

Position of the MOT on the "cross-border cooperation" strand of Cohesion Policy 2014/2020

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THE "CROSS-BORDER COOPERATION" STRAND OF COHESION POLICY 2014/2020

I. INTRODUCTION

On 6th October 2011, the European Commission published the proposals for the 2014/2020 regulations on Cohesion policy:

- ≡ A general regulation
- ≡ Three specific regulations for the ERDF, the ESF and the Cohesion Fund
- ≡ Two regulations dealing with the European territorial cooperation (ETC) goal and the European grouping of territorial cooperation (EGTC)
- ≡ Two regulations on the European Globalisation Fund (EGF) and the Programme for Social Change and Innovation
- ≡ A communication on the European Union Solidarity Fund (EUSF).

Following the consultation of its members, the Transfrontier Operational Mission (MOT) publishes its position paper on these regulation proposals, aiming at a better consideration of the cross-border areas in the Cohesion Policy Framework.

Presentation of the Transfrontier Operational Mission (MOT):

The Transfrontier Operational Mission, created in 1997, is both an association and a French inter-ministerial structure, which has the main objective of facilitating cross-border projects. Its missions are operational assistance to leaders of cross-border projects (project development, legal structures, studies, etc.), networking, assistance in the definition of overall strategies in cross-border cooperation, and implementation of European projects. The MOT brings together within its network local authorities and their groupings, associations, cross-border structures, large corporations, states, etc. involved in cross-border cooperation and situated on both sides of the border. It has 59 members, from 12 European countries.

To date, the MOT has concentrated its work on cross-border proximity cooperation and the assistance to the definition of policies regarding with cross-border territories.

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II. POSITION

1. Territorial extension of cross-border cooperation (CBC) programmes

≡ **Geographic criteria for the definition of CBC programmes**

Article 3.1 of the Regulation on the European Territorial Cooperation (ETC) objective states that: "regions to be supported shall be the regions of the NUTS level 3 regions of the Union located along all internal and external land borders other than those covered by programmes under the external financial instruments of the Union." This criterion helps maintaining the specificity of the CBC strand, whose main goal is the development of integrated border territories, and the overall clarity of the ETC goal. For instance with regard to cross-border cooperation, they help to ensure the concentration of resources at the proximity level of the border and counter dilution of the programme. Nevertheless, some voices are in favour of extending the eligible areas to NUTS 2 territories. For the MOT, greater flexibility (in terms of eligible areas, or of the percentage that can be spent outside the NUTS 3 area) is, if justified at the project level, better than a systematic extension of the eligible area to NUTS 2.

The ETC Regulation maintains the "150 km rule" for defining the perimeters of maritime CBC. It includes "all NUTS level 3 regions of the Union along maritime borders separated by a maximum of 150 km, without prejudice to potential adjustments needed to ensure coherence and continuity

of cooperation programme areas established for the 2007-2013 programming period" (Article 3 of the ETC Regulation).

This criterion of definition, combined with a continuity of the perimeters of existing programs, allows us to distinguish between proximity maritime CBC and transnational cooperation, thus facilitating the choice of strategies and the orientation of the project leaders. However, there are voices advocating an extension of maritime CBC programmes to larger areas. For the MOT, the criterion of definition of maritime CBC programmes should be maintained. However, greater flexibility (in terms of direct eligible areas, or percentage that can be spent outside the eligible area) should also be privileged.

≡ Design and size of the CBC programmes

If the regulation draft clarifies the ETC criteria for defining the areas eligible to the ETC objective, it gives no clear provisions on the size of the programmes that will be created. Across the generations of INTERREG programmes, the trend has been generally towards the merger of programmes and greater perimeters. While in earlier generations, the programmes were implemented on territories corresponding to the size of the Euro-historical regions, the current generation has seen the creation of CBC programmes covering the whole of a border between two states.

