

**ELEMENTS RELATED TO PROPOSED INTEGRATION OF ALLOCATIONS UNDER
EXTERNAL FINANCING INSTRUMENTS INTO
EUROPEAN TERRITORIAL COOPERATION GOAL PROGRAMMES**

Fiche no 28

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Commission Proposal	Relevant Articles
European Territorial Cooperation [COM(2011) 611]	3, 4, 7, 28

This paper has been drawn up on the basis of the proposals for regulations adopted by the European Commission on 6 October 2011. It does not prejudge the final nature of the act, or the content of any delegated or implementing act that may be prepared by the Commission.

1. OBJECTIVE OF THE PAPER

The objective of this fiche is to provide additional information about the integration of allocations from external financing instruments into programmes under the European Territorial Cooperation goal supported by ERDF.

Article 3(4) and (5) ETC Regulation opens **transnational** and **interregional** ETC programmes for participation by regions from third countries or territories¹ covered by external financial instruments of the Union, making specific reference to the European Neighbourhood Instrument (ENI)² and the Instrument for Pre-accession Assistance (IPA II)³. However, other external financing instruments may also be relevant, such as the European Development Fund⁴ or the Development Cooperation Instrument (covering Brazil) in the context of the outermost regions.

Article 28 of the Commission's proposal for a Regulation for the European Territorial Cooperation goal (ETC Regulation)⁵ sets out provisions for the integration of external financing instruments for transnational and interregional cooperation programmes. It reads as follows:

"Detailed rules concerning financial management as well as programming, monitoring, evaluation and control of the participation of third countries in transnational and interregional cooperation programmes as referred to in Article 3(4), second subparagraph, and (5) shall be established in the relevant cooperation programme and/or the relevant financing agreement between the Commission, each of the third countries and the Member State hosting the managing authority of the relevant cooperation programme, as appropriate."

Other Articles also have to be taken account of in this context, notably Article 3 on Geographical coverage, Article 4 on Resources and Article 7 on the Content of cooperation programmes.

Article 28 - and consequently this fiche - does not concern the **cross-border** cooperation strand since no transfer from ENI and IPA II⁶ to the ETC cross-border cooperation strand is foreseen. In this respect, ERDF will support ENI-CBC programmes with Member States and IPA II-CBC programmes with Member States. The mechanism to transfer ERDF is set out in Article 4(4) to (6) ETC Regulation. That support may return under the conditions set out in Article 4(7) and (8) of that Regulation.

¹ Outermost regions are surrounded by another category of non-Union territory: "Overseas territories and countries" as covered by Articles 198 to 204 and Annex II of TFEU. The reference to "third countries and territories" in the proposed ETC Regulation is meant to cover "third countries and overseas countries and territories".

² COM(2011)839 of 7.12.2011.

³ COM(2011)838 of 7.12.2011.

⁴ COM(2011)840 of 7.12.2011.

⁵ For easier reading, none of the legislative proposals is quoted as proposal in the text.

⁶ ENI (Eastern part): Armenia, Azerbaijan, Belarus, Georgia, the Republic of Moldova and Ukraine. Although a specific instrument will cover the partnership with Russia, ENI covers Russia's participation in "*Cross-Border Cooperation and in regional cooperation with EU participation*" (Article 1(3) ENI). IPA II: All Western Balkans, Iceland and Turkey.

2. MAIN ELEMENTS OF THE FUTURE INTEGRATION SYSTEM

Both ENI and IPA II Regulations contain complementary provisions which allow for the transfer of allocations from ENI and IPA to enable beneficiary third countries under these instruments to participate in **transnational** ETC cooperation programmes (Article 7(6) ENI⁷ and Article 9(3) IPA II⁸).

In addition, IPA II funds can also be integrated into **interregional** cooperation programmes (Article 9(3) IPA II).

