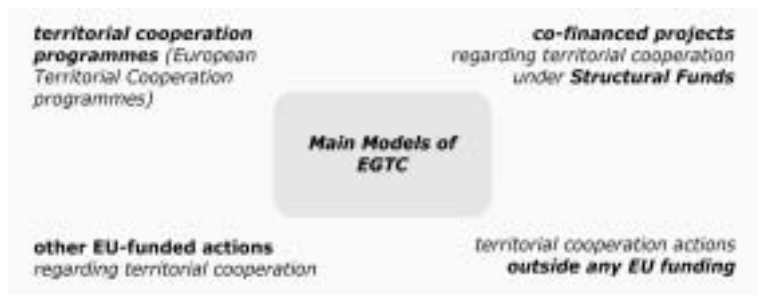


Territorial Cooperation: Overview and Assessment of EGTCs*

Hannes Schaffer**

1. Why an EGTC?

With the introduction of the European Grouping of Territorial Cooperation the European Commission provides a striking new instrument for territorial cooperation through the Union. In fact, Regulation (EC) No. 1082/2006 is a first case in which an EC Regulation gives specific and substantial rights to local, regional and national public authorities from different countries to set up joint structures for a more efficient cooperation. Like any other, the Regulation produces direct effect in all member states, but it also requires the member states to develop the necessary implementing rules to ensure the effective application of the Regulation.



Source: Mecca.

As the establishment of an EGTC can be a long process, requiring long-term involvement and commitment of the partners, as well as financial investment, such investments should be proportionate to the expected result. It seems that the sole creation of an EGTC for a short-term project might represent a too large investment as compared to the benefits brought by the EGTC. Instead the prospective partners should, already in the development stage, consider the sustainability of

* This paper is based on the results of the Handbook on The European Grouping of Territorial Cooperation which the Mecca experts Hannes Schaffer and Christina Ringler elaborated for INTERact.

** Hannes Schaffer is Executive Manager Mecca Consulting, Wien.

the EGTC and its long-term duration. Especially for the case of program management the timing factor is essential as the setting-up procedure of an EGTC might take its time while the life-cycle of an operational program is rather short. In general the setting-up of an EGTC might be easier where a long tradition of trust and cooperation is already in place and based on a formal structure (e.g. Euroregion) than in regions with little cooperation history and no strong structures in place.

Already now one can say that the more partners (and the more countries) will be involved in an EGTC, the more complex the setting-up process seems to be. Therefore it is highly recommended to state a clear mission and objective of the EGTC in the very beginning. Prospective members should not hesitate to obtain legal advice concerning their national legislations and their compatibility for establishing an EGTC.

2. Advantages of an EGTC

The EGTC responds without doubt to the necessity to have a legal institutional tool of cooperation that derives from community law. It provides a common legal basis to all local and regional authorities and member states, and is applicable in all member states, even in those that have not signed the Madrid Outline Convention, its additional protocols or specific bi- or multilateral agreements. As already mentioned in the previous paragraph, the EGTC has the most extensive legal capacity accorded to legal persons under the member states national law.

The EGTC has a legal personality, which may be private or public, depending on the national legislation applicable (this possibility was left open in the Regulation). Compared to cooperation structures that have no legal personality, this means essentially the advantage of having legal capacity to act as an autonomous body, having its own budget, hiring its own staff and contracting independently. Additionally this also means that in case of prejudice, the EGTC has the possibility to sue other authorities.

The rules relating to the composition of the EGTC allow the participation of all types of «bodies governed by public law» and aim particularly at the «member states», the «regional» and

the «local authorities» as well as associations of public entities¹. The possibility for member states to participate was in principle not considered so far, and constitutes an important change for territorial cooperation. It will allow some member states to participate in such cooperation where no regions exist (e.g. Slovenia, Luxembourg) or where the theme of cooperation envisaged is a competence of the national level. It may also contribute to the application of multi-level governance and increase the strategic dimension of territorial cooperation². In many European Territorial Cooperation programs, the member states are partners in the programs. At the same time, it will ensure that the competent national body can be involved, should a specific responsibility, required for the EGTC functioning, lay at national level instead of regional level even for federal/highly decentralised states.

The EGTC covers all types of European Territorial Cooperation: cross-border, transnational and interregional. It is thus not limited to cross-border cooperation like most of the existing instruments in this field, even if it is expected that the EGTC could be more often used under this first type of cooperation (proximity, limited number of partners, etc. would make it easier to set up a joint structure). Moreover, the EGTC may be used for a diversity of cooperation missions: management of EU programs, EU projects and other cooperation outside EU funding. Also third countries can be involved in an EGTC if their legislation or any agreements between member states and the concerned third country allows it³.

