

EXPLANATORY MEMORANDUM TO
THE EUROPEAN GROUPING OF TERRITORIAL COOPERATION REGULATIONS
2015

2015 No. 1493

1. This explanatory memorandum has been prepared by the Department of Business, Innovation and Skills and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the House of Lords Secondary Legislation Scrutiny Committee.

2. Purpose of the instrument

- 2.1 The European Grouping of Territorial Cooperation Regulations 2015 (the 2015 Regulations) will ensure the effective application of Regulation (EU) No. 1302/2013 of the European Parliament and of the Council on a European Grouping of Territorial Cooperation (the EGTC Regulation) in the UK. The Regulations replace the European Grouping of Territorial Cooperation Regulations 2007 No. 1949 as amended (the 2007 Regulations).
- 2.2 A “European Grouping of Territorial Cooperation” (EGTC) is a mechanism to facilitate and promote territorial cooperation between regional and local authorities in different EU Member States and certain non-Member State countries in order to promote social, economic and territorial cohesion. Examples of how this works in practice are:
- forming an EGTC to run an EU funded territorial cooperation programme as is the case for the InterReg Programme covering the Grande Région (FR, DE, BE);
or
 - operating cross-border health care infrastructure as in the case of Hospital de la Cerdanya (FR, ES).
- 2.3 An EGTC is a legal entity which can act on behalf of its members across Member State borders using the legal framework of the Member State in which the entity is established (thus avoiding the need for separate administrative/legal frameworks in different Member States for the same activity). This enables much more efficient administration of territorial co-operation activities.
- 2.4 EGTCs were first introduced as part of the 2007-13 Structural Funds Regulations package. The original EU Regulation (1082/2006/EC) has now been amended as part of the 2014-20 Structural Funds Regulations package and replaced by the EGTC Regulation.

The EGTC Regulation

2.5 The amendments that are introduced by the EGTC Regulation are intended to provide clarification, simplification and improvement of the establishment and functioning of EGTCs.

2.6 The main changes introduced by the EGTC Regulation are that:

2.6.1 An EGTC can now be set up between members of one or more Member States and one or more third countries, provided that:

- the third country neighbours at least one Member State or its Overseas Country or Territories (OCTs), including maritime borders; or
- both the third country or the OCT and Member State are participants in a joint EU cooperation programme.

2.6.2 A body covered by Public Law can become a member of an EGTC through tacit approval after 6 months, except in the Member State where the EGTC's seat is located, where formal approval is required. The 6 month period is interrupted when the Member State requests more information, except if the prospective members of the EGTC provide the information in less than 10 days.

2.7 The full details of the amendments are set out in Annex A.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 The decision to revoke the 2007 Regulations and replace them with the 2015 Regulations, rather than amending the 2007 Regulations has been made because the department has taken the opportunity to codify the Regulations, clarify an ambiguity in the 2007 Regulations and implement new provisions in order to implement the new requirements of the EGTC Regulation.

4. Legislative Context

4.1 The Regulations will ensure the effective application of the EGTC Regulation and exercise the Member State options according to UK policy.

4.2 A Transposition Note is attached as an annex to this Explanatory Memorandum.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- 7.1 The last Government approved the amendment of the EU Regulation governing EGTCs which is implemented by this UK legislation. As this implementing legislation relates to technical, administrative conditions for the functioning of EGTCs and does not implement any substantive policy changes, Cabinet Office has advised that there is no need to seek further Cabinet Committee clearance for the implementing legislation. The Devolved Administrations and Government Departments with an interest have been consulted and are content. (To date no EGTCs have been established in the UK and no UK public authorities have participated in EGTCs established in other Member States, so this legislation is unlikely to have any significant impact in the UK.)
- 7.2 The overarching policy towards the Regulation is that we support cooperation activities between Member States but the amount of regulation required to ensure effective application of the EGTC Regulation should be kept to a minimum. This position was maintained for the negotiation of the EGTC Regulation (No. 1302/2013).
- 7.3 Within this overarching policy approach, the UK implementing legislation will clarify several administrative points on which the EU regulation allows some discretion for Member States:
- the domestic legislation should be applicable UK wide;
 - the domestic legislation should apply elements of existing company and insolvency law to regulate an EGTC whose registered office is in the UK (a UK EGTC) ;
 - members of a UK EGTC will have to carry unlimited liability;
 - the tasks of a UK EGTC will not be limited where there is no financial contribution from the Union;
 - the Secretary of State will act as the competent authority within the meaning of the EGTC Regulation, but will involve in any decision making process:
 - the relevant Devolved Administration, when the public body wishing to be a member of an EGTC or otherwise under consideration is in their territory, and
 - other interested parties, for example the sponsor Department;
 - membership of the EGTC should be available to the broadest range of public bodies that the EU Regulation allows.

