

06.09.2004

Comments of the

***ASSOCIATION OF EUROPEAN BORDER REGIONS
(AEBR)***

on the proposal of the European Commission for a

- ***COUNCIL REGULATION LAYING DOWN GENERAL PROVISIONS
ON THE EUROPEAN REGIONAL DEVELOPMENT FUND, THE
EUROPEAN SOCIAL FUND AND THE COHESION FUND***

- ***REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE
COUNCIL ON THE EUROPEAN REGIONAL DEVELOPMENT FUND***

- ***REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE
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Introduction

The Association of European Border Regions congratulates the EU-Commission for the presentation of the regulations that has taken place in summer 2004 as planned.

Despite the great challenges linked to the accession of 10 new members and economic restructuring taking place as a consequence of globalisation, the EU-Commission has managed to present future-oriented and innovative proposals, together with a necessary financial framework, which meet the broader goals as defined in Lisbon and Gothenburg.

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The joint and general provisions for all three funds have achieved to ensure a coherent and integrated European policy for these funds, which is based upon efficiency, transparency and a clarification of responsibilities within the partnership.

Explanatory Memorandum

1. Introduction: necessity to revise the regulations

The introduction finds approval.

2. The new architecture for EU cohesion policy after 2006

The concentration on three objectives finds approval. AEBR welcomes in particular that "Territorial Co-operation" has been defined as a proper political objective (despite its lower financial appropriations compared to the other two objectives).

2.1. Convergence

The basic arguments find general approval, especially the main objective "to promote growth enhancing conditions and factors leading to real convergence".

For the regions, whose per capita GDP will be above 75% of the Community average due to statistical effects linked to the enlargement, a problem-oriented, innovative approach for the phasing-out with a fair financial proposal could be found.

2.2. Regional competitiveness and employment: anticipating and promoting change

The innovative creation of the second priority as a political goal (and not anymore as Objective 2 areas) helping to meet the most important challenges in all member states and regions finds approval, as well as the double concept with a concentration on three priorities under the ERDF and on four political priorities under the ESF concentration.

The application of a single funding source in the context of these new programmes is

equally supported.

2.3. European territorial co-operation

The creation of the new objective "European Territorial Co-operation" with financial support only from the ERDF on ground of integrated and pluri-annual programmes finds strong approval. The integration of Europe in diversity requires a European political priority for questions of common importance and for co-operation among and on different levels.

Due to the fact that questions of European importance are concerned, all border areas in an enlarged European Union (independent from national priorities) need to remain included into cross-border co-operation supported by EU-programmes. In the proposed regulation, appropriate consideration has been devoted to the particular role of external borders as well as to the diversity of maritime co-operation, which can take place - according to it's character and intensity - as cross-border, interregional and transnational co-operation.

Due to the EU-enlargement, a revision of the current transnational co-operation areas seems to be an urgent necessity in order to shape coherent and operational areas.

It remains however unclear how interregional co-operation that is included in the national mainstream programmes will practically operate. Doubts remain whether all regional mainstream programmes will include appropriate funding for interregional co-operation (necessity of some kind of obligation) and whether the selection of operations will be made according to consistent and EU-wide standardised criteria in order to ensure high-quality activities that generate an added value.

3. An integrated response to specific territorial characteristics

The consideration of areas with specific problems and the increase of funding for such areas in particular cases find approval. However, AEBR points out that the Convention for a European Constitution has included in July 2004 a reference on "the specific conditions of border areas" (III §116). This passage is not reflected in the proposed draft regulation (probably because at time of the elaboration of this

regulation such an amendment to the Convention for a European Constitution could not be foreseen). This new fact should however lead to an improvement of the general regulation and of all other funds-specific regulations.

4. A better organisation of the instrument is operating in rural areas and in favour of the restructuring of the fisheries sector.

Especially the support of rural development merits particular attention. Solving the problems of rural areas is a future key task in the framework of territorial cohesion and for creating equal living conditions in all regions of Europe. The problems of rural areas such as outward-migration, ageing of the population, loss of services of general interest and lacking full use of social and cultural infrastructures are very present in numerous regions and can barely be solved by their own capacity.

