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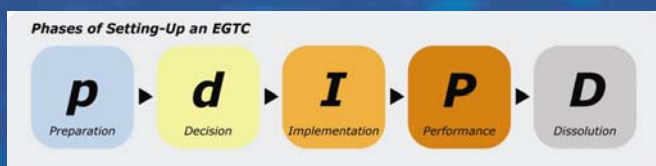
INTERACT HANDBOOK

THE EUROPEAN GROUPING OF TERRITORIAL COOPERATION (EGTC)

WHAT USE FOR EUROPEAN TERRITORIAL COOPERATION PROGRAMMES AND PROJECTS?

Updated version November 2008

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PREFACE

EGTC is an acronym that is on everybody's lips, from local to national authorities, across the European Union's territory and even on its external borders. The 'European Grouping of Territorial Cooperation' (EGTC)¹ is a **Community legal instrument that has been directly applicable in all EU Member States since 1 August 2007**. While recourse to EGTC is **optional**, this dedicated instrument offers a new opportunity for strengthening the management aspects of territorial cooperation activities.

The **European Commission (EC)**, which submitted the original proposal for a Regulation on a European Grouping of Cross-border Cooperation on 14 July 2004, will closely monitor developments in this regard.

The **Committee of the Regions (CoR)**, officially appointed by the EGTC Regulation to hold a register of EGTCs (by collecting their conventions and statutes), also plays a key role in this process.

In line with its mandate to support the implementing authorities of European Territorial Cooperation programmes in day-to-day management issues, **INTERACT** saw the need to provide an information and training tool on this new instrument that is directly, though not solely, targeted at European Territorial Cooperation programmes and projects. In this regard, the role of INTERACT is to be seen as complementary to those of the above-mentioned institutions and the works already available, which have been used for the development of this Handbook².

The development of the EGTC Handbook was coordinated by INTERACT Point Vienna. The Handbook was drafted by mecca consulting in cooperation with the Assembly of European Regions. Its content was reviewed twice by Prof. Levrat of the University of Geneva. In addition, other knowledgeable experts also provided valuable input.

INTERACT Point Vienna
November 2008

DISCLAIMER: *This publication does not necessarily reflect the opinion of the members of the INTERACT Monitoring and Steering Committee or the above-mentioned institutions.*

¹ Regulation (EC) No 1082/2006 of the European Parliament and of the Council of 5 July 2006 on a European Grouping of Territorial Cooperation

² See in particular the study by the Committee of the Regions: *The European Grouping of Territorial Cooperation*, directed by Prof. Levrat, University of Geneva, January 2007

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LIST OF ACRONYMS

AA	Audit Authority
AEBR	Association of European Border Regions
AER	Assembly of European Regions
CA	Certifying Authority
CoR	Committee of the Regions
EEIG	European Economic Interest Grouping
EGTC	European Grouping of Territorial Cooperation
ERDF	European Regional Development Fund
ESF	European Social Fund
EU	European Union
JTS	Joint Technical Secretariat
LGCC	Local Grouping of Cross-border Cooperation
LPP	Lead Partner Principle
MA	Managing Authority
MS	Member State
MSC	Monitoring and Steering Committee
OP	Operational Programme
PJM	Project management
PM	Programme management
SCE	Societas Cooperativa Europaea - The European Cooperative Company
SE	Societas Europaea - The European Company

CHAPTER 1

CONTEXT AND AIM OF THE HANDBOOK

1. CONTEXT AND AIM OF THE HANDBOOK

1.1. Background - The genesis of the EGTC and the state of the art

Until the end of the programming period 2000-2006, very few INTERREG programmes were directly managed by a joint integrated management body, e.g. in the form of Euroregion or other cross-border structures with legal personality (only 6% of the INTERREG IIIA programmes were managed in this way³).

Instead, management functions (primarily Managing Authority (MA), Paying Authority (PA) and Joint Technical Secretariat (JTS)) were usually fulfilled by regional or national institutions (regional councils, ministries, etc.) from one or more participating countries.

Numerous reasons can be stated for this, the main one being the absence or lack of an appropriate legal framework for the setting-up of such joint management structures.

The European Court of Auditors, the European Parliament and the European Commission therefore saw the need to create an adapted instrument and on 14 July 2004, the European Commission (EC) proposed a Regulation to create a European Grouping of Cross-border Cooperation (EGCC)⁴. This proposal by the European Commission was part of the Cohesion legislative package for the programming period 2007-2013, which also included a General Regulation on the European Regional Development Fund (ERDF)⁵ and a Regulation for the European Social Fund (ESF), the Cohesion Fund and the European Regional Development Fund (ERDF)⁶. The EGTC Regulation, however, relates to a normative instrument whose validity is not limited to the programming period 2007-2013.

This new instrument was mainly, though not exclusively, meant to be used for EU programme and project management⁷: as a matter of fact, recourse to an EGTC for programme management is one way (among others) of complying with the principle of joint management and single management structures (Articles 59 and 60 of Regulation (EC) No 1083/2006). Another reason for creating such instrument is the application of the principle of non-discrimination: cooperation should not be more difficult between partners from two different Member States than between partners located in the same Member State.

The focus of the draft regulation on cross-border cooperation was soon abandoned and the scope of the instrument was enlarged to include all types of territorial cooperation⁸. The instrument was thus renamed **European Grouping of Territorial Cooperation (EGTC)**, and was eventually approved, in the form of a Regulation of the Council and the European Parliament, on 5 July 2006⁹. Following the approval of the Regulation, which has been directly applicable in all 27 EU Member States since 1 August 2006, Member States had to make national provisions to ensure the effective application of this Regulation within one year^{10, 11}. To date, this process has not yet been completed in all EU Member States (see Chapter 3).

³ INTERACT Point Tool Box: *Study on organisational aspects of cross-border INTERREG programmes - Legal aspects and partnerships*, 2006

⁴ COM (2004) 496 final

⁵ Draft version: COM (2004) 495 final -Approved version: Regulation (EC) No 1080/2006 of 5 July 2006

⁶ Draft version: COM (2004) 492 final -Approved version: Regulation (EC) No 1083/2006 of 11 July 2006

⁷ The four types of EGTC are presented in detail in Point 2.1.

⁸ A distinction is made between 'European Territorial Cooperation' in the meaning of the EU-funded programmes that replace the former INTERREG programmes, and 'territorial cooperation' in a more general sense (cross-border, transnational or interregional cooperation projects/actions, with or without EU-funding)

⁹ Regulation (EC) No 1082/2006 on a European Grouping of Territorial Cooperation.

¹⁰ Art. 16(1) of Regulation (EC) No 1082/2006 covers the obligation of Member States to make such provisions as are appropriate to ensure the effective application of this Regulation. These provisions should already have been made by 1 August 2007

By 1 August 2011, the European Commission will forward to the European Parliament and the European Council a report on the application of the EGTC Regulation, together with proposals for amendments where appropriate. Even in the absence of proposals by the European Commission, the Regulation will remain in force, as it is not limited to the programming period 2007-2013.

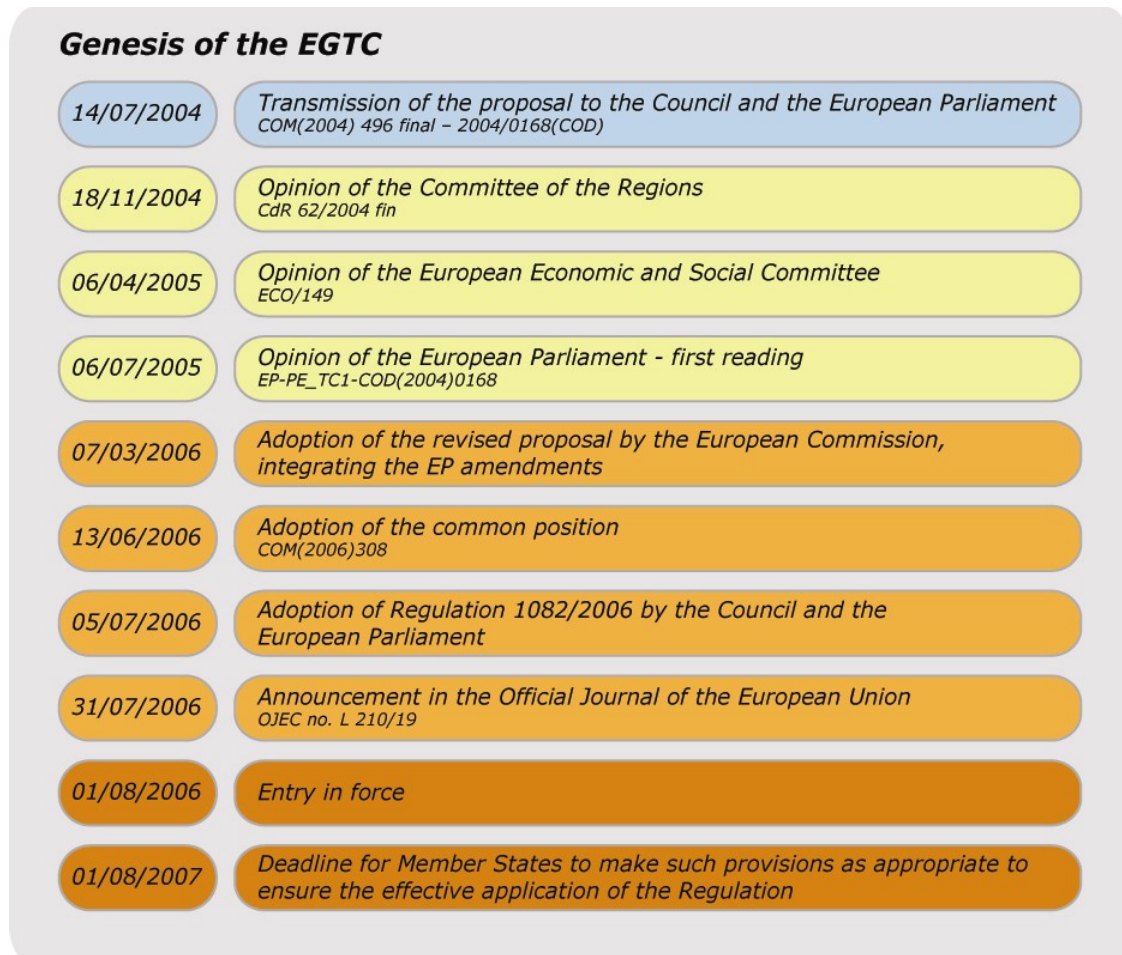


Fig. 1: Genesis of the EGTC

Further details on the genesis of the EGTC are provided in the INTERACT legal study¹² and the EGTC study of the Committee of the Regions (CoR)¹³.

Objective

The objective of the EGTC instrument is to propose a single framework for the legal structuring of territorial cooperation activities throughout the European Union, while remaining an optional tool.

¹¹ Throughout the document this process will be referred as the 'implementation' or 'integration' of the EGTC Regulation into the national legal systems

¹² INTERACT Point Tool Box: *Study on organisational aspects of cross-border INTERREG programmes - Legal aspects and partnerships*, 2006

¹³ *The European Grouping of Territorial Cooperation*, directed by Prof. Levrat, University of Geneva, Committee of the Regions, January 2007

Current challenges

The main challenges at the moment are the following:

- As already mentioned above, not all Member States have yet made the necessary provisions¹⁴;
- The EGTC is a new instrument, which is not yet well known and which suffers from:
 - A lack of simplicity: the name is not easy to remember and has changed from EGCC to EGTC. The acronym also differs from language to language;
 - A lack of concreteness: many regions are interested in this instrument, but few concrete examples of EGTCs are available so far.
- The EGTC is, among others, intended as an instrument for European Territorial Cooperation programme management, and if programme partners want to entrust programme management to an EGTC, they should start making preparations as soon as possible. However, programme partners are already busy with all the requirements of the new Operational Programmes, and the EGTC, being an optional and untested instrument, is **not considered a high priority for the moment**.

First EGTC

The first EGTC officially registered is the *Eurometropole Lille-Kortrijk-Tournai*. It was created on 28 January 2008, with the first meeting of its Constitutive Assembly. The EGTC brings together 14 partners from the urban French-Belgian border area around Lille (FR), Kortrijk (BE, Flemish Region) and Tournai (BE, Walloon Region).¹⁵



1.2. Methodology

INTERACT's scope, based on its mandate to support European Territorial Cooperation programmes and, indirectly, projects, is essentially focused on two of the four main EGTC models presented in Art. 7(3) of Regulation (EC) No 1082/2006:

- EGTC for the management of EU-funded programmes (European Territorial Cooperation programmes);
- EGTC for the management of EU-funded projects, with a focus on European Territorial Cooperation projects.

For this reason, the Handbook provides practical information on the EGTC with a focus on European Territorial Cooperation programme and project management questions (see in particular Point 4.1.4. and 4.1.5.). The starting point for the provided information was the CoR study *The European Grouping of Territorial Cooperation*¹⁶. This was supplemented by literature research, questionnaires and additional information provided by experts (e.g. peer review by Prof. Nicolas Levrat) and practitioners (EGTC Needs Assessment Meeting¹⁷; INTERACT Seminars on the EGTC¹⁸ and follow-up review). In contrast to the above-mentioned study there is no explicit concentration on legal issues and no elements that depend on the national implementing provisions are included.

¹⁴ See Chapter 3 for further details on the current status

¹⁵ More information and contact details can be found under Points 5.6 and 5.10. The official date of creation of the EGTC is 21 January 2008 (*Arrêté du Préfet de la région Nord-Pas-de-Calais*)

¹⁶ *op. cit.*

¹⁷ INTERACT EGTC Needs Assessment Meeting, Vienna, 14 September 2007: <http://www.interact-eu.net/227138/675434/0/1351353>

¹⁸ First INTERACT Seminar on the EGTC, 26-27 November 2007, Vienna. The draft version of this Handbook was presented on this occasion and reviewed afterwards

1.3. Content

Chapter 2 of the Handbook deals with general information on the EGTC Regulation, including expected advantages and limitations of the instrument. Chapter 3 provides an overview of the Member States' progress concerning the adoption of national provisions. Chapter 4 presents the quintessence of the Handbook, which consists of the roadmap for the implementation process of an EGTC. Here the setting up of an EGTC is described step by step, including questions to be discussed by the partners and specific action lists. Since only few EGTC have been set up to date, the selected case studies (Chapter 5) focus on areas that are considering the establishment of an EGTC. Conclusions are provided in Chapter 6.

An INTERACT Frequently Asked Questions (FAQ) on the EGTC has been developed in parallel to this Handbook and is available in electronic version in the EGTC Section of the INTERACT Website.

CHAPTER 2

GENERAL INFORMATION ON THE EGTC

2. GENERAL INFORMATION ON THE EGTC

The following chapter deals with the EGTC Regulation in general and gives a brief overview of the instrument.

2.1. What is the EGTC for?

Created by Regulation (EC) No 1082/2006 of the Council and the European Parliament of 5 July 2006, the European Grouping of Territorial Cooperation (EGTC) is a new Community legal instrument at the service of public entities¹⁹ willing to develop projects and activities of common interest in the field of territorial cooperation, as described in Articles 1 and 7 of the aforementioned Regulation.

Four main models of EGTC are possible²⁰:

- EGTC in order to implement territorial cooperation programmes (European Territorial Cooperation programmes). *Example*: EGTC as MA and/or JTS of an INTERREG IVA programme;
- EGTC for implementing co-financed projects in the field of territorial cooperation under the Structural Funds (ERDF, ESF, Cohesion Fund). *Example*: European Territorial Cooperation projects (cross-border/transnational/interregional);
- EGTC for the purpose of carrying out other EU-funded territorial cooperation actions;
- EGTC in order to implement territorial cooperation actions outside any EU funding.

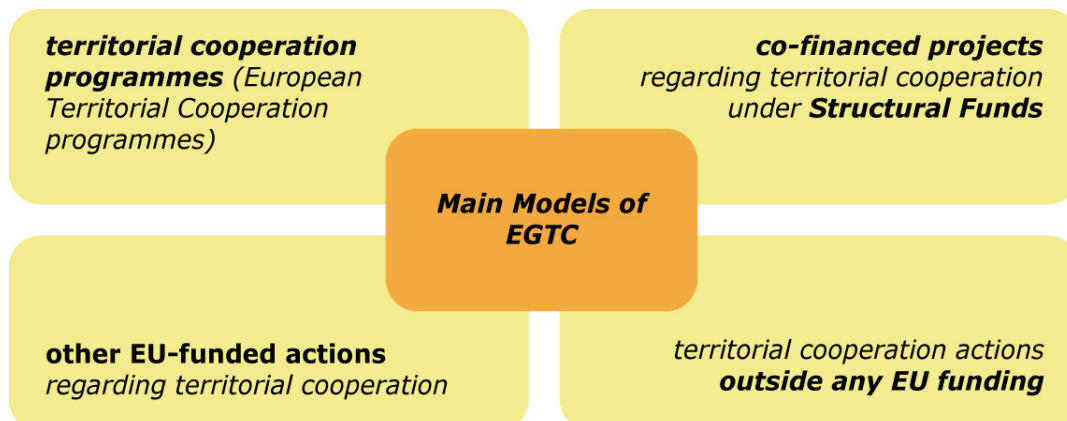


Fig. 2: The four models of EGTC according to Art. 7(3) of Regulation (EC) No 1082/2006

2.2. Characteristics of an EGTC

The EGTC Regulation, with direct applicability in all 27 EU Member States, offers a legal basis for the creation of entities, called EGTCs, with a **legal personality**. In each Member State it enjoys the maximum legal and contractual capacity conferred on legal persons according to the respective national law²¹. This means, for example, that it may *'acquire or dispose of movable and immovable property, employ staff and may be party to legal proceedings'*²².

¹⁹ For more details see Point 2.3 on Membership

²⁰ Art. 7(3) of Regulation (EC) No 1082/2006

²¹ Art. 1(4) of Regulation (EC) No 1082/2006

²² *ibid.*

2.3. Membership

An EGTC must be composed of **members from at least two Member States** belonging to the following categories: local and regional authorities, other public entities or public-equivalent bodies²³, associations of public entities²⁴ and, finally, Member States (national level).

The participation of Member States alongside regional or local authorities in a legal structure subject to national law is an unprecedented phenomenon. **The Member States** as such can play up to three different roles in the process of establishing an EGTC:

- They have to designate responsible authorities for the approval of 'national' EGTC²⁵ and the participation of prospective members falling under their jurisdiction;
- They have to designate competent authorities for the control of the management of public funds by the EGTCs registered in their territories²⁶;
- They can also become member²⁷ of an EGTC.

Participation of private entities is excluded as such. However, entities fulfilling the criteria listed in Art. 1(9) of Directive 2004/18/EC can be considered as '**bodies governed by public law**' and are therefore eligible for participation in an EGTC. '*A "body governed by public law" means any body:*

- (a) established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character,*
- (b) having legal personality and*
- (c) financed, for the most part, by the State, regional or local authorities, or other bodies governed by public law; or subject to management supervision by those bodies; or having an administrative, managerial or supervisory board, more than half of whose members are appointed by the State, regional or local authorities, or by other bodies governed by public law.*

Non-exhaustive lists of bodies and categories of bodies governed by public law which fulfil the criteria referred to in (a), (b) and (c) of the second subparagraph are set out in Annex III. Member States shall periodically notify the Commission of any changes to their lists of bodies and categories of bodies'.

Additionally one should not forget the possibility to create **public-private partnerships** between e.g. an EGTC and private entities, which do not fulfil the above criteria. This could be particularly relevant for project management.

²³ Art. 3(1)(d) of Regulation (EC) No 1082/2006,; '*bodies governed by public law within the meaning of the second subparagraph of Art. 1(9) of Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts*'

²⁴ Associations can become members of an EGTC even if they are private-law based, as long as they fulfil the criteria applicable to bodies governed by public law as set in the abovementioned EU Directive

²⁵ With the registered office in its own territory

²⁶ Art. 6 of Regulation (EC) No 1082/2006

²⁷ Art. 3(1) of Regulation (EC) No 1082/2006

2.4. Applicable law

The EGTC is subject to the provisions of Regulation (EC) No 1082/2006 and the provisions of its convention and its statutes, which the EGTC members must enact. For matters not explicitly regulated by Regulation (EC) No 1082/2006, the laws of the Member State where the EGTC has its registered office become applicable, since the act of setting up the office subjects the EGTC to the national legislation of the State in which the registered office will be located²⁸.

2.5. Objectives and tasks of an EGTC

The establishment of an EGTC should not be a goal in itself but a means to reach other goals, such as long-term strategic developments, management of public services, programme management, etc. The EGTC can be used as instrument for integrated territorial (multi-level) governance in coherent areas split by borders. While recourse is optional, such institutional build-up is expected to contribute to legal strengthening of cooperation in a given area and to increase visibility and legitimacy of such cooperation.

The objective and tasks of an EGTC²⁹ are laid down by its members in the convention, within the limits set forth by the Regulation³⁰. In particular, the EGTC is not entitled to exercise *'powers conferred by public law or duties whose object is to safeguard the general interests of the State or of other public authorities, such as police and regulatory powers, justice and foreign policy'*.

An EGTC can be established to manage a specific action or project ('uni-functional EGTC'), or it may function as a cooperation platform with several missions/tasks ('multi-functional EGTC'), including coordinating a joint development and/or solving common problems arising in the cooperation area³¹.

In principle, an EGTC must not engage in commercial profit-oriented activities, such as e.g. building and running a cross-border golf course. It is, however, acceptable to join seven golf courses in different Member States in one cooperation platform and market their existing infrastructure ('7 Days of Golf - 7 Courses')³².

Services of general interest must also be considered differently, if the activity to be implemented by the EGTC is a competence of all EGTC members, e.g. managing a public equipment for the implementation of a service of general interest (transport, health, education, etc.). Such activity is not purely commercial but implies a payment by the end-users for the services provided by the EGTC (and often the price does not cover the real costs of the services but only part of them - the rest would be covered by the members of the EGTC).

²⁸ Schaffer, Hannes; Haselberger, Beatrix; Dillinger, Thomas; Zehetner, Franz: *Europäischer Verbund für Territoriale Zusammenarbeit (EVTZ) - ein Instrument zur grenzüberschreitenden Zusammenarbeit*. Weinviertel Management

²⁹ While the main objective of each EGTC should be related to territorial cooperation in general (with the aim of strengthening economic and social cohesion), an EGTC as such does not need to justify its direct and specific contribution to the strengthening of economic and social cohesion

³⁰ Art. 7 of Regulation (EC) No 1082/2006

³¹ See Chapter 5 for examples of uni- and multi-functional EGTCs

³² Schaffer, Hannes; Haselberger, Beatrix; Dillinger, Thomas; Zehetner, Franz: *Europäischer Verbund für Territoriale Zusammenarbeit (EVTZ) - ein Instrument zur grenzüberschreitenden Zusammenarbeit*. Weinviertel Management

2.6. The EGTC in a nutshell: advantages and limitations³³

Throughout the development of this Handbook the **main advantages and limitations of the EGTC instrument** have been collected and summarised. The lists below are certainly not exhaustive as advantages and limitations depend on the specific situations in the regions. As more experience is becoming available, the future will show which aspects prove to be most beneficial.

2.6.1. Advantages of the EGTC

- ✓ Without doubt, the EGTC responds to the necessity of having a legal, institutional tool for cooperation derived from Community law. It provides a common legal basis for all local and regional authorities and Member States and is **applicable in all Member States**, even those that have not signed the Madrid Outline Convention³⁴, its additional protocols or specific bi- or multilateral agreements.
- ✓ The EGTC has a **legal personality**, which may be private or public depending on the applicable national legislation (this possibility was left open in the Regulation). In particular, the EGTC has the **most extensive legal capacity** accorded to legal persons under the Member States' national law. Compared to cooperation structures that have no legal personality, this essentially means the possibility to act as an autonomous body, having its own **budget**, **hiring its own staff** and **contracting independently**. Additionally this also means that the EGTC can be **part of legal proceedings** and can sue other authorities.
- ✓ Participation in an EGTC is open to a broad range of legal bodies, which increases the number of possible partnerships. All types of **'bodies governed by public law'** may become members, including Member States, regional and local authorities as well as associations of public entities³⁵. Private entities which meet the criteria applying to bodies governed by public law can also participate (e.g. a private association solely composed of public members and financed by public funds is to be seen as a body governed by public law and may therefore participate in an EGTC).
- ✓ **The possibility for Member States to participate** in EGTCs constitutes an important change for territorial cooperation. Indeed Member States were usually excluded from cooperation structures with legal personality, even in well-advanced types of structures such as under the Karlsruhe Agreement (See Annex 4). This possibility is particularly crucial in Member States where no regions exist (e.g. Slovenia, Luxembourg) or where the envisaged theme of cooperation is a competence of the national level. This also contributes to the application of multi-level governance and increases the strategic dimension of territorial cooperation³⁶.
- ✓ The EGTC covers **all types of European Territorial Cooperation**: cross-border, transnational and interregional. Thus, unlike most of the existing instruments in this field, it is not limited to cross-border cooperation, even if it is expected that the EGTC could be more often used under this first type of cooperation (proximity, limited number of partners, etc. would make it easier to set up a joint structure).

³³ Some of the elements listed have been extracted from INTERACT Point Tool Box: *Study on organisational aspects of cross-border INTERREG programmes - Legal aspects and partnerships*, 2006. For the drafting of this study, various information sources were considered, including the report by the AEBR 'Towards a new community legal instrument facilitating public law-based transeuropean cooperation among territorial authorities in the European Union' - March 2004

³⁴ *European Outline Convention on Transfrontier co-operation between territorial communities of 21 May 1980*. European Treaties Series /106, Strasbourg 1999 See further details in Annex 4

³⁵ Art. 3 of Regulation (EC) No 1082/2006

³⁶ *The European Grouping of Territorial Cooperation*, directed by Prof. Levrat, University of Geneva, Committee of the Regions, January 2007

- ✓ Beyond European Territorial Cooperation, the EGTC may be used for a **diverse spectrum of cooperation missions**: management of other types of EU programmes, EU projects and cooperation actions outside EU funding. However, Member States may limit the tasks that EGTCs may carry out without Community financial contribution (the fourth category of EGTC)³⁷.
- ✓ **Third countries** can be involved in an EGTC if their legislation and agreements between Member States and the concerned third country allow it³⁸, and if the concerned Member States do not exclude this possibility.
- ✓ The EGTC can **act on behalf of its members**, and also it is possible for one member to implement tasks of the EGTC on behalf of the whole partnership³⁹.
- ✓ The EGTC **does not create an additional administrative level** and its members do not transfer any competences to the EGTC, but entrust it with the implementation of specific operational missions and tasks. The EGTC aims at **abolishing a discriminatory aspect** within the European Union's single market, which made it more difficult to cooperate with a partner from another country than with a partner from one's own Member State.
- ✓ The EGTC **does not remove all existing legal formats of cooperation** but is a new alternative. Other existing formats should be considered if they are more appropriate for the type of cooperation envisaged (see Annex 4).
- ✓ The **limited number of compulsory organs**⁴⁰ allows flexibility. 'Small' EGTCs can then have a lean structure, while 'larger' EGTCs may add more organs.
- ✓ The EGTC provides an **official 'label'** recognised by the European Commission and within the European Union in general. It gives more **visibility** to cooperation.

