

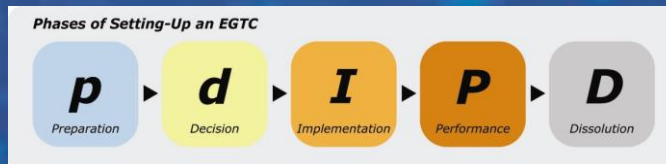
# FREQUENTLY ASKED QUESTIONS: THE EGTC

## EUROPEAN GROUPING OF TERRITORIAL COOPERATION

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## INTRODUCTION

This FAQ (Frequently Asked Questions) lists a series of questions raised in the preparation and during the first and second INTERACT Seminars on the EGTC, organised by INTERACT Point Vienna (November 2007, April 2008, October 2008). The answers are the main outcomes of the discussions that took place among the Seminar participants, INTERACT staff, the European Commission relevant desk officers, as well as other EGTC stakeholders.

For further information on the EGTC, please consult the INTERACT Handbook on the EGTC, available at: [www.interact-eu.net](http://www.interact-eu.net). Hard copies can also be ordered at: [jp.vienna@interact-eu.net](mailto:jp.vienna@interact-eu.net).

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## GENERAL QUESTIONS

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### 1. What is the difference between an EGTC and a Euroregion?

Euroregion or Euregio is a label and does not represent a legal type of structure as such. Euroregions can be without legal status, with private or public legal status, as well as embedded in different legal frameworks (association, cross-border body etc). It is of course possible to create an EGTC and call it 'Euregio' or 'Euroregion', if it represents well the identity of the territory concerned. Also a Euroregion, as existing structure (with or without legal personality) may transform into an EGTC for instance. Usually a Euroregion-type EGTC will be expected to have a long-term perspective and multi-functional character.

### 2. What are the expected advantages of setting up an EGTC?

The expected advantages differ from one EGTC to the other, depending on:

- Situation in the partnership (past experience, political support, need for a legal instrument etc);
- Type of EGTC envisaged (short- or long-term cooperation, EGTC for programme management, project management and/or multi-functional EGTC).

Generally speaking, setting up an EGTC means creating a legal body with its own personality, whose activities can be easily implemented across borders. Other important advantages:

- An EGTC can be part of legal proceedings - this also means that there is a single place of jurisdiction;
- Financial liability is clarified: within the partnership and towards third parties. See also below.
- Visibility (in the region and at EU-level), neutrality (it is a community instrument, no matter where the EGTC is set up) etc

For programme management, it also means:

- A joint body manages the joint programme budget (no national split allowed), this joint body may also manage the national co-financing parts.
- The JTS as joint body with international staff - all EGTC members shall jointly agree on the composition of the JTS - JTS as EGTC 'independent' from programme partners staff.
- MS are always partners in the programmes - they could be members of the EGTC (not possible with other instruments).
- It increases the spirit of cooperation.

For project management:

- The EGTC, as a legal person, can submit applications for EU-funding, on behalf of the partnership.
- It increases the spirit of cooperation.

### 3. Is it possible to set up an EGTC for a limited period of time?

It is of course possible to set up an EGTC for e.g. running a two or three-year project. This might be particularly relevant in the Interregional Strand of European Territorial Cooperation, where the setting up of long-term structures between non neighbouring regions is quite unlikely, while a solid structure might be needed for a short period of time in order to implement a strategic project.

Apart from these types of projects, it is rather expected that EGTCs will be set up in order to implement long-term cooperation strategies, e.g. to be continued after the end of the project or programme. As a matter of fact, the added-value of the EGTC must be superior to the cost implied by its setting up, and such added-value requests that the EGTC is set up for a sufficient period of time, otherwise it may not 'be worth it'. The EGTC serves as a great opportunity to create solid

and long-term partnerships, able to continue cooperation even after the project or programme is finished. This durability implies that the EGTC can continue the activities started with the project and ensure the sustainability of project results, which is very important.

Although the primary use of the instrument is for programme and project management, it is likely to be used often for multi-functional cooperation.

#### 4. What is a multi-functional EGTC?

The EGTC does not solely or necessarily run a programme or a project but is used as a more general instrument of territorial governance in a given area, and implements different projects and actions, with or without EU-funding. In any case the EGTC shall precisely define its objective, priorities and envisaged actions.

