



## Guideline for the establishment of an EGTC for stakeholders of transnational cooperation

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# 1 Introduction

This guideline primarily targets German stakeholders who have worked in transnational cooperation projects (INTERREG B) and who intend to establish a more permanent basis of their co-operation, which does not (exclusively) rely on INTERREG funding. This guideline provides an overview of the most important questions that arise in the course of establishing an EGTC. It points out which questions may require further clarification and, as far as possible, makes proposals how to deal with these challenges. At the beginning of this guideline, specific characteristics of the EGTC (European Grouping of Territorial Cooperation) are compared with the structure of INTERREG projects when scrutinising whether there is a need for establishing an EGTC.

The Committee of the Regions and INTERACT have already published proposals on the procedures when establishing an EGTC. These proposals, however, do not specifically address stakeholders involved in transnational cooperation. This guideline stands out against other guidelines by being more precise. It does so by

- depicting questions that occur when transnational (project) structures are established in the long term, i.e. without INTERREG funding;
- providing possible answers for arising questions;
- facilitating the search for further sources of information.

This guideline may support stakeholders of transnational cooperation to better understand the EGTC legal instrument. The main goal furthermore is to provide German stakeholders with decision support in order to assess the pros and cons of establishing an EGTC. An EGTC is an opportunity to put transnational cooperation on a permanent basis. Depending on the cooperation structure and its context, another solution may, however, be preferable. This guideline neither intends to advise stakeholders for nor against establishing an EGTC. It provides information that comprises different arguments, problems, questions and possible solutions – as objective as possible.

Once again, one has to emphasise that the guideline has been primarily developed to address German stakeholders. Thus, this guideline does not only focus on information that is relevant from a German perspective. This is also reflected by the process that is introduced in this guideline and that may differ from processes for establishing an EGTC preferred in other countries. This should be considered by German stakeholders when using this guideline together with their partners.

In order to achieve the above-mentioned targets, the guideline is divided into two parts:

- **Check list.** This list systematically presents the questions to be answered and to be discussed. As far as possible, a standardised structure is used for discussing single matters. This structure comprises the following aspects:
  - preconditions that generally argue for or against establishing an EGTC;
  - a short general description of each question;

- examples for possible answers to the respective question and
- an extract from the EGTC Regulation, if necessary.
- **Further sources of information.** The annex to this guideline (separate document, only available in German) contains several sources that provide further support for establishing an EGTC. They comprise, among others, the EGTC Regulation, a list of German approval authorities, contacts and short descriptions of selected EGTCs.

Despite its more detailed information compared to other process descriptions, this guideline cannot provide universal solutions for any kind of constellation within a transnational EGTC. The high diversity of problems deriving from establishing a transnational EGTC (with German participation) would exceed the size of this guideline. It can therefore neither consider cultural differences nor other aspects that differ from country to country when establishing a transnational EGTC. The variety of options would be too great. Thus, each project has to develop suitable options on its own. Due to this argumentation, the guideline will not refer to the implementation of the EGTC Regulation in other EU Member States.

Transnational projects will generally establish an EGTC with partners from more than two Member States. This requires some basic knowledge about the legal systems of all states involved, especially about the legal system of the state in which the EGTC shall have its seat. Due to the complexity of legal issues to be solved, it is recommended to get legal advice in the course of establishing an EGTC.

Each EGTC formation is an individual process! Thus, stakeholders who are already experienced with the EGTC instrument and who are advanced in the establishment process may only find additional comments rather than solutions or answers for their remaining problems and questions.

## 2 Check list

The following figure illustrates the general process of matters to be dealt with while establishing an EGTC for transnational cooperation projects. This general process is a theoretical process in so far as the practical process will most probably deviate at several points from the presented process. There are many linkages between single questions. Therefore, clarifications resulting from a specific question may require corrections for questions that have already been discussed. Formulations for tasks and objectives will often be summarised under working titles before definite formulations may be drawn from further modifications. The presented structure aims to provide orientation for the process and path of an EGTC formation. At different stages of the process, this guideline may be used in different ways:

- During the **starting phase** it provides an overview of tasks with which interested stakeholders will be confronted.
- While **working** on single questions they are to be discussed in more detail. The guideline indicates possible solutions that may inspire future steps.
- Towards the **end** of the EGTC formation, the guideline provides assistance in verifying whether all aspects have been considered.

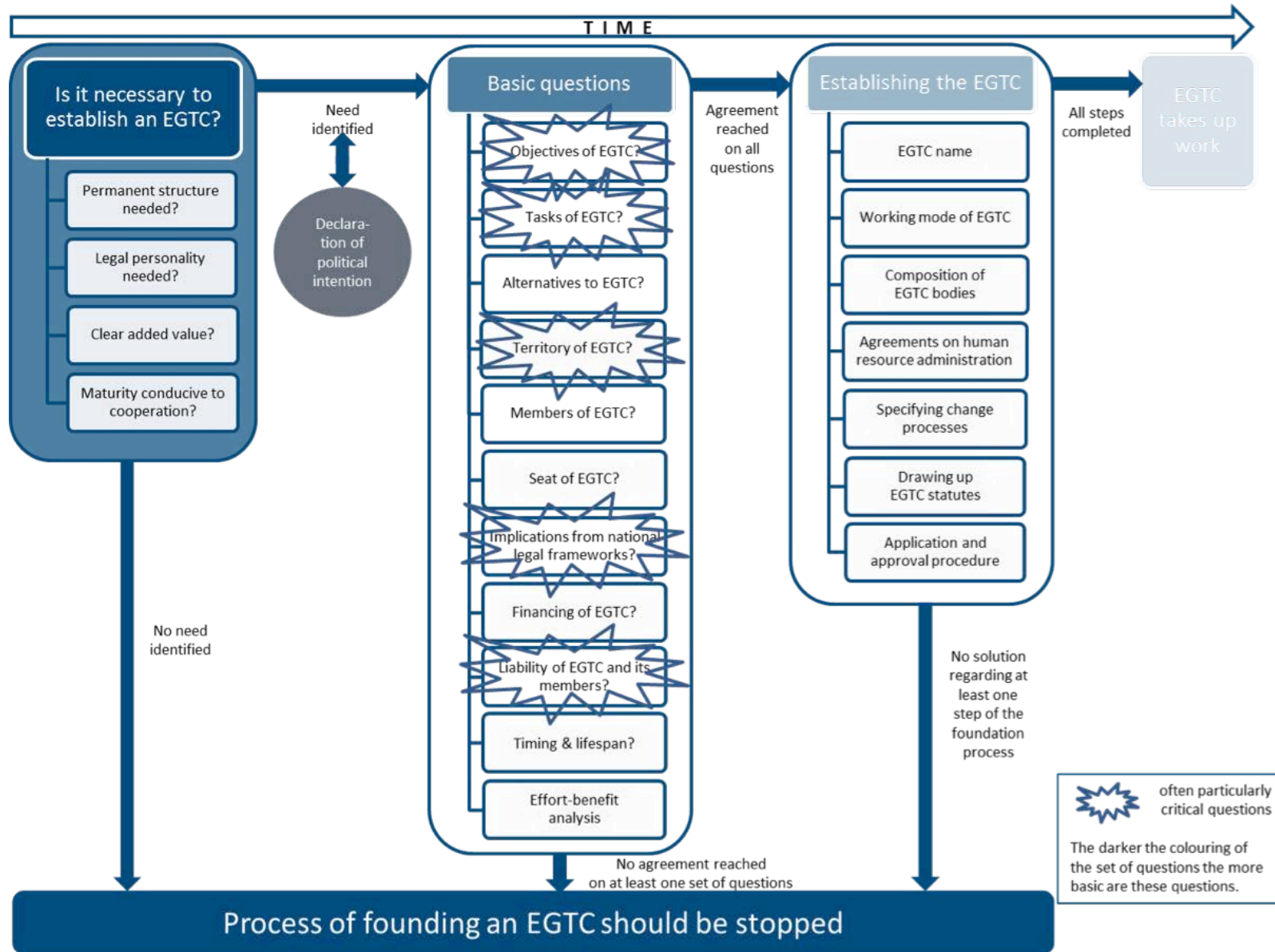
In this process, we distinguish between four general (circled) sections:

- Is there a need to establish an EGTC?,
- basic questions,
- establishment of an EGTC,
- EGTC work begins.

These matters should be dealt with in the given order (see figure), in order to implement this process in the most target-oriented way. By following this structure, rather conflict-free matters will not be discussed before 'Establishing the EGTC', and obstacles, that mainly arise when working on basic questions, will already have been overcome. Basic questions will, however, only be dealt with if there is consensus about the need for establishing an EGTC.

Questions within one of the four framed sections may be dealt with either according to the structure indicated here or in a different order. It may even be useful to work on several questions simultaneously. This basically depends on the specific situation of the transnational project interested in establishing an EGTC. As answers to one question may affect other questions and may be very time-consuming respectively, one may even expect that several questions of the same section are considered simultaneously or that processes when dealing with them at least overlap.

**Figure 1: Overview of matters and process of a recommended establishment of an EGTC**



Four questions are highlighted in the section ‚Basic questions‘. They have proved to be very important or critical in different processes when establishing an EGTC. The figure points out that at any time one may decide against establishing an EGTC if some preconditions cannot be sufficiently fulfilled. Establishing an EGTC must not become an end in itself!

## 2.1 Is it necessary to establish an EGTC?

Before scrutinising the necessity for establishing an EGTC, the main characteristics of an EGTC should be shortly explained in order to identify principal differences between the structure of an EGTC and the project structure in the framework of INTERREG.

The European Grouping of Territorial Cooperation (EGTC) was created by Regulation 1082/2006 of 5 July 2006 and amended by Regulation 1302/2013. The main objective of the EGTC is to facilitate and to promote all kinds of territorial cooperation between its members in order to strengthen economic, social and territorial cohesion in the European Union. This Regulation created an instrument which allows bodies governed by public law to act together beyond national borders in the name of one organisation. This has been achieved by providing the EGTC with extensive legal capacity and an **own legal personality**.

Through the creation of an own legal personality, EGTC members allocate tasks to the EGTC on a permanent (or temporary) basis. Competences and responsibilities, however, remain at the members themselves. The EGTC may procure INTERREG projects as an **individual applicant**; the partnership structure does not have to be set up for every application. Thus, the degree of **continuity and consistency** in the cooperation structure is higher than in INTERREG projects. The internal relationship is settled by the EGTC, whereby former project partners do **not have to close recurring project contracts** anymore. Through this permanent character tasks become more **independent from the members‘ political change**, e.g. if representatives and contact persons change as a result of elections. The functioning of an EGTC therefore does not correspond to a project structure but is rather **comparable to a special-purpose association** („Zweckverband“).

### 2.1.1 Which requirements and needs for cooperation exist?

Is it necessary to establish an EGTC?

A **need** to establish an EGTC is **identified** if there is consensus about the added value of an EGTC and/or a permanent structure is required due to the permanent or specific character of the task under question. ⇒ A political declaration of intention should be adopted and one should proceed by working on the section ‚Basic questions‘.

The planned establishment of an EGTC should **not** be pursued if no need can be identified. This can be assumed when **none** of the following conditions is fulfilled:

- there is no permanent task;
- no own legal personality is necessary;
- there is no consensus on the added value;

- there is a lack of sufficient common grounds.

In this case, it is reasonable to assume that the EGTC serves as an end in itself.

The work on establishing an EGTC should be started with the questions set out in the first column of questions in order to check thoroughly the general need for establishing an EGTC. If a need can be identified, this does not imply a successful establishment of an EGTC. It only implies that it is reasonable to go on with 'Basic questions'.

The general need can be identified by answering a few questions:

- **Is it necessary to establish permanent cooperation structures?** A need may exist when the transnational project deals with a permanent issue or if the issue may not be solved by *one* project in the near future. Such an issue, for example, may be the maintenance of communication structures and information exchange between partners – independently from ongoing projects. Conversely, issues which may be solved in a given period of time do not entail a need for establishing permanent cooperation structures.
- **Is the EGTC supposed to perform tasks for which an own legal personality is required?** Due to the hitherto existing project cooperation, new tasks may arise for the existing partnership that cannot or can only with difficulty be dealt with in a structure without an own legal personality. This is particularly true for the provision of services and implementation of joint activities on behalf of all partners as well as for the legitimate representation of all members through the EGTC. As an example for such services one may think of different kinds of consultation centres. An own legal personality is furthermore helpful – though not a necessary requirement – when representing all members as one applicant in applying for EU funds for joint activities of all members. If there are no such tasks that could only be carried out with an own legal personality, one may conclude that there is no need for establishing an EGTC.
- **Does the EGTC create a (significant) added value?** Different sources mention several advantages that may, depending on the project's subject, also be relevant for transnational cooperation projects. They in particular include:
  - to create a strategic approach for integrating different actions in the framework of a common policy,
  - to implement activities in accordance with the principle of subsidiarity,
  - a better structure for the exchange of information and best practices,
  - permanent structures and continuous activities,
  - legally binding decisions and long-term commitment of members,
  - the participation of partners in the decision-making process and ownership,
  - the transparency and visibility of the structure,
  - a better efficiency of common (project) administration (especially in EU-funded follow-on projects that will be procured in the future)
  - easier tendering and procurement procedures,
  - to recruit own staff,




- to ensure the capability to take part in EU programmes (as an individual applicant),
- the opportunity to stimulate further cooperation by sending a clear political signal with the establishment of an EGTC.

Some of these aspects have already been mentioned in the previous questions. Even if neither a need for establishing permanent cooperation structures nor for an own legal personality could be derived from answering the previous questions, a need may nevertheless exist, when the EGTC entails a relevant added value in the sense of one or several above-mentioned advantages.

- **Is the level of common experiences of cooperation sufficient?** Previous developments in territorial cooperation structures show that the establishment of permanent cooperation structures usually result from a gradual development process. Quality, duration and intensity of the cooperation result in a certain degree of maturity that suggests the establishment of permanent structures. In these cases, cooperation is usually based on thematic, economic, geographic and/or cultural common grounds. The need for an EGTC, however, is not automatically derived from the degree of maturity of cooperation. But it reveals the degree of trust in the cooperation as well as the awareness or development of joint perspectives. This tends to be helpful for advancing the EGTC establishment process as it allows for rather general formulations of statutes giving adequate leeway in the future.