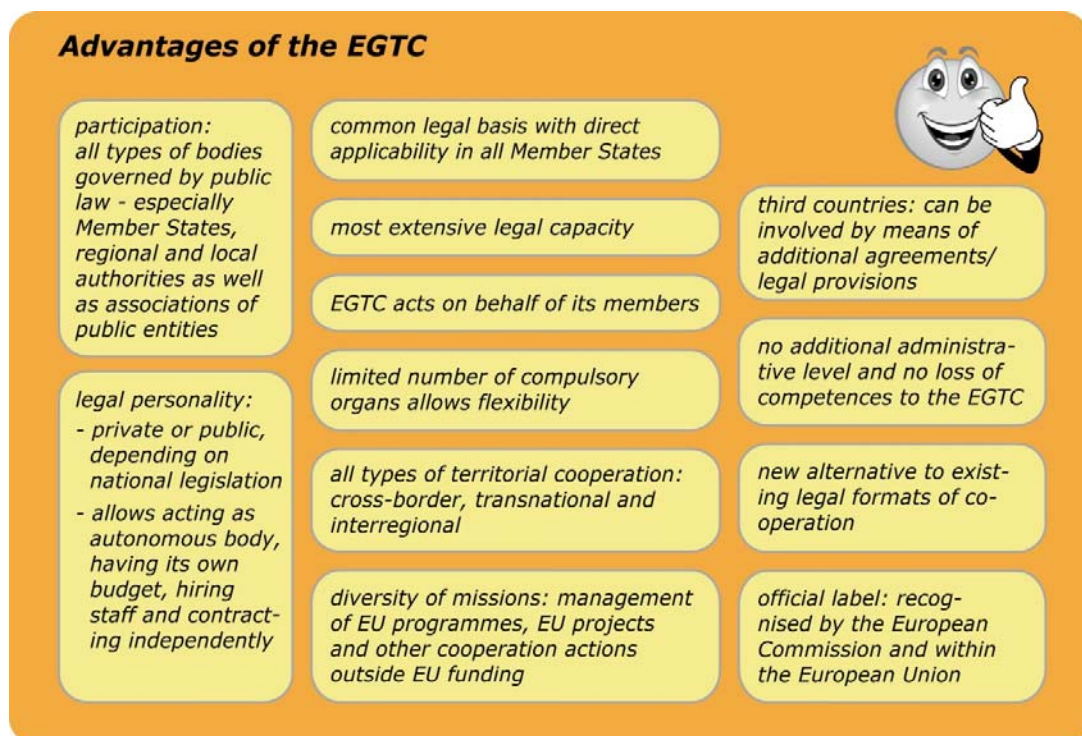


Fig. 3: Advantages of the EGTC⁴¹

³⁷ Art. 7(3) of Regulation (EC) No 1082/2006

³⁸ Preamble Clause 16 of Regulation (EC) No 1082/2006

³⁹ Art. 7(5) of Regulation (EC) No 1082/2006

⁴⁰ Art. 10 of Regulation (EC) No 1082/2006

2.6.2. Limitations of the EGTC

- ✓ The aim of the EGTC is to create a uniform legal basis throughout the European Union. However, a large variety of EGTCs is likely to emerge, due to different combinations of aspects and factors, which could somehow blur the image of the EGTC⁴², e.g.:
 - Members (homogeneous or heterogeneous) / with or without State participation
 - Applicable law (EGTC governed by public or private law / limited or unlimited liability of members)
 - Activities carried out (managing EU funds or without any EU financing / carrying out activities on behalf of its members or just coordinating cooperation)
 - Inclusion/exclusion of members from third countries
 - Etc.
- ✓ The EGTC will probably provoke some distrust, mainly due to the fact that the system contains some **legal loopholes**⁴³.
- ✓ In several of its articles the Regulation refers to national legislations, which means that different legal consequences may apply in different countries. The EGTC's prospective members therefore need to be cautious about the different national frameworks available and choose the most appropriate for their structure. This requires **solid legal knowledge and expertise, as well as investment in time and legal advice**.
- ✓ **Private law entities cannot become EGTC members** (except of course if they may be considered as bodies governed by public law (see above and Chapter 2)). Private-public partnerships, however, can be set up e.g. between the EGTC and a private actor or using other existing national or EU legal instruments.
- ✓ **Delays** can occur due to the fact that the deadlines for authorising participation in an EGTC lack precision (see e.g. in the English version *'the Member State shall, as a general rule, reach its decision within a deadline of three months...*⁴⁴). In reality this flexibility clause only applies in one very specific case, the participation of more than one Spanish regions in an EGTC (in such case, the ex-ante control requires approval by the Spanish Parliament and therefore more than three months might be needed). All Member States have agreed to the three-month rule and are expected to apply it strictly.
- ✓ The vagueness of the wording *'The tasks given to an EGTC by its members shall not concern the exercise [...] of duties whose object is to safeguard the general interests of the State'*⁴⁵ could create insecurities.

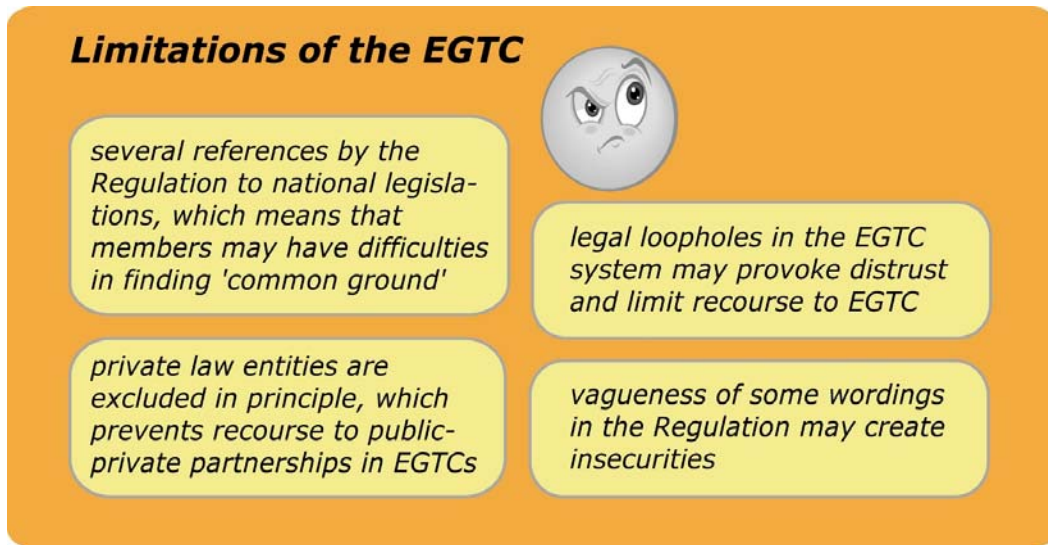
⁴¹ Based on INTERACT Point Tool Box study: *Study on organisational aspects of cross-border INTERREG programmes - Legal aspects and partnerships*, 2006

⁴² This limit can also be considered as an advantage, as it shows that the EGTC instrument adapts to the specificities and circumstances of different areas, strategies, partnerships etc.

⁴³ For legal details see Study *The European Grouping of Territorial Cooperation*, directed by Prof. Levrat, University of Geneva, Committee of the Regions, January 2007

⁴⁴ Art. 4(3) of Regulation (EC) No 1082/2006

⁴⁵ Art. 7(4) of Regulation (EC) No 1082/2006

Fig.4: Limitations of the EGTC⁴⁶

⁴⁶ Based on INTERACT Point Tool Box: *Study on organisational aspects of cross-border INTERREG programmes - Legal aspects and partnerships*, 2006

CHAPTER 3

STATUS OF NATIONAL PROVISIONS IN THE EU MEMBER STATES

3. STATUS OF THE NATIONAL PROVISIONS IN THE EU MEMBER STATES

3.1. Introduction

Art. 16 of Regulation (EC) No 1082/2006 states that *'Member States shall make such provisions as are appropriate to ensure the effective application of this Regulation'*. The nature of the national provisions may vary according to the national framework: law, decree, act, etc. Also, the federal nature of some countries (e.g. Belgium, Austria) partly led to the preparation of several sets of provisions.

In principle, the national provisions should cover elements that have been left open in the Regulation. Most national provisions clarify:

- The legal regime applicable to an EGTC domiciled in the Member State (private/public, participation open to members with unlimited/limited liability or not)⁴⁷;
- The types of tasks to be carried out by an EGTC domiciled in the Member State (national restrictions are possible⁴⁸);
- The notification process: authority in charge of receiving and approving the notification, procedure, etc.;
- The issue of participation of partners from third countries (authorised or not);
- Etc.

The national provisions, once adopted, must be notified to the European Commission and the other Member States⁴⁹.

The deadline for the adoption of such provisions was **1 August 2007**. Only two Member States had actually fulfilled this requirement by this date. In January 2008, the European Commission sent a reminder to those Member States that had not adopted provisions yet.

The following chapter presents the status of the provisions in most of the EU Member States. The information is based on:

- The findings of the questionnaire sent by the European Commission to the Member States, the results of which were presented in June 2007⁵⁰. 20 Member States out of 27 answered the questionnaire;
- The round tables organised in the INTERACT Needs Assessment Meeting and in the first INTERACT Seminars on the EGTC, 26-27 November 2007, 10-11 April 2008 and 23-24 October 2008;
- A last update of information that was collected as a follow-up to these Seminars.

All adopted national provisions are available for download on the INTERACT Website, section EGTC -Downloads

⁴⁷ Art. 12 of Regulation (EC) No 1082/2006

⁴⁸ Art. 7(3) of Regulation (EC) No 1082/2006: *'A Member State may limit the tasks that EGTCs may carry out without a Community financial contribution. However, those tasks shall include at least the cooperation actions listed under Art. 6 of Regulation (EC) No 1080/2006'*. In summary, such restrictions are rather limited as the first two types of EGTC offer already a broad scope of possibilities and cover many fields of action

⁴⁹ Art. 16(1) of Regulation (EC) No 1082/2006

⁵⁰ COCOF-07-0041-01-EN, 12 June 2007

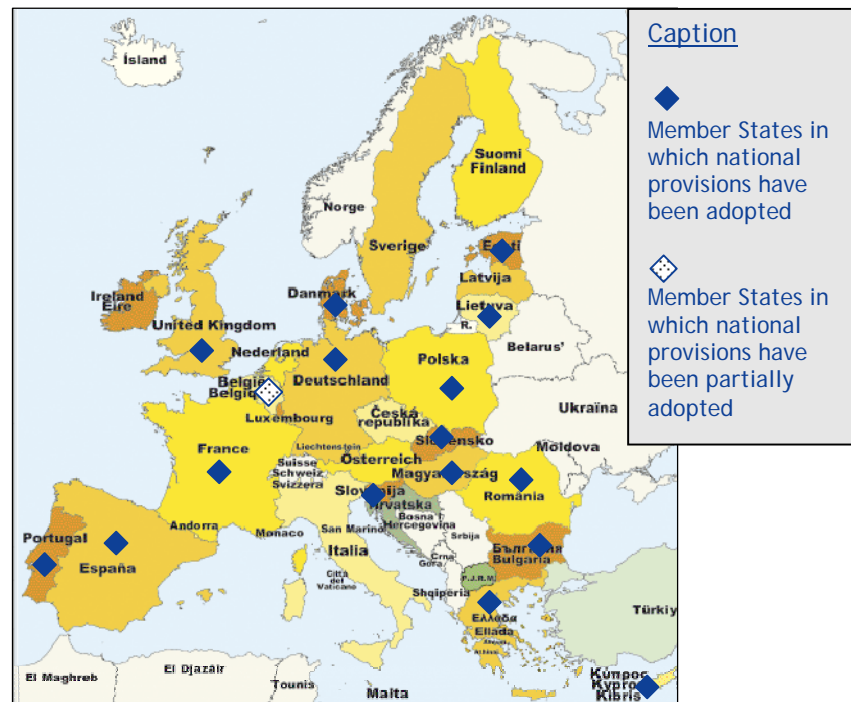


Fig. 5: Overview on the status of national provisions on the EGTC in the EU - November 2008⁵¹

3.2. Member States in which national provisions have been adopted

Bulgaria: The Council of Ministers adopted a decree on 29 August 2007, composed of eight articles and supplementary provisions. The decree entered into force on the date of its publication, 4 September 2007. In terms of national provisions, it is to be noted that only participants with unlimited liability are accepted, and EGTCs with their seat in Bulgaria are to be considered as non-governmental organisations. The decree was amended in September 2008 to include specifications and additional provisions applicable in Bulgaria: 1) possibility of third countries' participation in EGTC founded by at least two Member States, 2) a detailed description of the tasks of EGTC in charge of programme and project implementation and 3) the designation of the Minister of Regional Development and Public Works as body in charge of the protection of public interest.

Cyprus: The national provisions were adopted by the Council of Ministers on 9 July 2008. An EGTC registered in Cyprus will be a non-profit company governed by private law. Notifications must be submitted to the Registrar of Companies, and the approval is made by a committee composed of the Ministry of Interior, the Planning Bureau and the Registrar of Companies as the Committee for the approval of applications. The Planning Bureau is responsible for the control of management of public funds of the EGTC.

Denmark: In 2007 provisions were prepared for presentation to the Danish Parliament, but the parliamentary process was interrupted due to a call for parliamentary elections in the autumn of 2007. In January 2008 the proposed provisions were presented to the Parliament and

⁵¹ http://europa.eu/abc/maps/index_en.htm. Copyright: European Commission

adopted on 30 April 2008. They entered into force in June 2008. The provisions indicate that it is not possible to register EGTCs in Denmark if any of their members have limited liability. One should also note that these provisions do not apply to Greenland and the Faroe Islands.

Estonia: The Parliament adopted national provisions on 16 June 2008, with entry into force on 5 July 2008. The Estonian Ministry of the Interior is responsible for receiving the notifications and preparing draft decisions on the approval/rejection of Estonian participation in an EGTC, for decision by the Estonian Government. The Ministry of Finance is appointed as national auditing authority and will control the use of public/state funds by EGTCs. The Estonian Government has the right to decide (upon proposal by the Ministry of the Interior) on the prohibition of the activities or decide about the withdrawal of Estonian members from an EGTC⁵². An EGTC located in Estonia is governed by private law and the Act of commercial associations should apply. Possible members are those listed in Art. 3(d) of the EGTC Regulation, they may have limited or unlimited liability. The Act does not give any specifications about participation of members from third countries⁵³.

France: National provisions were adopted by the Senate on 24 January 2007 as part of a general law dealing with various elements (*'Projet de loi relatif à l'expérimentation du transfert de la gestion des fonds structurels européens et à la coopération décentralisée'*). Following the last elections, the new National Assembly did not consider the text until after the summer 2007. The proposed law presented to the National Assembly in October 2007 was refocused. After adoption by the National Assembly and the Senate (3 April 2008), the law entered into force on 16 April 2008⁵⁴. It contains a unique article, which modifies the *'Code Général des Collectivités Territoriales'*. Participation in EGTCs registered in France is also open to partners from neighbouring countries which are members of the Council of Europe: Switzerland, Andorra and Monaco. An EGTC registered in France is governed by public law.

Germany: The 16 *Länder* are in charge of the effective application of the EC Regulation in their respective legislations. At federal level and in all *Länder* the responsible authorities have now been designed and provisions have been effectively adopted (as of 1 April 2008). The Federal Ministry of Economy has published a complete list of the notification authorities in the *Länder*, and is available for any requests or questions.

Greece: The Ministries of Economy and Finance and of Interior were responsible for the preparation of the national provisions. General provisions were adopted on 23 November 2007 (Art. 22 of Law No 3613)⁵⁵. These general provisions indicate, among other things, that the Minister of the Interior is in charge of approving participation after consultation with and consent of a committee in which the Ministry of Economy and Finance also participates (Art. 2(b)). An EGTC with seat in Greece has the status of a non-profit company (Art. 2(c)). An administrative decree with further details was adopted in February 2008 and information was circulated to all local and regional authorities, in order to present the legislation⁵⁶.

Hungary was the first Member State to adopt national provisions on 25 June 2007 (Act XCIX of 2007 on the European Grouping of Territorial Cooperation). The legislation is concise and very flexible (all types of EGTCs are envisaged). An EGTC in Hungary will be a non-profit business organisation. Members from non EU Member States are not excluded. In terms of liability, if a Hungarian local government becomes member of an EGTC it will have limited liability; other Hungarian members may participate with unlimited liability⁵⁷.

⁵² Based on Art. 13 of Regulation (EC) No 1082/2006

⁵³ Information obtained from Estonian national body

⁵⁴ Law No 2008-352 of 16 April 2008

⁵⁵ Information obtained from Greek national body

⁵⁶ Additional information from Greek participant in the EGTC Seminar, 10-11 April 2008

⁵⁷ Additional information obtained from Hungarian national body

Lithuania: Proposed provisions were submitted by a working group to the Government and clarifications were requested on the issues of liability and public interest. The Parliament officially adopted the national provisions on 3 June 2008. The responsible authority is the Ministry of the Interior. Lithuanian members of an EGTC have limited liability, and an EGTC registered in Lithuania is a public entity. The main challenge in Lithuania at the moment is the general lack of information on the EGTC among public institutions⁵⁸.

Poland: The recent political changes have caused delays in the preparation and adoption of national provisions. After an inter-institutional consultation organised by the Ministry of Regional Development, the EGTC provisions were adopted by the two chambers of the Parliament in November 2008, and the bill was signed by the President of the Republic of Poland on 28 November. The law will enter into force 30 days after its notification, therefore by the end of December 2008⁵⁹.

Portugal: The national provisions were adopted on 27 September 2007 by the Council of Ministers.⁶⁰ The Decree Law No 376/2007 was published on 9 November 2007 (available in Portuguese and English versions). According to this decree law, an EGTC in Portugal will be a '*public collective associational body*' (Art. 2). The Financial Institute for Regional Development (IFDR) is in charge of notifications received from prospective members (Art. 5(2)), and, once the notification is accepted, organises a consultation with the concerned members of the Government (Art. 5(5)) to verify the conformity of the draft convention with EU and Portuguese law and with Portugal's international commitments. Provisions still need to be adopted for the Autonomous Regions of Madeira and Acores, as the national provisions adopted so far only concern the continental part of the country.

Romania: A working group was established to draw up the national provisions, which were adopted on 12 November 2007. An EGTC in Romania will be considered as non-profit legal entity acting in the public interest. The Ministry of Development, Public Works and Housing is responsible for the notification process, but other institutions may be consulted during this process. The court located in the place where the EGTC has its registered office checks the convention and the statutes from a legal point of view, and finally the registration of the statutes is done by the Ministry of Development, Public Works and Housing.

Slovakia: The provisions were passed in the Parliament in February 2008. The entry into force took place on 1 May 2008.

Slovenia: The Government of the Republic of Slovenia adopted a Government decree on 20 March 2008 on the basis of a Government law. In Slovenia members can establish an EGTC under private law.

Spain: The Decree No 37/2008 was adopted on 18 January 2008 and entered into force on 20 January 2008. The decree contains 13 articles, which define the legal personality of an EGTC registered in Spain (public entity). Spanish prospective members shall send their notification to the Ministry of Public Administration, which will consult other ministries before decision. The notification should be accompanied by: (1) a copy of the draft convention and statutes; (2) documentation stating the legal status of the prospective members and, if applicable, their limited liability; (3) the decision by the decision-making organ of the prospective member authorising its participation in an EGTC.

United Kingdom: The act laid before Parliament on 10 July 2007 came into force on 1 August 2007. As regards options left open by the EGTC Regulation, Art. 8 of the act states that '*A UK*

⁵⁸ Information obtained from Lithuanian national body

⁵⁹ Information obtained from Polish national body

⁶⁰ Additional information obtained from Portuguese regional body

EGTC may not be formed with a member which has limited liability. All members of an EGTC to be set up in the UK must therefore have unlimited liability. It is worth noting that a guidance note was drafted by the responsible department (Department for Business, Enterprise and Regulatory Reform), which explains *'What an EGTC is, how to seek approval to become a member of an EGTC and what steps need to be taken for a UK EGTC to acquire legal personality'*⁶¹.

3.3. Member States in which national provisions have not been adopted or partially adopted

Austria: Originally the partners envisaged adopting provisions at federal level, applicable throughout the country, but due to constitutional constraints, it was agreed to opt for a regional approach with nine regional sets and one federal set of provisions. A model proposal was jointly elaborated - coordinated by the Land Kärnten - containing general provisions applicable to all types of EGTC in Austria. At this stage (October 2008), no final decision has been made as to whether a federal act would be sufficient from a constitutional point of view, and the process is delayed due to the recent legislative elections of September 2008⁶².

Belgium: The process is complex as each region/community has to adopt its own provisions:

- **Flanders:** The decree, adopted by the Flemish Parliament on 21 December 2007, was published in the Official Journal on 7 February 2008. Detailed rules were adopted by a Decision of the Government, which entered into force on 18 January 2008. An amendment to the Decision was adopted on 26 September 2008 concerning the detailed functions of the Minister of the Interior, competent for EGTC matters, as well as the notification process.
- **Walloon Region:** The draft decree was to be presented to the Council of Ministers of the Walloon Region in a first reading on 21 February 2008. The various consultation processes should lead to a final approval of the decree by the Parliament and to its publication until the end of 2008.
- **German-speaking Community:** The draft decree was approved by the Government in a first reading on 7 February 2008 and by the Parliament on 23 June 2008. Publication and entry into force are expected until the end of 2008. The draft decree is concise and consists of a single article indicating that the Government is responsible for the implementation of the Regulation⁶³.
- **Brussels-Capital Region:** provisions will take the form of an order (*'ordonnance'*).
- **Federal level:** The Government adopted on 21 December 2007 a Royal Decree for EGTC members from the federal level.

Czech Republic: The Ministry for Regional Development is in charge of the preparation of the national provisions. The law is foreseen to come into force in November 2009⁶⁴.

Finland: The draft law is under development and this process is expected to be finalised for a submission to the Finnish Parliament during spring 2009. The law will come into force with the signature of the President, perhaps in August-September 2009.

Ireland: The drafting process of a Statutory Instrument is underway but implies a long procedure.

⁶¹ The guide is available at: <http://www.berr.gov.uk/files/file40650.doc>

⁶² Information obtained from Austrian regional body

⁶³ Information obtained from Belgian regional body

⁶⁴ Information obtained from Czech national body

Italy: On 3 August 2007 the Council of Ministers approved a proposed decree to be signed by the President of the Republic providing rules for the national implementation of the EGTC Regulation, which received a negative opinion by the Council of State (*Consiglio di Stato*) on 7 November 2007. This constitutional body expressed the opinion that, considering the nature of the activities foreseen for the EGTC, it is necessary to make recourse to a primary level rule (ordinary law), and not to a secondary level rule. The Parliament must therefore intervene in the procedure in order to prepare such a law⁶⁵. The Second draft of the *Legge Comunitaria 2008* (with articles 21-23 concerning the EGTC) was approved by Council of Ministers on 28 August, and was submitted beginning October to the Parliament and the Senate.

According to the draft, the competent authority to receive notifications will be the '*Segretariato Generale della Presidenza del Consiglio dei Ministri*'; the assessment will be done in analogy to Italian administrative law by the '*Dipartimento per gli Affari Regionali e le Autonomie Locali della Presidenza*' that will ask the opinion of other services⁶⁶.

Latvia: The approval procedure was planned to start at the end of March 2008. An EGTC registered in Latvia will be considered an association under public law, although associations are normally under private law⁶⁷.

Luxembourg: The legal basis for application is the law of 23 February 2001 on groupings of local authorities. A very short law will be enacted to state this and to assign the Ministry of the Interior and Spatial Planning as the competent authority to receive applications and documents. This short law was approved by the Council of Ministers in early December 2007 and submitted to the Parliament for approval⁶⁸.

Malta: The final draft, prepared by the Ministry of the Interior, is ready and is in the process of being sent to the Cabinet of Ministers for approval. This order gives the responsibility to the Minister of Finance to act as the competent authority to receive the notifications and documents as set out under Art. 4(4) of Regulation (EC) No 1082/2006. The main specificity of the national provisions is the exclusion of members with limited liability⁶⁹.

Netherlands: The Ministry of the Interior is designated as responsible ministry for the preparation of national provisions. A first draft was presented in June 2007 but was not approved. A new proposal passed a consultation process within different departments, and was to be submitted to the Council of Ministers in October and then to the Council of State for advice. The last step will consist of the adoption by the First and Second Chambers of the Parliament. Entry into force is expected for April 2009⁷⁰.

Sweden: In November 2006 the Swedish Government appointed a special inquiry to analyse the EGTC. The inquiry consulted representatives of neighbouring Member States around the Baltic Sea and the Federation of Swedish Municipalities. The proposal submitted by the inquiry in December 2007 was sent out in March 2008 for a broad consultation with local and regional authorities, institutions involved in cross-border cooperation, etc. Based on Parliament's decision the EGTC act is expected to enter into force on 1 January 2009⁷¹.

⁶⁵ Information obtained from Italian national body

⁶⁶ Information obtained from responsible authorities

⁶⁷ Information obtained from responsible authorities

⁶⁸ Information obtained from Luxembourg national body

⁶⁹ Information obtained from Maltese national body

⁷⁰ Information obtained from Dutch national body

⁷¹ Information obtained from Swedish national body

3.4. The EGTC and third countries

Non EU Member States are not concerned by this new instrument as such⁷², be they candidates, potential candidates or other third countries (such as Switzerland, Norway, Andorra, Ukraine, etc.). However, participation of entities from third countries in an EGTC may be possible, as stated in Preamble Clause 16 of Regulation (EC) No 1082/2006, under the following conditions:

- The third country adopts national legislation to create an instrument similar or close to the EGTC. The integration of the EGTC provisions into the national legislation could be of particular relevance for candidate and potential candidate countries as part of the integration of the *acquis communautaire*;
- The third country may alternatively sign agreements with EU Member States in order to enable their authorities to participate in EGTCs.

While the Regulation presents these two measures as alternative solutions (*'legislation of a third country or agreements between Member States and third countries'*), it might be necessary to both adopt national legislation and sign an interstate agreement. This may be necessary, e.g. to clarify relationships between third countries and Member States regarding financial control procedures and because of the different powers and jurisdictions involved in different countries, i.e. regional and national.

- Participation of entities from third countries in an EGTC is also subject to the national provisions of the concerned Member State, whether these allow such participation or not⁷³.

3.5. What to do if national provisions are not yet in place?

Currently a wait-and-see trend is evident among most interested stakeholders, which is partly due to the **absence of individual national provisions in many Member States despite the deadline of 1 August 2007**. The calendar for such provisions is not known in all countries, which increases uncertainties. However, recent experience has shown that where there is a strong interest and lobby for the EGTC, such as in France or Portugal⁷⁴, the preparation of national provisions was speeded up in response to such interest.

As Regulation (EC) No 1082/2006 is directly applicable in all Member States, **administrative recourse** is open to prospective EGTC members against the national authorities for non-respect of this deadline. Even though these actions should be brought before national courts, Regulation (EC) No 1082/2006 lays down many legal rules and principles that may be interpreted by the European Court of Justice through the preliminary ruling procedure. However, legal proceedings, although possible, delay the process and therefore **dialogue with national authorities** seems more advisable in practice⁷⁵.

⁷² The legal basis for the EGTC Regulation is Art. 159(3) of the EC Treaty, which relates to cohesion actions in the Community, outside the Funds. This only applies to the territory of the Community, therefore it is not applicable to third countries

⁷³ See for instance the French provisions which enable partners from neighbouring third countries members of the Council of Europe (Switzerland, Andorra, Monaco) to participate in an EGTC with registered office in France (See also Point 3.2)

⁷⁴ See Point 3.2

⁷⁵ Example: In Portugal the national body in charge of adopting the national provisions received draft conventions from prospective members of EGTCs, which had a positive effect on encouraging the national level to adopt the legislation rapidly (Communication at the Open Days, CoR meeting on the EGTC. Brussels, October 2007)

CHAPTER 4

ROADMAP FOR SETTING UP AN EGTC

4. ROADMAP FOR SETTING UP AN EGTC

4.1. Introduction to the roadmap

This chapter provides a **step-by-step roadmap** for creating and implementing a European Grouping of Territorial Cooperation. Throughout the roadmap, specific attention is being paid to the first two types of EGTC, which are most relevant to INTERACT stakeholders: EGTCs for the management of European Territorial Cooperation programmes and projects.

4.1.1. Genesis of the roadmap

This roadmap was developed on the basis of Regulation (EC) No 1082/2006. The elements of the Regulation were extracted and presented in chronological order, listing the different steps needed to set up and implement an EGTC. The roadmap, partly inspired by the previous works of the Committee of the Regions⁷⁶, was further developed and reviewed by various actors, including EGTC specialists and territorial cooperation practitioners.