Regarding the size of the programs most appropriate to the realities territorial border, the MOT considers that there is no general rule and believes that the perimeters should be drawn in accordance to the realities of each cooperation space. To apply a single principle of design would be counter-productive for the actual cooperation. The MOT would also like to point out the positive outcomes of a certain perimeter stability that insures a better capitalisation of knowledge and improves the impact of the programmes.

2. Strategic perspectives and programming

The MOT supports the proposal of a new more detailed and precise Common Strategic Framework (CSF) at the European level. This document sets "for each thematic objective, key actions to be supported by each CSF Fund", "priority areas for cooperation activities for each of the CSF Funds, where appropriate, taking account of macro-regional and sea basin strategies", and emphasizes the territorial dimension by mentioning "the key territorial challenges for urban, rural, coastal and fisheries areas, as well as for areas with particular territorial features referred to in Articles 174 and 349 of the Treaty, to be addressed by the CSF Funds" Articles 10 and 11 of the General Regulation. The MOT especially appreciates that the Partnership Contracts (PC) shall record investment priorities for each Member state, as well as priority areas of cooperation (article 14 of the General Regulation).

The MOT, however, would like to point out the short time provided for the development of programmes, especially considering the increased demands of the new CSF. Indeed, the Partnership Contract should be sent to the Commission three months after the adoption of the CSF (Article 13, General Regulation) and the CBC programmes should be submitted three months after the transfer of the Partnership Contracts (Article 23, General Regulation). These deadlines seem very restrictive in the case of CBC programmes that have to take into account the specificities of CBC and particularly long processes of consultation and programme development, which are especially complex because of the large number of partners, the existence of different national context, but also the possibility of coordinating border aspects of Partnership Contracts between neighbouring Member States.

≡ A stronger link between strategies and programs

The MOT considers that the obligation to define strategies for the ETC goal at each programming level (CSF, PC and CBC programmes) is highly positive. The regulation proposals strengthen coordination between strategic documents and programs through the new provisions relating to the common strategic framework (Articles 10 and 11, General Regulation), the Partnership contracts (Article 14, General Regulation), and cooperation programs (Article 7, ETC Regulation) a very positive development according to the MOT.

More specifically, the articulation between programming and strategies is consolidated in the new structure of the CBC programmes. The choice of thematic objectives must be justified with

respect to the Common Strategic Framework and the ex-ante evaluation (Article 7, ETC Regulation). This provision existed also in previous regulations, but is increasingly important given the strengthening of thematic concentration.

The link between the funds is reinforced within the Common Strategic Framework (Articles 10 and 11, General Regulation) and Partnership Contracts (Article 14, General Regulation), which should detail the mechanisms of coordination between the funds. MOT warmly welcomes these new provisions.

≡ **Contracts partnerships**

MOT welcomes the new provisions that make the inclusion of the territorial cooperation objective in the Partnership Contracts mandatory. This is consistent with the desire of France to coordinate the Partnership Contracts neighbouring countries on aspects of cross-border cooperation. This coordination system, however, poses the question of the role of non-member States of the European Union.

The MOT also welcomes the emphasis on the principle of multi-level governance, which implies respectively for the Partnership Contract and for each operational program, that each Member State establish a partnership with "competent regional, local, urban and other public authorities; economic and social partners; and bodies representing civil society" (Article 5, General Regulation), an aspect that is fundamental and integrated in the MOT approach. The regulations thus specify that the Partnership Contract is drawn up in cooperation with the sub-national authorities and private partners mentioned in Article 5 of the General Regulation and in consultation with the Commission (Article 13, General Regulation).

The MOT considers that local authorities should be given a strategic role in defining and implementing the Partnership Contracts, being both the best scale to identify the needs of the territories and to implement CBC projects. In addition, many sub-national authorities directly manage European funds. They must therefore have a significant place within a national steering committee. Nevertheless, it is essential that the incorporation of new players in the monitoring committees does not complicate or delay management procedures. It is therefore necessary to establish a clear and well-defined participation mechanism.