### 2.1.2 Declaration of political intention

Once the need for an establishment of an EGTC is identified, the political will has to be formed in order to initiate the (possible) EGTC establishment. This asks for a joint declaration by the political stakeholders of all members of the future EGTC. The declaration should contain the joint wish for the establishment of an EGTC and the mandate to allocate resources for its establishment. It may furthermore specify a thorough review of the adequacy of an EGTC solution including a time frame for the review.



Declara-  
tion of  
political  
intention

The declaration fulfils different functions:

- It formulates tasks to be performed by the administrative staff involved of the future EGTC members to ensure that sufficient resources will be provided for the establishment.
- It should clarify responsibilities in the establishment process by referring to relevant internal processes, lobbying etc. This also includes the foreseen involvement of politicians, especially local politicians.
- It thereby binds political representatives to long-term cooperation and creates higher obligation for both political and administrative representatives to cooperate.
- It sets a clear signal to external stakeholders by proclaiming the willingness to cooperate permanently.
- Finally, relevant European institutions (EU Commission, CoR) may be informed, simplifying the access to different sources of information.

## 2.2 Basic questions

### 2.2.1 Which objectives are to be achieved through cooperation in an EGTC?



If at least one joint specific objective can be formulated, the process should be continued.

If the stakeholders cannot agree on a common objective, this suggests that all efforts for the establishment of an EGTC should be cancelled. This may be a result of continuous and significant differences between partners regarding the understanding of or expectations on the EGTC.

The EGTC instrument has been created in order to provide a standardised opportunity to stakeholders of territorial cooperation anywhere in the European Union with which they can contribute to strengthening economic, social and territorial cohesion. Correspondingly, an EGTC may only be established by stakeholders of transnational project cooperation if the EGTC generally aims to facilitate and/or to promote territorial cooperation for strengthening economic, social and territorial cohesion in the relevant (transnational) territory.

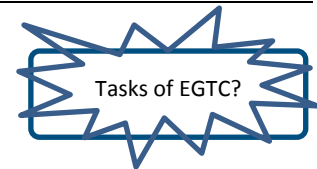
Transnational project groups of territorial cooperation are usually based on one or several INTERREG projects. The purpose of all these projects is to contribute to cohesion in the European Union. Therefore, the general objective, for which EGTCs may be established, is ensured.

The EGTC Regulation furthermore requires a 'specific objective' that has to be formulated for the convention and the statutes and that supports the general objective. Some examples for such specific objectives in transnational projects are:

- to promote exchange in a relevant thematic transnational network,
- to promote common interests of a transnational network,
- to support spatial development in the territory of the network in favour of cohesion.

The development of the specific objective can additionally be supported by formulating operational objectives. Their formulation may be an intermediate step towards the development of concrete tasks.

## 2.2.2 Which tasks are transferred to the EGTC (and to what extent)?



When the partners can agree on the tasks of the EGTC, important content-related decisions are made. These decisions form the framework for a series of legal and technical questions, e.g. the financial base (cf. question 2.2.8).

In case that even an intensive dialogue on balancing different expectations does not result in a common understanding with regard to the nature and the extent of tasks to be transferred to the EGTC, doubt is casted on the success of the whole process. One should at least consider postponing further efforts.

Transnational networks may perform both tasks of a single thematic field or across different themes. The tasks must promote territorial cooperation and, as described above, strengthen territorial cohesion. They should be derived from the hitherto existing project cooperation. In this way it is easier to ensure that the partners have the necessary responsibilities as well as content-related and formal competencies. This furthermore simplifies to answer question 2.2.5 (membership structure). Regardless of the membership structure, the amended EGTC Regulation contains several simplifications (Art. 7 (2) EGTC Regulation). Under certain circumstances not all members need to have all competencies necessary to perform the tasks of the EGTC.

### Art. 7 (2) EGTC Regulation

An EGTC shall act within the confines of the tasks given to it, namely the facilitation and promotion of territorial cooperation to strengthen Union economic, social and territorial cohesion, and the overcoming of internal market barriers. Each task shall be determined by its members as falling within the competence of every member, unless the Member State or third country approves the participation of a member established under its national law even where that member is not competent for all the tasks specified in the convention.

Formulations of tasks have to be as precise as possible. Developing a tree of aims and tasks (general objectives – operational objectives – tasks) that is related to the question of the objective (cf. question 2.2.1) may be useful. It is in particular necessary to clarify which tasks may be performed within a common framework and which restrictions result from national laws that affect the opportunities for action of individual partners. **No** national/regional **competencies are transferred** to the EGTC. They remain with the individual EGTC members. Only the **performance of specific tasks** will be transferred from the members to the EGTC. Thus, the structure of an EGTC corresponds to a special-purpose association (“Zweckverband”), which is an association of different local and regional authorities in order to jointly perform a specific public task. An EGTC therefore focuses on a joint execution of tasks beyond national borders. Consequently, the formulation of tasks is essential for further developing the EGTC.

Due to their experience with transnational cooperation, project partners should be familiar with each other’s opportunities for action. This should be an advantage when formulating tasks. Nevertheless, the understanding of the tasks that should be bindingly transferred to the EGTC may differ between future EGTC

members. This may raise the need for further clarification and more detailed specifications regarding the tasks. This need for clarification is often caused by different ideas regarding the use of and by varying expectations on an EGTC. If it becomes apparent that expectations vary significantly between partners, an intensive dialogue should be held in order to balance expectations and interests. If necessary, this may be supported by an external facilitator. Already at the beginning, this dialogue may be restricted to a certain period or to a limited number of workshops.

In principle, establishing an EGTC that focuses on a specific thematic field might be less complex than establishing a cross-thematic EGTC. In specific thematic fields like managing a cluster or a research network, the partnership structure is generally more homogenous than for cross-thematic tasks. Spatial planning may be an example for the latter. Accordingly, a formulation of tasks for a specific thematic focus is expected to be easier than for different themes of activity. The question regarding the homogeneity of the partnership structure affects other questions as well that will be discussed below (cf. e.g. questions 2.2.8 and 2.2.9).

Some examples for typical tasks of an EGTC originating from transnational project work are the following:

- strengthening activities that increase the visibility and the positioning of a network in Europe,
- implementing sustainable communication strategies within the network,
- acquiring and managing EU funds,
- developing joint strategies for the transnational territory,
- coordinating the spatial development of the transnational territory.

### 2.2.3 Are there realistic alternatives to an EGTC?

Alternatives to EGTC?

If a reasonable consolidation of cooperation is only possible by establishing an EGTC, the establishment process should be continued.

If a different and easier structure offers a more suitable and perhaps even cheaper solution, this alternative should be taken.

An extensive assessment of all alternatives would exceed the size of the guideline. Hence, possible alternatives will be only briefly presented in the following. Depending on the hitherto existing project structure, some alternatives may require further and in-depth analysis.

