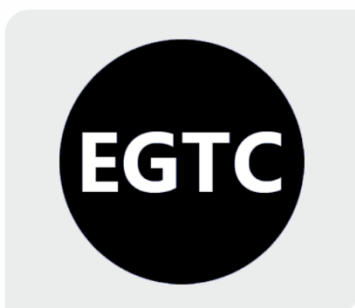


**2018**



**LEGAL ACCESSIBILITY**  
along the Hungarian borders  
**Third milestone**



## **Legal obstacles of EGTCs**

Analysis and recommendations

**Written by:**  
CESCI

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## Executive summary

In 2016, Central European Service for Cross-Border Initiatives (CESCI) launched the *Legal accessibility* initiative with the support of the Hungarian Ministry of Justice. The goal of the first project of the initiative was to extensively identify the legal obstacles along the Hungarian borders<sup>1</sup>. The initiative continued in 2017 in order to overcome legal and policy constraints of institutional cooperation in the frontier regions, a contribution was given to in four key areas (the preparation of the EGTC legal harmonisation in Serbia, integration of healthcare services across the border, cross-border retail of local products, building up of comprehensive information systems)<sup>2</sup>. The current project (implemented in 2018) focusses on three key areas: designing cross-border ambulance services, setting up cross-border health services, review legal obstacles and experiences about EGTCs with a Hungarian interest (Hungarian members).

The current sub-project focussing on the legal obstacles and the operational experiences of the EGTCs with Hungarian interest would have been initially involved in the planning procedure of the European Union's next budgetary period triggered in 2018. The process started with the approval of the Multi-annual Financial Framework (MFF) and the post-2020 Cohesion Policy Regulations, including the EGTC Regulation<sup>3</sup>. Since among the 72 EGTCs registered in the European Union<sup>4</sup> 25 has a Hungarian member (35%), and 21 of them has their seat in Hungary (29%)<sup>5</sup>, the Hungarian experience could have been valuable during the process of amending the Regulation. The original goal of the sub-project was to gather the Hungarian experiences concerning the tool's correct and incorrect use, and to make a proposition how to amend the Regulation in order to exclude the incorrect use and to promote the correct use of it across the whole EU. However, the European Commission's report<sup>6</sup> on 17 August 2018 came to the

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<sup>1</sup> Milestone No. 1: <http://legalaccess.cesci-net.eu/en/milestone-no-1/>

<sup>2</sup> Milestone No. 2: <http://legalaccess.cesci-net.eu/en/milestone-no-2/>

<sup>3</sup> The original text of the Regulation was adopted by the European Parliament and the European Council on 5 July 2006. The Regulation entered into force on 1 August 2007 (except the Article 16). The Regulation (EU) No 1302/2013 of the European Parliament and of the Council of 17 December 2013 significantly amended the Regulation (EC) No 1082/2006 on the European Grouping of Territorial Cooperation (EGTC).

<sup>4</sup> There are some inactive, unfunctional EGTCs who legally still exists. For example EGTC Kras Bodva has stopped its cooperation activities and communicating with the Register Office since 2011. The legal liquidation proceedings of the EGTC began in 2012, but still has not ended. It means that EGTC Kras Bodva is not functional, but still legally exists. (Based on the information received from the Slovakian Approval Authority.)

<sup>5</sup> <https://webapi2016.cor.europa.eu/v1/documents/cor-2016-04572-00-04-tcd-tra-en.docx/content>

<sup>6</sup> 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

conclusion that instead of amending the EGTC Regulation, different measures are needed (last but not least at national level):

*„The challenges that have been identified suggest that legal certainty for the EGTCs and the approval authorities would benefit more from standardised requirements and procedures **than further amendments to the EGTC Regulation**. If EGTCs are to be more effective and subject to simpler arrangements, there is a **need for more coordination** among Member States to improve interpretation and application of the Regulation, overcome difficulties due to implementation differences and **coordinate divergent national legal frameworks**. **Better promotion** of EGTCs in the context of EU funding instruments — especially the ETC programmes— will support their access to EU funds.” (emphasis added)*

Nevertheless, we did not give up on our goal of unfolding and sharing legal obstacle and useful experiences of the Hungarian EGTCs.

The analysis included three main activities: surveys and interviews with EGTCs with Hungarian interest; research on legal background (desk research).

A **survey**, consisting of 19 questions, was sent to the EGTCs with Hungarian interest in order to gather information on their operational experiences. The survey contained questions in the following topics:

- contact information of those EGTCs completed the survey (5 questions);
- experiences on designing, managing and the calls of CBC-programmes (7 questions);
- experiences related to the recognition of the EGTCs as independent legal entities (7 questions).

The survey was completed by 10 EGTCs. As it can be seen on the following figure, we received a completed questionnaire from five border areas (Slovakian, Ukrainian, Romanian, Serbian, Croatian); nine EGTCs of them have their seat in Hungary, and one of them in Slovakia. The map below shows the location of the EGTCs participating in the survey, while their basic data is shown in the table below.

Figure 1: EGTCs participating in the research

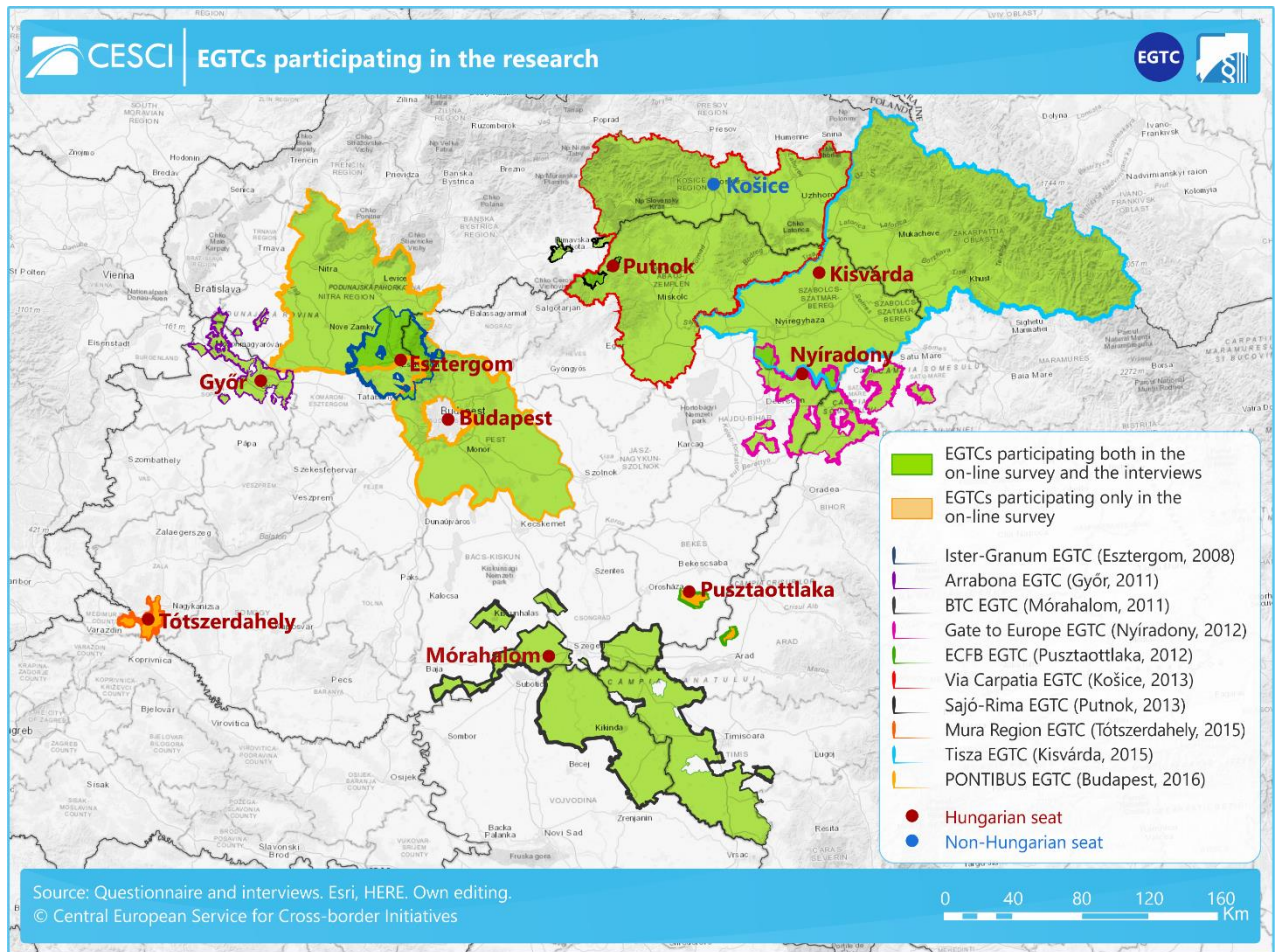


Table 1: Basic data of EGTCs participating in the survey

Name of the EGTC	Abbreviation applied (+EGTC)	Seat of the EGTC	Affected neighbouring country	Year of registration
<b>Ister-Granum European Grouping of Territorial Co-operation Ltd</b>	Ister-Granum	Esztergom (HU)	Slovakia	2008
<b>Arrabona EGTC Ltd.</b>	Arrabona	Győr (HU)	Slovakia	2011
<b>Bánát - Triplex Confinium Limited Liability EGTC</b>	BTC	Mórahalom (HU)	Romania and Serbia	2011
<b>EGTC Gate to Europe Ltd.</b>	Gate to Europe	Nyíradony (HU)	Romania	2012
<b>European Common Future Building European Grouping of Territorial Cooperation with Limited Liability</b>	ECFB	Pusztatótlaka (HU)	Romania	2012
<b>European Grouping of Territorial Cooperation Via Carpatia Limited</b>	Via Carpatia	Košice (SK)	Slovakia	2013
<b>Sajó - Rima / Slaná - Rimava European Grouping of Territorial Cooperation with Limited Liability</b>	Sajó-Rima	Putnok (HU)	Slovakia	2013

Name of the EGTC	Abbreviation applied (+EGTC)	Seat of the EGTC	Affected neighbouring country	Year of registration
<b>Mura Region European Grouping of Territorial Cooperation Limited Liability</b>	Mura	Tótszerdahely (HU)	Croatia	2015
<b>Tisza European Grouping of Territorial Cooperation Limited Liability</b>	Tisza	Kisvárdá (HU)	Ukraine	2015
<b>PONTIBUS European Grouping of Territorial Cooperation Limited Liability</b>	PONTIBUS	Budapest (HU)	Slovakia	2016

Based on the survey, a **personal interview** was made with the representatives of 8 EGTCs. The main goal of the survey was to specify the uncovered problems, and through the personal communication, to go into further details concerning the experiences of the EGTCs. We discussed the following themes with the interviewees:

- the general and legal identification on EGTCs;
- the public opinion on EGTCs' in the country of origin and in the other member countries;
- the interpretation of EGTCs by the competent authorities /other administrative authorities / public service providers/ the actors of the private sector;
- experiences in relation with programming of ETC programmes;
- experiences in relationship with participation in ETC calls;
- experiences concerning the participation in other calls;
- the advantages identified during the on-line survey;
- the difficulties identified during the on-line survey;
- suggestions on how to improve situation and the assessment of the EGTCs.

Besides of the EGTC survey and personal interviews, we implemented a **desk research** within the framework of the sub-project. On the one hand, this research work focused on the regulations on EGTCs both at EU and national levels; and on the other hand it served as a review of the regulations relevant from the point of view of the EGTCs' experiences. The results of the legal research are summarised in the chapter titled "European Union's legislative framework", and in the chapter concentrating on the experiences of the EGTCs. In the chapter entitled "Operational experiences of the Hungarian EGTCs" the description of the legal situation associated with each statement was highlighted with a blue background.

Based on the obstacles identified during the research and the professional experience of the past years, we made findings and proposals in three areas to handle the legal obstacles and operational experiences of the EGTCs:

- suggestions formulated based on the experiences of the EGTCs identified within the framework of the research;
- suggestions on the basis of the acquired experience during the multi-annual professional support provided by CESCI for the EGTCs;
- suggestions to utilize the opportunities offered by SGEI and EGTC regulations.

While the first two sets of proposals contained recommendations based on the existing experience, the third one aimed to highlight the opportunities which are granted by the current SGEI and EGTC Regulations. The most important advantage of the EGTC Regulation is the reference to the SGEI Regulation, which states that the EGTC can carry out business activities in a cross-border manner. This fact represents a new perspective, which has not yet become widespread among the Hungarian EGTCs.

## 1. Legislative framework

### 1.1 The European legislative framework

More than ten years ago, the Regulation on the introduction of a new form of association in the European Union, the Regulation (EC) No. 1082/2006 on the European Grouping of Territorial Cooperation (hereinafter referred to as the Regulation)<sup>7</sup> entered into force.

The provisions of the Regulation will be analyzed in two parts:

- first period: between 2007 and 2012 (original text),
- second period: from 2013 to the present (amended text).

#### 1.1.1 The period between 2007-2012

The Regulation, which entered into force, created a new way of thinking that raised the mechanism of cross-border cooperation to a higher level. The Regulation is binding in its entirety and directly applicable in each Member State, but for the implementation of each procedure, detailed rules were needed at Member State level.<sup>8</sup>

#### EGTCs' status, applicable law (Article 1-2., 5.)

The EGTC is intended to facilitate cross-border, transnational and / or interregional cooperation with the sole purpose of strengthening economic and social cohesion. To this end, it has the broadest legal capacity granted to legal entities in accordance with the legislation of each Member State. This can be a limited liability if certain conditions are met. It acquires legal personality on the day of its registration and / or publication (whichever comes first) in accordance with national legislation of its seat, and may act in accordance with its legal status as public, private or between the public and private status as well.

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<sup>7</sup> The full name of this Regulation: 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). The Regulation entered into force on the day following its publication in the Official Journal of the European Union, and was to apply from 1 August 2007, with the exception of Article 6.

<sup>8</sup> Regulation Article 16 Final provisions 1. Member States shall make such provisions as are appropriate to ensure the effective application of this Regulation.



### Members (Article 3.)

In accordance with the 2006 Regulation, the EGTC can be created by at least two EU Member States, either at State level or through cooperation of territorial entities<sup>9</sup>, but under certain conditions, some organizations from non-EU countries (so-called third countries) can also join.

