

BRIEF SUMMARY REPORT:

**TOWARDS
A NEW COMMUNITY LEGAL INSTRUMENT
FACILITATING
PUBLIC LAW BASED
TRANSEUROPEAN CO-OPERATION
AMONG
TERRITORIAL AUTHORITIES
IN THE EUROPEAN UNION**

March 2004

**Elaborated by the
Association of European Border Regions (AEBR)**

Introduction

The history of cross-border co-operation during the past 40 years has clearly shown that an existence of appropriate legal framework conditions positively influenced on the overall development and the quality of cross-border co-operation in Europe.

The conclusion of inter-state agreements on cross-border co-operation, which took place especially during the 1990ies and also in recent years, has certainly contributed to create more suitable legal framework conditions for decentralised co-operation, which is sometimes even based on public law.

- Inter-state agreements defined the context, possibilities and forms of decentralised cross-border co-operation activities that can be undertaken by regional and local authorities of neighbouring states.
- The creation and operation of lasting and long-term oriented cross-border structures as well as the launching and running of cross-border co-operation at programme or project level was also enhanced by inter-state agreements, as they contributed to eliminate legal uncertainties.
- Last but not least, inter-state agreements have re-enforced the establishment of transparent procedures for the internal functioning of cross-border co-operation schemes (“internal legitimacy”), but also their “external” legitimacy with regard to other administrative structures and the individual citizens.

Despite the progress achieved at date in the field of cross-border co-operation, there are still legal obstacles or restrictions that prevent regional and local authorities from establishing more far-reaching cross-border, inter-regional and transnational co-operation activities and from directly managing related EU-support programmes (like INTERREG).

The creation of a coherent EU-wide legal framework for decentralised Transeuropean co-operation would therefore be an important step that helps to further enhance this important aspect of the wider European integration process.

1. Main factors influencing on the design of practical solutions for realising a Community-law based instrument for decentralised co-operation

The technical reports covering all EU-borders and those of selected Accession Countries (Slovakia, Poland) have allowed establishing a first overview on the general legal framework conditions and the quality of specific legal instruments for decentralised co-operation. Based upon this, a number of provisional conclusions will be drawn (section 1.1.).

These provisional conclusions can be considered the “main factors” that influence the design of practical Community level solutions for a new co-operation instrument that might be pursued at EU-level (section 1.2.).

1.1. Overview on existing legal framework for decentralised Transeuropean co-operation and provisional summary conclusions

Legal framework conditions for decentralised Transeuropean co-operation have mostly been elaborated for decentralised cross-border co-operation. They are made up of European-wide standards that are not directly applicable in practice (Madrid Outline Convention) and a plethora of different other directly applicable legal instruments, partly resulting from country-specific legislations (domestic powers, other legislation) and partly from inter-state agreements or treaties covering specific border zones.

This rather heterogeneous and incomplete legal framework has also direct implications for the cross-border, inter-regional and transnational co-operation in the context of Community support programmes.

Conclusion no. 1: There is a general need to create appropriate legal framework conditions not only for decentralised cross-border co-operation, but also for inter-regional and transnational co-operation.

European-wide standards for decentralised co-operation, not directly applicable in practice

With the adoption of the “**Madrid Outline Convention**” on Transfrontier Co-operation between Territorial Communities or Authorities¹ by the Council of Europe in 1980, a framework of reference for legally structuring cross-border co-operation has been created.² The Madrid Outline Convention, which has been ratified by more than 25 Member States of

¹ Article 2 of the Outline Convention defines the term “territorial communities and authorities” as “communities/authorities or bodies which exercise regional and local functions”.

² Council of Europe: European Outline Convention on Transfrontier co-operation between territorial communities (Madrid Outline Convention). European Treaties Series /106, Strasbourg 1999. In its Annex, the Madrid Outline Convention proposes 5 model agreements for the promotion of cross-border co-operation and 6 outline agreements on cross-border co-operation adapted to the needs of regional and local authorities.

the Council of Europe, was further improved by a “First Additional Protocol” that came into force on 1.12.1998.³

The main limitation of the Madrid Outline Convention and its First Additional Protocol is that its provisions and the model agreements are not directly applicable. They are only a framework of reference. Additional inter-state “application” agreements had therefore to be concluded for “overcoming” the diversity of national powers and legal prescriptions governing cross-border co-operation along the different borders (especially regarding public law-based co-operation).

The initial “Terms of Reference” for the study and the “Inception Report” have suggested examining a specific solution that could be promoted at Community level, **the EU's accession to the Madrid Outline Convention of the Council of Europe**. This potential solution encounters however three basic problems:

- The EU lacks of a statute that is comparable to a sovereign nation state. Due to that, it must be questioned whether the European Union could in principle be entitled to join the Convention of the Council of Europe.
- An adhesion is restricted by the fact that several EU-Member States have not yet ratified the Madrid Outline Convention. This makes it impossible for the Union to adhere the Convention on ground of a joint mandate that is backed by all EU-Member States.
- The European Union also lacks of similar state-like powers with regard to territorial authorities. This raises the question whether Article 1 of the Madrid Outline Convention⁴ could be practically applied by Community institutions.

Assuming that all the above-mentioned problems could be resolved, a number of additional aspects would further complicate this potential solution. Even if the EU could adhere to the Madrid Outline Convention, an adoption of secondary Community law would still be necessary in order to practically apply the general provisions of the Convention. Only a specific EC-regulation (or directive) could create solid legal foundations for co-operation in general and/or for truly joint operational management of EU-programmes (especially for INTERREG) as well as for a sound handling of European funding under a single responsibility.

Conclusion no. 2: Due to the limited practical applicability of the Madrid Outline Convention provisions and the range of problems associated with a potential adherence of the European Union to the Convention, it is highly recommended to exclude this option from the scope of practically realisable solutions that could help improving legal framework conditions for decentralised co-operation.

³ The Protocol “sharpened” the Convention by substituting as much as possible facultative expressions and advocated the setting up of permanent institutions for cross-border co-operation either based upon public or private law.

⁴ Council of Europe, Madrid Outline Convention, Article 1: Each Contracting Party undertakes to facilitate and foster cross-border co-operation between territorial communities or authorities within its jurisdiction and territorial communities or authorities within the jurisdiction of other Contracting Parties. It shall endeavour to promote the conclusion of any agreements and arrangements that may prove necessary for this purpose with due regard to the different constitutional provisions of each Party.

Original domestic powers of territorial authorities regarding decentralised cross-border co-operation.

