



Implementation of EU external border cooperation after 2013, particularly on borders with the Russian Federation

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The purpose of this discussion paper is to analyse the present situation concerning EU external border cooperation, particularly on borders with the Russian Federation. This paper is based on a study commissioned by the Finnish Ministry for Foreign Affairs to explore the positions of various stakeholders in order to find a basis for continuation of cooperation in the next budgetary period. It builds on the experiences of the writer and recent interviews with relevant stakeholders in previous and current programmes.

The views expressed in this paper represent in no way the position of the Finnish Ministry for Foreign Affairs or the Finnish Government. The writer bears sole responsibility for them.

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Abbreviations

CBC	Cross Border Cooperation
DG	Directorates General
ERDF	European Regional Development Fund
ENPI	European Neighbourhood and Partnership Instrument
ETC	European Territorial Cooperation
INTERREG	European territorial cooperation financed from European Regional Development Fund
IPA	Instrument for Pre-Accession Assistance
JMC	Joint Monitoring Committee
JMA	Joint Managing Authority
JSC	Joint Selection Committee
LSP	Large Scale Project
MEDA	Euro-Mediterranean Partnership
ODA	Official Development Assistance
PHARE	Action Plan for coordinated aid to the Central and East European countries
PRAG	Practical Guide to contract procedures for EC external actions
Tacis	Technical Assistance to the Commonwealth of Independent States

I Summary and conclusions

General issues

- The European Union, its Member States and the governments of partner countries benefit from external border cooperation through the creation of a positive atmosphere for rapprochement between the participating countries, improvement of EU and partner country relations, increasing people-to-people contacts and promotion of shared political and economic values and European cooperation methods. This contributes significantly to stability and prosperity on the border regions, which is in the common interest of all stakeholders.
- Cross-border cooperation on EU external borders should be perceived as cooperation between the border regions for the purpose of integrated and sustainable regional development and harmonious territorial integration across the EU external border. The responsibility and benefits should always remain at the regional level and the cooperation should be based on equal partnership. To increase ownership and commitment to cooperation, all countries and regions participating in ENPI CBC -programmes should be encouraged to contribute also financially according to their means.
- The political framework for the EU external CBC is the European Neighbourhood Policy on one hand and the Strategic Partnership with Russia on the other hand, but their implementation programmes should be based on the good practices of INTERREG.
- In order to be a successful foreign policy tool these Programmes need to be implemented properly. Many Member States participating in current programmes consider shared management as key to any future success of EU external border cooperation.

- Experience since 2007 has proved that territorial cooperation – including across external borders – can only be implemented on rules developed for cooperation, not assistance. The ground-breaking innovation of 2003 to combine the external relations political framework with regional-level cooperation should be finally implemented. When the Commission's legislative proposals for the next budgetary period are presented, the nature of external border CBC and its proper legislative environment and administrative structure needs to be reconsidered in the light of the experience gained.

Cooperation with Russia

- The Russian Federation stands out among other ENPI CBC partner countries in several aspects. It is the only partner country providing significant co-financing to the programmes. It is also the only partner country not eligible for ODA assistance and it is not included in the European Neighbourhood Policy.
- However, separating Russia from other EU external border CBC would not serve the objective of approximation of internal and external border CBC implementation. The result for some Member States (Lithuania and Poland) might be that three different sets of rules (INTERREG, ENPI CBC and Russia-specific) would need to be applied on CBC on their borders. This would obviously not be practicable.
- In addition to providing necessary uniformity, maintaining Russia in the same legislative framework as the other partner countries could also have another advantage: it might encourage other partner countries to consider co-financing the programmes and consequently improve achieving the objectives of equal partnership, full commitment and ownership. This does not imply that some special arrangements would not be necessary in the programmes with Russia.

Legal and administrative framework

- The problems encountered in the implementation of the ENPI CBC have not been caused by the CBC provisions in the ENPI Regulation which were based on the Neighbourhood Programmes.
- The decision by the European Parliament and the Council to apply shared management to ENPI CBC programmes which was revoked by the European Commission in the ENPI CBC implementing rules, should be reconfirmed and implemented.
- An analysis on the use of shared management by DG Regio in external funding in IPA CBC should be urgently made and communicated to the Member States before a proposal on the future legislative framework is presented.
- The necessary contractual arrangements when applying shared management to external funding need to be clarified before the new Financial Regulation is finalised.

