



EUROPEAN COMMISSION
DIRECTORATE-GENERAL
REGIONAL POLICY
Policy Coordination
The Director

INFORMATION NOTE TO THE COCOF

Subject: Interpretation of the Lead beneficiary principle under Articles 19 and 20 of Regulation (EC) No 1080/2006, especially concerning joint bodies such as EGTCs

The Commission services have received a number of questions concerning the role of a European Grouping of Territorial Co-operation (or a similar grouping) in relation to the partnership requirements for territorial co-operation projects.

1. An EGTC can be either a beneficiary or a lead beneficiary in a territorial co-operation project. While Article 18 of the ERDF Regulation (Parliament and Council Regulation 1080/2006) covers programme management, it does not exclude project management, and indeed project management is expressly covered in the EGTC Regulation (Parliament and Council Regulation 1082/2006).

2. Article 19 of the ERDF Regulation sets out certain conditions for project partnerships under the European territorial cooperation objective. Such projects shall include beneficiaries from at least two countries. When an EGTC is a beneficiary, a narrow reading of Article 19 could lead to the conclusion that this Article requires another beneficiary next to the EGTC in order to have at least two. Having consulted the Legal Service of the Commission, the services of the Commission can however interpret Article 19 so as to permit the use of an EGTC as "sole" beneficiary in such contexts for the following reason: Since an EGTC brings together authorities or organisations from at least two Member States to act on behalf of those authorities or organisations, the EGTC as legal person meets the partnership requirements by itself. Therefore the use of an EGTC (acting as "sole" beneficiary) should be considered as satisfying the requirements of Article 19 (evidently for interregional projects, partners from at least three countries would need to be in the EGTC).

3. To the extent that other legal bodies than EGTCs offer analogous possibilities of cooperation between entities in at least two participating countries, such legal bodies can equally act as "sole" beneficiary in such cases while respecting all rights and obligations for a beneficiary under a given cooperation programme. A complete list of such bodies can not be indicated, but all joint bodies mentioned in bi/multilateral agreements on transfrontier cooperation are certainly covered (e.g. DE: "grenzüberschreitender Zweckverband"; ES: "Consortio transfronterizo"; FR: "Groupement local de coopération transfrontalière (GLCT)", "Société d'Economie mixte"; IT: "Società a capitale misto pubblico o privato") as well as all legal bodies under Community or national law, chosen by the partners to set up a joint body (e.g. foundations or associations under public or private law).

Comparability with an EGTC can be assumed when the following elements are fulfilled:

- The body has legal personality (see Article 1(3) EGTC-Regulation),
- The members are listed in Article 3(1) of the EGTC-Regulation and located in two different countries, of which at least one Member State (of particular interest for bilateral cooperation between one Member State and one Non-Member State, where the EGTC-Regulation does not apply),
- The existing convention, statutes or other documents of such a body have been presented to the JTS clearly demonstrating a cooperation objective of the body as well as the auto-financing of the body (see Articles 1(2) and 11 of the EGTC-Regulation); such documents can be recognized as the "agreement" referred to in Article 20(1)(a) of the ERDF-Regulation, provided the members of the body have been informed about the project application.

4. It has to be underlined that the interpretation given above concerns only the cross-border/transnational requirements of operations referred to in Article 19 and the lead beneficiary requirement under Article 20 of the ERDF-Regulation. Other provisions such as Article 16 or Article 17 of that Regulation apply.

This means that activities of the EGTC in a different Member State than where it has its registered office, shall be controlled by the body responsible for controls on the respective "territory" (Article 16 of the ERDF-Regulation).

According to Article 17(3) of that Regulation, the Member State on whose territory the EGTC (as "sole" beneficiary) has its registered office, shall ultimately reimburse amounts unduly paid. However, even if the assets of the EGTC are insufficient to meet its liabilities, its members shall be liable (Article 12(2) of the EGTC-Regulation). It is for the managing authority to foresee guaranties in a contract with an EGTC as "sole" beneficiary in case such residual liability of the members is limited according the 3rd sub-paragraph of Article 12(3) of that Regulation.