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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, xxx
COM(2004) 496 final

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

establishing a European grouping of cross-border cooperation (EGCC)

(presented by the Commission)

[SEC(2004)....]

EXPLANATORY MEMORANDUM

Member States and regional and local authorities have experienced important difficulties in carrying out and managing actions of cross-border co-operation, trans-national co-operation and inter-regional co-operation, within the framework of differing national laws and procedures. This calls for appropriate measures at the community level in order to reduce these difficulties.

The harmonious development of the entire community territory and reinforced economic, social and territorial cohesion imply a stronger cross-border co-operation and the adoption of measures to improve the implementation conditions for cross-border co-operation.

To this end, article 159, third paragraph, allows for specific actions to be taken outside the funds which are the subject of the first paragraph of this article, in order to achieve the treaty objective of greater economic and social cohesion.

In order to overcome the obstacles hindering cross-border co-operation, it is necessary to introduce a co-operation instrument at the community level, which allows the creation of co-operative groupings in the community territory, invested with legal personality, called “European groupings of cross-border co-operation” (EGCC). Recourse to the EGCC should be optional.

The EGCC is invested with the capacity to act on behalf of its members, notably the regional and local authorities of which it is composed. The tasks delegated to it must be defined by its members, in a convention of European cross-border co-operation.

The EGCC must be able to act, either for implementing programmes of cross-border co-operation co-financed by the Community, notably by the structural funds, as well as trans-national and inter-regional co-operation programmes, or for carrying out cross-border co-operation programmes which are at the sole initiative of the Member States and their regional and local authorities, without financial contribution by the Community.

The financial responsibility of regional and local authorities, as well as that of the Member States, is not affected by the formation of an EGCC, with regard to both the management of Community funds and national funds.

The powers exercised by regional and local authorities as public authorities, notably police and regulatory powers, cannot be the subject of a convention.

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

establishing a European grouping of cross-border cooperation (EGCC)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 159, third paragraph thereof,

Having regard to the proposal from the Commission¹,

Having regard to the opinion of the European Economic and Social Committee²,

Having regard to the opinion of the Committee of the Regions³,

Acting in accordance with the procedure laid down in Article 251 of the Treaty⁴,

Whereas:

- (1) Article 159, paragraph 3, of the treaty provides for specific actions to be decided outside the funds which are the subject of paragraph 1 of that article, in order to achieve the objective of social and economic cohesion envisaged by the treaty. The harmonious development of the entire community territory and greater economic, social and territorial cohesion imply the strengthening of cross-border co-operation. To this end it is appropriate to adopt the measures necessary for improving the implementation conditions for actions of cross-border co-operation.
- (2) Taking into account the important difficulties encountered by the Member States, in particular by the regions and local authorities, in implementing and managing actions of cross-border, trans-national or inter-regional co-operation within the framework of differing national laws and procedures, measures to reduce these difficulties are necessary.
- (3) Taking into account notably the increase in the number of land and maritime borders in the community following its enlargement, it is necessary to facilitate the reinforcement of cross-border, trans-national and inter-regional co-operation in the Community.

¹ OJ C , , p. .

² OJ C , , p. .

³ OJ C , , p. .

⁴ OJ C , , p. .

- (4) The existing instruments, such as the European economic interest grouping, have proven ill-adapted to organising a structured co-operation of structural fund programmes within the INTERREG initiative during the 2000-2006 programming period.
- (5) Council Regulation (EC) No (...) laying down general provisions for the European regional development fund, the European social fund and the Cohesion fund, increases the means in support of European territorial co-operation.
- (6) It is likewise necessary to facilitate and follow up the implementation of cross-border co-operation actions, without financial participation by the Community.
- (7) In order to overcome the obstacles hindering cross-border co-operation, it is necessary to institute a co-operation instrument at the community level, which allows the creation of co-operative groupings in the community territory, invested with legal personality, called “European groupings of cross-border co-operation” (EGCC). Recourse to the EGCC should be optional.
- (8) It is appropriate for the EGCC to be given the capacity to act on behalf of its members, and notably the regional and local authorities of which it is composed
- (9) The tasks and competencies of the EGCC must be set out in a “Convention of European cross-border co-operation”.
- (10) The members may decide to set up the EGCC either as a separate legal entity or to assign its tasks to one of the members.
- (11) The EGCC must be able to act, either for implementing programmes of cross-border co-operation co-financed by the Community, notably within the structural funds in conformity with Regulation (EC) No and Regulation (EC) No on the European Regional Development Fund, as well as trans-national and inter-regional co-operation programmes, or for carrying out cross-border co-operation programmes which are at the sole initiative of the Member States and their regional and local authorities, without financial contribution by the Community.
- (12) It should be specified that the financial responsibility of regional and local authorities, as well as that of the Member States, is not affected by the formation of an EGCC, with regard to both the management of Community funds or national funds.
- (13) It should be specified that the powers exercised by regional and local authorities as public authorities, notably police and regulatory powers, cannot be the subject of a convention.
- (14) It is necessary for the EGCC to establish its statutes, and equip itself with its own organs, as well as rules for the budget and for the exercise of its financial responsibility.
- (15) Since the conditions for cross-border co-operation, as specified in this regulation, cannot be created in an efficient way by the Member States, and are thus better established at the community level, the Community can take measures, in accordance with the subsidiarity principle enshrined in article 5 of the treaty. In accordance with the proportionality principle set out in that article, this regulation does not exceed what

is necessary for achieving its objectives, recourse to the EGCC being optional, in accordance with the constitutional system of each Member State,

