

Opinion of the Committee of the Regions on 'New perspectives for the revision of the EGTC Regulation' (own-initiative opinion)

(2011/C 104/02)

THE COMMITTEE OF THE REGIONS

- emphasises that economic, social and territorial cohesion helps the Union, all its Member States and its territorial units to be better prepared to face the challenges posed by globalisation for Europe and prevent a potential loss of influence;
- concludes that the EGTC can be the Community legal response to the institutionalisation of territorial cooperation within the Union, which still allows European territorial bodies to freely choose other forms or formulas, with or without legal personality, although these would not be genuinely Community entities, but international ones;
- considers that the EGTCs also provide useful prospects as 'laboratories' for multi-level governance, also advocates the introduction of a specific programme with Community funding, allocated from the ERDF, which would contribute to the creation of new EGTCs or the conversion of prospective cooperation projects managed using conventional formats;
- considers it necessary to remind the authorities managing the programmes and clearly specify in the future revised Regulation (EC) No 1082/2006 that there can never be grounds for discriminating against EGTCs when taking part on a competitive basis in such Community initiatives, calls for tender or programmes, all the more so since the very existence of the EGTC bears witness to the reality of a permanent European grouping and fulfils the usual requirements of transnationality;
- welcomes the decision taken by the CoR Bureau on 26 January 2011 to set up an EGTC platform of the Committee of the Regions to provide on-going evaluation of the implementation of Regulation (EC) No 1082/2006 and the practical progress of the EGTCs.

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I. POLICY RECOMMENDATIONS

THE COMMITTEE OF THE REGIONS

General comments

1. notes that the European Grouping of Territorial Cooperation (EGTC) is a new form of legal person created by Community law through Regulation (EC) No 1082/2006 ⁽¹⁾. According to Article 18 of the regulation, it was to enter into force on 1 August 2006 and to apply by 1 August 2007, with the exception of Article 16, which would apply from 1 August 2006, regarding the adoption by the Member States of such provisions as were appropriate to ensure the effective application of the regulation;

2. recalls that, under the terms of Article 17 of the Treaty on European Union, it is a competence and responsibility of the European Commission to ensure the application of the Treaties and of measures adopted by the institutions pursuant to them, and to oversee the application of Union law under the control of the Court of Justice of the European Union;

3. points out that under the terms of Article 17 of Regulation (EC) No 1082/2006, 'by 1 August 2011, the Commission shall forward to the European Parliament and the Council a report on the application of this Regulation and proposals for amendments, where appropriate';

4. is of the view that, following the analyses by European legal writers and a comparison between such analyses and the actual application of the regulation, the present own-initiative opinion of the Committee of the Regions comes at a highly opportune time with a view to carrying out an exhaustive examination of the EGTC institution and how it operates in practice. This will facilitate any amendments that may be required to Regulation (EC) No 1082/2006 in order to bring it into line with the needs identified in the course of the prior consultations carried out by the Committee of the Regions of the European Union and of drafting the present opinion;

5. points out that the Treaty on the Functioning of the European Union henceforth places territorial cohesion on the same footing as economic and social cohesion and the EGTC regulation can be an important political and judicial vector allowing implementation of this principle;

6. notes that with the new provision concerning 'Economic, social and territorial cohesion', the third paragraph of

Article 174 of the Treaty on the Functioning of the European Union adds that 'among the regions concerned, particular attention shall be paid to rural areas, areas affected by industrial transition, and regions which suffer from severe and permanent natural or demographic handicaps such as the northernmost regions with very low population density and island, cross-border and mountain regions';

7. points out that Article 349 of the Treaty on the Functioning of the European Union refers to the specific case of the outermost regions and the need to adopt measures geared to their particular situation;

8. draws attention to the fact that EGTCs have so far been set up mostly in frontier regions and, to a lesser extent, in island regions;

9. recalls that the recitals of Regulation (EC) No 1082/2006 make very clear the reasons behind the European legislator's decision to take a step of such importance as that of creating a new legal institution of this kind and incorporating it into the Union's legal system; firstly, to increase the cohesion of the Union by facilitating territorial cooperation; secondly, to reduce the difficulties that this cooperation was intended to avoid; thirdly, to reinforce cooperation as a result of expanding Community borders following Union enlargement; and fourthly, to remedy the unsuitability of the previous legal structures, such as the European economic interest grouping (EEIG), for organising cooperation under 'European territorial cooperation' objective (previously known as the INTERREG initiative);

10. notes that, in addition to the legal reasons, it also emerges from Regulation (EC) No 1080/2006 that it may be financially and economically appropriate to channel, on a non-compulsory basis, territorial cooperation programmes or projects that are co-financed by the Union through the EGTCs, as one of several instruments for territorial cooperation. In all cases, the basic criterion for obtaining co-financing must be the quality of each proposal submitted;

