

Lessons learnt: A balance of the EGTC tool

The EGTC as a legal solution of institutionalisation of cross-border cooperation

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Abstract

This article will explain the main features of the groupings that have made the EGTCs the basic legal solution for institutionalising cross-border cooperation between public institutions, in particular local authorities.

For this reason, the author focuses on the issues relating to the legal personality of the EGTC. The article also discusses the scope of the tasks of the EGTC and the limits to which it is subject. In this context, the author also deals more specifically with questions relating to the performance of services of general economic interest by EGTCs. Against this background, the author also answers the question of the forms of exercise of its powers, in particular whether the EGTCs may also act on a mandatory basis.

Because of the changes brought about by the reform of the EGTC regulation of 2013, the membership is also examined in more detail. As only public bodies may belong to the EGTC, the question of the position of the EGTC in public procurement law arose in this context.

Furthermore, the author presents the internal structure of the grouping and the legal character of both founding documents – convention and statutes. This is followed by a description of the foundation procedure with special attention to the changes in 2013.

The author also addresses the question of the relevance of the seat of the grouping for its legal qualification. He also presents the current and future financing possibilities for EGTCs.

The study concludes with the proposed tasks of the EGTC within the ECBM.

Keywords: EGTC, legal personality, cross-border public procurement, cross-border services of general economic interest

I. Introduction

An EGTC is a relatively new legal instrument. It was introduced in 2006¹. Although only 14 years have passed since the introduction of this instrument, it is clear that the groupings have dominated the landscape of institutional cross-border cooperation.

The importance of the EGTC has been evident from the outset in the strong link with the regulations on EU cohesion policy. The EGTC Regulation was adopted in the budget package for the European Structural and Investment Funds.

Initially, the EGTC instrument was quite modestly popular. However, in recent years there has been an increasing number of groupings established.² According to the European Commission's report, the initial leniency towards the groupings was due, among other things, to insufficient knowledge of the territorial cooperation instrument itself both in the Member States and in the Commission.³

In 2013 a reform was implemented to change this state of affairs. It was guided by the slogans of continuity, transparency and flexibility of the law on EGTCs.⁴ Since then, we have been able to observe the development of EGTCs. It can now be concluded that they have become an integral part of the landscape of territorial cooperation in the European Union.

This article will explain the main features of the groupings that have made the EGTCs the basic legal solution for institutionalising cross-border cooperation between public institutions, in particular local authorities.

For local authorities (Spatial Foresight, 2018: 6)⁵, legal barriers in particular are a major challenge when cooperation is institutionalised. As public institutions, they are strictly bound by the requirements of public law and therefore need appropriate legal bases for the initiation and implementation of cooperation. However, the multilateral agreements under international law do not provide a legal basis for institutionalised cooperation for municipal institutions. This applies both to the

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, p. 19–24).

2 Currently 77 (as of 12.6.2020) – https://portal.cor.europa.eu/egtc/CoRAactivities/Documents/Official_List_of_the_EGTCs.pdf.

3 Commission Staff Working Paper. Accompanying the document Report from the Commission to the European Parliament and the Council on The application of Regulation (EC) No 1082/2006 on a European Grouping of Territorial Cooperation (EGTC), 5.

4 Proposal for a Regulation of the European Parliament and of the Council amending 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) as regards the clarification, simplification and improvement of the establishment and implementation of such groupings (COM/2011/0610 final – 2011/0272 (COD)).

5 Table 1. Overview of effectiveness indicators.

European Charter of Local Self-Government of 15 October 1985⁶ and to the Madrid Outline Convention of 21 May 1980⁷.

It is true that the European Charter of Local Self-Government provides for the right of local authorities to cooperate with local authorities of other States under the conditions laid down by law (Art. 10(3) European Charter). However, this provision does not confer on local authorities a subjective right to cooperate as such and thus to institutionalise the cooperation (Storbeck, 2016: 92). As a consequence, cooperation between territorial authorities from several States has for a long time been in a (legal) grey area. (Engl, 2017: 46)

The situation has changed significantly in favour of local authorities since the entry into force of the Madrid Outline Convention. It is true that the Madrid Outline Convention is a purely political agreement which does not provide local authorities with a direct legal basis for cooperation (Storbeck, 2016: 69). However, it does encourage the contracting states to conclude so-called “umbrella agreements” in accordance with a model annexed to the Outline Convention and to define the desired cooperation formats in these agreements. Since the mid-1980s of the XXth century, more and more instruments have gradually been made available to local authorities. These include formats such as the local cross-border cooperation grouping (LCCG⁸) and the Euroregional Cooperation Groupings (ECGs)⁹.

The analysis carried out for the purposes of this article has shown that the EGTC is by far the dominant form of institutional cross-border cooperation. Currently 77 groupings have been formed. The number of other forms of cooperation (involving public entities) is as follows

6 European Charter of Local Self-Government (ETS No.122).

7 European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (ETS No. 106).

8 Anholt Convention – Convention of 23 May 1991 between the Land of North Rhine-Westphalia, the Land of Lower Saxony, the Federal Republic of Germany and the Kingdom of the Netherlands on Transfrontier Co-operation between Territorial Communities or Authorities and other Public Authorities;

Karlsruhe Convention – Convention of 23 May 1991 between the Government of the Federal Republic of Germany, the Government of the French Republic, the Government of the Grand Duchy of Luxembourg and the Swiss Federal Council, acting on behalf of the Cantons of Solothurn, Basel-Stadt, Basel-Landschat, Aargau and Jura, on Transfrontier Co-operation between Territorial Communities or Authorities and Local Public Authorities.

Mainz Convention – Agreement of 8 March 1996 between the Land of North Rhine-Westphalia, the Land of Rhineland-Palatinate, the Walloon Region and the German-speaking Community of Belgium on cross-border Co-operation between local authorities and other public bodies.

9 Protocol No. 3 to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities concerning Euroregional Co-operation Groupings (ECGs) (CETS No. 206).

- EEIG (with participation of public entities) – 3¹⁰,
- SE¹¹ – 1 (Brenner Basistunnel SE),
- LCCG – 10,
- ECG – 0,
- others (f.i. cross-border consortia (Treaty of Bayonne) – 3) (MOT, 2013: 20).

The dominance of an EGTC is not surprising. It is mainly due to the many advantages that this legal form offers to its members. The last report of European Commission again highlights the advantages of an EGTC and particularly:

- consolidate an integrated strategic approach;
- stabilise cooperation structures and ensure the continuity of actions;
- improve the transparency and visibility of cooperation; and
- facilitate participation in EU programmes.¹²

The EGTC also offers many advantages in legal terms. These include, in particular, legal independence and the resulting binding nature of the cooperation and the sustainability of the cooperation. The EU legal personality makes an EGTC more visible and more likely to be accepted by other relevant authorities. It is recognised as an intermediary that can initiate new cross-border measures and sometimes exert more influence on decision-making (Chapter II).¹³

Another argument in favour of the EGTC is that it can perform tasks that are at the heart of the tasks of its members. As an independent body, it can thus work in a goal and task oriented manner and carry out its tasks more effectively and efficiently (Chapter III).

These tasks can be effectively performed by the EGTC as a legal person by enabling it to carry out certain acts autonomously and on its own responsibility. The range of its activities covers mainly private law options. However, in certain cases, the EGTC can also take quasi-public law measures of general application (see Chapter III.3.).

10 Cf. Europäisches Institut für Energieforschung EDF-KIT EWIV (EIFER), arte TV, SUB-MARINER Network.

11 European company (SE) – Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European company (SE) (OJ L 294, 10.11.2001, 1–21).

12 Report from the Commission to the European Parliament, the Council and the Committee of the Regions on the application of Regulation (EC) No 1082/2006 on a European Grouping of Territorial Cooperation (EGTC) as amended by Regulation (EU) No 1302/2013 as regards the clarification, simplification and improvement of the establishment and functioning of such groupings (SWD(2018) 395 final =COM(2018) 597 final).