4.1.2. How to use the roadmap?

The roadmap is to be used by the prospective members in a future EGTC as a **practical tool for reflection and decision-making**. The roadmap presents the different phases identified in creating and running an EGTC: Preparation, Decision, Implementation, Performance and Dissolution. The summary chart below illustrates these different phases and the corresponding colour codes:

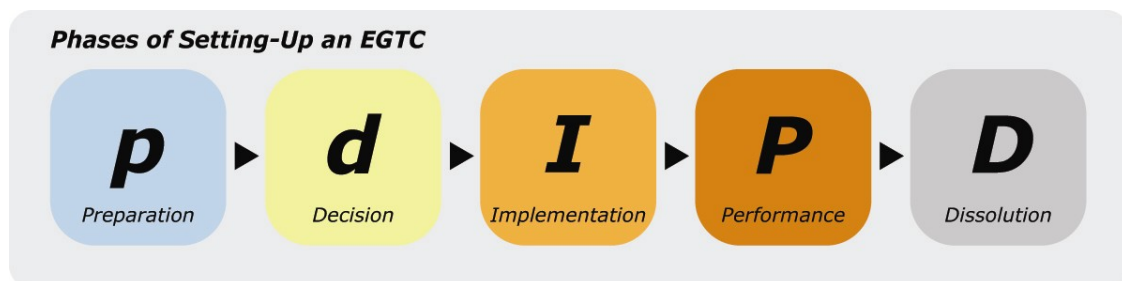


Fig. 6: Phases of setting up an EGTC

For each phase, the following information is given:

- **Presentation** and explanation of the step;
- **Relevant sources** in the EGTC Regulation
- **Open questions**: questions to be discussed by the prospective members in each phase;
- **Action list**: list of actions to be taken by the prospective members to close this step;
- **Programme Management (PM)**: comments specifically applicable to EGTCs for European Territorial Cooperation programme management;
- **Project Management (PJM)**: comments specifically applicable to EGTCs for European Territorial Cooperation project management.

⁷⁶ Based on Committee of the Regions; Levrat, Nicolas: *Eight steps to evaluate the feasibility of establishing the EGTC*. http://www.cor.europa.eu/En/activities/egtc_implement.htm

No reference is made in the roadmap to specific national provisions that may apply, but these should not be forgotten and must therefore be carefully considered at each relevant step.

This detailed roadmap is supported by a roadmap in table form, with colour codes corresponding to the different phases identified (see Annex 1).

4.1.3. General methodological notes



Order: The phases presented in the roadmap may be considered differently or the order of the steps may be changed. For instance, in some cases the identification of the partners precedes the identification of the territory. In other cases the location of the registered office is pre-defined by the partners (e.g. there is already an office available in one of the countries).



Timing: No specific timing can be given for each of these steps as it will vary greatly depending on the different types of cooperation envisaged. E.g. where a cooperation structure already exists and wants to transform itself into an EGTC, some of the preliminary steps can be skipped (identification of the partners, territory, etc.). In any case, **potential delays** must be taken into account, which cannot be calculated in advance but need to be considered. See details under Point 4.2.6.



Alternatives: If the anticipated delays are too long as compared to the added value offered by the EGTC instrument, prospective members may envisage recourse to other types of cooperation (See Point 4.3.1 and Annex 4 for examples of other available cooperation structures).

4.1.4. EGTC for the management of a European Territorial Cooperation programme

The European Commission promotes the use of the EGTC for programme management, as Art. 18 of Regulation (EC) No 1080/2006 shows: *'Member States participating in an Operational Programme under the European Territorial Cooperation objective may make use of the European Grouping of Territorial Cooperation under Regulation (EC) No 1082/2006 [...] 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'*.

In the current situation, where most Operational Programmes have already been approved by the European Commission, it is rather unlikely that many of them will create an EGTC in the next few years and transfer the management of the programme to this EGTC in the course of the 2007-2013 programming period. Such transfer is however possible, and is even envisaged by at least one Operational Programme: the Greater Region / Grande Région / Großregion Cross-border Programme (see Point 5.1). The planned transfer stated in the Operational Programme document should take place in the course of 2009. The function of Managing Authority will be transferred from a Belgian public authority (Walloon Region) to the EGTC, with registered office in France.

In terms of timing, the following should be considered:

- Update of programme documents (Operational Programme, Memorandum of Understanding, document on the setting up of management and control system⁷⁷, etc.);
- Update of implementation documents (guidelines for applicants, subsidy contracts, operational manual of the JTS, of the Certifying Authority (CA), etc.);
- Update of working documents (working contracts with employed staff, if existing staff are transferred to the EGTC);
- Transfer of documentation, databases, information, etc. to the EGTC;
- Transfer of the Technical Assistance (TA) budget to the EGTC - or the part of the TA budget which is allocated to the EGTC. The part of the TA budget already spent or committed is likely to be further managed and accounted for by the previous beneficiary, while the EGTC will manage the remaining TA budget and programme budget - alternative options might also be considered.

Such transfer should be planned in advance in order to avoid any delays and possible drawbacks. If several programme functions are transferred to the EGTC, e.g. Managing Authority and Certifying Authority, there should be a clear division of tasks among the EGTC staff, to be detailed in the document on the setting up of the management and control system⁷⁸. Additionally, if the EGTC has the function of Managing Authority, the Audit Authority of the Programme will have to be set up in the same country as the EGTC⁷⁹.

4.1.5. EGTC for the management of a European Territorial Cooperation project

The EGTC and the Lead Partner Principle⁸⁰

With the new programming period 2007-2013, the Lead Partner Principle (LPP) has become compulsory. The main reason for implementing the LPP is to ensure the genuine joint development and implementation of cross-border, transnational and interregional projects, which was not always ensured in the past (e.g. single or mirror projects are strictly excluded). Cross-border and transnational projects must be composed of at least two partners from two different Member States and satisfy a minimum of two of the four cooperation criteria (all four criteria in interregional projects)⁸¹:

- Joint development
- Joint implementation
- Joint financing
- Joint staffing

Under the LPP, project activities are carried out by different partners, one of whom acts as the so-called 'Lead Partner'. A subsidy contract is signed between the Lead Partner and the Managing Authority. The Lead Partner is responsible for the implementation of the project vis-à-vis the MA and ensures the administrative link between the project and the programme. Each partner remains fully responsible for its own actions and expenditure, which must be controlled by a designated controller⁸². In many programmes, partnership agreements are usually signed by the project partners.

⁷⁷ Art. 71 of Regulation (EC) No 1083/2006

⁷⁸ *ibid.*

⁷⁹ Art. 14(1) of Regulation (EC) No 1080/2006

⁸⁰ Art. 20 of Regulation (EC) No 1080/2006 refers to 'Lead beneficiary'; 'Lead Partner' has the same meaning and is more commonly used

⁸¹ Art. 19(2) of Regulation (EC) No 1080/2006 on the European Regional Development Fund

⁸² INTERACT Point Tool Box, *Handbook on the Lead Partner Principle in European Territorial Cooperation Programmes*, 2007

With the new EGTC instrument, project partners may decide to create an EGTC for the management of the project. The EGTC would be the Lead Partner of the project and the project partners would be members of the EGTC. In this case, the project proposal will be submitted and the project will be managed by a single body, the EGTC, on behalf of the EGTC members. The question of the compatibility of the LPP with the EGTC instrument was answered positively in November 2007 by the European Commission services. An official communication was sent by the European Commission to the Managing Authorities of the European Territorial Cooperation programmes to confirm the possibility of an EGTC running a European Territorial Cooperation project as sole institution (no additional partners needed):

Extract from Mailing 3-2008 - EGTCs as beneficiaries - 6 February 2008 - DG Regional Policy

1) An EGTC can be either a beneficiary or a lead beneficiary in a territorial cooperation project. While Article 18 of the ERDF Regulation (Parliament and Council Regulation 1080/2006) speaks about programme management, it does not exclude project management, and indeed project management is expressly covered in the EGTC Regulation (Parliament and Council Regulation 1082/2006).

2) Article 19 of the ERDF Regulation sets out certain conditions for project partnerships (e.g. for cross-border cooperation, a partnership shall include beneficiaries from at least two countries). Article 19 should be interpreted so as to permit the use of an EGTC in such contexts. **Since an EGTC brings together authorities or organisations from at least two Member States to act on behalf of those authorities or organisations, the use of an EGTC as a lead beneficiary should be considered as satisfying the requirements of Article 19** (evidently, for interregional projects partners from at least three countries would need to be in the EGTC). Thus, an EGTC can act as 'sole' beneficiary since it would meet the partnership requirements by itself.

3) Other legal bodies similar to EGTCs in construction can equally act as 'sole' beneficiary in such cases.

Other elements to be considered

The implementation of European Territorial Cooperation projects by an EGTC may also pose a few **other challenges**, which must be considered carefully:

- No private body may be member of an EGTC as such (except if it fulfils the criteria applying to bodies governed by public law⁸³ or e.g. if it is a private association composed of public bodies⁸⁴), even though some European Territorial Cooperation programmes consider private bodies as eligible applicants. An alternative is to create a project partnership between an EGTC as Lead Partner and a private body as project partner;
- Even if the EGTC is usually not listed as **potential beneficiary** in the Operational Programme or documentation for applicants, it does not mean that EGTCs are excluded from participating in this programme, as long as they fulfil the basic criteria requested for other types of applicants;

⁸³ See Chapter 2

⁸⁴ Art. 3(1) of Regulation (EC) No 1082/2006

- In principle, European Territorial Cooperation programmes do not finance the creation and functioning of joint structures as such. Only those running costs of an EGTC, which are directly related to the implementation of a project (staff costs, overheads, etc.) should be considered eligible for EU funding. Under European Territorial Cooperation programmes, different types of activities might be considered eligible for ERDF funding, such as a feasibility study for setting up an EGTC may be considered eligible in certain programmes. Some programmes may also consider encouraging the creation of EGTCs for project management by granting a higher ERDF subsidy rate to projects involving an EGTC or by financing EGTC set up in the framework of capacity building, for a limited period of time (e.g. decreasing funding rate).

For specific conditions applicable in each programme, please consult the programme authorities.

In any case, European Territorial Cooperation programmes will not finance the setting up of EGTCs as such, therefore you should not just set up an EGTC for the sake of it!

Is the EGTC a suitable instrument for my project?

No straight answer can be given to this question. In any case, recourse to EGTC remains optional. Some factors to be considered by the project partners may include:

- The size of the project (partnership, funding): For large projects recourse to a joint structure may facilitate project management (e.g. the EGTC can run the project on behalf of all partners: development of project activities, management of a public service set up among partners, public procurement, etc.);
- Its duration: An EGTC may be suitable to ensure sustainability of the project results after the subsidisation period, in particular when running a public service on a long-term basis;
- The strategic and political importance of the project;
- Etc.

Do we need to create an EGTC in order to be able to access EU funding?

NO! The EGTC is one instrument among others and recourse to the EGTC is optional. While it is directly targeted at territorial cooperation activities, recourse remains optional. Access to ERDF funding under European Territorial Cooperation is not exclusively open to EGTCs: Any partnership can submit a project application, be it formed as an EGTC or not. When a partnership submits an application without being formed as an EGTC, the partners must sign a partnership agreement to confirm their participation in the project and their commitment.

Other questions?

Please check the INTERACT FAQ on the EGTC on the INTERACT Website.

4.1.6. The EGTC Roadmap

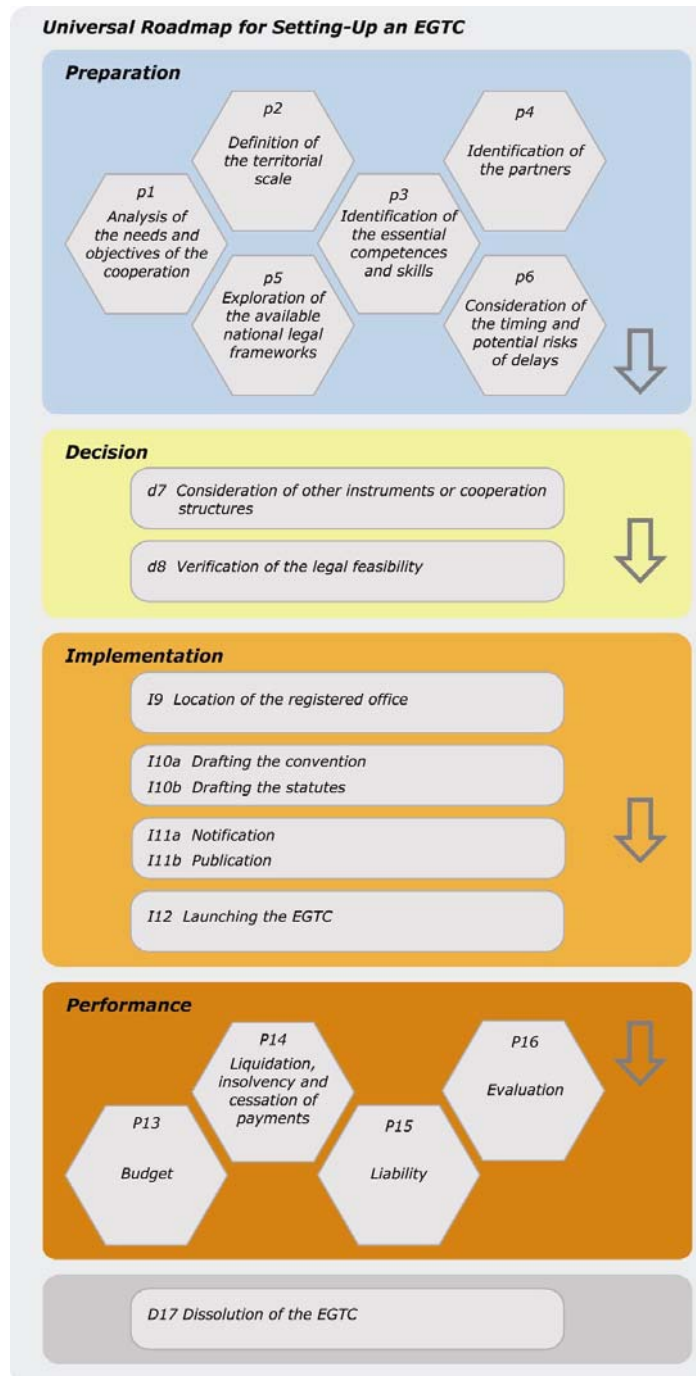


Fig. 7: General Roadmap for Setting-Up an EGTC⁸⁵

⁸⁵ Based on Committee of the Regions; Levrat, Nicolas: *Eight steps to evaluate the feasibility of establishing the EGTC*. http://www.cor.europa.eu/En/activities/egtc_implement.htm

4.2. Preparation Phase



Before an EGTC can be set up or even considered, some preparatory steps have to be carried out. In some cases they may vary in their order but they should pave the way for the decision phase.

4.2.1. Analysis of the needs and objectives of the cooperation



One of the starting points might be the **analysis of the present situation**: Is there already a form of cooperation on the territory/between the existing partners (conventions, written or oral agreements, structure, projects, etc.)?

The prospective members/identified partners must also try to find out what **type of cooperation** they need to set up, the **objectives** they want to reach and the **type of missions** that they would entrust to the EGTC (or other cooperation structure).

The **objective** of an EGTC shall be to facilitate and promote cross-border, transnational and/or interregional cooperation between its members with the aim of strengthening economic and social cohesion⁸⁶. It is very important that all partners agree to a joint/common general objective and at this early stage one should ensure that all key players meet around a table and jointly agree on a common objective, timetable, procedures, etc.

As stated in Article 7(3) of the EGTC Regulation, the tasks of an EGTC shall be limited primarily to the implementation of territorial cooperation programmes or projects co-financed by the Community through the European Regional Development Fund (ERDF). However, an EGTC may carry out other specific actions of territorial cooperation between its members in pursuit of the objective referred to in Art. 1(2), with or without financial contribution from the Community⁸⁷. National rules may be more restrictive on the fourth category (EGTC without Community contribution)⁸⁸ and should therefore be considered. An EGTC shall carry out the tasks given to it by its members in accordance with the Regulation and relevant national legislations⁸⁹.

Exclusion: The tasks given to an EGTC by its members shall not concern the exercise of powers conferred by public law (sovereign functions) or of duties the object of which is to safeguard the general interests of the State or of other public authorities, such as police and regulatory powers, justice and foreign policy⁹⁰. Members can only cooperate within the limits of their competences under national law⁹¹.

Different types of EGTC may be considered:

- **Uni-functional EGTC:** Management of a European Territorial Cooperation programme, management of a specific European Territorial Cooperation project or other cooperation project/action. The EGTC can for instance be in charge of the implementation of a specific public service on behalf of its members (e.g. Hospital of Cerdanya⁹²);

⁸⁶ Art. 1(2) and Art. 7(3) of Regulation (EC) No 1082/2006. See also Fig. 2.

⁸⁷ Art. 7(3) of Regulation (EC) No 1082/2006

⁸⁸ Art. 7(3) of Regulation (EC) No 1082/2006: *'Member States may limit the tasks that EGTCs may carry out without a Community financial contribution. However, those tasks shall include at least the cooperation actions listed under Article 6 of Regulation (EC) No 1080/2006'*

⁸⁹ Art. 7(1) and Art. 2 of Regulation (EC) No 1082/2006

⁹⁰ Art. 7(4) of Regulation (EC) No 1082/2006

⁹¹ Art. 3(1) and Art. 7(2) of Regulation (EC) No 1082/2006

⁹² See detailed case study presentation under Point 5.5

- **Multi-functional EGTC:** Coordination of the cooperation between partners on different common areas of intervention, within the limits of competences of each partner, e.g. education, health, transport, environment, security, economic development, risk management, etc. The EGTC can serve as a forum for the coordination of different policies (e.g. Eurometropole Lille-Kortrijk-Tournai⁹³).

It may be advisable to organise a **needs assessment** among the potential partners and other stakeholders, e.g. in the form of a **feasibility study**. This path has been followed by some of the case studies presented in Chapter 5.

Open questions to be discussed	Action list
General	
<ul style="list-style-type: none"> - Do the defined needs and objectives of the cooperation correspond with the possible tasks of an EGTC? - Discuss which of the four EGTC models you want to set up in order to implement: <ul style="list-style-type: none"> - European Territorial cooperation programmes - Co-financed projects in the field of territorial cooperation under the Structural Funds incl. European Territorial Cooperation projects - Other EU-funded projects/actions regarding territorial cooperation - Projects/actions of territorial cooperation outside any EU funding - Can the defined objectives be fulfilled within the required timeframe? - Does the national law of any prospective member forbid the possibility of setting up an EGTC for territorial cooperation outside EU funding? 	<ul style="list-style-type: none"> - List of needs and objectives - Definition of general strategy and mission(s) of the EGTC - Definition of the timeframe (setting up, duration of the project/cooperation) - Choose one of the four EGTC models, a mix of models or other cooperation structures/agreements - Feasibility study (if needed)
Programme Management	
<ul style="list-style-type: none"> - Can an EGTC be set up in time to manage the Operational Programme? 	<ul style="list-style-type: none"> - Definition of the timeframe (setting up, duration of the Operational Programme) - Decide whether the sole function of the EGTC will be to manage the Operational Programme, or will the EGTC also have other missions (e.g. project management), during and after programme closure?

⁹³ See detailed case study presentation under Point 5.6

4.2.2. Definition of the territorial scale

P

The territorial scale of the cooperation within an EGTC can be cross-border, transnational and/or interregional⁹⁴. The area of intervention of the EGTC has to cover (parts of) territory from at least **two Member States**⁹⁵.

Size: There is no regulatory minimum or maximum size of territory. Also, the extent of the EGTC territory does not necessarily correspond to the entire territory of each prospective member, e.g. where a Member State is a member of an EGTC it is often not the entire national territory concerned. Finally, in the case of cooperation between non-adjointing regions, recourse to the EGTC is of course possible, even though it implies several separated regions rather than one large EGTC territory.

Associated partners: The members may decide to associate external partners (outside the territory of the EGTC) to the activities of the EGTC⁹⁶.

Third countries' participation: Institutions from non EU Member States can be involved in an EGTC if their national legislation and/or agreements between Member States and the concerned third country allow(s) it⁹⁷. Although the possibility of involving third countries is left open by Regulation (EC) No 1082/2006, Member States may prohibit such involvement. See also Point 3.4. and Point 4.2.4. on the identification of partners.

PM: The territory covered by the EGTC does not necessarily have to correspond to the programme territory (eligible area): e.g. the EGTC could be formed between just two programme partners but implement its tasks (JTS and/or MA functions) on behalf on the Monitoring and Steering Committee (MSC).

PJM: If one of the members of the EGTC is located outside of the programme area, the EGTC can still run a project (e.g. as Lead Partner) but project activities can only take place in the programme area. Also if the EGTC has its seat outside the programme area, it does not prevent the EGTC from running a project, as long as the activities take place in the programme area.

Open questions to be discussed	Action list
General	
<ul style="list-style-type: none"> – What is the appropriate geographical size of cooperation for achieving the set objectives? – Does the national law of each prospective member allow the involvement of a third country in an EGTC? 	<ul style="list-style-type: none"> – Outline the territory of the cooperation area – Check if involvement of members from a third country is allowed or not. If allowed, consider whether the third country has adopted applicable legislation for the EGTC and/or signed an agreement with the concerned Member State(s)

⁹⁴ Art. 1(2) of Regulation (EC) No 1082/2006

⁹⁵ Art. 3(2) of Regulation (EC) No 1082/2006

⁹⁶ See for instance Eurometropole Lille-Kortrijk-Tournai, Article 4 of the Convention: *'Territories, cities and municipalities which are not located in the reference territory but are neighbouring or close, can be associated to the works of the Eurometropole Lille-Kortrijk-Tournai'*

⁹⁷ Preamble Clause 16 of Regulation (EC) No 1082/2006

4.2.3. Identification of the essential competences and skills

P In order to find the appropriate partners in the next step, the essential competences and skills needed to carry out the intended cooperation should first be identified. An EGTC shall be made up of members acting in a common framework, within the limits of their competences under national law⁹⁸. The tasks of the EGTC must *'all fall within the competence of every member under its national law'*⁹⁹. Therefore the **least common denominator** regarding these competences has to be found¹⁰⁰. However, this article may be more or less strictly interpreted in the various Member States; therefore you are advised to check the respective national provisions.

In terms of **skills**, it is important that some or all partners have previous experience in cooperation projects/structures and are familiar with the philosophy of cooperation. Also prospective members need to have sufficient political and administrative backup, negotiation, language skills, etc. Finally one should also consider whether all partners have the **financial capacity** to contribute to the budget of the EGTC (contribution by all partners is not compulsory but recommended).

Difference between competences and tasks/missions

Each EGTC member has a given set of competences under national law, which they have the authority to implement on their territory of jurisdiction (e.g. wastewater management). When they enter an EGTC, they do not transfer any of their competences to the EGTC, but solely entrust the EGTC with the implementation of a specific set of tasks/missions that fall under their competence (e.g. the mission of the EGTC is to build and manage a wastewater plant, on behalf of its members).

Open questions to be discussed	Action list
General	
– Which competences and skills are needed to fulfil the objectives of the EGTC?	– Catalogue of topics according to actual and/or needed competences and skills of each prospective member → find out common fields of competence
Programme Management	
	– List the competences required for fulfilling the functions of MA and/or JTS: <ul style="list-style-type: none"> - Capacity to act on behalf of the responsible Member State - Authorisation to act as interface between participating Member States/regions - Capacity to fulfil the MA and/or JTS obligations as stated in the Structural Funds Regulations, such as to sign subsidy contracts with beneficiaries

⁹⁸ Art. 3(1) and Art. 7(2) of Regulation (EC) No 1082/2006

⁹⁹ Art. 7(2) of Regulation (EC) No 1082/2006

¹⁰⁰ For instance the different partners decide to cooperate in the field of education, where each of them has competence in their own jurisdiction (general competence for all fields of education or specific competence in primary, secondary education etc). The scope of the EGTC is broad ('education' in general) but its activities will of course take place in the frame of the extent of competences of each partner

4.2.4. Identification of the partners

P Members of an EGTC can belong to one or more of the following categories¹⁰¹: Member States, regional or local authorities, associations of public authorities, e.g. Euregios/Euroregions or Working Communities in cross-border areas (provided that they have a legal personality), and bodies governed by public law within the meaning of Art. 1(9) of Directive 2004/18/EC. Private members are excluded, unless they fulfil the criteria applying to 'public bodies governed by public law'¹⁰². See also Point 2.3. for more details.

In many cases, if there is already a tradition of (informal) cooperation, partners are often already identified in advance. EGTCs are not solely open to existing cooperation structures, and the Regulation contains no rule or restriction in this regard. Still, the establishment of an EGTC may well be easier for existing cooperation structures or partnerships (even if informal). The list of common competences is then needed if they want to set up a joint body.

If there is no such existing partnership, the EGTC members should be chosen and matched with a view to the objectives and purpose of the EGTC as such. The identification of the partners proceeds according to their competences, as the least common denominator will enable the mission of the EGTC to be determined. It is, however, advisable to restrict to a small number of committed members, otherwise it may become too heterogeneous with too large a scope of tasks.

Open questions to be discussed	Action list
General	
<ul style="list-style-type: none"> – Which partners correspond to the needed skills and competences? If partners are already known, do they all have at least one competence in common? – If the planned EGTC is based on an existing cooperation structure (e.g. Euroregion or Working Community, with or without legal personality): <ul style="list-style-type: none"> - Do you already have the needed competences and skills or do you have to change/do you need new partners? - What are the conditions for transforming an existing cooperation structure into an EGTC? - Does the former structure have to be dissolved? 	<ul style="list-style-type: none"> – Consider the interpretation of 'public equivalent body' in each of the Member States concerned – Catalogue of (new) partners, including the specification of their legal status, competences, and national provisions applying to EGTCs

¹⁰¹ Article 3(1) of Regulation (EC) No 1082/2006

¹⁰² See Chapter 2

Open questions to be discussed	Action list
Programme Management	
	<ul style="list-style-type: none"> – Compare the list of EGTC members to the list of programme partners (members of Monitoring and Steering Committee): not all programme partners can become members of the EGTC: e.g. EC and social and economic partners participate in the MSC, but cannot be member of an EGTC¹⁰³
Project Management	
	<ul style="list-style-type: none"> – List potential project partners, check whether their legal status enables them to become member of an EGTC¹⁰⁴ – Check the programme conditions regarding participation of an EGTC in a project¹⁰⁵

4.2.5. Exploration of the available national legal frameworks

P

Although the Regulation has produced direct legal effects in all Member States since 1 August 2007, in practice national provisions have to be in place in the concerned States to enable the establishment of an EGTC, except where ad-hoc solutions can be found (see Point 3.5.).

Where national provisions are not yet available, it means that prospective members have no competent authority to send their notification to. Furthermore, in order to analyse the feasibility of an EGTC, prospective members need information on the applicable national provisions (public/private law, unlimited/limited liability - see Point 4.5.3. on liability).

Before selecting the appropriate one, all available national legal frameworks have to be studied carefully, paying attention to the aims of cooperation as well as the nature of the partnership. This will constitute an important factor in determining the location of the registered office. However, other factors may influence the decision regarding the location of the EGTC (see Point 4.4.1.).

The EGTC Regulation does not state whether an EGTC should be governed by public or private law. The CoR study on EGTC¹⁰⁶ states that the nature of the provisions of the Regulation and the rules on the prior control of participation of entities by the State concerned (see Point 4.4.4.) inevitably suggest that public law applies. However, recourse to private law is not expressly excluded and is actually applicable in several Member States (see Chapter 3).

¹⁰³ But the EGTC does not necessarily need to cover the whole programme partnership and territory. See Point 4.2.2.

¹⁰⁴ Private bodies (unless they fulfill the criteria applying to bodies governed by public law) may NOT be members of an EGTC, even though some European Territorial Cooperation programmes consider private bodies as eligible applicants. In this regard, a partnership may for instance be created between an EGTC as Lead Partner and a private body as partner

¹⁰⁵ Even if the programme manual or Operational Programme does not specifically indicate EGTCs as potential final beneficiaries, this does not mean that EGTCs should be excluded from participating in a project. Since the EGTC has legal personality and is composed of public or public-equivalent bodies, there should be no problem to apply

¹⁰⁶ *op.cit.*, pp. 76-78

Open questions to be discussed	Action list
General	
– Have the concerned Member States set up all necessary provisions?	<ul style="list-style-type: none"> – YES: All necessary provisions are in place → Compare the different applicable provisions. – NO: Delays will arise → Consider whether alternative solutions should be searched for (other type of structure) or wait for the provisions to be in place - This time can be used to start drafting convention and statutes
Programme Management	
– Have the concerned Member States set up all necessary provisions for establishing an EGTC?	<ul style="list-style-type: none"> – YES: EGTC can be set up quickly and take over the programme management – NO: the nomination of an interim MA/JTS is necessary. Consider the implications, especially the procedure for transfer of functions to the EGTC, once set up

4.2.6. Consideration of the timing and potential risk of delays

P

An important step in the preparation phase is consideration of the timing and potential risk of delays. Following types of delays may occur:

- Delay by one or more of the concerned Member States in establishing the necessary national provisions;
- Delay by one or more prospective members in notifying their national authority of their intention to participate in an EGTC;
- Delay by one or more prospective members in receiving approval of the notification (non-respect of the three-month deadline¹⁰⁷ by the national authority or incompleteness of the notification submitted by the prospective members);
- Delay caused by the different electoral agendas of the prospective members and consequent changes.