The EGTC may, for example, have a lobbying function at the national level, as all members speak with one voice and thus may be stronger together. Having a legal personality gives also more visibility and legitimacy to a cooperation structure. The sustainable character of the EGTC is also essential, especially in view of the post 2013 period.

Multi-functional EGTCs could for instance replace existing cooperation structures that have no legal personality or which are based on an inadequate organisation.

Currently, several existing structures, facing similar problems, are considering transforming into an EGTC, such as the Working Community Galicia-Norte de Portugal (<http://www.galicia-nortept.org>), the Euroregion Alps-Mediterranean, the Eurodistrict Oderland-Nadodrze ([www.bezgranic.net](http://www.bezgranic.net)) etc.

## EGTC FOR THE MANAGEMENT OF A EUROPEAN TERRITORIAL COOPERATION PROGRAMME

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#### 5. Do Member States HAVE to delegate the management of the European Territorial Cooperation programmes to EGTCs?

No! This is an option proposed in the EGTC Regulation, but Member States are free to delegate or not, programme management (e.g. Managing Authority and/or Joint Technical Secretariat functions) to an EGTC. It is up to the programme partners to take such decisions.

#### 6. What is the difference between the assembly of the EGTC and the Programme Monitoring and Steering Committee?

The main difference lies in the fact that the Monitoring and Steering Committee (MSC) of a European Territorial Cooperation programme must also include socio-economic actors, and not all socio-economic actors are eligible for membership of an EGTC (e.g. structures not fulfilling the criteria for being considered as 'bodies governed by public law'). Also the European Commission participates in the Monitoring and Steering Committee meetings but is not entitled to become member of an EGTC.

Otherwise, if the EGTC is composed of all other programme partners, it is likely that the composition of the assembly is very close to that of the MSC, and meetings can be organised back-to-back to limit travel and accommodation costs.

#### 7. Can an EGTC run part of a programme (as Intermediate Body)?

As stated in Article 42 of Regulation (EC) No 1083/2006, 'The Member State or the Managing Authorities may entrust the management and implementation of part of an operational programme to one or more intermediate bodies (IBs), [...] including local authorities, regional development bodies or non-governmental organisations [...]'. Therefore it can be envisaged that an EGTC acts as Intermediate Body in a European Territorial Cooperation programme or any other EU programme. In particular this could be considered in very large programmes covering a large

border area, or for the management of a specific thematic priority. This could e.g. also be used for the management of an interregional cooperation priority axis in an Objective 1 or 2 programme<sup>1</sup>, if this option has been selected.

## EGTC FOR THE MANAGEMENT OF A EUROPEAN TERRITORIAL COOPERATION PROJECT

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### 8. Do we need to create an EGTC in order to be able to access EU funding (e.g. European Territorial Cooperation programme)?

NO! The EGTC is one instrument among others and recourse to the EGTC is optional. While it is directly targeted at territorial cooperation activities, recourse remains optional. Access to ERDF funding under European Territorial Cooperation will not be exclusively opened to EGTCs: any partnership can submit a project application, be it in the form of an EGTC or not. When a partnership submits an application without being formed as an EGTC, the partners must sign a partnership agreement to confirm their participation in the project and their commitment.

### 9. What if an EGTC wants to apply for EU-funding within a European Territorial Cooperation but is not included in the list of potential applicants of the concerned programme?

Even if the programme manual or Operational Programme does not specifically indicate EGTCs as potential final beneficiaries, this does not mean that EGTCs should be excluded from participating in a project. Since the EGTC has legal personality and is composed of public or public-equivalent bodies, there should be no problem to apply.

### 10. Does the EGTC need to have its registered office in the programme area to be eligible for EU funding?

No, as in the case of any other potential applicant, the headquarters of the applicant institution can be outside the programme area: e.g. a Ministry with headquarters located in the capital city outside the programme territory.

### 11. The EGTC and the Lead Partner Principle<sup>2</sup>: how does it work?

With the new programming period 2007-13, the Lead Partner Principle (LPP) has become compulsory. The main reason for implementing the LPP is to ensure the genuine joint development and implementation of cross-border, transnational and interregional projects, which was not always ensured in the past (e.g. single or mirror projects are strictly excluded). Cross-border and transnational projects must be composed of at least two partners from two different Member States and satisfy a minimum of two of the four cooperation criteria (all four criteria in interregional projects)<sup>3</sup>:

- Joint development
- Joint implementation
- Joint financing
- Joint staffing

Under the LPP, project activities are carried out by different partners, one of whom acts as the so-called 'Lead Partner'. A subsidy contract is signed between the Lead Partner and the MA, under which the Lead Partner is responsible for the implementation of the project vis-à-vis the MA and ensures the administrative link between the project and the programme. Each partner remains fully responsible for its own actions and expenditure, which must be controlled by a designated

<sup>1</sup> Article 37(6)(b) of Regulation (EC) No 1083/2006

<sup>2</sup> Article 20 of Regulation (EC) No 1080/2006 refers to the 'lead beneficiary': 'lead partner' has the same meaning and is more commonly used.

