

DEPARTMENT FOR BUSINESS
ENTERPRISE & REGULATORY REFORM

**EUROPEAN GROUPINGS OF
TERRITORIAL COOPERATION
(EGTC)**

GUIDANCE

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This is a guide only and should be read together with the relevant legislation.

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Introduction

This document explains what a European Grouping of Territorial Cooperation (EGTC) is, how to seek approval to become a member of an EGTC and what steps need to be taken for a UK EGTC to acquire legal personality.

The booklet is intended as an introductory guide only. If you are considering forming or becoming a member of an EGTC, please refer to the legislation governing EGTCs, or seek specialist legal advice.

Law governing EGTCs

There are two sources of legislation governing an EGTC and its participants.

The primary source is Regulation (EC) No 1082/2006 of the European Parliament and of the Council of 5 July 2006 on a European Grouping of Territorial Cooperation¹ (“the EC Regulation”). This is “directly applicable” legislation which means it forms part of UK law without the need for further implementing legislation.

Domestic legislation is permitted only where necessary to ensure the effective application of the EC Regulation. This is achieved by the European Grouping of Territorial Cooperation Regulations 2007² (“the UK Regulations”). The UK Regulations apply to prospective members of an EGTC who are formed under UK laws, and to EGTCs whose registered office/official address are located in the UK.

¹ O.J. L210, 31.07.2006, p.19.

² SI 2007/1949

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About EGTCs

What is an EGTC?

An EGTC is a new form of legal entity that can be formed to facilitate cross-border cooperation, with the exclusive aim of strengthening economic and social cohesion.

Its members must be located on the territory of at least two Member States³

What can an EGTC do?

The purpose of an EGTC is to facilitate cross border cooperation with the exclusive aim of strengthening economic and social cohesion. In providing an EGTC with legal personality it may, in particular, acquire or dispose of movable and immovable property, employ staff and enter into contracts.

The objective and tasks of an EGTC will be set out in its convention, which governs the EGTC (see further the section on getting participation in an EGTC approved).

Who can participate in an EGTC?

Membership of an EGTC is open to the following:

- Member States
- regional authorities
- local authorities
- bodies governed by public law

and associations consisting of bodies belonging to one or more of these categories.⁴

The meaning of a “body governed by public law” is set out in Article 1(9) of Directive 2004/18/EC⁵ which has been implemented into UK law through Article 3(1) of the Public Contracts Regulations 2006⁶. Legal advice should be sought if you are uncertain about whether you are a body governed by public law for the purpose of the EC Regulation.

³ See Article 3(2) of the EC Regulation

⁴ See Article 3(1) of the EC Regulation.

⁵ O.J. L 134, 30.04.2004, p114 as amended by Commission Regulation (EC) No 2083/2005 (O.J. L 333 20.12.2005, p.28)

⁶ SI 2006/5

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Membership of an EGTC is available to the broadest range of bodies that the EC Regulation allows. This does not mean that all these bodies can automatically become a member of an EGTC.

A body must seek approval of its proposed membership of an EGTC from the authority designated in the UK Regulations as competent to undertake this task. In the case of bodies formed under UK law this is currently the Secretary of State for Business, Enterprise and Regulatory Reform (BERR). This is the case whether the body in question wishes to be a member of an EGTC or a UK EGTC.

Approval for membership to join an EGTC will be considered on a case by case basis using consistently applied objective criteria.

1. The body's participation should be consistent with UK national law and the EC Regulation.
2. Participation should be in the public interest.
3. Participation should be in line with UK public policy⁷
4. The objective and tasks of the EGTC, as stated in its convention, should facilitate cross border cooperation with the exclusive aim of strengthening economic and social cohesion.⁸
5. The Convention and Statutes of the EGTC should contain, clearly, all the information required by the EC Regulation.⁹
6. A UK EGTC may not be formed with a member which has limited liability.¹⁰

What are the advantages of an EGTC?

An EGTC can act on behalf of its members to facilitate and promote the strengthening of economic and social cohesion. In particular, an EGTC is intended to assist with the delivery of European Community funded cooperation objective programmes and projects. When an EGTC is used for this purpose one benefit would be that project applications could be made directly to the EGTC and approved by the EGTC, as opposed to dual approval by each Member State as is the case under some existing arrangements.

