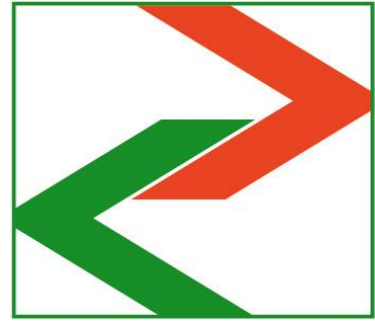


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06.09.2004

Comments of the

***ASSOCIATION OF EUROPEAN BORDER REGIONS
(AEBR)***

on the proposal of the European Commission for a

- ***REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ESTABLISHING A EUROPEAN GROUPING OF CROSS-BORDER CO-OPERATION (EGCC)***

AEBR strongly welcomes this initiative of the European Commission. The regulation is urgently necessary in order to create homogeneous European legal instruments for cross-border, interregional and transnational co-operation, which establish a legal basis for strategic programme-level as well as for project level co-operation.

AEBR has elaborated a study on "decentralised co-operation among public law based territorial authorities" for the European Commission, which contains concrete recommendations and proposals for such a regulation. The study has clearly identified the wider background, the actual needs, and the added value as well as potential solutions for EU instruments. It explicitly distinguishes between a public law based purpose association for co-operation and public law based agreements for co-operation. Although both aspects can be found in the regulation, they are not congruent with regard to their contents.

The most important differences are:

- the public law based purpose association is a quite "massive" legal instrument for co-operation. In fact, it is suitable in the context of strategic programme oriented co-operation only in the context of cross-border co-operation (in the field of interregional and transnational co-operation probably for project level co-operation in the context of e.g. highway construction, interlinking of energy networks etc);
- a public law agreement is mostly suitable for interregional and transnational co-operation, which is not this intensive as cross-border co-operation between immediately neighbouring territorial authorities. The public law based purpose association would be a legal instrument that is too massive for this type of co-operation.

For ensuring that the regulation takes the right direction and produces the greatest possible added value, AEBR strongly recommends reviewing in detail this regulation during the coming months and to imperatively include the necessary changes and adaptations.

In addition, the terminology regarding cross-border, interregional and transnational

co-operation needs to remain consistent. On the cover page, for example, a "European grouping for cross-border co-operation" is mentioned, whereas the text makes reference to a grouping for cross-border as well as for interregional and transnational co-operation.

The following suggestions are made with regard to a more coherent terminology:

- The general term for summarising cross-border, interregional and transnational co-operation should be "Trans-European Co-operation".
- The general terms for the legal instruments provided for in this regulation should be "European Grouping for Co-operation" (EGC) and "European Convention for Co-operation" (ECC). In practice, both instruments could then be made more specific in the context of each type of co-operation (e.g. European Grouping for Cross-border Co-operation, European Convention for Transnational Co-operation).

In the comments on the explanatory memorandum, considerants and articles below, the "old abbreviation" EGCC will however be used for practical reasons (i.e. if the proposals on a new terminology shall be adopted, the entire text will then need to be revised carefully in this manner).

It is also recommended to check the translations. The German version, for example, makes reference to grouping for cross-border co-operation, but in fact one can assume that probably an association for cross-border co-operation is meant.

Our statement on the explanatory memorandum, on individual considerants and on the articles will not come back to these more basic comments again.

Explanatory Memorandum

In **paragraph 5** it is mentioned that the EGCC is invested with the capacity to act in the name and on behalf of its members, notably the regional and local authorities of which it is composed. Rightly, the member states are not mentioned in this context. In article 2 referring to the composition, however, it is said that the member states also form part of the members of an EGCC. The member states do however not need

an EU regulation to conclude public law based agreements across borders.

Paragraph 6 should read as follows: ... *for carrying out (...) which are at the sole initiative of the member states and/or their regional and local authorities, without financial contribution by the Community.*

Explanation:

For measures without a financial contribution of the European Community or the member states, regions and local authorities must be able to establish an EGCC in order to self-regulate their cross-border co-operation. The member states should in no case be members of an EGCC (see existing examples of interstate agreements NL/D, B/NL/LUX, F/D/LUX/CH, F/E etc.), because member states can on ground of own powers conclude agreements across borders.

In **paragraph 7**, aspects related to the financial responsibility are formulated in an unclear way. To which kind of financial responsibility is referred to that cannot be subject of an EGCC? If, as mentioned later, an EGCC will be entitled to manage EU programmes, this will be automatically linked to a great deal of financial responsibility.

In **paragraph 8** it is unclear what is meant by (...) *powers exercised (...), cannot be the subject of a convention*. Does this concern own powers of regional and local authorities as public law based entities or does it concern competencies, which have been delegated (i.e. sovereign administration or an administration delegated to the private sector)?

