



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 11.12.2002
COM (2002) 709 final

COMMUNICATION FROM THE COMMISSION

**A framework for target-based tripartite contracts and agreements
between the Community, the States and regional and local authorities**

1. INTRODUCTION

In addition to being privileged local democracy actors within the countries of the Union, territorial authorities are called upon to play a growing role in the framing and implementation of Community policies. With this in mind, the White Paper on European Governance adopted by the Commission in 2001 put forward the idea of **target-based tripartite contracts**, to be concluded between the Member States, the territorial authorities designated by them, and the Commission. In proposing a “trial”, the Commission was motivated mainly by considerations of flexibility: “there should be more flexibility in the means provided for implementing legislation and programmes with a strong territorial impact, provided the level playing field at the heart of the internal market can be maintained”.

There is a general emphasis in the Treaties on the need for Community actions to take account of diversity. This is already evident in the very design of the legislative instruments. Not only were directives designed to allow the Member States a significant degree of flexibility in national transposition. Community regulations also lend themselves to a certain differentiation in the methods of implementation, provided that such differentiation is based on objective assessment criteria.

In addition, in certain areas of action with strong territorial impact, such as cohesion or environmental policy, the Treaty explicitly provides for local circumstances to be taken into account. Flexibility is inherent in the very principles of **economic and social cohesion**, the aim of which is to reduce disparities in the levels of development of the different regions and the backwardness of the regions. Thus, the notion of “partnership” is one of the fundamental principles underlying the programming and implementation of the Structural Funds for 2000-2006. However, this principle, provided for in Article 8 of Council Regulation (EC) No 1260/1999, is implemented “in full compliance with the respective institutional, legal and financial powers of each of the partners”. This flexibility is also reflected in the **environmental policy** objectives which “aim at a high level of protection taking into account the diversity of situations in the various regions of the Community”.

Nevertheless, with the exception of cohesion policy, Community practice and the intensity of legislative action have not always taken sufficiently into account the growing role of regions and cities in the implementation of national and Community policies. Hence the interest which emerged during the consultations on the Governance White Paper in contractual tools aimed at developing the possibilities of differentiation between and participation of territories in the realisation of objectives defined at European level or in cooperation between various geographical levels.

Those same consultations also revealed the apprehensions or reservations of some Member States, which are rightly concerned that such a contractual approach must not challenge the fundamental principle of the sole responsibility of the Member States for carrying out Community policies. The idea of experimental or voluntary pilot projects, particularly in the environmental area, was welcomed. That of tripartite contracts “empowering certain subnational authorities to implement specific actions aimed at achieving objectives defined in basic Union legislation” gave rise to requests for **clarification**, both from certain Member States and from European networks of regional and local authorities. This is the subject of the present Communication, which describes the general conditions for recourse to “tripartite contracts”, whether in the context of applying a legislative act or in reference to a Community objective. Throughout the remainder of this Communication, we therefore propose to use:

- **target-based tripartite contracts** to describe contracts concluded between the European Community - represented by the Commission - a Member State and regional and local authorities in direct application of binding secondary Community law (regulations, directives or decisions); and
- **target-based tripartite agreements** to describe agreements concluded between the Commission, a Member State and regional and local authorities outside a binding Community framework.

2. AIMS AND SCOPE OF TARGET-BASED TRIPARTITE CONTRACTS AND AGREEMENTS

- Target-based tripartite contracts and agreements are, on principle, subject to a general obligation of compatibility with the Treaties; in particular, they may under no circumstances create or sustain obstacles to intra-Community trade. They may only be envisaged where they do not conflict with the constitutional systems of the Member States. They are justified when they offer **value added** by comparison with other instruments for the achievement of common objectives. This value added may lie in either the **simplification** resulting from the contract (where, for example, the contract reduces the number of detailed horizontal implementing measures required) or in the **political** benefits and **efficiency gains** resulting from closer **involvement** and **participation** of regional and local authorities in policies whose impact varies in accordance with, for example, geographical, climatic or demographic circumstances and which are thus likely to benefit from local knowledge and practice. In some cases, such simplification and increased participation of territorial authorities may also be expected to lead to **speedier performance**.
- On the basis of these aims, it is possible to determine a number of general characteristics of tripartite contracts and agreements relating to scope, actors, and certain arrangements for participation and information in the implementation process.