In several **Federal States of the European Union**, only the state-like territorial entities of **Germany** (Länder) and **Belgium** (Regions, Cultural Communities) have general powers to engage in cross-border co-operation that can be based upon private and public law. In **Austria**, the Länder have only the possibility to get involved in cross-border co-operation on ground of private law. Other regional and local authorities in all of these 3 Federal States have the possibility to launch cross-border co-operation mostly on ground of private law.

In **France**, different internal reforms of the domestic law on territorial authorities and specific government decrees (1992-1995, 1999, 2001) have substantially improved the possibilities of regions, departments and municipalities to become directly involved in decentralised co-operation. First, however still hesitant steps in this direction, can also be observed in the regionalised EU-Member State **Italy**⁵.

In **several EU-Member States (Netherlands, Sweden, Finland, Denmark)**, local authorities have - within certain limits - the powers to engage in cross-border co-operation on ground of private law. Very early this possibility was de facto used by local authorities in the Netherlands, whereas in Scandinavian countries, this opportunity was frequently limited due to the principle of locality.

In **Greece**, however, the situation is rather contradictory: The domestic legislation allows local authorities to have autonomy for organising cross-border co-operation structures and to fund such initiatives, but they need to take permission from regional authorities (representing the central government) on some steps they have to take in order to implement co-operation activities.

In **Spain** and a larger number of **centralised governments systems** within the European Union (**United Kingdom, Ireland, Portugal, Luxembourg**), existing regional and/or local authorities have no explicit original domestic powers to become involved in decentralised cross-border co-operation.

In the context of the adherence process to the Madrid Outline Convention during the 1990ies, future **EU-Member States of Central and Eastern Europe** (Accession Countries) have – as a first step – frequently changed the country-internal definition of powers allocated to territorial authorities and recognised their right to become directly involved in decentralised cross-border co-operation (e.g. Slovakia, Poland).

Conclusion no. 3: The European-wide diversity of domestic powers allocated to territorial authorities in the field of cross-border co-operation will always continue to exist. It will not be possible to adapt or harmonise them in order to create an EU-wide homogenous legal standard for decentralised cross-border co-operation.

⁵ Constitutional reform implemented by the state law no 131 of 5th June 2003: It recognised to the region the power of concluding agreements with other States and their sub-entities in the cases and form defined by state laws.

*Treaties or agreements on cross-border co-operation concluded
between two or a greater number of States.*

The provisions of existing inter-state agreements or treaties on cross-border co-operation generally strengthen legal framework conditions for cross-border co-operation. In the respective areas covered, they create specific legal framework conditions and co-operation instruments that might be used by territorial authorities.

In Scandinavia the “**Treaty of Helsinki**” (1962) and the “**Nordic Convention on Cross-border Co-operation** (1977) laid the foundations for decentralised co-operation across borders of Denmark, Sweden, Finland and Norway. On ground of these agreements, local authorities are entitled to co-operate mostly on ground of private-law, as the specific legal framework conditions in Scandinavian states are not suitable for setting up public-law based inter-municipal co-operation entities across a border.

Along many European borders, a larger number of **inter-state agreements or treaties based upon the Madrid Outline Convention of the Council of Europe** have been concluded during the past 15 years that provide for cross-border co-operation (i.e. application agreements). These agreements enable territorial authorities to become involved in cross-border co-operation and often also provide for specific co-operation instruments.

Despite this common framework of reference, practically all inter-state agreements limit the possibilities of territorial authorities to engage in decentralised cross-border co-operation to the scope of nationally available powers. This only allows establishing co-operation on ground of the smallest common denominator (minimum standard co-operation instead of generalised co-operation).

In addition, the factual implications of the legal instruments offered in these agreements are quite different. A provisional “ranking order” that can be established among several of the most important agreements shows the following picture:

- **The most far reaching agreements** provide territorial authorities with a broader range of co-operation instruments, among which is also the possibility to establish a new and public law-based co-operation structure (*ex-novo* structures). Examples with application experience are the Anholt-Agreement (1991/1993, D/NL), the Benelux-Convention (1986/1991, B/NL/L), the Karlsruhe-Agreement (1996/1997, D/F/L/CH) and the Mainz-Agreement (1996, D/B).⁶ An agreement without practical application experience yet is the agreement between Belgium and France (2002).
- **Developed agreements** also provide territorial authorities with a broader range of co-operation instruments, but territorial authorities can only use legal structures existing on one side of the border if they wish to set up public-law based co-operation structures (*no ex novo* structures). An example with application experience is the Bayonne-Treaty (1995/1997, E/F) and an agreement without practical application experience is the Valencia-Agreement (2003/2004, E/P).
- **Comparatively weaker agreements** normally provide inter-state commissions on cross-border co-operation and provide territorial authorities with a very limited range of co-operation instruments (e.g. conclusion of co-operation conventions or establishment of private-law based co-operation structures; *no* public-law based co-

⁶ Concluded between the Länder Nordrhein-Westfalen and Rheinland-Pfalz in Germany and the Walloon Region and the German-speaking Community in Belgium: The agreement is similar to the Isselburg-Anholt agreement and regulates cross-border co-operation between the regional entities and their local authorities.

operation). Examples with application experience are the Rome-Agreement (1993, F/I), the Vienna-Agreement (1993, A/I), the Basel-Agreement (2000, D/F/CH) and a larger number of inter-state agreements that were concluded by Slovakia⁷ or Poland⁸ with their respective neighbouring countries.

Inter-state agreements have created a considerable diversity of legal-instruments that are made available for decentralised cross-border co-operation in the EU. This multitude of co-operation instruments explains why permanent cross-border co-operation structures in Europe still develop in a variety of forms and with very different legal capacities. Especially the provision of “*neutral*” public law based co-operation instruments (*ex novo* structures) in inter-state agreements and their actual use is still the exception. Experience only exists in the context of the Benelux-Convention, the Anholt Agreement and the Karlsruhe Agreement.

Conclusion no. 4: Co-operation can mostly be established on ground of private law and less frequently on ground of public-law. Co-operation based upon “neutral” public-law based “ex novo” structures is still exceptional. Realistically, it will not be possible to adapt all existing inter-state agreements in a way that a common European-wide legal standard for establishing decentralised co-operation is created.

*Other legal instruments that are
“de facto” used in decentralised Transeuropean co-operation*

These legal instruments are not explicitly designed for co-operation among territorial authorities and are mostly defined by country-specific laws or on ground of Community-wide applicable law.

The **associative private law of different countries** is in many cases used in the field of cross-border co-operation (e.g. creation of permanent cross-border structures; project-level co-operation), but also for establishing structures in the field of inter-regional and transnational co-operation (permanent networks; project-level co-operation).

