



Consultation paper on the future of ENPI CBC

1.- INTRODUCTION

A) Background

During the conference held in Brussels on 15 and 16 February 2011, the European Commission officially launched the reflection on the future of ENPI CBC programmes. The European External Action Service (EEAS), in charge of designing the new ENPI, has indicated that the draft ENPI II regulation (successor of the current regulation 1638/2006) should be prepared in autumn 2011 followed by the Strategy paper. The future ENPI CBC Implementing Rules (successor of the current regulation 951/2007) will be drafted afterwards, end of 2011 and in the course of 2012.

Key questions need to be discussed now in order to ensure that the main ENPI II regulation reflects the experiences and views of all ENPI CBC stakeholders. The sections principally concerned are Title III (notably articles 8, 9, 10 and 11) of the current ENPI regulation. Article 11 sets the legal framework for developing the ENPI CBC Implementing Rules (ENPI CBC IR).

In autumn 2010, the Commission asked INTERACT ENPI to examine the current ENPI CBC Implementing Rules and propose possible improvements for the next period. For this purpose, INTERACT ENPI set up, in January 2011, an expert group comprising individuals with suitable experience of ETC, IPA CBC and ENPI CBC. The role of the expert group is to assist INTERACT ENPI in the consultation process with ENPI CBC stakeholders, providing a support role in the general debate on the future ENPI CBC IR and lending its experience of current ENPI CBC management and implementation.

The aim of the expert group and of this consultation process is to prepare proposals/recommendations regarding the future ENPI CBC.

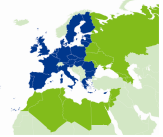
B) Two-Step Approach

The proposed consultation paper has thus two objectives:

- 1) Firstly, it is a tool to consult all ENPI CBC stakeholders with a view to gathering recommendations in relation to the draft ENPI II regulation (in particular the specific articles related to ENPI CBC, i.e. points (17) and (18) of the preamble and articles 8, 9, 10 and 11.
- 2) Secondly, it can help identify a number of key areas where specific consultations/workshops might be established in order to contribute to the development of the draft ENPI CBC IR.

Two key elements will be taken into consideration in the framework of the consultation process:





- 1) The involvement of Partner Countries representatives is crucial. Such countries will have a unique opportunity to reflect on the current implementation of ENPI CBC programmes including vis-à-vis their national legislation, the feasibility of various options proposed in this paper and their overall commitment to the next generation of ENPI CBC programmes.
- 2) The future ENPI CBC regulatory framework should above all create favourable conditions for the implementation of ENPI CBC projects (beneficiaries and partners) while simultaneously protecting the EU's financial interests. The ENPI regulation and its ENPI CBC Implementing Rules will not enter into great detail concerning project implementation. There are, however, a number of key issues that need to be addressed. CBC programmes can achieve real impacts in cross-border regions if projects are of good quality and well implemented.
For this purpose, an abstract of the general questionnaire with the questions related to project management is hereafter proposed to project stakeholders.

This consultation paper has been prepared by the ENPI CBC IR expert group under the coordination of INTERACT ENPI. The expert group met three times in January, February and April 2011 to discuss the content. The paper also takes on board the outcomes of the conference organised on 15 - 16 February in Brussels including responses to questionnaires completed by conference participants. It is a discussion paper and is designed to ensure that all concerns, reactions and possible solutions are taken into account when the expert group drafts its recommendations to the EEAS and the European Commission.

C) **Timing and specific information relating to the consultation**

The consultation process will remain open until 10 June 2011. In order to reach all relevant stakeholders, the discussion paper will be circulated as widely as possible. This will include direct emailing from the European Commission to the JMAs which will then inform their JMC members and JTS, INTERACT ENPI and RCBI websites, relevant network meetings and training activities organised by INTERACT ENPI.