If own powers of regional and local authorities or powers delegated to the private sector cannot be subject of an agreement, one has to ask the question what they should actually do with an EGCC and what its content should be?

Therefore, this paragraph should be formulated more clearly, above all with regard to the fact that powers can be delegated to the private sector.

Considerants

Considerant (1)

The sentence in this considerant should read as follows: (...) *"imply the strengthening of Trans-European co-operation among territorial authorities in the EU and with territorial entities in neighbouring third countries".*

Considerant (11)

(...) *which are at the sole initiative of the member states and/or their regional and local authorities, without financial contribution by the Community.*

Considerant (12)

This considerant requires re-drafting as the text is unclear and because it is not understandable to which financial responsibility it actually refers to.

Considerant (13)

It is recommended to mentioning that delegated sovereign powers, which are executed by regional and local authorities as public entities, especially police and regulatory powers, cannot be subject of such a convention, but powers delegated to the private sector.

Explanation:

Comments to paragraph 8 of the explanatory statement.

Considerant (14)

(...) *and equip itself with its own organs and rules concerning the decision-making process, as well as rules for the budget and for the exercise of its financial responsibility and provisions regarding its dissolution.*

Considerant (15)

The sentence in this considerant should read as follows: *"Since European-wide homogeneous legal conditions for cross-border, transnational and interregional co-operation cannot be created in an efficient way by the member states, and thus are better established at the community level, (...)."*

Articles

This part of the regulation should be carefully redrafted, which also implies that articles are put into a new order. The regulation should start with a general statement on its basic objective (new article 1) and a general statement explaining by which instruments (convention, grouping) these objectives will be achieved (new article 2). Only then, technical details of the instrument-section should start, preferably with matters related to the "co-operation convention". They are then followed by the articles relating to aspects of the "co-operation grouping" (i.e. nature, composition, competence, statutes, organs, budget, publicity).

Despite these general remarks, the comments below will follow the "old numbering" of articles contained in the current draft regulation:

Art 1, No. 3

The sentence should read as follows: *The objective of the grouping is to facilitate and promote cross-border, transnational or interregional co-operation between regional and local authorities in EU Member States, but also between them and territorial authorities of neighbouring third countries, with the aim of reinforcing economic, social and territorial cohesion.*

Consequently, the last sentence of No 3 could be dropped and replaced by the following: *Under all forms of Trans-European co-operation, a grouping can be established for the purpose of strategic-programmatic co-operation and for project level co-operation.*

Art 2, No. 1

An EGCC can only be composed of public law based entities, but not of "other local organisms". Member states do not form part of an EGCC (see comments regarding paragraph 5 of the explanatory statement to this regulation, which includes only regional and local authorities in the membership).

Art 2, No. 2

According to this formulation, an EGCC should be entitled to assign its tasks to one

of the members. This aspect has nothing to do with the composition and should be regulated in the statutes, wherefore this aspect should rather be mentioned under Article 5.

A new No 4 is proposed: *"On ground of this regulation, a public law agreement can be concluded, for which the contracting parties are the member states and/or regional and local authorities."*

Art 3, No. 2

The national law applicable can only be the one of the state in which the EGCC has its legal seat.

Art 3, No. 4

"... a transfer of the delegated powers of public authority,, but powers can be delegated to the private sector..."

Explanation:

Comments to the explanatory statement.

Art 4, No. 5

The "Convention" should be transformed into a proper instrument generally applicable under all types of Trans-European co-operation, both at the strategic level (programme level) and at the project level. It needs also to be highlighted that by a convention, a public law based relationship is constituted between the contracting parties.

One specific reference should highlight that the convention can also be used for establishing "groupings for co-operation". In this case, the law applicable to a convention can only be the law of a single member state concerned, i.e. the one in which the future EGCC will have its registered legal seat.

Explanation: The broad definition would establish the convention as a "separate instrument" that can generally be used in the context of Trans-European co-

operation, but especially in those cases that require less far-reaching legal solutions compared to the one of establishing a grouping (i.e. transnational and interregional co-operation). By the specific reference, the convention would still remain the necessary "precondition" for establishing a more far-reaching European grouping for co-operation, which is currently the only purpose of the convention.

Art. 5

The English version of the regulation rightly speaks of "statutes" that need to be drawn up for an EGCC. In other language versions, the wording is somehow misleading as it refers to "internal rules of procedure" (e.g. German version).

Art. 6

An EGCC needs at least the following organs:

- an assembly of the members,
- a board,
- a secretariat (which automatically includes a director or a manager).

If an EGCC should be entitled to implement EU programmes, its structural setup should also be in line with the prescriptions contained in the Structural Funds regulations. The regulations clearly highlight that the joint programme secretariat is to be established within the managing authority.