

HUNGARY

Act XCIX of 2007

on the European Grouping of Territorial Cooperation

In order to strengthen economic and social cohesion and to facilitate cross-border, transnational and interregional cooperation, the Parliament adopts the following act in line with the Community legislation:

Chapter 1

GENERAL PROVISIONS

Scope

Article 1

- (1) The rules set forth in Regulation (EC) No 1082/2006 of the European Parliament and of the Council of 5 July 2006 on a European grouping of territorial cooperation (hereinafter Regulation) and in this Act are applicable to the foundation, organisation, operation and termination of a European grouping of territorial cooperation established in Hungary (hereinafter referred to as grouping).
- (2) The rules of this Act are applicable in all proceedings aimed at the approval of a member under the laws of Hungary in a grouping established abroad.
- (3) For the purposes of Paragraph (1) of Article 3 of the Regulation, the organisations pursuant to Sections a) through j) of Paragraph (1) of Article 22 of Act CXXIX of 2003 on Public procurements (hereinafter referred to as the Public Procurement Act) are to be construed in terms of Hungary (members under the laws of Hungary). A partnership of local governments pursuant to Section d) of Paragraph (1) of Article 22 of the Public Procurement Act may participate in a grouping if it has legal entity.

Activity

Article 2

- (1) A grouping may not be established with the primary aim of pursuing business activities and may not perform public authority activities.
- (2) Participation in a grouping by a local government's
 - a) budgetary organisation is subject to a non-transferable consent by the council of representatives of the local government ,
 - b) decision by its council of representatives may not be transferred upon a partnership with a legal entity.
- (3) The liability of a local government, a local government's partnership with a legal entity and a local government's budgetary organisation may not exceed the extent of its material contribution (limited liability)

Chapter 2

ESTABLISHMENT OF A GROUPING

Establishment

Article 3

The name of the grouping shall contain the description “European Grouping of Territorial Cooperation”. In the case pursuant to the fifth subparagraph of Paragraph (2) of Article 12 of the Regulation, the name of the grouping shall contain the description “European Grouping of Territorial Cooperation with Limited Liability”.

Approval

Article 4

- (1) The Metropolitan Court shall decide the approval pursuant to Paragraphs (3) and (6) of Article 4 of the Regulation within the scope of a non-litigation proceeding.
- (2) The application must state the data specified under Sections a) through c) of Paragraph (6). In addition to the stipulations of Paragraph (2) of Article 4 of the Regulation, the following shall be attached to the application for approval:
 - a) in case of members pursuant to Sections a) and b) of Paragraph (1) of Article 22 of the Public Procurement Act, save for the state, the consent of their superior organisation to their participation in the grouping under the proposed convention and statutes as members;
 - b) in case of members as budgetary organisations of national minority governments, of local governments and of local minority governments, the consent of the council of representatives (general assembly) to their participation in the grouping under the proposed convention and statutes as members;
 - c) in case of local governments, the extract of the minutes containing the decision of the council of representatives on participation in the grouping;
 - d) should they be produced in a language other than Hungarian, the translation of the proposed convention and statutes into Hungarian.
- (3) In case of an incomplete submission of the application for approval, the court shall invite the applicant in an order posted or delivered to applicant within fifteen (15) days reckoned from the receipt of the application to supplement the application. A sufficient deadline – of at least fifteen (15) days - shall be provided for supplementing the application, which may be extended by fifteen (15) days on a separate application. There is no place for an application of attestation due to a delayed or an incomplete fulfilment of supplementing the application.
- (4) The application for approval may be withdrawn until an order deciding the merits of the case is adopted. In this case, the court shall terminate the proceeding.
- (5) The court shall examine the application within thirty (30) days reckoned from the receipt of the application by the court, and if the application had not been submitted by the authorised entity, the participation of applicant in the grouping would violate the law, the deadline for supplementing the application has not been met or the application was supplemented in an incomplete or erroneous manner, the court shall reject the application in an order, otherwise shall grant the approval in an order. When calculating this deadline, the time elapsed from the posting (delivery) of the decree inviting to supplement the application until the supplementing of the application or the expiry of

the deadline provided for supplementing of the application in case the application is not submitted may not be taken into account.

