

# INTERACT Handbook on the European Grouping of Territorial Cooperation (EGTC)

## WHAT USE FOR EUROPEAN TERRITORIAL COOPERATION PROGRAMMES AND PROJECTS?

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EGTC  
EGTS  
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REKT

Phases of Setting-Up an EGTC



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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'<sup>1</sup> 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 launched the process by originally submitting the 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<sup>2</sup> already available have been used for the development of this Handbook.

The development of the EGTC Handbook was coordinated by INTERACT Point Managing Transition and External Cooperation. The Handbook was drafted by mecca consulting in cooperation with the Assembly of European Regions. Its content was reviewed on two occasions by Prof. Levrat of the University of Geneva and representatives of different institutions concerned also reviewed its content and provided useful inputs.

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

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

<sup>2</sup> 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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## CHAPTER 1

# CONTEXT AND AIM OF THE HANDBOOK

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## 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 way<sup>3</sup>).

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

Numerous reasons can be posited 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 14 July 2004, the European Commission proposed a Regulation to create a European Grouping of Cross-border Cooperation (EGCC)<sup>4</sup>. This proposal by the European Commission was part of the cohesion legislative package for the programming period 2007-13<sup>5</sup>, consisting of a general Regulation and a Regulation for the European Social Fund (ESF), the Cohesion Fund and the European Regional Development Fund (ERDF), respectively.

This new instrument was mainly, though not exclusively, meant to be used for EU programme and project management: 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).

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 cooperation<sup>6</sup>. 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 2006**. Following the approval of the Regulation, which has been directly applicable in all 27 EU Member States since 1 August 2006, Member States had one year's time to make national provisions to ensure the effective application of this Regulation<sup>7</sup>. To date, this process has not yet been completed in all EU Member States (see Chapter 3).

By 1 August 2011, the 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 Commission, the Regulation will remain in force.

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

<sup>4</sup> See COM (2004) 496 final.

<sup>5</sup> Regulation (EC) No 1082/2006, however, like all the other Structural Funds Regulations, is a normative instrument whose validity is not limited to 31.12.2013.

<sup>6</sup> A differentiation is made between 'European Territorial Cooperation' in the meaning of the INTERREG programmes and the European Regional Development Fund (ERDF) on the one hand, and 'territorial cooperation' in a general sense regarding programme and project management on the other.

<sup>7</sup> Throughout the document this process will be referred as the implementation or integration of the EGTC Regulation into the national legal systems.

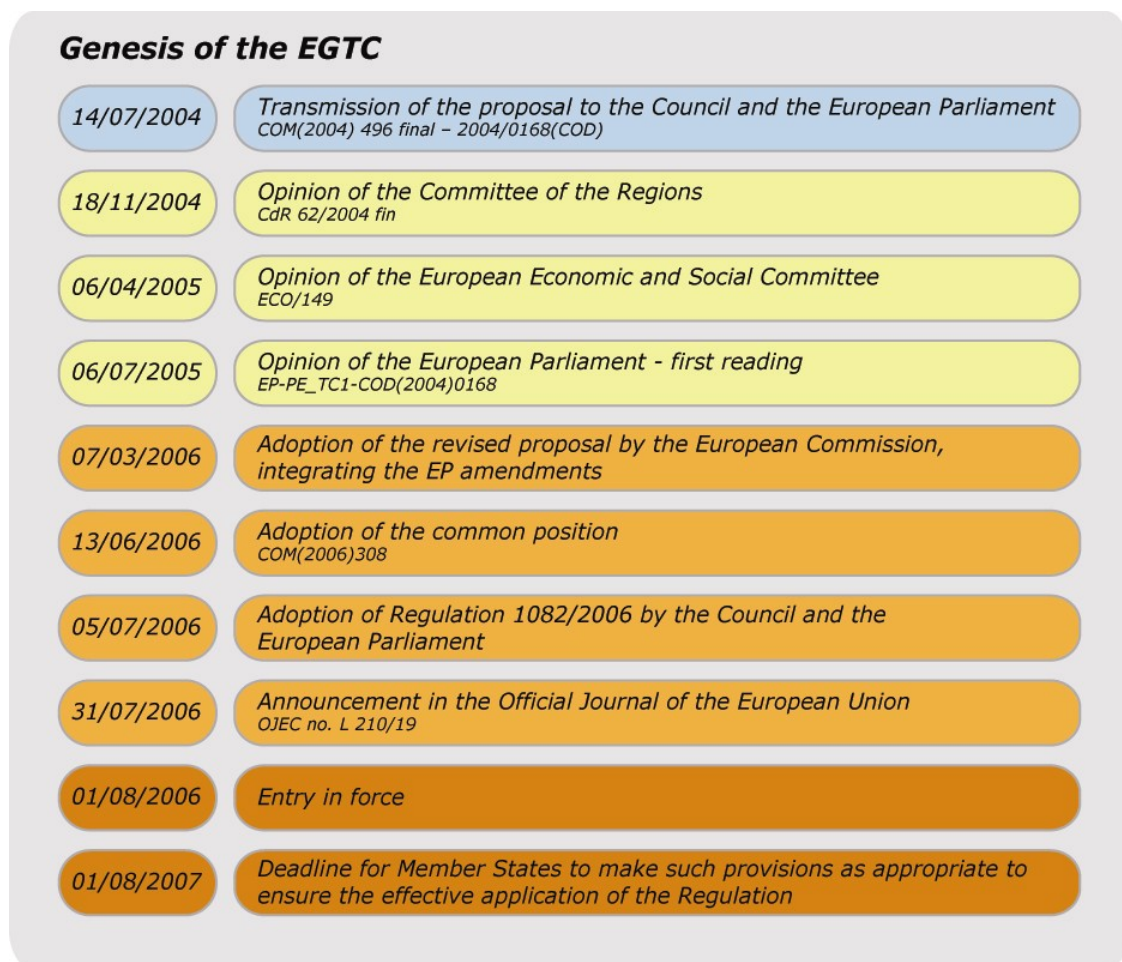


Fig. 1: Genesis of the EGTC

Further details on the genesis of the EGTC are provided by the INTERACT legal study<sup>8</sup> and the EGTC study<sup>9</sup> of the Committee of the Regions.

### 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.

<sup>8</sup> INTERACT Point Tool Box: *Study on organisational aspects of cross-border INTERREG programmes - Legal aspects and partnerships*, 2006.

<sup>9</sup> *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 provisions. See Chapter 3 for further details on the current status;
- 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 too few concrete examples of EGTCs are available so far.
- The EGTC is mainly 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 for the setting-up of the new Operational Programmes, and the EGTC, being an optional and untested instrument, is **not considered a high priority for the moment**. This Handbook will therefore provide a general framework applicable to all types of EGTC, complemented by information specific to EGTCs for programme management (see Point 1.2. below) but also for project management, where interest is high among many stakeholders.

## First EGTC

**The first EGTC on the EU territory was recently created:** on 28 January 2008, the Constitutive Assembly of the EGTC *Eurometropole Lille-Kortrijk-Tournai* took place in Kortrijk (Belgium). 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).<sup>10</sup>



## 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 Article 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<sup>11</sup> *'The European Grouping of Territorial Cooperation'*. This has been supplemented by literature research, questionnaires and additional information provided by experts (peer review by Prof. Nicolas Levrat) and practitioners (EGTC Needs Assessment Meeting<sup>12</sup>; INTERACT Seminar on the EGTC<sup>13</sup> 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**.

<sup>10</sup> More information and contact details can be found under Point 5.7

<sup>11</sup> *op. cit.*

<sup>12</sup> EGTC Needs Assessment Meeting. Vienna, 14.09.2007 - <http://www.interact-eu.net/227138/675434/0/1351353>

<sup>13</sup> First INTERACT Seminar on the EGTC, 26-27.11.2007, 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. This is followed by a brief overview (Chapter 3) of the Member States' progress concerning the adoption of national provisions<sup>14</sup>. 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. The specific cases of 'EGTCs for European Territorial Cooperation programme management' are included in the relevant steps. Since only one EGTC has been set up to date, the selected case studies (Chapter 5) focus on areas that are considering the establishment of an EGTC – the information dates from January 2008.

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<sup>14</sup> 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 have been already made until 1 August 2007.

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CHAPTER 2  
**GENERAL INFORMATION ON THE EGTC**

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## 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 entities 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. Territorial cooperation is to be understood as cross-border, transnational or interregional cooperation.

**Four main models<sup>15</sup>** of EGTC are possible:

- EGTC in order to implement territorial cooperation programmes, incl. European Territorial Cooperation programmes. Example: EGTC as Managing Authority and/or Joint Technical Secretariat;
- 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 projects outside any EU funding.

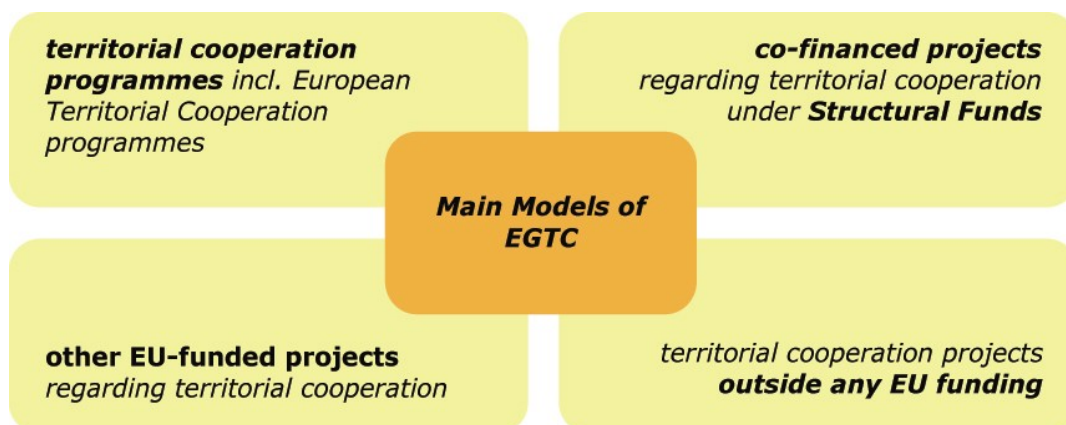


Fig. 2: The four models of EGTC according to Article 7(3) of Regulation (EC) No 1082/2006

### 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 law<sup>16</sup>. This means, for example, that it may 'acquire or dispose of movable and immovable property, employ staff and may be party to legal proceedings'<sup>17</sup>.

<sup>15</sup> Regulation (EC) No 1082/2006 Art. 7(3)

<sup>16</sup> Regulation (EC) No 1082/2006 Art. 1(4)

<sup>17</sup> *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 bodies<sup>18</sup>, associations of public entities<sup>19</sup> 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 States** as such can play three different roles in the process of establishing an EGTC:

- They have to designate responsible authorities for the approval of 'national' EGTC<sup>20</sup> 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 territories<sup>21</sup>;
- They can become members<sup>22</sup> of an EGTC.

**Participation of private entities is excluded as such.** However, entities fulfilling the criteria listed in Article 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'.

### 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's 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 located<sup>23</sup>.

<sup>18</sup> Regulation (EC) No 1082/2006, Art. 3(1)(d): 'bodies governed by public law within the meaning of the second subparagraph of Article 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'.

<sup>19</sup> Associations can become members of an EGTC even if they are private associations, as long as they fulfil the criteria applicable to bodies governed by public law.

<sup>20</sup> With the registered office in its own territory.

<sup>21</sup> Regulation (EC) No 1082/2006 Art. 6

<sup>22</sup> Regulation (EC) No 1082/2006 Art. 3(1)

<sup>23</sup> Schaffer, Hannes; Haselberger, Beatrix; Dillinger, Thomas; Zehetner, Franz: *Europäischer Verbund für Territoriale Zusammenarbeit (EVTZ) - ein Instrument zur grenzüberschreitenden Zusammenarbeit*. Weinviertel Management.

## 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, of a programme, etc. The EGTC is to be seen as an **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 increased visibility and legitimacy of such cooperation.

The **objective and tasks** of an EGTC are laid down by its members in the convention, within the limits set forth by the Regulation<sup>24</sup>. In particular, the EGTC is not entitled to exercise any tasks concerning 'the exercise of 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**'. For example, it is conceivable that an EGTC will be established in order to manage a specific action or project (**'uni-functional EGTC'**), or it may function as an cooperation platform with several missions (**'multi-functional EGTC'**), including coordinating a joint development and/or solving common problems arising in the cooperation area.

In principle, an EGTC must **not engage in commercial profit-oriented activities**, such as e.g. building and running a cross-border golf course<sup>25</sup>. 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')<sup>26</sup>. **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).

## 2.6. Alternative instruments available

The setting up of a specific joint body/structure is not always necessary, as **in some cases the signing of a partnership agreement, convention or memorandum of understanding will be sufficient or more appropriate**.

**In some countries, a diversity of legal instruments for territorial/cross-border cooperation already exists**, based on interstate agreements (e.g. the Benelux, Karlsruhe, Bayonne or Brussels Agreements – see Annex 3) or based on national provisions. 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 envisaged. **In other countries however, the EGTC is the first and only instrument available**.

The next chapter will present the status of implementation of the EGTC Regulation in the EU Member States.

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<sup>24</sup> Regulation (EC) No 1082/2006 Art. 7

<sup>25</sup> Schaffer, Hannes; Haselberger, Beatrix; Dillinger, Thomas; Zehetner, Franz: *Europäischer Verbund für Territoriale Zusammenarbeit (EVTZ) - ein Instrument zur grenzüberschreitenden Zusammenarbeit*. Weinviertel Management.

<sup>26</sup> *ibid.*

## CHAPTER 3

# **STATUS OF THE NATIONAL PROVISIONS IN THE EU MEMBER STATES**

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

#### 3.1. Introduction

Article 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. Austria, Belgium) leads 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)<sup>27</sup>;
- The types of tasks to be carried out by an EGTC domiciled in the Member State (national restrictions are possible<sup>28</sup>);
- 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);
- Additional organs to be set up (e.g. Fiscal council in Portugal);
- Etc

**The national provisions, once adopted, must be notified to the European Commission and the other Member States<sup>29</sup>.**

The deadline for the adoption of such provisions was 1 August 2007. Only few Member States had actually fulfilled this requirement by this date, and a few more have taken the necessary provisions since then. 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, whose results were presented in June 2007<sup>30</sup>. 20 Member States out of 27 answered the questionnaire;
- The round tables organised in the INTERACT Needs Assessment Meeting<sup>31</sup> and in the first INTERACT Seminar on the EGTC, 26-27 November 2007;
- A last update of information that was collected as a follow-up to the first Seminar.

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<sup>27</sup> Regulation (EC) No 1082/2006 Art. 12

<sup>28</sup> Regulation (EC) No 1082/2006 Art. 7(3): 'Ä 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'.

<sup>29</sup> Regulation (EC) No 1082/2006 Art. 16(1)

<sup>30</sup> COCOF-07-0041-01-EN, 12 June 2007

<sup>31</sup> INTERACT EGTC Needs Assessment Meeting. Vienna, 14.09.2007



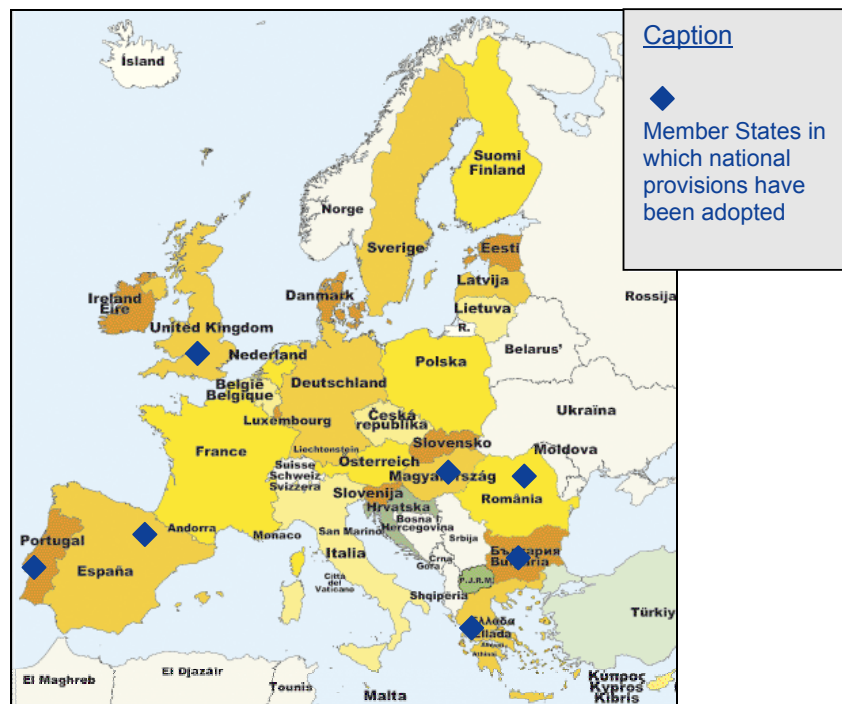


Fig. 3: Overview on the status of national provisions on the EGTC in the EU – February 2008<sup>32</sup>

### 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 8 articles and supplementary provisions (see decree in electronic Annexes). 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.

**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 (Article 22 of Law No 3613, see electronic Annexes) and detailed provisions will follow at a later stage<sup>33</sup>. 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)).

