

Public-private partnerships in transnational cooperation – possibilities and limitations

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Authors

Siegfried Rupprecht & Dr Georg Werdermann

Rupprecht Consult – Forschung & Beratung GmbH, Cologne

English translation: Gabi Wegeler, Rupprecht Consult – Forschung & Beratung GmbH, Cologne

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Summary

In the framework of the research project "**Public-private partnerships in transnational cooperation – possibilities and limitations**", the basic conditions of the involvement of private actors in projects of transnational cooperation (INTERREG B) were analysed on behalf of the Federal Ministry of Traffic, Building and Urban Affairs.

Project goals and methods

Private actors play a key role in strengthening the competitiveness of regions, but until now they are not sufficiently involved in transnational projects. Moreover, the different INTERREG cooperation areas handle their participation rather differently.

This study shows to what extent the INTERREG programmes now succeed in involving private actors in transnational projects (INTERREG B), which advantages are inherent in their participation, which underlying obstacles can be observed and which steps can be undertaken to involve private actors more effectively in INTERREG.

This study was based on investigations and expert interviews with actors from all five cooperation areas with German participation (Baltic Sea Region, North-West Europe, North Sea Region, Central Europe, Alpine Space). The validation of the results was accomplished in the course of two expert workshops.

Involvement of “private actors“

The INTERREG B cooperation areas use different definitions of the term “private actor“, which is also reflected in differing regulations concerning participation. In addition, the European state aid regulations are an important determinant for the involvement of private actors. These regulations, however, are complex, they cannot be applied easily to the INTERREG programme context and they are perceived by the programme actors as being fraught with risk. While there are no uniform guidelines, easily implementable in INTERREG B, managing authorities and programme secretariats have developed different practices for the involvement of private actors, ranging from restrictive to actively supportive.

In the five INTERREG B cooperation areas, currently (as per 08/2011), a total of approximately 300 private partners¹ is involved, for whom more than 50 million euros of ERDF funds are being spent. That amounts to around 8% of all partners and 7% of the ERDF funds allocated so far. The share of private partners in INTERREG is largest in the North Sea Region (13%) and in Central Europe (12%), whereas in Alpine Space (7%) and North-West Europe (6%), the percentage is only half as high; in the Baltic Sea Region, the share of private organisations is low (2%). These proportions also apply to the share of funds received by the private partners.

In comparison with the forerunner programme INTERREG IIIB, primarily the North Sea Region and North-West Europe have experienced an increase in the share of private actors, whereas the direct project involvement of private partners was reduced in the Alpine Space and the Baltic Sea Region.

The participation of private actors in INTERREG B as a whole shows a clear disparity in relation to the special strategic importance of public-private partnerships, which is called for in numerous EU policy documents.

Advantages of the involvement of private actors in INTERREG

From the point of view of many private actors, INTERREG is nevertheless a potentially promising programme. The interview partners of this study described INTERREG as:

- a good tool to open up new markets and to test new ideas;

¹ For these data, which are based on calculations of the BBSR, “private actors“ are understood as organisations/institutions organised under private law, mainly profit-oriented, i.e. active in the market.

- a possibility to create networks and increase visibility of the company in the market;
- a path towards cooperation between competitors in a market segment;
- a good opportunity to gain “EU experience”
- a good option to work more intensively on one’s own topics in cooperation with European partners;
- a way to profile the company as potential investor and service provider

The involvement of private partners is also of advantage for the cooperation projects, as they can:

- use the current and practical know-how of private partners for innovation;
- integrate market and marketing know-how of the companies in a targeted way for sustainable project implementation and application-oriented results;
- open networks of private companies to all project partners;
- make communication channels and technical infrastructure of the private partners available to the project.

Barriers and recommendations for action

The recommendations for action formulated in the framework of this study intend, based on a rather extensive interview and validation phase, to make suggestions for a discussion process between the involved actors. The authors have tried to develop recommendations for all barriers identified as being relevant, as far as structural restraints did not impede it (see the following overview concerning barriers and recommendations).

According to the view of the authors of this study, there are some concrete options of action, which are so far employed insufficiently, but which could, in the short and medium term, facilitate better involvement of private actors, without increasing legal risks.

After analysis of legal literature, numerous programme documents and other material, the authors believe that the existing legal framework of state aid on the one hand

- offers opportunities to rule-consistently promote public-private cooperation in INTERREG B projects in the short and medium term, but on the other hand
- corresponds decreasingly to the reality of the INTERREG programmes and that therefore essential aspects of state aid relevance should be considered anew.

At the same time, it is clear that more effective public-private partnerships in the complex interactive structure of INTERREG are certainly not easy to create in the short term. The current discussions about the future of INTERREG offer an important basis for suggesting short and medium term recommendations with the aim to put INTERREG on a sustainable basis for the cooperation of public and private partners in the future through long-term modifications of the framework conditions.

Barriers to and recommendations for more effective involvement of private actors

Area	Concrete obstacles	Recommendation for action
Programme profiling	<ul style="list-style-type: none"> • Confusing complexity due to differing profiles of the INTERREG programmes • Competition of the EU programmes with sometimes better conditions/less effort • Communication strategies, which are not targeted at private partners • Perceived as a “niche instrument” of structural funding, without strong lobby 	<ul style="list-style-type: none"> • Simplification/unification of the rules of implementation and adjustment of the opportunities to participate • Differentiation of funding rates according to type of activity • Programme communication targeted at private actors • Promotion of cooperation across cooperation areas
EU state aid regulations	<ul style="list-style-type: none"> • Complexity of the EU state aid regulations when being applied to INTERREG • Non-uniform interpretation of the state aid regulations and application of state aid instruments • Insufficient coordination and counselling for questions of state aid by national and EU institutions 	<ul style="list-style-type: none"> • Solution-oriented application of the examination criteria on state aid • More effective handling of state aid regulations • General clarification of the state aid relevance of INTERREG
Rules of procedure	<ul style="list-style-type: none"> • Accounting/claiming of overheads laborious/not possible • Rigid/not very problem adequate guidelines for project planning • Guidelines for auditing are complex and require to reveal sensitive data • Protection of intellectual property is not unequivocally ensured 	<ul style="list-style-type: none"> • Acceptance of overheads • Opportunities to participate with reduced administrative burden • Definition of unambiguous rules for the protection of intellectual property
Application procedure	<ul style="list-style-type: none"> • Application and selection procedure are partly considered to be intransparent and laborious • Evaluation criteria for project applications do not consider requirements of applicants sufficiently 	<ul style="list-style-type: none"> • Two-step, tightly organised application procedure/More effective support for inexperienced partners • Better integration of the stakeholders of private actors in programme committees • Result-oriented project monitoring
Working cultures	<ul style="list-style-type: none"> • Private actors have to adapt to working cultures of the public sector • Provision of sufficient personnel capacities is sometimes difficult for small enterprises 	<ul style="list-style-type: none"> • Better consideration of different working cultures in project planning and implementation
Further barriers	<ul style="list-style-type: none"> • Lacking advance or progress payments lead to low levels of liquidity • Partly low/differing funding rates in cooperation areas • Project duration longer than innovation cycles • Programme borders perceived as being artificial/cross-programme cooperation difficult • Insufficient data basis for the involvement of private actors 	<ul style="list-style-type: none"> • Granting of advance/progress payments • More flexible project duration • Better conditions for cross-cooperation area projects • Uniform conditions for assessing the involvement of private actors

1. Project context

In the framework of the research project "**Public-private partnerships in transnational cooperation – possibilities and limitations**", the basic conditions of the involvement of private actors in projects of transnational cooperation (INTERREG B) were analysed on behalf of the Federal Ministry of Transport, Building and Urban Development.

Point of departure

The focus of the goal of "European territorial cooperation", especially in the programme section of INTERREG B, is on cross-border cooperation of national, regional and local partners in transnational cooperation areas. The aim is to strengthen a harmonious regional development of the total territory of the EU and a better integration of the new Member States.

In the course of a stronger orientation of the EU programmes towards the goals of the Lisbon and Gothenburg strategies, the topic of "public-private partnerships" has again gained topicality. Based on the usually rather intense participation of administrations, research and non-government organisations, the question was raised in the INTERREG programmes as well, how especially private actors could be more involved in projects. This discussion will also remain an important topic for the EU funding programmes beyond 2013 and their orientation towards the EU strategy "Europe 2020".

Relevance

The cooperation of regional and local actors constitutes an essential element of regional economic and innovation structures. The sustainable improvement of the quality of life and strengthening the competitiveness of cities and regions can only be achieved in the cooperation of many actors. Here, private actors increasingly assume an important role, since the innovation potential of private actors, due to their economic power and networking, is a central element for strengthening the competitiveness of regions.

The involvement of private partners in EU projects of transnational cooperation is, however, still difficult. Next to a number of objective barriers, there are also numerous "soft" obstacles concerning the participation of private partners. Furthermore, the involvement of private actors in the different cooperation areas is currently not harmonised. Whereas direct funding of private institutions is possible in some programmes, only indirect involvement is possible in others.

In order to better use the potentials of transnational cooperation, it is requisite to further systematically increase and well communicate to all those involved the understanding of these problems, but also the benefits to be gained from stronger participation of private actors.

Objectives

The present study wanted to show, how the INTERREG programmes currently succeed in involving private actors in transnational projects (INTERREG B), which barriers exist, which advantages there are to the participation of private actors and which steps can be taken to better involve them. In this context, EU regulations (such as the ones on state aid) were also examined concerning their influence on public-private partnerships. In the following, recommendations should be given on how the cooperation areas could proceed in the future (also in view of a simplification/unification of the rules and regulations between the various cooperation areas).

The following operative goals were formulated in the project:

- development of a systematic understanding of the status quo of the involvement of private partners in transnational cooperation;
- description of the benefits and potentials of public-private partnerships as well as presentation of successful forms of cooperation;
- identification of best practice examples;

- development of concrete and practice-relevant recommendations for action for transnational programme committees.

In the course of this research project, the five cooperation areas with German participation have been investigated:

- Baltic Sea Region (BSR)
- North-West Europe (NWE)
- North Sea Region (NSR)
- Central Europe (CE)
- Alpine Space (AS)

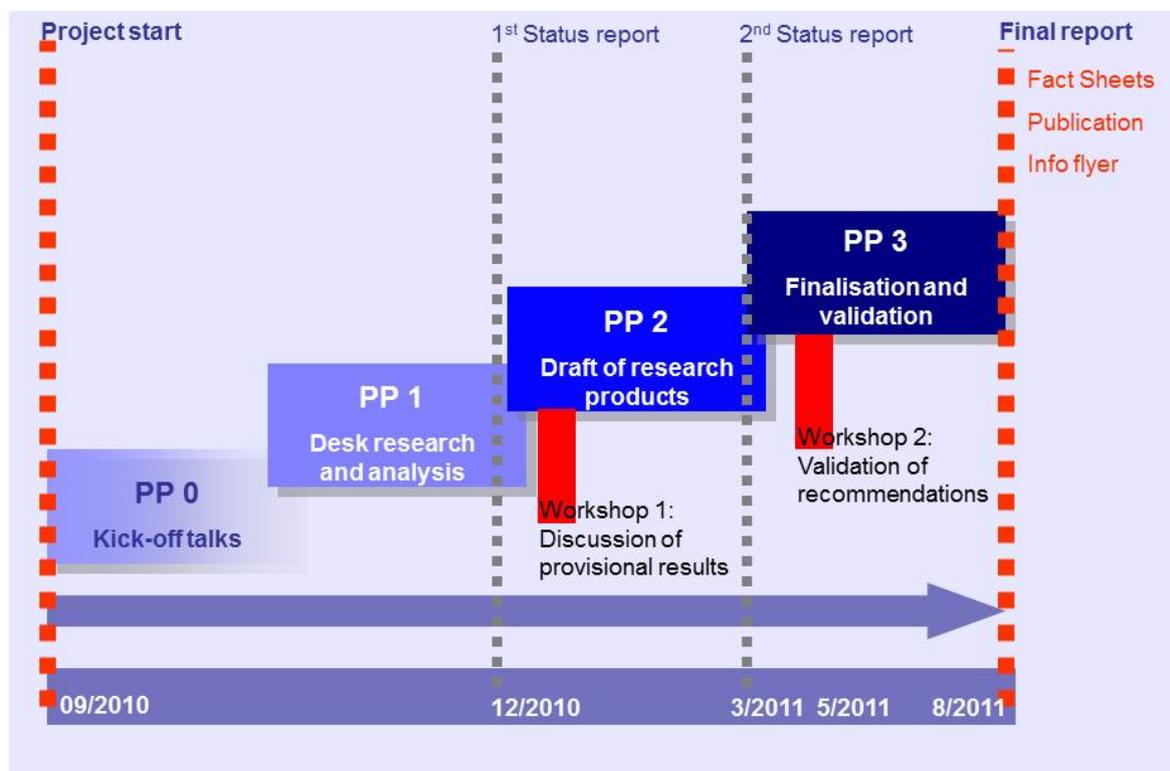
As far as possible within the framework of this limited project, a good balance of these five cooperation areas was aimed at by data collection, analysis and recommendations.

