

**Questions and answers concerning the
European Grouping of Territorial cooperation (EGTC)**

19 December 2012

Based on the COM's proposal

This overview of questions and answers has been drawn up to provide further information for delegations. The clarification provided does not prejudge in any way the final position of the Commission on any of these questions.

SUBJECT	QUESTION	ANSWER
<p>Applicable law/under the Convention: Article 2(1)(b)*</p> <p><i>"(b) where expressly authorized by this Regulation, the provisions of the convention referred to in Article 8".</i></p> <p>*Articles are quoted as of the amended EGTC Regulation, not of the amending Regulation</p>	<p>(RO Q a) Until the time being, the statute also was included as a document to govern EGTC. The statute contains specific provisions, such as staff recruitment, audit, financial responsibility, which are not included in the convention. Thus, the approval authority will not have the possibility to see this document and look into these provisions. Particularly, in case of EGTC submitting projects, one needs to assess the human capacity of an EGTC.</p> <p>Proposed amendment:</p> <p><i>"...in case projects are involved, statute should be involved. In other matters, statutes should be informally sent to MS, which shall issue an opinion on statute only if there are significant aspects."</i></p>	<p>Under the current Regulation, the statutes also cover all provisions of the convention, which leads to a considerable overlap (added value of the convention?). The COM therefore proposes to have two distinct documents without overlap: the convention as sort of basic act/founding chart of the legal body, to be checked by the national authorities on one hand, and the statutes on the practical and internal affairs of the legal body (sort of rules of procedures) on the other hand. Consequently, provisions which should be checked by the national authorities and are currently covered by the statutes are transferred to Article 8 on the Convention (see answers given on Articles 8 and 9 below).</p>

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<p>Applicable law/ under the Convention: Article 2(1)(b)</p>	<p>(BE Q A) Article 2, paragraph 1 (Regulation 1082/2006) refers to the “agreement and the statutes”, whereas the draft article 2, paragraph 1, no longer makes any reference to the “statutes”. Could we receive some explanation for this change?</p>	<p>Provisions currently covered by Article 9 on the statutes are transferred to Article 8 (e.g. on applicable law). Consequently, the revised Article 9 covers provisions on practical and internal affairs of the legal body (sort of rules of procedures), which do not require the approval of the national authorities.</p> <p>However, the statutes would still define some applicable rules (on accounting and budgetary rules under point (g) → either point (g) is also transferred to Article 8 or reference to statutes to be added in Article 2((1)(b).</p>
<p>Applicable law/powers of statutory organs: Article 2(1)(c)</p>	<p>(EL) Which are these statutory organs? Please use the same terms throughout the document.</p>	<p>"Statutory organs" are the organs defined in a specific convention, which can be more than the two regulatory organs under the Regulation: Director and Assembly.</p> <p>"Statutory organs" are mentioned in Recital (24), the Article quoted and Article 8(2)(h), whereas Article 9(2)(a) only refers to "organs".</p>
<p>Recital 7 [on Article 3(1)]: <i>"...competences may be regional on one side of a border, but national on the other side, especially in smaller or centralised Member States. Consequently, it should be clarified that national authorities may become members of an EGTC alongside</i></p>	<p>(EL) What do we mean here by 'alongside'? It is clear that authorities and organizations at all levels of governance within a Member-State may participate to an EGTC. But National Authorities means the MS and not something different.</p>	<p>It is indeed clear that authorities and organizations at all levels of governance within a Member-State may participate to an EGTC. Adding "national authorities" only clarifies that for some EGTCs the legal body "Member State" (e.g. "L'État" du Grand-Duché de LUX for the EUKN EGTC) is member and for others the competent Ministry or authority at <u>national</u> level.</p>

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<i>the Member State."</i>		
Membership: Article 3(1)	(HU) Can a LEADER local action group be a member of an EGTC?	LEADER local action groups may be legal bodies (see Article 30(2) CPR) or not. Only legal bodies which can be considered as <u>public</u> bodies can become EGTC members. Article 28 and 30 CPR require that public sector is not majority in decision-making.
Membership of associations: Article 3(1), 2nd subparagraph	(NL Q 4) In the current text of article 3, par. 1, it is perfectly clear that associations consisting of bodies belonging to one or more of the categories under a) and d) may be(come) members of an EGTC. In the new text, such a reference is no longer included. Since in practice, across Europe, associations of municipalities and of other	The Corrigendum corrected among others this proposal: only the 1 st subparagraph of Article 3(1) is amended, thus keeping the 2 nd sub-paragraph. → Associations are eligible under the 2 nd subparagraph; no change.

