



COMMISSION OF THE EUROPEAN COMMUNITIES

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Amended proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

establishing a European grouping of territorial co-operation (EGTC)

(presented by the Commission pursuant to Article 250(2) of the Treaty)

EXPLANATORY MEMORANDUM

Member States and regional and local authorities have experienced important difficulties in carrying out and managing actions of cross-border co-operation, trans-national co-operation and inter-regional co-operation, within the framework of differing national laws and procedures. This calls for appropriate measures at the Community level in order to reduce these difficulties. The existing instruments, such as the European economic interest grouping on Community level or bi- or multilateral agreements between Member States have proven ill-adapted to organising a structured co-operation of structural fund programmes within the INTERREG initiative during the 2000-2006 programming period. The Committee of the Regions among others has invited the Commission to consider the setting-up of a Community instrument.

The harmonious development of the entire Community territory and reinforced economic, social and territorial cohesion imply a stronger cross-border co-operation and the adoption of measures to improve the implementation conditions for co-operation of all kinds. To this end, article 159, third paragraph, of the Treaty, allows for specific actions to be taken outside the Funds which are the subject of the first paragraph of that provision, in order to achieve the Treaty objective of greater economic and social cohesion. The proposal shall be adopted under the co-decision provisions (Art. 251 of the Treaty).

In order to overcome the obstacles hindering territorial co-operation, it is necessary to introduce a co-operation instrument at the Community level, which allows the creation of co-operative groupings in the Community territory, invested with legal personality, called "European groupings of territorial co-operation" (EGTC). Recourse to the EGTC shall be optional.

The EGTC is invested with the capacity to act on behalf of its members, notably the regional and local authorities of which it is composed. The tasks delegated to it must be defined by its members, in a convention of European territorial co-operation. The EGTC must be able to act, either for implementing programmes of co-operation programmes co-financed by the Community, notably by the Structural Funds, or for carrying out any other co-operation action at the sole initiative of the Member States and/or their regional and local authorities, with or without financial contribution by the Community.

In order to restrict the Regulation to the strict minimum, the national legislation on the ways equivalent groupings formed under national law operate shall apply to those issues not covered by the Regulation or the Statutes of the EGTC.

Development of the file

The political importance of the proposal can be considered as high. The European Parliament has voted in first reading in favour of a new instrument for co-operation and has proposed several amendments whereas the Council's working group is still examining it, with a special concern about the possible consequences if the objective of the grouping is not clearly limited and about the measures for the control over its legality and over the regularity of its acts. In the Member States some regions located at the borders are very interested in having such an instrument if it allows for cooperation with bordering regions in a flexible way and within a high margin of autonomy with

regard to the central administrations and Governments. Such an instrument is seen as a complement to similar initiatives at national level, and at the level of the Council of Europe (for example the Euroregions). The Committee of the Regions has adopted a resolution strongly supporting the Commission's initiative. Overall the Parliament's report (Draftsman: Mr. Jan Olbrycht) supports the Commission's proposal to create a new instrument to facilitate co-operation. The Draftsman's proposals aim at improving the text and at adding some issues not covered by the Commission's proposal, or not clearly enough. The Commission accepted most of the amendments adopted by a large majority in the plenary Session on 6 July 2005 as they help to clarify the text and are in line with the objective of the Commission's proposal.

Follow-up of European Parliament amendments

The Commission has fully accepted 17 amendments. First of all the Commission accepts to rename the grouping into "European grouping of territorial co-operation" (EGTC) throughout the text in order to reflect that the grouping may cover all kind of "territorial" co-operation: cross-border, trans-national or inter-regional (Title, Recitals 1, 5, 6, 7, 10, 12, 16, title of Art. 1, Art. 1, Art. 3, title of Art. 4 and Art. 4.

Then the Commission accepts to exclude financial liability of the Member States when the EGTC is used outside the management of Structural Funds (Art. 3 (4)). Furthermore, the Regulation should fix the applicable law which should be the one of the Member State where the EGTC will have its registered seat (Art. 1A(2)). Additional clarifications were made in Recitals 7, 8 and 15 as well as in Article 1(3).

Another 17 amendments are acceptable in principle/substance, but subject to rewording. Concerning the following recital and articles the Commission just prefers an alternative formulation: Recital 11, Art. 2(3), 3(2), 4(1) and 8(1).