Anticipating such delays, though not easy, is important. For EGTCs with a long-term perspective (e.g. a general cooperation structure of the Euroregion-type or an EGTC for the management of a public service), delays will not necessarily jeopardise the eventual creation of the EGTC. For programme- and project-related EGTCs, however, such delays may challenge the setting up of the EGTC and its relevance:

- **PM:** If the EGTC is intended to manage a European Territorial Cooperation programme within a limited timeframe of maximum ten years (2008-17), the EGTC must be set up early enough to be worth it, except of course if the EGTC is multi-functional and fulfils other functions during and after programme closure. Multi-functionality ensures a longer-term perspective for the EGTC in the event that no new programme is approved;

¹⁰⁷ The three-month deadline is expected to be strictly adhered to, even though Art. 4(3) of the English version of the Regulation indicates this deadline 'as a general rule'

- **PJM:** If the EGTC is intended to manage an EU-funded project, the EGTC must be set up relatively quickly in order to be able to apply for a project within the limited timeframe of an EU programme, or to run the project (if already approved).

Open questions to be discussed	Action list
General	
<ul style="list-style-type: none"> – How far have the concerned Member States progressed with establishing the provisions? – Has the procedure for notification been clarified in all concerned Member States? What are the national provisions for approval of a prospective member's participation? – What is the attitude of the concerned Member States towards the implementation of an EGTC? – Are there any other expected delays? – Will the EGTC be based on an existing cooperation structure? If so, are delays expected due to a transition phase (staff, etc.)? 	<ul style="list-style-type: none"> – List of possible delays (external and internal factors) – Roadmap and estimated timeframe for setting up (backward planning¹⁰⁸) <ul style="list-style-type: none"> → Delays are accepted by all members <p><u>or</u></p> <ul style="list-style-type: none"> → Another cooperation structure/agreement has to be considered

4.3. Decision Phase



Following these preparatory considerations the partners have to compare different possibilities for their cooperation and jointly decide on the most appropriate solution.

4.3.1. Consideration of other instruments or cooperation structures



The setting up of a specific joint body/structure such as an EGTC is costly (time, human and financial resources, etc.) and this should be kept in mind by interested stakeholders. For basic cooperation purpose, it is not always necessary to set up such structure, as in some cases the signing of a partnership agreement, convention or memorandum of understanding might be sufficient or more appropriate.

In some countries, a diversity of legal instruments for territorial/cross-border cooperation already exists, and alternative Community instruments may also be considered:

- European Economic Interest Grouping (EEIG);
- Cooperation structures based on multilateral or bilateral treaties and agreements (e.g. Anholt Treaty, Karlsruhe Agreement, Benelux Convention, Bayonne Treaty, etc.);
- Cooperation structures based on national legislations - with possible participation of foreign members.

The EGTC supplements these existing agreements and does not replace them; one should therefore consider all instruments available and their relevance to the type of cooperation

¹⁰⁸ For instance, if the partners have planned to have the EGTC in place by mid-2009, they should plan 'backwards' from this date, in order to see whether the planned date is realistic, and if so to set strict deadlines for all the steps to be completed until mid-2009

envisaged. In other countries however, the EGTC is the first and only instrument available for this type of cooperation.

→ See Annex 4 - *Other available legal instruments for the purpose of territorial cooperation.*

Open questions to be discussed	Action list
General	
<ul style="list-style-type: none"> - 1) Are there any existing adequate cooperation structures or agreements for regulating the cooperation? <ul style="list-style-type: none"> - YES → Go to 2 - NO: Why wasn't there any institutional cooperation structure in place so far? <ul style="list-style-type: none"> a) There were no problems that required such a structure → No need to create one b) Problems existed but were efficiently resolved by other means → Go to 2 c) No institutional solution was available until now → The EGTC as a new solution should not prevent from looking at answers a) and b) again. → Go to 2 - 2) What are the advantages/ disadvantages of the EGTC versus another structure? Are there any other structures available? - 3) Do we need to set up a legal structure (with statutes, organs, office and staff) or is the signing of a cooperation agreement sufficient? 	<ul style="list-style-type: none"> - Comparison of different instruments, agreements and cooperation structures available in the cooperation area
Programme Management	
<ul style="list-style-type: none"> - Does the programme need to be managed by a joint management structure? <ul style="list-style-type: none"> - YES: consider EGTC and other available instruments - NO: the signature of a Memorandum of Understanding among programme partners is sufficient, which entrusts the management functions to one of the programme partners and clarifies partners' responsibilities in the programme 	<ul style="list-style-type: none"> - List the expected advantages/disadvantages of entrusting programme management to a joint cooperation structure

4.3.2. Verification of the legal feasibility of the planned proposal

- d** After deciding on the most appropriate solution, the legal feasibility has to be checked taking account of possible differences in the national legal systems (e.g. public or private law / limited or unlimited liability - see Point 4.5.3. on liability). The main question to be answered in this step relates to finding a common legal basis for the implementation of an EGTC in all participating countries.

Open questions to be discussed	Action list
General	
<ul style="list-style-type: none"> - What national provisions are applicable in the different Member States concerned? - Which national provisions are the most appropriate/favourable for the EGTC? 	<ul style="list-style-type: none"> - Recommended: seek legal advice and/or organise a feasibility study <ul style="list-style-type: none"> - If setting up an EGTC is the most appropriate solution and is legally feasible, then you can implement the next steps - Otherwise consider another cooperation structure/agreement

4.4. Implementation Phase

- I** The cooperation partners enter the implementation phase once they have selected the EGTC as the appropriate solution for their needs. In this key-phase, partners will have to agree on essential matters such as the location of the EGTC, its functioning, its name, etc., to be included in the convention and statutes.

During this phase, the short- and long-term objectives of the EGTC should also be set and agreed among partners, in order to be able, during the performance phase, to assess and evaluate the performance of the EGTC (see Point 4.5.4.).

4.4.1. Location of the registered office

- I** The registered office (seat) of an EGTC shall be located in a Member State under whose laws at least one of the members is formed¹⁰⁹. The decision regarding the seat of the EGTC determines the applicable law and the financial control procedures, as these lie within the competence of the Member State in which the EGTC has chosen to set up its office¹¹⁰.

It is likely that the partners will set up the registered office in the Member State offering the most favourable conditions (legal, fiscal, social) or offering the framework most appropriate to the type of cooperation envisaged.

The partners may also agree to set up branch offices on parts of the EGTC territory situated in other Member States or elsewhere. They may also decide to distinguish between the registered

¹⁰⁹ Art. 8(2) of Regulation (EC) No 1082/2006

¹¹⁰ - Art. 2 and 6 of Regulation (EC) No 1082/2006

- Schaffer, Hannes; Haselberger, Beatrix; Dillinger, Thomas; Zehetner, Franz: *Europäischer Verbund für Territoriale Zusammenarbeit (EVTZ) - ein Instrument zur grenzüberschreitenden Zusammenarbeit*. Weinviertel Management

- Levrat, Nicolas (2006): *In order to establish EGTCs*. Abstract of the presentation. Brussels, 10 October 2006

office of the EGTC (where the EGTC is officially registered) and the **operational office** (where the EGTC team is working). This option has been selected by the partners of the EGTC Eurometropole Lille-Kortrijk-Tournai (registered office in France, operational seat in Belgium).

Open questions to be discussed	Action list
General	
<ul style="list-style-type: none"> – Where is the registered office to be set up? 	<ul style="list-style-type: none"> – Decision on the seat of the registered office, based on key decision criteria, such as¹¹¹: <ul style="list-style-type: none"> - National provisions of each concerned Member State (legal status of the EGTC, provisions regarding staff, liquidation, insolvency, liability, etc.) - Location of the office within the cooperation area (central location should be considered if possible) - Political will to host the office, including financial offers by a member - Political stability, administrative culture, opinion of the population, etc. - Fiscal regimes and other conditions for staff (salaries, social schemes, etc.)
Programme Management	
<ul style="list-style-type: none"> – Where is the registered office to be set up? 	<ul style="list-style-type: none"> – To be taken into consideration: <ul style="list-style-type: none"> - Central location in programme area - Attractive labour conditions for future MA/JTS staff, etc. - If the EGTC is to fulfil the function of MA, it must be located in the same country as the Audit Authority

4.4.2. Drafting of the convention

I An EGTC shall be governed by a convention concluded unanimously by its members¹¹².

Drafting process: All interested partners and national authorities¹¹³ should be involved in the drafting process in order to ensure equal commitment to the EGTC and its structure. The drafting process may be very long and will imply numerous meetings and exchange of draft versions, therefore sufficient time and staff resources need to be dedicated by each partner, including involvement of technical staff (including legal experts), as well as political stakeholders.

¹¹¹ This list of criteria was elaborated by the participants in the first INTERACT Seminar on the EGTC, 26-27 November 2007, Vienna. See complete list in the FAQ on the EGTC, available on the EGTC Section of the INTERACT Website

¹¹² Art. 8(1) of Regulation (EC) No 1082/2006

¹¹³ According to the provisions of Art. 4(3) of Regulation (EC) No 1082/2006

Content: As the modification procedure of a convention requires approval by the Member States, the content of the convention should be strictly limited to what is required in the Regulation (and possibly in the national provisions, if additional information is required). Additional details should be instead integrated into the statutes (since only a substantial modification of the statutes requires approval by the Member States) or other administrative document such as internal rules of procedure.

→ See the *EGTC model convention - template for use* in Annex 2.

Name: Give the EGTC a simple name that can be read by people from all participating regions and which clearly associates the EGTC to the territory. Since the label EGTC is becoming well known, 'EGTC' could/should be part of the name. Also, if the EGTC is to have limited liability this should be clearly stated in the name of the EGTC¹¹⁴.

Open questions to be discussed	Action list
General	
<p>The convention¹¹⁵ has to specify:</p> <ul style="list-style-type: none"> – The name of the EGTC and its registered office – The extent of the territory in which the EGTC may execute its tasks¹¹⁶ – The specific objectives and tasks of the EGTC, its duration and the conditions governing its dissolution – The list of EGTC members – The law applicable to the interpretation and enforcement of the convention, which shall be the law of the Member State where the EGTC has its registered office – The appropriate arrangements for mutual recognition, including for the purpose of financial control – The procedures for amending the convention 	<ul style="list-style-type: none"> – Proposal of convention, to be drafted jointly by all prospective members
Programme Management	
	<ul style="list-style-type: none"> – Consider incorporating relevant parts of the 'Memorandum of Understanding' into the EGTC convention – If the EGTC has several functions, differentiate between programme management functions and others

¹¹⁴ Art. 12(2) of Regulation (EC) No 1082/2006

¹¹⁵ Art. 8(1) of Regulation (EC) No 1082/2006

¹¹⁶ The extent of the EGTC territory does not necessarily correspond to the entire territory of each prospective member, e.g. where a Member State is a member of an EGTC it does not mean that the entire national territory is included in the EGTC

4.4.3. Drafting of the statutes

I The statutes of an EGTC have to be adopted on the basis of the convention by its members acting unanimously¹¹⁷. As with the convention, the statutes should also be kept as concise as possible. If more provisions are needed, the introduction of an additional document such as a **procedures manual** or **internal rules of procedure** is recommended.

→ See the *EGTC model statutes - template for use* in Annex 3.

Open questions to be discussed	Action list
General	
<p>The statutes¹¹⁸ of an EGTC shall contain, as a minimum, all the provisions of the convention together with the following:</p> <ul style="list-style-type: none"> – The operating provisions of the EGTC organs (assembly: permanent or rotating presidency?) and their competences, the number of representatives in the relevant organs¹¹⁹ – The decision-making procedures (consensus or majority rule?)¹²⁰ – The working language or languages¹²¹ – The arrangements for its functioning, concerning staff management, recruitment procedures and the nature of staff contracts – The arrangements for the members' financial contributions and the applicable accounting and budgetary rules, including rules on financial issues – The arrangements for members' liability in accordance with Art. 12(2) of Regulation (EC) No 1082/2006 – The authorities responsible for the designation of independent external auditors – The procedures for amending the statutes – Any other provision deemed relevant 	<ul style="list-style-type: none"> – Proposal of statutes, to be drafted jointly by all prospective members

¹¹⁷ Art. 9(1) of Regulation (EC) No 1082/2006

¹¹⁸ *ibid.*

¹¹⁹ Regarding the number of representatives per member in the EGTC organs, different systems may be considered e.g.: 1) one representative per member; or 2) number of representatives to be based on the population covered by each member (e.g. one representative for members with less than 20,000 inhabitants, two representatives for members with a population between 20,000 and 50,000 etc.) - Recommendation by the Association of European Border Regions

¹²⁰ It is recommended to adopt internal rules of procedure that allow for decision by majority, as a consensus system implies de facto the possibility for any member to veto and therefore to 'paralyse' the functioning of the structure, which is against the principle of cooperation and would reduce the added value of such a structure. However, the majority rule may be difficult to use in EGTCs where the national level is member, as this may imply situations where national members could be 'overruled' by regional or local members

¹²¹ Linguistic parity is very important in some areas, especially where cooperation includes minorities or in bilingual countries (e.g. Belgium), where it has an important political dimension

4.4.4. Notification of the convention and the statutes

I Once agreement between the partners has been reached on a proposal of convention and statutes, the **notification procedure** can be started.

Each prospective member shall notify its Member State of its intention to participate in the EGTC and send a copy of the proposed convention and statutes. Additional documentation may be requested in some Member States, to be checked in the national provisions.

What is likely to be checked by the Member States?

- The completeness of the notification, including the convention and statutes;
- The conformity of the notification with applicable Community and national legal provisions (EC Regulation as primary source and applicable national rules as secondary source): eligible members, tasks of the EGTC, etc.;
- Any other element deemed necessary, such as compliance with the principle of public interest, police and regulatory powers, etc. But it is absolutely excluded for Member States to perform a control of opportunity - only a legality control should be done.

The Member State shall reach its **decision** on the notification within a deadline of three months. They may apply national law to take such decision and must justify any potential refusal¹²². Rejection should remain the exception and therefore needs to be duly justified by the responsible authority.

Open questions to be discussed	Action list
General	
	<ul style="list-style-type: none"> – Participation of the members in an EGTC is approved or not – If the convention and statutes are not approved by every concerned Member State, partners have to rewrite them and therefore go back to the drafting process – If each partner obtains approval → implement the next step

4.4.5. Publication of the convention and the statutes

I If none of the Member States concerned voices reservations, all members shall formally agree on the final version of the statutes and convention, unanimously¹²³. The statutes and any subsequent amendments shall be registered and/or published in accordance with the applicable national law in the Member State where the EGTC has its registered office.

Within 10 working days of the registration and/or publication of the statutes, a request has to be sent to the Office for Official Publications of the European Communities for publication of a notice in the Official Journal of the European Union announcing the establishment of the EGTC¹²⁴. The members also have to inform the Member States concerned and the Committee of the Regions of the convention and the registration and/or publication of the statutes¹²⁵.

¹²² Art. 4(2) of Regulation (EC) No 1082/2006

¹²³ Art. 4(5) of Regulation (EC) No 1082/2006

¹²⁴ Art. 5(2) of Regulation (EC) No 1082/2006

¹²⁵ Art. 5(1) of Regulation (EC) No 1082/2006

Open questions to be discussed	Action list
General	
	<ul style="list-style-type: none"> – Formal agreement by all members on the final convention and statutes – Registration and/or publication of statutes – Publication of a notice in the Official Journal of the European Union – Inform the Committee of the Regions and the Member States concerned

4.4.6. Launching the EGTC

- I** Once the EGTC is registered, it is officially created and can start its activities. A number of administrative questions have to be answered and a series of actions must be taken. In particular, the following elements should be considered:
- Opening of a bank account, and payment of the first contributions by the members (and/or bank loan) in order to start up the first activities;
 - Setting up of organs: An EGTC acts through its organs, which are specified in its statutes and vested with all necessary powers to guarantee the legal capacity of the EGTC¹²⁶: an **assembly**, which is made up of representatives of its members, and a **director**, who represents the EGTC and acts on its behalf¹²⁷. Where necessary, the statutes may provide for additional organs with clearly defined powers;
 - Recruitment of staff¹²⁸ or procedures for secondment of staff from the members' administrations¹²⁹. At least the director must be recruited or nominated;
 - Setting up of internal work flows and procedures;
 - Etc.

PM: The MSC of the programme has to be differentiated from the assembly of the EGTC, as the former should also include social and economic partners¹³⁰ which are unlikely to be members of the EGTC. The European Commission also participates in the MSC.

¹²⁶Schaffer, Hannes; Haselberger, Beatrix; Dillinger, Thomas; Zehetner, Franz: *Europäischer Verbund für Territoriale Zusammenarbeit (EVTZ) - ein Instrument zur grenzüberschreitenden Zusammenarbeit*. Weinviertel Management.

¹²⁷Art. 10(1) of Regulation (EC) No 1082/2006

¹²⁸Art. 1(4) of Regulation (EC) No 1082/2006

¹²⁹In the case of the Eurométropole Lille-Kortrijk-Tournai, it was decided that a member of the assembly would fulfil the function of director. This person also acts as president, an additional organ defined in the statutes of the EGTC

¹³⁰Art. 11(1)(b) of Regulation (EC) No 1083/2006

Open questions to be discussed	Action list
General	
<ul style="list-style-type: none"> – What is the role of the director¹³¹ and the assembly? – Should all members be represented in the assembly? Who should represent each member in the assembly (administrative or political level?)¹³²; How to ensure continuity (e.g. in case of political changes?)? – How frequent are the meetings of the assembly? – Decision-making process: majority or consensus?¹³³ – Do we need/want additional organs? – Can members second staff to the EGTC?: <ul style="list-style-type: none"> - Who employs these staff? - What is the legal basis? - In which country is staff insured? - Can these staff subsequently return to their administration of origin? 	<ul style="list-style-type: none"> – Establishment of the office (incl. branch offices if applicable): rental contract, equipment (public procurement procedures of the hosting country to be considered), etc. – Define the functions and missions of the director and the assembly and other organs if applicable – Recruitment of staff (or secondment from the partner institutions), including director – Launching of the assembly (first meeting) – Launching of first activities → funds needed to cover the launch costs, to be raised from partners' contributions and/or via a loan – Setting up of management and control system (incl. financial flows, accounting system)
Programme Management	
<ul style="list-style-type: none"> – How to handle the transition phase concerning staff employment if the EGTC takes over programme management from the interim MA/JTS? 	<ul style="list-style-type: none"> – List the bodies to be set up for programme management: MA and/or JTS? Certifying Authority? Other? – Consider the staffing of the office (director but also the staff of the MA and/or JTS) – List the labour conditions applying to existing staff working for the programme - compare with the conditions applying under the EGTC

¹³¹ In some Member States a director has executive and representative functions and in others just administrative ones

¹³² The participation of all members in the assembly may be recommended as a way of ensuring equal involvement and commitment of all members. Consider the law applicable in the Member State of the registered office

¹³³ See Point 4.4.3 for more details

4.5. Performance of an EGTC



For successful establishment of the EGTC several measures have to be taken to provide for its smooth performance.

4.5.1. Budget and control of financial management of public funds



Managing its own budget is of course a key advantage of the EGTC, as compared to other types of cooperation. It enables the EGTC, inter alia, to hire its own staff and acquire property. This requires of course the set up of solid financial management and control procedures for the control of the public funds managed by the EGTC.

The **annual budget** should contain a component for running costs and, if necessary, an operational component (project-related budget)¹³⁴. The structure and size of the annual budget depends to a large extent on the tasks assigned to the EGTC.

How to determine the contributions of the members?

Although not compulsory, contributions by all members are highly recommended to ensure equal involvement and enhance their sense of responsibility. However, and contrary to other existing instruments (like for instance the LGCC¹³⁵ created under the Karlsruhe Agreement), it is not compulsory that all members participate financially, which may enable small institutions to become members of the EGTC (e.g. associations, NGOs, etc.). In-kind contributions may also be considered, for example provision of staff, office, equipment by a member. In terms of share of contributions, there is no rule and different agreements may be reached among the members:

- Equal contributions by all members;
- A split of financial contributions between each Member State (50-50), additionally split of contributions among members on each side of the border, as in the case of Eurometropole Lille-Kortrijk-Tournai¹³⁶;
- Contributions calculated on the basis of the population in each member's territory, as in the case of Eurodistrict Oderland-Nadodrze¹³⁷;
- Etc.

Management of funds - control of EGTC expenditure

The funds are controlled on the basis of the budget annually approved by the assembly:

- If the EGTC receives EU funds, the rules for EU funding (EU eligibility rules and national eligibility rules of the country of the EGTC seat) apply;

¹³⁴ Art. 11(1) of Regulation (EC) No 1082/2006

¹³⁵ Local Grouping of Cross-Border Cooperation, created by the Karlsruhe Agreement of 1996 between Germany, France, Luxembourg and Switzerland. The LGCC is an integrated cooperation structure of public law, applying to cross-border cooperation among local and regional public authorities (but not national authorities or other public authorities)

¹³⁶ INTERACT Seminar, 26-27 November 2007, Michel Delsaux: The annual budget 2008 is divided into 50% contributions from the French side (split among the four French members) and 50% contributions from the Belgian side (split among the 10 Belgian members)

¹³⁷ INTERACT Seminar, 26-27 November 2007, Sören Bollmann: The annual budget 2008 is calculated on the basis of members' contributions corresponding to EUR 0.10 per inhabitant

- For other sources (national and regional public funds, incl. contributions of the members) the rules applying to control of public funds of the country of the EGTC seat apply.

All in all, the advantage is that the whole EGTC budget and expenses are subject to the financial control rules and procedures of just one country, namely the country where the EGTC is registered. The control authorities of the country where the EGTC has its seat perform the control of all EGTC acts and expenditure (national and EU funding). If the legal framework of the other partner countries does not allow any controls of the EGTC's acts to take place on their territory (e.g. on-the-spot checks), then an agreement must be signed between the concerned Member States so that the controls are performed by national controllers from the partner countries, for activities taking place on their territory¹³⁸. They must inform the main controller about the controls performed.

PM: Structural Funds, be they managed by an EGTC or any other body, are subject to the same control rules¹³⁹: In particular, each Member State remains financially responsible for the funds spent on its territory, as stated in Art. 12(3) of Regulation (EC) No 1082/2006. This concerns in particular cases of recovery of funds unduly paid to final beneficiaries: according to Art. 17 of Regulation (EC) No 1080/2006, such funds are eventually to be reimbursed to the programme by the Member State of the concerned beneficiary if the project Lead Partner has not been able to recover these funds.

Open questions to be discussed	Action list
General	
<ul style="list-style-type: none"> – How will the budget be formed? – Should all members contribute to the budget? Equally or not? When and how often should they make these contributions, and in what amount? 	<ul style="list-style-type: none"> – Draft an annual budget – Decision on the financial contributions of the members – Decision on the financial control procedures, accounting and audit trail
Programme Management	
<ul style="list-style-type: none"> – Should national co-financing be paid out to the EGTC at the beginning of the programme period? 	<ul style="list-style-type: none"> – If an EGTC is multi-functional, one must differentiate between: <ul style="list-style-type: none"> - The running costs to be covered from the Technical Assistance budget of the programme, including national co-financing - The other elements of the EGTC budget (other activities) – If the EGTC fulfils the function of Certifying Authority of the programme: setting up an account for payments from the EC (including pre-financing) and payments to the final beneficiaries

¹³⁸ Art. 6(2) of Regulation (EC) No 1082/2006

¹³⁹ Art. 6(4) of Regulation (EC) No 1082/2006

Open questions to be discussed	Action list
Project Management	
	<ul style="list-style-type: none"> – If an EGTC is multi-functional, one must differentiate between: <ul style="list-style-type: none"> - The budget specific to the implementation of the EU-cofinanced project (incl. ERDF and national co-financing parts) - The other elements of the EGTC budget (other activities)

4.5.2. Liquidation, insolvency and cessation of payments

P As regards liquidation, insolvency, cessation of payments and similar procedures, the national provisions of the Member State where the EGTC is registered shall apply¹⁴⁰.

Open questions to be discussed	Action list
General	
– What are the applicable national provisions?	– Consult national provisions and clarify these provisions to all members of the EGTC, including members from other EU Member States

4.5.3. Liability¹⁴¹

P If the assets of an EGTC are insufficient to meet its liabilities, its members shall be liable for the EGTC's debts whatever their nature. This means that the EGTC as such always has unlimited liability, i.e. in case a debt must be reimbursed, the EGTC must reimburse this debt in full if it has sufficient assets, or at least up to the limit of its assets. **The members of the EGTC only have a residual liability**, they become liable for the debts once the assets of the EGTC have been used.

Note: A Member State can prohibit the registration on its territory of an EGTC the members of which have limited liability. If the liability of at least one member of an EGTC is limited as a result of the national law under which it is formed, the other members may also limit their liability in the statutes, provided that limited liability is authorised by their own national law and by the law of the Member State on whose territory the EGTC is to have its registered office.

PM: If an EGTC is beneficiary of Technical Assistance, it shall be responsible for its debts. If the EGTC is the sole beneficiary of the TA budget, the Member State where the EGTC has its registered office should reimburse to the European Commission (if a recovery procedure is needed)¹⁴². Before conferring programme management to an EGTC, all Member States will have agreed on internal reimbursement procedures (e.g. the other Member States will reimburse on a pro-rata basis to the responsible Member State) or the members of the EGTC will have to reimburse towards the EGTC.

¹⁴⁰ Art. 12(1) of Regulation (EC) No 1082/2006

¹⁴¹ Art. 12(2) of Regulation (EC) No 1082/2006

¹⁴² Art. 17(3) of Regulation (EC) No 1080/2006

PJM: If an EGTC is beneficiary of European Structural Funds, it shall be responsible for its debts and shall therefore reimburse any amount unduly paid by the programme (if a recovery procedure is needed)¹⁴³. The relation between the EGTC and its members is comparable to the relation between a Lead Partner and its partners: the EGTC shall first try to secure repayment from its member(s). If not successful, two possibilities are open: either the Member State where the EGTC is registered shall reimburse (according to the wording of the abovementioned article) or, according to different arrangements in the subsidy contract (and/or partnership agreement), the Member State where the EGTC member concerned is located (the one concerned by the recovery procedure) shall reimburse.

Open questions to be discussed	Action list
General	
<ul style="list-style-type: none"> – Is the registration of an EGTC the members of which have limited liability permitted? – What is the current status regarding liability (unlimited or limited) of EGTC members? 	<ul style="list-style-type: none"> – Decision on unlimited or limited liability if the conditions for such a decision are met (according to Art. 12(2)) of Regulation (EC) No 1082/2006

4.5.4. Evaluation

P It is recommended to evaluate the EGTC, two to three years after its launching¹⁴⁴. In order to prepare such evaluation and get the best out of it, it is recommended that the EGTC members set the following at the very beginning of the EGTC activities:

- Baselines: Where are we starting from? (including quantitative and qualitative indicators);
- Targets: What do we want to achieve? By when? (including quantitative and qualitative indicators).

The evaluation can be developed on this basis, assessing the progress and level of achievement of each objective/target.