The EGTC can act on behalf of its members. It does not create an additional administrative level, and its members do not transfer any competences to the EGTC but entrust it with the implementation of specific operational missions. The EGTC does not remove all existing legal formats of cooperation but appears as a new optional alternative to existing legal formats of cooperation. Moreover, the limited number of compulsory organs⁴ leaves flexibility for the EGTC members. «Small» EGTCs can then have a light structure, while «larger» EGTCs may add organs. In short, the EGTC provides an official «label» recognised by the European Commission and within the European Union in general.

¹ Regulation (EC) No. 1082/2006, Article 3.

² Committee of the Regions, *The European Grouping of Territorial Cooperation - EGTC*, 2007.

³ Regulation (EC) No. 1082/2006, Recital 16.

⁴ Regulation (EC) No. 1082/2006, Article 10.

3. Limits of an EGTC

In practice the Regulation will not create a uniform effect throughout the European Union. A big number of potentially different legal categories⁵ of EGTCs in 27 member states can be identified. Each category consisting of a variation of the following criteria linked to a) the members (homogeneous or heterogeneous) / with or without state participation; b) the applicable law (EGTC governed by public or private law / limited or unlimited liability of members); and c) the activities carried out (managing EC funds or without any EC financing / carrying out activities on behalf of its members or just coordinating cooperation). The EGTC probably provokes some distrust, mainly due to the fact that the EGTC system contains some legal loopholes⁶. It is expected that this lack of legal safety limits recourse to EGTC.

The Regulation refers in several articles to national legislations, which means that different legal consequences may apply. The EGTC's prospective members may have difficulties to find a sort of «common ground», where all national provisions applicable are compatible (e.g. risk of incompatibility between the Hungarian and [draft] Austrian legislations concerning liability).

The private law entities do not figure amongst the potential EGTC members. This prevents recourse to public-private partnerships in EGTCs. Such partnerships can be set up outside the EGTC however, e.g. between the EGTC and a private actor or using other existing national or EU legal instruments.

Delays can occur due to the fact that the deadlines for authorising participation in an EGTC lack of precision (see e.g. in the English version «the member state shall, as a general rule, reach its decision within a deadline of three months [...]»⁷). Therefore the authorising body of a member state could in principle hinder or slow down the process. The vagueness of the wording «The tasks given to an EGTC by its members shall not concern the exercise [...] of duties whose object is to safeguard the general interests of the state»⁸ could create insecurities.

⁵ Based on the study Committee of the Regions, *The European Grouping of Territorial Cooperation - EGTC*, cit., which deals with 25 member states.

⁶ For legal details see *ibidem*.

⁷ Regulation (EC) No. 1082/2006, Article 4, para. 3.

⁸ *Ibidem*, Article 7, para. 4.

4. Adoption of the National Rules for the EGTC

Following 23 member states have already adopted national rules for the establishment of EGTC: Hungary, UK, Bulgaria, Portugal, Romania, Greece, Spain, Slovenia, France, Slovakia, Denmark, Lithuania, Poland, Czech Republic, Luxembourg, Italy, Finland, Sweden, Germany, Ireland, the Netherlands, Estonia, and Latvia. In Belgium only the Flemish community has adopted rules, in Austria only the regions of Carinthia, Vorarlberg and Lower Austria while the adoption process in Cyprus is in an advanced stage.

Fifteen EGTCs have been already set up, including members from eleven countries, namely Hungary, Portugal, Greece, Spain, France, Slovakia, Luxembourg, Italy, Germany, Belgium, and Cyprus. Even more EGTCs are under preparation, of which some are expected to be realised in the near future (e.g. Euroregion Donau-Moldau).

Existing Groups of Territorial Cooperation may give useful hints and provide experiences to other regions, playing with the idea of setting up an EGTC⁹. INTERact and the Committee of the Regions, which has set up a register of existing EGTCs (according to Article 5 of Regulation [EC] No. 1082/2006), actively follow the development of EGTCs and pursue their efforts to sustain territorial cooperation.

5. Proposals for an Amendment of the EGTC Regulation

The European Commission, in line with its mandate as stated in Article 17 of Regulation (EC) No. 1082/2006, plays a specific role in the framework of this monitoring and follow-up process, being in charge of evaluating the application of the Regulation and proposing any changes, if needed, by 1 August 2011. To do so, the European Commission should be informed by each member state of the national provisions taken in application of the Regulation.