### Tasks (Article 7.)

In developing the Regulation, it was an expectation that the EGTCs created could be able to manage jointly financed community cooperation programs (ERDF, Structural Funds), initiated solely at the level of Member States, or territorial cooperation without the participation of the community / Member States.

The one of the well-governed part of the Regulation defines the tasks of the EGTC<sup>10</sup> as follows:

- the tasks of the EGTC can only be selected from the competence of the individual members in accordance with their national legislation, but the tasks assigned to them may not include the tasks entrusted to the members by public law and tasks aimed at protecting the general interests of the State or other administrative bodies;
- the tasks should in principle be limited to the implementation of community co-financing and territorial co-financing programmes, according to which Member States can limit the scope of tasks that can be performed without the community's financial contribution to the EGTC, at least for the cooperation actions listed in Article 6 of Regulation (EC) No 1080/2006<sup>11, 12</sup>;
- EGTC cannot act beyond its competence;
- EGTC members may unanimously authorize a member to perform EGTC tasks.

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<sup>9</sup> See the Article 3 (1) of the Regulation

<sup>10</sup> See the Article 7 of the Regulation

<sup>11</sup> See Regulation (EC) No 1080/2006 of the European Parliament and of the Council of 5 July 2006 on the European Regional Development Fund and repealing Regulation (EC) No 1783/1999, Official Journal of the European Union, 31 July 2006

<sup>12</sup> See Article 6 on European territorial cooperation:

Within the framework of the European Territorial Cooperation, ERDF will focus its support on the following priorities:

1. the development of cross-border economic, social and environmental activities
2. the establishment and development of transnational cooperation
3. reinforcement of the effectiveness of regional policy

### Basic documents, organisational structure (Article 8-10.)

The two main documents of the EGTC are the Convention and the Statutes (the latter also includes the full text of the Convention, which is mandatory<sup>13</sup>). The main documents had a minimum established content<sup>14</sup>, in addition, the details of the organisational-operational procedures were "free" to shape.

The two mandatory bodies of the EGTC are the Assembly and the Director. The provision does not affect the competence and tasks of the Assembly or the Director and leaves their inauguration to the members.

The seat of the EGTC is located in the territory of the Member State, by the legal system of which at least one of the EGTC founding members is set-up<sup>15</sup>, and this fact also determines the law applicable to the work of EGTC. **This is important in the context of the rules governing the EGTC, as in matters that are not or only are partly covered by the Regulation, the Member State's national legislation is applicable in which the EGTC has its registered office.**

### Establishment process (Article 4-5.)

The creation of an EGTC is a complex process consisting of two main parts:

- the preparatory phase with the participation of the founding members: as a result, the main decision-making body of the members approves its accession to the EGTC in view of the drafts of the Convention and the Statutes, then the members notify their Member State about their intention to participate in the EGTC;
- the administrative procedure of the creation of the EGTC starts to run from the moment once the founding members notified the relevant authority on their intention; the procedure consists of an approval process and a registration procedure<sup>16</sup>; in the approval process, the designated authority of the Member State concerned approves the applicant to enter the EGTC, or refuses to give its consent on the basis of the submitted EGTC documents, giving its reasons, too. The refusal must be based on a violation of the Regulation or the public interest or public policy of the Member State; legal remedy in

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<sup>13</sup> See the Regulation 9. § (2)

<sup>14</sup> See the Article 8 and 9 of the Regulation

<sup>15</sup> See the Regulation 8. § 2 a)

<sup>16</sup> It may happen that members of designated national authorities are already involved in the verification of key documents at the preparatory stage.

case of refusal should be available<sup>17</sup>. During the proceedings, Member States may require payment of certain fees, which cannot exceed the administrative costs of the entry<sup>18</sup>.

The Committee of the Regions, Member States and States concerned must be informed of registration within ten working days. Then the creation of the EGTC is published in the “S” series of the Official Journal of the European Union, and can be accompanied by a press release at the request of its members, including the creation date, the name of the EGTC, its goals, members name, and its location.

### Financial responsibility, financial management (Articles 11-12.)

In case of the establishment process (or the accession phase) when a founding member in accordance with its national law can only participate in EGTC activities<sup>19</sup> with limited liability, other members are not affected by the restriction, and can freely decide whether to limit their liability. The rate is not fixed, but the extent of its liability - mutatis mutandis -, must not exceed the member’s upper limit of liability concerned.

The extent of responsibility varies between EGTC organisation and members. As general rule, in order to settle all debts of an EGTC as an organization<sup>20</sup>, and only if its assets are not sufficient for this purpose, subsidiary (unlimited) liability for the participants is activated<sup>21</sup>. The exception to this is the limited liability of a member mentioned above, which excludes or limits to a certain extent the liability of the member(s) for remaining debt<sup>22</sup>. The limitation of liability and the amount of the (membership) contribution must be indicated in the Statutes.

If an EGTC consists of members with limited liability, Member States may, without consequences, prohibit the registration of the EGTC in their territory<sup>23</sup>.

Apart from the rules on financial responsibility, the Regulation discusses further financial and economic questions by giving a framework, details are left to be defined in the financial provisions of the Member State in which the EGTC has its registered office.

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<sup>17</sup> See the Regulation 2. § (3)

<sup>18</sup> See the Article 16 (2) of the Regulation

<sup>19</sup> See the restrictions for some Hungarian members in the 2. § (3) of the Act XCIX 2007 of the Hungarian Parliament on European Territorial Cooperation

<sup>20</sup> See the first sentence in the Article 12 (2) of the Regulation

<sup>21</sup> See the first and second paragraph of Article 12 (2) of the Regulation

<sup>22</sup> In theory, it can happen that except for the limited liability member present in the EGTC, other participants do not limit their liability.

<sup>23</sup> See the last paragraph of Article 12 (2) of the Regulation

### Jurisdiction (Article 15.)

The Regulation provides guidance on resolving internal and external legal disputes of the EGTCs. Accordingly, in internal disputes between members, the community law is primarily applicable<sup>24</sup>, but the competent court of the Member State can act if EU standards are not applicable. In case of any dispute between members and third parties the domestic law of the Member State is applicable, which entails the legal effect to the right of appeal.

### Termination (Article 14.)

Termination of an EGTC must be based on the specific provisions of the Regulation and the Convention, or by decision of the designated authority on initiative of the competent authorities. The fundamental reasons for termination is a violation of public order, public safety, public health or morals, in which case these illegal activities on the territory of the Member State concerned can be prohibited or its member(s) can be excluded from the EGTC.

It also entails the termination of the EGTC if, at the request of any competent authority with a legitimate interest, the competent court or decision-making body of the participating country terminates the EGTC in case of violation of the provisions of Article 1 (2) or Article 7 of the Regulation.

Sanctions or, ultimately, termination of the EGTC may only be ordered unless the EGTC ceases the prohibited activity in question, as required by the authority.

## 1.1.2 Steps of the revision after the adoption of the Regulation

At a theoretical level, the revision of the EGTC Regulation began with its adoption when the INTERACT study assessed the INTERREG III programmes and analysed the advantages and disadvantages of the EGTC.<sup>25</sup>

In 2010, at the ETC workshop held in Thessaloniki, the unanimous opinion was that the owners of individual programmes did not consider the EGTC to be a better solution than the already existing structures.

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<sup>24</sup> See: 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

<sup>25</sup> The authors of the study also indicated, among other things, that the exclusion of individuals of private law also impedes the flexibility of the structure; the EGTC organizations need national approval, as well as other organizations (so the cross-border integrated organization status is not automatic), and it takes years to legitimize a new management structure that is clearly accepted by the partners.

A comprehensive EGTC study published by the Committee of the Regions in early 2007, showed that the Regulation leaves too much room for legislation at the national level, claiming that the Regulation, in fact, places EGTC activities under the jurisdiction of national legislations.<sup>26</sup> During the revision process, the Committee of the Regions was the most loyal supporter of the EGTC, as the launch of the EGTC Platform and the EGTC Portal also demonstrated this.<sup>27</sup>

In 2008, the first deep analysis of the EGTC instrument was published including also the list of groupings being under construction that time.<sup>28</sup> The study emphasized that the “dominance” of the national law of Member States allows for different applications, which in combination with the public interest of the authorities, may lead to intentional misinterpretations.

In 2009, the Committee of the Regions published a state-of-play analysis in which a number of problems were identified, such as the delay in the adoption of national implementing laws, the prolongation of the approval and registration procedures, as well as the uncertainty of third-country provisions.

In 2010 the Committee of the Regions also published a brochure<sup>29</sup> that summarized the first experiences of applying the Regulation, which contained specific recommendations for the revision of the Regulation. The brochure made suggestions in four areas (*membership*: e.g., participation of private organizations in EGTCs, *the role of the Member State*: e.g. duration of the approval, goals and objectives; *“de iure” participation in the programmes*, *legislation*: the content of the two founding documents).

During the revision of the Regulation, Hungary played a prominent role in the preparation of amendments. One of the results of the Spanish-Belgian-Hungarian presidential trio was a questionnaire<sup>30</sup>, which received nearly 100 substantive responses (including also proposals summarized by the CESCI).<sup>31</sup>

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<sup>26</sup> See Article 7 (2) of the Regulation

<sup>27</sup> See <http://portal.cor.europa.eu/ETT/en-US/Platform/Pages/welcome.aspx>, and the resolution about its launching: <http://portal.cor.europa.eu/ETT/en-US/Documents/bureau%20dec/en.pdf>

<sup>28</sup> See [http://www.interact-eu.net/news\\_publications/new\\_ETT\\_handbook/174/1547](http://www.interact-eu.net/news_publications/new_ETT_handbook/174/1547)

<sup>29</sup> See <http://portal.cor.europa.eu/ETT/SiteCollectionDocuments/2010%20ETT%20brochure.pdf>

<sup>30</sup> The questionnaire was sent directly to all existing EGTCs and those under preparation also, members of the EGTC Expert Group, and other experts on this topic, COTER specialised committee members, permanent representations of the Member States, regional offices in Brussels and individual associations, and it was published on the website of the Committee of the Regions, on the Directorate-General of Regional and Urban Policy, on the INTERACT website and also on the website of other associations and stakeholders.

<sup>31</sup> The main results of the summary were:

- all respondents were in favour of the revision of the Regulation, but with different intensity (64% of the respondents were in favour of a smaller revision, 35% wanted a bigger revision, and 1% considered a full revision necessary);

As a continuation of the consultation process, on 13 July 2010, the Committee of the Regions organized a forum dedicated to the revision, and convened a high-level meeting in the last days of September, and also organized an extensive consultation event during the Open Days. In these forums, it turned out that **the public is not well aware of the content and objectives of the Regulation and that the policies of some Member States specifically impede the effectiveness of the EGTCs.**

On 3 May 2010, the Spanish Presidency organized a joint consultation meeting with the Committee of the Regions in Cáceres, Spain,<sup>32</sup> and in March 2011, Hungary held an international conference where amendments of the EGTC Regulation were proposed, and the question of multi-level governance also came up.

On 30 November 2010, the meeting of the presidency of Committee of the Regions had a separate item on its agenda in order to discuss the current issues related to the EGTCs, such as the political strategy of the Committee of the Regions on the revision of the legal framework, the organization of an inter-institutional EGTC conference, and the creation of an EGTC network.

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On January 27 and 28 2011, at its plenary meeting, the Committee of the Regions adopted the conclusion on new aspects of the revision of the EGTC Regulation with a view to developing policy recommendations for the proposal of the Commission on the revision of the EGTC regulatory framework, scheduled for August 2011. Some conclusions from the opinion<sup>34</sup>:

- we need to give the opportunity to Member States to entrust EGTCs to manage operational programmes for territorial cohesion;

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- the biggest problem was caused by differences between the regulatory systems of individual Member States, especially with regard to the hiring of the employees, public procurement procedures, the limited liability, and the classification as a private or public law entity;
  - the notion of “national interest” caused interpretation problem, on the basis of which Member States could refuse to register the EGTC or initiate its termination;
  - 30% of respondents wanted to exclude the participation of third countries, while 70% supported the proposal, many of them wanted to simplify the rules for the accession of third countries;
  - EGTCs are already integrated into the ETC system when planning the budget for the 2014–2020 period;
  - it was stated that EGTC is a tool for multi-level governance and even a kind of laboratory (this is an important development compared to the previously defined programme and project management functions).

<sup>32</sup> The key objective of the meeting was the evaluation of the current EGTC regulations and the value added represented by EGTCs in cross-border, transnational and interregional cooperation.

<sup>33</sup> The 126th meeting of the presidency of the Committee of the Regions, on 30 November, 2010, paragraph 6: European Grouping for Territorial Cooperation - EGTC, current situation, political strategy and supporting measures,

<sup>34</sup> OWN-INITIATIVE OPINION of the Committee of the Regions on NEW PERSPECTIVES FOR THE REVISION OF THE EGTC REGULATION (88<sup>th</sup> plenary session, 27 and 28 January 2011). Rapporteur: Alberto Núñez Feijóo (ES/EPP),

- the duration of approval procedures should be reduced within reasonable limits;
- creating a common platform with the participation of stakeholders;
- private organizations must be allowed to participate in the EGTCs;
- provisions based on international law allow local and regional authorities in third countries to fully participate in the EGTCs.

As a result of the preparatory activities and documents in October 2011, the European Commission published its proposal for amending the Regulation.<sup>35</sup>

Subsequently, Member States themselves made comments, including the Ministry of Public Administration and Justice of Hungary, making the following key comments:<sup>36</sup>

- supported the possibility of creating EGTCs consisting of an entity of a Member State and that of a third country / overseas territory (without involving second EU Member State entity);
- supported the amendment of the mandatory elements of the content of the Convention and the Statutes, stating that it is impossible to determine in advance the complete list of European, national and regional rules that will apply to the EGTC's activities;
- supported that the approval procedure would be limited to the approval of the Convention;
- did not agree with the (six-month) extension of the proposed procedural deadline, and, at the same time, recommended that the request should be automatically accepted in the case of administrative silence of the competent authority (tacit approval);
- supported the Commission's amendment, which included that public undertakings defined in the Directive 2004/17/ EC of the European Parliament and of the Council can become members of an EGTC;
- supported the decision based on insurance within the scope of the European Research Infrastructure Consortium (ERIC), but expressed their concern that there might be different practices in Member States without general rules;
- proposed the creation of a Network of EGTC Approval Authorities.

