**Agreement between Luxembourg and the Member States and Partner States on the Implementation, Monitoring and Control System of the**

**ESPON 2020 Cooperation Programme**

**including the Reference Document on the ESPON EGTC Liability Mechanism**

In accordance with the EU regulations laying down provisions on the European Structural and Investment Funds (hereinafter referred to as ESI-Funds), in particular

* REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL (EU) No 1303/2013 of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006 (hereinafter referred to as CPR),
* REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL (EU) No 1301/2013 17 December 2013 on the European Regional Development Fund and on specific provisions concerning the Investment for growth and jobs goal and repealing Regulation (EC) No 1080/2006 (hereinafter referred to as ERDF-Regulation),
* REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL (EU) No 1299/2013 of 17 December 2013 on specific provisions for the support from the European Regional Development Fund to the European territorial cooperation goal (hereinafter referred to as ETC-Regulation),
* REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL (EU) No 1302/2013 of 17 December 2013 amending Regulation (EC) No 1082/2006 on a European grouping of territorial cooperation (EGTC) as regards the clarification, simplification and improvement of the establishment and functioning of such groupings (hereinafter referred to as EGTC-Regulation),

having regard to the related Delegated and Implementing Acts adopted by the European Commission,

and with references to the “Agreement on the Submission and Co-financing of the ESPON 2020 Cooperation Programme and the related Liability Mechanism for the ESPON EGTC acting as Single Beneficiary” signed by all countries mentioned as follows

The EU Member States, the Federal Republic of Austria, the Kingdom of Belgium, the Republic of Bulgaria, the Republic of Croatia, the Republic of Cyprus, the Czech Republic, the Kingdom of Denmark, the Republic of Estonia, the Republic of Finland, the Republic of France, the Federal Republic of Germany, the Hellenic Republic, Hungary, the Republic of Ireland, the Republic of Italy, the Republic of Latvia, the Republic of Lithuania, the Grand Duchy of Luxembourg, the Republic of Malta, the Kingdom of the Netherlands, the Republic of Poland, the Republic of Portugal, Romania, the Slovak Republic, the Republic of Slovenia, the Kingdom of Spain, the Kingdom of Sweden and the United Kingdom of Great Britain and Northern Ireland;together with the Partner States, the Kingdom of Norway, the Swiss Confederation, the Republic of Iceland and the Principality of Liechtenstein

have concluded with the Grand-Duchy of Luxembourg the following Agreement:

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## PART 1: SUBJECT MATTER AND DEFINITIONS

### Article 1 - Subject matter

(1) This Agreement stipulates implementing provisions and arrangements needed to implement the ESPON 2020 Cooperation Programme, Cooperation Programme Document ‘ESPON 2020 Cooperation Programme’ (CCI 2014TC16RFI004) as adopted by the Commission Implementing Decision (EU) No C(2015) 958 final of 12 Febraury2015, and to pursue its implementation throughout the whole programming period 2014-2020.

(2) More specifically, in accordance with the principles of shared management and with reference to Articles 8 (4) and 8 (8) of the ETC-Regulation, this Agreement identifies the relevant authorities and bodies of the management and control system, defines their respective functions and describes the procedures for the joint monitoring, administrative and financial management and control of the ESPON 2020 Cooperation Programme.

(3) This Agreement also defines the appointment of the ESPON EGTC as Single Beneficiary to implement a Single Operation under Priority Axis 1 of the ESPON 2020 Cooperation Programme and the establishment of a related Liability Mechanism, shared among the Member States and Partner States participating in the ESPON 2020 Cooperation Programme and the Grand-Duchy of Luxembourg, with the aim to guarantee for potentially occurring financial consequences of ineligible expenditure and financial corrections that have to be borne by the ESPON EGTC.

### Article 2 - Definitions

In the framework of the present Agreement, the following definitions apply:

1. Action is used for describing the elements of an operation. This means in concrete terms that a set of Actions constitutes an Operation.
2. Activity is used for describing the elements of an Action implemented under an Operation. This means in concrete terms that a set of Activities constitutes an Action. Under the ESPON 2020 Cooperation Programme, some of the activities will be implemented as a provision of services following a Public Procurement procedure.
3. Beneficiary means, according to Article 2 (10) CPR, (…) *a public or private body* (…) *responsible for initiating or both initiating and implementing operations.*
4. Operation means, according to Article 2 (9) CPR, (…) *a project, contract, action or group of projects selected by the managing authorities of the programmes concerned, or under their responsibility, that contributes to the objectives of a priority or priorities* (…).
5. The ESPON 2020 Cooperation Programme defines a Single Operation in the sense of sub-point (d) to be financed under Priority Axis 1.
6. The ESPON 2020 Cooperation Programme defines the ESPON EGTC as Single Beneficiary in accordance with Art. 12 (2) and (3) of the ETC-Regulation and within the meaning of the notion “sole beneficiary”. In accordance with Art. 12 (5) of the ETC–Regulation and the granting procedure as defined in the Cooperation Programme, the Single Beneficiary shall be attributed a Grant Agreement to implement a Single Operation under Priority Axis 1 decided by the Monitoring Committee.
7. The ESPON EGTC is established by the Region of Brussels Capital, the Region of Flanders, the Region of Wallonia and the Grand Duchy of Luxembourg, with the objective of acting as Single Beneficiary (as described under sub-point f) and of implementing the Single Operation (as described under sub-point e) and, if deemed necessary by the Monitoring Committee, further operations in the framework of ESPON 2020 Cooperation Programme.
8. The Operation Specification is prepared by the Monitoring Committee and contains the provisions guiding the preparation of the Operation Proposal elaborated by the Single Beneficiary. The Operation Specification further details content requirements and implementing rules to be fulfilled by the Single Beneficiary.
9. The Operation Proposal is prepared by the Single Beneficiary for the Single Operation and is submitted to the Monitoring Committee for approval. It includes the Multiannual Work Programme, the first Annual Work Plan and, when relevant, Scoping Notes of Major Activities.
10. The Grant Agreement is the contract concluded between the Managing Authority of the ESPON 2020 Cooperation Programme and the ESPON EGTC in its role of Single Beneficiary. The Grant Agreement allocates the ERDF-funding and national co-financing and funding by Partner States under Priority Axis 1 and specifies the conditions related to the use of funds. Annexes to the Grant Agreement are the Operation Specification, the Operation Proposal including the elements listed under sub-point (i) and, if so decided by the Monitoring Committee, an addendum which covers the obligations resulting from the evaluation of the proposal on the Multiannual Work Programme. The Grant Agreement will be annually amended by the Annual Work Plan.
11. The Operation Implementation Guidelines established by the Managing Authority and approved by the Monitoring Committee is the guiding document with information on the implementation of the Single Operation by the Single Beneficiary.