13 Report... (footnote 12), 5.

The EGTC is intended primarily for cooperation between public law bodies (Chapter IV.). This makes it one of the few forms of cross-border cooperation accessible to local authorities and public enterprises. The exclusion of natural persons and private entities has indeed created a cooperation format that takes into account the specificities of the public law of the Member States. At the same time, however, the EGTC is relatively flexible with regard to changes in membership (withdrawal or accession of new members). Possible changes are to be made according to a simplified approval procedure according to Art. 4(6a) EGTC Regulation.

The membership structure also influences the EGTC's ability to carry out cross-border procurement (Chapter V).

There is also flexibility in the internal constitution of the EGTC (Chapter VI). It is mainly shaped by the convention of the EGTC. The internal procedures are essentially defined in the statutes (Art. 9(1) EGTC Regulation). This allows the members to determine the decision-making and other rules of cooperation independently, without having to involve the approval authorities (for the founding documents, see more in Chapter VII).

For the sake of completeness, the procedure for the formation of EGTCs (Chapter VIII.) and the importance of the EGTC's registered office (Chapter IX.) still need to be discussed.

Moreover, the EGTC quasi-automatically fulfils the four conditions for good partnership and cross-border cooperation set out in Art. 12(4) of the ETC Regulation¹⁴. Its applications therefore have a greater chance of receiving funding, and the advantage for the members is that more projects are carried out in their field. This advantage is particularly evident when the EGTC is set up as a sole beneficiary. As sole beneficiaries, EGTCs have easier access to ESI funds. Applying for such funds through the grouping entails less administrative work for the members and for the Member States.¹⁵ The EGTC, as sole beneficiary, is responsible for the development, application for financing and subsequent implementation of cross-border projects. In the new programming period, the EGTC gains further opportunities for use as a privileged beneficiary of the Small Projects Fund and (Chapter X) as an initiator of the ECBM (Chapter XI).

14 Regulation (EU) No 1299/2013 of the European Parliament and of the Council of 17 December 2013 on specific provisions for the support from the European Regional Development Fund to the European territorial cooperation goal (OJ L 347, 20.12.2013, 259–280).

15 Report... (footnote 12), 4.

II. Legal personality

The EGTC has legal personality according to Art. 1(3) EGTC Regulation and has the most extensive legal capacity in each Member State according to Art. 1(4) EGTC Regulation. The EGTC Regulation does not explicitly specify whether it has legal personality under Union law or under the law of the Member State. Nor does the EGTC Regulation decide whether this legal personality is to be assigned to public or private law.

In principle, the view prevails that the legal personality of an EGTC is enshrined in Union law (Kubicki, 2017:102). It is disputed that in the case of the EGTC – unlike the SCE and the SE – not all Member States have comparable legal forms whose national legal personality could be linked to the regulatory content EGTC Regulation, if necessary by harmonising or otherwise.

In the absence of a clear definition in the EGTC Regulation of the attribution to public or private law, the only question that remains is whether there are criteria under Union law that might have to be taken into account when making a choice at one of the two downstream levels, especially if the Member States were to determine them in a general way through implementing rules. The requirement of effective application of the EGTC Regulation should be considered here (Pechstein & Deja, 2011: 364). If, for example, the legal effects of a national private law body are in conflict with or limited the (legal) possibilities granted by the EGTC Regulation in the light of the legal consequences arising from it, this would be contrary to Union law and the corresponding provisions of the Member State law would be inapplicable.

The grouping's registered office also determines its legal nature, as this is not defined in the EGTC Regulation. Thus, in accordance with the Polish EGTC law, groupings with a registered office in Poland are treated as (private law) associations (Art. 3 of the Polish EGTC Law¹⁶). On the contrary, it is unclear how EGTCs with registered office in Germany will be treated. As a rule, however, they are regarded as an undefined legal form (*sui generis*) with its own legal personality. For EGTCs with the participation of local authorities, the provisions of the municipal code are applied by analogy.¹⁷ In France the EGTC is a replica of the French *groupement d'intérêt public*, the central type of organisation in French administrative law for cross-border cooperation (Martínez, 2005: 341).

16 Polish Act of 07. 11. 2008 on the European Grouping of Territorial Cooperation (O.J. of 2008 No 218 Pos. 1390) with amendments).

17 See Art. 9 Convention of "Interregional Alliance for Rhine – Alpine Corridor" EGTC with registered seat in Mannheim (Germany).

III. Tasks of the EGTC and forms of action

The joint delegation of tasks may relate to one or more tasks. Furthermore, an EGTC may also carry out tasks only for certain parts of the territory of its members or delegate the execution of the tasks assigned to it to a member (*cf.* Art. 7(5) EGTC Regulation).

III.1. Scope of tasks and its limitations

According to Art. 7(1) EGTC Regulation, an EGTC carries out the tasks „delegated” to it by its members. However, the EGTC may not be assigned any tasks. The following criteria must be taken into account when delegating tasks:

III.1.a. Joint assignment of tasks

According to Art. 7(2), the delegation of tasks to an EGTC presupposes first of all that the matter to be delegated is the responsibility of all its members. With the 2013 reform, an attempt was made to make an exception to the parallelism of competences. According to Art. 7(2) a Member State may authorise the participation of a member subject to its jurisdiction even if it does not have the necessary competence for all delegated tasks. However, it is doubtful whether the Member States will be willing to sacrifice their system of competences for cross-border cooperation between municipalities.

III.1.b. Binding to the objectives and purposes of the EGTC Regulation

Art. 7(2) EGTC Regulation in conjunction with Art. 7(2) sets a framework for the delegation of tasks. Art. 1(2) sets a framework for the delegation of tasks by linking it to the objectives and purposes defined by the EGTC Regulation. It follows from Art. 7(2)¹⁸ and Art. 4(3) letter a) no. i) of regulation that compliance by the national approval authorities with the limits resulting from the objectives and purposes EGTC Regulation is (legally) verifiable.

Furthermore, the establishment of an EGTC must be seen as an institutionalised form of cooperation between border municipalities from two or more Member States to facilitate and promote territorial cooperation.

The reform EGTC Regulation has added a further objective to Art. 7(1), namely the overcoming of obstacles in the internal market. However, there is no explanation of this in the legislative materials. In any case, according to the traditional understanding of this requirement, an EGTC cannot make a contribution to this, since, in principle, it does not have regulatory powers (*cf.* Art. 7(4)(1)) to eliminate differences

¹⁸ „An EGTC shall act within the confines of the tasks ...”

between the participating Member States' legal systems, despite the limitation of its scope, which is territorial anyway. However, if this element is nevertheless to be of material importance, it could primarily consist in directing the transferable tasks of an EGTC (also) towards the promotion of cross-border mobility, particularly of persons and services. This requirement should easily be satisfied in the case of services of general interest organised jointly across Member States' borders or a joint management of infrastructure for the benefit of residents of all participating local authorities. With regard to the tasks like coordination, promotion and support of cross-border cooperation, this would apply whenever the joint projects covered by it contribute to cross-border mobility in a specific case.

III.1.c. Limitations based on national law

The scope of tasks for EGTCs established on the territory of a Member State may be determined by this State in the form of an exhaustive list (Art. 16(1)). (Greco & Marchesi, 2011: 103). According to Art. 7(3), however, Member States may also determine the scope of tasks by restricting those carried out without “financial support from the Union”.

Poland, among others, has made use of this last power. Art. 16 of the Polish EGTC Law stipulates that the groupings can only carry out the acts covered by Art. 7 of the ETC Regulation. On the one hand, this is intended to concentrate the EGTC's actions on the ETC measures.¹⁹ On the other hand, control over the EGTC should also be simplified. This restriction applies only to those groupings that have their registered office in Poland. It follows that “Polish” EGTCs can only engage in activities that are covered by the investment priorities of the EGTC. However, this restriction is not intended to be very sensitive (Bußmann, 2009: 14). *Lege non distinguente*, whether it concerns financing from the ESI funds or from other programmes (IPA, CEF, special support instruments).