Methodology

The project goals were implemented in three performance phases (PP):

- PP 1 – Data collection, analysis, formulation of hypotheses: application of qualitative and quantitative research methodology (stakeholder interviews, statistical evaluation, desk research)
- PP 2 - Drafting of the research products: draft of publication, fact sheets, info flyer and recommendations of action; validation of project results together with programme actors
- PP 3 - Stakeholder workshop and finalisation of research products

Figure 1.1: Performance phases of the project



The primary empiric basis of this study is provided by the 25 expert interviews. Interview partners were various programme actors (members of the Steering Committees, of the Programme Secretariats, project partners from different areas as well as relevant individuals) from all cooperation areas with German participation. The semi-structured expert interviews were held between October 2010 and January 2011 – either as face-to-face interviews or on the telephone.

Further, e.g. additional quantitative (representative) investigation would have been desirable, but was not possible within the framework of this research project.

The project results were validated in two expert workshops. 15 INTERREG programme actors participated in a first expert workshop in December 2010. During the workshop, first results of the status quo analysis were presented and the provisional recommendations were discussed with the participants. These discussions were deepened during the final workshop in May 2011.

2. Definition of terms

What are “private actors” in transnational cooperation projects?

“Private actors”

A common German distinction between public and private institutions differentiates them according to legal form:²

- (legal) entities under public law, i.e. territorial authorities (Federal Government, Laender, districts and municipalities), professional bodies or chambers (associations of local authorities, chambers of industry and commerce, chambers of crafts and trade or professional chambers such as the bar association), state universities as well as federal offices (e.g. Federal Office for Freight Transport), Laender institutions (e.g. universities of applied sciences) and local institutions (e.g. waste water authorities outsourced by the municipality etc.), charitable foundations (e.g. Federal Environmental Foundation), and
- (legal) entities under private law (limited companies = GmbH, stock corporations, registered associations) respectively

In INTERREG practice, the different cooperation areas use diverse definitions:

- profit orientation: In some cooperation areas (e.g. in the Baltic Sea Region), profit-oriented private partners are completely excluded from participation;
- form of financing (public or private sources);
- governance structure of the company (administrative structures, composition of supervisory board).

In the absence of other regulations, various INTERREG B programmes use EU Directive 2004/18 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts for the assessment of the partner status:

“A ‘body governed by public law’ means any body:

(a) established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character;

(b) having legal personality; and

(c) financed, for the most part, by the State, regional or local authorities, or other bodies governed by public law; or subject to management supervision by those bodies; or having an administrative, managerial or supervisory board, more than half of whose members are appointed by the State, regional or local authorities, or by other bodies governed by public law.”³

Enterprises

According to the European Commission's recommendation of 06 May 2003, any entity is to be considered an enterprise, irrespective of its legal form, if it engages in an economic activity.⁴ This wording is also in accordance with the terminology, which the European Court of Justice uses in its decisions and is of particular relevance for the topic of “state aid”; the term is also further discussed at the Court.

² Original German quote according to Wikipedia (<http://de.wikipedia.org/wiki/Rechtsform> and http://de.wikipedia.org/wiki/Juristische_Person); Version: 01 August 2011 (in German).

³ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:134:0114:0240:en:PDF>, p. 14

⁴ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32003H0361:DE:HTML> (in German)

Small and medium-sized enterprises (SME)

The understanding of small and medium-sized enterprises (SME) is of particular relevance for regional policies, as these economic actors are often considered to be “motors of economic development”. The term comprises the category of microenterprises as well as that of small and medium-sized enterprises. SMEs are companies, which employ less than 250 people and which either generate an annual turnover not exceeding 50 million EUR, or where the annual balance sheet does not amount to more than 43 million EUR.

Summary

The term “private actor” is not unambiguous in the INTERREG B programmes:

- In the political discussion, the term (usually) refers to profit-oriented enterprises, which are not state-owned; often, primarily SMEs are referred to.
- The INTERREG B programmes use different definitions.
- Legal considerations in the state aid context only determine, whether there is economic activity.

In the framework of this publication, we use the ambiguous term “private actor”, but we differentiate where necessary.

3. Benefits of the involvement of private actors

3.1. Potentials of public-private partnerships

The advantages of the active involvement of private actors in INTERREG programmes can be viewed from different perspectives: from the viewpoint of EU policy, of the INTERREG programmes, regions and projects as well as that of public and private partners.

3.1.1. EU policy

The involvement and support of private actors in European regional development processes is high on the agenda - particularly of the European structural and regional policy. Over the last years, a number of important strategy documents have been published, in which considerable importance is attached to private actors in the form of SMEs. The background of this development is that the integration of SMEs is essential for putting EU policies and strategies into reality. By way of example for the INTERREG context, the following have to be mentioned here:

- The “ERDF regulation”
- “Europe 2020 – a strategy for smart, sustainable and inclusive growth”

ERDF regulation (INTERREG/European territorial cooperation)

In the context of the INTERREG B programmes, private actors are particularly addressed in the priority “innovation” of regulation 1080/2006 (“ERDF regulation”):⁵

- “the establishment of networks between appropriate tertiary education and research institutions and SMEs”;
- “development of joint financing instruments to support research and development (R&D) in SMEs”.

Europe 2020 – a strategy for smart, sustainable and inclusive growth

In the “Strategy for smart, sustainable and inclusive growth – Europe 2020”, SMEs are directly addressed in one of the seven flagship initiatives:⁶

“An industrial policy for the globalisation era to improve the business environment, notably for SMEs, and to support the development of a strong and sustainable industrial base able to compete globally”.

3.1.2. INTERREG programmes

Next to the “ERDF regulation”, all operational programmes of the concerned five cooperation areas consider the involvement of the private actors to be a necessity for successful regional development. Especially with a view on achieving the “Lisbon objectives” on the regional level and for the implementation of the “Europe 2020 strategy”, the private actors are attributed central significance.

This position was shared by most of the interview partners, both from the public and the private sector⁷:

“Cohesion policy is about creation structures to implement and deliver EU 2020 and Lisbon and Gothenburg. We want private actors using these structures.”

⁵ 1080/2006 Art. 6, par. 2

⁶ European Commission (2010), p.5

⁷ In this study, all quotes of interview partners are presented indented and in italics. All interviewees were guaranteed anonymity, therefore the sources are not mentioned.

“The view that projects of transnational cooperation could only bring municipalities or public regional authorities forward is quite simply untrue. It also reduces our world to public administration. But the world does not only consist of public administration, but of the contrary.”

“The Focus on growth and economic development has become so much stronger. It is ridiculous running these programs without the private sector!”

“We are now rather keen to have a relationship with private sector partners because for the economic development of the cooperation area we must support their working conditions. And this is impossible without having them on board.”

3.1.3. Regions

On the regional level, private partners are important for the implementation of development strategies and for ensuring economic performance. The integration of private partners is also important for the development of a balanced regional governance structure and comprehensive stakeholder involvement:

“Private Partners offer different perspectives concerning regional and territorial development. Namely the point of view of those, who interact with users and customers in the market every day to develop endogenous potentials in the regions and to use methods, which are not as much in the foreground in public administrations.”

Furthermore, terms such as innovation transfer and the ability of cluster formation (with the aim of strengthening international competitiveness) are often directly coupled with the involvement of private actors.

“Innovation transfer has to be ensured and can be put on the transnational level through INTERREG projects. In this context, for the country (...) the development of transnational clusters is paramount. This way, enterprises are better enabled to succeed in international competition, e.g. with Asia or America. For this purpose, we need all actors of the Triple Helix.”

3.1.4. Projects

On the project level, according to the opinion of almost all interviewees, private partners are apparently important for giving the projects a reference to reality. They ensure the market relevance of the results and assure a reference to everyday life.

“Due to the involvement of the private actors the projects become more practically relevant, useful and related to real life problems with more countable results. The projects developed by the public sector are often more theoretical.”

“Private partners can generate tangible results. And this is what we are looking for. They are very good at focusing, helping to deliver results and not just meetings.”

Furthermore, private partners are often perceived as major driver of project development and project implementation. Many interview partners were of the opinion that private actors reason in a more economic and competition-oriented way:

“The experiences with the involvement of private partners are mainly positive. If they really join the project, i.e. if they make all these efforts, which have to be made, they have a very strong commitment and push strongly towards the practical implementation of the results. For me, this is a very central aspect.”

Private partners also contribute their preliminary technical work to projects:

“Furthermore we contribute our know-how, e.g. prototypes, which have already been developed in other project contexts. Thus we did not have to start from scratch (...). It is in our interest to quickly develop a product from the preparatory academic work, which can be used and implemented in the market.”

Moreover, private partners often have better and/or other networks, which they can contribute to the projects and they establish new networks more easily:

“We contribute our contacts to various industrial organisations, associations, but also to governmental organisations and to the UN as well to the project (...) in order to make their knowledge available. We have, for example, involved a partner from Nigeria as observer in the (...) project. This way, a totally different level is incorporated in the project.”

Last, but not least, private partners can make technical infrastructure available to the project (e.g. for telephone and video conferences, server capacity for websites etc.). Concerning external project communication, large partners are particularly advantageous:

“We as ... have taken over the communication for the project. In our group, we have an incredibly professional department at our disposal for the project. This PR department obviously functions very differently from that of a municipality or another public partner.”

3.1.5. Public partners

In general, the benefits of the involvement of the private actors is mostly undisputed from the view of many public actors as the latter also share the opinion that the relevant INTERREG project ideas have to reach the economy and that private actors are important for a self-supporting regional economic development.

Especially with regard to the support of public partners, private consultants are considered to be helpful:

“Next to the content-related work in some areas it becomes more and more important to take over project management tasks from the researchers in order to allow them to concentrate on their thematic work. That is the more important the larger the projects become. But in INTERREG, where the administrative requirements are extremely high, our services also become more and more important and are gladly accepted.”

However, in the public sector, reserved positions can also be observed, for instance concerning the need of many private actors to gain profits:

“Some private companies believe that they can gain financial profit from the project. That has to be rejected. Then the role of a client would be more adequate.”

“INTERREG is based on cooperation. But a private company does not want to cooperate, but it wants to earn money. Therefore there is no demand on the part of the private partners.”

“The private company sees the money first and the market and then the problem, while the public partner considers the problem and the policy first and then the money.”

3.1.6. Private partners

Many private actors confirmed during the interviews that the INTERREG programme goals generally fit well into the agenda of private actors:

“The basic aims of the programme match the actual needs of small and medium-sized enterprises by 95%.“

For private economic actors, INTERREG is a good tool for opening up new markets and for “testing”. It can create networks and enhance the “visibility” in the market.

“We are a small company. But if we act collectively with the transport operators of Paris and Brussels, we are perceived very differently and may perhaps be offered different terms and conditions – then Bombardier and Siemens will react differently. For us alone, they would not have presented these top-class experts“.

But private actors will only participate, if the project is of market relevance. Furthermore, the projects have to fit the portfolio of the company:

“The involvement must be deducible from the corporate goals. Nothing else makes any sense.”

“Our project offers a good platform to promote our new methods and our competence also in contact with government offices.“

“In the (...) project, there was a good accord with our own company strategy. It is our aim to jointly achieve things on the European level. ”

“We have a PT extension strategy, which could also be found in the project. So the project helps to do the things we wanted to achieve until 2030 anyway. Beyond that, the co-financing of course also helps to do things which would not be feasible without this money.“

The image of the INTERREG funding is often helpful and the involvement in INTERREG projects good for outside publicity:

“Sometimes, we have seen ourselves here as an ‘avant-garde of funding’, since INTERREG is not governed by the scattergun approach, but only offers co-financing to projects, which are ‘avant-garde’, i.e. innovative. That was new territory for the corporate group as well.”

The observer status may also offer advantages, as it allows for the cooperation of competitors within a market segment.

“The observer status or the status as associated partner offer us the opportunity to cooperate with competitors without creating competition-related problems.“

In total, the INTERREG involvement often helps the companies to improve their position in the market:

“We have generated an immense market advantage from our project participation.“

Finally, the projects, where English is usually the common language, also help to gain or expand branch-specific language skills

“Many project participants also really only learn English now due to their involvement the project.“

Furthermore, they offer the private partners the chance to bring forward topics, which are not yet ready for the market.