If the establishment of an EGTC focuses on creating an own legal personality, only a few alternatives exist that fulfil this requirement for transnational cooperation projects. These alternatives though imply other disadvantages, yet they should be considered from case to case. One issue concerns the question in how far the transfer of tasks from members to a legal personality in another country is approvable if this legal personality is not an EGTC, i.e. whether another legal instrument could be used. This depends both on the relevant national legislation and on the concrete tasks under question.

In contrast to cross-border cooperation, transnational cooperation projects cannot refer to agreements that aim at simplifying cross-border cooperation. This among other things results from the geographic scope of transnational projects. Thus, the following alternatives remain for transnational cooperation projects that pursue an own legal personality:

- **Registered association.** Such an association can be established in accordance with the national law of the country in which it will be registered. Although local and regional authorities can principally become members of registered associations, this may be prohibited for a registered association in another country. This depends on the national legislation.
- **European Economic Interest Grouping (EEIG).** This form of business organisation is based upon EU law and was established for promoting cross-border economic cooperation between Member States. An EEIG has no legal personality but has the capacity of rights and obligations (legal capacity). It can be established by different types of companies – both by natural and legal persons under private or public law. In contrast to an EGTC, it is, however, registered as a private-sector organisation for which profitability is assumed. Therefore, an EEIG may not be suitable for many tasks related to territorial cooperation (cf. Regulation (EC) No 1082/2006, recital (4)).
- **Limited liability company.** Local and regional authorities may generally participate in limited liability companies or may establish them. This also applies to the participation in international limited liability companies. If the company is established as a non-profit limited liability company, profitability would not be presumed as its main purpose. However, depending on the subject of cooperation, the transfer of tasks to other legal personalities might be restricted to EGTCs.

If the establishment of an EGTC is not driven by the objective of creating an own legal personality, other forms for consolidating the existing network could be considered. The easiest solution in many cases consists in legally binding contracts. They may be designed similarly to partnership agreements in INTERREG projects. Such an approach may be sufficient e.g. for establishing and equipping a joint secretariat.

However, these forms of cooperation cannot be applied everywhere based on the same terms. In each case, one has to scrutinise whether all partners are allowed to financially contribute to a foreign local or regional authority on the base of agreements. Depending on the concrete design, other advantages of an EGTC, in particular regarding the cooperation's consolidation, possibly cannot be achieved when following the path of an alternative to the EGTC.

All in all, it may be worthwhile for transnational projects to review different alternatives to an EGTC. The possible relevance of these alternatives, however, depends on the Member States involved and the main subject of the EGTC.

### 2.2.5 To which territory does the EGTC refer?



Transnational projects usually include partners from more than two Member States. The basic condition of Article 3 of the EGTC Regulation for transnational projects is therefore fulfilled.

Defining the territorial scope is of particular relevance as the territory can be either continuous or discontinuous, i.e. spatially diffuse. This depends on the members' areas of competence. Additionally, it is conceivable that, on a territory that is generally continuous, partners cannot be found in all sub-territories. In other words, an EGTC territory may also comprise some 'white areas'.

These questions regarding the territory are relevant for the future formulation of convention and statutes and may also affect the formulation of tasks (cf. question 2.2.2). According to the EGTC Regulation, the territory on which the EGTC may perform actions has to be defined in the convention and statutes respectively. The definition of the relevant territory should therefore match the territory on which the partners are able to act. In case it is envisaged that new partners should or can join the EGTC after its establishment, it may be useful to integrate a saving clause in this definition. If these partners belong to a Member State that is already represented in the EGTC through other members, the approval procedure for the new convention may be simplified (cf. Article 4 (6) and Article 4 (6a)).

In addition, it is useful to clarify in how far it is necessary to involve stakeholders from neighbouring areas, who are not partners of the EGTC, in order to achieve the objective and to fulfil the tasks of the EGTC. This broader perspective may be important for example in the case of corridor developments or functional cooperation areas. At least for these cases, it should be reviewed whether some kind of 'consultative committee' or another body should be established which may involve these stakeholders in another way than the EGTC organs (cf. question 2.2.5).

Finally, the cooperation area may comprise areas of non-EU countries. Thus, in some cases the question may be raised whether stakeholders from third countries should or could be involved. Article 3a of the amended EGTC Regulation clarifies the way in which institutions from third countries and overseas territories can be involved. This article furthermore clarifies the necessary involvement of institutions from EU Member States in such a case. In addition, Article 4 (3a) contains details about the approval procedure for the involvement of third countries. Accordingly, the Member State, where the proposed registered office of the EGTC is to be located, shall verify in consultation with the other Member States involved whether the conditions of Article 4 (3a) are fulfilled. Furthermore, participation in the EGTC has to be approved by the third country. This participation can for example be based on an agreement that was concluded between a Member State, under whose law a prospective EGTC member is established, and that third country.

### 2.2.7 Which partners should be members of the EGTC or should be integrated in the EGTC through other forms of cooperation?

Members of EGTC?

A downsized membership structure, that focuses on the core group of stakeholders and that initially involves other partners in committees or working groups etc. and only integrates them as members at a later stage, may be beneficial to the EGTC establishment provided that no partner feels excluded.

An EGTC should not be established if the membership structure and the composition of all active partners challenge the achievement of objectives or if the membership structure is not sufficient for implementing the tasks.

Especially for big projects the question arises whether all project partners want to be, should be and can be a member of the EGTC. Hitherto existing analyses suggest that the coordination effort increases significantly the more members are involved – both in the initial phase and in everyday working practices of an EGTC. The same applies to the number of Member States that are involved through EGTC members. A high number of members and Member States respectively restrict the prospect of achieving a positive outcome of a cost-benefit analysis for an EGTC establishment. However, there are no general limitations in size or number of members. This has to be decided from case to case. Even though the described relationship between the number of members and effort is of general relevance and should be thoroughly considered, it does not imply compulsory restrictions. This is reflected by existing EGTCs that bring together dozens or even more than 100 municipalities.

In the case of transnational projects, this issue may become even more critical due to geographic distances between members and different types of members. The latter are particularly involved in cross-sector transnational projects and represent particular challenges for the concrete formulation of financing, liability and coordination rules (cf. related questions). This usually is only a minor challenge for thematically more focused projects like managing a cluster or developing a research network, provided that the partnership structure is more homogenous than in cross-sector projects. Additionally, it might be easier in these cases to identify a comparatively homogenous core group for establishing an EGTC.

Due to the variety of partnership structures in transnational projects, it is necessary to distinguish between different types of participations in an EGTC. The EGTC Regulation does not lay down any restrictions so that very different types of participation are conceivable. Depending on the context of the transnational project a distinction between full members and other associated partners should be considered:

- **Full members.** The group of potential EGTC members (cf. Article 3 EGTC Regulation), that in the end make up the general assembly, is restricted to Member States, regional and local authorities and bodies governed by public law. Bodies governed by public law are institutions (regardless their legal form) that were established for the specific purpose of meeting non-commercial needs of general interest, have legal personality and that are

primarily financed by public bodies.<sup>1</sup> An enterprise that is entrusted with the operation of services of general economic interest may also become a member of an EGTC, provided that this is in accordance with applicable national and EU legislation.