Areas in which the pursuit of Community objectives must take into account significant variations in territorial impact as well as the *a priori* availability of territorial policy management experience will be prime candidates for the conclusion of tripartite contracts or agreements. **Regional policy** and the **environment** spring to mind. However, recourse to tripartite instruments does not affect the management of Structural Funds as laid down in existing regulations, without prejudice to the future development of these regulations. Since the aim is to develop experience and encourage involvement, the clear identification of local actors to be included in the contract or agreement is an important condition for success. This identification requires the involvement of the Member States, if only to ensure that the contract or agreement is compatible with constitutional, legislative and administrative provisions in force in each Member State.

The notion of contract or agreement implies that the actors concerned converge around previously and **clearly defined objectives**. Whether quantitative or qualitative, these objectives should, as far as possible, be measurable. In the case of tripartite contracts, minimum objectives to be included in the contract will be specified in the basic legislative instrument (directive, decision or regulation). As for tripartite agreements, minimum basic objectives are to be deduced from relevant preparatory documents (for example, a recommendation or a White Paper).

Finally, considerable **information** will have to be provided on the content, implementation and results of the contractual or agreement-based approach. For the attention of the interested parties, this will be the task first and foremost of the regional and local authorities concerned, which will have to consult and involve as much as possible organisations representing local and regional life. For the attention of the relevant Union institutions and bodies, the Commission will be responsible for submitting to the Parliament, the Council and the Committee of the Regions an evaluation and follow-up report.

- In the case of tripartite contracts between the Community - represented by the Commission - a Member State and the regional and local authorities designated by them, compatibility with the general provisions of the Treaties requires that the following be included:
 - in the basic legislative instrument (directive, decision or regulation), an **enabling clause** by which, in accordance with Article 202 of the Treaty, the legislator authorises the Commission to conclude a contract with the Member States and the local authorities involved in the achievement of the objectives defined in the legislation (cf. Annex I to the Communication); and
 - in the wording of the contract itself, a provision aimed at recalling that the Member State in which the tripartite contract is performed is alone responsible *vis à vis* the Commission for its due performance and, consequently, subject to possible legal action pursuant to Article 226 of the Treaty. This provision does not exclude other partners from participating in the detailed performance of the tripartite contract.
- Finally, tripartite agreements must include a clause referring to compatibility with the general provisions of the Treaties.

3. IMPLEMENTATION OF TARGET-BASED TRIPARTITE CONTRACTS AND AGREEMENTS

- The establishment of a contractual commitment in the form of a target-based tripartite contract or agreement will take the form of a document signed by the authorising officers. A model contract or agreement reiterating the principles and aims outlined in the first part of this Communication is attached in Annex II.
- Any one of the future contracting parties may take the initiative to establish such tripartite relations. For its part, the Commission will review such initiatives while taking into account, on a case-by-case basis, the possibility of following up to them in the light of the general principles outlined in this framework communication. This review will be carried out in concertation with the Member States concerned.

Expressions of interest and possible pilot initiatives will - in addition to being subjected to a value added assessment - be considered with regard to available human and financial resources.

- The Commission does not plan to propose a modification of the existing provisions governing the implementation of the Structural Funds, considering instead that the existing partnerships should be allowed to run their course.

- In the first instance, the Commission plans to launch pilot target-based tripartite agreements. Only after having assessed and drawn lessons from this experiment will it consider the possibility of target-based tripartite contracts.

a) the Commission will examine the possibility of securing appropriations for pilot target-based tripartite agreements on the basis of Article 48 § 2 of the new financial regulation which incorporates the contents of the interinstitutional agreement of May 1999 on budgetary discipline and improvement of the budgetary procedure.¹ In any event, the budgetary and financial rules for the implementation of contracts/agreements will be defined later, in accordance with the new financial regulation. Recourse to tripartite contracts/agreements does not affect the Commission's right to demand and obtain, in accordance with its responsibilities pursuant to Article 274, the necessary financial guarantees from the partner concerned and, failing that, from the Member State.

b) in general, tripartite agreements or contracts will not qualify for additional Community financing. They will become an arrangement for the use of appropriations normally allocated to the performance of common policies.

Annex I: Enabling clause (tripartite contracts)

Annex II: Model tripartite contract or agreement

¹ Point 37 of this agreement specifies that appropriations for pilot schemes of an experimental nature aimed at testing the feasibility of an action and its usefulness may be implemented without a basic act as long as the actions which they are intended to finance fall within the competence of the Community. The same applies to appropriations relating to preparatory actions intended to prepare proposals with a view to the adoption of future Community actions.

Annex 1

Enabling clause for a tripartite contract to be inserted into a draft regulation, directive or decision

1. Aim

“In view of what follows:

The [...] measures envisaged have strong territorial impact.

These measures aim to achieve the following objectives: [...].

