



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 12 September 2013**

**11944/13**

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**Interinstitutional File:  
2011/0272 (COD)**

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**FSTR            74  
FC              40  
REGIO        147  
SOC            570  
CADREFIN 179  
CODEC       1674**

**"I" ITEM NOTE**

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from:	The General Secretariat
to:	Permanent Representatives Committee
No. Cion prop.:	COM(2011) 610 final/2
No. prev. doc	15251/1/11 REGIO 87 CADREFIN 91 CODEC 1636
Subject:	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulation (EC) No 1082/2006 of the European Parliament and of the Council of 5 July 2006 on a European grouping of territorial cooperation (EGTC) as regards the clarification, simplification and improvement of the establishment and implementation of such groupings - Approval of the final compromise text

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1. The Commission submitted a Proposal<sup>1</sup> for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulation (EC) No 1082/2006 of the European Parliament and of the Council of 5 July 2006 on a European grouping of territorial cooperation (EGTC) as regards the clarification, simplification and improvement of the establishment and implementation of such groupings on 6 October 2011.
2. The European Commission submitted a revised proposal<sup>2</sup> on 14 March 2012.

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<sup>1</sup> doc. 15251/11 REGIO 87 CADREFIN 91 CODEC 1636

<sup>2</sup> doc. 15251/1/11 REV 1 REGIO 87 CADREFIN 91 CODEC 1636

3. On the basis of the Commission's revised proposal, the Council agreed on a general approach on 7 March 2013, as set out in ADD 4 REV 1 to doc. 5609/1/13 REV 1.
4. Following a number of Trilogues with the European Parliament and the Commission, the co-legislators reached a provisional agreement on the EGTC regulation towards the end of the Irish Presidency.
5. On 26 June 2013, the Permanent Representatives Committee examined and validated that provisional agreement as set out in the fourth column of ADD 4 to doc. 11375/13, which was corrected by ADD 4 REV 1 to doc 11375/13 and transferred into a consolidated draft amending legislative text in the Annex to the current doc 11944/13.
6. In addition to the purely corrective nature of ADD 4 REV 1 to doc 11375/13, the following technical modifications can be found in the Annex to current document:
  - a) new recital 36b) on exercise of delegation.
  - b) new footnote in Article 3 on the alignment of rules on application of the amending EGTC Regulation with regard to OCTs.
7. As a follow-up to this validation, it is suggested that the Permanent Representatives Committee:
  - authorises the Presidency to send a letter to the Chair of the Committee on Regional Development confirming that, should the European Parliament adopt its position at first reading, in accordance with Article 294 paragraph 3 of the Treaty, in the form set out in the compromise package contained in the Annex (subject to revision by the legal linguists of both institutions), the Council would, in accordance with Article 294, paragraph 4 of the Treaty, approve the European Parliament's position and the act shall be adopted in the wording which corresponds to the European Parliament's position.

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

amending Regulation (EC) No 1082/2006 of the European Parliament and of the Council of 5 July 2006 on a European grouping of territorial cooperation (EGTC) as regards the clarification, simplification and improvement of the establishment and implementation of such groupings

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular the third subparagraph of Article 175 thereof,

Having regard to the proposal of the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the Opinion of the European Economic and Social Committee<sup>3</sup>,

Having regard to the Opinion of the Committee of the Regions<sup>4</sup>,

Acting in accordance with the ordinary legislative procedure,

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<sup>3</sup> OJ C , , p. .

<sup>4</sup> OJ C , , p. .

Whereas:

- (1) In accordance with Article 17 of Regulation (EC) No 1082/2006 of the European Parliament and of the Council of 5 July 2006 on a European grouping of territorial cooperation (EGTC) (hereinafter the 'EGTC Regulation'), the Commission adopted on 29 July 2011 the "Report from the Commission to the European Parliament and the Council - The application of the Regulation (EC) No 1082/2006 on a European Grouping of Territorial Cooperation (EGTC)".
- (2) In that Report, the Commission announced its intention to propose a limited number of modifications to the EGTC Regulation to facilitate the establishment and operation of EGTCs, as well as clarification of certain existing provisions. Obstacles to establishing new EGTCs should be removed while maintaining continuity in and facilitating the operation of existing ones, thus allowing more extensive use of EGTCs to contribute to better cooperation and policy coherence among public bodies without additional burden on national or European administrations.
- (3) The creation of an EGTC is a matter to be decided by its members and their national authorities, and is not automatically associated with any legal or financial advantages at the Union level.
- (4) The Treaty of Lisbon has added the territorial dimension to Cohesion Policy and replaced "Community" by the "Union". The new terminology should therefore be introduced into the EGTC Regulation.

