CESCI
CENTRAL EUROPEAN SERVICE
FOR CROSS-BORDER INITIATIVES

Contribution of the CESCI to the revision of the EGTC Regulation

This present document was created following proposals made by CESCI on request from the Committee of the Regions in connection with the review of the EGTC Regulation. The reviewing of the original, roughly outlined technical material containing the responses given to the questionnaire, took place after the experiences of the stakeholder consultation on 13 July 2010 convened by rapporteur Alberto Nuñez Feijóo.

The stakeholder consultation highlighted that reviewing the Regulation at the same time also necessitates deeper investigation of the question as to within which framework of interpretation can an EGTC be defined. Therefore this present document has been divided into two sections. In the first part we have attempted to draw up an interpretation framework of the institution of the EGTC in support of the legislative process. In the second part of the Contribution document specific proposals are defined as the review of the Regulation. On the one hand our responses to the questionnaire prepared by the Committee of the Regions are summarised here and on the other, based on our experiences we have also set out specific codification proposals.

With the Contribution document our aim is to effectively contribute to the EGTC Regulation review procedure and to the successful operation of the EGTCs established within the European Union.

Mr. Dr. Prof. György Kocziszky

President

CESCI

Content

A brief introduction to CESCI

The Central European Service for Cross-Border Initiatives (in brief: CESCI) was formed in 2009 with the aim of providing professional support for the institutional and project development plans of cross-border cooperation among the changed conditions resulting from the expansion of the European Union, the elimination of internal borders and the EGTC Regulation.

The organisation, which is registered as an association, considers the Paris based Mission Opérationnelle Transfrontalière (MOT) an exemplary ally of the players participating in cross-border cooperation, and wishes to implement its development in a strategic partnership with the MOT, which is a member of the CESCI.

Our objective is to develop a professional network in Central and Eastern Europe within the framework of CESCI; such as EUROMOT in Western-Europe. Through developing CESCI we would like to strengthen solidarity between the new member states and at the same time to develop a professional network in this part of Europe.

OUR OBJECTIVES

The main objectives of CESCI:

- providing professional support for cross border cooperation along the Hungarian borders as well as in other states of Central and South-Eastern Europe
- incorporating the Euroregions, the EGTCs and the local and regional authorities participating in the cross-border cooperation into a network
- promoting good examples from Western European initiatives
- establishing strategic cooperation with the competent decision making and decision preparing institutes of the European Union as well as with Northern and Western European networks created with the same purpose
- strengthening the internal cohesion and mutual rapprochement within the region by establishing partnerships between the nations of Central and Southern Europe.

OUR SERVICES

CESCI provides professional help primarily for EGTCs to be formed along the Hungarian borders. CESCI provides full professional help for creating institutes of this kind, together with supporting the establishment of EGTCs serving other forms of European territorial cooperation and the network collaboration between such organisations.

The service portfolio of the organisation:

- Institutional development as well as project development consultation and coordination;
- Strategic planning, compilation of professional material;
- Project management;
- Organisation of courses, training and conferences;
- Mediation of partners for tenders;
- Participation in international projects, the generation of such projects;
- Publications, operation of professional portals.

The writers of the present document have actively participated in the establishment of the first Central-European EGTC, the Ister-Granum; and they are also currently involved in supporting the foundation and launching of three Hungarian-Slovakian, three Hungarian-Romanian and one transnational EGTC. Our aim as an organisation with direct experience in connection with both the foundation and operation of EGTCs is to contribute to and to ensure that EGTCs are utilised widely and successfully for the alignment of the regions along the borders.

1. Understanding of the EGTC

In order to be able to define relevant proposals in connection with the review of the EGTC Regulation, it is necessary to elucidate what the EGTC actually means. The need for this clarification was also illustrated by the 13 July workshop in Brussels, as no agreement developed between those speaking regarding the interpretation of the new instrument.

For our part, we approach the question from three directions. On the one hand we examine what the 'founding fathers', the initiators of the regulation meant by EGTC. On the other hand, based on the examples of EGTCs established to date we highlight how the regulation is interpreted by those applying it in practice. Finally we discuss the relationship between the EGTC and the principle of multi-level governance.

1.1. Interpretation

1.1.1. Interpretation of the 'founding fathers'

The establishment of the EGTC Regulation cannot be separated from the process of the European Territorial Cooperation becoming Priority 3 of the Cohesion Policy in the 2007–2013 budget period. The INTERREG programme, which was launched in 1990, as a Community Initiative not only provided smaller amounts for the cross-border territorial cooperation, but its weight within the policies was also considerably less than that of the ETC in the cycle after 2007.

The research carried out within the framework of the INTERACT programme also had to play an important role in drafting the Regulation. These studies pointed out the anomalies associated with the spending of the sums allocated to cross-border cooperation.

As Mr. Dirk Peters noted at the workshop on 13 July; the creators of the EGTC Regulation would have liked to establish an organisational framework that is suitable for managing cross-border programmes and projects, irrespective of whether these are financed by sources from within or outside of the EU. Therefore the main objective was to eradicate the anomalies, which have been identified during the INTERACT programme. Although cross-border initiatives that have been raised to the level of Community law have legal personalities in the Member States concerned, the creators of the regulation consciously did not wish to provide them with regulatory powers and roles (see Article 7 of the Regulation).

1.1.2. Interpretation of the founders of the EGTCs

If we examine the established EGTCs so far (including those in the process of being established), we can divide them into four types based on functionality.

Most of the already established EGTCs set the regional development of the areas directly along the borders as their objective. These organisations can be referred to as cross-border territorial development EGTCs. Their objectives include long-term territorial cooperation, implementation of common goals and the establishment and operation of joint institutions, enterprises thus ensuring sustainability of the results of the developments.

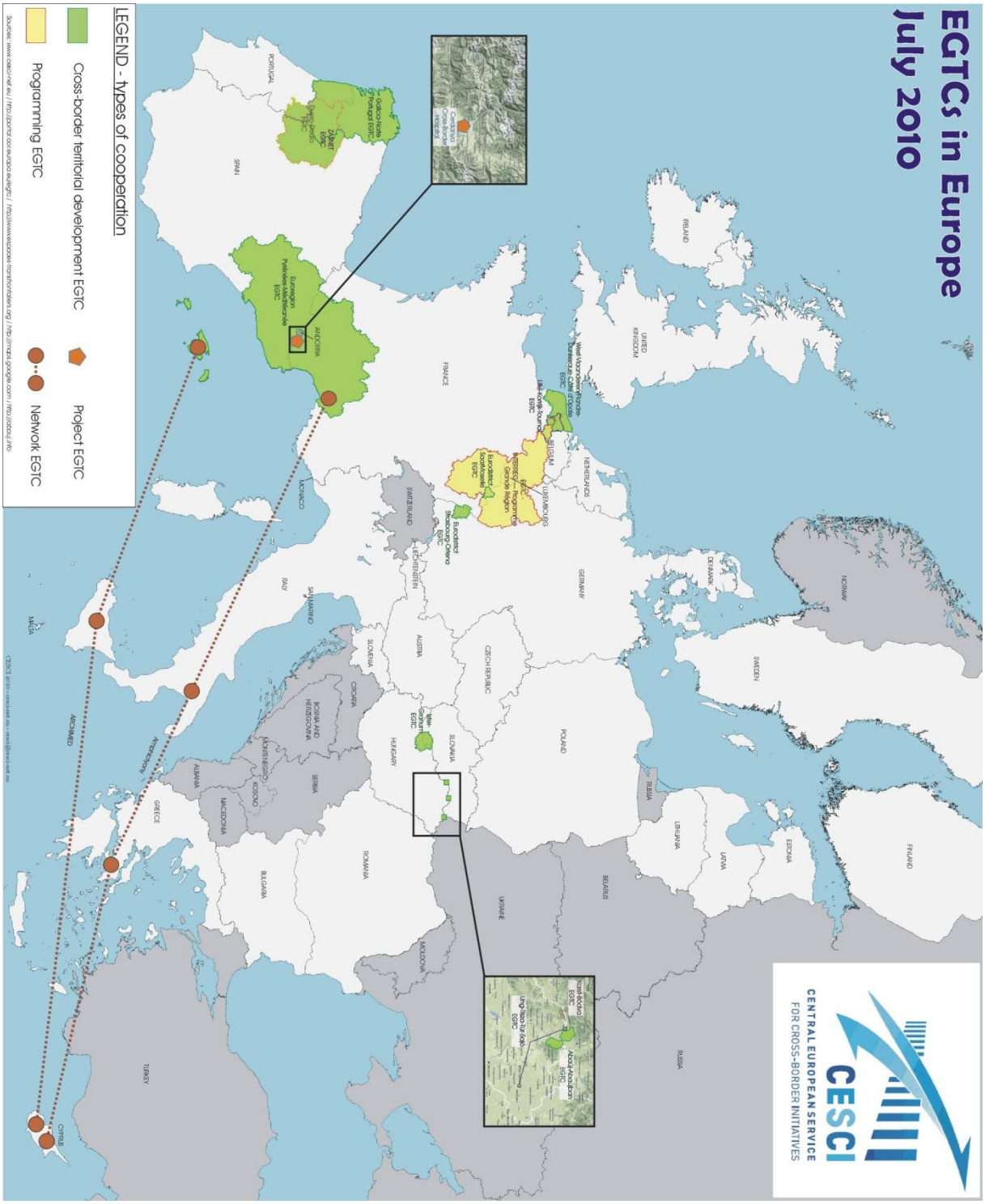
These EGTCs could be considered as the next generation of Euroregions, as they lift the work started within the framework of Euroregions, Eurodistricts and other organisations to a higher level.