<sup>3</sup> Regulation (EC) No 1080/2006 on the European Regional Development Fund.

controller<sup>4</sup>. In many programmes, partnership agreements are usually signed by the project partners.

With the new EGTC instrument, project partners may decide to create an EGTC for the management of the project. The EGTC would be the Lead Partner of the project and the project partners would be members of the EGTC. In this case, the project proposal will be submitted and the project will be managed by a single body, the EGTC, on behalf of the EGTC members. The question of the compatibility of the Lead Partner Principle with the EGTC instrument was answered positively in November 2007 by the Commission services. An official communication was sent by the European Commission to the Managing Authorities of the European Territorial Cooperation programmes to confirm the possibility of an EGTC running a European Territorial Cooperation project as sole institution (no additional partners needed):

**Extract from Mailing 3-2008 - EGTCs as beneficiaries - 06.02.2008 - DG Regional Policy**

1) An EGTC can be either a beneficiary or a lead beneficiary in a territorial cooperation project. While Article 18 of the ERDF Regulation (Parliament and Council Regulation 1080/2006) speaks about programme management, it does not exclude project management, and indeed project management is expressly covered in the EGTC Regulation (Parliament and Council Regulation 1082/2006).

2) Article 19 of the ERDF Regulation sets out certain conditions for project partnerships (e.g. for cross-border cooperation, a partnership shall include beneficiaries from at least two countries). Article 19 should be interpreted so as to permit the use of an EGTC in such contexts. **Since an EGTC brings together authorities or organisations from at least two Member States to act on behalf of those authorities or organisations, the use of an EGTC as a lead beneficiary should be considered as satisfying the requirements of Article 19** (evidently, for interregional projects partners from at least three countries would need to be in the EGTC). Thus, an EGTC can act as 'sole' beneficiary since it would meet the partnership requirements by itself.

3) Other legal bodies similar to EGTCs in construction can equally act as 'sole' beneficiary in such cases.

**12. Is it possible to financially support the setting-up of EGTCs, within Territorial Cooperation programmes?**

No regulatory element prevents the programmes from developing such supporting schemes. For instance costs for making a feasibility study for an EGTC or setting-up costs could be considered eligible as part of a capacity building activity. In such cases, programmes could e.g. envisage to apply a degressive co-financing rate for such costs. This also depends on the objectives and priorities of each programme.

But EU programmes will not finance, in the long-run, daily running costs of an already set-up EGTC.

**MEMBERSHIP**

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**13. Who is eligible for becoming member of an EGTC?<sup>5</sup>**

- Member States
- Local and Regional authorities
- Associations of public authorities
- Bodies governed by public law

<sup>4</sup> INTERACT Point Tool Box, *Handbook on the Lead Partner Principle in European Territorial Cooperation Programmes*, 2007.

<sup>5</sup> Article 3(1) of Regulation (EC) No 1082/2006 (EGTC Regulation)

#### 14. What is meant by bodies governed by public law?

Article 1(9) of Directive 2004/18/EC, provides following definition:

‘A body governed by public law means any body:

- (a) established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character,
- (b) having legal personality and
- (c) financed, for the most part, by the State, regional or local authorities, or other bodies governed by public law; or subject to management supervision by those bodies; or having an administrative, managerial or supervisory board, more than half of whose members are appointed by the State, regional or local authorities, or by other bodies governed by public law.

Non-exhaustive lists of bodies and categories of bodies governed by public law which fulfil the criteria referred to in (a), (b) and (c) of the second subparagraph are set out in Annex III. Member States shall periodically notify the Commission of any changes to their lists of bodies and categories of bodies’.

#### 15. If an association of public entities has private legal personality, can it become member of an EGTC nevertheless?

