



Territorial Cooperation projects 2007-2013:
Subsidy Contract guidelines





DISCLAIMER: This tool was issued by INTERACT during the 2000-2006 programming period and aims at spreading good examples and lessons learnt to enable a successful implementation of the 2007-2013 programming period. A few modifications have been made to the original version available in hard copy.

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INTERACT hopes this tool will contribute to “Sharing INTERREG experiences” and encourage other Community Initiative programmes to share their skills and knowledge with INTERREG stakeholders through INTERACT.

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CONTENTS

1. RATIONALE FOR SUBSIDY CONTRACTS	4
2. AIMS OF THE SUBSIDY CONTRACT	5
3. THE SUBSIDY CONTRACT TOOL	9
3.1 Objectives of the INTERACT tool on Subsidy Contracts within the framework of the territorial cooperation programmes	9
3.2 Commented analysis of a standard Subsidy Contract and good practices proposal	9
a. Legal provisions to be respected	9
b. Means of payment of Community aid	10
c. Relations with project partners	11
d. Control rules	11
e. Minimum archiving period	11
f. Reporting rules	11
g. Recovery of unjustified expenditure	12
h. Publicity rules	12
i. Clause attributing legal jurisdiction	12
j. Length of the Contract and means of early cancellation	13
k. Means for the signature of the Subsidy Contract (and third parties information)	13
l. Glossary of terminology used along the Subsidy Contract	13
4. GOOD PRACTICE IDENTIFIED AND ASPECTS TO BE IMPROVED	14
4.1. Good practice identified in Subsidy Contracts	14
4.2. Aspects that can be improved in Subsidy Contracts	16
a. LP's rights	16
b. Financial management of the programme	18
5. CONCLUSIONS	21

1. Rationale for Subsidy Contracts

Article 20.1 of Regulation (EC) No 1080/2006 sets out that *a final beneficiary shall be appointed for each operation*. This final beneficiary or 'Lead Partner' (hereinafter LP) shall be responsible for ensuring the implementation of the entire operation.

In turn, Article 15.2 of Regulation (EC) No 1080/2006 of the European Parliament and of the Council *"The Managing Authority (hereinafter MA) shall lay down the implementing arrangements for each operation, where appropriate **in agreement with the lead beneficiary**"*.

The Subsidy Contract (in some programmes called Grant Offer Letter) is an essential element within the framework of the managing and monitoring of territorial cooperation programmes. This agreement stipulates the rights and obligations of the LPs, and sometimes their partners, as well as the authorities involved in the implementation of the programme (generally concluded between the MA of the programme and the LP of the project concerned), and serves as a basis for the checks carried out and for possible amicable and contentious disputes.

The fields covered by this agreement are numerous and range from methods of reporting the progress of projects to payment methods and cover the different legal and financial obligations to be respected by the co-signatories.

A Subsidy Contract is thus systematically offered by the MA of the programme to the Subsidy Contract, either in the form of a **bilateral contract**, or as a **unilateral notification** (or subsidy order), with an acceptance period for the LP. It thus seems to respond to specific demands.

Subsidy Contracts guarantee uniform application and completion of the project in conformity with the programming decision of the Steering Committee (hereinafter SC), imposing a series of direct obligations on the LP as well as protecting its rights in obtaining the Community subsidy. On the other hand, they protect the MA against all forms of risk, and in addition preserve respect for national and Community rules concerned.

2. Aims of the Subsidy Contract:

A. To guarantee the rights of LPs in receiving the Community co-financing (respecting the purpose of the subsidy as it was programmed by the SC)

This first objective is seldom explicitly mentioned at the head of the contract, excepting for the mention of the amount of Community subsidy granted.

To guarantee these rights, overall the contracts provide mention of the provisional ERDF contribution as well as those of co-financers of the project. Payment of the Community subsidy is usually subject to respect from project specifications (often annexed to the contract and the same compulsory character). This is evidently a restriction on the LP and his partners, but it is equally a **payment right** if these conditions are respected.

It is worth noting that the new Community Regulations relating to management of Structural Funds, Article 20 of ERDF (EC) Regulation 1080/2006 makes specific mention to the rights and duties of the Lead and project partners.

The notion of LP in Territorial Cooperation Objective programmes

The **LP** is a key element in the management of territorial cooperation projects which has become compulsory for all operations for the 2007-2013 new period. The LP bears overall financial and legal responsibility for territorial cooperation projects and their role is therefore critical to the overall success of a project.