5. Simplification and decentralisation

The proposals are generally accepted, especially those regarding programme planning, further decentralisation of responsibilities, performance and quality of the co-financed programmes and improvement of the administrative system (with higher transparency, differentiation and proportionality).

The reduction of the number of funds from currently 6 to 3 is approved, as well as the use of only one fund per programme.

The proposals regarding financial management and control promoting a clear distribution of responsibilities, a highlighting of the principle of additionality, a future payment at the level of priorities etc. constitute a good approach for simplification and decentralisation.

Although the Commission insists on maintaining the principle of automatic decommitment (n+2 rule) in its proposal, it seems that this is not yet an optimal solution. At least there is scope for improvement.

6. Financial resources

The EU-Commission's proposal of financial resources at a level of EUR 336.10 billion for the three priorities seem to be appropriate in order to enable the Commission to fulfil the political priorities of the European Councils of Lisbon and Gothenburg. The distribution of available financial resources across the three priorities can, for the moment, be accepted.

The distribution of financial resources within the objective "European Territorial Co-operation" according to the size of the population and the total population in the concerned regions only finds limited approval. It is desirable to consider additional criteria that take into consideration the region-specific conditions of border regions.

A precondition for approval is however that also in the future, all border areas of the EU continue (independent from the opinion of individual member states) to be included in European support programmes for cross-border co-operation.

Considerants and Articles

AEBR's most important recommendations and proposals for amendments concerning the general provisions have already been formulated in the section on the explanatory statement. Accordingly, AEBR's opinion on the regulation will only focus on individual considerants and articles that require concrete and specific proposals for amendments and comments.

Considerant (15)

For the first time, border regions of the Community are listed among the territories with natural handicaps.

According to the Convention for a European Constitution (III §116), the reference should read more precisely as follows: *... areas with a low density of population as well as the specific conditions of border regions of the Community should be strengthened ...*"

Conclusions: The reference of considerant 15 should be introduced into the

explanatory statement for the "general provisions" as well as in the text of the other regulations on the ERDF and the ESF.

Considerant (19)

The following text is proposed: *"... is to cover all regions having land or sea frontiers (independent from national priorities and decisions) and ..."*

Indeed all regions along land and sea borders are concerned. This should not be depending upon different opinions and priorities in the member states. In fact, cross-border co-operation is a question of European importance (see the argumentation on the explanatory statement).

Considerant (35)

It should be further highlighted that territorial co-operation is not a part of the national strategic guidelines (see also Considerant 44).

Considerant (44)

Separate proceedings for the implementation of "European Territorial Co-operation" are definitely necessary in order to avoid difficulties that have frequently emerged in the past.

This formulation needs absolutely to be maintained in the forthcoming negotiations on the regulations.

Considerant (50)

It is welcomed that currently existing national provisions are applied for judging the eligibility of expenditure.

In case of territorial co-operation, however, it needs - as derogation - to be insured that common cross-border and transnational criteria for eligibility are defined. Truly joint projects could fail if such a common definition is lacking.

Considerants (59), (60) and (61)

Very practical solutions have been found regarding the cash flow, the interruption of payment and for the case if delays occur for reasons that have not been caused by the responsible actors.

Title I

Chapter I, Art.2

In the "definitions", it is urgently required to explain interregional, cross-border and transnational co-operation. This would, in the future, avoid confusion on terminology, also in the context of the EU programmes of other Directorate Generals. Up to now, these terms are repeatedly used with different contents (e.g. in the ESF-regulation, in the research and innovation policy).

Chapter II, Art.3, No. 3

In the mentioning of territorial specificities, a reference regarding border regions is missing (see considerant 15).

Chapter III, Art.7

The first sentence of the article should read: *"For the purpose of cross-border co-operation, all regions of the Community are eligible"* (see the argumentation on the explanatory statement).

The inclusion of the *"sea borders within the Community"* is welcomed. The distance of 150 km should, in case of smaller deviations, be handled in a flexible manner. Significantly larger distances are not acceptable: in this case, a truly cross-border co-operation can not be any longer insured.

Chapter V, Art.18

The distribution of financial resources requires further explanation.