## PART 2: DESIGNATION AND FUNCTIONS OF THE MAIN IMPLEMENTING STRUCTURES AND OTHER RELEVANT BODYS

### Article 3 – The Monitoring Committee

(1) In accordance with Article 47 (3) CPR, the Member States and Partner States shall set up within three months of the date of notification of the Commission decision adopting the ESPON 2020 Cooperation Programme a committee (hereinafter referred to as Monitoring Committee) to monitor the implementation of the ESPON 2020 Cooperation Programme in agreement with the Managing Authority. The Monitoring Committee shall draw up its Rules of Procedure and unanimously adopt these Rules of Procedure during the first meeting of the Monitoring Committee.

(2) In accordance with Article 48 (1), (3) and (5) CPR, the Monitoring Committee shall be composed of the following members:

1. Representative(s) of each EU Member State with one vote per delegation;
2. Representative(s) of each Partner State with one vote per delegation;
3. Representative(s) of the Managing Authority of the ESPON 2020 Cooperation Programme who shall have no voting rights but can make reservation on any concerns of a legal nature;
4. Representative(s) of the European Commission, participating in the work of the Monitoring Committee in an advisory capacity.

The members of the Monitoring Committee shall be appointed by the participating country at the latest within 30 days from the date of the notification of the decision approving the ESPON 2020 Cooperation Programme. Once appointed, the national authorities and contact persons responsible for representing a Member or Partner State in the Monitoring Committee shall be promptly notified to the Managing Authority. Substitutes are allowed and shall be appointed accordingly.

(3) The Monitoring Committee shall have a chairman (usually the country of the EU Presidency) and a vice-chairman (the Managing Authority), which is nominated according to the procedure to be defined by the Monitoring Committees’ Rules of Procedure.

(4) Partnership and multi-level governance will due to the specific character and mission of the ESPON 2020 Cooperation Programme involve competent urban and other public authorities or economic and social partners or other relevant bodies and non-governmental organisations representing various societal issues. This will be ensured by consultations, hearings, surveys, seminars and workshops, and other communication efforts. In order to ensure efficient and effective meetings these organisations shall not become members in the Monitoring Committee but representative partners can, when appropriate, participate as guests in specific meetings of the Monitoring Committee and shall not have any voting rights.

(5) Representatives from EU Candidate Countries and from the Certifying Authority may participate in Monitoring Committee meetings as observers. Upon request, also external experts supporting the implementation of the ESPON 2020 Cooperation Programme and representatives of the Single Beneficiary may participate in Monitoring Committee meetings as guests.

(6) The Monitoring Committee, as the only decision-making body within the ESPON 2020 Cooperation Programme, shall have the overall responsibility for monitoring the Programme. For this purpose and in accordance with Article 49 CPR, the Monitoring Committee shall regularly meet twice but at least one time per year. The Monitoring Committee shall establish rules for the Monitoring Committee meetings, written procedures and silent consent in the Committee’s Rules of Procedure.

(7) The Monitoring Committee shall review the implementation of the Programme and Programme’s progress made towards achieving its objectives. In doing so, it shall have regard to the financial data, common and programme specific indicators, including changes in the value of result indicators and progress towards quantified target values, and the milestones defined in the performance framework referred to in Article 21(1), and, where relevant, the results of qualitative analyses.

(8) Pursuant to Article 49 (2) (3) (4) CPR and to Article 110 CPR, while taking into consideration the specific context of the ESPON 2020 Cooperation Programme, the Monitoring Committee shall assume all functions and, in particular:

1. Examine any issues that affect the performance of the ESPON 2020 Cooperation Programme and of the Single Operation;
2. Examine and approve the annual and final implementation reports of the ESPON 2020 Cooperation Programme;
3. Examine the evaluation plan drawn up by the Managing Authority for the ESPON 2020 Cooperation Programme at its first meeting, approve it or amend the evaluation plan at a later stage;
4. Examine progress made in implementing the evaluation plan and the follow up given to findings of evaluations;
5. Examine and adopt a seven year communication strategy for the ESPON 2020 Cooperation Programme and the yearly communication action plans as well as any amendment of this communication strategy or of a given yearly action plan;
6. Examine the implementation of the communication strategy of the ESPON 2020 Cooperation Programme closely coordinated with the outreach activities of the programme;
7. Examine and approve, if necessary under conditions, any proposal by the Managing Authority for any amendment to the ESPON 2020 Cooperation Programme;
8. Assess, negotiate and approve the Operation Specification which shall guide the preparation of the Operation Proposal;
9. Establish minimum criteria for approving, if necessary under conditions, the proposal for the Single Operation elaborated by the ESPON EGTC in its role as Single Beneficiary of the ESPON 2020 Cooperation Programme;
10. Assess, negotiate and approve, if necessary under conditions, the Single Operation proposal submitted including the Multi-annual Work Programme 2015-2020 for the Single Operation and the respective proposed financial allocations;
11. Discuss and approve; , if necessary under conditions, the Annual Work Plans for the Single Operation, including general principles for selection criteria, the respective proposed financial allocations and scoping notes for those activities the Monitoring Committee considers to be of particular importance;
12. Discuss and approve the Annual Implementation Report for the Single Operation and related actions and activities of the Single Beneficiary;
13. Ensure the monitoring of the activities of the ESPON EGTC as Single Beneficiary, according to the modalities stipulated in the Grant Agreement;
14. Ensure the nomination of representatives of the Monitoring Committee or delegated experts to participate in Project Support Teams, for accompanying and giving policy advice to the implementation of major projects mainly on applied research and for acting as a rapporteur to the Monitoring Committee, and address the proposals made by Project Support Teams;
15. Provide, via the rapporteur, direct feedback to the Single Beneficiary on important activities related to specific objective 1-4.