HAVE ADOPTED THIS REGULATION:

Article 1

Nature of the EGCC

1. A co-operative grouping can be established on community territory in the form of a European grouping of cross-border co-operation, hereafter referred to as “EGCC”, under the conditions and according to the modalities envisaged by this regulation.
2. The EGCC is invested with legal personality.
3. The objective of the EGCC is to facilitate and promote cross-border co-operation between Member States, as well as regional and local authorities, with the aim of reinforcing economic, social and territorial cohesion.

In the same aim, it can equally have the objective of facilitating and promoting trans-national and inter-regional co-operation.

Article 2

Composition

1. The EGCC can be made up of Member States and/or regional and local authorities and/or local public bodies, hereafter referred to as “members”.
2. The creation of an EGCC is decided at the initiative of its members.
3. The members can decide to set up the EGCC as a separate legal entity, or to assign its tasks to one of the members.

Article 3

Competence

1. The EGCC carries out the tasks which it is assigned by its members in accordance with this regulation. Its competencies are defined by a convention of European cross-border co-operation, hereafter referred to as “convention”, which is passed by the members, in conformity with article 4 of this regulation.
2. Within the limits of its tasks, the EGCC acts on behalf of its members. To this end, the EGCC is invested with the legal capacity accorded to legal entities by national legislations.

3. The EGCC can be given the task either of implementing cross-border co-operation programmes co-financed by the community, notably through the structural funds, or of carrying out any other action of cross-border co-operation with or without community financial intervention.

The formation of an EGCC does not affect the financial responsibility of its members or of the Member States, neither for community funds nor for national funds.

4. A convention cannot concern the delegation of powers of public authority, notably police and regulatory powers.

Article 4

Convention of European cross-border cooperation

1. All EGCC are the subject of a convention.
2. The convention specifies the tasks of the EGCC, its duration and the conditions for its dissolution.
3. The convention is limited solely to the domain of cross-border co-operation determined by its members.
4. The convention stipulates the responsibilities of each of the members with respect to the EGCC and with respect to third parties.
5. The convention defines the law applicable to its interpretation and enforcement. The applicable law is from one of the Member States concerned. In case of a dispute between members, the competent jurisdiction is that of the Member State whose law was chosen.
6. The convention establishes the modalities of mutual recognition in the field of control.
7. The conditions for granting concessions or public service delegations to the EGCC within the cross-border co-operation are to be defined in the convention, on the basis of the applicable national law.
8. The convention is notified to all its members and to the Member States.

Article 5

Statutes

1. The EGCC adopts its statutes on the basis of the convention.
2. The statutes contain the following provisions:
 - a) the list of its members;

- b) the objective and tasks of the EGCC, and its relations with the members;
 - c) its name and the address of its seat;
 - d) its organs and their competencies, its functioning, the number of representatives of the members on the organs;
 - e) the decision-making procedures of the EGCC;
 - f) the establishment of the working language or languages;
 - g) the modalities for its functioning, notably concerning personnel management, recruitment procedures, the nature of personnel contracts, guaranteeing stability of co-operation actions;
 - h) the modalities for the members' financial contributions and the applicable accounting and budgetary rules;
 - i) the designation of independent organisation of financial control and external audit;
3. If a member is assigned the tasks of the EGCC, in accordance with article 2, paragraph 3, the content of the statutes can be a part of the convention.
4. Upon adoption of the statutes, the EGCC has the capacity to act, in accordance with article 3, paragraph 2.

Article 6

Organs

1. The EGCC is represented by a director, who acts on its behalf.
2. The EGCC can equip itself with an assembly, which is made up by representatives of its members.
3. The statutes can envisage supplementary organs

Article 7

Budget

1. The EGCC establishes an annual provisional budget, which is adopted by the members. It draws up an annual activity report, certified by experts who are independent of the members.
2. The members are financially liable on a pro-rata basis according to their contribution to the budget, until the EGCC's debts are eliminated.

Article 8

Publicity

The EGCC is published in the *Official Journal of the European Union*, once it has the capacity to act, in accordance with article 5, paragraph 4. As of this instant, the legal capacity of the EGCC is recognised in each Member State.

This publication includes the name of the EGCC, its objective, the list of its members and the address of its seat.

Article 9

Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply from 1 January 2007.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President