

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

**Revised version of the APPENDIX to Protocol No. 3 to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities concerning Euroregional Co-operation Groupings (ECGs)  
(CETS No. 206)**

*(approved by the Committee of Ministers on 10 September 2015  
at the 1234th meeting of the Ministers' Deputies)*

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**MODEL LEGAL PROVISIONS  
TO ENSURE THE IMPLEMENTATION OF THE PROTOCOL  
ON EUROREGIONAL CO-OPERATION GROUPINGS (ECGS)**

**Initial remarks**

*It is for each state to determine whether its current laws and regulations enable it to guarantee, without taking new legislative or administrative measures, the due implementation of Protocol No. 3, which it wishes to ratify. In this connection, it should be recalled that the provisions of the Appendix setting out obligations are merely proposals submitted to the legislatures of the States Parties to the Protocol.*

*Some of these provisions merely draw immediate conclusions from the commitments entered into by the states which have ratified Protocol No. 3; they are simply recommendations addressed to each state so as to facilitate the normative implementation of the Protocol in accordance with Article 13 thereof.*

*Other, sometimes more detailed, provisions are just suggestions for "practical solutions which would facilitate the creation or functioning of ECGs", as stated in the explanatory note to Section I, without being absolutely required by Protocol No. 3. In this case, the rules laid down reflect the theoretical choice that national legislators may make freely in order to add to the regulatory framework governing ECGs subject to their legislation. It will be for each parliament to draw on these suggestions, if it so wishes, and to freely determine the obligations to be imposed on ECGs having their headquarters in the state or territorial community for which it is legislating and on members of these Groupings.*

**APPENDIX to Protocol No. 3**

TABLE MATCHING  
THE PROVISIONS OF THE APPENDIX WITH THOSE OF THE PROTOCOL

<b>Appendix (Sections)</b>	<b>Corresponding articles of the Protocol</b>	<b>Subject</b>
I	Article 13	Scope of the provisions implementing the Protocol.
II	Article 1 and Article 3.2 and 3.3	Right to establish or join an ECG
III	Article 3.1 and 3.2, and Article 5.3	Law applicable to the ECG
IV	Article 2.1, 2.2, 2.4 and 2.5	Legal personality and legal capacity of the ECG, budgetary autonomy
V	Article 3	Membership of the ECG
VI	Article 2.3; and Article 4.1, 4.3, 4.7 and 4.9	Agreement establishing the ECG
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**APPENDIX to Protocol No. 3**

TABLE MATCHING  
THE PROVISIONS OF THE PROTOCOL WITH THOSE OF THE APPENDIX

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XXIV	Article 7.1 and 7.2	Role and field of action of the ECG
XXV	Article 7.2; Article 11.3	Implementation of decisions of the ECG
XXVI	Article 7.3 and 7.4	Competence and powers of the ECG under public law (See also Protocol 1, Art. 5.2)
XXVII	Article 7.3 (by implication)	Mandate, delegation and concession of public services
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XXIX	Articles 8 and 11.5	Duration, prolongation, winding up and liquidation of the ECG
XXX	Article 9.1 and 9.4	Financial liability of the ECG and its members
XXXI	Article 9.1 and 9.2	Liability of the ECG
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XXXIII	Article 10.1, 10.2, 10.4 and 10.5	Judicial settlement of disputes (legal remedies)
XXXIV	Article 10.3	Arbitration
XXXV	Article 11.1, 11.2 and 11.4	Administrative review of legality
XXXVI	Article 11.5	Judicial review of legality
XXXVII	Article 12	External financial supervision
XXXVIII	Article 15	Applicability of existing treaty rules
XXXIX	Article 16.1	Exclusion from scope of application
XL	Article 18	Terms and definitions
XLI	Not mentioned	Transfer of the ECG's headquarters to the territory of another State Party to the Protocol
XLII	Not mentioned	Transformation of an existing transfrontier co-operation body into an ECG

## APPENDIX to Protocol No. 3

### MODEL LEGAL PROVISIONS TO ENSURE THE IMPLEMENTATION OF THE PROTOCOL ON EUROREGIONAL CO-OPERATION GROUPINGS (ECGS)

#### General considerations

**1. Choice of national wording for implementing provisions.** — From the standpoint of form, in order to draft the texts designed to facilitate each State Party's normative implementation of Protocol No. 3, it was necessary to adopt a unilateral drafting approach. Accordingly, the aim is that each State Party should adopt an approach to implementation which takes account of its own situation, covering:

- the participation of its own territorial communities or authorities in the establishment of ECGs;
- the organisation and functioning of the ECG governed, on a subsidiary basis, by the legislation applicable to a particular category of legal entities established under domestic law;
- the participation of foreign territorial communities or authorities in this ECG; and
- supervision of the activities on its territory of a public body established under foreign law.

**2. Taking into account national conceptions of the relationship between international and domestic law.** — The texts proposed here take account of the different legal traditions of the Council of Europe member states, some of which are resolutely dualist as regards the relationship between international law and their own legal system,<sup>1</sup> others monist to varying degrees, depending on the effect given to certain international rules in their domestic law. In order to meet the needs of the former, it seemed important not to limit the content of the Appendix to provisions intended to enable *implementation* of the Protocol for the purposes of its application, but to also include rules which reproduced in a unilateral way the substance of the Protocol itself. These texts will therefore be able to serve as models for the drafting of a complete legislative transposition of the Protocol and for the drafting of simple additional implementing rules.

**3. Taking into account the various methodological options for the wording of the provisions; identification and classification of the Sections.** — Account also had to be taken of the many legal forms in which states may consider ensuring the normative implementation of the Protocol they intend to ratify. A state may opt for passing a law exclusively relating to ECGs; it may also involve introducing specific changes to various laws relating to the categories of legal entities that it has chosen in order to clarify the internal regulations that will be applicable to these Groupings. In order to facilitate the task of all interested states, the Appendix comprises 41 provisions or sets of provisions, each numbered with Roman numerals. These provisions and sets of provisions constitute Sections relating closely or more loosely to an Article of the Protocol, apart from the first and the last two. With the exception of these, all the Sections are given in the order of the articles of the Protocol.

In this way, all State Parties may decide to reproduce only those provisions that suit them or adapt them to the requirements of their national legislation; those States Parties that so wish may, on the same basis, draft a single, comprehensive law, or co-ordinate in one text all the rules contained in the Protocol itself and the more detailed, but optional rules that are proposed to facilitate implementation of the Protocol.

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<sup>1</sup> For example, in the United Kingdom, signed and ratified international treaties must be formally included in a law transposing them into the domestic legal system.

**TEXT OF  
PROTOCOL NO. 3 TO THE EUROPEAN OUTLINE CONVENTION ON TRANSFRONTIER CO-OPERATION  
BETWEEN TERRITORIAL COMMUNITIES OR AUTHORITIES CONCERNING EUROREGIONAL CO-  
OPERATION GROUPINGS (ECGS)**

**Article 13 – Implementation of the Protocol**

1. The Parties shall take such legislative, administrative or other measures as are appropriate to ensure that the provisions of Part I are implemented.
2. In order to facilitate implementation of this Protocol, an appendix will provide the more detailed, but optional provisions for the establishment and operation of ECGs. The Parties wishing to introduce into their national law all or part of the provisions of the appendix may do so in accordance with the relevant constitutional and legislative procedures.
3. The provisions of the appendix may be reproduced as they appear or may be adapted to meet the needs of the Parties concerned.
4. The Parties may declare that the provisions of the appendix, once introduced into their national legal system, constitute the implementing provisions referred to in paragraph 1.
5. The provisions of the appendix do not constitute an authoritative interpretation of the provisions included in Part I.
6. The provisions of the appendix shall be drafted by the Council of Europe and appended to this Protocol as soon as they are approved by the Committee of Ministers.

## APPENDIX to Protocol No. 3

### I. Scope of the provisions implementing the Protocol (article 13 of the Protocol)

1. This law governs transfrontier or interterritorial co-operation bodies under \*\*\* law,<sup>2</sup> established in the form of Euroregional Co-operation Groupings in accordance with Protocol No. 3 to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities
2. It also applies to the participation of \*\*\* territorial communities or authorities in the establishment of Euroregional Co-operation Groupings under foreign law, to their accession to such Groupings and to their liability for Groupings' debts in the event of default by the latter.
3. It also governs the supervision of acts performed on the national territory by Euroregional Co-operation Groupings under foreign law, where the government of \*\*\* is a member thereof or where \*\*\* territorial communities or authorities are members of those Groupings.

#### **Explanatory note**

*This first "Section" specifies those aspects of the legal status of ECGs that may fall within the unilateral legislative or regulatory competence of a state. The principle underlying Protocol No. 3 is to take as a basis the various legal statuses assigned by each national legislature to the different categories of legal entities existing under its domestic law, which may include foreign territorial communities or authorities (see Sections III and IV of this Appendix); the provisions of Protocol No. 3 focus on these various national legal instruments and institute exceptions thereto only to the extent strictly stipulated by those provisions. Accordingly, the aspects of the legal status of ECGs which each State Party is invited to address on the basis of this Appendix, primarily refer to measures intended to harmonise the relevant national legal instruments with the provisions of the Protocol.*

*Most of the time, these provisions may also serve to ensure the implementation of Regulation (EC) No. 1082/2006 of 5 July 2006 on a European grouping of territorial co-operation (EGTC)<sup>3</sup> as amended by Regulation (EU) No. 1302/2013 of 17 December 2013 as regards the clarification, simplification and improvement of the establishment and functioning of such groupings.<sup>4 5</sup>*

*Some practical solutions can also be found in the Appendix which would facilitate the creation or functioning of ECGs, even though such solutions are not mentioned in either the Protocol or the European Union Regulation, as modified. In this case, the rules set out in the Appendix are not a requirement of Protocol No. 3; they reflect instead the theoretical choice that national legislatures may freely make when it comes to decide on the regulatory framework applicable to the ECGs subject to their legislation. Wherever it was deemed necessary, the explanatory notes in the Sections indicate whether the proposed solutions are not mentioned in Protocol No. 3 or Regulation EC No. 1082/2006 as modified by Regulation (EU) No.1302/2013.*

*As presented here, Section I can provide introductory provisions for a possible "Law on Euroregional Co-operation Groupings under \*\*\* law". Its wording draws on the Netherlands law of 26 November 2009 implementing Regulation (EC) No 1082/2006 on a European Grouping of Territorial Co-operation (EGTC) (abbreviated to the [Netherlands] law implementing the EGTC Regulation).<sup>6</sup> Like that law, Section I identifies three aspects of the status of ECGs that fall within the legislative competence of each State Party:*

<sup>2</sup> The three asterisks correspond to the state of the legislature concerned, to its national legislation or to the nationality of the territorial communities or authorities of the state in question.

<sup>3</sup> Regulation (EC) No. 1082/2006 of 5 July 2006 on a European grouping of territorial co-operation (EGTC), *OJEU* L 210 of 31 July 2006, p. 19 et seq.

<sup>4</sup> Regulation (EU) No. 1302/2013 of 17 December 2013 amending Regulation (EC) No 1082/2006 on a European grouping of territorial co-operation (EGTC) as regards the clarification, simplification and improvement of the establishment and functioning of such groupings, *OJEU* L 347 of 20 December 2013, p. 347 et seq.

<sup>5</sup> Moreover, the references to Regulation No. 1082/2006 previously contained in this Appendix have been adapted to the new numbering of those provisions following the adoption of the amending Regulation No. 1302/2013.

<sup>6</sup> *Staatsblad van het Koninkrijk der Nederlanden*, 2009, No. 512.

*(a) the rules on the organisation, powers and functioning of an ECG under \*\*\* law, including those on participation by the territorial communities or authorities of \*\*\* in the establishment and functioning of such an ECG, the rules on the participation of foreign territorial communities or authorities in such an ECG and the procedure whereby territorial communities or authorities, whether \*\*\* or foreign, can subsequently accede to the Grouping in question;*

*b) the rules governing participation by the territorial communities or authorities of the legislating state in the establishment and functioning of an ECG under foreign law and the rules on the subsequent accession of such communities or authorities to the Grouping in question;*

*(c) the rules concerning supervision of the activities, on the national territory, of an ECG under foreign law.*

*The concepts of transfrontier or interterritorial co-operation and territorial communities or authorities used here for the first time are defined in Section XL based on the terminology of the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (ETS No. 106) and its first two protocols (ETS Nos. 159 and 169).*





**Text of Protocol No. 3****Article 1 – Euroregional co-operation groupings (ECGs)**

1. Territorial communities or authorities and other bodies referred to under Article 3, paragraph 1, may set up a transfrontier co-operation body in the form of a "Euroregional co-operation grouping" (ECG) on the territory of the member States of the Council of Europe, Parties to this Protocol, under the conditions provided by it.
2. The objective of the ECG shall be to promote, support and develop, for the benefit of populations, transfrontier and interterritorial co-operation between its members in their common areas of competence and in keeping with the competences established under the national law of the States concerned.

**Article 3 – Membership**

2. Territorial communities or authorities of a State non-Party to this Protocol, which shares a border with a Party which is or will become the State in which the ECG has its headquarters, may take part in the establishment of, or join, this ECG if an agreement between these two States so allows, without prejudice to the provisions of this Protocol.
3. Territorial communities or authorities of the Parties shall have the majority of voting rights in the ECG.

## APPENDIX to Protocol No. 3

### II. Right to establish and join an ECG (Articles 1 and 3.2 and 3.3 of the Protocol)

- 1 Within the limits of their competence and in accordance with the international commitments of \*\*\*, \*\*\* territorial communities or authorities, which are not excluded from the scope of the present law, may establish a Euroregional Co-operation Grouping under \*\*\* or foreign law with territorial communities or authorities of other States Parties to Protocol No. 3, or join such a Grouping, provided that those foreign territorial communities or authorities are themselves authorised to do so.
- 2 The territorial communities or authorities which are members of a Euroregional Co-operation Grouping established in accordance with paragraph II.1 above shall have the majority of voting rights within the deliberative bodies of that Grouping.
- 3 Within the limits of their competence, \*\*\* territorial communities or authorities which are not excluded from the scope of the present law may establish a Euroregional Co-operation Grouping under \*\*\* law with territorial communities or authorities of a state which is not a Party to Protocol No. 3, or join such a Grouping, if \*\*\* has a shared border with that state and to the extent that a bilateral treaty concluded with it so allows.

#### **Explanatory note**

*Paragraphs 1 and 2 of this Section authorise the territorial communities or authorities of the legislating state to establish an ECG under national law with their foreign counterparts, or to join such a Grouping subsequent to its establishment, on condition that together with the latter they hold the majority of voting rights in the Grouping's deliberative bodies. Clearly, these territorial communities or authorities must themselves be authorised to establish or join such a Grouping in the state to whose jurisdiction they are subject.*

*The authorisation referred to in paragraph 1 also relates to the establishment of an ECG under foreign law with the participation of territorial communities or authorities subject to the jurisdiction of the legislating state and to their subsequent accession to such a Grouping.*

*Paragraph 2 applies to both national and foreign territorial communities or authorities. The "deliberative bodies" of an ECG are understood to mean at the very least the General Assembly and the Board (see Section XI).*

*Paragraph 3 also authorises the establishment of an ECG under national law or the accession of a national territorial community or authority to that ECG where the participating foreign communities or authorities are subject to the jurisdiction of a state which is not a Party to Protocol No. 3. In accordance with Article 3.2 of the Protocol, this is possible only where (a) the two states have a shared border, (b) they have concluded a treaty to that effect and (c) the ECG has its headquarters in the legislating state in accordance with Article 2.1 of the Protocol.*

*Under Section XXXIX, certain categories of territorial communities or authorities may be excluded from the scope of the legal provisions for implementing the Protocol, in conformity with Article 16 of the Protocol.*

### **Text of Protocol No. 3**

#### **Article 2 – Legal personality, legal capacity and applicable law**

1. The ECG shall be a legal person, governed by the law of the Party, Council of Europe member State, in which it has its headquarters.
3. The law applicable to the type of corporate entity chosen for the ECG by the members shall be stipulated in the agreement establishing the ECG, without prejudice to the provisions of this Protocol or to any other specific provision adopted by the party in accordance with Article 13.