Article 20 of the new ERDF Regulation (EC) No 1080/2006 sets out that:

1. For each operation, a **lead beneficiary** shall be appointed by the beneficiaries among themselves. The lead beneficiary shall assume the following responsibilities:

- (a) It shall lay down the arrangements for its relations with the beneficiaries participating in the operation in an agreement comprising, inter alia, provisions guaranteeing the sound financial management of the funds allocated to the operation, including the arrangements for recovering amounts unduly paid;
- (b) It shall be responsible for ensuring the implementation of the entire operation;
- (c) It shall ensure that the expenditure presented by the beneficiaries participating in the operation has been incurred for the purpose of implementing the operation and corresponds to the activities agreed between those beneficiaries;
- (d) It shall verify that the expenditure presented by the beneficiaries participating in the operation has been validated by the controllers;
- (e) It shall be responsible for transferring the ERDF contribution to the beneficiaries participating in the operation».

2. Each beneficiary participating in the operation shall:

- (a) Assume responsibility in the event of any irregularity in the expenditure which it has declared;
- (b) Inform the Member State in which it is located about its participation in an operation in the case that this Member State as such is not participating

B. To guarantee the rights of the MA

This is a very relevant issue in territorial cooperation relationships, because in terms of Community legislation the MA is the body that becomes legally and financially (and also politically) responsible and liable in case of failure of the LP, project partners or the corresponding programme National Correspondents.

The **functions and duties of the MA** are laid down in the Regulations (specifically in Regulation (EC) No 1083/2006, § article 60), and are the following:

- (a) ensuring that operations are selected for funding in accordance with the criteria applicable to the Operational Programme (hereinafter OP) and that they comply with applicable Community and national rules for the whole of their implementation period;
- (b) verifying that the co-financed products and services are delivered and that the expenditure declared by the beneficiaries for operations has actually been incurred and complies with Community and national rules; verifications on-the-spot of individual operations may be carried out on a sample basis in accordance with the detailed rules to be adopted by the Commission in accordance with the procedure referred to in Article 103(3);
- (c) ensuring that there is a system for recording and storing in computerised form accounting records for each operation under the OP and that the data on implementation necessary for financial management, monitoring, verifications, audits and evaluation are collected;
- (d) ensuring that beneficiaries and other bodies involved in the implementation of operations maintain either a separate accounting system or an adequate accounting code for all transactions relating to the operation without prejudice to national accounting rules;
- (f) setting up procedures to ensure that all documents regarding expenditure and audits required to ensure an adequate audit trail are held in accordance with the requirements of Article 90
- (g) ensuring that the certifying authority receives all necessary information on the procedures and verifications carried out in relation to expenditure for the purpose of certification;
- (i) drawing up and, after approval by the monitoring committee, submitting to the Commission the annual and final reports on implementation;
- (j) ensuring compliance with the information and publicity requirements laid down in Article 69;
- (k) providing the Commission with information to allow it to appraise major projects.

In the case of non complying its duties, and notably in the case of failure in the execution of a project, the MA has the following responsibilities:

- **Financial responsibility:**

Under the Territorial Cooperation Objective the MA is not responsible for ensuring compliance with national and Community rules regarding project expenditure, because

different national rules are in place in each Member State. The MA's responsibility is limited to ensuring that the agreed checks have been carried out by the designated body.

The MA is responsible *in fine* for the correct use of Community Funds within the framework of the programme. If unwarranted expenditure has slipped by different checks (notably detailed and completed work), it is up to the Certifying Authority to recover it from the project LP (and from the Member State in ultimate stage).

• **Legal responsibility**: The responsibility of the MA in a programme involves several types of legal risks:

- a) The first type of conflict might obviously arise between the MA and the final beneficiaries (LP or project partners) in case of disagreement on the delivery of co-financed products and services or the payment of expenditures.
- b) The MA may also enter into litigation with National Authorities concerned, and primarily with its own Member State, if it is the State that granted the mission.
- c) The MA also risks litigation with the Community Authorities concerned (with regards to the shared responsibility between the MA and its Member State).
- d) Finally, disputes may also arise between the MA and third parties to the programme (non-subsidised business competitors, individuals alleging damages caused by operations co-financed by the programme, Third countries, etc.).

• **Political responsibility** might come out of situations of poor execution of the programme.

Therefore, the Subsidy Contract provides a series of **direct obligations on the LP in order to protect the MA** against all these risks.