Within the wider context of associative private law, an interesting progress could be made if the proposal for a Council regulation on a Statute for a “European Association” (EA) would be adopted. It could facilitate border-crossing co-operation among national associations for a common purpose.

Another legal instrument based on Community law is the **European Economic Interest Grouping (EEIG)**. It is not suitable for legally structuring co-operation that aims at managing and implementing EU-support programmes (e.g. INTERREG), but it can be applied for cross-border, inter-regional or transnational projects with an economic or commercial nature. This is mostly due to the EEIG-regulation’s narrow focus on enhancing EU-wide co-operation between private law-based companies. But also in the field of project-level cross-border co-operation, the experience of INTERREG IIA⁹ has shown that the legal instrument has clearly

⁷ Agreements on Transfrontier co-operation between Territorial Communities or Authorities Slovak Republic/Poland (1994/1995), Slovak Republic/Czech Republic (2000/2001), Slovak Republic/Ukraine (2000/2001), Slovak Republic/Hungary (2001/2001). The Outline Treaty between the Slovak Republic and the Republic of Austria (2003) has not yet entered into force.

⁸ Agreements on cross-border co-operation: Polish Republic /Belarus (1992), Polish Republic /Ukraine (1993) Polish Republic /Slovak Republic (1994), Polish Republic /Czech Republic (1994) Polish Republic / Republic of Lithuania (1995).

⁹ Provisional summary findings of the INTERREG II ex-post evaluation.

proved its practical limits (e.g. time- and resource consuming set-up process, difficulties in handling and EEIG, EEIG-structure is not always justified for the purpose of the project).

Conclusion no. 5: Both private-law based options (associative law, EEIGs) can be further improved at Community level, which would allow creating additional European-wide instruments that can be applied in the context of decentralised co-operation.

*Implications for Transeuropean co-operation
in the context of Community support programmes (e.g. INTERREG)*

The diversity and partial weaknesses of legal framework conditions have direct implications mostly for the management and implementation of Community programmes, but to a lesser extent in the context of EU-projects.

Permanent cross-border co-operation structures can, in the large majority of cases, not become directly responsible for and substantially involved in the **management and implementation of INTERREG IIIA programmes**. One important reason explaining this is the very restricted provision of public-law based co-operation instruments and the predominant existence of private law-based co-operation instruments. Only in the exceptional case when private law-based cross-border co-operation structures had clarified the question of final liability, they were entitled to manage an INTERREG IIIA programme. A more far-reaching involvement of cross-border structures in programme level co-operation can mostly be found along those borders, where a strong public-law based cross-border co-operation on “equal footing” is made possible (D/F-PAMINA, D/NL, D/NL/B) or where treaties created specific conditions in this respect (Ireland/Northern Ireland¹⁰).

Compared to strategic level co-operation (management & implementation of programmes), the current experience of INTERREG IIA¹¹ shows that **quality and intensity of project-level co-operation** was not influenced by an absence of appropriate legal framework conditions that could help to structure or further institutionalise co-operation. Only a minority of the more than 10.000 realised INTERREG IIA projects have established specific legal structures for jointly managing their cross-border initiatives.¹² In those cases where legal structures have been established for INTERREG IIA projects, they were mostly based upon the national law of one partner country and only in exceptional cases on the Community regulation on “European Economic Interest Groupings” (EEIGs).

Conclusion no. 6: Progress regarding more stable legal frameworks conditions for decentralised co-operation in the context of Community support programmes should mostly concentrate on strategic-level co-operation, i.e. the management and implementation of EU-support programmes. This requires however a public-law based solution for decentralised co-operation.

¹⁰ The “Good Friday Agreement” of 1998 has led to the creation of several cross-border co-operation bodies, including a Special European Union Programmes Body (SEUPB). This border specific permanent body has direct responsibility for the relevant EU-cross-border programmes.

¹¹ Provisional summary findings of the INTERREG II ex-post evaluation.

¹² Reasons explaining this are: limited time horizons of the projects, the nature of the project did not require formalization, other flexible solutions have been found (informal joint arrangements, lead partner principle, ad-hoc consortia, joint management boards etc.)

1.2. Solutions that could be promoted within the European Union

The above made summary conclusions (see 1.1.) clearly show that a certain “common denominator” is needed in order to further enhance the development of legally more solid decentralised Transeuropean co-operation. This is true for private law-based co-operation, but especially for public law-based co-operation.

Any improvement in this direction should create legal framework conditions that go beyond the partial solutions offered in existing national law and/or inter-state agreements.

An improvement should also not exclusively focus on improving legal framework conditions for Transeuropean co-operation within INTERREG-programmes. There are several reasons for that.

- If the rules for EU-Structural Funds programmes such as INTERREG should be modified (restricted territorial eligibility etc.), the new Community instrument would not be generally applicable any more. This would again lead to a trend that differentiated co-operation standards emerge along different EU-borders.
- A solution only for INTERREG-type programmes does not provide sufficient guarantees that related co-operation structures are *sui generis* decentralised structures. Other actors such as central state administrations or Community-level administrations are normally involved in programme level management and would therefore be members of such a co-operation structure. In addition, this bears the risk that programme management could still be dominated by central state actors.
- There are also other Community support programmes that need adequate legal solutions for programme-level and/or project-level co-operation among territorial authorities.

As a consequence of the above-said, we recommend basically two solutions that can be practically promoted at European level:

- **An “incremental solution”**, which consists of a step-by-step improvement of existing private-law based options for Transeuropean co-operation.
- **A “strategic/political solution”**, which consists of elaborating a new Community legal instrument for general Transeuropean co-operation based upon public law.

The incremental solution:

The incremental solution could take as a point of departure existing private law-based co-operation instruments that are defined by Community law. These instruments would need to be changed in a way that also territorial authorities could be able to fully use them in the context of cross-border, inter-regional and transnational co-operation. This would allow further improving and enlarging the scope of those private-law based co-operation solutions that are currently provided for in national laws or most inter-state agreements.

- A change of the currently existing EC-regulation on European Economic Interest Groupings (EEIGs) of 1985 can follow two basic options: The first option consists of preserving the essence of the current EEIG-approach and of clarifying specific

provisions that are still a source of problems for public-law based actors.¹³ The second more radical option would consist of reforming more fundamentally the existing EEIG-regulation, especially through introducing specific types of groupings that can be set up for economic co-operation¹⁴.

- A change of the EC-regulation on the Statute for a “European Cooperative Society” (SCE)¹⁵ adopted in July 2003 and the modification of a proposal for a Council regulation on a Statute for a “European Association” (EA), not yet adopted. Changes in both texts should – at least – explicitly foresee that territorial authorities and existing cross-border structures are actors entitled to establish an these structures.

