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REPORT

**SETTING UP A EUROPEAN GROUPING
OF TERRITORIAL CO-OPERATION (EGTC)
AT THE EUROPEAN UNION'S EXTERNAL BORDERS**

by

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A. EGTC - THE POLITICAL CONTEXT

1. Territorial co-operation among regional and local authorities across Europe gained important political and legal recognition within the legislative package for Structural Funds (2007-2013): Regulation No 1083/2006, which established a new main Objective Territorial Cooperation, within the structure of the cohesion policy for 2007-2013 and the Regulation 1082/2006 establishing a new legal instrument for territorial cooperation: the European Grouping of Territorial Cooperation (EGTC).
2. The EGTC allows local and regional authorities to create stable structures for territorial cooperation at cross-border, transnational and interregional level.
3. The whole implementation of the Regulation (= establishment of EGTCs) started from 1 August 2007. Up to 31 July 2007 the EGTC Regulation had foreseen a transitional period during which all Member States should have made such provisions as appropriate to ensure the effective application of this Regulation.
4. Such an instrument is needed because in many Member States:
 - there are no existing legal framework for territorial cooperation (cross-border, transnational, interregional)
 - the existing legal framework is not sufficient
 - the existing legal framework is not efficient
5. Until now, the state of play shows that only 9 Member States (HU, UK, BG, PT, SI, GR, RO, FR and ES) have made provisions to implement the Regulation.
6. At the same time several local and regional authorities have shown great interest in applying the new legal instrument and have taken both political commitment and technical measures towards the establishment of future EGTCs.

B. EGTC - THE LEGAL CONTEXT

I. How to set up an EGTC and EGTC acts

(Note: only some main features are being presented in here. The lists do not intend to be exhaustive)

1. The partners that can establish an EGTC

The Regulation itself defines five categories of prospective members:

- a. Member States
- b. Regional authorities
- c. Local authorities
- d. Bodies governed by public law within the meaning of Directive 2004/18/EC on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts
- e. Associations consisting of bodies belonging to one or more of these categories
 - Bodies from at least two Member States
 - Participation from third countries is possible (members belonging in one of the categories defined above)

2. Convention and Statutes

- a. Convention and Statutes to be drafted
 - *Ex-ante* agreement of Member States for draft Convention and Statutes
 - After member States approval EGTC members agree unanimously final Convention and Statutes
 - Procedure according to national rules, which Member States must prepare (Regulation does not provide the procedure)
- b. Statutes shall be registered/published in the Member State of "registered office" (determines applicable law)
- c. Members inform Member States concerned as well as the Committee of the Regions about the creation of the EGTC (Publication of key information in the Official Journal)
- d. EGTC start to exist from day of national registration/publication

3. What can an EGTC do?

- a. Implement co-operation programmes
- b. Run co-operation projects
- c. Other specific co-operation actions with EU funding
- d. Other co-operation actions without EU funding

4. What can an EGTC NOT do?

- a. Exercise of powers conferred by public law to safeguard general interest of State
 - Police
 - Regulatory powers
 - Justice
 - Foreign policy
- b. Actions outside EU funding can be further restricted by the Member States in the national provisions

5. How can an EGTC act?

EGTC can act through its organs:

- a. Assembly
- b. Director
- c. Additional organs defined in the statutes

6. EGTC managing public funds and EGTC liability

- a. Assembly approves annual budget of the EGTC
- b. EU funds managed and controlled according to relevant EU law
- c. National funds controlled in a similar way as EU funds
 - EGTC liable as such
 - Residual liability of members

II. Examples of added value of an EGTC

7. The EGTC gives a legal basis for structuring territorial cooperation and for making it more efficient and regular. Thus the common legal structure serves as a solid basis for joint territorial development with a long-term perspective.

8. It gives the partners recognition of territorial co-operation across the borders.

9. The setting up of an EGTC facilitates the direct contact of sub-national administrative levels (regions, municipalities) to Member State level and EU institutions, in particular in centrally organised countries. It is therefore a tool for strengthening the partnership of the local and regional levels with the EC.

10. Where co-operation already exists, the EGTC opens up the possibility of going even further.

11. The EGTC structure offers one seat be it in the case of joint implementation of territorial cooperation programmes (all functions combined on one location e.g. in employing common staff and sharing common properties, parities of voting, employment conditions etc.) or be it in the case of Lead Partner projects

12. The establishment of an EGTC gives legitimacy to co-operation, makes it more independent from the changing political will and it generally raises its profile

13. The EGTC must be considered as an advanced tool for the most complex form of multi-level governance, as it is required in a cross-border context (integration of various administrative levels and sectors across borders, multiplicity of actors).

III. Established EGTCs

14. First EGTC created on 28 January 2008:

"Eurométropole – Lille-Kortrijk-Tournai" between France and Belgium

15. The EGTC Regulation asks the Commission to present a "Report and review" by 2011. Given this timetable, during the first phase of the next programming period of structural funds, EGTC will be most likely limited to the implementation of (pilot) projects, whereas mainstreaming the use of EGTC at programme level could become a major feature of the programming period after 2013. Furthermore EGTC brings huge potentialities for cooperation outside EU-funding, in sectors like health, first-aid, transport, etc.

IV. EGTC AND THIRD COUNTRIES

16. The legal basis for the EGTC Regulation is the cohesion policy (Art 159 EC Treaty) which implies that it has to be considered as an instrument of EU internal policy.