The contract aims at guaranteeing **efficient monitoring and checks** of the project by the MA and grants him the means to link payment of Community funds to compliant running of the project. For example, the contract makes provision for keeping documents and recovery of sums unduly paid either to the LP, or to his partners or the national correspondents concerned.

C. To guarantee respect for National and Community rules

Compliance with both national and Community rules is a ground condition for the eligibility of project expenses.

Building upon experience with similar programmes in the programming period 2000-2006, Article 56(4) of Regulation (EC) No 1083/2006 provides that *rules on the eligibility of expenditure are to be laid down at **national level**, subject to the **exceptions** provided in the **specific Regulations for each Fund**. With regard to Article 13 of Regulation (EC) No 1080/2006, common rules on the eligibility of expenditure should be laid down which are applicable to Operational Programmes under the European territorial cooperation objective in order to ensure **consistency** between the rules applicable to projects implemented in different Member States.*

Additionally, there are also common rules stemming from the EU **horizontal policies**.

D. To guarantee uniform application of the project relating to programme Priorities

Overall, the ultimate aim of the Subsidy Contract is to guarantee project's compliance with the strategy of the programme

3. The Subsidy Contract TOOL

3.1 Objectives of the INTERACT tool on Subsidy Contracts within the framework of the territorial cooperation programmes

In the spirit of INTERACT, this study proposes **a tool for the benefit of territorial cooperation programmes**, identifying good practice and solutions to problems associated to the signature and implementation of Subsidy Contracts. It intends to provide territorial cooperation programmes with a practical tool easily to adapt and tailor to the specific respective national rules and that allows simplification and clarification of the ground rules for each programme.

The analysis of the various Subsidy Contract models in use demonstrates that their structure is relatively similar and that the same points are generally dealt with. The emphasis of this tool was placed more on points that could be completed or clarified in existing agreements so that they may be more accessible to project promoters not necessarily up to scratch on the functioning of the territorial cooperation programme and Community rules within the framework of the Structural Funds (hereinafter SF).

3.2 Commented analysis of a standard Subsidy Contract and good practices proposal

a. Legal provisions to be respected

This part is essential in a great majority of programmes and is often present in the preamble of the Contract, or the first article. The degree of precision and explanation of the national and Community legal basis to be respected is, nevertheless quite variable.

We suggest integrating into the Grant Offer Letters or into a specific annexe, the following information to allow LPs to be informed and to access more easily to the texts which form the legal basis of Subsidy Contracts.

I. Community rules specifically applicable to Territorial Cooperation programmes

- *Council Regulation (EC) No 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund (hereinafter ERDF), the European Social Fund and the Cohesion Fund and repealing Regulation (EC) 1260/1999*

This legal text is the « backbone » of the legal system for the European SF. The Regulation sets out the objectives of Cohesion Policy for 2007-2013, details the financial framework and resources available, lists management and control systems, and specifies the role of competent authorities in the implementation of each OP.

- *Regulation (EC) No 1080/2006 of the European Parliament and of the Council of 5 July 2006 on the European Regional Development Fund and repealing Regulation (EC) 1783/1999:*

The Regulation, dealing with ERDF specifies within the framework set up by the General Regulation, the ERDF scope of assistance in the different objectives, with specific provisions on the European Territorial Cooperation Objective. It details, with regard to the General Regulation, management, monitoring and control systems, functions of the MAs and responsibilities of beneficiaries.

- *Commission Regulation (EC) No 1828/2006 of 8 December 2006, setting out rules for the implementation of Council Regulation (EC) 1083/2006.*

This Commission Regulation lays down the information and publicity rules which must be obligatorily respected for each operation co-financed by European SF. It also sets out management and control systems, and procedures in case of irregularities.

II) Cross-section Community rules

Final beneficiaries of operations have the obligation to respect the full range of Community Regulations (Community acquis). These Community rules are specifically applicable to Territorial cooperation programmes. These “horizontal” Community policies are notably:

- Rules for competition and entry into the markets;
- Protection of the environment;
- Equal opportunities between men and women.

III) National rules

National rules must be applied complementarily to Community rules by LPs and project partners. These rules come from States participating in the programme.

It would be certainly useful, here also, to summarise, for the benefit of project promoters, the principle national rules to be respected (for example, in the area of public procurement, prior administrative authorisations or specific financial rules).

It should also be included the decision (number, date) of the Monitoring Committee of the programme to select the operation for funding.

b. Means of payment of Community aid

This point is essential in each contract. Indeed, it allows the maximum amount of Community funding to be determined as well as the means for calculation and payment.