Another type is the network EGTC. For network EGTCs, the determining factor is a common theme and not the territorial proximity. The cooperating partners within the network are connected by a topic of joint programmes or projects. This form of cooperation can be effectively applied for the implementation of transnational or interregional projects as well as for the long-term sustainability of their results.

The third type is represented by a programming EGTC. This EGTC performs the tasks of the managing authority of a specific European Union financing programme and may directly conclude contracts with the beneficiaries for implementing specific projects.

Finally, the fourth type is a project EGTC. In this case, the objective of the partners is the implementation of a specific cross-border project. The EGTC in such cases functions as a project association.

The institution of an EGTC based on the above is interpreted by *those applying* the Regulation as follows: an EGTC is an institution, which can be applied in all three known forms of European Territorial Cooperation (cross-border, transnational, interregional) for carrying out management tasks at project or programme level as well as specific regional development tasks along the border. This interpretation appears not to exceed the scope of the interpretation of the 'founding fathers'. If however the question is examined more closely, we will necessarily reach the problem of multi-level governance.


EGTCs in Europe
July 2010
LEGEND - types of cooperation
Cross-border territorial development EGTC
Project EGTC
Programming EGTC
Network EGTC
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1.1.3. The EGTC Regulation from the point of view of MLG

According to the original intentions of the initiators, the EGTC is a tool for managing cross-border projects and programmes. However regarding the main potential areas for cooperation, most of them need a stable institutional background (e.g. cross-border health services, joint management and operation of border crossing transport infrastructure or public transport systems etc.) and a management capacity with appropriate legal licenses. This means that there are no projects or programme management without a certain level of governance.

A functioning cross-border hospital, public transport system or a vocational system etc. have arising governance issues: who manages the institution and by which legal system; who employs the staff; who finances the doctors working at the hospital, from which budget; who makes the decisions concerning the territory of the service provision etc.

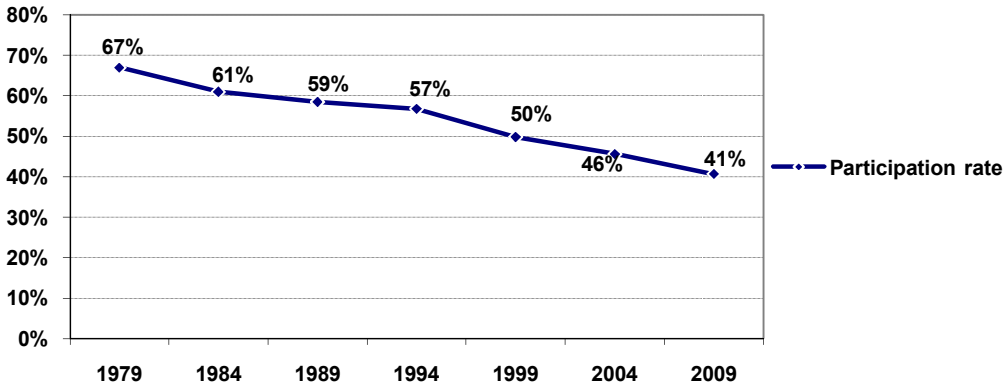
Within the documents created by the Committee of the Regions on the subject of multi-level governance, EGTC is mentioned as an appropriate legal and institutional tool of MLG in border areas. According to the community principle of subsidiarity the White Paper on multi-level governance presents EGTC as a tool that 'allows public authorities to be brought together, according to a variable institutional geometry, by virtue of their levels of responsibility and to promote an enlarged partnership with socio-economic actors'. (CdR 89/2009 fin, 30). At the same point in the documents, it explicitly states that the EGTC fits into the MLG priority: 'The dimension of multilevel governance is at the heart of the process to launch, establish and manage an EGTC.'

In the same way, the document prepared by the Committee of the Regions (EGTC Developments on the ground: added value and solutions for the problems, June 2010, 3, 4) and the analysis written by Gianluca Spinacci and Gracia Vara-Arribas (The European Grouping of Territorial Cooperation (EGTC): New Spaces and Contracts for European Integration?; Eipascope 2009/2, 5, 7, 10) sees EGTC as the subject of the MLG priority of the EU. The latter writes that EGTC Regulation 'is a forerunner in supporting territorial cohesion through an innovative multi-level governance format.' (7)

All these examples strengthen that the EGTC (contrary to the original meaning) has been recently considered as a significantly important station in the decentralization process of the European Union as the subject of the MLG, it is not a simple programme or a project management body. If we

think seriously about the EGTC we have to be aware that it is unlikely ever to be fully realised proper governance licences.

There is one more phenomenon to be mentioned. The democratic deficit of the European institutions is often spoken about; yet despite the efforts taken by the Community, the European dimension has remained a 'foreign affair' for its citizens. The participation rate in the EU elections makes obvious the lack of interest from its citizens concerning Community issues (see the figure below; in case of 1979 the Greek elections of 1981 is included).



The interest towards the elections diminishes with the strengthening competences of the European Parliament. Although the influencing political power of the EP has been getting stronger and stronger, this has not been realised by its citizens in their daily life.

After the elections of 2004 a wide discussion began on the tasks needed. The White Paper on the information and communication policy of the EU (COM(2006) 35 final), the Action Plan to Improve Communicating Europe by the Commission (SEC(2005) 985 final), Plan-D for Democracy, Dialogue and Debate (COM(2005) 494 final) etc. have given answers to this problem but they have not yet been able to solve the issues (see the results of the elections of 2009).

In the contrast to the problems of legitimacy, participation and involvement at community level are rooted into the new concept of sovereignty.

1.2. Space and sovereignty

1.2.1. Space as a social product

Space is not a physical, but a social reality. This theorem, already established by Aristotle in his Logic, was extended in modern times initially by Immanuel Kant and later by Henri Lefebvre. The excellent French historian and sociologist in his work titled *La production de l'espace* (1974) considered space entirely a product of the human mind. As from the more or less constant relationship of the objects around us, it is the human mind that creates the concept of space; outside and independent of the observer space cannot exist (l'espace perçu). On a second level the human mind itself also creates specific concepts for space; a country or a region certainly cannot be defined in nature. These concepts and symbols (e.g. country) are connected by mankind to the objects and landscape surrounding them (l'espace conçu).

