



EGTC consultation – European Territorial Cooperation stakeholders

With the services offered to European Territorial Cooperation (ETC)¹ stakeholders on the European Grouping of Territorial Cooperation (EGTC)² instrument over the past 3 years, as well as with the participation in various consultation and networking meetings, INTERACT collected a critical number of issues and suggestions made by these stakeholders.

This document reflects questions and comments raised to INTERACT since 2007, in particular:

- Contributions and proposals collected during the workshop on the future of ETC, organized by INTERACT in March 2010, where a working group focused on the issue “Programme set up - joint structures with legal personality; EGTC”
- Proposals and comments of speakers and audience during the Conference “20 years of Territorial Cooperation” in Tournai on 30.09-01.10.2010.

The themes listed hereafter are split between “Changes to the Legal Framework” and “Guidance and support on the EGTC”. Where not specified, the proposals directly come from ETC stakeholders. In other cases, proposals are made by INTERACT on the basis of problems brought up to INTERACT by ETC and other stakeholders.

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1) State of play and main concerns of ETC programmes

ETC programmes welcome a structure that can really ACT across the borders (single financial control, public procurement, single eligibility rules) - **simplification** is needed.

In quite a few ETC programmes a **reflection was launched** in the beginning of the programming period, like e.g. at the SEUPB³, Euregio Meuse-Rhine, URBACT, France-UK 2 Seas, France-Italy Maritime, and some more. The cross-border cooperation Programme Greater Region, however, is the only ETC programme having created an EGTC for programme management so far. The complexity of programme management and the large number of compulsory tasks to be performed at the preparation stage (like drafting the article 71 description) seem to have downgraded the EGTC option to a lower priority level in the programming phase.

¹ Art. 6 of Regulation (EC) No 1080/2006 of the European Parliament and of the Council of 5 July 2006 on the European Regional Development Fund and repealing Regulation (EC) No 1783/1999 OJ L210

² 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) OJ L210

³ Special EU Programmes Body



Programmes do not wish recourse to the EGTC instrument for programme management to become compulsory and appreciate the current flexibility provided for programme set up. According to different legal and administrative contexts of the ETC programmes, in many cases it is neither possible nor desired to establish legally, financially or organizationally truly independent programme implementation bodies. The establishment and operation of such separate institutions would require more administrative and financial resources. Many programmes work on a conventional basis (e.g. Memorandum of understanding) which provides a solid basis for mutual trust and sharing of programme and financial responsibilities between programme partners.

However, the issue of **independence of programme management from national/regional influences** was brought at the future workshops. The EGTC may appear as a suitable instrument, as it enables to create a separate organism to run the programme⁴. The advantages of an EGTC for programme management would be to provide a joint structure that would fully represent the programme Monitoring and Steering Committee: The programme partnership would be reflected and embedded in a legal body - application of the **subsidiarity principle**. The EGTC would appear as a European model providing for independence, sustainability, governance, flexibility in programme management. In the experience of the Greater Region, unique so far, the members of the EGTC assigned the EGTC director position to a staff from a member institution of the EGTC, which may endanger the independence of the EGTC. On the other hand, all programme partners (except of course socio-economic partners) are members of the EGTC, which means a “collegial” joint Managing Authority, a really jointly managed programme. As the partner regions however are also members of the Monitoring and Steering Committee, this can create conflicts of interest between Managing Authority and Monitoring and Steering Committee.

As for **project management**, ETC stakeholders outline more and more the need to produce tangible, visible and sustainable project results: the EGTC may be a **suitable instrument for sustainable project partnerships**. ETC programmes see the EGTC as mostly suitable for cross-border operations, as it can foster integrated management of territories and real governance in planning and implementation. From a cost-benefit point of view, the EGTC is more suitable for long-term cooperation platforms than for running short single ETC projects. An experience is being started in the Italy-France Maritime programme to manage strategic project.

Conclusion: The EGTC instrument came too late for most ETC programmes to make use of it for programme management in 2007-2013. Use for the next period is not excluded, if the use of the instrument is simple, if guidelines are clear and if recourse to an EGTC leads to a real simplification. Due to the relatively short programme duration the EGTC set up must be quick and simple, to not endanger the start and implementation of the programme.