A wider scope of available private-law based solutions for cross-border, inter-regional and transnational co-operation at EU-level could have a positive impact on project-level co-operation realised in the context of EU-programmes. But it will certainly not resolve problems that are related to a strategic-level management of Community support programmes (especially under INTERREG), as the “purpose” of the revised Community legal instruments still remains too narrow or specific and because of the lacking public-law based nature of these co-operation entities.

So even if all of the above-mentioned steps could be realised, they would only result in a partial improvement of the current legal framework conditions for co-operation. In addition, one has also to take into consideration the lengthy and complicated revision process of all these regulation. This could endanger a timely application of the entire set of reforms at the beginning of the new programming period after 2006.

The political / strategic solution:

The political / strategic solution would create a new Community-law based instrument that establishes a homogenous and EU-wide directly applicable legal basis for further promoting generalised Transeuropean co-operation among territorial authorities (cross-border, inter-regional and transnational co-operation).

This instrument would lay down the basic principles for public law-based cross-border, inter-regional and transnational co-operation. The new legal framework instrument would allow flexibility in order to adapt decentralised co-operation to the specific requirements and different needs. It would therefore provide for specific co-operation structures that can be set up by territorial authorities. The basic principles shall also provide for generalised democratic control and publicity of public law based co-operation.

This solution offers the most significant added value for the Community, as public-law based cross-border co-operation only exists along a very limited number of borders and is not at all possible in the framework of inter-regional and transnational co-operation. By substantially expanding and improving the current legal framework conditions for public law-based co-operation, concrete steps towards a model for new European governance could be made.

The following chapter of this paper will further elaborate the basic contents that need to be considered in a new Community instrument for generalised, public-law based Transeuropean co-operation among regional and local authorities.

¹³ Inclusion of local/regional authorities as potential actors that can participate in EEIGs and reduction of the State's possibility to prohibit or restrict participation in EEIGs on the ground of public interest (Article 4). Review of article 23 (1), specifying the liability of EEIG members.

¹⁴ Groupings for private-to-private co-operation (current EEIG); groupings for public-to-public co-operation; groupings for public-private partnership co-operations (PPPs).

¹⁵ Council regulation EC no 1435/2003, 22 July 2003.

2. Contents of a new Community-law based instrument for generalised Transeuropean co-operation based upon public law

2.1. The legal fundament of a new Community instrument and its basic principles

Before elaborating the details of a future Community instrument promoting public-law based Transeuropean co-operation, a number of crucial issues need to be briefly addressed:

- The legal base of the new Community instrument and the regulatory instrument used for implementing its provisions (legal fundament).
- The basic principles that should govern the new Community instrument.

The legal fundament of the new Community instrument

The **legal base** for the Community instrument should realistically refer to the revised EC-treaty provisions after the full entry into force of the Nice Treaty. In the consolidated version of the **Treaty on the European Community**, the following Articles could be used:

- **Article 159 (3) EC-Treaty**¹⁶ in Title XVII “Economic and Social Cohesion”, as amended by the Treaty of Nice. This option has the advantage that the co-decision procedure applies and that decision making within the Council is now made by qualified majority (Art. 251). A disadvantage is that the scope covered by the wording “*specific action*” is not fully clear and that doubts regarding the applicability of this legal base could be raised.
- **Article 308 EC-Treaty**¹⁷, which is the traditional means for launching new actions that are not covered by the current Treaty provisions. A clear disadvantage of this option is that the Council will decide unanimously, which can quickly create a “blockage situation” of a proposal for the legal instrument.

If the **Treaty establishing a European Constitution** should come into force so timely that its provisions could be applied to adopt the new Community legal framework instrument, the Article III-117 (3) of the policy on “Economic, Social and Territorial Cohesion” can be used.¹⁸

¹⁶ EC Treaty, Art. 159 (3): If specific conditions prove necessary outside the funds and without prejudice to the measures decided upon within the framework of the other Community policies, such actions may be adopted by the Council acting in accordance with the procedure referred to in Article 251 and after consulting the Economic and Social Committee and the Committee of the Regions.

¹⁷ EC Treaty, Art. 308: If action by the Community should prove necessary to attain, in course of the operation of the common market, one of the objectives of the Community, and this Treaty has not provided the necessary powers, the Council shall, acting unanimously on a proposal of the Commission and after consulting the European Parliament, take the appropriate measures.

¹⁸ EU-Constitution, Article III-117 (3): European laws or framework laws may establish any specific measure outside the Funds, without prejudice to measures adopted within the framework of the Union's other policies. They shall be adopted after consultation of the Committee of the Regions and the Economic and Social Committee.

Once the most appropriate legal base has been chosen, **a regulatory instrument needs to be selected.**

- If the **legal base** is the **Treaty on the European Community** after Nice, the most appropriate regulatory instrument would be an **EC-Regulation**.
- If the **legal base** should be the **European Constitution**, the most appropriate regulatory instrument would be a **European Law**.

Both regulatory instruments have the advantage to be generally applicable and compulsory in all their parts and would come into effect immediately after their adoption without a lengthy transformation process.

Basic principles governing the new Community legal instrument

The “**considerants**” of a future EC-Regulation (European Law) **should define a set of basic principles** governing the new Community legal instrument. There are a number of important issues that should at least be mentioned.

The new Community law-based instrument established by this EC-Regulation (European Law) ...

- aims at further strengthening the legal framework conditions for general and decentralised cross-border, inter-regional and transnational co-operation among territorial authorities in Europe (Transeuropean co-operation).
- will, by this, make an important contribution to realise the fundamental objectives and tasks of the European Union, as defined in the current Treaty¹⁹ (or in the future European Constitution²⁰).
- aims, in particular, at promoting and facilitating decentralised Transeuropean co-operation among territorial authorities of EU-Member States that is based upon public law and create Community-wide applicable rules for public law-based co-operation.
- aims, within its possibilities, at stimulating decentralised, public-law based cross-border, inter-regional and transnational co-operation between territorial authorities of EU-Member States and territorial authorities located in neighbouring Third Countries. In this wider context, especially the specific situation for cross-border co-operation along the actual and future external EU-borders shall be duly taken into account.
- shall respect and promote the principles of subsidiarity and partnership and follow a bottom-up approach, both in the context of decentralised Transeuropean co-operation within the EU and also in co-operation involving partners from Third Countries, and by this contribute to realise a new model for European governance.

