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**REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND
THE COUNCIL**
**The application of the Regulation (EC) No 1082/2006 on a European Grouping of
Territorial Cooperation (EGTC)**

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1 INTRODUCTION

Article 175 of the Treaty on the functioning of the European Union¹, in particular its third subparagraph², provided the legal basis for the adoption of Regulation (EC) No 1082/2006 of the European Parliament and the Council of 5 July 2006 on a European grouping of territorial cooperation (EGTC)³ (the EGTC Regulation), which entered into force on 1 August 2006 and has been fully applicable since 1 August 2007. It opened a new perspective in the domain of cooperation and enabled the creation of a new European instrument providing a legal structure for better cooperation between national, regional and local authorities and other public law bodies in different countries, especially in the context of the European Territorial Cooperation (ETC) Objective of Cohesion Policy.

The EGTC instrument is intended to increase the cohesion of the Union by facilitating territorial cooperation and reducing its practical difficulties through a legal body that can increase legal certainty and stability for cooperation initiatives.

This document meets the requirement of the Commission to report by 1 August 2011 to the European Parliament and the Council on the application of the Regulation and proposals for amendments, where appropriate (Article 17) N.B. all articles quoted are those of the EGTC Regulation, unless otherwise indicated.

2 PURPOSE OF THE EGTC INSTRUMENT

Member States and, in particular, regional and local authorities encountered significant difficulties when trying to implement programmes for territorial cooperation because of differing national laws and procedures and the increase in the number of land and maritime borders in the Community following its enlargements of 2004 and 2007.

Existing instruments on cooperation within the European Union, such as the European economic interest grouping (EEIG), are primarily aimed at cooperation between economic operators⁴ rather than public authorities. In addition, the structures proposed by the Council of Europe for regional and local authorities to cooperate across borders were not endorsed throughout the whole European Union.

¹ Replacing Article 159 of the Treaty Establishing the European Union

² "If specific actions prove necessary outside the Funds and without prejudice to the measures decided upon within the framework of the other Union policies, such actions may be adopted by the Council acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee and the Committee of the Regions."

³ OJ L 210, 31.7.2006, p. 19.

⁴ "other legal bodies governed by public or private law, which have been formed in accordance with the law of a Member State" can also be members of a grouping (Article 4 of Regulation (EEC) No 2137/85), including, among others, local authorities and chambers of commerce. However, this is provided that their activities can be considered of an economic nature

In this context, the EGTC was created at European level as a legal instrument which contributes to territorial cooperation across national borders by providing a directly applicable and lasting European basis for actions. All Member States implement the EGTC Regulation in full. The establishment of an EGTC is optional and the EGTC Regulation does not prevent any institution from freely choosing other forms or formulas for territorial cooperation, with or without legal personality.

The EGTC was developed to make territorial cooperation more strategic but – at the same time – more flexible and simple. An EGTC should reduce the difficulties encountered by Member States and, in particular, by regional and local authorities in implementing and managing cooperation activities in the context of differing national laws and procedures.

3 APPLICATION OF THE EGTC REGULATION

To gather the necessary data on the practical application of EGTC the European Commission's Directorate General for Regional Policy organised an informal meeting with the experts of individual Member States (High Level Group reflecting on future Cohesion Policy), met representatives of the European Parliament, and in particular worked in close cooperation with the Committee of the Regions.

In 2010 the European Commission and the Committee of the Regions together with the 2010-2011 Presidencies of the Council of the European Union (Spain-Belgium-Hungary) and the INTERACT programme led a wide consultation of Member States, regional and local authorities and other stakeholders on the operation and added value of the EGTC instrument.⁵

3.1 Role of the European Institutions and Advisory Bodies

3.1.1 European Commission

The Commission has consistently underlined the importance of effective governance in ensuring territorial cohesion⁶. Furthermore the Commission actively participated in conferences and discussions organised by the Presidencies of the Council, the Committee of the Regions, by EGTCs and other stakeholders.