The Commission agrees to clarify the very objective of the EGTC: Either an EGTC is set up to manage a co-operation programme co-financed by the Community, notably under the future objective 3, or it is set up to carry out any other action of co-operation (Recital 12, Art. 1(2) and Article 3(3)). The Commission suggests that throughout the text the Regulation should distinguish between "powers" or "competences" of the members of an EGTC on the one hand and of a delegation of "tasks" to the EGTC on the other hand (Recital 11 and Articles 2(3), title of Art. 3 and 3(2)).

Concerning a right of supervision and control of the Member States, the Regulation should provide for the appropriate measures. However, the initiative for the creation of an EGTC shall remain with the potential members and no additional obstacles are created. These supervision rights cannot only cover issues concerning the management of funds, but also the right to control whether the members may delegate the execution of the tasks to an EGTC (new Art. 2A).

The Commission proposes that the law governing the way in which equivalent groupings formed under national law operate in the Member State where the EGTC has its seat applies to EGTC, not only concerning the registration of the EGTC - as asked for by the EP - but also to cover other aspects not regulated by the Regulation (Art. 1A(2) and Art. 5(4)).

The Commission proposes to clarify the distinction between the elements to be covered by the convention (Art. 4) and those to be covered by the statutes (Art. 5): the statutes cover all the elements of the convention, all the elements mentioned in Art. 5 and additional elements as agreed upon by the members. The convention would cover only the elements enabling the Member States to control whether the members may delegate the execution of the tasks to an EGTC according to the relevant national legislation and if the objective of the EGTC in conformity with this Regulation.

The Commission accepts the amendment concerning Recital 16 in substance, but sticks to the standard formulation concerning the principles of subsidiarity and proportionality.

Concerning the definition of “other bodies” in Art. 2(1), the Commission prefers a reference to an existing definition (reference accepted for the Structural Funds in general) than to create a new one. The Commission agrees to concentrate provisions concerning the responsibilities of the members in Article 5(2)d). However, Amendment 31 would delete elements deemed necessary by the Commission.

Furthermore, a group of 2 amendments is only partially acceptable: In Art. 4(2) the Commission only accepts that the convention is notified to the Member States concerned and to the Committee of the Regions. Concerning the compulsory organs of an EGTC, the Commission defines the assembly as a compulsory organ in Art. 6(1).

Finally, the Commission clarifies the wording in Art. 4(1)f) of the English version in line with the French version, the wording in Art. 3(5) and in Art. 5(2)e) in order to avoid any misunderstanding, the title of Art. 8 to bring it into line with existing legislation and deleted the second sentence in Art. 9 in order to enable the setting-up of an EGTC before the start of the next programming period (i.e. 1 January 2007).

Pursuant to Article 250(2) of the Treaty the Commission amends its proposal according to the following text. As the amendments should be seen within the context of a relatively short legislative proposal, the text is being presented in a consolidated version.

Amended proposal Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

establishing a European grouping of **territorial** ~~cross-border~~ co-operation **(EGTC)** ~~(EGCC)~~

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular the third paragraph of Article 159 thereof,

Having regard to the proposal from the Commission¹,

Having regard to the opinion of the European Economic and Social Committee²,

Having regard to the opinion of the Committee of the Regions³,

Acting in accordance with the procedure laid down in Article 251 of the Treaty⁴,

Whereas:

- (1) Article 159, paragraph 3, of the Treaty provides for specific actions to be decided outside the Funds which are the subject of paragraph 1 of that article, in order to achieve the objective of social and economic cohesion envisaged by the Treaty. The harmonious development of the entire Community territory and greater economic, and social ~~and territorial~~ cohesion imply the strengthening of cross-border co-operation. To this end it is appropriate to adopt the measures necessary for improving the implementation conditions for actions of cross-border co-operation.
- (2) Taking into account the important difficulties encountered by the Member States, in particular by the regions and local authorities, in implementing and managing actions of cross-border, trans-national or inter-regional co-operation within the framework of differing national laws and procedures, measures to reduce these difficulties are necessary.
- (3) Taking into account notably the increase in the number of land and maritime borders in the Community following its enlargement, it is necessary to facilitate the reinforcement of cross-border, trans-national and inter-regional co-operation in the Community.

¹ OJ C [...], [...], p. [...].

² OJ C [...], [...], p. [...].

³ OJ C [...], [...], p. [...].

⁴ OJ C [...], [...], p. [...].