It should also be noted that different investment priorities have also been identified for different components of the ETC (cross-border, transnational and interregional). It is therefore necessary to decide on the character of the EGTC in each case from this point of view. It is therefore not possible to entrust an interregional EGTC with the same tasks as a cross-border grouping.

¹⁹ Debate in the legislative procedure of the Polish law implementing the EGTC Regulation, Biuletyn Sejmowy (parliament document) No. 1257/VI of 7.10.2008, 16–17.

III.2. Tasks in the area of services of general interest and infrastructure management by EGTC

In terms of their tasks, EGTCs can be organised on a cross-cutting or thematic basis. The members are therefore free to choose whether to set up an EGTC for specific tasks or to create several groupings with different tasks. The basic condition is that the tasks must potentially further the general objectives of the EGTC (Art. 7(2) EGTC Regulation).

The "services of general economic interest" (SGEIs) are regularly the subject of inter-municipal cooperation at Union level (Zillmer et al., 2019). There is also no doubt that the EGTC can be entrusted with services of general interest.²⁰ The EGTC Regulation, which since 2014 makes explicit reference to SGEIs in several places (*cf.* Art. 3(1)(e), 7(4)), speaks in favour of this.

Infrastructure management is often closely linked to services of general interest (Pielow, 2001: 24), and is also a cross-cutting task of municipal activity (Hünnekens, 1995: 183). Almost all tasks of the municipalities, such as school, social and health care, culture and sport, road construction, local and regional transport (local public transport, regional transport), supply and disposal (with energy or water) require the construction and maintenance of appropriate infrastructure facilities. This can also be the subject of the assignment of tasks. It is not clear why interested local authorities from two or more adjacent Member States could only delegate the management of a common infrastructure (e.g. swimming pool) to an EGTC, but not the construction. In the case of the latter in particular, it would also be possible to make use of the new EU public procurement rules, which give joint cross-border bodies such as EGTCs the possibility of a choice of law with regard to the applicable (national, but EU-determined) public procurement law (Klinkmüller, 2017: 253).²¹

However, EGTCs are still seldom entrusted with such tough tasks. In practice, the vast majority of EGTCs are used for soft tasks such as coordination or the promotion and support of joint projects.

III.3. Types of action

It is necessary to clarify below how the EGTC can carry out its tasks, and in particular the means by which it can do so. Because of the public law nature of its members, the first question is whether the EGTC may use the measures conferred by public law. Reference to the instruments of private law should be made as well.

²⁰ This is already the case with the original EGTC Regulation: Pechstein & Deja, 2011: 362; Peine & Starke, 2008: 405; Czarnecka-Zawada, 2008: 199.

²¹ See also Chapter V.

III.3.a. Exercising of public power

As already mentioned above, the tasks may not involve the exercise of public authority. Since that it is clear that no such powers conferred by public law may be delegated to an EGTC and that it cannot therefore act in this way (Pechstein & Deja, 2011: 361; Peine & Starke, 2008: 403). It is therefore necessary to clarify what is meant by “powers conferred by public law” within the meaning EGTC Regulation and what is the basis for the exception in Art. 7(4)(2).

This condition must be interpreted autonomously (Obwexer, 2011: 53).²² Consequently, the meaning and purpose of the regulation must be used, which are derived from the preamble and history of the EGTC Regulation. They support the interpretation that the EGTC should not be endowed with powers that belong to the core area of public authority (Obwexer, 2011: 53, 70; Bußjäger, 2011: 530). Art. 15(3) a) also confirms this view. According to this Art., citizens have the right to challenge the administrative acts adopted in connection with the EGTC’s activities before the courts of the Member State whose constitution provides for the right of appeal. As a rule, an EGTC does not create a new administrative authority²³ nor does it replace members (Miaskowska-Daszkiewicz & Mazuryk, 2010: 255).

It can be concluded from this that, in principle, the EGTC may not adopt administrative acts, decisions and regulations, adopt statutes, pass judgements or act in areas that, because of their relevance to the state, are part of its monopoly (e.g. justice, foreign policy, fiscal sovereignty) (Bußjäger, 2011: 534). The competence to adopt and enforce measures to ensure the effectiveness and efficiency of the performance of its tasks therefore remains with the members. From the point of view of Austrian law, the conclusion of public law contracts by the EGTC is also not permitted (Bußjäger, 2011: 534).

According to Art. 7(4), the EGTC²⁴ may “however” determine the conditions for the use of an infrastructure managed by the EGTC or the conditions under which SGEIs are provided, in compliance with the applicable Union and national law. This includes the tariffs and fees to be paid by users. This exception to the general exclusion of sovereign powers in paragraph 1 is to be understood as a guarantee that such issues may be determined by the EGTC, even if, under national law, this may only be done on the basis of sovereign powers (“in compliance with the applicable national law”). Such an understanding should therefore allow the EGTC to determine the conditions for the use of infrastructure and SGEIs, but not on the basis of sovereign powers, but under private law (Krzymuski, 2017: 169).

22 Groupe d'études politiques européennes (2007) was critical of the provision (p. 125).

23 The situation could be different if the EGTC is used as a managing authority within the ESIF: Obwexer, 2011: 70.

24 This must be done by resolution of the general assembly. Cf. Art. 7(4) EGTC Regulation.

In the case of public law disputes, the jurisdiction of the courts is determined in accordance with Art. 15(3) EGTC Regulation.

III.3.b. Private law instruments

As already mentioned above, the EGTC is a legal person and can therefore participate in legal transactions independently. As a rule, the EGTC will act under private law. For cross-border transactions, the applicable law is determined in accordance with the conflict rules of private international law.

The rules of private international law are currently codified in two regulations: Rome I Regulation²⁵ and Rome II Regulation²⁶. The scope of application of the first-mentioned regulation is open to claims arising from legal transactions. In contrast, Rome II Regulation refers to claims arising from non-contractual obligations. They apply regardless of whether it is the law of an EU Member State or of a third country (Art. 2 Rome I Regulation, Art. 3 Rome II Regulation).

First and foremost, recourse must be had to the **freedom of choice** of law. According to this, the legal system which the parties to an obligation have themselves indicated as applicable is decisive. In the case of contractual obligations characterised by the principle of contractual freedom, this is readily apparent (Art. 3 Rome I Regulation). Since the entry into force of Rome II, the parties to a non-contractual obligation have also been able, under Art. 14 Rome II Regulation, to determine autonomously the applicable law of obligations. However, it should be noted that this choice of law may, as a rule, be made after the creation of the debt relationship (ex post determination). This allows the EGTC and a person injured by it – e.g. as a result of a car accident caused by the EGTC director – to agree on a law. On the basis of this right, the conditions and extent of the grouping's liability are determined ex-post.

However, in the absence of an effective choice of law, the statute of liability is determined on the basis of **objective connecting factors**. According to Art. 4 *et seq.* Rome I regulation, contractual claims are based on the habitual residence of a party or the location of the property concerned, depending on the type of contract. If the “habitual residence” of the EGTC is relevant, the place of the grouping's head office is decisive (Art. 19(1) of the Rome I Regulation). In the case of an EGTC, this is the registered office of the director. It is therefore not the statutory seat that counts, but the place where the body entitled to represent it acts. This is not in contradiction with Art. 2(1) sentence 2 of the EGTC Regulation,

25 Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) (OJ L 177, 4.7.2008, 6–16).

26 Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II) (OJ L 199, 31.7.2007, 40–49).

which treats the EGTC as a body of the Member State where it has its registered office. The conflict rules of the Rome I regulation are based on the registered office of the head office and not on the fact that the EGTC belongs to a state.

The law applicable to tort or delict, on the other hand, is the law of the country in which the damage occurred (Art. 4(1) Rome II regulation), unless a special conflict-of-law rule (Articles 5–9 Rome II regulation) provides for a different connecting factor. The place of the event (*lex loci delicti*) is therefore not taken into account, but the place where the property actually occurred (*lex loci damni*). The place where the damage occurred is the State in which the objectively occurred primary damage took place (*lex loci damni*).