#### **Article 5 – Statutes**

3. In addition to the mandatory provisions of the agreement, the statutes shall contain rules on membership, withdrawal and dissolution of the ECG, including the legal consequences, as well as on operations, organs and their tasks, staffing, budgets and financing, liability, accountability and transparency of the ECG, without prejudice to the provisions of this Protocol and in conformity with the applicable law.

### APPENDIX to Protocol No. 3

#### III. Law applicable to the ECG (Articles 2.1, 2.3 and 5.3 of the Protocol)

- 1 Without prejudice to the provisions of Protocol No. 3, a Euroregional Co-operation Grouping shall be governed by this law if it has its headquarters in \*\*\*.
- 2 With regard to matters or aspects of a matter not dealt with by this law, it shall also be governed by:
  - a. the legal or regulatory provisions applicable to the categories of legal entity designated in the transfrontier or interterritorial co-operation agreement establishing the Grouping in accordance with the provisions of Sections IV (paragraph 2) and VI (paragraph 4.e) below<sup>7</sup>;
  - b. its statutes drawn up in conformity with Protocol No. 3, with this law and with the legal and regulatory provisions referred to in a) above.

#### **Explanatory note**

*Under **paragraph 1**, the ECG is governed by Protocol No. 3 and by the law of the state in which it has its registered headquarters. The state establishing this rule must be a party to the Protocol and a signatory of the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities.*

*The term “headquarters” means the head office or one of the operational units of an ECG, constituting its official registered address and specified in its statutes, in accordance with Sections VIII and XL.*

*The wording of paragraph 1 would appear to diverge from Article 1.5 of Regulation (EC) No. 1082/2006 insofar as the latter merely requires the registered office of an EGTC to be located in a member state of the European Union, “under whose law at least one of the EGTC’s members is established”. However, paragraph 2 of Section 6 specifically states that the law applicable to the ECG grouping is “that of the state to whose jurisdiction at least one of the founding territorial communities or authorities is subject (...)”. In practice, the domestic law governing an ECG on account of the location of the registered headquarters of that grouping will also be the law to whose jurisdiction one or more territorial communities or authorities which are members of the grouping are subject.*

***Paragraph 2** supplements the list of provisions applicable to an ECG. With regard to matters or aspects of a matter not dealt with by Protocol No. 3 or by the law implementing that Protocol, the ECG is governed by the legal or regulatory provisions applicable to the category of legal entity chosen by the Grouping’s potential members,<sup>8</sup> in accordance with Article 2.3 of the Protocol. This choice must be stipulated in the agreement establishing the ECG.*

***Paragraph 2 a)** of this Section refers expressly to this agreement and these laws and regulations. Accordingly, it enables the general legal arrangements of ECGs to be adapted to the specific features of each national legal system.*

***Paragraph 2 b)** sets out the requirement for the statutes of the Grouping to be in conformity with Protocol No. 3 and the legal and regulatory provisions applicable to the category of legal entity chosen, in accordance with Article 5.3 of the Protocol.*

<sup>7</sup> This concerns in fact “specific national legislation” applicable to the groupings’ activities in accordance with the provisions of article 8, §2, h) of (CE) Regulation 1082/2006 on the EGC, to be amended as proposed by the European Commission [doc. COM(2011)610 final/2 of 14 March 2012, art.1, point 9h]. These provisions do not appear in the compromise text drafted by the presidency of the Council and have been replaced by “the applicable Union and national law [...] where the EGTC carries out its tasks” [doc. 5906/13 ADD4 EV1 of 25 February 2013].

<sup>8</sup> This is in fact the “applicable (...) national law of the Member State where the EGTC has its registered office for the purposes of the interpretation and enforcement of the convention” according to Article 8.2g) of Regulation 1082/2006, as amended by Regulation (EU) No. 1302/2013.

**Text of Protocol No. 3****Article 2 – Legal personality, legal capacity and applicable law**

1. The ECG shall be a legal person, governed by the law of the Party, Council of Europe member State, in which it has its headquarters.
2. The ECG shall have the most extensive legal capacity accorded to legal persons under that State's national law.
4. The ECG shall have the right to its own budget and the power to implement it.
5. The ECG may enter into contracts, hire staff, acquire movable and immovable property and bring legal proceedings.

### APPENDIX to Protocol No. 3

#### IV. Legal personality and legal capacity of the ECG, budgetary autonomy (Article 2.1, 2.2, 2.4 and 2.5 of the Protocol)

- 1 A Euroregional Co-operation Grouping shall be a legal entity under public or private law.
- 2 The transfrontier or interterritorial co-operation agreement establishing the Grouping shall determine whether it comes under public or private law by making it subject, with regard to matters or aspects of a matter not dealt with by this law or by Protocol No. 3, to the legal or regulatory provisions applicable to one of the categories of legal entity in which the participation of foreign territorial communities or authorities is authorised.
- 3 The Grouping shall have the most extensive legal capacity that can be granted to legal entities under national legislation, insofar as is necessary for the performance of its tasks and the accomplishment of its purpose. This capacity shall in all cases encompass the rights to enter into contracts, to acquire and dispose of moveable and immovable property, to hire staff, to institute legal proceedings, to draw up its own budget and to implement the expenditure provided for therein.
- 4 In particular, the Grouping shall be able to conclude transfrontier or interterritorial co-operation agreements under the conditions provided for in Section XL. These agreements shall specify the law to be applied when interpreting and implementing their provisions. The law specified shall be that of \*\*\* or of a state to whose jurisdiction one of the foreign co-contracting territorial communities or authorities is subject.

#### **Explanatory Note**

**Paragraph 1** offers additional possibilities for the status of ECGs compared with Regulation (EC) No. 1082/2006 on a European Grouping of Territorial Co-operation,<sup>9</sup> the potential members of an ECG may declare that it falls into one of the categories – which exist under the law of the legislating state – of public-law legal entities and which the relevant institutional legislation authorises to include foreign territorial communities or authorities. Various consequences resulting from this choice are set out under Sections XXVI to XXVIII.

The categories of legal entity covered by **paragraph 2** will vary according to national legislation. Examples of public-law legal entities include:

- i. the various legal forms of intermunicipal Groupings (public establishments, unions, associations, etc. based on intermunicipal co-operation)
- ii. the various legal forms of Groupings of other territorial communities
- iii. the various legal forms of Groupings of territorial communities involving other public-law legal entities
- iv. the various legal forms of Groupings of territorial communities involving other public-law and private-law legal entities;

and, if the national institutional legislation authorises them to include both national and international territorial communities or authorities:

- v. the various forms of public interest Groupings
- vi. public-law Groupings involving private-law legal entities.

<sup>9</sup> See Comparative study of the treaty provisions on ECGs and regulatory provisions on a EGTC, Council of Europe, European Committee on Local and Regional Democracy, Doc. LR-IC(2011)4 of 10 May 2011.

*Private-law legal entities (international associations, non-profit making associations, private-law foundations, local semi-public companies, etc.) may also serve as a legal framework for ECGs, provided that:*

- a. *they may include national territorial communities or authorities;*
- b. *they may in addition include foreign territorial communities or authorities.*

*The EGTC status instituted by Regulation (EC) No. 1082/2006 fulfils the two aforementioned conditions in states which are members of the European Union, since the Regulation has a direct effect in those states. However, it has to be supplemented by numerous implementing provisions; the Sections in this Appendix could offer some models for drafting those provisions.*

**Paragraph 3** *specifies the minimum substance of “the most extensive legal capacity” which the state whose law is applicable must accord the ECG in accordance with Article 2.4 and 2.5 of Protocol No. 3. It corresponds to the provisions of Article 1.4 of Regulation (EC) No. 1082/2006.*

*The date on which the ECG acquires legal capacity need not be stipulated in paragraph 3. In conjunction with Article 4.7 of Protocol No. 3, the wording of paragraph 3 above indeed allows the competent legislature to decide whether the registration (or publication) of the founding agreement and statutes of the ECG constitutes a requirement for the attribution of legal personality or merely a requirement for that legal personality to be effective vis-à-vis third parties. In principle, the question will be settled by the legislation subsidiarily applicable to the Grouping under the founding agreement. Should the partners wish to set up a Grouping that can also qualify as an EGTC under Regulation (EC) No. 1082/2006, the legislature, if it is in agreement with this possibility, should specify that the Grouping will acquire legal personality only on the date when its founding agreement and statutes are registered or published, whichever comes first.<sup>10</sup>*

**Paragraph 4** *of this Section suggests authorising the ECG to enter into transfrontier or interterritorial co-operation agreements in the same way as its member territorial communities or authorities. The choice of applicable law is restricted to either the law of the state in which the Grouping is located or the law of any state to whose jurisdiction one of the foreign co-contracting territorial communities or authorities is subject. Since States Parties to Protocol No. 3 are under no obligation to ratify either the Additional Protocol of 9 November 1995 to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities or Protocol No. 2 concerning interterritorial co-operation of 5 May 1998, the conditions for concluding such agreements are set out in section XL, to which paragraph 4 makes reference.*

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<sup>10</sup> See Article 5.1 of Regulation (EC) No. 1082/2006.





**Text of Protocol No. 3****Article 3 – Membership**

1. Members of the ECG shall be territorial communities or authorities of a Party and may also include the respective member State concerned of the Council of Europe.

All legal persons established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character, may be members if:

- their activity is financed mainly by the State, a territorial community or authority or similar body; or
- their management is subject to the control of these entities; or
- half the members of their administrative, managerial or supervisory organ are appointed by the state, a territorial community or authority or similar body.

Individuals may not be members of an ECG.

2. Territorial communities or authorities of a State non-Party to this Protocol, which shares a border with a Party which is or will become the State in which the ECG has its headquarters, may take part in the establishment of, or join, this ECG if an agreement between these two States so allows, without prejudice to the provisions of this Protocol.
3. Territorial communities or authorities of the Parties shall have the majority of voting rights in the ECG.

### APPENDIX to Protocol No. 3

#### V. Membership of the ECG (Article 3 of the Protocol)

The following may be members of a Euroregional Co-operation Grouping under \*\*\* law:

- 1 territorial communities or authorities \*\*\* which are not excluded by the scope of the present law, and territorial communities or authorities of other States Parties to Protocol No. 3, provided that they are authorised to do so;
- 2 member states of the Council of Europe to whose jurisdiction the territorial communities or authorities in question are subject, and the competent bodies of those states;
- 3 territorial communities or authorities subject to the jurisdiction of a state not party to Protocol No. 3, if the Grouping in which they wish to participate will have its headquarters in \*\*\*, if \*\*\* has a shared border with that state and insofar as a bilateral treaty concluded with it so allows;
- 4 legal entities established for the specific purpose of meeting general interest needs and which are not industrial or commercial in nature, if:
  - their activity is financed mainly by a State Party to Protocol No. 3 or by territorial communities or authorities or public-law bodies of such a state; or;
  - their management is subject to the supervision of this state, these territorial communities or authorities or these public-law bodies; or;
  - over half the members of their administrative, managerial or supervisory organ are appointed by a State Party to Protocol No. 3 or by territorial communities or authorities or public-law bodies of such a state;
- 5 industrial or commercial undertakings over which a State Party to Protocol No. 3 or territorial communities or authorities or public-law bodies of such a state have a dominant influence because they:
  - own the majority of the capital;
  - hold the majority of the voting rights associated with the shares issued by such undertakings;
  - may appoint more than half of the members of the administrative, managerial or supervisory organ of the undertaking in question;
- 6 other private-law entities under \*\*\* law, provided they comply with one of the following:
  - a. they have some degree of public authority;
  - b. they have a mandate, delegation or concession of public services;
- 7 private-law entities established specifically to provide services of general economic interest;
- 8 legal entities or undertakings, as indicated in points 4, 5, 6 and 7 above, which are not subject to the jurisdiction of a State Party to Protocol No. 3, under the same conditions as the legal entities or undertakings referred to above;
- 9 associations comprising territorial communities or authorities referred to in paragraphs 1 and 3 above.

### **Explanatory note**

**Paragraphs 1 to 4** above list the “potential members” of an ECG in accordance with Article 3 of Protocol No. 3. Section XXXIX deals with the categories of territorial communities or authorities of the legislating state which may be excluded in conformity with Article 16 of the Protocol. Clearly foreign territorial communities and authorities must themselves have been authorised to join a GEC by the state to whose jurisdiction they are subject.

**Paragraph 2** also mentions states’ “competent bodies”, which are not cited in the Protocol. The possibility of allowing state bodies to participate in ECGs is not a requirement of Protocol No. 3. It was introduced in order to ensure continued compatibility with Regulation (EC) No. 1082/2006 concerning EGTCs as amended by Regulation (EU) No. 1302/2013. In order to take account of the fact that “competences that are regional on one side of a border, may be national on the other, especially in smaller or centralised member states”, Regulation No. 1302/2013 stipulates that “national authorities should be able to become members of an EGTC alongside the member state”.<sup>11</sup> The term utilised by the Commission is “authorities at national level”.<sup>12</sup>

**Paragraph 3** refers to the conditions to be fulfilled for the participation of territorial communities or authorities subject to the jurisdiction of a state which is not Party to Protocol No. 3, in accordance with Article 3.2 of the Protocol and paragraph 3 of Section II above. It covers in particular situations referred to in Article 3a of the revised Regulation (EC) No. 1082/2006 (accession of members from third countries or overseas countries or territories).

**Paragraphs 5 and 7** include among the potential members of an ECG industrial or commercial undertakings over which the public authorities have a dominant influence, as well as private-law entities established specifically to provide services of general economic interest. This is not a requirement of Protocol No. 3. The aim is again to ensure continued compatibility with Regulation (EC) No. 1082/2006 concerning EGTCs, Article 3.1 of which has been amended so that “EGTCs may be used in the future to jointly manage public services with a particular focus on services of a general economic interest or infrastructures [with] other private or public law actors”.<sup>13</sup> This presupposes that it must also be possible for the members of an ECG to include not only “legal entities established for the specific purpose of meeting general interest needs and which are not industrial or commercial in nature” (paragraph 4),<sup>14</sup> but also private undertakings (paragraph 5)<sup>15</sup> provided that the public authorities have a dominant influence over these legal entities or undertakings; and legal entities entrusted with the operation of services of general economic interest (paragraph 7).<sup>16</sup>

<sup>11</sup> Amending Regulation No. 1302/2013, recital 7.

<sup>12</sup> Article 3.1.a of Regulation (EC) No. 1082/2006 on the EGTC, as amended by Regulation (EU) No. 1302/2013.

<sup>13</sup> Under the terms of Amending Regulation No. 1302/2013, undertakings providing “services of general economic interest” are entrusted with such services, “in compliance with applicable [European] Union and national law”, in fields “such as education and training, medical care, social needs in relation to health care and long-term care, childcare, access to, and reintegration into, the labour market, social housing and the care and social inclusion of vulnerable groups”, recital 8.

<sup>14</sup> For the application of European Union law, Article 3.1d) of Regulation (EC) No. 1082/2006 equates these legal entities to public law bodies.

<sup>15</sup> In the European Union, these undertakings are equated to public undertakings for the application of Directive 2004/17/EC of 31 March 2004 co-ordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors, (Article 3.1.d of Regulation (EC) No. 1082/2006 as amended by Regulation (EU) No. 1302/2013.