Cross-border co-operation has been defined by the European Commission, the European Parliament and the Committee of the Regions as first priority within the objective Territorial Co-operation. This is not any more reflected in the distribution of financial resources.

Without questioning the importance of transnational co-operation, it has not been justified (and is therefore not understandable) how such a significant increase for transnational co-operation has been decided. The current evaluations do not provide any foundations in this direction.

A clear explanation is also required, whether 12.12% for the "European Neighbourhood Instrument" will solely be used for cross-border co-operation or whether these funds will also be used to finance the "second window" (transnational co-operation) in the framework of the Neighbourhood Instrument

Even by adding the financial resources of the "European Neighbourhood Instrument" to those allocated to cross-border co-operation, one reaches only a maximum of 47,73 % of the financial means. This does not correspond to a priority support, but to an equal distribution of financial support between cross-border and transnational co-operation.

Title II

Chapter II, Art.25

If regions should include future actions in the field of interregional co-operation within their regional programmes (see also 2.3 of explanatory memorandum and comments on article 36), the Commission should require that specific references on this type of intervention are included in the "national strategic reference frameworks" (i.e. strategy chosen, main goals of the priorities, operational section).

Title III

Chapter II, Art.36

In line with the comments made on article 25, it is necessary that specific references

for the mainstreaming of interregional co-operation within regional programmes are made in the section dealing with "implementing provisions for the operational programmes" (No 1). Such additional provisions are necessary, as the implementation of co-operative actions between different regions from various countries requires specific rules that are different from those applying to the implementation of single-country mainstream interventions.

Chapter II, Art.37

AEBR strongly supports that specific modalities for operational programmes in the context of the objective "European Territorial Co-operation" are created.

Title V

Chapter I, Art.52

In the listing, a reference to the "*particular problems of border regions*" is missing (Convention for a European Constitution III §116, see also considerant 15 in this regulation).

Title VI

Chapter I, Art.58, No.5

Specific modalities for management and control of operational programmes in the context of the objective "European Territorial Co-operation" are strongly supported.

Chapter II, Art.63

It is not convincing that only a representative of the member state or of a managing authority can chair the monitoring committee. In a decentralised programme, it must be possible that the members of the committee unanimously agree to nominate another joint chair, who has however not fulfilled these conditions.

It can also not be understood why the member states decide alone on the composition of the monitoring committee. It should be remembered that the principles of subsidiarity and partnership apply within the programmes.

If the Commission is only represented on an advisory basis, it must be clearly defined what this means in practice. It would not be very helpful for the programmes if the Commission, due to its advisory status, is not involved in decision-making and tends to present recommendations or concerns at a later stage, which lack of clarity and increase uncertainty and subsequently lead to delays in the implementation of programmes. In current practice, this was always the case when the Commission has raised concerns.

Chapter III, Art.64, lit.(a)

The criteria for selecting co-financed operations should always be defined before the submission of a programme. After the submission and approval of a programme, new difficulties normally tend to appear in practice.

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We welcome that the Commission has considered in the elaboration of this regulation numerous recommendation and arguments, which have in particular been promoted by AEER, but also by other European regional organisations, and has taken into consideration the recommendations of the ex-post evaluation of INTERREG II. One can largely approve the proposals of the Commission, mainly due to the fact that they built upon the general provisions.

Due to this general positive judgment, only a few amendments on some considerant and articles contained in the proposal for a regulation are necessary.

Explanatory memorandum:

Third paragraph: *"This calls ... and a cross-border co-operation among all border regions, ..."*

Explanation: The regulation on the European Regional Development Fund is connected to the Council regulation on "general provisions". However, there are already several member states that are of the opinion that this regulation can also be considered as a stand-alone regulation and - consequently - allows own interpretations. If the most important references are not repeated in the explanatory memorandum of the specific Structural Funds regulations, the danger appears that member states tend to interpret provisions differently (e.g. only support to the old and new external borders, but not any more to the current internal borders).

Considerant (10)

According to considerant 15 of the general provisions and the Convention for a European Constitution (III §116), the reference should read more precisely as follows: ... *The ERDF should also address the specific difficulties encountered by certain islands, mountain areas, border areas and sparsely populated areas whose geographical situation slows down the development.*"

Chapter I,

Art.4

The listed topics for support can be accepted.