Article 159

Member States shall conduct their economic policies and shall coordinate them in such a way as, in addition, to attain the objectives set out in Article 158. The formulation and implementation of the Community's policies and actions and the implementation of the internal market shall take into account the objectives set out in Article 158 and shall contribute to their achievement. The Community shall also support the achievement of these objectives by the action it takes through the Structural Funds (European Agricultural Guidance and Guarantee

Fund, Guidance Section; European Social Fund; European Regional Development Fund), the European Investment Bank and the other existing Financial Instruments.

The Commission shall submit a report to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions every three years on the progress made towards achieving economic and social cohesion and on the manner in which the various means provided for in this Article have contributed to it. This report shall, if necessary, be accompanied by appropriate proposals.

If specific actions prove necessary outside the Funds and without prejudice to the measures decided upon within the framework of the other Community policies, such actions may be adopted by the Council acting in accordance with the procedure referred to in Article 251 and after consulting the Economic and Social Committee and the Committee of the Regions.

17. The Regulation was adopted through the co-decision procedure and e.g. required only a qualified majority when voted in the Council. Had third countries been envisaged with this Regulation, the legal basis should have been different and it would have affected also the decision making procedure.

18. It should also be noted that the Regulation imposes a number of restrictions on the member States and therefore can not apply to third countries, at least without their consent.

19. Paragraph 16 of the recitals to Regulation states:

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 where the legislation of a third country or agreements between Member States and third countries so allow.

20. While the non-EU Member States are not concerned by this new instrument as such, participation of entities from third countries in an EGTC may be possible under certain conditions.

1. The third country adopts national legislation to create an instrument similar or close to the EGTC. (This could be of particular relevance for candidate and pre-candidate countries)
2. The third country may alternatively sign agreements with EU Member States in order to enable their authorities to participate in EGTCs
3. Participation of entities from third countries in an EGTC is also subject to the national provisions of the concerned Member States, whether these allow or not such participation.

21. It should be noted that the freedom has been left to national provisions to cover or not to cover participation of third countries. National provisions may also completely deny participation from the third countries.

22. Other issues to be considered in this context (examples):

- The location of the registered office of an EGTC has to be in one of the Member States
- The location of an EGTC's registered office determines the applicable law
- EGTC's registered office must be made after careful consideration, taking into account the advantages and disadvantages of the legal environment of the state in which the EGTC is to be formed

- An EGTC must include partners at least from two Member States
- Bi-lateral cooperation between a Member State and a third country are not covered by the Regulation (e.g. EGTC like cooperation between France and Switzerland)
- So far only national provisions of Romania and France cover explicitly third country participation

C. SUMMARY OF THE COMMITTEE OF THE REGIONS POSITION

23. The Committee of the Regions (CoR) has a specific consultative competence on territorial co-operation, recognised by the Treaty (art. 265 TEC), and a general consultative competence on cohesion policy. On that basis the CoR is deeply involved in supporting the new legal instrument for territorial cooperation (EGTC). The CoR's political strategy, and supporting political and technical actions aimed to facilitate the establishment of EGTC, have been agreed by the CoR Bureau in December 2006.

24. The CoR underlines that a substantial progress in implementing Territorial Cooperation and the EGTC scheme will produce a considerable impact on key dossier, like the following: the EU agenda on multi-level governance, the territorial cohesion agenda, the future structure and orientation of cohesion policy interventions, the consolidation of the regional (cooperation) dimension within EU thematic policies.

25. The CoR asks that all the responsible authorities take the necessary measures to bring the EGTC into operation as soon as possible after the 1 August 2007 deadline set by the Regulation. The CoR supports the initiatives of local and regional authorities both in ensuring the adoption of a coherent regulatory framework at national level and in setting up EGTCs.

26. The first Inter-institutional Conference on EGTC will take place in 19 June 2008, at a key moment for the future of the new legal instrument. The event will be co organised by the CoR and the European Commission with the participation of the European Parliament and the Slovenian Presidency. The event will take place in Brussels.

27. Other main actions in 2008:

- An Own-initiative Opinion is under preparation in the Commission COTER, with the aim to draw up an early progress report on the implementation of the new legal instrument. The opinion will serve to show the great variety of scope, territorial scales and governance solutions which are already emerging from this early explorative stage into the implementation of the EGTC Regulation. It will provide, in particular, evidence of the wide territorial partnerships that EGTC-shaping is already triggering, giving evidence to the possible contribution to achieving territorial cohesion through an innovative multi-level governance format. The adoption is foreseen at the CoR Plenary in June 2008 back to back with the Inter-institutional Conference.
- The EGTC Expert Group: aims at assessing progress in establishing EGTCs, facilitating the mutual exchange of experiences and supporting the political work of the CoR.
- The EGTC web pages www.cor.europa.eu/egtc.htm
- Publication of a CoR legal study "The European Grouping of Territorial Cooperation – EGTC" (translated and available on the web site in DE/EN/FR/DE/ES/IT/NL/PL).
- A new study on EGTC is under preparation with a COR contractor on national provisions and case histories. This study will be presented during the Interinstitutional Conference in June 2008.
- Publication of EGTC State of Play as a collection of national rules at www.cor.europa.eu/egtc.htm

- Moreover, the Art. 5 of Regulation 1082/2006 states that the CoR is to be informed of the status and conventions of future EGTCs when they are set up; therefore the establishment of a database as Register on EGTC has been put in place.