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Involvement of SMEs in ETC programmes:

achievements & future perspectives

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Disclaimer and Acknowledgements: *While this paper should be considered final, it remains a "living" document as arguments presented herein are based on drafts of the Cohesion Policy 2014-2020 legal framework and proposals for the revision of the State Aid regulations.*

Practical examples included in this paper are intended to provide an overview of different approaches currently in place across European Territorial Cooperation (ETC) programmes in order to support the given arguments. They might not necessarily be the best practice. Other good examples may be added as they become known.

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You are welcome to contact Karolina Bachmann (karolina.bachmann@interact-eu.net) with any comments or questions you may have. Specific questions related to State Aid can also be directed to Katrin Stockhammer (katrin.stockhammer@interact-eu.net).

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I. Introduction

Territorial cooperation in the EU has evolved over recent years. Historically having a spatial focus and promoting economic and social cohesion through mere exchange activities, today it plays a bigger role in providing concrete solutions by multi-country partnerships. These concrete solutions include new services, innovative schemes and approaches, in addition to physical investments developed jointly by project partners.

In 2007-2013, projects financed by European Territorial Cooperation (ETC) programmes have been increasingly set to deliver original outputs, often with the aim to tackle market-related challenges.

These rather new types of activities require the involvement of relevant stakeholders. With this in mind, many ETC programmes took steps to target organisations outside the typical group of ETC actors. They invited private organisations and SMEs to participate. In general, this was not an easy task, as ETC rules and procedures are designed to suit public sector logic and do not leave much room for manoeuvre in order to address the specificities and needs of private businesses. Those SMEs that decided to contribute had to play according to these rules. There are not many such SMEs.

On the threshold of the 2014-2020 period, many ETC programmes are considering how to include SMEs in future projects. They are generally encouraged to do so, given the current economic situation in Europe and the goals of the EU political agenda for the coming years. The decision on which way to go in order to deliver the Europe 2020 objectives belongs to the relevant programme bodies.

This paper examines different possibilities for participation of SMEs in ETC programmes. Specifically, it explores practical challenges and regulatory requirements related to the involvement of SMEs as beneficiaries of ETC funds.

The paper aims to:

1. Present achievements of ETC programmes in the 2007-2013 period, with regard to the involvement of SMEs.
   - What is the scale of SMEs involvement in ETC?
   - What are the experiences of ETC programmes in dealing with SMEs?
   - What are the particular challenges that ETC programmes face?
   - What are the practices of ETC programmes to facilitate participation of SMEs?
2. Provide ETC programmes with a source of inspiration and the means to help them decide on whether or not to include SMEs as beneficiaries of the programme funds in the 2014-2020 period.
   - What are the general expectations towards ETC in delivering the objectives of Europe 2020?
   - How could the involvement of SMEs contribute to achieving the aims of ETC programmes in 2014-2020?
   - What is the added value of ETC compared to other EU programmes providing support to SMEs?
   - What are the possibilities and options for tackling challenges and allowing for a smoother integration of SMEs into ETC programmes during 2014-2020?
   - How to address State Aid in the ETC context?
   - How to deal with questions pertinent to Intellectual Property Rights?

II. What is an SME? Definition and classification of SMEs among other types of beneficiaries

One particularity of European Territorial Cooperation is that it facilitates intervention in many different thematic fields and economic sectors. A variety of actions are allowed as long as they contribute to reinforcing Europe's territorial cohesion by capitalising on the strengths of the regions. Such a broad spectrum of ETC interventions requires that relevant actors are involved. This is why beneficiaries[1] of ETC programmes include organisations of different legal status, active at different levels of governance and in different sectors.

Definition of a beneficiary:

- **Regulation 1083/2006** (Article 2(4)): an operator, body or firm, whether public or private, responsible for initiating or initiating and implementing operations. In the context of aid schemes, under Article 87 of the Treaty, beneficiaries are public or private firms carrying out an individual project and receiving public aid.
- **Draft Common Provisions Regulation**[2] (Article 2(10)): beneficiary means a public or private body responsible for initiating or initiating and implementing operations; in the context of State Aid, the term 'beneficiary' means the body which receives the aid; in the context of financial instruments, the term 'beneficiary' means the body that implements the financial instrument.

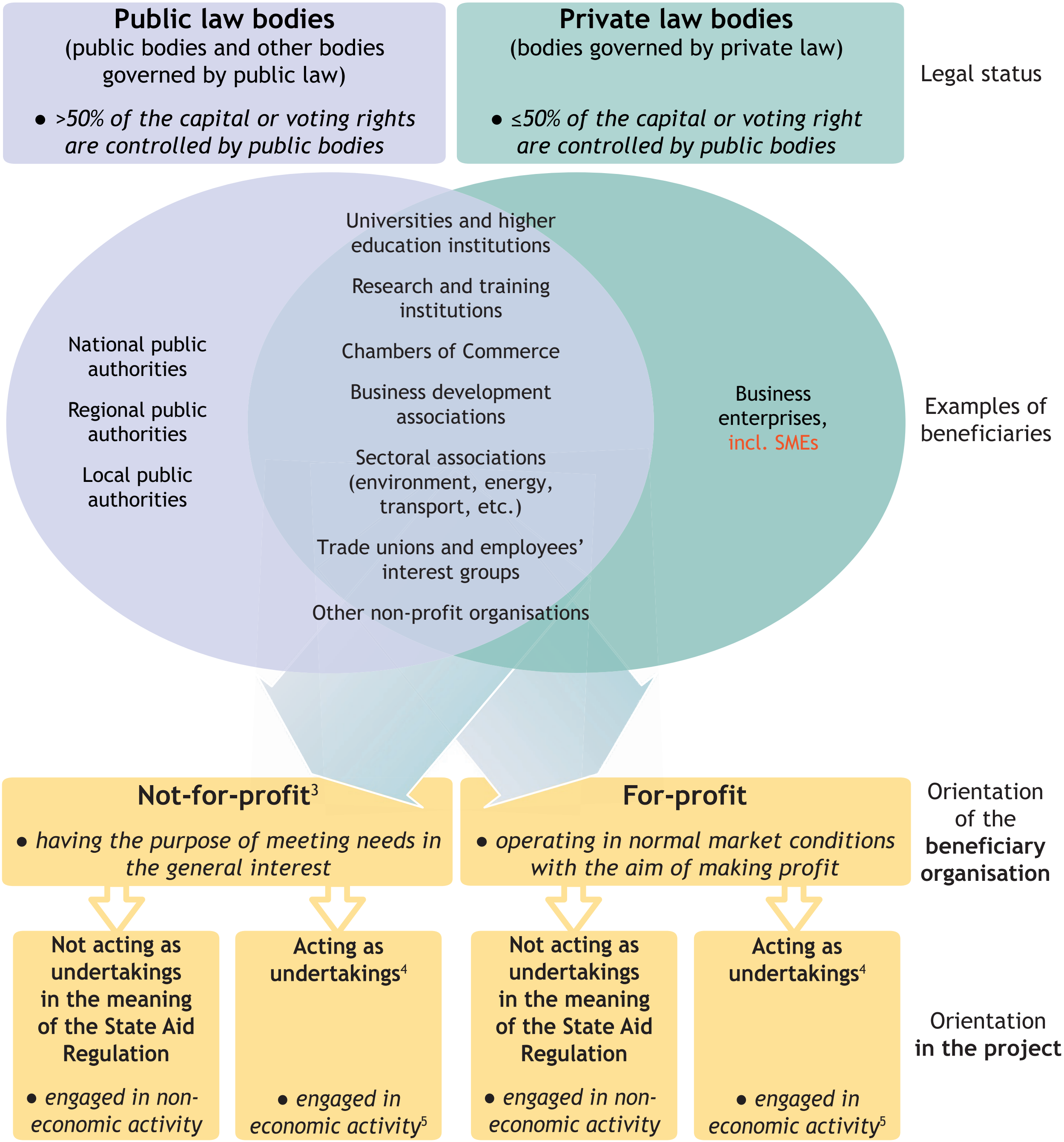
Although based on the same understanding of what the term 'beneficiary' means, there is no standard classification of beneficiaries applicable to ETC programmes in 2007-2013. Individual programmes established their own systems in order to classify organisations benefiting from programme funds. Some common patterns can be drawn, but they still do not make it any easier to collect comparable data across the EU in a systematic way. A certain level of standardisation might be worth considering for the 2014-2020 period.

For the purpose of this paper, and in order to allow for a comprehensive analysis of the different approaches applied by ETC programmes during 2007-2013, the following general classification is used. It must be noted that Chart 1 does not include all definitions and possible further categorisation levels of both public and private law bodies; in a simple way, it recognises the position of SMEs (as business enterprises in particular) among other types of beneficiaries, aiming to present orientations they can take in ETC projects.

[1] Beneficiary means a project partner involved in a cooperation project and financed from ETC funds. In this paper, the two terms ('beneficiary' and 'project partner') are used interchangeably.

[2] All references to the Cohesion Policy 2014-2020 legal framework presented in this paper are based on official drafts available on the website of the European Commission, DG Regional and Urban Policy, *http://ec.europa.eu/regional_policy/what/future/proposals_2014_2020_en.cfm*

Chart 1: Classification of beneficiaries



SMEs form a distinctive group of beneficiaries. Given their statutory character, the majority of SMEs fall under the group of entities governed by private law (*private law bodies*) and by nature they are generally active in the market with the aim of making profit (*for-profit*). As far as the category of SMEs also applies to not-for-profit organisations that act as undertakings (e.g., public or private research and training institutions registered as not-for-profit can still be engaged in economic activities and depending on their size be classified as SMEs), the main arguments presented in this paper focus on SMEs of all types, which in their normal operation are profit-oriented entities with private status.

[3] In ETC practice often referred to as public-equivalent bodies.

[4] An undertaking is defined as any entity, regardless of its legal status, which is engaged in economic (commercial/competitive) activity and where there is a market in comparable goods and services. It does not have to be for-profit as long as the activity carried out is one which, in principle, has commercial competitors. It can include not-for-profit, public and private law bodies (e.g., universities, research institutions, social associations) when they are engaged in economic activity.

[5] Economic activity means an activity that consists of offering goods or services in a given market and which may be carried out, at least in principle, in order to make profit.

Not all ETC programmes allow SMEs to participate as beneficiaries. The programmes that make this possible engage SMEs in different ways. In general, they can be grouped under two headings:

- *SMEs not acting as undertakings in the meaning of the State Aid Regulation*: for the activities carried out within ETC projects, SMEs are required to act as non-undertakings and according to the same conditions as all other beneficiaries. The activities in which they are engaged in the context of an ETC project are of a non-economic/social nature; i.e., they are not about provision of goods and services in the market with the purpose of gaining advantage. It needs to be noted that classification of an SME into this group requires a detailed assessment and agreement that the grant allocated is not State Aid relevant; i.e., it has no effect on the competition and trade in the internal market.
- *SMEs acting as undertakings*: SMEs carry out activities within ETC projects and receive programme funds under de minimis, the General Block Exemption Regulation, or other schemes; i.e., an ETC programme grants State Aid to the SME.

Practical examples of ETC programmes 2007-2013 are presented below. The text is extracted from relevant programme documents.

Practical example 1: North Sea Region Programme

> **Factsheet No 7. Public-Private Partnerships**
>
> Both public and private sector organisations such as, e.g., universities, research institutes or labour market organisations can be beneficiaries and lead beneficiaries in projects under the North Sea Region Programme and as such receive money from the programme.
>
> In order to receive money, the following conditions must be met:
>
> - The organisation is a legal body,
> - The organisation acts as a non-profit organisation in the context of the project and operates in line with the principle of real costs – this does not exclude beneficiaries acting on a for-profit basis in other contexts. It should be kept in mind that there must be a clear separation of the project costs and other non-project related costs in the accounting system,
> - […]

This is a practice followed by the programme in 2017-2013; application of the same approach in 2014-2020 requires consideration and a possible review.

Practical example 2: North West Europe Programme

Guidance Note 16. State Aid

In the INTERREG IVB NWE Programme, funds granted to a project partner may constitute State Aid. When this is the case, the grant must comply with the European Commission's State Aid rules. If you believe that your project may contain State Aid, it is essential that you contact the JTS or other programme authorities at an early stage in project development.

16.1 General rule

The European Union defines State Aid very broadly as covering any measure involving a transfer of State resources which (threaten to) distort competition by favouring certain undertakings (see definition in point 3 below) and thus it affects trade between Member States.

This broad definition induces 5 cumulative criteria:

1. The measure must confer a benefit or advantage on the recipient which it would not otherwise have received (in this context, the ERDF grant)
2. It must be granted by the State/ through State resources (which is the case in this context)
3. It must selectively favour certain undertakings or the production of certain goods: an 'undertaking' means any entity engaged in economic activity (offering goods and services on the market), regardless of its legal status, ownership and the way it is financed. Even if an entity provides the goods or services free of charge or is financed entirely by the State, it can be subject to State Aid rules. State Aid rules apply thus to both public and private partners. Non-economic activities include those that are from the exclusive competence of the State (i.e., issuing of passports), the social nature of the activity (i.e., education) and the terms on which the goods and services are supplied (i.e., health care).
4. It must distort or threaten to distort competition: this criterion is widely seen as redundant with the previous one, because if a measure favours an undertaking it is seen as possibly threatening to distort competition.
5. It must affect trade between Member States: here again, the interpretation is very broad, because as long as the goods or services are subject to trade this criterion is met. Moreover, there is no minimum threshold and thus the cases where trade between Member States is not affected are very few.

[…]

16.2 Exceptions

To the general rule explained above, there are exceptions that are either enshrined in the Treaty (compatible State Aid) or in the European Commission's regulations (i.e., de minimis and General Block Exemption Regulation).