2.1. Integration of ENI (proposed successor to ENPI)

2.1.1. Current system for ENPI (2007-2013 period)

From a management point of view, under ETC transnational programmes ENPI CBC funds are managed according to the following approaches:

- A. Parallel financial and parallel programme management: funds for the ENPI CBC component are managed in accordance with ENPI/ENPI CBC Implementing Regulation and funds for the ETC component are managed in accordance with ETC rules (only example: Baltic Sea Region (BSR) programme).
- B. Joint financial, but parallel programme management: ENPI funds are mainly subject to ETC rules. The financial plan is split per fund (only example: South East Europe (SEE) programme).

Both systems cover the following elements:

- separate funds and budget lines, including separate monitoring and reporting;
- financing plan specifically setting out the support from each fund;
- programme implementing rules clearly laid down in the joint programming document;
- public procurement in third countries under the special rules for external action in the Financial Regulation⁹;
- ultimate responsibility of the Commission in case of non-recovery from beneficiaries located in ENPI countries by the managing authority (MA) within a year.

Financing agreements for SEE were already signed between three parties: the Commission, each third country and Hungary, the Member State hosting the managing authority, whereas financing agreements for BSR were only signed between the Commission and the ENPI

⁷ Article 7(6) ENI Regulation: "When it is necessary to implement more effectively measures for the common benefit of the Union and partner countries, in areas such as transnational cooperation and inter-connections, funding under this [= ENI] Regulation can be pooled together with funding covered by other relevant Union Regulations establishing financial instruments. In this case, the Commission shall decide which single set of rules shall apply to implementation."

⁸ Article 9(3) IPA II Regulation: "Where appropriate, the IPA may contribute to transnational and interregional cooperation programmes or measures that are established and implemented under the provisions of Regulation (EU) No [ETC] and in which IPA beneficiary countries participate."

⁹ Except for the contribution of ENI to Technical Assistance managed by the Hungarian programme authorities according to EU public procurement rules.

country. Subsequently, the BSR managing authority then signed agreements/memoranda with each ENPI country.

2.1.2. Future system proposed for ENI (2014-2020 period)

For the 2014-2020 period, Article 28 ETC Regulation provides a legal basis allowing for further integration, but would also allow for the continuation of the solutions applied for the current period.

The Commission proposes two options (discontinuing option A in the preceding section 2.1.1. as too cumbersome for an integrated action):

- A. Joint financial management as well as integrated programme management:
- separate budget lines for the different contributions for commitment purposes, as set out in the Decision approving the programme;
 - financing plan by axis only setting out the support from "EU funds";
 - monitoring and reporting by fund only on an aggregated level;
 - programme implementing rules clearly laid down in the joint programming document (mainly rules under CPR and ETC Regulation);
 - public procurement in third countries may still be implemented under the special rules for external action in the Financial Regulation;
 - ultimate responsibility of the MA, based on the commitment of the third country to the content of the OP, including the apportionment of liability (Articles 7(2)(g)(vi), 7(5) and 25(3)).

The Decision adopted by the Commission will approve the cooperation programme and serve as financing decision in terms of the Financial Regulation. The rules applicable to the programme implementation ("programme implementation conditions")¹⁰ will be set out in that Decision, in accordance with Article 28. The rules to be applied will be those laid down in the CPR and the ETC Regulation, subject to taking into account some specificities such as for public procurement or grants. The detailed rules referred to in Article 28 will not invent new rules and will be subject to the provisions of the Financial Regulation.

In case a third country does not confirm its clear commitment as required under Article 7(5) ETC Regulation which would allow the programme's managing authorities in the Member States to assume their responsibility towards the Commission (e.g. on financial corrections), the Member States may draw appropriate consequences before submitting the cooperation programme to the Commission.

- B. Continuation of option B as set out in section 2.1.1: joint financial management, but parallel programme management per fund.

As the two management models are options, the Commission and the Member State hosting the programme's managing authority and representing the participating countries will agree which option will apply. A programme adopted under option B may be transformed into an integrated programme according to option A during the programming period.