**Hungary** was the first Member State to adopt national provisions in June 2007 (see Act XCIX in electronic Annexes). The legislation is concise and very liberal (all types of EGTCs are envisaged). An EGTC in Hungary will be a non-profit business organisation (probably governed by private law). Members from non-EU Member States are excluded, and members of an EGTC with its seat in Hungary should have limited liability.

**Portugal:** The national provisions were adopted on 27 September 2007 by the Council of Ministers.<sup>34</sup> The Decree Law No 376/2007 was published on 8 November 2007 (available in Portuguese and English versions – see electronic Annexes). According to this decree law, an EGTC in Portugal will be a ‘public collective associational body’ (Art. 2). The Financial Institute for

<sup>32</sup> Source: [http://europa.eu/abc/maps/index\\_en.htm](http://europa.eu/abc/maps/index_en.htm). Copyright: European Commission

<sup>33</sup> Information collected from Greek national body, email of 11.12.2007

<sup>34</sup> Additional information from Portuguese regional body, email of 3.10.2007

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. In terms of organs, an EGTC registered in Portugal must set up a fiscal council (in addition to the organs required by Regulation EC No 1082/2006).

**Romania:** A working group was established to draw up the national provisions, which were eventually adopted at the beginning of November 2007. An EGTC in Romania will be considered as a 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.

**Spain:** National provisions, in the form of a decree (Decree No 37/2008, see electronic Annexes) were adopted on 18 January 2008. It contains 13 articles, which precise 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 a copy of the draft convention and statutes; documentation stating the legal status of the prospective members and, if applicable, their limited liability; finally, the decision of 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 (see act in electronic Annexes). As regards the exercise of Member State options under the EC Regulation, Article 8 of the act states that 'A UK 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'<sup>35</sup>.

### 3.3. Member States in which national provisions have not been adopted are under adoption

**Austria:** Originally the partners envisaged adopting provisions at federal level, applicable throughout the country, but eventually, due to constitutional constraints, it was decided to opt for a regional approach with nine regional sets and one federal set of provisions<sup>36</sup>. A proposal was presented at federal level containing general provisions applicable to all types of EGTC in Austria. The Land of Carinthia led the coordination of the new process. Each Land is now working on its respective provisions and all provisions are expected to be in place by summer 2008.

**Belgium:** The process is complex as each region has to adopt its own provisions, territorial cooperation being a competence of the regions:

- **Flanders:** The Flemish Parliament adopted the draft decree in plenary on 20 December 2007 (see electronic Annexes). The National Council expressed no comments; therefore the decree should enter into force in the first quarter of 2008<sup>37</sup>;
- **Walloon Region:** The draft decree was to be presented to the Council of Ministers of the Walloon Region in first reading on 21 February 2008. The various consultation processes

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<sup>35</sup> The guide is available at: <http://www.berr.gov.uk/files/file40650.doc>

<sup>36</sup> Information collected from Austrian regional body, email of 24.09.2007

<sup>37</sup> Information collected from Belgian regional body, 19.02.2008

- should lead to a final approval of the decree by the Parliament (Walloon Region / French Community) in plenary in June and its publication at the end of June 2008<sup>38</sup>;
- **German-speaking Community:** The Government in first reading on 7 February 2008 approved a draft decree. After submission to the National Council, the Government will decide on the decree in a second reading, before submission to the Committee of the Parliament. Entry into force is expected in spring 2008. The draft decree is concise and consists of a single article indicating that the Government is responsible for the implementation of the Regulation<sup>39</sup>.

**Cyprus:** After a series of consultations between all relevant government departments and the law office, the planning bureau prepared a proposal to the Council of Ministers regarding the establishment of EGTCs in Cyprus. In particular, an EGTC in Cyprus will be a non-profit company whose members will have limited liability according to Cyprus company law. The law is expected to be approved after the presidential elections of February 2008<sup>40</sup>.

**Czech Republic:** The Ministry for Regional Development is in charge of the preparation of the national provisions.

**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. The provisions are expected to come into force on 1 June 2008. According to the proposed provisions it will not be possible to register EGTCs in Denmark if any members have limited liability<sup>41</sup>.

**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 has been refocused and mainly concerns interregional cooperation, the EGTC and the suppression of recourse to the PIG for cooperation<sup>42</sup>. It was adopted on a first reading on 29 January 2008 and will be discussed in the Senate on 3 April 2008<sup>43</sup> before entering into force<sup>44</sup>.

**Germany:** The Länder are in charge of the effective application of the EC Regulation in their respective legislation. Information from the Federal Ministry of Economy and from participants in the INTERACT Seminar indicated that all Länder have designated an authority for the notification process and that in almost all Länder the provisions have been effectively adopted. The Federal Ministry of Economy is available for any requests or questions (Mrs Kirsten Scholl) and will shortly publish an overview of the status of the provisions in the 16 Länder.

**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

<sup>38</sup> Information collected from Belgian regional body, 19.02.2008

<sup>39</sup> Information collected from Belgian regional body, email of 13.02.2008

<sup>40</sup> Information collected from Cyprus national body, email of 18.02.2008

<sup>41</sup> Information collected from Danish national body, email of 18.02.2008

<sup>42</sup> Public Interest Group for cooperation: a French decree of 1994 enabled local authorities from other EU Member States to become members of a PIG. Existing cooperation PIGs will not be suppressed but new cooperation PIGs will be excluded.

<sup>43</sup> [www.assembleenationale.fr/13/dossiers/conformite\\_CGCT\\_reglement\\_groupeementeuropéen\\_cooperation\\_territoriale.as](http://www.assembleenationale.fr/13/dossiers/conformite_CGCT_reglement_groupeementeuropéen_cooperation_territoriale.as)

<sup>44</sup>

Information collected from French national body, email of 14.02.2008

order to prepare such a law. Because of the anticipated end of the current legislature's term, the task will probably be given to the new Parliament to be elected in April 2008<sup>45</sup>.

**Lithuania:** Proposed provisions were submitted to the Government and clarifications were requested on the issues of liability and public interest. The main challenge in Lithuania at the moment is the general lack of information on the EGTC among public institutions<sup>46</sup>.

**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 approval<sup>47</sup>.

**Malta:** The final draft 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 Article 4(4) of Regulation (EC) No 1082/2006. The main specificity of the national provisions is the exclusion of members with limited liability<sup>48</sup>.

**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 draft has to pass the First and Second Chamber and the final provisions are expected to be in place by the end of 2008 at the latest<sup>49</sup>.

**Poland:** The recent political changes have caused delays in the preparation and adoption of national provisions. The Ministry of Internal Affairs is the responsible authority. An inter-institutional consultation was recently organised by the Ministry of Regional Development. A draft law is expected to be adopted in the second quarter of 2008<sup>50</sup>.

**Slovakia:** The provisions have not yet been adopted by the Parliament. Adoption is expected for March 2008.

**Slovenia:** No specific national law needs to be adopted as a governmental decree is sufficient. A local act and a foreign affairs act are in place and the technical steps now need to be taken. An EGTC in Slovenia will have a public or private law basis.

**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 will be sent out in March 2008 for a broad consultation with local and regional authorities, institutions involved in cross-border cooperation, etc. On this basis a draft bill will be submitted to the Parliament in autumn 2008 and the EGTC act is expected to enter into force on 1 January 2009<sup>51</sup>.

No detailed information was found on the remaining EU Member States within the scope of this Handbook. We therefore advise you to consult the website of the **Committee of the Regions**<sup>52</sup> for updated information on implementation progress in the EU Member States.

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<sup>45</sup> Information collected from Italian national body, email of 12.02.2008

<sup>46</sup> Information collected from Lithuanian national body, 27.11.2007

<sup>47</sup> Information provided by Luxembourg national body, email of 29.01.2008

<sup>48</sup> Information collected from Maltese national body, email of 10.12.2007

<sup>49</sup> Information collected from Dutch national body, email of 13.12.2007

<sup>50</sup> Information collected from Polish national body, email of 10.12.2007

<sup>51</sup> Information collected from Swedish national body, email of 12.02.2008

<sup>52</sup> Committee of the Regions. [http://www.cor.europa.eu/document/activities/egtc/EGTC\\_State\\_of\\_play.pdf](http://www.cor.europa.eu/document/activities/egtc/EGTC_State_of_play.pdf), last checked on 18.03.2008

### 3.4. The EGTC and third countries

**Non-EU Member States are not concerned by this new instrument as such<sup>53</sup>**, be they candidate, pre-candidate or other third countries (such as Switzerland or Norway, for instance). 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 pre-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, e.g. in order 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 or not such participation.

### 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 Portugal<sup>54</sup>, 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. Several provisions of the Regulation provide for possible access to judges. However, recourse to legal proceedings delays the process and therefore **dialogue** with national authorities seems more advisable in practice<sup>55</sup>.

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<sup>53</sup> 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.

<sup>54</sup> See Point 3.2 for Portugal and Point 3.3 for France.

<sup>55</sup> Example: In Portugal the national body in charge of setting up the necessary 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**

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## 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, with specific attention paid to EGTCs for programme management.

#### 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 Regions<sup>56</sup>, was further developed and reviewed by various actors, including EGTC specialists and territorial cooperation practitioners, in particular during the EGTC Needs Assessment Meeting<sup>57</sup>.

#### 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 and Performance (rounded off by comments on evaluation and the possibility of dissolution). The summary chart below (see Fig. 4) illustrates these different phases and the corresponding colour codes:

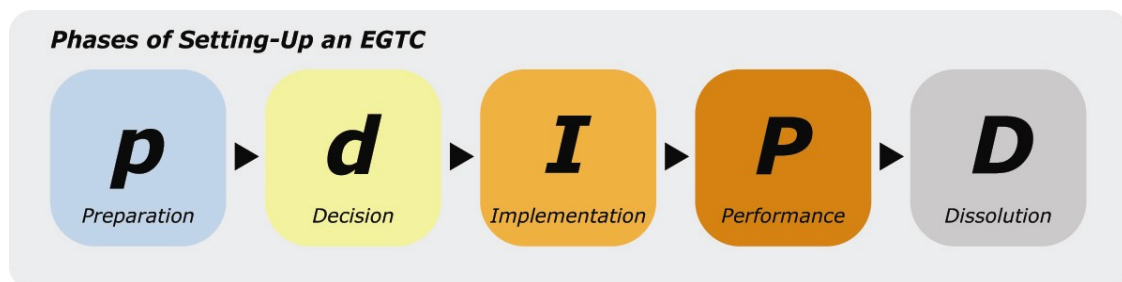


Fig. 4: Phases of setting up an EGTC

For each phase, the following information is given:

- **Presentation** and explanation of the step;
- **Relevant sources** in the EGTC Regulation – no reference is made in the roadmap to the specific national provisions that may apply, but these should not be forgotten and must therefore be carefully considered at each relevant step;
- **Open questions**: questions to be discussed by the prospective members in each phase;
- **Action list**: check-list of actions to be taken by the prospective members to close this step;
- **PM or PJM**: comments specifically applicable to EGTCs for European Territorial Cooperation programme management (PM) or project management (PM).

<sup>56</sup> 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\\_implementation.htm](http://www.cor.europa.eu/En/activities/egtc_implementation.htm), last checked on 18.07.2007

<sup>57</sup> EGTC Needs Assessment Meeting. Vienna, 14.09.2007

This detailed roadmap is supported by two roadmaps in table form, with colour codes corresponding to the different phases identified (see Annexes 5 and 6):

- **A general roadmap** applicable to the setting up and implementation of all types of EGTC;
- **A programme management roadmap** specifically applicable to the setting up of an EGTC for the management of a European Territorial Cooperation programme, which is one of the main targets of this Handbook and requires specific provisions and considerations.

#### 4.1.3. General methodological notes



The phases presented in the roadmap may be considered differently or **the order of the steps may be changed**, e.g. where a cooperation structure already exists and wants to transform itself into an EGTC, some of the steps are not needed (identification of the partners, territory, etc). In other cases, the identification of the partners intervenes prior to the identification of the territory, or 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). The roadmap presents the different steps to be followed, but 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, **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.

**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.** These may range from signing a cooperation agreement to the creation of another type of joint structure, if other instruments are available (see Annex 3 for examples of other available cooperation structures).



In any case, the following 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. It is indeed very important that all partners agree and commit to the chosen solution; therefore this solution must be advantageous for all of them.

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

The European Commission is willing to promote the use of the EGTC for programme management, as Article 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 submitted to the European Commission for approval, **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 2007-13 programming period.** Such transfer is possible, however, 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 (MA) will be transferred from a Belgian public authority (Walloon Region) to the EGTC, with registered office in France.

Generally speaking, a transfer of this kind requires very careful consideration. The **timing factor** in particular must be taken into account, as well as the various procedures needed to endorse the transfer of functions (MA and/or Joint Technical Secretariat (JTS)):

- Update of programme documents (Operational Programme, Memorandum of Understanding, document on the setting up of management and control systems<sup>58</sup>, etc);
- Update of implementation documents (guidelines for applicants, subsidy contracts, 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 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 (MA) and Certifying Authority (CA), there should be a clear division of tasks among the EGTC staff, to be clearly explained in the document on the setting up of the management and control systems<sup>59</sup>. Additionally if the EGTC ensures the function of Managing Authority, the Audit Authority of the Programme will have to be set up in the same country as the EGTC<sup>60</sup>.

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

##### The EGTC and the Lead Partner Principle

With the new programming period 2007-13, the application of 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 now 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)<sup>61</sup>:

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

Under the LPP, project activities are carried out by different partners, one of whom<sup>62</sup> acts as the so-called 'Lead Partner'<sup>63</sup>. A subsidy contract is signed between the Lead Partner and the MA, under which 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

<sup>58</sup> Art. 71 of Regulation (EC) No 1083/2006

<sup>59</sup> *Ibid.*

<sup>60</sup> Art. 14(1) of Regulation (EC) 1080/2006

<sup>61</sup> Art. 19(1) of Regulation (EC) 1080/2006

<sup>62</sup> In certain cases there can be two Lead Partners for administrative reasons.

<sup>63</sup> In Regulation (EC) 1080/2006, the term 'lead beneficiary' is used instead of Lead Partner.

remains fully responsible for its own actions and expenditure, which must be controlled by a designated controller<sup>64</sup>.

With the new EGTC instrument, project partners may decide to create an EGTC for the management of the project. The EGTC would then become the Lead Partner of the project, but since the whole partnership is already included in the EGTC, no additional partner is needed in principle, which would contradict the Lead Partner Principle (which requires at least two partners from two countries). The question of the compatibility of the Lead Partner Principle with the EGTC instrument was addressed to the Legal Department of the DG Regional Policy at the European Commission and answered positively in the course of November 2007. An official communication was sent by the European Commission to the Managing Authorities of all 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 – 6.02.2008 – 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 fulfils the criteria applying to bodies governed by public law<sup>65</sup> or e.g. if it is a private association composed of public bodies<sup>66</sup>), whereas 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.
- In principle, European Territorial Cooperation programmes **do not finance the creation and functioning of joint structures as such**, but may support e.g. projects run by an EGTC. In any case, only those running costs of an EGTC which are directly related to the implementation of the project (staff costs, overheads, etc.) should be considered eligible for EU funding. Under European Territorial Cooperation programmes, different types of costs might be considered eligible for ERDF funding, e.g.:

<sup>64</sup> INTERACT Point Tool Box, *Handbook on the Lead Partner Principle in European Territorial Cooperation Programmes*, 2007.

<sup>65</sup> See Chapter 2

<sup>66</sup> Regulation (EC) No 1082/2006 Art. 3(1)

- A feasibility study for setting up an EGTC may be considered eligible in certain programmes, or
- Some programmes may also consider encouraging the creation of EGTCs for project management by granting a higher ERDF subsidy rate to the projects involving an EGTC;
- 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 in themselves, 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, financial size): 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, including the development of project activities, the management of a public service set up among partners 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.

