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REPORT FROM THE COMMISSION

TO THE EUROPEAN PARLIAMENT, THE COUNCIL AND THE COMMITTEE OF THE REGIONS

on the application of Regulation (EC) No 1082/2006 on a European Grouping of Territorial Cooperation (EGTC) as amended by Regulation (EU) No 1302/2013 as regards the clarification, simplification and improvement of the establishment and functioning of such groupings

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1. INTRODUCTION

As legal bodies that can increase legal certainty and stability for cooperation initiatives, European groupings of territorial cooperation ('EGTCs') are intended to improve cohesion in the European Union by facilitating territorial cooperation and addressing the practical difficulties involved. EGTCs should reduce the problems encountered by Member States and, in particular, regional and local authorities in implementing and managing cooperation activities in the context of differing national laws and procedures.

Regulation (EC) No 1082/2006 of the European Parliament and of the Council on a European grouping of territorial cooperation (the 'EGTC Regulation')[1] was adopted on the basis of Article 175 of the Treaty on the Functioning of the European Union, in particular its third subparagraph. It entered into force on 1 August 2006 and has been fully applicable since 1 August 2007. It was amended by Regulation (EU) No 1302/2013[2] as regards the clarification, simplification and improvement of the establishment and functioning of EGTCs.

In accordance with Article 17 of the EGTC Regulation the Commission services have to forward to the European Parliament, the Council and the Committee of the Regions a report on the application of this Regulation assessing, based on indicators, its effectiveness, efficiency, relevance and EU added value of EGTCs, and scope for simplification.

2. EGTCs IN PRACTICE

EGTCs' recent activity on the ground[3]

EGTCs are concentrated in certain areas, mostly along the Hungarian, Slovak, French, Spanish and Portuguese borders. Their territorial coverage is particularly extensive in Hungary. Some Member States are not involved in any EGTCs, these differences might in some instances be a result of already established other type of cooperation structures.

In 2017, four EGTCs had members from a non-EU country. As the EGTC Regulation did not explicitly refer to EGTCs with an external dimension until it was amended, one cannot expect a rapid emergence of such EGTCs[4].

Main types of EGTCs are:

- cross-border EGTCs, which address mainly local and regional challenges;

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1 OJ L 210, 31.7.2006, p. 19.

2 Regulation (EU) No 1302/2013 of the European Parliament and of the Council of 17 December 2013 amending Regulation (EC) No 1082/2006 on a European grouping of territorial cooperation (EGTC) as regards the clarification, simplification and improvement of the establishment and functioning of such groupings (OJ L 347, 20.12.2013, p. 303).

3 This section is based on the *EGTC monitoring report 2017*, CoR (2018).

4 *The participation of entities from outside the EU in the European groupings for territorial cooperation*, CoR (2015).

- transnational EGTCs, over territories considerably wider than cross-border cooperation areas;
- network EGTCs, composed of members that are not connected to a particular area; and
- EGTCs for specific purposes, e.g. hospitals, nature parks, transport corridors and universities.

By 31 December 2017 there were 68 EGTCs altogether.

The most common EGTC arrangement involves cooperation between 2 and 20 local authorities, with small to medium-sized cooperation structures. The second most prominent arrangement is cross-border cooperation involving regional authorities.

EGTCs are mostly funded through membership fees, transfer from national and regional budgets, and contributions from EU funds, mainly the European Structural and Investment Funds (ESI Funds), but also LIFE, Erasmus+ and Horizon 2020.

In 2017, the EGTCs were active in restructuring, due to growth in membership: in total, 21 (31%) reported a change in membership.

At the end of 2017, work was under way to establish over 20 new EGTCs. The range of applications of the EGTC instrument is likely to expand further as a result.

Motivation and challenges relating to the creation of EGTCs

Motivation[5]

The EGTC instrument was created to facilitate and promote territorial cooperation with a view to strengthening cohesion in the EU. EGTCs are widely used to consolidate and/or deepen general (cross-thematic) cross-border cooperation. Mainly local and regional bodies make use of them, but EGTCs are also used for interregional cooperation.

The motivation for setting up an EGTC varies. Primarily, an EGTC is established as a visible and permanent structure for territorial cooperation to manage joint projects, infrastructures or environmental resources.