Open questions to be discussed	Action list
General	
<ul style="list-style-type: none"> – Who will define the expectations for the EGTC at the beginning of the implementation process? – Does the set-up and implementation of the EGTC meet these expectations? – Which difficulties occurred during the implementation process and in operating the EGTC? – What kind of evaluation is necessary? Just an internal exercise, or an external one? – If external, how will the evaluation be financed? 	<ul style="list-style-type: none"> – Catalogue of difficulties and possible solutions – Do the results of the evaluation meet the expectations set at the beginning of the implementation process? <ul style="list-style-type: none"> - YES: continuation of the EGTC - NO: adjustment of procedures, statutes, etc. or dissolution

¹⁴³ *ibid.*

¹⁴⁴ Recommendation by mecca consulting

4.6. Dissolution



External dissolution: The activities of an EGTC may be prohibited by a competent court or authority if they contravene public policy, security, health, morality or the public interest. Dissolution may also be possible if the EGTC activities exceed the defined scope¹⁴⁵.

Internal dissolution: Dissolution may also be the result of a decision by the assembly of the EGTC. It is expected that the results of the evaluation of the performance of the EGTC may lead to different decisions regarding continuation or dissolution of the EGTC:

- If the EGTC is set up for a limited duration, dissolution should occur naturally at the termination date of the EGTC but it may also occur before (e.g. in the event of problems or if the partnership decides so). In the event of partnership problems, one must see whether it is possible to continue the EGTC with a restricted number of partners (Can the EGTC still achieve its goal with fewer partners?).
- If the EGTC is set up for an unlimited duration, dissolution may occur when the members jointly agree to end their cooperation on this basis, e.g. because the EGTC has not brought the expected added value to the cooperation, it has been too complex to manage or it appears to be ill-adapted to the needs of the partners.

In case of problems in the partnership, **dissolution is actually the very last resort** and other solutions should be considered before:

- Resignation of a member;
- Exclusion of a member;
- Integration of new members.

These possibilities and the corresponding rules and procedures can be stated in the statutes of the EGTC.

Open questions to be discussed	Action list
General	
<ul style="list-style-type: none"> - Archiving: Who will keep the files of the dissolving EGTC (e.g. accountancy and documentation of expenditure): maybe one of the partners? - Legal proceedings: What if the EGTC was party to any legal proceedings before the dissolution? Legal advice is necessary - Convention and statutes: Should each EGTC member inform their national authority of the dissolution? Check national provisions 	<ul style="list-style-type: none"> - Decision on the archiving procedures - Consult legal advisors - Check information procedures - Properties: Properties acquired by the EGTC should be sold and/or redistributed among the partners. The remaining budget might be used to pay final expenses, the rest should be redistributed among members, based on a calculation formula to be agreed.

¹⁴⁵ Art. 13 and Art. 14 of Regulation (EC) No 1082/2006

Open questions to be discussed	Action list
General (continued from previous page)	
	<ul style="list-style-type: none"> – Staff: The staff employed by the EGTC must be informed about the end of the contracting period, according to the national provisions applicable and with a period of notice. Legal advice should be sought from labour law experts – Although not explicitly stated in the Regulation, the Committee of the Regions, which holds a register of EGTCs, should be informed of such dissolution
Programme Management	
<ul style="list-style-type: none"> – Will the EGTC dissolve after the end of the Operational Programme (2017) or will it continue, e.g. with other missions than programme management? 	<ul style="list-style-type: none"> – If the EGTC received EU Structural Funds, such change must be communicated to the programme authorities or the European Commission, in case of controls and audit (expenditure can be checked up to five years after the closure of the programme) – Member States to designate a new MA/JTS
Project Management	
<ul style="list-style-type: none"> – Will the EGTC dissolve after the end of the project or will it continue, e.g. with other missions? 	<ul style="list-style-type: none"> – If the EGTC received EU Structural Funds, the dissolution must be communicated to the programme authorities, in case of controls and audit (expenditure can be checked up to five years after the closure of the project). – Income received by the EGTC for the implementation of the project will be handled as revenues to be deducted¹⁴⁶.

4.7. Conclusions

The presentation of this roadmap showed a number of procedures and steps to be followed. It may give the impression that setting up an EGTC is a long and tiresome process, but **things may turn out to be smoother in practice and some steps may be very quick** if all partners are equally committed. Strong leadership may further help to speed up these processes.

The key issue remains that of **sustainability**: How to ensure a long-term perspective and added value for the EGTC? In many cases, setting up a cooperation structure remains a long and sometimes arduous procedure, therefore the decision should be based on a **cost versus long-term benefits analysis**.

¹⁴⁶ Art. 55 of Regulation (EC) No 1083/2006

CHAPTER 5

CASE STUDIES: EGTCs IN PREPARATION AND OTHER STRUCTURES

5. CASE STUDIES ON EGTCs IN PREPARATION AND OTHER STRUCTURES

Although a wide range of public authorities are considering the establishment of an EGTC, the current situation with delays in the adoption of national provisions has led to a **wait-and-see trend** in most areas. It is likely that the first EGTCs will act as '**motors**' for the development of further initiatives, and the numerous problems anticipated might not occur at all in reality or be resolved by means of pragmatic solutions and experimentation. Financial incentives and/or legal advice could help to attract and support these first pioneers. As presented shortly in Chapter 1, the **first EGTC** was born on 28 January 2008, between 14 partners around the metropolitan area between Lille (FR), Kortrijk and Tournai (BE): **Eurometropole Lille-Kortrijk-Tournai**¹⁴⁷.

From the EGTCs in preparation or in functioning, of which a few selected cases are presented hereafter, the following characteristics emerge:

- Most of the EGTCs in preparation have a cross-border cooperation dimension;
- There are different types of partnerships involved (large/small, multi-level, etc.);
- There are different EGTC models envisaged:
 - European Territorial Cooperation programme management (Greater Region)
 - European Territorial Cooperation project management (Galicia-Northern Portugal)
 - Large infrastructure/public services projects without EU funding (Cerdanya Hospital)
- Several EGTCs have a multi-functional approach (Matriosca, Galicia-Northern Portugal, Alps Mediterranean Euroregion);
- Several of the EGTCs in preparation are based on existing cooperation (either legally structured or not), like the Euroregion Ister-Granum.

The following chapter presents a selection of various types of EGTC in preparation, as well as cases where the EGTC solution has not been chosen yet and is subject to analysis by the cooperation partners. In some cases the possibility of establishing an EGTC has already been excluded, either because it is not legally feasible (France-Vaud-Geneva conurbation: bilateral cooperation between partners from one EU Member State and one third country), or because other instruments are deemed to be more appropriate.

Point 5.8 lists additional EGTCs in preparation as well as cooperation areas which have considered but ruled out the EGTC. These cases have not been included in the detailed case studies, but information can be obtained from the websites or contact persons. This list is to be further developed and regularly updated.

¹⁴⁷ More detailed information is provided in Point 5.6

5.1. INTERREG-IV-A Programme Greater Region¹⁴⁸

Introduction

The territory of the Greater Region is composed of 11 institutional partners of very different natures and very different degrees of autonomy in their actions, associating five different territories within four EU Member States:

- Luxembourg;
- Germany: *Länder* Saarland and Rhineland-Palatinate;
- France: *Région* Lorraine with different members: the French State, represented by the *Préfet de Région*, the *Conseil Régional* Lorraine, the three *Départements* Moselle, Meurthe-et-Moselle and Meuse;
- Belgium: the Walloon Region, the French Community and the German-speaking Community.



Fig. 8: The Greater Region

Organisational background

The Greater Region has no legal identity. It is a cooperation and coordination platform, acting at both political and operational level. The area benefited from INTERREG funding, but the existence of three INTERREG IIIA programmes in the area of the Greater Region in the period 2000-2006, including areas covered by two programmes and entailing different application and management procedures, led the institutional partners to consider **merging these three programmes into a single one for the period 2007-2013** under the umbrella of the Greater Region. This means in practice that the eligible area for funding of cross-border projects is enlarged (which could foster the development of larger projects and partnerships), with simplified procedures (e.g. same application procedure throughout the area) and the identity of the Greater Region is reinforced at the level of the European Union. In order to make this merger possible the management structures of the three INTERREG IIIA programmes had to be replaced by a single one, and the opportunity to make use of the EGTC instrument where all partners are represented was agreed by all political leaders at the Ninth Summit of the Greater Region in June 2006. The political will to create an EGTC by 2009 is stated in the INTERREG IV

¹⁴⁸ In French: Programme INTERREG IV-A Grande Région; In German: INTERREG IV-A-Programm Großregion

Operational Programme submitted to the European Commission by the programme partners of the Greater Region.

Type of EGTC

From mid-2009 onwards the EGTC plans to act as Managing Authority for the cross-border European Territorial Cooperation Programme Greater Region / *Grande Région* / *Großregion*.

Status of implementation

After the Ninth Summit of the Greater Region in June 2006 the decision was taken to replace the existing three INTERREG IIIA programmes on the territory of the Greater Region by a single programme for the new period 2007-2013. The Walloon Region (Belgium) acts as transitional Managing Authority for the new programme and these functions will be transferred to the EGTC once set up. The French *Préfecture* of the Region Lorraine is leading the preparation of the EGTC. The registered office is expected to be located in Metz. The EGTC will consequently be set up under French law.

The executive office, which acts as JTS of the programme, was set up in Luxembourg, it is a non-profit association under Belgian law (asbl). Once the EGTC is in place, the association will be dissolved and the tasks of JTS and MA will be transferred to the EGTC, although the office might remain in Luxembourg City. The adoption of national provisions is still pending in some parts of the area but the programme partners are already working on the convention and the statutes.

5.2. Galicia-Northern Portugal Working Community

EGTC IN
PLACE

Introduction

The Galicia-Northern Portugal Working Community is located in the north-western Iberian Peninsula.



Fig. 9: Galicia-Northern Portugal Working Community

Organisational background

The most important milestones on the way to cross-border cooperation were:

- The Set-Up Agreement of the Galicia-Northern Portugal Working Community of 31 October 1991, under the aegis of the Madrid Convention (1980);
- New Set-Up Agreement of the Galicia-Northern Portugal Working Community of 24 February 2006 adapting the provisions specified in the Spanish-Portuguese Treaty on Cross-Border Cooperation of 3 October 2002.

The roles of president and vice-president were alternately assumed by the President of the *Xunta de Galicia* and the President of the Coordination Committee of the *Norte Region*, for a period of two years. The Coordination Committee, consisting of the general coordinators of both regions, acted as the permanent contact and ensured the continuity of the activities of the Working Community. Several territorial cooperation communities (*Association Eje Atlántico del Noroeste Peninsular*, the communities *Valle del Tamega / Valle del Limia / Valle del Cávado / Valle del Miño*) and sectoral committees met once a year in the council. The opportunity to make use of the new EGTC instrument was considered by the partners and it was decided to transform the Working Community into an EGTC.

Type of EGTC

The broad range of partners and activities of the Working Community has led to the setting up of a **multi-functional** EGTC with the following core activities: Coordinating and implementing the joint strategies of the members, managing European Territorial Cooperation programmes and projects as well as other EU funds.

Status of implementation

- July-September 2006: Meetings between the partners in order to analyse the EGTC Regulation and other cooperation opportunities - development of the project and the statutes of the EGTC;
- November 2006-February 2007: Adoption of the proposals of convention and statute; presentation of the proposals to the Spanish and Portuguese Governments; Galician Government application for an in-depth report on the legal requirements and the economic impact resulting from the introduction of the EGTC in the Spanish legal system;
- March-November 2007: Formalities carried out by the *Xunta de Galicia* and the Coordination Committee of the Region *Norte de Portugal* in order to support the development of national provisions in their respective country. Portuguese national provisions were published on 8 November 2007 (Decree Law No 376/2007);
- December 2007-September 2008: Parallel to the process of adoption of national provisions in Spain (adopted in January 2008), the partner regions prepared and submitted proposals for the statutes and convention;
- 22 September 2008: creation of the EGTC.

5.1. Alpe Adria Pannonia experience (AAP)¹⁴⁹

Introduction

Created in 1978 with the aim of promoting friendly and lively cooperation relations among its members, the Alpe Adria Working Community (AA WC) is located at the interface of old and new Member States. It involves at the moment 13 partners from different Member States and third countries, with very different institutional and administrative settings:

- Austrian Länder: Styria, Carinthia, Burgenland, Upper Austria;
- Italian Regions: Friuli Venezia Giulia, Veneto, Lombardia;
- Hungarian Counties: Baranya, Zala, Somogy (since 1 January 2009 not any more member), Vas;
- Republic of Slovenia;
- Republic of Croatia.

This very large space, characterised by strong regional and cultural diversity, counts around 26 million inhabitants. The members want to pool resources and combine their strengths to raise enough critical mass for improving the quality and efficiency of their cooperation and consequently their position in relation to other regions in Europe.

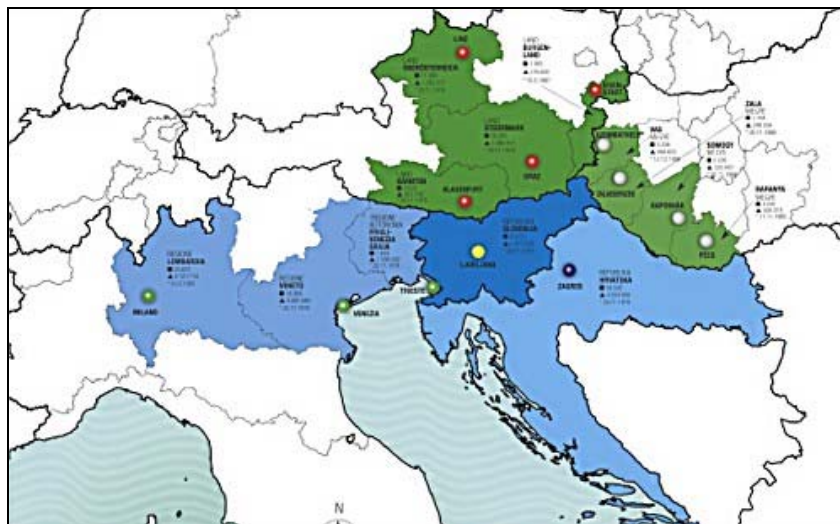


Fig. 10: Alpe-Adria Working Community

Organisational background

The AA WC activity has always been distinguished by the capacity to activate multiple contacts at social and cultural levels which contribute to realise common initiatives and 'people to people' projects, sustained by the Community itself. The results of the INTERREG IIIB CADSES project Matriosca AAP - Alpe Adria Pannonia (2005-2007)¹⁵⁰, in which many AA members participated as partners, concern also the possible new institutional setting for a better cooperation in the AAP area in order to tackle new challenges and to strengthen the social, economic and territorial cohesion becoming more competitive and visible in an enlarged Europe. In the context of this project a feasibility study on the possibility to use the EGTC instrument was carried out, and the preliminary draft statutes and conventions were drafted.

¹⁴⁹ www.alpeadria.org

¹⁵⁰ Management Tools, effective Relations for new Interregional Organisation aimed at Strengthening the Cooperation among regions in the Adria-Alpe-Pannonia space: <http://www.matriosca.net>

The operative outputs of the project have been deeply analysed and further elaborated inside the Alpe Adria Working Community: its members intend to benefit from the instrument at disposal to implement development policies of strategic relevance for the involved territories.

EGTC Status of implementation

Various elements are under discussion at the moment. The AA WC members agree to make all efforts within the limit of their competences and possibilities, to create the conditions to set up a body with legal personality in order to implement common projects, also in the light of using ERDF resources under the European Territorial Cooperation Objective 2007-2013, mainly at transnational level. The EGTC is an important and unique instrument to be carefully considered to reach this challenging goal.

5.2. Alps Mediterranean Euroregion¹⁵¹

Introduction

The territory of the Alps Mediterranean Euroregion covers five European regions, two on the French side and three on the Italian one:

- Provence-Alpes-Côte d’Azur;
- Rhône-Alpes;
- Liguria;
- Piemonte;
- Valle d’Aosta.

The five regions represent about 17 millions inhabitants on a territory of 110 000 sq km. Driven by strong historical links of economic and cultural nature, the rationale behind the Euroregion initiative is to reinforce the role of regions in Europe and influence the key policies of the European Union through a common and coordinated action.



Fig. 11: Alps Mediterranean Euroregion

Its main goal is to develop concrete projects in key areas, such as accessibility and transport, innovation and research, environment and risk prevention, culture and tourism, education and

¹⁵¹ Main source of information: material provided by the coordination office of the Euroregion Alps Mediterranean, May 2008

training, aimed at ensuring a balanced, sustainable and shared development of the alpine and Mediterranean area.

Background

The Alps Mediterranean Euroregion has its origins in COTRAO, the community of western Alps set up by France (Rhône-Alpes and Provence-Alpes-Côte d'Azur), Italy (Piemonte and Valle d'Aosta, Liguria for certain projects) and Switzerland (Valais, Geneva and Vaud) in the 1980's. In order to give a stronger visibility to this area facing an enlarged Europe and a new generation of European programmes 2007-2013, the two French and three Italian Regions decided in 2005 to constitute the Alps Mediterranean Euroregion.

The five Presidents met for the first time in July 2006 in Piemonte to sign the Agreement that established the Euroregion and defined the main lines for their cooperation. They met for a second time in November 2006 in Rhône-Alpes and agreed on strategic actions that led to the signature of the July 2007 Protocol of Cooperation in Valle d'Aosta. The protocol clearly states a shared willingness to make use of the new European legal instrument: the EGTC. The Alps Mediterranean Euroregion was officially launched during the Open Days in 2007 and its common offices in Brussels were inaugurated in January 2008.

Thematic groups and Implementation

In July 2007 the Alps Mediterranean Euroregion set up five thematic working groups, each coordinated by one of the Region, as follows:

- Innovation and research - Provence-Alpes-Côte d'Azur Region;
- Environment, risks prevention and sustainable development - Rhône-Alpes Region;
- Accessibility and transport - Piemonte Region;
- Tourism and culture - Liguria Region;
- Education and training - Valle d'Aosta Region.

The working groups aim at promoting the exchange of information and experience among the regions, the development of shared territorial strategies and the implementation of common projects in the identified fields.

The presidency of the Alps Mediterranean Euroregion is organised on the basis of a half-yearly rotation system, under which each region holds the presidency for a period of six months. In 2008 the presidency was ensured by Region Provence-Alpes-Côte d'Azur, followed by Liguria Region. Starting from 2009 the presidency will be held by the Rhône-Alpes Region, followed by Piemonte Region.

Type of EGTC

The Alps Mediterranean Euroregion intends to set up a legal basis by the means of an EGTC with the main goal of running cooperation projects, possibly co-funded by the European Union within its regional and other policies, in key areas that are primary for the development of its territory.

Status of implementation

The five regions have finalised the statutes and convention of the EGTC, which should be approved at regional and national level by the first semester 2009. The EGTC Alps Mediterranean will be set up under the national provisions of French law with a registered head office in France and a representation office in Brussels within the premises of the Euroregion building.

5.3. Hospital of Cerdanya (France/Spain)¹⁵²

Introduction

The main objective of the project is to create a cross-border organisation for the construction and subsequent management of an acute-care hospital for all patients in the regions of Cerdanya (France, Catalonia-Spain) and Capcir (France). These regions are currently divided between two different countries, but once were a single unit. Alta Cerdanya County and Capcir County belonged to Northern Catalonia, the part of Catalonia that now forms part of France as a result of the Treaty of the Pyrenees (1659).

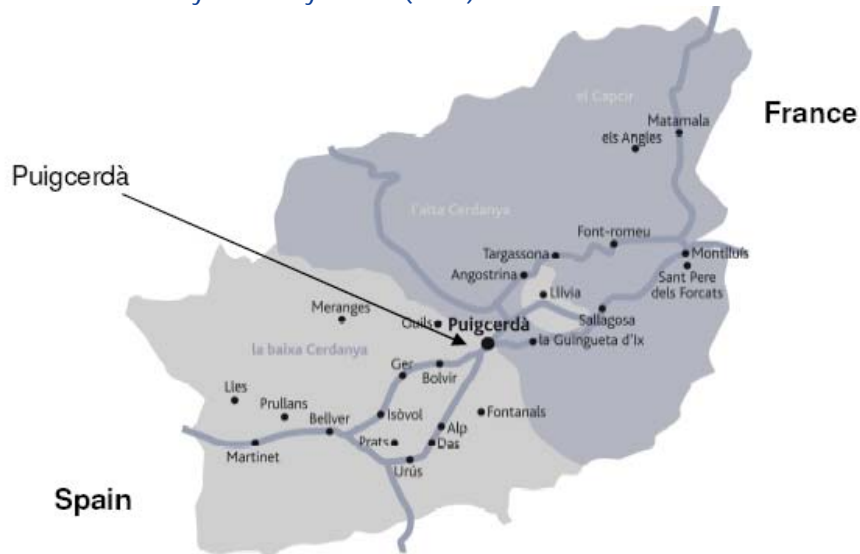


Fig. 12: Hospital of Cerdanya¹⁵³

Organisational background

In December 2002, the first political initiative was launched at a kick-off meeting of the politicians of Catalonia and Languedoc-Roussillon concerning the possibility of building a common cross-border hospital. All parties agreed that the existing hospital of Puigcerdà had no possibilities for expansion and therefore the question arose whether to build a new hospital in the region. Based on the first kick-off meeting, an INTERREG-financed **feasibility study** was carried out starting in July 2003 to find out if a new cross-border hospital could be built. The study involved local and regional French and Spanish health care actors. The study evaluated the health care needs in the French and Spanish population as well as the technical and political possibilities for setting up a common hospital structure. Therefore, the study was based on an analysis of data from both sides (e.g. characteristics of the population, tourists, care needs of the population, evaluation of care possibilities), a cost-evaluation analysis, evaluation of legal issues and face-to-face interviews with politicians, professionals and the general public. The results of the study showed the need for a hospital and the extent and amount of services that should be provided by the hospital.

General agreement was reached on the goals of the project, but because of the different health care systems in Spain and France and the differing competences, which in Spain are at the regional level (Regional Ministry of Health of Catalonia and the *Servei Català de la Salut* as

¹⁵² Hospital of Cerdanya. <http://www10.gencat.net/catsalut/cerdanya/en/>

- http://www.euregio.nrw.de/project-descriptions/details/id-102-hospital_of_cerdanya_details.pdf

¹⁵³ http://www.euregio.nrw.de/project-descriptions/details/id-102-hospital_of_cerdanya_details.pdf

its service purchasing agency) and in France at the national level (Ministry of Health in Paris), several steps of negotiation were and still are required at different competence levels in France.

The structure of the project consists of a steering committee which has the political oversight of the project (Supervisory Board), a technical committee comprising the Department of Health, the *Servei Català de la Salut* (CatSalut), the *Agence Régionale de l'Hospitalisation* (ARH), and the co-direction group of the project with two main responsible persons, one from Spain and one from France as the 'engine' of the project.

Both the Spanish and French sides decided to install the new hospital in Puigcerdà on the Spanish side, because the city is bigger, more accessible and has a hospital tradition. Furthermore, the local Spanish Government offered land where the hospital can be built.

Type of EGTC

This EGTC should help to establish and manage the cross-border hospital (uni-functional - project-level).

Status of implementation

On 19 March 2007 the French Minister of Health and Solidarity and the Catalan Minister of Health signed a letter of intent in Puigcerdà to create a European Grouping for Territorial Cooperation as an inter-administrative legal instrument for the governance and management of the future Cerdanya Joint Cross-Border Hospital. The letter of intent establishes the minimum specifications of the EGTC. Besides the two signatory parties, other regional and municipal public administrations will also participate and be represented in the EGTC.

The building of the cross-border hospital, started in 2008, should enable the hospital to be up and running by 2010.

5.4. Eurometropole Lille-Kortrijk-Tournai

EGTC IN PLACE

Introduction

The Eurometropole Lille-Kortrijk-Tournai is the first EGTC created. It brings together 14 partners from the urban French-Belgian border area around Lille (FR), Kortrijk (BE, Flemish Region) and Tournai (BE, Walloon Region). It is a multi-functional type of EGTC with a long-term strategic objective of territorial governance: promote and support effective, consistent cross-border cooperation within the metropolitan territory.

Organisational background

The border territory around the metropolitan areas of Lille (FR), Tournai (BE, Wallonia) and Kortrijk (BE, Flanders) is characterised by a continuity of conurbations polarised around city centres. It counts not less than two million inhabitants and covers 3,550 sq km. There are strong historical links between these cities and their inhabitants, despite national and linguistic frontiers. Cross-border cooperation was intensified in the 1980s and soon the '*Conférence permanente intercommunale transfrontalière*' (COPIT) was created as institutional platform for this cooperation. The COPIT was transformed into an association under French law in 2001. A new institutional and legal framework offered later favourable conditions for the creation of the Eurometropole Lille-Kortrijk-Tournai: signature of the Brussels Agreement in 2002¹⁵⁴, EGTC Regulation in 2006 and setting up of a French-Belgian parliamentary working group in 2005-2006¹⁵⁵.



Fig. 13: The Eurometropole Lille-Kortrijk-Tournai

In November 2006, a technical working group was created on the occasion of the first meeting of the Constitutive Committee of the Eurometropole: this group, made up of representatives of the 14 partners, prepared the texts for the convention and the statutes of the future EGTC. In March 2007, all prospective members signed a Declaration of intent for the creation of the Lille-Kortrijk-Tournai Eurometropole. In July 2007, the technical group presented its results during the third meeting of the Constitutive Committee. The draft texts for the convention and the statutes were then transmitted for validation by the deliberative authorities of the 14 partners. The EGTC was officially created on 21 January 2008, date of the '*Arrêté du Préfet de*

¹⁵⁴ Agreement on cross-border cooperation between local authorities of 16 September 2002, signed between the French State and the Belgian federal and regional authorities

¹⁵⁵ The CIADT (Spatial Planning and Development Interministerial Committee) decided at the end of 2003 to set up this group, whose activities started in 2005. The group, whose results were published in March 2007, identified the legal obstacles on the cross-border cooperation and produced ideas for solutions in different fields such as planning, transport, employment, environment, education or safety

la Région Nord-Pas-de-Calais. The constitutive meeting of the Assembly took place a few days later, on 28 January 2008.

Type of EGTC

The EGTC covers the territory of four Flemish districts, three Walloon districts and a French local authority, Lille Metropole, which gathers 85 municipalities. In total 145 municipalities have decided to come together in this project.

Formally speaking, the EGTC counts 14 institutional partners:

- On the French side: the State, the Region Nord-Pas-de-Calais, the *Département du Nord* and Lille Métropole *Communauté Urbaine*.
- On the Belgian side: the Federal State, the Flemish Region and Community, the Province of Western Flanders, the Leiedal intercommunal association¹⁵⁶, the WVI intercommunal association¹⁵⁷, the Walloon Region, the French Community of Belgium, the Province of Hainaut, the IDETA intercommunal association¹⁵⁸, the IEG intercommunal association¹⁵⁹.

The Eurometropole intends to promote and support effective, consistent cross-border cooperation within its territory. The objective of the Eurometropole is also to strengthen links between various European conurbations, particularly in the fields of employment, transport, spatial planning (e.g. through joint studies and spatial planning), sewage and culture (e.g. joint use of public sport equipments).

The EGTC is composed of the following organs and bodies:

- The **Assembly** is the deliberating and control body. It is empowered to approve the annual budget, amend the statutes, appoint the Board and select the cooperation topics. All levels of responsibility involved in the development of the urban area are present within the Assembly (84 members).
- The **Board** is the executive authority, which aims at ensuring the direct piloting of the EGTC. Operating like a board of directors, the Board constitutes the place of dialogue, exchange and deliberation regarding the projects to be implemented. The board has 32 members. Dual parity is respected and the political level is represented.
- The **Executive Management Committee**, composed of a President and three Vice-Presidents, also respects the criteria of dual parity, notably through a rotating chairmanship.
- **Committees or working groups**, designated by the Assembly and the Board, is responsible for studying major topics in order to carry out preparatory work and define a multi-annual action programme.
- A **Conference of Mayors and Burgomasters** brings together all the mayors and burgomasters of the Eurometropole. Its purpose is to inform the Mayors and Burgomasters of the works and projects of the EGTC and enable discussion at municipal level.
- The **Cross-Border Agency** is the administrative and technical tool in charge of 1) programming and follow-up of a multi-annual action plan decided on by the Assembly, 2) chairing of thematic committees and 3) technical assistance for the projects decided upon by the EGTC. Furthermore, its role is vital in the strategy building

¹⁵⁶ On behalf of the communes of the District of Kortrijk

¹⁵⁷ On behalf of the communes of the Districts of Roeselare, Ieper and Tielt

¹⁵⁸ On behalf of the municipalities of the District of Tournai and the District of Ath and the communes of Lessines, Silly and Enghien

¹⁵⁹ On behalf of the municipalities of the District of Mouscron and the commune of Estaimpuis

process of the cross-border urban area. The registered office of the EGTC is located in Lille (FR), while the agency is located in Belgium, with bilingual staff.