8. Consultation outcome

- 8.1 A consultation with interested stakeholders took place prior to the implementation of the original 2006 EGTC Regulation (No. 1082/2006). The last Government took the same policy position during negotiation of the 2013 EU regulation after similar consultation with the Devolved Administrations and relevant government departments. The same parties have been consulted on this implementing regulation.
- 8.2 This regulation is administrative/technical in nature and there has been very little interest in EGTC across the UK to date.

9. Guidance

9.1 The guidance produced for the 2006 Regulation has been amended by the Department of Business, Innovation & Skills. It covers:

- what an EGTC is;
- how to seek approval to become a member of an EGTC;
- what steps need to be taken for a UK EGTC to acquire legal personality; and
- the responsibilities of a UK EGTC once established.

This guidance will be available through the GOV.UK website when the 2015 Regulations come into force.

10. Impact

10.1 An Impact Assessment has not been prepared for this instrument, as it has no impact on business, charities or voluntary bodies.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 By 1 August 2018, the Commission will forward to the European Parliament, the Council and the Committee of the Regions a report on the application of the EU Regulation, evaluating, based on indicators, its effectiveness, efficiency, relevance, European added value and scope for simplification.

12.2 The Secretary of State will publish a review of the effective operation of these Regulations by 31st July 2020.

13. Contact

Simon Jones at the Department of Business, Innovation and Skills, tel: 0207 215 2686 or e-mail: simon.a.jones@bis.gsi.gov.uk, can answer any queries regarding the instrument.

List of amendments to Regulation (EU) No. 1302/2013 of the European Parliament and of the Council on a European Grouping of Territorial Cooperation.

Article	Amendments
Art. 1. Nature of the EGTC	Now includes reference to the objective of territorial cohesion which was a concept added in the Treaty of Lisbon.
Art. 2. Applicable law	The applicable law to the EGTC are the Regulation, then the Convention (not the statutes) and then the national law of the Member State where the registered office of the EGTC is located. The Convention has to identify the law applicable to the activities of the EGTC.
Art. 3. Composition	Public undertakings of Annex III of Directive 2004/17/EC (private law) and undertakings entrusted with operations of services of general economic interest can be part of an EGTC. EGTCs with one entity from one Member State and another one from a non-EU Member State are possible.
Art. 3a. Members from third countries or overseas countries or territories (OCTs)	An EGTC may be set up between members of one or more Member States and one or more third countries, but the third country must neighbour at least one Member State or its Overseas Country or Territories (OCTs), including maritime borders, or both the third country and the OCT or Member State must be eligible under a joint EU cooperation programme.
Art. 4. Establishment	Includes the reasons for non-approval of the Convention. Tacit approval after 6 months, except in the Member State where the EGTC' seat is located, where formal approval is required. The period is interrupted when the Member State requests more information, except if the prospective members of the EGTC provide the information in less than 10 days. In case of accession of a member from a third country, the approval is for the Member State where the EGTC's seat is based, consulting the other EU Member States concerned, if any. The amendments to the statutes shall only be notified to the Member States, no new authorisation will be required. The amendments to the Convention need approval of the Member States, except the accession of new EGTC members from a Member State that already participates (only the Member State concerned has to approve) and the accession of new EGTC Members from a third country (the approval is for the Member State where the EGTC's seat is based, consulting the other EU Member States concerned, if any).
Art. 4a. Participation of members from an Overseas Country or Territory (OCT)	The authorities of the Member State to which the OCT is linked are competent for the authorisation.
Art. 5. Acquisition of legal personality and publication	The Committee of the Regions (CoR) will be in charge of publishing the establishment of the EGTC in section C of the OJEU. The members of the EGTC are not obliged to do so any more.
Art. 6. Control of management of public funds	The legislation of control of EU funds shall apply in relation to actions co-financed by the EU.