Sub-national authorities can be involved through associations or in the regional consultations, as was the case during the preparation of the current National Strategic Reference Framework. Nevertheless, the implication of sub-national partners has to be genuine and not a simple consultation or a request of approval of a strategy already built. Collaboration with stakeholders should be formalized, establishing in each Partnership Contract a consultation mechanism.

3. Integrated territorial development

The MOT welcomes the introduction of provisions for articulating the territorial and thematic dimensions of cohesion policy.

The Partnership Contracts must contain "an integrated approach to territorial development" and that "an integrated approach to address the specific needs of geographical areas most affected by poverty" (Article 14, General Regulation), which include cross-border regions.

The CBC programmes must submit their "contribution to the integrated strategy for territorial development set out in the Partnership Contract" (Article 7.2.c, ETC Regulation). Furthermore, if any, programs must contain a "planned integrated approach to the territorial development of urban, rural, and coastal areas with particular territorial features", "the list of cities where integrated actions for sustainable urban development will be implemented", "areas in community-led local development will be implemented", and "contribution of the planned interventions towards macro-regional strategies and sea basin strategies".

The draft regulations introduce three new instruments to ensure the link between the thematic objectives chosen and the territorial dimension: community-led local development (Articles 28 – 30, General Regulation), joint action plans (Articles 93 to 97, General Regulation) and integrated territorial investments (Article 99, General Regulation).

The ETC Regulation allow the cross-border implementation of these three devices for the thematic-territorial articulation (Articles 8-10, ETC Regulation), with the possibility of using the

EGTC (or other legal entity established under the laws of a Member State) to carry out such actions.

The MOT supports these changes in the implementation of cohesion policy. However, the concrete functioning of these devices remains to be defined, as well as the articulations between them. The appropriate use of these tools requires extensive preliminary work on developing the strategy and identifying the most appropriate parameters for their implementation. Moreover, when using these tools additional complexity to the management of programmes and projects should be avoided. Finally, the articulation between these three types of instruments should be clarified in order to prevent the new cooperation framework from becoming excessively complex.

≡ **Community-led local development**

The MOT supports the involvement of local actors in CBC, specifically that of "local action groups" which are established "to design and implement local development strategies" (Article 30, General Regulation). The MOT looks forward to their implementation "through integrated and multi-sectoral area-based development strategies" in "specific sub-regional territories" (Article 28, General Regulation). The MOT is pleased that this instrument can be "implemented into the cross-border cooperation programmes, provided that the local development group is composed of representatives of at least two countries, of which one is a Member State" (Article 9, ETC Regulation).

≡ **The joint action plans**

The MOT approves the possibility of implementing joint action plans, an "operation defined and managed in relation to the outputs and results. It comprises a set of projects, not consisting in the provision of infrastructure, carried out under the responsibility of the beneficiary as part of one or more operational programmes "(Article 93, General Regulation).

≡ **Integrated territorial investments**

The MOT welcomes the inclusion in the General Regulation of the need for "an integrated approach involving investments under more than one priority axis of one or more operational programmes" during the implementation of "an urban development strategy or other territorial or pact defined in Article 12(1) of Regulation ... [ESF]" (Article 99, General Regulation). This instrument may be particularly relevant in the context of cross-border urban areas.

4. Thematic concentration

One of the main proposals of the new regulations is the choice of a limited number of thematic objectives that can be funded by operational programmes. This implies a focus on "actions bringing the greatest added value in relation to the Union strategy for smart, sustainable and inclusive growth" (Article 16, General Regulation). Article 5 of the General Regulation specifies that each CBC programme can select up to four thematic objectives listed in Article 9 of the General Regulations. Article 6 of the ETC Regulation also provides details specific to cross-border cooperation.

