

HIGH LEVEL GROUP REFLECTING ON FUTURE COHESION POLICY

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EUROPEAN GROUPING OF TERRITORIAL COOPERATION

This document has been prepared by DG Regional Policy as the basis for a discussion with experts as part of a general reflection process on the future of cohesion policy. It does not prejudge in any way the final position of DG Regional Policy or the Commission on these questions.

1. INTRODUCTION

Regulation (EC) No 1082/2006 of the European Parliament and the Council of 5 July 2006 on a European grouping of territorial cooperation (EGTC)¹ (the EGTC regulation) entered into force on 1 August 2006 and has been applicable since 1 August 2007. It enabled the provision of a legal structure for enhanced cooperation between national, regional and local bodies in different countries, especially in the context of European Territorial Cooperation. This was needed in particular because the opportunities and frameworks for regional and local authorities to cooperate across borders provided by the Council of Europe² were not being used throughout the European Union. Member States, regional and local authorities were therefore experiencing significant difficulties in implementing and managing territorial cooperation in the framework of differing laws and procedures.

The opportunities offered by the EGTC regulation, are to, *inter alia*:

- § increase the cohesion of the Union by facilitating territorial cooperation;
- § increase legal certainty, being independent of possible political or legal changes in participating Member States;
- § reduce the difficulties for cooperation; and
- § to reinforce and develop a more stable framework for cooperation.

The Regulation requires the Commission to report by 1 August 2011 to the European Parliament and the Council on the application of the Regulation and proposals for amendment, where appropriate (Article 17).

The Commission is currently preparing this report on the basis of experience gained so far with the EGTC regulation, its implementation and how it works in practice. A particular useful source of information is the recent consultation on the operation and added value of the EGTC instrument, which was carried out by the Committee of the Regions, the Commission and the Trio of Presidencies of the Council of the European Union (Spain-Belgium-Hungary) and the INTERACT programme.

¹ OJ L 210, 31.7.2006, p. 19.

² European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities, signed in Madrid on 21.V.1980, the three Additional Protocols to that Convention as well as bilateral and multilateral agreements based on these texts.

In this context, this HLG discussion paper provides an overview of the main areas for consideration with regard to future of the EGTC instrument, and sets out a number of considerations and questions for the possible future development of the European grouping of territorial cooperation, namely:

- implementation of the EGTC regulation and EGTCs in operation;
- areas for consideration of improvement.

2. IMPLEMENTATION OF THE EGTC REGULATION AND TAKE-UP OF EGTCs

2.1. Member States' implementation of the EGTC regulation

The EGTC regulation is binding in its entirety and is directly applicable in all Member States. Therefore Member States must make such provisions as are appropriate to ensure the effective application of the regulation. The deadline for adapting national legislation to the European legislation on the EGTC was set for 1 August 2007.

While nearly all Member States have now informed the Commission on the measures taken to adapt national rules to conform with the regulation, a number did so only after considerable delay. Delay at this level has in some cases contributed to difficulties in approving proposals for specific EGTCs which in turn has hindered the take-up of the instrument.

2.2. Take-up of EGTCs

Article 7 of the EGTC regulation 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*".

Based on the EGTC regulation the role of an EGTC shall be limited primarily to:

- § the implementation (management) of territorial cooperation programmes,
- § the implementation of projects co-financed by the cohesion policy.

Furthermore, an EGTC may carry out other specific actions of territorial cooperation between its members with or without a financial contribution from the Community.

Of the **16 EGTCs** now established, one is concerned exclusively with the implementation and management of European territorial cooperation programmes; one primarily with implementation of projects financed by cohesion policy and the rest with a mixture of actions or other specific actions.

Therefore most of the EGTC activities concern other tasks than the primary purposes identified in Article 7 – to implement programmes and projects in the framework of cohesion policy. Among different stakeholders the EGTC is recognised as a positive instrument, but its take-up to date is seen to fall well short of its potential.

Q1: *Do you think that the potential of the EGTC has been fully exploited in your Member State so far? If not, what do you think have been the main obstacles at national level to the implementation of the regulation and the establishment of EGTCs?*

3. IMPLEMENTATION OF EGTCs IN PRACTICE: AREAS FOR CONSIDERATION OF FURTHER IMPROVEMENT

The EGTC represents a higher level of cooperation available to local, regional and national authorities. The EGTC regulation provides a formal framework to existing cooperation, providing in many cases a legal basis and a more solid institutional structure at EU level. An EGTC contributes to a good institutional dialogue between the Member States and other public authorities and is a suitable structure for long-term territorial cooperation. Nonetheless, the slow take-up of the instrument, and some difficulties in practical implementation, suggest that improvements are possible and necessary.