At which courts the claims are to be enforced is to be decided according to the rules of international civil procedure law (*cf.* Art. 15(2) EGTC Regulation). Thus, the jurisdiction of the courts for private law actions against an EGTC is currently determined by the Brussels Ia Regulation.²⁷

IV. Members of the grouping

In developing cross-border legal forms, the EU has so far limited itself to establishing instruments for private individuals (EEIG, SCE, SE). The EGTC is therefore a special feature of Union law in terms of its membership structure. For the first time, a cooperation instrument with its own legal personality has been created for public bodies. It is true that exceptions are also provided for private entities. However, these only apply to those companies that have been entrusted with the provision of services of general economic interest (SGEI). This means that the public law reference is also established if the company is organised under private law.

IV.1. Members according to Art. 3(1) EGTC Regulation

Art. 3(1) EGTC Regulation continues to establish in Art. 3(1) EGTC Regulation an exhaustive list of eligible members.

Since the 2013 reform, private companies may also be members of the EGTC, in the case if they provide services on the basis of a specific act of entrustment (Calliess, Ruffert & Jung, 2011; Art. 106 TFEU recital 36, 40). Furthermore, associations of these entities may also participate in an EGTC (Art. 3(1) EGTC Regulation). Thus the EGTC is open to special purpose associations, other EGTCs or local authority associations. It has not been clearly decided whether natural persons and other

²⁷ Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ L 351, 20.12.2012, 1–32).

private individuals may participate in the associations without these associations losing their capacity to participate in an EGTC. This is relevant, for example, when the EGTC is based on support associations across the border. The wording “associations of bodies belonging to one or more of the categories mentioned in Art. 3, paragraph 1, first sentence” probably indicates that the membership of private individuals in such an association excludes it from the group of potential EGTC members. However, public law bodies and undertakings are still public law bodies if the public element is predominant (*cf.* Art. 2(1)(b) of Directive 2004/17; Art. 1(1) of the second subparagraph of Art. 1(2) of Directive 2004/18). The decisive factor is therefore the control of the potential member by the public authorities. Thus, a non-predominant membership of private individuals in such an association should not prevent their participation in an EGTC.

However, the direct participation of natural persons in an EGTC is not permitted. This is a major difference with the EEIG or with municipal companies, and thus a restriction compared with the forms of activity of municipalities under company law.

IV.2. Members from third countries

In principle, the members of the grouping must be representatives of at least two Member States (Art. 3(2) EGTC Regulation). However, as from June 2014, bodies from third countries may also be members of an EGTC with only one member from the EU, provided that they are comparable to those under Art. 3(1) EGTC Regulation. The registered office of an EGTC with the participation of third countries must always be in an EU Member State (Art. 1(5) EGTC Regulation). The common border between an EU Member State whose bodies participate in the EGTC and the third country concerned is not necessary in cases of so-called maritime cooperation (Art. 3a (1) EGTC Regulation).

As a rule, the formation of such an EGTC requires the participation of bodies from at least two EU Member States and at least one third country (Art. 3a (1) sentence 1 EGTC Regulation). An exception for a 1:1 EGTC between members from the EU and a third country is permitted under the conditions of Art. 3a(2) EGTC Regulation.²⁸ Cooperation within an EGTC also depends on whether the third countries apply conditions and procedures that comply with the provisions of the EGTC Regulation. This can be ensured, for example, by having legislation in force in the third country that allows the establishment of the EGTC with EU Member States. Another solution could be, for example, that there are international, bilateral or multilateral agreements between the EU Member States and third countries based on the 1980 European Framework Convention and its additional protocols.²⁹

28 *Cf.* Tisza EGTC (Hungary and Ukraine) with seat in Kisvárda (Hungary).

29 Preamble No. 15 of regulation amending EGTC Regulation.

However, it is not necessary for the agreements to be concluded between all the states participating in the respective EGTC (recital 15 of the EGTC Amendment Regulation). Finally, for an EGTC crossing the EU border, it is necessary that the Member States and third countries jointly implement territorial cooperation measures or programmes supported by the Union (Art. 3a (1) sentence 1 EGTC Regulation). These measures can be based on the European Neighbourhood Instrument (ENI) or the Instrument for Pre-Accession Assistance (IPA II).³⁰ The participation of the third country in the EU education programme Erasmus+ is sufficient. This allows the establishment of inter-university EGTCs between Member State and third country universities.

In the case of the participation of bodies from third countries, the specific features resulting from Art. 4(3a) EGTC Regulation must be taken into account at the time of formation. These relate not only to the eligibility of the third country entities, but also to whether the participation of the potential member from its territory is approved in the third country in a procedure that meets the requirements EGTC Regulation or whether there is a cross-border cooperation agreement between an EU Member State participating in the EGTC and the third country.

IV.3. Accession and resignation of members and termination of cooperation within EGTC

Changes in the membership structure require a corresponding change in the agreement. However, as a rule they are not subject to approval (Art. 4(6a) letter a) EGTC Regulation). Only the Member State concerned must authorise the accession of a member from its territory. In fact, these rules should also apply to the withdrawal of a member, since this also involves the amendment of the convention. However, these changes in membership were not explicitly regulated in the EGTC Regulation. It can therefore be assumed that the members can decide on them in the statutes.

A decision to dissolve an EGTC may be taken by its members. In addition, dissolution is compulsory in the event of the withdrawal of one (or two) members (if the EGTC which has two members only) (*cf.* Art. 13 EGTC Regulation) or if it is established that the EGTC no longer meets the requirements of Art. 1(2) EGTC Regulation or Art. 7 EGTC Regulation. This applies in particular to cases where an EGTC carries out activities that are not covered by the tasks listed in Art. 7 EGTC Regulation.

Dissolution takes place according to the rules laid down in the convention (Art. 8(2) (d) EGTC Regulation). Liquidation, on the other hand, is carried out according to the rules of the Member State in which the registered office is situated, which apply to similar cases. In this respect, therefore, the regulation of the EGTC does not differ from that applicable to other legal entities under national law.

³⁰ Preamble No. 9 of regulation amending EGTC Regulation.

V. Public procurement law

Art. 39 of the Directive 2014/24/EU³¹ and Art. 57 of the Directive 2014/25/EU³² provide for the possibility of a joint procurement procedure between authorities from different Member States.³³ Where the cooperation of contracting authorities has taken the form of an EGTC, then both regulations give the possibility to choose the law applicable to the public procurement procedure.

The participating contracting authorities may agree to apply the law of the place of establishment or the law of the Member State where the EGTC carries out its activities (Art. 39(5) and Art. 57(5) respectively). The decision is taken either by the competent body of the grouping (in this case, as a rule, by the assembly of the grouping) or by the members themselves by adopting an appropriate provision in the grouping's convention. The temporal and material scope remains with the members or the grouping itself. The decision may be taken for an indefinite period of time (in the convention) or for a fixed period of time. It is also possible to limit the application of the chosen legal order to specific types of orders or to several orders. An ad hoc decision may also be taken, and the law applicable to one particular procedure only may be determined.

Art. 39(4) and 57(4) of Directives provide guidance for the award of joint contracts where contracting authorities do not have a joint body. A systemic interpretation therefore leads to the conclusion that, in so far as the applicable law has been chosen, an EGTC becomes a joint contracting entity and thus a (transnational) contracting entity.

VI. Internal structure of the EGTC

The EGTC is a relatively flexible instrument in organisational terms. Although its membership is linked to the public law nature of the member, the EGTC reform has made it possible for bodies from third countries to participate in groupings. It should also be noted that the membership of certain entities in an EGTC can be „forced” by the so-called parallelism of competence according to Art. 7(2), sentence 2 EGTC Regulation. This can be remedied, if necessary, by loosening up the definition of tasks, by limiting the members to the soft formulations (e.g. coordination, support

31 Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC Text with EEA relevance (OJ L 94, 28.3.2014, 65–242).