Implementation

- In addition to general Community-level provisions on the implementation of ENPI CBC programmes, there is a need for the participating countries to jointly develop programme-specific implementing rules. Even if separate internal provisions are necessary for different financing sources, the applicants should be presented with one uniform set of programme rules.
- Joint Monitoring Committees should be developed into bodies where the regions define their joint development strategies and priorities for the programmes and the calls for proposals. The role of central government

representatives should be limited to financial and practical implementation issues. Project selection should be entrusted to Joint Selection Committees to avoid application of conflicting criteria in the process.

- The position of the Managing Authority in the day-to-day management of the programme should be strengthened to allow the Joint Monitoring Committee to concentrate on strategic issues. The possibility of assigning the task of Managing Authority to an International Financial Institution in future programmes should be explored.
- Selection of projects to be financed from the programmes should be entrusted to Selection Committees consisting of experts from the regional level. The central government could be represented in the Selection Committee as experts to ensure the availability of possible national funding for the selected projects.
- The proposal to pool Community and national programme funds should be carefully considered, as all its implications are not yet clear. Although pooling of funds would facilitate programme and project management, it would require an extensive regulatory framework which takes into consideration the needs of all financiers, not just the European Community.

Other issues

- The need for national legislation in the implementation of external border cooperation has been so far largely neglected. Transfer to shared management requires adoption of national provisions in the Member States to fulfil the requirements of the Financial Regulation and other Community legislation. The partner countries also need to analyse the need for national rules.

- External border cooperation programmes should concentrate on development projects which could include feasibility studies, environmental assessments and planning of major investment projects. The actual funding of the investment could be realised through other sources such as national funds or international financial institutions.
- Consideration should be given to a separate investment-oriented instrument with adequate funding to safeguard continuing cooperation on regional development projects.

II Introduction

Cross-border cooperation across the European Union's external borders is an important and innovative foreign policy tool. It combines the foreign policy interests of the Union and the participating countries with the regional development and cooperation needs of the border regions. Regional development programmes drawn up and implemented by the external border regions themselves contribute both to improved relations between the countries and to integrated and sustainable regional development and harmonious territorial integration on EU borders. Hence in 2007-2013 the external border cooperation, for the first time, combines EU's internal structural funds with external action funding in a single financial instrument.

When this innovative tool was planned, the intention was to adapt the procedures developed in the Union's successful INTERREG cooperation to implementation of external border cooperation. However, after the adoption of the legislative framework, the external action assistance model was chosen for a basis for the implementation. The concept of combining a foreign policy framework with a territorial cooperation implementation model did not materialise.

Difficulties experienced in setting up the programmes, conclusion of Financing Agreements with the partner countries and launching calls for proposals have delayed the implementation of the programmes to the extent that the first projects were not approved until the end of 2010, the fourth year of the seven-year programme period. The situation has not only resulted in missed opportunities in regional development cooperation for the participating regions, but also put the Member States' external

border regions at a grave financial disadvantage vis-à-vis their internal border neighbours. Because of the delays, some funding allocated to these programmes faces a decommitment risk and could consequently be lost.

In the following pages, experiences in the present budgetary period are analysed and an attempt is made to identify possible ways forward.

III Background

In March 2003 the European Commission proposed in its Wider Europe Communication that “the European Union should aim to develop a zone of prosperity and a friendly neighbourhood”. One of the elements of the Wider Europe Communication¹ was the specific possibility of creating a new Neighbourhood Instrument “which builds on the experience of promoting cross-border cooperation within the PHARE, Tacis and INTERREG programmes”. This initiative was followed up later that year (July 2003) with another Communication from the Commission called “Paving the Way for a New Neighbourhood Instrument”². Taking into account the short-term constraints in the coordination between the then-existing instruments, the latter Communication proposed adoption of a two-step approach. An initial phase in 2004–2006 would focus on improvement of coordination between the various financing instruments. For the second phase, beginning in 2007, a new legal instrument was envisaged.

In the first phase in 2004–2006, a first attempt was made to coordinate the use of EU internal (European Regional Development Fund, ERDF) and External (Tacis, MEDA) funding to finance cross-border cooperation on the EU’s external border. These Neighbourhood Programmes – largely based on experience on the Finnish/Russian border – had a single application process and single project selection. They were jointly managed by bodies consisting of representatives from both sides of the border. Single projects were operated on both sides of the border concurrently rather than consecutively or separately.

¹ *Wider Europe – Neighbourhood: A New Framework for Relations with our Eastern and Southern Neighbours COM(2003) 104 final*

² *COM(2003) 393 final*

However, funding from the two sources had to be contracted and paid out by different authorities. The responsibility for the ERDF funding was entrusted to the Managing Authorities of the programmes, i.e. Member States' regional or central public authorities, which often also acted as Technical Secretariats. The external funds were managed by the European Commission delegation in the partner country in question. The Directorates General involved inside the European Commission were DG's Regio, Relex and EuropeAid. Despite major effort from all sides, synchronisation in contracting and paying out ERDF and external funds could not be achieved which resulted in frustration and many failed joint projects.