Time-consuming and complex procedures are reported as the most important negative factors when establishing an EGTC. 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. It has also been suggested that the content of the convention establishing the EGTC and the statutes governing its operations might be more clearly defined.

3.1. Broader use of EGTCs

In addition to the EGTC regulation, Article 18 of the Regulation (EC) No 1080/2006 of the European Parliament and of the Council of 5 July 2006 on the European Regional Development Fund, specifies 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. In this context, each Member State shall continue to assume financial responsibility.*" This facility has, however, been applied only exceptionally, in part due to the time constraints of adoption of the EGTC regulation itself and of the European territorial cooperation programmes.

However, there could be scope in future for further encouragement of the use of EGTCs to manage cooperation inside and outside the European territorial cooperation objective. One possibility would be to broaden the use of EGTCs beyond the tasks of the managing authority and of joint technical secretariat to make it responsible for a part of an European territorial cooperation programme (i.e. sub-programme covering the territory of an EGTC) or to introduce a specific provision for the role EGTCs could play in the framework of interregional cooperation outside the European territorial cooperation objective (Article 37(6)(b) of Regulation (EC) No 1083/2006). For example, when an EGTC manages a programme or part of a programme, the EGTC staff could be entitled to do the 1st level controls throughout the whole territory covered, with Member States conferring the execution of their own obligations to the EGTC.

3.2. Membership, including third countries

Entities established under private law can be a member of an EGTC if they satisfy the conditions specified in Article 3 of the EGTC regulation. However, the current legislative basis does not currently include explicit provision for the participation of third countries and this would only be possible in the event that the third country has adopted similar rules to the Member State implementing the regulation or that international agreements between the Member State and the third country allow for the establishment of joint legal bodies. In addition, there appear to be differences of views on the question of third country participation;

with some stakeholders considering that it should remain limited and other stakeholders in favour of a revision of the present rule in favour of a greater freedom in this area.

As EU law does not apply to third countries, the potential extension of EGTCs to third countries would need special consideration. In particular, it may be necessary to distinguish between two cases: membership of regions from a third country in an EGTC involving two or more Member States; and establishing an EGTC comprising regions from a single Member State and a third country.

3.3. Liability

The legal difficulties linked to the EGTC formation process are cited by some stakeholders as among the most important obstacles discouraging establishment of an EGTC. These often stem from the lack of uniformity of the application of the EGTC regulation or lack of coordination between the relevant authorities. It has been suggested that the regulation allows the Member States to take different decisions in the process of national implementation which leads to differences of legal status concerning limited or unlimited liability. As a result, the regime may be different in two neighbouring States.

In addition, when the EGTC regulation was negotiated, some Member States insisted that their national law does not allow local authorities to become members of a legal body with unlimited liability. This led to the provisions of Article 12.

However, the European Research Infrastructure (ERIC) Regulation adopted in 2009 proposed the following solution to the same problem, which could offer a viable approach for EGTCs in the future:

"2. The financial liability of the members for the debts of the ERIC shall be limited to their respective contributions provided to the ERIC. The members may specify in the Statutes that they will assume a fixed liability above their respective contributions or unlimited liability.

3. 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."

3.4. Day-to-day implementation issues (public procurement rules, employment rules)

Concerning **public procurement rules**, the question is whether the EGTC can have a status that allows it to apply its own public procurement rules (compatible with EU Directives) or whether it is inevitable that the rules of the national authority where the office of the EGTC is located will apply. In either case it might be preferable to have a single set of rules for any one EGTC regardless of where its operations take place.

As regards **employment rules**, Article 9(2)(d) of the EGTC regulation allows that the Statutes contain the arrangements for its functioning, notably concerning personnel management, recruitment procedures and the nature of personnel contracts. According to Article 2(1)(b) of the regulation such arrangements take precedence over the application of the laws of the hosting Member State. One option to enable further flexibility would be that the EGTC regulation allows the application of the law of the place where staff (or statutory organs) of an EGTC perform their duties instead of the law of the location of the registered office.

- Q2:** *Would more explicit reference (in other legal instruments) to the EGTC be helpful as regards its role in management of programmes, parts of programmes or projects funded by cohesion policy?*
- Q3:** *Should an appropriate legal basis be added to the EGTC regulation in order to enable the participation of third countries? Should this be for regions of a third country in an EGTC comprising at least two Member States only, or could regions of a third country in an EGTC with a single Member State also be included?*
- Q4:** *Could the ERIC approach be applied to the issue of liability of EGTCs thus resolving the problems resulting from different approaches to liability in different Member States?*
- Q5:** *Do you agree that the EGTC regulation should be more specific or prescriptive as regards day-to-day management (public procurement, employment rules) in order to prevent/reduce implementation difficulties?*