Subsequent parts of this paper include an in-depth discussion about the SME orientation in the context of ETC projects. Before diving into the analysis, it is important to establish what is meant by an SME.

- **General Block Exemption Regulation** (Annex I)[6]: "The category of micro, small and medium-sized enterprises (SMEs) is made up of enterprises which employ fewer than 250 persons and which have an annual turnover not exceeding EUR 50 million, and/or an annual balance sheet total not exceeding EUR 43 million."

Based on the EC Regulation, there are three parameters that define an SME: number of employees, annual turnover and/or annual balance sheet.

Category	Employees	Turnover AND/OR	Balance sheet
Micro	< 10	EUR 2 million	EUR 2 million
Small	< 50	EUR 10 million	EUR 10 million
Medium	<250	EUR 50 million	EUR 43 million

[6] The same definition is spelled out in Recommendation 361/2003/EC (Article 2(1)) and in Annex II of the draft General Block Exemption Regulation proposed by DG Competition and currently under review. More information on the proposal of the new GBER applicable to ETC programmes in 2014-2020 is provided in Section VI of this paper.

These ceilings apply to autonomous undertakings only.

If an enterprise is part of a larger grouping, data from other enterprises of this grouping may have to be included in order to determine if it still qualifies as an SME. The adding up of data depends on the nature of the relationship.[7]

<table>
<tr><th>Type of enterprise</th><th colspan="2">Capital or voting rights</th><th>Calculation of data (employee/turnover/ balance sheet)</th></tr>
<tr><td>Autonomous</td><td>0%</td><td>The enterprise is totally independent, i.e., it has no participation in other enterprises and no enterprise has a participation in the company.</td><td rowspan="2">Calculation using only the employees and financial data from the annual account of the enterprise in question.</td></tr>
<tr><td>Autonomous</td><td>< 25%</td><td>The enterprise has a holding of less than 25% of the capital or voting rights (whichever is higher) in one or more other enterprises; others do not have a stake of 25% or more of the capital or voting rights in the enterprise.</td></tr>
<tr><td>Partner relationship[8]</td><td>>= 25%
<= 50%</td><td>The enterprise has a holding equal to or greater than 25% of the capital or voting rights in another enterprise; another enterprise has a holding equal to or greater than 25% in the enterprise.
The enterprise is not linked to another enterprise, i.e., its voting rights in another enterprise (and vice versa) do not exceed 50%.</td><td>Calculated by adding the proportion of the other enterprise's employees and financial data to the account of the enterprise in question.</td></tr>
<tr><td>Linked relationship</td><td>> 50%</td><td>The company holds more than 50% of the capital or voting rights in another enterprise (and vice versa).</td><td>Calculated by adding 100% of data of all linked enterprises.</td></tr>
</table>

Based on the results of the calculation, it is possible to check if an enterprise complies with the thresholds defined in the EC Regulation. Provided it falls under the ceilings, it has a status of an SME and thus is eligible for support from relevant EU programmes. This also includes involvement of SMEs in ETC programmes.

[7] More information and guidance on the calculation of data can be found at *http://ec.europa.eu/enterprise/policies/sme/files/sme_definition/sme_user_guide_en.pdf*

[8] If more than 25% of the company's capital or voting rights is controlled by the State, the company is classified as large (i.e., it is not an SME).

III. SMEs in ETC: Achievements of ETC programmes 2007-2013

In 2007-2013, achievements of ETC programmes with regard to involvement of SMEs as project partners and thus recipients of ETC funds have been relatively scarce compared to other types of organisations that ETC programmes attracted with greater success. Nevertheless, ETC experiences in dealing with SMEs have been rich. Even though the total number of SMEs engaged in implementation of projects is comparatively low, one must look at them with an objective eye, given all mayor obstacles and challenges ETC programmes had to face in this respect.

Whereas ETC challenges are discussed in later parts of this paper, this section presents achievements accomplished by programmes in 2007-2013. Above all, it reports on the outcomes of a survey on *Involvement of SMEs in ETC programmes* conducted by INTERACT among ETC programme bodies in spring 2013. Over 50% of programmes responded to this survey. ETC achievements are presented based on the analysis of data drawn from a representative sample of 33 ETC programmes: 9 transnational programmes (70% of all transnational programmes) and 24 cross-border programmes (45% of all cross-border programmes).[9]

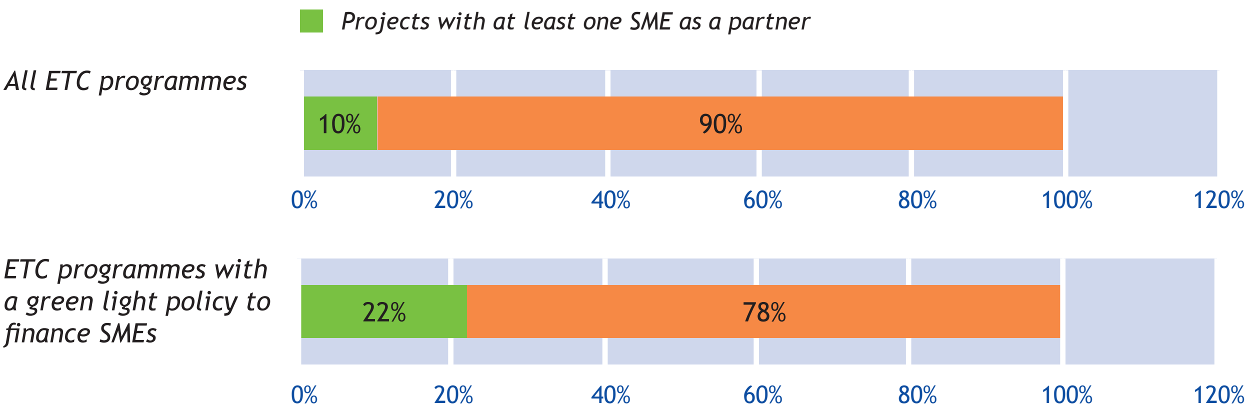
As most of the ETC programme funds had been allocated by the time the survey took place, the data provided and therefore the outcomes of this analysis can be treated as definite for the 2007-2013 period; i.e., it is unlikely they will change much before the end of the 2007-2013 round of ETC programmes.

SMEs eligible to participate

Not all ETC programmes allow SMEs to participate as beneficiaries. This has its roots in the consensus among Member States forming decision-making committees of individual programmes and is often reflected in the programme's eligibility rules. In consequence, only 55% of ETC programmes treat SMEs as eligible to receive ERDF support. The others decided to follow a red light policy, as they established eligibility criteria that ruled out the possibility for SMEs to apply for funds.

Among those programmes which are open to SMEs, 22% of projects that they finance include SMEs as beneficiaries. In the case when all ETC programmes are taken into account, the share of projects with the participation of SMEs is obviously lower; less than 10% of all projects supported by ETC programmes across the EU involve SMEs.

Chart 2: Share of projects including SMEs as beneficiaries



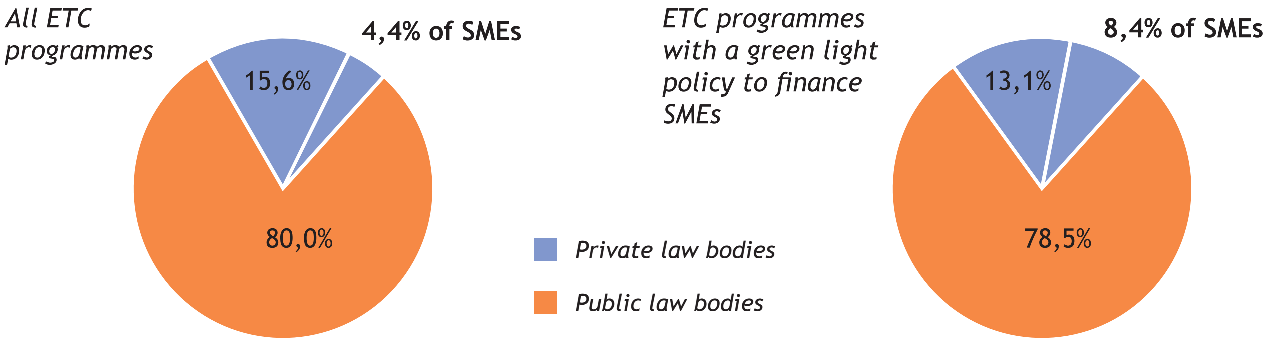
[9] Given the nature of interventions financed by network programmes and specific provisions governing the implementation of the IPA cross-border cooperation component, responses submitted by the INTERREG IVC Programme and the Romania-Republic of Serbia IPA Programme have not been integrated in the overall analysis. It must also be noted that statistics drawn on the sample used and presented in this paper are as thorough as possible, based on the data provided by programmes. Major deviations from reality cannot be excluded, as the status of beneficiaries can, in some cases, be imprecisely indicated in monitoring systems of individual programmes.

SMEs as recipients of ERDF

At the EU level, SMEs represent 4.4% of all beneficiaries (i.e., public and private law bodies) financed by ETC programmes. In the group of beneficiaries with private status, the share of SMEs still remains moderate; SMEs constitute 22% of all organisations governed by private law that receive ETC funds.

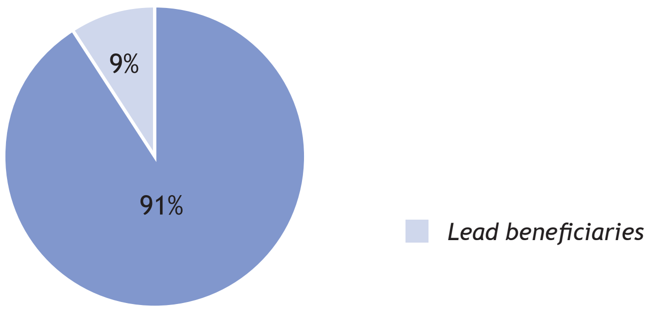
In comparison, if only programmes where eligibility rules permit SMEs to participate (55% of ETC programmes finance SMEs) form the basis for analysis, the share of SMEs is nearly twice as big; i.e., SMEs represent 8.4% of all beneficiaries. Their share among other organisations governed by private law reaches 39%.

Chart 3: Share of SMEs as beneficiaries



Further to the involvement of SMEs as beneficiaries, some of them carry out the role of lead beneficiaries within the financed projects; i.e., they bear responsibility for the general management of the project, facilitation of contacts within the partnership, reporting on the project implementation to relevant programme bodies, etc. Only around 9% of SMEs involved in ETC projects act as lead beneficiaries.

Chart 4: Share of lead beneficiaries among all SMEs financed from ETC funds



It is important to note that even though some overall conclusions can be drawn on the achievements of ETC programmes in involving SMEs, the findings of the survey also prove that there are cases of individual programmes which deviate from the general patterns. For example, in the Germany-Netherlands IVA Programme, the share of SMEs reaches up to 25% of all beneficiaries, and almost half of the beneficiaries with private status are SMEs. The Central Europe Programme finances activities carried out by SMEs that make up over 25% of private organisations. The Atlantic Area Programme attracted a large number of private organisations, but SMEs represent no more than 3% of them. Because the situation varies between individual cases, the following factors can be identified as having an effect on the scale of SME involvement in different programmes:

- structure of the economy in the programme zone;
- impact of the economic crisis and resilience of regions covered by the programme;
- strategy of the programme and priorities for ERDF intervention;
- services offered by the programme to attract SMEs, including provision of information about funding opportunities;
- programme rules and requirements facilitating involvement of SMEs, including SME-friendly procedures.

A more elaborate discussion on these factors, in particular the strategic focus of programmes and measures used by programmes to support participation of SMEs in ETC, is undertaken in subsequent parts of this paper.

IV. Role of SMEs in ETC projects 2007-2013: Ways of involvement

Given the experiences of ETC programmes in dealing with SMEs in 2007-2013, involving SMEs as beneficiaries is just one way for them to participate. There are also other options for including SMEs. Regardless of whether SMEs are allowed as beneficiaries or they play other roles in ETC projects, many different practices have emerged throughout ETC in this regard. ETC programmes have been creative in setting-up their own procedures for the involvement of SMEs. Examples of the most common models are presented below.

Involvement of SMEs as beneficiaries

Those programmes that apply a green light policy for the involvement of SMEs as beneficiaries often impose certain restrictions by limiting the scope of responsibilities SMEs can take within projects or the financial support they can receive from the programme. Here are some examples.
If involved as beneficiaries:

- SMEs can be engaged as beneficiaries, but they cannot act as lead beneficiaries (e.g., North West Europe Programme);
- SMEs can only receive programme funds to cover their travel and accommodation expenditure and costs of control (e.g., Atlantic Area Programme);
- SMEs can only be funded within the de minimis threshold (e.g., Estonia-Latvia IVA Programme);
- SMEs can only be funded by the programme if the match-funding[10] comes from public sources and the SME has been entrusted by a public authority to perform a specific task under the Services of the General Economic Interest (e.g., Northern Periphery Programme).

While this list of different programme approaches is not exhaustive, it does capture the most common ones. Despite some limitations imposed on SMEs involved as beneficiaries, in the majority of cases, SMEs are still accountable for performing their work within the financed projects, on an equal footing with other organisations in the project partnership. SMEs are responsible for ensuring implementation of activities as assigned to them in the project application for ETC funds and approved by the programme. They are also expected to contribute to joint actions that stimulate cooperation and exchange between partners, and to carry out communication activities.