- (4) The existing instruments, such as the European economic interest grouping, have proven ill-adapted to organising a structured co-operation of Structural Fund programmes within the INTERREG initiative during the 2000-2006 programming period.
- (5) Council Regulation (EC) No (...) laying down general provisions for the European regional development fund, the European social fund and the Cohesion fund, increases the means in support of European territorial co-operation.
- (6) It is likewise necessary to facilitate and follow up the implementation of cross-border co-operation actions, without financial participation by the Community.
- (7) In order to overcome the obstacles hindering cross-border co-operation, it is necessary to institute a co-operation instrument at Community level, which allows the creation of co-operative groupings in the Community territory, invested with legal personality, called “European groupings of **territorial** ~~cross-border~~ co-operation” (**EGTC**) (~~EGTC~~). Recourse to the EGTC should be optional.
- (8) It should be optional to continue to apply agreements on cross-border, trans-national or inter-regional co-operation between Member States and/or regional and local authorities;**
- ~~(8)~~**(9)** It is appropriate for the **EGTC** ~~EGCC~~ to be given the capacity to act on behalf of its members, and notably the regional and local authorities of which it is composed
- ~~(9)~~**(10)** The tasks and competencies of the **EGTC** ~~EGCC~~ **should** must be set out in a “Convention of European grouping of **territorial** ~~cross-border~~ co-operation”.
- ~~(10)~~**(11)** _____ The members **of the EGTC should** ~~may~~ be able to decide ~~to set up the EGCC either as a separate legal entity or~~ to assign the execution of its tasks to one of the members.
- ~~(11)~~**(12)** _____ The **EGTC** ~~EGCC~~ **should** ~~must~~ be able to act, either for implementing programmes of cross-border co-operation co-financed by the Community, notably within the structural Funds in conformity with Regulation (EC) No and Regulation (EC) No on the European Regional Development Fund, as well as trans-national and inter-regional co-operation programmes, or for carrying out cross-border co-operation programmes which are at the sole initiative of the Member States and their regional and local authorities, without financial contribution by the Community.
- ~~(12)~~**(13)** _____ ~~It should be specified that the~~ ~~The~~ financial responsibility of regional and local authorities, as well as that of the Member States, **should** is not **be** affected by the formation of an **EGTC** ~~EGTC~~; with regard to both the management of Community Funds or national Funds.
- ~~(13)~~**(14)** _____ ~~It should be specified that the~~ ~~The~~ powers exercised by regional and local authorities as public authorities, notably police and regulatory powers, **should** ~~can~~ not be the subject of a convention.
- ~~(14)~~**(15)** _____ It is necessary for the **EGTC** ~~EGCC~~ to establish its statutes, and equip itself with its own organs, as well as rules for the budget and for the exercise of its financial responsibility.

(15)(16) _____ Since the **objectives of the action to be taken to improve the** conditions for **territorial** ~~cross-border~~ co-operation, as specified in this Regulation, cannot be **sufficiently achieved** ~~created in an efficient way~~ by the Member States **in the framework of differing national laws and procedures between them**, and **can therefore, by reason of lack of valuable solutions offered by existing instruments on Community level, be** ~~are thus better achieved~~ established at the Community level, the Community **may adopt** ~~can take~~ measures, in accordance with the **principle of subsidiarity** ~~principle~~ **as set out** enshrined in article 5 of the Treaty. In accordance with the **principle of proportionality** ~~principle~~, **as** set out in that Article, this Regulation does not **go beyond** ~~exceed~~ what is necessary **in order to achieve** ~~for achieving~~ **those** its objectives, recourse to the **EGTC** ~~EGCC~~ being optional, in accordance with the constitutional system of each Member State,

HAVE ADOPTED THIS REGULATION:

Article 1
Nature of the EGTC ~~EGCC~~

1. A co-operative grouping **may** ~~can~~ be **set up** ~~established~~ on Community territory in the form of a European grouping of **territorial** ~~cross-border~~ co-operation, hereinafter referred to as **“EGTC”** ~~“EGCC”~~, **on** ~~under~~ the conditions and ~~according to in the~~ modalities envisaged by **in the manner** laid down in this Regulation.

~~The EGCC is invested with legal personality.~~

2. The objective of the **EGTC** ~~EGCC~~ **shall be** ~~is~~ to facilitate and promote **economic or social actions of** ~~cross-border~~, **trans-national and interregional** co-operation, **hereinafter referred to as “territorial co-operation”**, between **its members as set out in Article 2(1), located in two or more** Member States, ~~a well as regional and local authorities~~, with the aim of ~~reinforcing~~ **strengthening** economic, and social and territorial cohesion.