<sup>16</sup> Amending Regulation No. 1302/2013, recital 8. The regulation makes explicit reference to “undertakings entrusted with the operation of services of general economic interest”, regardless of whether they are governed by public or private law (Article 3.1.e). As paragraph 6 in this Section authorises the participation of any private-law legal entity entrusted with the operation of a service normally the responsibility of the public authorities – which includes services of general economic interest – paragraph 7 should refer solely to *public-law* entities entrusted with the operation of such services.

*At the request of practitioners specialising in transfrontier co-operation law, the proposed provision in **paragraph 6** authorises the participation of private-law entities belonging to categories other than those referred to in paragraphs 4, 5 and 7 (legal entities and undertakings established, run or supervised by public authorities subject to the jurisdiction of a State Party to Protocol No. 3), and public-law entities specifically entrusted with the operation of services of general economic interest. To be admissible, either the private-law entity referred to in paragraph 6 must have, if only very partially, the right to take unilaterally mandatory measures vis-à-vis third parties; or it must have the right to perform tasks normally incumbent on the public authorities. These various hypotheses are not covered by Protocol No. 3; Regulation (EC) No. 1082/2006, as amended by Regulation (EU) No. 1302/2013, covers them only very partially. They are based on Article 2 of the Protocol of 22 September 1998 supplementing the 1986 Benelux Convention on transfrontier co-operation between territorial communities or authorities.<sup>17</sup> The Appendix therefore offers an undisputed added value for states wishing to promote harmonious regulations governing transfrontier or interterritorial co-operation.*

*In line with Article 3.2 of Protocol No. 3, **paragraph 8** enables the legal entities and undertakings referred to in paragraphs 4 to 7 to become members of an ECG even if they are subject to the law of a state not party to the Protocol, under the same conditions as territorial communities or authorities of that state (see paragraph 3 of section II above).*

*Lastly, **paragraph 9** provides that associations of territorial communities or authorities may be included among the potential members of an ECG. This possibility is not explicitly provided for in Protocol No. 3; it has been available under Article 3.1 of Regulation (EC) No. 1082/2006 since its entry into force.<sup>18</sup>*

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<sup>17</sup> The 1986 Benelux Convention and its Protocol of 22 September will be abrogated in application of Article 30 of the New Benelux Convention on transfrontier and interterritorial co-operation of 20 February 2014.

<sup>18</sup> See the second sub-paragraph of Article 3.1 of Regulation (EC) 1082/2006.

**Text of Protocol No. 3****Article 2 – Legal personality, legal capacity and applicable law**

3. The law applicable to the type of corporate entity chosen for the ECG by the members shall be stipulated in the agreement establishing the ECG, without prejudice to the provisions of this Protocol or to any other specific provision adopted by the party in accordance with Article 13.

**Article 4 – Establishment of the ECG**

1. The ECG shall be established by a written agreement between its founding members.
3. The agreement shall specify, in addition to the list of members, the name of the ECG, the address of its headquarters, the duration, object and tasks of the ECG, as well as its geographical scope. The name of an ECG whose members have limited liability shall include the word “limited.”
7. The agreement shall be registered or published in the State where the ECG has its headquarters, as well as in all States to which its members belong, in accordance with the national law applicable.
9. The agreement shall be written in the language(s) of the State where the ECG has its headquarters and in the language(s) of the member(s), all versions being equally authentic.

### APPENDIX to Protocol No. 3

#### VI. Agreement establishing the ECG (Article 2.3 and Article 4.1, 4.3, 4.7 and 4.9 of the Protocol)

- 1 A Grouping shall be established by a transfrontier or interterritorial co-operation agreement, the negotiation of which shall involve one or more \*\*\* territorial communities.
- 2 The agreement establishing the Grouping shall be a written document. It shall specify the law to be applied when interpreting and implementing its provisions. The law to be applied shall be that of the state to whose jurisdiction at least one of the founding territorial communities or authorities is subject, without prejudice to the relevant provisions of Protocol No. 3.
- 3 The agreement shall be written in the official state language(s) and in the languages of the members, all versions being equally authentic.
- 4 The agreement shall contain provisions on:
  - a. the name of the Grouping and its headquarters;
  - b. the members of the Grouping;
  - c. the period for which it has been established and the arrangements for possibly prolonging it;
  - d. the domestic law governing its foundation;
  - e. the category of legal entities to which it belongs and the legislation primarily applicable to that category;
  - f. the principles governing staff recruitment and management methods and the law applicable to staff;
  - g. the fields to be covered by the Grouping's activities;
  - h. the geographical scope of these activities, if appropriate;
  - i. the applicable domestic law on the liability of the Grouping and its members, and, in particular, the arrangements for sharing the subsidiary liability of the members of the Grouping where the liability of at least one of the members is limited by the domestic law to which that member is subject.
- 5 The founding agreement under \*\*\* law shall be registered or published in accordance with the legislation that applies to the category of legal entity it designates.
- 6 The conclusion of a founding agreement under \*\*\* law shall affect neither the extent nor the nature of the powers and responsibilities of the \*\*\* territorial communities or authorities or other public-law legal entities parties to it. Those public institutions shall not be divested of the powers and responsibilities which they allocate to the Grouping in accordance with this law, without prejudice to the concessions or delegations of tasks carried out in accordance with the provisions of section XXVII.

#### **Explanatory note**

*The first four paragraphs of this section refer both to ECGs established under national law and those established under foreign law, provided that the territorial communities or authorities subject to the jurisdiction of the legislating state are founding members of the Grouping.*

**Paragraph 1** has two implications. Firstly, it implies that the power of the legislature of the State Party to Protocol No. 3 with regard to the establishment of ECGs is based on the involvement of territorial communities or authorities governed by the national law of this state; secondly, it requires the adoption of a founding agreement in the form of a transfrontier or interterritorial co-operation agreement. It should be emphasised that this agreement must be unanimous as all the founding members must be parties to it.

**Paragraph 2** sets out the law applicable when interpreting and applying the agreement establishing an ECG comprising members from the legislating state, without prejudice to the application of Protocol No. 3. It should be brought into line with Article 1.5 of Regulation (EC) No. 1082/2006 which stipulates that the registered office of an EGTC shall be located in an EU member state "under whose law at least one of the EGTC's members is established".

**Paragraph 4** lists the items that have to be included in the founding agreement. Four matters require clarification: the national law applicable to the Grouping, the provisions applying to the category of legal entity to which the Grouping belongs; the staff regulations; and arrangements relating to the liability of the ECG and the subsidiary liability of its members.

- The national law governing the Grouping (paragraph 4.d) should be the same as that which applies to the interpretation and application of the agreement (paragraph 2).<sup>19</sup>
- Article 2.3 of the Protocol requires the category of legal entity to which the Grouping will belong and the law which as a result shall apply once it has been established (paragraph 4.e) to be mentioned in the founding agreement.
- Point f, on the principles for staff recruitment and management and the law applicable to staff, corresponds to a modification introduced by Regulation (EU) No. 1302/2013 to clarify the Regulation on EGTCs.<sup>20</sup>
- Point i also corresponds to an amendment to Regulation (EC) No. 1082/2006 resulting from the adoption of Regulation (EU) No. 1302/2013.<sup>21</sup> In view of the significant consequences of the limitation of the liability of certain members of a Grouping, this provision requires the applicable domestic law regarding the liability of the ECG to be stipulated in the agreement establishing the Grouping – and not merely in the statutes – and that, in the event of a limitation of the subsidiary liability of certain members, the arrangements for sharing liability among all members<sup>22</sup> also be specified therein, within the limits laid down by the domestic law governing the Grouping.<sup>23</sup> In this way, it supplements Article 9.4 of Protocol No. 3 which provides that this limitation be specified in the statutes.<sup>24</sup>

**Paragraph 6** is based on the principle that the delegation of powers to an ECG under a founding agreement subject to the law of the legislating state does not divest the founding members subject to the jurisdiction of this state of the powers and responsibilities assigned to them by national legislation. If the opposite principle were accepted in the legislating state, this would have to be clearly stipulated in the law in order to notify the foreign states and potential foreign participants in such Groupings.

<sup>19</sup> Please refer, in this connection to the comment in paragraph 1 of Section III above: the ECG is governed by the legislating state, i.e. the state in which it has its registered headquarters.

<sup>20</sup> Article 8.2.k of Regulation (EC) No. 1082/2006 on the EGTC, as amended by Regulation (EU) 1302/2013. Recital 26 of the Amending Regulation states: "Given the importance of the rules applicable to staff of EGTCs and of the principles governing the arrangements concerning personnel management and recruitment procedures, the convention, not the statutes, should specify those rules and principles. It should be possible for different options as to the choice of rules applicable to staff of EGTCs to be laid down in the convention. The specific arrangements concerning personnel management and recruitment procedures should be addressed in the statutes."

<sup>21</sup> Article 8.2.l of Regulation (EC) No. 1082/2006, as modified by Regulation (EU) No. 1302/2013.

<sup>22</sup> Article 12.2a, paragraph 1 of Regulation (EC) No. 1082/2006, as modified by Regulation (EU) No. 1302/2013. Recital 28 states "Given the importance of the arrangements relating to members' liability, the convention, not the statutes, should specify those arrangements".

<sup>23</sup> See below, paragraph 4 of Section XXX.

<sup>24</sup> In any event, under Article 5 of Protocol No. 3, the statutes are an integral part of the agreement establishing the ECG (see paragraph 1 of Section IX).





**Text of Protocol No. 3****Article 4 – Establishment of the ECG**

2. The prospective members shall submit all appropriate documentation to prove that the necessary procedures or formalities required by the national law applicable to them have been respected. This documentation shall be appended to the agreement.
4. Before concluding an agreement to found an ECG or before joining an ECG, the territorial communities or authorities shall, as appropriate, inform, notify or obtain authorisation from their national authorities regarding this intention.
8. The territorial communities or authorities, members of the ECG, shall inform their national authorities that the ECG has been lawfully established.

**APPENDIX to Protocol No. 3****VII. Procedure for establishing an ECG (Article 4.2, 4.4 and 4.8 of the Protocol)**

- 1 Before concluding an agreement to establish a Euroregional Co-operation Grouping or before joining such a Grouping, each \*\*\* territorial community or authority concerned shall inform the administrative authorities supervising its activities of its intention.
- 2 The decisions of \*\*\* territorial communities or authorities on their participation in the establishment of a Grouping shall be subject to the same procedures and the same controls as laid down for the other acts and deliberations of those territorial communities or authorities. The \*\*\* administrative authority shall review the legality of such decisions and their compatibility with public policy and the public interest. It shall state the reasons for its own decisions.
- 3 The same shall apply, mutatis mutandis, to decisions by other legal entities under \*\*\* law on their decision to participate in the establishment of the Grouping.
- 4 Prospective members from other States Parties to Protocol No. 3 shall submit all appropriate documentation certifying that the necessary procedures or formalities required by the national law applicable to them have been complied with. This documentation shall be appended to the agreement establishing the Grouping.
- 5 \*\*\* territorial communities or authorities that are members of the Grouping shall inform their respective supervisory authorities that the Grouping has been lawfully established.

**Explanatory note**

*With regard to **paragraphs 1, 2, 3 and 5** of this Section, the jurisdiction of the legislating state is mostly limited to territorial communities or authorities and other prospective members of the ECG governed by the law of that state. **Paragraph 4** also requires potential foreign members to produce documents proving that their decision to participate complies with the law of the state to whose jurisdiction they are subject.*

*Instead of setting up a special system of information, notification or authorisation from which all States Parties can withdraw unilaterally under Article 4.6 of the Protocol, **paragraphs 2 and 3** of the proposed text refer to the general system of administrative control that already exists in the legislating state with regard to each category of potential member whose existence and powers are established in accordance with that state's domestic law. It is specified however that the supervisory authorities may verify not only that decisions to participate in the Grouping are lawful but also that they are compatible with public policy and public interest, in accordance with Article 4.5 of the Protocol.*

**Text of Protocol No. 3**

**Article 4 – Establishment of the ECG**

3. The agreement shall specify, in addition to the list of members, the name of the ECG, the address of its headquarters, the duration, object and tasks of the ECG, as well as its geographical scope. The name of an ECG whose members have limited liability shall include the word “limited.”

**APPENDIX to Protocol No. 3****VIII. Premises and headquarters of the ECG (Article 4.3 of the Protocol)**

- 1 The Euroregional Co-operation Grouping of \*\*\* law shall establish its headquarters on national territory.
- 2 The Grouping may establish other operational units on the territory of states to whose jurisdiction the foreign territorial communities or authorities which are members of the Grouping are subject.
- 3 To be valid, any notice, summons or service of process must be sent to the Grouping's headquarters or an operational unit. This shall also apply to all official correspondence.

**Explanatory note**

*The term "headquarters" is commonly used to refer to the place in which a legal entity of some kind is established, making it its legal registered address, provided that the fact is specified in that entity's statutes. Where ECGs are concerned, the term can mean both the sole location in which the Grouping is based or one of its operational units. The State Party on whose territory the headquarters of a Grouping is based determines the national law by which the Grouping will mainly be governed (see section III), even if this is not where its central administrative offices are located.*

**Paragraph 2** authorises Groupings to set up operational units - including central administrative offices - outside the territory of the state in which they have their headquarters, in other words outside the state by whose law the Grouping is mainly governed.

**Paragraphs 2 and 3** are based on Article 8 of the Benelux Convention on transfrontier and interterritorial co-operation of 20 February 2014. As all correspondence is officially sent to any of the ECG's operational units, it is for the latter to ensure that the central administrative offices and/or the headquarters are duly informed of the content of such correspondence.

**Text of Protocol No. 3****Article 5 – Statutes**

1. The statutes of the ECG shall be an integral part of the agreement establishing it.
2. The statutes shall be written in the language(s) of the State where the ECG has its headquarters and in the language(s) of the member(s), all versions being equally authentic. They may specify which language or language(s) is(are) to be considered the working language(s).
3. In addition to the mandatory provisions of the agreement, the statutes shall contain rules on membership, withdrawal and dissolution of the ECG, including the legal consequences, as well as on operations, organs and their tasks, staffing, budgets and financing, liability, accountability and transparency of the ECG, without prejudice to the provisions of this Protocol and in conformity with the applicable law.

## APPENDIX to Protocol No. 3

### IX. Statutes of the ECG (Article 5 of the Protocol)

- 1 The statutes of the Euroregional Co-operation Grouping under \*\*\* law shall form an integral part of the founding agreement.
- 2 The statutes shall be written in the language(s) of the state where the Grouping has its headquarters and in the language(s) of the members, all versions being equally authentic. They may specify which language or languages are to be regarded as the working language(s).
- 3 The statutes of the Grouping shall contain provisions on:
  - a. the stipulations required by section VI.4;
  - b. the purpose, tasks, powers and responsibilities assigned to the Grouping;
  - c. the conditions governing amendment of the statutes, particularly with regard to membership, withdrawal and exclusion of members;
  - d. the conditions governing the prolongation, winding up and liquidation of the Grouping;
  - e. the composition of the Grouping's statutory bodies, their duties, the modes of representation of its members and the system of appointment of their representatives to these bodies;
  - f. the procedure for convening meetings, their public or non-public character;
  - g. quorums, the procedures for making decisions and the majorities required for their adoption;
  - h. the Grouping's operating methods, particularly with regard to transparency and management reporting;
  - i. the specific arrangements for staff management and recruitment procedures;
  - j. the arrangements for financing the Grouping's activities;
  - k. the applicable budgetary and accounting rules;
- 4 The statutes of the Grouping shall be registered or published, in accordance with the legal and regulatory provisions applicable to the category of legal entities specified by the agreement establishing the Grouping.