However, in contrast to other types of beneficiaries, there are attributes that only SMEs possess and which therefore can be made use of in ETC projects where SMEs are involved. In most cases, SMEs are providers of specific knowledge and expertise. This is even more true for projects that focus on a particular sector of the economy (e.g., creative and cultural industries, transport, energy) and where certain technical activities need to be carried out in order to reach the project objectives. In the 2007-2013 period, examples of actions that SMEs perform within ETC projects include:

- Product and service development;
- Feasibility studies on new measures;
- Demonstration of new solutions;
- Testing of pilot developments;
- Knowledge transfer (in cooperation with research centres and through contacts with industry and other relevant stakeholders).

According to the recent publication by DG Regional and Urban Policy: *What are counterfactual impact evaluations teaching us about enterprise and innovation support?*[11], these types of actions have also

[10] The term 'match-funding' to ERDF used throughout this paper refers to financial resources (own or from other sources) secured by a beneficiary to match the ERDF amount allocated to this beneficiary by an ETC programme, in accordance with the programme's co-financing rate.

[11] *What are counterfactual impact evaluations teaching us about enterprise and innovation support?*, DG Regional and Urban Policy, European Commission, December 2012, *http://ec.europa.eu/regional_policy/sources/docgener/focus/2012_02_counterfactual.pdf*

been recognised as some of the most effective tools for SME support.

Other ways of involving SMEs

In ETC programmes where eligibility rules do not allow SMEs to participate as beneficiaries, their contribution is possible by other arrangements. The following examples can be listed:

- SMEs are engaged as associated partners with their own financing, to take part in implementation of specific activities in the project;
- SMEs are providers of external services to the project. They are contracted under the terms of public procurement to carry out selected activities within the project, or supply goods and services;
- SMEs are sponsors of so-called public goods (e.g., lighthouse, transport corridor) or facilities (e.g., meeting rooms) in the project. Sponsoring of this kind is usually treated as contributions in-kind and considered by most programmes as match-funding to ERDF;
- SMEs are consulted on activities carried out within the projects and/or they provide opinions on project outputs. In this case, they often form part of the project steering group or reference groups;
- SMEs are represented through sectoral associations, chambers of commerce or other public/private law bodies engaged as beneficiaries. Through their membership, SMEs become direct users of products, tools, solutions, etc. developed within the project (i.e., SMEs utilise project outputs, which are specifically designed to fulfil their needs).

Again, this list of different programme approaches to engaging SMEs in ways other than granting them the status of a beneficiary is not exhaustive, but it does give an overview of the most common practices.

As much as these examples of how SMEs can be brought on board are relevant for ETC projects funded under any programme priority, they are most often observed in projects that aim to strengthen the innovation capacity of the programme area; i.e., they promote greater entrepreneurship, facilitate development of growth clusters, etc. In this respect, a number of projects have been implemented in 2007-2013 that delivered:

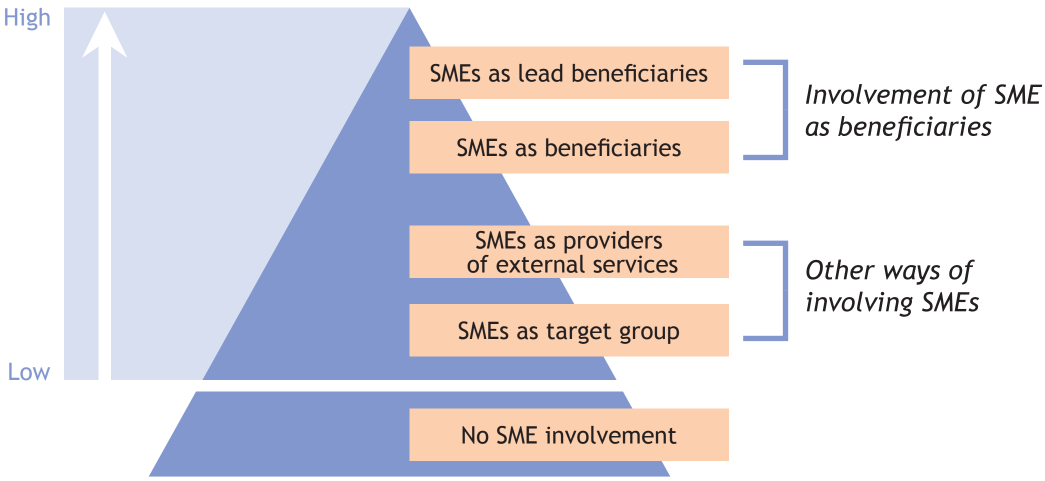
- Trainings for SMEs (e.g., training to support development of entrepreneurship skills, courses for SME executives, schemes targeted towards young people starting businesses)
- Business advisory services (e.g., support in development of business plans, advisories on financial management, resource efficiency)
- Networking platforms (e.g., forums for knowledge exchange, initiatives to support female entrepreneurship)
- Investments in small-scale infrastructure for SMEs (e.g., business incubators, innovation centres, management workspaces)

Beneficiary or target group?

As discussed above, the highest level of SME involvement is seen in projects carried out in a particular sector where SMEs play an important role, and in projects that focus on the development of SMEs in general and their framework conditions. In both cases, SMEs are still more likely to be engaged in ways other than being official partners bound by a Partnership Agreement to deliver concrete project activities; i.e., as beneficiaries of the programme funds.

In general terms, it can be argued that the presence of SMEs in ETC projects increases as the responsibility they bear for the project lessens and their commitment in the implementation process gets smaller. In consequence, the experiences of ETC programmes in 2007-2013 prove that the vast majority of SMEs participate in ETC as target groups; i.e., they do not play an active role in the implementation of project activities but are immediate users of the delivered outputs.

Chart 5: Number of SMEs involved depending on their role in ETC projects



The examples of roles/ ways to involve SME included in Chart 5 have been chosen deliberately. In addition to the arguments presented above, the role of SMEs as service providers requires extra attention.

The findings of the INTERACT survey *Involvement of SMEs in ETC programmes* illustrate the fact that drawing a clear line between SMEs included as beneficiaries and SMEs providing external services remains an issue for many ETC programmes. It has been reported that, in these two cases, it is often difficult to evaluate at the application stage if an SME figuring on the list of project partners is indeed a relevant potential beneficiary, or if this is a way for a mere service provider to circumvent public procurement rules.

As EU regulations and ETC programme rules do put restrictions on SMEs acting as beneficiaries (e.g., ERDF support within the de minimis threshold), it is not surprising that they are only able to commit in a limited manner. Consequently, within ETC projects SMEs are often in a position to undertake no more than single activities for which their expertise is required, and thus it becomes unclear if such a contribution should rather be treated in terms of provision of external expertise subject to public procurement, and vice versa. Above all, it should be remembered that for any organisation to be considered a relevant partner in an ETC project, it must demonstrate its willingness to cooperate. Similarly, any SME involved as a project partner must contribute to cooperation and exchange activities within the project, regardless of the regulatory restrictions imposed on them.

V. SMEs in ETC: Main challenges of 2007-2013 and options for addressing them in the future

The analysis of achievements of ETC programmes in 2007-2013 show that SMEs make up just about 4,4% of all beneficiaries. ETC programmes were not able to attract many SMEs. This is because it has been challenging to do so!

In this context, a set of targeted questions was included in the survey *Involvement of SMEs in ETC programmes,* in order to establish a firm understanding of the main challenges. ETC programmes that apply a green light policy and allow SMEs to act as beneficiaries were asked to indicate, based on their experiences, the core factors that limit SME participation. Programmes not allowing SMEs to be beneficiaries of ETC funds were asked to list reasons for banning this possibility. In all cases, ETC programmes were also expected to specify the most problematic issues that need to be tackled in order to include SMEs in the upcoming 2014-2020 period.

Based on the responses received from over 50% of ETC programmes across the EU, it can be established that certain recurring challenges are typical for the majority of programmes.

Management of State Aid and ensuring compliance with State Aid rules have been named by programmes (both those open to SMEs as beneficiaries and those not allowing SMEs to participate) as the most challenging issues to deal with during the current period. EU regulations governing State Aid are ever demanding, and complex procedures must be followed in order to adhere to the rules. Consequently, handling State Aid cases is perceived as risky by many Member States forming decision-making committees of different ETC programmes, and thus a reason to reject those applications for ETC funds where questions pertaining to State Aid remain unclear. Every second ETC programme that took part in the survey indicated State Aid as one of the core problems impacting the level of SME involvement. In addition, most of the respondents pointed to State Aid as a primary challenge to solve, in order to attract SMEs in the future.

In the same spirit, managing issues in relation to Intellectual Property Rights (IPR) is also a challenge. By nature, SMEs are interested in being able to protect their rights to innovative products and solutions developed in the framework of ETC projects. However, this is perceived as contradictory to ETC principles of transparency and making project outputs and results available to the general public. Lack of clarity on how to ensure that by allowing SMEs to retain IPR they do not gain benefits and distort competition in the internal market makes it difficult for ETC programmes to engage SMEs.

The fact that SMEs are inherently profit-oriented establishments and EU rules applicable to ETC programmes require that revenues generated in ETC projects cannot remain at the beneficiary level but must be deducted from ERDF support have been identified as another challenge by many respondents.

The logic of ETC and the needs of SMEs do not always go hand in hand. Apart from the examples mentioned above (revenues, IPR), a large number of ETC programmes recognise that administrative procedures related to the implementation of an ETC project can be particularly heavy for SMEs and thus an obstacle that hinders many of them from participating. ETC rules require SMEs to report in detail on the activities carried out and provide all necessary documents to prove the costs incurred. The reporting process must follow ETC programme procedures, which often differ from the typical dealings of any SME. In addition, requirements regarding public procurement, archiving of data to comply with the programme control procedure, etc. contribute to the reluctance of SMEs to get involved.

It must also be noted that complex rules and administrative procedures, in some cases varying between different ETC programmes and from the usual way SMEs operate, often cause uncertainty among SMEs (particularly those with no previous experience in dealing with EU-funded projects), whether or not they comply with all necessary requirements. This raises the potential risk for SMEs of incurred costs being declared ineligible.

Another example of divergence between the ETC set-up and the needs of SMEs which stood out among the responses collected during the INTERACT survey links to pre-financing. As ETC funds are allocated on the basis of reimbursement, SMEs have to pre-finance the activities they carry out before the costs can partially be covered by the programme. On top of this, reporting procedures are complex and it takes time for programme bodies to process claims and authorise payments. As a result, the possibility of facing cash flow problems cannot be excluded. In fact, the risk for SMEs is relatively high.

The issue of time appears problematic as early on as the application stage. Application procedures are lengthy, and decision-making by ETC programme bodies takes more time than many SMEs can afford to wait. SMEs are not in a position to commit their usually scarce resources to activities which might be approved or not in several months. Based on the results of the survey, many ETC programmes recognise this problem and agree that the uncertainty about possible involvement in an ETC project is one of the reasons preventing SMEs from participation, as they are more inclined towards more secured funding sources.

Hungary-Slovakia IVA Programme:
"The programme procedures do not allow fast allocation of funds. Therefore, the way ETC programmes operate hardly fits the needs of SMEs that require quick actions to adapt to the market environment".

Despite the reluctance of SMEs to participate as beneficiaries in ETC programmes due to the different timeframes under which they operate, required pre-financing and complex procedures they usually are not familiar with, some ETC programmes (especially those experienced in SME involvement) indicate that insufficient levels of information on how to participate in ETC projects might often be the cause of the problem. The majority of SMEs do not have much understanding of the application process, and they lack information on how participation in ETC projects is arranged.

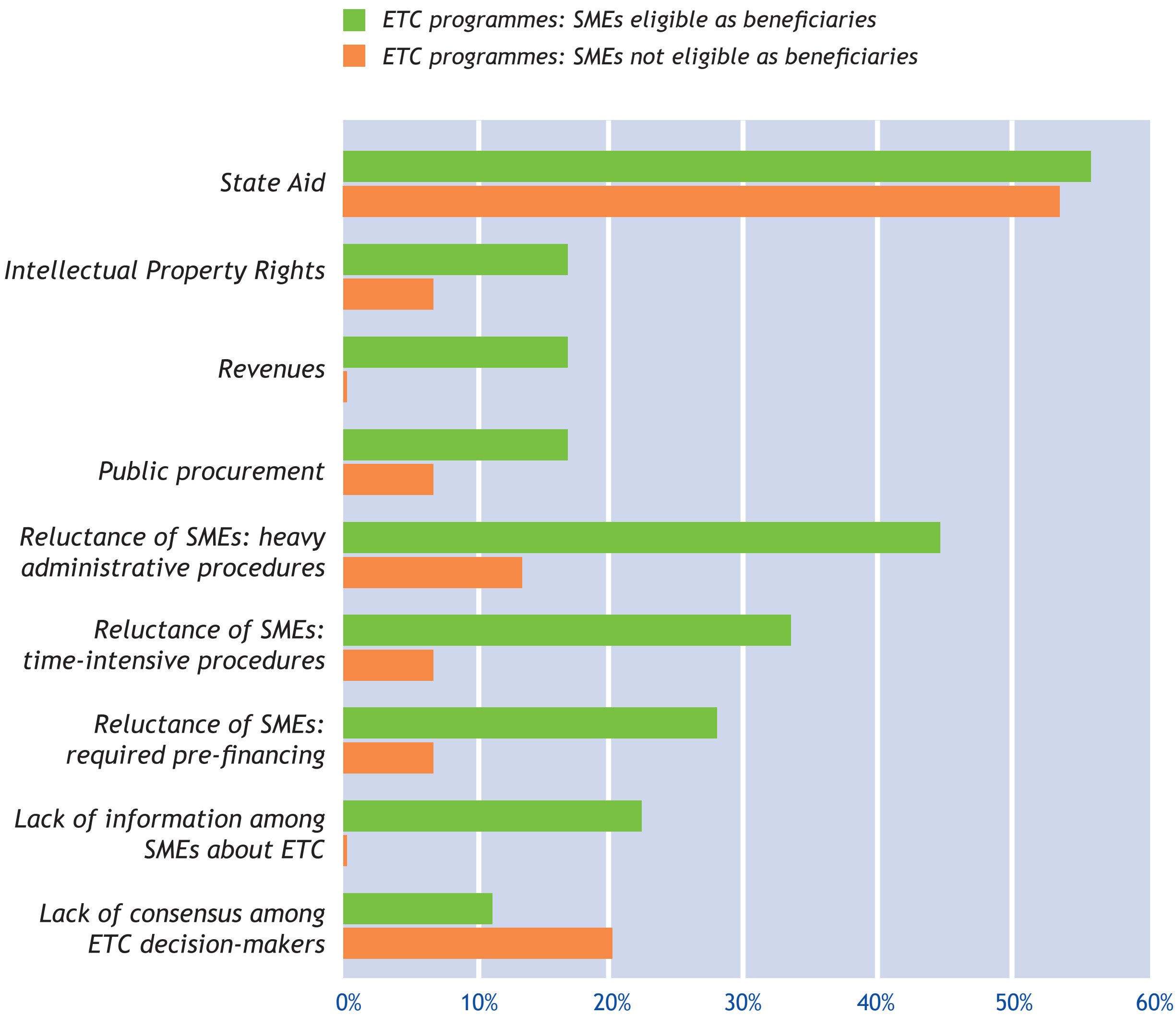
Oresund-Kattegat-Skagerrak IVA Programme:
"[…] there are relatively few projects involving the private sector. One of the reasons why business involvement is limited may be that companies do not see the benefits of participation in large and complex projects, and therefore they find it difficult to allocate time for participation".