~~In the same aim, it can equally have the objective of facilitating and promoting trans-national and inter-regional co-operation.~~

3. **The EGTC shall have legal personality. It shall have in each Member State the most extensive legal capacity to act accorded to legal persons in their law; it may, in particular, acquire or dispose of movable and immovable property and may be a party in legal proceedings.**

Article 1 A
Applicable law

1. **An EGTC shall be governed by the following:**
 - a) **this Regulation;**
 - b) **where expressly authorized by this Regulation, the provisions of the convention and the statutes;**

- c) **in the case of matters not, or only partly, regulated by this Regulation, the laws of Member States governing national groupings of a similar nature and purpose in the Member State where the EGTC has its seat.**
2. **The law applicable to the interpretation and enforcement of the convention referred to in Article 4(1)(d) shall be the law of the Member State where the EGTC has its seat.**

Article 2 **Composition**

~~The EGCC can be made up of Member States and/or regional and local authorities and/or local public bodies, hereafter referred to as “members”.~~

~~The creation of an EGCC is decided at the initiative of its members.~~

~~The members can decide to set up the EGCC as a separate legal entity, or to~~

1. **The EGTC shall be made up of members belonging to one or more of the following categories or to associations whose members belong to one or several of these categories**
 - a) **Member States,**
 - b) **regional authorities**
 - c) **local authorities or**
 - 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 services contracts⁵,**

hereinafter referred to as “members”.
2. **The formation of an EGTC shall be decided at the initiative of its members.**
3. **The members of an EGTC may decide to** assign its tasks to one of the members.

Article 2 A **Control**

1. **Prior to the formation of an EGTC its members shall establish a draft convention as set out in Article 4 and notify it to the Member States in which the members are located. Within two months from the reception of the draft convention the Member States concerned shall satisfy themselves that the tasks**

⁵ OJ L 134, 30.04.2004, p. 114.

mentioned in the draft convention comply with this Regulation and fall within the competencies of the members according to their respective national laws.

If a Member State considers that the tasks mentioned in the draft convention do not comply with this Regulation or not fall within the competencies of those members which are located in its territory, it shall transmit a statement of the reasons thereof to the members.

If, after two months, the Member States remain silent, the draft convention shall be deemed to be approved.

2. After the formation of an EGTC, the competent authorities of the Member State where the EGTC has its seat shall have a right of supervision, in accordance with the national law applicable, in respect of the EGTC's acts and management of public Funds.
3. The Member State where the EGTC has its seat shall inform the other Member States affected by the convention of the results of any checks carried out in accordance with paragraph 2.

Article 3
Competence
Tasks

1. The ~~EGTC~~ EGCC carries ~~shall carry~~ out the tasks which it is assigned ~~to it~~ by its members in accordance with this regulation. Its ~~competencies are~~ **tasks shall be** defined by a convention of European **territorial** ~~cross-border~~ co-operation, hereafter referred to as "convention", which is passed by the members, in conformity with article 4 of this regulation."

~~Within the limits of its tasks, the EGCC acts on behalf of its members. To this end, the EGCC is invested with the legal capacity accorded to legal entities by national legislations.~~

2. The EGTC shall act within the confines of the tasks entrusted to it.
3. The ~~EGTC~~ EGTC **may** ~~can~~ be given the task either
 - of implementing **territorial** ~~cross-border~~ co-operation programmes co-financed by the Community, notably through the Structural Funds, or
 - of carrying out any other **economic or social** action of **territorial** ~~cross-border~~ co-operation **at the sole initiative of the bodies referred to in Article 2(1)**, with or without ~~community~~ **a** financial ~~intervention~~ **contribution from the Community.**

The formation of an ~~EGTC~~ EGCC does not affect the financial responsibility of its members or of the Member States, neither for community funds nor for national funds.

4. **Without prejudice to the financial responsibility of Member States in relation to any Community Funds entrusted to the EGTC, no financial liability shall arise for Member States on account of this Regulation in relation to an EGTC of which they are not a member.**
5. ~~A~~ **The tasks assigned to the EGTC by the** convention ~~cannot~~ **may not** concern the delegation ~~exercise~~ of powers ~~of~~ **conferred by** public authority, notably **law of duties designed to safeguard the general interests of the state or other public authorities, such as** police and regulatory powers.