The organisation set up by the Eurometropole Lille-Kortrijk-Tournai is achieved without any transfer of competence in as far as the various organs created cannot replace the already existing national components. This being the case, each member will check, within their own institution, that the decisions taken are implemented.

A principle of double-parity applies to the functioning and composition of the organs: parity between the French and the Belgian sides, and parity between the Flemish and the Walloon sides for Belgium. As for the budget, the funding of the Eurometropole is shared equally between France and Belgium, then between Flanders and Wallonia, it is assured by the various participating levels of political responsibility. French-Dutch bilingualism is also a key-element of the EGTC, and the name of the EGTC reflects this principle.

Status of implementation

The first annual budget of the EGTC, which was voted by the Assembly in January 2008, amounts to EUR 989 000 for 2008 and was to be used to set up the operational services and launch the first activities. The partners are now in the process of recruitment of the Director and staff for the operational team. The opening of the offices in Kortrijk and Tournai is underway and the team should be completed by mid-2009.

In terms of activities, the first priority is to implement structuring projects for the Eurometropole, e.g. with the coordination or merging of equipments (e.g. swimming pools, crematoriums), and to involve the population in these projects. In particular the first projects should deal with daily issues such as environment, transport services and general public services for the population and enterprises.

Also thematic commissions are to be set up, to give impulse to the EGTC's decision-making organs. As for the functioning of the EGTC organs, one key-task for 2008 was the drafting of internal rules of procedure to complete the statutes of the EGTC.

Communication activities (website, brochure, exhibitions, media reports, press releases, etc.) are also essential during this starting phase 2008-2009, to make the EGTC known by the population, the media, other European metropolitan border areas and the European institutions.

5.5. Euroregion Ister-Granum¹⁶⁰

Introduction

This first EGTC in Central Europe, launched on 6 May 2008¹⁶¹, links the Slovak-Hungarian border area around the cities of Esztergom (HU) and Stúrovo (SK). The two cities aim to pool their resources on 20 joint projects in the framework of the new EGTC, including a regional healthcare system, new port facilities, the rebuilding of five bridges across the Ipoly/Ipel, a regional tourist agency, a bilingual TV and radio broadcasts.

¹⁶⁰Main source of information:

http://www.istergranum.hu/index.php?k=admin_en/data/00000000/_fix/00000006&id=0

¹⁶¹The partners launched the EGTC on 6 May 2008 with the signature of a Cross-border Cooperation Pact, but the formal notification process of the EGTC members has not been finalised yet (November 2008): The EGTC was registered by the Slovak government in June 2008 and the Hungarian authorities will normally recognize the official existence of the structure in the near future



Fig. 14: Euroregion Ister-Granum

Organisational background

Institutional cooperation in this border area started in 1999, when the Prime Ministers of Slovakia and Hungary signed an agreement regarding the rebuilding of the Mária Valéria Bridge, which links the two parts of the area and is therefore a key-element of cross-border cooperation. This agreement was followed by the launching of a cooperation agreement between the two major cities of the border area, Esztergom (HU) and Stúrovo (SK), which was then endorsed by the involved regions. The bridge was inaugurated in 2001 and various cooperation activities were launched (culture, media, etc.). The declaration of intent to create a Euroregion for the Ister-Granum area was signed in 2003 and the Euroregion held its first assembly in February 2004. A regional development agency was then created to implement euroregional activities.

The seven-year development programme of the Ister-Granum Euroregion was completed in 2005 and was presented to the European Parliament by the delegates of the region. The partners eventually decided to continue cooperation on a long-term basis and give its own legal identity to the Euroregion by creating an EGTC.

Type of EGTC

The EGTC Euroregion Ister-Granum is a multi-functional EGTC to be set up for an unlimited duration: Its primary tasks are *'the implementation of territorial cooperation programmes and projects co-financed by the European Union'*¹⁶² and sustaining institutions. Furthermore the establishment of a wine route, an enterprise-logistic belt, joint health provision, as well as an own energy agency and tourism management organisations are amongst the plans.

The EGTC is to be registered in Hungary, with headquarters in Esztergom. Due to the limited liability of some of its Hungarian members, the Slovak members used the provision of the EGTC Regulation¹⁶³ and decided to limit their own liability in the EGTC: Therefore the official name of the EGTC is *'Ister-Granum European Grouping for Territorial Co-operation Ltd'*.

¹⁶² Art. 2 of the Statutes of the Euroregion Ister-Granum

¹⁶³ Art. 12(2) of Regulation (EC) No 1082/2006

In terms of functioning, the Euroregion will be composed of following **organs** and bodies:

- The **Director** is the representative and the administrative leader of the EGTC. The work of the director is supported by the Ister-Granum Eurorégió Fejlesztési Ügynökség Kft (Ister-Granum Euroregion Development Agency Ltd).
- The **General Assembly** is the highest decision-making body of the EGTC. Its members are the representatives of the local governments of the settlements participating in the cooperation. Decisions are made with a two-third majority voting system, except for decisions about adoption and amendments of the convention and statutes, which require consensus.
- The **Senate** is the managing and operative body of the EGTC, with eight members. It also manages the EGTC between meetings of the General Assembly.
- **Joint chairpersons**: These are the leaders of the General Assembly and Senate. They are elected by the General Assembly for a period of two years, one year as Executive and one as Deputy Chair.
- **Six committees**:
 - Foreign Affairs Committee
 - Human Resources Committee
 - Economic and Asset Management Committee
 - Environment Protection Committee
 - Industrial and Transport Committee
 - Culture and Tourism Committee
- The **Regional Advisory Body** is composed of the six members of the Senate (local governmental side), the representatives of the Chambers of Commerce and Industry of the three counties involved (NUTS III), the representatives of the three largest employer companies (for the commercial sector), and the six delegates of the Regional Civil Parliament (non-profit sector). The development council is the strategic decision-making body of the EGTC.

As for the financing of the structure, members' contributions are to be paid to the EGTC budget annually, and the amount is calculated on the basis of the population of each member.

Status of implementation (after the launching in May 2008)¹⁶⁴

Step 1 - Registration:

- Registration process in both countries
- Preparation of common projects
- Joining of new members

Step 2 - After the registration:

- Create a committee system
- Actuation of institution system
- To make competitions

¹⁶⁴ Information provided by the Euroregion Ister-Granum, May 2008

5.6. Eurodistrict SaarMoselle¹⁶⁵

Introduction

This border territory between the agglomerations of Sarreguemines (FR, Moselle-Est) and Sarrebrücken (DE, Saarland) covers an area of 1 500 sq km and a population of 1 million inhabitants. It is characterised by strong economic and cultural links and exchanges (no geographical barriers) and a main common challenge: the restructuring of the economy after the dismantling of the mining industry.



Fig. 15: The Eurodistrict SaarMoselle



Fig. 16: Detail view of the Eurodistrict SaarMoselle

Organisational background

Both regions on each side of the border are in a peripheral situation from a national perspective; to overcome this, the local authorities of the region have been conducting exchanges and joint activities for many years. In 1997, they institutionalised their cooperation by creating the *Zukunft SaarMoselle Avenir association* (association under French law specifically applicable to the regions of Alsace and Moselle), with the aim of promoting the development of cross-border cooperation in the area¹⁶⁶. Its registered office is in Sarreguemines (FR) and the operational office is located in Sarrebrücken (DE).

The partners are:

- The Saarbrücken *Regionalverband* (Urban Community)
- The City of Saarbrücken
- The Grouping of municipalities of the Pays de l'Albe et des Lacs
- The Sarreguemines Confluence agglomeration grouping
- The Forbach Porte de France agglomeration grouping
- The Grouping of municipalities of Freyming Merlebach
- The Grouping of municipalities of the Pays Naborien
- The Grouping of municipalities of the Warndt
- The Grouping of municipalities of the Faulquemont District

¹⁶⁵ Main source of information: presentation by Mrs Isabelle Prionon, Director of the Eurodistrict Saarmoselle, given on the occasion of the Second INTERACT Seminar on the EGTC, 10 April 2008, Brussels

¹⁶⁶ For instance, currently the association's activities are built up around three main initiatives: 'Future visions' (prospective document for future urban planning), the 'Metropolitan cooperation project' initiative (supported by the French State / DIACT and Saarland, for the integration of the area), and the 'Eurodistrict' initiative (reflection on the structuring of the cooperation)

The association has various decision-making organs and operational bodies and as such is comparatively straightforward to run, which limits the budget needed. On the other hand, the work done and the contacts obtained are often informal and the financial commitments of the partners are random. It is therefore difficult to structure the operations of the association. Another key-problem is the impossibility for the association, as private-law structure, to manage public funds from e.g. INTERREG programmes, as it would need to provide bank guarantees, which is not possible due to the absence of capital.

This being considered, the association responded to the call launched by the French and German States in 2004, for the creation of 'Eurodistricts'.

The Eurodistrict initiative was therefore launched as a reflection to improve and ensure the sustainability of the structure. Since then, several meetings have taken place to evaluate the various possibilities in terms of legal structure. This year, the working group came to the conclusion that the legal structure of an EGTC would definitely be the best form of cooperation. The EGTC should eventually be able to support the joint development defined in the 'Future vision'.

Following arguments were listed:

- The financial commitments of the partners could be secured on a multi-annual basis, through contributions to the budget of the joint structure. This would guarantee more financial solidity and autonomy of the structure. The budget would be voted upon to implement a multi-annual working programme with adequate resources (compared to the current functioning where the association is almost exclusively dependent on external funding/grants). Also the EGTC itself could apply for EU-funded projects more easily. These two arguments alone are not sufficient to justify the choice of the EGTC, as higher contributions from the members could be collected. However other arguments have to be considered - see below;
- The diversity of cooperation partners involved also gives an advantage to the EGTC, as compared to the Local Grouping of Cross-border Cooperation (LGCC)¹⁶⁷: with the EGTC, different types of public regional stakeholders could become members;
- The EGTC offers a visibility at EU level.

These elements are still subject to approval by the future members of the structure.

Type of EGTC

The type of EGTC envisaged to replace the Eurodistrict association is a multi-functional EGTC with unlimited duration, with activities in different fields of cross-border cooperation, for the overall structuring of the border area.

The purpose of the future structure is to guarantee the sustainable development of the cross-border territory through the support, promotion and coordination of cross-border cooperation between municipalities and groupings of municipalities.

¹⁶⁷ Local Grouping of Cross-Border Cooperation, created by the Karlsruhe Agreement of 1996 between Germany, France, Luxembourg and Switzerland. The LGCC is an integrated cooperation structure of public law, applying to cross-border cooperation among local and regional public authorities (but not national authorities or other public authorities)

In agreement with its purpose, the mission of the future structure will be to:

- Manage cross-border projects;
- Assist its members in producing and implementing cross-border cooperation projects;
- Implement the joint territorial marketing of the cross-border metropolitan area;
- Promote the interests of the cross-border metropolitan area towards regional, national and European institutions;
- Collect and distribute information on cooperation projects of its members throughout the territory of the area;
- Support to cross-border networks of citizens.

Status of implementation

So far the partners of the future Eurodistrict have agreed on the **purpose and main objectives** of the EGTC. Consensus has to be reached on the **scope** of the cooperation area.

In terms of **membership**, the main difficulty at the moment lies in the fact that there are different potential members, some have been cooperating since 1997 already, some only joined the cooperation in 2005 with the Metropolitan project, some are members of the association, others are not. Therefore they have different expectations and levels of commitment, and an idea could be to differentiate between 'core' EGTC members and associated partners with an option for future membership.

Finally, while municipalities were allowed to be members of the association, their participation in the EGTC could lead to over 100 members in the structure, which is challenging in terms of management and organisation. As an alternative one could envisage to open participation to groupings of municipalities instead, so as to limit the number of members while ensuring the representation of the municipalities.

The partners would like to uphold the association's **organs**. Their function will however be slightly altered so as to be suitable to the legal form of the EGTC.

A flat-rate contribution is recommended in terms of financing. The crucial issue that remains to be solved is that of the amount of the members contributions.

As for the **location of the headquarters**, the final recommendations suggest to set up the registered office in France, with an administrative office on the German side. Indeed, while the legal framework in Saarland (DE) offers flexibility, the French legal system guarantees more security in terms of management.

In spite of this, the Eurodistrict SaarMoselle partners defined quite a **tight schedule** for the implementation of the new structure. Until the end of December 2008, potential members are requested to declare their intention to participate in the EGTC. The remaining articles of the statutes and convention will then be drawn, for what concerns the partnership and the allocation of seats. The formal approval of the convention and statutes should start in 2009. The work programme is also being prepared.

5.7. France-Vaud-Geneva Conurbation¹⁶⁸ - *Non-applicability of the EGTC instrument*

Introduction

To meet the travel needs of the inhabitants of the cross-border area in a sustainable manner, the partners undertook to 'plan, coordinate, develop and organise the provision of cross-border public transport' in the entire France-Vaud-Geneva conurbation.

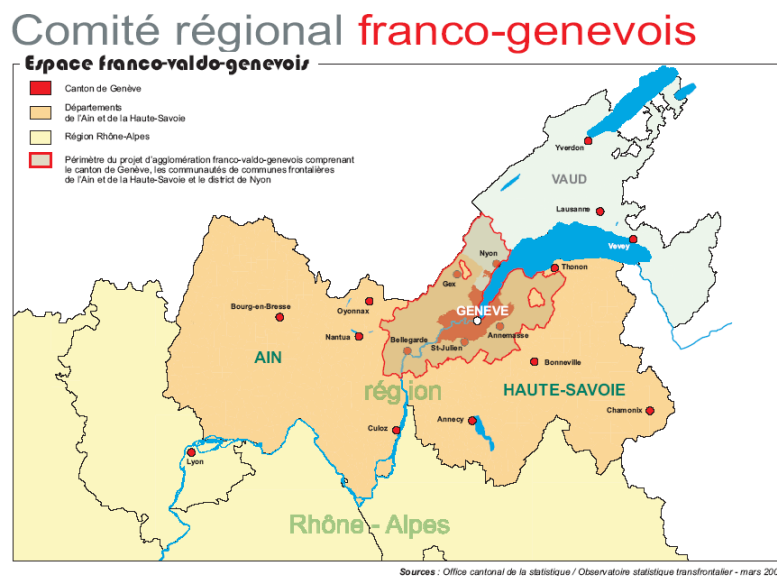


Fig. 17: The France-Vaud-Geneva Conurbation¹⁶⁹

Organisational background

The existing legal structure is the *Comité régional franco-genevois* based on a 1973 international agreement. On 23 February 2007, the French and Swiss local authorities¹⁷⁰ signed a cooperation agreement introducing joint governance for cross-border public transport by road (the inclusion of rail transport would have entailed several other partners). This agreement is based on the establishment of a Strategy Committee and a cooperation structure: a Local Grouping for Cross-border Cooperation¹⁷¹ (LGCC). The LGCC will have the task of organising cross-border public transport by road and its operation, administration, marketing and fare system. Other tasks may be assigned to the LGCC by the Strategy Committee. The establishment of an LGCC also solves one of the major difficulties in setting-up cross-border public transportation by road, since it allows the issue of cross-border calls for tenders.

Due to the fact that an EGTC has to consist of members from at least two EU Member States¹⁷², the France-Vaud-Geneva conurbation cannot set up a European Grouping of Territorial Cooperation as it involves cooperation between one EU Member State and one non EU Member State.

¹⁶⁸ Mission Opérationnelle Transfrontalière. <http://www.espaces-transfrontaliers.org/en/>

¹⁶⁹ Comité régional franco-genevois : http://www.crfginfo.org/fck_editor/upload/File/CRFG_presentation/CarteCRFG_22mars07.pdf

¹⁷⁰ For France: Rhône-Alpes Region, Ain and Haute-Savoie Départements, the municipal communities of the Annemasse conurbation; For Switzerland: the Genevois and the *Pays de Gex*, and Geneva and Vaud cantons

¹⁷¹ The LGCC establishment, which has been possible since the extension of the Karlsruhe agreement of 2004 on the French-Swiss border, is a juristic person under public law with legal capacity and budgetary autonomy. The grouping is subject to domestic law of the state where it has its registered office (in this case France)

¹⁷² Art. 3(2) of Regulation (EC) No 1082/2006

The transportation LGCC mentioned above is only one of several existing or planned LGCCs¹⁷³. At a later stage, all these groupings are to be included in a 'cross-border agglomeration project', which is already quite heavily subsidised by both the French and Swiss national Governments. The main drawback of this instrument is the ban on conferring regulatory power on an LGCC, which could raise difficulties. Additionally, **Member States as such cannot become members of an LGCC** (and due to the rather centralistic nature of France, the participation of the French state would probably be needed alongside the local and regional governments).

The second option consists in using the provision of the French EGTC law which enables the creation of EGTCs with participation from neighbouring third countries of France that are members of the Council of Europe.

¹⁷³Two other LGCCs are already in place in the border area: one for the construction of a tunnel for the draining and treatment of domestic wastewater from the Pays de Gex (FR) to Geneva (CH), the other for the management and functioning of the Salève cablecar (situated on the French territory but on a mountain representing the natural heritage of the whole cross-border area)

5.8. Overview of EGTCs under consideration/in preparation/already functioning

This table, subject to amendments and completion, provides a provisional and non-exhaustive list of potential EGTCs. Some of the cases presented below have only considered the EGTC as one possibility among others - in some cases the EGTC option has been set aside for the time being - and further information should be obtained directly from the contact persons.

Name	Area / countries	Objective	Contact person	Email	Further information
Alpe-Adria Working Community ¹⁷⁴	AT, IT, SI, HR, HU	Multi-functional EGTC			www.alpeadria.org
Alzette-Belval 2015	FR, LU	Feasibility study in progress			
Cerdanya Hospital ¹⁷⁵	FR, ES	Construction and management of a cross-border hospital	Xavier Conill	XCONILL@clinic.ub.es	http://hcerdanya.eu/fr/index.html
DonauHanse	Cities network alongside Danube, from Ulm (DE) to Odessa (UA) Led by City of Vienna (AT)	Establish DonauHanse as a sustainable engine for economic, tourist, infrastructural and cultural cooperation, beyond the current borders of the EU	Gerhard Jakisch	gerhard.jakisch@wien.gv.at	www.donauhanse.net/
Eixo Atlantico	ES, PT	To give a legal basis to the existing Eixo Atlantico network of municipalities (Portuguese private association). Convention and statutes have been drafted.	N. Gestoso	galicia.prensa@eixoatlantico.com	www.eixoatlantico.com
Euregio Weinviertel	AT, CZ, SK	To structure cross-border cooperation, based on the existing Euregio	Hermann Hansy	rm@euregio-weinviertel.org	www.euregio-weinviertel.org/
EuRegio West-Nyugat Pannonia	Burgenland (AT) West-Hungarian counties (HU)	Having a unique structure and office for the Euregio with common staff; project development	Andras Vissi	andras.vissi@westpa.hu	www.euregio.hu/eu/de/west/

¹⁷⁴ See detailed presentation under Point 5.3

¹⁷⁵ See detailed presentation under Point 5.5

Name	Area / countries	Objective	Contact person	Email	Further information
Euregio Salzburg - Berchtesgadener Land - Traunstein	AT, DE	To create a unique legal structure for the EuRegio, instead of two associations and a working community	Steffen Rubach	rubach.euregio@tzf.de	www.euregio.sbg.at
Eurodistrict Sarrebruck Moselle Est ¹⁷⁶	FR, DE	Feasibility study in progress	Isabelle Prianon	isabelle.prianon@rvsbr.de	www.saarmoselle.fr
Eurodistrict Oderland-NadOdrze (EDON) ¹⁷⁷	DE, PL	- To give a legal basis to CBC - EGTC as solution to the absence of bilateral agreement DE-PL ¹⁷⁸ . - Convention and statutes have been drafted.	Heike-Doreen Ehling	info@bezgranic.net	www.bezgranic.net
Eurometropole Lille-Kortrijk-Tournai ¹⁷⁹	BE, FR	Promote and support effective, consistent cross-border cooperation within the metropolitan territory - territorial strategy and governance.	Lille Métropole Communauté urbaine	mvannouque-digne@cucl-lille.fr	www.lillemetropole.fr
Euroregion (so-called 'Villa Manin Initiative')	IT, AT, HR, open to possible SI membership	Create a permanent structure as a legal entity in order to reinforce and support territorial cooperation, focusing on specific issues of common interest.	Nelly Barbon and Maria Greco (Veneto Region), Giorgio Tessarolo and Elisabetta Reja (Friuli Venezia Giulia Region)	maria.Greco@regione.veneto.it nelly.barbon@regione.veneto.it giorgio.tessarolo@regione.fvg.it elisabetta.reja@regione.fvg.it	www.regione.fvg.it/rafpportieuropeinternazionali/areaArgomento.act?dir=/rafvg/cms/RAFVG/AT11/ARG8/
Euroregion Ister-Granum ¹⁸⁰	HU, SK	Multi-functional EGTC	Gyula Ocskay	office@istergranum.hu	www.istergranum.hu

¹⁷⁶ See detailed presentation under Point 5.8

¹⁷⁷ EDON was launched in 2003 as a community of interests between 15 German and Polish municipalities (no legal personality). To date the network numbers 25 members.

¹⁷⁸ At the regional conference of EDON on 4 December 2007, the members jointly signed a letter to urge the national Polish authorities to adopt national provisions so that the planned EGTC can be set up. An interim solution was agreed by the members: to create a German and a Polish association, each association being composed of the respective national members, cooperation being ensured by an agreement signed between the two associations. Source: www.bezgranic.net

¹⁷⁹ See detailed presentation under Point 5.6

¹⁸⁰ See detailed presentation under Point 5.7

Name	Area / countries	Objective	Contact person	Email	Further information
Eurorégion Alpes-Méditerranée ¹⁸¹	FR (Rhône-Alpes, Provence-Alpes-Côte-d'Azur), IT (Liguria, Piemonte, Valle d'Aoste)	To coordinate the participating regions, facilitate access to EU funding, develop a territorial strategy	Secretariat of the Euroregion, Brussels	eventsalpm@bruxelurope.be	Eurorégion Alpes Méditerranée 62, rue du Trône B-1050 Bruxelles
Eurorégion Pyrénées-Méditerranée	ES, FR	Multi-thematic cooperation between the partner regions	Secretariat of the Euroregion	info@euroregio.eu	www.euroregio.eu
Galicia - Northern Portugal Working Community ¹⁸²	ES; PT	Programme and project management	Marilia Silva	marilia.silva@ccdr-n.pt	www.ccdr-n.pt
Greater Region ¹⁸³	FR, BE, DE, LU	Management of the INTERREG IVA Programme Greater Region	Préfecture de Région Lorraine (FR)	arielle.petitdemange@lorraine.p ref.gouv.fr	
National Park Mercantour - Alpi Marittime	FR, IT	Cooperation between neighbouring French and Italian natural parks ¹⁸⁴	Patrizia Rossi	patrizia.rossi@parcoalpimarit time.it	www.mercantour.eu
Plate-forme transfrontalière Flandre occidentale-Dunkerque-Côte d'Opale	BE, FR	-Political representation (governance) -Coordination of the actions of the partners -Coordination of project development ^{185, 186}			www.dunkerquegrandlittoral .org/home.html

¹⁸¹ See detailed presentation under Point 5.4

¹⁸² See detailed presentation under Point 5.2

¹⁸³ See detailed presentation under Point 5.1

¹⁸⁴ There is a longstanding cooperation between the French National Park of Mercantour and the Italian Regional Park Alpi Marittime, with participation in various INTERREG projects and the implementation of common action plans over the past two decades. The Board of directors has recently confirmed its intention to set up an EGTC and to launch the preparation phase. The final perimeter of the cooperation area to be covered by the EGTC is not set yet and could be enlarged to include other parks and partners

¹⁸⁵ Information obtained from the presentation given by Mr Geert Sanders, General Director of the West Vlaamse Intercommunale, MOT Conference 8-9 November 2007, Lille

¹⁸⁶ On 30 November 2007 the political representatives of the area covered by the Platform signed a joint political declaration to set up an EGTC

Name	Area / countries	Objective	Contact person	Email	Further information
Semclimed	Mediterranean countries (Spain, Portugal, France, Italy and Greece) and eventually all Mediterranean regions e.g. North African countries, Turkey, Israel, Palestine, etc.	Management of environmental projects in the framework of INTERREG IVC and/or MED - small-scale EGTCs	Gloria Ortiz	project.cief@gva.es	www.semclimed.blogspot.com/

Table 1: Overview of EGTCs under consideration/in preparation

CHAPTER 6

CONCLUSIONS

6. CONCLUSIONS

With the introduction of the European Grouping of Territorial Cooperation, the European Commission has provided a striking new instrument for territorial cooperation throughout the Union. In fact, Regulation (EC) No 1082/2006 is the first case in which an EC Regulation gives specific and substantial rights to local, regional and national public authorities from different countries to set up joint structures for more efficient cooperation. Like any other, the Regulation produces direct effect in all Member States, but it also required the Member States to adopt the necessary implementing rules to ensure the effective application of the Regulation by 1 August 2007. Even though most Member States have now fulfilled their obligations, many have not done so yet and delays are therefore expected in the notification processes of newly created EGTCs.

Final recommendations

As the establishment of an EGTC can be a long process requiring long-term involvement and commitment on the part of the partners as well as financial investment, such investments should be proportionate to the expected result – a **cost-benefit analysis** should be organised.

Early on in the development stage the prospective members should consider the **sustainability** of the EGTC. Particularly in the case of programme management the timing factor is essential, as the setting-up process of an EGTC might take some time. In general, the setting up of an EGTC might be easier where a **long tradition of trust and cooperation** is already in place based on a formal structure (e.g. Euroregion/Euregio) compared to regions with little history of cooperation and no strong structures in place.

Also a cost-benefit analysis of non-cooperation should be envisaged, as non-cooperation may in the long-run be more costly than cooperation!

It is also highly recommended to state a **clear mission and objective** of the EGTC at the very beginning. Prospective members should not hesitate to **obtain legal advice** concerning the applicable national legislations.

As the field of activities covered by Regulation (EC) No 1082/2006 is very large and offers a complex number of different types of EGTCs, the methodology, strategy and legal steps for establishing an EGTC will have to be adapted. Although a number of legal aspects are still very unclear, national legislators (or administrative authorities) should thus be encouraged to adopt rules quickly, at least for certain categories of EGTCs to be established on their territory, without waiting for all these legal issues raised by the variety of potential EGTCs to be resolved¹⁸⁷.

Support

INTERACT and the Committee of the Regions, which has set up a register of existing EGTCs (according to Art. 5 of Regulation (EC) No 1082/2006), actively follow the development of EGTCs and pursue their efforts to sustain territorial cooperation. Technical support for pioneer/pilot EGTCs, collections of good practices and guidelines for establishing or managing EGTCs in different legal contexts may also be provided by supporting institutions (*Mission Opérationnelle Transfrontalière* (MOT) and EUROMOT¹⁸⁸, The General Secretariat of the Benelux, The Association of European Border Regions, The Assembly of European Regions, etc.)¹⁸⁹.

¹⁸⁷ E.g. the participation of a foreign state in a legal structure under domestic law, even if it is based on an EC Regulation, raises numerous and substantial legal problems

¹⁸⁸ MOT (www.espaces-transfrontaliers.org/en) is a member of EUROMOT, the European network of cross-border local authorities created in November 2007 by MOT, Eixo Atlantico and City Twins

¹⁸⁹ Recommendation by mecca consulting

The European Commission, in line with its mandate as stated in Art. 17 of Regulation (EC) No 1082/2006, plays a specific role in the framework of this monitoring and follow-up process, being in charge of evaluating the application of the Regulation and proposing any changes, if needed, by 1 August 2011. To do so, the European Commission should be informed by each Member State of the national provisions taken in application of the Regulation.