This reduction in the number of thematic objectives is justified by the Commission as a way to maximise the impact of cohesion policy. The MOT considers that, in the cross-border context, this provision should be interpreted with great caution so as not to undermine the objectives of the newly strengthened territorial cohesion and local integrated development. A too strong specialisation of CBC programmes is not entirely desirable in the light of the objective of the integration of cross-border territories that calls for interventions in a greater number of sectors, cross-cutting actions (e.g.: on the mutual understanding populations and border territories), the establishment of a governance and an appropriate territorial engineering, etc.

Thematic concentration should not lead to the disappearance of micro-projects, of people-to-people actions, or actions in the field of social policies, culture or tourism. Moreover, the ability of programmes to fund public bodies providing capacity building for small projects or project leaders can be crucial. In addition, a risk to avoid is the thematic concentration on the competencies on only some of the public authorities involved in the programmes, thus preventing other bodies from developing projects. Finally, the thematic concentration may induce a loss of adaptation capacity to unexpected economic changes.

5. Articulation between the cross-border, transnational and interregional strands, as well as macro-regional strategies

The Partnership Contracts will have to include "the main priority areas for cooperation, taking account, where appropriate, of macro-regional and sea basin strategies" (Article 14, General Regulation).

The different types of cooperation play an important role in the implementation of the Common Strategic Framework through their complementarity. The MOT supports, in the same way as the European Commission, the improving of the articulation between ETC programmes and regional programmes, the coordination of sectorial policies, the actions and investments made at a cross-border or transnational scale to improve governance.

In addition, the MOT welcomes the position taken by the European Commission on macro-regional strategies: "Given the possible overlap between existing and future macro-regions, sea-basins, transnational programme areas, the proposed regulation explicitly foresees that transnational cooperation can also support the development and implementation of macro-regional strategies and sea-basin programs (including the ones established on the external borders of the EU)" (page 7, ETC Regulation).

The MOT also underlines that strategies carried out by cross-border regions (Euro-regions, Eurodistricts, etc.), without the intervention of the Commission, must also be taken into account by the Partnership Contract and cooperation programmes, which should support them.

Until now, coordination between cooperation programmes has been very weak, giving at times rise to overlaps and diffuse objectives. A solution to the articulation of different territorial scales is to have a sufficiently representation of different levels in the bodies in the stages of development, programming and monitoring of the programmes.

6. Coordination between CBC programmes and coordination with other ETC of regional programmes

The MOT emphasizes the importance of coordination between CBC programmes, and the coordination with ETC or regional programmes. In previous periods, the lack of coordination between neighbouring programs resulted in a failure to fulfil potential synergies,

One solution would be to include in the programme committees the representatives from each neighbouring programme, in order to promote synergies, exchange on management or facilitation practices. The coordination with regional programmes is desirable, but difficult to implement as scales, management methods and priorities may vary. However, awareness actions directed to project leaders can be implemented in order to better articulate the use of different funds and public support in each action.

7. Role of European groupings of territorial cooperation (EGTC) in cross-border cooperation

The draft regulation on the European territorial cooperation objective refers more systematically the role that the European Grouping of Territorial Cooperation (or other legal entities established under the laws of participating countries) can play in the context of cross-border cooperation.

≡ EGTC and cooperation programmes

The MOT is supporting the new provisions of the ETC Regulation, that "Member States should be encouraged to confer the task of managing authority on an EGTC or to make such a grouping responsible for managing the part of the cooperation covering the territory concerned by the EGTC" (point 28, ETC Regulation). Thus, Article 21 of the ETC Regulation provides the opportunity for EGTC to manage a CBC programme, as managing authority, or a part of a programme, as an intermediary body.

The draft regulation therefore makes a change from the current period, when only the possibility for an EGTC to become managing authority was explicit. The MOT considers that extending the

powers of the EGTC to manage part of a programme is welcome. This will better coordinate CBC programmes with the EGTC projects. This provision thus facilitates the financing of cross-border territorial projects through INTERREG A programmes. The EGTC can therefore improve governance and programme management, provided that certain provisions related to its operation are clarified.