(9) The Monitoring Committee shall seek to make decisions on ground of consensus. Should a consensus not be reached, a qualified majority voting shall apply for which further details are provided in the Monitoring Committees’ Rules of Procedure.

(10) Members of the Monitoring Committee having a conflict of interest in respect of any subject matter up for consideration by the work or by decision of the Monitoring Committee shall declare such interest to the meeting and shall not take part in the decision. The details of this procedure shall be set out in the Monitoring Committees’ Rules of Procedure.

(11) If necessary for facilitating and preparing its decisions, the Monitoring Committee may establish separate (Sub-)Committees or formats of cooperation between the Member States and Partner States.

### Article 4 – The Managing Authority

(1) In accordance with Article 21 ETC-Regulation the Member States participating in the ESPON 2020 Cooperation Programme have designated as single Managing Authority the “Ministry of Sustainable Development and Infrastructures, Department for Spatial Planning and Development (DATER), Division of International Affairs” of the Grand Duchy of Luxembourg.

(2) In accordance with Article 125 (1) of CPR the Managing Authority shall be responsible for managing the ESPON 2020 Cooperation Programme in accordance with the principle of sound financial management. The Managing Authority shall assume all functions related to the management of the cooperation programme, the selection of the Single Operation, the financial management and control of the Cooperation programme as defined in Article 125 CPR and in Article 23 ETC-Regulation.

(3) The Managing Authority shall hold all property rights of results achieved by the ESPON 2020 Cooperation Programme on behalf of the Member and Partner States, which themselves can use these property rights without any restrictions or obligation except those restrictions or obligations imposed by third parties, also to the Managing Authority.

### Article 5 – The Managing Authority assuming the function and tasks of the Joint Secretariat

(1) With reference to Article 23 (2) ETC-Regulation, due to the size and the organisational structure of the ESPON 2020 Cooperation Programme with only one Single Operation, and in order to keep the administrative and financial burden as low as possible, the Managing Authority shall assume the function and tasks of a Joint Secretariat for the Programme by contracting the necessary support and staff.

(2) The Managing Authority assuming the function and tasks of the Joint Secretariat shall assist the Monitoring Committee in carrying out its tasks and thereby act as the Secretariat of the Monitoring Committee. The Managing Authority assuming the function and tasks of a Joint Secretariat shall also provide on-going information and assistance to the Single Beneficiary in order to support a sound and correct implementation of the Single Operation.

### Article 6 – The Certifying Authority

(1) In accordance with Article 21 ETC-Regulation, the body acting as the single Certifying Authority of the ESPON 2020 Cooperation Programme shall be the “Ministry of Sustainable Development and Infrastructures, Department for Spatial Planning and Development, Division of Administration and Budget” of the Grand Duchy of Luxembourg.

(2) The Certifying Authority shall assume all functions as set out by Article 126 (a) – (h) CPR and shall establish all procedures referred to in Annex XIII (3) (B) CPR. The Certifying Authority shall also,

1. draw up and submit to the Commission all payment applications according to Article 131 CPR and on the amount as defined by Article 130 CPR laying down common rules for calculating interim payments and payment of the final balance;
2. observe and comply with the proceedings and deadlines as set out by Article 135 CPR for a presentation of interim payment applications and for their payment;
3. receive the payments made by the European Commission;
4. receive the national co-financing of the Member States and the contributions of the Partner States;
5. make payments to the Single Beneficiary, in accordance with Article 132 CPR, and to any other recipient of a payment.

(3) A Euro-currency (EUR) bank account for the ESPON 2020 Cooperation Programme shall be available at the Certifying Authority in the name of the Trésorerie de l’Etat du Luxembourg at the latest 30 days from the date of the notification of the Commission decision approving the Programme. The single bank account shall be used by the Certifying Authority for receiving the ERDF-contribution from the Commission, the Member States’ co-financing and the Partner State contributions and for making all payments to the Single Beneficiary or to any other recipient of a payment.

### Article 7 – The Audit Authority

(1) The Member States participating in the ESPON 2020 Cooperation Programme have designated as Audit Authority the “Ministry of Finance, General Inspection of Finance (IGF)” of the Grand Duchy of Luxembourg, in accordance with Article 21 ETC-Regulation.

(2) The Audit Authority shall assume the functions as set out by Article 127 (1) – (8) CPR. The Audit Authority shall also contribute to the Commission’s cooperation with audit authorities in accordance with the provisions as set out by Article 128 (3) CPR.

(3) In agreement with the provision of Article 124 (2) CPR, the Audit Authority is responsible for drawing up the report and opinion assessing the fulfilment by the Managing Authority and Certifying Authority of the criteria related to the internal control environment, risk management, management and control activities and monitoring, on the basis of the Annex XIII of the CPR.

(4) With reference to Art. 25 ETC-Regulation, the setting up of a Group of Auditors is not required considering that the only two grant-receiving bodies of the ESPON 2020 Cooperation Programme (the Managing Authority and the Single Beneficiary) are located in Luxembourg. However, on demand of Member and Partner States a Consultative Group of Auditors of may be established at own cost of the sending countries.

### Article 8 - Body designated to carry out control tasks (First Level Control)

(1) The body responsible for management verifications including administrative verifications, according to Article 125 (4) (a) and Article 125 (5) and Annex XIII (3) (A) (ii) of the CPR, and Article 23 (4) of the ECT-Regulation, is the “Ministry of Finance, Directorate for Financial Control (DCF)” of the Grand Duchy of Luxembourg.