In addition, INTERACT ENPI will organise a meeting for Partner Country representatives on 19 May, in Brussels. The objective of this meeting is to explain the consultation paper and to identify those issues that require the specific attention of Partner Countries when completing the questionnaire. This meeting will be for information and training purposes only: Partner Country representatives may be less familiar with certain topics related to the possible harmonisation of ENPI CBC with other CBC Instruments implemented by Member States. Following the meeting, participants will be invited to assist their colleagues from Partner Countries in completing the questionnaire.

Two questionnaires are available for consultation purposes:

- one for persons involved in the management and implementation of ENPI CBC Programmes (programme authorities, national counterparts, info points etc.)
- the other for persons involved at project level (beneficiaries and partners).

As already made clear, the questions mainly concern issues relevant to the draft ENPI regulation. INTERACT ENPI will examine the answers received from all ENPI CBC stakeholders and should be in a position to summarise the conclusions for the benefit of the expert group by the end of June. The corresponding recommendations will be sent to the EEAS / European Commission by mid-July 2011 at the latest.





Should you have any queries on the questionnaire and during the consultation process, please send an email to interact.enpi@interact-eu.net.

List of Acronyms

| | |
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| AA | Audit Authority |
| CA | Certifying Authority |
| ENPI CBC | European Neighbourhood Partnership Instrument Cross-border cooperation |
| ENPI CBC IR | European Neighbourhood Partnership Instrument Cross-border cooperation Implementing Rules |
| ETC | European Territorial Cooperation |
| FA | Financing Agreement |
| FR and its IR | Financial Regulation and its Implementing Rules |
| JMA | Joint Managing Authority |
| JOP | Joint Operational Programme |
| LSP | Large Scale Project |
| MCS | Management and Control System |
| MoU | Memorandum of Understanding |
| MS | Member State |
| PC | Partner Country |
| PraG | Practical Guide to contract procedures for EU external action |
| TA | Technical Assistance |

Documents for download:

Regulatory framework:

ENPI CBC

Regulations 1638/2006 and 951/2007 as well as the ENPI CBC Strategy paper 2007-2013 may be downloaded at: http://ec.europa.eu/europeaid/where/neighbourhood/regional-cooperation/enpi-cross-border/key_documents/index_en.htm

IPA CBC

The Council Regulation (EC) No 1085/2006 of 17 July 2006 establishing the IPA as well as its Commission Regulation (EU) No 540/2010 of 16 June 2010 amending Regulation No 1085/2006 may be downloaded at: http://www.interact-eu.net/ipa_regulations/ipa_regulatory_framework/52/3644

Practical Guide to contract procedures for EU external action and annexes:

http://ec.europa.eu/europeaid/work/procedures/implementation/practical_guide/index_en.htm

NB : this is the link to the general text of the PraG. It does not include possible derogations granted to JMAs in their respective ENPI CBC programmes.

Financial Regulation and its Implementing Rules:

http://ec.europa.eu/budget/documents/financial_regulation_en.htm#table-1_1



Future of ENPI CBC programmes

Extract of the consultation paper for the attention of ENPI CBC project stakeholders

Important notice:

In order to collect relevant data, the questionnaire targets exclusively persons having experience with ENPI CBC projects. Please complete whichever part of the questionnaire that you believe is most relevant to you. Do complete those boxes or answer those questions which you are not familiar with.

The questionnaire should be returned to the following address before 10 June 2011: interact.enpi@interact-eu.net

Identification fiche (Please fill in the information below):

- Are you currently involved in the management of an ENPI CBC project?
YES NO
If NO, please specify what your experience is with ENPI CBC:
- If yes, which role do you have in the project?
Beneficiary Partner
Please specify whether you are from a Member State, a Partner Country or another country
 - a. Member State , which country:
 - b. Partner Country , which country:
 - c. Other (Norway, Turkey)
- How were you informed about the existence of this consultation?
Through INTERACT ENPI Through RCBI Through a programme body of your ENPI CBC programme
Other Please specify:
- Do you have experience with other CBC instruments (European Territorial Cooperation, IPA CBC)?:
YES NO If YES, please specify:
- Do you have experience with CBC instruments from previous periods:
Tacis / MEDA Neighbourhood Programmes other, please specify:





2.- DISCUSSION ISSUES

A) ENPI CBC general objectives

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| <p>Issue 1</p> <p>Description</p> | <p>▷ ENPI CBC general objectives</p> <p>As set in (22) of reg. 1638/2006, the objective of the ENPI regulation is to promote enhanced cooperation and progressive economic integration between the European Union and neighbouring countries. With regard to this general objective and in the specific context of cross- border cooperation between Partner Countries and Member States, the strategy paper has defined four key objectives for ENPI CBC 2007-2013 :</p> <ol style="list-style-type: none"> 1. Promoting economic and social development in regions on both sides of common borders 2. Working together to address common challenges, in fields such as the environment, public health and the prevention of and fight against organised crime 3. Ensuring efficient and secure borders 4. Promoting local cross border “people-to-people” actions. |
| | <p>Questions - please choose between the proposed options or detail your answer</p> |
| | <p>1) Do the key objectives provide your programme with enough flexibility to properly address the real needs of the cross-border region?</p> <p>YES <input type="checkbox"/> NO <input type="checkbox"/></p> <p>If NO, please explain:</p> <p>Other remarks:</p> |





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D) Project Implementation

- 2) Responsibilities at project level
- 3) Harmonisation of rules applicable to projects
- 4) Verification of expenditure

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| Issue 2 | ▷ Responsibilities at project level |
| Description | <p>The current ENPI CBC IR does not regulate the responsibilities of the Beneficiary and of the partners contrary to the ETC and IPA CBC regulations (article 96 of IPA CBC 718/2007). The only existing legal document for projects under ENPI CBC is the PRAG grant contract (especially its Annex II on the general conditions) that is signed between the JMA and the beneficiary.</p> <p>ETC and IPA CBC regulations underline the need for the establishment of a Partnership agreement between the Lead Beneficiary and its partners. It also stipulates that each final beneficiary ("partner") participating in the project is responsible for irregularities in the expenditure which it has declared.</p> |
| | Questions - please choose between the proposed options or detail your answer |
| | <p>1) Do you think that the beneficiaries' responsibilities should be laid down in the future ENPI CBC regulatory framework?</p> <p style="text-align: center;">YES <input type="checkbox"/> NO <input type="checkbox"/></p> |





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| | <p>Please specify:</p> <p>2) According to your experience, should the establishment of a partnership agreement between a Lead beneficiary and its partners be required in the regulatory framework of ENPI CBC?</p> <p>YES <input type="checkbox"/> NO <input type="checkbox"/></p> <p>If yes, please specify what should be regulated in this partnership agreement:</p> <p>Other remarks:</p> <div data-bbox="392 885 1904 981" style="border: 1px solid black; height: 60px; width: 100%;"></div> |
| | <p>Please indicate here any experience, template, ideas that you would like to share to improve the future ENPI CBC</p> |
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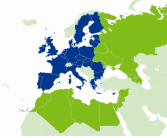
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| Issue 3 | ▷ Harmonisation of rules applicable to projects |
| Description | This issue concerns the single contract, the single set of eligibility rules and the procurement procedures. Verification of expenditure at project level is covered by issue 14. |
| Discussion points / Proposed options (if relevant) | <p><u>Expert group discussions</u> The expert group considers that a number of tools used in ENPI CBC may improve the project implementation and the cooperation between beneficiaries and partners. These tools are:</p> <ul style="list-style-type: none"> a) A single contract: the JMA signs only one contract with the beneficiary for the whole project. There is no other contract signed for the community contribution as it was formerly under Neighbourhood Programmes (JMA / European Commission Delegation). b) Procurement rules as set in Annex IV to the PraG grant contract: without limiting the possibility of using national rules for public authorities and bodies governed by public law both in Member States, Annex IV provides a single set of rules for all other bodies thus ensuring the application of adequate procurement procedures for all bodies receiving public funds. Nevertheless, at early stages of project start-up in several ENPI CBC Programmes problems have arisen concerning the application of Annex IV. Concerning Partner Countries, the application of Annex IV is unclear. c) The same rules for verifying project expenditure (see issue 4). d) Single set of eligibility rules as per Article 14 of the General Conditions to the grant contract: without limiting the possibility of following national practices, Article 14 offers a harmonised approach to the eligibility of expenditure within and among programmes. This is considered as positive, especially for bodies located in regions covered by different ENPI CBC Programmes (i.e. rules would not change depending on the programme in which the institution participates). <p>The options to be followed could be two:</p> <ul style="list-style-type: none"> a) Option 1: to keep these common rules at contract level b) Option 2: to set such common requirements directly in the regulation. In this respect, articles 34 and 89 of the IPA CBC Regulation could be used as a basis. This option also leaves room for programme specific eligibility requirements (e.g., exchange rate losses), as set in Article 89.5 of the same Regulation. <p>It is also the opinion of the expert group that the non-eligibility of preparatory costs has heavily hindered the creation of</p> |





