



COMMISSION OF THE EUROPEAN COMMUNITIES

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**COMMUNICATION FROM THE COMMISSION
TO THE EUROPEAN PARLIAMENT**

pursuant to the second subparagraph of Article 251 (2) of the EC Treaty

concerning the

**common position of the Council on the adoption of a Regulation of the European
Parliament and of the Council on establishing a European grouping for territorial co-
operation (EGTC)**

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1- BACKGROUND

Date of transmission of the proposal to the EP and the Council (document COM(2004) 496 final – 2004/0168(COD)):	15 July 2004
Date of the opinion of the European Economic and Social Committee:	6 April 2005
Date of the opinion of the Committee of the Regions:	18 November 2004
Date of the opinion of the European Parliament, first reading:	6 July 2005
Date of transmission of the modified proposal to the EP and the Council (document COM(2006) 94 final – 2004/0168(COD)):	7 March 2006
Date of adoption of the common position:	12 June 2006

2- OBJECTIVE OF THE COMMISSION PROPOSAL

Member States and regional and local authorities have experienced important difficulties in carrying out and managing actions of cross-border, trans-national and inter-regional co-operation, within the framework of differing national laws and procedures. The existing instruments, such as the European economic interest grouping on Community level or bi- or multilateral agreements between Member States have proven ill-adapted to organising a structured co-operation for economic and social cohesion in the meaning of Article 158 of the Treaty and in particular of structural fund programmes within the INTERREG initiative during the 2000-2006 programming period. This calls for appropriate measures at the Community level in order to reduce the difficulties of cross-border, trans-national and inter-regional co-operation.

The proposal is subject to the co-decision provisions (Article 251 of the Treaty).

The purpose of the Commission's proposal is to introduce a co-operation instrument at the Community level, which allows the creation of co-operative groupings between local and regional authorities in the Community, invested with legal personality, called "European groupings of territorial co-operation" (EGTC).

The tasks delegated to it must be defined by its members, in a convention of European territorial co-operation. The EGTC shall be able to act, either for implementing co-operation programmes co-financed by the Community, notably by the Structural Funds, or for carrying out any other co-operation action at the sole initiative of the regional and local authorities, with or without financial contribution by the Community.

3- GENERAL COMMENTS ON THE COMMON POSITION AND NEW PROVISIONS COMPARED WITH THE COMMISSION MODIFIED PROPOSAL

The Commission welcomes the common position adopted unanimously because it maintains the essential objectives of the Commission's revised proposal (following the EP first reading). It introduces a certain number of changes which complete the text with regards to the applicable rules and procedures. Several Parliament's amendments in first reading are present in the common position, even though with drafting changes to ensure the legal consistency of the text and technical workability of the EGTC. These include the definition of territorial cooperation, the need to specify the Member States' financial liability, the applicable law and the provision to publish and/or register the statutes of the EGTC.

The most significant changes introduced by the common position are outlined here below.

The first significant change concerns the *ex-ante* control by the Member States when their regions or local authorities intend to set up an EGTC. Article 4(3) foresees that a Member State agrees to the proposed member's participation in an EGTC, unless it considers that such participation is not in conformity with the Regulation or national law (more or less corresponding to the Commission's modified proposal) or is not justified for reasons of public interest or public policy (*ordre publique*) of that Member State. An appropriate justification of refusal shall always be provided.

The second significant change concerns the scope of the Regulation. The common position of the Council has added in Article 7(3) that Member States may limit the tasks EGTCs may carry out without a Community financial contribution. However, this limitation cannot concern the core actions of territorial co-operation.

The system of financial liability of the EGTC as such and of its members has been reshaped: Concerning the organs, Article 10(3) states that the EGTC shall be liable for the acts of its organs towards third parties, even where such acts do not fall within the tasks of the EGTC. The liability of the EGTC in general and the residual liability of its members in case the assets of the EGTC are insufficient to meet its liabilities are now covered by Article 12(2). In principle the members have an unlimited residual liability. However, the national law may exclude or limit the liability of members formed under it.

4- COMMISSION DETAILED COMMENTS

4.1 Amendments accepted by the Commission and incorporated in full or in part in the common position

Amendments 1, 2, 4, 5, 7, 9, 14, 15, 16, 19, 23, 25, 27, 30 and 35 The common position agrees to call the instrument “European Grouping of Territorial Co-operation” (EGTC) in order to clarify that not only cross—border, but also trans-national or inter-regional co-operation are covered.

Amendment 3 The definition of “territorial co-operation” as covering the three forms of co-operation, namely “cross-border”, “trans-national” and “inter-regional”, has not been taken up in Recital 7, but in Article 1(2).

Amendment 6 Recital 5 covers agreements between Member States and/or regional and local authorities and clarifies that the Regulation is not intended to circumvent other frameworks for co-operation.

Amendments 8 21 and 24 The common position has deleted this Recital, but Article 7(5) states that the members of an EGTC may empower one of the members to execute its tasks.

Amendment 12 The decision-making procedures are covered by Article 9(2)(b), but not in Recital 14.