Art.5

The listed priorities and related aspects can be accepted.

Art.6, No.1

The first sentence under No 1 should be coherent with the introductory section on transnational co-operation (considerant No 2)

The themes listed under No 1 defining the focus for ERDF-support should be made more consistent with regard to cross-border co-operation. The themes should be grouped according to their content-oriented links. As a consequence, the following proposals for redrafting this article are presented:

1. The development of general cross-border co-operation, through the financing of joint economic and socio-cultural activities and measures promoting a sustainable territorial development of cross-border regions, primarily:
 - a. by encouraging the development of the economic fabric of cross-border areas, in particular the development of SMEs, tourism, research & development and cross-border trade;
 - b. by encouraging the joint protection and management of the environment, including an establishment of cross-border infrastructures in the field of fresh-water provision, solid waste and waste water treatment, renewable energy and traditional energy provision;
 - c. by reducing isolation through infrastructure investment mainly for eliminating missing links or improving secondary connections in order to enhance the access to transport, information and communication networks and services;
 - d. by promoting cross-border labour mobility, the integration of the cross-border labour market, joint local employment initiatives or training and

- social inclusion measures as well as the sharing of human resources and facilities for research and technical development;
- e. by developing and promoting cross-border socio-cultural co-operation, including joint infrastructures, in fields such as culture and education or health;

Art.6, No.2

The statements relating to transnational co-operation can be approved, especially also the possibility to establish bilateral co-operation between maritime regions. A clear distinction between cross-border maritime co-operation and transnational maritime co-operation is however necessary, e.g. by mentioning distances or by distinguishing between the contents of pluri-annual integrated programmes for maritime cross-border co-operation and of those for transnational bilateral maritime co-operation.

The proposal under lit. (b), which establishes a relationship between cross-border sections of Trans-European Networks and transnational measures as well as vice versa, is an old request supported by AEBR and finds therefore approval. It needs however to be highlighted that cross-border sections of Trans-European Networks, dealt with in the context of transnational co-operation, can not be realised without the participation and approval of existing programme structures established for cross-border co-operation (i.e. against the will of the concerned border regions).

The listing of potential priorities that shall be addressed by transnational co-operation programmes should however be enlarged by the theme "polycentric spatial development and the new urban-rural relationship". This important aspect needs absolutely to be included, as it forms part of the 3 basic policy aims defined in the European Spatial Development Perspectives (ESDP), which have been agreed at the informal Council of ministers responsible for spatial planning in Potsdam (May 1999).

Art.7

The listing of non-eligible expenditure can be approved.

There needs however to be some clarification what exactly is meant by value added

tax and how this should be handled. In practice, no invoice of a craft undertaking, an enterprise or a printer etc can be presented without value added tax. Which value added tax is actually referred to?

Chapter II,

Art.10

Border regions have to be included in the range of areas with natural handicaps and specific problems according to the European Constitution (III §116). The section should make a reference to this aspect.

Chapter III,

The regulation on the European Regional Development Fund is connected to the Council regulation on "general provisions". But it can be interpreted, as already done by several member states, as a stand-alone regulation. If in this regulation the basic elements for territorial co-operation, as contained in the "general provisions", are not explicitly repeated, this might lead to legally different interpretations that e.g. allow excluding co-operation among the current internal EU borders according to the opinion of some member states. For reasons of clarity and in order to avoid misunderstandings, the most important text elements on cross-border and transnational co-operation of the "general provisions" should be included at the beginning of this chapter:

“All regions along the internal terrestrial and certain regions along the external terrestrial borders as well as along certain neighbouring maritime borders will be eligible for cross-border co-operation. The aim will be to promote joint solutions to common problems between neighbouring authorities, such as urban, rural and coastal development and development of economic relations and networking of SMEs.”

“As far as the broader actions to promote transnational co-operation is concerned, the member states and regions are invited to assess the usefulness and

effectiveness of the existing 13 transnational co-operation zones (defined under INTERREG IIIB) in the light of enlargement. The objective will be to decide together with the Commission on a number of zones for transnational co-operation which are sufficiently coherent and where there are common interests and opportunities to be developed. It is envisaged that such co-operation will focus on strategic priorities with a transnational character such as R&D, environment, risk prevention and integrated water management.