- (4)(a) It should be noted that EGTCs may have the potential to enhance the promotion and achievement of the harmonious development of the European Union as a whole and the economic, social and territorial cohesion of its regions, in particular and to contribute to meeting the objectives of the Europe 2020 strategy. They may also contribute positively to reducing barriers to territorial cooperation between regions which suffer from severe and permanent natural or demographic handicaps including the specific situation of outermost regions and may be instrumental in strengthening the cooperation between third countries, overseas countries and territories and EU border regions, including through the use of external cooperation programmes of the EU.
- (5) Experience with EGTCs set up so far shows that the new legal instrument is also being used for cooperation in the implementation of other policies of the Union, including by implementing programmes or parts of programmes using EU financial support other than Cohesion Policy. The efficiency and effectiveness of EGTCs should be enhanced by broadening the nature of EGTCs, removing persisting barriers and facilitating the establishment and operations of EGTCs while maintaining the Member States' possibility to limit the actions that EGTC's may carry out without the EU financial support. It is recalled that under Regulation (EU) No 1083/2006 EGTC's have in each Member State the most extensive legal capacity, including also the possibility to conclude agreements with other EGTCs or other legal entities for the purposes of carrying out joint cooperation projects to, inter alia, provide for more efficient operation of macro-regional strategies.
- (6) EGTCs operate by nature in more than one Member State. Consequently, EGTC Regulation allows that the possibility for the convention and statutes to state the applicable law on certain issues. It should be clarified where such statements privilege - within the hierarchy of applicable law laid down in that Article - the national laws of the Member State where the EGTC has its registered office. At the same time, the provisions on applicable law should be extended to the acts and activities of an EGTC subject to legal scrutiny by Member States in each individual case.

- (7) Differing status of local and regional bodies in different Member States results in the fact that competences may be regional on one side of a border, but national on the other side, especially in smaller or centralised Member States. Consequently, it should be clarified that national authorities may become members of an EGTC alongside the Member State.
- (8) While Article 3(1)(d) of the EGTC Regulation allows that bodies established under private law may become members of an EGTC provided that they are considered as being 'public law bodies' in terms 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, EGTCs may be used in the future to manage jointly public services with a particular focus on services of general economic interest or infrastructure. Other private or public law actors may therefore also become members of an EGTC. Consequently, "public undertakings" within the meaning of Article 2(1)(b) of Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors, and, undertakings entrusted with the operation of services of general economic interest, in fields such as, education and training, of medical care, of social needs as regards health and long term care, childcare, access to and reintegration into the labour market, social housing and the care and social inclusion of vulnerable groups should be covered as well.

- (9) Regulation (EC) No 1082/2006 does not contain detailed rules concerning the participation of entities from third countries in an EGTC formed in accordance with this Regulation, i.e. between members from at least two Member States. Given the further alignment of the rules governing the cooperation between one or more Member States and one or more third countries - predominantly in the context of cross-border cooperation under the European Neighbourhood Instrument (ENI) and the Instrument for Pre-accession Assistance (IPA II), but also in the context of complementary financing from EDF, and of transnational cooperation under the European territorial cooperation goal where allocations from ENI and IPA II will be transferred to pool these allocations with allocations from the European Regional Development Fund (ERDF) under joint cooperation programmes - the participation of members from third countries neighbouring a Member State including its outermost regions in EGTCs set up between at least two Member States should be explicitly provided for. This should be possible where the legislation of a third country or agreements between at least one participating Member State and a third country so allows.
- (10) In order to strengthen Union's economic, social and territorial cohesion and in this respect to reinforce in particular the effectiveness of territorial cooperation, including one or more of cross-border, transnational and interregional cooperation between members of an EGTC, the participation of third countries neighbouring a Member State (including its outermost regions) should be allowed in an EGTC. Operations under European territorial cooperation programmes, where co-financed by the EU, should therefore, continue to pursue cohesion policy objectives, even if they are implemented, partly or in their entirety, outside the territory of the Union, and, thus, the activities of an EGTC are carried out at least to some extent outside the Union territory. In this context and where relevant the contribution by the activities of an EGTC having also members from third countries neighbouring at least one Member State (including its outermost regions) to the objectives of EU external actions' policies (eg. development cooperation or economic, financial and technical cooperation objectives) remain merely incidental, as the centre of gravity of subject cooperation programmes and consequently the activities of an EGTC (even with the participation of third countries neighbouring at least one Member State (including outermost regions) should focus primarily on EU cohesion policy objectives.

Consequently, the possible development cooperation or economic, financial and technical cooperation objectives between only one Member State, (including its outermost regions), and one or more third countries are only ancillary to the cohesion policy-based territorial cooperation objectives between Member States (including outermost regions). Therefore, the third subparagraph of Article 175 TFEU is sufficient legal basis for the adoption of the Regulation.

- (12) [...] Following the authorization for participation of national, regional, sub-regional and local authorities and organizations, as well as, where appropriate, other public bodies or institutions (including public service providers) from an overseas country or territory ("OCT") in an EGTC, based on Article [...] of Council Decision No. (EU)../2013 on the association of OCT with the EU ("Overseas Association Decision") and taking into account the intention that for the 2014 to 2020 programming period a special additional financial allocation will reinforce the cooperation of the outermost regions of the Union with neighbouring third countries and some of the neighbouring OCTs as listed in Annex II to the Treaty the legal instrument of EGTC should be also opened to members from OCTs. For the sake of legal certainty and transparency special approval procedures for the accession of members from an OCT to an EGTC should be established including in this regard, where necessary, special rules on applicable law to the concerned EGTC with members also from an OCT.
- (13) The EGTC Regulation distinguishes between the convention laying down the constitutive elements of the future EGTC and the statutes setting out the implementation elements. However, the statutes have to contain all the provisions of the convention. It should be clarified that the convention and the statutes are distinct documents and - although both shall be sent to Member States - the approval procedure should be limited to the convention. In addition, some elements presently covered by the statutes should be covered by the convention instead.