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	<p>authorities are quite regularly members of an EGTC, we would welcome that such an option may continue to exist in future as well. Therefore, The Netherlands suggests that the current wording in article 3, par. 1, on the membership of associations be maintained.</p>	
<p>Membership of associations: Article 3(1), 2nd subparagraph</p>	<p>(BE Q B) The current article 3, paragraph 1, (Regulation 1082/2006) explicitly mentions that associations consisting of bodies belonging to one or more of the categories under a) to d) may also be members. Why such mix-type associations are no longer referred to in the article 3, paragraph 1 of the new proposal? Currently existing EGTCs like EGTC West-Vlaanderen-Flandre Dunkerque Côte d’Opale, the EGTC Eurometropolis Lille-Kortrijk-Tournai and the EGTC Linieland van Waas & Hulst are typical mix-type associations.</p>	<p>See answer above to NL Q 4.</p>

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<p>Recital 10 [on Article 3a]: <i>"Experience shows that the involvement of authorities or other bodies from third countries equivalent to those eligible inside the Member States has given rise to implementation difficulties. However such involvement in EGTCs set up by members drawn from two or more Member States constitutes only an ancillary element to the cooperation inside the Union and between Member States."</i></p>	<p>(EL) This part is a bit confusing, since the first sentence refers to bodies or authorities from third countries and the second sentence refers to MS and to the "ancillary element" of the cooperation. Please clarify.</p>	<p>The part of the Recital quoted describes the current situation, where the EGTC Regulation has only Article 159, third paragraph, TEC as legal basis (now Article 175, 3rd subparagraph TFEU, the Cohesion Policy chapter). Cooperation between two Member States under the Cohesion chapter is an internal policy, inside the Union. Associating EGTC members from third countries is therefore only an ancillary element and would not require an additional legal basis. This Recital refers to the proposed Article 3a, paragraph ONE.</p> <p>The legal bases mentioned in the proposal are required to allow for 1to1 EGTCs, because we change from cooperation <u>inside</u> the Union to <u>external</u> cooperation. Mentioning Articles 209(1) and 212(1) TFEU is therefore only required for Article 3a, paragraph TWO (introduced by Recital 11).</p>
<p>EGTC with one MS and one third country or overseas territory: Article 3a(2)</p>	<p>(ES Q 1) The general rule is that third countries or overseas territories participate with at least 2 MMSS, if they jointly carry out territorial cooperation actions or implement programmes supported by the Union.</p> <p>But paragraph 2 seems to establish an exception to the general rule of minimum participation of two MMSS, allowing an EGTC to be made</p>	<p>Exactly, this is the purpose, as there was strong demand from EP, CoR and FR, concerning situations like bilateral ETC-programmes between FR and Switzerland.</p>

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	<p>up of members from one MS and one third country or overseas territory, if the MS considers such an EGTC consistent with the scope of its territorial cooperation.</p> <p>This can lead to a multiplicity of different cases. We would therefore like to confirm what the intention of paragraph 2 is; if the aim is to have the creation of EGTCs with participation of only one MS as an exception to the general rule, or just as a different possibility. It could be useful to specify the cases in which such EGTCs could be created. In relation with this, recital 16 seems to be more specific and concrete than the corresponding article, where the drafting is too general.</p>	<p>Recital 16 is addressing what checks the Member State where any EGTC involving third countries (or territories) is registered can do.</p> <p>The 1-to-1 EGTC is prepared in Recital 11.</p>
<p>EGTC with one MS and one third country or overseas territory: Article 3a(2)</p>	<p>(NL Q 5) The Netherlands suggests that in article 3, paragraph 1, be clarified that the overseas territories are the overseas countries and territories as listed in Annex II</p>	<p>See Recital 12!</p>

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	to the Treaty.	
EGTC with one MS and one third country or overseas territory: Article 3a(2)	<p>(NL Q a) How can a Member State where the EGTC is registered ensure that the conditions laid down in article 3a are fulfilled and that a third country or Member State with an overseas territory has approved the prospective member's participation according to equivalent conditions and procedures to those laid down in the regulation?</p>	<p>National implementing rules may state what document the EGTC has to submit to prove that approval in the MSt/3rd country of the new EGTC member was given. In case of an overseas territory, the legislation of the MSt may also cover these aspects.</p> <p>E.g. when NL amends its national implementing EGTC rules, the situation of its overseas territories could also be covered to facilitate the setting up of an EGTC between FR (St. Martin) and St. Maarten (Dutch overseas country).</p>
EGTC with one MS and one third country or overseas territory: Article 3a(2)	<p>(HU) According to the former Preamble, now the purview of the Regulation sets the conditions for entities from third countries or overseas territories to participate in EGTCs. These can be: the implementation of the EC Regulation into the third country's national law or if international agreements</p>	<p>Yes, an existing agreement on territorial cooperation between the parties may serve as legal basis to allow its regions and public bodies to join legal bodies for cooperation purposes. However, the legal instrument to ratify an Additional Protocol to the Madrid Agreement may not be as detailed as the implementing rules in MSt on the procedure or the designation of the competent authority to approve membership.</p> <p>Yes, ratification of an Additional Protocol to the Madrid Agreement can be considered national legislation, but not</p>

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	<p>between the parties so allow. Henceforward, will an existing agreement on territorial cooperation between the parties fulfill these conditions of participation?</p> <p>Can the accession to one of the Additional Protocols of the Madrid Convention by the third country serve as a basis of cooperation?</p> <p>Do all members of an EGTC have to be parties of the international agreement allowing territorial cooperation, or is it satisfactory if the agreement exists (only) between one Member State and the third country?</p>	<p>yet as an agreement on that basis as e.g. the bilateral/trilateral agreements between FR-BE, FR-IT, DE-NL etc.</p> <p>Yes, between just ONE MSt and the 3rd country is sufficient. E.g. an EGTC between HU, RO and UA can be set up, when at least HU and UA have concluded a cooperation agreement under the Madrid <i>acquis</i>.</p>