4. Involvement of private actors in the INTERREG B cooperation areas

In the course of this research project, all five cooperation areas with German participation have been examined:

- Baltic Sea Region (BSR)
- North-West Europe (NWE)
- North Sea Region (NSR)
- Central Europe (CE)
- Alpine Space (AS)

4.1. Actual involvement of private actors

In the five INTERREG B cooperation areas, currently (as per 08/2011) a total of approximately 300 private partners⁸ is involved, for whom more than 50 million euros of ERDF funds are being spent. That amounts to around 8% of all partners and 7% of the ERDF funds allocated so far. The share of private partners in INTERREG is largest in the North Sea Region (13%) and in Central Europe (12%), whereas in the Alpine Space (7%) and North-West Europe (6%), the percentage is only half as high; in the Baltic Sea cooperation area, the share of private organisations is low (2%). These proportions also apply to the share of funds received by the private partners.

In the forerunner programme INTERREG IIIB, 7% of all partners were private organisations who used 6% of the total ERDF funds of the programmes. When compared to INTERREG IIIB, primarily the North Sea Region and North-West Europe have experienced an increase in the share of private actors, in Central Europe the share of private partners remains about as high as in the formerly combined Central and South-Eastern European area with more than 12%. The direct project involvement of private partners was reduced in the Alpine Space and the Baltic Sea Region.

The participation of private actors in INTERREG B as a whole shows a disparity in relation to the special strategic importance of public-private partnerships, which is called for in numerous EU policy documents (e.g. Europe 2020 strategy, see chapter 3.1 above).

4.2. Common features

Based on their common framework of action, Council Regulations (EC) No. 1083/2006 (“Structural Funds Regulation”) and 1080/2006 (“ERDF Regulation”), the examined cooperation areas share a number of common features:

- EU reference and strategy documents and EU guidelines, which serve as reference for the operational programmes (OPs) and programme implementation;
- higher level funding priorities, i.e. accessibility, environment, sustainable urban development, promotion of innovation;
- project duration;
- composition of the formal structure of the programme actors (i.e. transnational and national programme committees, Managing Authority and Programme Secretariats, Certifying Authority, Audit Authority);

⁸ These data are based on calculations of the BBSR. The BBSR records private project partners in all cooperation areas on a comparable basis. Private project partners are understood as institutions/enterprises organised under private law, mainly profit-oriented, i.e. active in the market

- appointment of the members in the transnational programme committees by the concerned Member States;
- method of project application assessment and monitoring of project implementation;
- programme and project financing (i.e. complete advance financing of the project activities by the project partners).

Figure 4.1: Transnational cooperation areas with German participation⁹



4.3. Differences

The examined INTERREG B programmes differ in essential operative features – despite their common strategic goals and the consistent administrative fundament.

⁹ Source: www.interreg.de

Differences in the context of "private" – "public"

- There is no common definition of the term “private actor” in the cooperation areas. Against the background of the state aid discussion, different cooperation areas use different levels of restriction.
- The cooperation areas offer different opportunities for participation with varying competences and funding opportunities.
- The cooperation areas have developed different forms of handling the European state aid control policy. The positions vary between actively supporting and restrictive.

General differences (of indirect relevance in the context of "private" – "public")

- The levels of funding, with which public and private partners are supported, amount to 50%, 75% or 76% (for German partners), depending on the cooperation area.
- The average total project budget and the derived respective average partner budgets (affecting private and public actors alike) vary between 2.7 and 7.5 million EUR.
- The share of investment costs range from 2.3% (Alpine Space) to 35% (North-West Europe).

4.3.1. Modalities of involvement of “private partners”

Baltic Sea Region (BSR)

The involvement of private actors as project partners is only possible, if they are “*meeting needs in the general interest*”, e.g. as registered association. This regulation results in the fact that economic actors can only be integrated as project partners via “intermediary organisations” such as e.g. chambers of commerce or (semi-)public technology centres without commercial interest. The Lead Partner option is not available for private partners.

Only public partners and private partners considered to be non-profit can become regular partners. Private partners, who are not non-profit, can only be “suppliers” or associated partners, which are involved via a “letter of intent”. Associated partners do not receive any funding from the programme. However, travel and accommodation cost can possibly be taken over and accounted for by a regular partner.

Irrespective of the strong restrictions concerning the access of private partners, all potentially state aid-relevant activities are examined at an early stage in the framework of two project assessments in order to remove them from the project portfolio, if necessary.

North-West Europe (NWE)

Private as well as public actors can act almost on an equal footing in the projects. The difference is that private partners with commercial interest cannot take over the Lead Partner function.

The programme distinguishes between three forms of involvement:

- as fully adequate project partner;
- as sub-partner to a regular partner (the funding is the same as for a regular partner);
- as observer (travel and accommodation costs are funded by the programme).

In this context, it is also interesting that the Operational Programme (OP) for NWE lists a number of EU initiatives “with connection to the operational programme for NWE” in its Annex C (e.g. CIP, the European Research Framework Programme or “Joint European Resources for Micro to Medium Enterprises (JEREMIE)”, thus positioning itself consciously in proximity to these SME-friendly programmes.

If during the project assessments state aid-relevant activities are identified in the scope of investments, a solution is sought together with the partners. Here, all existing instruments such as “de min-

imis”, the General Block Exemption Regulation (GBER) and the notification are put to use. In this connection, all partners are encouraged also to cooperate with the national authorities (usually the ministries of economy on the national and regional level).

North Sea Region (NSR)

Private as well as public actors can act on an equal footing as partners in the projects. The Lead Partner status is available for both public and private partners. The sub-partner status is also a possibility.

The North Sea Region has defined clear framework conditions in its OP, according to which private and public project partners can become active in the projects:

- The organisation has an unambiguous legal form.
- Within the project, the organisation acts as “non-profit organisation” on the basis of actual costs (outside the project, private partners can be profit-oriented).
- All project-related cost must be separated from the running costs of the organisation in the organisation’s accounting.
- All project results have to be made available to the public free of cost.
- All project partners (also, and especially private actors) have to adhere to applicable tendering and procurement legislation.
- In some cases it may be required to provide a bank guarantee.

These rules were set up as a reaction concerning the questions of state aid control (especially the question of economic advantages). Herewith, an attempt is being made at already excluding the case of state aid in the regulations of the OP.

Central Europe (CE)

Private actors can be involved as partners in all programme priorities. In the “innovation” priority, they can also be Lead Partners.

Furthermore, private and public institutions can become associated partners. Their travel and accommodation cost can be funded via a regular partner.

The OP for Central Europe also quotes the EU funding programmes FP7, LIFE+ and CIP as being related in impact.

In Central Europe, the state aid topic plays a central role in project application. All partners (private and public) have to provide a formal declaration that their project activities are in conformity with state aid regulations. Concerning planned investments, the programme authority and the JTS primarily apply the “de minimis” regulation. Over the course of three years, project partners can thus only receive a maximum funding of 100,000€ in the transport sector or 200,000€ respectively in all other areas from all (!) state aid funds.

The “de minimis” regulation can in principle be applied to all budget lines here. In practice, however, only those areas are taken into consideration, where an actual competitive advantage can be suspected (e.g. budget lines “investment” and “external expertise”). The programme differentiates between direct and indirect state aid. Direct state aid relates to the project partners, indirect state aid also refers to indirect beneficiaries (see the INNOTRAIN example).

Example INNOTRAIN

In the INNOTRAIN project, IT infrastructure (soft- and hardware) is being analysed and modeled with the help of software tools by SMEs.

The aim is to optimise and professionally manage this infrastructure. Experiences from business information technology show that 20-40% can be saved this way. With these freed resources, the respective SME can initiate product and process innovation in a second step (e.g. implementation of new services such as remote maintenance or new procurement concepts).

The project is primarily targeted at IT managers of small and medium-sized enterprises. During the duration of the project, approximately 1,000 companies shall get the chance to analyse their structures.

According to the concept of “indirect state aid”, all funding recipients, i.e. all SMEs, at which INNOTRAIN is aimed, have to sign a formal declaration. In this document, the SME confirms that the financial equivalent of the analysis (approx. 500€) is not in conflict with public funding, which has probably already been paid.

Alpine Space (AS)

Private actors can be partners in all priorities. However, their own contribution has to be accounted for by other public funding. The background of this rule is the assumption that by the provision of public funding, a public interest in the involvement of the private partner can be secured and documented. Private partners can – under certain conditions - also take over Lead Partner functions.

“It becomes extremely burdensome to impossible to find co-financing in the Alpine Space. If we had not been a company with communal affiliation, we would have had a real big problem. That is why so few private companies get in. Those who do get in usually have connections to a municipality.”

Additionally, interested organisations can join the project as “observers”. These organisations are, however, formally not considered to be “project participants”.

In the Alpine Space, only projects are approved, which do not include state aid-relevant activities. In the end, it is up to the responsibility of each project partner to make sure that these requirements are met. The national contact points, Joint Technical Secretariats (JTS) and the representatives of the Member States are at the partners’ disposal for advice. If, in absolutely exceptional cases, it should not be possible to change the project structure in a way in which every case of state aid can be ruled out, the involvement of the respective partner is only granted under the de minimis regulation (so far, no project has made use of this possibility).

4.3.2. General conditions of participation

Besides specific regulations for the involvement of private actors, there are numerous rules of participation, which apply to all partners likewise, but which are of special significance for private actors.

Project budgets

The average project budgets (as indicator of “project size”) vary considerably between the different cooperation areas. Private partners can thus realistically count on roles (budgets) of very different sizes.

Table 4.2: Size of the project budget by cooperation area (2007-2013) [in 1,000 EUR]

Cooperation area	Mean budget	Smallest budget	Largest budget
Baltic Sea Region (BSR)	3,369	394	7,995
North-West Europe (NWE) ¹⁰	7,570	956	23,280
North Sea Region (NSR)	5,130	1,880	15,570
Central Europe (CE) ¹¹	2,800	1,100	7,100
Alpine Space (AS) ¹²	2,796	1,734	3,990

Source INTERREG IVB project database of the BBSR

The mean budgets for private and public actors do not differ significantly, i.e. on average private partners receive a similar budget as public project partners.

Funding rates

The funding rates vary between the examined cooperation areas. Although private and public partners are treated in equal terms within the respective cooperation area, the general difference in the amounts of funding rates is not a marginal framework condition for the involvement of private actors.

Table 4.3: Funding rates by cooperation area

Cooperation area	Funding rates
Baltic Sea Region (BSR)	75% for partners from Denmark, Germany, Sweden and Finland 85% for partners from Estonia, Lithuania, Latvia and Poland 50% for partners from Norway 90% for partners from Belarus
North-West Europe (NWE)	50% for all partners
North Sea Region (NSR)	50% for all partners
Central Europe (CE)	75% for partners from Austria, Germany and Italy 85% for partners from the Czech Republic, Hungary, Poland, Slovakia and Slovenia
Alpine Space (AS)	76% for all partners Particularities: Private partners have to finance their own contribution through public funds. This is perceived as a major barrier to private partner project involvement. Italian partners receive an additional national contribution of up to 100% of the project cost by the Fondo di Rotazione.

Funding of (pilot) investments

As a matter of principle, the transnational programmes are not designed as investment programmes. However, transnational cooperation funded in the framework of INTERREG B can support different investment-related activities – depending on the respective project goals:

- Pre-investment measures such as feasibility studies, strategies or concepts

¹⁰ JTS NWE

¹¹ German INTERREG contact point for Central Europe

¹² German INTERREG contact point for the Alpine Space

- Realisation of smaller pilot investments

The analysis of the interviews showed that the various programmes differ clearly concerning their orientation towards these investment-related measures. According to the information provided by the interviewed private actors, the discrepancies in handling the financing of investment purposes have a direct impact on the attractiveness of the respective INTERREG programme for these actors.

Baltic Sea Region (BSR)

Smaller investments with transnational pilot character can be funded.

North-West Europe (NWE)

Smaller investments with transnational pilot character can be funded. Investments account for one third of the project budget on average, which is way above the level of the other programmes.

North Sea Region (NSR)

Smaller investments with transnational pilot character can be funded.