- (14) Experience from the setting up of EGTCs shows that the three months period for approval by a Member State has rarely been respected. The period should therefore be extended to six months. On the other hand, in order to create legal certainty after that period, the convention should be deemed to be approved by tacit agreement, where applicable, in accordance with the national law of the Member States concerned (including their respective constitutional requirements). However, the Member State where the proposed registered office of the EGTC will be located should have to formally approve the convention. While Member States may apply national rules on the procedure for such approval or may create specific rules in the framework of the national rules implementing the EGTC Regulation, derogations to the provision concerning tacit agreement after the period of six months should be ruled out except as provided for in this Regulation.
- (15) It should be clarified that Member States should approve the convention unless it considers the participation of a prospective member is not in conformity with the EGTC Regulation, with other provisions of Union law concerning the EGTC's activities as laid down in the draft convention or with the national substantive law relating to the powers and competences of the prospective member; it considers that participation is not justified for reasons of public interest or public policy of that Member State, or it considers that the statutes are not consistent with the convention, while excluding from the scope of the scrutiny any national law requiring other or stricter rules and procedures than those foreseen by the EGTC Regulation.

(16) As the EGTC Regulation cannot apply in third countries, it should be specified that the Member State where the proposed EGTC's registered office will be located should when approving the participation of prospective members established under their law, satisfy itself, in consultation with the other Member States concerned (being those Member States under whose laws prospective members have been formed), that the third countries have applied equivalent conditions and procedures to those in the EGTC Regulation or in accordance with international bilateral or multilateral agreements concluded between Member States of the Council of Europe, whether or not they are also Member States of the Union, based on the Madrid Outline Convention and the additional Protocols adopted thereupon. It should also be specified that in the case of the involvement of several Member States and one or more third countries, it should be sufficient that such an agreement has been concluded between the respective third country and one participating Member State.

(16bis) The procedures for approval of participation of prospective members from OCTs should, given links between OCTs and Member States of the Union, involve those Member States. In accordance with the specific governance relationship between the Member State and the OCT, the Member State should either approve the participation of the prospective member or provide written confirmation to the Member State where the registered office is located that the competent authorities in the OCT have approved the prospective member's participation in accordance with equivalent conditions and procedures to those laid down in this Regulation. The same procedure should apply in the case of a prospective member from an OCT that wishes to join an existing EGTC.

- (17) In order to encourage the accession of additional members to an existing EGTC, the procedure to amend conventions in such cases should be simplified. Consequently, such amendments should, in the case of a new member from a Member State that has already approved the convention, not be notified to all participating Member States, but only to the Member State under whose national law the new prospective member is established and the Member State where the EGTC's registered office is located. The subsequent amendment of the convention should be notified to all Member States concerned. However, this simplification should not apply in case of a new prospective member from a Member State that has not already approved the convention or from a third country or overseas territory in order to enable all participating Member States to check whether such accession is in line with its public interest or public policy.
- (18) As the statutes will not contain all the provisions of the convention, both convention and statutes should be registered and/or published. In addition, for reasons of transparency, a notice on the decision setting-up an EGTC should be published in the C series of the Official Journal of the European Union. For reasons of coherence, that notice should be established in accordance with a common template.
- (19) The purpose of an EGTC should be extended to cover the facilitating and promotion of territorial cooperation in general, including strategic planning and the management of regional and local concerns in line with Cohesion and other Union policies, thus contributing to the Europe 2020 strategy or to the implementation of macro-regional strategies. An EGTC should therefore be able to implement operations with financial support other than that provided by the Union's cohesion policy. In addition, it should be clarified that a given competence needed for the efficient implementation of an EGTC should be represented by every member in each of the Member States represented unless the Member State or third country approves participation where the member is not competent for all the tasks specified in the convention.

- (20) In this context, it should be confirmed that this instrument is neither intended to circumvent the framework provided by the Council of Europe acquis offering different opportunities and frameworks within which regional and local authorities can cooperate across borders including the recent Euroregional Co-operation Groupings , nor to provide a set of specific common rules which would uniformly govern all such arrangements throughout the Union.
- (21) Both the specific tasks of an EGTC and the possibility of Member States to limit the actions that EGTCs may carry out without a financial support from the Union should be aligned with the provisions governing the Structural Funds during the period 2014-2020.
- (22) While it is laid down that the tasks do not concern, among others, 'regulatory powers', which may have different legal consequences in different Member States, it should nevertheless be specified that an EGTC's assembly may, if the EGTC Convention specifically so provides, and, in compliance with national and Union law, define the terms and conditions of the use of an item of infrastructure the EGTC is managing, or the terms and conditions according to which a service of general economic interest can be provided including the tariffs and fees to be paid by the users.
- (23) As a consequence of the opening up of EGTCs to members from third countries or overseas territories, it should be specified that the convention should contain arrangements for their involvement.