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<p>Approval procedure: Article 4(3):</p> <p><i>"The Member State shall reach its decision within a deadline of six months from the date of receipt of an application in accordance with paragraph 2. If the Member State concerned does not respond within the time limit laid down, the convention shall be deemed to be approved."</i></p>	<p>(RO Q b) Tacit agreement in case of EGTC is not an option, considering its relevance.</p> <p>Proposed amendment:</p> <p><i>"...in case that major aspects have been clarified."</i></p>	<p>COM open for better wording, but "major aspects" is very vague.</p> <p>Where should the text proposed fit in exactly?</p>
<p>Approval procedure: Article 4(3)</p>	<p>(PL Q1) In the opinion of Poland the re-wording proposed for art 4.3 (approval procedure) (...°) may cause a legal insecurity. In particular, the expression "<i>does not respond</i>" is not defined. Can the EC provide specific examples when the tacit approval could be exercised?</p>	<p>Where the MSt reacts, comments or requires changes to the draft convention, there is no scope for tacit agreement.</p>
	<p>(PL Q2) Which institution checks whether the respective Member State has not responded within the time limit (six months)?</p>	<p>The planned EGTC. The EU Regulation sets a right for regional / local authorities / public bodies to set up an EGTC. MSt can only oppose under certain conditions, but the EGTC is not in the discretion of the MSt. This is the issue of a legal instrument established under EU law.</p>

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	<p>(PL Q3a) What is the proposed by the EC procedure in case deemed approval is granted?</p>	<p>National implementing rules shall specify who will require the registration / publication. Normally, legal bodies that need registration / publication request this themselves at the registration / publication body.</p>
	<p>(PL Q3b) How the registration / publication of the convention and the statute which have not been approved by respective Member State may happen?</p>	<p>See previous answer.</p>
	<p>(ES Q 2) The deadline established by the Regulation for the approval of the convention is six months. We would like to have a clarification on the rules (EU of national) that will be applied concerning the calculation of this deadline (for example, concerning the interruption of the deadline to wait for replies by the prospective member to the request of additional documents).</p> <p>We would also like to have more information on the</p>	<p>Six months where the MSt "does not respond" → any reaction or request for clarifications by the MSt inside the six months excludes tacit approval.</p> <p>The 6 months period is then interrupted just like when COM examines PCs or OPs under the CPR deadlines.</p> <p>See replies to Article 5.</p>

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	<p>procedure an effect of the approval in the case of non reply by the MS concerned (If the Member State concerned does not respond within the time limit laid down, the convention shall be deemed to be approved). Which documents (convention, statutes...) would be the ones to be taken into account for approval? The original documents? What happens if one of the MMSS has introduced changes to adapt to its internal rules? Which are the effects of this approval?</p>	
<p>Approval procedure: Article 4(3), last subparagraph</p>	<p>(ES Q 2) In deciding on the prospective member's participation in the EGTC, Member States may apply their national rules.</p> <p>We would like to clarify the meaning of this sentence. The Regulation establishes clearly the cases for non authorization of the creation of enlargement of the EGTC, so it is not clear for which elements of the</p>	<p>Yes. National rules may refer to existing procedures.</p>

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	<p>decision national rules can be applied.</p> <p>Does it refer to the internal procedure for approval? If this is the case, this should be clarified in the text.</p> <p>On the other hand, if it refers to the national rules as criteria for the approval of the convention, it would be redundant.</p>	<p>Otherwise, specific rules have to be defined in the national EGTC implementing rules.</p> <p>No, all approval criteria are defined in Article 4(3), 1st subparagraph.</p>
<p>Approval procedure: Article 4(3)</p>	<p>(SE Q 1) Can the Commission elaborate how the tacit agreement will work in practice?</p> <p>Is this method used in other EU Regulations?</p>	<p>See answers to other MSt.</p> <p>Yes: CPR, on MP and annual reports.</p>
<p>Approval procedure: Article 4(3)</p>	<p>(EL) Process of approval of an EGTC by national authorities. We do not agree with the tacit approval of a Member State on the participation of a prospective member in an EGTC. Therefore, we would like the last sentence of</p>	<p>Experience tells that some MST just did not react at all, although the Regulation gives a right to regional authorities/ public bodies to set up an EGTC:</p> <p>The logic is "Member States shall approve, unless", and not:</p> <p>"Member States may approve, provided that...."</p>

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	<p>paragraph 3:</p> <p><i>“If the Member State concerned does not respond within the time limit laid down, the convention shall be deemed to be approved”</i></p> <p>to be deleted. A Member State should always expressly give its consent to a prospective member in an EGTC!</p>	
<p>Approval procedure: Article 4(3) + Recital 15</p>	<p>(SE Q 4) Article 4 (a) paragraph 3 stipulates that the Member State can reject a convention if it considers that such participation is not in conformity with national law concerning the competences of the prospective member or that such participation is not justified for reasons of public interest or of public policy of that Member State. As this seems reasonable and important, Sweden wonders why the Commission in recital 15 is diminishing national competences by stating <i>“while excluding from the scope of the scrutiny any national law</i></p>	<p>See decisive bit marked in Sweden's question. Current Regulation says:</p> <p>"national law, including the prospective member's powers and duties".</p> <p>Especially "duties" may be interpreted by MSt as also covering obligations to ask for permissions under pre-EGTC legislation.</p> <p>The substantive law (FR: droit matériel) law on competences should be the only criterion concerning national legislation.</p>