Finally on a third level these symbolic space constructions have an effect on the perceptions and actions of mankind, becoming part of their lives and identity, as well as influencing their further perceptions (l'espace vécu).

The author with this train of thought claims no lesser than the space that surrounds us and defines our identity is a product of society, the quality of which is determined by the cultural traditions of a given community.

A person who has never left the village of birth will have a completely different mental map than a manager who commutes weekly between the American, the European and the Asian continents. The Prairie was physically the same for the native Indians as for the pioneers that arrived to the New World, yet it had completely different meanings and a different connection to the identities of the two groups.

Thus our perceptions associated with space are determined by certain discursive facts; the cultural schemes that we learn through our upbringing.

Why is this philosophical detour important?

Our perception of space in Europe has been defined and monopolised by national state discourses over the past 400 years. A perception of space developed, in which a national state played an exclusive role. The national state sovereignty is most transparently expressed by the state boundaries, the concept of sovereignty thus merged with the protection of territorial integrity.

Due to the strengthening role of globalisation, new regionalism and virtual space this exclusivity is increasingly something of the past. This process is also strengthened by the European Union through the creation of a framework for integration of national states.

The cross-border cooperation brings a completely new space perception into play; here the national state logic is only secondary. The stakeholders participating in the cross-border cooperation have a completely new space perception and mental mapping than the persons determined by national state discourses. The other side of the border in this case has a closer link with the identity of those living there, than the centre of the distant national state.

The establishment of the European Union represents an initial break with the previous national state concept, as the aim of the European Community is the gradual dismantling of state boundaries. The policies at a Community level however are still controlled by the national states, therefore the cross border initiatives in a certain sense exceed the level of Community policies; they represent a kind of clear break with the thinking within the framework of national states. Their aim is to establish structures, which will develop models and mental maps that are 'perpendicular' to the national state space perception.

1.2.2. The evolution of cross-border cooperation

The regions can be classified according to many criteria. The functional approach might be the most productive one referring to the EGTCs. According to this we differentiate among formal or natural, functional and normative regions.

The boundaries of formal or natural regions are marked by the common heritage of landscape, geography, history and culture. A formal region (as the Rhine Valley or the Mediterranean basin) does not necessarily match the administrative borders, though still forming an organic unit.

The borders of functional regions are set by the tasks and functions that a centre performs. The urban district of a city always forms a functional region. Here the population travels to the city to study, to work, to be entertained, to do the shopping etc., with these settlements forming the functional region.

By contrast the existence of a normative region is due to a norm, thus legislation. A regional reform, the creation of counties or provinces executed by administrative means always assumes a legal and thus political foundation.

These three levels can also be separated during the history of cross-border cooperation. The initial stage is represented by the level of a formal region. The representatives of regions and towns related by landscape-geographical and historical-cultural reasons have started spontaneously search out contacts with one another. This initial stage of the CBCs is primarily characterised by human-human contacts with such cooperation being of an ad hoc nature.

However the thought developed relatively early on that these generally peripheral regions along the borders would together be able to replace the functional deficiencies resulting from the distance from the centre.

Someone having a heart attack on the other side of the border should not be transported to a hospital several hundred kilometres away, if there is such an institution in the direct vicinity on the other side of the border. If there is a fire in a border town, it is the simplest and fastest way to help from the other side of the border.

Recognising this, the CBCs have started to provide jointly certain functions. With this they have exceeded the formal-natural level and achieved the functional level. For safe cooperation however the legislation (norms) was needed to guarantee the long-term smooth performance of such functions.

Following several attempts, with the help of the EGTC-Regulation the European Union lifted the CBCs to the level of the normative regions. Now the establishment of the well-defined territorial cooperation along the inner borders of the European Union is enabled by legislation.

This way the European Union provides a stable, institutional framework for the application of a new, non-national state space concept. If this new space concept is coupled with the idea of multi-level governance, it necessarily leads to the rethinking of the questions associated with sovereignty, to the revision of the perception and concept of sovereignty of

the past 400 years. However the question is: why would this be in the interest of the decision makers of the national states?

1.2.3. Sovereignty and EGTC[1]

During the integration process the member states have been abdicating several competences, delegating them to the Community institutions. As the Community does not have competence to issue licenses, the merit of the competences delegated defines the latitude of the Community as well as the remaining sovereignty of the given member state.

At the same time the Court of Luxemburg has stated several times that the Community works within a limited authorisation, with the Maastricht Treaty emphasising that the identity of the national states was to be respected.

Regarding the performance of Community competences, the EGTC Regulation mentions two principles. The principle of *subsidiarity* means that the member states recognise that the solution of a given problem is not sufficiently effective at national level, but that the given aims are achievable at Community or regional level.

However, the principle of *proportionality* states that Community level legislation must not mean an exaggerated intervention into the competences of national level. In accordance with the latter the Regulation forbids the EGTC to exercise police and regulatory powers. Although the Regulation is directly applicable and directly effective, not all the elements are self-executive; as a result legal harmonisation remains the task and the right of the member state. The Regulation is not applicable without the national provisions.

At the same time it is obvious that most of the member states hardly adapt the new legal tool. While within the framework of the former lighter ruling, member states were able to handle and govern the cross-border cooperation, in case of Groupings they face organisations with complete legal capacity that are able to influence the territorial development of the state or even the daily life of the population living in the border area. And this is the point where the interests of decision making bodies of different levels meet.

1 The sovereignty problem does not occur in case of transnational and interregional (network) EGTCs so these types are not treated here.

1.2.4. Dissolving the potential conflict

As can be seen, the initiators of the EGTC Regulation intended to create a legal framework for an organisation are able to manage cross-border (later transnational and interregional) projects and programmes without governance competences. At the same time we have seen that the White Paper on multi-level governance interpreted the EGTC as a case of subsidiarity and MLG. This interpretation is reinforced by the Spinacci study as well as the final documents of the EGTC Urbact project led by Mission Opérationnelle Transfrontalière (MOT). The project has looked for answers to the questions of leadership and community issues concerning the function of cross-border conurbations.

The statement that the cross-border development works needed an effective political involvement and a stable legal framework was a very important result of the project. (See more about the project: http://urbact.eu/en/projects/metropolitan-governance/egtc/our-outputs/)

Additionally project and programme management cannot be effective without governance competences. If we state in accordance with the principle of subsidiarity that decisions have to be made at the proper level we shall not deprive the border areas of this right.

In conclusion, we cannot prevent EGTCs from having own competences and this will lead to some conflicts with the national level, although it is also in their own interests. Having the proper competences cross-border structures can provide a contribution to the development of the border areas, reaching at the same time the main objectives of the Community, the national state and the border region.

It is very important to make it obvious that the cross-border institutions are not intended to diminish the competences of the national level but to reinforce them in realising common projects that enhance the economic capacities of the peripheral border areas. With the help of local and regional initiatives the national level does not need to concentrate further financial and operational resources into the area.

The competitiveness of the area strengthens and the involvement of citizens is easier as they have concrete experiences of the functioning Community and the given national states; all this results in a general increase of creative energies.

It is beneficial to establish professional organisations similar to the MOT that are able to mediate between the national and local-regional levels. These organisations present equally the bottom-up and top-down processes, as well as keeping in touch with the Community institutions. Mediator organisations can mediate the national requirements towards local stakeholders and their needs towards the national level. Using a mediator ensures that conflicts are solvable in a professional way as it creates a proper forum to analyse the nature of the conflict of normative regulations and to seek solutions.

A further solution can be the participation of the state in the functioning EGTC; this is the French model. In this way the different levels can cooperate effectively, excluding conflicts since they are operating in a tight cooperation. By participating in the development work of the EGTC national states can govern and control the processes.

These examples demonstrate that the EGTC as a tool of MLG is not necessarily in conflict with the national level; any problems can be solved with mutual understanding.