In the second phase the internal and external Community funds were merged into a single instrument managed by joint bodies under one set of rules. The rules were expected to be based on the European Territorial Cooperation (ETC, INTERREG) taking into account the specificities required by operations outside the EU territory. For the budgetary period 2007–2013 external border cooperation was included in the European Neighbourhood and Partnership (ENPI) instrument³ as a separate strand (ENPI CBC). Community funding to the 15 ENPI CBC Programmes comes from the external action (Heading 4) funds (559 m€) and from ERDF funds allocated by the participating Member States from their national share (465.5 m€).⁴

³ Regulation (EC) No 1638/2006 of the European Parliament and the Council of 24 October 2006 laying down general provisions establishing a European Neighbourhood and Partnership Instrument

⁴ A large part of Community contribution towards the programmes comes from ERDF funds which are designated to fostering regional development. Based on the results achieved in the present budgetary period their availability in the future for ENPI CBC can be questioned.

The 2003 Communication was based on demand-driven approach and was well received by the various stakeholders. External border cooperation could have far greater importance for external relations than its financial volume would imply. Unfortunately the cooperation has not attained the visibility it deserves on the EU external relations agenda. This is at least partly due to the problems in the implementation of the current Programmes.

IV Nature of external border cooperation

- The political framework for the EU external CBC is the European Neighbourhood Policy on one hand and the Strategic Partnership with Russia on the other hand, but their implementation programmes should be based on the good practices of INTERREG.
- In order to be a successful foreign policy tool, these programmes need to be implemented efficiently. Many Member States participating in current programmes consider shared management as key to any future success of EU external border cooperation.
- Experience since 2007 has proved that territorial cooperation – also across external borders – can only be implemented on rules developed for cooperation, not assistance. The ground-breaking innovation of 2003 to combine external relations political framework with regional-level cooperation should be finally implemented. When the Commission’s legislative proposals for the next budgetary period are presented, the nature of external border CBC and its proper legislative environment and administrative structure needs to be reconsidered in the light of the experience gained.

The dichotomy between regional development cooperation and external assistance approaches has been central in all discussions on external border cooperation since the early 2000’s and has greatly influenced the administrative solutions adopted for the programmes.

The relevant *Member States* perceived the purpose of the new instrument as a tool for transferring the modalities of internal cross-border cooperation under INTERREG to the external border, taking into consideration the specific needs of operating partly outside the EU territory. Like INTERREG

programmes, the ENPI CBC programmes were meant to be managed in shared management mode by a Member State public body acting as Managing Authority. Cross-border cooperation is cooperation between the regions on both sides of the border with support from the central government of the participating countries and the European Commission. This approach was also reflected in the decisions of the Member States to allocate part of their ETC ERDF funds to the programmes. Some Member States also committed significant national co-financing. In most ENPI CBC Programmes there is no co-financing from partner countries.

Hence the division of competence between the various Ministries in the Member States concerning ENPI CBC has been clear. The Ministries of Foreign Affairs are responsible for the political framework and give support in contacts with the European Commission and the partner countries while the Ministries responsible for regional development are competent in all issues concerning the implementation of the programmes.

These structures have not been mirrored in the *European Commission*, where the responsibility for the ENPI CBC Programmes was assigned to DG EuropeAid⁵ with no involvement of DG Regio. This decision has steered the implementation modalities of ENPI CBC away from shared management and towards the external assistance since the approach of different Directorates General is based naturally on their respective administrative traditions. The decision to apply the centralised indirect management mode resulted in strong involvement of the Commission in day-to-day programme decisions in accordance with rules of external assistance. On the other hand DG Regio, which had provided administrative support to the Neighbourhood Programmes,

⁵ DG EuropeAid has recently been merged with DG Development, creating the new DG EuropeAid Development and Cooperation (Devco). DG Devco will be responsible for the Union's development policy and implementation.

manages the budget of the Territorial Cooperation Programmes in shared management with the Member States. This approach was also selected for the parallel IPA⁶ CBC programmes managed by DG Regio.

The dialogue between the Member States and the European Commission has been characterised and sometimes complicated by this administrative asymmetry. However, the decisions that will be taken on the future implementation modalities will potentially have implications on the division of competence inside the European Commission. This could lead to assigning the responsibility for all external border cooperation (IPA and ENPI CBC) inside the European Commission to DG Regio which alone in the Commission possesses expertise in both territorial cooperation and shared management.