¹⁹ Consolidated version of the Treaty establishing the European Community: Article 2 in relation and the following Considerants (“Determined to lay the foundations of an ever closer union among the peoples of Europe.” “Resolved to ensure the economic and social progress of their countries by common action to eliminate the barriers which divide Europe.” “To strengthen the unity of their economies and to ensure their harmonious development by reducing the differences existing between the various regions and the backwardness of the less favoured regions.”).

²⁰ European Constitution, Article 3 (The Union’s objectives) and Article 4 (Fundamental freedoms and non-discrimination):

- will, by this, help to simplify inter-administrative relations within the European Union.
- shall ensure that through public-law based Transeuropean co-operation, no new tier of territorial self-government will be created.
- shall avoid any harmful competition between co-operation options offered under this regulation and other public law based co-operation solutions defined on ground of national law or existing inter-state agreements.
- shall be flexible in order to respect the diversity of legal framework conditions for decentralised public-law based co-operation in different EU-Member States and in neighbouring Third Countries.
- shall define a number of “general provisions” that need to be respected throughout the EU by all forms of decentralised and public-law based Transeuropean co-operation.
- shall define a number of “specific provisions” that further specify the precise operational conditions and modalities governing an establishment of different solutions for public law-based Transeuropean co-operation, including the elaboration, management and implementation of EU-support programmes.
- will, by this, help to respect the different needs and potentials of territorial authorities in the field decentralised Transeuropean co-operation.

2.2. General and specific provisions of an EC-Regulation establishing a new Community legal instrument for decentralised, public-law based Transeuropean co-operation

This section will identify the most important provisions (Articles) that need to be covered by a future EC-Regulation.

The Regulation itself could be separate between “general provisions” that govern decentralised Transeuropean public law-based co-operation in general and “specific provisions”, which specify the operational aspects related to the use of individual co-operation tools.

For each provision of the future EC-Regulation, a brief general explanation will be given. The explanation is normally linked to a concrete suggestion for an Article-text that could be included into the Regulation, which is shown in a grey-shaded text box below.

General provisions governing public law-based Transeuropean co-operation

The EC-Regulation on the new Community-law based instrument should contain a limited number of general provisions, which define the basic approach adopted with regard to decentralised Transeuropean co-operation based upon public law.

A first article should clearly highlight the **wider objective of the EC-Regulation**. The objective is the creation of a new Community legal instrument that establishes a solid basis for decentralised and public law-based Transeuropean co-operation among territorial authorities of EU-Member States (Article 1).

Article 1:

(1) The objective of the present Regulation is to create a new and Community-wide applicable legal instrument for decentralised Transeuropean co-operation.

(2) The Community instrument enables to establish public-law based cross-border, inter-regional or transnational co-operation among territorial authorities of EU-Member States.

In another introductory article, the EC-Regulation should **further specify the “purpose” of the new Community legal instrument** within the wider context of decentralised Transeuropean co-operation. The EC-Regulation will allow decentralised public law based co-operation on all matters that are related to general cross-border, inter-regional and transnational co-operation (Article 2).

The future Community instrument should avoid a purpose-formulation that restricts public-law based co-operation to the sole range of legal competences that is available to regional or local authorities on ground of their respective national context. If this would happen, the Community instrument would repeat a weakness of many inter-state agreements, which allow only establishing a minimum standard co-operation instead of generalised co-operation²¹.

Article 2:

The specific purpose pursued by the Community legal instrument is to initiate and to further develop public-law based co-operation, which covers all matters that are of general relevance for decentralised cross-border, transnational and inter-regional co-operation, both at the strategic / programmatic level and at the level of individual projects.

Due to the diversity of constitutional framework conditions in EU-Member States, especially regarding the different national provisions for regional and local self-government, the Regulation should be flexible with regard to the “means” by which the specific purpose of the Community instrument can be put into practice.

An Article of the Regulation should therefore generally introduce the specific tools that are made available to territorial authorities of EU-Member States for decentralised, public law-based Transeuropean co-operation (Article 3). It should at least define two basic options that enable territorial authorities to legally establish decentralised Transeuropean co-operation structures:

- A legal option that allows establishing a new structure at European level for far reaching public law-based co-operation that is governed by public law (i.e. the “European Special Purpose Authority” or ESPA)

²¹ Co-operation only on ground of the smallest common denominator.

- A legal option that allows – as a multi-functional tool – territorial authorities to establish various types of less far reaching legal solutions for public-law based co-operation structures (i.e. the “European Public Law Agreement” or EPLA).

The Article should also highlight that the legal tools of this Regulation will not prohibit regional / local authorities of EU-Member States to use other legal instruments for public law-based co-operation that already exist under different national legislations or have been established by virtue of formal inter-state agreements (Article 3).

Article 3:

(1) In order to achieve the purpose as defined in Article 2, territorial authorities of EU-Member States may establish public law-based co-operation structures by using the following tools: “European Special Purpose Authorities” and “European Public-Law Agreements”.

(2) These legal options for decentralised and public-law based co-operation provided for in this Regulation shall not prohibit territorial authorities of EU-Member States from using other existing legal instruments for public-law based co-operation.

The general provisions should highlight that the Regulation will create a new legal instrument for public-law based Transeuropean co-operation and not a possibility for establishing a new tier of territorial self-governance.

Therefore, an Article should clearly prohibit that public-law-based co-operation on ground of this Regulation may provide for an independent execution of sovereignty rights of whatever kind on foreign territory (Article 4).

This provision will not create an obstacle for an effective enforcement of decisions adopted in the context of public-law based co-operation. The EC-Regulation will allow that sovereignty rights can actually be delegated in the context of public-law based decentralised co-operation. Two specific solutions will be offered for their effective execution in the context of the individual co-operation tools provided for by this Regulation:

- In the context of an ESPA, the members of the public law based co-operation structure (the territorial authorities) will be obliged to make use of their domestic powers and to take all other necessary initiatives on either side of the border that allow an effective execution of the structure’s tasks and decisions (see “specific provisions” below).
- In the context of an EPLA, a territorial authority will be given the possibility to establish a delegated execution of own tasks by another territorial authority, however in the name of the delegating authority and according to its directives/instructions (see “specific provisions” below).

In addition, other actors such as the states may transfer / delegate certain tasks to decentralised public-law based co-operation structures set up on ground of this Regulation.

Article 4:

(1) A public law-based co-operation structure established on ground of this Regulation can not independently execute sovereignty rights on foreign territory.

(2) If sovereignty rights are transferred or delegated to a co-operation structure established on ground of this Regulation, they can be executed on foreign territory only by members that are directly involved in the co-operation.