However the first step is to clearly comprehend and understand the nature of the EGTC. We hope we can continue to contribute to this process of understanding.

2. Remarks on the revision of the Regulation

2.1. Answers to the questionnaire of the Committee of the Regions

Within this chapter we summarize our remarks concerning the questionnaire prepared by the Committee of the Regions. As the first group of questions refers to the theoretical background of the Regulation within this chapter we treat the Questions 2-5 only.

2.1.1. Ideas on the reasons that have hampered or impaired the creation of EGTC

- Is it more efficient to continue with conventional or atypical cooperation mechanisms than mechanisms which, through their institutionalisation, constitute an EGTC?

We cannot make universal statements about the daily routine of the EGTCs because of the lack of relevant experiences. However it seems that the EGTC is a much more efficient form than the former ones in the field of cross-border leadership, management and financing. It is expected that the EGTC will be able to fulfil the criteria concerning the maintenance of the results of concrete development projects, because the EGTC is allowed to establish and operate own permanent institutions.

It is important to clarify the advantages of the EGTC as an organisation contrary to other cross-border cooperation.

- The most important advantage might be that the EGTC has the opportunity to involve not only self-governments of different levels but also the state. On the one hand this fact gives authority to the organisation; on the other hand it provides a steady financing background. Finally, it can positively influence the effective power of the EGTC.
- Secondly, the institution of the EGTC makes the operation and financing of the common institutions extremely simple and completely legal. This means that the

EGTC might have own employees (e.g. the Secretariat), institutions (e.g. a strategic management body) and enterprises (e.g. project development company). The operation of these institutions can be financed by membership fees, common tender incomes and direct subventions of state.

- A very important advantage is that the regulation is obligatory in every member state. Until now there are only 34 European countries adopting the Madrid Convention on cross-border cooperation even though the European Council has 47 members. Two additional protocols of the Convention have been adopted in even less countries. The third protocol was approved last September, and makes it possible to establish Euroregional Cooperation Groupings. However this protocol will not be an obligatory rule in every member state either. On the other hand, the EGTC regulation forms the part of the Community Law, so every member state approves the EGTC as an independent legal entity. The operation of the EGTC is protected by the legal system of the Union and does not need to sign bilateral contracts; an EGTC with a seat in any member state can start its operation in every member country immediately after its registration. So in conclusion, the EGTC is an organization which represents local or regional interests and at the same time it is also a Community level organization. This duality makes its operation particularly effective.

- As must be clear from the types of EGTCs, it is a highly adaptable instrument. It may be applied to the changing needs, it is a flexible structure. In the case of emerging new information during the implementation of a development programme, the main targets, the decision making processes and the institutions can also be amended.

- Finally, the EGTC is the most proper instrument to receive financial support from the ETC programmes. By its formal fundamentals it obtains these subsidies with more preferable conditions than other cooperation. This is the case because an EGTC fulfils automatically the requirements for common projects; as a long term institutional cooperation it guarantees sustaining the results of the projects as well as the common financing. All these factors ensure that an EGTC takes part in calls for tenders with higher scores than other partnerships.

The above mentioned advantages increase the importance of the EGTCs in the field of the regional policy. The most efficient communication channel is the cross-border cooperation, especially the EGTC, which can show the main objectives of the European Community: free crossing of the borders; the peaceful, partnership cooperation among the European nations; decreasing regional differences; strengthening equal opportunities; preservation of the European colourfulness.

- What technical and legal difficulties hamper, impede or deter from promoting the creation of an EGTC where there is already a history of territorial cooperation?

The main obstacles are the followings:

- lack of certain national EGTC laws;
- differences between the EGTCs as well as the interpretations of the law (for example some countries define the EGTC as an organisation whose goals are to maintain some institutions and permanent cooperation; however in other countries it is defined as a project-association; moreover in each of the countries different regulations exist concerning the financial responsibility: i.e. the case of limited and unlimited responsibility);
- the different status and number of authorities (the authorities in certain member states belong to different sides of the branches of power; in the case of the authorities from the executive power, the fear of political influence can be an issue);
- the rules which make the participation of third countries more difficult;
- differences among the national regulations concerning the various level of the local government;
- difference among the laws concerning the public services;
- the lack of a legal background of the common, cross-border financing (e.g. the common CBC healthcare system);
- the relations between the national and the cross-border strategies are not clarified;
- the unpreparedness of the authorities, the lack of the connections between them (a permanent forum should be formed at community level);
- the lack of an objective deadline for the registration process.

- *Should any Community authority intervene in the process of setting up an EGTC to guarantee that the project satisfies Community rules?*

According to our experiences it can be useful. On the one hand it can mean a kind of quality assurance and give authority to the initiative; on the other hand the community level aspect also meets indirectly the daily problems which the cross-border cooperation can face. At the same time we also have to mention that it is not possible to achieve commonality because of the different regulatory practices of the member states.

2.1.2. Measures to promote institutionalised territorial cooperation

- *How can we establish in financial terms the provision of Community support for institutionalised territorial cooperation?*

The further operation and the possible widening of the ETC programme are important in our view. However we do not suggest creating a community level fund supporting the operation of the EGTCs, because it encourages the establishing of EGTCs without real activities.

Contrary to this, it would be better to give special support for some model initiatives. These projects would be the experimental areas of the EGTCs, which will show the way for the further development of the tool.

- *What percentage of added value should programmes and projects of institutionalised territorial cooperation merit?*

In view of the peripheral situation of the Central European cross-border areas, it would be good to preserve the current, 85% intensity, because it provides considerable motivation for creating these types of cooperation and there is a lack of own financial resources.

- What role should the European Investment Bank play in promoting programmes and projects proposed through an EGTC?

We are not able to reflect on this question.

- What countries or regions from third countries and what preferential programmes should be eligible for cooperation through an EGTC and what legal adjustments are considered necessary to ensure that this cooperation is really possible?

It is important to ease the participation of third countries:

- It should be enough for two partners (member and non-member) to establish an EGTC (it should not be necessary to have one more member partner).
- A contract should be made at community level within the framework of the European Neighbourhood Policy; therefore this action will be the part of the accession process and the adaptation of the acquis, contrary to the current situation when each member state has to make an arrangement with the given third country.

2.1.3. Promoting the Community legislative instrument of the EGTC with a view to stepping up European Territorial Cooperation

- Should the Community identity of the EGTC be strengthened?

Yes, it might give greater authority to these initiatives.

- Should the EGTC be renamed the European Cooperation Territorial Community (ECTC) to underline that the result of the cooperation is more than just the sum of its promoters and that it exists in its own right?

In consideration of the established EGTCs and the complicated registration process, we do not recommend it at this stage.

2.1.4. Improving the procedure for creating EGTC

Some optional tools of the improvement of the EGTC:

- Creating an own commissioner position concerning the field of the European Territorial Cooperation (ETC). This new position can ensure the necessary significance for the cross-border cooperation, furthermore it also ensure the professional, political and financial background of the EGTC for the long term.
- Creating a new Expert Group or modification of the actual one, in which the formed EGTCs will play a decisive role.
- It would be useful to analyse how an EGTC might be able to fulfil regulatory tasks.
- By our experiences it is to be thought to regulate the minimum and maximum size of an EGTC. Establishing a very small EGTC (2-3 small villages) has no sense, because they are not able to create appropriate budget. Establishing a very large EGTC has no sense either because it is very hard to manage.

- Is it useful that the amendment of Regulation (EC) No 1082/2006 incorporates the need for a supranational body to issue advance and non-binding opinions on whether plans to set up an EGTC are in keeping with this regulation from both a technical and legal point of view?

In our view this is not necessary. If it is not compulsory, then anybody can do this (as it happens now).

- Is it appropriate that this opinion-making body is the group of experts on EGTC supported by the Committee of the Regions, with endorsement from the Committee itself?

See also above.

- What practical problems merit special attention in the reform of the regulation in order to facilitate management in the EGTC?