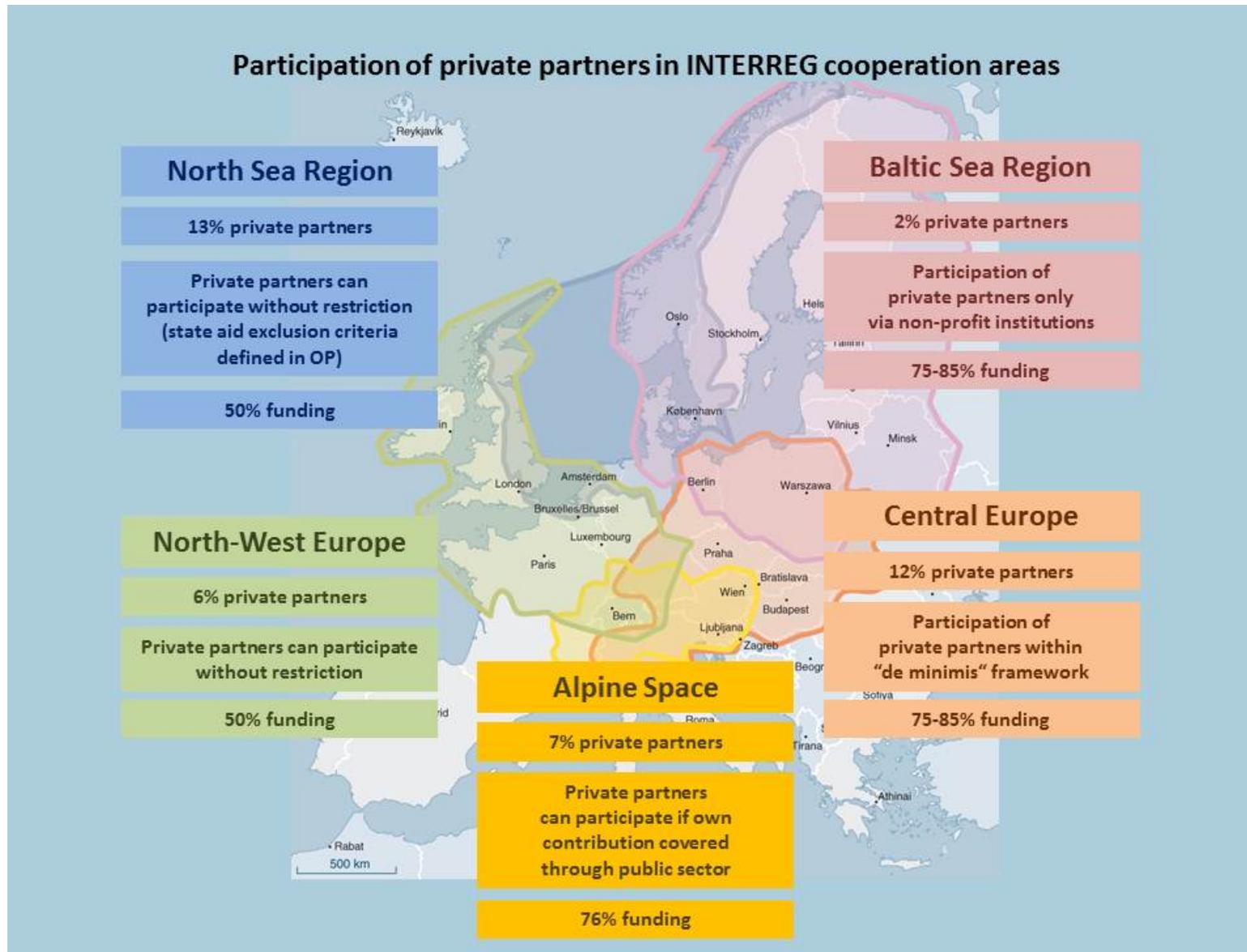
Central Europe (CE)

Smaller investments with transnational pilot character can be funded. The level of investment is usually limited by the “de minimis” regulation.

Alpine Space (AS)

In the Alpine Space region, investments are only funded to a very little extent. In the cost category "investment", there is a differentiation between "equipment", (which is explicitly and verifiably required for project implementation and is often only eligible in the framework of the depreciation period), and "small scale infrastructure". This category needs separate approval by the Programme Committee, and strict regulations have to be applied. The instrument is used relatively rarely as there are no means for investments in the comparatively small total budget of the Alpine Space.

Figure 4.4: Private participation in the INTERREG cooperation areas¹³



¹³ Source: calculations of the BBSR/Source map: www.interreg.de (BBSR)

5. Barriers and obstacles

On the basis of the interviews conducted in the framework of this research project it can be stated that the involvement of private actors in INTERREG B programmes is subject to a number of obstacles. Although many of the problems listed in the following potentially concern both private and public actors alike, the interviewees attribute a particular relevance to them concerning the involvement of private partners.

In the following, the major obstacles to the involvement of private partners in INTERREG B will be discussed *from the point of view of the private actors*.

If sorted roughly according to priority, from the point of view of the interviewees the following barrier areas and concrete obstacles arise:

Table 5.1: Barriers to the participation of private actors

Area	Concrete obstacle
Programme profiling	<ul style="list-style-type: none"> • Confusing complexity due to differing profiles of the INTERREG programmes • Competition of the EU programmes with sometimes better conditions/less effort • Communication strategies, which are not targeted at private partners • Perceived as a “niche instrument” of structural funding, without strong lobby
EU state aid regulations	<ul style="list-style-type: none"> • Complexity of the EU state aid regulations when being applied to INTERREG • Non-uniform interpretation of the state aid regulations and application of state aid instruments • Insufficient coordination and counselling for questions of state aid by national and EU institutions
Rules of procedure	<ul style="list-style-type: none"> • Accounting/claiming of overheads laborious/not possible • Rigid/not very problem adequate guidelines for project planning • Guidelines for auditing are complex and require exposure of sensitive data • Protection of intellectual property is not unequivocally ensured
Application process	<ul style="list-style-type: none"> • Application and selection procedure are partly considered to be intransparent and laborious • Evaluation criteria for project applications do not consider the requirements of applicants sufficiently
Working cultures & capacities	<ul style="list-style-type: none"> • Private actors have to adapt to working cultures of the public sector • Provision of sufficient personnel capacities is sometimes difficult for small enterprises
Further barriers (of lesser priority)	<ul style="list-style-type: none"> • Lacking advance or progress payments lead to low levels of liquidity • Partly low/differing funding rates in cooperation areas • Project duration longer than innovation cycles • Programme borders perceived as being artificial/cross-programme cooperation difficult • Insufficient data basis for the involvement of private actors

5.1. INTERREG programme profiling

Different profiles and expectations

The profiles of the various INTERREG B programmes with their specific regional and sectorial differentiation and different funding rules are often difficult to understand for “INTERREG-Newcomers”. Furthermore, the programme committees in the various cooperation areas have very dissimilar views concerning the character and the emphases of their programmes. Whereas in some areas pilot investments are

emphasised as expression of concrete action, other cooperation areas rather fund cooperative activities without direct investment character.

As a consequence, private and public actors have different expectations concerning the funding programme. In the eyes of not a few actors, the geographical overlap of the cooperation areas results in a confusing situation, in which the meaningfulness of differing rules and foci of the INTERREG cooperation areas is not self-evident. Complexity and lack of clarity are major obstacles to a first involvement in INTERREG programmes.

Competition of the EU programmes

Despite the transnational character of the INTERREG programmes and their focus on integrated territorial development, they are at times in competition with other funding opportunities both at the European and at national levels. These offer more favourable conditions in certain cases (in the European Research Framework Programme [FP7] up to 100% of the personnel cost can be funded) or they are more easily accessible (even if the projects have to be custom-tailored to the respective funding programmes). Especially large corporations often have access to other (national) funding opportunities, which may have less regulatory requirements.

"In our corporation, we were facing rather strong headwind concerning project participation. The background is, that the ERDF funding can only be obtained under the stipulation of transnational cooperation. To receive money from the funds is normally easier, without the cooperation."

"You have to consider thoroughly what you want INTERREG to fund. 82% national funding for specific investments in a new line are much more attractive than the 50% to be gained from INTERREG. INTERREG, however, is more suitable for the funding of planning activities."

Communication strategies, which are not targeted at private partners

The communication of the INTERREG programmes is not targeted at private partners in an optimal way. Thus, meetings such as annual conferences could become *"insider events"*.

"It is partly still no man's land, as private actors are still not on the agenda of many programme secretariats. On this account, many flyers and info material are until now only designed for "professional customers" and do not consider the perspectives of the private companies."

"We were lucky with our superiors. They always trusted us concerning the goals and meaningfulness of the project. If you only look at the information provided by the programme, you throw your hands up in horror, as you get the feeling that you will never understand it. Too much text, everything is so complicated."

In consequence, as private actor you often need the support of an external consultant in order to best recognise and utilise the opportunities provided by the programme.

"The communication of INTERREG programme towards private partners is very poor. Had we not engaged (...), i.e. a consultant specialised on our topics, we would not be in this project now. ... Without this support, our participation would not be feasible."

"As private partner, you cannot manage such a project with all the rules and procedures yourself without an external adviser. Here, the cooperation with (...) [in another programme; the authors] is easier and more pragmatic and closer to the methods of a commercial enterprise."

Placement of INTERREG IVB in the system of the Structural Funds

Many interview partners of both the public and private sector discover that INTERREG is poorly equipped financially when compared to the Objective 1 and Objective 2 programmes. So far, INTERREG

(Objective 3) is thus a “niche instrument” without strong lobby in politics and economy outside spatial planning.

“INTERREG B is a small annex to Objectives 1 and 2”.

“INTERREG is a niche product on the national level as well - also in comparison with other funding programmes. We do not have a real lobby and nobody who is well versed.”

The integration of the INTERREG programmes as “Objective 3” into the funding sector of the European funds for regional development is principally perceived critically, as it results in numerous misunderstandings on the side of potential project partners according to the perception of programme actors:

“INTERREG has never really been accepted especially in the Ministry of Economy and it did not have friends on the management level. And even if it did, these friends were often coined by the traditional funding programmes of the ERDF and had always assumed that a competitive advantage could be generated with the programme.”

“Basically, we do not have any specific rules for Objective 3. They are mainly the rules of the Objective 1 and Objective 2 programmes, which are being interpreted differently by all those involved. And Objectives 1 and 2 are clearly targeted at private companies and large investments. This is different in INTERREG. ... Here, too, it is good if the private companies are involved.”

5.2. EU state aid regulations

5.2.1. Viewpoint of actors

A major barrier to a more comprehensive involvement of private actors in INTERREG programmes is the often restrictive implementation praxis concerning European state aid regulations. Based on insecurities in handling existing regulations and guidelines, many programme actors want to avoid mistakes in project authorisation and also preclude future liability claims of the European Commission against individual Member States. Expertise in state aid control policy is hard to find and, what’s more, expensive. In consequence, the state aid topic is, according to the unanimous opinion of the actors, often assessed in a wrong way and the resulting conflict potential is overrated, thus causing a threatening scenario, which is not a true reflection of reality:

“It created these enormous perceptions of risk which were disproportionate to the real situation.”

“Due to the still existing uncertainties many authorities and stakeholders follow the principle ‘better safe than sorry’”.

“The administration tries to cover its back wherever possible. Nobody there is interested in results. In the case of a follow-up examination by the EU, all cover their backs.”

This situation is difficult to understand – for many private actors as well – since many companies in reality work outside the competition or are in the end working under public contract respectively. Some interview partners remarked critically, that in the context of the state aid discussion, especially companies primarily owned by the public sector are in a sometimes unclear legal position. Public transport companies and other utility companies for example are usually listed as commercial companies, but they are mainly committed to the public interest in their actions and mostly controlled by politically determined committees, so they deem themselves unjustly affected by the state aid problem. Other “intermediary organisations” of the private sector are also facing problems, as they are listed e.g. as associations or formally listed private companies, but are non-profit in practice or are subject to the primacy of politics respectively.

As a matter of fact, the question of partner status (i.e. the assessment of whether a partner should be considered as “private” or “public”) is often linked to the question of state aid by the programme secre-

tariats, although such a classification is insignificant, since the EU state aid legislation has to be applied to both private and public enterprises likewise.

In the course of this research project, numerous “INTERREG programme experts” were consulted; people who are practically involved in the INTERREG programme world and have profound programme proficiency. According to the unanimous opinion of these experts, only few activities in the INTERREG B projects are in practice state aid-relevant, the vast majority of the activities does not constitute anti-competitive funding. This contradiction between professional assessment and common practice is in part explicable by the relatively complex legal framework of the European state aid regulations. Therefore, first of all some basic explanations shall serve the purpose of better understanding these relatively specific problems.

5.2.2. Excursus: legal framework

By virtue of regulation 1080/2006, INTERREG is an integral part of the European regional development fund (ERDF). The areas convergence, regional competitiveness and employment as well as European territorial cooperation (INTERREG) are components of a common framework. According to Art. 54, par. 4 of the superordinate EU regulation 1083/2006, all ERDF-funded operational programmes for the period 2007-2013 must consider the question of state aid reasonably:

“For State aid to enterprises within the meaning of Article 87 of the Treaty, public aid granted under operational programmes shall observe the ceilings on State aid.”