Several articles of the general section in the EC-Regulation should lay down basic provisions that define:

- where co-operation structures with an own legal personality will have their registered seat and offices (Article 5),
- which is the applicable legislation for a supervision of a public-law based co-operation structures (Article 6),
- which are the applicable rules in case a co-operation structure will be acting as a legal employer (Article 7).

It needs however to be highlighted that EU-Member States must create adequate framework conditions allowing a development of stable working conditions for joint staff that is employed by a co-operation structure set up under this Regulation. In this context, the most important provisions that need to be created / adapted in national laws are the possibility for an unlimited duration of staff delegation from one partner area to the area where the co-operation structure has its legal seat and specific rules / exemptions regarding fiscal and social security obligations.

Article 5:

A co-operation structure with an own legal personality created on ground of this Regulation must have its registered seat and office in a Member State of the European Union. It may be transferred from one Member State to another subject to certain conditions.

Article 6:

The supervision of co-operation structures with an own legal personality created on ground of this Regulation will be carried out according to the legal provisions of the EU-Member State in which the structure has its registered seat and office.

Article 7:

(1) Each co-operation structure with an own legal personality based on public law that is created on ground this Regulation shall have the capacity to act as a legal employer.

(2) The Member States of the European Union will take all necessary measures to ensure that joint staff employed by a public-law based co-operation structure created on ground this Regulation is provided with stable and secure working conditions.

Specific provision governing the individual legal options for public-law based co-operation

The EC-Regulation on the new Community-law based instrument should also contain a number of articles that lay down the conditions and operational modalities for an establishment of public law-based co-operation in the context of Transeuropean co-operation.

A first set of Articles contained in the section “specific provisions” should stipulate **the conditions and operational modalities** that allow territorial authorities of EU-Member States to establish a public-law based “**European Special Purpose Authority**” (ESPA).

An ESPA is a new public-law based co-operation structure with an own legal personality (*ex novo* structure). An ESPA can be established among territorial authorities for very advanced and substantial cross-border, transnational and inter-regional co-operation. Territorial authorities can make use of this structure in the context of a strategic / programmatic level co-operation, but also in the context of advanced project level co-operation (Article 8).

As such, the ESPA would enjoy a status – at European level - that is comparable to

- public law-based co-operation entities that can currently be established between territorial authorities of one EU Member State (e.g. inter-municipal co-operation structures),
- public law-based cross-border co-operation structures that can be established between territorial authorities of different EU-Member States on ground of existing inter-state agreements (e.g. *ex novo* cross-border co-operation structures).

The ESPA can be delegated substantial tasks and take compulsory decisions that affect the members of the structure and citizens living in the area covered by the structure. In order to provide for an effective enforcement of tasks allocated to / decisions taken by an ESPA, its members (the territorial authorities) will be obliged to make use of their domestic powers in order to take all necessary measures. The provisions should however prohibit that an ESPA is able to issue laws or administrative regulations of a general nature that create binding effects or obligations for Third parties (Article 9).

An ESPA is the preferred actor that can be directly entrusted with the overall elaboration, management and implementation of an EU-support programme for its area (Article 10). An ESPA is entitled to take over all the functions and tasks related to the management and implementation of EU-programmes, i.e. it can act as Managing Authority and as Paying

Authority, it can run the joint programme secretariat with own staff and ensure ongoing programme monitoring tasks. An ESPA shall also

- be responsible for the elaboration of a cross-border EU-programme for a larger border area, of which its own area of operation forms part,
- participate in the elaboration of EU-support programmes covering larger transnational areas, especially if its own area of operation is directly concerned by the programme.

Territorial authorities of EU-Member States that wish to co-operate jointly in the context of an ESPA will have to elaborate statutes (rules) that define more in detail the organisational set-up and all other technical issues of this structure. These statutes need to be registered and approved by the competent administrative authorities of the EU-Member State in which the ESPA will have its seat.

The EC-Regulation should enumerate the compulsory issues that need to be regulated by future ESPA-statutes (Article 11). The provisions in the list should be precise regarding the general requirements but not make detailed prescriptions in order to create a sufficient level of “flexibility” and “liberty for contractual agreement”. The list of provisions can either be part of the Article itself or included in the Regulation as a Technical Annex (for this case see the box below: ANNEX I).

Article 8:

(1) In the context of decentralised cross-border, inter-regional and transnational co-operation, territorial authorities of EU-Member States may establish a „European Special Purpose Authority” (hereinafter referred to as ESPA).

(2) An ESPA is to be a body with an own legal personality based upon public law, which can be established for strategic /programmatic co-operation and project-level co-operation.

Article 9:

(1) An ESPA can be attributed extensive executive capacity in order to carry out jointly among its members essential public tasks related to cross-border, inter-regional and transnational co-operation.

(2) An ESPA can take own decisions that are binding for its members.

(3) The members of an ESPA are obliged towards the Authority to make full use of their domestic powers and to take all other necessary initiatives that allow an effective execution of the ESPA’s tasks and decisions.

(4) An ESPA may not issue legally binding rules (laws) or administrative directives of a general applicable nature that create obligations for Third Parties.

Article 10:

An ESPA can, among all other tasks, be generally entitled to elaborate, manage and implement EU-programmes supporting cross-border, transnational and inter-regional co-operation.

Article 11:

(1) An ESPA shall draw up statutes (rules), which need to be registered and approved by the competent administrative authorities of the EU-Member State in which the ESPA will have its seat.

(2) The statutes need to regulate a number of compulsory issues, which are listed in a technical annex to this Regulation (Annex I).

ANNEX I:

List of compulsory issues to be regulated by statutes for and ESPA

A „European Special Purpose Authority” (ESPA) can be established for strategic /programmatic and project-level cross-border, inter-regional and transnational co-operation among territorial authorities of EU-Member States. The ESPA is a body with an own legal personality based upon public law. Its statutes need to define at least the following aspects:

- **Legal personality of an ESPA, which needs to be registered in the EU.**
- **The members of an ESPA.**
- **The responsibilities and tasks of an ESPA, including the management of EU-co-operation programmes.**
- **The name and the seat of an ESPA.**
- **The responsibilities of the different decision-making bodies of an ESPA and the number of representatives composing them.**
- **The number of members necessary for decision making (quorum) and the decision making procedures.**
- **Legal obligation and legal liability of the members of an ESPA.**
- **The applicable law of enforcement in case of claims on the other side of a border.**
- **The language(s) used for proceedings and publicity of an ESPA.**
- **Provisions that guarantee the democratic legitimacy of an ESPA (publicity of the meetings, provision of information, responsibility vis à vis the citizens, wider legal liability).**
- **The procedures for budget management / accounting, financial control and financial liability.**
- **The modalities for determination of the financial resources for an ESPA.**
- **Procedures for an accession of new members or a withdrawal of actual members from an ESPA.**
- **The place of jurisdiction in case of legal dispute (recommended: country of the registered seat).**
- **Provisions for the dissolution of an ESPA.**
- **Provisions for winding-up an ESPA after its dissolution.**
- **In addition, statutes for an ESPA may foresee any other necessary provisions as appropriate (e.g. national authorities delegating tasks to an ESPA).**