- (6) The Metropolitan Court shall keep electronic records on the data of organisations holding approvals pursuant to Paragraph (1). The records shall include the data below:
 - a) name and seat of applicant;
 - b) name and seat of grouping;
 - c) objectives and responsibilities of the grouping;
 - d) date of the decree resolving the granting of approval entering into force.
- (7) Existing and deleted data of the records pursuant to Paragraph (6), and the proposed convention and statutes are public, anyone may access them and take notes on them.

Registration

Article 5

- (1) A grouping shall come to exist by registration by a court. The registration proceeding is a non-litigation proceeding under the sole jurisdiction of the Metropolitan Court. Legal representation is mandatory in the proceeding
- (2) Original copies of the convention and the statutes, their authentic Hungarian translation, if not produced in Hungarian, and the original copies and authentic Hungarian translations of the approvals pursuant to Paragraph (3) of Article 4 of the Regulation shall be attached to the application for registration.
- (3) The application must state the data specified under Sections a) through f) of Paragraph (2) of Article 6.
- (4) In case an incomplete application for registration of a grouping is submitted, the court shall invite the applicant in an order posted or delivered to applicant within fifteen (15) days reckoned from the receipt of the application to supplement the application by specifying an appropriate deadline and warning of the legal consequences of omission. A sufficient deadline – not exceeding thirty (30) days - shall be provided for supplementing the application, which may be extended by fifteen (15) days on a separate and justified application. There is no place for an application of attestation due to a delayed or an incomplete fulfilment of supplementing the application. If the deadline for supplementing the application has not been met or the application was supplemented in an incomplete or erroneous manner, the court shall reject the application in an order.
- (5) The court shall terminate the proceeding if the application for registration is withdrawn by applicant until an order deciding the merits of the case is adopted.
- (6) The court shall decide the registration or the rejection of the application within thirty (30) days reckoned from the receipt of the application by the court. When calculating this deadline, the time elapsed from the posting (delivery) of the decree inviting to supplement the application until the supplementing of the application or the expiry of the deadline provided for supplementing of the application in case the application is not submitted may not be taken into account.
- (7) Registration may not be refused if the convention and the statutes comply with the stipulations of the Regulation and this Act, and all members have approvals pursuant to Paragraph (3) of Article 4 of the Regulation.

- (8) Should the court fail to meet its decision-making obligation pursuant to Paragraph (6) within the deadline, the head of the court must take, within eight (8) days reckoned from the expiry of such deadline, the necessary measures to consider the application.
- (9) Should an application fail to be considered pursuant to the stipulations of Paragraph (8), registration shall come to exist on the ninth (9th) day following the expiry of the deadline specified under Paragraph (6) with contents as stated in the application.
- (10) The court shall also deliver its decision on registration to the public prosecutor.
- (11) The grouping may commence its activities upon the decision on registration becoming final.
- (12) Changes in data entered in the records must be notified to the court within thirty (30) days reckoned from the change, the stipulations of Paragraphs (1) through (11) are applicable to the notification and the entry of the change into the records *mutatis mutandis*.

Records

Article 6

- (1) The Metropolitan Court shall keep electronic records on the data of the grouping.
- (2) The records shall include the following data of the grouping:
 - a) name and seat of grouping;
 - b) names and seats of the members of the grouping;
 - c) objectives and responsibilities of the grouping;
 - d) duration of operation of the grouping;
 - e) name and place of residence of the director of the grouping, method of exercising the right of representation (independently or jointly);
 - f) date of convention and statutes;
 - g) date of registration of the grouping;
 - h) registration number of the grouping;
 - i) if the grouping is subjected to bankruptcy, liquidation, final settlement or debt settlement proceedings or termination pursuant to Article 14 of the Regulation, then reference to such fact and the date of commencement of such proceedings;
 - j) date of termination of the grouping.
- (3) Existing and deleted data of the records, and the convention and statutes are public, anyone may access them and take notes on them.

Chapter 3

FINANCIAL MANAGEMENT OF A GROUPING

Financial Management, Accounting

Article 7

- (1) The grouping shall manage its finances independently with a view to implementing the aim identified in the convention.
- (2) The grouping may perform business activities in line with the stipulations of its statutes, provided that it does not jeopardise the aim of the grouping.

Article 8

- (1) The reporting, book-keeping and accounting obligations of the grouping, as other organisation identified in a separate legislation qualifying as a legal entity are governed by the Accounting Act and legislation based on its authorisation.
- (2) The grouping shall publish its account in the Official Notice published as a supplement to the Hungarian Official Journal within one-hundred-and-fifty (150) days reckoned from the balance sheet turning date of the particular business year.