In general, there are few particularities in the sample Subsidy Contracts but some points, nevertheless, warrant greater precision for the benefit of LPs and project partners:

Specify the notion of «maximum provisional amount». Indeed, from the outset not all project partners necessarily appreciate the principle of repayment of ERDF using eligible expenses invoices, which can lead to a reduction in the final sum of Community funds paid in instances where certain expenses are ruled out by the LP. In the same way, specify that under-spending of finances will lead to a proportional reduction of ERDF.

Clearly specify the notion of «invoices» or of «accounting documents of equivalent probative value» as well as the technique for submitting certification of expenditures so as to avoid any problems when making payment requests. Ensure that the accounting rules for presenting invoices or similar documents are the same in all Member States participating in the programme.

Establish a maximum period for submitting documentary proof (for example, three months after they have been issued) so as to avoid financial difficulties for the programme, notably automatic decommitment.

Coordinate rules for eligibility of expenses between the national leaders of the programme provide and to the Agreement restating the main points that might prove to be litigious when making payment requests. Particular attention must be given to the fiscal and social regime of partners, notably to the level of VAT.

Provide, for the benefit of the LP, an indication of the **average payment period** by the Certifying Authority of the programmes. This should not be in any case over 3 months (Regulation (EC) No 1080/2006 art. 16.2)

c. Relations with project partners

This issue is rarely brought up in the Subsidy Contracts analysed. This seems logical given the thinking of the LP. All the same, in order to guarantee a satisfactory completion of the project by the partnership, respecting the decision of the Monitoring Committee and the national and community rules, it would be useful to:

- Specify in the Subsidy Contract the rights and obligations of the co-signatories ;
- Make provision for notification by the MA of the Subsidy Contract to the partners ;
- Make systematically compulsory the signature of a **Partnership Agreement**, validated in advance by the MA. The Partnership Agreement can also be included as annex to the Subsidy Contract.

d. Control rules

This point is dealt with in different ways in the Subsidy Contracts analysed. Some mentioned different levels and means of inspections while others are relatively discrete on the subject (or make reference to certain instances in a procedure guide or manual). On this point it would be useful to:

- Specify the different control levels of as well as the national or Community bodies likely to carry them out;
- Specify (in an annexe) the nature and procedures of the different control levels as well as the specific obligations on the LP and project partners ;
- Indicate the appeal options open to the LP;
- Privilege open debate and the presumption of good faith from the LP.

e. Minimum archiving period

The minimum period for **archiving of documentary proof** relating to the project co-funded by the LP is certainly the field where the greatest divergences arose. The following recommendation can be issued in this regard:

- Set a **precise date for the minimum archiving period**, providing a leeway for security rather than taking the Community rule of three years as it is. In compliance with art. 90 of EC Regulation 1083/2006, documents shall be kept at least three years after closure of the respective OP (that is to say, 2016 for the 2007-2013 programmes)
- Specify the archiving locations, conditions and supports (references to the national law of the LP or rules common to the LPs of the programme is a possibility).

f. Reporting rules

These rules, relevant for knowing the progress of the project and the programme, and therefore having permanently updated performance indicators, are, in general, well detailed in the Grant Offer Letters in the sample. However, the following elements could be introduced:

- Insist on the **contents of activity reports** (we should place, for example, the summary in an annexe) and their importance for the good completion of the programme and for the next generation of funds ;
- Detail the **indicators** and refer to an annexe or to an **information guide** to ensure correct understanding by the LP of its self-evaluation obligations.

g. Recovery of unjustified expenditure

This issue is of the core of the Subsidy Contract. The contract is drafted and offered to the LP in order to avoid any unjustified expenditure. In theory, if the Subsidy Contract reflects good instruction and is scrupulously respected, there shouldn't be any instances of unjustified expenditure in the programme.

Nevertheless, may any litigation arise, the purpose of the Subsidy Contract assumes that the methods of recovering the sums concerned are dealt with conventionally, to avoid references to a competent judge for consideration. In order to comply with this, it is particularly useful to:

- Clearly define the notion of unjustified expenditure;
- Specify the steps for recovery of such sums (amicable phases, pre-litigation, litigation) ;
- Specify the maximum period for amicable repayment and the potential consequences of going through a litigation procedure (penal phase, ban on seeking further funding within the framework of the programme, ban in responding to public calls to tender for a certain period etc.);
- Clearly specify the amount of late interest applied (avoiding mere references to the respective national rules).

h. Publicity rules

It is the task of the Managing to ensure respect for the information and publicity rules (specified in the communication plan and in the EC Regulation 1828/2006, section 1) and to indicate clearly these responsibilities in the Subsidy Contract. To do this it would be useful to:

- Explicitly mention publicity obligations in the Subsidy Contract, additionally detailing the different publicity actions and procedures in an annexe or in a specific guide;
- Provide the LP with the elements required by the Regulations (normally available on the programme Website) such as documents, logos or stickers.
- Ensure that communication expenses of publicity are included in the project budget at the instruction phase.