#### **Explanatory note**

*The points to be covered by the statutes match those listed in Article 5.3 of the Protocol. The statutes should specify the applicable law regarding the liability of the Grouping and its members, in accordance with Sections VI (paragraph 4 i) and XXX (paragraph 4). They may also specify which language or languages are to be regarded as the working language(s) (**paragraph 2**).*

*If the agreement establishing the Grouping contains provisions relating to the principles of staff recruitment and management and the law applicable to staff (Section VI, paragraph 4, point f), the statutes may simply describe the specific arrangements for staff management and recruitment procedures, as proposed by **paragraph 3**, point i of this Section. Recital 26 of Regulation (EU) No. 1302/2013 amending Regulation (EC) No. 1082/2006 puts forward the same solution for EGTC staff recruitment and management procedures.*

*Although Protocol No. 3 does not explicitly require the statutes to be registered or published in the same way as the agreement establishing the Grouping,<sup>25</sup> **paragraph 4** of this Section provides for this formality echoing Article 5.1 of Regulation No. 1082/2006 on the EGTC, as amended by Regulation (EU) No. 1302/2013.*

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<sup>25</sup> This obligation may nonetheless be deduced from the fact that the statutes form an integral part of the agreement establishing the Grouping, which is itself subject to this formality.

**Text of Protocol No. 3****Article 5 – Statutes**

3. In addition to the mandatory provisions of the agreement, the statutes shall contain rules on membership, withdrawal and dissolution of the ECG, including the legal consequences, as well as on operations, organs and their tasks, staffing, budgets and financing, liability, accountability and transparency of the ECG, without prejudice to the provisions of this Protocol and in conformity with the applicable law.

**Article 11 – Supervision, administrative and judicial review**

4. Where the ECG carries out any activity in contravention of the provisions on public policy, public security, public health or public morality of the States to which its members belong, or in contravention of the public interest of the said States, the competent authority or body of these States may prohibit that activity on its territory or require those members that fall under its jurisdiction to withdraw from the ECG unless the latter ceases the activity in question. Such prohibitions shall not constitute a means of arbitrary or disguised restriction on co-operation between the members. Review of the competent authority's or body's decision by a judicial authority shall be possible.



### APPENDIX to Protocol No. 3

#### X. Withdrawal or exclusion of ECG members (Article 5.3 and Article 11.4 of the Protocol)

- 1 Any member of a Euroregional Co-operation Grouping may withdraw from the Grouping during the term of the agreement establishing the Grouping, at the end of a financial year, provided it has discharged its obligations fully and given notice of its intention two months prior to the end of that financial year.
- 2 The General Assembly referred to in Section XII may, on a duly substantiated proposal given by the Board referred to in Section XIII, expel any member which seriously fails to discharge its obligations and is still in breach of them after a period of two months from the Board's serving a warning on it by registered letter. A representative of the member concerned shall be heard beforehand.
- 3 The duly substantiated notification referred to in paragraph 7 of Section XXXV shall be deemed grounds for withdrawal, unless it is set aside by the competent court of the state that opposes continued participation in the Grouping by the foreign members coming under its jurisdiction.
- 4 The Grouping's statutes shall lay down the rules on the procedure for the withdrawal or exclusion of members.
- 5 An addendum to the founding agreement shall specify the practical, and particularly financial, aspects of withdrawal or exclusion. It shall provide for compensation for the Grouping for damage sustained as a result of the failure of the expelled member to meet its obligations.
- 6 The provisions in paragraphs 2 and 4 of Section XXII shall apply to the addendum.

#### **Explanatory note**

*Under Article 5.3 of Protocol No. 3, the statutes must contain rules on the withdrawal of members from the ECG. It is for each legislative body of a State Party to the Protocol to lay down a minimum framework in this connection.*

***Paragraphs 1, 2 and 5** of this Section are proposals directly based on Articles 20 and 21 of the revised preliminary draft uniform law on territorial co-operation groupings (doc. CDLR (2006) 17 of 27 April 2006). These suggest setting out along the lines indicated in the text the minimum legal framework of the procedure to be followed in the event of the withdrawal or exclusion of a member. The details must be specified in the statutes (**paragraph 4**).*

*Received practice would seem to indicate, insofar as EGTCs are concerned, that relatively long procedural delays can be detrimental to transfrontier cooperation bodies. Nevertheless, the delay of two months proposed in paragraphs 1 and 2 of this Section can of course be adapted by the legislating state to align with standard practice.*

*Among other causes, insolvency, financial collapse or bankruptcy of a member of the Grouping may justify that member being expelled by decision of the General Assembly, in accordance with **paragraph 2**.*

**Paragraph 3** provides for the application of the rules set forth in the subsequent paragraphs of this Section in the event that the authorities of the state to whose jurisdiction one or more foreign members of the Grouping are subject demand their withdrawal, in accordance with Article 11.4 of the Protocol. This situation is described in paragraph 7 of Section XXXV.

**Paragraph 6** makes the provisions of section XXII, under which all modifications to the agreement establishing the Grouping are subject to the same preparation and publication procedure as the initial agreement, applicable to the addendum specifying the arrangements for the withdrawal or exclusion of a member. The founding agreement must be amended as the withdrawal or exclusion of a member of the Grouping changes that Grouping's membership and the demarcation of the geographical scope of its activities. Yet paragraphs 2 and 4 of section XXII require, in accordance with Article 6 of the Protocol, that "any amendment to the founding agreement and any amendment to the mandatory provisions thereof reproduced in the statutes ... be adopted according to the established procedure described in Section VII" and subject to the same formalities concerning registration and publication of the notice that a Grouping has been established, in other words they must be adopted according to the procedure set out in Article 4 of the Protocol.



**Text of Protocol No. 3****Article 5 – Statutes**

3. In addition to the mandatory provisions of the agreement, the statutes shall contain rules on membership, withdrawal and dissolution of the ECG, including the legal consequences, as well as on operations, organs and their tasks, staffing, budgets and financing, liability, accountability and transparency of the ECG, without prejudice to the provisions of this Protocol and in conformity with the applicable law.

**APPENDIX to Protocol No. 3****XI. Management bodies of the ECG (Article 5.3 of the Protocol)**

1. Under the conditions provided for in this law, a Euroregional Co-operation Grouping having legal personality shall comprise a General Assembly, a Board, a Chair and one or more Vice-Chairs.
2. The statutes may provide for additional bodies subject to compliance with the legislation that applies to the category of legal entity to which the Grouping belongs.
3. The statutes shall allocate powers to the management bodies in accordance with the legislation that applies to the category of legal entity to which the Grouping belongs, without prejudice to specific powers allocated by this law to one body or another.
4. They may also provide for the appointment, for a specified term, of a Director General under the Board's authority.

***Explanatory note***

*Article 5.3 of Protocol No. 3 does not list the management bodies of an ECG. It leaves it to the Grouping's statutes to lay down the rules on the organisation and tasks of each body. This Section proposes that each legislature of a State Party to the Protocol should establish a general framework by listing the ECG's management bodies, allocating powers to them and, where appropriate, providing for a director general to be appointed.*

*In this perspective, the legislative framework suggested under this section is formulated in such a way as to make it compatible with the varied objects that can be assigned to an ECG. Of course, each state is free to adapt this proposal to its needs and in accordance with standard practice. Nevertheless, in order to be compatible with the rules on EGTCs, the Grouping must have, at the least, a General Assembly and a Director General.<sup>26</sup>*

*The respective powers of the management bodies shall be specified in the statutes, in accordance with the legislation that applies to the category of legal entities to which the Grouping belongs, except where provided otherwise in Protocol No. 3 or particular legal provisions compatible with that Protocol.*

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<sup>26</sup> See Article 10 of Regulation EC No. 1082/2006.

**Text of Protocol No. 3****Article 5 – Statutes**

3. In addition to the mandatory provisions of the agreement, the statutes shall contain rules on membership, withdrawal and dissolution of the ECG, including the legal consequences, as well as on operations, organs and their tasks, staffing, budgets and financing, liability, accountability and transparency of the ECG, without prejudice to the provisions of this Protocol and in conformity with the applicable law.

**APPENDIX to Protocol No. 3****XII. General Assembly of the ECG (Article 5.3 of the Protocol)**

1. The General Assembly shall comprise representatives of all the Grouping's members.
2. Each member of the Grouping shall have at least one seat in the General Assembly. No single territorial community or authority may hold more than half the seats.
3. Without prejudice to the provisions of this law, the organisation and proceedings of the General Assembly shall be governed by the legislation that applies to the category of legal entity to which the Grouping belongs.
4. Meetings of the General Assembly shall be public, except in special cases provided for in the statutes.

***Explanatory note***

*The proposals in this section are suggestions for establishing along the lines indicated in the text the basis for the organisation and functioning of the General Assembly. They are drawn directly from articles 28 and 30 of the revised preliminary draft uniform law on territorial co-operation groupings (doc. CDLR (2006) 17 of 27 April 2006). The other rules shall be laid down in the legislation applicable to the category of legal entities to which the Grouping belongs and in the statutes.*

**Text of Protocol No. 3****Article 5 – Statutes**

3. In addition to the mandatory provisions of the agreement, the statutes shall contain rules on membership, withdrawal and dissolution of the ECG, including the legal consequences, as well as on operations, organs and their tasks, staffing, budgets and financing, liability, accountability and transparency of the ECG, without prejudice to the provisions of this Protocol and in conformity with the applicable law.



**APPENDIX to Protocol No. 3****XIII. Board of Directors of the ECG (Article 5.3 of the Protocol)**

1. The number of members of the Board or the rules for determining that number shall be laid down in the Grouping's statutes.
2. The members of the Board shall be elected by the General Assembly. However, the members of the first Board may be designated in the statutes.
3. Each member of the Grouping shall put forward candidates. The latter need not be members of the General Assembly.
4. Meetings of the Board shall not be public, except in special cases provided for in the statutes.

***Explanatory note***

**Paragraphs 2 and 3** contain suggestions for establishing along the lines indicated in the text the basis for the organisation and functioning of the Board. The other rules shall be laid down in the legislation applicable to the category of legal entities to which the Grouping belongs and in the statutes.

*The proposals in this Section are very general in nature. Reflecting the recognised autonomy of a local body endowed with legal personality, they are taken directly from Articles 23 and 24 of the revised preliminary draft uniform law on territorial co-operation groupings (doc. CDLR (2006) 17 of 27 April 2006). Each state is free to adapt them according to its needs or traditions, for example by setting out that members of the Board are not elected by the general assembly, but instead are directly designated by each member of the grouping.*

**Text of Protocol No. 3****Article 5 – Statutes**

3. In addition to the mandatory provisions of the agreement, the statutes shall contain rules on membership, withdrawal and dissolution of the ECG, including the legal consequences, as well as on operations, organs and their tasks, staffing, budgets and financing, liability, accountability and transparency of the ECG, without prejudice to the provisions of this Protocol and in conformity with the applicable law.

**APPENDIX to Protocol No. 3****XIV. Chairmanship and vice-chairmanship of the ECG (Article 5.3 of the Protocol)**

1. The Board shall elect from among its members a Chair and one or more Vice-Chairs. The Vice-Chairs shall be chosen among the representatives of territorial communities or authorities of each state other than that of which the Chair is a national.
2. The Chair shall convene and chair meetings of the Board under the conditions laid down in the statutes; he or she shall direct the proceedings of the General Assembly.
3. The Chair shall act in the name and on behalf of the Grouping. He or she shall represent it in judicial and extra-judicial matters.
4. In the absence of the Chair, the Vice-Chair or Vice-Chairs shall perform his or her duties.

***Explanatory note***

*The proposals in this section set out the basic rules governing the election and powers of the Chair and Vice-Chairs. They are taken directly from article 26 of the revised preliminary draft uniform law on territorial co-operation groupings (doc. CDLR (2006) 17 of 27 April 2006). Each State is free to adapt them according to its needs or traditions by, for example, making provision for the Chair of the Board to be election by the general assembly.*

*Additional rules shall be laid down in the statutes, in full compliance with the legislation applicable to the category of legal entities to which the Grouping belongs.*

**Text of Protocol No. 3****Article 5 – Statutes**

3. In addition to the mandatory provisions of the agreement, the statutes shall contain rules on membership, withdrawal and dissolution of the ECG, including the legal consequences, as well as on operations, organs and their tasks, staffing, budgets and financing, liability, accountability and transparency of the ECG, without prejudice to the provisions of this Protocol and in conformity with the applicable law.

**APPENDIX to Protocol No. 3****XV. Director General of the ECG (Article 5.3 of the Protocol)**

1. The Board may, on the Chair's proposal, task a Director General with the day-to-day management of the Grouping for a fixed period.
2. The Director General shall have authority over all staff working within the Grouping.
3. He or she may hold delegated powers. On a proposal from the Board, the Chair may authorise him or her to represent the Grouping and act in its name and on its behalf where such is provided for in the statutes and in the circumstances specified therein.

***Explanatory note***

**Paragraphs 1 and 2** of this Section are partially based on Article 27 of the revised preliminary draft uniform law on territorial co-operation groupings (doc. CDLR (2006) 17 of 27 April 2006).

*Under the proposals set out in this Section, a decision delegating authority may permit the Director General, in accordance with **paragraph 3**, to act on behalf of the Grouping in certain circumstances. This possibility – which in effect entails modifying the list of management bodies of the grouping – should be provided for by the legislator, not in the statutes of the grouping. In practice, if such delegated authority were to be implemented within an ECG, it would ensure on this point compatibility of the statutes of this ECG with Article 10 of Regulation (EC) No. 1082/2006 on the EGTC.<sup>27</sup>*

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<sup>27</sup> It is true that Regulation (EC) No. 1082/2006 does not impose either the existence of a Board of the EGTC which can nominate the Director General, or that of a Chair who can grant such a delegation. However, that does not imply that the nomination of a Director of an EGTC must be the work of the assembly of such a grouping. In effect, as Article 10.2 of the regulation allows for the statutes of an EGTC to make provision for “additional management bodies with clearly defined powers”, these statutes may allocate the power of nomination and of delegation to bodies other than the assembly.

**Text of Protocol No. 3****Article 5 – Statutes**

3. In addition to the mandatory provisions of the agreement, the statutes shall contain rules on membership, withdrawal and dissolution of the ECG, including the legal consequences, as well as on operations, organs and their tasks, staffing, budgets and financing, liability, accountability and transparency of the ECG, without prejudice to the provisions of this Protocol and in conformity with the applicable law.

### APPENDIX to Protocol No. 3

#### XVI. **General rules on the terms of office of representatives of the ECG's members on the Grouping's statutory bodies and the deliberations of those bodies (Article 5.3 of the Protocol)**

1. The appointment and terms of office of representatives of the territorial communities or authorities and other legal entities which are members of the Grouping on the Board and in the General Assembly shall be governed by the domestic law of the state to whose jurisdiction each territorial community, authority or entity concerned is subject.
2. The representatives of \*\*\* members of the Grouping on its statutory bodies shall be subject to the disqualifications from eligibility for office laid down by the legislation that applies to the category of legal entity to which the Grouping belongs.
3. The members of the Grouping's statutory bodies shall be appointed for a period laid down in the statutes not exceeding six years. This term of office shall be renewable once or more than once, unless restrictions are laid down in the statutes.
4. The term of office of representatives of members of the Grouping shall end at the latest with the first meeting of the deliberative assembly following the renewal of the statutory bodies of the territorial community or authority or other legal entity by which they have been appointed.
5. Representatives on the General Assembly who are elected to the Board shall immediately give up their seats. The member of the Grouping which appointed them shall replace them forthwith.
6. If a seat on the Board becomes vacant for any reason, the Board shall appoint a temporary member. He or she shall serve until a new Board member is elected.
7. Except where otherwise provided in this law or the statutes, any decision by a statutory body of the Grouping shall be taken by an absolute majority of the votes cast. The fixing of quorums shall be by distinguishing the states to whose jurisdiction the members of the Grouping are subject.
8. Voting by proxy shall be permitted. No member may hold more than one proxy.
9. Minutes shall be drawn up for each meeting of the General Assembly and Board.
10. Minutes shall be drafted in the language or languages whose use is prescribed by the domestic law of each of the states to whose jurisdiction the members of the Grouping are subject for their proceedings and decisions. They shall be sent to each member and to the authorities responsible for supervising the Grouping.