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	<p><i>requiring other or stricter rules and procedures than those foreseen by the EGTC Regulation”.</i></p>	
<p>Approval in case of third countries: Article 4(3a)</p>	<p>(ES Q 1) Art. 4.3 a. establishes that the MS where the proposed registered office of the EGTC will be located shall ensure that the conditions laid down in Article 3.a are fulfilled.</p> <p>We would like to clarify the scope of this requirement of jointly carrying out territorial cooperation actions:</p> <ul style="list-style-type: none"> ➤ Does it have to be fulfilled only when creating the EGTC or during the whole life of the EGTC? ➤ In the first case, would it have to be totally fulfilled before creating the EGTC, or is it only necessary that 	<p>There are different criteria for EGTCs involving third countries (paragraph 1) or in cases of 1-1 EGTCs (paragraph 2).</p> <p>Assuming that the question is only about paragraph 1:</p> <p>EGTC Regulation is mainly about the legal body as such. Article 4(3a) in conjunction with Article 3a is about the setting-up. Control of EGTC's after their creation is governed by Article 14. As dissolution is a last resort, this should only be an exception.</p> <p>The implementation of cooperation actions shall be laid down in the convention. However, joint strategic planning may precede the elaboration of project applications. EGTCs will not be set up for just some projects. A specific project does not need to be elaborated before setting up the EGTC.</p> <p>No. Interruption of joint projects with third countries have to be addressed by the ETC/IPA programme authorities,</p>

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	<p>a project has been foreseen to implement this cooperation?</p> <ul style="list-style-type: none"> ➤ What happens if the EGTC concludes, or even interrupts temporarily the cooperation projects with the third country; would this third country be excluded from the EGTC? ➤ Who would be responsible for the control of this situation? If it's the MS where the registered office of the EGTC is located, is it possible to carry out the control without a previous notification by the EGTC of the projects periodically controlled? <p>To avoid misunderstandings, we consider that it should be clearly stated in the Regulation</p>	<p>not by authorities supervising EGTC's as legal bodies.</p> <p>Except for the procedure under Article 14 EGTC, requirements of EGTC as a beneficiary are ONLY governed by the ETC Regulation or external CBC rules.</p>

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	<p>whether this requirement is to be fulfilled only when the EGTC is created, or there has to be a permanent control of its fulfillment. In the case of a permanent control, more information would be needed (procedure, information obligations to the body responsible for the control, etc.).</p>	
<p>Consistency of the convention: Article 4(5)</p>	<p>(ES Q 3)The members shall agree on the convention referred to in Article 8 ensuring consistency with the approval or the amendments suggested by the Member States.</p> <p>In the current period, the coordination and assurance of the coherence of the different linguistic versions was a competence of the MS. It is reasonable that there is a greater involvement of members on the coordination; however, problems could arise in the case of proposals by a MS that lead to a modification</p>	

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	<p>which is against the law in another MS. To avoid this, we think a paragraph should be added, stating that once there is an agreement of the members on the convention, there should be supervision by the MS to check that the relevant comments have been included and there have been no modifications which could lead to a different decision. We can send a drafting suggestion.</p> <p>In addition to the previous comment, we understand that the deadline for decision should be interrupted until the consistency of the texts is ensured.</p>	<p>COM open to a text proposal for clarification.</p> <p>Yes. However, the total period when the original application and then its revised version is with the competent MSt authority shall not exceed 6 months.</p>
<p>Recital 17 [on Article 4(6)]: <i>“In order to encourage the accession of additional members to an existing EGTC, the procedure to amend conventions in such cases should be simplified. Consequently, such amendments should not be notified to all participating Member States, but only to the</i></p>	<p>(EL) We think that a notification to all participating M-S is necessary for reasons of clarity and transparency.</p>	<p>Once the MSt under whose aw the new EGTC member is established has approved, the amended convention and statutes shall be notified to <u>all</u> Member States (see Article 5(1) as amended).</p>

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<p><i>Member State under whose national law the new prospective member is established.”</i></p>		
<p>Recital 17 [on Article 4(6)]</p>	<p>(HU) If the amendment of the convention should be notified only to the Member State under whose national law the new prospective member is established, then how can the registration – approval authority of the EGTC’s seat register the new member? (Under this new regulation, there won’t be an integrated registration in the registered office of the EGTC.)</p>	<p>Once the Member State under whose national law the new prospective member is established has approved the accession of the new EGTC, the amended convention and statutes shall be sent to the registration / publication of the MSt where the EGTC has its registered office. National implementing rules may state what document the EGTC has to submit to prove that approval in the MSt of the new EGTC member was given.</p>

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<p>Approval of the accession of a new member Article 4(6)</p>	<p>(ES Q 4) The third [sub-]paragraph establishes that in case of accession to an existing EGTC of a new member from a Member State that has already approved the convention, such accession shall only be approved by the Member State under whose laws the new member is established.</p> <p>We consider there is some inconsistency with recital 17, according to which the accession of a new member only has to be notified to the Member State under whose laws the new member is established (notification, not approval, as in art. 4.6).</p> <p>Only one MS approves the accession, but all MMSS should be notified about the accession of a new member.</p>	<p>Notification for the approval procedure is to be distinguished from the subsequent notification of the approved amended convention to all Member States concerned (Article 5(1), last phrase). Recital 17 prepares amendments to Article 4(6) only.</p> <p>Yes. COM open to improve wording of Recital 17, if necessary.</p> <p>Recital 18 prepares amendments to Article 5, but this Article is amended in other aspects; information of <u>all</u> Member States by all EGTC members is already foreseen.</p>
<p>Approval of the accession of a new member Article 4(6)</p>	<p>(NL Q 3) In the current proposal amendments to the statutes need no longer be</p>	<p>Article 5 as amended still foresees that convention and statutes and any subsequent amendments thereto shall be</p>