It is the question of the related common regulatory background: while these national laws are so different, the latitude of the EGTCs remains narrow. It is important to start a special legislative process concerning the EGTCs.

It should also be analysed how the non-governmental organisations serving common tasks can participate in the operation of the EGTCs. The future of the EGTCs will simply be the same as the Euroregions in the case of lack of social support.

For further remarks see the Chapter 2.2.

2.2. Proposals

for the 2011 review of the Regulation (EC) No. 1082/2006 of the European Parliament and of the Council on the European Grouping of Territorial Cooperation (EGTC) (hereinafter referred to as: Regulation)

I. Introduction

Several observations have been submitted so far from the Hungarian part, from which many have been substantiated by the European Commission, the Committee of the Regions and the experts of the trio. Their inclusion in the report was recommended as well as in the amendment proposals.

These proposals were decisively connected with procedural, accounting, administrative and informative questions. From CESCI's part we ourselves consider raising these questions right and we are in support of this.

In the following we outline a number of proposals which are partially connected to the content amendment motions already accepted by experts and partially give the logical and structural construction of the Regulation a new meaning.

II. Reference basis for the proposals

- *The principle of supremacy (primacy):* the priority of Community law vs. national law, where primacy has not been originated from the contents of the relevant Conventions but the case-law of the European Court.
- *The regulation has a directly applicable legal basis with direct effect*
    - directly applicable – Theoretically it does not require any further national legislative act to become part of national legislation and for the recipients to fully comply with it. In practice however implementation control by member states may occur, which cannot rewrite the content of the relevant Community legislative legal basis, furthermore cannot hinder the direct application of the regulations that form an integral part of Community law.

The relevant section of the Regulation also refers to this:

Article 16 (1) of the Regulation (1) Member States shall make such provisions as are appropriate to ensure the effective application of this Regulation.

- directly effective – The citizens as well as legal persons of that member state may institute proceedings against the state, before their own national court, directly on the grounds of Community law or a specific rule of it.

The 'self-executing' effect of the regulations at times are missing, therefore the establishment of executive rules becomes necessary. This however contains, as the examples show, the possibility of differing interpretation of the Regulation.

We believe that the differences of the national (executive) legislation associated with groupings currently observed, which cannot be explained by the characteristics of the differing public administrative systems, form obstacles for the Regulation to become directly effective and create problems for the simultaneous and uniform application of the Regulation in the Community.

- *'Closing effect':* The member states during the EC legislative act, as regards the given subject of the regulation, have surrendered their legislative sovereignty, thus in the subject hereinafter they shall not make law.

  In addition to this, the difficulties of interpreting the Community regulations may also arise. In many cases it seems that the responses to this have been included in the national executive regulations, not only in violation of Community law, but also issuing new mandatory rules for interpretation.

  In our opinion the interpretation problems cannot be solved in this way (as the Member States in essence have surrendered their legislative sovereignty), in this respect the aim is the 'further development' of the Regulation, as harmonising legislation. This is also an obligation of the Community. One of the possible areas of development is also reviewing the Regulation, which shall certainly have an effect in 2011 on the lives of the EGTCs.

- *The principle of legal certainty:* With consideration to the entities subject to different national laws that have established and operated the EGTCs, the Regulation and the Member State regulations essentially shall ensure the following conditions:
    - relatively quick legal establishment;
    - legal certainty covering the entire operational duration of the organisation;
    - a regulation facilitating the development of the operation of the organisation (e.g. to ensure that the disadvantages resulting from the initial problems of the territorial cooperation, which hinder achieving the objectives of the EGTC, cannot be present in the national rules, as discretionary reasons for dissolution);
    - exemption from the possibility of political intervention (central government).

There are the following expectations concerning the legal certainty:

- guaranteed process of the establishment and dissolution (also as regards competent bodies and deadlines)
- clarity and controllability of the approval and registering authorities
- furthermore the level of details of the regulations concerning management and the management process based on regular inspections.

III. Observations, proposals in connection with the Regulation

1. Prohibition of time limits (Article 1)

According to experience, certain Member States welcome groupings established for a definite period on their territory, defining them as a project company; therefore there is a risk that during the approval and registration of member participation, they 'lead' the establishing EGTCs towards defined operational period and determined specific tasks.

In our interpretation however, a grouping may also be established for an indefinite period, which option is not prohibited by the Regulation.

- ✓ According to the Preamble (11) of the Regulation, a grouping may be established by initiatives starting from both the top or the bottom. An activity of a grouping is considered as an initiative starting from the top, if it is exercised under the Structural Funds during the implementation of territorial cooperation programmes and projects and has been co-financed by the Community. The Regulation in this respect does not exclude the EGTCs from continuing operation after the completion of the project.

'(11) The EGTC should be able *to act, either* for the purpose of *implementing territorial cooperation programmes or projects* co-financed by the Community, notably under the Structural Funds in conformity with Regulation (EC) No 1083/2006 and Regulation (EC) No 1080/2006 of the European Parliament and of the Council of 5 July 2006 on the European Regional Development Fund, ...'

Actions are considered as initiatives starting from the bottom if they are the sole initiatives of the Member States or their entities and are realised in territorial cooperation, furthermore which may be implemented without time limits, even with financial contribution of the Community.

'(11) The EGTC should be able *to act*… or *for the purpose of carrying out actions* of territorial cooperation which are at the sole *initiative of* the Member States and their *regional and local authorities* with or without a financial contribution from the Community.'

- ✓ Article 1 (1) and (2) do not detail whether the grouping can be established for 'a definite or indefinite period':

Article 1

Nature of an EGTC

(1) A European grouping of territorial cooperation, hereinafter referred to as EGTC, may be established on Community territory under the conditions and subject to the arrangements provided for by this Regulation.

(2) The objective of an EGTC shall be to facilitate and promote cross-border, transnational and/or interregional cooperation, hereinafter referred to as 'territorial cooperation', between its members as set out in Article 3(1), with the exclusive aim of strengthening economic and social cohesion.

- ✓ within the meaning of Article 8(1) they are the members of the Convention who amongst others set the period for the grouping

(1) An EGTC shall be governed by a convention *concluded unanimously* by its members *in accordance with Article 4.*

(2) *The convention shall specify:…*

c) the specific objective and tasks of the EGTC, its *duration* and the conditions governing its dissolution;

In our opinion, Member States' regulations and provisions directed at tightening/restricting the duration are based on misinterpretation and are contrary to the Regulation as well as to the spirit of the Regulation.

Proposal

We propose that the European Union brings to the fore the correct interpretation of the question through guidelines of the appropriate level.

2. Participation of third countries in an EGTC (Preamble (16))

Preamble (16) provides an opportunity for the legal entities of third countries to gain admission to an EGTC. During the application of the Regulation to date increasing attention was given to this option, although no actual admission of third countries has yet taken place. The interest is not a coincidence: third countries have seen the potential indirect economic benefits in the EGTCs or they have become as regards territory, involved in a development.

Admission of the legal entities of third countries is allowed by internal legislation permitting cross-border cooperation or an agreement between Member States and third countries. These legal instruments only exist or are so far available in a very few places. Wherever they are available, typically they are related to previous internal regulations or transnational contracts (e.g. Ukraine). Concluding a new transnational contract, due to the complexity and lengthiness of the preparation, seems an almost unmanageable process.

In our opinion the difficulties indicated, with the current regulation; do not support the admission of the legal entities of third countries to EGTCs, only the amendments to certain relevant regulations or agreements.

It is much more likely that either the Regulation has to be adjusted to existing conditions or a solution has to be sought for the questions raised within the framework of the transnational contracts to be concluded between the EU and third countries.

✓ *Observer status*

Through the amendment of the Regulation, in the absence of internal legislation of the third country or an agreement between member states and a third country (although theoretically there is no impediment to it due to its indicative nature), observer status could be *explicitly* set up, which would allow the legal entity of a third country to join the EGTC as an observer. Within this, for example they would have the right to participate and speak as well as perhaps the right to submit proposals in the general assembly, but could also be present in other bodies as observers.