Chapter 4

LEGAL REMEDY, SUPERVISION AND CONTROL

Article 9

A member whose right or lawful interest is violated by a resolution adopted by the grouping or an organisational unit thereof may contest such resolution at the Metropolitan Court within a deadline of thirty (30) days reckoned from its adoption subject to a lapse of right. The litigation shall be governed by the general rules of Act III of 1952 on rules of civil proceedings (hereinafter referred to as the Act on the Rules of Civil Proceedings). The submission of a statement of claim has no suspensive force on the implementation of the resolution; the court, however, may suspend the implementation of the resolution.

Article 10

- (1) The public prosecutor shall exercise statutory supervision over the operation of the grouping under the rules applicable to the public prosecutor. In case the lawfulness of the operation of the grouping cannot be provided otherwise, the public prosecutor may turn to the Metropolitan Court.
- (2) Based on the legal action of the public prosecutor, the Metropolitan Court may
 - a) annul a resolution of the grouping or an organisational unit thereof in violation of the law, and may order the adoption of a new resolution, if required;
 - b) convene the general meeting of the grouping in order to restore the lawfulness of the operation.
- (3) In case the grouping fails to comply with the stipulations of the judgement and fails to restore the lawfulness of the operation within three (3) months reckoned from the judgement becoming final, the public prosecutor may file a case before the Metropolitan Court for the termination of the grouping.

Article 11

- (1) The competent authority for the purposes of Article 6 of the Regulation shall be the State Audit Office, unless otherwise provided for by the act or the government decree.

- (2) The State Audit Office is authorised to control the lawfulness of the financial management of the grouping.

Article 12

The State Audit Office may contact the competent authority of the Member State of establishment with a view to conducting controls in case a member under the laws of Hungary takes part in a grouping established abroad.

Article 13

If the State Audit Office detects any unlawful act by the grouping within the scope of its financial management, then requests restoration of the statutory condition. In case of a severe violation of the law or if the grouping fails to fulfil such request, the public prosecutor may file a case before the Metropolitan Court for the termination of the grouping upon a request from the President of the State Audit Office.

Chapter 5

TERMINATION OF THE GROUPING

Article 14

- (1) A grouping may terminate only without a legal successor.
- (2) In case a grouping terminates, save for a liquidation proceeding, a final settlement proceeding is appropriate.
- (3) A proceeding pursuant to Paragraph (2) shall be initiated if
 - a) the fixed term specified in the convention has elapsed or another condition of termination specified in the convention has occurred, including a decision by the grouping on termination without a legal successor;
 - b) the court ordering termination of the grouping pursuant to Article 14 of the Regulation;
 - c) the court ordering termination of the grouping in a litigation aimed at this.
- (4) The provisions of Chapter VIII of Act V of 2006 on company publicity, judicial corporate proceedings and final settlement (hereinafter referred to as the Company Publicity Act) are applicable to the conduct of a final settlement *mutatis mutandis*. In case of the final settlement of a grouping, the proceeding for entry of a change (deletion) pursuant to the Company Publicity Act shall refer to the notification pursuant to Paragraph (12) of Article 5 of this Act. The responsibilities of the registry court shall be performed by the Metropolitan Court and all publication obligations related to the proceeding shall be fulfilled in the Official Notice published as a supplement to the Hungarian Official Journal.
- (5) In case of the insolvency of a grouping, the provisions of Act XLIX of 1991 on bankruptcy and liquidation proceedings (hereinafter referred to as the Bankruptcy Act) are applicable.

Article 15

- (1) For the purposes of Article 13 of the Regulation, the organisation with authority to exercise official control over the particular activity is authorised to prohibit the activity of the grouping.

- (2) In case the conditions for approval pursuant to Article 4 cease to prevail, the Metropolitan Court shall order the withdrawal of the member under the laws of Hungary from the grouping in a non-litigation proceeding, *ex officio* or on request from the public prosecutor or the organisation granting consent pursuant to Sections a) and b) of Paragraph (2) of Article 4.
- (3) In case of a grouping registered by the Metropolitan Court, the membership relationship of a member will cease upon the court decision pursuant to Paragraph (2) becoming final.
- (4) In case the grouping was not registered by the Metropolitan Court, the court shall notify the organisation authorised to register by forwarding its decision pursuant to Paragraph (2) within fifteen (15) days reckoned from the decision becoming final.