The Commission offers active support both directly, through conferences and networking events, through bilateral contact with some Member States and stakeholders, and via INTERACT, a programme for the exchange of experience in European Territorial Cooperation. Furthermore, EGTCs are now a regular topic of the Open Days held annually by the Commission and the Committee of the Regions.

3.1.2 European Parliament

The European Parliament has taken a close interest in EGTCs. The own-initiative report "on Objective 3: a challenge for territorial cooperation – the future agenda for cross-border,

⁵ Results published in *Conclusions of the Committee of the Regions about the joint consultation – The Review of regulation (EC) 1082/2006 on the European Grouping of Territorial Cooperation*, Committee of the Regions, 2010, http://www.cor.europa.eu/COR_cms/ui/ViewDocument.aspx?contentid=366960dd-3c03-4efa-9230-665455fa6bb5

⁶ Second progress report on economic and social cohesion (COM(2003)31 final of 30.01.2003, p.5.

transnational and interregional cooperation"⁷ was adopted in 2011. On EGTC the report states "this instrument works satisfactorily" and "it has met the need expressed by regional and local authorities for structured cooperation covering financing, the legal status of projects and multi-level governance (...)." Moreover, specific sectoral reports, for example on sport⁸ and health care⁹, encourage the promotion and use of the EGTC for cross-border, transnational, and inter-regional cooperation.

3.1.3 Committee of the Regions

The Committee of the Regions is identified by the Treaty as a principal partner of the Commission, in particular in issues concerning cross-border cooperation. The Committee adopted opinions on the EGTC in 2008¹⁰ and 2011¹¹, whereby it confirmed its commitment to support EGTC but called for legal changes to ease its setting up and functioning. In addition, it considers that "...the EGTCs also provide useful prospects as 'laboratories' for multi-level governance".

3.2 Member States' implementation of the EGTC Regulation

Member States must make such provisions as are appropriate to ensure the effective application of the EGTC Regulation. The deadline was 1 August 2007 and the Staff Working Document accompanying this Report provides detailed information on the information transmitted by Member States to the Commission.¹²

While all Member States have now informed the Commission on the measures taken or to be taken to adapt national rules to conform with the Regulation, a number did so only after considerable delay. Such delays have often contributed to difficulties in approving proposals for specific EGTCs.

3.3 Number and scope of EGTCs

Article 5 states that "the members shall inform the Member States concerned and the Committee of the Regions of the convention and the registration and/or publication of the statutes". This allows the Committee of the Regions to hold an informal register of EGTCs:

Creation of EGTCs (31 March 2011)¹³

Year	EGTCs created	Cumulative total
2008	4	4

⁷ Draft Report (2010/2155(INI)), Committee on Regional Development, Rapporteur: Marie Thérèse Sanchez-Schmid, June 2011.

⁸ "White Paper on Sport", EP resolution of 8 May 2008 (2007/2261(INI), point 83, OJ C 271E, 12.11.2009, p. 51.

⁹ European Parliament legislative resolution of 23 April 2009 on the proposal for a directive of the European Parliament and of the Council on the application of patients' right in cross-border healthcare (COM(2008)0414 – C6-0257/2008-2008/0142 (COD)), Amendment 102.

¹⁰ Opinion of the Committee of the Regions on European Grouping of Territorial Cooperation: new impetus for territorial cooperation in Europe (CdR 308/2007fin), Rapporteur: Mercedes Bresso.

¹¹ Own-Initiative Opinion of the Committee of the Regions on New Perspectives for the Revision of the EGTC Regulation (CdR 100/2010fin), Rapporteur: Alberto Núñez Feijóo.

¹² See Section 2 of Staff Working Document.

¹³ Source: Committee of the Regions. See full list in Section 3 of Staff Working Document.

2009	6	10
2010	6	16
In preparation	21	

Article 7 states that “[an] EGTC shall act within the confines of the tasks given to it, which shall be limited to the facilitation and promotion of territorial cooperation to strengthen economic and social cohesion.” The “tasks of an EGTC shall be limited primarily to the implementation of territorial cooperation programmes or projects co-financed by [Cohesion Policy]. An EGTC may carry out other specific actions of territorial cooperation between its members (...) with or without a financial contribution from the Community.”