(2) In relation to the Single Beneficiary it will act as central approbation body responsible for the designation of the first level controller of the Single Beneficiary according to the procedure defined in the Operation Implementation Guidelines.

(3) In relation to the Technical Assistance implemented by the Managing Authority, the “Ministry of Finance, Directorate for Financial Control (DCF)” shall be the body executing the control tasks by itself.

### Article 9 – Th**e** Single Beneficiary – the ESPON EGTC

(1) The statutory members founding the ESPON EGTC are:

(a) The Belgian Region of Brussels Capital represented by the Brussels Urban Development Ministry

(b) The Belgian Region of Flanders represented by the Spatial Development Department of Flanders,

(c) The Belgian Region of Wallonia represented by the Public Service of Wallonia, General Directorate for Spatial Planning, Housing and Patrimony,

(d) The Grand Duchy of Luxembourg represented by The Ministry of Sustainable Development and Infrastructures, Department for Spatial Planning and Development, Division of General Affairs” of the Grand Duchy of Luxembourg.]

The ESPON EGTC has its registered office in Luxembourg.

(2) As defined by the ESPON 2020 Cooperation Programme and in accordance with Article 12 (2) and (3) ETC-Regulation, the ESPON EGTC shall be the Single Beneficiary receiving a Grant Agreement under Priority Axis 1 of Programme issued by the Managing Authority.

(3) The ESPON EGTC shall observe, when acting as the Single Beneficiary of the ESPON 2020 Cooperation Programme, the following principles:

1. The members of the ESPON EGTC shall make the EGTC operational for accepting the Grant Agreement. During the operation of the ESPON EGTC, the members of the EGTC shall focus on the internal affairs and questions of legality of the grant receiving body and shall ensure that the ESPON EGTC is implementing its activities in full compliance with the mutual understanding of all States signing up for the ESPON 2020 Cooperation Programme.
2. The members of the ESPON EGTC shall not execute influence on issues related to the content of implementation of the Grant Agreement, as the monitoring of the Single Operation and of its activities remains at the level of the Monitoring Committee.
3. The Assembly of the ESPON EGTC shall work in full transparency and in good faith with the Monitoring Committee and the Managing Authority and shall ensure a smooth operation of the EGTC.

### Article 10 – Separation of functions between and within the management and control bodies

(1) In accordance with Article 72 (b) CPR, the Grand Duchy of Luxembourg shall undertake all necessary actions within its institutional, legal and financial framework to ensure a clear separation of the functions between and within the above-designated bodies of the management and control system as well as with the Single Beneficiary referred to in Article 9 of this Agreement .

(2) The separation of functions shall be documented by a Ministerial Degree (Arrêté Ministériel) of the Grand Duchy of Luxembourg.

### Article 11 – The Network of national ESPON Contact Point institutions

(1) Each Member State and Partner State of the ESPON 2020 Cooperation Programme shall nominate an ESPON Contact Point (hereinafter referred to as ECP), the latest within 3 months from the date of the notification of the decision approving the ESPON 2020 Cooperation Programme. Together, these ECPs constitute the “Network of national ESPON Contact Point institutions”. Member and Partner State shall define individually in the context of their nomination their relation with their national ECP.

(2) The general function of each ECP shall be to support the outreach and use of territorial evidence from the ESPON 2020 Cooperation Programme in the Member State and Partner State in which it is established, in a focused and coordinated way and in collaboration with the ESPON EGTC. A specific task of each ECP shall be to establish and maintain close relations with the national and regional levels of the Member State and Partner State, in which it is established, in order to enhance the use of the ESPON 2020 Cooperation Programme.

(3) Beyond the work in their respective Member/Partner State, the individual members of the “Network of national ESPON Contact Point institutions” shall work together for the interest of the ESPON 2020 Cooperation Programme. For this purpose and for the close coordination with the ESPON EGTC, Technical Assistance shall support cost for the organisation of two meetings of the “Network of national ESPON Contact Point institutions” per year as well as the travel cost of one ECP-delegate per country for attending these meetings.

## PART 3: PROCEDURES FOR MANAGEMENT AND CONTROL

### Article 12 – Set up and operation of the electronic monitoring and accounting systems

(1) In accordance with Article 125 (2) (d) and (e) CPR, the Managing Authority shall establish a monitoring system to record and store, in computerised form, data on the Single Operation necessary for monitoring, evaluation, financial management, verification and audit. The computerised information system shall be set up no later than 31 December 2015. In accordance with Article 125 (2) (e) CPR and Article 125 (8) CPR, the Managing Authority shall subsequently collect, enter and store data in this monitoring system which is in conformity with the requirements set out by delegated and implementing acts of the European Commission and corresponds to the specific nature of the ESPON 2020 Cooperation Programme.

(2) In accordance with Article 126 (d) CPR, the Certifying Authority shall ensure that there is an accounting system which records and stores, in computerised form, accounting records for the Single Operation. The accounting system supports all the data required for drawing up payment applications and accounts, including records of amounts recoverable, amounts recovered and amounts withdrawn following cancellation of all or part of the contribution for the Single Operation or the ESPON 2020 Cooperation Programme. The accounting system shall be operational no later than [date] and shall be used as a basis for certification of expenditure to the Commission.

(3) The Managing Authority and the Certifying Authority shall ensure that a link is set up between the electronic monitoring and accounting systems which allows all exchanges of information between the Single Beneficiary and the Managing Authority, the Certifying Authority and the Audit Authority to be carried out by means of electronic data exchange.

(4) In order to comply with Article 74 (4) CPR, the Grand Duchy of Luxembourg shall carry out all official exchanges of information with the Commission on the ESPON 2020 Cooperation Programme by using the electronic data exchange system, for which the Commission shall establish the terms and conditions through related implementing acts.