32 Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC Text with EEA relevance (OJ L 94, 28.3.2014, 243–374).

33 More about it: Klinkmüller. 2017: 253 *et seq.*

and promotion of certain measures from the area of competence that is basically closed to them).

The internal structure of an EGTC is determined by its organs and other internal bodies. Organs are natural persons or groups of such persons who are entitled to represent, control or make decisions within a legal person. They may perform their functions both internally and externally. By contrast, committees and offices have only technical functions, assisting the institutions in the performance of their duties.

The EGTC Regulation explicitly provides for only two organs for an EGTC: the assembly and the director (Art. 10(1) EGTC Regulation). However, the members of an EGTC may set up other organs. In this case their functioning, competencies and composition (of the collegial organs) must be defined in the statutes (Art. 10(2) in conjunction with Art. 9(2) a) of EGTC Regulation). The overview of the founding documents of existing EGTCs shows numerous internal structure arrangements. In this way, the members seek to adapt the EGTC, which can be used throughout Europe, to local conditions, by giving the EGTC a structure that is known and applied by them in other forms of inter-municipal cooperation. It can also be assumed that the EGTC will benefit from the experience gained in other cooperation bodies (euroregions, associations, etc.), as a sign of the continuity of the cooperation.

VI.1. Assembly

The assembly is composed of representatives of the members of the EGTC. The number of representatives must be agreed between the members. As a rule, the members have one representative in the assembly. In principle the official representatives of the members (mayors, presidents, leaders, etc.) meet in the assembly.

The competences of the assembly are to be determined in the agreement. It follows from the documents of the EGTCs set up so far that the assembly is the "decision-making" body of the EGTC. The assemblies of previously established EGTCs have their own "organs", the presidents or chairmen. They chair the deliberations of assemblies, and can also be entrusted with the tasks of the director.³⁴

The assembly decides collegially. The distribution of votes is an autonomous decision of the members. It is made unanimously or by majority vote. The first variant is particularly characteristic of EGTCs with a small number of members. The introduction of so-called double majorities is also conceivable. In these cases, a majority of the votes of all the members and, at the same time, a majority of the votes of the representatives of the Member State concerned is required. The persons

³⁴ In EGTC „Gorizia, Nova Gorica and Šempeter – Vrtojba” the president of the assembly is the legal representative of the EGTC (<https://euro-go.eu/en/chi-siamo/struttura/>).

representing the members in the EGTC do not have to be free from instructions. The competent organs may therefore also require a specific voting method through their representative (Bußjäger, 2011: 535).

In the time between the meetings, the Senate³⁵ or the Board of Directors³⁶ may act. These committees are then “small” assemblies, which are set up for reasons of practicality in order to make decisions faster and easier. These committees prepare the resolutions of the assembly, and they review the draft resolutions. In the EGTC Pamina, the assembly can delegate some of its tasks to the president or the executive committee.

Some EGTC statutes provide for a chairman to be elected from the assembly. The chairman’s task is, in principle, to chair the assembly’s meetings.³⁷ In some cases, the chairmen (presidents) of the assembly have been entrusted with representation tasks³⁸ or act as directors.³⁹

VI.2. Director

The EGTC is represented by a director (Art. 10(1) EGTC Regulation). This is therefore a legal representative of the grouping. The director is a monocratic body, but he can be a member of bodies (e.g. the executive committee).

The EGTC Regulation does not provide for the appointment (e.g. by election) of the director, so the members are free to decide this autonomously. As a rule, the director is elected by the assembly. There are also EGTCs where the director is appointed by the president.⁴⁰ The director may be appointed by the members of the assembly. In the case of the “EGTC Interreg Programme IV A Grande Region/Großregion”, the tasks of the director as chairman of the EGTC were assigned to the respective prefect of the Lorraine Region.⁴¹ However, an external person can also be appointed as director (Drab & Kledzik, 2009: 66).

Representing the grouping is one of the main tasks of the director. His further competences are defined in the statutes. As a rule, the director is charged with the implementation of decisions of the General Assembly.

35 Art. X.4. Statutes of “Ister-Granum EGTC”.

36 Art. 17 Statutes of “EGTC Europaregion Tirol-Südtirol-Trentino”.

37 Art. 17 Statutes of EGTC “Euregio Senza confini R.L.-Euregio Ohne Grenzen mbH”.

38 Art. 5.2.1. Convention of “Interregional Alliance for the Rhine-Alpine-Corridor EGTC”.

39 Art. 8(2) Statutes of “EVTZ Pamina”.

40 Art. 15 Statutes of “AECT Huesca Priineos-Hautes Pyrénées”.

41 Art. 16 Statutes of EGTC “Interreg IV A Grande Region/Großregion”.

The name of this function also differs in some groupings. In some EGTCs, the tasks of the director are performed by the “president”.⁴² In these cases, the director is only entrusted with technical tasks to ensure that the EGTC meets and maintains long-term conditions.⁴³

VI.3. Other bodies

According to Art. 10(2) EGTC Regulation, other organs may be appointed and endowed with appropriate powers. The functioning of these organs, their competencies and composition must be defined in the statutes (Art. 9(2) (a) EGTC Regulation). In this respect, the members have a wide margin of manoeuvre, of which they make full use. Collegial bodies such as the executive or supervisory boards have been set up in EGTCs.⁴⁴ The management board usually decides on matters that are not reserved for the council. The managing board can also decide on the conclusion of contracts, which create liabilities for the EGTC, if a certain value is exceeded. The supervisory boards are intended as controlling bodies.⁴⁵ In addition, working groups and committees are established to deal with specific areas.⁴⁶

The EGTC secretariat is set up to deal with technical matters and to assist the implementing body. This is headed either by the director (or secretary general). The EGTC's staff are employed in the secretariat or are seconded from members. The seat of the secretariat may also be located in a state other than the one in which the EGTC has its registered office, in order to balance interests. However, the consequence of this is that the office located in a Member State operates under a different law than that applicable to its registered office. It is also generally held that the Assembly can decide on the establishment of further organs.

42 Art. 15(1) Statutes of “EGTC Europaregion Tirol-Südtirol»; Art. 9 Statutes of «EGTC Conurbation».

43 § 46 Statutes of “Pannon EGTC”; Art. 8 Statutes of “EGTC Conurbation”; Art. 17 Statutes of EGTC “Interreg IV A Grande Region/Großregion”.

44 Art. 17 Statutes of “EGTC Europaregion Tirol-Südtirol-Trentino»; Art. X.6. Statutes of «Ister-Granum EGTC».

45 “EGTC Europaregion Tirol-Südtirol-Trentino», «EGTC Conurbation», «EVTZ Euregio Senza confini R.L. – Euregio Ohne Grenzen mbH», «EGTC Archimed», EGTC Tritia Ltd., EGTC Tatry Ltd.

46 “EGTC Amphictyony”: International Relations, Environment, Incorporation; “EGTC Conurbation”: Transport Committee, Energy Committee.

VII. Contractual basis for the grouping

According to the EGTC Regulation, the convention and the statutes are fundamental documents for the EGTC. They differ from each other in terms of their legal nature and content.

EGTCs are subject to different legal acts at national and Union level. However, the working principles are specified in the founding documents to be drawn up by the members themselves. In this respect, a hierarchy can only be affirmed between the convention and the statutes, as the convention is the basis and standard of review for the statutes. Also in the foundation phase the agreement plays a major role as the object of approval.

VII.1. Convention of the EGTC

The importance of the convention is emphasised in two places in the EGTC Regulation: in Art. 2(1)(b) and Art. 8(1). The acts of the organs of the EGTC and the EGTC itself are subject to the convention. The convention is mentioned as one of the main sources for the EGTC. Whether the hierarchy of EGTC law is linked to it is open to debate (Krzymuski & Kubicki, 2014: 1341).