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President of the Regional Government of Galicia. [https://webapi.cor.europa.eu/documentsanonymous/cdr100-2010\\_fin\\_ac\\_en.doc](https://webapi.cor.europa.eu/documentsanonymous/cdr100-2010_fin_ac_en.doc)

<sup>35</sup> See: 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))

<sup>36</sup> See the Proposal of Ministry of Public Administration and Justice to the European Interdepartmental Coordinating Committee on the revision of the legislation on the European Group for Territorial Cooperation (draft, November 2011, Budapest) titled: Initial negotiating position on the Regulation No. 1082/2006 of the European Parliament and of the Council (of July 5, 2006)

After receiving comments from Member States the Committee of the Regions on 15-16 February 2012, at its 94<sup>th</sup> plenary meeting,<sup>37</sup> announced its opinion on the text proposed by the European Commission. The CoR

- proposed to extend the scope of companies eligible for membership to the companies entrusted with the operation of services of general economic interest;
- proposed to clarify the conditions for approving the Convention or rejecting an application for the establishment of the EGTC;
- supported the creation of EGTCs including members from one EU Member State and a third country or overseas territory;
- considered useful that EGTCs could set tariffs and fees for those who use the infrastructure managed by them, and wanted to extend this provision to services of general economic interest, which were also operated by the EGTCs;
- indicated that it was extremely difficult to define in advance in the Convention a complete list of European, national and regional rules to be applied to EGTC's activities in the future;
- supported the clarification of provisions on liability regimes, in particular, the introduction of an insurance scheme.

### 1.1.3 From 2013 until now

Following the multi-stage review process, the European Parliament and the Council approved the Regulation (EU) No 1302/2013<sup>38 39</sup> on 17<sup>th</sup> of December 2013 which introduced substantial amendments to the text of the Regulation (EC) No 1082/2006 adopted by the European Parliament and the Council on 5<sup>th</sup> of July 2006 (hereinafter referred as the Regulation).<sup>40</sup>

The main changes are detailed below.

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<sup>37</sup> See: COTER-V-022. Opinion of the Committee of the Regions: Revision of the EGTC Regulation. [https://webapi.cor.europa.eu/documentsanonymous/cdr371-2011\\_fin\\_ac\\_en.doc](https://webapi.cor.europa.eu/documentsanonymous/cdr371-2011_fin_ac_en.doc)

<sup>38</sup> Regulation (EU) No 1302/2013 of the European Parliament and of the Council of 17 December 2013 amending Regulation (EC) No 1082/2006 on a European grouping of territorial cooperation (EGTC) as regards the clarification, simplification and improvement of the establishment and functioning of such groupings.

<sup>39</sup> Within the title of the law, the term "European Communities (EC)" was replaced by "European Union (EU)". The reason for this is that the Treaty of Lisbon introduced the term "Union" instead of the term "Community"; therefore, the new usage of words had to be transferred into the text of the Regulation (EC) No 1082/2006 (and into other relevant legislations).

<sup>40</sup> The Regulation had to be applied from 22<sup>nd</sup> of June 2014.



## Objective (Article 1)

*Territorial* cohesion was included among the goals of the Regulation in the Article 1, paragraph (2) (strengthening of economic, social cohesion), because the Lisbon Treaty added territorial dimension to Cohesion Policy. The objectives were expanded, hence covering territorial cooperation in general.

## Nature of the EGTCs, applicable law, seat (Articles 1-2, 5)

The law which is applicable to the seat of the EGTC was decisively formulated<sup>41</sup> and inclusion of the relevant provision among the rules on the nature of the EGTC made their role even more important.<sup>42</sup>

## Members (Article 3)

The following entities have been added to the EGTC's potential members:

- *national authorities* which became members as “pairs” of the regional authorities, to dissolve different set of territorial competences of the Member States;
- *public service organizations, including:*
  - a) **public undertakings** on the basis<sup>43</sup> of the Article 2, paragraph (1) of the Directive 2004/17/EC of the European Parliament and of the Council<sup>44</sup>, as well as
  - b) **undertakings entrusted with operations of services of general economic interest-SGEI**,

both organizations appeared with topics, like “**education and training, medical care, social needs in relation to health care and longterm care, childcare, access to, and reintegration into, the labour market, social housing and the care and social inclusion of vulnerable groups**”<sup>45</sup> (emphasis added);

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<sup>41</sup> See: Regulation Article 2, last sentence of paragraph 1: „Where it is necessary under Community or international private law to establish the choice of law which governs an EGTC's acts, an EGTC shall be treated as an entity of the Member State where it has its registered office.”

<sup>42</sup> See: Regulation Article 1, paragraph 5: „The registered office of an EGTC shall be located in a Member State under whose law at least one of the EGTC's members is established”.

<sup>43</sup> State or local government companies, hence any business on which the public authorities may exercise decisive influence directly or indirectly as an owner, through their financial participation in a business, or through the rules applicable to the business.

<sup>44</sup> See: 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.

<sup>45</sup> See: Preamble of amending Regulation (8).

- type of *public institutions*, on the basis of the Article 1, paragraph (9), second subparagraph of the Directive<sup>46</sup> 2004/18/EC of the European Parliament and of the Council, (a) is established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character; (b) having legal personality; (c) financed, for the most part, by the State, regional or local authorities, or other bodies governed by public law; or subject to management supervision by those bodies; or having an administrative, managerial or supervisory board, more than half of whose members are appointed by the State, regional or local authorities, or by other bodies governed by public law,
- *national, regional or local authorities of third countries, or third country public institutions or public undertakings* equivalent to public bodies on the basis of the Article 3a<sup>47</sup> of the EU EGTC Regulation under specified conditions.

Under the new regulation, the EGTC may consist of members located in the territory of only one member State and members located in the territory of a third country (or OCT<sup>48</sup>) – including its outermost regions.

### Tasks (Article 7)

A number of exceptions appeared to the general rule within the new legislation for the EGTCs, thus providing a more flexible legislative environment, such as:

- transferable tasks (the EGTC tasks, as a general rule, have to appear separately within their own sphere of competence)<sup>49</sup>, the concerned member State or the third country may also approve the participation of a member, established under the national law in the EGTC, that member does not have competency in certain tasks given by other members;
- in accordance with the Convention, national and the EU law, the General Assembly of the EGTC may determine the **conditions for the use of infrastructure elements**, managed by the EGTC, or **the conditions for providing a service of general economic interest, including tariffs and fees paid by the users**;
- for more general objectives, EGTC tasks can be also implemented without the financial support related to EU Cohesion Policy; however, these activities should be harmonized

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<sup>46</sup> See: 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.

<sup>47</sup> This article is about the members from third countries or overseas countries or territories (OCTs).

<sup>48</sup> See: Council Decision 2013/755/EU of 25 November 2013 on the association of the overseas countries and territories with the European Union ('Overseas Association Decision') (OJ L 344, 19.12.2013, p. 1–118).

<sup>49</sup> See: the first part of the last sentence of the Article 7 (2) of the Regulation.

with the provisions of the ERDF, the European Social Fund and the Cohesion Fund for the 2014-2020 programming period.

### Basic documents (Articles 8-9)

Within the approval process, only the Convention will be substantively considered. Moreover, some content elements which were previously involved within the Statutes will be part of the Convention in the future (and vice versa).<sup>50</sup> Both the Convention and the Statutes must be registered / published because the Statutes does not contain all the provisions of the Convention. Their publication shall be within the 'C' series of the Official Journal of the European Union, together with the publication model set out in the Annex of the amended Regulation.

### Process of foundation (Articles 4-5)

Some rules of the approval process were also renewed:

- duration of the approval process increased to 6 from 3 months;
- further two were included within the authority's rejection reasons: infringement of other EU law relating to the activities and relating to the activities of the EGTC, as well as if the Statutes is not in harmony with the Convention;
- besides of the obligation for giving an explanation of the refusal, the acting authority should propose amendments for the contested provisions within the basic documents;
- the acting authority may "legitimately listen" during the administration period (e.g. rectification), but the Convention shall be deemed as approved after expiration of the 6-month period (but in this case, the member State with the seat has to formally approve the Convention, too);
- in the case of a request for information from a member during the procedure, the procedural time limit is interrupted and it remains until the member responds to the questions, unless the reply is implemented within 10 working days after the onset of the interruption.

In case of third country participation, the relevant acting authority has to consult with the authorities of the other concerned member State in order to verify the approval decree of the members' participation which is sent from there.

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<sup>50</sup> See: new the new 8<sup>th</sup> and 9<sup>th</sup> articles of the Regulation.

### Financial responsibility, management (Articles 11-12)

The creation of an EGTC does not automatically result in financial advantages at EU level; furthermore, the rules for controlling public funds and the auditing provisions on the financial statements of the EGTC were clarified (appointment of an independent external auditor to perform the audit; preparation, auditing and publication of the financial statements is principally determined by the law of the member State where the registered office of the EGTC is located).

In the future, authorities of the member States may require the limited liability EGTCs for an appropriate insurance in order to cover the risks which are associated with their activity or to have an adequate financial guarantee.

The Commission was required to report on the application of the amended Regulation to the European Parliament, the Council and the Committee of the Regions by 1<sup>st</sup> of August 2018, which was submitted by the deadline<sup>51</sup>.

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<sup>51</sup> 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; Brussels, 17.8.2018, COM(2018) 597 final.

## 2. Operational experiences of the Hungarian EGTCs

The experiences and practical statements identified with questionnaires and interviews and collected relating to the operation of Hungarian EGTCs were put in three categories in this chapter:

- the recognition of the EGTCs as independent legal entities;
- the participation of the EGTCs in the ETC (INTERREG) programmes;
- the participation of the EGTCs in different calls.

While processing the different topics, we made an effort to reflect on the relevant legislative environment, where it was necessary along with the introduction of the experiences, communicated by the EGTCs. The experiences of the EGTCs were formulated generally in most cases, however sometimes we also mentioned specific cases.

### 2.1 The recognition of the EGTCs as independent legal entities

As a result of the research, it can be stated that despite the available legislative frameworks, the awareness of the EGTCs is still varying and it is typically small. Due to this phenomenon, their identification causes difficulties for administrative institutions. Based on the feedback of the EGTCs, the administration is usually easier in the country of origin.

Several active EGTCs have reported that **the EGTC, as a legal model was more and more integrated into the professional common awareness, however its general recognition was rather lacking**. Several times, the EGTCs themselves needed to “struggle” for their recognition as independent legal entities, despite the fact that their legal capacity is fixed in the Regulation:

Point 4 of Article 1 of the EGTC Regulation: *“4. An EGTC shall have in each Member State the most extensive legal capacity accorded to legal persons under that Member State's national law. It may, in particular, acquire or dispose of movable and immovable property and employ staff and may be a party to legal proceedings.”*

Although, the regulatory framework relating to the EGTCs is completed, the **different specialised legislations (e.g. the tax and labour legislations) often still do not mention them as independent legal entities**, thus the EGTCs are mostly interpreted as Ltds or non-profit organisations registered in the country of origin. The unknown legal form usually causes difficulties – mostly among the non-specialised authorities and the public services – until the EGTCs do not raise awareness of the relevant legislations during administration.

The problem of the legal status of EGTCs is further exacerbated by the fact that the Regulation also contains a progressive but currently not fully enforceable provision, according to which the

EGTC Convention should also include applicable EU and national law directly related to the activities of the EGTC. Regulation Article 8 (2): „ *The convention shall specify: [...]j) the applicable Union and national law directly relevant to the EGTC's activities carried out under the tasks specified in the convention*”.

The criticism of this regulatory component already came up during the revision period of the Regulation, however several authorities, like the Committee of the Regions itself<sup>52</sup> and the Hungarian acting authority<sup>53</sup> have reported that the implementation of this rule is “extremely complicated” and “impossible”. Regardless, the Regulation entered into force this way. At the moment we have no information about the preparation of a complete list so far. Besides, the national approval authorities that CESCI got acquainted with so far, do not ask for the preparation of a “complete” list – due to practical reasons.

Based on the experiences of the EGTCs, **the awareness about and recognition of the EGTCs in Hungary is slightly better**, than in the neighbouring countries. This result is due to the high number of EGTCs registered in the country and due to the active professional and informational activity of the competent authority. Several reasons of the diverse level of awareness about the EGTCs can be identified: for instance, questions that are not or are only partially ruled by the Regulation are governed by the national law of the country of origin; or that the Member States treat their national implementing regulations with different intensities or, in several cases, even without taking certain content elements (e.g. issues of procedural law) into consideration; but the extent to which the given Member State intends to involve the EGTC’s legal tool in the development of cross-border cooperation is also important.

Based on the experiences of the Hungarian EGTCs, the specific cases, boundaries and problems relating to the above mentioned statements are the following.

**The Via Carpatia EGTC reported about the difficulties relating to accounting.** Their accountant in charge had registered the finances of the EGTC as if the organisation was an Ltd. Later they changed to non-profit book-keeping.

Identification of the EGTC’s legal status is not easy if we analyse the Regulation on its own, as we do not find any clear classification relating to its status, while there are examples in the Member States about the classification of the EGTC as a legal private or public entity or the mixture of the two. The legal background of the answer to the problem is provided by the

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<sup>52</sup> See: COTER-V-022. Opinion of the Committee of the Regions: Revision of the EGTC Regulation. [https://webapi.cor.europa.eu/documentsanonymous/cdr371-2011\\_fin\\_ac\\_en.doc](https://webapi.cor.europa.eu/documentsanonymous/cdr371-2011_fin_ac_en.doc)

<sup>53</sup> See: KIM Proposition for the European Interdepartmental Coordinating Committee, Starting negotiation position REGULATION (EC) No 1082/2006 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL (July 5, 2006) on the review (Proposal) of the legislation of the European grouping of territorial cooperation Budapest, November 2011

Regulation and, due to the Slovakian seat of the EGTC (Košice), by the relevant regulation of the country of origin that is the legislation on European Grouping of Territorial Cooperation and the 540/2001 Z. z. law on supplementing the law on national statistics. There is no separate section on the status of the EGTC among the provisions of the Regulation but on the basis of its provisions, it can be concluded that the Slovakian-based EGTC is a business organisation that is a legal entity based on private law, performing public law tasks, which can be clearly separated from the nature of an Ltd. The legal status of the EGTC differing from the Ltd is indicated by many regulatory aspects:

- the types of background regulations (EGTC: EU Regulation, Slovakian EGTC law; Ltd.: Commercial Law)
- acting authorities (EGTC: Úrad podpredsedu vlády SR pre investície a informatizáciu; Government Department; Ltd.; relevant Enterprise Authority, Commercial Court);
- annexes to the application (EGTC: the approval of a supervisory body; Convention and Statutes; Ltd.: articles of association, initial fund);
- membership (EGTC: at least two public of authorities, Ltd.: at least one natural person);
- the period of the procedure (approval and registration at the same time) (EGTC: at least 7-12 months, Ltd.: can be completed in 3-4 weeks).