In order to take account of certain regional or local characteristics, these objectives may, where applicable, be achieved by a tripartite contract between the Community, represented by the Commission, a candidate Member State and a regional or local authority of that Member State, where the criteria defined in the present regulation are met.

The aim of tripartite contracts is to achieve optimal implementation of the objectives established by the regulation.”

2. Arrangements

Article [...]:

“The [...] objectives may, in order to take account of certain regional or local characteristics, be achieved by a tripartite contract between the Community, represented by the Commission, a candidate Member State and a regional or local authority of that Member State, where the following criteria are met:

- *the envisaged tripartite contract must be authorised by the constitutional, legislative, regulatory or administrative provisions of the candidate Member State;*
- *the regional or local authority concerned must have the required powers in the targeted area of implementation;*
- *[...]”*

Article [...]:

“The tripartite contract referred to in Article [...] is ratified by a decision of the Commission addressed to the Member State and the regional or local authority concerned.”

ANNEX 2

Model tripartite contract or agreement (key elements)

1. Contracting parties or parties to the agreement

The contracting parties or the parties to the agreement shall be mentioned, along with the natural persons representing them (names and positions). The competence of the parties shall be verified, as well as the power of signature of the natural persons representing them.

2. Preamble

- The preamble to a “tripartite contract” based on an enabling clause inserted in a Community regulation, directive or decision shall refer to the relevant Community and national legal bases.

Example:

“The present tripartite contract is based on Article [...] of EC Regulation No [...] of the European Parliament and the Council of [...] concerning [...] and on Articles [...] [relevant constitutional and administrative provisions of the Member State concerned].”

- The preamble to a “tripartite agreement” shall refer to the relevant Community or national legal framework.

Example:

“The aim of the present tripartite agreement is to implement, in a voluntary manner, the Recommendation of the European Parliament and the Council of 30 May 2002 concerning the implementation of Integrated Coastal Zone Management in Europe.

This tripartite agreement is compatible with Articles [...] [relevant constitutional and administrative provisions of the Member State concerned].”

3. Definitions

The tripartite contract or agreement shall contain precise definitions of the main terms used, in particular technical and legal terms open to different interpretations.

4. Subject of the contract or agreement

The subject of the contract or agreement shall be clearly defined. Contracts or agreements shall be concluded for the achievement of specific “*objectives*”. These may be quantitative and/or qualitative but must in any case be susceptible to follow-up. In particular, quantitative objectives must be quantified and qualitative objectives identifiable. Any exceptions must be specifically mentioned.

5. Nature of obligations

Preference will be given to obligations regarding results as opposed to obligations regarding means.

In the case of a tripartite contract based on an enabling clause inserted in a Community regulation, directive or decision, only obligations regarding results can be considered.

6. Arrangements for follow-up and evaluation

Tripartite contracts or agreements shall contain transparent and appropriate arrangements for credible follow-up and evaluation. In this respect, existing best practice may be taken into account.

7. Transparency

Tripartite contracts or agreements shall be established and implemented in the most transparent manner possible. Transparency is first and foremost of concern to the interested parties and, in particular, the organisations representing regional or local life (the business world, chambers of commerce, non-governmental organisations, etc.). The transparency of the project shall be reflected in the preamble to the contract or agreement.

With a view to ensuring transparency in implementation, contracts or agreements shall provide for an adequate mechanism for informing, associating and/or consulting as often as is achievable.

The contract shall be adequately advertised. The Commission shall publish in the Official Journal of the European Communities an extract from those contracts and agreements to which it is a party, accompanied by indications on how to obtain the totality of the documents.

8. Consequences of non-performance

Tripartite contracts or agreements shall specify the consequences of non-performance of their provisions and, where applicable, any remedies. In the case of a tripartite contract provided for in a regulation, directive or decision, the basic act shall indicate that in case of non-performance, Community common law rules will, *ipso facto*, at a minimum, apply. For tripartite agreements, non-performance clauses shall be established on a case-by-case basis.

9. Duration

Tripartite contracts or agreements shall be concluded for a fixed term with a possibility for renewal if provided for in the texts to which they refer.

10. Decision of the Commission

Tripartite contracts based on an enabling clause inserted in a Community regulation, directive or decision shall be ratified by a decision of the Commission addressed to the Member State and/or the regional or local authority concerned. This provision shall be the subject of a specific clause in the contract. The Commission's decision shall be published in the Official Journal of the European Communities with extracts

from the contract or agreement, as well as indications on how to obtain a full copy of the text in the original language, annexed.

11. Date and signature

Tripartite contracts or agreements shall be dated and signed by natural persons with the power of signature.