Article	Amendments
Art. 7. Tasks	<p>Territorial cooperation to strengthen economic, social and territorial cohesion is the general mission of the EGTC.</p> <p>The EGTC may also implement a part of an EU Funded territorial cooperation (ETC) programme, not necessarily the whole programme.</p> <p>The tasks of the EGTC shall fall within the competence of every member, but the Member State or the third country may authorise exceptions for members coming from their State.</p> <p>Actions carried out without financial support from the EU can be limited by the Member States, but not if they concern the priorities of the ETC.</p> <p>The assembly of an EGTC may determine the tariffs, fees and other conditions of use of an item of infrastructure or a service of economic general interest provided by the EGTC.</p>
Art. 8. Convention	<p>Contains new specifications about the content of the Convention, related to the duration of the EGTC; its organs and competences; the applicable law to the registered office, to other possible locations/offices, to the activities and infrastructure, to the staff and to the liability; and the procedure of adoption and amendment of the statutes and of the Convention.</p> <p>The applicable law to the staff is mentioned in recitals 26 and 27 and dealt with in a common declaration.</p>
Art. 9. Statutes	<p>The obligatory mention of the organs of the EGTC and their competences is moved to the Convention.</p>
Art. 11. Budget and auditing	<p>The law of the Member State of the registered office applies always to accounts, auditing and publication of the accounts.</p>
Art. 12. Liability	<p>If one member has limited liability, the other members can limit their liability but only if their national legislation allows it.</p> <p>In EGTCs of limited liability, any Member State may require schemes of insurance or financial guarantees (public or private) to cover the risks specific to the activities of the EGTC.</p>
Art. 15. Final provisions	<p>The Member States shall inform the Commission about the national implementation of the Regulation. The Commission shall inform the other Member States and the CoR.</p> <p>The national provisions of the Member States also affect their respective OCTs.</p> <p>Two declarations are added: One engages the Member States to adopt efficient and transparent procedures; the other one supports the work of the CoR and its Platform of EGTCs.</p>
Art. 17. Report and review clause	<p>The Commission will present a report by 1 August 2018. Indicators of effectiveness, efficiency, European added value, relevance and sustainability will be adopted by delegated act.</p> <p>Recital 33 provides that the EGTC shall be disseminated between the Commission services and the EEAS.</p>

Article	Amendments
Transitional provision	<p>Existing EGTCs are not obliged to modify their Convention and statutes.</p> <p>EGTCs already authorised whose publication or register is pending, or whose procedure of authorisation started more than 6 months before the entry into force of the revised Regulation, shall be subject to the old version of the Regulation.</p>

Other new dispositions related to the EGTC as referenced in other EU Regulations related to cohesion policy.

Provision	New disposition
Art. 2. Common Provisions Regulation (CPR)	The expenditure of an EGTC is always considered public expenditure
Art. 93. CPR	Defines the Joint Action Plans. The EGTCs can be beneficiaries.
Art. 99. CPR	Defines the Integrated Territorial Investments. The EGTCs can be beneficiaries or intermediate bodies.
Art. 8. European Territorial Cooperation (ETC)	An EGTC can be beneficiary of a Joint Action Plan.
Art. 10. ETC	An EGTC can be an intermediate body to implement an Integrated Territorial Investment.
Art. 11 (3) ETC	An EGTC can be single beneficiary of ETC projects, if it fulfils the cooperation criteria.
Art. 21. ETC	An EGTC can manage a programme or a part of it.
Art. 22. ETC	An EGTC can be managing authority and carry out the first level control in the whole area of a programme.