Thus, considering these factors, the operation of the EGTC and an Ltd. should not be mixed up, but it is appropriate ultimately to ask for the opinion of the Slovak EGTC authority on this subject.

**The Arrabona EGTC wanted to establish a branch office in Slovakia with constant estate rental.** However, the Slovakian law contains several requirements (contracting Slovakian accountant, applying for Slovakian tax number) that the organisation did not want to undertake. At the end, instead of constant rental, they do not use the office but occasionally, as an Info Point. At the same time, they stated in the lease contract that they do not carry out taxable transactions in the office, thus the obligation to apply for a tax number and to give notification to the Slovakian commercial court became unnecessary.

To thoroughly settle the case, Slovakian legal-financial expertise is needed, however, some reactions can still be made. One of these is that in the case of the EGTCs registered there, the Slovakian EGTC law, without containing a definition of status law, is closer to private law due to some provisions characterising certain economic companies (non-cash contribution, termination/liquidation cases, control bodies, the publication of the registration in the 513/1991 Commercial Gazette). At the same time, according to the Section 34. paragraph (1) of the Slovakian EGTC law: “A legal person having its registered office outside the territory of the Slovak Republic which is a grouping pursuant to a separate regulation (*See: Regulation*) and laws of a country of where it has its registered office **may operate on the territory of the Slovak**

***Republic under the same conditions and in the same extent as a Grouping formed pursuant to this Act and a separate regulation (See: Regulation)."***

Thus, according to the quoted provisions, the **Slovakian activity** of the EGTC with foreign seat, will be judged according to the rules of the Slovakian private law.<sup>54</sup> As a consequence, the Slovakian Commercial Law regulation concerning *the organisational unit* (e.g. representation, office, agency, warehouse) *established in a different country (i.e. in Slovakia) by a foreign legal person* could be interpreted on the above cases.<sup>55</sup> According to this provision, the organisational unit is not a separate legal entity, but performs all its activities on behalf of a foreign legal person (in our case on behalf of Arrabona EGTC), while its representation is ensured by the leader of the foreign legal person (EGTC) or possibly by the leader of the appointed organisational unit (if there is any). The administrative obligation of the organisational unit includes only the commercial court notification and the application of double-entry book-keeping. If the organisational unit is deleted from the Slovakian register, its "obligations" will not be eliminated even after the deletion, as they remain the obligations of the foreign legal person (EGTC).

To sum up, it seems that EGTC can undertake the responsibility over the activities carried-out by its branch located in Slovakia but these activities shall be separated from the own commitments taken by the branch registered in Slovakia (as well as its taxpayer status). For this differentiation (establishment of the definitions; examples) it is recommended to involve a Slovakian expert skilled in the Slovak Commercial Law, its justification and commentary.

**The Gate to Europe EGTC also reported about difficulties related to the registration of the foreign (Romanian) branch office.** The Romanian authorities asked the EGTC to modify their Statutes in order to be allowed to open a branch by including the establishment of the Romanian branch in it, and to record the internal rules thereof as the annex of the Statutes.

The Regulation provides the founders with a great deal of flexibility to establish the organisational-operational model. It does not regulate the establishment of a branch, and does not even mention it among the mandatory content of the founding documents. Given that in Romania the EGTC has the most extensive legal capacity ensured to legal entities, it appears that it has a legal right - if it is not prohibited - to initiate the creation of a *non-autonomous tax organisational entity or a branch with taxable obligation* in the territory of the concerned Member State without a separate indication. We consider that the EGTC will only have obligation if the establishment of one of the above mentioned two types of entities is ruled by specific Romanian national legislations (notification, tax number request, etc.). Still, the EGTC should be equally treated with Romanian applicants. In this case, the competent Romanian territorial authorities

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<sup>54</sup>This raises a narrower or broader type of interpretation of Article 1 (4) of the Regulation. See the explanation of the question among the issues raised.

<sup>55</sup>See: Paragraph 7 of the Commercial Law.



(tax, social insurance and registration authorities) have the right to act and not the Romanian EGTC approving authority. The “intervention” of the latter one in the procedures appears to be justified only in the case of a possible breach of the general interest, either after noticing *ex officio*, or after the EGTC had notified the authority about the procedure.

**The Arrabona EGTC reported that they wanted to have Internet access for their Slovakian operations through a Slovakian service provider**, but due to the obstacles that came up (one of the service providers does not make a contract with Hungarian organisations; the other provider asked for an incredible amount of deposit along with the translation of all official documents), they decided to use their Hungarian subscription in a roaming mode in Slovakia.

The Arrabona EGTC in Slovakia has the most extensive legal capacity available that is, it should have equal rights with the Slovakian Internet subscribers, even if they order the subscription in person, or online.<sup>56</sup> On this basis, the reference to discriminatory grounds (the exclusion due to belonging to another Member State or restriction by unreasonable amount of deposit) violates the freedom to use (cross-border) services within the EU.<sup>57</sup> It should be noted that in term of “cross-border element” it is enough for the EGTC (during its Slovakian activities) to use the given service of the service provider that has its seat over there, thus it does not have to be literally cross-border.

**The Gate to Europe EGTC and the BTC EGTC both reported on the difficulties about the process of opening a bank account in Romania.** After a long administration, both EGTCs managed to open their bank account eventually, but later the bank liquidated the bank account of the BTC EGTC, stating that there was not enough money circulation thereon<sup>58</sup>.

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<sup>56</sup> See: Regulation (EU) 2018/302 of the European Parliament and of the Council of 28 February 2018 on addressing unjustified geo-blocking and other forms of discrimination based on customers' nationality, place of residence or place of establishment within the internal market and amending Regulations (EC) No 2006/2004 and (EU) 2017/2394 and Directive 2009/22/EC (Text with EEA relevance). The regulation entered into force twenty days after its publication in the Official Journal of the European Union and it was applicable from 3 December, 2018 with the exception of Article 6.

<sup>57</sup> Although Article 56 of the Treaty on the European Union (TFEU) only deals with the freedom to provide services, the Court of Justice of the European Union has extended this in its customary practice and also included the freedom to use services here, as a logical complement to the freedom to provide services. See: the case 26/83. *Luisi kontra Carbone kontra Ministero del Tesoro* case, CJEU [1984] 377. p.

<sup>58</sup> According to the information from the representative of the EGTC, the bank wanted them to sign a Romanian statement without any previous notice, and only when the Romanian-speaking EGTC member read the text, was it discovered that they would have signed an unwanted application asking the bank to terminate their bank account. As the representatives of the EGTC were not willing to sign it, the bank itself denounced the bank account contract, following a procedure initiated by the National Bank of Romania.

During **opening a bank account**, if the EGTC is acting in a Member State other than its country of origin, the EGTC has the most extensive legal capacity available in that Member State, therefore, it is entitled to equal treatment with other clients of the bank (the cautious attitude of the bank is probably due to the lack of knowledge about the EGTC tool). The refusal of the opening of an account can be carried out lawfully, for example in the case if the applicant does not meet with EU rules preventing money laundering or they are financing terrorists<sup>59</sup>. However, banks may apply further assessment criteria, for example the justification of the applicant's real and rightful interest in opening an account (in our opinion, this can be justified with the existence of EGTC's members in the given Member State and with transferring their membership fee to an account there).

**The liquidation of a bank account** can have several reasons. E.g. it can be due to the breach of the payment account contract by the customer. It means that the EGTC used the selected payment account under favourable monthly fees conditions and with the fulfilment of the prescribed amount of money transfer. After some time, the condition about transferring was not fulfilled even during the grace period. If there are obstacles similar to this, or those resulted from the lack of knowledge of local conditions, it is best to look for financial professionals of the given Member State.

As it can be seen, in everyday practice the EGTCs are experiencing difficulties with the recognition as independent legal entities in several Central and Eastern European countries, but there are also specific legal obstacles to this in Ukraine and Serbia.

The BTC EGTC still has difficulties, as **it is not possible to establish an EGTC with Serbian members yet**. Theoretically local governments have the right to join international organisations. According to the Municipality Law, they only need to obtain a permission from the Ministry of the Interior. However, it does not make sense to join the EGTC, as the grouping has no legal capacity to act on their behalf in Serbia<sup>60</sup>.

Under the relevant rules of the Regulation, as a third country, Serbia (an EU candidate country) may establish an EGTC with its neighbouring EU Member States (Hungary, Romania, Bulgaria, Croatia) if it fulfils one of the following criteria:

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<sup>59</sup> See: Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (Text with EEA relevance)

<sup>60</sup> The 2017 Legal Accessibility Project of CESCI was dealing with the situation, in the framework of which, a document entitled 'Serbia's participation in the European Grouping of Territorial Cooperation (EGTC) and Euroregional Cooperation Grouping (ECG)' was prepared, which is available on the initiative's website: <http://legalaccess.cesci-net.eu/en/milestone-no-2/harmonization-of-egtc-legislation/results-harmonization-of-egtc-legislation-2nd-milestone-2017/>

- a) it has a regulation equivalent to the terms and procedures included in the Regulation, or
- b) it has an agreement with at least one Member State, according to the law of which an EGTC-member was established.

In order to fulfil this latter condition, the Regulation offers the opportunity of bilateral or multilateral international agreements based on the Madrid Convention and its Additional Protocols (European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities)<sup>61</sup>. Serbia joined the Madrid Convention in 2015<sup>62</sup> and with the professional contribution of CESCI, an analytical study, exploring the preparation of the relevant Serbian legislation, as well as a proposal on the text of the legislation itself were drafted in order to make the Regulation applicable in the territory of Serbia. The harmonisation process concerning the EGTC legislation did not have a progress yet.

The representative of the Tisza EGTC reported that **the legal status of EGTCs registered abroad is still not recognized in Ukraine**. The Tisza EGTC was founded in October 2015, based on a valid interstate agreement,<sup>63</sup> in accordance with the Regulation, but this did not help the EGTC become a recognized legal entity in Ukraine.<sup>64</sup> Although the Madrid Convention and its three Additional Protocols came into force several years ago by the Ukrainian Parliament, the adopted legislation only provides the theoretical possibility of their application while the way of implementation is unknown.

Since the Ukrainian authorities do not recognize the right of the EGTC for project implementation and making investments in the territory of Ukraine, thus for the cross-border implementation of a major infrastructure development project within the HUSKROUA ENI Programme, the EGTC must first be accredited by the Ministry of Economy (in Kiev). The application package must include the request of the Joint Technical Secretariat (JTS) of the HUSKROUA ENI programme and that of the EGTC, and the signed grant contract; an office must be opened in Uzhhorod (UA), and the President of the EGTC has also to authorize a Ukrainian individual, who can act on behalf of the EGTC regarding the Ukrainian activities of the project. Until the Eligibility Licence is issued, the EGTC cannot implement projects in Ukraine and cannot

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<sup>61</sup> See: The European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities and its Additional Protocols, adopted in Madrid on 21 May 1980 by the Council of Europe.

<sup>62</sup> The main dates of the joining: signing: 2015. 05. 29., ratification: 2016. 03. 15., entering into force: 2016. 06. 16.. See: <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/106/signatures>

<sup>63</sup> See: The Convention between the Government of the Republic of Hungary and the Government of Ukraine on Cross-Border Cooperation that was signed in Budapest on 11 November 1997.

<sup>64</sup> Founders: Szabolcs-Szatmár-Bereg County Council, the Municipality of Kisvárd, Zakarpattia Oblast Council. Registered: Under No 19, in October 26, 2015 with a seat in Kisvárd.

even open a bank account (related to the project). As with the completion of the project, the licence itself is repealed too, therefore, if the relevant Ukrainian implementing legislation is not prepared by the end of the project, the EGTC needs to obtain accreditations from the Ukrainian Ministry for each project.

It is the reason why Tisza EGTC made the initiative to set up an expert group which aims at offering legal advice to the Supreme Council (the government) on the way of the legal harmonisation of the EGTC rules.

Table 2: Overview table on the adoption of the Madrid Convention and its Additional Protocols concerning the third countries and Member States concerned <sup>65</sup>

Documents	Entry into force in each country (situation in December 20, 2018)						
	Austria	Hungary	Romania	Serbia	Slovakia	Slovenia	Ukraine
<b>European Outline Convention CETS No.106</b>	19/01/1983	22/06/1994	17/10/2003	16/06/2016	02/05/2000	18/10/2003	22/12/1993
<b>Protocol No. 1 CETS No.159</b>	18/06/2004	-	05/05/1998 (signature only)	-	02/05/2000	18/12/2003	05/02/2005
<b>Protocol No. 2 CETS No.169,</b>	23/12/2006	-	05/05/1998 (signature only)	-	01/02/2001	18/12/2003	05/02/2005
<b>Protocol No. 3 CETS No.206</b>	-	-	-	-	-	01/03/2013	01/03/2013

## 2.2 The participation of the EGTCs in the ETC programmes

### 2.2.1 Programming

**The participation of EGTCs of Hungarian interest (seat or members) in ETC programmes varies from programme to programme.** While in the SKHU INTERREG V-A Programme, a particular attention was paid to the involvement of the EGTCs, in the case of the HURO INTERREG V-A Programme, the contribution could be only done through the drafting of voluntary comments. Regarding the implementation of the programmes, it can also be seen that the EGTCs only have a certain level of management role in the Slovakia-Hungary INTERREG programme.