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	<p>approved by the member states. After an initial check on the convention and the statutes in the case a prospective member notifies its intended participation, only amendments of the convention need approval. The EGTC could therefore change the statutes without any instrument for the Member State to formally interfere.</p> <p>The Netherlands proposes to amend the obligatory notification of changes to the statutes with an automatic approval if the Member State does not respond within six months. The Member State may within those six months withhold agreement with the proposed changes. (<i>lex silencio positivo</i>).</p>	<p>registered / published.</p> <p>COM open to add "and the statutes and any amendments thereto" at the very end of Article 5(1).</p> <p>MSt may control the statutes via Articles 13 and 14. Except for Article 9(2), points (g) [accounting and budgetary rules; see above answer given to BE Q A and below answer given to NL Q c] and (i) [liability of the members], where provisions might not respect national rules, the other points concern purely EGTC-internal issues.</p>
<p>Approval of the accession of a new member Article 4(6)</p>	<p>(NL Q 4a) Accession of new members to an existing EGTC only requires approval of the Member State under whose laws the new member is established (article 4, par. 6).</p>	

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	<p>Without any other Member State involved, a lot of members from one Member State could be added to the EGTC, thus possibly changing the character of the EGTC. Considering the responsibilities of the Member State where the EGTC is registered, the Netherland would think that at least this Member State would also have to approve the accession.</p> <p>The approval period for the accession of a new member is changed from three to six month, with automatic approval if the Member State does not respond within six months from the date of receipt of an application (art. 4, par. 3). Especially when the EGTC is registered in a Member State, an accession can have far reaching consequences. A period of six months may be feasible, but only after all the documentation required is received.</p>	<p>As stated above, 6 months is the maximum concerning the time when documents including additional documents are with the competent approval authority.</p>

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<p>Approval of the accession of a new member Article 4(6):</p> <p><i>“However, in case of accession to an existing EGTC of a new member from a Member State <u>that has already approved the convention</u>, such accession shall only be approved by the Member State under whose laws the new member is established. Paragraph 3 of this Article shall apply.”</i></p>	<p>(BE Q 3) We think that this procedure, which is welcomed as it reduces the administrative burden in case of accession of a new member, can be enlarged to all new members from Member states regardless whether these have already approved the convention. This could be done by omitting the underlined sentence? What’s the Commission’s view on this?</p>	<p>When an EGTC is set up in MSt A, B and C, all three have checked the founding documents. The EGTC is then registered in MSt A.</p> <p>An additional member in MSt B shall be accepted by MSt B (under whose laws it is established) and then notified to MSt A (for registration/ publication) and MSt C (for information).</p> <p>An additional member from MSt D, which may not even be aware of the existence of the EGTC, shall be notified to MSt A, B, C and D:</p> <p>MSt A, B and C may have a problem with an additional member from MSt D (public interest or public policy).</p>
	<p>(EL) However, in case of accession to an existing EGTC of a new member from a Member State that has already approved the convention, <u>such accession shall only be approved by the Member State under whose laws the new member is established.</u></p> <p>Please consider rephrasing, as the “whose” reference makes the sentence unclear and difficult to understand.</p>	<p>See example given above.</p>
<p>Registration and publication: Article 5</p>	<p>(ES Q 2) The convention and the statutes and any subsequent amendments thereto shall be</p>	<p>COM sticks to its proposal.</p>

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	<p>registered or published, or both, according to the applicable national law in the Member State where the EGTC concerned has its registered office.</p> <p>This clause establishes an obligation to register or publish the statutes, which have not been submitted to a previous legality control by the MS.</p> <p>We think that the publication should be limited to the convention. Or, if the statutes are to be published, a previous control of its legality should be allowed by the MMSS.</p>	
<p>Registration and publication: Article 5</p>	<p>(HU) Probably most of the national legislations, as in Hungary the Code of Civil Procedure does so, provide remedies during the registration procedure. According to article 5(1) „<i>the EGTC shall acquire legal personality on the day of registration or publication, whichever occurs first.</i>” Hence, the Regulation does not take into account the time-limit of an eventual remedy. Therefore, we recommend that the provision</p>	<p>No. Provision inspired by other legal instruments at EU level:</p> <ul style="list-style-type: none"> ➤ Article 16 SE (European Company) ➤ Article 11 SCE (European Cooperative Society) ➤ °/° EEIG (not always legal person) ➤ Article 7 ERIC (approved by COM)