With the establishment of the observer status, the legal entity would undertake to make a declaration within a year: either to terminate their observer status and 'exit' the EGTC or request admission as associate member or through membership based on legislation and agreement. Admission into the EGTC through *membership based on legislation and agreement* could take place (returning to the previous wording of the Regulation), provided that the internal legislation of the third country or the agreement between the member state(s) and third countries would allow it.

Becoming an associate member could be possible in the absence of the above regulation. In this latter case, the legal entity of a third country in addition to the rights and obligations arising from observer status would also receive Community financial aid.

Naturally, no institution may be established in their own operational area. In addition to these rights, the legal entity of the third country would become eligible to pay a preferential part of the membership fee paid by the full members of the EGTC as a contribution, whilst still not being able to participate in substantive decisions.

✓ *Transnational contract*

A transnational contract would be laid down including the terms for admission of third countries to the EGTC between the EU (not each Member State) and third countries. This way it could be avoided that the relevant transnational contracts are created individually and through lengthy extended contract preparation processes. We believe that this contract would

have greater weighting than the less detailed Member State internal legislation for cross-border cooperation.

With consideration to the significance of the topic we propose the regulation concerning third countries to be lifted from the Preamble to the essential part of the Regulation.

Proposal

Proposed version (with the amendment in bold)

Preamble (16) The third subparagraph of Article 159 of the Treaty does not allow the inclusion of entities from third countries in legislation based on that provision. The adoption of a Community measure allowing the creation of an EGTC should not, however exclude the possibility of entities from third countries participating in an EGTC formed in accordance with this Regulation as observer and associate member or through membership based on legislation and agreement, where the legislation of a third country or agreements between Member States and third countries so allow.

Article 1

Nature of an EGTC

(1) A European grouping of territorial cooperation hereinafter referred to as 'EGTC', may be established on Community territory as well as with effect to the territory of a third country, under the conditions and subject to the arrangements provided for by this Regulation.

Article 3

Composition of an EGTC

(1) An EGTC shall be made up of members, within the limits of their competences under national law, belonging to one or more of the following categories:

a) Member States;

b) regional authorities;

c) local authorities;

d) bodies governed by public law within the meaning of the second subparagraph of Article 1 (9) of Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts.

e) the legal entities of third countries, as joining members.

Associations consisting of bodies belonging to one or more of these categories may also be members. **Associations consisting of legal entities of third countries are only allowed to become members, where the legislation of a third country or agreements between Member States and third countries so allow.**

(2) An EGTC shall be made up of members located on the territory of at least two Member States.

(3) Legal entities of third countries and their associations may join the EGTC as observers, as associated member or through membership based on legislation and agreement. By the acceptance of the observer status, the legal entity of the third country would undertake to make a declaration within a year as regards the termination of their observer status or requesting admission as associate member or through membership based on legislation and agreement. Admission into the EGTC through membership based on legislation and agreement is created by the internal legislation of the third country or an agreement between the Member States and third countries. In the absence of this regulation as associated members they are eligible to receive Community financial support provided that the granting of these aids is not contrary to the internal legislation of the third county or to transnational contracts.

3. Applicable law (Article 2)

In our opinion in this article the sequential logical order, from top to bottom of the applicable law is necessary.

As a logical structure we propose the order as regulation, Member State governance, provincial/federational governance, convention and statutes, as the latter ones (may) build on the previously mentioned regulations, namely a)-c)-(2)-(b), thus (1) a) remains unchanged, point c) would become point b), paragraph (2) would become point c) and point c) would become point d).

The section of paragraph (1) starting with 'Where it is…' and ending with '…office' would form paragraph (2).

Proposal

Proposed version (with the amendment in bold)

(1) An EGTC shall be governed by the following:

a) this Regulation**;**

b) **In the case of matters not, or only partly, regulated by this Regulation,** the laws of the Member State **where the EGTC has its registered office.**

c) **Where a Member State comprises several territorial entities which have their own rules of applicable law, the reference to the law applicable under paragraph 1 (b) shall include** the law of those entities**, taking into account the constitutional structure of the Member State concerned.**

d) **Where expressly authorised by this Regulation, the provisions of the** convention **and the** statutes **referred to in Articles 8 and 9.**

(2) **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.**

4. Establishment of an EGTC (Article 4)

The establishment process of an EGTC

In our opinion, the title and content of Article 4 is not completely coherent, as the title is about the establishment of an EGTC (together with the approval and registration procedure associated with member participation), whilst the content of the article is only on the approval procedure. *In a wider sense*, establishment, according to our interpretation, is the approval of the member participation referred to above together with registration, while *in the strict sense;* it is the registration with the constitutive effect together with the associated procedure and the closing final registering decision (order). The EGTC acquires its legal personality by this decision and thus may start its actual operation.

Given the above, it is clear that the three months deadline indicated in Article 4 is the specified period only for the approval of member participation and not the establishment of

the EGTC (whilst in our experience the general misconception is that an EGTC can be registered during a three months period!).

We are concerned that Article 5 does not specify a defined period as regards registration, but leaves the conduct of the registration procedure to the differing procedures of the Member States rules.

Our concern is increased in that the uncertainty of the registration procedure period, besides the definite approval period, is unaccountable, in addition, this situation could jeopardise one of the most critical stages of the establishment of an EGTC, even if legal securities were indisputably incorporated into the public administration system of the Member States, thus also into the process associated with the registration procedure. We consider the Hungarian regulation an example to follow, where following the failure of the court and the head of the court to act, on the ninth day following the specified deadline the EGTC is automatically established with the content as per the application.

Although in practice 'buying time' of Member States typically does not occur in the registration stage, we recommend to draw the Member States' attention to this question, and at the same time, based on the Hungarian legislative measure referred to above, we recommend clarification of the provision.

Representation during the establishment of the EGTC

Formally, the approval of member participation is indeed initiated by the members themselves, however the registration itself, in practice, is initiated by the general assembly, as the representative of the highest authority of the EGTC or by the chairman, who obviously acts on behalf of the members.

In connection with the participation of the chairman it can be raised as an argument that whilst the EGTC is not registered, the chairman is not a chairman officially either, however voting, as an action, in our opinion provides the foundation for the proceedings of the person elected as chairman before the authorities. In practice (thus for example also in Hungary) the competent authority so far has not yet objected to that the person signing the registration application is the chairman of the general assembly. The director could be considered as representative, however even if the person of the director has been elected, in the registration application stage they have no valid contract or are registered at the court.

Based on the above, we propose the amendment to the relevant section of the text.

The separate inclusion of the registration in Article 5

The regulatory section on registration in the Regulation was included in Article 5, separately from Article 4 (*separated from the process of establishment*, almost casually mentioned). Besides this, together with the act of publication, which in our opinion is not comparable with the significance and legal consequences of the act of establishment, as publication for example does not contribute to the acquisition of a legal personality of the EGTC (see our opinion on this in the interpretation of Article 5).

In order to include the two acts of the establishment of an EGTC jointly in one Article, we consider lifting certain elements of Article 5 into Article 4 necessary, as separate paragraphs.

Proposal

Proposed version (with the amendment in bold)

Article 4

Establishment of an EGTC, **acquiring legal personality**

(1) The *decision* **for participation** in the EGTC shall be initiated by the prospective members **separately, whilst the registration of the EGTC, where it has its registered office, is initiated by the representative of the highest authority of the EGTC.**

(2) For approval of member's participation each prospective member shall

a) notify the Member State under whose law it has been formed of *its intention to participate* in an EGTC; and

b) send that Member State a copy of the proposed convention and statutes referred to in Article 8 and 9.