≡ **EGTC and devices of territorial development**

The MOT welcomes the opportunity for EGTC to implement the new instruments of territorial development, namely the joint action plans, as beneficiary (Article 8, ETC Regulation), and integrated territorial investments, as an intermediary body (Article 10, ETC Regulation).

These provisions represent a significant advance because they will better articulate the European programmes with the cross-border territorial projects and cooperation strategies.

≡ **The EGTC and projects funded by CBC programmes**

The MOT supports the provisions that "an EGTC or other legal body established under the laws of one of the participating countries may apply as sole beneficiary for an operation provided that it is set up by public authorities and bodies from at least two participating countries "(Article 11.3, ETC Regulation).

8. Budgetary framework of cross border cooperation programmes

≡ **Financial envelope of the ETC objective**

The MOT welcomes the increased funding to the European territorial cooperation objective. Indeed, for the period 2014 - 2020, 3.48% of the budget of cohesion policy, or 11.7 billion euros will be allocated to cooperation, whereas in the current period, the envelope is 7, 5 billion euros, or 2.4% of the overall budget. Thus, although the share of cross-border cooperation has decreased within the ETC Objective, passing from 77% to 73%, funds are higher: 8.57 billion euros (4.1, FCR), versus for 5.6 billion euros in the current period. The maximum cofinancing rate for territorial cooperation objective remains at 75% (Article 110, General Regulation).

It is important that this budget increase for the ETC Objective is confirmed during the negotiations. However, the major issues will be to coordinate the cooperation strategies of both sides of the border and to increase the synergies between regional programmes and cooperation programmes, thus increasing the contributions of European and national funds to CBC .

≡ **Criteria and methodology for allocating funds**

The population of NUTS 3 areas is maintained as the criterion for allocation of funds (Article 4, ETC Regulation). However, it is at this time unclear whether the new regulations propose a different process for allocating financial envelopes, that is if Commission adopts a decision to award funds directly to programmes of cooperation. Thus, the total funds for the ETC Objective would no longer be distributed firstly to Member States, then between the three strands of ETC, and finally to CBC programmes. The MOT supports a simplification that would be more responsive to the characteristics of ETC programs.

The MOT believes that the allocation criteria should be further detailed and that it is essential to take into account other criteria than population; like the density of population, challenging geographic features, the GDP per capita, growth, cross-border flows, etc.

≡ **Financial arrangements for the outermost regions (including French overseas territories)**

The new arrangements for the outermost regions (which include the French overseas territories) are more favourable, which the MOT welcomes. "Cooperation programmes involving the outermost regions shall receive not less than 150% of the ERDF support they received in the 2007-2013 period" (Article 4.2, ETC Regulation). Moreover, regulation expands the flexibility of the spending for programmes including the outermost regions to 30% of the total amount (Article 19, ETC Regulation).

9. Evaluation of programme performance

≡ Evaluations (ex ante, on-going, ex post)

The draft regulations reinforce the importance of programme evaluation, to estimate the impact of Funds on the regions and their contribution to the EU strategy for a smart, sustainable and inclusive growth. The current structure (ex ante evaluation, on-going, ex post) is maintained, but the new provisions are more specific as to the assessment objectives.

Particular attention is paid to the ex ante evaluation, which "shall address, in particular, the adequacy of the programme strategy, the corresponding objectives, indicators, targets and the allocation of budgetary resources" (Article 25, General Regulation). The MOT particularly welcomes the emphasis on assessing the contribution of programmes to targets, the relevance and clarity of selected indicators and external coherence (Article 48, General Regulation), which will ensure a better match between programmes and the needs of the territory. Moreover, it will be possible to carry out evaluations during the programming period as well as ex post, to explore the effectiveness, efficiency and impact of programmes (Articles 49 and 50, General Regulation).