<sup>65</sup> See: <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/106/signatures>

Several EGTCs along the Slovakian border reported that the EGTCs could participate in several preparatory meetings and workshops during the planning process thanks to the invitation of the external experts in charge of designing the programme (CESCI, Centire, HBF). Thus, they had the opportunity to include the bottom-up needs in the programme that were mostly required by the experiences of the past period. The EGTCs operating along the Romanian border however, reported that they had the opportunity to comment on the draft programme only on a voluntary basis but they did not receive official invitations neither to the consultation process nor to the public events.

The EGTCs did not participate in the preparation of the other programmes, mainly because they did not exist at the programming period. Although the Pannon EGTC was operating at this time, since they had no Croatian members back then, only Slovenians, they were not invited to the development of the Hungary-Croatia INTERREG V-A programme despite the geographical interest of their Hungarian members. They could not participate in the designing of the Slovenia-Hungary programme either because the seat of the EGTC was not located within the programme area – regardless of that several ones of its members were geographically eligible. These examples show that the institutions involved in programme management do not always fully understand the substance of the EGTCs, and they do not have enough knowledge about their territorial integrative role.

### 2.2.2 The programme implementation phase

**The attitude of each programme management body is different in terms of programme implementation.** Officially, the EGTCs are only involved in the implementation of the SKHU INTERREG V-A Programme.

On August 17, 2018, the European Commission published its 2018 Report on the implementation of the Regulation on a European Grouping of Territorial Cooperation. In this report, it is stated that *"the original objective of the EGTC instrument was to facilitate European territorial cooperation (ETC) at both programme and project level, which besides the implementation of specific projects includes programming in a broader sense."* The 1302/2013/EU Regulation modified Article 7 (3) of the 1082/2006/EC Regulation by the followings: *„Primarily, the tasks of an EGTC may concern the implementation of cooperation programmes, or parts thereof, or the implementation of operations supported by the Union through the European Regional Development Fund, the European Social Fund and/or the Cohesion Fund."*

The Report emphasises that the participation of the EGTCs in programme management is really a curiosity at the moment. The Report only mentions two EGTCs that actually implement ETC programmes. These are the Grande Région EGTC and the ESPON EGTC. It also mentions two other EGTCs that are responsible for the implementation of a small project fund belonging to

an ETC programme; these are the Via Carpatia EGTC and RDV EGTC along the Hungarian-Slovakian border (see below). Besides them, two groupings are the exclusive beneficiaries of European Territorial Cooperation projects, and the Italy-Slovenia GO EGTC realises Integrated Territorial Investment (ITI). Unlike these programme-level activities, the involvement of EGTCs in INTERREG V-A projects is rather typical.

**The EGTCs can participate in the MC meetings of the SKHU INTERREG V-A Programme as observers. In the case of other programmes, this is not possible.** EGTCs are invited to the meetings of the Monitoring Committee of the INTERREG V-A Slovakia-Hungary Programme, on a rotation basis through one representative. First the westernmost, secondly the easternmost based EGTCs were invited to participate on the forthcoming MC meetings then the second westernmost and second easternmost EGTCs and so on. County-level EGTCs (PONTIBUS EGTC, Via Carpatia EGTC, Rába-Dunaj-Váh (Rába-Duna-Vág) EGTC) are excluded from rotation principle since their members, the counties are MC members in their own right.<sup>66</sup> With the application of the principle, the Slovakia-Hungary programme fulfils an exemplary role by including the EGTCs, even if they do not have voting rights.

The Common Provisions Regulation<sup>67</sup> gives an opportunity for the EGTCs to participate in the MC, but it does not make it mandatory: *“Article 48: Composition of the monitoring committee. 1. [...] The composition of the monitoring committee of a programme under the European territorial goal shall be agreed by the Member States participating in the programme and by third countries in the event that they have accepted the invitation to participate in the cooperation programme. The monitoring committee shall include relevant representatives of those Member States and third countries. The monitoring committee may include representatives of the EGTC carrying out activities related to the programme within the programme area.”*<sup>68</sup>

**Two EGTCs, as intermediary bodies have been selected for managing the implementation of the so called „Small Project Fund” within the SKHU CBC Program.** The Small Project Fund (SPF) is a new tool within the Interreg V-A Slovakia-Hungary Cooperation

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<sup>66</sup>Source: Rules of Procedure of the Monitoring Committee for Interreg V-A Slovakia-Hungary Cooperation Programme

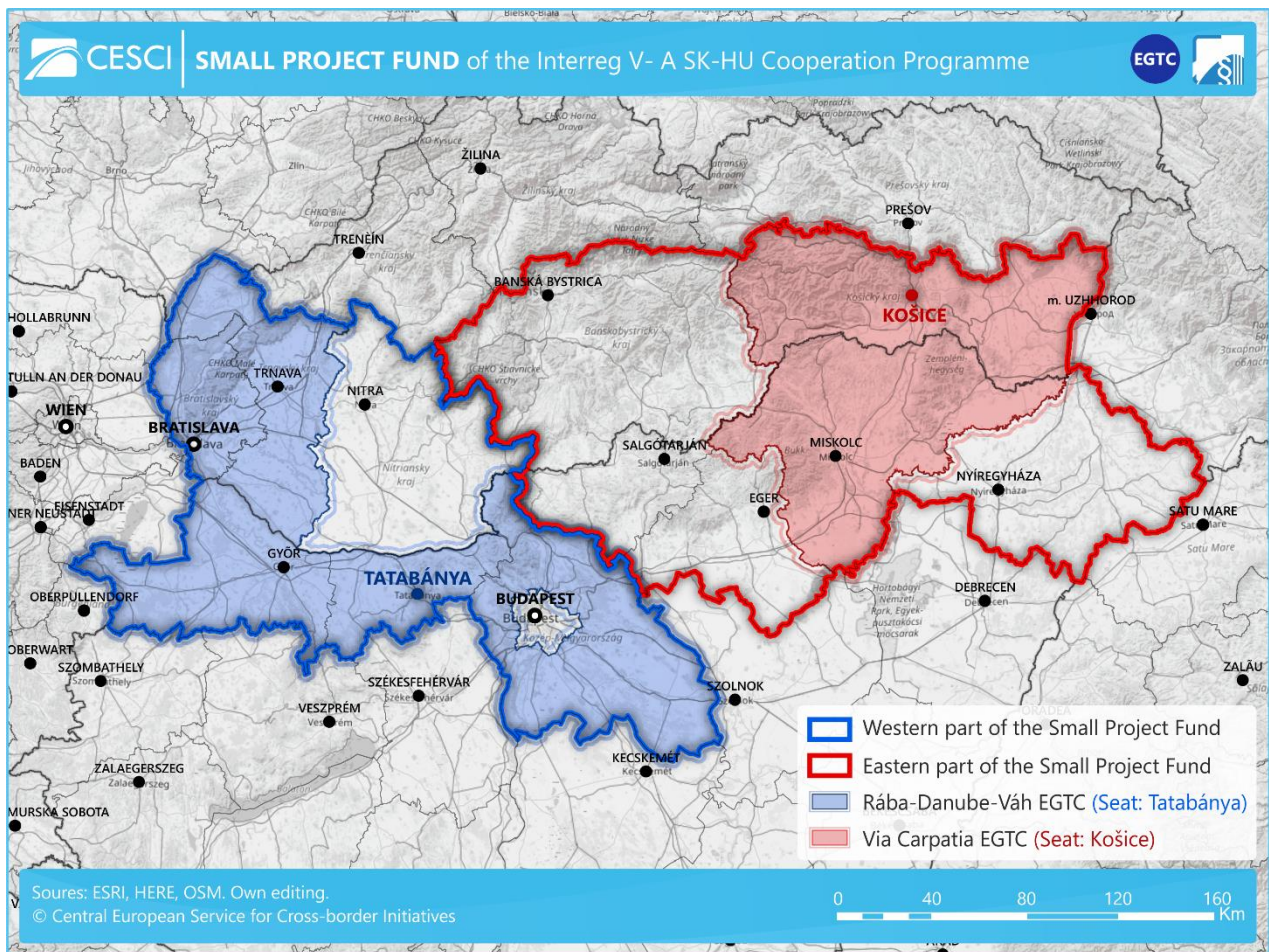
<sup>67</sup>REGULATION (EU) No 1303/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006

<sup>68</sup>The EU Cohesion Policy regulations relating to the new budget period, and published on May 29, 2018, already prescribe the mandatory membership of the EGTCs concerned, in the monitoring committee.



Programme. The overall objective of the Small Project Fund is to strengthen social cohesion across the border by facilitating the project implementation of such institutions whose project proposal counts with a smaller total amount than the usual financial limits in an ordinary call.<sup>69</sup> For the implementation of the SPF two management organizations (EGTC) were designated: Rába-Danube-Váh EGTC on the western part of the programming area and Via Carpathia EGTC on the eastern part of the programming area.

Figure 2: Management of the Small Project Fund of the Interreg V-A SK-HU Cooperation Programme



The ETC Regulation<sup>70</sup> gives an opportunity for the EGTCs for this type of involvement: "Article 22: European grouping of territorial cooperation. Member States participating in a cooperation programme may make use of an EGTC for the purposes of making it responsible for managing that cooperation programme or part thereof, in particular by conferring on it the responsibilities

<sup>69</sup><http://www.skhu.eu/news/small-project-fund>

<sup>70</sup> 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

*of a managing authority.” The new draft ETC Regulation<sup>71</sup>, published on May 29, 2018, made the solution, applied by the Slovakia-Hungary programme into an example to follow, in an explicit way: Article 24. (2) paragraph: „The beneficiary of a small project fund shall be a cross-border legal body or an EGTC.”*

The Slovakia-Hungary INTERREG V-A programme also provided further roles to the EGTCs, however, on a non-exclusive basis. **The EGTC was also mentioned among the main beneficiaries of the so-called TAPE (Territorial Action Plan for Employment) instrument** that was launched in 2017, to improve the employment situation of some border regions. Within the framework of the TAPes, 3-7 employment projects can be implemented in parallel, with the involvement of SMEs, municipalities, educational institutions and NGOs. The projects should be in synergy with each other and they have to respond to the main common employment challenges of the given border sub-region in a cross-border way. In order to make sure that the projects can be implemented safely and as planned, each TAPE includes an additional coordination and communication project (CCP) with the following organisational forms as eligible beneficiaries:

- regional, county or local municipalities;
- European groupings of territorial cooperation;
- development agencies,
- local action groups.

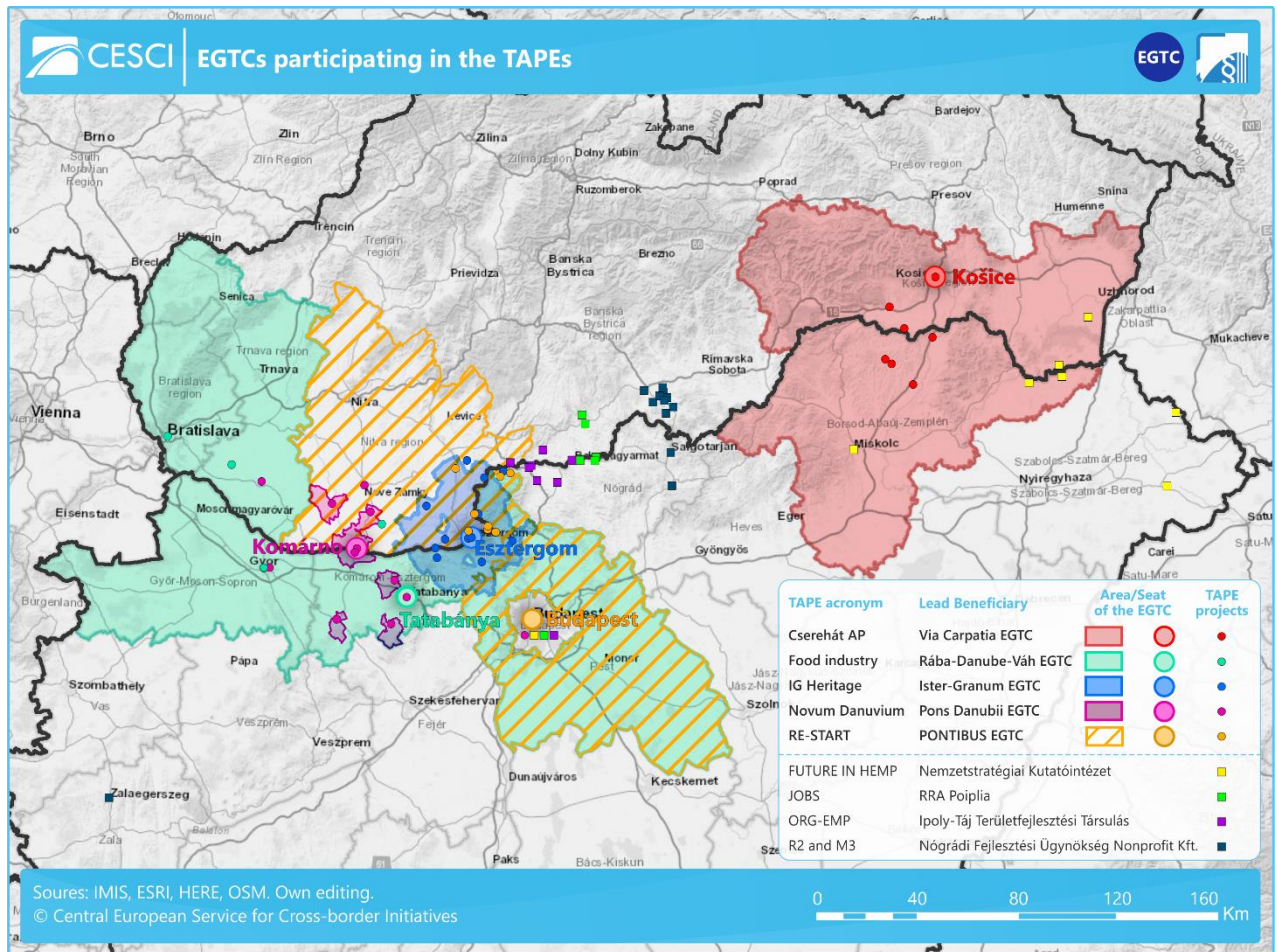
Within the framework of the (two-round) TAPE call, the Monitoring Committee supported 9 applications, among which, the lead partners of 5 are EGTCs which clearly indicates the territorial potential of the groupings. This construction also shows how EGTCs can take a role in the integrated, multi-sectorial development of a border region. The TAPes which have been developed according to a methodology similar to that of the ITI can be even considered sub-programmes implemented under PA3 of the CP.