In terms of content, following the 2013 reform, the convention is to be understood as the “constitution of the EGTC”. It defines the constituent elements of an EGTC (members, tasks, organs, applicable law, etc.).⁴⁷ Its content is defined in Art. 8(2) EGTC Regulation.

The convention must specify the objectives and tasks of the grouping (Art. 8(2)(c) EGTC Regulation). Generally speaking, the objectives of the grouping in the form of an EGTC are mentioned in Art. 1(2) and Art. 7(2) and (3) EGTC Regulation. The first article deals with the EU legislator’s declaration, from which the motivation for introducing this instrument can be deduced. In the second case, the objective sets the limits to the EGTC’s activities and the choice of tasks. Only those tasks that are still within the scope of the general objective of the EGTC according to Art. 1(2) EGTC Regulation may be transferred to the grouping. Finally, Art. 8(3) EGTC Regulation exempts from financial support for the performance of tasks, provided that the general objectives are respected.

According to the wording of the regulation, the members may not go beyond these specifications.⁴⁸ At present, the provisions that refer to an alleged choice of law pose

⁴⁷ Cf. Preamble No. 12 of regulation amending EGTC Regulation.

⁴⁸ Different in the case of the statutes (Art. 9(2) EGTC Regulation). However, experience shows that national approval authorities insist on further provisions, e.g. with regard to voting ratios in the assembly.

the greatest difficulties (Art. 8(2) letters h)–k) EGTC Regulation) (Krzymuski & Kubicki, 2014: 1341) However, their conflict-of-law content is debatable (Krzymuski & Kubicki, 2014: 1341).

Since the reform of the EGTC law in 2013, the obligation to obtain approval is limited to the convention. However, the reservation of formal approval applies exclusively to the Member State in which the future EGTC's registered office is to be located (Art. 4(3) EGTC Regulation). In other cases, tacit approval is sufficient.⁴⁹

Art. 2(1) and Art. 2(1a) EGTC Regulation exclude the possibility for EU Member States to enact regulations in the field covered by the Regulation or the convention. However, it remains to be clarified whether the convention also enjoys the priority of application provided for in the EU regulations.⁵⁰ In this case, it is not the effect of an EU body or other EU entity, but an act taken by entities under national law on the basis of the EGTC Regulation alone. In comparable situations, which, however, concern private activities under EU law (e.g. a European company), this type of act takes precedence over national law which only applies in the third place.⁵¹ The practical relevance of this issue ultimately depends on the extent to which derived legal acts can be shaped on the basis of a specific regulation. If these possibilities are modest because of the broad scope of the regulation, then a legal act adopted by the members will have virtually no independent meaning alongside the basic act of a Union regulation.

VII.2. EGTC statutes

The change in the nature of the agreement has also had an impact on the statutes. The „new” statutes now have a more technical character. The EGTC Regulation defines only a minimum content of this document. Its content can be extended by the members. The EGTC Regulation also refers to other provisions in various places.⁵²

The reassignment of the role of the statutes also had the effect that they are no longer subject to approval. However, it is critical of the formation process, in that its contradiction with the convention is a ground for refusal (Art. 4(3)(c) EGTC Regulation). This is the consequence of the provision that the statutes must be adopted not only on the basis of, but also “in accordance with the convention” (Art.

49 See Chapter VIII.

50 This is the view expressed in relation to the previous legal status Pechstein & Deja, 2011: 369.

51 Art. 9 of Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European company (SE) (OJ L 294, 10.11.2001, 1–21).

52 For example, on organs (Art. 10(2) EGTC Regulation), financial contributions determining the scope of liability and liability after termination of membership of the EGTC (Art. 12(2) EGTC Regulation).

9(1) EGTC Regulation). The publication obligations relating to the statutes (and their amendments) remain unchanged (Art. 5(1) EGTC Regulation).

Since the statutes are to be adopted “on the basis of and in accordance with the agreement”, which itself is subject to approval, they should only be adopted after the agreement has been approved. As a rule, the documents of the EGTC are negotiated at the same time, so as to ensure consistency in content.

VII.3. Other documents

The members are not prevented from creating other documents as well. These can be, on the one hand, appendices to the founding documents, such as the text of the declaration of accession,⁵³ the exact designation of members or their organs by which they are represented in the associations.⁵⁴ Project books can also be attached, which determine the work programme for the initial phase. If these documents are part of the agreement, then they and their amendments are subject to approval.

Other provisions adopted on the basis of the founding documents (like rules of procedure etc.) shall have the status given to them by the members. As they do not form part of the catalogue of constituent documents under the EGTC Regulation, the members are more free to define their content. However, they must respect the mandatory provisions of the Member States whose bodies participate in the EGTC.

VIII. Foundation procedure

In terms of time, an EGTC can be expected to take about 2 to 3 years to set up. Depending on the complexity of the formation procedure, this period may be exceeded or not. According to the guidelines on the formation of EGTCs in a cross-border context, the potential approval authorities must be involved at an early stage in order to deal with the legal issues informally and effectively (Zillmer, Böhme, Lüer & Stumm, 2014). A common understanding of the process can then be developed; in particular, concrete agreements can be reached as to which authorities and actors need to exchange information and agree on which step in the approval process. (Krzymuski, Lüer & Zillmer, 2020)

Facilitating the formation of EGTCs was one of the main motives for the 2013 reform⁵⁵, but the process of forming an EGTC is still a relatively complex and composite procedure. This is mainly due to the fact that the Member States consider

53 Art. 5 No 11 and 12 Convention of “CETC EGTC Ltd.”

54 Art. 5, 15.1., 16.4., 18.1. Convention of “EGTC EUKN Ltd.”

55 Sh. the title and recitals 1), 5) and 13) of the amendment regulation of EGTC Regulation.

the cross-border activities of their local authorities as an encroachment on the exclusive competence of the central administration for foreign affairs.

The EGTC Regulation is constructed in such a way that the members are in principle entitled to approve the convention and join the EGTC (*cf.* Art. 4 par. 1–3 EGTC Regulation) (Peine & Starke, 2008: 404). Nevertheless, some Member States see the legal instrument EGTC as a threat to their territorial integrity, although the EGTC has no sovereign powers.

It should be noted in the formation procedure that the EGTC as such was not subject to approval. Approval is only required for the convention and for accession (Art. 4(3) EGTC Regulation). Furthermore, the authorities of the Member State in which the EGTC has its registered office also only have to give an express (“formal”) approval. It is usually issued as an administrative act (*cf.* for example, Art. 6(1) Polish EGTC Law).

Otherwise it is sufficient – and this is a real relief – that the period for approval expires without success. The time limit is now six months (previously three) and starts to run from the receipt of the documents from the members (Art. 4(3) EGTC Regulation). This means that the period runs separately for each member and can end differently by requesting additional documents.

VIII.1. Establishment process at national level

According to the bottom-up approach, the impetus for the formation of EGTCs should come from the interested parties (Art. 4(1) EGTC Regulation). Motivation is not one of the legal categories, so reference is made here to other contributions (Görmar, 2017: 419; Zillmer, Lürer & Toptsidou, 2017: 447; Zillmer et al., 2014: 31–34). This can be given, for example, by a resolution of intent in which future members announce their will to set up the grouping. It would be best to involve the national approval authorities in the negotiation of documents in order to immediately dispel any concerns and thus reduce the risk of refusal of approval. Once the founding documents have been negotiated, the members must take the appropriate decisions on joining the EGTC. The approval is followed by the registration of the grouping or publication of the documents (Art. 5(1) EGTC Regulation). What is actually to be done is decided autonomously by each Member State. From a legal point of view, the difficulties in the formation process at national level are mainly due to the differences in implementation EGTC Regulation in the legal systems of the Member States.