### Article 3 EGTC Regulation

(1) The following entities may become members of an EGTC:

- a) Member States or authorities at national level;
- b) regional authorities;
- c) local authorities;
- d) public undertakings within the meaning of point (b) of Article 2(1) of Directive 2004/17/EC of the European Parliament and of the Council or bodies governed by public law within the meaning of the second subparagraph of Article 1(9) of Directive 2004/18/EC of the European Parliament and of the Council;
- e) undertakings entrusted with operations of services of general economic interest in compliance with applicable Union and national law;
- f) national, regional or local authorities, or bodies or public undertakings, equivalent to those referred to under point (d), from third countries, subject to the conditions laid down in Article 3a.

(2) An EGTC shall be made up of members located on the territory of at least two Member States, except as provided for in Article 3a(2) and (5).

- **Associated partners.** Besides the above mentioned institutions, private and commercial institutions may also work in an EGTC if this is useful for the purpose of the EGTC. Establishing structures for associated partners is also possible but not mandatory. These structures may, however, be useful for transnational projects for a variety of reasons and they may refer to both public and private legal entities:
  - Project partners (currently) do not want to become full members because they do not want to commit themselves permanently to the EGTC or because they still have reservations on the EGTC instrument due to a lack of experience.
  - Project partners are (currently) not supposed to become a full member because the formal membership is restricted to a small group of very intensively involved institutions for efficiency reasons.
  - Project partners cannot become a full member because they do not fulfil the conditions of the EGTC Regulation (keyword: commercial) or other legal barriers still exist (keyword: third country).
  - Interested institutions that were not yet involved in the previous project work but are interesting and/or relevant for the future work on transnational tasks may be involved either as full members (e.g. additional local and regional authorities) or as associated partners – depending on their institutional structure.

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<sup>1</sup> For details on conditions for these other bodies governed by public law cf. European Parliament and Council (Directive 2004/18/EC, Art. 1(9)).



The type of involvement for associated partners should be selected according to the reason for involvement. The EGTC Regulation does not state any restrictions. Thus, there is a lot of leeway regarding the wording in the statutes. Therefore, only some examples for possible forms of involvement can be given here:

- **Existing committees from INTERREG.** Transnational project cooperation includes different committees (e.g. Steering Committee) that could be used and possibly further developed for a higher number of partners and adjusted to changing roles.
- **Advisory board.** Especially in cases, in which the consultation of non-members reoccurs and is important for fulfilling transnational tasks, the establishment of an advisory board may be a suitable solution. An example is the establishment of an EGTC for managing a cluster which among other things requires permanent feedback and exchange with the enterprises involved in the cluster.
- **Thematic working groups.** Depending on the task of the EGTC (for example in the context of strategy development) the establishment of thematically focussed working groups that involve associated partners can be helpful for fulfilling the tasks.

Regardless the decision on the number and structure of members during the process of establishing an EGTC, the membership may change over time. Other members should or may want to access the EGTC or members might even express the wish to leave the EGTC during its existence. This could happen if relevant competencies are transferred from a member to another institution due to administrative or political reforms, or when, in the initial formation phase, a core group assumes that the EGTC should grow at a later stage. Both cases should therefore be considered and described when writing the statutes.

### 2.2.8 Where is the registered office of the EGTC to be located?

Seat of EGTC?

The decision on the location of the registered office of the EGTC has usually not been problematic in the past. If it appears to be problematic, this can be the result of one of the following factors. Either political willingness and factual considerations in the light of a national legislation differ or partners from different countries consider the registered office as a possible means to gain greater recognition and prestige that they do not want to forgo. It is recommended to put the real objective of cooperation before such considerations.

The decision on the country of the registered office has far-reaching consequences as it is directly linked to the relevant national legal framework. This decision may be taken at an early or a later stage in the phase of preparing the establishment. This depends on the specific configuration. Due to the consequences resulting from this decision, it is generally recommended to tackle this issue at an early stage (for example immediately after answering the questions so far mentioned in this guideline). However, when deciding on the country, some basic knowledge should also be gathered for other relevant countries in order to put the decision on a sound basis. Central aspects and relevant factors are the following:

- **Political willingness.** As this decision leads to visibility and influence, it is often decided at political level.
- **Practical considerations.** The decision is influenced by practical considerations of the initiators who might want to or are supposed to take on a leading role in the EGTC and who might not want to change their location.
- **Liability.** If an EGTC is supposed to be established with limited liability, a registered office in a foreign country may be particularly interesting as 'piercing the corporate veil' (which is not known in all countries) does not reach beyond national borders.
- **Jurisdiction.** Depending on how the EGTC Regulation is implemented on the national level, an EGTC may be governed by public or private law.
- **Recruitment of staff.** Rules for remuneration and disparities in income levels may hamper the recruitment of staff for the EGTC in some countries. This may become particularly important if staff from other countries is to be recruited. Especially for German public employees and civil servants, it is usually not attractive to change the terms of their contracts. This might be necessary in order to work in another country though.

Even though political considerations tend to be very important for the decision on the registered office, it is recommended to review different national legislations with regard to their consequences for the EGTC in order to make a well-balanced decision (cf. question 2.2.7). It is therefore recommended to scrutinise this decision during the cost-benefit analysis. Very different opportunities, restrictions and consequences for everyday working practices result from the principle that, unless otherwise specified, applicable law and jurisdiction correspond to the national legislation of the country in which the registered office is located. Especially the leeway in designing the EGTC, explained in the next section, is to be considered. Establishing direct contact with the competent approval authorities might give further insight into this issue (cf. question 2.3.2).

In addition to the decision on the country in which the registered office is to be located, transnational projects may also consider the need for establishing cooperation offices in other territories of the EGTC. This could be relevant for comparatively large-scale transnational projects in order to ensure a corresponding presence and visibility of the EGTC.

### 2.2.9 Which opportunities and restrictions result from relevant national legislations for the establishment of an EGTC?



If the relevant national legislations are incompatible with each other or if the EGTC Regulation is differently interpreted by the Member States involved and leading to incompatibility, further efforts to establish an EGTC might become obsolete – at least in the envisaged partnership.

Previous experiences in establishing EGTCs show that the national legislation strongly impacts on the design of the EGTC. In France, for example, memberships were so far only approved when the registered office was located in France. The question on the legal form is also regulated in different ways in the Member States. However, no such restrictions exist for German members. In the selection process of the country for the registered office, it is mandatory to

analyse the consequences that result from the decision, on a predefined location or on several alternative Member States with regard to:

- legal form,
- rules on liability,
- financial management and auditing,
- public tendering procedures,
- fiscal regulations (in particular regarding VAT),
- recruitment and payment of staff,
- social security.

External legal advice is recommended for a solid review of these rules. The legal adviser should have particular in-depth knowledge of the national legislation that is relevant for an EGTC in the Member State in which the registered office shall be located in order to point out potential problems and to provide the EGTC with arguments for a sound assessment of potential locations. Furthermore, interdependencies between various of the above-mentioned aspects are to be considered. One example may be the interdependence between the legal form and the approval of exemptions from VAT.