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<sup>71</sup> 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) <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2018%3A374%3AFIN>



Figure 3: EGTCs participating in the TAPes



### 2.3 The participation of the EGTCs in different calls

In general, it can be stated that the EGTCs are more active in project than in programme implementation. In 2017, 33 of the 68 EGTCs reported that they were implementing ETC projects<sup>72,73</sup>. A total of 84 ETC projects were reported for 2017, which is more than double compared to the 35 projects in 2016.<sup>74</sup>

<sup>72</sup> Assessment of the application of EGTC regulation. Final report – 20.04.2018. 2017CE160AT116. Written by Spatial Foresight. [https://ec.europa.eu/regional\\_policy/sources/docgener/studies/pdf/assess\\_egtc\\_applic\\_en.pdf](https://ec.europa.eu/regional_policy/sources/docgener/studies/pdf/assess_egtc_applic_en.pdf)

<sup>73</sup> At the end of 2018, the number of registered EGTCs was 72. Due to the absence of a comprehensive database concerning the project implementation activities of the EGTCs, a more recent statement cannot be made. The processing of the projects of the 2014-2020 programmes is only 50% on the website, keep.eu.

<sup>74</sup> Committee of the Regions (2018): EGTC monitoring report 2017. p. 118.

Besides the ETC projects, EGTCs also participate in the implementation of projects funded by other programmes, and the number of these activities is even more significant in the dead time periods between two INTERREG CBC-programmes.

The implementation of the projects plays an increasingly important role in the financing of the EGTCs. In the following, the experiences of the EGTCs of Hungarian interest will be reviewed concerning application systems and project implementation.

At the beginning of the programming period, the EGTCs experienced that **the groupings as beneficiaries appeared almost exclusively in the calls of the ETC programmes**. They did not appear as potential beneficiaries in the mainstream, national calls, and for a while they were also missing from the calls of the Interreg Europe and International Visegrad Fund<sup>75</sup> calls. Since then, positive changes have been noticed in this area. At the same time, the domestically managed EU programmes, as well as even many direct EU funds, still do not mention the EGTCs among the eligible applicants. The root of the problem is that there is no common regulation on the identification of the beneficiaries. These lists are defined in line with the priority areas of the particular programmes and applications that need to be supported, so that the members of the Programming Task Force discuss who should be identified as beneficiaries. For most of these Task Forces, the EGTC is an unknown legal entity, so they do not really think about providing them with eligibility. During the next programming period, this deficiency should be solved: EGTCs should be listed among the beneficiaries in the case of each programme. Furthermore, it should also be determined, with how many partners should the EGTC participate in these applications. (E.g. if the EGTC has members in three different countries, do the calls identify them as 3 or as 1 partner?).

According to previous experiences, the fact that **EGTCs are classified as organisations based on their seat** is mainly a problem in the case of national level calls. One of the exemplary cases of this phenomenon is when the seat municipality is not classified as eligible beneficiary, while the other EGTC members are. The Arrabona EGTC (with a seat in Győr) faced with this case by several national calls (where the city of Győr was not eligible), and to solve the problem, two new Hungarian branches of the EGTC were registered. However, the territorial competence of the EGTC should have been enough to gain eligibility.

Another exemplary case of this phenomenon is that sometimes, regardless of that the EGTC has members in the country other than its origin, it still cannot participate in the calls of the given country because it is considered as an organisation belonging to the other country. Thus the

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<sup>75</sup> The International Visegrad Fund operated by the four countries concerned (Poland, Czech Republic, Slovakia and Hungary) regularly supports direct cross-border projects what makes reasonable to include EGTCs as eligible partners.

PONTIBUS EGTC with its Hungarian seat cannot take part in Slovakian calls, although they have a Slovakian member.

Similarly, it also means dissonance that **the national EGTC Fund managed by the Hungarian Ministry of Foreign Affairs and Trade, operates based on the country of origin of the EGTCs.** This approach contradicts the interpretation that can be derived from the EU Regulation, namely that the EGTCs are considered to be independent legal entities in all the countries concerned. For example, the PONTIBUS EGTC reported that although there is a government fund in both countries concerned (Hungary and Slovakia) available for the EGTCs, they are still not able to preferably utilise them in practice. As it was already mentioned they could not participate in the aid scheme on the Slovakian side as they had their seat in Hungary. But they also cannot finance their operational costs on the Slovakian side from the fund of the Hungarian Ministry of Foreign Affairs and Trade. The position of the Slovakian-registered Via Carpatia EGTC and the Pons Danubii EGTC is similarly problematic, since they cannot be the direct beneficiaries of the aid granted by the Hungarian Ministry. The Via Carpatia EGTC had to establish a Hungarian registered nonprofit Ltd, which was thus authorised to receive the aid. In the case of Pons Danubii, one of the already existing enterprises of one of the member municipalities was entrusted with the management of the EGTC's Hungarian projects, thus having access to the government's operational resources. In fact, the same rights should be granted to the EGTCs with Slovakian seats in both cases, such as those with Hungarian seat. The main advantage of the grouping would be that they would not have to set up independent institutions or partner organisations on the other side of the border. The above mentioned practice questions this advantage.

Apart from the deficiencies, it is worth mentioning some positive examples of project implementation practices of the EGTCs with Hungarian participation.

For example, the Arrabona EGTC – using the frameworks provided by the ETC Regulation – is **implementing a project**, called "BUILCOGREEN" (*Building institutional cooperation for greener settlements within the territory of Arrabona EGTC*) **as a single beneficiary**, which aims at preparing the cross-border integration of settlement operation services. No additional partner has been involved in the project, the EGTC itself implements the activities on both sides of the border.

The case of the Ister-Granum EGTC is also worth mentioning as a positive example, which participates in a cross-border project (*Building cross border ferry connection and necessary infrastructure between Neszmély and Radvaň nad Dunajom*) **as a Slovak (!) beneficiary** in partnership with two other Hungarian beneficiaries. The uniqueness and pioneering approach of the investment project derives from that in this case the Ister-Granum EGTC with a Hungarian seat represents one of its Slovakian member municipalities in the project. On the territory of the

concerned municipality (Radvaň nad Dunajom) a (cross-border) ferry port will be constructed, however the local government would not have been able to provide the pre-financing of the investment (the Slovakian government does not provide aid for this), which would have resulted in the failure of the project. Meanwhile, the Hungarian government provides 50% pre-financing from the ERDF to the approved applicants with Hungarian seat and pays the 10% national co-financing in advance, too. The Ister-Granum EGTC is entitled to these pre-financing solutions as an applicant with a Hungarian seat, but the port investment is implemented on the Slovakian side. Due to this duality, the local municipality offered the concerned plot to the EGTC in the form of a permanent lease. Furthermore, they entrusted the EGTC in a contract with the construction of the ferry port and the selection of the ferry service provider. It also provides 5% as own contribution for the investment. So, the EGTC with the Hungarian seat, which alone should be authorised for cross-border investment, is building a ferry port together with a Hungarian State company due to the high investment value. The latter one will be constructing the port on the Hungarian bank of the Danube.

The project is a good example showing when an EGTC can implement cross-border development, relying on its eligibility in both Member States concerned. The positive attitude of the relevant Hungarian and Slovakian State bodies and authorities was also needed for this, as in the Slovakian building permission procedures an EGTC with Hungarian seat appeared as an interested party, which had never happened before.

Basically, the implementation of cross-border projects should be ensured by two beneficiaries, at least. This is regulated by the Article 12 (2) of the ETC Regulation: *“Operations selected under cross-border and transnational cooperation shall involve beneficiaries from at least two participating countries, at least one of which shall be from a Member State. [...]”* However, paragraph 3 of the article – based on the special situation of EGTCs, – gives them the opportunity to implement such projects as a sole beneficiary: *“Notwithstanding paragraph 2, an EGTC or other legal body established under the laws of one of the participating countries may be the sole beneficiary of an operation provided that it is set up by public authorities or bodies from at least two participating countries, in the case of cross-border and transnational cooperation, [...]”*

It should be mentioned however that the application of the single beneficiary principle can cause difficulties, as well. In the case of the ferry project of the Ister-Granum EGTC mentioned above, **it was not clear for a long time, which country's public procurement rules should be considered by the EGTC during the selection of contractors.**

The organisation requested a resolution from the Hungarian Ministry of Foreign Affairs and Trade (as Managing Authority of the programme). The ministry, in cooperation with the Prime

Minister's Office, stated that according to the relevant legislation<sup>76</sup>, the EGTC, as a contracting authority, has the right – by decision of the General Assembly – to act according to the public procurement rules either of its seat or of the Member State in which the procurement activity takes place. The agreement based on the seat can be concluded for an indefinite period (as fixed in the Statutes!) and for a limited period of time in line with the contracts in question; or certain types of contracts. In the given case, the current activity related to the ferry port to be built between Neszmély and Radvaň nad Dunajom, will take place on the Slovakian side, therefore, considering all the circumstances (professional-financial efficiency, etc.), the application of the Slovakian public procurement law is recommended.

Similarly to the examples above, **thanks to the positive attitude of the authorities concerned, the Tisza EGTC including Hungarian and Ukrainian members, had the opportunity to participate at the first call of the HUSKROUA ENI programme.** According to the original version of the call, the applicants had to have 3 years of closing balance. This condition was mitigated to 2 years, by the request of the Tisza EGTC. Thus, the EGTC was able to submit its application for the development of waste management system in Zakarpattia Oblast in Ukraine, and, thanks to the successful application, the realisation of the first waste separation plant of Zakarpattia Oblast started in 2018.

Based on the received experiences and opinions, it can be finally concluded that, according to the EGTCs, **the partnership principle is a minimal advantage in the calls, the professional content of the project is more decisive.** At the same time, it can be seen that compared to the previous programming period, **there is a significant increase in the number of successful EGTC applications.** On the one hand, this indicates that the preparedness of the EGTCs has improved, and, on the other hand, that their recognition and legitimacy has also increased.

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<sup>76</sup> See: The Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and the article 39 (5) on the repealing of the Directive 2004/18/EC Text with EEA relevance and the article 30 (5) of Act CXLIII of 2015 on Public Procurement

### 3. Recommendations

On the basis of the identified obstacles and the professional experiences gained by CESCI team during the past years, recommendations in three fields have been drafted:

- proposals formulated on the basis of the experiences of the EGTCs identified within the framework of the research;
- proposals formulated on the basis of professional experiences of CESCI;
- suggestions for exploiting the opportunities offered by SGEI and EGTC Regulations.

#### 3.1 Proposals formulated on the basis of the experiences of the EGTCs

<b>Conclusions formulated on the basis of the experiences of the EGTCs</b>	<b>Recommendations in relation with the findings</b>
<p>The EGTC, as a legal form, has become increasingly integrated into professional public awareness, but its general awareness is still very limited.</p>	<ul style="list-style-type: none"> <li>• Information material to be sent to the possible members as target group.</li> <li>• Publication of interpretations, application sheets, etc. about the Regulation and the substance of the relevant national EGTC rules in understandable language on the website of the national approving authority.</li> <li>• Mandatory delivery of the above national interpretations to the Committee of the Regions, and, in parallel, initiating of a single information platform about the EGTC regulations of the member states and concerned third countries.</li> </ul>
<p>The EGTC is often not mentioned as a separate legal entity by different sectorial legislations (such as tax or labour legislation).</p>	<p>The EGTC concept has been adapted within the concerned legal acts of the main fields relevant in terms of the EGTC legislation (e.g. civil law, law on corporate tax and dividend tax, law on civil procedure, law on bankruptcy and liquidation proceeding); although, in many other cases this has not been realised yet. It is recommended to complement the legislative activity by processing the relevant cases.</p>
<p>Establishment of an EGTC in Serbia is not possible, yet.</p>	<p>The situation can be handled either by bilateral agreement or by internal Serbian law. CESCI put forward a textual proposal for the latter option in</p>



<b>Conclusions formulated on the basis of the experiences of the EGTCs</b>	<b>Recommendations in relation with the findings</b>
	<p>2017, but it has not been applied until today. The EU could provide political support, encouragement, while the Hungarian Ministry of Foreign Affairs and Trade could provide professional assistance for legal harmonisation during the accession process of Serbia, for putting the topic on the agenda of the Joint Committee meetings.</p>
<p>The legal status of an EGTC registered abroad is still not recognized in the territory of Ukraine.</p>	<p>Similarly to the example of Serbia, Ukraine should also be encouraged to adopt the relevant implementation legislation; however, in this region there is a need to increasingly count with the changes of the actual political situation.</p> <p>The initiative of the Tisza EGTC aiming to establish a professional working group with the involvement of the Ukrainian Academy of Sciences and the Faculty of Law of the University of Uzhgorod, which would prepare a summary about the relevant EU level and Hungarian legal frameworks in Ukrainian language, and a proposal addressing the Supreme Council (the government) of Ukraine.</p>
<p>Participation of the EGTCs in the ETC programming differs from programme to programme.</p>	<p>The good practices which were launched in the SKHU INTERREG V-A programme should also be taken by other programmes. The EGTCs, as important territorial actors, should be mandatory members of the programming working groups. Nevertheless, it has to be seen that the majority of the EGTCs is currently professionally, financially and strategically weightless, hence discussing the conditions of participation can be one of the most urgent issues to tackle among the concerned authorities and the EGTCs.</p>
<p>The EGTCs along the Hungarian-Slovak border can participate at the SKHU INTERREG V-A Programme MC meetings with an observer status, on the basis of rotation principle;</p>	<p>Good practices launched in the SKHU programme could be taken by other programmes, in harmony with the 2021-2027 Cohesion Policy regulations.</p>