#### **Explanatory note**

*Under Article 5.3 of Protocol No. 3, statutes must contain rules on the statutory bodies of the ECG and their tasks. It is for each legislature of a State Party to the Protocol to establish a basic framework for this.*

**Paragraph 1**, as proposed, merely states that it is for each interested state to set out the rules for their representation on the ECG's collegial bodies.

**Paragraph 2**, which suggests making provision for incompatibilities along the lines indicated in the text, does not apply to foreign members of the Grouping. It is for the legislation of the states to whose jurisdiction these members are subject to address the incompatibilities applicable to them.

**Paragraph 3** does not relate to the legal entities which are members of the ECG but rather their representatives in the Grouping's collegial bodies. It suggests setting the duration of their terms of office on the said bodies, along the lines indicated in the text.

The proposal set out in **Paragraph 4** would be applicable to all representatives of ECG members, irrespective of the state to whose jurisdiction the members they represent are subject.

**Paragraphs 5 and 6** propose regulating in principle, along the lines indicated in the text, the replacement of members of the General Assembly and the Board in the event of a vacant seat or incompatibility.

**Paragraphs 7 and 8** propose regulating the exercise of voting rights in the Grouping's collegial bodies along the lines indicated in the text. In particular, it is proposed that quorums are set in such a way as to require the attendance of a minimum number of representatives of ECG members from each State.

Finally, **Paragraphs 9 and 10** propose formulating the basic rules on the drafting and distribution of the minutes of the meetings of these collegial bodies along the lines indicated in the text.

The proposals on this subject contained in this Section are drawn directly from Articles 23.5 28.3, 31.2, 33, 36.1, 37.1 and 38 of the revised preliminary draft uniform law on territorial co-operation groupings (doc. CDLR (2006) 17 of 27 April 2006). It is of course open to all States party to Protocol No. 3 to adopt different rules regarding the deliberations of the bodies of their ECGs as well as the mandates of members' representatives within these groupings. For example, the legislating state may prohibit vote by proxy, just as it might define a common working language.





**Text of Protocol No. 3****Article 5 – Statutes**

3. In addition to the mandatory provisions of the agreement, the statutes shall contain rules on membership, withdrawal and dissolution of the ECG, including the legal consequences, as well as on operations, organs and their tasks, staffing, budgets and financing, liability, accountability and transparency of the ECG, without prejudice to the provisions of this Protocol and in conformity with the applicable law.

### APPENDIX to Protocol No. 3

#### XVII. Transparency - information and access to ECG documents (Article 5.3 of the Protocol)

1. Any representative of a member of the Grouping who so requests during a meeting of the General Assembly shall be entitled to obtain information from the Board on the Grouping's activities relating to subjects on which the General Assembly may take a decision.
2. The General Assembly shall periodically adopt a full report on the Grouping's activities and forward it to the latter's members.
3. The representatives of the Grouping's members in the General Assembly shall report periodically, in writing, to the members who have appointed them on the Assembly's activities and on the manner in which they have performed their duties.
4. All members of the Board may consult all the reports, documents and information received by that body.
5. The Board shall supply in writing, within one month, information requested by any member of the Grouping.
6. Any natural or legal person shall have a right of access, on request, to the public documents held by the Grouping, on whatever medium, without having to provide reasons for the request to access them. The Grouping's statutes shall lay down the conditions of access and the procedure to be followed, in accordance with the \*\*\* constitution and legislation, and in full compliance with the international commitments of \*\*\*. Full reasons must be given for any refusal to grant access, and if the interested party so requires, such reasons must be provided in writing. In such cases, the party requesting access has a right of appeal before the \*\*\* court with jurisdiction in this matter.

#### **Explanatory note**

*Under Article 5.3 of Protocol No. 3, statutes must contain rules on accountability and transparency. It is for each legislature of a State Party to the Protocol to establish a basic framework for this.*

***Paragraphs 1 to 5** contain suggestions taken directly from Articles 25 and 32 of the revised preliminary draft uniform law on territorial co-operation groupings (doc. CDLR (2006) 17 of 27 April 2006). They propose placing on the ECG an obligation to report regularly on its activities to its members and to provide the representatives of those members in the General Assembly with the information they seek. These paragraphs also place an obligation on those members to inform the legal entity which has appointed them, and on the Board to inform any member of the Grouping.*

***Paragraph 3** sets out a proposal which applies to members subject to the jurisdiction of the legislating state and to foreign members of the Grouping.*

***Paragraph 6** proposes introducing the principle of individual access to public documents. It lays down the minimum conditions with reference to the constitution, legislation and international commitments of the legislating state. Among the international rules which should be complied with by ECGs in this respect is the Council of Europe Convention on Access to Official Documents, opened for signature in Tromsø on 18 June 2009.*

**Text of Protocol No. 3****Article 5 – Statutes**

3. In addition to the mandatory provisions of the agreement, the statutes shall contain rules on membership, withdrawal and dissolution of the ECG, including the legal consequences, as well as on operations, organs and their tasks, staffing, budgets and financing, liability, accountability and transparency of the ECG, without prejudice to the provisions of this Protocol and in conformity with the applicable law.

### APPENDIX to Protocol No. 3

#### XVIII. Budgetary and accounting rules applicable to the ECG (Article 5.3 of the Protocol)

1. The Grouping shall have an annual draft budget approved by the General Assembly. It shall draw up a balance sheet and profit and loss account certified correct by auditors independent from its members, in accordance with the provisions of Section XXXVII.
2. The budget, including the charges relating to the servicing of any loans, shall be balanced.
3. The annual budget shall be drawn up and the Grouping's accounts shall be kept and managed in accordance with the rules applicable to the category of \*\*\* legal entities to which the Grouping belongs.

#### **Explanatory note**

*Under Article 5.3 of Protocol No. 3, the statutes must contain rules on budgets and the requirement for financial accountability. It is for each legislature of a State Party to the Protocol to establish a basic framework for this.*

*Under the proposals in this Section, the Grouping's General Assembly must draw up a balanced annual budget every year. The budgetary and accounting rules which apply are those of the state where the Grouping has its headquarters. Article 11.2 of Regulation (EC) No. 1082/2006 lays down the same principle.*

*The wording of the proposals is based on Article 4.2 d) of the additional Protocol to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities; Article 51 of the revised preliminary draft uniform law on territorial co-operation groupings (doc. CDLR 2006-17 of 27 April 2006); Article 14 of the Karlsruhe Agreement of 23 January 1996 or the Brussels Agreement of 16 September 2002, on cross-border cooperation between local authorities and local public bodies, and Article 6.1 of the Genevan Law of 14 November 2008 on transfrontier co-operation bodies (LOCT) in the case of paragraph 2.*

**Text of Protocol No. 3****Article 5 – Statutes**

3. In addition to the mandatory provisions of the agreement, the statutes shall contain rules on membership, withdrawal and dissolution of the ECG, including the legal consequences, as well as on operations, organs and their tasks, staffing, budgets and financing, liability, accountability and transparency of the ECG, without prejudice to the provisions of this Protocol and in conformity with the applicable law.

**APPENDIX to Protocol No. 3****XIX. Contributions by members of the ECG (Article 5.3 of the Protocol)**

1. The members' contributions to the costs and expenses occasioned by the Grouping's work shall take the form of annual financial contributions and, possibly, the provision of premises or equipment and the making available or secondment of staff of territorial communities or authorities.
2. The nature of these contributions and the basis for their distribution among members of the Grouping shall be determined in the statutes, along with the arrangements for periodic adaptations of this distribution.

**Explanatory note**

*Under Article 5.3 of Protocol No. 3, the statutes must contain rules on the staffing, budgets and financing of the ECG. It is for each legislature of a State Party to the Protocol to establish a basic framework for this.*

*The following, entirely classical, proposals are made concerning the types of contributions of members of a Grouping:*

- (a) an annual financial contribution by each member;*
- (b) the making available or secondment of staff of territorial communities or authorities participating in the Grouping (see Section XXI);*
- (c) possibly, the provision of premises or equipment by certain members of the Grouping.*

*These proposals are based on Article 44 of the revised preliminary draft uniform law on territorial co-operation groupings (doc. CDLR (2006) 17 of 27 April 2006).*

**Text of Protocol No. 3****Article 5 – Statutes**

3. In addition to the mandatory provisions of the agreement, the statutes shall contain rules on membership, withdrawal and dissolution of the ECG, including the legal consequences, as well as on operations, organs and their tasks, staffing, budgets and financing, liability, accountability and transparency of the ECG, without prejudice to the provisions of this Protocol and in conformity with the applicable law.



### APPENDIX to Protocol No. 3

#### XX Material and financial resources of the ECG (Article 5.3 of the Protocol)

1. The annual financial contributions referred to in the previous Section shall be compulsory expenses for the territorial communities or authorities and the other members of the Grouping. They shall be revised periodically in accordance with the rules laid down by the statutes.
2. The facilities and equipment provided by members of the Grouping shall remain their property. They shall recover them when the Grouping is wound up.
3. The Grouping may also be funded by income from the services it provides for the territorial communities or authorities, users or third parties, but not by any levies of a fiscal nature.
4. The Grouping's income shall also comprise subsidies made to it at its request, gifts and legacies from natural or legal persons and interest and other returns on its assets.
5. The Grouping may contract loans. Any loans shall be approved by the body or bodies competent for such decisions within each legal entity which is a member of the Grouping.
6. Items purchased by the Grouping shall remain its property. If the Grouping is wound up, they shall be devolved in accordance with the rules set out in Section XXIX.

#### **Explanatory note**

*Under Article 5.3 of Protocol No. 3, the statutes must contain rules on the finances of the ECG. It is for each legislature of a State Party to the Protocol to establish a basic framework for this. The proposals in this Section are mere suggestions.*

**Paragraphs 1 and 2** list the various types of contributions by the members to the operation of an ECG.

**Paragraphs 3 to 5** list ECGs' other optional sources of income: subsidies, payment for services rendered, gifts and legacies, return on assets and loans contracted. The latter must be approved by all members of the Grouping. Loan charges must be entered in the budget (see Section XVIII).

*These proposals are based directly on Articles 44, 48 and 49 of the revised preliminary draft uniform law on territorial co-operation groupings (doc. CDLR 2006-17 of 27 April 2006), Article 4.2 of the additional Protocol to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities and Article 6.3 of the Genevan Law of 14 November 2008 on transfrontier co-operation bodies (LOCT).*

**Text of Protocol No. 3****Article 5 – Statutes**

3. In addition to the mandatory provisions of the agreement, the statutes shall contain rules on membership, withdrawal and dissolution of the ECG, including the legal consequences, as well as on operations, organs and their tasks, staffing, budgets and financing, liability, accountability and transparency of the ECG, without prejudice to the provisions of this Protocol and in conformity with the applicable law.

### APPENDIX to Protocol No. 3

#### XXI. Staff of the ECG (Article 5.3 of the Protocol)

1. The staff of the Grouping under \*\*\* law shall be made up of:
  - a. staff directly recruited by the Grouping on fixed-term or permanent contracts and paid from its budget;
  - b. staff made available by members of the Grouping;
  - c. staff seconded from these territorial communities or authorities and paid from the Grouping's budget.
2. In the event that the Grouping is wound up, staff members directly recruited by the Grouping for an indefinite duration, shall be offered employment by some or all of the members, in accordance with paragraph 4 of Section XXIX.
3. Staff made available to the Grouping shall retain their original terms and conditions of employment. The practical aspects of such arrangements, particularly any compensatory adjustment between the salary paid by the original employer and the contribution he or she owes to the Grouping, shall be the subject of an agreement between the Grouping and the original employer.
4. The staff shall take their instructions exclusively from the Grouping. They shall be answerable to the Director General if there is one and, otherwise, to the Chair of the Grouping.
5. The labour regulations and the taxation and social security arrangements concerning the Grouping's staff shall be governed by \*\*\* law. However, labour relations with staff assigned to an operational unit which is not the Grouping's headquarters shall be subject exclusively to the law of the state in which this operational unit is located; the rules on the taxation and social security of such staff shall be determined in the same manner.
6. The Grouping shall attempt to ensure that working conditions are equivalent in all its different operational units. The statutes may contain additional provisions in this respect.

#### **Explanatory note**

*Under Article 5.3 of Protocol No. 3, statutes must contain rules on the staff of the ECG. It is for each legislature of a State Party to the Protocol to establish a basic framework for this. The proposals in this connection in this Section are mere suggestions. They are not required by Protocol No. 3, but are entirely compatible with it. They are based directly on Articles 10 and 11 of the Benelux Convention on transfrontier and interterritorial co-operation of 20 February 2014 and on Articles 45 to 47 of the revised preliminary draft uniform law on territorial co-operation groupings (doc. CDLR (2006) 17 of 27 April 2006).*

*Under the terms of **paragraph 1**, the Grouping's own staff are recruited on work contracts. If such contracts are for an indefinite duration, **paragraph 2** provides that where the Grouping is wound up ahead of time or upon expiry of the period for which it was set up, it must redeploy the staff members concerned in accordance with the conditions laid down in paragraph 4 of Section XXIX. This rule is not applicable to staff engaged on fixed-term contracts.*

*Any ECG member may place staff at the disposal of the Grouping. Such staff shall retain their original terms and conditions of employment (**paragraph 3**) but shall take their instructions from the Grouping in accordance with the general rule set out in **paragraph 4**.*

*Staff are regarded as having been "seconded" to the ECG where they are "lent" to the Grouping and paid by the latter (**paragraph 1, c**). This category of staff is also placed under the operational authority of the Grouping.*

The proposed determination, in **paragraph 5**, of the law governing staff labour relations and social security arrangements is in compliance with the rules specifying the law that may be applied on the territory of the member states of the European Union (in particular Article 11.3a of Regulation (EC) No. 883/2004 of 29 April 2004 on the co-ordination of social security systems and Article 8 of Regulation (EC) No. 593/2008 of 17 June 2008 on the law applicable to contractual relations — Rome I); accordingly, ECGs which are subject to the jurisdiction of a European Union member state and the territorial communities or authorities that are members of that Grouping must comply with EU law in this matter.<sup>28</sup> This proposal coincides with Recital 24 of Regulation (EU) No. 1302/2013 amending Regulation (EC) 1082/2006.<sup>29</sup>

According to Recital 26 of Regulation (EU) No. 1302/2013 “it should be possible for different options as to the choice of rules applicable to staff of EGTCs to be laid down in the convention.” With regard to ECGs established in accordance with Protocol No. 3 and their national enforcement legislation, any disparity between the legal provisions relating to the working conditions of members of staff as a result of their place of work (hours, leave entitlement, etc.) could be offset by the granting of additional advantages to those whose local conditions of work are less favourable than those applicable by law in another operational unit of the same ECG. Such advantages may be stipulated in the statutes (**paragraph 6**). This proposal is based on Article 10 of the Benelux Convention on transfrontier and interterritorial co-operation of 20 February 2014.