11. wishes to emphasise that in this regard, Article 18 of Regulation (EC) No 1080/2006 ⁽²⁾ included a specific provision allowing the management of operational programmes under the territorial cooperation objective to be delegated to EGTCs, whereby the Member States could confer on them the responsibilities of the managing authority and of the joint technical secretariat. These responsibilities should also include financial liability vis-à-vis the European Commission;

⁽¹⁾ Regulation (EC) No 1082/2006 of the European Parliament and of the Council of 5 July 2006 on a European grouping of territorial cooperation (EGTC) (OJ L 210, 31.7.2006).

⁽²⁾ Regulation (EC) No 1080/2006 of the European Parliament and of the Council of 5 July 2006 on the European Regional Development Fund and repealing Regulation (EC) No 1783/1999 (OJ L 210, 31.7.2006).

12. points out that, for its part, Article (3)(2)(c) of Regulation (EC) No 1083/2006⁽³⁾ specifies that 'the European territorial cooperation objective [...] shall be aimed at strengthening cross-border cooperation through joint local and regional initiatives, strengthening transnational cooperation by means of actions conducive to integrated territorial development linked to the Community priorities, and strengthening inter-regional cooperation and exchange of experience at the appropriate territorial level';

13. highlights the fact that Articles 7, 38 and other corresponding articles of Regulation (EC) No 1083/2006, together with Chapter III and supplementary provisions of Regulation (EC) No 1080/2006, suggest that the aim is to ensure cohesion through more and better territorial cohesion within the Union, and that this can achieve maximum excellence and efficiency by being put on an institutional footing;

14. emphasises that economic, social and territorial cohesion helps the Union, all its Member States and its territorial units to be better prepared to face the challenges posed by globalisation for Europe and prevent a potential loss of influence;

15. concludes that the EGTC can be the Community legal response to the institutionalisation of territorial cooperation within the Union, which still allows European territorial bodies to freely choose other forms or formulas, with or without legal personality, although these would not be genuinely Community entities, but international ones;

16. considers that the EGTCs also provide useful prospects as 'laboratories' for multi-level governance, as called for in the Committee of the Regions' white paper. In view of the contribution that the EGTC can make to achieving the Europe 2020 objectives, believes that EGTCs of an appropriate size, such as those involved in macro-regional activities, could serve to support the conclusion of development and investment partnership contracts, as proposed by the Commission in its Communication on the EU Budget Review of 19 October 2010, which are tools for implementing the Europe 2020 strategy but unfortunately confined to Commission-Member State relations;

The practical application of Regulation (EC) No 1082/2006

17. notes, however, that although the EGTC is an institution under Community law created for the express purpose of facilitating territorial cooperation within the Union, and it would appear *a priori* that the regulations governing the Community funds favour their use under the objective of European territorial cooperation, the actual facts are quite different to the

logical and desirable expectations that prompted the Community legislator to take a step of such legal significance;

18. confirms, following the wide-reaching prior consultations carried out with representatives of the European Parliament, the Council and the Commission, and in meetings open not only to Committee members, but also to the different European regional organisations and specialists in the field, that only a small number of existing EGTCs manage territorial cooperation programmes or projects that are co-financed by Community funds;

19. avers that most of the existing EGTCs carry out other specific territorial cooperation actions without a financial contribution from the Union, in keeping with the second paragraph of Article 7(3) of Regulation (EC) No 1082/2006;

20. considers that in the light of this situation, it would be useful to carry out a rigorous analysis of the reasons for this discrepancy between expectations and real achievements, and propose specific measures to remedy shortcomings, on the basis that the thinking and objectives that prompted the Community legislator to create the EGTC are, if anything, even more valid now that the Treaty on the Functioning of the European Union has put territorial cohesion on the same footing as economic and social cohesion;

21. is also of the view that the Committee's contribution in this regard can be especially useful for the Commission in drawing up the report on the application of Regulation (EC) No 1082/2006 it must forward to the European Parliament and the Council, together with proposals for any amendments that may be appropriate;

22. holds that the opinion drawn up by Ms Bresso (CdR 308/2007 fin) and adopted at the plenary session of the Committee on 18 June 2008 is an excellent starting-point for a rigorous analysis of the circumstances that have prevented the EGTC becoming the ideal Community legal instrument for institutionalising and consolidating territorial cooperation in the Union;

23. must point out that the above-mentioned opinion already stressed that 'one measure to be implemented at the Community level would be to encourage the use of the EGTC as the preferred instrument for cooperation' (point 25), emphasising that 'that the implementation of the regulation should be properly coordinated, so that the various legal acts drawn up by the Member States in order to apply Regulation (EC) 1082/2006 can be brought together without creating any incompatibility or obstacles' (point 32);

⁽³⁾ Regulation (EC) No 1083/2006 of the Council of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1260/1999 (OJ L 210, 31.7.2006).