- (24) It should be specified that the convention should not only repeat a reference to the applicable law in general as already laid down in Article 2, but should list the [...] Union or national rules applicable to the EGTC as a legal body or to its activities. In addition, it should be specified that such national legislation or rules may be those of the Member State where statutory organs exercise their powers, especially where the staff working under the responsibility of the director is located in a Member State other than the Member State where its office is registered, or the applicable Union and national law directly relevant to the EGTC activities carried out under the tasks specified in the convention, including where it is managing public services of general interest or infrastructures.”
- (25) This Regulation should not cover problems linked to cross-border procurement encountered by EGTCs.
- (26) Given their importance, it should be clarified that the convention, not the statutes, should indicate the rules applicable to the EGTC’s staff as well as the principles governing the arrangements concerning personnel management and recruitment procedures. [...]. It should be possible to provide that different options as the choice of rules may be laid down in the convention. The specific arrangements concerning personnel management and recruitment procedures should be addressed in the statutes.
- (27) Member States should further exploit the possibilities foreseen under Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems to provide by common agreement for exceptions to the determination of the legislation applicable according to that Regulation in the interest of certain persons or categories of persons and to consider the staff of EGTCs as being such a category of persons.

- (28) Given their importance, it should be clarified that the convention, not the statutes, should cover the arrangements for members' liability in case of an EGTC with limited liability.
- (29) The different arrangements referring to the control of management of public funds on one hand and of the audit of the EGTC's accounts on the other hand should be clarified.
- (30) It should be specified that where an EGTC has as its exclusive objective the management of a cooperation programme or part thereof supported by the ERDF, or where an EGTC concerns interregional cooperation or networks, information concerning the territory in which the EGTC may execute its task is not required. In the former case, the territory will be defined (and amended) in the relevant cooperation programme. In the latter case, while in most cases concerning immaterial activities, the requirement for such information would jeopardize the accession of new members to interregional cooperation or networks.
- (31) EGTCs whose members have limited liability should be more clearly distinguished from those whose members have unlimited liability. In addition, in order to enable EGTCs whose members have limited liability to implement activities that might generate debts, Member States should be allowed to require that such EGTCs take appropriate insurance or that they be subject to an appropriate financial guarantee to cover the risks specific to the activities thereof.

- (32) It should be clarified that Member States inform the Commission about any provisions adopted to implement the EGTC Regulation and to submit these provisions as well as any amendments thereof. In order to improve the information and coordination between the Commission, the Member States and the Committee of the Regions, it should be specified that the Commission will transmit these provisions to the Member States and to the Committee of the Regions. That Committee has set up an EGTC platform allowing all the stakeholders to exchange their experiences and good practices and to improve communication on EGTC opportunities and challenges, facilitating the exchange of experiences on the establishment of EGTCs at territorial level and sharing knowledge of best practices on territorial cooperation.
- (33) A new deadline for the next report should be fixed. In accordance with the Commission's move towards more evidence-based policy-making, this report should address the main evaluation questions including effectiveness, efficiency, European added value, relevance and sustainability. Effectiveness is understood as also covering the attempts inside the different Commission services and between the Commission and other bodies such as the European External Action Service to disseminate the knowledge about the EGTC instrument. It should also be specified that taking account of the first subparagraph of Article 307 of the Treaty this report should also be forwarded to the Committee of the Regions.
- (34) It should be clarified that existing EGTCs may not adapt their convention and statutes to amendments to the EGTC Regulation.
- (35) It should also be specified under which set of rules those EGTCs for which an approval procedure has already been started before the application of this Regulation should be approved.

- (36) In order to adapt existing national rules to implement this Regulation before programmes under the European territorial cooperation goal have to be submitted to the Commission, the starting date of this Regulation's application should be six months after the date of its entry into force. When adapting their existing national rules Member States should ensure that competent authorities responsible for approval of EGTCs are determined and that, in accordance with their legal and administrative arrangements, these should be the same bodies responsible for receipt of notifications in accordance with Article 4 of this regulation.
- (36a) In order to consider the effectiveness, efficiency, relevance, European added value and scope for further simplification of this Regulation, the Commission should prepare a report on the application of this regulation for submission to the European Parliament, the Council and the Committee of the Regions not later than 1 August 2018. This report should be prepared on the basis of appropriate consultation, including at expert level.
- (36b) For the purpose of laying down a list of indicators for use in the evaluation and preparation of the report of the application of this Regulation, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.



- (37) Since the objective of this Regulation, namely the improvement of the EGTC legal instrument, cannot be sufficiently achieved by the Member States and can therefore be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective, recourse to an EGTC being optional, in accordance with the constitutional system of each Member State,

HAVE ADOPTED THIS REGULATION:

*Article 1*

Regulation (EC) No 1082/2006 is amended as follows:

- (1) Article 1 is amended as follows:

- (a) Paragraphs 1 and 2 are replaced by the following:

"1. A European grouping of territorial cooperation, hereinafter referred to as "EGTC", may be established on Union 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 in particular territorial cooperation, including one or more of cross-border, transnational and interregional cooperation, between its members as set out in Article 3(1), with the aim of strengthening Union economic, social and territorial cohesion."

(b) The following paragraph is added:

"5. The registered office of an EGTC shall be located in a Member State under whose law at least one of the members is established."

(2) In Article 2, paragraph 1 is replaced by the following:

"1. [...] The acts of the statutory organs of an EGTC [...] shall be governed by the following:

(a) this Regulation [...];

(b) the convention referred to in Article 8, when it is expressly authorised by this Regulation; and,

(c) in the case of matters not, or only partly, regulated by this Regulation, the national law of the Member State where the [...] registered office of the EGTC is located."