⁷ For criteria 1-3 see Article 4(3) of the EC Regulation.

⁸ See Article 7 of the EC Regulation.

⁹ See Article 8 and 9 of the EC Regulation.

¹⁰ See Regulation 8 of the UK Regulations.

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What are the advantages of a UK EGTC?

One of the consequences of restricting membership of a UK EGTC to bodies with unlimited liability is the ability to reduce the amount of regulation to which that EGTC is subject. Where a body limits its liability, a greater degree of regulation is needed to protect third parties with whom the body transacts business.

What are the disadvantages of a UK EGTC?

The EGTC is liable for the acts of its organs as regards third parties, even where such acts do not fall within the tasks of the EGTC. Members of an EGTC registered in the UK would not be able to limit these liabilities.

How is an EGTC structured?

An EGTC is required by law to have an assembly, made up of representatives of its members, and a director, who represents the EGTC and acts on its behalf¹¹.

Additional organs may be provided by the statutes¹². These can be used to assist in the execution of the EGTC's tasks.

What is the role of the members?

The members decide how the EGTC will operate by establishing a convention and statute which address these issues. The convention and statute have to be agreed unanimously by the members.

The members are required to be represented on the assembly and the assembly is required to adopt the annual budget.¹³ The assembly of a UK EGTC will also be responsible for appointing an auditor and making accounts available on request.¹⁴

Any other roles for the members or assembly should be established in the convention and statutes.

What is the role of the director?

The role of the director is defined by the members through the convention and statutes. The Director of a UK EGTC, in addition to the assembly, will be responsible for appointing an auditor and making accounts available on request.

¹¹ See Article 10(1) of the EC Regulation.

¹² See Article 10(2) of the EC Regulation.

¹³ See Article 11(1) of the EC Regulation.

¹⁴ See Regulation 6 of the UK Regulations.

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From when does a UK EGTC have legal personality?

A UK EGTC is accorded legal personality as a body corporate on the date its statutes are published in the Gazette¹⁵.

How is an EGTC funded?

An EGTC will be funded by its members. BERR will designate the competent authority for control of the management of any public funds involved.¹⁶

What are the accounting requirements?

A UK EGTC is generally subject to the provisions of Part 7 (accounts and audit) of the Companies Act 1985 ("the 1985 Act") as if it were a small company within the meaning of the 1985 Act. Certain modifications have been made to Part 7 to reflect the particular nature of an EGTC¹⁷.

In particular although a UK EGTC will not need to deliver accounts and reports to the registrar of companies, it will need to:

- (a) make its latest accounts available for inspection at its registered office by any person, without charge and during business hours; and
- (b) supply a copy of those accounts to any person on request at a price not exceeding the administrative cost of making and supplying the copy.¹⁸

The accounting requirements of an EGTC whose registered office is located outside the UK, will be those laid down by the law of the Member State where that office is situated.

Is an EGTC subject to audit?

Yes, as stated above, a UK EGTC is subject to the appropriate sections of Part 7 (accounts and audit) of the Companies Act 1985.

The requirements as to the appointment of an auditor are set out in regulation 6(4) and (5). A UK EGTC will need to appoint an appropriate auditor in accordance with the decision-making procedures contained in the statutes of that UK EGTC.

¹⁵ See Article 5(1) of the EC Regulation.

¹⁶ See Article 6(1) of the EC Regulation.

¹⁷ See Regulation 6(1) of the UK Regulations.

¹⁸ See Regulation 6(3) of the UK Regulations.

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The audit requirements of an EGTC whose registered office is located outside the UK, will be those laid down by the law of the Member State where that office is situated.

Can an EGTC be wound-up?

Yes, but the rules will depend on the location of the registered office of that EGTC. If a UK EGTC becomes insolvent it may be wound up as if it were an unregistered company, under Part 5 of the Insolvency Act 1986¹⁹.

The rules applicable to any other type of EGTC will be those laid down by the law of the Member State where that office is situated.

Can an EGTC be dissolved?