⁶ Council Regulation (EC) No 1085/2006 establishing an Instrument for Pre-Accession Assistance

V Programmes with the Russian Federation

- The Russian Federation stands out among other ENPI CBC partner countries in several aspects. It is the only partner country providing significant co-financing to the programmes. It is also the only partner country not eligible for ODA assistance and it is not included in the European Neighbourhood Policy.
- However, separating Russia from other EU external border CBC would not serve the objective of approximation of internal and external border CBC implementation. The result for some Member States (Lithuania and Poland) might be that three different sets of rules (INTERREG, ENPI CBC and Russia-specific) would need to be applied on CBC on their borders. This would obviously not be practicable.
- In addition to providing necessary uniformity, maintaining Russia in the same legislative framework as the other partner countries could also have another advantage: it might encourage other partner countries to consider co-financing the programmes and consequently improve achieving the objectives of equal partnership, full commitment and ownership. This does not imply that some special arrangements would not be necessary in the programmes with Russia.

Cross-border cooperation with Russian regions is a major foreign policy priority for the Member States which have borders with Russia. The idea of engaging Russian regions in INTERREG cooperation was introduced on Finnish-Russian border regions in the 1990s and has served as a model for the ENPI CBC.

The Commission's 2003 Communication on the new Neighbourhood Instrument was received with great enthusiasm in EU-Russian border areas. The Neighbourhood Programmes, despite the failure to synchronise contracting and payments, contributed to creation and further development of cross-border networks and project ideas. ENPI CBC Programmes were prepared by the participating regions and countries in 2006–2007 and were expected to be launched expediently.

The Russian Government announced in 2007 that it would allocate a significant amount (final sum 105 million euros) of national co-financing to the ENPI CBC Programmes. This decision resulted in stronger involvement of Russian Federal Ministries in the programme administration. According to the Russian legislation, federal co-financing is managed by federal authorities, not the regions. Consequently, the Russian government authorities tend to perceive ENPI CBC as predominantly EU-Russia and/or Russia-Member State cooperation. Russia sees ENPI CBC as a possible model for cross-border cooperation on their non-EU borders.

Negotiations between the European Commission and the Russian government on programme-specific Financing Agreements were seriously delayed until mid-2009 due to fundamentally different approaches of the parties. This had detrimental consequences for the Programmes and Managing Authorities in the Member States.

Adoption of the programmes was delayed in the Commission until the end of 2008. Discussions between the programme bodies and the Commission on the launch of the first calls for proposals were prolonged i.a. due to disagreement between the parties on application of the general EU external assistance procedures which are not compatible with the programme rules agreed by the participating countries and adopted by the Commission.

The Baltic Sea Region INTERREG IVB Programme, which uniquely includes an ENPI CBC component (for Russia and Belarus), is an important

financial tool in the implementation of the EU Strategy for the Baltic Sea Region. Participation of Russia in the Programme (adopted by the European Commission in December 2007) would have greatly facilitated the realisation of the external dimension of the Strategy. Unfortunately funding for Russian partners was excluded by failure to conclude a financing agreement by the end of 2008. Despite missing Community funding, a large proportion of the projects selected in the Programme include Russian partners, which reflect the great interest of the Russian regions in Baltic Sea cooperation.

Since 2006, Member States and Russian regions and authorities have invested time and resources in ENPI CBC without many concrete results in the form of projects. ENPI CBC, which was supposed to be a quantum leap forward, has so far delivered less than the Neighbourhood Programmes did in two years. At the regional level, this has caused much frustration and resulted in a loss of confidence in the ability of the European Union to facilitate cooperation.

Discussions conducted by the writer with different stakeholders indicate that fundamental changes in the implementation framework are needed to secure continuation of ENPI CBC on EU-Russian borders. Everyone agrees, however, on the importance of this cooperation.

In the absence of a viable ENPI CBC implementation model the Member States which have borders with Russia might want to increase the maximum percentage of ERDF funding that can be used outside the EU territory (now at 10 percent) and to further define the rules on use of these funds. This would facilitate their use in cooperation with the Russian regions. Some Member States would continue to allocate national co-financing towards such cooperation. The willingness of the Russian Federation to co-finance such programmes is open.

The end result would resemble the 2004–2006 Neighbourhood Programmes without the EU external funding component but possibly with Russian national co-financing. The absence of EU external funding would probably preclude financing of investments but the programme budgets would enable maintaining a steady volume of development projects and sufficient intensity of cooperation across the border.