EGTCs contribute to:

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

Challenges[6]

Challenges when creating EGTCs relate to:

- approval authorities' lack of experience and knowledge as regards the steps to be taken;
- the need to find agreement between EGTC members on the content of the work or the precise tasks involved; and

[5] *European grouping of territorial cooperation as an instrument for promotion and improvement of territorial cooperation in Europe*, European Parliament (2015).

[6] *Experience of European groupings of territorial cooperation (EGTC)*, Moro Praxis (2017).

- differing national rules and regulations, e.g. procurement of services and taxation; the EGTC Regulation provides for a European legal form subject to national implementing rules, so tailor-made solutions based on the applicable national legislation need to be found for each EGTC.

EGTCs and European territorial cooperation

The original objective of the EGTC instrument was to facilitate European territorial cooperation (ETC) at both programme and project level, which besides the implementation of specific projects includes programming in a broader sense.

Currently, two EGTCs actually implement ETC programmes: the Grande Région EGTC, which is the managing authority (MA) for the Grande Région Programme; and the ESPON EGTC, which has a specific role, since it is the sole beneficiary, and as such responsible for implementing, the 2014-2020 ESPON Programme[7].

Some EGTCs are responsible for implementing small project funds in specific ETC programmes: the RDV EGTC and the Via Carpatia EGTC manage the small project fund[8] in their respective geographical areas under the Hungary-Slovakia Interreg programme. Two EGTCs are sole beneficiaries of ETC projects, and the GO EGTC implements an integrated territorial investment (ITI).

In 2017, 33 EGTCs were involved as lead partner or partner in some 83 ETC projects. EGTCs are also involved in ETC in other ways, e.g. co-financing or facilitating ETC projects or programmes.

3. ASSESSMENT OF THE APPLICATION OF THE EGTC REGULATION

The Commission services worked in close cooperation with the Committee of the Regions (CoR) to gather the necessary data to assess the application of the amended EGTC Regulation. The main sources of data were the CoR's EGTC monitoring report 2017[9] and a commissioned study[10] to assess the questions and indicators set out in the Annex to the future delegated act on the EGTC implementation indicators.

The outcome of the analysis of the data gathered was discussed and agreed with the CoR.

3.1. Effectiveness of the EGTC Regulation

The analysis of the effectiveness of the EGTC Regulation, as amended, looked at how successful the EU action had been in achieving its objectives[11]. The main objectives of the amendments were:

- to facilitate the establishment of EGTCs;
- to clarify certain provisions; and
- to promote more extensive use of EGTCs.

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7 Luxembourg and France participate in the Grande Région EGTC. Luxembourg and Belgium participate in the ESPON EGTC.

8 The Small Project Fund is implemented under two priority axes of the Interreg V-A Slovakia-Hungary Cooperation Programme and must contribute to their priority objectives. RDV EGTC and Via Carpatia EGTC are EGTCs on the border between Hungary and Slovakia.

9 *EGTC monitoring report 2017*, CoR (2018).

10 *Assessment of the application of the EGTC Regulation*, Spatial Foresight (2018). http://ec.europa.eu/regional_policy/en/policy/cooperation/european-territorial/egtc/.

11 Due to a lack of baseline data, only the level at the cut-off date is reported for some of the indicators relating to effectiveness, rather than the increase over the period.

A total of 21 new EGTCs were established between 21 June 2014 and December 2017. This development represents a significant increase of 44% in the total number of EGTCs and shows that the pace of foundations since the initial approval of the EGTC Regulation is maintained.

The number of EGTC members has also increased by more 30% from above 600 (21 June 2014) to above 800 by the end of 2017. Membership of existing EGTCs grew considerably more in 2016 and 2017 than in previous years, indicating that the amendments of the EGTC Regulation facilitated the enlargement of EGTCs. The fact that the EGTC Regulation clarified the rules in this respect has supported this development.

At least 10 EGTCs were involved in cross-border service provision, either in a direct management role or indirectly. The current EGTCs plan to provide or contribute to a wider range of services in the future, e.g. natural disaster warning systems and cross-border waste recycling[12]. This indicates that the amendments of the EGTC Regulation are relevant.