An EGTC shall be considered to be an entity of the Member State where it has its registered office where it is necessary to [...] determine the applicable law under Union or private international law.

1a. Activities of the EGTC for carrying out tasks referred to in Article 7(2) and (3) inside the Union shall be governed by the Union law and the national law specified by the convention referred to in Article 8.

The activities co-financed from the Union budget shall comply with the requirements set out in applicable Union and national law relating to its application.

(3) Article 3 is amended as follows:

(a) The first subparagraph of paragraph 1 is replaced by the following:

"1. The following entities may become members of an EGTC:

- (a) Member States or authorities at national level;
- (b) regional authorities;
- (c) local authorities;
- (d) public undertakings within the meaning of Article 2(1)(b) of Directive 2004/17/EC of the European Parliament and of the Council or bodies governed by public law within the meaning of Article 1(9) of Directive 2004/18/EC of the European Parliament and of the Council ;
- (e) national, regional or local authorities or bodies or public undertakings equivalent to those referred to under point (d) from third countries [...], subject to the conditions laid down in Article 3a. "
- (ea) undertakings entrusted with operations of services of general economic interest in compliance with applicable national or Union law;

(b) Paragraph 2 is replaced by the following:

"2. An EGTC shall be made up of members drawn from the territory of at least two Member States, except as provided for in Article 3a, paragraphs (2) and (5)."

(4) The following Article 3a is added:

"Article 3a

Accession of members from third countries or overseas countries or territories (OCTs)

1. In accordance with Article 4(3a), an EGTC may be made up of members drawn from the territory of at least two Member States and of one or more third countries [...] neighbouring at least one of the Member States including its outermost regions where those Member States and third countries [...] jointly carry out territorial cooperation actions or implement programmes supported by the Union.

For the purposes of this Regulation, a third country or an OCT is considered as neighbouring a Member State including its outermost regions where the third country or an OCT and the Member States share a common land border or where both the third country or and OCT and a Member State are eligible under a joint maritime cross-border or transnational programme under ETC or under another cross-border, sea-crossing or sea-basin cooperation programme, including where separated by international waters.

2. An EGTC may be made up of members drawn from the territory of only one Member State and of one or more third countries [...] neighbouring the Member State including its outermost regions, where that Member State considers such an EGTC consistent with the scope of its territorial cooperation in the context of cross-border or transnational cooperation or bilateral relations with the third countries concerned [...]

3. For the application of paragraphs (1) and (2) of this Article, third countries neighbouring a Member State including its outermost regions include maritime borders between the countries concerned.

4. In accordance with Article 4a and subject to the conditions set out in paragraphs (1), an EGTC may also be made up of members drawn from one or more Member States including its outermost regions and one or more OCT, with or without members from one or more third countries.

5. In accordance with Article 4a and subject to the conditions set out in paragraph (2), an EGTC may also be made up of members drawn from only one Member State including its outermost regions and of one or more OCT, with or without members from one or more third countries.

6. An EGTC may not be set up only between members from a Member State and one or more OCT linked to that same Member State. "

(5) Article 4 is amended as follows:

(a) Paragraph 3 is replaced by the following:

"3. Following notification under paragraph 2 by a prospective member, the Member State which has received the notification shall, taking into account its constitutional structure, approve [...] the prospective member's participation in the EGTC and the convention, unless:

(a) it considers that such participation or the convention is not in conformity with:

- (i) this Regulation;
- (ii) other Union law concerning the acts and activities of the EGTC; or
- (iii) national law relating to the powers and competences of the prospective member;

(b) it considers that such participation is not justified for reasons of public interest or of public policy of that Member State; or

(c) it considers that the statutes are not consistent with the convention.

In case of non-approval, the Member State shall give a statement of its reasons for withholding approval and shall, where appropriate, suggest the necessary amendments to the convention [...].

The Member State shall reach its decision within a deadline of six months from the date of receipt of a notification in accordance with paragraph 2. If the Member State which has received the notification, does not raise any objection within the time limit laid down, the convention shall be deemed to be approved. However, the Member State where the proposed registered office of the EGTC will be located shall formally approve the convention before the EGTC can be established.

Any request for additional information from the Member State shall interrupt the time limit. The period of interruption shall start on the day following the date on which the Member State has sent its observations to the prospective member and shall last until the prospective member has responded to the observations.

However, an interruption of the time limit shall not occur as long as the prospective member has submitted a reply to the observations by the Member State within ten working days following the start of the period of interruption.

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

(b) The following paragraph 3a is inserted:

"3a. In the case of an EGTC with prospective members from third countries [...] the Member State where the proposed registered office of the EGTC will be located shall [...] , in consultation with the other Member States concerned, satisfy itself that the conditions laid down in Article 3a are fulfilled and that the third country [...] has approved the prospective member's participation in accordance with:

- (i) equivalent conditions and procedures to those laid down in this Regulation; or
- (ii) an agreement concluded between at least one Member State under whose law a prospective member is established and such third country [...] [...]. "

(c) Paragraphs 5 and 6 are replaced by the following:

"5. The members shall agree on the convention referred to in Article 8 ensuring consistency with the approval [...] in accordance with paragraph 3 of this Article.