VI EU legal and administrative framework

- The problems encountered in the implementation of the ENPI CBC have not been caused by the CBC provisions in the ENPI Regulation, which were based on the Neighbourhood Programmes.
- The decision by the European Parliament and the Council to apply shared management to ENPI CBC programmes, which was revoked by the European Commission in the ENPI CBC implementing rules, should be reconfirmed and implemented.
- An analysis on the use of shared management by DG Regio in external funding in IPA CBC should be urgently made and communicated to the Member States, before a proposal on the future legislative framework is presented.
- The necessary contractual arrangements when applying shared management to external funding need to be clarified before the new Financial Regulation is finalised.

1. Legal framework

External border cooperation with non-candidate countries was included in the ENPI Regulation placed in the framework of external action. The integration was a part of overall reduction of the number of external relations funding regulations in 2006. The provisions on CBC in the regulation were based on the experience of the Neighbourhood Programmes and on INTERREG legislation.

The choice of whether to include provisions on external border cooperation in the external policy or the cohesion policy framework should not have major implications on their content. The primary provisions concerning the selection procedure and the programme bodies of the INTERREG-Tacis/MEDA Neighbourhood programmes, which for the first time attempted to coordinate internal and external CBC funding in 2004–2006, were located in structural funds legislation.

It was understood by the Member States that implementation of the new programmes would be based on shared management and the structural funds model. Initial preparation inside the European Commission was carried out in close cooperation between DG Relex and DG Regio. According to Article 10 of the ENPI Regulation, ENPI CBC Programmes shall, in principle, be implemented through shared management.

2. The question of the management mode – shared vs. centralised management

The role of implementing rules in shared management differs from that applied in other management modes. When the budget is implemented by shared management, implementation tasks are delegated to Member States which take the necessary legislative, regulatory and administrative or other measures. The Member States also bear the full responsibility for the use of funds. In central management the Commission is responsible for the use of funds and Community legislation is applied directly.

In 2006, before the beginning of the present budgetary period, the Financial Regulation⁷ was revised to include – among other issues – necessary provisions for the implementation of the incoming ENPI CBC. In Article 163 shared management – applied so far for the Common Agricultural Policy and Structural Funds – was introduced as a possible management

mode for external actions with a view of adopting this mode for external border cooperation.

The Commission's ENPI CBC Implementing Regulation⁸, prepared by DG EuropeAid and adopted in August 2007, decreed (Article 23) that the Commission's so-called PRAG⁹ procedures for procurement and grants shall be applied to the ENPI CBC Programmes. DG EuropeAid determined later that the PRAG provisions on centralised indirect management would be applied instead of shared management. Because the PRAG does not contain provisions for cooperation programmes, a majority of programme decisions require a derogation that must be approved by the Commission. This structure gives the Commission the final word in all aspects of programme implementation undermining the powers of the joint programme bodies.

In shared management, the countries participating in a programme would have the possibility of adopting implementation arrangements suitable to the specific circumstances of the programme, as long as the management and control system is compatible with the Community requirements. In centralised indirect management, as applied today, a majority of programme management decisions must be submitted for approval by the Commission.

In centralised indirect mode, the task of Contracting Authority should be delegated to a national body through a Delegation Agreement. No such agreements have been concluded. Administratively the situation is very unsatisfactory and the unclear division of responsibility creates a hazard.

⁷ Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities

⁸ Commission Regulation (EC) No 951/2007 laying down implementing rules for cross-border cooperation programmes financed under Regulation (EC) No 1638/2006 of the European Parliament and the Council laying down general provisions establishing a European Neighbourhood and Partnership Instrument

⁹ Practical Guide to Contract procedures for EC external actions

3. Questions relating to the financing agreement

In accordance with Article 9 (8) of the ENPI Regulation, the Commission shall conclude a financing agreement with the partner countries in accordance with the relevant provisions of the Financial Regulation. The financing agreement shall include the legal provisions necessary for the implementation of the joint operational programme.

According to Article 166(2) of the Financial Regulation, financing agreements with the beneficiary third countries shall be concluded by the end of the calendar year following the year the budgetary commitment was made (n+1 rule). In paragraph 3 of the Article the n+1 rule is excluded for the ENPI CBC programmes. This provision was revoked in Article 10 of the Commission's ENPI CBC Implementing Regulation which reintroduced the n+1 requirement to ENPI CBC financing agreements. This resulted in exclusion of the Russian Federation from the ENPI CBC component of the Baltic Sea Region Programme.

The Commission's recent proposal for a Regulation on the financial rules applicable to the annual budget of the Union¹⁰, if adopted, would imply major changes in the ways Community funds are managed. The new Regulation is proposed to enter into force on the 1st of January 2012.

In the future the Commission would implement the budget according to Article 55(1) either directly through its departments and executive agencies or indirectly in shared management with Member States or by entrusting budget implementation tasks to third countries, international organisations financial institutions or other bodies.