(3) *Following notification under paragraph 2* by a prospective member, the Member State concerned shall, taking into account its constitutional structure, *approve the prospective member's participation in the EGTC*, unless it considers that such participation is not in conformity with this Regulation or national law, including the prospective member's powers and duties, or that such participation is not justified for reasons of public interest or of public policy of that Member State. In such a case, the Member State shall give a statement of its reasons for withholding approval.

In deciding on the prospective member's participation in the EGTC, Member States may apply the national rules.

(4) The members shall agree on the convention referred to in Article 8 and the statutes referred to in Article 9 ensuring consistency with *the approval* of the Member States in accordance with paragraph 3 of this Article.

(5) Any amendment to the convention and any substantial amendment to the statutes shall be approved by the Member States according to the procedure set out in this Article. Substantial amendments to the statutes shall be those entailing, directly or indirectly, an amendment to the convention.

(6) The statutes referred to in Article 9 and any later amendments to it shall be registered or registered and published in compliance with the national rules applicable in that Member State, where the EGTC has its registered office. The EGTC shall acquire legal personality on the day of the registration or on the day following the publication after the registration.

(7) The Member State shall appoint the competent authorities for the procedures included in paragraph (2) and (6).

(8) As a general rule, the Member State shall make a decision within three months of receipt of the applications appropriate for adjudication jointly with the procedures set out in paragraph (2) and (6).

5. Acquisition of legal personality and publication (Article 5)

We have already indicated in III.4, that we consider it desirable to combine the rules of establishing an EGTC (as regards the approval and registration procedures of member participation) in a single article, therefore we propose to divide the text of Article 5 and record it into two separate articles (Article 4 and 5). We propose in Article 4 only the inclusion of the section referring to registration, whilst in Article 5 only the sections on information provision and publication.

Observations regarding publication

Although through the practice of the European Court the case-law is present in the Community regulation, even slowly leaking into Member State level, national rules, apart from a few exceptions, they are based on continental legislation. Thus in this respect they also follow the rules for establishing organisations with a general legal framework (lex generalis), where the legal personality is founded by the registration of constitutive effect and not by establishment. By publication, primarily organisations that are individually created according to lex specialis become legal personalities.

The legal environment of the EGTC in our opinion falls within the lex generalis cases with the EGTC acquiring its legal personality in accordance with legislation by type enforcement. Therefore *the case of becoming a legal personality based on publication in accordance with the Regulation, we consider more as a way of thinking within a liberal framework on the part of the legislators,* rather than a set rule to be followed.

However, we cannot imagine even with the above arguments that it was the original intention of the legislator for the EGTC to acquire its legal personality based on the decisions approving participation and a formal publication. Therefore *we deem necessary the rethinking of this wording, thus besides acknowledgement of the presence of the 1st publication, the insertion of the pre-publication entry.*

The *deadline for publication* in the Official Journal of the EU, due to proposals raised by others, will be not discussed in detail. The only remark we make regarding the topic that as the publication does not attach any direct sanctions to the EGTC (thus for example not a requisite for acquiring legal personality), furthermore a one-two weeks publication period will generally not result in any disadvantages for the EGTC (indeed, we consider this period, compared with the current near one year establishment period, as negligible), *we do not insist on the publication deadline to be governed by the Regulation.*

Proposal

Proposed version (with the amendment in bold)

Article 5

Information provision and publication in the Official Journal

(1) The members shall inform the Member States concerned and the Committee of the Regions of the convention and the registration or the publication **following registration** of the statutes.

(2) The EGTC shall ensure that, within 10 working days from registration or the publication **following registration** of the statutes, a request is sent to the Office for Official Publications of the European Communities for publication of a notice in the *Official Journal of the European Union* announcing the establishment of the EGTC, with details of its name, objectives, members and registered office.

6. Specific definitions of tasks (Article 7)

In III.1 we have already indicated that the concept of certain Member States of a definite operational period in practice may also mean the expectation of specific tasks on the part of the EGTC (e.g. Slovakia).

In our opinion it is not explicitly specified anywhere that the tasks shall be more specified than paragraph (3). Ambiguous though that under Article 8 c) the expression 'the specific objective and tasks' is used, furthermore the second part of Article 7(3) in the section (starting with 'An EGTC may…') the expression 'other specific actions…' is used, it may be more about reducing the framework of the tasks rather than defining specific tasks.

Of course *we would also welcome, the EGTC already having definite ideas as regards future tasks in the establishment stage,* however in our judgement, apart from a few specific objectives (e.g. the operation of a joint health institute) this expectation cannot be forced upon all the forming EGTCs.

We believe that *specific tasks* in the case of an established EGTC *will be outlined exactly as a necessary first step after the registration period within the framework of strategic development work.* Besides, it is prudent that *the development of the strategy and the*

tactical/operational processes as well as the definition of the tasks takes place with the active involvement from the already elected director, as after all it is the director who for years will head the management, designate their daily tasks and take responsibility for potential mistakes.

Proposal

We propose that the European Union brings to the fore the correct interpretation of the question by guidelines of the appropriate level.

7. Defining power (Article 9 2/a))

According to Article 10(2) 'The statutes may provide for additional organs with clearly defined powers.'

As in the statutes in addition to the mandatory organs, other organs may now also be included, the expression 'clearly defined' also has a function in Article 9 (2) a), or in our interpretation that is the right place for it. In our opinion, *the essence of Article 10(2) is primarily not the issue of how clear the power should be, but that the legislator states: the establishment or even dissolution of new organs shall be subject to well founded reasons.*

Proposal

Proposed version (with the amendment in bold)

Article 9 (2) a)

'the operating provisions of the EGTC's organs and their **clearly defined** competences, as well as the number of representatives of the members in the relevant organs.'

8. Working language (Article 9 2/c))

In our judgement, due to the differing working languages of the EGTCs, interpretational disputes could arise in the future.

In such a case the acceptance of a *common language* is desirable as a *main rule*. From our part, for practical reasons, we recommend this language to be English.

With consideration however to the question of the convention and statutes accepted in the language of the home Member State, also taking into consideration the frequent bad English translations of national rules, for the text versions of official documents, we propose *the language of the documents registered by the competent authorities of the Member State with the EGTC's registered office* to be considered as official.

Proposal

Proposed version (with the amendment in bold)

Article 9 (2)

c) 'the working language or languages, **as well as the language or languages governing disputes.'**

9. Limited liability (last sentence in Article 12 (2))

The last sentence of Article 12 (2) of the Regulation is as follows:

'A Member State may prohibit the registration on its territory of an EGTC whose members have limited liability.'

In our interpretation the expression 'whose members have limited liability' means that each member of the EGTC has limited liability. We can only talk about the limited liability of several (at least two) members, if the section of the sentence said: '*whose members may* have limited liability'.

Despite the above interpretation which we believe to be correct, certain national legislation excludes the participation of founding or joining members who have limited liability from an EGTC with the registered office in that Member State. By using a specific example, e.g. ex lege limited liability Hungarian entities cannot be members in an EGTC with its registered office in Romania.

In our interpretation the legislator with the quoted words had already included the concept of a member who has limited liability in the Regulation, has raised no objection against an EGTC being established with even one or more members who have limited liability, even if the financial liability of other members remains unlimited. The legislator left sorting out the question of liability flexible, as in the case of mandatory organs, for the members and Member States, subject to the inclusion of the following legal securities and controls:

- Other members who have unlimited liability have been granted the opportunity to limit their liabilities themselves.
- The Member States shall not be required to register an EGTC, whose members *all* have limited liability.

In our opinion the intention of the legislator, by combining several regulatory points, is clear and flexible and in addition to ensuring freedom of choice, provides relatively high legal security. Despite this, we propose the clear wording of the relevant sentence.

Proposal

Proposed version (with the amendment in bold)

Last sentence in Article 12 (2):

'A Member State may prohibit the registration on its territory of an EGTC which is **exclusively** made up of members who have limited liability.'

10. Public interest (Article 13)

We propose clarification of the actions to be taken in the case of contravention of public interest.