Awareness-raising activities and promotion of ETC programmes among SMEs is one way to address this problem, as has been mentioned by many respondents. Interestingly, the same was confirmed by beneficiaries of ETC funds themselves in a study conducted on SME involvement in the north-eastern part of Europe: "SME interest in the projects would likely increase if they were made more aware of the positive results and benefits potentially gained by participation".[12]

For the reasons outlined in the arguments presented above, some ETC programmes 2007-2013 found it challenging to reach a consensus between Member States on the programme policy towards SMEs, and tools and procedures needed if SMEs are allowed as beneficiaries. The prevailing mindset of ETC decision-makers and the established working culture generally favour actors from the public sector. Some Member States also perceive involvement of SMEs in terms of increased risk for them and the programme. In case of irregularities or bankruptcy, Member States are after all liable for the beneficiaries concerned and located on their territory. SMEs are prone to instability, and there are examples of SMEs that have faced bankruptcy while acting as partners in ETC projects.

[12] *A survey on SME involvement in ETC Programmes operative in North-East Europe, during the period of 2007-2013*, INTERACT Programme, August 2010

Chart 6: Main challenges of ETC programmes regarding involvement of SMEs



On the other hand, looking towards the next round of ETC programmes, there seems to be a clear political will and interest in many Member States to increase the role of SMEs as beneficiaries of ETC funds in 2014-2020. This is because however challenging it might be to involve SMEs, there are benefits to be gained from doing so. Based on lessons learnt from the 2007-2013 period, the following benefits for ETC programmes and the projects they finance can be listed as examples:

- ETC programmes can better address territorial challenges in their area if all relevant actors (including SMEs) are engaged;
- Acting as beneficiaries, SMEs are more committed to the development of solutions within ETC projects. As they focus on reaching concrete benefits quickly, SMEs can accelerate the delivery of project outputs;
- Given their experiences and expertise, SMEs contribute with a specific know-how to elaborate solutions and/or they suggest ways of putting them into practice. As they bring new approaches and a different perception, SMEs can improve the quality of project outputs;
- Given their contacts with specific industries and other stakeholders, SMEs can foster acceptance of project results among relevant target groups.

These and other benefits are reported by ETC programmes that currently involve SMEs. Many benefits can also be named by the SMEs themselves that successfully contribute to implementation of ETC projects. In some cases, this would not be as easy to achieve if certain SME-friendly procedures and targeted activities were not in place. Several ETC programmes took special steps to facilitate involvement of SMEs in the current period. The practices presented below are selected examples of how it can be made possible for SMEs to participate, despite their limited resources and restricted financial capacity (practical examples 3 and 4) and how SMEs can be informed about ETC though different awareness-raising activities (practical example 5).

Practical example 3: France (Channel)-England IVA Programme

(extract from the programme document)

Operational Programme

Project appraisal and selection

A dedicated and simplified procedure has been established for selecting micro-projects. It is based on the following principles:

- Project applications may be submitted on a continuous basis;
- A fact-track appraisal process;
- The possibility of a written approval procedure by the Steering Committee.

The micro-project concept concerns projects of a total cost not exceeding EUR 60 000 of which EUR 45 000 is ERDF co-financing, representing a maximum ERDF co-financing rate of 75%.

Micro-projects are designed in particular for applicants with limited financial capacity or for projects which prepare the ground for future larger projects. They aim to facilitate the emergence of ground level, community-based projects through a stronger involvement of small companies and the not-for-profit and private sector. Consequently, national and local government institutions or agencies, universities and research and development centres, whether public or private, and companies of more than 250 employees, are not eligible for the micro-project procedure.
Micro-projects may be submitted under any of the specific objectives under priorities 1 to 4 of the present operational programme.

It must be noted that the 75% grant rate applies only to micro-projects; regular projects receive support of up to 50% of the project budget. While keeping in mind that unified co-financing rates are promoted as one way towards simplification in 2014-2020 (different rates for different partners and activities lead to excessive administrative burden at the programme side), the practice example proves that a certain degree of flexibility is possible in order to facilitate involvement of SMEs in ETC programmes.

Practical example 4: Flanders-Netherlands IVA Programme

(based on exchange with the programme representative, December 2012)

One way to involve organisations (including private companies) in projects in a more flexible manner is the option to include them as a 'project partner light' (PP Light).

Flexibility:

- In the application, projects allocate part of the budget to specific activities for which the ultimate beneficiary of the ERDF is not yet known (but they will be appointed, e.g., through a call system for innovative pilots). Companies or other organisations can join the project at a later stage as a PP Light. At the moment of the project approval, the private match-funding for these PP Light activities does not have to be covered by a match-funding statement.
- The PP Light can join the project as a beneficiary (receiving ERDF) at a later stage during the project implementation, without the need to change the project budget or the project Subsidy Contract.

How this works:

- The budget foreseen for the PP Light activities forms part of the budget of one of the project partners already listed in the application, under the budget line External costs & services. The PP Light can receive ERDF to cover internal costs (e.g., Staff costs) and for External costs & services.
- The PP Light is selected to join the project through a 'Subsidy Regulation' defined by the project (e.g., call system, competition).
- A Partnership Agreement between the project partner and the PP Light stating that the PP Light agrees with the terms and conditions stated in the manual of the programme is compulsory.
- The activities and costs of the PP Light have to be in line with the programme selection criteria and rules.
- A de minimis statement is often compulsory (in the case of State Aid).
- The project partner has to report at the end of the project the total amount of private match-funding the PP Light has brought in.
- FLC can perform on-the-spot checks at the level of the project partner and the PP Light.

The process of reporting the PP Lights costs:

- The costs incurred and paid by the PP Light are reported via the project partner, using the same programme financial reporting forms. All compulsory documents to justify the costs must be provided.
- The one additional document that a PP Light has to provide is an overview of all funding sources that cover the total eligible cost of the PP Light (ERDF, private match-funding, other public match-funding).
- The project partner reports in its financial report on the total cost of the PP Light under the budget line External costs & services. The financial report of the PP Light is provided in the annex.
- The project partner is responsible for transferring the received ERDF to the PP Light as quickly as possible. The PP Light provides proof of payment for the due amount of ERDF before the next declaration of expenses is paid out by the programme.

Given positive experiences with using the flexible system of 'project partner light' (PP Light), it may be possible that the programme follows the same practice in 2014-2020. This would mean that in the next programme round an SME will be able to join a project at any point during the lifetime of the project and become a beneficiary of the programme funds. Without any budget changes, it will start carrying out activities in the project. The budget of the PP Light (not yet known SME) allocated to another partner in the application would not have to be secured with any match-funding from the PP Light at the stage of the project approval, but be provided later on.

Practical example 5: Estonia-Latvia IVA Programme

(based on input provided by the programme during the INTERACT survey)

In 2009, the JTS actively participated in various targeted events for entrepreneurs and also stressed during public presentations of the programme that private entrepreneurs were strongly encouraged to apply for funding under Priority 1: *Increased cohesion of the Programme area* and Priority 2: *Higher competitiveness of the Programme area*, as a certain amount of the programme funding was earmarked for private entrepreneurs.

Active work was carried out with intermediaries of private sector companies, and programme seminars and events were announced through business papers in both countries.

In summer 2009, the JTS carried out a phone survey among regional stakeholders and journalists to find out which sectors of entrepreneurship had the strongest cooperation potential. Three sectors stood out: tourism, timber processing and the food industry.

A two-day contact-making trip was organised for local Estonian and Latvian food entrepreneurs, including company visits to interesting small- and medium-sized food enterprises in southern Estonia and northern Latvia. Altogether, 20 Estonians and 17 Latvians active in the field of food producing or processing participated.

A two-day contact-making trip was organised for local Estonian and Latvian timber entrepreneurs, including company visits to interesting small- and medium-sized timber enterprises in southern Estonia and northern Latvia. Altogether, 7 Estonians and 12 Latvians active in the field of timber and wood processing participated.

The major event of 2009 – a contact forum for the partner search – was also promoted in the private sector by various means. Approximately half of the participants were primarily interested in Priority 2 of the programme and attended the respective workshop.

Towards the end of the year, the interest of private sector companies in the programme had increased, which was demonstrated by the profile of participants who attended programme events and consultations.

In view of the upcoming 2014-2020 period and new expectations towards ETC programmes that should contribute to delivery of the Europe 2020 objectives, individual programmes are expected to take action to simplify the rules and procedures that beneficiaries must follow. If SMEs are to be targeted as beneficiaries in the future, it is recommended that ETC programmes:

1. *Use simplified cost options*[13]

By applying simplified cost options (e.g., lump sums, flat rates), SMEs can calculate eligible costs faster, easier, and with higher certainty. This also simplifies the reporting procedure, as not all invoices and other documents of probative value have to be provided. In addition, simpler procedures allow ETC programme bodies to verify the declared expenditure in a quicker manner, enabling SMEs to receive ERDF in due course and without delays.

2. *Use harmonised implementation tools*

By streamlining programme documents that are used by (potential) beneficiaries (including project application forms, progress reports, etc.) and by achieving a certain level of harmonisation of rules and procedures across different ETC programmes, SMEs can be better instructed on the requirements they have to follow when involved in an ETC project, regardless of which ETC programme finances it. In addition, awareness-raising activities by ETC programmes can be easier to implement and their outreach can be greater, if the messages are aligned between different ETC programmes.

3. *Set up a fast and objective selection process, and provide support at the application stage*

By setting up a selection process that allows for faster decision-making on project applications and

[13] More information on the proposals for simplified cost options and other harmonised implementation tools can be found on the INTERACT website: *http://www.interact-eu.net/news_publications/harmonised_programme_implementation_tools/174/13730*

subsequently speeds up the allocation of ETC funds to SMEs in the event of approval, the relatively high start-up costs for SMEs related to submitting of applications can be reduced. Currently, open calls for proposals barely take into account the needs of SMEs. They require a high level of commitment and investment in terms of resources when preparing an application, for which the chance of approval is rather low. In 2014-2020, ETC programmes can consider using systems that provide additional means of support during project preparation. These may include pre-selection of project proposals before full project applications are drafted, provision of seed money to facilitate development of project applications, organisation of special calls for proposals targeted at SMEs with simplified application procedures, etc.

4. *Give priority to assessment of Progress Reports from projects that include SMEs as beneficiaries*

By giving priority to SMEs in the programme internal procedures, SMEs can be treated faster and limit their risk of facing cash-flow problems. In the current period, ETC programmes have different internal procedures for how they monitor progress of project implementation and execute periodic payments to their beneficiaries. In the majority of cases, programme bodies process progress reports on a “first-come first-served” basis; i.e., those reports that are submitted first are assessed at first instance. In the 2014-2020 period, programmes can consider prioritising projects that involve partners prone to cash-flow risks. This includes SMEs.

5. *Make good use of IT systems*

By promoting the use of electronic systems in communication and the exchange of data between ETC programmes and their beneficiaries, the administrative burden can be reduced. Using on-line systems limits the paper work and the number of physical documents that must be provided. This can also facilitate exchange of information on an on-going basis, thus speeding up certain processes. Moreover, electronic systems should make it possible for SMEs to submit the documents only once, as information can be shared between all relevant programme bodies. Based on a general observation and the experiences of the practitioners, SMEs are in favour of using IT systems.[14]

6. *Actively promote SME inclusion*

By carrying out awareness-raising activities and active communication tailored to the needs of SMEs, they can be encouraged to participate in ETC programmes and gain a better understanding of the requirements and benefits that being included as beneficiaries could bring. Above all, the first step in promoting involvement of SMEs might be to convince all relevant Member States, so that a consensus is found. Member States, in particular in those programmes that currently do not allow SMEs to participate, need to be open to facing any possible challenges that come with the decision to finance SMEs.