Be aware of the convenience to include the list of beneficiaries to be published by the MA.

i. Clause attributing legal jurisdiction

This point does not pose any particular problem in the Subsidy Contracts studied. Practically all of them indicate the applicable national law of the Member State where the MA is located.

It would perhaps be worthwhile to specify the following elements in the passages relating to the clause attributing legal jurisdiction:

- Language of procedures;

- Possibility of amicable phase or open debate (this possibility should be privileged);
- Make provision for the intervention of a mediator or referee in case of failure in the amicable phase

j. Length of the Contract and means of early cancellation

The length of the Contract was an issue mentioned in few of the Subsidy Contracts considered. For those contracts which do so, the duration was often short and it was foreseen that the final completion stages of the project may be prolonged for a couple of months.

Nevertheless, it was noted that the duration of the contract posed problems when the latter was shorter than the length of the final controls and the minimum archiving period. It would therefore be useful either:

- Not to specify the length of validity of the Agreement (as is the case for many programmes), or:
- If specified, to make it coincide with the deadline for the minimum archiving period, or
- If the length of the Contract is shorter, to specify that the obligations linked to rules for controls and archiving remain applicable for the duration of the minimum archiving period.

k. Means for the signature of the Subsidy Contract (and third parties information)

Even if the nature and number of signatories does not posed big problems, it would nevertheless be convenient to specify in the Subsidy Contracts:

- The length of the Subsidy Contract and the consequences for the LP failing to sign within the prescribed deadline.

l. Glosary of terminology used along the Subsidy Contract

NB: In order to help the construction of this item in each Subsidy Contract, a Glossary of terminology related to Territorial Cooperation programmes may be found on the INTERACT Website: www.interact-eu.net

4. Good practice identified and aspects to be improved

4.1. Good practice identified in Subsidy Contracts

1. Generally the contracts have the same typology and the same content (despite different national legal bases of the MA), which facilitates understanding of his obligation by the LP operating in different INTERREG III strands.

When a number of programmes share the same MA, it is logical that we find Subsidy Contracts with the same typology and the same type of content.

Nevertheless, on reading the Grant Offer Letters in the sample, we remarked that most of them also share a relatively similar structure.

True, certain differences exist between them but these do not disrupt the economy of an Agreement in relation to the others.

We could have envisaged more significant variations due to the peculiarities of certain border zones. The Grant Offer Letters deal with this particular instance on the linguistic side, for example, by specifying working languages or for report submission to their own space (French and German, for example, in the Rhine Superior Space).

We might also have envisaged large variations due to the political-administrative organisation or the legal tradition of the country concerned. Even here we note few differences between Grant Offer Letters issued by a central national authority (for example, the Spanish Finance Ministry for the Spain-France programme) or from a private law Foundation (Maas-Rhine programme). With the same token, there are few differences between Grant Offer Letters issued in Common law countries and those emanating from Roman law countries. .

This is certainly due to the harmonising influence of Community Regulations on structural funds, which give MA of territorial cooperation programmes a common legal basis to respect.

In conclusion, the relative similarity between the Subsidy Contracts allows an operator to assume responsibilities in several programmes in the same strand or in different strands without coming up against monitoring and control rules that are too dissimilar. This is a clear advantage because he is already confronted with quite significant differences in the content of the projects between strands A and C, for example, in terms of organisation of partnerships or project content.

2. *A priori*, there are no programmes where the LPs are clearly disadvantaged with regards those in other programmes.

The few variations noted have, therefore, very little influence on how the LP conducts the project

Nevertheless, certain points might be considered relatively unjust or discriminatory by LPs:

- The practice of paying advances by a MA (which, like in the case of the ALCOTRA programme might be considered as relatively generous) might cause LPs in other programmes to question why they are not able to benefit from the same facility.
- The issue of the payment date of the balance of Community aid might also be considered as discriminatory. Some LPs have to wait until the final programme report has been adopted by the Commission, thus several years, while others see the balance

repaid once their final spending invoice has been approved by the MA. Moreover, the percentage of this balance varies between the programmes.