Yes, if it fulfils the criteria set in Article 1(9) of Directive 2004/18/EC

#### 16. Should the Member States (national level) participate in an EGTC?

The participation of the national level may be perceived in some cases as an intrusion in local and regional cooperation matters, depending on the constitutional and institutional setting of a specific country. However, in some cases participation of the national level is necessary:

- The principle of symmetry of competences (Art 7(2) of Regulation (EC) No 1082/2006) implies that a regional authority on one side needs to cooperate with a national authority on the other, when the competence in question lies at national level.
- In some countries, especially in countries where regionalisation has not taken place yet (Slovenia) or where there are no regions due to the limited size of the country (Luxembourg), the participation of the national level is necessary.
- Finally, the participation of the national level may bring an essential political support and visibility to the EGTC etc.

#### 17. Who should become member of an EGTC?

Even if the EGTC Regulation provides for a broad list of eligible institutions, each EGTC will be constituted differently. For each EGTC one should identify:

- **Key-members:** have the competences for participating in the activities planned by the EGTC, are motivated and committed. The number and type of members will differ a lot between various EGTCs, with small and homogeneous EGTCs (e.g. municipalities in a border area) and large and asymmetric EGTCs, including e.g. local, regional and national members).
- **Secondary members or associated partners:** some prospective members may be interested to a lesser extent or concerned by only few activities of the EGTC for instance. These could be integrated as associated partners, with a specific status, rights and obligations. In this category, ‘trouble-makers’ may also be identified and partly integrated or excluded.

#### 18. Is it possible for members from third countries to participate in an EGTC?

The participation of third countries is possible only if:

- The national provisions of the Member States concerned do not exclude this;
- There are EGTC members from at least two Member States;
- A bilateral agreement of international law foreseeing the set up of this kind of structure (not necessarily an EGTC) exists between the third country and the Member States concerned;
- The third country's internal law authorises such participation, e.g. with the adoption of this instrument into national legislation. The adoption of a EU-instrument by third countries occurred e.g. for the EEIG and it could support the integration of the *acquis communautaire* by candidate countries. It is more challenging with potential candidate countries.

Alternatively, if national provisions allow it, an EGTC may have associated members - e.g. from third countries -, with different rights and obligations.

The Council of Europe intends to approve a similar instrument, which must be however ratified by all States before entering into force, unlike the EGTC.

### 19. Why is recourse to the EGTC only opened to partners from EU Member States?

The legal basis for the Regulation is Article 159(3) of the Treaty, which refers to Economic and Social Cohesion in the European Union. Therefore this instrument is in principle not opened to third countries. However, the Member States may decide about the possibility for third countries to participate.

EU law is not international law, it is about internal cooperation within the EU Community, and it is about non-discrimination of cooperation between authorities from two different countries, as compared to cooperation between authorities from the same country.

## THE EGTC REGULATION AND THE ADOPTION OF NATIONAL PROVISIONS

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### 20. What to do if national provisions have not been adopted yet?

If a Member State has not indicated the competent authority to be notified under Art 4 of Regulation (EC) No 1082/2006, there may be a procedural problem. However, in many countries, local and regional governments know the authorities which are competent to exert supervision, and they could obviously address their notification to such authorities. It then depends on national procedural law, to know whether such authority needs to take a formal decision based on a national regulation, or whether it could give an approval on the basis of the 1082/2006 Regulation directly, or even whether its approval does not need to be explicit (non opposition may be sufficient). So, depending on the constitutional and administrative arrangements of different countries, it would be possible for a State to approve a participation by a national entity to a foreign based EGTC without a specific EGTC legislation.<sup>6</sup>

### 21. Can the scope of an EGTC be limited by the country concerned (e.g. only for European Territorial Cooperation under Structural Funds) or this is decided by the members of an EGTC when drawing up the convention?

It is possible for a Member State to prohibit the use of the EGTC for other types of cooperation, outside Community Funds, as stated in Article 7(3) of the EGTC Regulation: 'Member States may limit the tasks that EGTCs may carry out without a Community financial contribution'. So, if a planned EGTC is not Community-funded at all, one should definitely check the national provisions applicable in the concerned countries, as these could indeed prohibit the use of EGTC for such cooperation.

<sup>6</sup> Prof. Nicolas Levrat, University of Geneva, Email of 19.11.2007

## 22. Does the whole EU Regulation apply to each EGTC?

Yes, while recourse to the EGTC is optional, once partners have decided to set up an EGTC, they must comply with all the rules and procedures of the EGTC Regulation, as well as with the national rules applicable.