¹⁰ COM(2010) 815 final

According to Article 176 of the proposal financing agreements would only be concluded with a third country in cases where that country is entrusted with Community budget implementation tasks. On the other hand agreements on the implementation of external actions would be concluded between the Commission and the body entrusted with budget implementation tasks. Implementation agreements concerning ENPI CBC are excluded from a general n+1 deadline decreed in Article 180 of the proposal.

This would seem to imply that in shared management any legal arrangements necessary, e.g. to secure the Court of Auditors (Art 152) and other Community bodies the right to control and audit the use of funds outside the Union territory, would need to be concluded between the Member State and the partner country or – in cases where another body has been entrusted with budget implementation tasks – between that body or its country of residence and the partner country. Agreements to be concluded between the Member State and the partner country could also include other provisions that are necessary to regulate the rights, obligations and other issues concerning the implementation of the programme.

VII Implementation of the ENPI CBC programmes

- In addition to general Community-level provisions on the implementation of ENPI CBC programmes, there is a need for the participating countries to jointly develop programme-specific implementing rules. Even if separate internal provisions are necessary for different financing sources, the applicants should be presented with one uniform set of programme rules.
- Joint Monitoring Committees should be developed into bodies where the regions define their joint development strategies and priorities for the programmes and the calls for proposals. The role of central government representatives should be limited to financial issues and practical implementation issues. Project selection should be entrusted to Joint Selection Committees to avoid application of conflicting criteria in the process.
- The position of the Managing Authority in the day-to-day management of the programme should be strengthened to allow the Joint Monitoring Committee to concentrate on strategic issues. The possibility of assigning the task of Managing Authority to an International Financial Institution in future programmes should be explored.
- Selection of projects to be financed from the programmes should be entrusted to Selection Committees consisting of experts from the regional level. The central government could be represented in the Selection Committee as experts to ensure the availability of possible national funding for the selected projects.

- **The proposal to pool Community and national programme funds should be carefully considered as all its implications are not yet clear. Although pooling of funds would facilitate programme and project management, it would require an extensive regulatory framework which takes into consideration the needs of all financiers, not just the European Community.**

1. Adoption of the Implementing Rules

In the current programme period, implementing rules applied to the ENPI CBC programmes are contained in the above-mentioned Commission's ENPI CBC Implementing Regulation, in the PRAG as well as in the Joint Operational Programmes.

The role of implementing rules in shared management differ from those applied in other management modes. In shared management the Member States adopt the necessary national rules on the use of Community funds and agree on the implementation arrangements with the partner countries.

Applying shared management in external border cooperation would require a mechanism to verify the compliance of the proposed system with the EU requirements. This could be in the form of the Commission approving a Management and Control System Report (like the ERDF Article 71 Report in structural funds programmes). This report would include a description of the project selection, approval and contracting procedures and the applicable national rules. It would also include a description of the procurement rules applied in the programme. PRAG contains a great deal of useful material for procedures applicable outside the EU. Use of certain parts of PRAG as inspiration when drawing up the management rules for an individual Programme is not excluded.

There seems to be no reason for the Member State beneficiaries to be exempted from the use of their national procurement legislation in projects financed from an external border cooperation programme. This legislation has already been notified to the Commission and deemed to fulfil the requirements of the applicable Community Directives. PRAG procurement rules could be applied for procurement outside the EU, at least in cases where the national procurement legislation of the partner country has not been determined as compatible with the Community rules.

The Russian Federation, which provides a significant contribution to programme funding has indicated that it would consider it necessary to be involved in preparation and adoption of the implementing rules. It is inconceivable that a third country would formally participate in preparation and adoption of Community legislation. Consequently such rules can only be agreed between the countries participating in a programme.

Joint implementing rules developed by the countries participating in a programme would also facilitate inclusion of provisions concerning national co-financing. Even if separate internal provisions are necessary for different financing sources, the applicant should be presented with one uniform set of programme rules. Such rules, once cleared by the European Commission, could be annexed either in the agreement on programme implementation between the participating countries or alternatively in the Joint Operational Programme. In order to provide necessary flexibility, the Joint Monitoring Committee should be authorised to adopt more specific arrangements in the framework of these general programme implementing rules.

2. Joint Monitoring Committee and Managing Authority

The Joint Monitoring Committee (JMC) is the primary forum for programme stakeholders for making strategic management decisions. It consists of representatives of regional and central authorities from the participating countries. In some programmes, social partners are also included. Joint Monitoring Committees should be developed into bodies where the regions define their joint development strategies and priorities for the programmes and the calls for proposals. The role of central government representatives should ideally be limited to implementation and financial issues. Project selection should be entrusted to Joint Selection Committees to avoid application of conflicting criteria in the process.