The EGTC Roadmap

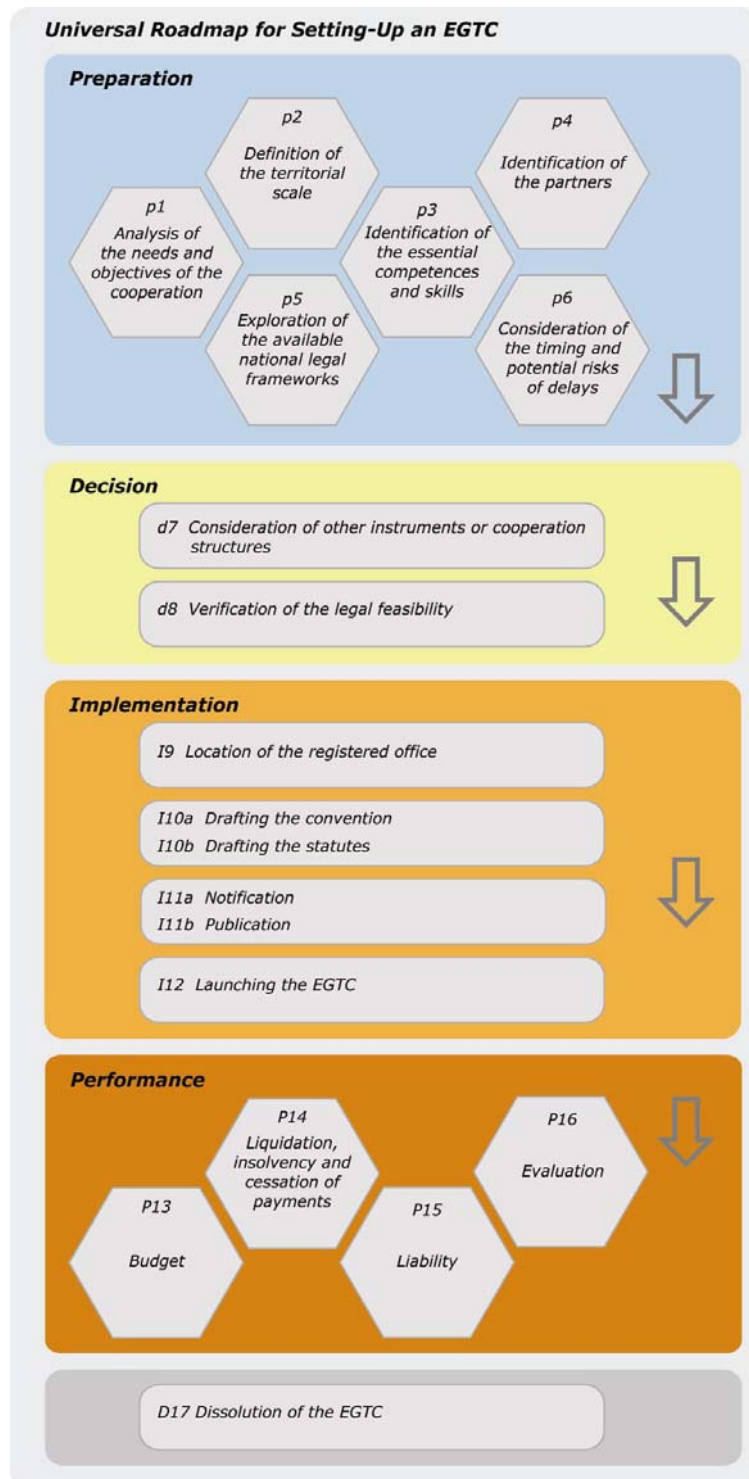


Fig. 5: General Roadmap for Setting-Up an EGTC<sup>67</sup>

<sup>67</sup> 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\\_implementation.htm](http://www.cor.europa.eu/En/activities/egtc_implementation.htm), last checked on 18.07.2007

## 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 (see Point 4.1.3.) 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 cohesion<sup>68</sup>.

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 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 Community<sup>69</sup>. National rules may be more restrictive<sup>70</sup> 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 legislations<sup>71</sup>.

**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 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<sup>72</sup>. Members can only cooperate within the limits of their competences under national law<sup>73</sup>.

#### 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;
- **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 a forum for the coordination of different policies, it can also be charged with the implementation of specific public services on behalf of its members (e.g. Hospital Cerdanya – see Point 5.5.).

<sup>68</sup> Regulation (EC) No 1082/2006 Art. 1(2) and Art. 7(3) (a contrario)

<sup>69</sup> Regulation (EC) No 1082/2006 Art. 7(3)

<sup>70</sup> Regulation (EC) No 1082/2006 Art. 7(3): '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'.

<sup>71</sup> Regulation (EC) No 1082/2006 Art. 7(1) and Art. 2

<sup>72</sup> Regulation (EC) No 1082/2006 Art. 7(4)

<sup>73</sup> Regulation (EC) No 1082/2006 Art. 3(1) and Art. 7(2)

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
<b>General</b>	
<ul style="list-style-type: none"> <li>– Do the defined needs and objectives of the cooperation correspond with the possible tasks of an EGTC?</li> <li>– Discuss which of the 4 EGTC models you want to set up in order to implement:               <ul style="list-style-type: none"> <li>- Territorial cooperation programmes incl. European Territorial Cooperation programmes</li> <li>- Co-financed projects in the field of territorial cooperation under the Structural Funds incl. European Territorial Cooperation projects</li> <li>- Other EU-funded projects regarding territorial cooperation</li> <li>- Projects/actions of territorial cooperation outside any EU funding.</li> </ul> </li> <li>– Can the defined objectives be fulfilled within the required timeframe?</li> <li>– Does the national law of any prospective Member State forbid the possibility of setting up an EGTC for territorial cooperation outside EU funding?</li> </ul>	<ul style="list-style-type: none"> <li>– List of needs and objectives</li> <li>– Definition of general strategy and mission(s) of the possible EGTC</li> <li>– Definition of the timeframe (setting up, duration of the project/cooperation)</li> <li>– Choose one of the 4 EGTC models or other cooperation structures/agreements</li> <li>– Feasibility study (if needed)</li> </ul>
<b>Programme Management</b>	
<ul style="list-style-type: none"> <li>– Can an EGTC be set up in time to manage the Operational Programme?</li> </ul>	<ul style="list-style-type: none"> <li>– Definition of the timeframe (setting up, duration of the Operational Programme)</li> <li>– 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?</li> </ul>

#### 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 interregional<sup>74</sup>. The area of intervention of the EGTC has to cover (parts of) territory from at least **two Member States**<sup>75</sup>.

**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.

<sup>74</sup> Regulation (EC) No 1082/2006 Art. 1(2)

<sup>75</sup> Regulation (EC) No 1082/2006 Art. 3(2)

where a Member State is a member of an EGTC it is often not the entire national territory concerned.

**Associated partners:** The members may decide to associate external partners (outside the territory of the EGTC) to the activities of the EGTC<sup>76</sup>.

**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) it<sup>77</sup>. Although the possibility of involving third countries is left open by Regulation (EC) No 1082/2006, Member States may prohibit such involvement<sup>78</sup>. See also Point 3.4. and Point 4.2.4. on the identification of partners.

Open questions to be discussed	Action list
<b>General</b>	
<ul style="list-style-type: none"> <li>– What is the appropriate geographical size of cooperation for achieving the set objectives?</li> <li>– Does the national law of each prospective Member State allow the involvement of a third country in an EGTC?</li> </ul>	<ul style="list-style-type: none"> <li>– Outline the territory and boundaries of the cooperation area</li> <li>– Check if:               <ul style="list-style-type: none"> <li>- Involvement of members from a third country is prohibited</li> <li>- Involvement of members from a third country is allowed → consider if the third country has adopted applicable legislation for the EGTC and signed an agreement with the concerned Member States (members from at least two Member States)</li> </ul> </li> </ul>
<b>Programme Management</b>	
<ul style="list-style-type: none"> <li>– Does the EGTC's territory correspond with the territory of the Operational Programme (eligible area – including adjoining areas if applicable)?</li> </ul>	
<b>Project Management</b>	
	<ul style="list-style-type: none"> <li>– Project partners and activities do not need to be located in the programme area but must be necessary to achieve the objectives of the project<sup>79</sup></li> </ul>

<sup>76</sup>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'.

<sup>77</sup> Regulation (EC) No 1082/2006 preamble clause 16

<sup>78</sup> E.g. In Hungary members from non-EU Member States are excluded. Communication at the CoR seminar on EGTC. Vigo, 6 July 2007

<sup>79</sup> Regulation (EC) No 1080/2006, Art. 21: 'expenditure incurred by partners located outside the programme area (as defined in Article 21(1)) may be eligible, if the project would have difficulty in achieving its objectives without that partner's participation'.

### 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 law<sup>80</sup>. The tasks of the EGTC must ‘all fall within the competence of every member under its national law’<sup>81</sup>. Therefore the **least common denominator** regarding these competences has to be found. 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
<b>General</b>	
– Which competences and skills are needed to fulfill 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
<b>Programme Management</b>	
	– List the competences required for fulfilling the functions of MA and/or JTS: <ul style="list-style-type: none"> <li>- Capacity to act (as MA) on behalf of the responsible Member State</li> <li>- Capacity to sign subsidy contracts with final beneficiaries</li> <li>- Authorisation to act as interface between the participating Member States</li> <li>- Capacity to fulfil the obligations of the MA and/or JTS as stated in the Structural Funds Regulations</li> </ul>

<sup>80</sup> Regulation (EC) No 1082/2006 Art. 3(1) and Art. 7(2)

<sup>81</sup> Regulation (EC) No 1082/2006 Art. 7(2)



#### 4.2.4. Identification of the partners

**P** **Members** of an EGTC can belong to one or more of the following categories<sup>82</sup>: Member States, regional or local authorities, associations of public authorities, e.g. Euregios or Working Communities in cross-border areas (provided that they have a legal personality), and bodies governed by public law within the meaning of Article 1(9) of Directive 2004/18/EC. Private members are excluded, unless they fulfil the criteria applying to 'public bodies governed by public law'<sup>83</sup>. 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 the circle of members 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
<b>General</b>	
<ul style="list-style-type: none"> <li>– Which partners correspond to the needed skills and competences? If partners are already known, do they all have at least one competence in common?</li> <li>– 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"> <li>- Do you already have the needed competences and skills or do you have to change/do you need new partners?</li> <li>- What are the conditions for transforming an existing cooperation structure into an EGTC?</li> <li>- Does the former structure have to be dissolved?</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>– Consider the interpretation of 'public equivalent body' in each of the Member States concerned</li> <li>– Catalogue of (new) partners, including the specification of their legal statuses, competences, and national provisions applying to EGTCs</li> </ul>
<b>Programme Management</b>	
	<ul style="list-style-type: none"> <li>– 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 EGTC</li> </ul>

<sup>82</sup> *Ibid.*

<sup>83</sup> See Chapter 2

Project Management	
	<ul style="list-style-type: none"> <li>– List potential project partners, check whether their legal status enables them to become member of an EGTC<sup>84</sup></li> <li>– Check the programme conditions regarding participation of an EGTC in a project</li> </ul>

#### 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 the 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<sup>85</sup> on EGTC 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.

Open questions to be discussed	Action list
<b>General</b>	
<ul style="list-style-type: none"> <li>– Have the concerned Member States set up all necessary provisions for establishing an EGTC?</li> </ul>	<ul style="list-style-type: none"> <li>– YES: All necessary provisions are in place → Check if these provisions are compatible</li> <li>– 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</li> </ul>

<sup>84</sup> Private bodies (unless they fulfill the criteria applying to bodies governed by public law) may NOT be members of an EGTC, whereas 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.

<sup>85</sup> *op.cit.*, pp. 76-78.

<b>Programme Management</b>	
<ul style="list-style-type: none"> <li>– Have the concerned Member States set up all necessary provisions for establishing an EGTC?</li> </ul>	<ul style="list-style-type: none"> <li>– YES: EGTC can be set up quickly and take over the programme management</li> <li>– NO: the nomination of an interim Managing Authority/Joint Technical Secretariat is necessary. Consider the implications, especially the procedure for transfer of functions to the EGTC once set up</li> </ul>

#### 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 Member States of the concerned EGTC in establishing the necessary national provisions. See Point 3.5. for details on possible alternatives;
- 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 deadline<sup>86</sup> 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 the programme closure. Multi-functionality ensures a longer-term perspective for the EGTC in the event that no new programme is approved;
- **PJM:** If the EGTC is intended to manage a 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 a EU programme, or to run the project (if already approved).

<sup>86</sup> The three-month deadline is expected to be strictly adhered to, even though the English version of the Regulation (Article 4(3) indicates this deadline 'as a general rule'.

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

### 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



Apart from the European Grouping of Territorial Cooperation, other alternatives may be considered, ranging from simple cooperation agreements to the setting up of other types of cooperation structures with legal personality, e.g.:

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

A cost-benefit analysis might help to compare these instruments. The feasibility of cooperating outside any legal framework should also be tested, as it may sometimes prove very cost-effective. If there are already structures or agreements in place for regulating the cooperation, the EGTC has to be compared to these existing instruments/structures.

→ See Annex 3 - *Other available legal instruments for the purpose of territorial cooperation.*

Open questions to be discussed	Action list
<b>General</b>	
Open questions to be discussed	Action list
<ul style="list-style-type: none"> <li>– 1) Are there any existing adequate cooperation structures or agreements for regulating the cooperation?               <ul style="list-style-type: none"> <li>- YES → Go to 2</li> <li>- NO: Why was there no institutional cooperation structure in place so far?                   <ul style="list-style-type: none"> <li>a) There were no problems that required such a structure → No need to create one</li> <li>b) Problems existed but were efficiently resolved by other means → Go to 2,3</li> <li>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 2,3</li> </ul> </li> </ul> </li> <li>– 2) What are the advantages/ disadvantages of the EGTC versus another structure? Are there any other types of structures available?</li> <li>– 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?</li> </ul>	<ul style="list-style-type: none"> <li>– Comparison of different instruments, agreements and cooperation structures available in the cooperation area</li> </ul>
<b>Programme Management</b>	
<ul style="list-style-type: none"> <li>– Does the programme need to be managed by a joint management structure?               <ul style="list-style-type: none"> <li>- YES: consider EGTC and other available instruments</li> <li>- 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</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>– List the expected advantages/disadvantages of entrusting programme management to a joint cooperation structure</li> </ul>

#### 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
<b>General</b>	
<ul style="list-style-type: none"> <li>- Are the different national law requirements in all concerned Member States compatible in order to establish an EGTC?</li> </ul>	<ul style="list-style-type: none"> <li>- Recommended: seek legal advice and/or organise a feasibility study               <ul style="list-style-type: none"> <li>- If setting up an EGTC is the most appropriate solution and is legally feasible, then you can implement the next steps.</li> <li>- Otherwise consider another cooperation structure/agreement.</li> </ul> </li> </ul>

#### 4.4. Implementation Phase



The cooperation partners enter the implementation phase once they have selected the EGTC as the appropriate solution for their needs. This third phase is key as 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 of the EGTC.

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



The **registered office** (seat) of an EGTC shall be located in a Member State under whose laws at least one of the members is formed<sup>87</sup>. 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<sup>88</sup>.

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**, e.g. on parts of the EGTC territory situated in other Member States. They may also decide to distinguish between the registered office of the EGTC (where the EGTC is officially registered) and the **operational seat** (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).

<sup>87</sup> Regulation (EC) No 1082/2006 Art. 8(2)

<sup>88</sup> - Regulation (EC) No 1082/2006 Art. 2 and 6

- 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

Open questions to be discussed	Action list
<b>General</b>	
<p>– Where is the registered office to be set up?</p>	<p>– Decision on the seat of the registered office, based on key decision criteria</p> <p>To be possibly taken in consideration<sup>89</sup>:</p> <ul style="list-style-type: none"> <li>- National provisions of each concerned Member State (legal status of the EGTC (private-public), provisions regarding staff, liquidation, insolvency, liability, etc.)</li> <li>- Location of the office within the cooperation area (central location should be considered if possible)</li> <li>- Political will to host the office, including e.g. financial offers by a member</li> <li>- Political stability, administrative culture, opinion of the population etc</li> <li>- Fiscal regimes and other conditions for staff (salaries, social schemes etc)</li> </ul>
<b>Programme Management</b>	
	<p>– To be taken into consideration:</p> <ul style="list-style-type: none"> <li>- Central location in programme area</li> <li>- Attractive labour conditions for future Managing Authority/Joint Technical Secretariat staff, etc</li> <li>- If the EGTC is to fulfil the function of MA, it must be located in the same country as the Audit Authority</li> </ul>

#### 4.4.2. Drafting of the convention

##### **I**

An EGTC shall be governed by a **convention** concluded unanimously by its members<sup>90</sup>.

**Drafting process:** All interested partners and national authorities<sup>91</sup> 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 and legal staff, as well as political stakeholders.

**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). The less details are specified in the convention, the less often one has to resort to this tiresome modification

<sup>89</sup> This list of criteria was elaborated by the participants in the first INTERACT Seminar on the EGTC, 26-27.11.2007, Vienna

<sup>90</sup> Regulation (EC) No 1082/2006 Art. 8(1)

<sup>91</sup> According to the provisions of Regulation (EC) No 1082/2006 Art. 4(3)

procedure - details can be integrated into the statutes (only substantial modification of the statutes requires approval by the Member States) or other administrative document (e.g. Internal rules of procedure).

→ See the *EGTC model convention - template for use* in Annex 1.

**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 EGTC<sup>92</sup>.

Open questions to be discussed	Action list
<b>General</b>	
<p>The <b>convention</b><sup>93</sup> has to specify:</p> <ul style="list-style-type: none"> <li>– The name of the EGTC and its registered office</li> <li>– The extent of the territory in which the EGTC may execute its tasks<sup>94</sup></li> <li>– The specific objectives and tasks of the EGTC, its duration and the conditions governing its dissolution</li> <li>– The list of EGTC members</li> <li>– 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</li> <li>– The appropriate arrangements for mutual recognition, including for the purpose of financial control</li> <li>– The procedures for amending the convention</li> </ul>	<ul style="list-style-type: none"> <li>– Proposal of convention, to be drafting jointly by all prospective members</li> </ul>
<b>Programme Management</b>	
	<ul style="list-style-type: none"> <li>– Consider incorporating the usual 'Memorandum of Understanding' (document signed between the institutional partners of an INTERREG/Territorial Cooperation Operational Programme) into the convention of the EGTC – if applicable and relevant!!</li> <li>– If the EGTC has several functions, differentiate between programme management functions and others</li> </ul>

<sup>92</sup> Regulation (EC) No 1082/2006 Art. 12(2)

<sup>93</sup> Regulation (EC) No 1082/2006 Art. 8(1)

<sup>94</sup> 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.