### Article 13 – Annual and Final Implementation Reports

(1) The Managing Authority shall, in accordance with Article 14 ETC-Regulation and with Article 50 CPR, draw up the annual implementation reports and the final implementation report for the ESPON 2020 Cooperation Programme and submit those reports to the European Commission at the stipulated deadlines. The Member States and Partner States, the Certifying Authority, the Audit Authority shall provide all necessary assistance and information as appropriate in order to ensure that the Managing Authority can fully comply with its reporting duties.

(2) At least once a year within the Monitoring Committee, the Managing Authority shall provide the Member States and Partner States with detailed information on the annual implementation report. Any annual implementation report shall be approved by the Monitoring Committee before it is submitted to the European Commission.

(3) Every year when the annual implementation report is submitted, the European Commission and the Managing Authority shall examine the progress made in implementing the ESPON 2020 Cooperation Programme. After this examination, the European Commission may formulate comments in writing to the Managing Authority, which then shall inform the Monitoring Committee on the Commission’s comments. The Managing Authority, after the agreement of the Monitoring Committee, shall then inform the European Commission of the action taken in response to its comments.

(4) The Managing Authority shall, on ground of the findings in each annual implementation report, monitor and follow up the progress made by the Programme and the Single Operation.

### Article 14 – Granting procedure for the Single Operation

(1) Following the approval of the ESPON 2020 Cooperation Programme, the Monitoring Committee shall further detail the conditions for the application procedure in the Operation Implementation Guidelines and shall establish the Operation Specifications and minimum criteria that are binding for the Single Beneficiary for the elaboration of the Operation Proposal including a Multi-Annual Work Programme and the first Annual Work Plan. The Single Beneficiary will be invited to prepare an Operation Proposal in a given time.

(2) The Operation Proposals submitted by the Single Beneficiary will be made available to the members of the Monitoring Committee . If the Monitoring Committee so decides it shall set-up an Assessment Committee with a limited number of representatives of the Monitoring Committee, which can be reimbursed for travel costs. The Managing Authority supports the process by organising the assessment procedure based on the eligibility and quality criteria approved by the Monitoring Committee, and prepares in line with the assessment of the Assessment Committee a proposal for a decision on the Operation proposals to be taken by the Monitoring Committee. Depending on the scoring the Monitoring Committee may decide to reject, negotiate or accept the proposal with recommendation about improvements.

(3) The Grant Agreement approved by the Monitoring Committee will be offered by the Managing Authority to the Single Beneficiary (ESPON EGTC). It will detail the rights and duties of both parties and the reporting timetable and requirements. The Operation Proposal including a Multiannual Work Programme, an Annual Work Plan for 2015, the Operation Specifications, the Operation Implementation Guidelines and the Liability Mechanism Reference Document will be an integral part of the Grant Agreement. The first Annual Work Plan and the Operation Implementation Guidelines will be considered as annex.

(4) In the following years, based on a decision of the Monitoring Committee about the minimum requirements of the Annual Work Plan, the Single Beneficiary shall prepare a proposal for the Annual Work Plan and submit it to the Monitoring Committee via the Managing Authority for assessment, negotiation and approval by the Monitoring Committee. This process may result in recommendations for improvements of the Annual Work Programme before annexing it as an addendum the Grant Agreement.

(5) The Monitoring Committee may ask the Managing Authority to exercise its right to terminate the Grant Agreement, should the Single Operation severely violate provisions of the Grant Agreement.

### Article 15 –Monitoring of the Single Operation

(1) The Managing Authority shall use the form for the Grand Agreement which has been approved by the Monitoring Committee and lay down further details concerning the responsibilities and liabilities of the Single Beneficiary. The Grant Agreement shall be signed by the Managing Authority and the Single Beneficiary.

(2) The Managing Authority shall implement additional checks in relation to the administrative, financial and technical capabilities of the Single Beneficiary. The information will be provided to the Monitoring Committee together with the documents preparing for the operation approval and prior the approval of Annual Work Plans.

The Managing Authority shall ensure that the Grant Agreement makes the Single Beneficiary aware of its obligation to:

1. Accept controls by the relevant authorities (Managing Authority, National Authorities in Luxembourg, Certifying Authority, Audit Authority, Commission services and European Court of Auditors), to give access to its premises, to provide and give access to all the information and documents supporting an adequate audit trail in compliance with Article 125 (4) (d) CRP;
2. Respect the rules of public procurement, information and publicity, environmental protection and equal opportunities rules;
3. Keep all information and supporting documents related to the operation at least until three years following the closure of the Programme,

(3) The Managing Authority shall decide on changes as long as the purpose and the other basic features of the Single Operation are not altered and which do not have consequences on the eligibility or the results of the single operation. In particular the Managing Authority shall decide on:

1. Additional minor conditions to the approved operation in case additional mistakes, errors or clarification requests are found during the negotiations with the Single Beneficiary;
2. Extension of the date by which Progress Reports have to be presented by the Single Beneficiary compatible with the timing of the ESPON 2020 Cooperation Programme.

(4) The Monitoring Committee shall decide in all other cases, accordingly to the provisions set in the Operation Implementation Guidelines, and shall be informed on decisions taken by the Managing Authority.

(5) The general provisions on eligible expenditure in Article 65 CRP and Article 18 ETC-Regulation and the provisions set out in further delegated acts adopted by the European Commission shall apply to determine the eligibility of expenditure under the Single Operation of the ESPON 2020 Cooperation Programme. Further specification of these requirements shall be laid down in the Operation Implementation Guidelines decided by the Monitoring Committee.

### Article 16 – First Level Controls

(1) For expenditure incurring under the Grant Agreement of the Single Operation, the verifications as referred to under point (a) of Article 125 (4) CPR shall be carried out by the controller, which is proposed by the Single Beneficiary and which received the approbation according to Article 8 of this Agreement.

(2) The details of the first level control procedures will be defined in the Operation Implementation Guidelines, complemented by the forms which shall be used for certifying the expenditure.

(3) The Managing Authority of the Programme shall ensure that expenditure of the Single Beneficiary can be verified within a period of two months of the submission of the documents by the Single Beneficiary.