[14] Presentation by Hubert Delorme, Senior Counsellor Regional Policy and Cohesion of Territories, European Association of Craft, Small and Medium-Sized Enterprises (UAEPME) at the OPEN DAYS 2012, *e-Cohesion Policy: e-government functionalities as simplification for beneficiaries in the 2014-2020 programming period*, Brussels

VI. ETC and State Aid

Any decision about whether or not SMEs should be allowed as beneficiaries of ETC funds needs to be based on a careful assessment of relevant State Aid rules and existing options to deal with these rules in cooperation projects. So far, State Aid rules have not only been complicated to apply in the multi-country context particular to ETC; they are also quite ambiguous, and legal certainty is often difficult to achieve. In the future, simplification of State Aid rules for SMEs involved in ETC programmes should be possible since the current review of the General Block Exemption Regulation (GBER) foresees an exemption for *Aid for SMEs' cooperation costs linked to ETC projects*.[15] In practical terms this means that ETC programmes should hopefully be able to provide funds to SMEs in a simpler manner and without the risk of granting potential State Aid.

ETC, SMEs and State Aid: Experiences of ETC programmes in 2007-2013

ETC programmes are relatively small, and possible negative impacts of cooperation projects on competition in the internal market appear very limited. Still, due to the lack of a suitable solution for administrating State Aid in a multi-national context, many ETC programmes have tried to reduce or avoid any potential State Aid. In a number of instances this was detrimental to the ability of ETC programmes to involve SMEs and to reach their programme objectives.

Therefore, ETC programmes have placed solutions to current State Aid issues high on their agenda for simplified and streamlined delivery systems in 2014-2020. Outcomes of the INTERACT survey *Involvement of SMEs in ETC programmes* indicated how significant this matter is. Based on the responses received:

- 45% of ETC programmes do not permit SMEs to participate as project partners at all. Out of these programmes, 53% explicitly mention State Aid as one of the main reasons.
- Among ETC programmes that do have experience with SME involvement, at least 56% consider State Aid as the main issue yet to be solved.

Main challenges of ETC programmes with regard to State Aid (2007-2013)

- Very complex situation as ETC programmes support cooperation projects in a variety of thematic fields;
- Different interpretation of State Aid rules in various countries and lack of resources in the Member States' State Aid units to deal with "the small fish" ETC;
- Time-consuming and expensive State Aid assessments that frequently lead to ambiguous results;
- Unclear responsibilities regarding registering, monitoring and controlling State Aid;
- Resulting unequal conditions for ETC partners.

Further analyses of those ETC programmes which allowed State Aid during 2007-2013 show that most of them applied de minimis, some used one or the other category of aid in the General Block Exemption Regulation (GBER), and only one programme notified a project to DG Competition for State Aid clearance[16].

There are already certain categories of aid in the GBER potentially applicable to ETC programmes, such as *Training aid*, *Aid for research and development* or *Aid for SMEs*. However, using these categories would normally lead to a mosaic of grant rates (different rates for different beneficiates and activities) as all of them have their distinct maximum co-financing rates (i.e., aid ceilings) and conditions.

[15] Consultation on additional categories for a revised draft of General Block Exemption Regulation on State Aid measures, European Commission, DG Competition, *http://ec.europa.eu/competition/consultations/2013_second_gber/index_en.html*

[16] The ETC project notified to DG Competition (*"Twin Hub"*) aims to make intermodal rail transport in the north-western part of Europe and with neighbouring regions more attractive and competitive. The notification concerns pilot train services with a budget of approximately EUR 1.8 million, which is directed at partial (50%) coverage of losses from the pilot train operations. The notification was presented by one of the Member States in the North West Europe Programme and no objection was raised by DG Competition.

ETC, SMEs and State Aid: Upcoming changes for ETC programmes in 2014-2020

In the 2014-2020 period, it is likely that a specific category of aid for SMEs engaged in ETC programmes will be introduced that should significantly simplify and clarify matters pertinent to State Aid in the ETC context (Article 18 of the draft GBER: *Aid for SMEs' cooperation costs linked to ETC projects*). De minimis will continue to be an option, although its application may change.

Whether an ETC programme will use de minimis, the GBER, or both has important strategic implications: de minimis puts a cap on the maximum amount of public funds for each SME involved as beneficiaries in ETC programmes (i.e., EUR 200 000 over a period of 3 years), while the draft GBER is quite generous in terms of the total public funds for SMEs (EUR 2 million per SME and project) but might limit the maximum permissible co-financing rate (currently a 50% ceiling is proposed).

<u>Application of the General Block Exemption Regulation</u>

The draft of the General Block Exemption Regulation foresees an exemption for SMEs acting as partners in ETC projects and financed from ETC funds (Article 18 of the draft GBER: *Aid for SMEs' cooperation costs linked to ETC projects*). The current draft will still be revised as it is not yet entirely in line with ETC requirements, including categories of costs applicable to ETC programmes in 2014-2020. The final version of the GBER is expected at the beginning of 2014.

In line with the proposal presented by DG Competition, ETC programmes using this category of aid may be able to apply a distinct maximum co-financing rate to SMEs that will be considered compatible with State Aid. This means that no extensive State Aid assessments will have to be carried out. Of course, this does not exclude ETC programmes from the obligation to ensure that the measures they finance in this case are in line with the GBER; i.e., they are covered by the common conditions outlined in Chapter I of the draft GBER and the specific conditions applicable to this category of aid. Relevant common provisions currently foresee that *Aid for SMEs' cooperation costs linked to ETC* should not exceed EUR 2 million per SME, per project. Article 18 describes a maximum co-financing rate of 50% and lists certain eligible costs. Again, this is based on the currently available draft and can still be changed.

Proposal of DG Competition declaring certain categories of aid compatible with the internal market in application of Article 107 and 108 of the Treaty

DRAFT May 2013

Article 18

Aid for SMEs' cooperation costs linked to ETC projects

1. Aid for cooperation costs incurred by SMEs participating in European Territorial Cooperation projects covered by Regulation [COM(2011)611 ERDF/ETC] shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempt from the notification requirement of Article 108(3) of the Treaty, provided the conditions laid out in this Article and in Chapter 1 are fulfilled.

2. The following costs shall be eligible:
   a. costs for organisational cooperation;
   b. costs of advisory and support services linked to cooperation and delivered by outside consultants and service providers;
   c. travel expenses, costs of materials and supplies directly related to the project, depreciation of tools and equipment, to the extent that they are used exclusively for the project.

   The services referred to in paragraph 1b above shall not be a continuous or periodic activity nor relate to the undertaking's usual operating costs, such as routine tax consultancy services, regular legal services or advertising.

3. The aid amount shall not exceed 50% of eligible costs.

It is worth mentioning that the draft GBER also foresees specific provisions for *Regional investment aid linked to ETC* (Article 15(12)), which could be useful for some ETC programmes. Clarification of this article and its applicability to ETC are expected at the beginning of 2014.

Steps in using the GBER

Applying the GBER requires that ETC programmes register their intention to use the GBER to DG Competition via one of the Member States. It also requires keeping track of the application of the GBER to individual beneficiaries, as Member States must submit annual reports on the use of the GBER to DG Competition.

It is important to note that registering the intention to use the GBER does not oblige programmes to actually use it. Should it turn out that the provisions are still too complex, alternatives can be explored; e.g., the possibility to finance SMEs under de minimis.

When granting aid under the GBER, ETC programmes should bear in mind some key aspects in this process and take the following steps[17]:

- Review the Operational Programme and other programme documents (e.g., programme manuals, fact sheets) to ensure compliance with all requirements for the *SMEs' cooperation costs linked to ETC projects* category of aid. This includes definition of an SME (Annex II of the draft GBER), maximum permissible co-financing rate, and general and specific conditions for *Aid for SMEs' cooperation costs linked to ETC projects* laid out in the final version of the GBER, if any.
- Complete a 'summary information form' (Annex III – Part 1 and Part 2 of the draft GBER). Part 1 contains questions that relate to general conditions of the GBER, while part 2 concerns the selected category of aid. This summary information has not yet been written with ETC in mind and adjustments are necessary. Part 1 requires a 'web-link to the full text of the aid measure' that in the case of ETC programmes can be a link to the Operational Programme or other programme documents. The Member State, which submits the information form, can be the Managing Authority on behalf of all other Member States participating in the programme.
- The completed 'summary information form' should be transmitted to the European Commission via the European Commission's electronic notification system ('SANI'), in consultation with the national State Aid unit of the country where the Managing Authority of the programme is located.
- The 'summary information form' must be sent to the European Commission within 20 working days from the day on which the aid is granted, using the European Commission's online registration system. This means that it is not necessary to register the use of the GBER during programming, as it can be done later on. However, even if an ETC programme decides to register the use of the GBER at a later point, certain considerations during programming could still be beneficial; e.g., ensuring that the definition of SME is in line with the GBER.
- Following the submission of the summary information, a unique reference number will be provided by the European Commission. ETC beneficiaries receiving aid under the GBER should be notified in writing of the reference number, and the number should be quoted in all correspondence relating to the GBER.
- ETC programmes using the GBER must put procedures in place to keep track of the aid granted under the GBER, as this information is required for annual reporting to the European Commission (Article 12(c) of the draft GBER). The information is used to monitor the application of the GBER. It also allows the European Commission and other interested parties to verify that all conditions laid out in the GBER have been fulfilled. Standardised forms are included in Annex III (Part 3) of the draft GBER.
- It is required (Article 13 of the draft GBER) to keep records of the information on aid granted under the GBER, and relevant supporting documents, for a period of 10 years starting from the date of the last awarded aid.

<u>Application of the de minimis rule</u>

De minimis has been the most common option for allocating ETC funds that are considered State Aid in the 2007-2013 period. It is likely it will also be used by ETC programmes that allow State Aid in the future. Applying de minimis will remain open to all ETC programmes and no specific notification to DG Competition will be necessary.

- De minimis can be useful; e.g., in cases where higher co-financing rates are required at the programme level compared to those allowed under the GBER (*Aid for SMEs' cooperation costs linked to ETC projects*). The draft GBER currently foresees a maximum co-financing rate of 50% for SMEs, although this can still change.
- De minimis can continue to be a good option in cases where SMEs receive 'indirect aid'; i.e., they

[17] National State Aid units operating in different Member States may also be consulted in this respect.

benefit from outputs delivered by ETC projects.

- During 2014-2020, ETC programmes will possibly be in a position to provide de minimis in addition to any de minimis an SME received from another country, as long as the SME is not located in the same country as the Managing Authority of the relevant programme. This should further simplify the application of de minimis and potentially rationalise applying de minimis without thorough State Aid assessments.

De minimis: legal background

In adopting Regulation 994/98 ('Enabling Regulation'), the Council of the European Union enabled the European Commission to establish a threshold below which aid measures are exempted from the obligation of notification, even if they are considered State Aid. On this basis, the European Commission adopted Regulation 1998/2006 to de minimis aid, which entered into force on 1 January 2007. The EC Regulation sets the de minimis ceiling at EUR 200 000 per undertaking granted over any period of three fiscal years. The introduction of de minimis made it easier for ETC programmes to allocate small amounts of funds to SMEs in 2007-2013.

The current de minimis Regulation expires on 31 December 2013 and a new regulation will apply to ETC programmes in 2014-2020, the final version of which is expected by the end of 2013.[18]

Commission Regulation on the application of Article 107 and 108 of the Treaty and the functioning of the European Union to *de minimis* aid

DRAFT March 2013

- The total amount of de minimis aid granted per Member State to any one undertaking shall not exceed EUR 200 000 over any period of three fiscal years.
- A specific ceiling of EUR 100 000 applies to road freight transport activities (see draft Regulation for conditions).

The regulation applies to undertakings in all sectors, with the exception of:

- Aid granted to undertakings active in the fisheries and aquaculture sectors as covered by Council Regulation (EC) No 104/2000;
- Aid granted to undertakings active in the primary production of agricultural products;
- Aid granted to undertakings active in the processing and marketing of agricultural products (see draft Regulation for conditions);
- Aid to export-related activities towards third countries or Member States (see draft Regulation for conditions);
- Aid contingent upon the use of domestic over imported goods;
- Aid granted to undertakings in difficulty as defined in Article 2(d) of the draft Regulation.

In the 2014-2020 period, the core of the de minimis framework is unlikely to change but some clarifications are under way. Most notably, it should be possible to clarify that de minimis counts per Member State. A proposal on the idea that all Member States should establish a central register for de minimis[19] is under discussion. As far as ETC programmes are concerned, such national registers of de minimis could facilitate controls and make it easier to establish if an SME is allowed to receive (additional) ETC funds under de minimis. On the other hand, some Member States are reluctant towards national registers, as it may take time to set up the system and it is unclear how reliable it can be, given the number of undertakings and the variety of support programmes for SMEs at both EU and national levels.

[18] Consultation on the second draft of the new de minimis Regulation replacing Regulation No 1998/2006, European Commission, DG Competition, *http://ec.europa.eu/competition/consultations/2013_second_de_minimis/index_en.html*

[19] At the moment, many Member States do not monitor de minimis in central databases. Instead, recipients of de minimis are required to sign a statement in which they declare that the de minimis threshold is observed.

Main challenges encountered by ETC programmes applying de minimis (2007-2013)

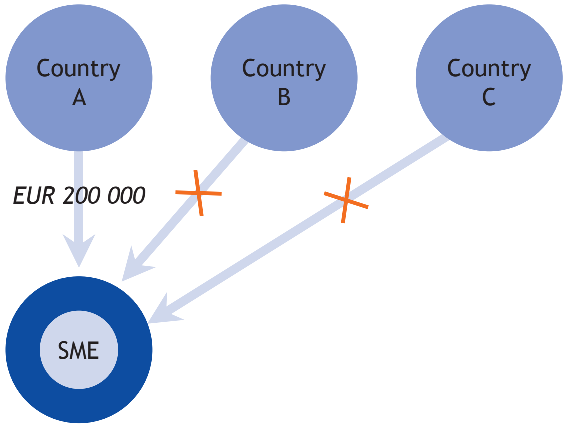
- De minimis (can) require State Aid assessments.
- Applying de minimis may exclude some SMEs (e.g., if they already exceeded the de minimis threshold or if they prefer to make use of de minimis aid from other sources).
- Uncertainties if de minimis aid granted by another Member State needs to be taken into account.