#### 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 unanimously<sup>95</sup>. As with the convention, the statutes should also be kept as concise as possible. If more rules and determinations are needed, the introduction of an additional document such as a **procedures manual** or internal rules of procedure is recommended. Of course, some Member States may require detailed information to be indicated in the convention and statutes because the ex-ante control is based on these two documents – national requirements must be checked carefully.

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

Open questions to be discussed	Action list
<b>General</b>	
<p>The <b>statutes</b><sup>96</sup> 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"> <li>– The operating provisions of the EGTC’s organs (assembly: permanent or rotating presidency?) and their competences, the number of representatives in the relevant organs</li> <li>– The decision-making procedures (consensus or majority rule?)<sup>97</sup></li> <li>– The working language or languages<sup>98</sup></li> <li>– The arrangements for its functioning, concerning staff management, recruitment procedures and the nature of staff contracts</li> <li>– 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</li> <li>– The arrangements for members’ liability in accordance with Art. 12(2) of Regulation (EC) No 1082/2006</li> <li>– The authorities responsible for the designation of independent external auditors</li> <li>– The procedures for amending the statutes</li> <li>– Any other provision deemed relevant</li> </ul>	<ul style="list-style-type: none"> <li>– Proposal of statutes, to be drafted jointly by all prospective members</li> </ul>

<sup>95</sup> Regulation (EC) No 1082/2006 Art. 9(1)

<sup>96</sup> *Ibid.*

<sup>97</sup> It is recommended to adopt internal rules of procedure that allow for decision by majority, as a consensus system de facto implies 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.

<sup>98</sup> 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 **procedure of notification** 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 presentation of the convention and the 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;
- The pertinence of the proposal;
- Any other element deemed necessary, such as compliance with principle of public interest, police and regulatory powers etc.

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. They may apply national law to take such decision and must substantiate any refusals they may make by referring to the Regulation<sup>99</sup>.

Open questions to be discussed	Action list
<b>General</b>	
	<ul style="list-style-type: none"> <li>– Participation of the members in an EGTC is approved or not</li> <li>– 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</li> <li>– If each partner obtains approval → implement the next step</li> </ul>

#### 4.4.5. Publication of the convention and the statutes

**I** If none of the Member States concerned voices reservations, 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<sup>100</sup>.

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<sup>101</sup>.

<sup>99</sup> Regulation (EC) No 1082/2006 Art. 4(2)

<sup>100</sup> Regulation (EC) No 1082/2006 Art. 5(1)

<sup>101</sup> Regulation (EC) No 1082/2006 Art. 5(2)

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

#### 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 concerning the organisation of the EGTC: see complete Action List below. 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. Without organs an EGTC would lack legal capacity<sup>102</sup>, therefore an EGTC shall have at least the following **organs**: an assembly, which is made up of representatives of its members, and a director, who represents the EGTC and acts on its behalf<sup>103</sup>. Where necessary, the statutes may provide for additional organs with clearly defined powers;
- Recruitment of staff<sup>104</sup> or procedures for secondment of staff from the members' administrations<sup>105</sup>. At least the director must be recruited or nominated;
- Setting up of internal work flows and procedures;
- Etc.

**PM:** The Monitoring and Steering Committee of the programme has to be differentiated from the assembly of the EGTC, as the former should also include social and economic partners<sup>106</sup> which are unlikely to be members of the EGTC.

<sup>102</sup> Schaffer, Hannes; Haselberger, Beatrix; Dillinger, Thomas; Zehetner, Franz: *Europäischer Verbund für Territoriale Zusammenarbeit (EVTZ) - ein Instrument zur grenzüberschreitenden Zusammenarbeit*. Weinviertel Management.

<sup>103</sup> Regulation (EC) No 1082/2006 Art. 10(1)

<sup>104</sup> Regulation (EC) No 1082/2006 Art. 1(4)

<sup>105</sup> In the case of the first EGTC in place, the Eurométropole Lille-Kortrijk-Tournai, it was decided that a member of the assembly would fulfil the functions of director. This person also fulfils the function of president, an additional organ defined in the statutes of the EGTC.

<sup>106</sup> Regulation (EC) No 1083/2006 Art. 11(1)(b)

Open questions to be discussed	Action list
<b>General</b>	
<ul style="list-style-type: none"> <li>– What is the role of the director<sup>107</sup> and the assembly?</li> <li>– 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?)<sup>108</sup></li> <li>– How frequent are the meetings of the assembly?</li> <li>– Decision-making process: majority or consensus?<sup>109</sup></li> <li>– Do we need/want additional organs?</li> <li>– Can the members second staff to the EGTC?:               <ul style="list-style-type: none"> <li>- Who employs these staff?</li> <li>- What is the legal basis?</li> <li>- In which country are staff insured?</li> <li>- Can these staff subsequently return to their administration of origin?</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>– Establishment of the office (incl. branch offices if applicable): rental contract, equipment (public procurement procedures of the hosting country to be considered), etc</li> <li>– Recruitment of staff (or secondment from the partner institutions), including director</li> <li>– Define the functions and missions of the director and the assembly</li> <li>– Launching of the assembly (first meeting)</li> <li>– Launching of first activities → funds needed to cover the launch costs, to be raised from partners' contributions and/or via a loan</li> <li>– Setting up of management and control system (incl. financial flows, accounting system)</li> </ul>
<b>Programme Management</b>	
<ul style="list-style-type: none"> <li>– How to handle the transition phase concerning staff employment if the EGTC takes over programme management from the interim MA/JTS?</li> </ul>	<ul style="list-style-type: none"> <li>– List the bodies to be set up for programme management: Managing Authority and/or Joint Technical Secretariat? Certifying Authority? Other?</li> <li>– Consider the staffing of the office (director but also the staff of the Managing Authority and/or Joint Technical Secretariat)</li> <li>– List the labour conditions applying to existing staff working for the programme - compare with the conditions applying under the EGTC</li> </ul>

#### 4.5. Performance of an EGTC



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

<sup>107</sup> In some Member States a director has executive and representative functions and in others just administrative ones

<sup>108</sup> The participation of all members in the assembly may be recommended as a way of ensuring equal involvement and commitment of all members. The law applicable in the Member State of the registered office of the EGTC must be considered.

<sup>109</sup> See footnote 97

#### 4.5.1. Budget and control of financial management of public funds



Having and 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 implies of course to set up 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)<sup>110</sup>. 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 LGCC 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, e.g. in the form of provision of staff, office, equipment etc 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;
- Equal contributions by each side of the border, the contributions of each member on each side of the border then being agreed among these ‘national’ members (e.g. Eurometropole Lille-Kortrijk-Tournai)<sup>111</sup>;
- Contributions calculated on the basis of the population in each member’s territory (e.g. Eurodistrict Oderland-Nadodrze)<sup>112</sup>;
- 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’s seat) apply;
- 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’s 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. In principle, the control authorities of the country where the EGTC has its seat perform the control of all EGTC's expenditure (national and EU funding). If the legal framework of the other partner countries does not allow any controls 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 the expenditure incurred on their territory<sup>113</sup>. They must inform the main controller about the controls performed.

<sup>110</sup> Regulation (EC) No 1082/2006 Art. 11(1)

<sup>111</sup> INTERACT Seminar, 26-27.11.2007, Michel Delsaux: The annual budget 2008 will be divided into 50% contributions from the French side (to be split among the four French members) and 50% contributions from the Belgian side (to be split among the 10 Belgian members).

<sup>112</sup> INTERACT Seminar, 26-27.11.2007, Sören Bollmann: The annual budget 2008 will be calculated on the basis of members’ contributions corresponding to EUR 0.10 per inhabitant.

<sup>113</sup> Regulation (EC) No 1082/2006 Art. 6(2)

**PM:** Structural Funds, be they managed by an EGTC or any other body, are subject to the same control rules<sup>114</sup>: In particular, each Member State remains financially responsible for the funds spent on their territory, as stated in Article 12(3) of Regulation (EC) No 1082/2006. This concerns in particular cases of recovery of funds unduly paid to final beneficiaries: according to Article 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. If the EGTC acts as Certifying Authority of the programme, for instance, it will not have to bear such costs.

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

#### 4.5.2. Liquidation, insolvency and cessation of payments



As regards liquidation, insolvency, cessation of payments and similar procedures, the national provisions of the Member State where the EGTC is registered shall apply<sup>115</sup>.

<sup>114</sup> Regulation (EC) No 1082/2006 Art. 6(4)

<sup>115</sup> Regulation (EC) No 1082/2006 Art. 12(1)

Open questions to be discussed	Action list
<b>General</b>	
– 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. Liability<sup>116</sup>

**P** An EGTC shall be liable for its debts whatever their nature. If the assets of an EGTC are insufficient to meet its liabilities, its members shall be liable for the EGTCs' debts whatever their nature, each member's share of responsibility being fixed in proportion to its contribution.

**Note:** A Member State can prohibit the registration on its territory of an EGTC whose members 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 budget, it shall be responsible for its debts. Each participating Member State is responsible for the funds spent on its territory. Should it prove impossible to recover unduly paid funds from a final beneficiary, the Member State of the concerned beneficiary should reimburse these funds to the programme.

Open questions to be discussed	Action list
<b>General</b>	
– Is the registration of an EGTC whose members have limited liability permitted? – What is the current status regarding liability (unlimited or limited) of the EGTC's members?	– Decision on unlimited or limited liability if the conditions for such a decision are met (according to Regulation (EC) No 1082/2006 Art. 12(2))

#### 4.5.4. Evaluation

**P** Two to three years after implementation the EGTC should be evaluated<sup>117</sup>. In order to prepare such evaluation and get the best out of it, it is recommended that the EGTC members set the following right at the very beginning of the EGTC's 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 then be developed on this basis, assessing the progress and level of achievement of each objective/target.

<sup>116</sup> Regulation (EC) No 1082/2006 Art. 12(2)

<sup>117</sup> Expert's recommendation

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

#### 4.6. 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<sup>118</sup>.

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 thus). 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 less partners?). In this case or if the EGTC must be dissolved;
- 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.

<sup>118</sup> Regulation (EC) No 1082/2006 Art. 13 and Art. 14



Open questions to be discussed	Action list
<b>General</b>	
<ul style="list-style-type: none"> <li>– Archiving: Who will keep the files of the dissolving EGTC (e.g. accountancy and documentation of expenditures): maybe one of the partners?</li> <li>– Legal proceedings: What if the EGTC was party to any legal proceedings, before or after being dissolved? Legal advice is necessary</li> <li>– Convention and statutes: Should each EGTC member inform their national authority of the dissolution? Check national provisions</li> </ul>	<ul style="list-style-type: none"> <li>– Decision on the archiving procedures</li> <li>– Consult legal advisors</li> <li>– Check information procedures</li> <li>– Properties: The properties acquired by the EGTC should be sold and/or redistributed among the partners. The remaining budget might be used to pay final expenditures and the rest should be redistributed among the members, based on a calculation formula to be agreed among them. If this happens within 5 years of the dissolution, any EU Structural Funds received by the EGTC will be handled as revenues to be deducted<sup>119</sup>.</li> <li>– Staff: In the event of dissolution 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 certain period of notice. Legal advice should be sought from labour law experts</li> <li>– Although not explicitly stated in the Regulation, the Committee of the Regions, which will hold a register of EGTCs, should be informed of such dissolution</li> </ul>
<b>Programme / Project Management</b>	
<ul style="list-style-type: none"> <li>– Will the EGTC dissolve after the end of the Operational Programme (2017) or will it continue, e.g. with other missions than programme management?</li> </ul>	<ul style="list-style-type: none"> <li>– If the EGTC received EU Structural Funds, such change must be communicated to the programme authorities or the European Commission, e.g. in case of controls and audit (expenditure can be checked up to 5 years after the closure of the programme)</li> </ul>

#### 4.7. Conclusions

The presentation of this roadmap showed us 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**.

<sup>119</sup> Regulation (EC) No 1083/2006 Art. 55

## CHAPTER 5

- CASE STUDIES:**
- **EGTCs IN PREPARATION**
  - **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 in which few Member States have established the necessary provisions to ensure effective application of the Regulation 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**<sup>120</sup>.

From the EGTCs in preparation, 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 (Euranest, Galicia-Northern Portugal, etc.)
  - Large infrastructure/public services projects without EU funding (Cerdanya Hospital).
- Several EGTCs have a multi-functional approach (Matriosca, Galicia-Northern Portugal).
- Some EGTCs are well advanced, and the conventions and statutes have already been drafted (Galicia-Northern Portugal, Oderland-NadOdrze, Cerdanya Hospital), while in others the reflection process has just started, including e.g. the organisation of feasibility studies, like in the West Flanders-Flanders-Dunkirk-Opal Coast cross-border platform.
- Several of the EGTCs in preparation are based on existing cooperation (either legally structured or not).

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 → involvement of only one EU Member State and one third country), or because other instruments have appeared to be more appropriate.

Point 5.7. 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.

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<sup>120</sup> More detailed information is provided in Point 5.7

### 5.1. The INTERREG-IV-A Programme of the Greater Region, Programme INTERREG IV-A Grande Région / INTERREG IV-A-Programm Großregion.

#### 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. 6: 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 benefits from INTERREG funding, but the existence of three INTERREG IIIA programmes in the area of the Greater Region in the period 2000-06, including areas covered by two programmes and entailing different application and management procedures in each programme, etc., led the institutional partners to consider **merging these three programmes into a single one for the period 2007-13** 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 procedure (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 Operational Programme submitted to the European Commission by the programme partners of the Greater Region.

## Type of EGTC

From 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 2007-13. 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, whose 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 Joint Technical Secretariat of the programme, was set up in Luxembourg and currently has the legal personality of 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 will remain in Luxembourg city. The adoption of national provisions is still pending in some of the Member States of the Greater Region (the French law is expected to be adopted by 3 April 2008) but the programme partners are already working on the convention and the statutes. These were drafted by the *Préfecture* of Lorraine in January 2008 in order to be operational as soon as possible, as declared by the Summit of the Greater Region.

## 5.2. The Galicia-Northern Portugal Working Community

### Introduction

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



Fig. 7: 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 are alternately assumed by the President of the *Xunta de Galicia* and the President of the Coordination Committee of the Northern Region, for a period of two years. The coordination committee, consisting of the general coordinators of both regions, acts as the permanent contact and ensures the continuity of the activities of the Working Community. Several territorial cooperation communities (*Association Eje Atlántico del Noroeste Peninsular*, the communities *Valle del Támega / Valle del Limia / Valle del Cávado / Valle del Miño*) and sectoral committees meet 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 should lead 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

First stage (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.

Second stage (November 2006 – February 2007): Adoption of the proposals of convention and statutes of the EGTC - 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

Third stage (March – December 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 the provisions guaranteeing the effective implementation of the EGTC's rules. National provisions on the EGTC for Portugal was published on 8 November 2007 (Decree Law No 376/2007).

Current status (December 2007): Although Spain has not yet established the pertinent national rules<sup>121</sup>, the Galicia Region has already prepared proposals for the statutes and convention of an EGTC due to the fact that the registered office will be seated in Vigo, Spain, while the Portuguese side has been waiting for this in order to submit the same proposal to their government.

### 5.3. MATRIOSCA-AAP<sup>122123</sup>

**MA**nagement **T**ools, effective **R**elations for new **I**nterregional **O**rganisation aimed at **S**trengthening the **C**ooperation among regions in the **A**dria-**A**lpe-**P**annonia space.

<sup>121</sup> Update: Spanish national provisions were adopted on 18 January 2008 – See Point 3.2.

<sup>122</sup> Börger, Stefan: MATRIOSCA-AAP. Strengthening Cooperation among regions in the Adria-Alpe-Pannonia space. Vienna, 14.09.2007

<sup>123</sup> <http://www.matriosca.net/cms/ziel/4989192/EN/>, last checked on 12.07.2007

## Introduction

This INTERREG IIIB CADSES project was initiated in 2005, lasting until the end of 2007, and was aimed at promoting integrated and coordinated development in the territory of the cooperation area 'Adria-Alpe-Pannonia'. This area forms a coherent territory located at the interface of old and new Member States and involves 14 regions from different Member States and third countries:

- Austria: Styria (Lead Partner), Carinthia, Burgenland
- Italy: Friuli Venezia Giulia, Veneto
- Slovenia: Government Office for Local Self-Government and Regional Policy (GOSP)
- Hungary: West-Transdanubia (Győr-Moson-Sopron, Vas, Zala) and South-Transdanubia (Baranya, Somogy, Tolna)
- Croatia: Region of Istria, Koprivnica-Krizevci County
- Two partners in kind: Varazdin County (Croatia) and AP Vojvodina (Serbia)

The partner regions want to pool resources and combine their strengths to raise enough critical mass for improving the quality and efficiency of their cooperation activity and consequently their position in relation to other agglomerations.



Fig. 8: MATRIOSCA-AAP

## Organisational background

Due to a wide range of bilateral and multiregional cooperations which exist side by side at administrative level, project level and within Euregios, Working Communities, multiregional organisations, etc., there are overlaps with projects in the same thematic fields and a lack of information, cooperation and coordination among all these partners. There is therefore a huge need for action:

- to safeguard political commitment to coordinated action
- to develop a strategic approach and framework for future projects
- to develop and implement joint projects of transnational importance
- to foster a lively community and sustain project generation by providing common 'meeting places' and coordinated technical support.