In addition to the EGTC Regulation, Article 18 of Regulation (EC) No 1080/2006 (ERDF Regulation)¹⁴, states that "Member States participating in an operational programme under the European territorial cooperation objective may make use of the [EGTC] with a view to making that grouping responsible for managing the operational programme by conferring on it the responsibilities of the managing authority and of the joint technical secretariat." Of the 16 EGTCs established by 31 March 2011, one was specifically set up to implement and manage one ETC programme, one primarily to implement a project financed by cohesion policy and the rest with other actions of territorial cooperation which may include projects funded through ETC.¹⁵

4 EGTCs IN PRACTICE

4.1 Motives to create and to further develop an EGTC

An EGTC offers a more coherent cooperation context available to local, regional and national authorities and other public bodies. The EGTC Regulation provides a formal framework to existing cooperation with more legal certainty, a more official basis and a more solid institutional structure. An EGTC contributes to a better dialogue between the Member States and other public authorities and is a suitable structure for long-term territorial cooperation.

The EGTC Regulation tool allows broad partnership, a real intervention capacity across borders and a wide scope of actions within all three cooperation strands: cross-border, transnational and interregional. It simplifies the previously very heterogeneous legal framework conditions existing for cross-border co-operation throughout the EU and provides an appropriate legal framework for transnational and inter-regional cooperation¹⁶, even though *ad hoc* solutions, formal or informal, have had to be found for specific issues.

The motivation to establish an EGTC is often the will to create a visible and permanent structure of cross-border or territorial cooperation, to design joint growth strategies, to generate economies of scale, and to manage joint projects, infrastructure or environmental resources. Reports from Member States, regional and local authorities and EGTCs show that the decision to set up an EGTC often depends on the previous history of cooperation between the partners. Partners underlined that the EGTCs were established in order better to face the

¹⁴ OJ L 210, 31.7.2006, p. 1.

¹⁵ Source: Committee of the Regions report

¹⁶ *INTERREG III Community Initiative (2000-2006) - Ex-Post Evaluation. Final Report (No. 2008.CE.16.0.AT.016)* by Panteia and Partners, May 2010, p. 165.

challenge of cooperation: reaching an agreement on the role and tasks of the EGTC is an important part of the process. Some of the existing EGTCs are planning to increase the number of their members, so the creation of an EGTC may not be a single event, but a step on a continuous process.

4.2 Practical difficulties in the application of the EGTC Regulation

Based on the evidence gathered in the consultations with stakeholders several issues have been identified in the application of the EGTC Regulation, both in relation to the creation and the functioning of the EGTC. Reactions of existing EGTC to the instrument are positive but uptake to date falls well short of potential.

As explained above, the delay in adopting national provisions meant that, by the time they were ready, the ETC programmes were already prepared and key decisions about their implementation systems already taken. Moreover, it may be that the novelty of the EGTC instrument deterred Member States and Managing Authorities from relying on it for a formal role in implementing cooperation programmes.

Time-consuming and complex procedures are reported as the most important negative drivers when establishing an EGTC. Some EGTCs complained about insufficient awareness of the instrument amongst the national authorities and Commission services when requesting practical information or applying for support. It seems that respect of the three month period for decision by a Member State on an application to create an EGTC is the exception rather than the general rule specified in Article 4.

4.2.1 Creation of an EGTC

The legal difficulties linked to the EGTC formation process, mostly stemming from a perception of incompatibility of differing national rules and a lack of coordination between the Member States, are among the most important obstacles discouraging stakeholders from establishing an EGTC. The variation in cross-border structures, local and regional authorities and associations highlights the need for an instrument such as the EGTC. At the same time, this variation creates great problems in applying a single model that will satisfy all the various constraints.

An issue inhibiting the creation of EGTCs is the differing status of local and regional bodies in different Member States. Tasks that fall under regional or local competence on one side of the border may be viewed as national responsibilities on the other side.