<sup>28</sup> It will be noted moreover that Article 16 of Regulation (EC) No. 883/2004 stipulates that bodies appointed by two or more European Union member states may, by common agreement, provide for exceptions to Articles 11 to 15 of this Regulation

<sup>29</sup> Recital 24 of Amending Regulation (EU) No. 1302/2013 stipulates that in certain cases, the national law applicable to the EGTCs “should be possible (...) to be the law of the Member State where the organs of the EGTC exercise their powers, in particular in the case of staff that work under the responsibility of the director and are located in a Member State other than the Member State where the EGTC has its registered office.” According to Recital 26, it is the **convention** establishing the EGTC and not the statutes, that should specify the rules applicable to staff of EGTCs and the principles governing the arrangements concerning personnel management and recruitment procedures. As far as ECGs are concerned, this Appendix to Protocol No. 3 provides that the agreement establishing the Grouping shall specify the law that applies to the Grouping’s staff and the principles governing staff recruitment and management methods (Section VI, paragraph 4.f)



**Text of Protocol No. 3****Article 6 – Amendments to the agreement and the statutes**

Any amendment to the agreement referred to in Article 4 and any substantial amendment to the statutes referred to in Article 5 shall follow the same procedures and form of those articles respectively. Substantial amendments to the statutes shall be those entailing, directly or indirectly, an amendment to the agreement. The majority required for the adoption of any such amendment shall be determined in the statutes.

**APPENDIX to Protocol No. 3****XXII. Amendments to the agreement establishing the ECG and to its statutes (Article 6 of the Protocol)**

1. The Board and the members of a Grouping may submit proposals to the General Assembly for amendments to the founding agreement or to the statutes.
2. Amendments to the founding agreement and any amendment to the mandatory provisions thereof reproduced in the statutes shall be adopted according to the established procedure described in Section VII without prejudice to any special provisions set out in section X (withdrawal or exclusion) or in section XXIII (subsequent accessions).
3. Any other amendment to the statutes shall be adopted by the General Assembly. Amendments shall require a decision taken by a majority which may not be less than two-thirds of the votes cast unless the law applying to legal entities established under the same laws as the Grouping provides for or allows a higher majority. The majority required shall be determined in the statutes.
4. Amendments to the founding agreement or the statutes shall be published in accordance with the procedure laid down by the legal and regulatory provisions applicable to the categories of legal entities to which the Grouping belongs.

***Explanatory note***

*Under Article 6 of Protocol No. 3, “any amendment to the agreement referred to in Article 4 and any substantial amendment to the statutes referred to in Article 5 shall follow the same procedures and form of those articles respectively”. This is the message of **paragraphs 2 and 4** of this section.*

*It is also for each legislature of a State Party to the Protocol to establish a basic framework for the introduction of any amendment and the adoption of amendments described as “non-substantial” amendments because they do not entail, directly or indirectly, an amendment to the agreement establishing the ECG. **Paragraphs 1 and 3** of this section contain specific yet limited proposals in this respect.*

**Text of Protocol No. 3****Article 6 – Amendments to the agreement and the statutes**

Any amendment to the agreement referred to in Article 4 and any substantial amendment to the statutes referred to in Article 5 shall follow the same procedures and form of those articles respectively. Substantial amendments to the statutes shall be those entailing, directly or indirectly, an amendment to the agreement. The majority required for the adoption of any such amendment shall be determined in the statutes.



### APPENDIX to Protocol No. 3

#### XXIII. Procedure for subsequent accessions to the ECG (by implication, Article 6 of the Protocol)

- 1 A Euroregional Co-operation Grouping under \*\*\* law may admit new members under either \*\*\* or foreign law. Applications for membership shall be made in writing and submitted to the General Assembly.
- 2 Applications by \*\*\* territorial communities or authorities for membership of an existing Euroregional Co-operation Grouping, both under \*\*\* law and under foreign law, shall be subject to the same notifications and the same checks as for other acts and deliberations of those territorial communities or authorities. The same shall apply, mutatis mutandis, to applications for membership from other \*\*\* legal persons to such a Grouping.
- 3 For their membership to take effect, all new members shall be required to sign a transfrontier or interterritorial co-operation agreement amending the agreement establishing the Grouping so as to determine the terms and effects of the new member's accession.
- 4 If a member of a Grouping under \*\*\* law has been legally taken over by another public-law legal entity which is now performing all its functions or if this other public-law legal entity has been legally substituted for this member, the member shall be automatically replaced by this entity as a member of the Grouping. No application for membership shall be required in such cases.
- 5 The provisions in paragraphs 2 and 4 of Section XXII shall apply to the agreement amending the founding agreement. Nevertheless, the consent of the current members governed by \*\*\* law to the conclusion of that agreement shall not be subject to the notifications and checks provided in respect of their other deliberations, provided that the national law governing the foreign members of the Grouping also makes this provision in respect of them.
- 6 Groupings under \*\*\* law shall notify the agreement confirming the accession of a new member, whether that new member is \*\*\* or foreign, only to the state to whose jurisdiction the new member is subject, unless no other member of the Grouping is already subject to that state's jurisdiction.

#### **Explanatory note**

*Paragraphs 1, 3, 5 and 6 of this Section offer a proposed framework governing the admissibility of the accession of new members, both national and foreign, to an ECG under national law, the signature of the agreement confirming the accession, and notification of that agreement to the states to whose jurisdiction the new members are subject. Similarly, paragraph 4 could apply both to members subject to the jurisdiction of the legislating state and to foreign members of a grouping established under national law. In contrast, the proposals contained in paragraph 2 concern only subsequent accessions of prospective members subject to the jurisdiction of the legislating state, but they relate both to ECGs governed mainly by the law of that state and ECGs governed by foreign law.*

*Any accession by a new member presupposes in principle a formal modification of the founding agreement, since the latter must list the members of the grouping.<sup>30</sup> In the case of EGTCS, a similar requirement applies to the subsequent accession of potential members. However, the European Commission felt that this procedure was too cumbersome where the candidate was subject to the jurisdiction of a state whose authorities had already scrutinised the content of the founding agreement. It has therefore made a simplification suggestion with regard to EGTCS.<sup>31</sup>*

<sup>30</sup> Protocol No. 3, Article 4.3; Section VI.4 of this Appendix.

<sup>31</sup> See Article 4.6 of Regulation (EC) 1082/2006 as amended by Regulation (EU) No. 1302/2013.

Since it is intended to maintain the correlation between the legal status of ECGs and that of EGTCs following the revision of Regulation (EC) No. 1082/2006, then the procedure for amending the founding agreement stipulated in Article 6 of Protocol No. 3 should be deemed not to be applicable to purely formal modifications such as a change to the list of members of the grouping.

Accordingly, **paragraphs 5 and 6** of this Section provide for the adoption of simplified rules similar to those in the revised EC Regulation. They make provision for a single check by the legislating state and a single notification of the accession of the new member. First, the **checking** of the agreement amending the founding agreement shall be undertaken only by the authority responsible for the general administrative review of the activity of the future member,<sup>32</sup> provided that the domestic law to which the foreign members of the ECG are subject requires them to comply with the same rule (as that set out in paragraph 5).<sup>33</sup> Second, the ECG is required to **notify** this accession only to the state under whose law this new member is mainly governed. However, if the accession concerns a new member who is under the jurisdiction of a state whose law no other members of the ECG are subject to, the notification must be sent by the ECG to all the states concerned.

**Paragraph 3** specifies that the take-over of a member or its legal substitution by another public-law legal entity does not require an application for membership of the Grouping.

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<sup>32</sup> In accordance with Article 4.6a. of Regulation (EC) 1082/2006 as inserted by Regulation (EU) No. 1302/2013, accession to a pre-existing EGTC must be approved exclusively by the state to whose jurisdiction the prospective member is subject, and be notified by that state to the state in which the registered office of that EGTC is located.

<sup>33</sup> This requirement of reciprocity is mentioned at the end of paragraph 5 of this Section.



**Text of Protocol No. 3****Article 7 – Tasks and scope of action**

1. The ECG shall perform the tasks that its members entrust to it. These tasks shall be in accordance with the competences of the members under their respective national law and shall be listed in the agreement and in the statutes.

### APPENDIX to Protocol No. 3

#### XXIV. Role and field of action of the ECG (Article 7.1 of the Protocol)

- 1 The objective of the establishment of a Euroregional Co-operation Grouping shall be to promote, support and develop, for the benefit of populations, transfrontier or interterritorial co-operation between its members.
- 2 In accordance with this objective and its purpose, any Euroregional Co-operation Grouping established under \*\*\* law shall perform the tasks assigned to it by its members in accordance with the conditions provided for in the domestic law of the states to whose jurisdiction they are subject. These tasks shall be in accordance with the competences of the members under their respective national law.
- 3 The \*\*\* state and the other states having jurisdiction over the territorial communities or authorities belonging to a European Co-operation Grouping, established under \*\*\* law or foreign law, may entrust the Grouping with the planning, negotiation, putting in place and management of territorial co-operation programmes co-financed by the European Union.

#### **Explanatory note**

**Paragraph 1** of this section partially reproduces the text of Article 1.2 of Protocol No. 3. To quote the terms of explanatory report, it "provides for maximum flexibility as regards the reasons why an ECG shall be established".

**Paragraph 2** concerns the functions of ECGs. It points out that the tasks of an ECG must be assigned in accordance with the procedures provided for under the domestic law of the states to whose jurisdiction the members of the Grouping are subject.<sup>34</sup> It also requires the tasks to be "in accordance with the competences of the members" of the ECG. This wording, taken from Article 7.1 of Protocol No. 3, enables an ECG to be established without the field of action of each member having to cover all the tasks assigned to the Grouping. It does not therefore rule out the participation of a potential member which does not have competence for one of the ECG's tasks or in all the areas covered by the objective assigned to the Grouping. Regulation (EC) 1082/2006 as amended by Regulation (EU) No. 1302/2013 also authorises the "participation of a member established under [the] national law of an EU member state, even where that member is not competent for all the tasks specified in the convention" establishing the Grouping, **but** on condition that such participation is approved by the state under whose jurisdiction the Grouping in question is subject.<sup>35</sup>

**Paragraph 3** is based on Article 2.3 of the revised preliminary draft uniform law on territorial co-operation groupings (doc. CDLR 2006-17 of 27 April 2006). It confirms that an ECG is a legal instrument which may be used not only to carry out "territorial co-operation" programmes co-financed by the European Union but also to facilitate the normative implementation of Regulation (EC) No. 1082/2006 on EGTCs. This objective may be achieved without the ECG having to assume the form of a European Grouping of Territorial Co-operation (EGTC).

<sup>34</sup> This requirement was already set out in Article 4.2 of the additional Protocol to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities.

<sup>35</sup> Amending Regulation (EU) No. 1302/2013, Recital 19. Article 7.2 of Regulation (EC) 1082/2006, as amended, provides that "Each task shall be determined by its members as falling within the competence of every member, unless the Member State or third country approves the participation of a member established under its national law even where that member is not competent for all the tasks specified in the convention" establishing the Grouping.

**Text of Protocol No. 3****Article 7 – Tasks and scope of action**

2. The ECG shall adopt decisions and ensure their implementation, in respect and for the benefit of individual persons or legal entities subject to the jurisdiction of the States to which its members belong. Members shall adopt or facilitate all necessary measures falling within their competences in order to ensure that the ECG's decisions are implemented.

**Article 11 – Supervision, administrative and judicial review**

3. Decisions and acts of territorial communities or authorities and other public and private law entities shall be subject to the supervision and administrative and judicial review of the legality of acts of territorial communities or authorities and of other public law entities in the forms required in the States under whose jurisdiction the said authorities fall.

### APPENDIX to Protocol No. 3

#### XXV. Implementation of decisions of the ECG (Article 7.2 and Article 11.3 of the Protocol)

1. Territorial communities or authorities shall, in good faith, take all necessary measures to ensure implementation of the decisions of the Grouping of which they are members, within the limits of the competences conferred on them by the domestic law of the state to whose jurisdiction they are subject. This shall also apply, *mutatis mutandis*, to the other legal entities which are members of the Grouping.
2. These measures shall be subject to the procedures and the supervision provided for in the domestic law of each state to whose jurisdiction the territorial communities or authorities are subject concerning the acts and deliberations of such communities or authorities. This shall also apply, *mutatis mutandis*, to any procedures and supervision to which other legal entities which are members of the Grouping may be subject.
3. The Grouping shall ensure the implementation of its own decisions in respect of individuals or legal entities subject to the jurisdiction of the states to whose domestic law its members are subject. The statutes shall contain rules of procedure to this end.

#### **Explanatory note**

**Paragraph 1** in this section corresponds to the second provision of Article 7.2 of Protocol No. 3, Article 43.1 of the revised preliminary draft uniform law on territorial co-operation groupings (doc. CDLR 2006-17 of 27 April 2006) and Article 9.1 of the Genevan Law of 14 November 2008 on transfrontier co-operation bodies (LOCT). According to these various texts, the members of a Grouping which has legal personality are required to implement in good faith the decisions taken by the competent body of the Grouping to which they belong: any partner which failed to do so would be held liable. In the case of territorial communities or authorities which are members of the Grouping, the obligation to implement the decisions also stems from the principle of subsidiarity set out in Article 4.3 of the European Charter of Local Self-Government: they must each facilitate the implementation of the Grouping's decisions whenever the Grouping does not have the power to implement them.

**Paragraph 2** corresponds to Article 11.3 of Protocol No. 3 and Article 43.2 of the 2006 revised preliminary draft uniform law on territorial co-operation groupings. It confirms that the acts of territorial communities or authorities which are members of an ECG remain subject to the supervision and administrative review applicable to such acts. The purpose of this provision is to reiterate the provisions of Article 6.1 of the additional Protocol to the Madrid Outline Convention. It also applies, *mutatis mutandis*, to the other legal entities in the Grouping.

The rule set out in **paragraph 3** corresponds to the first provision of Article 7.2 of the Protocol. According to the explanatory report to Protocol No. 3, it offers "utmost flexibility" regarding the mandatory nature of the ECG's decisions in the various states to whose jurisdiction its members are subject. Depending on whether it is a public-law or private-law entity, an ECG does not have the same authority or effective legal mechanisms for implementing its decisions. This is equally true in the legislating state (where the ECG has its headquarters) and in any foreign state to whose jurisdiction some of the Grouping's members are subject (see Section XXVI below). It is therefore proposed that the statutes include rules of procedure suited to the nature of the ECG so as to ensure that the members take on a timely basis the measures needed to implement the Grouping's decisions in respect of their citizens.

**Text of Protocol No. 3****Article 7 – Tasks and scope of action**

3. The tasks given to an ECG shall not concern the exercise of regulatory powers. The ECG shall not be empowered to take measures which might affect the rights and freedoms of individuals, or to impose levies of a fiscal nature.
4. The ECG may not exercise competences that territorial communities or authorities exercise as agents of the State to which they belong, except where duly authorised. It may exercise competences that States members of the ECG confer upon it.



### APPENDIX to Protocol No. 3

#### XXVI. Competences and powers of the ECG under public law (Articles 7.3 and 7.4 of the Protocol)

- 1 Within the limits laid down in paragraph 2 above, any Euroregional Co-operation Grouping including \*\*\* territorial communities or authorities but established under the public law of a foreign state shall be empowered to adopt unilateral administrative measures enforceable in national territory in accordance with \*\*\* law.
- 2 However, on the national territory, the Euroregional Co-operation Grouping established under \*\*\* or foreign public law shall not be empowered to lay down rules or to take decisions which might affect the rights and freedoms of individuals, nor to decide on levies of a fiscal nature.
- 3 Nevertheless, any Euroregional Co-operation Grouping established under \*\*\* law may determine the conditions of use, on the national territory, of an item of infrastructure or any other community service it is managing, including the prices and fees to be paid by users.
- 4 A Euroregional Co-operation Grouping established under \*\*\* law may not exercise competences conferred upon \*\*\* territorial communities or authorities as agents of the state or by virtue of delegated state authority, except where duly authorised to do so under a specific legislative or regulatory provision.
- 5 The \*\*\* state may, in agreement with the other states which are members of the same Euroregional Co-operation Grouping established under \*\*\* law, assign to the Grouping powers going beyond the limits laid down in the preceding paragraphs.