The Committee of the Regions, the trio of presidencies of the Council of the European Union (Spain-Belgium-Hungary), the European Commission and the INTERact program recently launched a consultation process on the revision of the EGTC Regulation (EC) No. 1082/2006. In Summer 2010

⁹ Committee of the Regions, *EGTC Projects*, at <http://portal.cor.europa.eu/egtc/en-US/Projects/already/Pages/welcome.aspx>.

they published a paper, including views of member states, established EGTCs and EGTCs under preparation, local and regional authorities and other stakeholders. The gathered contributions will be fed into proposals for amendments, which shall be issued by the Commission¹⁰.

The following conclusions are drawn out of the consultation process:

a) The Regulation Needs to Be Changed

The amended Regulation should make it easier to operate an EGTC and improve the process of setting up. In the current programming period not many EGTCs have been initiated, the Regulation entered in force too late. In the next period, starting from 2014 more EGTCs are expected to evolve. Therefore efforts not only to adapt current legislation but also to improve coordination between regulations (ERDF, IPA, and ENPI) have to be undertaken.

Main problems which have been encountered until now are the following ones: a) assessment procedure by the central authority of the member state (e.g. three months deadline is rarely respected); b) staffing for legal reasons and due to differences in salaries; c) problems with eligibility to run projects (e.g. ETC); d) eligibility for program management, resulting from reluctance of member states or secretariats to work with EGTCs, which are perceived as competitors; e) public procurement, budget and accountability; f) VAT and social security numbers not recognised by the partner state authorities; and g) lack of knowledge concerning EGTC at national administrations.

b) Differences in Legislation

The Regulation permits large differences in the national implementation, therefore legal status of EGTC diverge (public or private, limited or unlimited liability). Difficulties have been encountered with defining the content of conventions and statutes, as well as with approval procedures. National provisions need to be harmonised, in order to make cooperation in the framework of EGTC possible in any European region. This may be realised either by demanding *ex-ante* coordination between neighboring states or by restricting the choices, which are left open by the Regulation.

¹⁰ Committee of the Regions, *The Review of Regulation (EC) 1082/2006 on the European Grouping of Territorial Cooperation*, 2010.

c) Information, Communication and Technical Assistance

A European structure is needed to promote networking and communication and additionally to support cooperating regions in their activities. The Committee of the Regions plays a major role in taking over these responsibilities.

Stakeholders involved in EGTC demand a platform or body to exchange knowledge and practices. A promising approach is an internet platform to establish an online network supporting and improving mutual learning. Newsletters, a helpdesk, seminars and training courses for staff could also be organised via this online platform.

d) Range of Tasks

EGTCs' fields of activities comprise manifold areas, including policy coordination and cooperation structures, acting as a new tier of governance or conducting long-term cross-border projects.

Basically it is seen positively to use EGTC as managing authority and joint technical secretariat, as it corresponds to the principle of subsidiarity. The EGTC allows following a strategic approach regarding the implementation of programs and promises thematically coordinated activities. Nevertheless EGTC eligibility is a main problem, as some national authorities are reluctant to delegate program management.

Setting up an EGTC is cost-efficient in terms of bureaucracy and resources only when its' purpose is to manage several projects or one extensive project. The main advantage of EGTC are cluster effects like a common approach for various activities dealing with related topics, exchange of information, sharing best practices, continuity, etc.

e) Private Entities

Opinions on including private entities in EGTC diverge largely: 60% of institutions concerned with EGTC are in favor, but a strong minority considers EGTC should be restricted to public authorities. Those endorsing to enable private entities to participate want to do this only under specific conditions, namely if they are: a) established under public law; b) not profit-oriented; c) oriented to public-private partnership or acting in general interest in the management of public service, research, environment, employment, ICT,

transport, health, social services or education; d) active or operating in the areas covered by the EGTC; e) having significant influence on the development of cross-border cooperation; f) associated with an EGTC which is not eligible to run a territorial cooperation program; g) substantially supporting to achieve the object of activity of the EGTC; and finally having a different legal regime, with special conditions for private actors.

f) Territorial Cohesion

EGTC is the EU main legal instrument for territorial cohesion and embodies a step towards multilevel governance. It may facilitate cross-border cooperation and unify decision makers from different levels and regions together in one legal entity.

With regard to macro-regions EGTC may help to retrieve a more solid structure. It comprises the possibility of structuring cooperation and capable to include many actors in a permanent structure. On the other hand macro-regions embrace large areas and consist of complex structures; therefore EGTCs managing them may get too extensive in order to work well.

The process for creating an EGTC risks being a rather long one. The field of activities covered by Regulation (EC) No. 1082/2006 is very large and offers a complex number of different types of EGTCs. Therefore a cost-benefit analysis should be conducted. The setting of an EGTC might be easier where a long tradition of trust and cooperation is visible and a formal structure – such as a Euroregion or Euregio – is in place. Without a clear mission and objective the implementation of an EGTC should not be started.