### Article 17 – Auditing

(1) According to Art. 127 (4) CPR the Audit Authority shall, within eight months of adoption of the ESPON 2020 Cooperation Programme, prepare an audit strategy for performance of audits. The audit strategy shall set out the audit methodology, the sampling method for audits on operations and the planning of audits in relation to the current accounting year and the two subsequent accounting years. The audit strategy shall be updated annually from 2016 until and including 2024.

1. The Audit Authority shall draw up in accordance with Art. 127 (5) CPR:

(a) an audit opinion in accordance with the second subparagraph of Article 59(5) of the Financial Regulation;

(b) a control report setting out the main findings of the audits carried out in accordance with paragraph 1, including findings with regard to deficiencies found in the management and control systems, and the proposed and implemented corrective actions.

(3) The Auditing will be based on the Delegated Acts, in accordance with Article 149 CPR, to set out the scope and content of audits of operations and audits of the accounts and the methodology for the selection of the sample of operations referred to in Art. 127 (1) CPR.

### Article 18 – Submission of Information to the European Commission

(1) The competent authorities of the ESPON 2020 Cooperation Programme shall draw up, for each year from 2016 until and including 2025, the documents as referred to in Article 138 CPR and submit those, by respecting the relevant annual deadlines, to the European Commission.

(2) The Certifying Authority shall, in accordance with Article 137 (1) CPR, draw up the accounts for the preceding accounting year.

(3) The Managing Authority shall, in accordance with Article 125 (4) (e) CPR, draw up a management declaration including:

1. A confirmation, in accordance with Article 59 (5) (a) and (b) of the Financial Regulation, that, in the opinion of those in charge of the management of the funds, (i) the information is properly presented, complete and accurate, (ii) the expenditure was used for its intended purpose, as defined in the sector-specific rules, and (iii) the control systems put in place give the necessary guarantees concerning the legality and regularity of the underlying transactions.
2. The annual summary of the final audit reports and of controls carried out, including management verifications carried out by the Managing Authority (or on its behalf by intermediate bodies). It shall also include an analysis of the nature and extent of errors and weaknesses identified in systems, as well as corrective action taken or planned.

(4) The Audit Authority shall, in accordance with Article 127(5) (a) and (b) of the first subparagraph, draw up the audit opinion and the control report for the preceding accounting year.

### Article 19 – Closure of the ESPON 2020 Cooperation Programme

(1) The closure of the ESPON 2020 Cooperation Programme shall be carried out in compliance with Article 141 CPR by the competent programme authorities.

## PART 4: PROCEDURES FOR CO-FINANCING, PAYMENT AND AN APPORTIONMENT OF LIABILITIES

### Article 20 – Co-financing of the ESPON 2020 Cooperation Programme

(1) At the beginning of every year, the Managing Authority shall send to the Member States and Partner States a request for transfer of their national co-financing representing their contribution to the ESPON 2020 Cooperation Programme. Until the end of February, or, in exceptional cases when this is not possible, at the latest within one month after the approval of their national budgets, the Member States and Partner States shall transfer their national contribution to the Programme for the coming year on the base of the financial plan agreed.

(2) All payments of the national co-financings and contributions will be credited to the single Euro-currency (EUR) bank account opened in the name of the Trésorerie de l’Etat du Luxembourg for the ESPON 2020 Cooperation Programme, which is managed separately as trust fund (Trust Account) by the Certifying Authority.

(3) A report on the payment situation shall be regularly given to the Monitoring Committee.

(4) If, at the end of the Programme implementation period, the Member States have transferred more funds than what was actually needed to co-finance the ESPON 2020 Cooperation Programme, the Certifying Authority will reimburse these funds, unless the Monitoring Committee or individual Member States represented in the Monitoring Committee decide differently.

### Article 21 - Payments under the ESPON 2020 Cooperation Programme

(1) Any payment under the ESPON 2020 Cooperation Programme shall be made by the Certifying Authority from the single bank account dedicated to be used for the ESPON 2020 Cooperation Programme.

(2) Under the Grant Agreement, on the referred amounts which are expressed in EURO (EUR), regular payments shall be made to the Single Beneficiary according to the following provisions:

1. Any payment under the Grant Agreement shall be disbursed solely to the bank account of the Single Beneficiary, which is specified in the approved Operation Proposal.
2. Prior to each payment under the Grant Agreement, a payment claim shall be submitted by the Single Beneficiary to the Managing Authority. Each payment claim must be supported by a Progress Report including an Activity and a Financial Report. The reports shall be accompanied by a certification of expenditure signed by the designated first level controller of the Single Beneficiary.
3. The Managing Authority shall assess the Progress Reports and monitor the proper implementation of the Single Operation and its activities according to the procedure laid down in the management and control system description. Only after the approval of the Progress Reports by the Managing Authority, the Certifying Authority shall make a payment to the Single Beneficiary.
4. The first first payment claim shall include the reimbursement of the preparation costs of the Operation Proposal.. The reimbursement of the preparation costs shall be accepted up to 2% of the total costs of the Single Operation as stated in the Grant Agreement. Only preparation costs incurred after the invitation to submit an Operation Proposal and directly linked to the preparation of the approved proposal shall be accepted.
5. Any subsequent payment claim shall be submitted every six months according to the approved timetable as detailed in the Grant Agreement. Depending upon the status of liquidity of the Single Beneficiary, payment claims may also be submitted earlier on request to the Managing Authority. In such case a revised timetable for submitting payment claims can be proposed by the Single Beneficiary. If accepted, the timetable of the Grant Agreement will be adapted accordingly.
6. Pursuant to Article 132 (1) CPR, the Managing Authority shall ensure that the Single Beneficiary receives the total amount of eligible public expenditure due no later than 90 days from the date of submission of the payment claim by the Single Beneficiary. The Managing Authority shall also ensure that the Single Beneficiary receives payments in full, meaning that no deduction, retention or further specific charges are made which would reduce the amount of the payment.
7. Pursuant to Article 132 (2) CPR, the Managing Authority shall have the right to extend the deadline for payments to the Single Beneficiary if documents supporting a payment claim are incomplete or if there is any suspicion of irregularities in the use of funding covered by Grant Agreement that requires further investigation. The Managing Authority shall have the right to cease payments to the Single Beneficiary if there is manifest evidence of irregularity.
8. The Managing Authority and the Certifying Authority shall have the right to withhold temporarily the payments to the Single Beneficiary should a systemic irregularity in the meaning of Article 2 (38) CPR occur, which results from a serious deficiency in the effective functioning of the management and control system as established by the Grand Duchy of Luxembourg. Payment suspension(s) shall be lifted as soon as the Managing Authority and the Certifying Authority receive sufficient evidence on the solution for eliminating the serious deficiency detected.