## Type of EGTC

It is quite uncertain at the moment which type of EGTC the region envisages, but the idea exists of an '**umbrella EGTC**' (**multi-functional EGTC**) for strategic issues involving all partners, with additional EGTCs on a smaller scale (bilateral or multilateral with just a few partners), without any subordinated relationships among the forms of cooperation to be institutionalised. To this end, a draft model statute for an EGTC was elaborated, which can be used for different levels / institutions in the AAP area according to the envisaged type of EGTC.

## Status of implementation

At the Final Political Conference of the project held in November 2007, the 'umbrella EGTC' was confirmed in the final declaration. According to this agreement, the elaborated model statute shall provide the basis for a future possible common structure to be agreed and then put into operation as soon as the legal framework in the involved states has been established. Furthermore, smaller scale forms of cooperation shall proceed alongside this in the MATRIOSCA-AAP space and implement projects at the respective levels without any hierarchy between the territorially larger level and the more restricted one. All regions propose to follow common strategies in their projects, as they result from such a multilevel approach. The Alps-Adriatic Working Community has already agreed to pursue these results.

## 5.4. Euranest<sup>124</sup>

### Introduction

Euranest, a transnational project, was born out of reflection following a seminar dedicated to sport organised in 2003 by the Province of Luxembourg (BE). The participating local authorities all presented characteristics similar to those of the Belgian Province of Luxembourg - countryside, environment, sport and tourism. One of the keys to sustainable development of these provinces at economic, employment, touristic and environmental levels, is the deployment of high-level projects centred on sports activities.

The basic core of Euranest includes:

- Belgium: the Province of Luxembourg (Lead Partner)
- France: the Rhône-Alpes Region (the *Département* of Savoie), the town of Vittel and the *Département* of Ardèche
- Italy: the Province of Turin
- Switzerland: the *Canton* of Valais.

### Organisational background

Euranest is a network of transnational partners aiming at the organisation of events belonging to the domain of active leisure. Based on the experiences and competences of the members, some common missions can be defined:

- Development of training courses on the themes of sport, tourism, economy, employment, leisure and environment, etc.
- Services to members: statistics, macro-economic studies and marketing plans

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<sup>124</sup> EGTC Needs Assessment Meeting. Vienna, 14.09.2007

Euranest. <http://www.euranest.eu/en/accueil>, last checked on 11.07.2007

Euranest. European Regions Association for Nature, Environment, Sports and Tourism. <http://brws.silesia-region.pl/zalaczniki/1159272342/1159278060.pdf>, last checked on 09.11.2007



- Selection, design and organisation of events, seminars, conferences on the themes and objectives of the EGTC – compilation of virtual databases and libraries on these matters
- Development of common projects such as the submission of event ideas
- Development and encouragement of national and international private or public partnerships

### Type of EGTC

The aim of Euranest is to establish an **EGTC for European Territorial Cooperation project management** concerning the fields of nature, environment, sports and tourism.

### Status of implementation

During a conference in 2006 with the aim of creating a vast interregional network, the possibility of Euranest becoming an EGTC was raised. Today, the structure of an EGTC seems to be appropriate for the regions' needs. The registered office is planned to be set up in Belgium, in the Province of Luxembourg.

## 5.5. Hospital of Cerdanya (France/Spain)<sup>125</sup>

### 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).

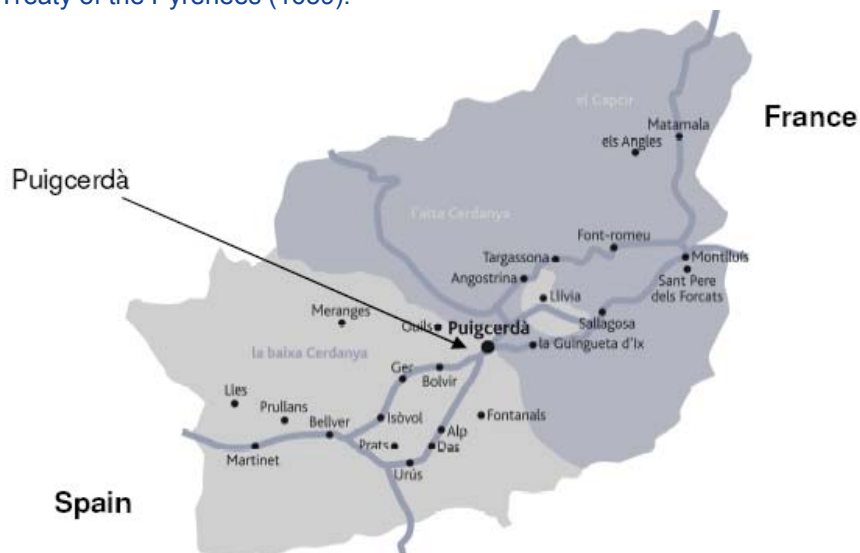


Fig. 9: Location of the Hospital of Cerdanya<sup>126</sup>

<sup>125</sup> - Hospital of Cerdanya. <http://www10.gencat.net/catsalut/cerdanya/en/>, last checked on 24.09.2007  
 - Hospital of Cerdanya. [http://www.euregio.nrw.de/project-descriptions/details/id-102-hospital\\_of\\_cerdanya\\_details.pdf](http://www.euregio.nrw.de/project-descriptions/details/id-102-hospital_of_cerdanya_details.pdf), last checked on 24.09.2007  
 - Euregio Project Homepage. Evaluation of cross-border activities in the European Union. Hospital of Cerdanya. [http://www.euregio.nrw.de/project-descriptions/details/id-102-hospital\\_of\\_cerdanya\\_details.pdf](http://www.euregio.nrw.de/project-descriptions/details/id-102-hospital_of_cerdanya_details.pdf), last checked on 31.07.2007

### Organisational background

In December 2002, the first political initiative was launched at a kick-off meeting of the politicians of Catalunya 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 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 instal 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 is to start in mid-2008 and the hospital should be up and running in 2010.

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<sup>126</sup> Hospital of Cerdanya. [http://www.euregio.nrw.de/project-descriptions/details/id-102-hospital\\_of\\_cerdanya\\_details.pdf](http://www.euregio.nrw.de/project-descriptions/details/id-102-hospital_of_cerdanya_details.pdf), last checked on 24.09.2007

## 5.6. The France-Vaud-Geneva Conurbation<sup>127</sup> - *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.

## Comité régional franco-genevois

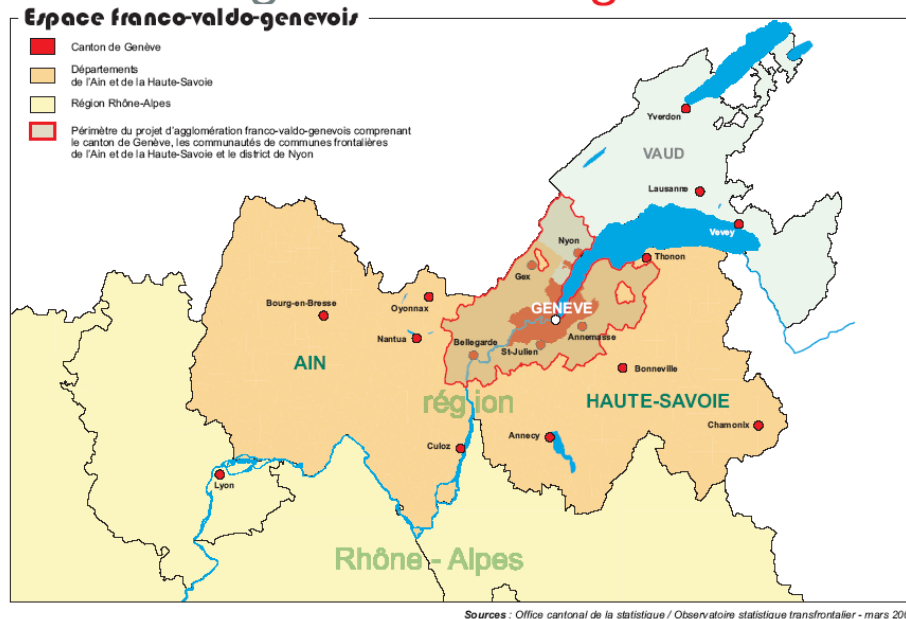


Fig. 10: The France-Vaud-Geneva Conurbation<sup>128</sup>

### 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 authorities<sup>129</sup> 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 Cooperation<sup>130</sup> (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.

<sup>127</sup> Mission Opérationnelle Transfrontalière. <http://www.espaces-transfrontaliers.org/en/>, last checked on 2.08.2007

<sup>128</sup> Comité régional franco-genevois : [http://www.crfginfo.org/fck\\_editor/upload/File/CRFG\\_presentation/CarreCRFG\\_22mars07.pdf](http://www.crfginfo.org/fck_editor/upload/File/CRFG_presentation/CarreCRFG_22mars07.pdf), last checked on 31.10.2007

<sup>129</sup> 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.

<sup>130</sup> 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).

Due to the fact that an EGTC has to consist of members from at least two EU Member States<sup>131</sup>, 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.**

The transportation LGCC mentioned above is only one of several existing or planned LGCCs<sup>132</sup>. 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 legal setting for this cross-border agglomeration is subject to discussions at present. Two solutions seem possible<sup>133</sup>:

- The creation of an LGCC to ensure the cross-border implementation of the agglomeration project (in particular for spatial planning issues) is the first option. However, the ban on conferring regulatory power on an LGCC 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 drawing up and adopting a specific international agreement between France and Switzerland, which would provide a specific solution including local, regional and national partners (and thus be closer to an EGTC). Since it would be a specific legal and institutional solution - rather than a framework - allowing public authorities to create their own institutional solution at their own initiative, it would probably be possible to grant more competences (maybe even including some regulatory powers) to whichever institutional cross-border structure was envisaged under such an agreement. But it is highly unlikely that such a solution could be implemented before 2015.

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<sup>131</sup> Regulation (EC) No 1082/2006 Art. 3(2)

<sup>132</sup> Two 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).

<sup>133</sup> Levrat, Nicolas. Review of the INTERACT EGTC Handbook, July 2007

### 5.7. Other 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 concerned	Objective	Contact person	Email	Further information
Alzette-Belval 2015	FR, LU	<i>Feasibility study in process</i>			
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 <sup>134135</sup>			
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	<a href="http://www.donauhanse.net/">http://www.donauhanse.net/</a>
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	<a href="http://www.eixoatlantico.com">www.eixoatlantico.com</a>
Euregio Weinviertel	AT, CZ, SK	To structure cross-border cooperation, based on the existing Euregio	Hermann Hansy	rm@euregio-weinviertel.org	<a href="http://www.euregio-weinviertel.org/">www.euregio-weinviertel.org/</a>
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	<a href="http://www.euregio.sbg.at">www.euregio.sbg.at</a>

<sup>134</sup> Information collected from the presentation given by Mr Geert Sanders, General Director of the West Vlaamse Intercommunale, MOT Conference 8-9.11.2007, Lille.

<sup>135</sup> On 30.11.2007 the political representatives of the area covered by the Platform signed a joint political declaration to set up an EGTC.

Name	Area / countries concerned	Objective	Contact person	Email	Further information
EuRegio West-Nyugat Pannonia	Land 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/
Eurodistrict Sarrebruck Moselle Est	FR, DE	<i>Feasibility study in progress</i>	Isabelle Prianon	isabelle.prianon@svsbr.de	www.saamoselle.fr
Eurodistrict Oderland-NadOdrze (EDON) <sup>136</sup>	DE, PL	- To give a legal basis to CBC - EGTC as solution to the absence of bilateral agreement DE-PL <sup>137</sup> . - Convention and statutes have been drafted.		info@bezgranic.net	www.bezgranic.net
Eurometropole Lille-Kortrijk-Tournai <sup>138</sup>	BE, FR	Promote and support effective, consistent cross-border cooperation within the metropolitan territory – territorial strategy and governance.	Lille Métropole Communauté urbaine	mvannouque-digne@cudl-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/rafvgrapportieuropeinternazionali/areaArgomento.act?dir=/rafvgrcms/RAFGV/AT11/ARG8/

<sup>136</sup> 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.

<sup>137</sup> At the regional conference of EDON on 4.12.2007, 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](http://www.bezgranic.net), last checked on 15.02.2008

<sup>138</sup> The Eurometropole Lille-Kortrijk-Tournai is the **first EGTC created**. The EGTC, composed of four partners on the French side and 10 on the Belgian side, was officially installed on 28.01.2008 with its registered office in Lille (FR); the operational services will be located in Belgium. Source: [www.diplomatie.gouv.fr](http://www.diplomatie.gouv.fr), 28.01.2008.

Name	Area / countries concerned	Objective	Contact person	Email	Further information
Eurorégion Alpes-Méditerranée <sup>139</sup>	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		
Eurorégion Pyrénées-Méditerranée	FR, ES	Multi-thematic cooperation between the partner regions	Secretariat of the Euroregion	info@euroregio.eu	www.euroregio.eu
Ister-Granum Eurorégió	HU, SK		Norbert Jankai	office@istergranum.hu	www.istergranum.hu
National Park Mercantour - Alpi Marittime	FR, IT	Cooperation between neighbouring French and Italian natural parks <sup>140</sup>			www.mercantour.eu
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: Other EGTCs under consideration/in preparation

<sup>139</sup> The creation of the Eurorégion Alpes-Méditerranée was agreed by the five partner regions in July 2006 and the Euroregion was officially created in November 2006 on the model of the Eurorégion Pyrénées-Méditerranée. The partners intend to create an EGTC and the headquarters of the Euroregion were opened in January 2008 in Brussels.

<sup>140</sup> 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 of the National Park of Mercantour 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.

CHAPTER 6  
**CONCLUSIONS**

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## 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 requires the Member States to adopt the necessary implementing rules to ensure the effective application of the Regulation by 1 August 2007. Even though several Member States have fulfilled their obligation, many have not done so yet and delays are therefore expected in the notification processes of newly created EGTCs.

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) than in regions with little history of cooperation and no strong structures in place.

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

Throughout the development of this Handbook the **main advantages and limitations of the EGTC instrument** have been collected and summarised.

### 6.1. Advantages of the EGTC<sup>141</sup>

- 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 Convention, 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 in case of prejudice the EGTC has the possibility to sue other authorities (and generally **be part of legal proceedings**).
- The rules relating to the composition of the EGTC allow the participation of all types of **'bodies governed by public law'** and aim particularly at the 'Member States', the

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<sup>141</sup> 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

- 'regional' and the 'local authorities' as well as associations of public entities<sup>142</sup>. This in principle excludes private entities from participating, unless they meet the criteria applying to bodies governed by public law (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).
- In principle, **the possibility for Member States to participate** had hitherto not been considered in the field of cross-border cooperation, and this constitutes an important change for territorial cooperation. It will allow some Member States to participate in such cooperation where no regions exist (e.g. Slovenia, Luxembourg) or where the envisaged theme of cooperation is a competence of the national level. It may also contribute to the application of multi-level governance and increase the strategic dimension of territorial cooperation<sup>143</sup> (NB: the Member States are partners in many European Territorial Cooperation programmes).
  - 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).
  - Beyond European Territorial Cooperation, the EGTC may be used for a **diverse spectrum of cooperation missions**: management of other EU programmes, EU projects and other cooperation outside EU funding. However, Member States may limit the tasks that EGTCs may carry out without a Community financial contribution<sup>144</sup>.
  - **Third countries** can be involved in an EGTC if their legislation and agreements between Member States and the concerned third country allow it<sup>145</sup>, 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 partnership<sup>146</sup>.
  - 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 one from one's own Member State.
  - The EGTC does **not remove all existing legal formats of cooperation** but appears as a new optional alternative. Other existing formats should be considered if they are more appropriate for the type of cooperation envisaged (see Annex 3).
  - The **limited number of compulsory organs**<sup>147</sup> allows flexibility for the EGTC members. '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.