## LIABILITY

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### 23. Liability of the EGTC: limited or unlimited?

The EGTC as such has always unlimited liability, i.e. in case a debt must be reimbursed, the EGTC must reimburse this debt in full if it has sufficient assets, or at least up to the limit of its assets. The members of the EGTC only have a RESIDUAL liability, i.e. they only become liable for the debts once the assets of the EGTC have been used. Members, on the other hand, may have limited or unlimited liability - see below.

### 24. Liability of the members: limited or unlimited?

The EGTC Regulation leaves it open to the EU Member States to restrict membership in an EGTC to members with limited/unlimited liability.

Therefore a Member State can prohibit the registration on its territory of an EGTC whose members have limited liability. If no national provisions restrict such participation, and if the liability of a member is limited as a result of the national law under which it is formed, the other members may also limit their liability in the statutes, provided that limited liability is authorised by their own national law.

As for the EGTC itself, it is liable for its debts, whatever their nature. If the assets of an EGTC are insufficient to meet its liabilities, its members shall be liable for the EGTCs' debts whatever their nature, each member's share of responsibility being fixed in proportion to its contribution.

## THE NOTIFICATION AND REGISTRATION PROCESS

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### 25. Ex-ante control by the Member States: can the Member States refuse the participation of an institution in an EGTC?

The authority in charge of analysing the notification will first check whether the notification is complete, before proceeding to its in-depth analysis. It is usually at this stage that the three month delay for reply starts running, unless national provisions state otherwise.

The Member State will then check that the prospective member fulfils the conditions set in the Regulation (compliance with the typologies of authorised members).

As a principle, a Member State shall approve participation unless 'it considers that such participation is not in conformity with this Regulation or national law [...] or that such participation is not justified for reason of public interest or public policy of that Member State [...]. In deciding on the prospective member's participation in the EGTC, Member States may apply the national rules.'

So it is clear that national rules, or even political reasons (e.g. based on 'public interest') may be applied. In all cases, Member States can only refuse participation in limited cases. If a Member State refuses the participation of a member in an EGTC or the registration of an EGTC on its territory, it must provide a justification of its decision.

**26. How much will the Member States require to be stated in the convention and statutes?**

Since only the convention and statutes must be submitted to the Member States as part of the notification process, they may require more details than the EGTC Regulation does. If no additional requirements are provided, it is recommended to keep the convention and statutes short and only provide for the information requested. The EGTC members can then draft e.g. internal rules of procedure or other implementing document to clarify other elements not covered by the convention or statutes. This additional document, unlike the convention and statutes, does not have to be approved by the national authority and can be therefore more easily adjusted, if necessary.

**27. What if I have not received any answer by the national authority responsible for the notification process after three months of the submission of the notification?**

Although the regulation indicates that ‘The Member State shall, as a general rule, reach its decision within a deadline of three months from the date of receipt of an admissible application’ (Article 4(3)), this ‘general rule’ flexibility clause only applies in a very specific case, namely for EGTCs with participation of one or more Spanish regions (in such cases, the ex-ante control requires approval by the Spanish Parliament and therefore more than three months might be needed). All Member States have agreed to the three-month rule are therefore expected to apply it strictly.

**28. Is it necessary to publish/register the convention of the EGTC?**

No, it is sufficient to publish the statutes of the EGTC, as stated in Article 5 of the EGTC Regulation. Since the statutes contain amongst others all articles of the convention, it is not necessary to publish both the statutes and the convention.

**29. Should the statutes be published in all concerned Member States?**

It is sufficient to publish/register the statutes in the Member State where the EGTC has its registered office, as stated in Article 5(1) of the EGTC Regulation.

**30. Should the statutes be published in the Official Journal of the European Union?**

No, the complete statutes only need to be published in the Member State where the EGTC has its registered office. What is published in the Official Journal of the European Union is just a notice ‘announcing the establishment of the EGTC, with details of its name, objectives, members and registered office’ (Article 5(2) of the EGTC Regulation).

**31. When does the EGTC acquire legal personality?**

- 1) First of all, all prospective partners must have submitted their notification and have received a positive answer from their respective national authority;
- 2) The final version of the statutes and convention must be agreed by all prospective members, as stated in Article 4(5) of the EGTC Regulation;
- 3) After this, the EGTC statutes can be published/registered in the country where the EGTC has its registered office. On this date the EGTC acquires legal personality and can therefore officially start its activities.