Conclusions

Having said that, **all theoretical questions currently arising might be resolved very easily in practice or indeed not occur at all!** Pragmatism and flexibility will be needed, as well as a strong commitment on the part of the potential EGTC partners. Any obstacles can be overcome as long as there is a strong and joint desire to do so - after all, that is what territorial cooperation is all about.

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ANNEXES

ANNEXES

ENCLOSED WITH THE HANDBOOK:

1. Roadmap for setting up an EGTC
2. EGTC model convention - Template for use
3. EGTC model statutes - Template for use
4. Other available legal instruments for the purpose of territorial cooperation
5. Useful links and contacts

AVAILABLE ON THE INTERACT WEBSITE (ELECTRONIC ANNEXES):

- FAQ on the EGTC - Based on Questions and Answers sessions of the past INTERACT Seminars on the EGTC
- Relevant Community Regulations (EGTC, EEIG, SE, SCE, etc.)
- National provisions adopted

ANNEX 1 - ROADMAP FOR SETTING UP AN EGTC

This roadmap is to be used by the prospective partners of a future EGTC as a practical tool for reflection and decision-making. The phases presented in the roadmap may be considered differently or the order of the steps may be changed. No specific timing can be given for each of these steps as it will vary greatly depending on the different types of cooperation envisaged. In any case, the roadmap should be used carefully, taking into account potential delays and drawbacks as well as other alternative solutions available, in order to reach the most cost-effective solution for all partners involved. Before considering the first step of the roadmap, it is advisable to organise a needs assessment among the potential partners and other stakeholders, e.g. in the form of a feasibility study.

All steps of this roadmap are presented in further detail in Chapter 4 of the Handbook, including specific information/recommendations for the setting up of an EGTC for programme management (PM) or project management (PJM) - see column 'Reference in Chapter 4'.

Phase	Implementation steps	Explanation	Source	Open questions to be discussed	Action list	Reference to Handbook
PREPARATION	P 1 Analysis of the needs and objectives of the cooperation	The objective of an EGTC shall be to facilitate and promote cross-border, transnational and/or interregional cooperation between its members with the aim of strengthening economic and social cohesion.	Art. 1(2) and Art. 7(3) (a contrario) of Regulation (EC) No 1082/2006	<p>1) Do the defined needs and objectives of the cooperation correspond with the possible tasks of an EGTC?</p> <p>2) Discuss which of the 4 EGTC models you want to set up in order to implement:</p> <ul style="list-style-type: none"> • Territorial cooperation programmes - European Territorial Cooperation programmes • Co-financed projects in the field of territorial cooperation under the European Regional Development Fund (ERDF) incl. European Territorial Cooperation projects • Other EU-funded actions regarding territorial cooperation • Actions of territorial cooperation outside any EU funding <p>3) Can the defined objectives be fulfilled within the required timeframe?</p> <p>4) Does the national law of any prospective Member State forbid the possibility of setting up an EGTC for territorial cooperation outside EU funding?</p>	<ul style="list-style-type: none"> • List of needs and objectives • Definition of the general strategy and mission(s) of the possible EGTC • Definition of the timeframe (setting up, duration of the project/cooperation) • Choose either 1) one of the 4 EGTC models, 2) a mix of different models, or 3) other cooperation structures/agreements • Feasibility study (if needed) 	4.2.1
		An EGTC shall carry out the tasks given to it by its members in accordance with the Regulation and relevant national legislations.	Art. 7(1) and Art. 2 of Regulation (EC) No 1082/2006			
		The tasks of an EGTC shall be limited primarily to the implementation of territorial cooperation programmes or projects co-financed by the Community through the European Regional Development Fund (ERDF). An EGTC may, however, carry out other specific actions of territorial cooperation between its members in pursuit of the objective referred to in Art. 1(2) (see above) with or without a financial contribution from the Community.	Regulation (EC) No 1082/2006 Art. 7(3)			
		Member States may limit the tasks EGTCs may carry out without a Community financial contribution.	Art. 7(3) of Regulation (EC) No 1082/2006			
		The tasks given to an EGTC by its members shall not concern the exercise of powers conferred by public law (sovereign functions) or of duties the objective of which is to safeguard the general interests of the State or of other public authorities, such as police and regulatory powers, justice and foreign policy.	Art. 7(4) of Regulation (EC) No 1082/2006			

Phase	Implementation steps	Explanation	Source	Open questions to be discussed	Action list	Reference to Handbook
PREPARATION	P 2 Definition of the territorial scale	The territorial scale of cooperation within an EGTC can be cross-border, transnational and/or interregional.	Art. 1(2) of Regulation (EC) No 1082/2006	What is the appropriate geographical size of cooperation for achieving the set objectives?	Outline the territory of the cooperation area	4.2.2
		An EGTC has to be made up of members located on the territory of at least two Member States.	Art. 3(2) of Regulation (EC) No 1082/2006			
		Authorities from third countries can be involved in an EGTC if their national legislation or any agreements between Member States and the concerned third country allow(s) it.	Preamble clause 16 of Regulation (EC) No 1082/2006	Does the national law of each prospective member allow the involvement of a third country in an EGTC?	Check if involvement of members from a third country is allowed or not. If allowed, consider whether the third country has adopted applicable legislation for the EGTC and/or signed an agreement with the concerned Member State(s)	
		Although the possibility of involving third countries is constituted by Regulation (EC) No 1082/2006, Member States may prohibit such participation				
P 3 Identification of the essential competences and skills	An EGTC shall be made up of members acting in a common framework, within the limits of their competences under national law. Therefore the least common denominator regarding these competences has to be found.	Art. 3(1) and Art. 7(2) of Regulation (EC) No 1082/2006	Which competences and skills are needed to fulfil the objectives of the EGTC? Do the identified partners have these competences and skills?	Catalogue of topics according to actual and/or needed competences and skills of each prospective partner => find out common fields of competence	4.2.3	

Phase	Implementation steps	Explanation	Source	Open questions to be discussed	Action list	Reference to Handbook
PREPARATION	P 4 Identification of the partners	Members of an EGTC can belong to one of more or the following categories: Member States, regional or local authorities, associations of public authorities (e.g. Euroregions, Working Communities - provided they have a legal personality) and 'bodies gouverne	Art. 3(1) of Regulation (EC) No 1082/2006	<ul style="list-style-type: none"> • If the planned EGTC is based on an existing cooperation structure (Euroregion, Working Community, structures for the management of EU programmes or project-based cooperation structures): <ul style="list-style-type: none"> - Do you already have the needed competences and skills or do you have to change? - Do you need new partners? - What are the conditions for transforming an existing cooperation structure into an EGTC? Does the former structure have to be dissolved? 	<ul style="list-style-type: none"> • Consider the interpretation of 'public equivalent body' in each of the Member States. • Catalogue of (new) partners, including the specification of their legal statuses, competences, and national provisions applying to EGTCs in each Member State concerned. 	4.2.4
	P 5 Exploration of the available national legal frameworks	Although the Regulation has produced direct legal effects in all Member States since 1 August 2007, in practice national provisions have to be in place in the concerned States to enable the establishment of an EGTC. Some Member States have still not progr	Experts recommendation	Have the necessary provisions been made in all concerned Member States?	<ul style="list-style-type: none"> • YES: The provisions are in place in all concerned Member States --> Compare the different applicable provisions and consider those which best fit for the type of EGTC envisaged. • NO: Delays will arise --> Consider whether alternative solutions should be searched for (other type of structure) or wait for the provisions to be in place – This time can be used e.g. to start drafting convention and statutes. 	4.2.5
	P 6 Consideration of the timing and potential risk of delays	Delays are expected due to the fact that some Member States have not progressed very far in making the appropriate provisions. See other potential types of delays in Point 4.2.6	Experts recommendation	<ul style="list-style-type: none"> • How far have the concerned Member States progressed with establishing the provisions? • Has the procedure for application/notification been clarified in all concerned Member States? • What is the attitude of the concerned Member States towards the establishment of an EGTC? • Are there any other expected causes of delay? 	<ul style="list-style-type: none"> • List of possible delays (external and internal factors) • Roadmap and estimated timeframe for setting up (backward planning can be envisaged, taking as starting point the planned date of creation of the EGTC and planning backwards) <p>Either delays are accepted by all members or another cooperation structure/agreement has to be considered</p>	4.2.6

Phase	Implementation steps	Explanation	Source	Open questions to be discussed	Action list	Reference to Handbook
DECISION	D 7 Consideration of other instruments or cooperation structures and selection of the most appropriate	<p>There are a number of possible instruments and structures for territorial cooperation, e.g.:</p> <p><u>Agreements:</u></p> <ul style="list-style-type: none"> • Cooperation agreements, goodwill agreements, memoranda of understanding, etc. <p><u>Structures:</u></p> <ul style="list-style-type: none"> • European Grouping of Territorial Cooperation (EGTC) • European Economic Interest Grouping (EEIG) • Cooperation instruments/structures based on plurilateral or bilateral treaties and agreements • Cooperation structures based on national legislations - with possible participation of foreign members <p><u>See Annex 4 for further information</u></p>	Experts recommendation	<p>Are there any existing adequate cooperation structures or agreements for regulating the cooperation?</p> <ul style="list-style-type: none"> • YES --> Go to question 2 • NO: Why was there no institutional cooperation structure in place so far? <p>a) There were no problems that required such a structure --> Then do not create one, even if possible.</p> <p>b) Problems existed but were efficiently resolved by other means --> Go to question 2</p> <p>c) No institutional solution was available until now --> The existence of the EGTC as a new solution should not prevent you from looking at answers a) and b) again --> Go to question 2</p> <p>2) What are the advantages / disadvantages of using the EGTC versus setting up a new bilateral/multilateral agreement or another structure?</p> <p>3) Do we need to set up a legal structure (with statutes, organs, an office, staff etc) or is the signing of a cooperation agreement sufficient?</p>	Comparison of different alternative instruments and cooperation structures available (taking account of the open questions)	4.3.1
	D 8 Verification of the legal feasibility of the planned proposal	<p>After deciding on the most appropriate solution, the legal feasibility has to be checked taking account of possible differences in the national legal systems (public or private law / limited or unlimited liability).</p>	Experts recommendation	<ul style="list-style-type: none"> • What national provisions are applicable in the different Member States concerned? • Which national provisions are the most appropriate/favourable for the EGTC? 	<ul style="list-style-type: none"> • Recommended: seek legal advice and/or organise a feasibility study • If setting up an EGTC is the most appropriate solution and is legally feasible, then you can implement the next steps. • Otherwise consider another cooperation structure/agreement 	4.3.2

Phase	Implementation steps	Explanation	Source	Open questions to be discussed	Action list	Reference to Handbook
IMPLEMENTATION	I 9 Location of the registered office	The registered office of an EGTC shall be located in a Member State under whose laws at least one of the members is formed.	Art. 8(2) of Regulation (EC) No 1082/2006	<ul style="list-style-type: none"> • Where is the registered office to be set up? 	Decision on the seat of the registered office - To be possibly taken in consideration : <ul style="list-style-type: none"> • National provisions of each concerned Member State (legal status of the EGTC (private-public), provisions regarding staff, provisions regarding liquidation, insolvency, liability, etc.) • Location of the office within the cooperation area (central location should be considered if possible) • Political will to host the office, including e.g. financial offer made by a member • Political stability, administrative culture, opinion of the population, etc • Fiscal regimes and other conditions for staff (salaries, social schemes etc) 	4.4.1
		The decision regarding the seat of the EGTC determines the applicable law and the financial control procedures, as these lie within the competence of the Member State in which the EGTC has chosen to set up its office.	Regulation (EC) No 1082/2006 Art. 2 and Art. 6			
If an existing cooperation structure decides to transform into an EGTC, the working conditions and other considerations during/after the transition phase should be taken into account.		Experts recommendation				
	I 10a Drafting of the convention in agreement with partners and national authorities	<p>An EGTC shall be governed by a convention concluded unanimously by its members.</p> <p>See also Point 4.4.2 for further details</p>	Art. 8(1) of Regulation (EC) No 1082/2006	<p>The convention has to specify:</p> <ul style="list-style-type: none"> • The name of the EGTC and its registered office • The extent of the territory in which the EGTC may execute its tasks • The specific objective and tasks of the EGTC, its duration and the conditions governing its dissolution • The list of the EGTC's members • The law applicable to the interpretation and enforcement of the convention, which shall be the law of the Member State where the EGTC has its registered office • The appropriate arrangements for mutual recognition, including for the purpose of financial control • The procedures for amending the convention. 	<ul style="list-style-type: none"> • Proposal of the convention, to be drafted jointly by all prospective members • Note: Since each amendment to the convention requires approval by the Member States, the content of the convention should be kept very concise - no more than what is required by the Regulation. Other elements can be integrated into the statutes. • Note: The extent of the territory does not necessarily correspond to the entire territory of each prospective member, e.g. where a Member State is a member of an EGTC it is often not the entire national territory concerned. 	4.4.2

Phase	Implementation steps	Explanation	Source	Open questions to be discussed	Action list	Reference to Handbook
IMPLEMENTATION	I 10b Drafting of the statutes in agreement with partners and national authorities	The statutes of an EGTC have to be adopted on the basis of the convention by its members acting unanimously.	Art. 9(1) of Regulation (EC) No 1082/2006	<p>The statutes of an EGTC shall contain, as a minimum, all the provisions of the convention together with the following:</p> <ul style="list-style-type: none"> • The operating provisions of the EGTC's organs (assembly: permanent or rotating presidency?) and their competences, the number of representatives in the relevant organs • The decision-making procedures (consensus or majority rule?) • The working language(s) • The arrangements for its functioning, concerning staff management, recruitment procedures and the nature of staff contracts • The arrangements for the members' financial contributions and the applicable accounting and budgetary rules, including rules on financial issues, for each of the members with respect to the EGTC • The arrangements for members' liability in accordance with Art. 12(2) • The authorities responsible for the designation of independent external auditors • The procedures for amending the statutes • Any other provision deemed relevant 	Proposal of the statutes	4.4.3
		<ul style="list-style-type: none"> • As with the convention, the statutes should also be kept as concise as possible. The competences of the assembly/director have to be clearly specified in the statutes. • If more rules and determinations are needed, the introduction of an additional document such as a procedures manual is recommended as a tool of self-commitment by the EGTC's members. 	Experts recommendation			
	I 11a Notification of the convention and statutes	Each prospective member shall notify the Member State under whose law it has been formed of its intention to participate in an EGTC and send that Member State a copy of the proposed convention and statutes. The Member State shall reach its decision within a deadline of three months, either on the EGTC itself if it is to be set up in this Member State or on the participation of the members from this Member State, as well as giving a decision on the convention and statutes.	Art. 4(2) of Regulation (EC) No 1082/2006		<ul style="list-style-type: none"> • Participation of the members in an EGTC is approved or not • If the convention and statutes are not approved by every concerned Member State, partners have to rewrite them and therefore go back to step I10 	4.4.4
		Once each prospective member has received approval, all members shall unanimously agree on the final version of the convention and the statutes.	Art. 4(5) of Regulation (EC) No 1082/2006		Voting of the convention and statutes by all members unanimously	

Phase	Implementation steps	Explanation	Source	Open questions to be discussed	Action list	Reference to Handbook
IMPLEMENTATION	I 11b Publication of the convention and statutes	The statutes and any subsequent amendments shall be registered and/or published in accordance with the applicable national law in the Member State where the EGTC has its registered office. The members have to inform the Member States concerned and the Committee of the Regions of the convention and the registration and/or publication of the statutes.	Art. 5(1) of Regulation (EC) No 1082/2006		<ul style="list-style-type: none"> • Registration and/or publication of statutes • Inform the Committee of the Regions and the Member States concerned 	4.4.5
		Within 10 working days of the registration and/or publication of the statutes, a request has to be sent to the Office for Official Publications of the European Communities for publication of a notice in the Official Journal of the European Union announcing the establishment of the EGTC.	Art. 5(2) of Regulation (EC) No 1082/2006		Publication of a notice in the Official Journal of the European Union	
	I 12 Launching the EGTC	The EGTC shall acquire legal personality on the day of registration or publication	Art. 5(1) of Regulation (EC) No 1082/2006	<ul style="list-style-type: none"> • What is the role of the director and the assembly? • Should all members be represented in the assembly? • Who should represent each member in the assembly (administrative or political level)? How to ensure continuity, e.g. despite political changes? • How frequent are the meetings of the assembly? • Decision-making process: majority or consensus? • Do we need/want additional organs? • Can the members second staff to the EGTC?: <ul style="list-style-type: none"> - Who employs these staff? - What is the legal basis? - In which country are staff insured? - Can these staff subsequently return to their administration of origin? 	<ul style="list-style-type: none"> • Establishment of the office (incl. branch office(s) if applicable): rental contract, equipment (public procurement procedures of the hosting country to be considered), etc. • Define clearly the functions and competences of the director and the assembly • Recruitment of staff (or secondment from the partner institutions), incl. the director • Launching of the assembly (first meeting) • Launching of first activities --> This requires the availability of funds to cover the launch costs, to be raised from the partners' contributions and/or via a loan. • Setting up of management and control system (incl. financial flows, accounting system) 	4.4.6
		An EGTC shall have at least the following organs: <ul style="list-style-type: none"> • an assembly, which is made up of representatives of its members • a director, who represents the EGTC and acts on its behalf. 	Art. 10(1) of Regulation (EC) No 1082/2006			
		The statutes may provide for additional organs with clearly defined powers.	Art. 10(2) of Regulation (EC) No 1082/2006			

Phase	Implementation steps	Explanation	Source	Open questions to be discussed	Action list	Reference to Handbook
PERFORMANCE	P 13 Budget	An EGTC has to establish an annual budget containing a component for running costs and, if necessary, an operational component (project-related budget).	Art. 11(1) of Regulation (EC) No 1082/2006	• How will the budget be formed?	<ul style="list-style-type: none"> • Draft an annual budget • Decision on the financial contributions of the members • Decision on the financial control procedures, accounting and the audit trail 	4.5.1
		Although not compulsory, contributions by all members are highly recommended to ensure equal involvement and enhance their sense of responsibility.	Experts recommendation	• Should all members contribute to the budget? Equally or not? When and how often should they make these contributions, and in what amount?		
		Control of expenditures: <ul style="list-style-type: none"> • EU funds --> EU eligibility rules and national eligibility rules of the country of the EGTC's seat • Other sources (public funds, contributions of the members) --> rules of the country of the EGTC's seat 	Art. 6 of Regulation (EC) No 1082/2006			
	P 14 Liquidation, insolvency and cessation of payments	As regards liquidation, insolvency, cessation of payments and similar procedures, an EGTC shall be governed by the laws of the Member State where it has its registered office.	Art. 12(1) of Regulation (EC) No 1082/2006	What are the applicable national provisions?	Consult national provisions and clarify these provisions to all members of the EGTC, including members from other EU Member States.	4.5.2
	P 15 Liability	An EGTC shall be liable for its debts whatever their nature. To the extent that the assets of an EGTC are insufficient to meet its liabilities, its members shall be liable for the EGTC's debts whatever their nature, each member's share being fixed in proportion to its contribution, unless the national law under which a member is formed excludes or limits the liability of that member. If the liability of at least one member of an EGTC is limited as a result of the national law under which it is formed, the other members may also limit their liability in the statutes.	Art. 12(2) of Regulation (EC) No 1082/2006	<ul style="list-style-type: none"> • What is the current status regarding liability (unlimited or limited) of the EGTC's members? • What are the national provisions applicable in terms of liability? 	Decision on unlimited or limited liability if the conditions for such a decision are met (according to Art. 12(2) of Regulation (EC) No 1082/2006)	4.5.3
		A Member State can prohibit the registration on its territory of an EGTC whose members have limited liability.	Art. 12(2) of Regulation (EC) No 1082/2006	Is the registration of an EGTC the members of which have limited liability permitted in the Member State concerned?		

Phase	Implementation steps	Explanation	Source	Open questions to be discussed	Action list	Reference to Handbook
PERFORMANCE	P 16 Evaluation	Two to three years after its establishment the EGTC should be evaluated.	Experts recommendation	<ul style="list-style-type: none"> • Which difficulties occurred during the implementation process and in operating the EGTC? • Does the set-up and implementation of the EGTC meet the original expectations? • What kind of evaluation is necessary? Done internally or externalised? • If external, how will the evaluation be financed? 	<ul style="list-style-type: none"> • Upon creation of the EGTC: list objectives/targets and deadlines • Catalogue of difficulties and possible solutions • Do the results of the evaluation meet the expectations set at the beginning of the implementation process? <ul style="list-style-type: none"> - YES: continuation of the EGTC - NO: adjustment of procedures, statutes, etc. or dissolution 	4.5.4
DISSOLUTION	D 17 Dissolution	The activities of an EGTC may be prohibited by a competent court or authority if they contravene public policy, security, health, morality or the public interest. Dissolution may also be possible if the EGTCs activities exceed the defined scope.	Art. 13 and Art. 14 of Regulation (EC) No 1082/2006	<ul style="list-style-type: none"> • Archiving: Who will keep the files of the dissolving EGTC (e.g. accountancy and documentation of expenditures): one of the partners? • Legal proceedings: What if the EGTC was party to any legal proceedings, before or after being dissolved? Legal advice is necessary. • Convention and statutes: Should each EGTC member inform their national authority of the dissolution? Check the national provisions. 	<ul style="list-style-type: none"> • Decision on archiving procedures • Consultation of legal advisors • Check information procedures • Properties: Properties acquired by the EGTC should be sold and/or redistributed among the partners. The remaining budget might be used to pay final expenses, the rest should be redistributed among members, based on a calculation formula to be agreed. • Inform staff about the end of the contracting period in accordance with the applicable national provisions. • Although not explicitly stated in the Regulation, the Committee of the Regions, which holds a register of EGTCs, should be informed of such dissolution. 	4.6
		Dissolution may also be the result of a decision by the Assembly of the EGTC.				
		Results of the evaluation of the performance of the EGTC may lead to different decisions: <ul style="list-style-type: none"> • EGTC with limited duration: dissolution at the termination date of the EGTC, but possible before • EGTC with unlimited duration: dissolution by joint agreement of the members 				

ANNEX 2 - EGTC MODEL CONVENTION, TEMPLATE FOR USE

INTRODUCTORY NOTE

This DRAFT model is based on a draft EGTC convention collected and standardised by INTERACT for use by other cooperation areas. This document is intended to serve as a very basic template for the bodies setting up an EGTC. This draft has to be adapted to reflect the specificities of their EGTC, their partnership and the applicable national law.

The compulsory elements are those listed in Art. 8(2) of Regulation (EC) No 1082/2006:

- Name and registered office - *ARTICLES 1 and 2 of the template*
- Extent of the territory - *ARTICLE 3 of the template*
- Specific objective and tasks of the EGTC - *ARTICLE 4 of the template*
- List of the EGTC members - *ARTICLE 5 of the template*
- Law applicable to the convention (Law of the Member State of the registered office) - *ARTICLE 6 of the template*
- Arrangements for mutual recognition, including for the purpose of financial control - *ARTICLE 7 of the template*
- Procedures for amending the convention - *ARTICLE 8 of the template*

Elements in RED are to be completed by the prospective members.

Additional elements may be necessary for the specific circumstances.

Disclaimer

Please note that INTERACT's goal is to provide useful information to European Territorial Cooperation programmes and projects, as well as to keep this information timely and accurate. If errors are brought to our attention, we will try to correct them. However we cannot accept responsibility or liability with regard to this information. This information is:

- of a general nature only and is not intended to address the specific circumstances of any particular individual or entity;
- not necessarily comprehensive, complete, accurate or up to date;
- not professional or legal advice (if you need specific advice, you should always consult a suitably qualified professional).

Convention of the European Grouping of Territorial Cooperation

[NAME OF THE EGTC]

Based on Art. 8 of Regulation (EC) No 1082/2006 of the European Parliament and the Council of 5 July 2007 on a European Grouping of Territorial Cooperation (EGTC)

PREAMBLE¹⁹⁰

ARTICLE 1 - NAME

The name of the EGTC is [NAME OF THE EGTC]

⇒ **Nota Bene:** if the members of the EGTC have limited liability, the name of the EGTC shall include the word 'limited'¹⁹¹.

ARTICLE 2 - REGISTERED OFFICE

The registered office of the EGTC is located in [NAME OF THE COUNTRY - POSTAL ADDRESS OF THE REGISTERED OFFICE]

⇒ **Nota Bene:** if the registered office is not the same as the operational office, the location of the operational office may be stated here.

ARTICLE 3 - AREA OF INTERVENTION

[LIST OF THE AREAS COVERED BY THE EGTC INTERVENTIONS]

⇒ **Nota Bene:** It is not necessarily the case that the area of intervention of the EGTC corresponds to the overall area of each member (e.g. if a Member State is a member of the EGTC, it does not mean that the whole country area is covered by the EGTC).

⇒ **Option:** The possibility for territories outside the area covered by the EGTC to be associated with the activities of the EGTC on an ad-hoc basis.

ARTICLE 4 - OBJECTIVE AND TASKS

4.1 Main objective

The objective of the EGTC is to [MAIN OBJECTIVE OF THE EGTC].

⇒ **Nota Bene:** The EGTC is of course expected to contribute, through its activities, to the strengthening of economic and social cohesion, but this does not necessarily have to be justified in written in the statutes and convention (Art. 7 of Regulation (EC) No 1082/2006) (in most cases such contribution is self-explanatory).

4.2 Tasks

The specific tasks of the EGTC are: [LIST THE SPECIFIC MISSIONS OF THE EGTC]

4.3 Duration of the EGTC

The EGTC is set up for [UNLIMITED/LIMITED] duration [UNTIL ... AND END DATE IF LIMITED DURATION]

¹⁹⁰ Optional

¹⁹¹ Art. 12(2) of Regulation (EC) No 1082/2006

4.4 Dissolution

- Satisfaction of creditors and distribution of the remaining property
- Dissolution procedure: start date; liquidators: functions and mission.

ARTICLE 5 - MEMBERS

The members of the EGTC are [LIST OF THE MEMBERS].

⇒ **Option:** Rules applying to membership.

ARTICLE 6 - APPLICABLE LAW

The members will comply with Regulation (EC) No 1082/2006 of the European Parliament and the Council of 5 July 2006 on a European Grouping of Territorial Cooperation (EGTC) as amended, as well as with the national provisions of the Member State in which the EGTC has its registered office.

For the interpretation and enforcement of the convention, the law of [MEMBER STATE OF THE REGISTERED OFFICE OF THE EGTC] is applicable.

ARTICLE 7 - AGREEMENTS FOR MUTUAL RECOGNITION

In the interests of mutual recognition of the legal systems of the EGTC members from the other participating Member States, including for financial control issues, it is agreed that all documentation needed for financial control should be made available in the language of the independent external auditors [NAME IF APPLICABLE] and in the form required.

ARTICLE 8 - PROCEDURES FOR AMENDING THE CONVENTION

Amendments to the convention require the approval of the members of the EGTC. Based on a proposal of amendment by a member to the [ASSEMBLY OR OTHER RELEVANT ORGAN RESPONSIBLE], the proposal will be submitted to the assembly for decision. Each amendment to the convention requires the approval of the members. Each member informs its Member State of the purpose of the amendment and sends its Member State a copy of the proposal of amendment. Each amendment must be publicised in accordance with Art. 5 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).

ARTICLE 9 - FINAL PROVISIONS

The EGTC members will notify the present convention to the Committee of the Regions according to Art. 5 of Regulation (EC) No 1082/2006.

[OTHER FINAL PROVISIONS]

Date, place

Signatures

ANNEX 3 - EGTC MODEL STATUTES, TEMPLATE FOR USE

INTRODUCTORY NOTE

This DRAFT model is based on a draft EGTC statute collected and standardised by INTERACT for use by other cooperation areas. This document is intended to serve as a very basic template for the partners setting up an EGTC. This draft has to be adapted to reflect the specificities of their EGTC, their partnership and the applicable national law.

The compulsory elements are those listed in Article 9(2) of Regulation (EC) No 1082/2006:

- All provisions of the convention - *ARTICLE 1 TO 8 of the template*
- The operating provisions of the organs and their competences, as well as the number of representatives of the members in the relevant organs - *ARTICLE 9 to 12 of the template*
- The decision-making procedures of the EGTC - *ARTICLE 13 of the template*
- Working language(s) - *ARTICLE 14 of the template*
- The arrangements for its functioning [...] - *ARTICLE 15 of the template*
- The arrangements for the members' financial contributions and the applicable accounting and budgetary rules - *ARTICLE 16 of the template*
- The arrangements for members' liability - *ARTICLE 17 of the template*
- The authorities responsible for the designation of independent external auditors - *ARTICLE 18 of the template*
- The procedures for amending the statutes - *ARTICLE 19 of the template*

Elements in RED are to be completed by the prospective members. Additional elements may also be considered.