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| | good partnerships at project level, especially in programmes covering wide cooperation areas. For this reason, preparatory costs should be considered as eligible in the future period for selected projects if programmes so decide. |
| Questions - please choose between the proposed options or detail your answer | |
| | <p>1) Should a single contract be applicable to all ENPI CBC projects regardless of the source of funding within a programme (ENPI, ERDF, IPA, national co-financing)?</p> <p>YES <input type="checkbox"/> NO <input type="checkbox"/></p> <p>Please specify:</p> <p>2) Should the same contract be applicable to all ENPI CBC programmes?</p> <p>YES <input type="checkbox"/> NO <input type="checkbox"/></p> <p>Please specify:</p> <p>3) Public procurement:</p> <p>a) In practice, what problems do you have to apply the contents of Annex IV (to the grant contract) properly in your country?</p> <p>b) Which of the following options would you consider to be the most applicable to the ENPI CBC context?</p> <p>Option 1: PraG Rules should apply to all beneficiaries/partners irrespective of their status (public or private) and of their origin (beneficiaries/partners from MS or PC) <input type="checkbox"/></p> |





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| | <p>Option 2: National rules should apply to all beneficiaries/partners irrespective of their status, provided principles of fairness, transparency, open competition and non-discrimination are respected and conflict of interest are avoided. <input type="checkbox"/></p> <p>Option 3: National rules should apply to public administrations and bodies governed by public law (both in MS and PC) whereas PraG Rules (or at least Annex IV to the PraG Grant Contract) should apply to private bodies. <input type="checkbox"/></p> <p>Option 4: National rules should apply to all MS bodies and PraG rules (or at least Annex IV to the PraG Grant Contract) should apply to bodies in Partner Countries. <input type="checkbox"/></p> <p>4) Do you think that having a single set of eligibility rules for the whole project is an advantage (i.e. same eligibility rules for expenditure occurring in MS, in PC or in other countries)?</p> <p>YES <input type="checkbox"/> NO <input type="checkbox"/></p> <p>Please specify:</p> <p>5) Should a specific article on ENPI CBC eligibility rules be included in the contract / the regulatory framework (ENPI II / ENPI CBC IR)?</p> <p>contract <input type="checkbox"/> regulatory framework <input type="checkbox"/></p> <p>Please specify:</p> <p>6) Do you agree with the expert group and consider that preparatory costs should be considered as eligible in the future programming of ENPI CBC?</p> <p>YES <input type="checkbox"/> NO <input type="checkbox"/></p> <p>If YES,</p> |
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| | <p>a) It should be explicitly mentioned in the regulation <input type="checkbox"/></p> <p>b) It is sufficient to keep in the regulation one single eligibility starting date applicable to programme and project level as in other CBC instruments <input type="checkbox"/></p> <p>Other remarks:</p> <div data-bbox="389 552 1901 647" style="border: 1px solid black; height: 60px; width: 100%;"></div> |
| | Please indicate here any experience, template, ideas that you would like to share to improve the future ENPI CBC |
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| Issue 4 | Verification of expenditure at project level (annex VII to the PraG grant contract) |
| Description | Under ETC, MS have set up national control systems (centralised or decentralised, 100% check or not). Article 39 of the ENPI CBC IR refers to the possibility of using these national control systems to “verify the soundness of the expenditure declared for operations or part of operations...” in Member States. Under ENPI CBC, even if using their national control systems - provided this possibility was already identified in the JOP - all auditors and controllers involved in the verification of expenditure at project level (both in Member States and Partner Countries) have to follow the procedures laid down in annex VII to the grant contract. |
| Discussion points / | <p><u>Expert group discussions:</u></p> <p><u>Expenditure verification in partner countries:</u></p> <p>The expert group agrees with the fact that annex VII should “theoretically” remain the control tool for Partner Countries. Setting up</p> |