6. Any amendment to the convention or to the statutes shall be notified by the EGTC to the Member States under whose law its members are established. Any amendment to the convention, except solely in the cases of accession of a new member covered by paragraph 7 (a), shall be approved by those Member States according to the procedure set out in this Article.

7. The following provisions shall apply in the case of accession of new members to an existing EGTC:

- (a) In case of accession of a new member from a Member State that has already approved the convention, such participation shall only be approved by the Member State under whose laws the new member is established in accordance with the procedure set out in paragraph 3 and notified to the Member State where the EGTC has its registered office.
  - (b) In case of the accession of a new member from a Member State that has not already approved the convention, the procedure set out in paragraph 6 shall apply.
  - (c) in the case of accession of a new member from a third country to an existing EGTC, such accession shall be subject of examination by the Member State where the registered office of the EGTC is located in accordance with the procedure set out in paragraph 3a."
- (5a) A new Article 4a is inserted as follows:

*"Article 4a*

Participation of members from an OCT

In the case of an EGTC with a prospective member from an OCT, the Member State to which the OCT is linked shall satisfy itself that the conditions of Article 3a are fulfilled and, taking into account its relationship with the OCT, either:



- (a) approve the prospective member's participation in line with Article 4(3); or
  - (b) confirm in writing to the Member State where the proposed registered office of the EGTC will be located that the competent authorities in the OCT have approved the prospective member's participation in accordance with equivalent conditions and procedures to those laid down in this Regulation."
- (6) Article 5 is replaced by the following:

*"Article 5*

Acquisition of legal personality and publication in the Official Journal

"1. The convention and the statutes and any subsequent amendments thereto shall be registered or published, or both, according to the applicable national law in the Member State where the EGTC concerned has its registered office. The EGTC shall acquire legal personality on the day of registration or publication in the Member State where the EGTC concerned has its registered office, whichever occurs first. The members shall inform the Member States concerned and the Committee of the Regions of the registration or publication of the convention."

2. The EGTC shall ensure that, within ten working days from the registration or publication of the convention, a request is sent to the Committee of the Regions following the template set out in the Annex to this Regulation. The Committee of the Regions shall then transfer this request to the Publications Office of the European Union for publication of a notice in the C series of the Official Journal of the European Union announcing the establishment of the EGTC, with the details set out in the Annex to this Regulation."

(7) In Article 6, paragraph 4 is replaced by the following:

"4. Notwithstanding paragraphs 1, 2 and 3, where the tasks of an EGTC mentioned under Article 7(3) cover actions which are co-financed by the Union, the relevant legislation concerning the control of those funds shall apply. "

(8) Article 7 is amended as follows:

(a) Paragraphs 2 and 3 are replaced by the following:

2. An EGTC shall act within the confines of the tasks given to it, which shall be the facilitation and promotion of territorial cooperation to strengthen Union economic, social and territorial cohesion, overcoming internal market barriers, and be determined by its members so that they fall within the competence [...] of every member, unless the Member State or third country approves the participation of a member formed under its national law even where that member is not competent for all the tasks specified in the convention.

3. An EGTC may carry out specific actions of territorial cooperation between its members in pursuit of the objective referred to in Article 1(2), with or without a financial support from the Union.

Primarily, the tasks of an EGTC may concern the implementation of cooperation programmes or parts thereof or of operations supported by the Union through the European Regional Development Fund, the European Social Fund and/or the Cohesion Fund.

Member States may limit the tasks that EGTCs may carry out without a financial support from the Union. However, without prejudice to Article 13, Member States shall not exclude those tasks concerning the investment priorities referred to in Article 6 of Regulation No ... [ETC]. "

(b) In paragraph 4, the following sub-paragraph is added:

"However, in compliance with applicable national or Union law, the assembly of an EGTC referred to in Article 10(1)(a) of an EGTC may define the terms and conditions of the use of an item of infrastructure the EGTC is managing, or the terms and conditions according to which a service of general economic interest is provided, including the tariffs and fees to be paid by the users."

(9) In Article 8, paragraph 2 is replaced by the following:

"2. The convention shall specify:

- (a) the name of the EGTC and its registered office;
- (b) the extent of the territory in which the EGTC may execute its tasks;
- (c) the objective and the tasks of the EGTC;
- (d) the duration of the EGTC and the conditions for its dissolution;
- (e) the list of the EGTC's members;
- (ebis) the list of EGTCs organs and their respective competences;
- (f) the applicable Union law and national law of the Member State where the EGTC has its registered office for the purposes of interpretation and enforcement of the convention;
- (fbis) the applicable Union and national law of the Member State(s) where the statutory organs of the EGTC act;

- (g) the arrangement for the involvement of members from third countries or in OCTs if appropriate including the identification of applicable law where an EGTC carries out tasks in third countries or in OCTs;
  - (h) "the applicable Union and national law [...]directly relevant to the EGTC activities carried out under the tasks specified in the convention;"
  - (i) the rules applicable to the EGTC's staff as well as the principles governing the arrangements concerning personnel management and recruitment procedures;
  - (j) [...] the arrangements for liability of the EGTC and its members in accordance with Article 12;
  - (k) the appropriate arrangements for mutual recognition, including for financial control of the management of public funds; and
  - (l) the procedures for adoption of the statutes and amendment of the convention, including compliance with the obligations set out in Articles 4 and 5.
3. [...]Where the tasks of an EGTC concern only the management of a cooperation programme or part thereof under Regulation No ... [ETC], or where an EGTC concerns interregional cooperation or networks, information under paragraph 2, point (b) is not required."