Yes, the members can dissolve the EGTC themselves. Conditions for this will be set out in the convention.²⁰

In addition, any competent authority with a legitimate interest can apply for an EGTC to be wound up.²¹ The UK Regulation sets out the relevant Courts for winding up a UK EGTC.²²

How to get your participation in an EGTC approved.

Agreeing the draft convention and statutes

The prospective members of an EGTC must, in the first instance, determine together the objective and the scope of the EGTC, and agree the draft convention and statutes:

The Convention must include the following:²³

- name
- registered office
- extent of territory in which the EGTC will operate
- objective and tasks
- duration
- conditions for dissolution
- list of members

¹⁹ See Regulation 7 of the UK Regulations.

²⁰ See Article 8(2)(c) of the EC Regulation.

²¹ See Article 14(1) of the EC Regulation.

²² See Regulation 5(3) of the UK Regulations.

²³ See Article 8 of the EC Regulation.

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- law applicable to the convention
- arrangements for mutual recognition
- procedures for amending the convention.

A UK EGTC will not be “registered” as such, so the reference above to the “registered office” should be read as meaning the principal office of the EGTC.

The Statutes must include the following²⁴:

- operating provisions of the organs (composition, competences)
- decision-making procedures
- working language(s)
- functioning arrangements (esp. regarding personnel)
- arrangements about members’ contributions, applicable accounting and budgetary rules
- arrangements about members’ liability
- authorities responsible for the designation of independent external auditors
- procedures for amending the statutes

Seeking approval to participate

Each prospective member must then notify the Member State under whose law it has been formed, of its intention to participate in an EGTC and provide a copy of the proposed convention and statutes. Prospective members from the UK should notify BERR at the following address:

EGTC Team
Department of Business, Enterprise and Regulatory Reform
Bay 1135
1 Victoria Street
London
SW1H 0ET

BERR shall respond to the notification, within a deadline of three months. Notifications will be assessed against the criteria as set out on page 3 of this document. Any decision will be made thorough consultation with the relevant Devolved Administration, when the organisation under consideration is based in their territory, and other interested parties, for example the sponsor Department. Any refusal to approve participation will be explained in writing.

For EGTCs which are to be registered in the UK, BERR must designate the competent authority responsible for control of the UK EGTC’s management of

²⁴ Article 7, EC Regulation.

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funds. This decision will be included in the response to notification of an intention to participate in an EGTC.

Will a fee be charged for seeking approval?

No, BERR will not charge a fee for this approval process.

Formation of a UK EGTC.

An EGTC acquires legal personality on the day that its statutes are registered and/or published.

The location of the registered office/official address of a prospective EGTC determines where its convention and statutes have to be either registered or published²⁵

So, if the registered office/official address is to be in the UK, then the statutes have to be published in accordance with the UK Regulations. If the office is to be located in, say, France, the statutes have to be published in accordance with French law.

If the EGTC's official address is to be in England or Wales it must be published in:

The London Gazette
PO Box 7923
London
SE1 5ZH

If it's official address is to be in Scotland it must be published in:

The Edinburgh Gazette
71 Lothian Road
Edinburgh
EH3 9AW

If it's official address is to be in Northern Ireland it must be published in:

The Belfast Gazette
16 Arthur Street

²⁵See Article 5(1) of the EC Regulation.

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Belfast
BT1 4GD

Will a fee be charged for publishing in the Gazette?

Yes, there is a fee publishing notices in the Gazette.

For further details on fees and publishing see <http://beta.gazettes-online.co.uk/>

Can the official address be transferred from one Member State to another?

Yes. To change the official address either in the UK or to another Member State would require a change to the EGTC's convention and as such would require each member to have the change authorised by the relevant competent authority in their respective Member States.²⁶ For UK members of an EGTC this will be BERR.

Further information

Further information on EGTCs can be accessed directly on the BERR website at www.berr.gov.uk, or by contacting the BERR by phone on 020 7215 5000 or by writing to us at the address below:

EGTC Team
Department of Business, Enterprise and Regulatory Reform
Bay 1135
1 Victoria Street
London
SW1H 0ET

²⁶ See Article 4(6) of the EC Regulation.