VIII.2. Founding procedures at EU level

Once the national procedure has been completed, the members are responsible for informing the Member States whose bodies participate in the EGTC and the European Committee of the Regions (CoR) of the registration or publication of the convention and the statutes. After this information, the Committee includes the EGTC in the so-called EGTC register.⁵⁶ On the other hand, the EGTC itself ensures that the application is submitted within 10 days of the formation of the EGTC, which the CoR forwards to the competent Publications Office of the European Union for publication of a notice of the formation of the EGTC in the Official Journal of the EU (C series). This is followed by a notice of the formation of the EGTC. The name, objectives, members and registered office of the EGTC are specified. In 2009 it was postulated that publication should only be permitted at EU level, so that differences between Member States do not affect the formation of the EGTC (Drab & Kledzik, 2009: 566).

IX. Seat of the grouping

One of the most important decisions to be taken by the members at the beginning of the foundation is the decision about the seat of the association. The registered office of an EGTC can be freely chosen, as it must be located in one of the EU Member States from which its members come (Art. 1(5) EGTC Regulation). Thus, even in the case of participation of third countries in an EGTC, the grouping's registered office must be located on EU territory.

On the one hand, the seating arrangement is strongly influenced by politics. Nevertheless, the choice of the country in which the seat is located should also be made pragmatically, from the point of view of the potentially easier handling of the grouping.

From a legal point of view, the choice of seat is relevant if only because the applicable law of the Member State in which the registered office is located governs the areas not or only partially covered by the EGTC Regulation (Art. 2(1)(c) EGTC Regulation). Since the EGTC can have different legal characteristics, the members will thus be able to determine the legal character of the grouping under private or public law. In practice, the law of the state in which the registered office is located is also relevant to the interpretation and enforcement of the convention (Art. 8(2) EGTC Regulation). The law of the state in which the registered office is situated also provides clarity as to whether registration or publication of the founding documents is necessary to obtain legal personality (Art. 5(1) EGTC Regulation).

56 Decision No 0114/2012 on the Register of EGTC.

The registered office also determines how the management of public funds is to be monitored (Art. 6(1) EGTC Regulation). This also covers the formal legal questions concerning the competent authorities. The registered office also determines the competence of the national authorities to dissolve the EGTC (Art. 14(1) EGTC Regulation) and to settle disputes involving the EGTC (Art. 15(2) EGTC Regulation). The law of the state in which the EGTC has its registered office may also impose further obligations in relation to the preparation of the accounts, including the associated annual report, and the auditing and publication of these accounts (Art. 11(2) EGTC Regulation). Finally, liquidation, insolvency, suspension of payments and comparable procedures (Art. 12(1) EGTC Regulation) must also be carried out according to the registered office of the Member State. This is intended to ensure that the decision on the registered office is always underpinned by a complex analysis, so that the decision is easier to defend and appropriate support is provided.

In the absence of a provision in the EGTC Regulation on the one hand and relevant case law on the other, it is not possible to clarify the extent to which an EGTC can freely transfer its registered office from one Member State to another. Here it will be crucial whether the EGTC is a legal entity under national law (of the Member State where it has its registered office) or under EU law (such as SE) (For example *Groupe d'études politiques européennes* (2007), 82; Obwexer, 2011: 51, 66; Pechstein & Deja, 2011: 364-365). Only in the latter case, according to the authors, could it be possible to transfer the registered office without prior dissolution of the EGTC.

X. Financing and eligibility of the EGTC

The members of the EGTC decide on the financing arrangements. According to current practice, in most EGTCs the day-to-day operation is financed by membership fees. The contributions can be determined, for example, according to the number of inhabitants or by some other factor. The members have a wide margin of manoeuvre here. In addition, grants, gifts and legacies, service charges, other legally admissible income are also possible. A decision on possible credits is to be made in the statutes. Economic activity of the EGTC is not excluded, either. Here, however, the requirements of the Member State in which the EGTC has its registered office and of the Member States whose members participate in the EGTC must be observed (economic activity by legal entities with the participation of public bodies).

As a union legal form, the EGTC can of course also be considered as a recipient of EU funding. It can acquire such funds independently, in particular through Interreg projects. The EGTC may be the sole beneficiary of funding from Interreg

programmes. As it is composed of members from different Member States, it does not need any other partners to apply for funding for its cross-border projects.

In the forthcoming programming period, the legal form of the EGTC will be even more in demand, since according to the Commission's proposal for the forthcoming Interreg EU regulation, small project funds will in future be managed by an EGTC or another cross-border legal entity (Art. 24(2) proposal for an Interreg Regulation⁵⁷).

At present, there are only two EGTCs that have been entrusted with the management of the SPF: Rába-Duna-Vág EGTC (RDV EGTC) and Via Carpatia EGTC; each manage a CPF under Interreg SK-HU. The overall objective of the CPF measures is to strengthen cross-border social cohesion by supporting local cooperation and long-term cooperation between actors on both sides of the border by promoting local/regional projects. The SPF, managed by RDV EGTC, is implemented under two priority axes of the Interreg V-A Slovak Republic-Hungary Cooperation Programme and must contribute to the achievement of its specific objectives: firstly, «Nature and Culture» (Specific objective: increasing the attractiveness of the border area) and secondly «Support for cross-border cooperation between public administrations» (Specific objective: improving cross-border inter-institutional cooperation and developing cross-border cooperation between citizens). The co-financing for CPF projects ranges from EUR 20,000 to EUR 50,000. The SPF, managed by Via Carpatia EGTC Ltd, supports activities for the development of cross-border cooperation in the fields of cultural exchange, human resources, planning and development studies, economic development, environment, tourism and communication.

XI. ECBM

With the entry into force of the new mechanism to resolve legal and administrative obstacles in a cross-border context (ECBM)⁵⁸, the EGTC acquires new competence with regard to facilitating cross-border cooperation.

The mechanism is aimed at a cross-border region within a Member State and consists in applying the laws of a neighbouring country where the application of its own laws would create a legal obstacle to the implementation of a joint project (which may

57 Proposal for a Regulation of the European Parliament and of the Council on specific provisions for the European territorial cooperation goal (Interreg) supported by the European Regional Development Fund and external financing instruments (COM/2018/374 final – 2018/0199 (COD)).

58 Proposal for a Regulation of the European Parliament and of the Council on a mechanism to resolve legal and administrative obstacles in a cross – border context (COM/2018/373 final – 2018/0198 (COD)).

concern infrastructure or a service of general economic interest). The application of this mechanism consists in the conclusion of a European cross-border commitment (“Commitment”), which is self-assertive, or a European cross-border declaration (“Statement”), which requires further legislative work in a Member State. The entry into force of the Regulation makes it possible to subject the cross-border project to a single legal system.

An EGTC can be an initiator within the meaning of Art. 8(1) proposal of ECBM regulation.

The tasks of the initiator are to identify the legal obstacle with regard to the planning, development, staffing, financing or functioning of a joint project (Art. 8(1) proposal of ECBM regulation), to prepare an initiative document drafted in accordance with Article 9 of ECBM regulation and to submit the initiative document to the competent Cross-border Coordination Point of the committing Member State and send a copy to the competent Cross-border Coordination Point of the transferring Member State (Art. 8(3) and (4) of proposal of ECBM regulation).

XII. Conclusion

Overall, as a „modern, flexible institution of (integrated) European public law” and as a „legal example of so – called multi-level governance”, the EGTC offers the possibility of exercising competences in a cooperative manner, not by delimiting them, but by involving different institutional actors and levels of government, thus enabling new forms and processes of governance for cross-border cooperation. Furthermore, the Commission emphasised that with the simplification of the EGTC Regulation in 2013, border regions can improve their joint planning and implementation strategies in different areas by formulating their common interests and having the same vision for the border area.⁵⁹

Bibliography

Bußjäger, P. (2011) Rechtsprobleme um den Europäischen Verbunde für territoriale Zusammenarbeit (EVTZ). Bußjäger P., Rosner, A. & Fischer, H. (eds.) *Im Dienste der Länder - im Interesse des Gesamtstaates: Festschrift 60 Jahre Verbindungsstelle der Bundesländer*, Institut für Föderalismus, New Academic Press, Wien, 525-537.