The position of the Managing Authority in the day-to-day management of the programme should be strengthened to allow the Joint Monitoring Committee to concentrate on strategic issues.

The task of Joint Managing Authority (JMA) in different programmes has been assigned to different regional or central public authorities in Member States. It has been suggested that an International Financial Institution – e.g. the Nordic Investment Bank – could be designated as Managing Authority in the future. There are some experiences of a financial institution performing the tasks of the Managing Authority in the INTERREG programmes. This solution would also facilitate transfer of partner country programme funding and contacts between the Russian government and the Managing Authority which have caused some complications in the current programmes.

3. Project selection

Project selection in the ENPI CBC programmes is normally (except for LSPs, see below) based on calls for proposals. Opening dates and selection criteria for each call are confirmed by the Joint Monitoring Committee.

Project selection is a central function in the ENPI CBC programmes. In the preparation phase of the Finnish-Russian programmes the process applied in the Neighbourhood Programmes was taken as a starting point. After the eligibility verification conducted by the Managing Authority/Secretariat the Steering (Selection) Committee selected the projects to be financed by unanimous decision.

Project selection in ENPI CBC programmes was originally meant to be the task of the Joint Selection Committee (JSC) consisting exclusively of regional level experts. This model would have placed the responsibility firmly in the hands of the regions. The European Commission, however, insisted that the final programme level decisions on project selection shall be taken by the Joint Monitoring Committee (JMC) upon recommendation by the JSC. All committee decisions are taken unanimously.

According to Article 13(2) of the Commission's ENPI CBC Implementing Regulation, if the JMA decides not to follow all or part of the recommendations of the JSC, it shall explain its decision in writing and submit the whole selection decision to the Commission for final approval. When the Implementing Regulation was prepared it was understood, that this provision was meant to prevent selection of projects which had not been found eligible by the JSC.

In practice referral of the project selection decisions to the JMC has delayed the process by several months and reopened the discussion on individual projects in JMC. The JMC has in some cases decided to remove some projects from the list provided by the JSC and to reduce budgets for

other selected projects. This was to be expected; the JMC could hardly be expected to restrain its role to rubber-stamping JSC decisions. The modifications made by the JMC have – when submitted to the Commission – further delayed the selection process by giving rise to extended correspondence with the Commission on the motivations of the JMC prior to the final approval of the Commission.

The representatives of the government of the Russian Federation have insisted that the Monitoring Committee should have full competence in deciding the projects to be financed because the Ministry for Regional Development is responsible for the use of Russia programme funding.

4. Pooling of funds

There is no tradition for pooling of EU funds with national co-financing in the INTERREG programmes. The ETC programme management bodies only take decisions on Community funds¹¹. It is the responsibility of individual applicants and the partnerships they form to find the necessary national public co-financing for the projects before they apply for EU funds. In most countries various regional level bodies have funds for national co-financing at their disposal.

In Finland all state co-financing to ENPI CBC programmes is managed by the Regional Councils, which act as Managing Authorities of the ENPI CBC Programmes. In the Kolarctic ENPI CBC Programme, Swedish and Norwegian national co-financing is managed by Swedish and Norwegian regional authorities. When the Russian Federation decided to co-finance

¹¹ *In programmes with Norwegian and Icelandic participation, the programme bodies also decide on the allocation of so called EU equivalent Norwegian and Icelandic funds to the projects*

ENPI CBC programmes, it chose to entrust the management of its funds to the programme JMAs. There are no provisions on the use of Russian funding in the programme-specific Financing Agreements. According to the Joint Operational Programmes, the “rules and procedures concerning the Community Contribution shall apply *mutatis mutandis* to Russian funding”.

The applicants in the three Finnish-Russian programmes apply for Programme Funding which includes Community, Russian and Finnish funds. This does not, however, imply that the funds have been pooled. The JMAs maintain different bank accounts for the funds from different sources. Finnish national legislation is applied for the Finnish state co-financing. This means that funding from the different funding sources is identified in the grant contracts concluded with the Lead Partners of the selected projects. The right of Finnish authorities to control the use of Finnish funding is also regulated in the grant contracts. In cases where an individual beneficiary for legal or other reasons cannot submit to such controls, it shall be excluded from the use of Finnish funds in the grant contract and project budget.

The Russian Federation has indicated that it would prefer pooling of all funds granted to applicants in the framework of ENPI CBC programmes in future.