Accordingly, this regulation is also valid for “European territorial cooperation” (INTERREG) and the INTERREG programme managing authorities are thus responsible for ensuring that the state aid rules are being observed.¹⁴ That means (at least theoretically), that an examination for all partners of a project has to take place as to whether there is unlawful state aid. This examination, however, often affords a lot of efforts due to the different legal situations and language barriers. In contrast to the “convergence” and “regional competitiveness and employment” programmes, which are always totally national programmes, INTERREG is by definition set up transnationally, state aid examinations are respectively complex and fraught with risks. In addition, it is the individual Member State, which is ultimately liable in case of unwarranted funding according to Article 17, par. 13 of the ERDF regulation.

Examination of state aid relevance

According to Art. 107¹⁵ of the EU Treaty,

“any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market.”

Accordingly, six questions have to be examined when determining whether there is a case of unlawful state aid:

- Is the beneficiary an “undertaking” involved in economic activity?
- Are state resources being transferred? These funds can be granted in various forms: e.g. as subsidies, interests and tax reliefs, guarantees, government holdings of companies, provision of goods or services on preferential terms etc.
- Is it selective aid, i.e. does the aid only benefit specific companies or economic sectors or enterprises in specific regions?
- Is there a (potential) “economic advantage”?
- Is there competitive distortion due to the aid or is it to be expected?

¹⁴ Article 60 of EU regulation 1083/2006.

¹⁵ Treaty on the Functioning of the European Union, consolidated version of May 2008; OJ C115/47; formerly Art. 87.

- Could the aid infringe with international trade in the EU?

If all these points can cumulatively be applied to a specific beneficiary, in the first instance unlawful state aid is involved.

Application of state aid instruments

If a case of initially unlawful state aid has been detected as a result of individual examination, it has to be verified, whether the state aid in this individual case

- is nevertheless allowed here due to its marginal size (“de minimis”);
- only has to be reported to the European Commission due to a general examination (General Block Exemption Regulation), which has already taken place or;
- can be submitted to the European Commission for authorisation after a yet to be arranged examination of the individual case (notification).

Figure 5.2: State aid control



This means that a state aid conform situation can be arrived at under certain conditions, even if at first an aid seems to be unlawful, when existing guidelines and specific instruments are applied (e.g. “de minimis”, the General Block Exemption Regulation [GBER] and notification).

As a result of the **de minimis regulation**, the total of the “de minimis” funds for one company can, since January 2007, amount up to 200,000 EUR (100,000 EUR for the road transport sector) for the current and the previous two tax years. The authority granting the money must issue a “de minimis certification” and the recipients are required to declare the already received “de minimis” grants before receiving new funding. In Germany, as in other EU Member States, there is no central registry for “de minimis” funding.

De minimis should only be applied when it is clear, that there really is a case of state aid. If a beneficiary has already received the maximum amount of state aid (according to “de minimis” definition), no further funding is allowed. Especially companies, for which an involvement in INTERREG is worth considering and who may be active in several projects, this situation comes up rather frequently – as experiences with the North Sea Region Programme have shown.

Some actors had the impression, that “de minimis” is applied very frequently (or even prematurely) in some cooperation areas in the sense of risk minimising.

Principally there is an obligation to examine all state aids in three-year periods, however, the programme secretariats usually content themselves with a self-certification by the beneficiaries. But if “de minimis” certifications are requested, although there is not a case of state aid, the concerned companies face a disadvantage.

As a result of the new **General Block Exemption Regulation** (in its version of 2008), in short GBER,¹⁶ the administrative effort for Member States and Commission in funding allocation is reduced. Based on the GBER, compulsory authorisation by the Commission is ruled out for 26 state aid categories (furthermore, GBER combines and unifies the provisions of formerly 5 regulations).

¹⁶ Commission Regulation 800/2008 of 6 August 2008, Official Journal L 214/3.

The GBER is most of all of relevance for small and medium-sized enterprises (SMEs), since funds from the 26 exempted categories can be distributed to SMEs. Some have even been designed especially for these companies. The GBER also includes “regional aid” in its Article 13.

On the basis of a **notification**, the European Commission can, in the course of an individual examination of a specific case, exceptionally grant state aid, which is neither licensed by the “de minimis” regulations nor by GBER. In order to decide, whether such an exception can be granted, the Commission has to be notified of such an aid, of which a company will benefit (notification). After authorisation by the European Commission, the aid can be granted.

5.2.3. State aid regulations in INTERREG practice

In consequence, the interpretation of the European state aid regulations leads to the dilemma, that detailed state aid examinations seemingly reduce the risk of liability for unlawfully granted state aid. On the other hand, this reduces the scope of potential beneficiaries to a few, mostly public actors. This, however, is hard to communicate to politicians, who aim for more private sector engagement, on the one hand, which is prevented through restrictions of the funding programmes, on the other hand.

Many of the INTERREG actors involved in this study adopt a critical stance vis-à-vis the topic of state aid:

- Legally binding advice is almost completely lacking. Clearer guidelines in terms of code of practice are expected, especially from the European Commission.
- There are discrepancies in practice between the responsible Directorates-General “Regional Policy” and “Competition”. Stronger coordination is called for.
- Regionally active programme actors and practitioners feel abandoned by their national authorities, while they themselves can only become active in a limited way.

In light of the fact that apparently Directorate-General “Competition” (as the significant authority) sees the state aid question far less critically than most of the administrative authorities, the INTERREG actors expect more pragmatic and courageous decisions from their programme authorities:

“If the guidance from the Commission is missing, then you have to create your own rules. Of course it is always better if there were guidance from the Commission, but it is possible to do projects with the situation as it is. Until now, Notifications work in all countries. Also in ‘Objective 2’ programmes. It is possible to live with state aid. You can either always look for new problems or you focus on the solutions.”

The main cause of this unsatisfactory situation is, according to the opinion of INTERREG experts involved in this study, that the INTERREG programmes, similar to the “convergence” and “regional competitiveness and employment” programmes, are administrated in the framework of the European Regional Development Fund (ERDF), but that they differ from it substantially in direction and character:

- INTERREG has developed into a programme for the promotion of transnational innovation potentials of Europe’s regions; this entails a wide cooperation of the societal actors, especially public-private partnerships on the regional and transnational level.
- The European state aid regulations start from the assumption that commercially operating individual enterprises should receive direct aid from a member state: this does not at all correspond to the funding constellation in INTERREG.
- There is a conflict of aims between compliance with the complex European state aid regulations and the political desire for stronger involvement of private actors.

These rather fundamental problems can however, as it is argued, not be solved legally, but only politically. The upcoming revision of the European Regional Development Fund (ERDF) could provide an opportunity for this solution.

5.3. Rules of procedure

Accounting of overhead cost

In some INTERREG cooperation areas, overheads can only be claimed as individual cost items, not as lump sum. Overhead cost is (per definition) not unambiguously attributable to individual projects, but nevertheless constitutes cost from the business point of view.

This situation often leads to the fact that real costs of private actors cannot be considered fully and often constitute an additional “hidden” own contribution. Actors, who know other EU programmes, do not understand why this INTERREG-specific difference exists.

Detailed project planning

Because of the necessity of planning and settling project expenditures very precisely and long in advance, the INTERREG programmes are perceived as bureaucratic and formalistic by many private actors.

“Planning of milestones five years in advance is not reasonable, either. It does not really matter whether I spend the money in WP3 or WP5. Only the results are crucial.”

“You can impossibly predict three years in advance how you can best set up cooperation between universities and companies in Gdansk, Vilnius or Tallinn, especially if you have not met the partners yet. But you have to determine it all beforehand.”

There are often differing interests in the use of the funds. At times, securing rapid cash flow is too much in the foreground on the side of the programme. Content-related and strategic aspects are then only treated with second priority.

Audit processes

The financial audits, the associated necessity of recording working hours as well as the comprehensive proof of financial processes are often not in line with the working practices of SMEs.

“Recording of working hours: we do not record hours, as we deem the efforts too high in proportion to the benefits. I do not record 100% of my time, if I can only claim 5-10%.”

Furthermore, generally all costs have to be audited by private auditors. That does not only take time and time, but is mostly problematic, as the accounts have to be disclosed completely for these examinations and probably even sensitive information (e.g. salaries) have to be outlined for the JTS and the Lead Partner.

“The requirements for documentation are too high. You have to open your company books to spend as much time on these as they decide. This is not so much an issue for the public sector.”

In this context, there are also complaints that there seem to be differences in handling projects of one and the same programme:

“We are astonished that even within one INTERREG programme, matters are not settled consistently. It very much depends on the auditor of the Lead Partners and on the respective JTS finance officer. The regulations applied to (...), are not necessarily also applied to (...). Difficulties become particularly apparent in the claiming of salaries and in handling matters of confidentiality.”

Moreover, private partners often face restrictions concerning the claiming of the service of international experts, who are working outside the EU:

“The employment of international experts is a problem. That is relevant, as part of our advance development department is based in non-EU countries (e.g. US). But these people are always contacted for certain projects. That usually leads to difficulties in the claiming of personnel cost.”

Protection of intellectual property

The protection of a project idea, of marketing ideas or new processes is often difficult due to the programme-inherent necessity to publish project results. This is particularly problematic for universities and private partners with development activities.

5.4. Application process

Application and selection procedure

The application and selection processes are often experienced as being intransparent and something that cannot really be planned. Particularly the quality criteria for eligible projects often seem obscure to actors, who are not deeply involved in the matter. Accordingly they are hard to translate into applications. At times, the encounter between specialist expertise on the side of the applicant and the broad integrative approach of regional development and transnational cooperation on the side of the programme secretariats leads to communication problems.

Besides, application processes have become rather complex and too expensive for many private partners in comparison to the advantages. A successful application can easily cost 30,000 – 60,000€. But sometimes only partial amounts (in Central Europe 20,000€) are eligible.

Many private actors criticise in addition that their stakeholders are not adequately involved in the process of project selection.

Evaluation criteria for project applications

Some actors criticise the usefulness of some of the project results requested by the programme side, as these are not in line with the working practice of private actors:

“The products requested by the programme such as brochures etc. usually have nothing to do with the needs of SMEs. They do not require something like that. They are interested in ‘real’ results. It is enquired how many manuals are being produced, how many politicians are involved etc.”

Interviewees furthermore demand that even more attention is paid to the success and the results of the projects and that there is a change from “input control” to “output control”:

“Content-related successes do not play a part in project evaluation. A list is being checked off. I think that the projects should be reorganised and paid according to success. They should clearly indicate if you achieve this or that, you get this amount of money.”

“Public administration does an input control. What has been put into this process? How much money for personnel, travel, material expenses etc.? That has to be reorganised. The question is: What is the output?”

5.5. Working cultures & capacities

Different working cultures

In the projects, different working cultures get to meet. Public and private actors often do not have an idea of the framework and working conditions of the respective other sector.

“In politics and administration, private companies are treated with high esteem, but there is no knowledge concerning the conditions reigning in an enterprise.”

Although fundamental exchange and cross-sectorial cooperation are essential and intended features of transnational projects, private partners often cannot but adjust to the partly more time-consuming working processes of public partners.

Personnel capacities of small enterprises

The provision of sufficient personnel resources for an INTERREG project, however, is often a problem particularly for small companies.

“In our project, we have a high degree of transnational networking. However: that already binds part of the resources and specialists. In a large company, the areas of responsibility of the employees are smaller. There, it is easier to make someone available for an EU project.”

5.6. Further barriers

Next to the mentioned barriers to a more effective involvement of private actors, there are some more, which are less relevant:

Advance and progress payments

Many private partners criticise the necessity of having to pre-finance the project activities. The lack of advance payments in the INTERREG programme hits SMEs and associations particularly hard and may necessitate pre-financing via external loans. These loans, however, are mostly credited towards the normal credit line of the companies, thus reducing the scope for other entrepreneurial activities. Moreover, interest cost is not eligible (as is, however, the case in most EU programmes).

The period until release of the ERDF funds are considered to be much too long. According to experience, it takes approximately 10-12 months instead of 6 months until pro rata refinancing. This is caused by long processing times of the JTS' call for funds and of the managing authorities. In addition, interview partners criticise that the existing financial guidelines are too much tailored to suit public actors:

“Although the INTERREG programmes are targeted at a stronger support of the economy as well, they are in reality programmes for public administration. Public administration does not have the problem of pre-financing, if the project is included in the institution's budget.”

Funding rates

In cooperation areas, where funding amounts to 50%, it can be observed that especially the private partners (but increasingly also the public partners) have difficulties in financing their own contribution.

In areas, which are part of more than one INTERREG programme (parts of Baden-Württemberg are for example eligible in North-West Europe, Central Europe and Alpine Space), the different funding rates of the programmes (50% in North-West Europe, 75% in Central Europe and 76% in the Alpine Space Region) are frequently considered to be puzzling.