NB: in some Member States, the national provisions require that in case the EGTC is to be set up on their territory, the notification of the EGTC must be accompanied by the national approvals of the participation of all other EGTC members. Collecting all approvals might require time (esp. in countries where no written approval is provided but a tacit consent is enough) and must therefore be taken into consideration in the setting-up calendar.

## EGTC SETTING UP AND FUNCTIONING - OFFICE, ORGANS

### 32. How to decide on the registered seat of the EGTC?

In some cases this question will not come up, as it is evident from the existing partnership where the seat of the EGTC will be set up. In other cases the decision on the registered seat of the EGTC is expected to be complex and be the fruit of negotiations among partners. Indeed many criteria can be taken into consideration. The following criteria were identified by the Seminars' participants:

- The history of cooperation, e.g. presence of an existing cooperation structure
- The political will of some members to host the EGTC
- Financial offers made by some partners (or e.g. offer of free premises)
- The national context:
  - Political stability
  - Attitude of the national authorities in charge of approving the EGTC towards this instrument
  - Working conditions applicable in the country: salary, working times and holidays, social protection, fiscal conditions etc
  - The operational costs applicable in the different countries (e.g. renting, insurance, electricity)
  - Administrative culture in place and bureaucracy level
- The geographic circumstances: accessibility, proximity to a large city, quality of life for staff to be recruited etc
- The experience of one of the members in the area of intervention of the EGTC: e.g. if the EGTC is in charge of wastewater management in a cross-border area, it is more likely to be set up in the region where infrastructures are in place or where national legislation is more favourable for the matter concerned.
- The opinion of the population
- The scale of the territory (central localisation of the office)
- Available staff (skilled staff)
- EGTC for programme management: the Managing Authority and Audit Authority have to be set up in the same country

The members may also decide:

- To differentiate between registered office and operational office(s), which can be set up in different countries than the registered office (e.g. case of the Eurometropole Lille-Kortrijk-Tournai)
- To set up a main office and branch offices in other parts of the area covered by the EGTC
- To set up, additionally, a representation office of the EGTC, e.g. in a capital city or in Brussels

### 33. Which and how many organs should be set up?

Here again, the EGTC Regulation is very basic and only provides for two compulsory organs: the assembly and the director.

Additional recommendations:

- Keep it small - not more organs than needed. See also budgetary impact of too many organs.
- Staff: make use of existing staff from the members' administrations, if appropriate. Agree on number of staff needed, functions to be ensured and recruitment process.
- Agree among members on the role and function of the director.



- List possible additional organs and for each organ: mission to be fulfilled, members, costs, expected added value, link to other organs etc.

### 34. How should the assembly of the EGTC be set up? Are there any restrictions or recommendations?

The EGTC Regulation does not provide for strict and detailed rules but leaves it up to the Member States to specify the applicable rules and procedures. In case national provisions do not provide for more specific rules, EGTC members can agree among each other on the following matters, to be indicated in the statutes or in the internal rules of procedure of the assembly:

**Members:** unless otherwise specified by national provisions, it is up to the members to agree on membership in the assembly. INTERACT recommendation: even if not compulsory, it is advised that each member designates at least one representative in the assembly, so that all members are equally involved. In terms of number, if national provisions do not specify, members may agree on one or more representative per member in the assembly, as well as on the type of representatives (elected or administrative staff). In all cases, the representatives in the assembly must have received a mandate to vote in the assembly, on behalf of their institution, so that decisions can be made.

**Duration of mandate:** the main issue at stake is that of the turn-over risk: this risk may be overcome by e.g. having two representatives per member in the assembly, so that in case of departure of one member continuity is ensured. Another solution to guarantee stability is to have administrative staff in the assembly instead of politicians (or both).

**Decision making procedures:** the main question is that of the unanimity versus majority vote: in terms of effectiveness, majority is preferable, so as to avoid any veto and the blocking of the EGTC. On some sensitive issues however members may prefer a unanimity system.

For more details, See Handbook - Annex 2: EGTC model statutes - template for use

### 35. What should be the role of the director of the EGTC?

There is no definite answer to this question. The group discussions revealed that in some cases (depending on the region, type of EGTC concerned, administrative cultures etc), the director will have an executive role, working under the auspices of the assembly, while in other cases it may additionally have a more 'political' role, including representation of the EGTC towards third parties. This is for instance the case of the EGTC Eurometropole Lille-Kortrijk-Tournai, where the president of the Assembly is the Director of the EGTC, and is supported by the director of the cross-border agency (operational office of the EGTC).