Article 16

The Metropolitan Court shall order termination pursuant to Article 14 of the Regulation in a non-litigation proceeding. Prior to the ordering of termination, the court may set forth a deadline of three months at most for the grouping to take measures required to remedy the situation.

Article 17

The grouping shall terminate by deletion from the records.

Chapter 6

CLOSING PROVISIONS

Interpreting Provisions

Article 18

For the purposes of this Act:

local government shall refer to the municipality of a village, a town, a town of county rank, the capital, a metropolitan district or a county.

Article 19

- (1) The general rules of the Act on the Rules of Civil Proceedings shall be applicable in a proceeding regulated in Chapters II and V of this Act with the deviations arising from the specificities of a non-litigation proceeding.
- (2) There is no place for appeal in litigation and non-litigation proceedings regulated under this Act.

Entry into Effect

Article 20

This Act shall enter into effect on 1 August 2007.

Article 21

- (1) Simultaneously with this Act entering into effect, the first sentence of Section c) of Article 685 of Act IV of 1959 on the Civil Code shall be replaced by the following provision:

“c) *business organisation*: state company, other state business agency, cooperative, housing association, European cooperative, business company, European company limited by shares, association, European business association, European grouping of

territorial cooperation, public benefit company, company of certain legal entities, subsidiary company, water management association, forest holding association, executory office, and self-employed entrepreneur.”

- (2) Simultaneously with this Act entering into effect, the following Section i) shall be added to Paragraph (1) of Article 2 of Act CLVI of 1997 on Public benefit organisations:

“i) European grouping of territorial cooperation.”

- (3) Simultaneously with this Act entering into effect, Section a) of Paragraph (1) of Article 3 of the Bankruptcy Act shall be replaced by the following provision:

“c) *business organisation*: state company, trust, other state business agency, cooperative, housing association, European cooperative, business company, European company limited by shares, public benefit company, company of certain legal entities, subsidiary company, water management association (save for water utility association), forest holding association, voluntary mutual insurance fund, private pension fund, association, including European business association, European grouping of territorial cooperation, executory office, sports club and all legal entities and unincorporated business companies the main seat of participation is located within the territory of the European Union under Council Regulation 1346/2000/EC on insolvency proceedings.”

- (4) Simultaneously with this Act entering into effect, Section e) of Paragraph (1) of Article 57 of Act XCIII of 1990 on stamp duties shall be replaced by the following provision:

[Exempt from stamp duty in civil cases:]

“e) proceedings aimed at the registration of a foundation, public foundation, non-governmental organisation, public benefit company, public body, European grouping of territorial cooperation and an MRP organisation set up under Act LXIV of 1992 on Employees’ Shareholding Programme (MRP), and proceedings aimed at approval of participation in a European grouping of territorial cooperation;”

- (5) Simultaneously with this Act entering into effect, the following Section i) shall be added to Paragraph (2) of Article 2 of Act LXXXI of 1996 on Corporate tax and tax on dividends (hereinafter referred to as the Corporate Tax Act):

“i) European grouping of territorial cooperation.”

- (6) The following Paragraph (10) shall be added to Article 9 of the Corporate Tax Act:

“(10) A European grouping of territorial cooperation shall determine the taxable base by applying Paragraph (1) through (7) *mutatis mutandis*.

- (7) Simultaneously with this Act entering into effect, the following Section i) shall be added to Paragraph (2) of Article 2 of Act LXXXI of 1996 on Corporate tax and tax on dividends (hereinafter referred to as the Corporate Tax Act):

“F) Beneficiary activities performed by a European grouping of territorial cooperation.

For the purposes of this Act, the following shall not qualify as undertaking activities from the business activities of a European grouping of territorial cooperation aimed at obtaining or resulting in income and profit pursuant to Paragraph (1) of Article 1:

1. the activity in line with the aim identified in the statutes, including support and benefits received for this activity;
2. equivalent of and revenue from sale of intangible assets, tangible assets and inventories serving solely the aim identified in the statutes;

3. part of interests received from a loan institution or an issuer of a security on liquid cash and cash equivalents placed in deposits or securities, and of the yield from a security issued by the state that is represented by revenues from the activity in line with the aim identified in the statutes with reference to the total revenues, whereby the revenue must be taken into account without such interest or yield.”

Article 22

This Act resolves the provisions required for the implementation 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).