Project duration and programme integration

Despite the advantages of long lasting projects, private partners often require shorter project cycles, especially in the IT sector. Moreover, the funding periods often do not interlock. As a result, young networks are dissolved to some extent or cannot be further consolidated.

“Another problem is the overlapping of the funding periods: presumably it will be like last time: In 2014, the new period will start, but there will not be any calls and programme rules before 2015. That leads to an interruption (of 2-3 years) of the network and to a long break in the development of follow-up projects.”

The internal cooperation of the various INTERREG programmes also offers room for improvement (e.g. more projects across cooperation areas, joint annual conferences etc.), as private partners wish for co-operation oriented towards economic relations rather than the borders of the cooperation areas.

“Why can economic experts from the south (NWE) not cooperate in projects with partners in the north? We are looking for more permeability of the cooperation areas as the 20% rule does not work in practice. It has to be restructured.”

Data basis for the assessment of the involvement of private actors

In the view of INTERREG experts, the data basis for the quantitative evaluation of the involvement of private actors is too irregular; it differs depending on the cooperation area and therefore only allows for limited conclusions.¹⁷ Particularly the diverse assessment and formal classification of the term “private actor” make the development of a common status quo analysis and INTERREG strategy difficult.

¹⁷ The data used in this study are based on individual information of the contact points and programme secretariats of the respective cooperation areas.

6. Recommendations for action

With their recommendations for action, the authors of this study try to take account of the barriers to more effective involvement of private actors in INTERREG B programmes.

Table 6.1: Barriers and recommendations for more effective involvement of private actors

Area	Concrete obstacles	Recommendation for action
Programme profiling	<ul style="list-style-type: none"> Confusing complexity due to differing profiles of the INTERREG programmes Competition of the EU programmes with sometimes better conditions/less effort Communication strategies, which are not targeted at private partners Perceived as a “niche instrument” of structural funding, without strong lobby 	<ul style="list-style-type: none"> Simplification/unification of the rules of implementation and adjustment of the opportunities to participate Differentiation of the funding rates according to type of activity Programme communication targeted at private actors Promotion of cooperation across cooperation areas
EU state aid regulations	<ul style="list-style-type: none"> Complexity of the EU state aid regulations when being applied to INTERREG Non-uniform interpretation of the state aid regulations and application of state aid instruments Insufficient coordination and counselling for questions of state aid by national and EU institutions 	<ul style="list-style-type: none"> Solution-oriented application of the examination criteria on state aid More effective handling of state aid regulations General examination of the state aid relevance of respective projects
Rules of procedure	<ul style="list-style-type: none"> Accounting/claiming of overheads laborious/not possible Rigid/not very problem adequate guidelines for project planning Guidelines for auditing are complex and require to reveal sensitive data Protection of intellectual property is not unequivocally ensured 	<ul style="list-style-type: none"> Acceptance of overheads Opportunities to participate with reduced administrative burden Definition of unambiguous rules for the protection of intellectual property
Application procedure	<ul style="list-style-type: none"> Application and selection procedure are partly considered to be intransparent and laborious Evaluation criteria for project applications do not consider requirements of applicants sufficiently 	<ul style="list-style-type: none"> Two-step, tightly organised application procedure/More effective support for inexperienced partners Better integration of the stakeholders of private actors in the programme committees Result-oriented project monitoring
Working cultures	<ul style="list-style-type: none"> Private actors have to adapt to working cultures of the public sector Provision of sufficient personnel capacities is sometimes difficult for small enterprises 	<ul style="list-style-type: none"> Better consideration of different working cultures in project planning and implementation

Further barriers	<ul style="list-style-type: none"> • Lacking advance or progress payments lead to low levels of liquidity • Partly low/differing funding rates in cooperation areas • Project duration longer than innovation cycles • Programme borders perceived as being artificial/cross-programme cooperation difficult • Insufficient data basis for the involvement of private actors 	<ul style="list-style-type: none"> • Granting of advance/progress payments • More flexible project duration • Better conditions for cross-cooperation area projects • Uniform conditions for assessing the involvement of private actors
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6.1. Programme Profiling

Simplification/unification (standardisation) of the rules of implementation of all cooperation areas

A joint effort of all INTERREG cooperation areas to simplify the rules of implementation, which would also result in standardisation, would increase the efficiency and attractiveness of the INTERREG programmes:

- Actors can transfer their experiences directly from cooperation area to cooperation area.
- The amount of time and money needed for the application and implementation of projects can be reduced.
- Professional exchange across cooperation areas can be fostered in a more targeted way.
- INTERREG is perceived as a uniform programme with unambiguous rules.

An expression of all simplification efforts should be the drafting of common, uniform programme documents such as *fact sheets*, *manuals* or *guidance notes* for all cooperation areas.

Alignment of the opportunities to participate

In the future, private and public actors should be treated equally, as the inconsistent regulations, especially those concerning the involvement of private actors, reduce the attractiveness of the INTERREG B programmes. For an increase in the participation of private partners, the interviewed actors have formulated three goals:

- *maximum goal*: involvement of private actors according to the same rules that are applied to public actors;
- *ideal goal*: private partners have the same rights as public partners, but cannot become Lead Partners;
- *minimum goal*: private partners can participate in all programmes as associated partners with funding of travel and accommodation cost.

The opportunity to be involved in projects as sub-partner or associated partner, which is offered in some cooperation areas and allows for participation without the whole administrative burden, which a full partnership entails, should be made available everywhere.

Settling of the partner status should be left to the Lead Partner in so-called “strategic calls” as well and not be effected by the programme. There should not be any restrictive guidelines from the programme side.

Differentiation of funding rates

Lead Partners are usually not willing to really offer project management on the basis of 50% or even 75% funding; in general, redistribution or compensation mechanisms are used, which, however, do not facilitate the day-to-day project work. However, for locally effective investments lower funding rates for joint experience exchange activities are conceivable.

In the European Research Framework Programme, higher funding rates are foreseen e.g. for activities with added European value: 100% for management, training, public relations, whereas research and development for SMEs and public institutions are funded with 75% (for large private companies only 50%) and demonstration with 50%.¹⁸

Different funding rates for different activities are not difficult to manage and would bring more transparency into accounting of the cross-cutting tasks (such as project management, joint trainings or public relations, which serve the project as a whole); individual compensatory arrangements on the project level could be dropped.

Target-oriented communication of the INTERREG programmes

In order to contradict the impression, that INTERREG B is a complex funding programme exclusively for “public actors“, the programmes should develop and implement concrete package of measures, especially in the area of programme communication.

In addition to the improvement of programme communication it is also necessary for the ministries on the national level to be informed about the problems concerning the involvement of private actors and to actively participate in their elimination.

Promotion of cooperation across programme areas

In the age of globalisation, it is not only important for large companies and enterprises active in Europe to be able to interact with partners from outside their own INTERREG cooperation area. In order to facilitate interaction beyond the borders of the cooperation areas, it should be possible to use the “20% rule“ more actively and in a less bureaucratic way.

It should become easier to fund international cooperation and cooperation with the neighbouring regions of the EU in the future.

6.2. EU state aid regulations

The European state aid regulations are complex. They cannot be applied satisfactorily in the INTERREG programme context and they are considered to be fraught with risk in the eyes of the programme actors. While the programme actors experience neither the European Commission nor the Member States as being actively involved in solving these insecurities, administrative authorities and programme secretariats have developed varying practices, ranging from restrictive to actively supportive. Restrictive procedures make participation of private commercial and other non-public partners often complicated and unattractive in consequence. Overall, the results are diverse, but on the whole there are deficient forms of the inclusion of private actors in INTERREG B programmes, which are in contradiction to the strategic aims of important EU policies.

But actually, from the point of view of the authors of this study, there are some concrete courses of action, which have until now only been used insufficiently and could allow for an amelioration of the dissatisfactory situation in the short and medium term, without considerably enlarging legal risks.

Based on the analysis of juridical literature, numerous programme documents and other material¹⁹, the authors believe, that the existing legal framework of state aid on the one hand

- offers opportunities to fund public-private cooperation in INTERREG B projects in the short and medium term in conformity with the regulations, on the other hand
- it corresponds decreasingly to the reality of the INTERREG programmes and therefore, the state aid relevance should be re-examined thoroughly.

¹⁸ See a sample calculation for SMEs according to different funding areas in “FP7 - Guide to Financial Issues (30/06/2010)”, p. 79.

¹⁹ Besides the quoted official documents, the authors have received important input from the INTERACT „State Aid Seminar“, Copenhagen, Feb 2010.

6.2.1. Solution-oriented application of the examination criteria on state aid

Due to the existing legal position, the managing authorities or the programme secretariats acting on their behalf are strictly required to examine the state aid relevance of the planned project activities for each (direct or indirect) beneficiary before granting ERDF funding. This implies control of the six state aid criteria²⁰

- Is the beneficiary an undertaking engaging in an economic activity?
- Are state funds being transferred?
- Is it selective aid?
- Is there a (potential) economic advantage?
- Is there competitive distortion due to the aid or is it to be expected?
- Could the aid affect interstate trade in the EU?

Only if all six criteria are met in an individual case, the ERDF funding is considered to be initially unlawful state aid. In some INTERREG cooperation areas, the priority seems to be in minimising probable legal risks of unwarranted aid. Other programmes seem to put the focus on the active promotion of public-private cooperation (as far as it is required in the project context) and have developed rules and testing methods which are suited in supporting it in conformity with the regulations. In the following, the mentioned criteria will be discussed in more detail.

Is the beneficiary an undertaking?

According to the current legal conception, each unit is considered as an undertaking, which engages in economic activity, irrespective of its legal form or financing. Economic activity means any activity offering goods or services on a market independently of a profit motive and irrespective of the undertaking being a public institution, public similar body or a private (commercial) company.²¹

In Germany, at present the following are definitely not considered to be economic activities: general sovereign tasks (e.g. police service, schooling) and those areas in which the state or public authorities take over tasks (e.g. basic systems of social security, aviation safety control).

This criterion obtains a certain complexity in that the assessment of what is a sovereign versus an economic task is undergoing change (e.g.: water supply is more and more seen as economic activity although it serves a public interest).

The role of associations and clubs, i.e. organisations established under private law, but generally speaking not engaged in commercial activity, has to be considered individually for each case in the INTERREG context on the basis of the concretely planned project.

Are state funds being transferred?

In order for funding to be considered state aid, two conditions have to be met. First, it has to be granted by the state or through state funds. Secondly, in addition the economic advantage has to be effected directly or indirectly by the state (Federal Government, Laender, municipalities or associations of local authorities) and it has to be attributable to it²². For this purpose, it is sufficient, if the funds are allocated by a public or private institution designated or set up by the state.

Concerning money from Structural Funds (i.e. INTERREG funding as well), there is agreement in the literature that it is financed from public means. They are either allocated directly by the Member States or

²⁰ Other authors talk about four or five criteria, but at the core there is no difference between our classification and theirs. We have chosen "undertaking, engaging in economic activity" as first criterion, while other authors primarily discuss this point in connection with the subsequent criteria.

²¹ For the definition see related legal matters C-180/98 to C-184/98 Pavlov (12 September 2000)

²² SCHMIDT/VOLLMÖLLER (2007), p.222

by public institutions commissioned by the Member States. Therefore, this criterion is always considered as being fulfilled.

Is it selective aid?

For funding to be considered state aid, a certain (private or public) enterprise has to receive a benefit (in the broadest sense). For the criterion of selective preferential treatment it is not relevant, whether this has an promotive effect.²³

Selectivity always has to be considered as given in the INTERREG context, as there is not any legal claim of funding on the part of the project partners and as the funding is based on an arbitrary decision by the selection committee.

Is there an economic advantage?

Preferential treatment means granting of an economic advantage in whichever form, without there being a quid pro quo in line with the market conditions (e.g. by contributions or exemption from fees, taxes and/or social benefits). Here, the term preferential treatment is based on a broad understanding and goes far beyond the term “subsidy”²⁴. Therefore, INTERREG funding must be interpreted as “economic advantage” in this sense.

It should be observed that we are not just talking about “some” unspecific advantage or an economic advantage that could “sometime” occur indirectly as a result of ERDF funding. It should rather be an advantage that is nameable in economical categories, which is recognisable as possible result of ERDF funding and is attributable to this fund. It is, however, irrelevant whether this advantage really comes to pass or how large it may be. An examination of the individual case is indispensable.

Is there competitive distortion due to the aid?

In order to be considered as distorting competition, there has to be a measure, which really distorts competition or has the potential to distort it. That implies, that there is a market with market participants, who have received an advantage over other participants, which they would not have received under market conform conditions. Here, it is sufficient if the benefitting company is only potentially better off than competitors, e.g. through savings due to ERDF funding. A concrete noticeability of a privileged position is not necessary.²⁵

In the INTERREG context, many private actors work pre-competitively, i.e. project activities are usually aimed at strategic cooperation, networking or the development of policy tools and often do not lead to marketable products results. Nevertheless, an individual case examination should take place, since the criterion of “distortion of competition” is usually interpreted in a narrow sense – under the prerequisite, that in the concrete project context, “undertakings” are engaged in “economic activity”.