#### **Explanatory note**

**Paragraph 1** contains one of the only provisions of the Appendix relating exclusively to ECGs under foreign law. In order to solve the sensitive issue of the exercise of particular rights under public law by a foreign public-law entity on national territory, it proposes that the solution be found by the state to whose jurisdiction this territory is subject. It is suggested that the legislating state grant ECGs under foreign public law the right to adopt unilateral measures which are mandatory for third parties.

**Paragraph 2** reproduces the prohibitions contained in Article 7.3 of Protocol No. 3. It constitutes a particular application of Article 4.2, letters b and c of the additional Protocol to the Outline Convention of 9 November 1995. The spatial scope of this paragraph is exclusively the territory of the legislating state, on which ECGs established under public law are prohibited from exercising power of regulation, police and taxation as prohibited in the two protocols mentioned above<sup>36</sup>.

Again to ensure continued compatibility with Regulation (EC) No. 1082/2006, amended by Regulation (EU) No. 1302/2013, **paragraph 3** enables ECGs established under public law to “determine the conditions of use of an item of infrastructure”,<sup>37</sup> or indeed “the conditions subject to which a service of general economic interest is provided, including the tariffs and fees to be paid by the users”,<sup>38</sup> in the same way as is now the case with respect to EGTCs.

<sup>36</sup> Note, however, that any State Party is free to conclude restricted international agreements with other States Parties to the Protocol making express provision for different solutions.

<sup>37</sup> Such is the rule introduced for EGTCs in the second sub-paragraph of Article 7.4 of Regulation (EU) No. 1302/2013. Recital 22 of Regulation (EU) No. 1302/2013 states that “an EGTC’s assembly should be able to define, if the convention specifically so provides, and, in compliance with Union and national law, the terms and conditions of the use of an item of infrastructure the EGTC is managing, or the terms and conditions subject to which a service of general economic interest can be provided, including the tariffs and fees to be paid by the users”.

<sup>38</sup> Examples of community services that could be offered by ECGs, and for which they could define conditions of use, include hospitals, nursing homes and other public housing.

**Paragraph 4** provides more precise information regarding the prohibition and exceptions contained in the first provision of Article 7.4 of Protocol No. 3.

**Paragraph 5** contains a proposal which seeks to give specific effect to the second provision in Article 7.4 of the Protocol.



**Text of Protocol No. 3****Article 7 – Tasks and scope of action**

3. The tasks given to an ECG shall not concern the exercise of regulatory powers. The ECG shall not be empowered to take measures which might affect the rights and freedoms of individuals, or to impose levies of a fiscal nature.

**APPENDIX to Protocol No. 3****XXVII. Mandate, delegation and concession of public services (by implication: Article 7.3 of the Protocol)**

1. For the purpose of achieving its aim, a public-law Grouping may be given specific tasks to perform in the name of, on behalf of and on the instructions of one of the territorial communities or authorities which belong to it, while complying with the domestic law which governs it.
2. The concession or delegation of public services to a Grouping by one of the territorial communities or authorities which belong to it shall be subject to the provisions and procedures laid down in \*\*\* law and that of the state to whose jurisdiction that community or authority is subject.

**Explanatory note**

*Though article 7.3 of Protocol No. 3 prohibits ECGs from exercising regulatory powers, taking measures which might affect the rights and freedoms of individuals or raising taxes, it does not prohibit the territorial communities or authorities which belong to a public-law ECG from assigning specific tasks of theirs to it, nor from granting concessions or delegating public-service tasks to it. That is the purpose of the proposals in this section. They are based directly on Article 41 of the revised preliminary draft uniform law on territorial co-operation groupings (doc. CDLR 2006-17 of 27 April 2006) and Article 5 of the Karlsruhe Agreement of 23 January 1996 and the Brussels Agreement of 16 September 2002.*

**Paragraph 1** only concerns ECGs established under national law, but applies to all the territorial communities or authorities which belong to them, regardless of the state to whose jurisdiction they are subject. In particular, it allows foreign territorial communities or authorities to issue instructions to an ECG governed by the law of the legislating state, provided that they are members of the Grouping.

*The territorial communities or authorities which may grant concessions or delegate public services as provided for in **paragraph 2** to the Grouping to which they belong may also be either domestic or foreign, while the Grouping is governed by the law of the legislating state. If the community or authority is foreign, the public law of the state to whose jurisdiction it is subject determines the conditions for granting concessions or delegating services; the law of the legislating state establishes the conditions for exercising the delegated powers or concessions.*

**Text of Protocol No. 3****Article 7 – Tasks and scope of action**

3. The tasks given to an ECG shall not concern the exercise of regulatory powers. The ECG shall not be empowered to take measures which might affect the rights and freedoms of individuals, or to impose levies of a fiscal nature.

### APPENDIX to Protocol No. 3

#### XXVIII. Public procurement contracts (*by implication: Article 7.3 of the Protocol*)

1. Where \*\*\* law provides for the granting of public procurement contracts, any Euroregional Co-operation Grouping established under \*\*\* law shall comply with the relevant rules if it initiates such contracts.
2. In respect of procedures for advertising, calls for tender and the choice of firms, \*\*\* or foreign territorial communities or authorities participating directly or indirectly in the funding of such operations shall indicate, in the transfrontier or interterritorial co-operation agreement providing for their participation, the obligations which the domestic law of their respective states lay down for such operations, having regard to the nature of the operation and its cost. Without prejudice to the law applying to the contract, they shall take measures enabling each of them to respect its obligations under its domestic law.

#### **Explanatory note**

*Under the EU directives, "contracting authorities" include not only states, regional or local authorities and bodies governed by public law but also all "public enterprises" and all public-law or private-law legal entities "not having an industrial or commercial character", provided that they are subject to the dominant influence of such contracting authorities by virtue of ownership, financial participation or the rules which govern them. The same is true for public-law entities established specifically to provide services of general economic interest. When an ECG is principally governed by the law of a state bound by these directives, it may therefore be subject to the legislation on public procurement. The same applies to ECGs which are governed by the public law of any other Council of Europe member state. Article 7.3 of Protocol No. 3, which prohibits ECGs from exercising regulatory powers, taking measures which might affect the rights and freedoms of individuals or raising taxes, does not exempt them from the application of national legislation on public procurement.*

*The rules applicable to ECGs in this respect are those of the law in force in the state where the ECG has its headquarters. **Paragraph 1**, which sets out this proposal, is consistent with the principle laid down in Article 2.1 of Protocol No. 3, which is reiterated in Section III of this Appendix.*

***Paragraph 2** seeks to take account of the interests of the territorial communities or authorities which belong to the Grouping which participate directly or indirectly in the funding of such operations. It is based on Article 42.2 of the revised preliminary draft uniform law on territorial co-operation groupings (doc. CDLR 2006-17 of 27 April 2006) and Article 6 of the Karlsruhe Agreement of 23 January 1996 or the Brussels Agreement of 16 September 2002.*

**Text of Protocol No. 3****Article 8 – Duration**

1. The ECG shall be established for a limited or unlimited period of time, to be specified in the agreement and the statutes.
2. The ECG shall be wound up *ipso facto* when the period for which it was established has expired or if the territorial communities or authorities cease to control the majority of voting rights. It may also be wound up by a unanimous decision of its members.

**Article 11 – Supervision, administrative and judicial review**

5. Notwithstanding the rules on dissolution of the ECG under the present Protocol and the statutes, at the request of a competent authority with a legitimate interest, a competent court or the competent authority of a party where the ECG has its headquarters may order the ECG to be wound up if it finds that the ECG is acting outside the tasks entrusted to it. The competent court or authority may allow the ECG time to rectify the situation. If the ECG fails to do so within the time allowed, it may be declared wound up.



**APPENDIX to Protocol No. 3****XXIX. Duration, prolongation, winding up and liquidation of the ECG (Articles 8 and 11.5 of the Protocol)**

- 1 The Euroregional Co-operation Grouping shall be established for a limited or unlimited period of time.
- 2 The Grouping shall be wound up ipso facto:
  - 1) when the founding agreement expires if the agreement was concluded for a limited period and was not renewed;
  - 2) when its purpose is accomplished;
  - 3) when territorial communities or authorities no longer form the majority of its members.
- 3 The Grouping may be wound up ahead of time:
  - 1) by unanimous decision of its members;
  - 2) by decision of the competent \*\*\* court, under the conditions laid down in the provisions of paragraph 3 of Section XXXVI.
- 4 If the dissolved Grouping had its own staff members recruited for an indefinite duration, its members must offer those staff members employment. A supplementary agreement between the members of the Grouping shall govern the arrangements for redeployment.
- 5 Winding up of the Grouping shall entail its liquidation. The Grouping shall also be liquidated in the event of a court ruling that its founding agreement is null and void, in accordance with paragraph 1 of Section XXXVI. It shall retain legal personality for purposes of the liquidation, until such time as this is completed.
- 6 The General Assembly shall determine the practical details of liquidation in accordance with the statutes and appoint one or more liquidators. The Board's functions shall cease once these appointments have been made.
- 7 If the Grouping's assets at the time of liquidation are insufficient, its members shall be liable for paying off all debts contracted before it was wound up until the extinction of such debts, in accordance with the provisions of Section XXX.
- 8 After payment of the debts and, if applicable, recovery of the initial contributions, the liquidator(s) shall divide surplus assets between the Grouping members in proportion to their previous financial contribution.
- 9 The commencement and completion of the liquidation procedure shall be publicised in accordance with the provisions of the legislation applying to the category of legal entity to which the Grouping belongs. They shall also be notified by the liquidator(s) to all the states to whose jurisdiction the Grouping's members are subject.

**Explanatory note**

**Paragraph 1** corresponds to Article 8.1 of Protocol No. 3, which it implements by setting out the conditions for extending the duration of ECGs set up for limited periods of time.

**Paragraphs 2 and 3** list the cases where ECGs are wound up ipso facto or ahead of time.

**Paragraph 4** governs what happens to staff members recruited for an indefinite duration when the ECG which employed them is wound up: it proposes that they be taken on by the members of the dissolved Grouping (see the explanatory note under Section XXI.2).

**Paragraphs 5 and 6** deal successively with the liquidation of ECGs and the details of liquidation.

**Paragraphs 7 and 8** require each member to contribute to paying off any debts which the ECG contracted but is unable to honour and then indicate the basis for dividing surplus assets or, if the assets are insufficient, outstanding liabilities between the members of the Grouping.

**Paragraph 9** governs the publicity to be given to the commencement and completion of the liquidation procedure.

The wording of paragraphs 1, 4, 5, 6, 8 and 9 is based respectively on Articles 64.2, 65.3, 65.1, 65.2, 65.4 and 66 of the revised preliminary draft uniform law on territorial co-operation groupings (doc. CDLR 2006-17 of 27 April 2006). The wording of paragraph 7 is based on Article 11.3 of the Genevan Law of 14 November 2008 on transfrontier co-operation bodies (LOCT).



**Text of Protocol No. 3****Article 9 – Liabilities**

1. The ECG – or, if its assets are not sufficient, its members jointly – shall be liable with regard to third parties for its acts, including debts of whatever nature, even if those acts do not fall within its tasks.
4. If a member of the ECG has only limited liability in accordance with the national law to which it is subject, the other members may also limit their liability in the statutes.

### APPENDIX to Protocol No. 3

#### XXX. Financial liability of the ECG and its members (Article 9.1 and 9.4 of the Protocol)

1. The Grouping shall be bound to meet the cost of its debts.
2. If the Grouping is unable to meet its obligations of whatever nature, its members shall take on its debts. They shall not be jointly and severally liable in relation to third parties. The statutes shall determine the apportionment of the burden among the members. Otherwise, each member's share shall be set in proportion to their financial contribution.
3. Former members of the Grouping shall remain liable, in the same proportion, for payment of the debts arising from activities of the Grouping conducted when they were members, until the extinction of such debts.
4. If the liability of at least one member of the Grouping is limited or excluded by the national law governing it, the founding agreement may provide for the sharing of the subsidiary liability of all the members and limit the liability of the other members in the same proportion, subject to this being authorised by the domestic law governing the Grouping.
5. In this case, the Grouping shall cover the risks specific to its activities by:
  - a. taking out appropriate insurance policies; or
  - b. obtaining a guarantee from a bank or other financial institution established within national territory; or
  - c. benefiting from a facility provided as a guarantee by the state of \*\*\* or by any legal entity under \*\*\* public law.

#### **Explanatory note**

**Paragraph 1**, corresponds to Article 9.1 of Protocol No. 3 and to Article 12 of Regulation (EC) No. 1082/2006:

**Paragraph 2** provides that, insofar as the assets of a Grouping are insufficient to honour its commitments, each of its members is required to take on its share of them, such share being laid down in the statutes or, in the absence of specific provisions in the statutes, in proportion to its financial contribution. The wording is based on Article 9.3 of the Genevan Law of 14 November 2008 on transfrontier co-operation bodies (LOCT).

**Paragraph 3** concerns three specific cases: the withdrawal or exclusion of a member and the winding up of the Grouping. In all three cases, former members remain liable for payment of their share in the debts until the extinction thereof.

**Paragraphs 2, 4 and 5** take account of the amendments to Regulation (EC) 1082/2006 introduced by Regulation (EU) No. 1302/2013 regarding each member's share in the payment of the ECG's debts in the event of its default, the arrangements for sharing in the event of the liability of at least one of the members being limited or excluded by its national law, and the requirements in that case to include these arrangements in the founding agreement and to take out insurance for the liability of the ECG or provide for it to be covered by an appropriate financial guarantee.<sup>39</sup>

The wording of the proposals is principally based on Article 14.3 of the Karlsruhe Agreement or the Brussels Agreement and Article 12 of the Benelux Convention on transfrontier and interterritorial co-operation of 20 February 2014.

<sup>39</sup> See paragraphs 2 and 2a of Article 12 of Regulation (EC) 1082/2006 as amended by Regulation (EU) No. 1302/2013.

**Text of Protocol No. 3**

**Article 9 – Liabilities**

1. The ECG – or, if its assets are not sufficient, its members jointly – shall be liable with regard to third parties for its acts, including debts of whatever nature, even if those acts do not fall within its tasks.
2. The ECG shall be liable to its members for any breach of the law to which it may be subject.

### APPENDIX to Protocol No. 3

#### XXXI. Liability of the ECG (Article 9.1 and 9.2 of the Protocol)

1. The Grouping shall assume all the obligations deriving from its commitments.
2. The Grouping shall be liable to its members for any breaches of this law, the statutes or other laws to which it is subject.
3. The Grouping shall be liable with regard to third parties for the acts of its management bodies and staff, even where such acts do not fall within its tasks, provided that the said acts do not exceed the powers which \*\*\* law confers or authorises to be conferred on those bodies or staff.
4. Where the damage has been caused intentionally or as a consequence of the serious negligence of a member of staff or one or more members of a body of the Grouping, the Grouping shall be entitled, even following the termination of duties, to institute proceedings against the members of staff or members of that body, jointly or severally, as appropriate.

#### **Explanatory note**

**Paragraph 1**, which states the obvious in that "The Grouping shall assume all the obligations deriving from its commitments", repeats the rule whereby the ECG "shall be liable with regard to third parties for its acts" (Article 9.1 of Protocol No. 3).

**Paragraph 2** repeats the rule set forth in Article 9.2 of Protocol No. 3. It corresponds to Article 10.3 of Regulation (EC)No. 1082/2006 on the EGTC.