General Reasoning

The cross-border, transnational and interregional cooperation of regional and local authorities have encountered difficulties recently due to the lack of an appropriate legal framework or the obligation of applying diverging national legislation and rules of procedure. The harmonic development of the entire territory of the Community and the strengthened economic, social and territorial cohesion entail the strengthening of cross-border cooperation and the adoption of measures aimed at the improvement of implementation conditions with respect to every form of cooperation.

The combating of obstacles hindering territorial cooperation necessitated the introduction of community means of cooperation enabling the setting up of groupings of cooperation with legal entity within community territory, the so-called European grouping of territorial cooperation (EGTC).

Regulation (EC) No 1082/2006 of the European Parliament and of the Council of 5 July 2006 on a European grouping of territorial cooperation allows for the setting up of a so-called European grouping of territorial cooperation in every Member State as of 1 August 2007.

The setting up of a European grouping is optional, previous community means shall continue to operate. The grouping is featured in the Hungarian legal system as a not-for-profit business organisation within the special scope set up by the EU.

The European grouping is not only applicable in implementing cross-border, transnational and interregional cooperation financed from the European Regional Development Fund but also in the course of the administration of projects implemented in territorial cooperation through financial contributions by the Member States, initiated by their regional or local authorities. This latter demand has arisen on behalf of European municipalities and regions (e.g. euro regions) in recent years, which players have wished to find an appropriate legal framework for their cooperation for long.

The new institution is expected to offer specialist benefits in the course of managing territorial cooperation programmes supported by the European Regional Development Fund, considering that the implementation of current INTERREG Community Initiatives demonstrated that decision-making and implementation processes are often overtly complicated, slow and cumbersome, the administration of operative activities was overtly bureaucratic, the rigidity of the system multiplied the time of performing certain tasks due to the different legal regulations.

The Regulation lays down that accession to a grouping is voluntary, however, with a view to its form drafted as a regulation, Member States must ensure the criteria for participation in their respective national laws. Considering that a community regulation is a source of law with direct effect and direct applicability in all Member States, thus the national legislator only had the opportunity to fill framework rules drafted by the Regulation with content.

Thus, the proposal aims to set up national regulation concerning the establishment, operation, termination of and participation in a grouping. The European grouping is featured in the Hungarian legal system as a not-for-profit business organisation within the special scope set up by the EU. The proposal defines the provisions relating to the approval of participation in the European grouping, to the registration, financial management, inspection and termination of a grouping, the regulation of which follows obligatorily from the Regulation. The legislator aimed to set up the most flexible regulation in terms of establishment, registration and operation of a grouping.

The proposal delegates responsibilities related to the registration, operation and termination of groupings established in Hungary to the Metropolitan Court, and thus, the Metropolitan Court has exclusive jurisdiction over the granting of approvals of participation in a grouping. The Metropolitan Court shall conduct non-litigation proceeding in these cases by applying the rules of the Act on Rules of Civil Proceedings.

The public prosecutor is authorised to supervise the operation of a grouping while the State Audit Office is authorised to control the financial management of a grouping. Unless otherwise resolvable, the public prosecutor may turn to the court with a view to restoring the lawfulness of operation. Ultimately, the public prosecutor may initiate a case before the court to terminate the grouping ex officio pursuant to Article 12 or upon a request from the President of the State Audit Office

The question of legal disputes is resolved in Article 15 of the regulation; therefore, it calls for no regulation in the act. A European grouping is suable at the court according to its seat. In accordance with the Regulation, community legislation on jurisdiction are applicable in legal disputes affecting a grouping; if these did not contain requirements then the courts of the Member State according to the seat have jurisdiction.

The grouping (EGTC) is a new institution, a new form without relevant experiences yet entailing great opportunities with respect to the legally regulated management of EU and national programmes in the future.

Detailed Reasoning

to Article 1

The scope of this Act is applicable to European groupings established in Hungary and to the approval of a member under the laws of Hungary in a grouping established abroad.

The scope of entities, with one exception, is aligned with the scope of tenderers identified in Act CXXIX of 2003 on Public procurements (hereinafter referred to as the Public Procurement Act) considering that those enumerated in Sections a) through j) of Paragraph (1) of Article 22 of the Public Procurement Act comply with the scope identified in the Regulation. In accordance with Article 3 of the Regulation, potential members of an EGTC include the state, regional and local authorities, and public law organisations pursuant to the second subparagraph of Paragraph (9) of Article 1 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. This scope of entities in national laws is covered by Section a) through j) of Paragraph (1) of Article 22 of the Public Procurement Act.

to Article 2

In accordance with the Regulation, a European grouping may be set up through a Convention and Statutes executed by the members. Members must determine the objectives and responsibilities of the grouping in a convention on cooperation pursuant to the stipulations of Article 8 of the Regulation. Founders identify the method of operation of the grouping and organisations thereof in the statutes.