- The minimum archiving period is also clearly different from programme to programme ranging from the end of 2011 until the end of 2017 (perhaps even longer for the Atlantic Space programme which has fixed this date for 6 years after the final Community payment). The archiving date is perhaps not a cause for concern for the LPs but they might possibly be surprised by the different interpretations made by the MA from the same Community regulation.
- Differences in the due dates and the content of progress reports by the LPs can also constrain some to more onerous administrative monitoring than their counterparts in other programmes.
- A final element that we can cite, without this being exhaustive, is, for example, the interest rates imposed by MA on unjustified expenditure to be recovered from a LP.

These few instances therefore demonstrate the different practices of MA of the different INTERREG III programmes. Should we seek to harmonise them in the future Objective of “European Regional Cooperation” or, on the contrary, consider that they are the fortunate and logical result of the subsidiarity principle and the adaptation of the legal, administrative and financial conduct of the programme to the specificities of each programme?

Rules of reporting and of control are generally well described. When reading the sample contracts, it seems that they all deal with rules for reporting and control, which is necessary so that LPs can correctly anticipate their future obligations.

In general, they are quite well described. All the same, as we will see in the following point, an effort can nevertheless be made by several programmes to facilitate their understanding and assimilation by their LPs because they are sometimes detailed in a very summarized or sketchy manner.

4. Some programmes usefully associate the partners or the national correspondents with the Subsidy Contract.

One of the questions the first programmes to use Subsidy Contracts were confronted with was to know who the signatories would be. Several options were envisaged and carried out:

- a. Unilateral notification of the grant decision by the MA (certain programmes in the sample chose this option).
- b. Co-signing of the grant decision by the MA and the LP (most MA in the sample used this method).
- c. Multilateral Subsidy Contract involving the LP's partners (used by some programmes).
- d. Involvement of foreign national correspondents in the contract (the choice made by the Franco-British programme, for example).

Each option has its own advantages and drawbacks:

- **Option A** allows for quick notification of the grant decision and less formalism (this is why it is sometimes used in other programmes co-financed by structural funds for micro-projects). The drawback is that it doesn't guarantee that the LP is fully aware of the extent of his responsibilities when the request is made or notification received. To compensate for this disadvantage in certain programmes, the LP is given a maximum period in which to confirm his agreement with the granting decision.

- **Option B** is the most common because it guarantees that the LP gets involved with full knowledge of the facts (at least that is what is hoped). The main drawback is the lack of involvement of the LP's partners, although they are affected by the effects of this legal act.
- **Option C** is interesting because it places all project participants on the same level of information. Its main disadvantage is the speed it takes to sign a document that must circulate among several partners and countries. This is why certain MA make it sign separately (each signatory signs as many times as there are co-signatories and the MA compiles an original for each when its finished).
- **Option D** is hypothetically even more interesting because it also associates the national correspondents, which facilitates the subrogation of rights between the MA (which is often unable to recover unjustified expenditure in the other countries) and the Member States of the programme.

There is, thus, no perfect method of notification of rights and obligations. One must therefore ensure in each instance correct understanding by the LP and his partners of the nature of their involvement in the programme. From whence comes the importance, in options A and B, of also referring to a partnership agreement, which is also essential document for the programme.

5. Some programmes rely on explanatory documents that are useful to the LP (methodology guide, internal procedures, etc.).

This is particularly the case for the interregional programmes, which have published a programme manual but also a specific guide to auditing procedures.

Other programmes can be mentioned, like, for example, the Sarre-Moselle programme which precedes all contracts with « general conditions », or the ALCOTRA programme which refers to its « *vade-mecum* ».

It is clear that this practice should be encouraged because it allows, on one hand, to give to the LP and his partners all elements necessary to respect and understand the mechanism and logic of the programme and, on the other hand, not to « overload » the Subsidy Contract and to focus on the most important elements.

4.2. Aspects that can be improved in Subsidy Contracts

At this stage, this is evidently only proposals of areas of work that, for some, risk perhaps disturbing the managing authorities who principally wish to equip themselves against all risk of appeal and of legal action being brought against them.

a. LP's rights

1. Greater specification of the LP's rights in the contract

The contracts indeed appear to be quite often biased against the LP, which can « scare off » potential LPs.

This is certainly the main criticism that can be levelled at most of the contracts in the sample. This is certainly due to numerous factors, whether combined or not:

- Conscious or unconscious desire of the MA to preserve its rights due to its apparently powerful position over the LPs.