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	<p>should be revised and the EGTC should acquire legal personality on the day when the deadline for remedy has passed</p>	
<p>General tasks: Article 7(2): <i>"2. An EGTC 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 on the basis that they fall within the competence under national law of at least one member from each Member State represented in that EGTC."</i></p>	<p>(RO Q c) Comment: to be added: "to strengthen economic, social and territorial cohesion, in the regions concerned by the EGTC."</p>	<p>RO is asked to clarify the purpose of the added text.</p>
<p>Specific tasks: Article 7(3): <i>"Specifically, the tasks of an EGTC may concern the implementation of cooperation programmes or parts thereof...."</i></p>	<p>(RO Q c) Comment: It should be added: <i>"projects". In case of programmes, the responsibilities should be delegated by MAs."</i></p>	<p>Delegation of the functions of programme authorities are governed by CPR and/or ETC Regulations.</p>
<p>Limitation of tasks: Article 7(3)</p>	<p>(NL Q 2) It is the opinion of the Netherlands that this limits the</p>	<p>The 3rd subparagraph of the current Regulation was only amended to adapt to the legal framework for post-2014 →</p>

SUBJECT	QUESTION	ANSWER
	<p>Member States too much in governing their own affairs. The Member States could be confronted with regional developments that go against the general interest. The Netherlands proposes to add to article 7(4) that actions covered by investment priorities may be limited (only) for overriding requirements of general interest.</p>	<p>purely technical adaptation.</p> <p>The proposed amendment does neither extend nor limit MSt's power.</p> <p>What NL is aiming at, is covered by Article 13.</p>
<p>Terms and conditions of infrastructures: Article 7(4):</p> <p><i>"However, the assembly referred to in Article 10(1)(a) of an EGTC may define the terms and conditions of the use of an item of infrastructure the EGTC is managing, including the tariffs and fees to be paid by the users."</i></p>	<p>(RO) Comment: Normally, EGTC is a non profit entity. Tariffs and fees should be charged as long they represent revenues and not profits.</p>	<p>Whether an EGTC is a non-profit entity or not, depends on the national implementing rules.</p> <p>The proposed amendment <u>clarifies</u> that the definition of terms and conditions (including tariffs and fees) can be done by the Assembly and is not considered as the execution of "regulatory powers".</p>
<p>Terms and conditions of infrastructures: Article 7(4)</p>	<p>(NL Q 1) The Netherlands appreciates that the EGTC is given the possibility to manage an item of infrastructure. Within the framework of the structural funds this is not</p>	<p>The possibility to manage an item of infrastructure is already not excluded by the current Regulation, which is limited to the EGTC as legal body (see current Article 2(1) and the example of the Cerdanya Hospital EGTC).</p> <p>Article 2(1) now explicitly also mentions EGTC's activities.</p>

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	<p>obvious. The Netherlands therefore proposes to address this possibility explicitly in article 1 of the Regulation.</p> <p>In article 7(4) is proposed that an EGTC may define the terms and conditions of the use of an item of infrastructure. It should be absolutely clear that this is only possible within the regulatory framework of the Union acts and the Union directives regarding infrastructure and the implementing measures regarding these acts. It must be clear that the competence of EGTC regarding terms and conditions will not set aside the responsibilities and powers of the existing regulators.</p> <p>Terms and conditions of the use of infrastructure may be of such importance that a member state must have some way of preventing terms and conditions that are</p>	<p>The intention of the proposed Article 8(2)(f) is exactly to <u>clarify</u> which EU and national law applies to an EGTC intending to manage public transport or water sewage or a hospital. The items of infrastructure are too varied to be more specific in the EGTC Regulation.</p> <p>In the line of the previous paragraph, it is sufficient to define the applicable EU and national law in the convention. The MSt is, of course, entitled to supplement that list in the draft convention. The national law on e.g. how to organise water sewage plants will govern the aspects on how the operator may fix tariffs and fees. When managing the infrastructure, the MSt will then have the "normal" rights" of control of the EGTC, but because the legislation on water sewage plants allows so, regardless whether the operator "happens" to be an EGTC.</p>

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	<p>contradictory to the public interest or public policy. The Netherlands proposes that intentions regarding terms and conditions may be part of the convention. The Member State may withhold its agreement with the participation of a prospective member for reasons of public interest or of public policy taking into account the proposed content of the convention, also with regard of the foreseen terms and conditions of the use of infrastructure.</p>	
<p>Terms and conditions of infrastructures: Article 7(4)</p>	<p>(NL Q b) How does the exploitation of an item of infrastructure relate to the Procurement Directive, especially with regard to concession contracts and the recent proposal on awarding concession contracts.</p>	<p>As NL rightly points out, procurement will be addressed in the EU Directives, including on concession contracts:</p> <p>http://register.consilium.europa.eu/pdf/en/12/st16/st16725-re01.en12.pdf (Review directive 2004/18/EC)</p> <p>http://register.consilium.europa.eu/pdf/en/12/st16/st16729.en12.pdf (Review directive 2004/17/EC)</p> <p>http://register.consilium.europa.eu/pdf/en/12/st16/st16731.en12.pdf (text on concessions).</p>