Some institutions, that worked on legal aspects related to EGTCs from a German perspective and might provide legal advice, are listed in the annex (only available in German). So far, only a few such institutions exist. Another opportunity to scrutinise the legal framework consists in direct contacts with approval authorities and in the exchange with already existing EGTCs. It is recommended to contact the relevant approval authorities at an early stage in order to avoid potential exclusion criteria and rules that are not capable of being approved in the first place. At the same time, this contact may be beneficial for securing the authorities' support.

The final outcome of the review of national legislations should not only be considered for the final decision on the registered office's location but also for weighting the cost-benefit analysis. Different countries imply different costs due to the above-mentioned consequences.

### **2.2.10 How can an EGTC be financed?**

Financing of EGTC?

The matter of financing is sufficiently solved when the implementation of permanent tasks can be financed by the contributions received from the members and if the members agree on how to divide the contributions.

Establishing an EGTC seems to be less promising when the preconceptions for the financial basis formed by partner contributions differ between the partners, because this also implies a different understanding of the tasks. This means that at least objectives and tasks need to be reviewed once more for reaching new consensus.

### Article 7 (3) and 7 (4) of the EGTC Regulation

(3) An EGTC may carry out specific actions of territorial cooperation between its members in pursuit of the objective referred to in Article 1(2), with or without financial support from the Union.

Primarily, the tasks of an EGTC may concern the implementation of cooperation programmes, or parts thereof, or the implementation of operations supported by the Union through the European Regional Development Fund, the European Social Fund and/or the Cohesion Fund.

Member States may limit the tasks that EGTCs may carry out without financial support from the Union. However, without prejudice to Article 13, Member States shall not exclude tasks concerning the investment priorities referred to in Article 7 of Regulation (EU) No 1299/2013 of the European Parliament and of the Council.

(4) 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 of the State or of other public authorities, such as police and regulatory powers, justice and foreign policy. However, in compliance with applicable Union and national law, the assembly of an EGTC, referred to in point (a) of Article 10(1), may define the terms and conditions of the use of an item of infrastructure the EGTC is managing, or the terms and conditions subject to which a service of general economic interest is provided, including the tariffs and fees to be paid by the users.

Institutions so far involved in INTERREG projects, who consider consolidating their cooperation by forming an own legal framework, may primarily finance the EGTC by contributions from the members (membership fee), which may then be complemented by additional subsidies if possible. The contributions should make up the basic equipment of the EGTC. Hence, the members have to agree on the level of contributions and individual shares. Additional funding may be acquired in different ways (new EU-funded projects, projects co-funded by national/regional programmes) but it should be considered that in particular INTERREG funding aims at financing projects and is not suitable for long-term funding. Therefore, the EGTC's long-term operation requires another solid source of revenue.

In order to minimise the need for further clarification, it has to be scrutinised how the funding can be embedded in the existing structures. Nevertheless, the following questions regarding the contributions have to be solved:

- **What should be the level of the financial basis for the EGTC financed by membership fees?** This decision should result from realistic assumptions for the financial footing required for the EGTC to fulfil its tasks. The total amount of membership fees is related to the formulation of tasks, provided these tasks have not already been covered by other funding.
- **To what extent does each member contribute to the financial footing?** Different conceivable models especially consider the size and the financial strength of each member. Due to very different possible membership and partnership structures, no general recommendations can be presented. Fees could either differ between members depending on their size or may be the

same for all members. In the latter case, the level could be determined by the financially weakest member, for example. This would of course affect the tasks that can be fulfilled. In the case of an unequal partnership, it could be reasonable to discuss the generally unproblematic matter of voting rules that are to be determined in the statutes (cf. question 2.3.1) already in the context of financing.

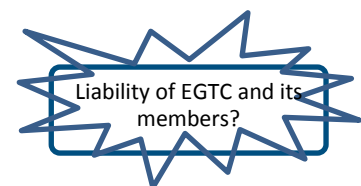
- **For how long are the fees fixed and when are they to be reviewed?** Answering this question is a crucial factor for the strategic orientation and the perspectives of cooperation within the EGTC. In doing so, the following points could be considered and weighed up:
  - With a **long-term agreement on fees** – for example for more than five years – all members proclaim their commitment towards each other. It creates leeway for long-term planning, strategic tasks and perspectives. Yet, it can become an obstacle if thematic and/or political priorities change as a result of political elections that affect single members.
  - **Short-term agreements on fees**, that include no more than a three-year period for revision for example, imply more flexibility for adjustments without requiring amendments of statutes or additional agreements. At least some members' willingness to pay may be higher than in case of a long-term commitment. At the same time, problems to recruit staff are more likely to arise under short-term agreements – depending on the applicable national legislation. This has to be scrutinised.
- **What should be done if members do not pay their fees?** Late or non-payment may happen for various reasons. This can be considered by specific rules in the statutes.

In case the EGTC should receive or acquire further funding besides the financing through membership fees, it should be checked in how far this affects other aspects of the concrete structure and design of the EGTC. Particularly, if members envisage an application for EU funds, i.e. Structural Funds like INTERREG,

- they should review the choice of the legal form (governed under public law vs. governed under private law) as an EGTC governed under private law may have restricted access to these funds (no specific rules have so far been adopted for an EGTC that has its registered office in Germany);
- it has to be clarified in how far pre-financing measures are necessary and how they could be secured by the EGTC and/or its members.

### 2.2.11 Who is liable and to what extent?

Even though liability issues are costly and time-consuming, they do very rarely represent an insurmountable obstacle for the establishment of an EGTC.



EGTCs may generally have either unlimited or limited liability. The EGTC Regulation does not provide a definite answer. Depending on the country where the registered office is located, the decision may be restricted through national

liability regimes (cf. question 2.2.7). In terms of equal treatment, the EGTC Regulation only defines that

- in an EGTC with **unlimited liability** and insufficient assets to meet its liabilities each member's share is fixed in proportion to its financial contribution (cf. financing, question 2.2.8);
- if the liability of at least one member **is limited**, the other members may also limit their liability in the statutes. In this case, any Member State concerned may require that the EGTC concludes an appropriate insurance or that it is subject to a guarantee provided by a bank.

The liability issue also takes the division of liability between members and the distinction between different areas of law (labour and employment law, civil law, administrative law) into account. How to solve different liability issues depends on both the Member State in which its registered office is located and on the EGTC's subject and thus needs legal advice. Liability issues may especially vary due to the tasks taken over by the EGTC.

In general, an easy solution is to limit the liability to the amount of fees for each member. In this way, each member's share would be fixed in proportion to its financial contribution. Depending on the subject of cooperation or the concrete structure of the partnership (with associated members), this limitation, may, however, prove to be insufficient or might not be in line with the respective national law. For EGTCs that envisage acquiring EU funds and/or envisage carrying out projects whose budgets significantly outreach the total amount of membership fees, further liability issues, that do not only concern membership fees, have to be resolved. In these cases, partial losses of revenue (not approved financial statement) and future recourse claims to funds that have already been spent may occur. However, recourse claims may occur regardless of EU funding if the EGTC is sued for consequences resulting from its activities. In order to ensure the full operation of the EGTC in case of payment defaults, payment returns or other recourse claims, it might be worthwhile considering whether an insurance should be contracted or whether the EGTC continuously saves some money for situations where liability issues may arise – this could be based on previous project experiences.