De minimis in ETC is likely to count per Member State

Discussions about de minimis in the context of ETC have brought attention to a key question: **In ETC, which Member State grants de minimis?**

In line with the practice of ETC programmes during 2007-2013:

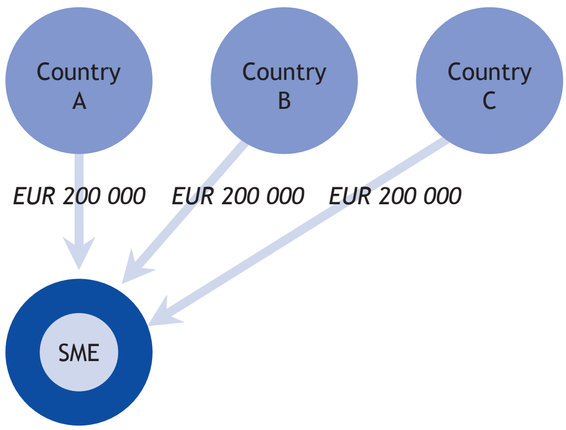
- ❖ De minimis granted by an ETC programme to a single SME located in country A is added to any State funds this SME already received from country A. The de minimis threshold is quickly reached, since an SME can only receive EUR 200 000 over a period of three years.



The draft of the de minimis Regulation stipulates: "The total amount of de minimis **aid granted per Member State** to any one undertaking shall not exceed EUR 200 000 over any period of three fiscal years." DG Competition has also confirmed verbally that the concept of de minimis is national, and that funds from different Member States do not have to be factored in.[20]

This can have implications for ETC programmes during 2014-2020:

- ❖ The Member State granting de minimis is the Member State of the Managing Authority (not the Member State where the SME is located).
- ❖ De minimis granted to an SME has to be monitored in the country of the Managing Authority (not the country where the SME is located).
- ❖ It is irrelevant whether or not an SME has reached the de minimis threshold in the country where it is located. As long as the Managing Authority is located in a different country, the same SME is entitled to receive an additional EUR 200 000.
- ❖ Each Member State needs to ensure that de minimis provided to an SME in a different country is not exceeded. This could be the case if different ETC programmes have their Managing Authorities in country B and provide funding to an SME in country A.



[20] INTERACT asked for written confirmation of this statement in the context of the public consultation on the draft de minimis Regulation (May 2013). This question needs to be clarified, even if national de minimis registers are not established.

De minimis (can) require State Aid assessments

In ETC programmes de minimis is often applied in projects that are carried out in the field of innovation, tourism, transport, energy or education, especially if they involve SMEs. However, de minimis is also relevant for ETC projects in other thematic fields or economic sectors, and it can concern other types of beneficiaries.

Examples of ETC projects managed under de minimis (2007-2013)

- Development of a cross-border cluster of creative industries. Potentially State Aid relevant partners: two SMEs contributing to the project with their specific knowledge from the creative and cultural industries sector.
- Development and application of therapeutic bio markers for cancer treatment. Potentially State Aid relevant partners: two SMEs contributing with their knowledge to enhance the quality of project outputs.
- Promotion and development of eco-extraction technologies for industrial and productive industries. Potentially State Aid relevant partners: one university, one SME.

Unfortunately, it is not possible to perform general assessments of State Aid, and each project application and potential beneficiary of ETC funds must be assessed separately.

For these reasons, during the 2007-2013 period, a number of ETC programmes applied de minimis to all SMEs (or all private law bodies) acting as project partners regardless of the actual State Aid relevance of their activities. The disadvantage of this approach is that by receiving ETC funds some SMEs may reach the de minimis threshold although they could otherwise be entitled to further funding under de minimis from a different source.

Some other ETC programmes are more selective, applying de minimis only if activities were deemed State Aid relevant. The disadvantage of this approach is that it usually leads to heavy administrative workload and costs (e.g., external consultation), and may not always increase legal certainty.

Although the practice of granting ETC funds to SMEs under de minimis without State Aid assessment (i.e., de minimis applied automatically to all SMEs supported by the programme) may have disadvantages for some SMEs, it is likely that it will become more popular among ETC programmes in 2014-2020, because de minimis granted by an ETC programme (i.e., the Member State of the Managing Authority) must no longer be added to the State Aid a beneficiary receives from another country.

De minimis requires declarations from beneficiaries

ETC programmes have to ensure that an SME is entitled to receive funds within the de minimis threshold prior to the project approval. According to the draft de minimis Regulation, it is sufficient to obtain a self-declaration from an SME, as long as no central de minimis register has been set up (i.e., in the Member State of the Managing Authority).

Commission Regulation on the application of Articles 107 and 108 of the Treaty and the functioning of the European Union to de minimis aid

DRAFT March 2013

Article 6(3)

[…] Before granting the aid, the Member State shall obtain a declaration from the undertaking concerned, in written or electronic form, about any other de minimis aid received to which this Regulation or other de minimis regulations apply during the previous two fiscal years and the current fiscal year.

The added value of further controls on a routine basis (e.g., first level control) appears questionable, since they are not required by the State Aid Regulation and it is often very difficult to assess the validity of these declarations, especially in Member States where central registers do not exist.

SMEs receiving 'indirect aid'

In 2007-2013, there are examples of ETC programmes that use de minimis for SMEs receiving 'indirect aid'; i.e., in cases where SMEs are direct users of services, products, solutions, etc. developed in ETC projects (e.g., a training delivered to SMEs to support their entrepreneurial skills). In such programmes, it is common practice to request de minimis declarations also from recipients of 'indirect aid'.

Another option is to ensure that the 'indirect aid' provided to SMEs is not selective and open to all undertakings. This means that all measures should be open to all types of undertakings, not only SMEs. According to information from DG Competition, measures addressed to SMEs would only in principle be considered selective. Only measures available to all undertakings of all sizes can be regarded as general.

VII. Intellectual Property Rights

Given the specificities of European Territorial Cooperation, the vast majority of projects financed by ETC programmes are carried out in the public domain. In this case, questions related to retention of Intellectual Property Rights (IPR) practically do not apply.

However, there are examples of ETC projects which include market-oriented elements. Such projects are often undertaken in a specific economic sector or field; e.g., information and communication technology, creative and cultural industries, transport, life sciences, etc. Innovative approaches and solutions developed in these projects may raise the partners' interest to protect the IPR. This is even more true when SMEs are involved, as they are responsible for driving innovation in many economic sectors.

Intellectual property: the protected work that derives from intellectual activities; i.e., industrial inventions and scientific, literary and artistic creations.
In most cases, the work that results from intellectual activities is intangible and generally kept secret. It can be protected (e.g., legal rights of the inventors to the work are recognised) in the form of:

- patents, industrial design, trademarks (industrial property)
- copyrights (scientific, literary, artistic works, software)

In the context of ETC, outcomes of intellectual activities usually come into being by the creation of tangible outputs; e.g., books, reports, software, pilot plants, etc.
Some ETC programmes allow for protection of the work. In these cases, rights resulting from copyright protection, design rights, patent rights, etc. fall under the category of project outputs and are treated as such.

In ETC, management of IPR is a complex and often sensitive matter. While there is room for improvement on how IPR are dealt with at the level of individual programmes and within financed partnerships, the core principles of ETC remain valid. For SMEs, this implies that even if they are allowed to retain IPR resulting from their involvement in an ETC project, exploitation of these rights can in principle only happen though public licences.

Taking into account practices of ETC programmes in 2007-2013 and building on current challenges, insights are given in this paper on how to address IPR in the 2014-2020 period. This includes guidance on what is possible and how issues pertinent to IPR could be managed both at the programme and project level.

Core principles of ETC and the IPR logic

Management of IPR in the context of ETC requires that strict rules are followed in order to ensure compliance with core ETC principles. The IPR logic builds on the following 4 pillars:

1. Access to project outputs and results
2. Communication and dissemination of information about the project
3. Ownership of project outputs
4. Protection of intellectual property

All project outputs and results[21] shall be made available to the general public free of charge and information about them should be widely disseminated.

This sentence defines the main framework conditions within which projects financed from ETC funds operate. Most of the 2007-2013 Operational Programmes include reference to the core principles deriving from this statement. In addition, they are repeated in all contractual documents setting relations between programmes and the projects they support, including Subsidy Contracts[22] and Partnership Agreements[23].

Although securing public access to project outputs and results free of charge does not automatically guarantee compliance with State Aid rules, it is a common approach to ensure that programme funds are allocated in a transparent way and that they can benefit all interested parties.

Financial Regulation 966/2012 governing the EU budget along principles defined in the EU treaties[24] states that:

- Article 129(1): "grants shall be subject to the principle of transparency and equal treatment."
- Article 125(4): "grants shall not have the purpose or effect of producing a profit within the framework of the action or the work programme of the beneficiary (non-profit principle)."

Based on the Financial Regulation, additional rules applicable to revenue-generating projects are defined in:

- **Regulation 1083/2006** (Article 55(3)): "where it is objectively not possible to estimate the revenue in advance, the revenue generated within five years of the completion of an operation shall be deducted from the expenditure declared to the Commission."
- **Draft Common Provisions Regulation** (Article 54(2)): "where it is objectively not possible to determine the revenue in advance […], the net revenue generated within three years of the completion of an operation or by 30 September 2023, whichever is earlier, shall be deducted from the expenditure declared to the Commission."

On the other hand, it must be noted that the requirement to report on revenues generated in the framework of an ETC project does not apply if State Aid is granted. This means that those SMEs which are involved in projects and financed by ETC programmes under de minimis, the GBER, or other State Aid schemes are subject to special treatment concerning this principle.

All SMEs included as beneficiaries in ETC projects (both SMEs *acting as undertakings* and *not acting as undertakings in the meaning of the State Aid Regulation*[25]) are obliged to communicate and disseminate information about the funding they receive from the programme. Responsibilities of beneficiaries and requirements about information and publicity measures for the public are laid out in the Implementing Regulation 1828/2006 and Annex V of the draft Common Provisions Regulation for 2014-2020.

In addition, there are rules pertinent to the change in ownership that apply to infrastructure projects and productive investments and may have an effect on SMEs participating in these types of projects. The rules do not allow for changes in ownership within a certain period of time, if such changes threaten distortion of competition in the internal market.

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21 Output is a direct product of project activities intended to contribute to the project result; i.e., an output is what has been acquired with a grant received from an ETC programme, and a result is a specific dimension of the well-being of people that is expected to be modified by the project intervention; e.g., improvement in mobility (result) pursued by building a transport infrastructure (output), increased competence (result) pursued by providing a training (output), etc.

22 Subsidy Contract is an agreement signed between the Managing Authority of an ETC programme and a project lead partner acting on behalf of other project partners. It sets legal and financial terms for implementation of a project, including information on allocation of the programme grant to the project.

23 Partnership Agreement is an agreement signed between all partners involved in the implementation of a project. It details rights and obligations of partners towards each other. Compared to the Subsidy Contract, where rules are set by the programme and are not subject to changes by the project, clauses in the Partnership Agreement are defined by the partners. Many ETC programmes provide a template of a Partnership Agreement (a model agreement) that may be modified by the partnership to accommodate their specific needs.

24 This includes rules on competition set out in Article 87 of the EC Treaty. European Territorial Cooperation is a policy area under shared management (i.e., implementation of ETC programmes is decentralised from the EU and delegated to Member States), thus ETC funds are considered a State Aid resource.

25 See Section II of this paper for more information on the classification of beneficiaries and orientation of SMEs in ETC projects.

Restrictions regarding the change in ownership within ETC projects:

- **Regulation 1083/2006** (Article 57(1)): The Member State or managing authority shall ensure that an operation retains the contribution from the Funds only if that operation does not, within five years from the completion of the operation […] undergo a substantial modification: (a) affecting its nature or its implementation conditions or giving to a firm or a public body an undue advantage; and (b) resulting either from a change in the nature of ownership of an item of infrastructure or the cessation of a productive activity.
- **Draft Common Provisions Regulation** (Article 61(1)): An operation comprising investment in infrastructure or productive investment shall repay the contribution from the CSF Funds if within five years from the final payment to the beneficiary or within the period of time set out in the State Aid rules, where applicable, it is subject to: (a) a cessation or relocation of a productive activity; (b) a change in ownership of an item of infrastructure which gives to a firm or a public body an undue advantage; or (c) a substantial change affecting its nature, objectives or implementation conditions which would result in undermining its original objectives.

All in all, EU regulations set clear rules along the first three pillars of the IPR logic: access to project outputs and results, communication about the project, and ownership of certain project outputs. Based on current practices of ETC programmes, management of IPR at the programme level happens by making sure that relevant provisions pertinent to the ETC general principles and reflected in these three pillars are included in Subsidy Contracts and in templates of Partnership Agreements.

Regarding the fourth pillar, ETC programmes rarely intervene in the settlement of detailed agreements between project partners as to sharing of their rights to IP and division of responsibilities. Provided ETC principles are respected, management of IPR at the project level is left to the discretion of the partnership.

Management of IPR within ETC projects

ETC principles set the stage and define general framework conditions for the IPR management in project partnerships. However, rules of ETC programmes do not go any deeper and they do not regulate what kind of arrangements concerning IPR should be made between partners. What is more, based on observations from the 2007-2013 period, the majority of ETC programmes abstain from providing guidance to projects on how the process should be managed. This concerns both instruction on basic issues related to IPR (e.g., how to define foreground IP, how to treat background IP) and more specific questions on exploitation of IPR (e.g., which exploitation strategy to choose, who covers the IPR fees, etc.).