Bußmann A. (2009) Europejskie ugrupowanie współpracy terytorialnej (EUWT); wdrażanie rozporządzenia (WE) nr 1082/2006 do polskiego porządku prawnego, *Samorząd Terytorialny*, 2009:5, 9-16.

⁵⁹ Report... (footnote 12), p. 4.

Calliess, C. & Ruffert, M. (2011) *EUV/AEUV. Das Verfassungsrecht der Europäischen Union mit Europäischer Grundrechtscharta*, C.H.Beck.

Czarnecka—Zawada, S. (2008) Europäische Verbünde für die territoriale Zusammenarbeit (EVTZ) und ihre Bedeutung für das IKZM am Beispiel der deutsch – polnischen Odermündung, *Osteuropa-Recht*, 54:3–4, 183-200.

Drab, M. K. & Kledzik P. (2009) Europejskie ugrupowanie współpracy terytorialnej nową instytucją polskiego prawa administracyjnego. Boć, J. & Chajbowicz A. (eds.) *Nowe problemy badawcze w teorii prawa administracyjnego*, Kolonia, Wrocław, 555-574.

Engl, A. (2017) Europaregionen und EVTZ: Konkurrenz oder Komplementarität? Krzymuski, M., Kubicki, P. & Ulrich, P. (eds.) *Der Europäische Verbund für territoriale Zusammenarbeit. Instrument der grenzübergreifenden Zusammenarbeit nationaler öffentlicher Einrichtungen in der Europäischen Union*, Nomos, Baden-Baden, 43-63.

Görmar, W. (2017) EVTZ und transnationale Zusammenarbeit zur Raumentwicklung aus nationaler Perspektive. Krzymuski, M., Kubicki, P. & Ulrich, P. (eds.) *Der Europäische Verbund für territoriale Zusammenarbeit. Instrument der grenzübergreifenden Zusammenarbeit nationaler öffentlicher Einrichtungen in der Europäischen Union*, Nomos, Baden-Baden, 419-445.

Greco, M.A. & Marchesi, C. (2011) Rechtliche und praktische Aspekte der Teilnahme an einem EVTZ aus italienischer Sicht. Bußjäger, P., Gamper, A., Happacher, E. & Woelk, J. (eds.) *Der Europäische Verbund für territoriale Zusammenarbeit (EVTZ): Neue Chancen für die Europaregion Tirol-Südtirol-Trentino*, New Academic Press, Wien 93.

Hünnekens, G. (1995) Rechtsfragen der wirtschaftlichen Infrastruktur. Heymann, Köln.

Groupe d'études politiques européennes (2007) *Europäischer Verbund für territoriale Zusammenarbeit*. Ausschuss der Regionen, Brussels.

Klinkmüller, S. (2017) Der EVTZ und grenzüberschreitendes Vergaberecht. Krzymuski, M., Kubicki, P. & Ulrich, P. (eds.) *Der Europäische Verbund für territoriale Zusammenarbeit. Instrument der grenzübergreifenden Zusammenarbeit nationaler öffentlicher Einrichtungen in der Europäischen Union*, Nomos, Baden-Baden, 253-276.

Krzymuski, M. (2017) Der EVTZ im Außenverhältnis. Krzymuski, M., Kubicki, P. & Ulrich, P. (eds.) *Der Europäische Verbund für territoriale Zusammenarbeit. Instrument der grenzübergreifenden Zusammenarbeit nationaler öffentlicher Einrichtungen in der Europäischen Union*, Nomos, Baden-Baden, 159-187.

- Krzymuski, M. & Kubicki, P. (2014) EVTZ – 2.0 – Neue Chance für die grenzübergreifende Zusammenarbeit öffentlicher Einrichtungen? *NVwZ*, 2014:20, 1338-1344.
- Krzymuski, M., Kubicki, P. & Ulrich, P. (eds.) *Der Europäische Verbund für territoriale Zusammenarbeit. Instrument der grenzübergreifenden Zusammenarbeit nationaler öffentlicher Einrichtungen in der Europäischen Union*, Nomos, Baden-Baden.
- Krzymuski, M., Lüer, C. & Zillmer, S. (2020) *Europäische Verbände für territoriale Zusammenarbeit: Unterstützung bei der Vorbereitung*, Anhang zum vorläufigen Endbericht: Broschüre BBSR.
- Kubicki, P. (2017) Unionsrechtliche Grundlagen eines EVTZ und mitgliedstaatliche Durchführung in: Krzymuski, M., Kubicki, P. & Ulrich, P. (eds.) *Der Europäische Verbund für territoriale Zusammenarbeit. Instrument der grenzübergreifenden Zusammenarbeit nationaler öffentlicher Einrichtungen in der Europäischen Union*, Nomos, Baden-Baden, 93-129.
- Martínez, J. (2005) Die grenzüberschreitende Raumplanung unter europäischem Integrationsdruck, *Zeitschrift für Umweltrecht*, 2005:7–8, 337-342.
- Miaskowska-Daszkiewicz, K. & Mazuryk, M. (2010) Europejskie Ugrupowanie Współpracy Terytorialnej – nowe ramy transgranicznej współpracy terytorialnej, *Roczniki Nauk Prawnych*, 20:2, 247-261.
- MOT (2013) *Rechtlicher Rahmen der grenzüberschreitenden Zusammenarbeit*, Mission Opérationnelle Transfrontalière, Paris.
- Obwexer, W. (2011) Der EVTZ als neues unionsrechtliches Instrument territorialer Zusammenarbeit. Bußjäger, P., Gamper, A., Happacher, E. & Woelk, J. (eds.) *Der Europäische Verbund für territoriale Zusammenarbeit (EVTZ): Neue Chancen für die Europaregion Tirol-Südtirol-Trentino*, New Academic Press, Wien 46-74.
- Obwexer, W. & Happacher, E. (2010) Rechtsfragen der Gründung eines Europäischen Verbundes für territoriale Zusammenarbeit (EVTZ) am Beispiel der Europaregion Tirol, *EJM*, 2010:3, 75-99.
- Pechstein, M. & Deja, M. (2011) Was ist und wie funktioniert ein EVTZ?, *Europarecht*, 2011:3, 357-383.
- Peine, F.-J. & Starke, T. (2008) Der europäische Zweckverband. Zum Recht der Europäischen Verbände für territoriale Zusammenarbeit (EVTZ), *Landes- und Kommunalverwaltung*, 2008:9, 402-405.
- Pielow, J. C. (2001) *Grundstrukturen öffentlicher Versorgung*, Mohr Siebeck, Tübingen.
- Spatial Foresight (2018) *Assessment of the application of EGTC Regulation*. Final report, European Commission, Brussels.

Storbeck, D. (2016) *Grenzüberschreitende kommunale Zusammenarbeit*, Universitätsverlag Göttingen, Göttingen.

Zillmer S., Böhme, K., Lüer, C. & Stumm, T. (2014) *Leitfaden zur Gründung eines EVTZ für Akteure der transnationalen Zusammenarbeit*, Bundesministerium für Verkehr und digitale Infrastruktur.

Zillmer, S. et al. (2015) *EGTC as an instrument for promotion and improvement of territorial cooperation in Europe*, European Parliament, Brussels.

Zillmer, S. et al. (2019) *Cross-border Public Services (CPS)*, Final Report. ESPON (<https://www.espon.eu/sites/default/files/attachments/ESPON%20CPS%2001%20Main%20Report.pdf>)

Zillmer, S., Lüer, C. & Toptsidou, M. (2017): Der EVTZ aus raumentwicklungs- und kohäsionspolitischer Sicht. Krzymuski, M., Kubicki, P. & Ulrich, P. (eds.) *Der Europäische Verbund für territoriale Zusammenarbeit. Instrument der grenzübergreifenden Zusammenarbeit nationaler öffentlicher Einrichtungen in der Europäischen Union*, Nomos, Baden-Baden, 447-476.