<b>Conclusions formulated on the basis of the experiences of the EGTCs</b>	<b>Recommendations in relation with the findings</b>
<p>however, there is no similar possibility in the case of other programmes.</p>	<p>For this purpose, the capacities of the EGTCs should be developed in order to effectively participate within the work of the monitoring committees.</p>
<p>Two EGTCs, as intermediary bodies, were selected for managing the implementation of the Small Project Fund (SPF) within the SKHU INTERREG V-A Programme.</p>	<p>The good practice should be extended also to other programmes; since through this model, EGTCs could effectively promote social cohesion in the given region. Management of the small project fund could even prepare some EGTCs for future Management Authority role.</p>
<p>EGTCs appear as beneficiaries only in the ETC programmes' calls.</p>	<p>EGTCs eligibility should be ensured especially in the case of direct EU calls based on an initiative taken at EU level during the finalization of the CP Regulations.. For this purpose, the Ministry of Foreign Affairs and Trade should get in contact with the authorities preparing relevant rules and those designing the new programmes.</p>
<p>During the calls for applications, the EGTCs are classified on the basis of their seat.</p>	<p>Basically, the problem originates from a misunderstanding which could be handled by guides issued by the EU. The elaboration of these guides could be initiated by the national EGTC authorities.</p>
<p>The application of the State Aid scheme for the EGTCs is (also) based on the principle of the EGTC seat.</p>	<p>Consultations should be initiated with the competent authorities of the two concerned governments, involving the Joint Committees as needed. Financial support from the sub-system of public finances is available also now, based on legislation or individual decision, through application or outside of it.</p>
<p>The Arrabona EGTC implements a project as a single partner.</p>	<p>This good practice could also be promoted towards other EGTCs – coupled with information on the necessary supplementary conditions.</p>



<b>Conclusions formulated on the basis of the experiences of the EGTCs</b>	<b>Recommendations in relation with the findings</b>
<p>The Ister-Granum EGTC, with seat in Hungary, participates in a cross-border project as a Slovakian beneficiary.</p>	<p>The legal background of the option is assured by the Regulation and the majority of the projects also allow for such “two-sided” participation, hence knowledge on the concerned national authorities should be expanded, helping establish a more supportive approach. We recommend that the project should be promoted as a best practice in the territory of the EU, besides of introducing the relevant legal provisions.</p>
<p>During the preparation of the project entitled <i>“Building cross border ferry connection and necessary infrastructure between Neszvény and Radván nad Dunajom”</i> it was not clear on which country’s procurement rules should be applied by the Ister-Granum EGTC in relation to the investments of individual project elements.</p>	<p>The legal background is given on the basis of the EU Directive mentioned in this study, and on the basis of the national public procurement legislation. However, clear information is important.</p>
<p>The EGTCs play a decisive role in the implementation of cross-border territorial action plans for employment (TAPE) within the framework of the Slovak-Hungarian programme.</p>	<p>Territorial cooperation programmes should put greater emphasis on integrated cross-border developments whose natural beneficiaries are the EGTCs. The lack of interest for cross-border integrated territorial investment is very often rooted in the complexity of the related (EU) regulatory environment; subsequently, it needs to be simplified (in the spirit of the new draft CP regulations).</p>

### 3.2 Proposals formulated on the basis of professional experiences of CESCI

<b>Conclusions articulated on the basis of professional experiences of CESCI</b>	<b>Recommendations in relation with the findings</b>
<p>The institution, mission, and purpose of the EGTC are difficult to interpret for some of the founding members, sometimes false expectations are linked to them, which can lead to disappointment. However, termination of the organization is time consuming and complicated process. In the case of Hungary, currently we can speak about two EGTCs (Kras-Bodva, UTTS) which are in the process of termination, but we can speak about suspension of activities in case of further 5-6 EGTCs.</p>	<p>Clear information about the nature of the EGTC, separation from other models, about the possible tasks as articulated above. In the near future, information available on the Hungarian government website is worthwhile to complement with the negative experiences of the EGTCs which are in crisis or which are in the process of termination, thus helping to create a realistic picture about the process of foundation of new EGTCs.</p>
<p>Some of the founders do not put enough emphasis on financial planning of the EGTC or they do it only within a limited scope. The initiators think that the founded EGTC will be maintained by the EU or by the support system of the granting Member State concerned. They want a quick registration, early fund raising without serious planning foundation.</p>	<p>In order to stop this tendency, we recommend that national authorities should examine the economic sustainability of the EGTCs more effectively; although, giving financial-economic advices (regulatory adjustment proposal, which is given in the case of membership request rejection, is not a basis for this) is not a task of the national authorities, hence it is useful to handle this question with the involvement of experts.</p>
<p>In some Member States, also further authorities, beyond the approving authority, participate in the approval process; accordingly, sometimes the foundation process of the EGTC simply gets stuck.</p>	<p>We recommend that the Member State approval authorities consult with the relevant authorities on how to keep (respect) the legislative duration of the approval process, at the same time, the relevant founders and other competent national EGTC authorities should receive clear information about the number of involved authorities in the other Member States concerned, as well as about the procedural rules of EGTC's administration laid down in national legislations. The Hungarian Government initiated the annual meeting of approval authorities of the EGTC,</p>

<b>Conclusions articulated on the basis of professional experiences of CESCI</b>	<b>Recommendations in relation with the findings</b>
	<p>where difficulties in application of the Regulation can be clarified by sharing of experiences and direct exchange of opinions. In 2018, the Committee of the Regions was also involved in organizing the annual meeting, which appears as an important milestone in the history of the initiative. However, Member State participation is rather low at these meetings, which does not help increase the visibility and recognition of the EGTC tool and it does not help the simplification of procedures.</p>
<p>Incorrect interpretation, non-compliance of the law by the authorities. It happened several times that the partner member state approving authority requested amendments from the founders which were contradictory to the Regulation; or the authority did not complied with its own national legislation.</p>	<p>Consultation with the seat Member State authority, or, if necessary, request the CoR guideline for the given case.</p>
<p>Thanks to the expansion of the EGTC activities, it is more and more common that the EGTC appears on the other side of the border through their branches as a “subsidiary” with legal personality or as a non-taxable organizational unit. The way of managing this phenomenon is sometimes different by the authorities of the concerned Member States.</p>	<p>Besides the seat member authority, the participating Member States’ authorities need to clarify the legal framework for such an “expansion”. Clear provisions is needed in order to avoid future misunderstandings. At the same time, independent legal entity of the EGTC should remain as a principle.</p>
<p>Different operation of EGTCs based on public or private law generates various practical difficulties during the founding, as well as the operation. There are some national EGTC laws defining the legal status of the EGTC, but this is not general.</p>	<p>The Committee of the Regions should ask for the status declaration of the EGTCs from the Member States, and to publish it on its website and/or to send a register to all the Member State authorities. Within the framework of the annual EGTC Report, such problems similar to the above should be included, thus helping the functioning of EGTCs without problems.</p>

<b>Conclusions articulated on the basis of professional experiences of CESCI</b>	<b>Recommendations in relation with the findings</b>
<p>The Regulation does not prohibit economic-entrepreneurial activity, moreover, some forms are even named (undertakings entrusted with operations of services of general economic interest), though some national authorities prohibit to use of this term within the founding documents of the EGTCs.</p>	<p>The EGTC Report, as well as a possible independent CoR Communication, could help clarify such misinterpretations.</p>
<p>The responsibility prescribed by the Regulation on providing information on the completion of the establishment procedure to the concerned Member States and to the Committee of the Regions is fulfilled only toward the Committee of the Regions, but according to the experiences it does not happen in the case of the Member States.</p> <p>According to the last sentence of the article 5, (1) paragraph of the Regulation: <i>"The members shall inform the Member States concerned and the Committee of the Regions of the registration or publication of the convention and the statutes."</i></p> <p>First sentence of the article 5, paragraph (2) of the Regulation: <i>"The EGTC shall ensure that, within ten working days of the registration or publication of the convention and the statutes, a request is sent to the Committee of the Regions following the template set out in the Annex to this Regulation."</i></p>	<p>The registering authority of the concerned Member State should warn the given EGTC about this legal obligation. It can be achieved by strengthening the cooperation between the approval authorities this information can also be directly exchanged. The EGTC Platform could play a central role in this process.</p>
<p>It happened in the case of a national minority self-government founding member (which itself includes several settlements) that (at the request of the competent authority of the non-home Member State) only the settlements located close to each other could enter the EGTC, thereby reducing the area of operation of the grouping.</p>	<p>The EGTC Report, as well as a possible independent CoR Communication could help clarify such (false) interpretations.</p>

<b>Conclusions articulated on the basis of professional experiences of CESCI</b>	<b>Recommendations in relation with the findings</b>
<p>If the liability of one member is limited according to the given national legislation on the basis of which it was established, the other members of the Convention may also limit their liability if it is allowed by their national legislation, but the extent of the responsibility undertaken is unknown.</p> <p>According to the article 12. paragraph (2a), <i>"If the liability of at least one member of an EGTC from a Member State is limited as a result of the national law under which it is established, the other members may also limit their liability in the convention where national law implementing this Regulation enables them to do so."</i></p>	<p>The EGTC Report, as well as a possible independent CoR Communication, could help clarify such misinterpretations.</p>
<p>The incomplete, inaccurate EGTC Register of the CoR, lack of information on national EGTC authorities and their registers, as well as the content-wise questions of the Regulation needed for a guidance require comprehensive administrative changes at the relevant EU platforms.</p>	<p>CESCI recommends the Hungarian approval authority to elaborate a package of suggestions toward the CoR.</p>

### 3.3 For a better utilisation of the opportunities offered by SGEI and EGTC Regulations

In this chapter the historical development of the services of general economic interest (SGEI) and their relationship with the EGTC will be examined without the pursuit of conducting a deeper analysis in order to not diverge from the main focus of the study. The purpose of this overview is to illustrate that the appearance of SGEI in the Member States may be accompanied with the re-interpretation of territorial integrity since EGTCs are entitled by the EU to establish and operate market-based services on both sides of the border with the added capacity of increasing their efficiency by defining tariffs and fees to be paid by the users.

## The historical development of the SGEI institution

The SGEI is a term appearing in the Treaty on the Functioning of the European Union (hereafter TFEU) Article 14, Article 106 Paragraph (2) as well as in the Paragraph (26) of the Protocol. Despite the fact that there have been attempts as early as the mid-1990s for establishing a canonized definition the term is still not unequivocally used in judicial, professional and academic contexts. For the first time, the SGEI question was independently dealt with by the Communication from the Commission in September 1996 which recognized its actual market character as well as – even if somewhat vaguely – defined it in the appendix II. According to this:

*Services of general economic interest: This is the term used in Article 90 of the Treaty and refers to market services which the Member States subject to specific public service obligations by virtue of a general interest criterion. This would tend to cover such things as transport networks, energy and communications.<sup>77</sup>*

The role of the SGEI in community legislation has fundamentally changed when the provision on its role (but not on its concept!) was incorporated into the Treaty on European Union by the Treaty of Amsterdam as it follows:

*Article 7d Without prejudice to Articles 77, 90 and 92, and given the place occupied by services of general economic interest in the shared values of the Union as well as their role in promoting social and territorial cohesion, the Community and the Member States, each within their respective powers and within the scope of application of this Treaty, shall take care that such services operate on the basis of principles and conditions which enable them to fulfil their missions.<sup>78</sup>*

These changes were widely considered as the end of negative integration and the beginning of positive integration despite the fact that the creation of the detailed rules were still missing.<sup>79</sup> Another milestone was the Lisbon Summit of March 2000, which raised – well before the fundamental Altmark decision (see later) was made – the issue of whether the financial support provided to the SGEI should be in fact considered as unlawful State Aid<sup>80</sup>. This led at the end of

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<sup>77</sup> Communication from the Commission: Services of General Interest in Europe. <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:1996:0443:FIN:EN:PDF>

<sup>78</sup> Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts <https://eur-lex.europa.eu/legal-content/HU/TXT/?uri=CELEX:11997D/TXT>

<sup>79</sup> See: Kende p. 111

<sup>80</sup> See: Communication from the Commission — Services of general interest in Europe. Official Journal C 017 , 19/01/2001 P. 0004 – 0023. [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C\\_.2001.017.01.0004.01.ENG&toc=OJ:C:2001:017:TOC](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C_.2001.017.01.0004.01.ENG&toc=OJ:C:2001:017:TOC)

the same year to the Nice European Council to call for the immediate drafting of the SGEI financial rules and the regular analysis of its services (quality, accessibility etc.).<sup>81</sup> In 2002, a register was made on the relation between the SGEI and the different forms of State Aid. The same year brought the idea of regulating the SGEI in the framework of directives for which the Commission was entrusted by the Article 42 of the Presidential Conclusion of the European Council's sitting in Barcelona.<sup>82</sup>

In 2004 the Commission's White Paper<sup>83</sup> proposed transparent rules for the selection of companies providing SGEI, however, this proposal's quality was not in pair with the framework directive's idea which was at the end not implemented due to the absence of consensus<sup>84</sup>. Subsequent proposals<sup>85</sup> cannot be regarded as progress towards the establishment of SGEI Regulations, but due to the absence of a common definition, the Court and Commission conceptual approaches also began to diverge.

The Court ruled generally that SGEI services – on the basis of the principles of equality, continuity and adaptability to circumstances – are activities with uniform pricing and quality conditions for all users within the given country, or at least the services can only vary according to objective and comprehensive criterion.<sup>86</sup>

On the basis of the 1996 definition, the Commission considered that *'SGEIs are economic activities which deliver outcomes in the overall public good that would not be supplied (or would be supplied under different conditions in terms of objective quality, safety, affordability, equal treatment or universal access) by the market without public intervention.'*<sup>87</sup>

To this concept the Commission subsequently linked three interpretative principles: the principle of Member States' freedom of definition (i.e. the Member State defines the content of the SGEI

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<sup>81</sup> See: [http://www.europarl.europa.eu/summits/nice1\\_en.htm](http://www.europarl.europa.eu/summits/nice1_en.htm)

<sup>82</sup> See: [http://www.consilium.europa.eu/ueDocs/cms\\_Data/docs/pressData/en/ec/71025.pdf](http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/ec/71025.pdf)

<sup>83</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - White Paper on services of general interest (COM/2004/0374 final)

<sup>84</sup> The idea of the framework directive was considered unacceptable (or acceptable only with conditions) by the majority of Member States, the stakeholders and the majority of non-governmental bodies. The then candidate country of Hungary was also part of the opposition party.

<sup>85</sup> Commission note on the relation between services of general economic interest and state aid (2002); Note on the methodologies for horizontal evaluation of services of general interest (2002); Green Paper (2003); White Paper (2004), etc.