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<p>Recital 13 [on Articles 8/9]: <i>"It should therefore be clarified that the convention and the statutes are distinct documents and - although both shall be sent to Member States - the approval procedure should be limited to the convention. In addition, some elements presently covered by the statutes should be covered by the convention instead."</i></p>	<p>(EL) Does that mean that the statutes need no approval whatsoever?</p>	<p>Yes, but they can be commented.</p>
<p>Recital 24 [on Article 8(2)(h)]: <i>It should be specified that the convention should not only repeat a reference to the applicable law in general as already laid down in Article 2, but should list the specific Union or national rules applicable to the EGTC as a legal body or to its activities.</i></p>	<p>(EL) The word "and" is more appropriate here setting the picture of the applicability of national rules to the EGTC.</p>	<p>In EN "or" is inclusive, meaning "and/or". In other languages, "or" can be exclusive, meaning "either or": Acceptable to replace by "and/or".</p>
<p>Recital 30 [on Article 8(2), 2nd subparagraph]: <i>"It should be specified that where an EGTC has as its exclusive objective the management of a cooperation programme or part thereof supported by the ERDF, or where</i></p>	<p>(EL) We cannot see the risk here. Why and how could such information hinder participation of new members to the EGTC?</p>	<p>It is true that the convention has to be amended for new members anyway. However, in the cases listed, only the Article listing the members would be amended and nothing else. COM considers this a simplification. In addition, networks may organize seminars outside the territory of any of the members (e.g. in Brussels). Defining</p>

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<p><i>an EGTC concerns interregional cooperation or networks, information, concerning the territory in which the EGTC may execute its task is not required. In the former case, the territory will be defined (and amended) in the relevant cooperation programme. In the latter case, while in most cases concerning immaterial activities, the requirement for such information would jeopardize the accession of new members to interregional cooperation or networks."</i></p>		<p>the territory covered of a network just doesn't make sense or is difficult to be defined <i>ex ante</i>.</p>
<p>Convention/Staff : Article 8(2)(i) and 3rd and 4th subparagraphs:</p> <p><i>"The following rules shall apply to the EGTC's staff as referred to in point (i),</i></p> <p><i>(a) those of the Member State where the EGTC has its registered office;</i></p> <p><i>(b) those of the Member State where the EGTC's staff is actually located; or</i></p> <p><i>(c) those of the Member State</i></p>	<p>(EL) Content of Convention - Regarding the last part of paragraph 2, on the "rules applicable to EGTC's staff" we suggest that <u>option c) should be deleted.</u></p> <p>Moreover, we would like to ascertain that options a) and b) apply cumulatively.</p>	<p>Deletion of (c) not pertinent: E.g. an EGTC with members from MSt A, B and C was registered in MSt A, with the Director and his staff working in MSt B, but also having staff from MSt C. Why not allowing the national from C, who has already worked in C, to +/- less continue under his national regime?</p> <p>NO, as we have already examples where the registered office and the location of the Director and his staff are in different MST (Eurométropole Lille-Kortrijk-Tournai or</p>

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<i>of which the staff member is a national."</i>		Pyrénées-Méditerranée). In addition, it could be against the <i>ordre public</i> , that nationals of MSt A working in this MSt are subject to public law of MSt B where the EGTC is registered.
Convention/Staff : Article 8(2)(i) and 3rd and 4th subparagraphs:	(BE Q D) Clarification: are the three options equal alternatives? How should the "or" be interpreted.	In the same secretariat, some staff could be covered under (a), whereas some others are covered by (b) and others by (c).
Statutes/Auditor: Article 9(2)(h)	<p>(NL Q c) Why does the designation of an independent external auditor need to be laid down in the statutes? Auditing with respect to financial support from the Union is provided for in the Regulations regarding the Structural Funds.</p> <p>For the auditing regarding national contributions making use of an auditor of one of the members of the EGTS might be more cost-effective.</p>	<p>Exactly: "controlling" and "auditing" of Structural Funds is governed by CPR/ETC Regulations. National co-funding for projects cofounded and implemented by EGTC's will be governed by national legislation on that national co-funding.</p> <p>Assuming that "national contributions" means "contribution from the EGTC members to the EGTC's own budget", that provision only means that an "independent external auditor" has to be designated (i.e. a person, an authority or an organisation is named). This can be the auditor of one of the EGTC's members, if allowed under national law.</p> <p>Current wording only requires stating "the authorities responsible for the designation of independent external auditors" (Article 12.3 of the Statutes of the EUKN EGTC:</p>

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		<i>"The Director is responsible for designating the auditor."</i>), which is of little added value.
Recital 31 [on Article 12]	<p>(HU) How would the structure of an „ERIC” insurance system look like in case of the EGTCs financial liability? Would it be compulsory to every EGTC to take part in a kind of „ERIC” insurance system or would it be voluntary?</p> <p>Under the regulation of the <i>decree</i> [EU Regulation] about ERIC, the financial liability of ERIC might be limited or unlimited as well. Under the abovementioned regulation how the problem of a unified regulation would be solved concerning the financial liability of EGTCs?</p>	Insurance system is optional → see Article 12(2).
Liability: Article 12(2)	(PL Q 4) Proposed amendments to the provisions concerning the liability in case the members of the grouping have limited liability are close to the ones in the ERIC regulation (723/2009). What are the experiences with the	There are only two ERICs approved by the COM. Hence there is little experience with ERICs. The fact that ERIC's are approved by the COM (by a formal Decision) and EGTCs in MSt, is a fundamental difference. PL should contact the PL representative for ERIC (Mr. Jacek Gierlinski).