24. the above opinion also advocates the introduction of 'a specific programme with Community funding, allocated from the ERDF, which would contribute to the creation of new EGTCs or the conversion of prospective cooperation projects managed using conventional formats' (point 48, opinion CdR 308/2007), and 'calls for tender launched by the Commission to award a comparative advantage in the evaluation of projects to those projects including the setting-up of an EGTC and a forecast of sustainability when the project itself is concluded. This would help to promote an institutional short- and medium-term culture of cooperation which would seek new sources of funding in addition to the Community budget' (point 49);

25. warns that since 1 August 2007 that only a very small number of EGTCs have been set up in Union territory compared to the number of European territorial bodies that were already cooperating between each other and to the expectations raised; similarly, very few EGTCs seem to be in the process of being set up, in spite of the implementation of numerous European territorial cooperation projects, in particular those that are co-financed by Community funds;

26. notes that the EGTCs are coming up against national legislation on recruitment, secondment and personnel management in general, despite the fact that they are territorial cooperation bodies which should be able to benefit from a little flexibility in this area; since, moreover, the fact of working physically in a country for a body whose headquarters is in another raises major legal difficulties for retirement, social security and tax arrangements, would propose that the regulation stipulate that the law governing personnel be that of the place where the employee is working, instead of the place where the body has its headquarters;

27. underlines the voluntary nature of the EGTC as an instrument for organising territorial cooperation, and therefore local and regional authorities must continue to have responsibility for determining the procedures best suited for territorial cooperation;

Improving implementation of the institution

28. concludes, on the basis of the information gathered, that the difficulties in launching the EGTC as a Community legal institution may correspond to three types of cause – legal-substantial, legal-procedural and economic-financial;

29. considers that, in the light of published studies and reports on the EGTC, emanating from both the Committee of the Regions and the scientific literature, it may be deduced that there is a slight probability that the problems stem from the unclear legal status of the institution, such as the absence of a single classification as a public, or alternatively, private law entity;

30. notes that the bulk of the evidence suggests that the legal obstacles lie overwhelmingly in the procedural field, since the implementation of Regulation (EC) No 1082/2006 is not coordinated, either independently between the Member States, or through a Community authority;

31. considers that in the light of this situation, it is essential that a Community authority should outline in advance how Regulation (EC) No 1082/2006 is to be applied in national legislation, even if such an outline would not be of a binding character;

32. urges the European Commission, in its proposed revision of the regulation, to put forward practical procedural measures that would help to reduce the current lengthy processing times that cannot always be countered by considering silence from the administration as indicating implicit acceptance, especially insofar as the number of Member States whose territorial bodies belong to EGTCs is on the increase: third party operators, such as credit institutions, contractors and workers demand greater legal certainty;

33. is convinced that such procedural measures need to include the creation of a joint forum bringing all the territorial bodies promoting EGTCs together with all the national authorities with powers of authorisation, in order to avoid the endless round of draft conventions and statutes, subject to constant change by disjointed and unrelated factors;

34. furthermore, is in favour of some examples of EGTC best practice being developed and established in close cooperation with the European Commission and using the CoR's EGTC monitoring platform. These should take special account of the goals of cohesion policy and the Europe 2020 Strategy as well as macro-regional strategies;

35. therefore highlights that it is important for all the relevant national authorisations to be proposed together in a single act, following a very closely coordinated, joint and simultaneous direct dialogue with all the promoters, without in any way infringing upon the proper discretion of the national authorities, regardless of the subsequent formalities that may be required by each national authorisation;

36. takes this opportunity to emphasise that, as well as drastically curtailing the circulation of documents and the length of the procedure, such a joint forum of all promoters and national authorities could open the door to imaginative solutions to the problems repeatedly raised by existing EGTCs regarding the status of their personnel and tax arrangements: the system of the sources of law set out in Article 2(1) of Regulation (EC) No 1082/2006 enables certain changes to be made to the convention and statutes of each EGTC;

37. highlights the potential importance of voluntary requests for a prior technical and legal opinion concerning the strict compliance of the draft convention and statutes of each proposed EGTC with Regulation (EC) No 1082/2006. Such an opinion would be non-binding, would be in line with Community law and would be drawn up by a group of legal experts appointed by the Committee of the Regions; instead of a prior technical and legal opinion, the advocates of an EGTC could, also on a voluntary basis, ask the same legal experts to accompany the abovementioned closely conducted joint dialogue and the procedure for drawing up the legal and technical framework for an EGTC;