In terms of responsibilities, a European grouping may be set up for various activities:

- A. implements a programme and proceeds as a Managing Authority or an implementing body;
- B. implements a project and appears as a lead partner in case of projects financed from the a structural fund or within the framework of a territorial cooperation programme;
- C. manages a project solely from national funds without community financial support expected within the framework of cooperation between cross-border municipalities and regions (as a municipal project company).

A/1 The European grouping is the implementing body of the programme

The EGTC is set up as a programme management organisation since all agencies are merged in a single organisation, thus eliminating previous fragmentation and consequent slowness. At the same time, full joint implementation is realised, efficiency improves, the system becomes less expensive and conflicts within the incumbent system are eliminated.

A/2 The European grouping performs the responsibilities of the Managing Authority

In this case, the EGTC is set up as part of the management organisation, however, only to perform the responsibilities of the Managing Authority. Thus, a “truly” joint Managing Authority is set up, which is currently missing from almost every cross-border or transnational programme.

B. Execution of projects financed from the Structural Funds

The European grouping is a joint project management organisation and is given a role as a lead partner in project administration (and application). Accordingly, all agencies are merged in a single organisation, the previous fragmentation is eliminated and standalone projects executed across the border will be executed in a single structure under coordination. Full joint

project execution under EU rules on new territorial cooperation programmes is realised, efficiency is improved, the project becomes less expensive.

C. Cooperation of (cross-border) municipalities (regions, euroregions) within the framework of project companies solely from national funds

Municipal and other regional cooperation working in a less regulated manner across the border may become closer.

In these instances, it is possible in the long run that mainly cross-border municipalities set up a “project company” by using their own funds. This EGTC may construct roads, operate public institutions (e.g. hospital, nursery schools) or may provide public services (e.g. water supply).

It is a process that can be supported in the long run, that facilitates integration and efficient services and is worthy of support, which may be initiated not only by Hungarian but also by foreign partners.

Of course, an EGTC may fulfil several of the responsibilities enumerated above with respect to various programmes and projects, and may be organised for other purposes in line with the Regulation.

As a rule, the Regulation identifies an unlimited liability of members participating in the regulation and offers the opportunity subject to relevant member state rules for limiting such liability. Thus, regulation conforms to the fundamental principles and requirements identified in the Constitution and other acts (Act on local Governments, Public Finance Act) on the general financial liability of local governments in Hungary, whereby local governments in Hungary are allowed to take part in undertakings only up to the extent of their material contributions. This rule is stated in Paragraph (3) of Article 2 of the Proposal in terms of an EGTC. Thus, the liability of a local government, an association of a local government with legal entity and the budgetary organisation of a local government in a grouping may not exceed extent of its material contributions (limited liability).

In case of unlimited liability, it is a problem that the regulation aims to regulate two different kinds of activities uniformly. A European grouping could indeed operate both as a managing authority and as a project company. Operation as a managing authority poses no particular problem since it is regulated precisely at community and at member state levels, thus liability does not arise in the course of such operation. However, operation as a project company does cause problems. If a European grouping constructs roads, operates public institutions or provides public services, the number of possible liability cases increases extraordinarily. Member state regulation may be a solution in these cases. If member state regulation does not allow for legal entities operated with limited liability to construct roads for example, then a European grouping may perform such activities only if it operates with unlimited liability. The same goes for the requirement of a certain capital. Such activities, however, are typically performed by legal entities operating with limited member liability (typically limited liability companies and companies limited by shares); therefore, it does not seem reasonable to demand unlimited member liability in case of European grouping.

According to the Regulation, in case at least one member of the grouping participates with limited liability (e.g. a Hungarian municipal partner), then the other members of the convention may also limit their liabilities.

to Article 3

The name of the grouping shall contain the description “European Grouping of Territorial Cooperation”, while if liability is limited, pursuant to the fifth subparagraph of Paragraph (2) of Article 12 of the Regulation, the name of the grouping shall contain the description “European Grouping of Territorial Cooperation with Limited Liability”.

to Article 4

In accordance with the Regulation, each member must apply for approval of participation from the competent organisation of its own member state prior to registration of a grouping. The Metropolitan Court has exclusive jurisdiction over the approval of participation by members under the laws of Hungary. Thus, members under the laws of Hungary must submit a relevant application for approval from the Metropolitan Court. This calls for the filing of a Draft Convention and Statutes executed by the members with the court.