A second set of Articles should stipulate the **conditions and operational modalities that allow** territorial authorities in the EU **to conclude** among them “**European Public Law Agreements**” (EPLA). An EPLA will generally allow establish less extensive forms of co-operation, as not all cross-border, transnational or inter-regional co-operation initiatives might feel the need to set up a far-reaching ESPA.²²

An EPLA can generally be concluded between territorial authorities of EU-Member States, but also between already existing public law based co-operation structures²³ and co-operation structures set up on ground of this regulation.²⁴ An EPLA needs to adopt the written form and will offer – as a multi-functional tool – **three basic options** that allow structuring and backing decentralised cross-border, transnational and inter-regional co-operation, both at strategic level and at the level of individual projects (Article 12).

Option 1: An EPLA can regulate a delegation of public tasks among territorial authorities of different EU-Member States (Article 13).

- An EPLA can be chosen for regulating a delegation of general or specific tasks among two and more territorial authorities of EU-Member States. This delegation of tasks can be agreed for decentralised cross-border, transnational and inter-regional co-operation, both in the framework of strategic level co-operation and in the context of individual projects.
- Through an EPLA, a territorial authority from one EU-Member State can delegate the execution of public tasks to a territorial authority of another EU-Member State only, if these tasks are executed in the name and under the direction of the delegating territorial authority and if the country-specific-law of the delegating authority is observed. It will not be possible to conclude an EPLA that provides for a delegation of tasks from one territorial authority to another, if the latter executes the delegated tasks in its own name.
- In order to increase legal security for a delegation of public tasks, an EPLA concluded for this purpose must respect a limited number of basic prescriptions that can be listed in a specific annex that is added to this Regulation (see ANNEX II).

Option 2: An EPLA can provide for the establishment of European Public Interest Groupings (EPIG), for which some specific provisions are defined in the EC-Regulation (Article 14).

- An EPIG is a specific public law based structure that allows to legally structuring decentralised co-operation in all fields of common public interest. An EPIG can be

²² The rather extensive solution of a public law-based special purpose authority (ESPA) might not always make sense for legally structuring cross-border co-operation initiatives at a start-up-phase or along borders that still lack of substantial experience in cross-border co-operation (also for management of Interreg-type EU-support programmes). But especially if it comes to the joint management/implementation of EU-support programmes for inter-regional and transnational co-operation or the management/implementation of individual co-operation projects (also projects implementing specific EU-programmes), an EPLA might be used for regulating all necessary details among the respective partners involved. Finally, an EPLA is also considered a good solution for setting up joint secretariats for EU-programmes supporting cross-border, inter-regional and transnational co-operation.

²³ Public law-based cross-border co-operation structures provided for in existing inter-state agreements.

²⁴ European Special Purpose Authorities (ESPA) or specific co-operation organisations of a common public interest that are based upon an EPLA, which are established for decentralised cross-border, inter-regional and transnational co-operation.

established for decentralised cross-border, transnational and inter-regional co-operation, both in the framework of strategic level co-operation and in the context of individual projects.

- The EPIG's specific objective is to initiate, facilitate or further develop activities of a common public interest among territorial authorities of EU-Member States and to improve or increase the results of those activities (e.g. support for a joint purchase or a joint provision of general services; establishment of joint support structures needed for the implementation of EU co-operation programmes and individual EU-projects²⁵). Activities of an EPIG shall always be related to the activities of its members.
- An EPIG can not take own decisions that are binding for its members or for Third Parties.
- An EPIG will have to draw up statutes that need to be registered and approved by the competent administrative authorities of the EU-Member State in which the EPIG will have its future seat. The statutes of the EPIG need to be drawn up in a manner that they respect several fundamental principles (basic objectives, what can an EPIG do, what can an EPIG not do) and regulate a certain number of compulsory aspects. All these issues can be listed in a technical annex that will be a part of the future EC-Regulation (see ANNEX III).

Option 3: An EPLA can also be concluded for the purpose of **regulating the necessary framework conditions for a joint elaboration, management and implementation of EU-programmes supporting cross-border, transnational and inter-regional co-operation** (Article 15).

- Similar to the currently existing "Interreg Agreements", an EPLA could be used by territorial authorities to regulate their mutual co-operation on all issues related to an elaboration, management and implementation of EU-support programmes (definition of tasks, obligations, legal relationship among programme partners, liabilities including final liability, administrative and financial management procedures etc.).
- The Agreement can also be used by an ESPA that is entrusted with the elaboration, management and implementation of an EU-programme. By such an agreement, the ESPA should clarify – among other issues - its relationship and its co-operation with other non-statutory public Third Parties that might be involved in the EU-programme management and implementation process (e.g. other public-law based co-operation structures in the programme area, central state authorities; the European Commission, the European Investment Bank etc.).
- If an EPLA relating to an elaboration, management and implementation of EU-support programmes is concluded, it will have to regulate a number of specific aspects that need to be respected according to the related Community law. These aspects can be listed in a specific annex that is added to this Regulation (see ANNEX IV).

²⁵ Establishment of a joint programme secretariat with joint staff employed; establishment of a joint project management office.

Article 12:

(1) In the context of decentralised cross-border, inter-regional and transnational co-operation, territorial authorities of EU-Member States, but also existing public-law based co-operation structures of EU-Member States, may conclude a „European Public-Law Agreement” (hereinafter referred to as EPLA).

(2) An EPLA needs to adopt a written form and provides three different solutions for legally structuring decentralised co-operation at a strategic / programmatic level and at project-level.

Article 13:

(1) An EPLA can regulate a delegation of public tasks among territorial authorities of EU-Member States.

(2) A territorial authority from one EU-Member States can delegate the execution of public tasks to a territorial authority of another EU-Member States only, if these tasks are executed in the name and under the direction of the delegating territorial authority and if the country-specific-law of the delegating authority is observed.

(3) An EPLA regulating a delegation of public tasks will have to consider a number of specific aspects in order to increase legal security for the territorial authorities concerned (see ANNEX II).

Article 14:

(1) An EPLA can provide for the establishment of a “European Public Interest Grouping” (EPIG).