Overall, EGTCs mention various benefits of using the instrument[13]:

- ✓ support for multi-level governance structures enhancing cross-border, bottom-up approaches that allow for intensified and/or higher levels of cross-border cooperation. The amended EGTC Regulation simplifies EGTC membership changes, thus supporting adjustments in line with EGTCs' development;
- ✓ enabling border regions to enhance joint planning and implementation of strategies in different fields by articulating their joint interests and sharing a vision for the border area. Since the amendment, this has included better service provision;
- ✓ as single beneficiaries, EGTCs have easier access to EU funding, since applying for EU funding through the EGTC involves less administrative effort for the members, especially in the 2014-2020 ESI Funds programming period. The cross-border or transnational character of EGTCs also helps in communicating EU added value when applying for EU funding;
- ✓ EU legal identity improves EGTCs' visibility and acceptance by other relevant public authorities. They are acknowledged as an intermediary that can initiate new cross-border actions and in some cases exert more influence on decision-making;
- ✓ EGTCs offer a reliable and sustainable communication channel facilitating various forms of cooperation in cross-border areas.

The objectives of facilitating the establishment of EGTCs, clarifying certain provisions and allowing for more extensive use of EGTCs have been achieved in several ways. EGTCs support ETC mostly by implementing projects and parts of programmes, rather than as MAs of ETC programmes. The EGTC Regulation has contributed to clarification and broader use of the instrument, especially as regards cross-border service provision and the inclusion of non-EU countries.

Studies[14] also confirm that clarity has been improved in several areas, such as membership, the participation of authorities from non-EU countries and the relationship between an EGTC's convention and its statutes. The functioning of EGTCs has been facilitated, as access to EU funding appears to be easier and changes in the convention (e.g. due to membership changes) have been simplified.

[12] See footnote 10.
[13] See footnote 10.
[14] See, for example, Krzymuski and Kubicki (2014) and Krzymuski (2017).

The EGTC Regulation includes in its Annex an inter-institutional statement in which the European Parliament, the Council and the Commission agree to undertake efforts within the institutions and with the Member States to support the use of EGTCs. At EU level, the CoR's EGTC platform has been revamped and this has considerably improved access to EGTC-related information. The CoR has also become more involved in EGTC-related promotion activities, including events and publications.

The CoR's annual EGTC monitoring report indicates an intensification of activities in support of EGTCs in the Member States. More Member States are promoting EGTCs, taking increasingly varied approaches[15]. The effectiveness of these activities is reflected in the widening application of the EGTC instrument, both in terms of themes addressed and geographical areas covered. The effectiveness of EGTC promotion activities varies strongly, as not all Member States are active in this respect. Despite the achievements in promoting EGTCs, some difficulties in accessing ETC funding seem to persist. This indicates that further efforts are required to promote EGTCs[16].

3.2. Efficiency of the EGTC Regulation

Efficiency considers the relationship between resources or inputs used and changes or results generated[17].

In the case of EGTCs, a comparison between EGTCs and other comparable structures under national or international law was drawn, which led to conclude that in most cases, costs of setting up an EGTC are too limited to be used as a relevant indicator of efficiency.

Other aspects were identified as more relevant when comparing EGTC and structures established under national or international law:

- ✓ the versatility of the EGTC is highly valued. When founded, EGTCs can be used for a wide variety of purposes[18]. Within the often broadly formulated tasks of an EGTC, actual working fields can be adjusted easily without fundamentally changing its structures; and
- ✓ one of the unique and most important advantages of EGTCs is that they have legal personality and are thus entitled to carry out activities in the countries in question.

3.3. Relevance of the EGTC Regulation

The relevance indicator considers the extent to which the objectives and provisions of the EGTC Regulation correspond to the needs of prospective EGTC members[19].

When looking at the amendment of the EGTC Regulation, which widened the objective of creating an EGTC and broadened their scope in this Regulation, we can conclude that a considerable number of current EGTCs use EU funds other than ETC that support their specific thematic objectives.

Since the start of the 2014-2020 programming period, the EGTC involvement in ETC has been generally supported by stronger legal links between the EGTC Regulation and the EU

[15] CoR 2017a. EGTC monitoring report 2016 and impacts of Schengen area crises on the work of EGTCs.

[16] CoR, 2017b. Simplification of the implementation of Cohesion Policy. Workshop on European Territorial Cooperation (ETC). Final report. Brussels.

[17] The main findings provide only qualitative insights. In-depth analysis with control groups would be required to obtain quantitative data on the relationship between costs for an EGTC, as compared with similar structures under national or international law.