In case of central budgetary organisations, consent from their superior organisation, in case of municipal budgetary organisations, consent from the council of representatives or the general assembly shall also be applied for with respect to participation in the grouping.

Prior to obtaining the approval and the consent from the superior organisation, the prospective members execute the proposed convention and statutes, the mandatory content elements of which are laid down in the Regulation. These shall be attached to the application for approval, in a Hungarian translation if not produced in Hungarian. Considering that the proposed convention and statutes are not final and that the grouping is not registered on their basis, in order to incur the lowest costs possible in setting up an EGTC, a non-authentic Hungarian translation will suffice. If the working language set forth within a European grouping is not Hungarian, then in this procedural stage, non-authentic Hungarian translation will suffice. The court will grant approval within the scope of a non-litigation proceeding.

to Article 5

A grouping shall be registered under the laws of the member where it has its seat according to the deed of establishment. Accordingly, the place of central administration shall also be in this member state, at the seat identified in the statutes.

A European grouping may be registered if all members wishing to participate hold approvals from their respective states. The registration proceeding is a non-litigation proceeding, the Metropolitan Court has exclusive jurisdiction over registration.

The application for registration shall feature data of which the court keeps record; moreover, original copies of the convention and the statutes must be attached thereto, along with an authentic translation if not produced in Hungarian. In case approvals from the respective member states are not available in Hungarian, their authentic translation must also be attached.

There is an opportunity for supplementing the application in the judicial proceeding in case applicant failed to state the appropriate data in its application or attached the required documents incomplete. There is no place for an application of attestation due to inadequate fulfilment of supplementing the application. The court shall terminate the proceeding in case the application for registration is withdrawn. An application may be withdrawn until an order deciding the merits of the case is adopted.

The Metropolitan Court shall decide the registration or the rejection of the application within thirty (30) days, which period shall not include the duration of supplementing the application.

to Article 6

A European grouping is a legal entity as of the date of registration. The Metropolitan Court keeps separate records of registered groupings and main data thereof. These records are public, accessible by anyone, notes can be produced from them. The Metropolitan Court also keeps a record of the scope of organisations having indicated their intention of participating in a European grouping abroad to a court that has granted its approval. A change made to the convention or the statutes must be notified to the Metropolitan Court within thirty (30) days reckoned from its date.

The list of approving organisations in each Member state is available to the Metropolitan Court in order to confirm the authenticity of the approval documents of foreign members in the course of the registration proceeding.

The grouping shall forward its application for the publication of a notice in the Official Journal of the European Union to the Office for Official Publications of the European Communities within ten (10) days reckoned from registration. This application shall contain the data kept on record by the Metropolitan Court.

to Article 7

A European grouping, although set up mainly to execute programmes implemented in territorial cooperation and co-financed by the European Community, yet the conduct of undertaking activities is tolerated or sometimes necessitated. As an independent legal entity, a European grouping may have independent financial management. Similarly, to the rules on participation of governmental organisations in financial management organisations, municipalities may only be members of a European grouping only with limited liability, their liability may not exceed the extent of their material contribution committed. As a reason thereof, the European grouping needs to be incorporated into accounting and tax legislation.

to Article 8

In terms of its financial management and accounting, a European grouping is “other organisation qualifying as a legal entity as defined in separate legislation” pursuant to Subsection r) of Section 4) of Paragraph (1) of Article 3 of the Accounting Act. See the relevant detailed rules in Government Decree 224/2000 (XII.19.) on the specificities of reporting and book-keeping obligations of certain other organisations pursuant to the Accounting Act. Another supplementary rule is that the account of a European grouping must be published on its own web site or in the designated official journal with a view to the management of public money, if any, transparency and protection of partners and creditors.

to Article 9

A member may contest a resolution at the Metropolitan Court that violates a right or just interest of that member. The Metropolitan Court shall examine violation of the interests of the grouping and compliance with legislation.

to Article 10

The public prosecutor exercises statutory supervision over the grouping and may turn to the Metropolitan Court. In the course of such statutory supervision, the public prosecutor examines compliance of the operation of the organisations of the grouping with the stipulations of legislation, its statutes and other internal regulations.