As a second issue, the EGTC Regulation allows the Member States to take different decisions in the process of national implementation which leads to differences in questions of limited or unlimited liability. The regime may be different in two neighbouring States. When the EGTC Regulation was negotiated some Member States stated that their national law did not allow local authorities to become members of a legal body with unlimited liability: hence the provision of Article 12 became necessary.

A third issue for both existing and prospective EGTCs is the membership of third countries and their regional and local bodies. Article 3 specifies that members of EGTCs must be Member States, regional or local authorities or public law bodies or their associations, drawn from at least two Member States. However there are several cases where the members or prospective members would see advantages in adding members from a third country or even setting up an EGTC between regions or local authorities of one Member State and a third

country. This poses issues at political level and, for the second case, on what legal basis an EGTC could be set up between members from only one Member State and from a third country.

Certain reported hindrances seem to derive from a lack of awareness of the detail of the EGTC Regulation. For example, there has been confusion between what should be contained in the convention forming an EGTC and what should be included in its statutes. Likewise, the mistaken belief that private entities cannot participate in an EGTC has limited some operations. In fact, private entities considered contracting entities for the purposes of public procurement may become members of an EGTC (Article 3(1)(d)). However, there is a request to extend this possibility even wider. Finally, some stakeholders have reported delays in the publication process for EGTCs, signalling a possible need for clarification and improvement of the notification process.

4.2.2 Operation of an EGTC

Established EGTCs report – almost universally – that once the hurdles surrounding their creation have been overcome the benefits are evident. The creation of a legal body with a mandate on both sides of a border can greatly simplify rational provision of public transport or utilities, or an integrated strategy for development of the region in the context of Europe 2020.

Nonetheless, the existence of an EGTC does not remove all problems experienced by cross-border operations. Different Member States or even different authorities within the same Member States may give a differing interpretation to a given legal provision and create different practices.

A major problem highlighted by stakeholders is linked to staff contracts, even if Article 9(2)(d) requires the statutes of an EGTC to contain arrangements for its functioning, notably concerning personnel management, recruitment procedures and the nature of personnel contracts. Consequently, the Commission is of the view that the statutes could indicate the law which applies to employment contracts, e.g. the law of the location of the registered office or of the place where other EGTC statutory organs are located and perform their duties. Otherwise, in accordance with the second paragraph of Article 2 of the EGTC Regulation, where it is necessary under the EU or international private law to establish the choice of law which governs an EGTC's acts, the EGTC must be treated as an entity of the Member State where it has its registered office.

Neither the EGTC Regulation nor the relevant EU Directives offer a solution where a public body such as an EGTC as contracting authority procures works or services in a different Member State than where it is registered. Nevertheless existing EGTCs have to procure in more than one Member States as the activities carried out by that EGTC cover different countries. There has been a request to cover this issue in the EGTC Regulation.

More visibility would enable EGTCs to support networking and to allow exchange of experience. Commission services have not always recognized EGTCs as eligible, for example, to participate in their calls for proposals. Similarly, national public administrations have not always been aware of EGTCs and their capacities and legal status.

The long drawn out procedure to establish an EGTC discourages subsequent adaptation of the convention or statutes, even when changed circumstances require it. The current EGTC Regulation does not, however, allow for a simplified approach to modification of the

convention and statutes, especially concerning the admission of new members to an existing EGTC.

4.3 Examples of existing EGTCs

The scope of activities currently undertaken by the EGTCs is very broad, ranging from the joint management of natural resources, to improved access to cross-border transport systems, management of services of general interest (such as health or education) and other territorial matters. Many EGTCs plan to implement growth and sustainable development strategies, in line with the Europe 2020 Strategy therefore contributing to the full development of the territories concerned.

The EGTC activities in many cases go beyond the implementation of cooperation programmes and projects in the framework of cohesion policy that are cited as primary tasks in the EGTC Regulation. Certain of these EGTCs, however, are now proposing projects for funding under ETC or other EU programmes.