2) Recommendations

2.1 Changes to the Legal Framework

Compatibility of national rules and harmonization

As it is the case with various EU provisions, a lot of space is left for national rules. This leads to a very complex legal framework and potentially to incompatibilities between national rules. A harmonization of the rules is needed in order to ensure more compatibility between national rules

⁴ If the EGTC cannot hire its own staff but uses secondment of staff from participating regions, there is a risk as to whether it offers a guarantee in terms of independence



and a more harmonious general framework. To this purpose, there is a need to have not only provisions on minimum, but also on maximum requirements by the Community Regulation (e.g. provisions on maximum number of organs, on the notification process, on the notification duration, etc) that provide a defined and limited scope of intervention for national rules. Current incompatibilities may even lead to paradox, like e.g. incompatible national provisions in Hungary and Bulgaria (Hungarian local governments have limited liability, but cannot participate in an EGTC with legal seat in Bulgaria, as the Bulgarian law only accepts members with unlimited liability on its territory).

Coordination of the notification process (article 4) (INTERACT proposal)

How to make sure that the notification process is coordinated between the concerned Member States (MS)? What if an MS accepts a notification and the other MS rejects it, does the approval of the first Member State lose its legal validity?

The notification process is long and complex as it runs in parallel in different countries, but not always at the same time. This may result in different outcomes and in delays for the registration of the EGTC. A joint assessment board (like the Monitoring and Steering committee of ETC programmes) could make things easier and quicker by ensuring a real coordination and joint decision. The example of the ERIC instrument (consultation committee of involved Member States) could be used and adapted to the EGTC case.

A more attractive instrument - benchmarking from other community instruments

Based on a benchmarking approach, at least 2 other community instruments offer provisions which are currently excluded from the scope of the EGTC Regulation. It is recommended that the review of the EGTC Regulation takes into consideration the experience of other instruments:

EEIG: The EEIG (European Grouping of Economic Interest) offers more flexible conditions on public procurement and staffing/salaries, it pays no company taxes nor taxes on earnings, and it is also open to the private sector. This type of solution, under private law, of course requires a proper and transparent control system to be in place⁵.

ERIC: The ERIC (European Research Infrastructure Consortium) instrument provides attractive conditions for use, which, if applied to the EGTC, might make recourse more interesting: *“...benefit from exemptions from VAT, adopt its own procurement procedures, which have to respect the principles of transparency, non-discrimination and competition but are not subject to public procurement procedures”*

(source: http://ec.europa.eu/research/infrastructures/ndex_en.cfm?pg=eric; 04.01.2010).

The EGTC is subject to the public procurement rules of the country of the registered seat. Which rules should apply to public procurement organized by the branch office of an EGTC located in another EU Member State, the rules of the country of the seat? A unique legal framework applying to all EGTCs EU-wide, like it is the case with the new instrument ERIC, could offer a real simplification.

Private sector participation

Limited private sector involvement in ETC projects is generally perceived as an issue and in particular in some areas (such as innovation, transport and renewable energy) it raises major

⁵ The secretariats of INTERREG IVC, INTERREG IVA 2 Seas and INTERREG IVB North West Europe are hosted by an EEIG.



obstacles to effectively pursuing the achievements of programme objectives. Linking this issue to the EGTC Regulation, the exclusion of private members from an EGTC might raise a problem for the stimulation of sustainable public-private ETC project partnerships, even if the possibility to involve private partners in a project (as partner of an EGTC) is acknowledged.

Participation of third countries

Many participants in EGTC seminars organized by INTERACT complained about the situation of third countries, being not per se eligible for participation in an EGTC (this being left to the appreciation of the Member States, even where third countries would introduce the EGTC in their own legislation). In particular this provision excludes de facto a number of cooperation programmes and projects from the scope of the Regulation, in particular ETC-CBC programmes with non EU Member States: e.g. France-Switzerland, Switzerland-Italy, Amazonia (Guyana-Brazil-Surinam) etc.

In the perspective of the next programming period, it was requested by participants that the legal and operational framework of ENPI and IPA should be harmonized with the ERDF - this would also entail the need to adopt the EGTC instrument to these programmes and projects.

Staffing issues

Labour law and working conditions (salaries, social and fiscal regime, pension scheme, career planning): how to ensure a labour status equally interesting for all staff members (coming from different countries)? This problem aroused in the Greater Region case, where the JTS and its staff, located in and subject to Luxembourg labour law, were kept separate from the EGTC - the EGTC being located in France. The programme therefore has two legal organizations for programme management: an EGTC (MA) and an association under Luxembourg law (JTS), which limits simplification. Staffing provisions following the rules of the country in which staff is working would be much welcome.