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- not necessarily comprehensive, complete, accurate or up to date;
- not professional or legal advice (if you need specific advice, you should always consult a suitably qualified professional).

Statutes of the European Grouping of Territorial Cooperation

[NAME OF THE EGTC]

Based on Art. 8 of Regulation (EC) No 1082/2006 of the European Parliament and the Council of 5 July 2007 on a European Grouping of Territorial Cooperation (EGTC).

ARTICLE 1 - NAME

The name of the EGTC is [NAME OF THE EGTC]

ARTICLE 2 - REGISTERED OFFICE

The registered office of the EGTC is located in [NAME OF THE COUNTRY - POSTAL ADDRESS OF THE REGISTERED OFFICE]

ARTICLE 3 - AREA OF INTERVENTION

[LIST OF THE AREAS COVERED BY THE EGTC INTERVENTIONS]

⇒ **Nota Bene:** It is not necessarily the case that the area of intervention of the EGTC corresponds to the overall area of each member (e.g. if a Member State is a member of the EGTC, it does not mean that the whole country area is covered by the EGTC).

ARTICLE 4 - OBJECTIVE AND TASKS

4.1 Main objective

The objective of the EGTC is to [MAIN OBJECTIVE OF THE EGTC].

⇒ **Nota Bene:** The EGTC is of course expected to contribute, through its activities, to the strengthening of economic and social cohesion, but this does not necessarily have to be justified in written in the statutes and convention (Art. 7 of Regulation (EC) No 1082/2006) (in most cases such contribution is self-explanatory).

4.2 Operational objectives

In particular the EGTC aims at [OPERATIONAL OBJECTIVES OF THE EGTC - EXPECTED IMPACT/CONTRIBUTION TO TERRITORIAL COOPERATION/DEVELOPMENT]

4.3 Tasks

The specific tasks of the EGTC are: [LIST THE SPECIFIC MISSIONS OF THE EGTC]

4.4. Duration of the EGTC

The EGTC is set up for [UNLIMITED/LIMITED] duration [UNTIL ... END DATE IF LIMITED DURATION]

4.5 Dissolution

- Satisfaction of creditors and distribution of the remaining property
- Dissolution procedure: start date; liquidators: functions and mission.

ARTICLE 5 - MEMBERS

The members of the EGTC are [LIST OF THE MEMBERS].

ARTICLE 6 - APPLICABLE LAW

The members will comply with Regulation (EC) No 1082/2006 of the European Parliament and the Council of 5 July 2006 on a European Grouping of Territorial Cooperation (EGTC) as amended, as well as with the national provisions of the Member State in which the EGTC has its registered office.

For the interpretation and enforcement of the convention, the law of [MEMBER STATE OF THE REGISTERED OFFICE OF THE EGTC] is applicable.

ARTICLE 7 - AGREEMENTS FOR MUTUAL RECOGNITION

In the interests of mutual recognition of the legal systems of the EGTC members from the other participating Member States, including for financial control issues, it is agreed that all documentation needed for financial control should be made available in the language of the controlling institution [NAME IF APPLICABLE] and in the form required.

ARTICLE 8 - PROCEDURES FOR AMENDING THE CONVENTION

Amendments to the convention require the approval of the members of the EGTC. Based on a proposal of amendment by a member to the [ASSEMBLY OR OTHER RELEVANT ORGAN RESPONSIBLE], the proposal will be submitted to the assembly for decision. Each amendment to the convention requires the approval of the members. Each member informs its Member State of the purpose of the amendment and sends its Member State a copy of the proposal of amendment. Each amendment must be publicised in accordance with Art. 5 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).

ARTICLE 9 - ORGANS

The organs of the EGTC are:

- The assembly
- The director
- [ADDITIONAL ORGANS]

ARTICLE 10 - ASSEMBLY

10.1 Mission

The assembly is responsible for the adoption of the general strategy and the annual work plans [OR ANY OTHER IMPLEMENTATION DOCUMENT]. The assembly is responsible for the adoption of the annual budget of the EGTC in accordance with Art. 11 of Regulation (EC) No 1082/2006. [POSSIBLE Additional missions]: e.g.:

- Remission
- Tasks of the EGTC
- Purchase and sale, acquisition of property
- Participation in other organisations
- Loans
- Modification of the statutes
- Approval of rules of procedure
- Election of the members of the board

⇒ **Nota Bene:** Additional missions may be entrusted by the members to the assembly in respect of the EGTC Regulation and the domestic law of the Member State where the EGTC is registered.

10.2 Chair

[CHAIRPERSON - FUNCTION - RULES]

10.3 Decision-making procedures

Voting: Each member has one vote.

Substitution: Members can be represented by [LIST OF POSSIBLE SUBSTITUTES - RULES APPLICABLE] or any other person entitled to vote.

10.4 Integration of new members

10.5 Resignation of a member

10.6 Exclusion of members

The assembly decides upon a proposal of exclusion of member(s). The proposal must be submitted to [RESPONSIBLE ORGAN].

10.7 Decision about amendments to the convention and/or statutes and dissolution of the EGTC

The assembly decides upon amendments to the convention or statutes and about the dissolution of the EGTC.

10.8 Designation of accountant(s)/controller(s)

- [ORGAN IN CHARGE OF THE DESIGNATION]
- [DESIGNATION PROCEDURE AND RULES]
- [DUTIES OF THE ACCOUNTANTS/CONTROLLERS]

10.9 Rules applying to the meetings of the assembly¹⁹²

- Invitation: The invitation is to be sent by [RESPONSIBLE ORGAN] to the members of the assembly at least [NO. OF WORKING DAYS/WEEKS] in advance. Additional points for discussion must be sent to [RESPONSIBLE ORGAN] at least [NO OF DAYS] before the meeting. These additional points will be communicated to the assembly at the beginning of the meeting.
- Frequency of meetings
- Extraordinary meetings [APPLICABLE RULES AND PROCEDURES FOR CALLING SUCH MEETINGS].
- Minutes [CONTENT; ORGAN IN CHARGE OF DRAFTING AND SIGNING].

ARTICLE 11 - BOARD [IF APPLICABLE - OPTIONAL]

11.1 Members and membership (selection procedure, duration of mandate, etc.)

11.2 Mission - fields of intervention

11.3 Frequency of meetings

11.4 Decision-making procedures

¹⁹² Optional - It is recommended that such rules be contained in a separate document, e.g. 'Internal rules of procedure of the EGTC assembly', in order to keep the statutes concise, as recommended in the Handbook (Point 4.4.3)

ARTICLE 12 - DIRECTOR

12.1 Designation/recruitment procedure

12.2 Functions

12.3 Matters for which approval by the assembly or board is required

12.4 Liability

ARTICLE 13 - DECISION-MAKING PROCEDURE

Quorum in the assembly:

- For day-to-day decisions: majority [OTHER RULE] of the members present at the meeting
- For decisions regarding modification of the convention and/or statutes: 2/3 [OTHER RULE] of the members present at the meeting

ARTICLE 14 - WORKING LANGUAGE(S)

14.1 Working languages

The working language(s) of the EGTC is/are [WORKING LANGUAGE(S)]

14.2 Applicable rules (documentation, rules at meetings, etc.)

ARTICLE 15 - FUNCTIONING

Staff administration, recruitment procedures and working contracts [ADDITIONAL PROCEDURES] are the responsibility of [ORGAN]. For these procedures, the applicable law is that of the Member State of the registered office of the EGTC.

⇒ Option - Branch offices, if applicable, may be mentioned here.

ARTICLE 16 - FINANCES

16.1 Annual contributions of the EGTC members

[RULES/SHARE; PROCEDURES]

16.2 Loans

[RELATED PROCEDURE]

16.3 Application for EU-funding (if applicable)

In order to be able to implement its objectives, the EGTC is entitled to submit applications for access to public funding and subsidies

16.4 Accountancy and budgetary rules

The applicable accountancy and budgetary rules are those of the Member State where the EGTC has its registered office.

16.5 Management of public funds, control and accountancy

[RULES AND RELATED PROCEDURE]

ARTICLE 17 - LIABILITY

17.1 Liability of the EGTC

17.2 Liability of the members of the EGTC

17.3 Liability of new members of the EGTC

ARTICLE 18 - RESPONSIBLE AUTHORITIES

The authority in charge of designating the independent external auditor(s) is [NAME AND ADDRESS OF THE AUTHORITY]

ARTICLE 19 - PROCEDURE FOR AMENDING THE STATUTES

Amendments to the statutes need the approval of the members of the EGTC. Based on a proposal of amendment by a member to the [ASSEMBLY OR OTHER RELEVANT ORGAN RESPONSIBLE], the proposal will be submitted to the assembly for decision. Each amendment to the statutes requires the approval of the members. Each member informs its Member State of the purpose of the amendment and sends its Member State a copy of the proposal of amendment.

ARTICLE 20 - FINAL PROVISIONS

The EGTC members will notify the present statutes to the Committee of the Regions according to Art. 5 of Regulation (EC) No 1082/2006.

[OTHER FINAL PROVISIONS]

Date, place

Signatures

ANNEX 4 - OTHER AVAILABLE LEGAL INSTRUMENTS FOR THE PURPOSE OF TERRITORIAL COOPERATION

A broad variety of legal instruments has been tried in order to generally allow for/facilitate territorial cooperation or to specifically enable the setting up of genuine and sustainable cooperation structures and joint programmes. The most common approaches are¹⁹³:

- Multilateral framework treaties and conventions concluded at international level;
- Bilateral or plurilateral agreements and protocols concluded between national states providing for inter-governmental cooperation or promoting cross-border cooperation that are frequently based on international framework treaties or conventions;
- Formal agreements, working protocols, conventions or contracts concluded by regional or local authorities;
- Other legal instruments based on Community law or national law that facilitate cross-border cooperation.

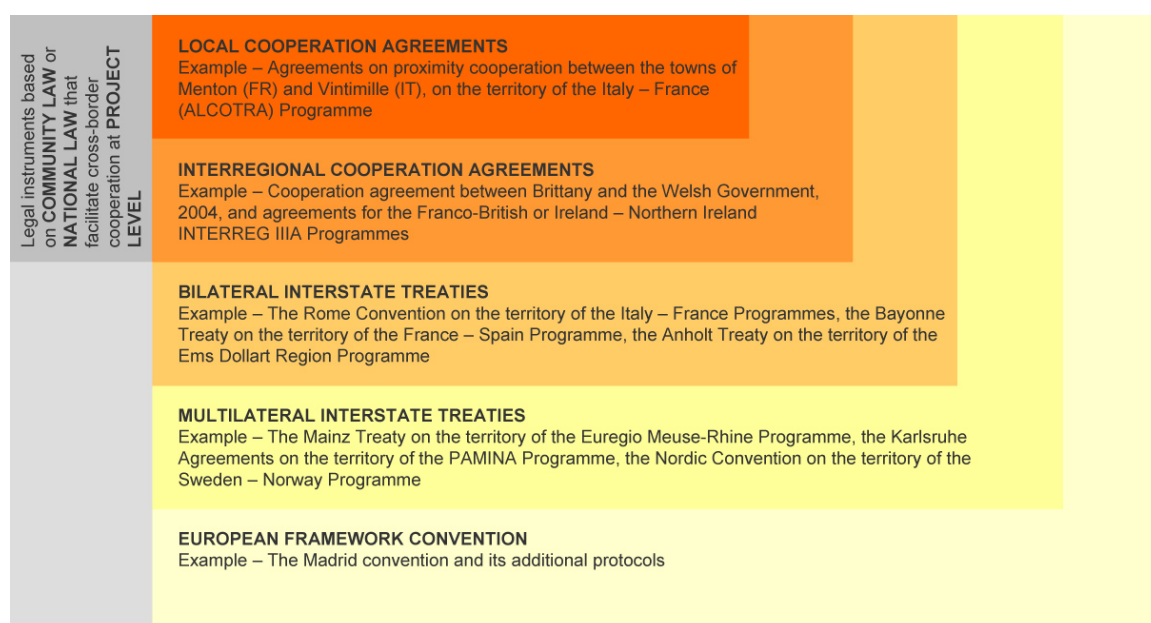


Fig. 18: The legal and international environment of territorial cooperation¹⁹⁴

1. Multilateral framework treaties and conventions concluded at international level¹⁹⁵

Multilateral treaties or conventions concluded at international level are some of the most important and long-standing instruments for providing a comprehensive framework for territorial cooperation - both for public and private bodies. These treaties and conventions can be concluded at different levels (between states or as quasi-executive agreements between Governments and in some cases, i.e. in federal states such as Germany, by regions when they have the international competence).

Further important instruments are international conventions elaborated and adopted under the auspices of the Council of Europe. The most important example is the Outline Convention on Transfrontier Cooperation between Territorial Communities or Authorities (Madrid Outline

¹⁹³ Association of European Border Regions (2001): *Transeuropean Cooperation between Territorial Authorities. New challenges and future steps necessary to improve cooperation*. <http://www.aebr.net>

¹⁹⁴ Based on INTERACT Point Tool Box: *Study on organisational aspects of cross-border INTERREG programmes - Legal aspects and partnerships*, 2006 - p. 39

¹⁹⁵ Association of European Border Regions (2001): *Transeuropean Cooperation between Territorial Authorities. New challenges and future steps necessary to improve cooperation*. <http://www.aebr.net>

Convention of 1980 and its Additional Protocols)¹⁹⁶. In the main part of the convention the contracting parties commit themselves (within the framework of their national laws) to a number of tasks: resolving legal, administrative and technical difficulties of cross-border cooperation (Art. 4); considering the possibility of providing regional and local authorities with special facilities in order to engage in cross-border cooperation (Art. 5); and supplying relevant information to other contracting parties (Art. 6), to their own regional and local authorities (Art. 7), and to the Council of Europe (Art. 8).

One limitation of the Madrid Outline Convention and the First Additional Protocol (1995) is that the systems and models contained in the documents are not directly applicable in practice, therefore they do not in themselves provide a treaty for cross-border cooperation but merely a framework. Examples from several border regions demonstrate that additional treaties need to be concluded between two national states to enable the regional and local authorities to engage in direct cross-border cooperation. In order to close the gap between the intense practice of networking and the legal reality, the Second Additional Protocol (1998) aimed at organising development cooperation between territorial communities and providing it with an adequate legal framework. However, the Additional Protocols have not been ratified by all countries, which makes them inapplicable in some countries, e.g. Italy.

2. Bilateral or plurilateral agreements and treaties concluded between states¹⁹⁷

A wide range of bilateral or plurilateral agreements and treaties have been concluded between states in the field of cross-border cooperation. All arrangements, principles and guidelines contained in these agreements and treaties depend entirely upon the political will of the signatory states. The dominant sub-types of interstate agreements are:

- Specific agreements providing for the establishment of inter-governmental commissions in the field of spatial planning, cross-border cooperation or regional development;
- Agreements on specific aspects of territorial cooperation;
- Simple agreements on good neighbourliness at the borders;
- Agreements on the implementation of the Madrid Outline Convention permitting general cross-border cooperation between regional and local territorial authorities.

Interstate agreements have quickly become one of the most common instruments for territorial cooperation across all aspects and stages of cooperation, namely planning, implementing, monitoring, funding and monitoring.

One example is the German-Dutch Treaty on Cross-border Cooperation (**Isselburg-Anholt Agreement** of 1991, ratified in 1993). This is a highly developed form of cross-border cooperation between regional and local authorities and enables regional authorities to pass public or private law agreements at cross-border level. This agreement is based on strong political commitment at national, regional and local levels and was designed with the prime objective of developing a practical instrument to enable regional and local bodies to engage in cooperation. The main feature of the German/Dutch treaty is that it provides for four types of cooperation at sub-regional level:

- Agreements under public law can be concluded between regional and local authorities;
- One local or regional authority can act on behalf of another in a foreign country;
- The establishment of an '*Arbeitsgemeinschaft*' (association) as a forum for decision-making, but without official powers;
- The establishment of an '*Öffentlichrechtlichen Zweckverband*' (administrative association for particular public service under public law) with a legal personality which can act on

¹⁹⁶ Council of Europe: (a) *European Outline Convention on Transfrontier co-operation between territorial communities (Madrid Outline Convention)*. European Treaties Series /106, Strasbourg 1999. (b) *Additional Protocol to the European Outline Convention on Transfrontier Cooperation between Territorial Communities or Authorities* (c) *Protocol No 2 to the European Outline Convention on Transfrontier Cooperation between Territorial Communities or Authorities concerning inter-territorial cooperation with explanatory report*

¹⁹⁷ Association of European Border Regions (2001): *Transeuropean Cooperation between Territorial Authorities. New challenges and future steps necessary to improve cooperation*. <http://www.aebr.net>

behalf of its members at cross-border level and represents a far-reaching form of cooperation (Euregios Rhein-Waal and Ems-Dollart have been reconstituted under this provision of the Treaty). It was far-reaching when adopted; this is, however, the solution that inspired the 1995 Additional Protocol to the Madrid Convention (ECTS n° 159) and it has therefore become common in most agreements since 1995.

A second example is the **BENELUX Convention** of 1989, which provides public local bodies in Belgium, the Netherlands and Luxembourg with new legal possibilities for implementing cross-border cooperation, but without any obligations. Two solutions are proposed: a legal entity of public law based on Dutch inter-municipal cooperation principles, and a more restricted form of cooperation based on an administrative agreement without the creation of any legal entity.

3. Formal agreements and less formal conventions or working protocols concluded by regional and local authorities¹⁹⁸

Local and regional authorities can conclude formal agreements on territorial cooperation directly, where the respective own national Government does not in principle appear as the contracting party. They can also adopt less formal agreements such as conventions on cooperation or working protocols between themselves. The practical possibilities for a 'legal contractual engagement' of regional and local authorities in an international context do however vary greatly throughout Europe and are dependent on the constitutional, legal and administrative framework of each state.

The **Mainz Agreement** of 1996 is an important example of a formal agreement on general cross-border cooperation, concluded directly between regional authorities of federal states without national Governments being involved. Contracting parties are the Federal State of North Rhine Westphalia (D), the Federal State of Rhineland Palatinate (D), the German-speaking Community (B) and the Walloon Region (B). This agreement is based on the Madrid Outline Convention and is in many respects (contents) comparable to the Isselburg-Anholt interstate agreement concluded between Germany and the Netherlands in 1991. The agreement foresees the possibility to set up public law-based cooperation bodies between local authorities (*Zweckverbände*), the conclusion of public law-based conventions and the creation of local working communities (*kommunale Arbeitsgemeinschaften*).

4. Legal instruments based on Community law or national law that facilitate cross-border cooperation at project level¹⁹⁹

Project-based territorial cooperation activities are mostly based on ad hoc solutions. They may be based either on arrangements and sporadic working groups or on agreements at local, regional or national level. In some cases these activities do not need their own permanent cooperation structure. Many cross-border projects can be dealt with by existing bodies on either side of the border. However, new project-level cooperation structures may sometimes be needed. There are several possible solutions: regional and local authorities may use legal instruments established under EU law (such as European Economic Interest Groupings, EEIGs) or solutions provided by national law. Following EU-based solutions can be considered:

4.1. The European Economic Interest Grouping (EEIG)²⁰⁰

The European Economic Interest Grouping (EEIG) is a legal facility established by Community law²⁰¹. The implementation of some provisions was deferred to the EU Member States: each Member State passed implementation laws which govern certain matters relating to groupings and set up the

¹⁹⁸ Association of European Border Regions (2001): *Transeuropean Cooperation between Territorial Authorities. New challenges and future steps necessary to improve cooperation*. <http://www.aebr.net>

¹⁹⁹ *ibid.*

²⁰⁰ European EEIG Information Centre. *EEIG European Economic Interest Grouping. The only transnational legal instrument for cooperation between entrepreneurs in Europe* (2001). <http://www.libertas-institut.com/uk/EWIV/portal.htm>

²⁰¹ Regulation (EC) No 2137/85

necessary rules for the registration of groupings. This instrument allows the formation of a grouping of individual companies or other legal entities and is especially tailored to SMEs. The purpose of the grouping is to facilitate or develop cooperation among the members.

A grouping must be formed by at least two members coming from two different EU Member States; members can be companies or legal bodies having a central administration in a Member State, or natural persons.

Advantages of an EEIG²⁰²:

- Although EEIGs have to be based upon the terms laid down in the European Regulation²⁰³, they are very flexible and non-bureaucratic legal instruments which can be adapted to different economic conditions. The Regulation guarantees considerable freedom for the EEIG's members in terms of internal organisation and in their contractual relations;
- A grouping can be founded with or without assets, investment or know-how transfer;
- A grouping can be established by subjects of different legal status: self-employed persons, private limited companies, chambers of commerce, etc.;
- The members of a grouping go on carrying out their own activities autonomously and obtain new business opportunities besides;
- The members of a grouping have unlimited joint liability for its debt in the form of subsidiary liability (Art. 24): the EEIG is responsible in the first instance if the assets of the EEIG are insufficient, with responsibility subsequently devolving to its members (similar in the case of an EGTC);
- A grouping pays neither company taxes nor taxes on earnings;
- A grouping can run its own business and have its own trademark;
- The official address of a grouping can easily be transferred within the Community. Other legal instruments require previous winding up of the enterprise, which involves costs, activities and loss of corporate image.

Disadvantages of an EEIG²⁰⁴:

Due to the application of national law the EEIG does not have its own legal personality in some Member States.

Relevance for European Territorial Cooperation programme/project management²⁰⁵:

- The requirement for exclusive support of 'economic activities' limits the scope of operations of an EEIG;
- Public authorities cannot delegate economic activities to an EEIG. Although EEIGs can be used to access Community funding at the level of projects, they cannot be used to manage economic activities directly;
- Additionally EEIGs can only act in the context of private law and are therefore unable to carry out any statutory functions of local authorities. As public authorities are the main actors in European Territorial Cooperation programmes and projects (even if some programmes also authorise private entities to act as final beneficiaries), the EEIG does not appear to be the most appropriate tool for programme or project management.

²⁰² *ibid.*

²⁰³ Regulation (EC) No 2137/85

²⁰⁴ Association of European Border Regions (2001): *Transeuropean Cooperation between Territorial Authorities. New challenges and future steps necessary to improve cooperation.* <http://www.aebr.net>

²⁰⁵ *ibid.*

4.2. The European Company - Societas Europaea (SE)²⁰⁶

It has been introduced to create a European company with its own legislative framework²⁰⁷. This allows companies incorporated in different Member States to merge or form a holding company or joint subsidiary while avoiding the legal and practical constraints arising from the existence of different legal systems. The registered office of the SE designated in the statutes must be the place where it has its central administration. In tax matters, the SE is treated in the same way as any other multinational, i.e. it is subject to the tax regime of the national legislation applicable to the company and its subsidiaries. SEs are subject to taxes and charges in all Member States in which their administrative centres are situated.

Advantages of an SE:

The SE can easily transfer its registered office within the European Union without dissolving the company in one Member State in order to form a new one in another Member State.

Disadvantages of an SE:

The European Company must have a minimum capital of EUR 120,000 and is therefore created for rather large companies only. Where a Member State requires a larger amount of capital for companies exercising certain types of activity, the same requirement will also apply to an SE with its registered office in that Member State.

Relevance for European Territorial Cooperation programme/project management:

The SE only allows companies to merge or form a new holding company or joint subsidiary and therefore has no relevance whatsoever in the field of European Territorial Cooperation programme or project management.

4.3. The European Cooperative Society - Societas Cooperativa Europaea (SCE)²⁰⁸

The European Cooperative Society (SCE)²⁰⁹ constitutes another step in the completion of the European Union's internal market. It aims to provide cooperatives, which are a form of organisation generally recognised in all Member States, with adequate legal instruments capable of facilitating the development of their cross-border/transnational activities, through collaboration, cooperation or mergers between existing cooperatives in the different Member States, or through the creation of new cooperative enterprises at European level. In this sense, the SCE complements the legislation on European Companies (SE). The SCE fills the gap with respect to the transnational activities of cooperatives.

An SCE can be established by natural or legal persons living or having their seat in different Member States. It differs from the SE in that natural persons can also be actors. The SCE is defined as a body with legal personality for which the capital subscribed by its members is divided into shares. Its registered office must be within the Community and must be in the same place as its central administration.

As is the case for the SE, there must always be a cross-border element. For example, an existing cooperative can only transform itself into an SCE if it has an establishment or subsidiary in another

²⁰⁶ EUROPA - SCADPlus. Statute for a European Company (11.10.2004). <http://europa.eu/scadplus/leg/en/lvb/l26016.htm>, last updated on 11.10.2004

²⁰⁷ Legal basis for the SE: Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European Company and Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European Company with regard to the involvement of employees in the European company

²⁰⁸ European Trade Union Institute for Research, Education and Health and Safety. *'The small sister of the SE': The European Cooperative Society (SCE)*
http://www.workerparticipation.eu/european_company/european_cooperative_society/the_small_sister_of_the_se_the_european_cooperative_society_sce and EUROPA - SCADPlus. Statute for a European Cooperative Society (11.10.2004). <http://europa.eu/scadplus/leg/en/lvb/l26018.htm>

²⁰⁹ Legal basis for the SCE: Council Regulation (EC) No 1435/2003 of 22 July 2003 on the Statute for a European Cooperative Society (SCE) and Council Directive 2003/72/EC of 22 July 2003 supplementing the Statute for a European Cooperative Society with regard to the involvement of employees

Member State. In the other listed cases, natural persons or legal entities must always come from at least two Member States. Its founders can also choose whether the SCE shall be governed by a monistic board structure (administrative board) or a dualistic one (management board plus supervisory board).

Advantages of an SCE:

Natural persons as well as legal persons can establish an SCE. An SCE, just like a European Company, can relocate to another Member State without having to be wound up and re-registered. Compared to the SE, the European Cooperative Society is suitable for smaller companies, too.

Disadvantages of an SCE:

A minimum capital of EUR 30,000 is still required to establish an SCE.

Relevance for European Territorial Cooperation programme/project management:

The European Cooperative Society is of no relevance for European Territorial Cooperation programme and project management because national legislations do not usually allow public entities to participate in such mixed economy companies outside the scope of national law.

ANNEX 5 - USEFUL LINKS AND CONTACTS

EU INSTITUTIONS

European Commission

DG Regional Policy

Mr Dirk Peters

Directorate General Regional Policy B.3

Legal and procedural matters, relations with the Committees

Avenue de Tervuren 41

B-1040 Brussels

dirk.peters@ec.europa.eu

Web information on the EGTC: http://ec.europa.eu/regional_policy/funds/gect/index_en.htm

Committee of the Regions

Directorate for Consultative Works

DTC Unit 3 - Networks & Subsidiarity

Rue Belliard, 101

B-1040 Brussels

t: + 32 2 282 25 93

e: egtc@cor.europa.eu

Web information on the EGTC: <http://www.cor.europa.eu/En/activities/egtc.htm>

OTHER INSTITUTIONS

Council of Europe

www.coe.int

See in particular:

- Section dedicated to cross-border cooperation:
http://www.coe.int/t/f/affaires_juridiques/d%E9mocratie_locale_et_r%E9gionale/domaines_dactivites/cooperation_transfrontaliere/default.asp#TopOfPage
- List of Euroregions.
http://www.coe.int/t/E/Legal_Affairs/Local_and_Regional_Democracy/Areas_of_Work/Transfrontier_Co-operation/Euroregions/List_of_Euroregions.asp#TopOfPage

Assembly of European Regions

www.a-e-r.org

See in particular EGTC web section: <http://www.a-e-r.org/fr/themes-majeurs/regional-partnership.html>

Association of Regional Border Regions (AEBR)

www.aebr.net

EUROMOT

www.espaces-transfrontaliers.org

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AECT
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EGTC
EGTS
EOEΣ
ESUS
ETBG
ETEC
ETKR
ETSG
EVTZ
EZÜS
EGTC
REKT

Phases of Setting-Up an EGTC