While the capacity to act as a managing authority and joint technical secretariat of the European cooperation programmes is welcomed by the existing EGTCs, this option is so far used only by the *Grande Région* EGTC. This may be due to the time constraints of adoption of the EGTC Regulation and obligation of the Member States to make their own national provisions in order to implement the EGTC Regulation.

***Grande Région* EGTC**

This EGTC established under French law and based in Metz was set up in April 2010 by the Grand-Duchy of Luxembourg, the *Région Wallonne* (Belgium), *Lorraine* (France) and the German *Länder* of Rhineland-Pfalz and Saarland. It is the only example of an EGTC acting as managing authority for an ETC cross-border cooperation programme, covering the major part of the regions concerned. The Joint Technical Secretariat is organised as an association and is located in Luxembourg. This EGTC is financed from the technical assistance of the ETC programme, which acts as the managing authority of the ETC Programme of the same name.

EGTC Hospital de la Cerdanya

This EGTC, created in April 2010, is an innovative solution to provide a hospital with an immediate impact on the population of a cross-border catchment area between France and Spain with about 30.000 inhabitants. The partners involved are the Catalan Government and the French Ministry of Health, the National Health Insurance and the Regional Agency for hospitals of *Languedoc-Roussillon*. Given the investment volume and the annual contributions, it is by far the most substantial venture among all EGTCs. The project is pioneering an area extremely important across the EU gradually increasing cooperation in and harmonisation of health care across the Member States.

Ister Granum EGTC

The **Ister Granum** EGTC was founded in June 2008 in the Hungarian-Slovakian border region as the second EGTC within the EU. Its background is the developing cooperation around the Eszergom-Parkany bridge. Today, 51

Hungarian and 38 Slovakian local authorities of the Euroregion are members. Due to strong political support and an active Euroregion, it was rapidly created, mainly based on the approved development programme, which is currently implemented by the EGTC. One major task is to develop applications for funding from the ECT Programmes Hungary-Slovakia and Southeast Europe.

As the number of EGTCs gradually increases it has become clear that while each EGTC adapts to its specific situation there is a widespread tendency to emphasise the strategic aspects of cooperation.

Eurometropole Lille-Kortrijk-Tournai EGTC

The first EGTC established in January 2008, the Eurometropole Lille-Kortrijk-Tournai EGTC includes 145 municipalities as well as regional and national authorities. The region has a long experience in working cross-border going back to 1991. It covers an extended urban area with a population of around two million. The main objective is to strengthen internal cohesion within the cross-border conurbation by promoting cooperation and realising projects according to the common development strategy. The added value is an improved coordination process based on the strong will of all stakeholders and a lengthy history of cooperation.

5 PROPOSALS AND IMPROVEMENTS

The Commission considers that the EGTC instrument should be kept as simple and non-constraining as possible, allowing the form and function of individual EGTCs to be shaped in accordance with the tasks they have to perform in the environment in which they are operating.

However, in order to ensure that this flexible approach does not lead to delays in implementation, there is scope for considerable improvement of procedures for approving proposed EGTCs. The Commission therefore envisages a limited number of specific improvements to the Regulation and the wider context.

5.1 Amendments to the EGTC Regulation

An EGTC offers a valuable instrument that is becoming more and more accepted. Nonetheless, the slow take-up of the instrument and some difficulties in practical implementation suggest that improvements are possible and necessary. The Commission therefore envisages a number of amendments to the EGTC Regulation. These would not require changes in the activity of current EGTCs but would on the one hand adapt the language to the Treaty on the Functioning of the European Union and on the other be centred on simplifying and accelerating the setting up process and implementation. For example, EGTCs between public bodies from only one Member State and from non-Member States could be authorised if scope of the legal act were broadened. A system of tacit response allowing EGTCs to be established in the absence of reasoned objections by national authorities within a reasonable time, might replace the current requirement to respond within three months as a general rule. The purpose of an EGTC could be extended to cover strategy and the planning and management of regional and local concerns in line with EU policies. Finally, in this section, the insurance-based solution adopted under EU law for a different

legal instrument¹⁷ could address the problem of setting-up of EGTCs with limited liability, allowed in some Member States, but not necessarily in neighbouring Member States.