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<sup>142</sup> Regulation (EC) No 1082/2006 Art. 3

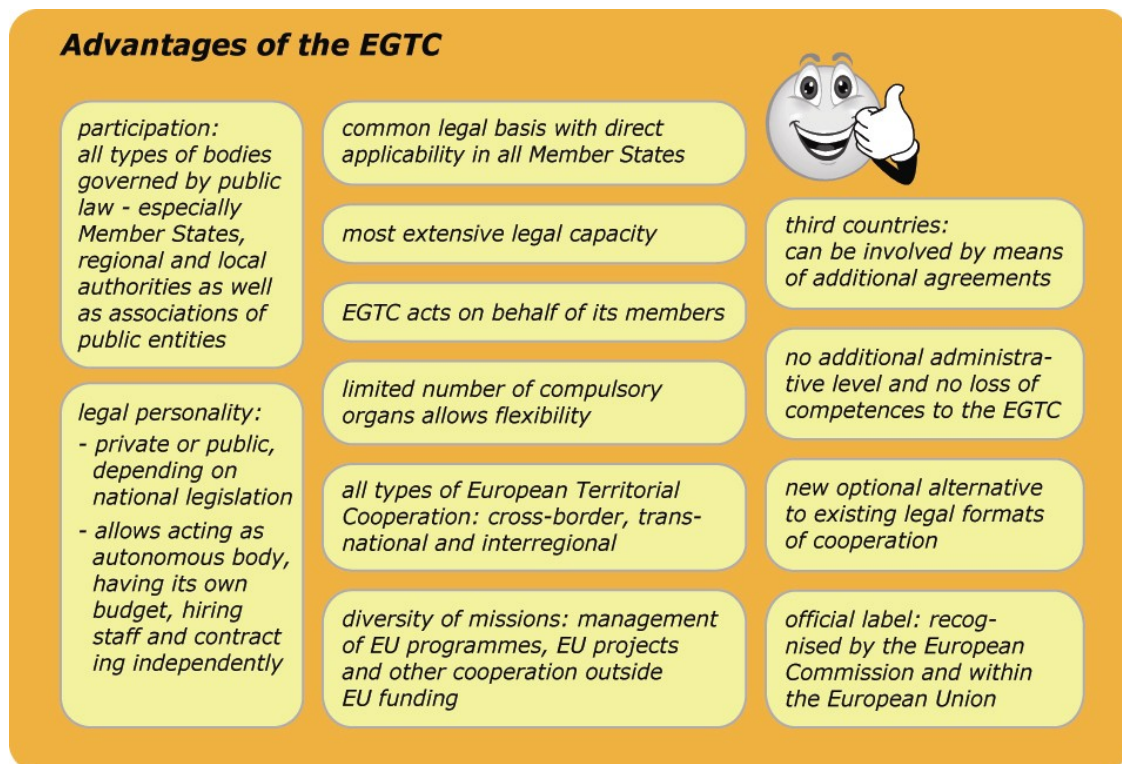
<sup>143</sup> *The European Grouping of Territorial Cooperation*, directed by Prof. Levrat, University of Geneva, Committee of the Regions, January 2007

<sup>144</sup> Regulation (EC) No 1082/2006 Article 7(3)

<sup>145</sup> Regulation (EC) No 1082/2006 preamble clause 16

<sup>146</sup> Regulation (EC) No 1082/2006 Article 7(5)

<sup>147</sup> Regulation (EC) No 1082/2006 Art. 10

Fig. 11: Advantages of the EGTC<sup>148</sup>

## 6.2. Limitations of the EGTC<sup>149</sup>

- The aim of the EGTC is to create a uniform legal basis throughout the European Union. However, 720 potentially different legal categories<sup>150</sup> of EGTC in 27 Member States can be identified, which gives a total of **19,440 possible legal categories** of EGTC - each category consisting of a variation on the following criteria linked to:
  - The members (homogeneous or heterogeneous) / with or without state participation
  - The applicable law (EGTC governed by public or private law / limited or unlimited liability of members)
  - The activities carried out (managing EC funds or without any EC financing / carrying out activities on behalf of its members or just coordinating cooperation).
- The EGTC will probably provoke some distrust, mainly due to the fact that the EGTC system contains some **legal loopholes**<sup>151</sup>. It is expected that this lack of legal safety will limit recourse to the EGTC.
- 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

<sup>148</sup> Based on INTERACT Point Tool Box study: *Study on organisational aspects of cross-border INTERREG programmes - Legal aspects and partnerships*, 2006.

<sup>149</sup> *Ibid.*

<sup>150</sup> Based on the study: *The European Grouping of Territorial Cooperation – EGTC* by the Committee of the Regions (2007), which deals with 25 Member States

<sup>151</sup> For legal details see *The European Grouping of Territorial Cooperation*, directed by Prof. Levrat, University of Geneva, Committee of the Regions, January 2007

- members may have **difficulty finding any 'common ground'** where all applicable national provisions are compatible.
- **Private law entities do not figure** amongst the potential 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...'152). Therefore the authorising body of a Member State could in principle hinder or slow down the process, even if Member States are expected to apply this rule 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'153 could create insecurities.

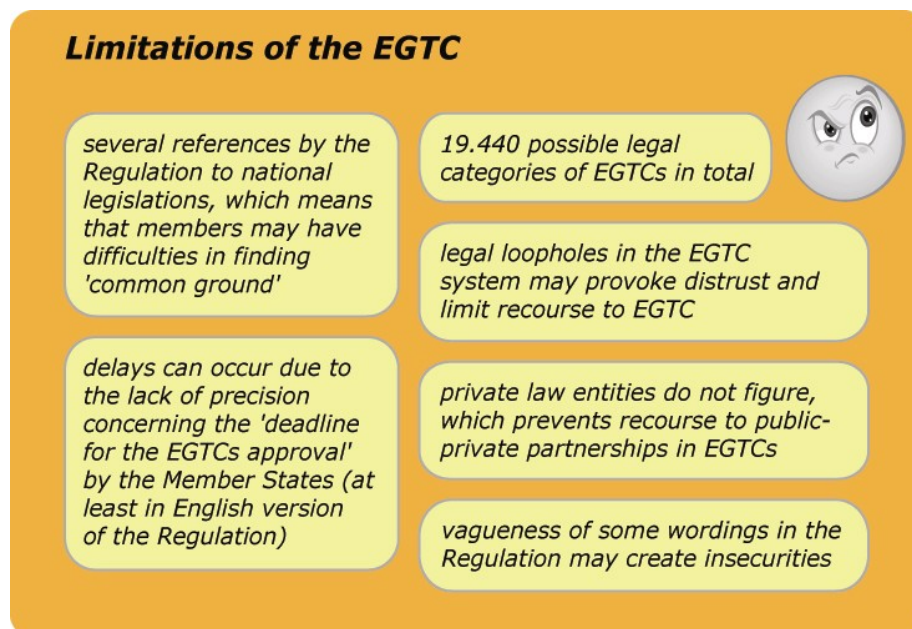


Fig. 12: Limitations of the EGTC<sup>154</sup>

### 6.3. Final recommendations

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. Prof. Levrat<sup>155</sup> states the likeliness of having different procedures and steps in different countries. Although a number of legal aspects are still very unclear, national legislators (or administrative authorities) should thus be encouraged to

<sup>152</sup> Regulation (EC) No 1082/2006 Art. 4(3)

<sup>153</sup> Regulation (EC) No 1082/2006 Art. 7(4)

<sup>154</sup> Based on INTERACT Point Tool Box: *Study on organisational aspects of cross-border INTERREG programmes - Legal aspects and partnerships*, 2006.

<sup>155</sup> Levrat, Nicolas (2006): *In order to establish EGTCs*. Abstract of the presentation. Brussels, 10 October 2006

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 resolved<sup>156</sup>.

**Support:** INTERACT and the Committee of the Regions, which will set up a register of existing EGTCs (according to Article 5 of Regulation (EC) No 1082/2006), will 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 EUROMOT<sup>157</sup>, General Secretariat of the Benelux, Association of European Border Regions, Assembly of European Regions, etc.)<sup>158</sup>.

The European Commission, in line with its mandate as stated in Article 17 of Regulation (EC) No 1082/2006, will play 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.

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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<sup>156</sup> 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.

<sup>157</sup> MOT ([www.espaces-transfrontaliers.org/en](http://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.

<sup>158</sup> Expert's recommendation.

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## ACRONYMS

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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
MC	Monitoring Committee
MS	Member State
MSC	Monitoring and Steering Committee
OP	Operational Programme
PA	Paying Authority
PIG	Public Interest Grouping
PM	Programme management
SC	Steering Committee
SCE	Societas Cooperativa Europaea - The European Cooperative Company
SE	Societas Europaea - The European Company

## **ANNEXES**

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## ANNEXES

### ENCLOSED WITH THE HANDBOOK:

1. EGTC model convention - Template for use
2. EGTC model statutes - Template for use
3. Other available legal instruments for the purpose of territorial cooperation
4. Useful links and contacts
5. General roadmap for setting up an EGTC
6. Roadmap for setting up an EGTC for the purpose of managing a European Territorial Cooperation programme

### AVAILABLE ON THE INTERACT WEBSITE:

- Relevant Community Regulations (EGTC, EEIG, SE, SCE etc)
- National provisions adopted or in adoption:
  - Belgium - Region Flanders (draft version 20.12.2007) (in Flemish)
  - Bulgaria (in English)
  - France (proposal of law, adopted by the National Assembly on 29.01.2008)
  - Greece (in English)
  - Hungary (in English)
  - Portugal (in Portuguese and English)
  - Romania (in Romanian)
  - Spain (in Spanish)
  - United Kingdom (National provisions and Guidance note, in English)

## ANNEX 1 - 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 Article 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's 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 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 8

### PREAMBLE<sup>159</sup>

#### 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'<sup>160</sup>.

#### 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'S 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 must prove its contribution to the strengthening of economic and social cohesion (Article 7 of Regulation (EC) No 1082/2006)

##### 4.2 Tasks

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

⇒ **Nota Bene:** The main objective and tasks can be merged into a single article

##### 4.3 Duration of the EGTC

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

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<sup>159</sup> Optional

<sup>160</sup> Regulation (EC) No 1082/2006 Art. 12(2)

#### 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 Article 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 Article 5 of Regulation (EC) No 1082/2006.

[OTHER FINAL PROVISIONS]

**Date, place**

**Signatures**



## ANNEX 2 – 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.

#### 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).

## Statutes of the European Grouping of Territorial Cooperation

### [NAME OF THE EGTC]

Based on 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 8

#### 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'S 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 must prove its contribution to the strengthening of economic and social cohesion (Article 7 of Regulation (EC) No 1082/2006)

##### 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 Article 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 Article 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 assembly<sup>161</sup>

- 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

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<sup>161</sup> 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 Article 5 of Regulation (EC) No 1082/2006.

**[OTHER FINAL PROVISIONS]**

**Date, place**

**Signatures**

## ANNEX 3 - 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<sup>162</sup> are

- 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. 13: The legal and international environment of territorial cooperation<sup>163</sup>

### 1. Multilateral framework treaties and conventions concluded at international level<sup>164</sup>

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**

<sup>162</sup> Association of European Border Regions (2001): *Transeuropean Cooperation between Territorial Authorities. New challenges and future steps necessary to improve cooperation*. <http://www.aebr.net>, last checked on 01.08.2007

<sup>163</sup> Based on INTERACT Point Tool Box: *Study on organisational aspects of cross-border INTERREG programmes - Legal aspects and partnerships*, p. 39

<sup>164</sup> Association of European Border Regions (2001), *op.cit.*

**Convention** of 1980 and its Additional Protocols)<sup>165</sup>. 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 states<sup>166</sup>

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 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

<sup>165</sup> 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*.

<sup>166</sup> Association of European Border Regions (2001), *op.cit.*



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 authorities<sup>167</sup>

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 level<sup>168</sup>

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)<sup>169</sup>

The European Economic Interest Grouping (EEIG) is a legal facility established by Community law<sup>170</sup>. 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 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.

<sup>167</sup> Association of European Border Regions (2001), *op.cit.*

<sup>168</sup> *ibid.*

<sup>169</sup> 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>, last checked on 11.07.2007.

<sup>170</sup> Regulation (EC) No 2137/85

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 EEIG<sup>171</sup>:**

- Although EEIGs have to be based upon the terms laid down in the European Regulation<sup>172</sup>, 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 EEIG<sup>173</sup>:**

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 management<sup>174</sup>:**

- 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.

## **4.2. The European Company - Societas Europaea (SE)<sup>175</sup>**

It has been introduced to create a European company with its own legislative framework<sup>176</sup>. 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

<sup>171</sup> *Ibid.*

<sup>172</sup> Regulation (EC) No 2137/85

<sup>173</sup> Association of European Border Regions (2001): Transeuropean Cooperation between Territorial Authorities. New challenges and future steps necessary to improve cooperation. <http://www.aebr.net>, last checked on 01.08.2007

<sup>174</sup> *Ibid.*

<sup>175</sup> 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, last checked on 11.07.2007.

<sup>176</sup> 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.

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)<sup>177</sup>**

The European Cooperative Society (SCE)<sup>178</sup> 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 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.

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<sup>177</sup> 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](http://www.workerparticipation.eu/european_company/european_cooperative_society/the_small_sister_of_the_se_the_european_cooperative_society_sce), last checked on 11.07.2007 and EUROPA - SCADPlus. Statute for a European Cooperative Society (11.10.2004). <http://europa.eu/scadplus/leg/en/lvb/l26018.htm>, last updated on 11.10.2004, last checked on 11.07.2007.

<sup>178</sup> 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.

**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 4 - 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](mailto:dirk.peters@ec.europa.eu)

Web information on the EGTC: [http://ec.europa.eu/regional\\_policy/funds/gect/index\\_en.htm](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](mailto: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](http://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](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](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](http://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](http://www.aebr.net)

#### EUROMOT

[www.espaces-transfrontaliers.org](http://www.espaces-transfrontaliers.org)

#### Secretary General of the Economic Union of the Benelux

Regentschapstraat 39

B - 1000 Brussels

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e: [info@benelux.be](mailto:info@benelux.be)

## **ANNEX 5 – GENERAL ROADMAP FOR SETTING UP AN EGTC**

## **ANNEX 6 - ROADMAP FOR SETTING UP AN EGTC FOR THE PURPOSE OF MANAGING A EUROPEAN TERRITORIAL COOPERATION PROGRAMME**

See the two tables hereafter

## ANNEX 5 ROADMAP FOR SETTING UP AN EGTC

### General remarks:

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.

Phase	Implementation steps	Explanation	Source	Open questions to be discussed	Action list
<b>PREPARATION</b>	<b>p1 Analysis of the needs and objectives of the cooperation</b>	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.	Regulation (EC) No 1082/2006 Art. 1(2) and Art. 7(3) (a contrario)	1) Do the defined needs and objectives of the cooperation correspond with the possible tasks of an EGTC?  2) Discuss which of the 4 EGTC models you want to set up in order to implement:	<ul style="list-style-type: none"> <li>• List of needs and objectives</li> <li>• Definition of the general strategy and mission(s) of the possible EGTC</li> <li>• Definition of the timeframe (setting up, duration of the project/cooperation)</li> <li>• Choose either one of the 4 EGTC models or other cooperation structures/agreements</li> <li>• Feasibility study (if needed)</li> </ul>
		An EGTC shall carry out the tasks given to it by its members in accordance with the Regulation and relevant national legislations.	Regulation (EC) No 1082/2006 Art. 7(1) and Art. 2	<ul style="list-style-type: none"> <li>• territorial cooperation programmes incl. European Territorial Cooperation programmes</li> </ul>	
		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 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)	<ul style="list-style-type: none"> <li>• co-financed projects in the field of territorial cooperation under the European Regional Development Fund (ERDF) incl. European Territorial Cooperation projects</li> <li>• other EU-funded projects regarding territorial cooperation</li> <li>• projects/activities of territorial cooperation outside any EU funding</li> </ul>	
		Member States may limit the tasks EGTCs may carry out without a Community financial contribution.	Regulation (EC) No 1082/2006 Art. 7(3)	3) Can the defined objectives be fulfilled within the required timeframe?	
		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 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.	Regulation (EC) No 1082/2006 Art. 7(4)	4) Does the national law of any prospective Member State forbid the possibility of setting up an EGTC for territorial cooperation outside EU funding?	