Article 4

Convention of European territorial ~~cross-border~~ co-operation

1. ~~All~~ **The EGTC** ~~EGCC~~ **shall be** are the subject of a convention **specifying:-**
 - a) **the name of the EGTC and the address of its seat;**
 - b) **the objective and** ~~The convention specifies the tasks of the~~ **EGTC** ~~EGTC~~, its duration and the conditions for its dissolution.;
 - c) **the list of its members;**

~~The convention is limited solely to the domain of cross-border co-operation determined by its members.~~

~~The convention stipulates the responsibilities of each of the members with respect to the EGTC and with respect to third parties.~~

~~The convention defines~~

- d) the law applicable to ~~the~~ its interpretation and enforcement **of the convention;**

~~The applicable law is from one of the Member States concerned. In case of a dispute between members, the competent jurisdiction is that of the Member State whose law was chosen.~~

- e) **the arrangements for mutual recognition** ~~The convention establishes the modalities in the field of control and~~
 - f) **on the basis of the applicable national law, the** ~~The conditions~~ **under which** for granting concessions or public service delegations **granted** to the **EGTC** ~~EGCC~~ within the **territorial** ~~cross-border~~ co-operation **are implemented** are to be defined in the convention, on the basis of the applicable national law.
2. **The convention shall be concluded by the members after completion of the procedure offset out in Article 2A. The members shall notify the** ~~The convention is notified to all its members and to the Member States~~ **and to the Committee of the Regions.**

Article 5
Statutes

1. The EGTC ~~EGCC~~ ~~adopts~~ **shall adopt** its statutes on the basis of the convention.
2. The statutes contain, at least, all the provisions of the convention and the following provisions:
 - a) ~~the list of its members;~~
 - b) ~~the objectives and tasks of the EGTC, and its relations with the members;~~
 - c) ~~its name and the address of its seat;~~
 - a) **the operating principles of** its organs and their competencies, ~~its functioning,~~ the number of representatives of the members ~~on~~ in the **relevant** organs;
 - b) the decision-making procedures of the EGTC ~~EGCC~~;
 - c) the ~~establishment of the~~ working language or languages;
 - d) the ~~modalities~~ **arrangements** for its functioning, notably concerning personnel management, recruitment procedures, the nature of personnel contracts, guaranteeing stability of co-operation actions;
 - e) the ~~modalities~~ **arrangements** for the members' financial contributions, ~~and the applicable accounting and budgetary rules,~~ **as well as the liabilities on financial issues, of each of the members of the EGTC with respect to it, as well as the division of liabilities of the members with respect to acts attributable to the EGTC and**
 - f) the designation of ~~the independent~~ organisations **responsible for** ~~of~~ financial control and **independent,** external audit.
3. ~~If~~ **Where** a member is assigned the tasks of the EGTC ~~EGCC~~, in accordance with ~~article~~ Article ~~3~~ 2, paragraph ~~2~~ 3, the content of the statutes ~~can~~ **may** be a part of the convention.

~~Upon adoption of the statutes, the EGCC has the capacity to act, in accordance with article 3, paragraph 2.~~

4. **The statutes shall be registered and/or published, according to the applicable law governing registration and/or publication of national groupings of a similar nature and purpose. The EGTC shall acquire legal capacity on the day of that registration and/or publication.**

Article 6 **Organs**

1. ~~The EGCC is represented by a director, who acts on its behalf. The~~ **EGTC shall have as organs an assembly and a director.**

~~The EGCC can equip itself with an assembly, which is made up by~~ **shall be composed of** representatives of ~~its~~ **the** members **of the EGTC.**

The director shall represent the EGTC and act on its behalf.

2. The statutes ~~can envisage supplementary~~ **may provide for other** organs

Article 7 **Budget**

The ~~EGCC~~ **EGTC** establishes an annual ~~provisional~~ budget, which is **shall be** adopted by the **assembly** members. It ~~draws up an annual activity report, certified by experts who are independent of the members.~~

~~The members are financially liable on a pro-rata basis according to their contribution to the budget, until the EGCC's debts are eliminated.~~

The preparation of its annual accounts, including the accompanying annual report, and the auditing and publication of those accounts shall be governed in accordance with the provisions referred to in points (b) and (c) of Article 1A(1).

Article 8 **Publicity**

Notice in the Official Journal of the European Union

~~The EGCC is published in the *Official Journal of the European Union* once it has the capacity to act, in accordance with article 5, paragraph 4. As of this instant, the legal capacity of the EGCC is recognised in each Member State.~~

~~This publication includes the name of the EGCC, its objective, the list of its members and the address of its seat.~~

The EGTC shall send, within ten working days from the registration or, if publication of the statutes is required in accordance with Article 5, paragraph 4, the publication of the statutes, to the Office for Official Publications of the European Communities a request for publication in the *Official Journal of the European Union* of a notice including the name of the EGTC, its objective, the list of its members and the address of its seat.

Upon the publication of this notice, the legal capacity of the EGTC shall be recognised in each Member State.

Article 9
Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

~~It shall apply from 1 January 2007.~~

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President