(3) The Single Beneficiary will be granted one advanced payment up to 6 % of the Grant Agreement. At the signature of the Grant Agreement a first payment of 2% will be executed, followed by two additional payments of 2 % processed after 4 months and 8 months from the signature of the Grant Agreement respectively by making use of the initial pre-financing amount which is paid to the ESPON 2020 Cooperation Programme by the European Commission in accordance with provisions of Article 134 (1) CPR. An additional payment of 2 % can be granted upon requested by the Single Beneficiary, which is subject to approval by the Monitoring Committee and the availability of Programme funding. Shall the annual instalments of this pre-financing amount not suffice to ensure the liquidity and a functioning of the Single Beneficiary without friction the Managing Authority will try to find a solution within the Grand Duchy of Luxembourg. Only in case no solutions can be found in Luxembourg the Managing Authority will ask the Member States and Partner States to find a common solution that eliminates the shortage of liquidity of the Single Beneficiary.

(4) Regular payments relating to the funding for Technical Assistance under Priority Axis 2 shall be made to the Managing Authority on ground of certified payment requests, which are submitted by the Managing Authority to the Certifying Authority.

(5) The Commission will, pursuant to Article 130 CPR, reimburse as interim payments 90 % of the amount for each Priority Axis of the ESPON 2020 Cooperation Programme to the eligible expenditure for a priority included in the payment application. Due to this, the Member States agree with the Managing Authority and the Certifying Authority on the following procedure to be applied in relation to the Single Beneficiary: Provided that the expenditure is certified, payments to the Single Beneficiary will be guaranteed up to an amount equalling 90 % of the approved ERDF funds for the Single Operation and 100% of the national co-financing. The payment of any remaining ERDF funds to the Single Beneficiary will depend on the availability of funds. Should there be insufficient funds to pay 100% of the amount to the Single Beneficiary, the final balance of the funding shall only be paid when the ESPON 2020 Cooperation Programme has reached its actual finalisation and the final payment is transferred by the European Commission to the Certifying Authority.

### Article 22 – Irregularities under the ESPON 2020 Cooperation Programme

(1) Under the ESPON Cooperation 2020 Programme, possible irregularities can occur for the following three situations:

1. In the use of funding for Priority Axis 1 which is allocated to the Single Beneficiary via the Grant Agreement.
2. In the use of funding for Technical Assistance under Priority Axis 2 of the ESPON 2020 Cooperation Programme.
3. By application of a flat rate correction at the programme level, according to Article 143 CPR.

(2) In order to fully comply with the provisions as set out by Article 122 (2) CPR, the main implementing structures of the ESPON 2020 Cooperation Programme shall contribute to prevent, detect and correct irregularities and to recover amounts unduly paid according to their respective functions and responsibilities.

1. The Managing Authority shall ensure that the ESPON EGTC, as Single Beneficiary of the funding under Priority Axis 1 of the ESPON 2020 Cooperation Programme, establishes all necessary statutory and operational provisions for preventing irregularities to occur in the use of funding under the Grant Agreement.
2. The Managing Authority shall take the necessary organisational and operational measures for preventing irregularities to occur in the use of funding for Technical Assistance under Priority Axis 2.
3. Should the Managing Authority or the Certifying Authority or the Single Beneficiary or any Member State and Partner State have any suspicion of irregularities, they shall without any delay inform the Monitoring Committee of the ESPON 2020 Cooperation Programme and the unit of the Managing Authority assuming the function and tasks of the Joint Secretariat.
4. The Grand Duchy of Luxembourg, as the country hosting the Single Beneficiary and the Managing Authority of the ESPON 2020 Cooperation Programme, shall be responsible for reporting and notifying to the Commission of irregularities that exceed EUR 10.000 in contribution from the ERDF and for keeping the Commission informed of significant progress in related administrative and legal proceedings.
5. The Managing Authority engages itself to communicate promptly to the Monitoring Committee, the Certifying Authority and the Audit Authority any information of detected irregularities relating to amounts of less than EUR 10.000 of ERDF-funding.
6. The Managing Authority, jointly with the other Member States and Partner States affected, shall undertake all efforts to recover amounts unduly paid, together with any interest on late payments.

### Article 23 – Apportionment of liabilities and the Liability Mechanism

(1) With reference to the ESPON 2020 Cooperation Programme, the situation regarding ESPON 2020 and the establishment of a Single Beneficiary is particular as only two entities will receive subsidies so the cases of liability can be rather clearly allocated:

(1) The Single Beneficiary under the Grant Agreement will receive the all funding allocated under the Priority Axis 1.

(2) The Managing Authority will receive all funding under the Priority Axis 2 (Technical Assistance).

(3) On principle a third case of liabilities is possible by imposition of flat-rate correction on the programme level affecting both, the Single Beneficiary and the Managing Authority.

(2) Liability of the Single Beneficiary - Priority 1: In case of occurrence of ineligible expenditure or irregularities with financial impacts in the use of funding by the Single Beneficiary the financial liability shall be borne by the ESPON EGTC. In case the EGTC is not able to cover these costs the members of the ESPON EGTC are liable. In order to support the members of the ESPON EGTC regarding a financial burden resulting from their unlimited liability in relation to the implementation of the ERDF-funding allocated under the Grant Agreement, an “ESPON EGTC Liability Mechanism” is set up (hereinafter referred to as Liability Mechanism) which is a formal Annex to the present Agreement (Annex I).