Art.12

The listing of necessary programme contents is a considerable progress that brings about further clarification. This is especially true for lit. (5), which refers to a single financing plan with no breakdown by member states.

This formulation needs absolutely to be maintained in the forthcoming negotiations on the regulations.

In the context of the implementation provisions for the operational programme, an additional reference should however be included that requires an ex-ante definition of joint eligibility criteria/rules for the selection and approval of future operations (see also comments regarding Art. 13).

Art.13

It is not sufficient that the Commission makes own proposals for the eligibility of specific categories of expenditure, which replace national rules. Partners of cross-border programmes have to define with a presentation of this programme what is jointly eligible, best through a joint convention that is annexed to the programme. Only like this one can avoid difficulties in the financing of joint projects at a later stage. Indeed, one has still to take into consideration what is not eligible according to EU rules.

Art.14

It must be further highlighted that a nomination of the respective authorities for each

individual programme is necessary. The establishment of a joint secretariat within the managing authority is strongly supported. It should however not only support the managing authority in the monitoring committee, but also the project promoters (so-called pro-active management).

The role of the EU remains however unclear in this article. Is the EU an advisory member or is it not represented at all? Which role does it play in case of questions, problems etc?

Art.17

The reference regarding a payment into a single account with no national sub-accounts (also not at a later stage!) is strongly supported and needs to be maintained in the forthcoming negotiations on the regulation.

The question remains unanswered whether payment should be made per programme or per border and how the cash flow is actually taking place (first to the national member states or directly on the account of the cross-border programme).

Art.19

From the current formulation in the draft proposal, one can deduce that this article aims at laying down basic criteria for the selection of projects, which will in the future implement cross-border or transnational co-operation programmes. In order to support a logic presentation of the entire ERDF-regulation, this article should normally follow prescriptions regarding strategic level co-operation at the level of programmes (i.e. current Articles).

The initiative taken for defining a number of baseline criteria applicable in the project selection process can only be warmly welcomed, but some scope for further improvement exists. In the view of AEBC, it is recommendable to adopt one definition for each type of co-operation supported under the new Structural Funds objective "European Territorial Co-operation".

Below, a number of suggestions are given that might help formulating such co-operation type-specific criteria:

1. Operations selected for cross-border operational programmes, referred to in article 6 paragraph 1, shall include beneficiaries from at least two

neighbouring countries, who jointly finance the operation and co-operate on at least two of the following aspects: joint development, joint staffing and joint implementation.

2. Operations selected for transnational co-operation programmes, referred to in article 6 paragraph 2, shall include beneficiaries from at least three countries, who co-operate on at least three of the following aspects: joint development, joint staffing, joint financing and joint implementation. In exceptional cases, an operation selected for transnational co-operation can be implemented in one Member State if the relevant operation has been jointly presented by partners from at least two Member States.
3. Operations selected for operational programmes concerning co-operation networks and exchange of experiences, referred to in article 6 paragraph 3, shall include at least three beneficiaries from at least three different Member States, who co-operate in the following ways for each operation: joint development, joint staffing, joint financing and joint implementation.

Art.20

The initiative of the Commission to generalise the "Lead Partner Principle" for all types of co-operation can only be strongly welcomed, as it will substantially help improving the quality and the intensity of project level cross-border co-operation along several borders with a relatively short tradition of co-operation (i.e. in these areas, frequently one-sided projects are implemented that do not substantially involve partners from the other side of the border).

However, and similar as in case of Article 14, this article should also follow the prescriptions regarding strategic level co-operation at the level of programmes (i.e. current Articles).

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The explanatory statement and the draft regulation are approved, however with two remarks:

- The text uses the terms "*interregional and transnational co-operation*", which in our opinion are not consistent with the use made in the ERDF-regulation and especially in the context of territorial co-operation (this requires an adaptation of the relevant article 8);
- also in the context of the European Social Fund, the future EU legal instrument for decentralised co-operation among territorial authorities, foreseen by the ERDF and defined by a specific regulation, can be used (this requires an introduction of specific reference within the relevant article 8).