Observations

- ✓ Contravention of public interest can occur not only by actions but also by negligence. *We propose providing for it within the text.*
- ✓ The legislator uses the expression 'a competent body of that Member State' for the prohibition of the activity and the withdrawal of the member from the EGTC. In the case of the prohibition the variety of these bodies is understandable and acceptable (e.g. police, public health authority), however for the same bodies requesting withdrawal of a member from the EGTC, in our opinion could result in strong concerns and legal uncertainty. The expression 'formed under its laws' is also ambiguous. *We propose an amendment to the text, thus the clarification (narrowing) of the scope especially of the competent authorities acting in matters associated with the EGTC.*
- ✓ Although the Regulation allows an authoritative review against the prohibition and withdrawal, in our opinion, *in the stage prior to this,* that EGTC is only able to discontinue this activity, if they become aware of its 'damaging nature' and its specific causes either through having observed it themselves or through communication from relevant authority, and are able to take actions, provided that sufficient time is provided for it, for terminating the infringing activities as well as completing previously neglected activities.

According to the current text, it is not clear whether the EGTC is given the opportunity for 'discontinuation'. As in such a case the Member State may abuse this interpretation, we propose an amendment to the wording. We also recommend this for the reason as a competent court or authority acting in compliance with Article 14 (2), prior to ordering the dissolution of an EGTC, may allow the EGTC time 'to rectify the situation'. Theoretically it is possible that during the member withdrawal process referred to in Article 13, the dissolution of the EGTC may also be implied, as the conditions essential for the operation of the EGTC would not necessarily exist after the withdrawal (see Article 3 (2): 'An EGTC shall be made up of members located on the territory of *at least two Member States'*).

Proposal

Proposed version (with the amendment in bold)

'Where an EGTC carries out any activity in contravention of a Member State's provisions on public policy, public security, public health or public morality, or in contravention of the public interest of a Member State, **or is deemed to be negligent in this regard,** a competent body of that Member State may prohibit that activity on its territory, **may request the rectification of the negligence as well as the elimination of the sanction resulting from the negligence,** furthermore **in the last resort may initiate at the competent authority the withdrawal of those** members which have been formed under its law **to withdraw** from the EGTC. **Prior to prohibiting the activity, imposing fines for the negligence, or initiating the withdrawal of those members which have been formed under the Member State's law to withdraw, the competent body or authority shall, by setting adequate deadline, together with a notification of the sanctions, inform the EGTC in writing to cease the infringing activity, to rectify the negligence or to eliminate the sanction resulting from the negligence.**

11. Review (Article 17)

With consideration to the principle of closing effect, as well as to the continuous development obligation required within the legal harmonisation framework of the Community, we propose for the Regulation either periodically (e.g. every five years) or by defining a new specific deadline to provide guarantee for carrying out the reporting and reviewing activity.

12. Other (publicity, registration, consultancy organisations)

We believe that with the above guidelines and amendments, together with previous Hungarian proposals, which are highlighted from these, more emphasis should be placed on publicity, on registration solutions and supporting the consultancy network. We propose access to the main data of EGTCs as widely as possible, thus for example internet based records (see Austrian regulation), as well as providing Community support to Member State consultancy organisations specifically set up for this purpose.

2.3. Analysing the templates of the convention and the statutes

On several forums the claim of creating document templates has arisen, which can help in creating EGTCs. This claim is supported by the Regulation stating obligatory elements of the convention and the statutes.

Based on this claim the Annex of the INTERACT Handbook on the EGTC (modified version, 2008 November) includes two templates. According to INTERACT these templates were only elementary intentions; INTERACT's goal is to provide useful information to the European Territorial Cooperation programmes and projects, as well as to keep this information timely and accurate.

Appreciating the supporting intentions and directions of the INTERACT Secretariat, in our opinion creating a universal template is not achievable, because of the following reasons:

- As we have seen, the national laws define the authority and the several types of EGTC in different ways: the different interpretation results in different legal documentation.
- There are significant differences among the national laws. (e.g. the question of limited and unlimited liabilities, which means varied authority; there are the various structure and spheres of authority of the local government; furthermore the differences among the decision-making processes of the federative and unitarian states).
- The main operational elements are not able to be formalised. Because of this reason the approval process of an EGTC has been cancelled, as according to the authority the given statutes and the convention of the certain EGTC took over so many elements of the documents of a former EGTC.
- Developing the main essence is always specified by the national interest, the purpose, the task and the organisational structure of an EGTC.
- Similar associations are unlikely to be found, with huge differences potentially being demonstrable especially within the organisational structure; we should also refer to the differences between the structure of the CBC and the transnational EGTCs.

According to our experiences working from the elementary part of the text (defining the institutions, tasks and authorities geared to the national law of the various members etc.); and the translation to the required languages takes specialists several months.

It is especially important to emphasise that the statute templates and the convention can encourage initiators into using schematic solutions; and can result in a lack of consideration for national legislation, which would have a crucial impact on the further operation of the EGTC.

At the same time according to our experiences, we can state that in the course of the translation special attention is needed. There can be serious differences among the different legal cultures used in Community law as a result of the different translated texts, e.g. there may not be a correct expression for a legal institute.

A literal translation can easily cause misunderstandings; therefore we have to aim towards explanatory translation, which can further make the usage of the templates more difficult. We recommend compiling a list of the technical terms at Community level, which will be able to support the translation process.

The INTERACT Secretariat is not intending to be comprehensive with the templates; therefore primarily they were published with explanations and for following the instructions of the Regulation.

In this section, we are proposing some modifications in order to amend the templates:

2.3.1. Convention

Preamble

The international arrangements, contracts, declarations, strategic objectives are already available, therefore these documents can easily be inserted in the Preamble; moreover a chapter can be designated for the national law of the charter members.

Name of the EGTC

We also recommend the usage of names in accordance with the charter members' official language, as well as the acronym of the EGTC.

Objectives

We recommend breaking those aims down into their component parts (general and specific parts), which are the special request of the approval authorities.

Tasks

We recommend breaking the tasks down into primary and other tasks according to Article 7 (3).

We draw attention to the Article 16 (1), second sentence, which states:

'Where required under the terms of that Member State's national law, a Member State may establish a comprehensive list of the tasks which the members of an EGTC within the meaning of Article 3(1) formed under its laws already have, as far as territorial cooperation within that Member State is concerned.'

Members

In our view it will be much easier if the list of charter members is included in the annex of the convention. On the one hand because the 'list' phrase refers to the location in the annex, on the other, when the number of the members increases it can avoid the need for editing the pages of the convention.

Applicable law

We recommend amending the applicable law refers to the issue of projects co-financed by the Community, with the relevant legislation concerning the control of funds provided by the Community. (Article 6 (4))

Amending the Convention

We draw attention to Article 4 (6), which states:

'Any amendment to the convention and any substantial amendment to the statutes shall be approved by the Member States according to the procedure set out in this Article. Substantial amendments to the statutes shall be those entailing, directly or indirectly, an amendment to the convention.'

Approval (signature), accession

We suggest that a different article includes the signature of the convention and the initial date of the accession of further members.

Final provisions

We recommend using the following details:

- The date when the convention came into force.
- The numbers of the pages, the copies and the versions of the convention.
- The number of the copies bestowing and the given ones to the members.
- After reading through the convention, the statement of the members that the convention is signed in accordance with the rules by assigned representatives.

2.3.2. Statutes

Introduction

The statutes are based not only on the Regulation, but the Convention, as it contains more regulations.

Legal statement

After the name and the seat of the association we recommend that the legal statement of the association features in an own article (self-managing, non-governmental organisation, which gains its legal entity after the registration process).

In general we recommend the logical restructuring of the statutes' articles. For example the chapter of the working language is located not independently, but after the chapter of the tasks. This is because implementing the tasks refers to the question of the languages, whilst how we treat the parts refers to the modification of the convention and the statutes in one article, as the parts belong together thematically.

We have not repeated the previously mentioned remarks and suggestions in the section dealing with the convention.