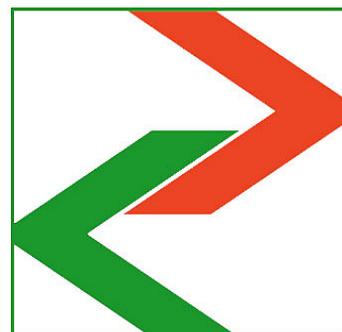


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## **STATEMENT**

on the

### **PROPOSAL FOR A**

## **REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**amending 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) as regards the  
clarification, simplification and improvement of the establishment  
and implementation of such groupings**

KOM(2011) 610 final

**1. November 2011**

## 1. General

The Association of European Border Regions (AEBR) **welcomes** the submission of the proposal for **amendment** of the European Commission aiming to improve the European Grouping for Territorial Cooperation (EGTC).

The proposals for amendments are related to **important problems** that occurred and offer practical solutions.

The three main objectives “**consistency, clarity and flexibility**” **meet approval**. Also, they are realised with the proposals for amendment. As summary of the contents of the regulation, Article 5 expresses this in a good way.

The AEBR shares the view of the EU-Commission that the added **value of an EGTC** is **sufficient** stimulation and no financial or other impulses of the European level are needed. An EGTC has to be viable on its own (membership fees). Its members have to know that cross-border cooperation requires own funds and that it does not only function if EU-funds are provided. Furthermore, own funds are a prerequisite for the liability that is scheduled in an EGTC.

By their studies, elaborated on behalf of the Committee of the Regions and the EU-Commission, the AEBR developed **practical oriented solutions and recommendations** that facilitated the realisation of the EGTC regulation in 2006. Nevertheless, till shortly before the end of the discussions there was the danger of failure as for the Member states the question of competences was highly controversial. Only the AEBR proposal (based on its practical experience) at a hearing of the Committee of the Regions, to replace the term “**competences**” by “tasks” achieved the final break-through. Unfortunately, the term “competences” is again used in some passages of the new regulation.

Based on practical experience of the AEBR we submit the following recommendations and concrete proposals for amendments/improvements.

## 2. Recommendations/proposals to the draft regulation

### A) General recommendations

The reasons to create and further develop an EGTC underline that there is a **clear need** to create visible and permanent legal structures of territorial cross-border cooperation in general, allowing also the decentralised management of EU-programmes.

There is the **danger to create parallel or double cross-border entities** for already existing cross-border cooperation and an EGTC would be established only for the purpose to manage EU-programmes.

Another difficulty is the **still ongoing discussion on “competences”** of an EGTC. It is not a coincidence that in the EGTC regulation of 2006 the term “competence” was avoided and **instead the term “tasks”** was used. Besides the fact that the differences in competences on both sides of a border will remain for decades, an EGTC will not be given competences, neither from the Member States nor from the regional/local level.

An EGTC has to **fulfil** necessary cross-border **tasks**. In well developed cross-border cooperation structures the **implementation of competences** may even be **delegated**, but the competence will still remain to the respective national public authority.

**Tasks are independent from competences** at regional level on both sides of the border. In practice, also in national policies, the regional/local level is involved in tasks (e.g. railways, large infrastructure, and national plans) and acts in those fields to represent the interests of their area/their members, even if it does not have the competence. There is no reason **why** this should **not be possible for a cross-border EGTC**. It is above all not a legal issue, but a political one.

Therefore, in the final proposal, like in the regulation of 2006, the term **“competence” should be substituted by “tasks”** (regards number 7 of the introduction, article 4, paragraph 3, etc.). Apart from that the proposal mainly speaks about tasks, at one point even about a “list of tasks”.

While in 2006 the term „**competences**“ was a controversial term for the Member states, in the new regulation it could have **negative effects** for a EGTC to be established, cause unnecessary discussions with the approving authority, and could be the motive for States to constrain the possible fields of action of an EGTC. This could cause **disparities** if it is about implementation of EU-programmes and territorial cooperation in general.

Example: An EGTC is established for cross-border cooperation in general, including management of EU-programmes. In a decentralised managed EU-programme, infrastructural measures can be implemented. At the same time the EGTC does not get the permission for “infrastructure” tasks in general cross-border cooperation (lack of competence). Legally, in both cases, it does not have the competence. But it can act in this field and fulfil cross-border tasks on behalf of its members.

Proposals for membership (including **participation** of institutions under **private law**), **involvement of third countries and overseas areas**, for a better **distinction** between **agreement** and **statutes**, for **enlargement of the objective** of an EGTC, for general applicable **law**, for rules for **staff**, for monitoring of the **administration** of public funds and for the **liability**, will bring **substantial progress**.

**B) Recommendations/proposals for the individual points of the proposal of the EU-Commission**

Ad article 1, paragraph 2:

**The passage (...) „shall be to promote economic, social and territorial cohesion “ (...) should be omitted completely.**

Justification: The objective of **territorial cooperation is already clearly defined in its specific regulation**. This could cause further and unnecessary discussions about the interpretation, and thus hamper the establishment of an EGTC. The negotiating partners of the EU-Commission in the Member States are others than those approving the EGTC in every particular state. Mostly these are the Ministries of the Interior in cooperation with the Ministry of Justice and the Ministry of Foreign Affairs that are not very familiar with the term “economic, social and territorial cohesion”. An EGTC “touches” their competences. Also, they were the ones who raised substantial objections against an EGTC before 2006. Here, without any need, a possible area of discussion is created.

Ad article 5, paragraph 1:

It should be **published in all participating states** in a due EGTC, as the public and the citizens, as directly concerned parties, have the right to equal and simultaneous information.

Ad article 7, paragraph 2:

**The passage (...) „shall act within the confines of the tasks given to it, which shall be the facilitation and promotion of territorial cooperation to strengthen economic, social and territorial cohesion and be determined by its members“ (...) should be omitted.**

Justification: see above

Question of execution of rights of an EGTC in another Member State

One of the most difficult questions is, if an EGTC may act as contacting partner for **works or services in another Member State, and how it can enforce its claims on the other side of the border.**

This problem was already solved in 1991 in the German-Dutch Treaty (Anholt Treaty). It was agreed that a **public authority may act under instruction and on behalf of a cross-border structure or of a public authority located in the neighbouring country.** This is also of practical importance in case of litigations.

Example: A trial in issues related to the law of state in which the EGTC is located that has impact on another Member State. In case of refusal of one of the parties affected by that trial the question arise how the claim can be straightforward enforced. The **current regulation** already allows that an **EGTC can delegate tasks to one of its members.** This should be further developed.