In general, insurances for municipalities ('Kommunalversicherungen') are eligible to cover different risks. One should consider that German insurance carriers may only contract insurances for EGTCs whose registered office is located in the regional business area of the insurance company in Germany. If the registered office is located abroad, German municipalities may be covered if the German municipality is liable due to its membership. These and other details should be clarified with the corresponding insurance company, though. The competent insurance companies for Germany are listed in the annex (only available in German). A second precondition concerns the shares of the EGTC governed by private and public law, respectively. In principle it must be assumed that an EGTC is eligible for insurance by a German insurance company if the majority, i.e. more than 50 %, is under public ownership. The basis for assessment is the share of capital of corporations involved and may be the number of people for other companies. This rather basic information needs to be complemented with

direct advice by one of the competent insurance companies in order to get insurance protection as required under specific and individual conditions.

When solving liability issues, it is also necessary to define in how far a member who has left the EGTC remains liable for consequences resulting from previous activities, which have been carried out during the period of membership, . This issue is directly linked to the above-mentioned issue when liability may arise due to recourse claims.

### **Article 12 EGTC Regulation**

(1) As regards liquidation, insolvency, cessation of payments and similar procedures, an EGTC shall be governed by the laws of the Member State where it has its registered office, unless otherwise provided in paragraphs 2 and 3. An EGTC shall be liable for all its debts.

(2) Without prejudice to paragraph 3, to the extent that the assets of an EGTC are insufficient to meet its liabilities, its members shall be liable for its debts irrespective of the nature of those debts, each member's share being fixed in proportion to its financial contribution. The arrangements for financial contributions shall be fixed in the statutes.

The EGTC's members may provide in the statutes that they are to be liable, after they have ceased to be members of an EGTC, for obligations arising out of activities of the EGTC during their membership.

(2a) If the liability of at least one member of an EGTC from a Member State is limited as a result of the national law under which it is established, the other members may also limit their liability in the convention where national law implementing this Regulation enables them to do so.

The name of an EGTC whose members have limited liability shall include the word 'limited'.

The requirements for the publication of the convention, statutes and accounts of an EGTC whose members have limited liability shall be at least equal to those required for other legal entities with limited liability under the laws of the Member State where that EGTC has its registered office.

In the case of an EGTC whose members have limited liability, any Member State concerned may require that the EGTC take out appropriate insurance or that it be subject to a guarantee provided by a bank or other financial institution established in a Member State or that it be covered by a facility provided as a guarantee by a public entity or by a Member State to cover the risks specific to the activities of the EGTC.

(3) Without prejudice to the financial responsibility of Member States in relation to any funding from the Structural and/or Cohesion Funds provided to an EGTC, no financial liability shall arise for Member States on account of this Regulation in relation to an EGTC of which they are not a member.

### **2.2.13 Are there temporal/time limitations for a reasonable establishment of an EGTC?**

Timing & lifespan?

The question concerning temporal limitations for establishing an EGTC has several dimensions:

- period of existence of an EGTC;
- date of its establishment;
- conditions for its dissolution.

EGTCs may be established for a limited or for an unlimited period of time. So far, hardly any EGTC has been established for a limited period of time. This also results from the effort that goes hand in hand with the establishment of an EGTC. A series of EGTC establishments has taken years and caused enormous effort. This effort alone is a sufficient reason for establishing an EGTC for an unlimited period of time. Furthermore, the criterion of permanent tasks that is discussed in chapter 2.1.1, suggests an EGTC establishment without a date for dissolution.

Limiting the period of existence from the beginning seems to be reasonable for tasks that call for an EGTC even though their temporal fulfilment is foreseeable and predictable. This limitation should, however, only be included if it is certain when the task will be fulfilled. If this certainty does not exist, a corresponding dissolution clause should be included in the statutes. This clause may schedule the automatic dissolution of the EGTC as soon as the task is fulfilled.

But even for an unlimited period of existence the members should agree on a possible dissolution procedure. This may either be decided by the general assembly or may be specified in a dissolution clause that describes the circumstances under which the EGTC cannot fulfil its tasks (anymore). Important matters in this case are in particular how to deal with

- remaining fees still to be paid by members,
- the remaining budget and
- where and how to store work, data, results etc. of the EGTC.

In case of transnational project cooperation it appears obvious to aim for establishing an EGTC attached to the end of project funding. Later intentions for establishing the EGTC might affect the engagement rather negatively, especially if the cooperation was interrupted after the end of the project and/or if the composition of the partners' staff has changed in the meantime.

If the EGTC is supposed to acquire EU funds, it may be reasonable to establish the EGTC before submitting the project proposal in order to minimise the administrative burden for the project management from the very beginning.

Temporal flexibility for negotiations, amendments of the convention and the statutes should be considered for the establishment process. Hitherto existing experiences indicate that the preparatory phase, in particular for EGTCs with a rather complex structure, usually lasts several years.



### 2.2.14 Which effort and benefit are to be expected from an EGTC?

Effort-benefit  
analysis

Several benefits cannot be expressed in monetary terms. If the symbolic character of an EGTC establishment is considered very important, this alone may already justify the effort.

One should especially refrain from the establishment when the relation between effort and benefit indicates that the expenditure for regular daily work will exceed the expected benefits.

Generally speaking, the EGTC is no 'lean' instrument. Additionally, the added value is often not obvious and cannot always be clearly and immediately presented – even if it exists. And yet it has to be considered that establishing an EGTC has an enormous symbolic character that cannot be outweighed by other alternatives for cooperation. Especially the attention from Brussels (European Commission, Committee of the Regions) is higher than for other forms of organisation.

These examples already indicate that neither all effort nor all benefits can always be expressed in monetary terms. That is why the term of a cost-benefit analysis is replaced by an analysis of expected effort and benefits. Depending on the specific subject of the cooperation, different aspects of general benefits of an EGTC can be expected. For the analysis of effort and benefits, the potential benefits already explained with regard to the added value in chapter 2.1.1 have to be evaluated for each specific case. The specific benefits will differ significantly from case to case depending on the subject of the hitherto existing INTERREG project and the future focus of the EGTC.

For EGTCs that emerge from transnational cooperation projects, the benefit essentially consists in a permanent and systematic exchange of information and the continuity of activities. The creation of an own legal personality may also simplify the financing through membership fees as the payment of fees to other forms of organisation may be more difficult. An own legal personality, furthermore, increases transparency regarding the use of financial resources within the group of partners.

Benefits have to be compared with the effort which may be differentiated according to important points of time:

- **Effort from the establishment until the analysis is carried out.** Depending on the point of time when the effort-benefit analysis is carried out, an enormous effort may have incurred. This effort cannot be reasonably considered in the analysis since it is not linked to the future process (sunk costs). Then again, carrying out the analysis at an early stage depends on many unforeseeable and external factors. Thus, it may be more reasonable to carry out the analysis at a later stage. Stakeholders involved have improved their European competencies in any case. This is a very valuable benefit regardless of the establishment of the EGTC!
- **Further expected establishment effort.** This effort also depends on the date on which the analysis is carried out. As established EGTCs nearly

unanimously report that the EGTC's benefit becomes apparent after having overcome initial impediments, it has to be considered whether and in how far this further establishment effort should be considered for the analysis.