Amendment 13 The common position re-formulates the Subsidiarity Clause (Recital 15).

Amendment 17 The right of supervision in respect of the EGTC’s management of public funds is being covered by Article 6. However, going beyond the amendment, Article 6(4) clarifies that the management of Community funds shall respect the relevant legislation.

Amendment 20 The common position defines the “local bodies” of the original proposal as “bodies governed by public law in the meaning of Article 1(9), 2nd subparagraph of Dir 2004/18/EC. This may cover “bodies acting on a not-for-profit basis, in which regional/local authorities and Member States participate” as asked for by the amendment. However, the common position’s wording has the advantage of using a pre-existing definition in Community law.

Amendment 22 Article 7 defines only “tasks” to be executed by an EGTC, whereas the “competences” of the members remain with them. The EGTC has no genuine competences.

Amendment 24 The common position has split up the amendment. Article 7(2) states that the EGTC shall act within the confines of the tasks given to it, whereas the delegation of the execution of its tasks to one of its members is covered by Article 7(5). The legal capacity accorded to an EGTC is covered by Article 1(4).

Amendment 26 Article 12(3) concerns the financial liability of Member States.

Amendment 28 Article 8(1) states that the EGTC shall be the subject of a convention concluded unanimously by its members, adding the need for an unanimous decision and referring to the ex-ante control procedure laid out in Article 4(3).

Amendment 29 The common position has split up the amendment. According to Article 8(2)(c) the convention specifies the tasks of the EGTC, whereas Article 9(2)(a) covers the operating provisions.

Amendment 31 Article 9(2)(e) and (f) state that the statutes cover the responsibilities of the members with respect to the EGTC and with respect to third parties. However, a new article on liability has been introduced (Article 12).

Amendment 32 Article 2(1) defines that where matters are not, or only partly, regulated by the Regulation, the laws of the Member State where the EGTC has its “registered office” apply.

Amendment 33 The right of supervision in respect of the EGTC’s management of public funds is being covered by Article 6. In line with the Parliament’s amendment, the modalities of mutual recognition in the field of control are regulated by the Regulation. However, the practical arrangements for mutual recognition shall be covered by the convention (Article 8(2)(f)).

Amendment 34 The common position defines the law that applies to matters not, or only partly, regulated by the Regulation (Article 2). However, the common position does not specify that the national law is the one “governing national groupings of a similar nature and purpose” (amended proposal of the Commission) or “governing the way in which associations operate” (proposal of the Parliament’s amendment).

Amendment 36 The Commission had only accepted the convention’s notification to the Member States and the Committee of the Regions. That part has been kept in the common position (Article 5(1)).

Amendment 37 The common position foresees an assembly and a director (Article 10(1)).

Amendment 38 Article 8, concerning the convention, covers the essential issues of the EGTC, whereas Article 9, concerning the statutes, covers the more operational aspects of the EGTC. Consequently, the modalities of the dissolution are covered by Article 9(2)(c) and not by Article 8.

Amendment 39 The EGTC acquires legal personality and the capacity to act on the day of its registration or publication (Article 5(1)). Consequently, this issue could be deleted in Article 9 concerning the statutes.

Amendment 41 Article 5 distinguishes between the registration/publication of the statutes according to national law and the obligation to send a request to publish a notice in the *Official Journal of the European Union*. Concerning none of the legal bodies on EU level a publication of the statutes in the *OJ* is foreseen.

4.2 Amendments accepted by the Commission and not incorporated in the common position

There are no such amendments.

4.3 Amendments rejected by the Commission yet incorporated in the common position

Amendment 10 The Commission had rejected this amendment as it referred to a proposed Additional Protocol to the European Outline Convention on Transfrontier Co-operation, as a reference to a text not yet adopted was not acceptable. However, Recital 5 mentions the Council of Europe *acquis*.

Amendment 40 The Commission had rejected to delete Article 10 concerning the organs. The common position fixes a set of compulsory organs (Article 10) allowing to provide for additional organs in the statutes. Consequently, Article 10 has been kept.

4.4 Amendments rejected by the Commission and not incorporated in the common position

Amendment 18 As the tasks of an EGTC are defined by the members, no specific examples should be given in the articles. However, Article 6 of the ERDF-Regulation has a quite large scope and actions to promote reconciliation are not excluded when respecting the criteria for cross-border co-operation projects.

Amendment 36 Neither the Commission's amended proposal nor the common position have stated that the convention is notified to the Commission and that the Commission shall enter the convention in a public register of all conventions of EGTCs.

Amendment 37 Neither the Commission's amended proposal nor the common position have added an executive committee or a secretariat as compulsory organ. However, the statutes may provide for additional organs (Article 10(2)).

4.5 Amendments concerning only one language version of the Regulation

Amendment 11 This amendment has not affected the English version of the original proposal.

5- CONCLUSION

The Commission welcomes the fact that a new legal Community instrument to foster co-operation between regional and local authorities within the Community will come into force and considers that the common position adopted on 12th June 2006 by unanimity largely follows the aims and approach of its proposal and so can support it.