[18] For further information, see CoR (2018).

[19] Due to a lack of baseline data, only the level at the cut-off date is reported for most of the indicators and their sub-categories, rather than the increase over the period.

cohesion policy regulations[20] and the overall involvement of EGTCs in cooperation programmes has increased considerably. Nearly half of the EGTCs are now involved in the implementation of ETC programmes, mostly through partnerships in one or more projects.

The amendment of the EGTC Regulation however has not led to the foundation of new EGTCs to act as MAs of ETC programmes. The EGTCs also use very rarely the option of acting as single beneficiary of an operation. A reason for the latter can be that especially in the early stages of the 2014-2020 programming period, ETC programmes required a great deal of clarification[21] and this may have discouraged further applications from prospective single beneficiaries.

There remain ambiguities. Article 8(2) of the EGTC Regulation differentiates between the law regarding enforcement of the convention (point g), where EGTC`s organs act (point h) and EGTC activities (point j). It is clear that the convention shall define the applicable law with regard to all three elements, but doubts remain how detailed the list of applicable law "directly relevant to EGTC's activities" should be[22]. The Commission's view is that the law "directly relevant" should be closely linked to the "tasks specified": an EGTC set up to manage a hospital has more specific tasks than an EGTC set up to develop its territory in a broad way.

3.4. European added value

The European added value indicator considers whether EGTCs were set up because of the EGTC Regulation. The EU added value is closely linked to the typical benefits identified for the EGTCs[23]. The advantages of an EGTC compared to similar legal bodies give valuable qualitative information to assess the European added value of the EGTC:

According to literature[24] the advantages are:

- ✓ as legal entities, EGTCs enable quicker and more efficient decisions in cross-border environments where several authorities are involved;
- ✓ EGTCs enable coherence, permanence and coordination, encourage common objectives and stabilise cooperation in cross-border areas;
- ✓ EGTCs are seen as independent from isolated political decisions and developments that could block the adoption or implementation of useful measures for cooperation areas extending beyond national borders;
- ✓ EGTCs give cooperation areas negotiating power that helps them to defend their interests; and
- ✓ EGTCs mitigate the separating effects of internal borders, thus supporting cohesion in the EU and improving the visibility of EU policies at local level.

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[20] See, for example, *The European grouping of territorial cooperation as an instrument for promotion and improvement of territorial cooperation in Europe*, European Parliament (2015), pp. 31-41.

[21] CoR, 2017b. Simplification of the implementation of Cohesion Policy. Workshop on European Territorial Cooperation (ETC). Final report. Brussels.

[22] See footnote 10

[23] Neither quantitative nor qualitative data could be obtained on the territorial cooperation structures and networks set up solely by means of EGTCs. The indicator appeared too difficult to grasp for EGTCs when collecting data for the 2017 Monitoring Report. As a result, findings are restricted to a qualitative assessment of the advantages of setting up a legal body under EU law as compared with other national or international bodies.

[24] The following draws especially on responses from EGTCs during data collection for the 2017 EGTC monitoring report and Zillmer and Luer (2017, pp. 15 -21).

European added value is confirmed by many EGTCs when highlighting benefits that they would not realise without the EGTC instrument.

3.5. Simplification

The degree of simplification is assessed on the basis of whether administrative costs and burdens have been reduced and whether an intervention allows for quicker or less complicated action. In the case of EGTCs, this is particularly relevant in the start-up phase.

The indicators/findings suggest that start-up periods have been shorter. This is particular the case for the phase covering the time needed from submitting the first draft convention until registration of the EGTC. Geographical differences might be due to the type of EGTCs being set up and experience with establishing EGTCs.

According to the indicators, the EGTC Regulation led to some simplification. However, the need to simplify EGTC legislation does not arise solely or even primarily from the EGTC Regulation, but often from national law of the Member States.

The amendment clarified various aspects of the EGTC Regulation, in particular the employment of staff, the division and ranking of an EGTC's convention and its statutes, the membership of various actors and the participation of non-EU members. The needs of (prospective) EGTC stakeholders have therefore been addressed in these areas.

4. PROPOSALS FOR IMPROVEMENT[25]

A key principle when considering any further amendment is to keep the EGTC instrument as stable as possible, since every change tends to create new uncertainty. Within the present framework, it is possible to facilitate the use of EGTCs through more information and better coordination between Member States and approval authorities, and more promotion in the context of EU funding instruments.