Phase	Implementation steps	Explanation	Source	Open questions to be discussed	Action list
PREPARATION	<b>p2 Definition of the territorial scale</b>	The territorial scale of the cooperation within an EGTC can be cross-border, transnational and/or interregional.	Regulation (EC) No 1082/2006 Art. 1(2)	What is the appropriate geographical size of cooperation for achieving the set objectives?	Outline the territory and boundaries of the cooperation area
		An EGTC has to be made up of members located on the territory of at least two Member States.	Regulation (EC) No 1082/2006 Art. 3(2)		
		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.	Regulation (EC) No 1082/2006 Recital 16	Does the national law of each prospective Member State allow the involvement of a third country in an EGTC?	Check if:
		Although the possibility of involving third countries is constituted by Regulation (EC) No 1082/2006, Member States may prohibit such involvements (e.g. Hungarian EGTC Regulation)			<ul style="list-style-type: none"> <li>• Involvement of a third country is prohibited</li> <li>• Involvement of a third country is allowed --&gt; consider whether the third country has adopted applicable legislation and/or signed an agreement with the concerned Member State(s)</li> </ul>
	<b>p3 Identification of the essential competences and skills</b>	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.	Regulation (EC) No 1082/2006 Art. 3(1) and Art. 7(2)	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
	<b>p4 Identification of the partners</b>	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 governed by public law" within the meaning of Directive 2004/18/EC Art. 1(9).  The partners should then be identified according to the competences and skills needed.	Regulation (EC) No 1082/2006 Art. 3(1)	<ul style="list-style-type: none"> <li>• 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), do you already have the needed competences and skills or do you have to change? Do you need new partners?</li> <li>• What are the conditions for transforming an existing cooperation structure into an EGTC? Does the former structure have to be dissolved?</li> <li>• Which partners correspond to the skills and competences needed?</li> <li>• If partners are already known, do they all have at least one competence in common?</li> </ul>	<ul style="list-style-type: none"> <li>• Catalogue of (new) partners, including the specification of their legal statuses, competences, and national provisions applying to EGTCs.</li> <li>• Consider the interpretation of 'public equivalent body' in each of the Member States concerned</li> </ul>



Phase	Implementation steps	Explanation	Source	Open questions to be discussed	Action list
PREPARATION	<b>p5 Exploration of the available national legal frameworks</b>	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 all concerned States to enable the establishment of an EGTC. Some Member States have still not progressed very far in making these provisions.		Have the necessary provisions been made in all concerned Member States?	<ul style="list-style-type: none"> <li>• YES: The provisions are in place in all concerned Member States --&gt; Check if these provisions are compatible</li> <li>• NO: Delays will arise --&gt; Consider whether the EGTC could/should be set up at a later stage of the 2007-2013 programming period - for programme/project management. Consider the implications (procedure for transfer of functions to the EGTC once set up, etc.)</li> </ul>
	<b>p6 Consideration of the timing and potential risk of delays due to different political and electoral agendas</b>	Delays are expected due to the fact that some Member States have not progressed very far in making the appropriate provisions.		<ul style="list-style-type: none"> <li>• How far have the concerned Member States progressed with establishing the provisions?</li> <li>• Has the procedure for application/notification been clarified in all concerned Member States?</li> <li>• What is the attitude of the concerned Member States towards the establishment of an EGTC?</li> <li>• Are there any other expected causes of delay?</li> </ul>	<ul style="list-style-type: none"> <li>• List of possible delays (external and internal factors)</li> <li>• Roadmap and estimated timeframe for setting up</li> </ul> <p>CSQ: Either delays are accepted by all members or another cooperation structure/agreement has to be considered</p>
		Although the Regulation sets a deadline of three months 'as a general rule' for the approval of an EGTC/the prospective member's participation, the time required may vary due to the lack of precision (at least in the English version of the Regulation).	Regulation (EC) No 1082/2006 Art. 4(3)	<ul style="list-style-type: none"> <li>• Will the EGTC be based on an existing cooperation structure?</li> <li>• If so, are any delays expected due to a transition phase (staff, etc.)?</li> </ul>	
				<ul style="list-style-type: none"> <li>• What are the national provisions for the approval of a prospective member's participation?</li> </ul>	

Phase	Implementation steps	Explanation	Source	Open questions to be discussed	Action list
<b>DECISION</b>	<b>d7 Consideration of other instruments or cooperation structures and selection of the most appropriate.</b>	<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"> <li>• Cooperation agreements, goodwill agreements, memoranda of understanding, etc.</li> </ul> <p><u>Structures:</u></p> <ul style="list-style-type: none"> <li>• European Grouping of Territorial Cooperation (EGTC)</li> <li>• European Economic Interest Grouping (EEIG)</li> <li>• Cooperation instruments/structures based on plurilateral or bilateral treaties and agreements</li> <li>• Cooperation structures based on national legislations - with possible participation of foreign members</li> </ul>		<p>1) Are there any existing adequate cooperation structures or agreements for regulating the cooperation?</p> <ul style="list-style-type: none"> <li>• YES --&gt; Go to questions 2,3</li> <li>• NO: Why was there no institutional cooperation structure in place so far?               <ol style="list-style-type: none"> <li>a) There were no problems that required such a structure --&gt; Then do not create one, even if it is possible.</li> <li>b) Problems existed but were efficiently resolved by other means --&gt; Go to questions 2,3,4</li> <li>c) No institutional solution was available until now --&gt; The existence of the EGTC as a new solution should not prevent you from looking at answers a) and b) again --&gt; Go to questions 2,3,4</li> </ol> </li> </ul> <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) How difficult is the establishment of the cooperation within an EGTC?</p> <p>4) Do we need to set up a legal structure (with statutes, organs, an office and staff) or is the signing of a cooperation agreement sufficient?</p>	<p>Comparison of different instruments and cooperation structures (taking account of the open questions)</p>
	<b>d8 Verification of the legal feasibility of the planned proposal</b>	<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). Legal advice or consultation of a supporting institution might be helpful, and legal feasibility studies are recommended.</p>		<p>Are the different national law requirements in all concerned States compatible in order to establish an EGTC?</p>	<ul style="list-style-type: none"> <li>• Recommended: seek legal advice and/or organise a feasibility study</li> <li>• If setting up an EGTC is the most appropriate solution and is legally feasible, then you can implement the next steps.</li> <li>• Otherwise consider another cooperation structure/agreement</li> </ul>

Phase	Implementation steps	Explanation	Source	Open questions to be discussed	Action list
IMPLEMENTATION	<b>I9 Location of the registered office</b>	The registered office of an EGTC shall be located in a Member State under whose laws at least one of the members is formed.	Regulation (EC) No 1082/2006 Art. 8(2)	• Where is the registered office to be set up?	Decision on the seat of the registered office, based on key decision criteria. To be possibly taken in consideration : • 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 offers made by a member • Political stability, administrative culture, opinion of the population etc • Fiscal regimes and other conditions for staff (salaries, social schemes etc)
		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.					
	<b>I10a Drafting of the convention in agreement with partners and national authorities</b>	An EGTC shall be governed by a convention concluded unanimously by its members.	Regulation (EC) No 1082/2006 Art. 8(1)	The convention has to specify: • 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.	Proposal of the convention  NB: 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.  NB: 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.

Phase	Implementation steps	Explanation	Source	Open questions to be discussed	Action list
IMPLEMENTATION	<b>I10b Drafting of the statutes in agreement with partners and national authorities</b>	<p>The statutes of an EGTC have to be adopted on the basis of the convention by its members acting unanimously.</p> <p>As with the convention, the statutes should also be kept as concise as possible. 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.</p> <p>The competences of the assembly/director have to be clearly specified in the statutes. Additional specifications can be provided in e.g. a procedures manual if necessary.</p> <p>Note that the role of a director in Latin countries (administrative function) is different from the understanding of the role in Anglo-Saxon countries (executive and representative functions).</p>	<p>Regulation (EC) No 1082/2006 Art. 9(1)</p> <p>Expert's recommendation</p>	<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"> <li>• The operating provisions of the EGTC's organs (assembly: permanent or rotating presidency?) and their competences, the number of representatives in the relevant organs</li> <li>• The decision-making procedures (consensus or majority rule?)</li> <li>• The working language(s)</li> <li>• The arrangements for its functioning, concerning staff management, recruitment procedures and the nature of staff contracts</li> <li>• 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</li> <li>• The arrangements for members' liability in accordance with Art. 12(2)</li> <li>• The authorities responsible for the designation of independent external auditors</li> <li>• The procedures for amending the statutes</li> <li>• Any other provision deemed relevant</li> </ul>	<p>Proposal of the statutes</p>
	<b>I11a Notification of the convention and statutes</b>	<p>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.</p>	<p>Regulation (EC) No 1082/2006 Art. 4 (2)</p>		<ul style="list-style-type: none"> <li>• Participation of the members in an EGTC is approved or not</li> <li>• 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</li> <li>• Once each prospective member has received approval --&gt; implement the next step</li> </ul>

Phase	Implementation steps	Explanation	Source	Open questions to be discussed	Action list
IMPLEMENTATION	<b>I11b Publication of the convention and statutes</b>	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.	Regulation (EC) No 1082/2006 Art. 5(1)		<ul style="list-style-type: none"> <li>• Registration and/or publication of statutes</li> <li>• Inform the Committee of the Regions and the Member States concerned</li> </ul>
		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.	Regulation (EC) No 1082/2006 Art. 5(2)		Publication of a notice in the Official Journal of the European Union
	<b>I12 Launching the EGTC</b>	Once the EGTC is registered, it is officially created and can start its activities.		<ul style="list-style-type: none"> <li>• What is the role of the director and the assembly?</li> <li>• In some Member States a director has executive and representative functions and in others just administrative ones.</li> </ul>	<ul style="list-style-type: none"> <li>• Establishment of the office (incl. branch office(s) if applicable): rental contract, equipment (public procurement procedures of the hosting country to be considered), etc.</li> </ul>
		An EGTC shall have at least the following organs: <ul style="list-style-type: none"> <li>• an assembly, which is made up of representatives of its members</li> <li>• a director, who represents the EGTC and acts on its behalf.</li> </ul>	Regulation (EC) No 1082/2006 Art. 10(1)	<ul style="list-style-type: none"> <li>• Should all members be represented in the assembly (recommended by experts)?</li> <li>• How frequent are the meetings of the assembly?</li> </ul>	<ul style="list-style-type: none"> <li>• Recruitment of staff (or secondment from the partner institutions), incl. the director</li> <li>• Define clearly the functions and competences of the director and the assembly</li> </ul>
		The statutes may provide for additional organs with clearly defined powers.	Regulation (EC) No 1082/2006 Art. 10(2)	<ul style="list-style-type: none"> <li>• Do we need/want additional organs?</li> <li>• Can the members second staff to the EGTC? Here several questions must be considered: Who employs these staff and based on which collective agreement? What is the legal basis? In which country are staff insured? Can these staff subsequently return to their administration of origin?</li> </ul>	<ul style="list-style-type: none"> <li>• Launching of the assembly (first meeting)</li> <li>• Launching of first activities --&gt; This requires the availability of funds to cover the launch costs, which have to be collected from the partners' contributions and/or raised via a loan.</li> <li>• Setting up of management and control system (incl. financial flows, accounting system, auditors).</li> </ul>

Phase	Implementation steps	Explanation	Source	Open questions to be discussed	Action list
PERFORMANCE	<b>P13 Budget</b>	An EGTC has to establish an annual budget containing a component for running costs and, if necessary, an operational component (project-related budget).	Regulation (EC) No 1082/2006 Art. 11(1)	• How will the budget be formed?	<ul style="list-style-type: none"> <li>• Draft an annual budget</li> <li>• Decision on the financial contributions of the members</li> <li>• Decision on the financial control procedures, accounting and the audit trail</li> </ul>
		Although not compulsory, contributions by all members are highly recommended to ensure equal involvement and enhance their sense of responsibility.	Expert's 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"> <li>• EU funds --&gt; EU eligibility rules and national eligibility rules of the country of the EGTC's seat</li> <li>• Other sources (public funds, contributions of the members) --&gt; rules of the country of the EGTC's seat</li> </ul>			
	<b>P14 Liquidation, insolvency and cessation of payments</b>	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.	Regulation (EC) No 1082/2006 Art. 12(1)	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.
	<b>P15 Liability</b>	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.	Regulation (EC) No 1082/2006 Art. 12(2)	What is the current status regarding liability (unlimited or limited) of the EGTC's members?	Decision on unlimited or limited liability if the conditions for such a decision are met (according to Regulation (EC) No 1082/2006 Art. 12(2))
A Member State can prohibit the registration on its territory of an EGTC whose members have limited liability.		Regulation (EC) No 1082/2006 Art. 12(2)	Is the registration of an EGTC whose members have limited liability permitted in the Member State concerned?		

Phase	Implementation steps	Explanation	Source	Open questions to be discussed	Action list
PERFORMANCE	<b>P16 Evaluation</b>	Two to three years after its establishment the EGTC should be evaluated.	Expert's recommendation	<ul style="list-style-type: none"> <li>• Which difficulties occurred during the implementation process and in operating the EGTC?</li> <li>• Does the set-up and implementation of the EGTC meet the original expectations?</li> <li>• What kind of evaluation is necessary? Just an internal exercise, or an external one?</li> <li>• If external, how will the evaluation be financed?</li> </ul>	<ul style="list-style-type: none"> <li>• Upon creation of the EGTC: list objectives/targets and deadlines</li> <li>• Catalogue of difficulties and possible solutions</li> <li>• Do the results of the evaluation meet the expectations set at the beginning of the implementation process?</li> <li>• YES: continuation of the EGTC</li> <li>• NO: adjustment of procedures, statutes, etc. or dissolution</li> </ul>
		<p>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.</p> <p>Dissolution may also be the result of a decision by the Assembly of the EGTC.</p> <p>Results of the evaluation of the performance of the EGTC may lead to different decisions:</p> <ul style="list-style-type: none"> <li>• EGTC with limited duration: dissolution at the termination date of the EGTC, but possible before</li> <li>• EGTC with unlimited duration: dissolution by joint agreement of the members</li> </ul>	Regulation (EC) No 1082/2006 Art. 13 and Art. 14	<ul style="list-style-type: none"> <li>• Archiving: Who will keep the files of the dissolving EGTC (e.g. accountancy and documentation of expenditures): one of the partners?</li> <li>• Legal proceedings: What if the EGTC was party to any legal proceedings, before or after being dissolved? Legal advice is necessary.</li> <li>• Convention and statutes: Should each EGTC member inform their national authority of the dissolution? Check the national provisions.</li> </ul>	<ul style="list-style-type: none"> <li>• Decision on archiving procedures</li> <li>• Consultation of legal advisors</li> <li>• Check information procedures</li> <li>• Properties acquired by the EGTC should be sold and/or redistributed among the partners. The remaining budget might be used to pay final expenditure. The rest should be redistributed among the members (calculation formula). If this happens within 5 years of the dissolution, any EU Structural Funds received by the EGTC will be handled as revenues to be deducted (Art. 55 of Regulation (EC) No 1083/2006).</li> <li>• Inform staff about the end of the contracting period in accordance with the applicable national provisions.</li> <li>• Although not explicitly stated in the Regulation, the Committee of the Regions, which will hold a register of EGTCs, should be informed of such dissolution.</li> </ul>
DISSOLUTION	<b>D17 Dissolution</b>				

## ANNEX 6 ROADMAP FOR SETTING UP AN EGTC SPECIFIC CASE "EGTC FOR EUROPEAN TERRITORIAL COOPERATION PROGRAMME MANAGEMENT"

### General remarks:

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. As the procedure to set up an EGTC can be long, the timing factor is very important.

Phase	Implementation steps	Explanation	Source	Open questions to be discussed	Action list
PREPARATION	<b>p1 Analysis of the needs and objectives of the cooperation</b>	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.	Regulation (EC) No 1082/2006 Art. 1(2) and Art. 7(3) (a contrario)	<ul style="list-style-type: none"> <li>• Do the defined needs and objectives correspond with the possible tasks of an EGTC?</li> <li>• Can an EGTC be set up in time to manage the Operational Programme?</li> </ul>	<ul style="list-style-type: none"> <li>• List of needs and objectives</li> <li>• Definition of the general strategy and mission(s) of the EGTC</li> <li>• Definition of the timeframe (setting up, duration of the Operational Programme)</li> <li>• 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?</li> <li>• Feasibility study (if needed)</li> </ul>
		An EGTC shall carry out the tasks given to it by its members in accordance with the Regulation and relevant national legislations.	Regulation (EC) No 1082/2006 Art. 7(1) and Art. 2		
		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 carry out other specific actions of territorial cooperation between its members in pursuit of the objective referred to in Art. 1 par 2 (see above) with or without a financial contribution from the Community.	Regulation (EC) No 1082/2006 Art. 7(3)		
		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 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.	Regulation (EC) No 1082/2006 Art. 7(4)		



Phase	Implementation steps	Explanation	Source	Open questions to be discussed	Action list
<b>PREPARATION</b>	<b>p1 Analysis of the needs and objectives of the cooperation</b>	Member States participating in an Operational Programme under the European Territorial Cooperation Objective may make use of the EGTC 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/or of the Joint Technical Secretariat. In this context, each Member State shall continue to assume financial responsibility.	Regulation (EC) No 1080/2006 Art. 18		
	<b>p2 Definition of the territorial scale</b>	The territorial scale of the cooperation within an EGTC can be cross-border, transnational and/or interregional.	Regulation (EC) No 1082/2006 Art. 1(2)	What is the appropriate geographical size of cooperation for achieving the set objectives?	Outline the territory and boundaries of the cooperation area: Does the EGTC's territory correspond with the territory of the Operational Programme (eligible area - including adjoining areas if applicable)?
		An EGTC has to be made up of members located on the territory of at least two Member States.	Regulation (EC) No 1082/2006 Art. 3(2)		
		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.	Regulation (EC) No 1082/2006 Recital 16		
		Although the possibility to involve third countries is constituted by Regulation (EC) No 1082/2006, Member States may prohibit such involvements.		Does the national law of each prospective Member State allow the involvement of a third country in an EGTC?	
<b>p3 Identification of the essential competences and skills</b>	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.	Regulation (EC) No 1082/2006 Art. 3(1) and Art. 7(2)		List the Operational Programme's institutional partners and compare their respective competences	

Phase	Implementation steps	Explanation	Source	Open questions to be discussed	Action list
PREPARATION	<b>p3 Identification of the essential competences and skills</b>	[...] with a view to making that grouping responsible for managing the Operational Programme by conferring on it the responsibilities of the Managing Authority and/or of the Joint Technical Secretariat. In this context, each Member State shall continue to assume financial responsibility.	Regulation (EC) No 1080/2006 Art. 18		List the competences required for fulfilling the functions of Managing Authority and/or Joint Technical Secretariat: <ul style="list-style-type: none"> <li>• Capacity to act (as Managing Authority) on behalf of the responsible Member State</li> <li>• Capacity to sign subsidy contracts with final beneficiaries</li> <li>• Authorisation to act as interface between the participating Member States</li> <li>• Capacity to fulfil the obligations of the Managing Authority and/or Joint Technical Secretariat as stated in the Structural Funds Regulations</li> </ul>
	<b>p4 Identification of the partners who have competences to manage Territorial Cooperation programmes</b>	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 that they have a legal personality) and "bodies governed by public law" within the meaning of Directive 2004/18/EC Art. 1(9).  The partners should then be identified according to the competences and skills needed (members of the Monitoring and Steering Committee or enlarged partnership).	Regulation (EC) No 1082/2006 Art. 3(1)	<ul style="list-style-type: none"> <li>• 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), do you already have the competences and skills needed or do you have to change? Do you need new partners?</li> <li>• What are the conditions for transforming an existing cooperation structure into an EGTC? Does the former structure have to be dissolved?</li> <li>• Which partners correspond to the skills and competences needed to fulfil the objectives of the EGTC?</li> <li>• Can all programme partners become members of the EGTC? If not, how can additional partners be integrated?</li> </ul>	<ul style="list-style-type: none"> <li>• Catalogue of (new) partners, including the specification of their legal statuses, competences, and national provisions applying to EGTCs.</li> <li>• Consider the interpretation of 'public equivalent body' in each of the Member States concerned</li> <li>• Compare the list of EGTC members to the list of programme partners (member of Monitoring and Steering Committee): not all programme partners can become members of the EGTC: e.g. the European Commission and social and economic partners participate in the MSC, but cannot be member of an EGTC.</li> </ul>