(10) Article 9 [...] is replaced by the following:

1. The statutes of an EGTC shall be adopted on the basis of and in accordance with the convention by its members acting unanimously.
2. The statutes shall contain, as a minimum, the following:
  - (a) the operating provisions of the EGTC's organs and their competences, as well as the number of representatives of the members in the relevant organs;
  - (b) the decision-making procedures of the EGTC;
  - (c) the working language or languages;
  - (d) the arrangements for its functioning;
  - (e) the [...] procedures concerning personnel management and recruitment [...];
  - (f) the arrangements for members' financial contributions;
  - (g) the applicable accounting and budgetary rules [...]of the members of the EGTC [...];
  - (h) the designation of the independent external auditor of the accounts of the EGTC; and
  - (i) [...]
  - (i) the procedures for amending the statutes, including compliance with the obligations set out in Articles 4 and 5."

(11) In Article 11, paragraph 2 is replaced by the following:

"2. The preparation of its accounts including where required the accompanying annual report and the auditing and publication of those accounts, shall be governed by the law of the Member State where the EGTC has its registered office."

(12) Article 12 is amended as follows:

(a) In paragraph 1 the following subparagraph is added:

"An EGTC shall be liable for all its debts."

(b) Paragraph 2 is replaced by the following:

"2. Without prejudice to paragraph 3, to the extent that the assets of an EGTC are insufficient to meet its liabilities, its members shall be liable for the debts of the EGTC of whatever nature, each member's share being fixed in proportion to its financial contribution. The arrangements for financial contributions shall be fixed in the statutes.

The members may provide in the statutes that they will be liable, after they have ceased to be members of an EGTC, for obligations arising out of activities of the EGTC during their membership.

2a. If the liability of at least one member of an EGTC from a Member State is limited [...] as a result of the national law under which it is established, the other members may also limit their liability in the convention where the national law implementing this Regulation enables them to do so.

The name of an EGTC whose members have limited liability shall include the word "limited".

The requirements for the publicity of the convention, statutes and accounts of an EGTC whose members have limited liability shall be at least equal to that required for other legal entities with limited liability [...] under the laws of the Member State where that EGTC has its registered office.

In case of an EGTC whose members have limited liability, any Member State concerned may require that the EGTC shall take appropriate insurance or that it shall be subject to a guarantee provided by a bank or other financial institution established in a Member State or be covered by a facility provided as a guarantee by a public entity or by the Member State to cover the risks specific to the activities of the EGTC. "

(13) In Article 15(2), the first sub-paragraph is replaced by the following:

"2. Except where otherwise provided for in this Regulation, Union legislation on jurisdiction shall apply to disputes involving an EGTC. In any case which is not provided for in such Union legislation, the competent courts for the resolution of disputes shall be the courts of the Member State where the EGTC has its registered office."

(14) In Article 16, paragraph 1 is replaced by the following:

"1. Member States shall make such provisions as are appropriate to ensure the effective application of this Regulation, including the determination of the competent authorities responsible for the approval in accordance with their legal and administrative arrangements.

Where required under the terms of a Member State's national law, that Member State may establish a comprehensive list of the tasks which the members of an EGTC established under its laws already have, as far as territorial cooperation in the meaning of Article **1(2)** within that Member State is concerned.

The Member State shall inform the Commission of any provisions adopted under this Article and shall submit these provisions or amendments thereof. The Commission will then inform the other Member States and the Committee of the Regions by transmitting the provisions.

1a. The provisions referred to in paragraph (1) insofar as they concern a Member State to which an OCT is linked shall, taking into account its relationship with the OCT, also govern the effective application of this Regulation with regard to those OCTs neighbouring other Member States or outermost regions thereof. "

(15) Article 17 is replaced by the following:

"By 1 August 2018 the Commission shall forward to the European Parliament, the Council and the Committee of the Regions a [...] report on the application of this Regulation, evaluating, based on indicators, its effectiveness, efficiency, relevance, European added value and scope for simplification [...].

The Commission shall be empowered to adopt delegated acts, in accordance with Article 17a, laying down the list of indicators referred to in the first subparagraph. "

(16) The following Article 17a is added:

*"Article 17a*  
Exercise of the delegation

1. The powers to adopt delegated acts are conferred on the Commission subject to the conditions laid down in this Article.

2. The delegations of power referred to in Article 17 shall be conferred on the Commission for a period of 5 years from the date of entry into force of this Regulation.



3. The delegations of power referred to in Article 17 may be revoked at any time by the European Parliament or by the Council.

A decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

5. A delegated act adopted pursuant to Article 17 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of 3 months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by 3 months at the initiative of the European Parliament or the Council.

If, on expiry of that period, neither the European Parliament nor the Council has objected to the delegated act, it shall be published in the Official Journal of the European Union and shall enter into force at the date stated therein.

The delegated act may be published in the Official Journal of the European Union and enter into force before the expiry of that period if the European Parliament and the Council have both informed the Commission of their intention not to raise objections.