The MOT also supports the provisions on annual reporting of the implementation of CBC programmes, which will especially have to account for the progress on the integrated territorial development (Article 13, ETC Regulation)

≡ Indicators

One of the innovations introduced by the draft regulation is the emphasis on programme performance and its measurement through indicators (Article 15, ETC Regulation, and Annex), a provision of which the MOT is delighted. Cooperation programmes can choose from the indicators proposed by the Commission and organized according to several themes (production investments, ICT infrastructure, transport, environment, R & D, energy and climate change, social infrastructure, urban development, labour market and training, institutional and administrative capacity).

For the MOT, it is important that indicators are relevant to the realities and objectives of CBC programmes. Therefore, qualitative indicators should also be retained. There are possible improvements to the list presented by the Commission, for instance by focusing more on the specific cross-border issues. Whilst supporting the Commission's increased focus on the performance and output of programmes, it will be important to ensure that the indicators used are limited, meaningful and qualitative as well as quantitative. The effort put into measurement should be proportionate to the value of the projects and the capacities of the project leaders and the management authorities.

10. Simplified management of CBC programmes

The draft regulations introduce measures to simplify the management of CBC programmes. The MOT can only approve the principle of simplification. However, it is important to ensure that, in the name of this principle, new rules imposed by the regulations do not question the systems in place, when they are effective. This concerns the certification task: the MOT considers that under no circumstances the merger of the management and certification tasks performed by the Managing Authority (Article 22 ETC Regulation) should be imposed.

This will improve financial management and speed up cash flow. It is welcomed the proposal to establish an annual system of clearance of accounts, which will allow close financial years without waiting for the end of the program. This should allow clearance of accounts before the EU projects funding. The proposed rules (regarding managing authority, audit authority, liability, etc.) are going to bring substantial improvements and simplifications as well as transparency in the processes.

Despite the simplification of financial management, real simplification only will be possible when planning management and control systems for each program. From the MOT point of view, all programs should adopt common management procedures, as project partners may manage projects in different programmes. Furthermore, all managing authorities should have a unique European software system to manage all procedures.

Nevertheless, is very important that this simplification in the management at programme level is reflected in improvements and simplification of management at project-level.

The MOT approves the new provision on decommitment for CBC programs, that will be in year N+3 rather than N+2 for the entire duration of the programme (Article 27, ETC Regulation). This is an important step that takes into account the complexity of ETC projects.

Finally, the provisions relating to the eligibility of expenditure (Articles 55 to 61, General Regulation, and Articles 17 to 19, ETC Regulation) have been clarified and simplified. Flat rates for maximum indirect costs have been introduced, which must represent less than 20% of direct costs and less than 15% of direct staff costs (Article 58, General Regulation). Moreover, to meet the specific needs of programmes, the monitoring committee may establish rules specific to the cooperation area, in addition to rules set by the General Regulation, ERDF Regulation and ETC Regulation.

The MOT considers that the new emphasis on multilevel governance in all aspects of the ETC goal (implementation and monitoring included) is much welcomed. As the local authorities are the first line of project elaboration and are best advised on the needs for cooperation, they should have a more important place in national monitoring committees. Nevertheless, it is essential that the incorporation of new players in the monitoring committees does not complicate or delay management procedures. It is therefore necessary to establish a clear and well-defined participation mechanism.

≡ Programmes and networks

The MOT emphasizes the importance of networking between programmes and cooperation projects. Indeed, in previous periods, the lack of networking between programmes and projects did not allow for a comparison of the results obtained or a capitalisation on good practices. The MOT wishes that actions such as guides to good practice, dissemination of expertise on CBC and beyond are implemented.

It will be up to programmes to allow such capitalisation (Article 2 of ETC Regulation), whether on thematic objectives (paragraph 3a) in the case of their setting out in cross-border territories; urban or rural cross-border development (paragraph 3b), exchange of experiences specific to cooperation (paragraph 3c), or observation of territories (paragraph 3d).