The court may annul a resolution in violation of the law and may convene the general meeting of the grouping in order to restore operation. The grouping must restore statutory operation in

line with the stipulations of the judgement; the public prosecutor may initiate a case for termination in case of failure to do so.

to Article 11

The State Audit Office is authorised to control the financial management of a European grouping as a legal entity. The Government Control Office controls the utilisation of funds provided by the European Community in line with separate legislation. In case a grouping receives central budgetary funds in the course of its operation, the organisations authorised in separate legislation (State Audit Office, Government Control Office, organisation providing the support) are allowed to control the utilisation of such budgetary funds. Other audit organisations (Tax and Financial Audit Office, National Headquarters of the Customs Guard, etc.) control the operation and activities of European grouping in line with relevant legislation.

to Article 12

According to the Regulation, the authorities of the Member State according to the seat must take the necessary measures in order to allow the competent authorities of other member states concerned to conduct the control of the actions of a grouping performed in this member state and to exchange relevant information. In line with its previous practices, the State Audit Office ensures control in Hungary and may contact, pursuant to Article 11, the competent authority according to the place of establishment with a view to conducting controls.

to Article 13

If the grouping acts unlawfully within the scope of its financial management, the State Audit Office may request restoration of the statutory condition. To this end, the President of the State Audit Office may approach the public prosecutor, who may file a case before the Metropolitan Court for the termination of the grouping upon if the grouping fails to take measures or commits a severe violation of the law.

to Article 14

Members shall determine in the convention the instances in which the grouping is terminated beyond the stipulations of the Regulation (e.g. a member wishes to withdraw from the grouping). Termination may take place upon expiry of a set term, upon occurrence of a set condition or the grouping may decide to terminate without a legal successor. In this event, a final settlement proceeding is appropriate. The provisions of the Act on company publicity, judicial corporate proceedings and final settlement concerning final settlement are applicable to the conduct of a final settlement whereby the proceeding for registration of a change shall refer to the notification specified in the act and company will naturally refer to the grouping, while the responsibilities of the registry court shall be performed by the Metropolitan Court. The publication obligation shall be fulfilled in the Official Notice published as a supplement to the Hungarian Official Journal instead of the Company Journal. In addition to the above, a grouping may also be terminated in the instances set forth in the act, on the one hand, in line with the stipulations of Article 14 of the Regulation, and on the other hand, in the instance specified in the act (the public prosecutor brings a case before the Metropolitan Court for the termination of the grouping). A grouping may only terminate without a legal successor considering that in case of a possible legal succession, the liability either for the funds utilised or for the implementation of joint projects could not be traced in the course of utilisation of EU funds or any joint project implementation, operation of joint institutions, while accountability could be avoided.

to Article 15

The Regulation stipulates that a grouping must perform its activities with a view to rules on law and order, public security, public moral in the particular member state and may not infringe a public interest of the particular member state. In this context, the scope of organisations sanctioning any violation of the above has been determined. The organisation with authority to exercise official control over the particular activity is authorised to prohibit the activity, while the Metropolitan Court may order the withdrawal of a member from the grouping in case the conditions for approval are eliminated or violated.

to Article 16

If a grouping does not act in line with the aim or the responsibilities identified in the Regulation, it shall be terminated by the Metropolitan Court. According to the Regulation, the court may set a deadline for remedying the situation before termination; accordingly, the Metropolitan Court may decide at its discretion to grant a deadline of three months for the remedy.

to Article 17

The Metropolitan Court is entitled to the right of deletion in case of termination upon expiry of the timeframe set or the occurrence of a condition set, termination without a legal successor or liquidation, or if the grouping fails to attest within three months that it has eliminated the aggrieved situation, the remedy of which was requested by the court.

to Article 18

The notion of local government used in the act is defined among the interpreting provisions, which is explained as a collective term.

to Article 19

Act III of 1952 on the Rules of Civil Proceedings shall be applicable in proceedings pertaining to the establishment and termination of a grouping with the deviations arising from the specificities of a non-litigation proceeding.

to Article 20

In line with the stipulations of Article 18 of the Decree, the Act shall enter into effect on 1 August 2007.

to Article 21

The adoption of the Act shall necessitate the amendment of certain rules stipulated in other acts; amended legislation and legislative provisions are enumerated accordingly.

to Article 22

The legislator satisfies its law approximation obligation by drafting the act. The Draft contains the clause on law approximation.