¹⁰ This term reflects better what is intended than the term of "detailed rules" proposed in Article 28.

It will be for the programme's managing authority to ensure through the programme monitoring that the contribution from ENI (i.e. from Heading 4 of the MFF 2014-2020) is actually spent outside the EU territory. Article 19(2) ETC would allow for additional flexibility¹¹. As long as globally on programme level the contribution from ENI is actually spent outside the EU territory (possibly with some flexibility margin under Article 19(2) ETC Regulation), this requirement will be considered fulfilled. In addition, the overall objectives of ENI shall be respected.

2.2. Integration of IPA II

2.2.1. Current system for IPA (2007-2013 period)

IPA CBC funds are managed under ETC transnational programmes on the basis of joint financial management and integrated programme management. Sources of financing are IPA (funds transferred from budget Title 22 to budget Title 13) and ERDF. IPA funds in the ETC transnational programmes are mainly subject to ETC rules, while separate financial plans (ERDF and IPA) are kept in the two ETC transnational programmes concerned: South East Europe and Mediterranean.

In accordance with Article 86(4) of Regulation (EC) No 718/2007¹², the rules governing the participation of the IPA beneficiary countries in ETC transnational programmes were established in the relevant programming documents and in the relevant financing agreements.

2.2.2. Future system proposed for IPA II (2014-2020 period)

For the 2014-2020 period, Article 28 ETC Regulation provides a legal basis to allow for further integration, but would also allow for the continuation of the solution already applied for the current period.

In the future, the Commission proposes two options:

- A. Joint financial management and integrated programme management with ERDF and IPA funds pooled, i.e. single financial plan and no breakdown of funds per source of financing (as currently applied by the great majority of the IPA-CBC programmes with EU member states);
- B. Continuation of the approach as set out in section 2.2.1: joint financial management and integrated programme management, but separate financial plans (ERDF and IPA).

The paragraphs in section 2.1.1. concerning the Commission Decisions approving transnational cooperation programmes, the commitment of third countries to the programme (including apportionment of liability) and monitoring also apply.

These two options could also be used should IPA beneficiaries participate in **interregional** cooperation programmes.

¹¹ To spend up to 20 % of ERDF outside the Union part of the programme area or up to 30 % in the case of outermost regions.

¹² "The cross-border component [of IPA] may also support, where appropriate, the participation of eligible regions of the [IPA] beneficiary countries in transnational and interregional programmes under the European territorial cooperation objective of the Structural Funds [...]. The rules governing the participation of [IPA] beneficiary countries in the above programmes shall be established in the relevant programming documents and/or in the relevant financing agreements, as appropriate."

2.3. Integration of EDF and the Development Cooperation Instrument

The Commission is aware that a coordinated use of the ERDF and the EDF appears difficult because of the differences in applicable rules. Harmonisation of these will, however, be difficult, not least because the EDF is not budgetised.

The Commission has nevertheless proposed some improvements to the way this cooperation is organised by foreseeing the possibility for outermost regions to spend up to 30% of their allocation outside the Union (Article 19(2)(b) ETC Regulation). Another key element in this context will be an improved coordination within the region itself: The development of joint regional cooperation committees bringing together representatives from the outermost regions and their ACP counterparts, the managing authorities of cooperation programmes and the bodies responsible for the EDF in the region would be a big step forward. The Indian Ocean is a good example in this respect.

Third countries eligible under the Development Cooperation Instrument (e.g. Brazil) or the Partnership Instrument are not eligible under EU internal instruments. Therefore there is no scope for overlap. The only possibility may concern Overseas Countries and Territories which benefit from a specific allocation under the EDF.

Nothing is foreseen in the draft ETC Regulation for such harmonisation of rules. Therefore, the separate implementation of funds under each respective instrument will only be coordinated by the Commission.