### 36. Can the EGTC recruit its own staff?

Yes, one of the possibilities offered by this new instrument is that the EGTC, having legal personality, can recruit staff. Recruited staff will be ruled by the law (social, fiscal, labour law) of the Member State, where the EGTC has its registered office.

The partners may also decide to second staff from their administrations to the EGTC for a given period or on a long-term basis (e.g. as in-kind contribution to the EGTC budget). It is also possible that the tasks of the EGTC (or some of them) are not performed by the EGTC itself but by one of the members, as made possible by Article 7(5) of the EGTC Regulation: 'the members of an EGTC may decide by unanimity to empower one of the members to execute its tasks'.

One should consider the most appropriate solution (mix is also possible) and the consequences for staff management (applicable law, e.g. fiscal, social, labour law etc) - working for an EGTC must remain attractive, as staff with appropriate skills and competences is needed (language, inter-cultural capacities, knowledge of the legislation etc). Usually the main differences between countries are the level of salaries, the tax pressure, working time, holidays, extra-paid hours, social conditions (sick leave, maternity leave etc). For tax issues, a case-by-case analysis of the situation of each staff member should be conducted, as it varies a lot.

In any case, the EGTC instrument does not solve all problems related to commuters, such as 'double-taxation' (in the country of residence and of activity) etc. These issues have to be discussed and solutions found on a case-by-case basis, e.g. by making use of the existing inter-state agreements.

## BUDGET AND FINANCIAL MANAGEMENT

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### 37. Should all EGTC members contribute to the budget of the EGTC?

This is not compulsory but highly recommended, to ensure an equal commitment and ownership feeling by all members.

### 38. How should we define/calculate the EGTC budget?

Different approaches were presented during the first Seminar, based on recent experiences:

- Eurométropole Lille-Kortrijk-Tournai: the budget is based on an equal split between the French and Belgium sides. Within each country, a decision is made among members on the split of their contributions.
- EDON: the calculation of the contributions is based on a basis of € 0,10 per inhabitant.

### 39. How is the budget of the EGTC controlled? By whom?

The public funds managed by the EGTC (EU, national, regional and other public contributions) are subject to control by a controller/auditor to be designated by the Member State in which the EGTC will have its registered office. The designation of the controller intervenes before approval of the notification of the EGTC. Different rules apply to the different types of public funds managed by the EGTC:

- The national rules of the country where the EGTC has its registered office apply to the control of national public funds (national, regional) managed by the EGTC, including members' contributions to the budget of the EGTC. The controller of the Member State where the EGTC is located is in charge of this control and should perform this work on the basis of international audit standards. Additionally, Article 6(2) of the EGTC Regulation provides the possibility for other Member States, if required under their national legislation, to participate in the control process, by controlling the acts of the EGTC performed on their territory, and informing the 'main' controller of these controls. So the control by national authorities on the financing of the EGTC and the use of public funds is very limited. Only the Member State where the EGTC has its registered office may exert substantial control (Article 6(1) of the EGTC Regulation).
- If the EGTC receives EU funding, e.g. as partner in an EU co-funded project, the use of these funds is subject to the respect of EU eligibility rules, and where applicable, national eligibility rules of the Member State where the EGTC has its registered office. If the EGTC is in charge of the management of a European Territorial Cooperation programme (MA and/or JTS), it will then manage the Technical Assistance budget of the programme, in accordance with the applicable EU and national rules.

### 40. If the EGTC organises a tendering procedure, which tendering rules should be applied?

National rules must be observed, in transposition to the EU rules and thresholds. If any additional national or regional rules or thresholds apply (e.g. lower thresholds), these shall be observed. In this case the applicable rules are those of the country of the seat of an EGTC.

## DISSOLUTION

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### 41. What happens in case of dissolution of an EGTC?

It is expected that the liquidators, to be nominated when dissolution is decided, take care of all running activities, including legal proceedings, payments etc.

If the EGTC was running a project co-funded by the EU and/or national funds, the members have to agree on whether to stop or continue the project, e.g. by transferring the funds and the management of the project to one of the EGTC members. If not possible, the project activities will be interrupted, programme authorities and co-financing institutions must be informed.

For these specific matters, it is advisable to consult the applicable national provisions.



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*Phases of Setting-Up an EGTC*