- Misunderstanding by the LP because the language used in the contract is not his usual one.
 - The LP hasn't the time or the desire to refer to the large legal basis often cited in the preamble and if he does he doesn't necessarily know where to look in the texts.
2. Clarity in the presentation of the legal bases to be respected by the LP must certainly be improved.

Indeed this basis is often described in the preamble with a number of texts of greater or lesser importance without, at least, a little summary of the main obligations therein. It is evident that the contract could not restate all these texts *in extenso* but some way of making them more accessible (and thus respectable) by the LP is certainly conceivable (see the following part of this study).

3. Should the clause of non-responsibility of the MA in instances of non-payment be looked at again?

If it is applied, the LP and his partners who might have pre-financed certain expenses would see themselves penalised for management problems at the programme level that don't concern them directly (automatic decommitment, systematic correction, delay or errors in the transmission of documents by the PA etc.).

In order to guarantee better application of Subsidy Contracts, it seems necessary that the LP and his partners have sufficient information at the time of instruction of the assistance request or during the programming phase.

This pre-information could take the form of written documents (procedural guides etc.) or a preparation meeting with pre-selected LPs. This meeting would allow LPs to properly understand their obligations and to know in detail the paying and inspection procedures put in place by the programme authorities.

It goes without saying that not all those submitting requests can have access to these meetings with the MA, but they must be systematic once the project has been chosen.

A potential object to these meetings is the geographic separation of the LP, which is especially the case in Strands B and C.

4. Are the clauses designating legal jurisdiction penalising for the LP?

The question can be asked about difficulties of access for the LP to foreign jurisdiction if the MA is not from his own national territory. This question is difficult to resolve because, in the other direction, can we ask the MA to go to court in as many countries as there are States partners to the programme ? A solution would be to let the national correspondent go to court against the LP of his own country. Another would be to put in place possible arbitration procedures.

5. Should we improve prior information available to the LP on his rights and duties vis-à-vis his partners and the programme authorities?

Here, indeed, a general lack of clarity of the obligations is noted. In order to compensate for this handicap, should we provide more didactic documents? This is the hypotheses made in the first part of the study within the framework of the tool proposed to simplify and clarify Subsidy Contracts.

6. Should a mechanism that would lead to greater involvement of the partners (co-signature, recorded delivery) be envisaged?

This point brings us back to option C mentioned in the previous point and is certainly a path for improvement destined for a better understanding by project partners of their obligations and in the same way making the work of coordination and inspection on the ground by LPs easier.

7. Should we envisage translation into the language of the LP if this isn't the working language of the programme?

This point perhaps only affects trans-national or inter-regional programmes departing from the principle in strand A that the MA communicates in the language of the LP. Is this really useful? In principle, in strand C, for example, the LP will see 1 of 2 working languages imposed (French in the Southern zone and English in the three others). Will he sufficiently understand his obligations if it isn't his usual language? Can the MA allow itself to have the Subsidy Contract project translated (as a reference) into each of the potential languages of the LPs (in the 21 official languages of the EU)?

8. Should we envisage harmonisation of the order of the different points covered by the contracts in order to facilitate understanding by the LPs and their partners?

It seems in principle that this question does not arise from specific questions, the architecture of the agreements in the sample that the same presentational order is generally followed. It is for this reason that the INTERACT tool doesn't propose a standard convention but rather proposals for improving understanding of the different obligations contained therein.

9. Should archiving periods not be harmonised?

It is true that it is surprising to see maximum archiving dates varying by 6 years. But is this really a great problem? Here, also, the question is raised of harmonisation at Community level or of subsidiary application according to the progress of the programmes. The advantage of harmonisation would allow programme managers to avoid asking themselves too many questions and to bring forward dates that are a little random or imprecise (3 years after the final Community payment).

The alternative would therefore either be to clearly specify this rule in the agreement or to propose that the European Commission fixes this date without consultation for the next programming period. It would also certainly be useful to specify better under which technical formats the archiving operations must be done.

b. Financial management of the programme

10. Must we systematically make provision for a maximum payment period for the PA?

This point is delicate because it gives the LP a precise due date for repayment of his expenses from the moment he submits an invoice that is in order, it puts a double pressure on the programme PA.

The first is to find itself in position of debt if the amounts of Community co-funding have not been paid to it for whatever reason that may be. The question is to know who will take on board the interest of the debt (depending on who is responsible for the delays, either the MA, the PA or the Commission?).