Could the aid affect interstate trade in the EU?

A measure can have a (potentially) trade impairing effect, if the imports and exports between EU member states are made more difficult or easier. Concrete noticeability does not matter.²⁶

The criterion of “affecting interstate trade” is often met when “undertakings” engage in “economic activity” in the concrete project context.

But this criterion requires a border-crossing impact. This means that a verifiable, exclusively local effect of the ERDF funding would not meet the criterion of unlawful state aid. Accordingly, in the Commission’s decisions²⁷ quoted in the state aid simplification package²⁸, the following can be accounted for:

²³ SCHMIDT/VOLLMÖLLER (2007), p.223

²⁴ FRENZ (2007), p. 52.

²⁵ FRENZ (2007), p. 224.

²⁶ FRENZ (2007), p. 224; also see judgment of 30 April 1998 of the Court of Justice of the European Union, Case T-214/95 (Vlaams Gewest).

"1. that the aid does not lead to investments being attracted in the region concerned; and 2. that the goods/services produced by the beneficiary are purely local and/or have a geographically limited attraction zone; and 3. that there is no more than marginal effect on consumers from neighbouring Member States; and 4. that the market share of the beneficiary is minimal on any relevant market definition used and that the beneficiary does not belong to a wider group of undertakings."

Examples of merely local activities, which are sometimes quoted, concern for example retail, taxi services, community, social and personal service activities. An examination of the individual case is nevertheless recommended.

6.2.2. State aid examination in practice

Before considering other aid instruments such as "de minimis", a refined examination of the individual case has to take place. In practice, however, not all examination criteria are of equal relevance:

Table 6.2: Examination need for state aid criteria

Examination criterion	Examination need for INTERREG
Is there an undertaking engaging in economic activity ?	✓ Criterion usually met/no individual case examination necessary
Are state funds being transferred?	✓ Criterion usually met/no individual case examination necessary
Is it selective aid?	? Individual case examination necessary
Is there an economic advantage ?	? Individual case examination necessary
Is there competitive distortion due to the aid?	? Individual case examination (Criterion often met, when "undertakings" engage in "economic activity")
Could the aid affect interstate trade in the EU ?	? Individual case examination (Criterion often met, when "undertakings" engage in "economic activity", except in case of purely local impact)

The examination is essentially based on the question whether in the concrete project context an "economically active undertaking" experiences an "economic advantage" of more than "local impact" (in the sense of the above definitions). It becomes clear that even in an individual case, absolute legal security cannot be achieved – and is not really obtained by restrictive practices, either. In some cooperation areas there are, however, widely used arguments, which are deemed sound by the authors of this study.

According to the opinion of various experts consulted, there is no "economic advantage", if strategies, plans or tools are developed by public actors, which serve governmental functions, or if activities aim at enlarging the generally available expert knowledge through studies, pilot investments, experiments or prototypes, as these activities do not cause a disturbance of the market, when the results of the activities are freely made available to all actors.

The argumentation is analogous, where generally available infrastructures are being set up, which are equally at the disposal of all potential users (e.g. streets, waterways etc.).

The INTERREG B North Sea Region applies the following criteria when allocating funds. It is argued that if all of the following funding criteria are met, a beneficiary does not experience "economic advantage":

²⁷ Commission's Decision in cases N 258/2000 (Germany, leisure pool Dorsten), N 486/2002 (Sweden, aid in favour of a congress hall in Visby), N 610/2001 (Germany, tourism infrastructure programme Baden-Württemberg) and N 377/2007 (The Netherlands, support to Bataviawerf – reconstruction of a vessel from the 17th century)

²⁸ Amtsblatt 2009/C 136/03

- All project activities are claimed on the basis of expenses actually incurred.
- No revenue is gained from the project activities.
- All project results are made freely accessible to the public.
- The partners involved do not have any specific rights to the results.
- Procurement law is applied to all project expenses (also to partners, which are not bound by it).
- There is a separation of costs for “economic“ and “non-economic“ activities.

These criteria constitute a concrete, traceable argumentation, which transfers the general EU state aid regulations to the INTERREG context in a constructive way. The authors consider this to be good practice, which should be universally adopted in INTERREG. Symptomatically, very similar criteria are effective for example in the 7th Framework Programme (FP7).²⁹

The complexity in examining the state aid criteria, which has to be handled by a managing authority or the secretariats under contract, respectively, should not be underestimated: Secretariats have to examine the legal status of institutions from varying legal systems and assess their partly rather specific project activities with regard to state aid criteria; this has to be done in a legally correct way, notwithstanding the time pressure. Therefore it is strongly recommended to initiate a cross-cooperation area knowledge and experience exchange (organisation of seminars, preparation of decision support tools, collection of examples (FAQ)) for minimising risks and enhancing efficiency; ideally this should be achieved across cooperation areas. The support of the relevant authorities on the Member State level, which hitherto seem to feel little pressure to act, should be sought; active participation of the European Commission (DG Regio and DG Competition) is essential.

Through transparent and clearly communicated rules, private commercial actors obtain a concrete framework for decision-making for their participation in INTERREG – as compared to a project application with an uncertain outcome of state aid examination.

An increasingly important aspect of the participation of private companies in INTERREG is, however, not yet solved: The more INTERREG projects develop and test concrete (often technical) solutions and “products“, the more urgent is the clarification of the intellectual property rights. Currently, this problem is more or less blinded out in practice and it does not find any basis in specific, INTERREG-relevant regulations. Only the general Financial Regulation of the EU determines:³⁰

“The Union grant may not have the purpose or effect of producing a profit for the beneficiary.”

That does not necessarily mean that each commercial exploitation of project results would fulfil the state aid criteria, as there are refined rules in other EU programmes, e.g. the 7th Framework Programme, which regulate intellectual property rights in conformity with state aid rules.³¹

6.2.3. More effective handling of state aid regulations

Sometimes, state aid is perceived as “spectre“, although it is (or could be) rather an instrument of public policy, which is not insignificant. With approx. 500 pages of regulations and a large amount of decisions of the European Court of Justice, it is certainly one of the more complex areas of European Community laws. The main problem, however, is that the state aid regulations were not developed for the INTERREG context, so their provisions are not directly transferable. This situation does not change much even after legal opinion has been obtained, as differing judicial conceptions are quite common – as the present study has also shown.

²⁹ See the general financing rules of FP7 (ftp://ftp.cordis.europa.eu/pub/fp7/docs/financialguide_en.pdf).

³⁰ Council Regulation No. 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities, Art 109 (2).

³¹ See the detailed description in „Guide to Intellectual Property Rules for FP7 projects“ (ftp://ftp.cordis.europa.eu/pub/fp7/docs/ipr_en.pdf)

The authors go from the assumption, that a more effective, more uniform handling of the state aid regulations in all cooperation areas, less coined by risk reasoning, would lead to a stronger involvement of private partners. In order to do so, the existing European state aid instruments have to be used actively and have to be applied in a manner, which is adequate to the INTERREG context.

Provided that the state aid relevance has been detected in a concrete individual case as a result of the examination of all six state aid criteria, the following instruments can principally be applied:

- Funding of smaller activities of private partners (SMEs) up to 100,000 €/200,000 € according to the “de minimis” regulation;
- Application of the General Block Exemption Regulation (GBER) to the planned investments. The GBER exempts numerous state aids from approval requirements;
- Notification of the European commission of the state aid with the aim of authorisation.

Application of the “de minimis” regulations

The application of the “de minimis” regulations presupposes that state aid has been detected in the course of the examination of an individual case. In the course of this project it could not be verified, whether “de minimis” certificates are really being required prematurely from the beneficiaries in some cooperation areas in order to minimise risks on the side of the programme.

“De minimis” is an easy to handle instrument, which, however, only permits the participation of relevant partners in a financially very limited scope; cumulated over all forms of state aid, a company can only receive 200,000 EUR (or 100,000 respectively in the road transport sector) over three fiscal years.

Application of the General Block Exemption Regulation

Based on this investigation, the authors could not recognise wide utilisation of the General Block Exemption Regulation. A possible reason for this is that the GBER has only been simplified since 2008 and that the application of it in the INTERREG context requires systematic preparation, which also requires the coordinated involvement of the Member States: The involved Member States have to consult closely and the application of the GBER already needs to be specified precisely at the call stage.

Even if Member States want to avoid the effort of the application in the INTERREG context, GBER could still be an effective tool that could offer a legally dependable and rather flexible framework of action for various INTERREG programme goals. It would also make it possible to grant more significant aids than possible under “de minimis” to relevant projects. Another advantage for private partners would be that the GBER context would already be visible in the call and that thereby legal security would be conveyed from the start.

INTERREG programmes could grant ERDF means for a total of 26 aid categories for strengthening regional competitiveness and other goals relevant for INTERREG, especially for small and medium-sized enterprises. The list of GBER facts is very interesting when seen from the point of view of INTERREG and all of the following points can be employed without geographical limitations:³²

- Aids for small and medium-sized companies: e.g. investment and employment aids, risk capital aids, aids for female entrepreneurs
- Aids for research and development and innovation
- Environmental protection aids: e.g. measures for combatting climate change such as aid for vehicle procurement, which exceeds the environmental standards for the EU, investment in energy saving, promotion of renewable energy, environmental studies
- Regional aids for investment and employment promotion
- Training aids etc.

³² Commission Regulation 800/2008 of 6 August 2008 declaring certain categories of aid compatible with the common market in application of Articles 87 and 88 of the Treaty (Official Journal L 241 of 9/8/2008).

GBER-based funding dispenses with the control of the “de minimis” limitations and supports the realisation of larger projects, which would not be eligible under “de minimis”. Nevertheless, this instrument is not sufficiently known to INTERREG actors.

In addition, however, there are specifically to be clarified issues, e.g. how will the various funding rates be handled, how will the classification of the GBER categories be affected in INTERREG practice, what could a sample call under GBER conditions look like?³³

Application of notification

The notification of the European Commission, aimed at granting state aids in the course of an individual case examination, which are neither permitted under the “de minimis” regulations nor on the basis of the GBER, is certainly an exception for special projects.

In practice, the authorisation is apparently complex, it may take up to one year, but it offers a relatively high amount of legal security.³⁴

Use of state aid instruments in practice

The application of the existing state aid instruments offers the possibility to remove existing legal insecurities and to enhance the involvement of private (and public) partners in the INTERREG B programmes – not least through larger and more relevant projects.

To make legally binding use of this option, practical support for the programme actors is particularly requisite. Applicants need descriptive overview information to recognise the consequences of the application for their organisations.

Next to the preparation of INTERREG-specific guidelines, mainly training of the programme actors concerning the competent application of the existing regulations is needed (in the sense of an INTERREG-internal capacity building). Especially the legally secure application of GBER and notification would require practical examples (e.g. as FAQs), annotated regulations (with good practices) to be made available – ideally in all cooperation areas. It would be particularly useful, if a common framework of action for GBER and notification for all cooperation areas could be agreed with the European Commission with the participation of the Member States.

Since the authorities, which are in charge of INTERREG, have a special function on the level of the Member States, the latter have to be involved early and intensely – even if the application of GBER and notification in INTERREG is deemed too complex by them.

6.2.4. General clarification of the state aid relevance of INTERREG

By contrast to the control of direct state aid allocated by a Member State to an enterprise (i.e. the classical case of state aid), state aid examinations for INTERREG B projects are relatively complex, since INTERREG B projects differ decisively from national scenarios:

- INTERREG B projects usually do not serve individual partners (in particular not individual companies), but are looking – in the public interest - for the solution to an important transnational problem.
- The individual project partners (e.g. companies as well) work together towards the solution, individual interests are submitted to the overall project interest.
- INTERREG B projects are in competition with each other, into which all can participate.
- The selection is made by a transnational committee on a consensus basis.

³³ In the scope of this investigation it was not possible to describe the application of the GBER in more detail; special cases such as ad-hoc aids according to GBER had to be totally disregarded.

³⁴ In the scope of this study it was not possible to do more detailed research on the concept of notification in the INTERREG context (standard assessment, closer investigation)

Both the financial scope and the character of most of the INTERREG projects as well as the individual funding of partners do not generally give reason to expect distortion of competition – when compared to the other two programmes of the European Structural Funds. Likewise, most projects and activities certainly coincide with the plans of the Commission to promote employment and innovation through “good state aid”³⁵.

Article 107 (3) of the EU treaty mentions a number of exceptions, according to which the funding could be compatible with the internal market, that means that a permit is at the Commission’s discretion. Among these are “such other categories of aid as may be specified by decision of the Council on a proposal from the Commission”.