If the European Parliament or the Council objects to a delegated act, the act shall not enter into force. The institution that objects to the delegated act shall state the reasons for its objections."

## *Article 2*

### Transitional provision

1. EGTCs established before the entry into force of this Regulation are not obliged to align their convention and statutes with the provisions of this Regulation as amended.
2. EGTCs for which a procedure under Article 4 has been started before the date of the application of this Regulation and for which only the registration and/or publication under Article 5 is outstanding, shall be registered and/or published according to the provisions of Regulation (EC) No 1082/2006 before its amendment.
3. EGTCs for which a procedure under Article 4 was started more than six months before the date of the application of this Regulation shall be approved according to the provisions of Regulation (EC) No 1082/2006 before its amendment.
4. Other EGTCs than those under paragraphs 2 and 3 for which a procedure under Article 4 was started before the date of the application of this Regulation shall be approved according to the provisions of Regulation (EC) No 1082/2006 as amended by this Regulation.

*Article 3*  
Entry into force

This Regulation shall enter into force following its publication in the Official Journal of the European Union.

It shall apply<sup>5</sup> from

Member States shall submit the necessary amendments to the national provisions adopted in accordance with Article 16(1) of Regulation (EC) No 1082/2006 no later than [...].

*Article 4*

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

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<sup>5</sup> In relation to Recital (12) and depending on the concrete publication dates of the two interlinked legislative acts in question – the rules on application of the amending EGTC Regulation with regard to OCTs shall be aligned as follows: "*Article 1(4)-(5), Article 1 (9) and Article 1(14) of the Regulation, insofar as they relate to OCTs, shall, however, only apply from 1 January 2014*".

**Template of the information to be submitted under Article 5(2)**  
**ESTABLISHMENT OF A EUROPEAN GROUPING OF**  
**TERRITORIAL COOPERATION (EGTC)**

Regulation (EC) No 1082/2006 of the European Parliament and of the Council of 5 July 2006  
(OJ L 210, 31.7.2006, p. 219)

*The name of an EGTC whose members have limited liability shall include the word 'limited' (Article 12(2))*

*The asterisk\* denotes mandatory fields.*

**I.1) NAME, ADDRESS AND CONTACT POINT(S)**

<b>Registered name*:</b>		
<b>Registered office*:</b>		
Town*:	Postal code:	Country*:
<b>Contact point(s):</b>	Telephone:	
For the attention of:		
E-mail:	Fax:	
<b>Internet address(es) (if applicable)</b>		

**I.2) DURATION OF THE GROUPING\*:**

<b>Duration of the Grouping:</b>	
<input type="checkbox"/> indefinite period	
<input type="checkbox"/> until: <input type="text"/> / <input type="text"/> / <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> (dd/mm/yyyy)	
<b>Date of registration/publication :</b> <input type="text"/> / <input type="text"/> / <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> (dd/mm/yyyy)	

## II. OBJECTIVES\*

[illegible]

### III. ADDITIONAL DETAILS ON NAME OF THE GROUPING *(if applicable)*

**Name in** *(please, indicate an appropriate country version)*

BG	ES	CS	DA	DE	ET	EL	EN	FR	GA	IT	LV
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
LT	HU	MT	NL	PL	PT	RO	SK	SL	FI	SV	Other: _____
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**Full name** *(if applicable)*: \_\_\_\_\_

**Abbreviated name** *(if applicable)*: \_\_\_\_\_

----- *Section III is to be used as many times as needed* -----

#### IV. MEMBERS\*

IV. 1) Total number of members in the Grouping\*:

<b>IV.2) Member information*</b>		
<b>Official name*:</b>		
<b>Postal address:</b>		
Town:	Postal code:	Country*:
<b>Contact point(s):</b>	Telephone:	
For the attention of:		
E-mail:	Fax:	
<b>Internet address(es) (if applicable)</b>		
<p><b>Type of member*:</b></p> <p><input type="checkbox"/> Member State</p> <p><input type="checkbox"/> National authority</p> <p><input type="checkbox"/> Regional authority</p> <p><input type="checkbox"/> Local authority</p> <p><input type="checkbox"/> Body governed by public law</p> <p><input type="checkbox"/> Public undertaking</p> <p><input type="checkbox"/> Association of:</p> <ul style="list-style-type: none"> <li>• Member State(s)    Total:* <input type="text"/><input type="text"/></li> <li>• National authority(ies)    Total:* <input type="text"/><input type="text"/></li> <li>• Regional authority(s)    Total:* <input type="text"/><input type="text"/><input type="text"/><input type="text"/></li> <li>• Local authority(s)    Total:* <input type="text"/><input type="text"/><input type="text"/><input type="text"/></li> <li>• Body(s) governed by public law    Total:* <input type="text"/><input type="text"/><input type="text"/><input type="text"/></li> <li>• Public undertaking(s)    Total:* <input type="text"/><input type="text"/></li> </ul> <p><input type="checkbox"/> Third country or overseas territory</p>		

----- Section IV.2 is to be used as many times as needed-----

## V. Additional information (if applicable)

[illegible]**VI. DATE OF DISPATCH OF THIS NOTICE:**   /   /     (DD/MM/YYYY)

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