The second is for the PA to take on board itself (or on behalf of the MA depending on the Agreement if the two bodies are legally distinct) possible financial corrections.

It this constitutes a significant financial risk, but it allows a risk of non repayment of expenses to weigh on the LP in certain hypotheses that do not concern it?

11. Should we not introduce more precisely into the contract the risks of loss of Community aid not directly linked to the LP (for example, systematic corrections)?

This point links back to the preceding problematic and concerns cases where programme authorities are confronted with systematic corrections at programme level and envisage a proportional reduction in Community aid to all LPs whether not they are affected by the reasons for this correction.

In this hypotheses of a systematic correction, we recommend of course that the MA re-inspects all the projects and applies reductions prioritising projects that have failed in their obligations (for example through inadequate publicity) and undertake actions to recover unjustified expenditure before applying a contractual reduction to all projects still waiting for co-financing.

The case of non-payment of Community aid by the Commission is, on the other hand, more delicate if it comes from a problem at programme management level (automatic decommitment, for example) because a choice must be made by the MA on which projects to penalise. If all the programming has been carried out and all projects have begun it will be useful to warn LPs as early as possible and to specify this possibility in advance in the Subsidy Contract.

12. Must we make provision for compensation (interest on late payment?) in instances of late payment of the PA relating to clauses in the Contract?

This point links back to the previous one and would lead, in instances of non payment within the fixed period, to making late interest payments to the LP (on the same basis as for repayment of unjustified expenditure?). Is this not one of the rules to be modified in the future regulation of spending eligibility, which excludes, for the moment, interest on debt?

13. Should the interest rate level not be harmonised in instances of repayment of unwarranted expenditure by the LP?

This point is linked to the previous one but, in this instance, we would lean more towards subsidiary application, leaving each MA the task of setting its own repayment conditions because financial conditions set in advance by the PA or the Cashier of the programme (when the MA and the PA are from the same body, payment is often delegated to a third-party banking body) vary from case to case.

14. Should payment methods for advances or pre-financing of the Community balance not be harmonised?

Here also, the question of harmonisation at Community level is raised. However, if advances were made compulsory as well as a reduction or elimination of the period for repayment at the end of the programme, would the MA have the financial means to cope with it?

15. Would it not be worthwhile, in the new programming period, to make provision for a larger down-payment to allow programme authorities to provide larger advances even if the risk of unjustified expenditure is increased?

16. Wouldn't it be better to improve invoicing rules in certain Contracts?

This point allows us to respond to one of the greatest difficulties of MA to avoid automatic decommitment, which is the speed and submission of the written proof of payment. Indeed, most programmes noted a great slowness in the submission of payment requests. Reasons for this are either bad both accountancy and internal organisation by the LP, or difficulties in procuring documents from its partners (where their interest in dealing with this point in the Contract comes in).

A simple clause to be inserted would set a deadline (for example, 3 months) for the submission of invoices or other written proofs after their production.

Thereafter pre-funded sums would no longer be able to be repaid by the MA (excepting under duly justification). We often find this clause in the Subsidy Contracts analysed, but above all for the final certification of expenditure. It would, perhaps, be good to make similar provision for the submission of other declarations.

5. Conclusions

It becomes clear from the analysis of the models considered in this study that the Subsidy Contract is very much the key to good programming.

It is therefore important that it is drafted in a precise manner and that it is then respected scrupulously because all potential controls will be carried out and litigation settled by this yardstick. Prior information meetings of LPs on the content of the Subsidy Contract are necessary to prevent in advance all potential difficulties in project implementation.

The procedure for signature of the Subsidy Contract is not to be minimised or trivialised. The MA should proactively ensure that the LP, and if necessary its partners, have properly understood the importance of this binding document. It is important as well for the MA to ensure that the partnership principle is upheld, notably with its National Correspondents in the other States participating in the programme.

All the same, the Subsidy Contract is not the sole guarantee for good programming. Consequently it does not replace the organisation, instruction, monitoring and control phases which, with the help of the Subsidy Contract, contribute to the implementation of operations that are in conformity not only with national and Community rules but equally with the objectives and strategy of the programme.

Another important element that goes beyond the framework of the Subsidy Contract is the capacity of the MA to request compliance by project partners. The Subsidy Contract would thus lose its importance if the signatories were to have the impression that the MA was not determined to bring its clauses into play, even in a litigious manner. Several ingredients are therefore necessary ranging from the legal nature of the MA to its political weight or quite simply the means that it employs to ensure good performance of the programme.

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