Convention and statutes (articles 8-9)

The content of the convention and statutes is partly redundant. For future EGTCs, the statutes could cover operational matters only, which are not covered by the convention, to simplify amendment processes of either of the 2 documents.

Modification of the convention (article 4(6))

In case of any modification of the EGTC convention, a re-approval process is needed. This involves all participating Member States and can be very long. A simplified written procedure for example for the integration of new members to the EGTC would be needed to not compromise the daily running of the EGTC.

Ownership of results and products (INTERACT)

If an EGTC is dissolved, who becomes the owner of its results and products? Provisions on the legacy of the EGTC should be made compulsory for the EGTC statutes.

2.2 Guidance and support on the EGTC, clarification on open issues (INTERACT)

For matters which cannot (and should not) be covered by Regulation (EC) No 1082/2006, a **COCOF guidance document** (like it exists for e.g. the role of the certifying authority, for management verifications, etc), providing for harmonized interpretation of the regulation, good practice examples and recommendations could improve the current state of information and reduce the



current uncertainties (especially on legal aspects). In particular following elements could be addressed in this document:

- **Clarification on article 7(4) - exercise of powers and safeguarding of general interests of the state**

Article 7(4) of the EGTC Regulation states that “The tasks given to an EGTC by its members shall not concern the exercise of powers conferred by public law or of duties whose object is to safeguard the general interests...”. The concepts of “powers” and “general interests” should be clarified, in line with the available jurisprudence, to reduce current legal uncertainties among prospective members.

- **Conflict of interest**

INTERACT received a request concerning the approach to be adopted where a ministry is at the same time prospective member and notification authority. The guidance note could clarify that 1) participation is possible; 2) Provisions must be taken to ensure that the administration in charge of the notification can also participate in an EGTC even if this might be left to the Member States to decide how this can be made possible (e.g. who should be the recipients of the notification in that case).

- **Registration in the Official Journal of the European Union (INTERACT proposal)**

INTERACT was regularly contacted by prospective members of EGTCs asking for the procedure to be followed for registration in the official journal. Official guidance would be welcome. Like in the case of the ERIC instrument, more visibility would be ensured for the EGTC by being published in the “L series of the Official Journal of the European Union.

- **EGTCs as partners in the governance of ETC programmes**

The option to use the EGTC for the management of a sub-programme or large strategic projects appeared appealing to ETC stakeholders and could be promoted. It would be worth reminding the interpretation of the lead partner principle in the case of EGTCs as beneficiaries (DG Regio mailing of 6.02.2008). NB: such information is contained in the INTERACT Handbook on the EGTC but may have more impact if transmitted through an official guidance document.

Another proposal was made in Tournai as to take account in the programme governance of existing EGTCs on a programme territory. These EGTCs, which usually work on the basis of a long-term vision for the territory, could be associated to the development and implementation of the programme strategy in becoming members of the Monitoring and Steering Committee of the programme.

- **The EGTC as an instrument to manage article 37(7) projects (INTERACT proposal)**

So far there is scarce use of the provisions of article 37(6)(b) on the possibility for Objective 1 and 2 programmes to dedicate a priority axis or a horizontal approach to transnational or interregional actions. The EGTC appears as a suitable instrument for the management of such actions, objective 1 and 2 programmes could be therefore guided towards the possible use, as one of the existing options, of the EGTC for the management of such actions.

3) Other proposals and remarks



Coordination - Register and network of national notification authorities (INTERACT)

As proposed by the EGTC expert group, having an online register of notification authorities, including an annual meeting and an online meeting tool (e.g. online forum) could support exchange of information between Member States.

The translation of all national provisions at least in the 3 EC working languages (English, French and German) might also contribute to a better mutual understanding.

No automatic bonus for EGTC-run projects

Participating ETC programmes did not support the proposal to systematically offer special bonuses to cooperation projects run by and EGTC. Such bonus (e.g. higher ERDF co-financing rate) should be solely related to project quality.

Promotional activities

The cross-border hospital in Cerdanya (French-Spanish border), run by an EGTC and benefitting from ETC EU funding, is an excellent “flagship” example that shows the added-value of the EGTC instrument. Such example should be promoted widely.