Phase	Implementation steps	Explanation	Source	Open questions to be discussed	Action list
PREPARATION	<b>P5 Exploration of the available national legal frameworks</b>	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 all concerned States to enable the establishment of an EGTC. Some Member States have still not progressed very far in making these provisions.		Have the necessary provisions been made in all concerned Member States?	<ul style="list-style-type: none"> <li>• YES: The provisions are in place in all concerned Member States --&gt; Check if these provisions are compatible</li> <li>• NO: Delays will arise --&gt; Consider whether the EGTC could/should be set up at a later stage of the 2007-2013 programming period. Consider the implications (nomination of an interim Managing Authority/Joint Technical Secretariat, procedure for transfer of functions to the EGTC once set up, etc).</li> </ul>
	<b>p6 Consideration of the timing and potential risk of delays due to different political and electoral agendas</b>	Delays are expected due to the fact that some Member States have not progressed very far in making the appropriate provisions.		<ul style="list-style-type: none"> <li>• How far have the concerned Member States progressed with establishing the provisions?</li> <li>• Has the procedure for application/notification been clarified in all concerned Member States?</li> <li>• What is the attitude of the concerned Member States towards the establishment of an EGTC?</li> <li>• Are there any other expected causes of delay?</li> </ul>	<ul style="list-style-type: none"> <li>• List of possible delays (external factors - internal factors)</li> <li>• Roadmap and estimated timeframe for setting up</li> </ul> <p>CSQ: Either delays are accepted by all members or another cooperation structure/agreement has to be considered</p>
		Although the Regulation sets a deadline of three months 'as a general rule' for the approval of an EGTC/the prospective member's participation, the time required may vary due to the lack of precision (at least in the English version of the Regulation).	Regulation (EC) No 1082/2006 Art. 4(3)	<ul style="list-style-type: none"> <li>• Will the EGTC be based on an existing cooperation structure?</li> <li>• If so, are any delays expected due to a transition phase (staff, etc.)?</li> </ul>	
				<ul style="list-style-type: none"> <li>• What are the national provisions for approval of a prospective member's participation?</li> </ul>	

Phase	Implementation steps	Explanation	Source	Open questions to be discussed	Action list
<b>DECISION</b>	<b>d7 Consideration of other instruments or cooperation structures and selection of the most appropriate</b>	<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"> <li>• Cooperation agreements, goodwill agreements, memoranda of understanding, etc.</li> </ul> <p><u>Structures:</u></p> <ul style="list-style-type: none"> <li>• European Grouping of Territorial Cooperation (EGTC)</li> <li>• European Economic Interest Grouping (EEIG)</li> <li>• Cooperation instruments/structures based on plurilateral or bilateral treaties and agreements</li> <li>• Cooperation structures based on national legislations - with possible participation of foreign members</li> </ul>		<p><b>1)</b> Are there any existing adequate cooperation structures or agreements for regulating the cooperation?</p> <ul style="list-style-type: none"> <li>• YES --&gt; Go to questions 2,3</li> <li>• NO: Why was there no institutional cooperation structure in place so far? <ul style="list-style-type: none"> <li>a) There were no problems that required such a structure --&gt; Then do not create one, even if it is possible.</li> <li>b) Problems existed but were efficiently resolved by other means --&gt; Go to questions 2,3</li> <li>c) No institutional solution was available until now --&gt; The existence of the EGTC as a new solution should not prevent you from looking at answers a) and b) again --&gt; Go to questions 2,3</li> </ul> </li> </ul> <p><b>2)</b> What are the advantages/disadvantages of using the EGTC versus setting up a new bilateral/multilateral agreement or another structure? Are there any other types of structures available?</p> <p><b>3)</b> Do we need to set up a legal structure (with statutes, organs, an office and staff) or is the signing of a cooperation agreement sufficient?</p>	<ul style="list-style-type: none"> <li>• Comparison of different instruments, agreements and cooperation structures available in the cooperation area</li> <li>• List the expected advantages/disadvantages of entrusting programme management to a joint cooperation structure.</li> </ul>
	<b>d8 Verification of the legal feasibility of the planned proposal</b>	<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). Legal advice or consultation of a supporting institution might be helpful, legal feasibility studies are recommended.</p>		<p>Are the different national law requirements in all concerned States compatible in order to establish an EGTC?</p>	<ul style="list-style-type: none"> <li>• Recommended: seek legal advice and/or organise a feasibility study</li> <li>• If setting up an EGTC is the most appropriate solution and is legally feasible, then you can implement the next steps.</li> <li>• Otherwise consider another cooperation structure/agreement</li> </ul>

Phase	Implementation steps	Explanation	Source	Open questions to be discussed	Action list
IMPLEMENTATION	<b>I9 Location of the registered office</b>	The registered office of an EGTC shall be located in a Member State under whose laws at least one of the members is formed.	Regulation (EC) No 1082/2006 Art. 8(2)	<ul style="list-style-type: none"> <li>• Where is the registered office to be set up?</li> <li>• What are the key decision-making criteria? To be taken in consideration:               <ul style="list-style-type: none"> <li>- National provisions of each concerned Member State (legal status of the EGTC (private-public), provisions regarding staff, provisions regarding liquidation, insolvency, liability, etc.)</li> <li>- Location of the Managing Authority/Joint Technical Secretariat within the programme area (central location should be considered if possible, location in the Member State that offers attractive labour conditions for future Managing Authority/Joint Technical Secretariat staff), etc.</li> <li>- Location of the MA in the same Member State as the Audit Authority of the programme</li> <li>- Political will to host the office</li> <li>- Fiscal regimes</li> <li>- etc.</li> </ul> </li> </ul>	Decision on the seat of the registered office
		If an existing cooperation structure (as Managing Authority/Joint Technical Secretariat) decides to establish an EGTC, the working conditions and other considerations during/after the transition phase should be taken into account.			
	<b>I10a Drafting of the convention in agreement with partners and national authorities</b>	An EGTC shall be governed by a convention concluded unanimously by its members.	Regulation (EC) No 1082/2006 Art. 8(1)	<p>The convention has to specify:</p> <ul style="list-style-type: none"> <li>• The name of the EGTC and its registered office</li> <li>• The extent of the territory in which the EGTC may execute its tasks</li> <li>• The specific objective and tasks of the EGTC, its duration and the conditions governing its dissolution</li> <li>• The list of the EGTC's members</li> <li>• 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</li> <li>• The appropriate arrangements for mutual recognition, including for the purpose of financial control</li> <li>• The procedures for amending the convention.</li> </ul>	<p>Proposal of the convention</p> <ul style="list-style-type: none"> <li>• Consider incorporating the usual "Memorandum of understanding" (document signed between the institutional partners of an INTERREG/Territorial Cooperation Operational Programme) into the convention of the EGTC - only if applicable and relevant!!</li> <li>• If the EGTC has several functions, differentiate between programme management functions and others.</li> <li>• 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 usually not the entire national territory concerned.</li> </ul>

Phase	Implementation steps	Explanation	Source	Open questions to be discussed	Action list
IMPLEMENTATION	I10a Drafting of the convention in agreement with partners and national authorities				NB: 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.
	I10b 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.	Regulation (EC) No 1082/2006 Art. 9(1)	<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"> <li>• The operating provisions of the EGTC organs (assembly: permanent or rotating presidency?) and their competences, the number of representatives in the relevant organs</li> <li>• The decision-making procedures (consensus or majority rule?)</li> <li>• The working language or languages</li> <li>• The arrangements for its functioning, concerning staff management, recruitment procedures and the nature of staff contracts</li> <li>• 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</li> <li>• The arrangements for members' liability in accordance with Art. 12 par 2</li> <li>• The authorities responsible for the designation of independent external auditors</li> <li>• the procedures for amending the statutes</li> <li>• any other provision deemed relevant</li> </ul>	Proposal of the statutes
		<p>As with the convention, the statutes should also be kept as precise as possible. 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.</p> <p>The competences of the assembly/director have to be clearly specified in the statutes. Additional specifications can be provided in e.g. a procedures manual if necessary.</p> <p>Note that the role of a director in Latin countries (administrative function) is different from the understanding of the role in Anglo-Saxon countries (executive and representative functions).</p>			

Phase	Implementation steps	Explanation	Source	Open questions to be discussed	Action list
IMPLEMENTATION	<b>I11a Notification of the convention and statutes</b>	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.	Regulation (EC) No 1082/2006 Art. 4(2)		<ul style="list-style-type: none"> <li>• Participation of the members in an EGTC is approved or not</li> <li>• 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</li> <li>• Once each prospective member has received approval --&gt; implement the next step</li> </ul>
	<b>I11b Publication of the convention and statutes</b>	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.	Regulation (EC) No 1082/2006 Art. 5(1)		<ul style="list-style-type: none"> <li>• Registration and/or publication of statutes</li> <li>• Inform the Committee of the Regions and the Member States concerned</li> </ul>
		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.	Regulation (EC) No 1082/2006 Art. 5(2)		Publication of a notice in the Official Journal of the European Union

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<b>IMPLEMENTATION</b>	<b>I12 Launching the EGTC</b>	Once the EGTC is registered, it is officially created and can start its activities.		<ul style="list-style-type: none"> <li>• What is the role of the director and the assembly? In some States a director has executive and representative functions and in others just administrative ones.</li> </ul>	<ul style="list-style-type: none"> <li>• Establishment of the office (incl. branch office(s) if applicable): rental contract, equipment (public procurement procedures of the hosting country to be considered), etc.</li> </ul>
		An EGTC shall have at least the following organs: an assembly, which is made up of representatives of its members, and a director, who represents the EGTC and acts on its behalf.	Regulation (EC) No 1082/2006 Art. 10 (1)	<ul style="list-style-type: none"> <li>• Should all members be represented in the assembly (recommended by experts)?</li> <li>• How frequent are the meetings of the assembly?</li> <li>• Do we need/want additional organs?</li> <li>• Can the members second staff to the EGTC? Here several questions must be considered: Who employs these staff and based on which collective agreement? What is the legal basis? In which country are staff insured? Can these staff subsequently return to their administration of origin?</li> </ul>	<ul style="list-style-type: none"> <li>• Define clearly functions and competences of the director and the assembly</li> <li>• List the bodies to be set up for programme management: Managing Authority and/or Joint Technical Secretariat? Certifying Authority? Other?</li> <li>• Consider the staffing of the office (director but also the staff of the Managing Authority/Joint Technical Secretariat)</li> <li>• Launching of the assembly (first meeting)</li> <li>• Launching of first activities --&gt; This requires the availability of funds to cover the launch costs, which have to be collected from the partners' contributions and/or raised via a loan - Use of technical assistance budget is possible if advance payment has been received from the EC.</li> <li>• Setting up of management and control system (incl. financial flows, accounting system, auditors)</li> </ul>
		As existing Managing Authorities and Joint Technical Secretariats employ staff, solutions for the transition phase have to be found.		How to handle the transition phase?	<ul style="list-style-type: none"> <li>• List the labour conditions applying to existing staff - compare with the conditions applying under the EGTC. Conditions should remain attractive for staff (salary, social security, unemployment conditions, etc).</li> </ul>



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PERFORMANCE	P13 Budget	An EGTC has to establish an annual budget containing a component on running costs and, if necessary, an operational component (project-related budget).	Regulation (EC) No 1082/2006 Art. 11(1)	<ul style="list-style-type: none"> <li>• How will the budget be formed?</li> </ul> <p>If an EGTC fulfils other missions in addition to the management of a European Territorial Cooperation programme, differentiate between:</p> <ul style="list-style-type: none"> <li>• The running costs to be covered from the TA budget of the Operational Programme, including national co-financing (should national co-financing be paid out to the EGTC at the beginning of the programme period?)</li> <li>• The other elements of the EGTC budget (other activities)</li> </ul> <p>If the EGTC fulfils the function of Certifying Authority of the Operational Programme, one also should consider setting up a specific budget line for programme financial flows (payments from the Commission (including pre-financing), payments to the final beneficiaries)</p>	<ul style="list-style-type: none"> <li>• Draft an annual budget</li> <li>• Decision on the financial control procedures, accounting and the audit trail</li> </ul>
		The EGTC can be financed from the Technical Assistance (TA) of the Operational Programme.			
		Control of expenditures: <ul style="list-style-type: none"> <li>• EU funds --&gt; EU eligibility rules and national eligibility rules of the country of the EGTC's seat</li> <li>• Other sources (public funds, contributions of the members) --&gt; rules of the country of the EGTC's seat</li> </ul>			
		Although not compulsory, contributions by all members are highly recommended to ensure equal involvement and enhance their sense of responsibility.	Expert's recommendation	<ul style="list-style-type: none"> <li>• Should all members contribute to the budget? Equally or not? When and how often should they make these contributions, and in what amount?</li> </ul>	
	P14 Liquidation, insolvency and cessation of payments	<ul style="list-style-type: none"> <li>• No liquidation, etc.</li> <li>• Dissolution after the end of the Operational Programme (2017) or continuation of the EGTC if it has other functions</li> </ul>		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.

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PERFORMANCE	P15 Liability	<p>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.</p> <p>Each participating Member State is responsible for the funds spent on its territory. Should it prove impossible to recover unduly paid funds from a final beneficiary, the Member State of the concerned beneficiary should reimburse these funds to the programme.</p>	Regulation (EC) No 1083/2006 Art. 98	<ul style="list-style-type: none"> <li>• As a beneficiary of the Technical Assistance budget, the EGTC shall be responsible for its debts.</li> <li>• What is the current status regarding liability (unlimited or limited) of the EGTC's members?</li> </ul>	Decision on unlimited or limited liability if the conditions for such a decision are met (according to Regulation (EC) No 1082/2006 Art. 12 par 2 )
		A Member State can prohibit the registration on its territory of an EGTC whose members have limited liability.	Regulation (EC) No 1082/2006 Art. 12(2)	Is the registration of an EGTC whose members have limited liability permitted?	
	P16 Evaluation	Two to three years after its establishment the EGTC should be evaluated.	Expert's recommendation	<ul style="list-style-type: none"> <li>• Which difficulties occurred during the implementation process and in operating the EGTC?</li> <li>• Who will define the expectations for the EGTC at the beginning of the implementation process?</li> <li>• Does the set-up and implementation of the EGTC meet these expectations?</li> <li>• What kind of evaluation is necessary? Just an internal exercise, or an external one?</li> <li>• If external, how will the evaluation be financed?</li> </ul>	<ul style="list-style-type: none"> <li>• Upon creation of the EGTC: list objectives/targets and deadlines</li> <li>• Catalogue of difficulties and possible solutions</li> <li>• Do the results of the evaluation meet the expectations set at the beginning of the implementation process?</li> <li>• YES: continuation of the EGTC</li> <li>• NO: adjustment of procedures, statutes, etc. or dissolution</li> </ul> <p>NB: Differentiate between evaluation of the EGTC and ongoing evaluation of the programme</p>

Phase	Implementation steps	Explanation	Source	Open questions to be discussed	Action list
DISSOLUTION	D17 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's activities exceed the defined scope.	Regulation (EC) No 1082/2006 Art. 13 and Art. 14	<ul style="list-style-type: none"> <li>• Archiving: Who will keep the files of the dissolving EGTC (e.g. accountancy and documentation of expenditures): one of the partners?</li> <li>• Legal proceedings: What if the EGTC was party to any legal proceedings, before or after being dissolved? Legal advice is necessary.</li> <li>• Convention and statutes: Should each EGTC member inform their national authority of the dissolution? Check the national provisions.</li> <li>• Will the EGTC dissolve after the end of the Operational Programme (2017) or will it continue, e.g. with other missions than programme management?</li> </ul>	<ul style="list-style-type: none"> <li>• Decision on archiving procedures</li> <li>• Consultation of legal advisors</li> <li>• Check information procedures</li> <li>• Properties acquired by the EGTC should be sold and/or redistributed among the partners. The remaining budget might be used to pay final expenditures. The rest should be redistributed among the members (calculation formula). If this happens within 5 years of the dissolution, any EU Structural Funds received by the EGTC will be handled as revenues to be deducted (Art. 55 of Regulation (EC) No 1083/2006).</li> <li>• Inform staff about the end of the contracting period in accordance with the applicable national provisions.</li> <li>• Inform the programme authorities or the European Commission, e.g. in case of controls and audit (expenditure can be checked up to 5 years after the closure of the programme).</li> <li>• Check any further information procedures</li> <li>• Although not explicitly stated in the Regulation, the Committee of the Regions, which will hold a register of EGTCs, should be informed of such dissolution.</li> </ul>
		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"> <li>• EGTC with limited duration: dissolution at the termination date of the EGTC, but possible before</li> <li>• EGTC with unlimited duration: dissolution by joint agreement of the members</li> </ul>			