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| <p>Proposed options (if relevant)</p> | <p>ETC-like national control systems seems very complicated especially in Partner Countries (for example, national control systems set up within IPA CBC do not seem to work properly). Some difficulties are however highlighted, such as the lack of reliable auditors (familiar with the national environment, with the specificities of the CBC programme and with the EU requirements) to verify project expenditure in some Partner Countries.</p> <p>It might be more reliable for the JMAs to have a short list of auditors (as long as they are selected with an open procedure) dealing with the verification of expenditure for all projects in the relevant Partner Countries within their programme (and not having a separate auditor for each project).</p> <p><u>Expenditure verification in Member States</u></p> <p>During the current period, only a limited number of countries have used their national control systems for the verification of expenditure in ENPI CBC Programmes; this relates mostly to countries having a centralised system in which national controllers perform directly the checks on the expenditure declared by beneficiaries/partners. The question at stake is if, irrespective of the national system followed, auditors and/or controllers from Member States should use the procedures and tools currently existing in ENPI CBC (Annex VII) or if they should follow the same practice as in ETC/IPA CBC.</p> <p><u>Need for harmonisation:</u></p> <p>In order to ensure a harmonised process of verification of expenditure throughout the entire ENPI CBC community, it is proposed that the current system for verification of expenditure is kept both for Member States and for Partner Countries. However, it should be considered that Member States may keep their national control systems for verifying expenditure or checking the quality of this verification done by external auditors without directly performing the controls. This should be done on an ex-post basis and not interfere with the reporting and payments claim system. Instead, it should complement the sample checks under the responsibility of the body in charge of the audit function. In practice, this would only have an effect on Member States using a centralised model. Such quality checks should be performed in all participating countries (i.e. including Partner Countries) in view of providing further guarantees to the MA on the effective functioning of the system.</p> |
| | <p>Questions - please give a mark between 5 (very important) and 1 (less important) or choose between the proposed options</p> |
| | <p>1) Do you agree with the expert group and consider that one single set of rules should apply for the verification of</p> |





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| | <p>expenditure at project level both for Member States and Partner Countries?</p> <p>YES <input type="checkbox"/> NO <input type="checkbox"/> Please explain:</p> <p>If YES, which single set of rules should this be?:</p> <p>a) Annex VII to the PraG grant contract <input type="checkbox"/></p> <p>b) OTHER, to be decided at programme level <input type="checkbox"/></p> <p>Other remarks:</p> <div data-bbox="392 804 1901 928" style="border: 1px solid black; height: 78px; width: 674px;"></div> |
| | <p>Please indicate here any experience, template, ideas that you would like to share to improve the future ENPI CBC</p> |
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E) Others

Should there be any other issues you would like to introduce, please fill out this part¹:

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| Issue | |
| Description | |
| Discussion points / Proposed options (if relevant) | |
| | Questions |
| | |

¹ Please fill in one table per issue.





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| | Please indicate here any experience, template, ideas that you would like to share to improve the future ENPI CBC |
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