As has already been emphasised several times, it is difficult to transfer the general EU state aid regulations to the INTERREG B context; instead of providing legal security, in part new questions are raised. What is more, INTERREG is increasingly becoming a transnational innovation programme of the regions; that will even reinforce the contrast to the classic state aid concepts. Therefore the authors recommend the creation of an own legal framework for European territorial cooperation (ETZ or “INTERREG”).

It seems feasible to revise the legal framework for INTERREG following the Community framework for state aid for research, development and innovation. In the justification of the Community framework, the following is remarked:³⁶

“The objective is through State aid to enhance economic efficiency and thereby, contribute to sustainable growth and jobs. Therefore, State aid for R&D&I³⁷ shall be compatible if the aid can be expected to lead to additional R&D&I and if the distortion of competition is not considered to be contrary to the common interest, which the Commission equates for the purposes of this framework with economic efficiency. The aim of this framework is to ensure this objective and in particular, to facilitate that Member States can better target the aid to the relevant market failures. Article 87 (1)³⁸ of the EC Treaty lays down the principle that State aid is prohibited. In certain cases, however, such aid may be compatible with the Treaty on the basis of Article 87 (2) and (3). Aid for R&D&I will primarily be justified on the basis of Article 87 (3) (b) and 87 (3) (c). In this framework the Commission lays down rules which it will apply in the assessment of aid notified to it, thereby exercising its discretion and increasing legal certainty and transparency of its decision-making.”

It is clear, that changes in the legal basis of the ETZ can only be achieved in the long run, if at all. Many actors would have to be won over in support of it and legal and administrative obstacles would have to be overcome. However, in this way a clear and developable working basis would be created for INTERREG.

6.3. Rules of procedure

Acceptance of overheads

Overheads are part of the regular cost structure of a company (regardless of whether it is public or private). According to the authors, there is no special state aid relevance attached to this cost category, as overheads constitute regular expenditure requisite for the fulfilment of the project activities. In company practice, this cost is normally calculated as share of personnel cost, a dedicated allocation to individual projects requires much effort.

Following the example of other EU programmes (e.g. the European Research Framework Programme, FP7, or the Intelligent Energy Programme, IEE), “flat rates” based on percentages should be taken as a basis for the sake of simplification. In FP7, depending on the project type, 7% (for projects funded

³⁵ FRENZ (2007), p. 249

³⁶ Official Journal of the European Union C 323/4 of 30/12/2006.

³⁷ R&D&I abbreviation for “Research and development and innovation”

³⁸ Now Art. 107

100%), or 20% respectively are frequent practice, newcomers can claim 60% of their cost (without sub-contracts) as so-called indirect project cost (overheads). In IEE, 60% of the personnel cost is accounted for as overheads.

All cooperation areas should offer the possibility to claim overheads. This could either be done on a lump sum basis or be part of First Level Control.

Reduction of the administrative burden

Opportunities for participation should be created – especially for private partners – which allow for participation beyond the observer status, but without large administration efforts and without deep previous INTERREG knowledge. Perhaps the involvement of service agencies and associations could be of help.

The possibility to participate in projects as sub-partner with reduced administrative burden should be made available in all cooperation areas.

Regulations for the protection of intellectual property

In a knowledge economy, the protection of intellectual property is essential for many partners. It is a seeming contradiction that at the same time there is an obligation to publish all project results – just to exclude state aid relevance.

The European Research Framework Programme has devised a comprehensive set of rules and guidelines (e.g. sample contracts) over the last years.³⁹ INTERREG could build on this.

6.4. Programme management

More transparent and cost-effective application procedures

To reduce the cost of application, many private partners endorse the general introduction of a two-step application procedure, which should, however, not increase the total application processing time.

- Step 1: Assessment of the relevance of the topic and the quality of the projected solution according to a project sketch
- Step 2: Complete evaluation on the basis of a detailed project application

Beside the description and communication of suitable success and evaluation criteria, close support of the applications by contact points and secretariats could particularly help smaller SMEs and partners inexperienced in INTERREG to keep starter cost low and to minimise application errors at an early stage.

Integration of the private actors into the programme process

In order to secure that the interests of all potential partners are considered in the evaluation of project applications, stakeholders of private actors should be involved more in the selection process in a suitable way, e.g. via the national INTERREG committees.

Project monitoring

Project documents should clearly name the planned project results and project monitoring should put a stronger focus on the achievement of the objectives (output instead of input orientation).

Granting of advance/progress payments

Numerous EU programmes are operating on the basis of a percentage advance financing, towards which further interim payments are not credited. This way, the partners usually experience a tolerable cash flow. Alternatively, partial payments based on percentage directly after the request to draw the funds could be established in INTERREG.

³⁹ Guide to Intellectual Property Rules (IPR) for FP7 projects, Version 3.

6.5. Working cultures and capacities

Public and private partners should pay more attention to their different working cultures and use them consciously for successful project implementation. The varying possibilities of participation of large or small enterprises respectively should also be better considered when settling the partner status (direct project partner vs. associated partners vs. involvement via chambers etc.). The Joint Technical Secretariats/JTS can support this more through their counselling and by granting more flexibility in project implementation and reporting.

During project preparation and contract negotiations, the JTS' should take more account of the necessity of more flexible project sizes and durations. The development of cross-cooperation area projects should be made easier.

Uniform standards for the assessment of the participation of private actors (data basis, definitions) would provide a better basis for further development of a strategy for the more effective participation of private actors.

6.6. Implementation of these recommendations

All interview partners agreed that the programme secretariats (JTS) have a vast amount of experience and that they are the ones who have to actively implement any kind of change. Therefore, the respective secretariats should be involved in all efforts for programme simplification from the start. Furthermore, they should not be overloaded with short-term modifications in order not to endanger orderly management of the running programmes.

In addition, more importance should be attached to the cooperation with INTERACT in order to promote mutual and cross-cooperation area initiatives and perhaps influence them in the sense of a stronger involvement of private actors.

It is difficult to create more effective opportunities of cooperation in the short term in the complex interactive structure of INTERREG. Germany is one of the few Member States involved in more than one large INTERREG B programme. The German members of the INTERREG committees also have the task to initiate cross-cooperation area discussions and to actively contribute their experience.

The mid-term evaluations and the new definition of INTERREG after 2013 offer important bases to implement short-term measures (like e.g. the initiation of EU-wide experience exchange between INTERREG actors), but also to suggest medium-term recommendations, set in the realms of the current legal norms and practices of action, as well as to put long-term modifications up for discussion, which will update INTERREG and put it on a basis, which will also be viable in the future.

7. Good practice examples

The “good practice” cases mentioned in this section are meant to illustrate the benefits and advantages of the involvement of private partners in projects of transnational cooperation by showing practical examples.

7.1. Jeppesen GmbH in the BLAST project (INTERREG North Sea Region)

The project

BLAST (Bringing Land and Sea together) fosters maritime safety in the North Sea Region.

The company

Jeppesen, a subsidiary of Boeing, processes aeronautic and nautical data and develops important navigation and optimization solutions for airborne, waterborne or rail transport.

Benefits for the project

1. provision of the latest know how in the field of harmonisation of maritime information for all project partners;
2. provision of the company’s technologies for project implementation;
3. opportunity for the project partners to use existing international networks and organisations.

Benefits for the company

Development work in the field of maritime information for safe shipping and navigation is a business objective of Jeppesen. Against this background, the company benefits from the involvement in the BLAST project by the exchange of know-how and the joint development of ideas.

Contact:

Michael Bergmann
Director Maritime Industry
michael.bergmann@jeppesen.com
www.blast-project.eu

7.2. moBiel GmbH in the “Ticket to Kyoto” project (INTERREG North-West Europe)

The project

The project develops strategies in the context of climate change. With concrete energy saving measures it wants to establish CO₂ reduction as priority for public transport providers.

The company

MoBiel is a 100% subsidiary of Stadtwerke Bielefeld (public utilities). The company runs the StadtBahn (tram) above and below ground and serves the vast majority of bus customers in Bielefeld.

Benefits for the company

The partner moBiel represents a multitude of similarly organised public or semi-public local combination utilities in Germany and strengthens experience exchange in German and North Rhine-Westphalian networks via its involvement.

In the project context, moBiel GmbH represents a “smaller” enterprise, which ensures transferability of the project impetuses to regions apart from metropolitan areas.

As partner in “Ticket to Kyoto”, moBiel can directly provide the know-how of an energy supplier concerning the use of renewable energies due to the involvement of the parent company Stadtwerke Bielefeld.

Benefits for the company

The project offers moBiel a good opportunity for experience exchange and transnational cooperation. In the framework of the project, moBiel can, together with the other project partners, learn what will be important for transport companies in the context of energy saving in the future. In this context, Ticket to Kyoto will develop a catalogue of ready to be implemented immediate measures. The combination of five similar companies furthermore increases visibility for all partners in the market.

Quote

“We want to combine our strategy “moBiel 2030” with the transnational aims of the project “Ticket to Kyoto”. Both projects contrate on the challenges of climate change and a shift towards public means of transport.”

Contact

Hartwig Meier
Head of Traffic Planning and local coordinator of Ticket to Kyoto
hartwig.meier@moBiel.de
www.tickettokyoto.eu

7.3. Allgäuer Überlandwerk GmbH in the ALPENERGY project (INTERREG Alpine Space)

The project

AlpEnergy examines possibilities of the future supply of renewable energies. Energy providers, development agencies, research facilities and public authorities from five different countries are united in this project.

The company

For more than 90 years, Allgäuer Überlandwerk GmbH (AÜW) has been offering a broad spectrum of services. Currently, AÜW is the largest regional electricity provider, serving more than 100,000 customers.

Benefits for the project

The local integration of AÜW as well as its means of communication contribute to informing the regional public actively about the challenges of future energy supply, the project contents and results. The aim is to incorporate the suggestions of the citizens in all future actions.

Benefits for the company

The insights gained in the project serve AÜW as basis for new products and energy services.

Quote

“Through the AlpEnergy project, AÜW can significantly strengthen the energy future in the Allgäu region and collect experiences.”

Contact:

Michael Lucke
Managing Director
Allgäuer Überlandwerk GmbH
Michael.Lucke@auew.de
www.alpenergy.net

7.4. Technologiezentrum Fördergesellschaft mbH Vorpommern in the PLASTEPPROJECT (INTERREG Baltic Sea)

The project

PlasTEP applies plasma-based technologies to concrete examples of exhaust air and waste water treatment, informs decision makers in politics and economy about the potential of this technology and fosters investments.

The company

The Technologiezentrum Fördergesellschaft mbH Vorpommern (TZV) was founded in 1991 as independent, success-oriented service provider and as incubator for the enterprises in the Pomerian region (Vorpommern). It offers comprehensive support for companies based in the region and for the founding of new enterprises.

Benefits for the project

- TZV has several years of experience in international projects. For this reason, TZV is responsible for the whole (legislative and executive) implementation of all planned project activities.
- TZV offers good regional networking, as well as links to Poland and Scandinavia. In the field of plasma technology, TZV also holds far-reaching contacts, which are being used for the project.

Benefits for the company

The project offers TZV the possibility to engage in border crossing activities, it provides close cooperation with the project partners and a comprehensive knowledge exchange. The implementation of new research findings and processes in plasma technology form the basis of further industrial settlement, for which TZV can further serve as service provider and as incubator for the companies of the region.

Quote

“Plasma technology breaks new ground and gives us the chance for environment-friendly industrialisation, which means that it is not necessary to miss the advantage of modern time besides reducing pollution.”

Contact

Alexander Schwock
Head of PlasTEP project
schwock@technologiezentrum.de
www.plastep.eu

7.5. Van Hool NV., associated partner in the TROLLEY project (INTERREG Central Europe)

The project

Trolley promotes trolleybuses as clean and economical means of transport in Central Europe.

The company

Van Hool is a Belgian city bus and coach manufacturer. With more than 4,000 employees, the company offers a broad range of diverse vehicles for sustainable urban transport. Van Hool supports the Trolley project as associated institution.

Benefits for the project

The added value of the involvement of Van Hool lies in the provision of the technical expertise of one of the leading industrial partners of the Trolley Community and the utilisation of the communication channels and networks of Van Hool for the project.

Benefits for the company

By supporting the Trolley project, Van Hool increases the public perception of the company as innovative provider; it can exchange experiences with other competitors and Trolley cities and further expand its existing networks.

“The involvement of van Hool in the Trolley project is of important strategic relevance for us and has already led to a number of concrete results.”

Contact:

Paul Jenné
Bus project manager
Van Hool NV
Paul.jenne@vanhool.be
www.vanhool.be
www.trolley-project.eu

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