<sup>86</sup> See cases number: C-320/91, C-393/92 and C-159/94.

<sup>87</sup> See: COMMISSION STAFF WORKING DOCUMENT Guide to the application of the European Union rules on state aid, public procurement and the internal market to services of general economic interest, and in particular to social services of general interest. Brussels, 29.4.2013. SWD(2013) 53 final/2



and the Commission ensures its integrity through harmonization), as well as the principles of neutrality and proportionality.<sup>88</sup>

### The appearance of SGEI in the EGTC Regulation

In 2011 during the review of the EGTC Regulation it became evident that a large proportion of the Member States interpreted some of its rules not only differently but also incorrectly.

One of these inaccuracies was that when considering the potential members the private legal entities carrying out business activities were to a certain degree neglected as the general view was that EGTCs are official legal institutions that did not tolerate market conditions within their framework. This conservative approach was also detectable in the case of EGTCs along the Hungarian-Romanian border where the Romanian approving authority categorically refused to include the word 'enterprise' in the EGTC's founding documents and even considered the term 'economic activity' as an exaggeration<sup>89</sup>.

This belief was contradicted by the Regulation itself since according to its original wording; institutions established under private law could already become members of an EGTC provided that they fulfilled the joint conditions set for the public institutions by the second subparagraph of Article 1 (9) of Directive 2004/18 EC of the European Parliament and the Council<sup>90</sup>. The public institution could become a member of an EGTC if:

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

In addition to the definition, the directive also offered examples by including in the Annex III a non-exhaustive list of public institutions and categories of institutions fulfilling the above mentioned conditions (for example, in the case of Germany a separate section was dedicated

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<sup>88</sup> See: Kende p. 121

<sup>89</sup> However, this attitude can be justified by precautions regarding the potential financial risks and damages endangering even the functioning of the member municipalities.

<sup>90</sup> See: Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (OJ L 134, 30.4.2004, p. 114–240). Repealed by Directive 2014/24/EU of the European Parliament and of the Council.

for private legal entities including municipal utility companies). Therefore, the Member States should have known about the possibility of involving private parties since they themselves compiled their lists and had to regularly inform the Commission of any changes in it.

When amending the Regulation, the range of private organizations that can be admitted as members of an EGTC has substantially changed as companies carrying out actual market activities were also included. The categories of *public undertaking* and *undertaking entrusted with the operation of services of general economic interest* have been introduced, with a view to the emergence of EGTCs in fields such as 'education and training, medical care, social needs in relation to health care and long-term care, childcare, access to, and reintegration into, the labour market, social housing and the care and social inclusion of vulnerable groups'<sup>91</sup>. It has to be mentioned that the legislation was not detailed: up to date, the definition for public undertakings is just as ambiguous in the usage of the Commission and the Court as it is for SGEI.

According to the relevant EU Directive and therefore according to the Commission<sup>92</sup>, a *public undertaking* is any organisation where the State or other public authority hold the majority of the undertaking's subscribed capital or control the majority of the votes attaching to shares issued by the undertaking or can appoint more than half of the undertaking's administrative, management or supervisory body<sup>93</sup>.

The Court's case-law is more general. According to this, a public undertaking is any publicly controlled organisation carrying out an economic activity regardless of its primary purpose. This definition also makes it possible for a public undertaking to be incorporated into public administration. Moreover, even the public administration itself may be considered as a public undertaking in the case of the provision of a particular service.

We have already discussed the SGEI's varied interpretations offered by the Court and the Commission. In the absence of a definitive and uniform solution, the Commission in practice has placed the rights for definition to the discretion of the Member States.

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<sup>91</sup> See the (8) Preamble of the Regulation.

<sup>92</sup> See: Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors (OJ L 134, 30.4.2004, p. 1–113). Repealed by Directive 2014/25/EU of the European Parliament and of the Council.

<sup>93</sup> Subsequently, public undertakings are not identical to state-owned enterprises, public utilities or public utility plants since the dominant state influence over a public undertaking is conceivable also without having ownership rights.

## Different treatment of SGEIs by Member States

Due partly to the different geographic, social and cultural attributes of the individual Member States, but partly to the varied needs of related users, SGEIs may in practice have different forms of operation and therefore the authorities of the Member States possess a wide scope in defining their actual content. As this legislative power encompasses various dangers (such as interest grievance or risk of financial loss due to inadequate procedures), two EU level 'brakes' have been incorporated into the Member States' discretionary procedure:

- (a) violations of EU harmonization rules are prohibited in sectors coordinated at EU level<sup>94</sup> and in other areas with objectives of general interest;
- (b) in the case of an 'evident mistake' during the official assessment procedure the possibility of reconsideration is continuously available<sup>95</sup>.

The priority of the harmonization rules is not disputable since their aim is to create and enforce the economic and financial principles as well as the conditions pertaining the given area, for which the European Parliament and the Council lay down the necessary regulations<sup>96</sup>. In addition to these rules, undertakings operating SGEIs are subject to the rules of the TFEU (in particular the competition rules), however, their special position (and the effect of market liberalization) is clearly shown by the fact that they are obliged to observe these provisions only to the extent that these would not obstruct them legally or administratively in the pursuit of their activities<sup>97</sup>. Moreover, the operating conditions of SGEI's are further defined by a series of other basic requirements such as ensuring high quality and safety, affordability, equal treatment, universal access and user rights.

It is also due to the liberal approach that the names of the companies operating the SGEIs may differ from one Member State to another since no regulation requires that a given task or service have to be enlisted under the category of 'general economic interest' (except for some EU-level legal obligations such as universal postal and telecommunication services). Subsequently, if the content of an SGEI is clearly defined by the Member State as public service obligation, it is not necessary to also reflect this in appellation actually calling it an SGEI.

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<sup>94</sup> For example, in the field of electronic communications services, Member States are obliged to introduce universal service commitments in accordance with the Regulation, but outside of its scope they have full discretion over the definition of electronic communications services as SGEIs.

<sup>95</sup> There are already some examples of evident mistakes in the case-law of the Court of Justice as well as in the Commission's decision-making practice (see for instance port operations or the inclusion of advertising in the public service activities of the audiovisual sector).

<sup>96</sup> See: Contract Article 14.

<sup>97</sup> See: Contract Article 106 (ex Article 86 TEC)

Although SGEI is already routinely present in certain economic areas (for example, universal banking; infrastructure construction relating to public service obligations), the introduction of the service requires a *thorough market analysis*. For example, if there is a market-based undertaking which has not yet been entrusted with SGEI but could perform the service (such as community transportation) under the pre-set conditions, the Commission considers that it would be unreasonable to impose a public service obligation on that activity and to designate a public institution for its performance while the task could be carried out with at least as much efficiency under market-based circumstances. It can also happen that the given service is already available on the market but at the discretion of the Member State the market is not able to offer the service to a level that is considered by the authorities to be of public interest (for example it is operated under extreme high fares that exclude low-income users of the service) then this service can be classified as an SGEI carried out by an undertaking. However, if the market fails to provide the service within a short period of time, it is at the discretion of the Member State to declare the service to be of public interest or to 'render' it to an SGEI service.

### The State Aid factor of SGEI

The issue of State Aid in relation with SGEIs is currently one of the most burning concerns as state support for market players has a distorting and restrictive effect on competition and is therefore prohibited. However, the 2001 Commission Decision<sup>98</sup> stipulates that some SGEIs may require state financial support to cover some or all of the specific costs arising from the public service obligation, and therefore determines the conditions under which a given State Aid qualifies as compatible with the internal market and exempted from the notification requirement of Article 108 (3) of the Treaty<sup>99</sup>. The basis for this definition is the fulfilment of the four combined conditions of the Altmark judgment, which are the following<sup>100</sup>:

- a) *the recipient undertaking must have public service obligations and the obligations must be clearly defined;*
- b) *the parameters for calculating the compensation must be objective, transparent and established in advance*

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<sup>98</sup> See: 2012/21/EU: Commission Decision of 20 December 2011 on the application of Article 106(2) of the Treaty on the Functioning of the European Union to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest (notified under document C(2011) 9380) Text with EEA relevance.

<sup>99</sup> See: TFEU Article 108. Paragraph (3).

<sup>100</sup> Judgment of the Court of Justice in Case C-280/00 (EBHT 2003., pg. I-7747.)

- c) *the compensation cannot exceed what is necessary to cover all or part of the costs incurred in the discharge of the public service obligations, taking into account the relevant receipts and a reasonable profit;*
- d) *Where the undertaking which is to discharge public service obligations is not chosen pursuant to a public procurement procedure which would allow for the selection of the tenderer capable of providing those services at the least cost to the community, the level of compensation needed must be determined on the basis of an analysis of the costs of a typical well-run company.*

The use of targeted State Aid may also arise in the case of EGTCs, the only question is whether the concerned Member States have the necessary regulations of internal implementation or are even able to incorporate the still somewhat 'inconceivable' legal institution of EGTCs into the already existing State Aid system.

### **The range of services that can be provided by SGEI**

When identifying the range of services associated with SGEI primarily the conceptual definition of these services can offer guidance. Given the fact that there is no common concept and there are overlapping interpretations between the SGEI (market-like) and the 'services of general interest' (market-like and non-market-like) one has to rely on the Court's case-law which is already endowed with legislative power. From this it becomes clear that currently there is no precise EU-level list, therefore, in the absence of EU-level sectoral rules regulating the area, Member States have a wide scope of discretion regarding the classification of services as services of general economic interest (see the aforementioned case of discretion). In this situation, the only possible responsibility of the Commission is to help avoid the 'evident mistake of assessment' or if it does occur then to provide the parties with the opportunity of revision.

Hungary as a Member State currently enlists the following public service tasks / sectors within the realm of the SGEI concept:<sup>101</sup>

- Local government asset management
- Urban management functions
- Water utility services, sewage collection and treatment
- Maintenance of local government buildings
- Waste management
- Chimney sweeping rendered as a public service

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<sup>101</sup> Source: Report of the State Aid Monitoring Office, Prime Minister's Office. TVI/920/2 (2016).  
[http://ec.europa.eu/competition/state\\_aid/public\\_services/2015\\_2016/hungary\\_en.pdf](http://ec.europa.eu/competition/state_aid/public_services/2015_2016/hungary_en.pdf)

- Funeral services
- Public lighting
- Landscape services
- Administrative and service support activities linked to public security
- Social services
- Technical support for organisations performing institutions' operating tasks
- Public IT services, public IT developments
- Development of infrastructure required to perform public functions
- Urban development
- Arts and public cultural services
- Telecommunications
- Public and general education, extracurricular training
- Facilities support services.

Due to the nature of the public service tasks, the provision of these services – usually focussing on water utility, wastewater management and waste management – is entrusted by municipalities typically to their in-house organizations. Larger municipalities enter into multi-annual framework contracts while smaller municipalities prefer contracts up to one year validity.

### Operation of SGEI in EGTCs

According to the text of the Regulation EGTCs may not engage in SGEI tasks but can invite among its members companies entrusted with the operation of SGEIs and thus may carry out such activities through the undertaking that operates the SGEI (as it is known for the performance of a given EGTC task the members can also appoint an entity among themselves).<sup>102</sup>

The undertakings entrusted with the operation of SGEIs are therefore expected to go through the same approval procedure as the other EGTC members, with the possible distinction that if it is the State that exercises decisive influence over the SGEI the rules of the approval procedure will be also modified accordingly.

The following key issues may arise during the involvement of the companies entrusted with the operation of SGEIs as members of EGTCs:

- **reconciliation of competences** = According to the last sentence of the Regulation Article 7. Paragraph (2): *'Each task shall be determined by its members as falling within the competence of every member, unless the Member State or third country approves the participation of a member established under its national law even where that member is*

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<sup>102</sup> See: Regulation Article 7. Paragraph (5).

*not competent for all the tasks specified in the convention'*. This restriction is mitigated by the fact that the EGTCs currently operating in Hungary have as members in majority municipalities whose responsibilities (within a given Member State) are essentially the same as those of the undertakings entrusted with the operation of SGEIs, but differences may occur in the case of members from other Member States;

- **limited liability of the member** = what happens if the undertaking entrusted with the operation of the SGEIs assumes limited liability when entering the EGTC; how this form of responsibility can be reconciled with the execution of SGEI tasks; how can this form of liability be adapted to the legal personality of the undertaking or what effect does this have on law-making influencing public order in another Member State while carrying out its public service activity;
- **SGEI activity in the non-seat Member State** = how will the authorities of the Member State react to business activities entering their territory, what kind of registration, control etc. rules do they introduce for them; how will those Member States react to this openly entrepreneurial activity carried out in its own territory that otherwise prohibits for those EGTCs which are established in its territory (or raises a veto objection in other cases) to mention the entrepreneurial activity in their founding documents;
- **Specify the SGEI tariffs** = how this tariff system will fit into the existing tariff system of the participating Member States in a similar area (for example transport, waste management) or whether there should be harmonized at all.

All these are just a few issues arising about the operation of the SGEI activity by an EGTC but it already seems clear that the Regulation and other relevant EU regulatory frameworks alone will not be sufficient for the smooth introduction of this novel legal entity which on the one hand is based on private law but on the other it also possesses as an entrepreneurial nature. Naturally, the members of the EGTCs themselves and the involved authorities will need to be thoroughly prepared to put the scheme into practice.

The fact that this preparation process can already start, and it can even be coordinated by an EGTC can be illustrated by a good Hungarian example<sup>103</sup> interpretable as a pilot project of a possible SGEI activity. The Hungary-based Arrabona EGTC would like to carry out settlement operation tasks in a common system in the border area of the participating Member States upon the completion or further development of its Builtcogreen project.

The project is based on a successful Interreg V-A Slovakia-Hungary project called *'Improving cross-border cooperation between public institutions and people in border regions'*. Its main objective is to share and disseminate experiences and good practices regarding settlement management between the members of the Arrabona EGTC. The project leader and sole

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<sup>103</sup> Source: <https://www.builtcogreen.arrabona.eu/>



beneficiary is the Arrabona EGTC while the main target groups are the population of the four founding cities and a further 29 member settlements in the area of operation of the EGTC. The content of the project will contain experience sharing workshops, 'mentoring service' between settlements, and the development of an IT background-system to increase operational efficiency.

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