VIII Other issues

- **The need for national legislation in the implementation of external border cooperation has been so far largely neglected. Transfer to shared management requires adoption of national provisions in the Member States to fulfil the requirements of the Financial Regulation and other Community legislation. The partner countries also need to analyse the need for national rules.**
- **External border cooperation programmes should concentrate on development projects which could include feasibility studies, environmental assessments and planning of LSPs. The actual funding of the investment could be realised through other sources such as national funds or international financial institutions.**
- **Consideration should be given to a separate investment-oriented instrument with adequate funding to safeguard the continuing cooperation on regional development projects.**

1. National legislation

It appears that Finland is the only Member State that has adopted specific legislation¹² on the implementation of the ENPI CBC. The Act in question largely follows the national legislation on European Territorial Cooperation. As ENPI CBC programmes are not technically structural funds programmes and require provisions on operations outside the Finnish territory, the Structural Funds Act was not applicable. The ENPI CBC Act contains provisions on the Joint Managing Authority, Joint Monitoring

¹² *Act on management of external cross-border cooperation (500/2008)*

and Selection Committees, recovery, controls and audits. It also contains the necessary provisions on protection of personal data and access to information. These issues need to be regulated by a Member State when applying shared management as decreed in the ENPI Regulation.

It seems that there is no Russian national legislation on the use of Russian co-financing to the ENPI CBC programmes. The three Finnish-Russian Joint Operational Programmes state that “rules and procedures concerning Community contribution shall apply *mutatis mutandis* to Russian funding”.

Exemption of Community assistance from Russian national taxes and duties is decreed in programme-specific financing agreements concluded between the European Commission and Russia. In the agreement drafting process it was established that the Commission did not have the competence to guarantee corresponding exemptions from Member State taxes and duties to Russian funding in Member States. A similar situation exists in the field of controls, checks and audits. The agreements’ provisions do not however seem to be directly applicable in Russia but do all require national legislation, which has so far not been adopted.

According to the programme rules, all funds paid to beneficiaries are subject to expenditure verification (first level control). The purpose of the verification is to control the eligibility of expenditure and activities and the correctness of application of public procurement procedures by beneficiaries. Expenditure verification outside the EU territory in the Finnish-Russian programmes is conducted by JMA-contracted private sector auditors.

It is unclear whether the Russian national legislation allows access for private sector auditors to the accounts of Russian public sector bodies. Apparently the only authority with general competence to audit Russian public sector accounts is the Accounts Chamber of the Russian Federation which has not been involved in the programmes.

2. Large scale investment projects

Major investment projects selected without calls for proposal – so called Large Scale Projects, LSPs – are allowed in many ENPI CBC programmes. The term refers to a grant that is awarded to a beneficiary which has exclusive competence in the field of activity. An example of a LSP could be a border-crossing point, a road, a bridge or a water-processing plant.

Great interest has been shown towards LSPs in programmes where the infrastructure at the border is inadequate. LSPs are identified either in the programme document or during the programme implementation by the Joint Monitoring Committee. Their selection for funding always requires the prior approval by the European Commission.

Before realisation LSPs require environmental impact assessments and building and other permits. In the limited time available for projects in the present programme, only LSPs in advanced state of preparation are likely to have a chance of success. Regardless, discussions on LSPs have had a tendency to dominate the work of programme bodies, delaying the selection and approval of development projects. In some programmes, a large share of programme funding has been reserved for LSPs. Failure to realise LSPs in the eligible programme period would create a risk of underspending and unfinished projects in those programmes.

In ENPI CBC, the lead partner for the LSP is the monopoly authority, e.g. a road administration authority, border authority or water authority. One precondition for realisation of such projects in Russian Federation is clarifying the legal issues regarding expenditure verification and audits referred to above.

IX The way forward

The innovative decisions to combine for the first time external and internal Community funding in a single instrument has made implementation of ENPI CBC a major challenge for all the stakeholders. At the same time as first projects selected for financing are only being launched, the legislative schedule leading to the next budgetary period requires decisions on the future arrangements.

Proposals on new legislative instruments are expected from the European Commission in mid-2011. The lessons learned in the present programming period need to be analysed. Reasons for the delays experienced in implementation need to be jointly identified and recognised.

In order to fulfil the expectations created for external border co-operation in 2003, involvement of all parties will be necessary. This requires intensive contacts between the Member States, the partner countries and different Directorates General in the European Commission in the coming months.

The unique concept of delegating implementation of an important part of the Union's external policy to the regional level needs to be reinforced. The power of the grassroots approach has to be fully exploited. In this way the cooperation can contribute to integrated and sustainable regional development between neighbouring border regions and harmonious territorial integration across the Community and with neighbouring countries, as foreseen in the preamble of the ENPI Regulation.

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