The EGTC is still a relatively new tool and many potential participants have no experience or knowledge of it. As a consequence, there is a need for more information, in particular on legal issues around designing an EGTC and developing its statutes and its convention.

The establishment of an EGTC will usually involve several Member States, which may implement the EGTC Regulation in different ways. Standardised requirements and procedures may contribute to greater legal certainty both for the EGTC partners and the authorities involved. Therefore, the regular meeting and exchange of information among approval authorities shall be continued and be used to address the above issues.

The need for better coordination also relates to contacts between potential EGTC members and approval authorities, and among latter ones in different Member States. In addition to the administrative questions, there is also a need to agree on the content of the EGTC. This process could be helped by an exchange of information and best practices between approval bodies, EGTCs and the CoR.

Better communication of the EGTC instrument in the context of EU funding programmes could promote its use and its access to EU funding as is foreseen in Article 3 of Commission

[25] Using input from *Experience of European groupings of territorial cooperation (EGTC)*, Moro Praxis (2017), *The European grouping of territorial cooperation as an instrument for the promotion and improvement of territorial cooperation in Europe*, European Parliament (2015) and *Assessment of the application of the EGTC Regulation*, Spatial Foresight (2018).

proposal COM(2018) 374[26]. This would be particularly important at the start of the next (post-2020) programming period.

New instruments proposed like the ECBM[27], which aim at enabling on a voluntary basis, that the rules of one Member State are applied in the neighbouring Member State for a specific project or services of general economic interest, will further help the work of EGTCs, as their wholly institutional nature is not suitable for resolving legal and administrative obstacles[28]. EGTCs have the potential to address other issues highlighted in the Commission Communication on Boosting growth and cohesion in EU border regions[29], e.g. facilitating cross-border accessibility or promoting greater pooling of health care facilities like the Cerdanya Cross-Border Hospital EGTC.

EGTCs often serve as a testing ground to overcome differences between Member States in applying EU law. A possible area of follow-up would be to use EGTCs as case studies on how these differences are addressed.

5. CONCLUSIONS

The amended Regulation aims to facilitate the establishment and operation of EGTCs, and to clarify certain existing provisions. Besides resulting in a significant increase of 44% in the total number of EGTCs it also enhances the efficiency and effectiveness of the EGTCs in promoting cooperation in the implementation of EU policies.

The analysis carried out on the basis of indicators relating to effectiveness, efficiency, and relevance shows that the objectives of facilitating the foundation of EGTCs, clarifying certain provisions and allowing for more extensive use of the EGTC instrument have been achieved.

The EGTC Regulation contributes to the clarification and broader use of the EGTC instrument, especially for cross-border service provision. It also clarifies several aspects, such as membership, the participation of authorities from non-EU countries and the relationship between the EGTC's convention and its statutes. Meanwhile the number of EGTC members increased by more than 30% since the beginning of the 2014-2020 programming period, the emergence of EGTCs with an external dimension will require specific action from actors at all levels.

Overall, EGTCs are much more involved in cooperation programmes, but only a few are implementing ETC projects as single beneficiaries or managing (parts of) a programme.

European added value is confirmed by many EGTCs when highlighting benefits that they would not realise without the EGTC instrument.

The amended EGTC Regulation provided a degree of simplification. However, the need to simplify EGTC legislation does not arise primarily at EU level, but in relation to supplementary conditions imposed by the Member States.

The effectiveness of activities to promote EGTCs varies strongly from country to country. Despite the additional promotion efforts, further efforts are still needed to enhance the efficiency and effectiveness of the EGTC instrument in fostering cooperation in the implementation of EU policies.

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[26] Proposal for a Regulation of the European Parliament and of the Council on specific provisions for the European territorial cooperation goal (Interreg) supported by the European Regional Development Fund and external financing instruments (Article 3) – COM(2018) 374 final,29.5.2018.

[27] Proposal for a Regulation of the European Parliament and of the Council on a mechanism to resolve legal and administrative obstacles in a cross-border context - COM(2018) 373 final, 29.5.2018.

[28] Article 7(4) of Regulation (EC) No 1082/2006 excludes that EGTCs exercise regulatory powers.

[29] COM(2017) 534 final, 20.9.2017

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