- **Daily work routines' effort.** This effort must be considered for the analysis in any case. It may be significant for transnational projects, especially with regard to the communication effort (travel expenditure and travelling times). The non-monetary effort and expenditure for own technical infrastructure, for setting up organisation structures and for overheads have to be considered. Discussing the expenditure in the context of an effort-benefit analysis is advantageous as it implies that alternative arrangements for daily work routines can be considered.

## 2.3 Establishing the EGTC

### 2.3.1 Negotiating and formulating convention and statutes

#### Establishing the EGTC

Statutes and convention are the central contractual documents of an EGTC. They define the internal relationship between the EGTC members and form the basis for the EGTC's approval by the competent national and regional authorities.

A general rule for writing the convention and the statutes could be: 'as precise as necessary, as flexible as possible'. Comparatively flexible formulations increase the level of flexibility for the EGTC regarding adaptation to short-term developments both in operational and in structural terms without having to amend the convention or the statutes, which would imply reapproval. This flexibility is especially appropriate for transnational EGTCs. The level of flexibility in the wording depends on the degree of trust between the partners. That is why reaching an agreement is easier for established cooperation structures than for less tested structures. Therefore, it has to be considered in how far the partnership agreement of the previous cooperation is suited to form a basis for the EGTC and for specifying the internal relationship within the EGTC.

Article 8 and Article 9 of the EGTC Regulation state essential and necessary parts of the convention and the statutes. Both documents must not be inconsistent. In addition, further arrangements may be made. Many aspects that are discussed in the previous chapters cannot only be used for clarifying the bases for further cooperation but also have to be integrated in the convention and statutes respectively.

The EGTC Regulation furthermore states some aspects that have not yet been discussed but that have nevertheless to be specified in the convention and/or the statutes. Related negotiations should take place after the preparation phase of the EGTC, i.e. during the phase of formulating both documents. Hitherto existing experiences of EGTC establishments indicate that the remaining problems are less critical and concern formal rather than content-related details:

- name of the EGTC,
- operation, organisation and composition of its organs including tasks and appointment of the director, voting rules, rules for financial control,
- working language(s),
- arrangements for personnel management, recruitment procedures and the nature of personnel contracts,
- procedures for amending the statutes including admission, resignation or expulsion.

Regarding the operation, organisation and composition of the EGTC's organs it is useful to follow the general rule 'as precise as necessary, as flexible as possible', in order to prevent highly bureaucratic and administrative structures. This also includes voting rules. Even though voting rules have rarely been considered problematic in the past, an arrangement for this matter can be very complex – especially for transnational projects with unequal partners. In these cases, it is

reasonable to discuss voting rules together with funding and liability issues (cf. questions 2.2.8 and 2.2.9).

In accordance with the EGTC Regulation, the director and the assembly (Article 10 EGTC Regulation) are mandatory organs. These organs are often complemented with an executive board and, when indicated, with a deputy for the director (a vice director, for example). The executive board is usually appointed from the assembly members' ranks. Some statutes of existing EGTCs furthermore define other organs such as committees or an executive director. These organs, however, do not necessarily have to be official organs of the EGTC but may support the EGTC by providing assistance like a general secretariat.

Arrangements for personnel management have partially been addressed in previous chapters. The mentioned advantage of recruiting own staff does not necessarily become effective so that it may be a reasonable supplement to integrate the possibility of using the members' staff in the statutes. In this context it is necessary to check:

- What are the consequences for the EGTC's personnel regarding remuneration, social security, tax law, rights of cancellation?
- Which legislation should be applicable for the personnel (legislation of the Member State where the registered office is located, working place, nationality)? In order to ensure equal treatment of all employees, the EGTC may set up additional ad-hoc rules.
- Is the recruitment of own personnel cheaper than using the members' staff when taking overheads (personnel management for example) into account?

If consultative committees are established, their concrete organisation and tasks should also be specified (cf. questions 2.2.4 and 2.2.5).

### **2.3.2 Initiating and implementing the application and approval procedure**

Application and approval procedure

As a first step, each member has to gain approval for its participation by its Member State. The Committee of the Regions provides a list of all competent authorities on the EGTC Online Platform. Due to the federal structure in Germany, both the federal states in question ('Bundesländer') and the Federal Ministry for Economic Affairs and Energy are responsible. All federal states have adopted specific details on their respective competences. The annex of this guideline (only available in German) contains a list of competent German authorities (as of 1 October 2013). In case the German institutions involved have their respective office in different federal states, it is necessary to seek approvals from all federal states concerned and the above-mentioned Federal Ministry.

The initiators of the establishment are advised to approach the approval authorities of the Member States involved at an early stage. This can be helpful for defining the Member State in which the registered office will be located and for preventing future delay as well as queries from the authorities after having submitted the application. According to the Regulation's amendment (Article 4 (3)), approval authorities may only refuse authorisation if

- such participation or the convention is not in conformity with other relevant law,
- such participation is not justified for reasons of public interest or
- the statutes are inconsistent with the convention.

The Member States shall reach their decisions within a period of six months. The Member State where the proposed registered office of the EGTC is to be located has to approve the convention formally in order to allow the EGTC to be established and to be registered. All other Member States involved have to approve the establishment explicitly or implicitly. The latter is deemed if the Member State neither raises an objection within that period of six months nor requests additional information. Therefore, silence of a Member State is considered as approval. The six-months deadline is not interrupted by any request for additional information if the prospective member submits a reply within ten working days.

Statutes and convention have to be registered and/or published in accordance with the applicable national law of the Member State where the EGTC has its registered office (cf. Article 5 EGTC Regulation). It acquires its legal personality on the date of registration or publication of convention and statutes, whichever occurs first. The members are obliged to inform the Member States involved and the Committee of the Regions. Within ten working days the EGTC has to send a request to the Committee of the Regions based on the template in the annex to the EGTC Regulation. The Committee of the Regions will transfer this request to the Publications Office of the European Union for publication of a notice in the C series of the Official Journal of the European Union announcing the establishment of the EGTC.

## 2.4 The EGTC takes up work

As soon as the EGTC has been established, i.e. its establishment has been approved and published, a number of initial steps has to be taken before the EGTC may take up substantive work. These first steps especially comprise:



The EGTC  
takes up  
work

- to open/establish an office,
- to recruit personnel (directly or from its members),
- to open a bank account,
- to carry out different administrative procedures (registration for tax, social security etc.) that may differ depending on the country where the registered office is located,
- to establish the EGTC's organs,
- to develop and present internal work processes in order to establish everyday working routines,
- to transfer existing contracts (rental agreements, employment contracts etc.) in case the EGTC is the legal successor of an existing legal personality.

Working on the last-mentioned issue depends on the corresponding national legislation as the EGTC Regulation does not provide any details on this. As some authorities and institutions might not be familiar with the legal entity of the EGTC, some of these initial steps may take much longer than expected.