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Regulation (EU) No 1302/2013 of the european Parliament and of the Council of 17 December 2013 amending Regulation (EC) No 1082/2006 on a European grouping of territorial cooperation (EGTC) as regards the clarification, simplification and improvement of the establishment and functioning of such groupings

REGULATION (EU) No 1302/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 17 December 2013

amending Regulation (EC) No 1082/2006 on a European grouping of territorial cooperation (EGTC) as regards the clarification, simplification and improvement of the establishment and functioning of such groupings

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular the third paragraph of Article 175 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee[(1)],

Having regard to the opinion of the Committee of the Regions[(2)],

Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) In accordance with Regulation (EC) No 1082/2006 of the European Parliament and of the Council[(3)], the Commission adopted on 29 July 2011 a report for the European Parliament and the Council on the application of that Regulation. In that report, the Commission announced its intention to propose a limited number of modifications to Regulation (EC) No 1082/2006 to facilitate the establishment and operation of EGTCs, as well as to propose clarification of certain existing provisions. Obstacles to establishing new EGTCs should be removed while maintaining continuity in, and facilitating the operation of, existing ones, thus allowing more extensive use of EGTCs to contribute to better policy coherence and cooperation between public bodies without creating an additional burden on national or Union administrations.

(2) The establishment of an EGTC is a matter to be decided by its members and their national authorities, and is not automatically linked with any legal or financial advantages at Union level.

(3) The Treaty of Lisbon added a territorial dimension to Cohesion Policy and 'Community' was replaced by 'Union'. The new terminology should therefore be introduced into Regulation (EC) No 1082/2006.

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(4) EGTCs can have the potential to enhance the promotion and achievement of the harmonious development of the Union as a whole and the economic, social and territorial cohesion of its regions, in particular, and to contribute to meeting the objectives of the Europe 2020 strategy for smart, sustainable and inclusive growth ('Europe 2020 strategy'). EGTCs can also contribute positively to reducing barriers to territorial cooperation between regions which suffer from severe and permanent natural or demographic handicaps, including the specific situation of outermost regions, and can be instrumental in strengthening the cooperation between third countries, overseas countries and territories ('OCTs') and Union border regions, including through the use of Union external cooperation programmes.

(5) Experience with EGTCs established so far shows that, as a legal instrument, EGTCs are also being used for cooperation in the context of Union policies other than Cohesion Policy, including by implementing programmes or parts of programmes with Union financial support other than that under Cohesion Policy. The efficiency and effectiveness of EGTCs should be enhanced by broadening the nature of EGTCs, removing persistent barriers and facilitating the establishment and operation of EGTCs while maintaining the Member States' ability to limit the actions that EGTCs are able to carry out without Union financial support. Under Regulation (EC) No 1082/2006 EGTCs have in each Member State the most extensive legal capacity accorded to legal persons under that Member State's national law, including the possibility of concluding agreements with other EGTCs, or other legal entities, for the purposes of carrying out joint cooperation projects to, inter alia, provide for more efficient operation of macro-regional strategies.

(6) By definition, EGTCs operate in more than one Member State. Consequently, Regulation (EC) No 1082/2006 provides for the possibility for the EGTC's convention and statutes to state the applicable law on certain issues. The cases in which such statements are to give priority, within the hierarchy of applicable law laid down in that Regulation, to the national law of the Member State where the EGTC has its registered office should be clarified. At the same time, the provisions of Regulation (EC) No 1082/2006 on applicable law should be extended to the acts and activities of an EGTC that are subject to legal scrutiny by Member States in each individual case.

(7) As a result of the differing status of local and regional bodies in Member States, competences that are regional on one side of a border can be national on the other, especially in smaller or centralised Member States. Consequently, national authorities should be able to become members of an EGTC alongside the Member State.

(8) While Regulation (EC) No 1082/2006 allows for bodies established under private law to become members of an EGTC provided that they are considered as being bodies governed by public law as defined in Directive 2004/18/EC of the European Parliament and of the Council[(4)], it should be possible to use EGTCs in the future to jointly manage public services with a particular focus on services of general economic interest or on infrastructure. Other private or public law actors should also be able, therefore, to become members of an EGTC. Consequently, 'public undertakings' as defined in Directive 2004/17/EC of the European Parliament and of the Council[(5)], and

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undertakings entrusted with the operation of services of general economic interest, in fields such as education and training, medical care, social needs in relation to health care and longterm care, childcare, access to, and reintegration into, the labour market, social housing and the care and social inclusion of vulnerable groups, should be covered as well.

(9) Regulation (EC) No 1082/2006 does not contain detailed rules concerning the participation of entities from third countries in an EGTC formed in accordance with that Regulation, i.e. between members from at least two Member States. Given the further alignment of the rules governing the cooperation between one or more Member States and one or more third countries, predominantly in the context of cross-border cooperation under the European Neighbourhood Instrument (ENI) and the Instrument for Pre-accession Assistance (IPA II), but also in the context of complementary financing from the European Development Fund, and of transnational cooperation under the European territorial cooperation goal, where allocations from the ENI and the IPA II are to be transferred in order to pool such allocations with allocations from the European Regional Development Fund (ERDF) under joint cooperation programmes, the participation of members from third countries neighbouring a Member State, including its outermost regions, in EGTCs established between at least two Member States should be explicitly provided for. This should be possible where the legislation of a third country, or agreements between at least one participating Member State and a third country, so allows.