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	ERIC provisions in that matter	
Liability: Article 12(2)	(NL Q d) To solve possible problems with limited liability of (members of) an EGTC appropriate insurance may be required by the Member States. This conflicts with the policy in some Member States that public bodies don't make use of insurances. Might there be a solution where this is taken into account?	Those Member States may have found solutions when public bodies manage "dangerous" activities. ETC (or mainstream) programmes will have found solutions where grants are given to beneficiaries with limited liability. Insurance may be an option, but is not obligatory.
Liability: Article 12(2)	(SE Q 2) Can the Commission describe how the system will work, when it comes to take appropriate insurance to cover the risk of an EGTC with members having limited liability.	See above.
Liability: Article 12(2)	(EL) If the liability of at least one member of an EGTC is limited or excluded as a result of the national law under which it is established, the other members may also limit their liability in the convention.	This is not new and was discussed when adopting the current EGTC Regulation. Starting point is that the liability of a member is limited or excluded as a result of (<u>pre-existing</u>) national law, not as the result of national rules implementing the EGTC Regulation!

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	<p>How can this be done and which criteria will be considered? At what stage of the establishment of the EGTC will this take place?</p>	<p>In an EGTC with members from MSt A and B, members from MSt A have limited liability. In order to avoid unbalance, the members from MSt B <u>may</u> opt to also have only limited liability. This will be clearly stated in the Statutes (Article 9(2)(i)).</p>
<p>Jurisdiction of the EU courts: Article 15(2)</p>	<p>(PL Q 5) Poland would like the EC to provide the information on the jurisdiction in case there are disputes involving the EGTCs (incl. the distinction between the application of the EU and national law).</p>	<p>In Article 15(2), the proposal just replaced "Community law" by "Union law".</p> <p>For the rest, Article 15 concerns provisions on conflict of law, which is a specific field of law, discussed with experts in 2005/2006.</p> <p>Applicable EU law covers e.g. the Regulations Brussels I and II, and Rome I and II.</p>
<p>Evaluation: Article 17</p>	<p>(NL Q 6) The Netherlands suggests that the indicators upon which the evaluation reports shall be based (art. 17) be adopted using an implementing act with an examination procedure.</p>	<p>Implementing acts aim at harmonized implementation of EU law by MSt. The list of indicators for a report to be produced by the COM supplements the basic legal act. → DA is the only legal option.</p> <p>However, COM is open to agree on list of indicators as ANNEX II to the Regulation.</p>
<p>Delegation of powers: Article 17A</p>	<p>(EL) Exercise of the delegation. - We would like clarifications as to the <u>ambit of the Commission's power to adopt delegated acts.</u></p>	<p>Limited to adopt a list of indicators. During CIS in September/October 2011, central services proposed standard indicators as for likewise COM reports. For lack of time, the list of indicators could not be finalised inside the COM.</p>

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<p>Transitional provisions: Article 2 of AMENDING Regulation</p>	<p>(NL Q 7) EGTC's established before entry into force of the new regulation are not obliged to align their convention and statutes with the provisions of the amended regulation. The Netherlands proposes to minimise the existence of 'different' EGTC's by providing for an opt-in or an opt-out system.</p>	<p>As existing EGTC's are not obliged, the COM's proposal is opt-in/opt-out: Those which opt for alignment and those that continue to operate under their existing convention and statutes.</p> <p>A different question is whether existing EGTCs when amending convention and statutes are obliged to do this under the new Regulation (EP proposed AM).</p>
<p>Not proposed</p>	<p>(NL Q e) Some problems regarding cross-border cooperation are not addressed.</p> <p>How for example can be dealt with contributions from different Member States in relation to VAT?</p>	<p>(TAXUD) Following the consultation launched on its Green Paper end of 2010, the Commission adopted a Communication on the future of VAT.</p> <p>The reform of the current VAT system that is envisaged should contribute to support a return to growth through its potential to reinvigorate the single market and underpin the current fiscal consolidation efforts in the Member States. More details about the Communication can be found on TAXUD website.</p> <p>As a follow-up to this Communication, the Commission is currently looking at the VAT treatment of public bodies. This review will be based on a study on VAT in the public sector and exemptions in the public sector which is about to be finalised. Member States (in the context of the Group on the future of VAT) and stakeholders (in the context of the VAT Expert Group) will be consulted on this issue early 2013. It should serve as input for future legislative</p>

SUBJECT	QUESTION	ANSWER
		initiatives.
Not proposed	(BE Q E) The EGTC, unlike the other legal persons of European law (European Company (SE – Art 8 Regulation 2157/2001), European Cooperative Society (SCE – Art 7 Regulation 1435/2003) and European Economic Interest Grouping (EEIG – Art 13-14 Regulation 2137/85) does not have the possibility to transfer (subject to certain conditions) its registered office to another Member State. Is this a deliberate choice?	<p>Yes: EGTC Regulation is a lean instrument (18 Articles). You can add all sort of other issues covered by the Regulations mentioned, resulting in a higher number of Articles:</p> <p>EEIG: 43 Articles; SE: 70 Articles; SCE: 80 Articles.</p> <p>The transfer of the registered office to a different MST, constitutes a change to the convention and should undergo the procedures under Article 4(5), 1st and 2nd subparagraphs.</p>
Other questions	(HU) Can the participation of EGTCs or their branch site(s) in mainstream programmes be supported on the level of the EU legislation?	<p>Already done: See Articles 8 (JAP) and 10 (ITI) of ETC Regulation.</p> <p>OP templates (both goals) may mention EGTCs as organisations to be consulted when drafting the OPs.</p>