The purpose, size of financing and practical operation of the Liability Mechanism is described in a specific “Reference Document on the Liability Mechanism” which shall be an Annex to the Agreement between Luxembourg and the Member and Partner States on the ESPON 2020 Cooperation Programme.

By the definition of the chain of liabilities any potentially occurring recovery of irregular expenditure from the Single Beneficiary to the Managing Authority is ensured.

(3) Liability related to the Managing Authority - Priority 2 (Technical Assistance): For financial consequences of possible irregularities occurring in the use of funding for Technical Assistance under Priority Axis 2 of the ESPON 2020 Cooperation Programme, two approaches shall be applied:

(a) For irregularities with financial impacts related to the administration of Technical Assistance, the financial liability shall be borne by the Managing Authority alone.

(b) For irregularities with financial impacts regarding the use of Technical Assistance, which is a consequence of a decision of the Member States and the Partner States in the Monitoring Committee , the liability shall be borne jointly by the Member States and Partner States proportionally to their financial contributions to the ESPON 2020 Cooperation Programme.

(4) Liability related to “Flat-Rate Corrections on the Level of the Cooperation Programme”: Considering, that the ESPON 2020 Cooperation Programmeprovides for a lean and clearly defined management and control structure and only two beneficiaries, the Managing Authority and the ESPON EGTC, any liability, in principle, shall be possible to be attributed. Therefore the probability of an application of flat-rate corrections is very low. Nevertheless, a rule shall be defined regarding the financial consequences of flat-rate corrections at the programme level:

(a) For the proportion of flat rate corrections relating to the funding under the Grant Agreement under for Priority Axis 1, the liability shall by borne by the Single Beneficiary, which can recur on the Liability Mechanism.

(b) For the proportion of flat rate corrections relating to Technical Assistance (Priority Axis 2), the liability shall be borne jointly by the Member States and Partner States proportionally to their financial contributions to the ESPON 2020 Cooperation Programme. Member and Partner States shall not be liable for irregularities, including ones having a systemic nature, and for flat rate corrections related to the administration of Technical Assistance. In the latter case, the liability rest with the Managing Authority.

## PART 5: CONCLUDING PROVISIONS

### Article 24 – Law Governing the Agreement

This Agreement shall be governed in accordance with the laws of the Grand-Duchy of Luxembourg.

### Article 25 – Cooperation and Use of Language, way of communication

(1) Good cooperation between the members of the Monitoring Committee, between the Managing Authority, the Certifying Authority and the Audit Authority represents a “condition sine qua non” in order to secure a sound and complete management, financial control and audit of all parts which are co-financed by the ERDF and national funds.

(2) All communication between the Member and Partner States, the Monitoring Committee the Managing Authority, the Certifying Authority and the Audit Authority and between all other bodies mentioned in the ESPON 2020 Cooperation Programme or this Agreement, as well as all communication necessary to manage and implement the ESPON 2020 Cooperation Programme, shall be in English language.

(3) If not explicitly decided differently by the Monitoring Committee, communication among the Member States, the Monitoring Committee and the programme bodies as well as the Single Beneficiary shall generally be done by e-mail, if this is not possible in well justified cases, by fax or via the ESPON Intranet in a specific portal dedicated to the communication within the ESPON 2020 Cooperation Programme. Important documents such as nominations or invoicing of national contributions send by e-mail shall have the form of scanned version of an official letter.

### Article 26 - Changes in the Programme Implementation Structures

(1) Any change of the name of a responsible person appointed shall be subject of a notification to the Managing Authority only.

(2) Any changes of an institution appointed shall be matter of a bilateral exchange of letters between the Managing Authority and the Member State/Partner State in question.

(3) A Member State or Partner State shall communicate to the Managing Authority any change referred to under paragraphs 1 and 2 no later than 5 working days after such a change has come into effect.

(4) The Managing Authority shall communicate to the European Commission in writing any change in the implementation structure no later than 15 working days, also by indicating the potential impact of this change on the implementation of the ESPON 2020 Cooperation Programme.

### Article 27 – Amendments to and Improvements of the Agreement

(1) This Agreement shall only be amended in writing and by a consensual decision of the Member States and Partner States of the ESPON 2020 Cooperation Programme.

(2) In the event that a provision of the present Agreement should be, or become, wholly or partly ineffective, the parties to this Agreement shall undertake all the necessary steps and actions to replace this provision by a more effective provision which comes as close as possible to the originally intended purpose of the provision declared ineffective.

(3) In the event that an ineffective provision is replaced, all other provisions of this Agreement shall remain valid.

### Article 28 – Commitment to the agreed provisions, settlement of conflicts and sanctions in case of a non-respect of the agreed provisions

(1) The Member States and the Partner States commit themselves to undertake all necessary actions for fully complying with the provisions as set out by this this Agreement.

(2) In the event that disputes should arise out or in connection with a non-respect of one or more provisions of this Agreement, the concerned parties shall first seek an amicable solution.

(3) Should the concerned parties fail to reach an amicable solution within a period of 3 months, mediation shall be searched before taking any legal actions.

(4) In case of persisting disputes arising out of a continuing non-respect of this Agreement shall be settled by the competent jurisdiction of the Grand-Duchy of Luxembourg.

(5) Should a continuing non-respect of this Agreement cause any financial damage to the ESPON 2020 Cooperation Programme (loss of funding etc.), appropriate compensation for the damage and financial impact may be asked to the party originating this damage.

### Article 29 – Signature, Entry into Force and Duration of the Agreement

(1) This Agreement shall be signed by representatives of the Governments of all Member States and Partner States participating in the ESPON 2020 Cooperation Programme.

(2) This Agreement enters into force at the date of the signature of each party.

(3) This Agreement shall remain in force for the duration of the implementation of the ESPON 2020 Cooperation Programme until its formal and entire closure by the European Commission.

## PART 6: ANNEXES TO THE AGREEMENT

**Annex I: Reference Document on the ESPON EGTC Liability Mechanism**