(2) The Grouping’s objective is to initiate, facilitate or further develop activities of a common public interest among territorial authorities of EU-Member States and to improve or increase the results of those activities.

(3) An EPLA needs to provide as an - integral part of the Agreement – the statutes (rules) for a European Public Interest Grouping, which need to be registered and approved by the competent administrative authorities of the EU-Member State in which the EPIG will have its seat.

(4) The statutes of an EPIG need to be drawn up in a manner that they respect and regulate a number of compulsory aspects, which are listed in a technical annex to this Regulation (see ANNEX III).

(5) A European Public Interest Grouping can not take own decisions that are binding for its members or for Third Parties.

Article 15:

(1) An EPLA can be used by territorial authorities of EU-Member States, but also by an ESPA set up on ground of this Regulation, to regulate co-operation over all issues related to an elaboration, management and implementation of EU-support programmes with concerned Third Parties.

(2) This EPLA will have to consider a number of specific aspects that need to be respected according to the related Community legislation (see ANNEX IV).

ANNEX II:

EPLA concluded for a delegation of public tasks among territorial authorities of different EU-Member States"

An EPLA can be concluded for regulating a delegated execution of public tasks that takes place among territorial authorities from different EU-Member States. These tasks are executed by another territorial authority in the name and under the direction of the delegating territorial authority and if the country-specific-law of the delegating authority is observed.

An EPLA concluded for this purpose needs at least to

- **enumerate the participating territorial authorities and define who will be the delegating territorial authority and who will be the executing territorial authority ,**
- **enumerate the legal provisions of the internal law of the delegating territorial authority that need to be respected by the executing territorial authority,**
- **define the organisational and procedural provisions necessary for a delegated execution of public tasks and other related aspects,**
- **define – if necessary - the budgetary provisions for a delegated execution of public tasks as well as the rules for accounting, financial control and financial liability.**
- **define the extent to which an exemption of final liability against third parties is agreed among the participating entities,**
- **The place of jurisdiction in case of legal dispute (recommended: county of the delegating authority).**
- **stipulate the rules that define the conditions when the co-operation on a delegation of tasks can be ended.**
- **In addition, the EPLA may foresee any other necessary provisions as appropriate.**

ANNEX III:

EPLA concluded for the establishment of a “European Public Interest Grouping”

A European Public Interest Grouping (EPIG) can be established for decentralised cross-border, transnational and inter-regional co-operation in all fields of common public interest, both for strategic level co-operation and for co-operation in the context of individual projects. The general objective of an EPIG is to initiate, facilitate or further develop activities of a common public interest among territorial authorities of EU-Member States and to improve or increase the results of those activities.²⁶ Activities of an EPIG shall always be related to the activities of its members.

A European Public Interest Grouping must contain, as an integral part of the Agreement, the statutes (rules) of the Grouping. These statutes (rules) shall regulate at least:

- *The name of the Grouping preceded or followed by the words “European Public Interest Grouping” or the initials “EPIG”, unless these words form already part of the name.*
- *The precise objectives for which the grouping is formed.*
- *The name, legal form, permanent address or registered office and the number and place of registration, if any, of each member of the grouping.*
- *The organs of the grouping, which are at least (1) the organ that allows members to act collectively for the purpose of achieving the objectives and (2) the manager (or the managers). Additional organs can be created by the members as appropriate.*
- *The duration of the grouping, except when it is indefinite.*
- *Procedures for an accession of new members or a withdrawal of actual members.*
- *The place of jurisdiction in case of legal dispute (recommended: country of the registered seat).*
- *Provisions for the dissolution of an EPIG and for winding-up an EPIG after its dissolution.*
- *Statutes for an EPIG may foresee other necessary provisions as appropriate.*

A “European Public Interest Grouping” (EPIG) that is established on ground of an EPLA may not

- *exercise, directly or indirectly, a power of management or supervision over its members own activities or over the activities of other territorial authorities, in particular in the fields of personnel, finance and investment;*
- *employ more than 50 persons;*
- *be used to make loans or the transfer of any property;*
- *be statutory member of another EPIG or of an ESPA established on ground of this Regulation.*

²⁶ E.g. support for a joint purchase or a joint provision of general services; establishment of joint support structures needed for the implementation of EU co-operation programmes and individual EU-projects (joint programme secretariat with joint staff employed; establishment of a joint project management office).

ANNEX IV:

EPLA concluded for the elaboration, management and implementation of EU-support programmes

An EPLA concluded for the elaboration, management and implementation of Community support programmes shall ensure that co-operation takes place in the most decentralised manner possible, under a single responsibility, with a clear final liability and with one single control, through binding majority decision among the programme partners and with a democratic control through a joint structure.

In case the eligible programme area covers one or more ESPAs that have been established for strategic level cross-border, transnational or inter-regional co-operation, these public-law based Authorities will need to be main contracting parties of an EPLA. In order to ensure a truly joint and decentralised approach, ESPAs should be allocated a leading role in all operational tasks related to the elaboration, management and implementation of Community support programmes.

The EPLA concluded for this purpose shall be presented at the same time when the programme draft is submitted to the Commission for approval.²⁷ It will have to regulate the following issues:

- *clarify all legal and co-operative relations between all programme partners involved (i.e. the public law based co-operation structures, state administrations, the EU-Commission, the European Investment Bank or other public actors).*
- *define who will present the EU-programme draft to the European Commission and who will be responsible for negotiating the programme draft with the Commission;*
- *specify who takes over the basic responsibility and final liability for the management and implementation of the programme;*
- *specify who ensures basic programme management tasks (i.e. single and joint Managing Authority, single and joint Paying Authority, single and joint Programme Secretariat);*
- *describe the mechanisms and procedures for joint financial management and control of the programme (common bank account, control, certification of expenditure, external audit, claim back procedures in case of fraud etc.);*
- *describe the procedures and responsibilities governing the implementation process of the programme (i.e. joint project selection, single contracting, joint monitoring, public procurement rules);*
- *jointly define all aspects regarding common eligibility (basic eligibility rules, eligible actions eligible expenditure or "cost items").*
- *The place of jurisdiction in case of legal dispute (recommended: place of the partner finally responsible / liable for the programme).*

This list may be changed or extended at a later stage in order to take into consideration new provisions of the related Community law.

²⁷ In the current Structural Funds programming period, good practice regarding this proceedings already exist both at the level of programmes (INTERREG IIIA programmes along the F/D and NL/B/D borders) and at the level of projects (INTERREG IIIB programme "North-West Europe": a partner agreement needs to be submitted with the project-proposal).