(10) In order to strengthen the Union's economic, social and territorial cohesion and therefore to reinforce, in particular, the effectiveness of territorial cooperation, including one or more of the cross-border, transnational and interregional strands of cooperation, between members of an EGTC, the participation of third countries neighbouring a Member State, including its outermost regions, should be allowed in an EGTC. Operations under European territorial cooperation programmes, where co-financed by the Union, should therefore continue to pursue Union Cohesion Policy objectives, even if they are implemented, partly or in their entirety, outside the territory of the Union, and, as a consequence, the activities of an EGTC are also carried out at least to some extent outside the territory of the Union. In this context, and where relevant, the contribution by the activities of an EGTC that also has members from third countries neighbouring at least one Member State, including its outermost regions, to the objectives of Union external action policies, such as development cooperation or economic, financial and technical cooperation objectives, remains merely incidental, as the centre of gravity of the cooperation programmes concerned and consequently the activities of that EGTC should focus primarily on Union Cohesion Policy objectives.Consequently any development cooperation or economic, financial and technical cooperation objectives between only one Member State, including its outermost regions, and one or more third countries are only ancillary to the cohesion policy-based territorial cooperation objectives between Member States, including their outermost regions. Therefore, the third paragraph of Article 175 of the Treaty on the Functioning of the European Union (TFEU) is a sufficient legal basis for the adoption of this Regulation.

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(11) Following the authorisation for participation of national, regional, sub-regional and local authorities and organisations, as well as, where appropriate, other public bodies or institutions, including public service providers, from an OCT in an EGTC, based on Council Decision 2013/755/EU[(6)] and taking into account that, in the case of the 2014-2020 programming period, a special additional financial allocation under the multiannual financial framework is to reinforce the cooperation of the outermost regions of the Union with neighbouring third countries and some of the OCTs listed in Annex II to the TFEU and neighbouring those outermost regions, EGTCs, as a legal instrument, should also be opened up to members from OCTs. For the sake of legal certainty and transparency special approval procedures for the accession of members from an OCT to an EGTC should be established including in this regard, where necessary, special rules on the law applicable to the relevant EGTC with members from an OCT.

(12) Regulation (EC) No 1082/2006 distinguishes between the convention laying down the constitutive elements of the future EGTC and the statutes setting out the implementation elements. However, under that Regulation the statutes currently have to contain all the provisions of the convention. Although both the convention and the statutes are to be sent to Member States, they are distinct documents, and 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.

(13) Experience gained from establishing EGTCs shows that the three-month period for the Member States' approval procedure has rarely been respected. That period should therefore be extended to six months. On the other hand, in order to ensure legal certainty after that period, the convention should be deemed to be approved by tacit agreement, where applicable, in accordance with the national law of the Member States concerned, including their respective constitutional requirements. However, the Member State where the proposed registered office of the EGTC is to be located should have to formally approve the convention. While Member States should be able to apply national rules on the procedure for approval of a prospective member's participation in the EGTC or to create specific rules in the framework of the national rules implementing Regulation (EC) No 1082/2006, derogations to the provision concerning tacit agreement after the six-month period should be precluded, except as provided for in this Regulation.

(14) The grounds for a Member State not approving a prospective member's participation or the convention should be set out. However, any national law requiring other rules and procedures than those provided for in Regulation (EC) No 1082/2006 should not be taken into account when deciding on that approval.

(15) As Regulation (EC) No 1082/2006 cannot apply in third countries, the Member State where the proposed registered office of the EGTC is to be located should, when approving the participation of prospective members from third countries, established under the law of those third countries, satisfy itself, in consultation with those Member States under whose laws other prospective members of the EGTC have been established, that the third countries have applied equivalent conditions and procedures to those laid down in Regulation (EC) No 1082/2006 or acted in accordance with

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international bilateral or multilateral agreements concluded between Member States of the Council of Europe, whether or not they are also Member States of the Union, based on the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities, signed in Madrid on 21 May 1980, and the additional Protocols adopted pursuant thereto. In the case of the involvement of several Member States of the Union and one or more third countries, it should be sufficient that such an agreement has been concluded between the respective third country and one participating Member State of the Union.

(16) In order to encourage the accession of new members to an existing EGTC, the procedure to amend conventions in such cases should be simplified. Consequently, such amendments should, in the case of a new member from a Member State that has already approved the convention, not be notified to all participating Member States, but only to the Member State under whose laws the new prospective member is established and the Member State where the EGTC has its registered office. Any subsequent amendment of the convention should be notified to all Member States concerned. However, such simplification of the amending procedure should not apply in the case of a new prospective member from a Member State that has not already approved the convention, a third country, or an OCT, because it is necessary to enable all participating Member States to check whether such accession is in line with its public interest or public policy.

(17) Given the links between Member States and OCTs, the procedures for approval of participation of prospective members from OCTs should involve those Member States. In accordance with the specific governance relationship between the Member State and the OCT, the Member State should either approve the participation of the prospective member from the OCT or provide written confirmation to the Member State, where the proposed registered office of the EGTC is to be located, that the competent authorities in the OCT have approved the prospective member's participation in accordance with equivalent conditions and procedures to those laid down in Regulation (EC) No 1082/2006. The same procedure should apply in the case of a prospective member from an OCT that wishes to join an existing EGTC.

(18) As the statutes are no longer to contain all the provisions of the convention, both the convention and statutes should be registered or published, or both. In addition, for reasons of transparency, a notice concerning the decision establishing an EGTC should be published in the C series of the *Official Journal of the European Union*. In the interests of consistency, that notice should contain the details set out in the Annex to Regulation (EC) No 1082/2006 as amended by this Regulation.

(19) The purpose of an EGTC should be extended to cover the facilitation and promotion of territorial cooperation in general, including strategic planning and the management of regional and local concerns in line with Cohesion Policy and other Union policies, thus contributing to the Europe 2020 strategy or to the implementation of macro-regional strategies. An EGTC should therefore be able to implement operations with financial support other than that provided by Union Cohesion Policy. In addition, every member in each of the Member States or third countries represented should be required to have