5.2 Possible clarifications

Experience shows that, in some cases, the EGTC Regulation has not been fully understood. The Commission will seek to make it clearer that the convention establishing an EGTC must state clearly under which laws it will operate, including any provision for exceptions, that private bodies submitted to public procurement rules may be members of EGTCs and that the statutes controlling an EGTC's operation must clearly set out the rules under which it will operate, such as applicable national law for employees.

5.3 Improvements linked to other EU regulations and policies

- For the EGTC instrument to achieve its full potential, it should be part of an integrated approach to delivery of EU policy priorities. In its proposals for the revision of Cohesion Policy regulations the Commission intends to ensure that no obstacles are placed in the way of the use of EGTCs. This could enable EGTCs to become more prominent in delivering interventions requiring cooperation among regions in different countries. Moreover, EGTCs could play an important role in enabling macro-regional strategies and inter-regional cooperation projects (outside ETC) and networks to become more effective.
- Extensive use of EGTCs in delivering other Union policies should also be encouraged. Whether in the fields of environmental improvement, research collaboration, education and culture or others, an EGTC may add to the value of Union policies by offering a more structured and adaptable means of implementation.
- In the forthcoming revision to Public Procurement Directives the Commission will consider how to address problems linked to cross-border procurement encountered by such bodies among others.

5.4 Improvements to gathering and dissemination of information

A number of changes could contribute to a more effective instrument. The Commission therefore intends to:

- Collect and distribute information on the implementation of the EGTC Regulation in the Member States;
- Actively collaborate with the Committee of the Regions on the EGTC Platform¹⁸,
- Encourage sharing of know-how, networking and regular exchange of views among all the stakeholders concerned (national, regional and local administrations, existing and prospective EGTCs), for example by a programme like INTERACT.

¹⁷ Article 12(3) of Council Regulation (EC) on the Community legal framework for a European Research Infrastructure Consortium (ERIC) (OJ L 206, 8.8.2009, p.1): "*If the financial liability of the members is not unlimited, the ERIC shall take appropriate insurance to cover the risks specific to the construction and operation of the infrastructure.*"

¹⁸ <http://portal.cor.europa.eu/egtc/en-US/Platform/Pages/welcome.aspx>

6 CONCLUSION

The EGTC instrument was proposed to overcome the obstacles hindering territorial cooperation in the European Union and beyond and in particular to provide a way to operate across borders, avoiding the blockages potentially created by incompatible legal and administrative systems. While the timing of the new instrument limited its use for this purpose, experience since 2007 shows that the EGTC instrument responds to clear needs. It has been used for *inter alia*:

- Managing specific projects, whether in receipt of Community funds or not;
- Planning development strategies for cross-border and multi-national zones;
- Operating facilities of common interest;
- Providing a locus for multi-faceted, multi-level communication and cooperation;
- Ensuring the visibility and durability of cooperation going beyond ETC programmes.

To summarise, the existence of this instrument has provided a means of moving from a desire to cooperate to concrete expressions of cooperation. The gradually accelerating move to create EGTCs shows that local and regional entities are finding more and more ways in which EGTCs can help achieve their aspirations.

Nonetheless, the opportunities could be exploited more widely. Difficulties in setting up an EGTC have discouraged a number of potential groups that could have contributed to the tasks listed above. Moreover, the existence of a single body with legal status operating across borders does not eliminate persistent issues such as determination of applicable public procurement rules across borders or the status of EGTCs' own staff.

The Commission therefore intends to propose a limited number of modifications to the Regulation to facilitate the establishment and operation of EGTCs, as well as clarification of certain existing provisions. It is also encouraging other changes to enhance the efficiency and effectiveness of EGTCs in promoting cooperation in the implementation of European policies.

The Commission's intended approach will seek to remove obstacles to establishing EGTCs while maintaining continuity in and facilitating the operation of existing ones. The Commission believes that these adaptations will allow more extensive use of EGTCs to contribute to better cooperation and policy coherence among public bodies without additional burden on national or European administrations.