During 2007-2013, protection of IPR in ETC projects has not been a common practice, and only a small fraction of partnerships considered such an option. Nonetheless, in cases of projects where questions around IPR arose, many ETC programmes faced difficulties in assisting them swiftly and effectively.

For the period 2014-2020, and in particular when involvement of SMEs as project partners is discussed, it is worth considering how the capacity of ETC programmes to deal with IPR can be improved.

Due to the complexity of this subject, it may not be possible to develop a single approach which matches all variables and fulfils all specific needs of ETC projects pertinent to IPR. First of all, this is because ETC projects cover a wide spectrum of activities carried out in various fields (e.g., transport, energy efficiency, landscape management), for which different business models and thus different IPR exploitation strategies can be defined, depending on customer segments, value proposition offered, etc. On top of this, ETC projects deliver outputs of a diverse nature (e.g., books, strategies, training courses, software) within which IP can be embodied and thus different types of IPR apply (e.g., copyright in case of books, patents in case of pilot plants). Secondly, IPR are subject to the principle of national protection. Differences in national IPR legislation make it difficult to draw joint conclusions and instruct partnerships by applying a “one-fits-all” approach.

In order to better address IPR in 2014-2020, it is recommended that ETC programmes:

1. *Enhance their knowledge base about IPR in general and their understanding of different options for the management of IPR within partnerships.*

This includes clarity about background IP/ foreground IP/ sideground IP and how they are treated in the ETC context, basic types of IPR, and IPR exploitation strategies most relevant for ETC projects.

Definition of foreground IP/ background IP/ sideground IP[26]	
Foreground IP	All knowledge, scientific and technical information developed by one or several project partners in the framework of the project.
Background IP	All knowledge and information (including inventions, databases, etc.) held by organisations prior to them becoming partners in a project and signing a Partnership Agreement. In general, background IP is not subject to ETC rules.
Sideground IP	Knowledge generated in parallel with the project; i.e., acquired by partner organisations at the time of the project implementation, but not part of the project. In general, sideground IP is not subject to ETC rules.

ETC programmes may allow for the foreground IP to be protected by project partners. There are different forms to protect the foreground IP; i.e., types of IPR.

[26] Based on the Guide to Intellectual Property Rules for FP7 project, Version 3, *ftp://ftp.cordis.europa.eu/pub/fp7/docs/ipr_en.pdf*

Types of IPR - examples[27]	INDUSTRIAL PROPERTY
Patent	
What is it?	Legal title that awards protection for a new solution to a technical problem. Covers the function, operation or construction of the new solution.
Characteristics	Requires innovativeness. It must have industrial application and be described in a way as to permit reproduction of the process.
Registration	Subject to registration by national patent offices and/or the European Patent Office.
Fees	Subject to registration fee and annual fees.
Term of protection	20 years from the filling date.
How are they exercised?	Own use, exclusive or non-exclusive licenses, sale of patent rights.
Design	
What is it?	Legal title that protects the decorative and aesthetic appearance of a product. Does not protect the function of the product.
Characteristics	Requires originality.
Registration	Subject to registration by national offices or OHIM[28].
Fees	Subject to registration fee and extension fees.
Term of protection	5 years, renewable for terms of 5 years up to maximum of 25 years.
How are they exercised?	Own use, licences, sale.
Trademark	
What is it?	The sign that distinguishes products or services of one undertaking from those of other undertakings.
Characteristics	Requires distinctiveness.
Registration	Subject to registration by national offices or OHIM.
Fees	Subject to registration fee and extension fees.
Term of protection	10 years, renewable indefinitely.
How are they exercised?	Own use, licences, sale.

[27] Based on a presentation by Prof. Dr. Sebastian Wundisch (Noerr LLP), Operational aspects of programming: Involvement of SMEs in ETC programmes 2014-2020, 10-11 April 2013, *http://www.interact-eu.net/events/operational_aspects_of_programming_involvement_of_smes_in_etc_programmes_2014_2020_10_11_april_2013_luxembourg/14/13595* and A practical guide to managing Intellectual Property Rights in an open innovation context, 2012, *http://six6.region-stuttgart.de/sixcms/media.php/1181/Opinet_IPR_Guide.pdf*

[28] OHIM (Office for Harmonisation in the Internal Market) is the EU agency responsible for registering trademarks and designs that are valid in all 27 countries of the EU.

COPYRIGHT	
Copyright	
What is it?	Copyright comes with authorship and protects works of literature and art and computer programmes.
Characteristics	Requires a certain level of creativity/originality.
Registration	Not subject to registration.
Fees	Not subject to any fees.
Term of protection	Lifetime of the author and 70 years post mortem auctoris.
How are they exercised?	Own use, exclusive or non-exclusive licences.

Provided retention of IPR is permissible in line with programme rules, project partners can best decide themselves on the most suitable strategy to protect the foreground IP, depending on how they plan to use it in the future (e.g., in research, development of products, processes). They should also decide on the relevant exploitation model for the IPR, bearing in mind that public access free of charge must be secured.

In this regard, groups of licences described as Open Source and Open Access can be taken as examples of exploitation models applicable in the ETC context. In general terms, Open Source licensing and Open Access are recognized by the following criteria:

- They are non-exclusive;
- They are publicly available;
- They are granted free of charge;
- They are for non-commercial use;
- They are granted for an unlimited period of time.

Even though Open Source[29] and Open Access[30] mostly refer to certain types of creations (respectively, software developments and written material available online), they can be exercised for other intellectual work protected by a copyright. Given the kind of outputs typically financed by ETC programmes (reports, training courses, analysis tools, software, etc.) and the framework conditions defined by ETC rules and principles, Open Source/ Access may be IPR exploitation models to consider.

2. *Establish clear programme rules to define an ownership regime of the foreground IP developed in projects.*

Many ETC programmes 2007-2013 have defined a default ownership regime applicable to the projects they finance. Interestingly, the systems differ between programmes, and there is no single regime for the ETC in general.

According to the rules of some ETC programmes, foreground IP resulting from a supported project shall be the property of the partner who carried out the work that generated the foreground. Only when the respective partner contributions cannot be determined, does joint ownership apply by default. Other programmes set a joint ownership regime at the start, where all partners enjoy the right to the foreground IP. There are also programmes that ban the possibility of protecting the foreground IP by any of the project partners.

Examples of different approaches used by ETC programmes in the 2007-2013 period are presented below. The text is extracted from relevant programme documents.

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29 Open Source is a license for computer software that allows the source code to be used, modified and shared by end users according to their needs.

30 Open Access provides unregistered access via the Internet to written material; e.g., articles, book chapters, etc.

Practical example 6: Central Europe Programme

Subsidy Contract

§ 12

Ownership – Use of outputs

1. Ownership, title and industrial and Intellectual Property Rights in the results of the project and the reports and other documents relating to it shall, depending on the applicable national law, vest in the lead partner and/or project partners.
2. Where several members of the partnership (lead partner and/or project partners) have jointly carried out work generating outputs and where their respective share of the work cannot be ascertained, they shall have joint ownership of it/them. The partnership agreement as mentioned in § 6.1 of this contract shall establish provisions regarding the allocation and terms of exercising that joint ownership.
7. Outputs as covered within in the meaning of Article 57 of (EC) Regulation No 1083/2006 cannot be transferred within the period set by this regulation.

Model Partnership Agreement

§ 20

Ownership – Use of outputs

1. Ownership, title and industrial and Intellectual Property Rights in the results of the project and the reports and other documents relating to it shall, depending on the applicable national law, vest in the lead partner and/or its project partners.
2. Where several members of the partnership (lead partner and/or project partners) have jointly carried out work generating outputs and where their respective share of the work cannot be ascertained, they shall have joint ownership of it/them.
3. In case of joint ownership, the following provisions shall apply:
   [xxxxx].
   Provisions applying shall be in line with § 25 of this agreement.[31]
4. Outputs as covered within the meaning of Art. 57 of (EC) Regulation No 1083/2006 cannot be transferred within the period set by this regulation.
5. The lead partner and project partners ensure that the project outputs are available for the Managing Authority for further spreading and for making them available to the public.

Practical example 7: Alpine Space Programme

Subsidy Contract

§ 13

Ownership/use of results

(1) All project outcomes and results shall be the joint property of all project participants. Consequently, the lead partner safeguards that each project participant shall grant a simple, non-exclusive right for use of any produced work of authorship to all other project participants.

(2) The lead partner takes note of the fact that the results of the project, especially any study or analysis produced in the course of the project, shall be made available to the public whereby the appropriate way of publication will be laid down in the programme implementation handbook. Moreover, the LP will ensure that the project participants shall play an active role in any actions organised by the programme to disseminate and capitalise on these results.

[31] Article 25 Applicable law of the Model Partnership Agreement reads: "This agreement is governed by and constructed in accordance with… [law of the country where the Lead Partner is located or law where the Managing Authority is located].

Practical example 8: Atlantic Area Programme

> **Subsidy Contract**
>
> ***§12***
> ***Intellectual Property Rights***
>
> 12.1 The lead beneficiary and all the partners of the project represented by the lead beneficiary, ensure that all the products developed within the project, subject to the provisions of national laws concerning intellectual property, are exempt from all rights.
>
> 12.2 The lead beneficiary and all the partners of the project represented by the lead beneficiary are aware and accept to waive all the patrimonial rights related to educational material, methodologies and other products of any nature that result from the project.

3. *Guide projects on general issues to take into account when setting agreements on the management of IPR in the partnership.*

Depending on the ownership regime to be followed, according to the programme rules, and specifically in the case of programmes that allow project partners to retain their IPR, there are a number of issues that need to be taken into account in order to avoid any disputes within the partnership over the IP.

Project partners are responsible for agreeing between themselves on the division of privileges and obligations related to the IP, and for negotiating any relevant questions with each other before the start of the project.

To assist beneficiaries in this process, programmes can instruct them about basic issues that should be thought of as a starting point. Guidance can be provided along a set of basic questions project partners should consider when setting agreements regarding IPR.

> **Basic questions for a successful management of IPR in the partnership**[32]
>
> 1. Have you properly and exhaustively identified and listed all exploitable outputs (assets) from your project? Be aware they do not necessarily match the list of expected outputs from the project.
> 2. Have you identified all background relevant to each asset?
> 3. Have you identified all contributors to the creation of each asset (generation of foreground)?
> 4. Have you decided how each asset (foreground IP) will be protected? Is copyright relevant?
> 5. Have you identified the interests of each project partner in the exploitation of each asset?
> 6. Have you defined a strategy for making each asset available to the public at no charge?

4. *Recommend beneficiaries use legal advice when setting partnership agreements related to IPR and inform them about the possibility of the cost of consulting legal experts being eligible.*

As legal abilities of ETC programme bodies may be limited and they may not be equipped with all relevant expertise to provide assistance on IPR management to individual partnerships, which due to the complexity of this subject often require separate attention and tailor-made solutions, pursuing support from external experts would be advisable.

Large companies usually have their own IP departments, often including legal IP expertise, but SMEs do not have the same capacity and require external help to deal with IPR, even more so in the complex multi-country context of ETC projects. ETC programmes that allow project partners, and SMEs in this respect, to retain IPR should therefore recognise the need and offer SMEs the possibility to receive additional assistance.

As derives from the arguments presented above, management of IPR by ETC programmes at the level of individual partnerships might only be possible by setting rules that address general ETC principles and by providing guidance on issues relevant to all projects. Differences across national legislations pertinent to IPR, specific needs of single projects, and legitimate interests of project partners entail that more detailed arrangements are best settled by the partners themselves.

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[32] Based on input provided by the RDIT Europe (*www.rdti.eu*), 21 May 2013

SMEs are seen as a source of innovation, thus if involved as beneficiaries of ETC funds in 2014-2020 questions about IPR will most likely come from them, if at all. Programme bodies must be ready to provide SMEs with adequate assistance in this field. Clear guidance on ETC principles and programme-specific rules concerning IPR should be the starting point. This is necessary in order for SMEs to recognise what is allowed under the rather strict ETC conditions. This is also necessary to help individual SMEs decide how they can contribute to ETC projects, taking into account the benefits of this involvement in relation to strategic goals of their own businesses.

The core principles of ETC set clear limitations as to how the foreground IP can be treated, and eventually they determine the form and degree to which SMEs involved as projects partners can benefit. Requirements to protect the foreground IP in line with a predefined ownership regime, non-exclusive exploitation of the IPR permitting public access at no cost, etc. are contradictory to the typical meaning of IPR, which is above all an expression of pursuing an exclusive position over the competition as well as associated financial gains. With this in mind, it becomes clear that ETC programmes may not be instruments for financing the business success of individual SMEs based on innovation. Those ETC programmes that in 2014-2020 want to contribute to the realisation of the Europe 2020 strategy by means of involving SMEs will most probably have to attract them by highlighting benefits of a different kind.

Still, it must be remembered that protection of IP is not mandatory in all cases, especially in situations when the generated IP does not have any commercial applicability. In principle, this concerns ETC. If, however, ETC projects are allowed to retain rights to the foreground IP, Open Source/ Access or similar models that put the foreground IP in the public domain can still be appropriate alternatives for SMEs. Given the nature of ETC projects and the types of outputs they deliver, such an open approach to IPR may be of interest to the involved partners, including SMEs; e.g., increased visibility of the project findings (e.g. open online access to publications, analysis), possibilities for further improvements on the software developments (open source codes), etc.