38. recommends a simplified procedure for any changes to the statutes and the convention as regards partnership, budget, entry of an associate partner, a former associate partner becoming a full member (cf. operation), the key for the distribution of members or the distribution of seats. This simplified procedure could take the form of a unanimous decision by the EGTC which could be challenged only by the relevant national authorities;

39. proposes to encourage or even permit, with the necessary safeguards, private (or semiprivate) bodies to participate in the EGTCs or cooperate with them. On account of the tasks they carry out, these bodies would contribute to the development of activities and implementation of the purpose of the EGTC, be it companies carrying out services of general economic interest under a public service concession or as part of public-private partnerships; the private (or semiprivate) bodies should in any case satisfy the principles of transparency, equal opportunities and non-discrimination, especially as regards procurement and employment;

40. underlines the need to improve the public profile at European level of EGTC conventions and statutes. They should be published in full in series C of the *Official Journal of the European Union*, which would increase legal certainty for third party operators throughout the Union and help to make the new institution more widely known;

41. at the same time, recommends that the European Commission additionally address the legislative implementation of its own regulation (EC) in order to clarify undefined legal concepts, fill loopholes and, more generally, establish a clearer link between basic regional and/or local cohesion, and the possible introduction of EGTCs, while underlining the voluntary nature of these groupings;

42. considers it necessary to remind the authorities managing the programmes and clearly specify in the future revised Regulation (EC) No 1082/2006 that there can never

be grounds for discriminating against EGTCs when taking part on a competitive basis in such Community initiatives, calls for tender or programmes, all the more so since the very existence of the EGTC bears witness to the reality of a permanent European grouping and fulfils the usual requirements of transnationality;

43. expresses regret at the predominant imposition of obsolete models, such as the signature of atypical conventions and an approach based on a project leaders/participants structure, under the guise of a *de facto* group which must often undertake intricate legal engineering in order to organise payment of advances, settlement of debts and the production of the necessary grounds, even though this incurs administrative and management costs for projects;

44. strongly urges that the recommendations contained in the above-mentioned opinion by Ms Bresso be taken into consideration, including those set out in points 48 and 49 of the opinion, requiring, where appropriate, that EGTC promoters guarantee the formation of independent focal points for European cooperation when Community co-financing comes to an end, in order to secure maximum administrative efficiency in management, economic efficiency and territorially-based European cohesion and integration without prompting an increase in overall EU public expenditure;

45. calls for the removal of the distance criterion (150 km) used in the classification of islands and outermost regions as border regions which may be eligible for financing from cross-border cooperation programmes in the context of the territorial cooperation objective of cohesion policy or of the European Neighbourhood Policy and in the context of the Wider Neighbourhood Action Plan;

46. calls for a review of the provisions of Regulation (EC) No 1082/2006 on the participation of territorial entities from third countries. Proposes amongst other things to envisage the possibility of setting up bilateral EGTCs between one entity from a Member State and another from a non-Member State either in the pre-accession phase, as part of the European Economic Area, or under the European Union neighbourhood or wider neighbourhood policies; also calls for new European provisions based on international law, which are essential for territorial entities from third countries to be full members of EGTCs, including those that have special links with the Union;

47. recalls that a helpful means of making it easier for third country territorial entities to join EGTCs might be to conclude international agreements between the Union and the relevant countries, under the provisions of Title V of Part Five of the Treaty on the Functioning of the European Union;

48. considers that with these measures the Union will also increase its internal coherence and strength with a view to addressing the approaching external challenges, through growing competitiveness on the international markets for goods and services, where the emerging nations still enjoy lower structural costs and greater competitive advantages, since they are not confronted with such an acute and rapid process of overall ageing and contraction of the population of working age;

Added value of the Committee of the Regions in implementing the EGTCs

49. considers that the Committee of the Regions plays an important part in facilitating, assessing and promoting EGTCs. It

must therefore be ensured that the Committee can continue to work on the EGTC as an institution, with measures such as fostering a European network made up of technical specialists and political representatives, together with an international forum;

50. welcomes the decision taken by the CoR Bureau on 26 January 2011 to set up an EGTC platform of the Committee of the Regions to provide on-going evaluation of the implementation of Regulation (EC) No 1082/2006 and the practical progress of the EGTCs, as part of its preparatory work with a view to the new circumstances that will prevail from 1 January 2014.

Brussels, 27 January 2011

*The President
of the Committee of the Regions*
Mercedes BRESSO