VIII. ETC in 2014-2020: Programme strategy. Is there a place for SMEs?

SMEs constitute 98% of all enterprises in the EU, 92% of which are micro enterprises; i.e., those with fewer than 10 employees. Over recent years, and despite the economic downturn, SMEs managed to retain their position, accounting for 67% of the EU's total employment and 58% of its GDP.[33] These figures indicate that SMEs constitute a real backbone of the EU economy.

With this in mind, enhancing the competitiveness of SMEs, their growth and innovation potential are at the core of the EU political agenda to ensure a successful transition towards a dynamic, knowledge-based economy. These goals constitute an important part of the Europe 2020 strategy.

Europe 2020 sets ambitious targets in order to turn the EU into a smart, sustainable and inclusive economy by the end of the decade. A wide range of actions at all levels will be necessary to underpin the targets. ETC programmes are equally expected to contribute to delivery of the Europe 2020 objectives. Whether they do so by including SMEs as beneficiaries, promoting involvement of SMEs in ETC projects in other ways, or trying to address objectives set for them without engaging SMEs has to be decided by the Member States of individual programmes. Based on current discussions, there is a general interest among ETC decision-makers in allowing SMEs to carry out activities in ETC projects and receive support from ETC funds in the 2014-2020 period.

As ETC programmes are now in the process of exploring different possibilities and they are considering options for the future, the results of the INTERACT survey show that all those programmes that in the current period apply a green light policy for SMEs to participate as beneficiaries would be inclined to continue this approach in the next programme round. In addition, responses provided by programmes that do not include SMEs as beneficiaries indicate an intention to change this approach in the majority of cases.

Above all, it must be remembered that involvement of SMEs in ETC programmes should not be an aim in itself but a possible means to reach the set objectives. Therefore, the question of whether SMEs should be allowed as beneficiaries of ETC funds needs to be carefully assessed by each programme in view of the programme's strategy for 2014-2020.

To arrive at a point where discussion about the role of SMEs and possible involvement in future programmes can commence, a number of strategic aspects[34] must first be considered. During the programming process it is recommended that ETC programmes at least go through the following initial stages:

- *Identification of the programme's strategic vision*: What are the challenges in the programme area? What are the specific needs in the area that the programme should help to address? What is the niche for ETC intervention compared to other forms of support available in the area?
- *Selection of thematic objectives (i.e., concentration on a limited number of thematic objectives)*: Which of the thematic objectives can best help in addressing the specific needs of your programme area?
- *Delivery of the programme strategy along the thematic objectives (i.e., translation of the objectives into actions)*: What kind of actions should the programme finance in order to achieve the intended objectives and results? Who are the relevant actors who can best carry out the actions? **Are SMEs among the identified potential beneficiaries?**

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[33] Fact and figures about the EU's Small and Medium Enterprise (SME), European Commission, DG Enterprise and Industry, *http://ec.europa.eu/enterprise/policies/sme/facts-figures-analysis/index_en.htm*

[34] For more comprehensive guidance on strategic aspects of programming, consult: *http://www.interact-eu.net/downloads/7723/INTERACT_HARMONISED_IMPLEMENTATION_TOOLS_Practical_paper_for_programme_preparation_final_.pdf*

On top of these and other strategic aspects to take into account, considerations are also necessary from an operational point of view; i.e., in terms of programme requirements and procedures that SMEs have to comply with if acting as beneficiaries of ETC funds. Challenges related to the operational set-up of ETC programmes and options to address them in the future have been presented to an extent in Sections V, VI and VII of this paper.

Above all, the strategy of the programme and the selected programme priorities will inarguably have an effect on the extent to which projects relevant for SMEs will be generated. SMEs are more likely to contribute to implementation of projects under priorities that encourage their involvement.

The draft EU regulations that lay out provisions for the implementation of ETC programmes in 2014-2020, provide a full list of thematic objectives and corresponding investment priorities from which individual ETC programmes are required to choose the ones that best address their territorial challenges. At least 80% of the programme's funds shall be allocated to a maximum of 4 thematic objectives, and 20% can support the programme's intervention in any of the investment priorities outlined in Article 6 of the draft ERDF Regulation.

Common Provision Regulation

DRAFT September 2012

Article 9

Thematic objectives

Each CSF Fund shall support the following thematic objectives in accordance with its mission in order to contribute to the Union strategy for smart, sustainable and inclusive growth:

(1) strengthening research, technological development and innovation;
(2) enhancing access to, and use and quality of, information and communication technologies;
(3) enhancing the competitiveness of small and medium-sized enterprises, the agricultural sector (for the EAFRD) and the fisheries and aquaculture sector (for the EMFF);
  (a) ***promoting entrepreneurship, in particular by facilitating the economic exploitation of new ideas and fostering the creation of new firms;***
  (b) ***developing new business models for SMEs, in particular for internationalisation;***
(4) supporting the shift towards a low-carbon economy in all sectors;
  (b) promoting energy efficiency and renewable energy use in SMEs;[35]
(5) promoting climate change adaptation, risk prevention and management;
(6) protecting the environment and promoting resource efficiency;
(7) promoting sustainable transport and removing bottlenecks in key network infrastructures;
(8) promoting employment and supporting labour mobility;
(9) promoting social inclusion and combating poverty;
(10) investing in education, skills and lifelong learning;
(11) enhancing institutional capacity and an efficient public administration.

Thematic objectives shall be translated into priorities specific to each CSF Fund and set out in the Fund-specific rules.

Some of the thematic objectives and investment priorities explicitly mention SMEs. However, it must be noted that possible involvement of SMEs as beneficiaries is not necessarily restricted to these only. SMEs may be relevant actors to get on board for the implementation of projects under other priorities, and considered eligible to receive ETC funds from other priority allocations. For example, based on opinions collected during the INTERACT survey, many ETC programmes find the thematic objective 1 relevant to attracting SMEs.

On the other hand, selecting thematic objectives 3 and 4, and their respective investment priorities that specifically refer to SMEs, does not require that SMEs would have to be included as project partners. They

[35] Point (b) is one of the investment priorities within the thematic objective (4), as outlined in the draft ERDF Regulation (Article 6). Similarly, points (a) and (b) under thematic objective (3) are corresponding investment priorities. In this paper, they are deliberately inserted under Article 9 of the Common Provisions Regulation to facilitate presentation of arguments discussed.

can still be engaged in other ways and they can also be target groups of ETC interventions. Section IV of this paper discusses different ways of SME involvement in ETC programmes.

Having said all this, it is important to remember that ETC is after all not the only EU instrument to address the needs of SMEs. Currently, there is a number of other EU funding schemes and support mechanisms for SMEs, such as 7th Framework Programme for Research and Technological Development (FP7), Competitiveness and Innovation Framework Programme (CIP), Joint European Resources for Micro and Medium Enterprises (JEREMIE), various mainstream programmes of EU Structural Funds, and many others. They provide assistance in a variety of forms: grants, loans, guarantees, as well as non-financial assistance measures via business support programmes and services.

Categories of the EU support schemes for SMEs (2007-2013)[36]

- *Thematic funding opportunities*: under direct management of the European Commission; support is provided in specific sectors/ thematic fields; e.g., environment, research, education.
  Examples of programmes under this category: 7th Framework Programme for Research and Technological Development, Intelligent Energy Europe, Entrepreneurship and Innovation Programme (incl. Enterprise Europe Network, Eco-innovation programme, CIP financial instruments in cooperation with EIF), Information Communication Technologies Policy Support Programme, etc.
- *Structural Funds*: management of programmes is delegated to Member States; support is provided in priority areas decided by the Member States.
  Examples: programmes financed from the European Regional Development Fund, European Social Fund, etc.
- *Financial instruments*: in the majority of cases managed by the European Investment Fund; support is provided indirectly; i.e., processed through financial intermediaries.
  Examples: SME Guarantee Facility and other schemes of the Competitiveness and Innovation Framework Programme, Joint European Resources for Micro and Medium Enterprises, European Investment Fund own investments, European Investment Bank loans, etc.
- *Support for the internationalisation of SME*s.

The future of the EU support for SMEs as a whole entails several novelties, including streamlining of funding, simplification of approaches, etc. In view of the upcoming changes, ETC will have to define its niche and position itself among other EU assistance schemes for SMEs, both those managed centrally by the European Commission (especially HORIZON 2020 and COSME 2014-2020) and those managed and implemented by Member States (in particular, other programmes of the Cohesion Policy 2014-2020). For individual ETC programmes this means that during the programming process they need to evaluate what the added value of their future interventions should be compared to other forms of support offered to SMEs in the programme area.

[36] European Union Support Programmes for SMEs: An overview of the main funding opportunities available to European SMEs, European Commission, January 2012, *http://ec.europa.eu/enterprise/newsroom/cf/_getdocument.cfm?doc_id=7264*

The EU Framework Programme for Research and Innovation 2014-2020 (HORIZON 2020)[37]

HORIZON 2020 is the financial instrument implementing the Innovation Union, which is a Europe 2020 flagship initiative aimed at securing Europe's global competitiveness. HORIZON 2020 will run from 2014 until 2020, with a planned budget of EUR 80 billion. This new EU programme for research and innovation is part of the drive to create new growth and jobs in Europe.

Specifically, HORIZON 2020 will aim to:
1. Enhance EU science (Excellent Science);
2. Promote industrial leadership in innovation; i.e., by investment in key technologies, greater access to capital and support for SMEs (Industrial Leadership);
3. Address major concerns such as climate change, developing sustainable transport and mobility, making renewable energy more affordable, ensuring food safety and security, or coping with the challenge of an aging population (Societal Challenges).

HORIZON 2020 will tackle societal challenges by helping to bridge the gap between research and the market by, for example, supporting innovative enterprises in developing their technological breakthroughs into viable products with real commercial potential.

Main beneficiaries:
- Educational institutions;
- Research organisations;
- Private sector companies, including SMEs and large scale companies;
- National, regional and local authorities.

Programme for the Competitiveness of enterprises and SMEs 2014-2020 (COSME)[38]

COSME aims to improve the business environment and the competitiveness of European enterprises. It will run from 2014 until 2020, with a planned budget of EUR 2.3 billion.

Specifically, COSME 2014-2020 will aim to:
1. Facilitate access to finance for Small and Medium-sized Enterprises (SMEs);
2. Create an environment favourable to business creation and growth;
3. Encourage an entrepreneurial culture in Europe;
4. Increase the sustainable competitiveness of EU companies;
5. Help small businesses operate outside their home countries and improve their access to markets.

Main beneficiaries:
- Existing entrepreneurs (small businesses in particular) - easier access to funding for development, consolidation and growth of their business;
- Future entrepreneurs (including young people) – assistance in setting up their own business;
- National, regional and local authorities – tools for effectively reforming policy: reliable, EU wide data and statistics, best practice and financial support to test and scale up sustainable solutions for improving global competitiveness.

[37] HORIZON 2020, European Commission, DG Enterprise and Industry, *http://ec.europa.eu/research/horizon2020/index_en.cfm?pg=home*

[38] Programme for Competitiveness of enterprises and SMEs (COSME) 2014-2020, Competitiveness and Innovation Framework Programme (CIP), *http://ec.europa.eu/research/horizon2020/index_en.cfm?pg=home*

Eventually, in 2014-2020, there will be different incentives for SMEs to pursue assistance from different funding schemes and support mechanisms across the EU. When involved in HORIZON 2020, SMEs will be offered support in investing in research and innovation to improve their competitiveness. For COSME, SMEs will be the main target to attract to the programme. With over 80% of the programme budget to be allocated to SMEs, COSME will focus on supporting SMEs in business start-up, access to finance and going international. Initiatives at both national and regional levels will also exist to address the needs of SMEs in their own distinctive way.

What incentives can ETC offer? What are the expectations of SMEs from being involved in ETC programmes?

It is inarguable that the vast majority of SMEs are locally based and, unlike large companies, they operate within their home territories. To help them grow out of their local position, build contacts and cooperation with partners from the outside seems a predominant starting point. ETC programmes offer this possibility.

Experiences of ETC from the 2007-2013 period, backed by analysis conducted individually by some programmes in order to evaluate the involvement of SMEs in projects they finance, prove that the main reason for SMEs to participate in ETC projects has been networking, finding new contacts and establishing relations for cooperation. Cooperation is the overarching goal of ETC interventions, thus it seems natural that project partners, and SMEs in this respect, benefit mostly from the opportunity to access new networks outside their usual territory of operation.

In addition to ETC projects being cooperation platforms, involved partners are required to carry out activities that address common territorial challenges or a joint asset of the programme area. In the current period, there are examples of projects that respond to this requirement through actions in a specific field or economic sector. Given the fact that each SME usually operates within one particular sector, it benefits most from involvement in a project that has a clear thematic focus; i.e., it is undertaken in the relevant sector where SMEs play a role. In this context, exchange of experiences, transfer of know-how and reinforcing of the SME's own expertise through development of new solutions jointly with other cooperation partners are examples of benefits and reasons for SMEs to participate in ETC. In 2014-2020 these points can remain important arguments to justify the ETC added value, (Why include SMEs as beneficiaries in ETC projects? How can the needs of SMEs be fulfilled by engaging them in ETC? What incentives and benefits to promote to make ETC attractive to SMEs?) compared to other EU support schemes for SMEs.

Main benefits for SMEs acting as beneficiaries in ETC programmes (2007-2013)

- Networking and establishment of new relations for cooperation;
- Transfer of know-how within the partnership;
- Joint development of new solutions;
- Development of new solutions by application of SME's own expertise.

ETC programmes that finance SMEs in the current period report with one voice that involvement of SMEs has brought an added value to the projects. Stories of regret are not known, unless they link to difficulties faced due to regulatory requirements and operational set-up of ETC programmes, which often do not follow the SME logic. It is hoped that the rules and procedures can be adjusted for ETC to become more SME-friendly in the near future.