**Paragraph 3** clarifies and elaborates on the rule regarding the liability of the ECG vis-à-vis third parties contained in Protocol No. 3.

**Paragraph 4** proposes that the ECG, whose liability has been held liable as a result of a serious or intentional error by a member of staff or a member of a body of the Grouping, be entitled to institute proceedings against the persons at fault.

The wording of the provisions in this Section is based directly on Article 58 of the revised preliminary draft uniform law on territorial co-operation groupings (doc. CDLR 2006-17 of 27 April 2006) and, with regard to paragraph 3, on Article 9.2 of the Genevan law of 14 November 2008 on transfrontier co-operation bodies (LOCT).

**Text of Protocol No. 3**

**Article 9 – Liabilities**

3. The organs of the ECG shall be liable with regard to the ECG for any breach of law they have committed in the exercise of their functions.



**APPENDIX to Protocol No. 3****XXXII. Liability of the ECG's organs vis-à-vis the Grouping (Article 9.3 of the Protocol)**

1. The Chair, Vice-Chair or Vice-Chairs, members of the Board and the Director General shall be liable vis-à-vis the Grouping, jointly or severally, as appropriate, for any breach of this law, the statutes or other laws to which the Grouping is subject, committed in the exercise of their duties.
2. The question of their liability vis-à-vis the Grouping may be raised either by the Grouping itself, by the \*\*\* state or by the states to whose jurisdiction the foreign members of the Grouping are subject.

**Explanatory note**

**Paragraph 1** clarifies the rule set forth in Article 9.3 of Protocol No. 3.

**Paragraph 2** proposes that the states to whose jurisdiction the members of the ECG are subject also have the right to raise the question of the personal liability of the management bodies vis-à-vis the Grouping.

*The wording of the provisions in this Section is based directly on Article 59 of the revised preliminary draft uniform law on territorial co-operation groupings (doc. CDLR 2006-17 of 27 April 2006).*

**Text of Protocol No. 3****Article 10 – Dispute settlement**

1. In the event of a dispute between the ECG and its members, the competent courts shall be those of the State in which the ECG has its headquarters.
2. In the event of a dispute between the ECG and a third party, the competent courts shall be those of the state in which the third party effectively resides or, in the case of a legal person, the State in which its seat or headquarters is located, as long as these States are member States of the Council of Europe.
4. Third parties shall retain, vis-à-vis territorial communities or authorities on behalf of which the ECG performs certain tasks, all the rights they would enjoy if those tasks were not performed by the ECG.
5. In any case the rights of individuals and legal persons shall include the right to appeal before all competent organs and courts, including the right of access to services in their own language and the right of access to information.

### APPENDIX to Protocol No. 3

#### XXXIII. Judicial settlement of disputes (Article 10.1, 10.2, 10.4 and 10.5 of the Protocol)

1. In the event of a dispute between the Euroregional Co-operation Grouping and its members, members of management bodies or members of staff with regard to its activities, jurisdiction shall be determined by the domestic law of the state on whose territory the Grouping's headquarters is located. This rule shall be without prejudice to paragraph 4.
2. In the event of a dispute between a Euroregional Co-operation Grouping and a third party, the competent courts shall be those of the Council of Europe member state in which the third party has his or her primary residence, or in the case of a legal entity, the state in which one of its seat or headquarters is located.
3. Third parties shall retain, vis-à-vis the territorial community or authority on whose behalf the Grouping performs certain tasks in accordance with the provisions in Section XXVII, all the rights they would enjoy if those tasks were not performed by the Grouping. The competent courts shall be those in the state to whose jurisdiction the territorial community or authority on whose behalf the Grouping is performing the said tasks is subject.
4. Nothing in this law may be relied on to adversely affect the scope and exercise of the rights of appeal available under the domestic law of other states to natural persons subject to the jurisdiction of those states against public-law legal entities which are members of the Grouping, in respect of:
  - a) administrative decisions for implementation of the deliberations of the Grouping;
  - b) access to services in their own language; and
  - c) access to information.

#### **Explanatory note**

*Paragraphs 1 and 2 restate the rules laid down in Article 10.1 and 10.2 of Protocol No. 3. Paragraph 1 retains the rule of the jurisdiction of the courts of the state in which the ECG has its official headquarters in the event of a dispute between the Grouping and its members, subject to the reservations set out in paragraph 4. Paragraph 2, like Article 10.2 of the Protocol, assigns jurisdiction to the courts of the state in which the third party has his or her primary residence<sup>40</sup> or in which one of its seats or headquarters is located, provided that the state in question is a member of the Council of Europe. It does not specify the competent courts where the third party resides or operates, even in part, in a state which is not a member of the Council of Europe. In such cases, paragraph 2 of Section XXXIV imposes an obligation of arbitration.*

*It should be noted that these provisions do not preclude the application of other international treaties and European Union regulations and would apply to disputes in which a Euroregional Co-operation Grouping is a party. In particular, Regulation (UE) No. 1215/2012 of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, that replaces, from 10 January 2015, Regulation (EC) No. 44/2001 of 22 December 2000, could acknowledge the jurisdiction of the courts in a state other than that indicated in paragraphs 1 and 2 of this Section, for example the courts in a non-member state of the Council of Europe.*

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<sup>40</sup> The concept of "primary" residence is preferred here to that of "effective" residence as used by Article 10.2 of Protocol No. 3. All primary residences are of course effective, but not all effective residences are necessarily primary.

**Paragraph 3** refers to the provision laid down in Article 10.4 of Protocol No. 3. It refers to the mandate, concession or delegation of public services assigned to the ECG by one or more territorial communities or authorities which are members of the Grouping, as provided for under Section XXVI. In the event of a dispute arising from these activities, injured third parties can apply to the courts of the state to whose jurisdiction the territorial communities or authorities on behalf of whom the ECG has acted are subject. The wording is based on Article 61.3 of the revised preliminary draft uniform law on territorial co-operation groupings (doc. CDLR 2006-17 of 27 April 2006).

**Paragraph 4** gives effect to Article 10.5 of Protocol No. 3, circumscribing its application to the judicial rights of appeal guaranteed by the domestic law of the states to whose jurisdiction the foreign members of ECGs established under \*\*\* law are subject. Although Article 10.5 does not formally specify against whom the appeal may be submitted, nor the competent courts, it is possible to conclude from a comparison of Article 15.3 of Regulation (EC) No. 1082/2006 with this provision – which is worded in a more general way – that those under an obligation to uphold the rights protected by virtue of the Protocol are both the ECG and its members, and that the competent courts are those in the state in which those right-holders reside or have their operational units. The wording in this paragraph is based on Article 10.2 of the Geneva law of 14 November 2008 on transfrontier co-operation bodies (LOCT), combined with Article 15.3 of Regulation (EC) No. 1082/2006.



**Text of Protocol No. 3****Article 10 – Dispute settlement**

3. Notwithstanding the provisions of paragraph 2, the ECG, the territorial communities or authorities, other public or private law entities concerned and third parties may conclude an arbitration agreement. If a third party's residence, seat or headquarters is not located in the territory of a member State of the Council of Europe, the ECG shall conclude an arbitration agreement for all activities with this party.

### APPENDIX to Protocol No. 3

#### XXXIV. Arbitration (Article 10.3 of the Protocol)

1. Notwithstanding all contrary legal provisions, the Euroregional Co-operation Grouping and the territorial communities or authorities and other \*\*\* members of the Grouping may conclude an arbitration agreement with third parties.
2. The prior conclusion of an arbitration agreement is mandatory when the Grouping enters into contractual relations with a third party primarily residing or having its seat or headquarters in a state which is not a member of the Council of Europe. Notwithstanding the rule laid down in paragraph 2 of Section XXXIII, such an agreement excludes from the jurisdiction of the courts of the state in which the third party has his or her primary residence, or one of its seats or headquarters, any subsequent dispute between the Grouping and the third party with regard to the non-performance of their respective duties.

#### **Explanatory note**

*The aim of **paragraph 1** is to authorise arbitration between the ECG or its members and third parties, despite the frequently made prohibition for public-law entities to make use of this judicial remedy. It corresponds to the first provision of Article 10.3 of Protocol No. 3, while specifying that the members of the ECG entitled to conclude such arbitration agreements, are exclusively those, like the grouping itself, that are bound by the law in the legislating state.*

*The agreement may be, but does not have to be, concluded before the dispute arises.*

***Paragraph 2** of the current provision seeks to supplement paragraph 2 of Section XXXIII which assigns jurisdiction to the courts of the state in which the third party has his or her primary residence<sup>41</sup> or has a seat or headquarters only if that state is a member of the Council of Europe in conformity with article 10.2 of Protocol No. 3. Accordingly, the first provision lays down the requirement for the conclusion of a prior arbitration agreement in cases where the third party has neither his or her primary residence nor seats or headquarters in a Council of Europe member state, in accordance with the second provision of Article 10.3 of the Protocol.*

*The second provision of paragraph 2 of this Section precludes the jurisdiction of courts in the state in which the third party has his or her primary residence or in any state where another seat or headquarters of the third party is situated once the arbitration agreement is put in place with a view to resolving disputes relating to the non-performance of the respective duties of the ECG and the third party. This is the implicit, but clear, consequence of Article 10.3 of Protocol No. 3.*

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<sup>41</sup> As in Section XXXII, the concept of "primary" residence is preferred here to that of "effective" residence.

**Text of Protocol No. 3****Article 11 – Supervision, administrative and judicial review**

1. Decisions and acts of the ECG shall be subject to the same supervision and administrative and judicial review of the legality of acts of territorial communities or authorities as those required in the State in which the ECG has its headquarters.
2. The ECG shall comply with information requests made by the authorities of the States to which the territorial communities or authorities belong. The supervisory authorities of the Parties shall endeavour to establish means of appropriate co-ordination and information.
4. Where the ECG carries out any activity in contravention of the provisions on public policy, public security, public health or public morality of the States to which its members belong, or in contravention of the public interest of the said States, the competent authority or body of these States may prohibit that activity on its territory or require those members that fall under its jurisdiction to withdraw from the ECG unless the latter ceases the activity in question. Such prohibitions shall not constitute a means of arbitrary or disguised restriction on co-operation between the members. Review of the competent authority's or body's decision by a judicial authority shall be possible.



**APPENDIX to Protocol No. 3****XXXV. Administrative review of legality (Article 11.1, 11.2 and 11.4 of the Protocol)**

1. The acts and deliberations of a Euroregional Co-operation Grouping established under public law shall be subject to the same administrative review of legality as that which applies to the acts and deliberations of \*\*\* territorial communities or authorities. If the Grouping includes \*\*\* communities or authorities subject to different review rules, the administrative review of the acts and deliberations of the Grouping shall be carried out in accordance with the rules applicable to ... (to be specified by the legislating state).
2. The supervisory authority of such a Grouping shall also ensure protection of the interests of public-law legal entities, which are members of the Grouping and which are subject to the jurisdiction of other states.
3. The supervisory authority of such a Grouping and the competent authorities for supervising the various members of the Grouping shall provide all the information requested and inform each other of the measures they intend to take and the results of their review.
4. As an exception to the above, the statutes of a Euroregional Co-operation Grouping established under \*\*\* public law comprising several states or one state and one or more autonomous public communities or institutions vested with their own legislative power may provide that the acts and deliberations of the Grouping shall be subject to the supervision of an authority common to these states, communities or institutions. The common supervisory authority shall comprise representatives of the competent authorities for the supervision of the various members of the Grouping. It shall verify the compliance of the Groupings' decisions with \*\*\* law, the statutes and ensure that the interests of all legal entities which are members of the Grouping are protected. The procedure shall remain subject to \*\*\* law.
5. Any Euroregional Co-operation Grouping must comply with requests for information from the administrative authorities to whose supervision the foreign members of the Grouping are subject by the law of their respective state.
6. Where a Grouping carries out an activity contrary to public policy, public security, public health, public morality or the general interest of a state to whose jurisdiction one or more of its foreign members are subject, the competent authority of that state may prohibit that activity on its territory or notify the Grouping that it is opposed to the members which are subject to its supervision continuing to be part of the Grouping, unless the latter ceases the activity in question.
7. Where a grouping established under foreign law carries out on \*\*\* territory an activity contrary to public policy, public security, public health, public morality or the general interest, the competent \*\*\* authority<sup>42</sup> shall prohibit that activity or notify the Grouping that it is opposed to the \*\*\* members of the latter continuing to be part of it, unless the Grouping ceases the activity in question on \*\*\* territory. Such notification shall be duly substantiated.

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<sup>42</sup> Here, the competent national or regional administrative authority in the legislating state should be specified.

### **Explanatory note**

**Paragraphs 1 to 4** in this Section concern review of the legality of the activities of ECGs established under public law subject to the jurisdiction of the legislating state. **Paragraphs 5 and 6** make provision for the occasional supervision of all ECGs, established under either private or public law.

In accordance with Article 11.1 of Protocol No. 3, **paragraph 1** provides that the substance of and arrangements for the administrative review of public-law ECGs shall be the same as those for the administrative review of the acts and deliberations of \*\*\* territorial communities or authorities. The rule is more detailed than is provided for in Article 6.2 of the Additional Protocol of the Madrid Outline Convention, which states “[m]easures taken by a transfrontier co-operation body set up under an agreement shall be subject to the supervision provided for in the law of the state in which the body’s headquarters are located”. Nonetheless, the Grouping may comprise \*\*\* communities or authorities subject to different supervision rules, either because they belong to different categories, or because they are subject to the jurisdiction of different public institutions or communities with their own legislative power in the legislating state. In such cases it is suggested that the legislative body subject the administrative review of the acts and deliberations of the Grouping to its own rules, drawing on the principles inherent in the rules in force regarding the different categories of territorial communities or authorities subject to the jurisdiction of the state in which the Grouping’s headquarters is located.

**Paragraph 2** obliges the supervisory authority to take account of the interests of the foreign members of the Grouping. It reflects the concern expressed in Article 11.1 of Protocol No. 3, which merely restates a rule laid down in Article 6.2 of the Additional Protocol: “(...) although the interests of territorial communities or authorities in other states must also be respected.”

**Paragraph 3** provides for the exchange of information and consultation between the supervisory authority of a Grouping established under \*\*\* public law and the competent authorities for supervision of the members – both national and foreign – of this Grouping. It reflects a further concern expressed in Article 11.2 of Protocol No. 3, first stated in Article 6.2 of the Additional Protocol: “[t]he supervisory authorities of the Contracting Parties shall endeavour to establish means of appropriate co-ordination and information.”

The proposals appearing in **paragraph 4** are based on Article 55.3 of the revised preliminary draft uniform law on territorial co-operation groupings (doc. CDLR 2006-17 of 27 April 2006), and Article 13.2 of the Benelux Convention on transfrontier and interterritorial co-operation of 20 February 2014. They call for the establishment of a common administrative authority to supervise a public-law ECG of which at least two members have their own legislative power.

**Paragraph 5** obliges any ECG established under domestic law to comply with information requests made by the competent authorities for supervising the foreign members of this Grouping, as stipulated in Article 11.2 of Protocol No. 3. The same requirement is seen in Article 6.2 of the Additional Protocol: “The transfrontier co-operation body shall comply with information requests made by the authorities of the states to which the territorial communities or authorities belong.”

The proposals set out in **paragraphs 6 and 7** are based on Article 57 of the revised preliminary draft uniform law on territorial co-operation groupings (doc. CDLR 2006-17 of 27 April 2006).

**Paragraph 6** concerns cases where the authorities of the state to whose jurisdiction one or more foreign members of the ECG are subject prohibit on their territory those of the Grouping's activities which they regard as contrary to public policy or the general interest, or where they demand that those members cease to belong to the Grouping, in accordance with Article 11.4 of the Protocol.<sup>43</sup> Notification of this demand is deemed to be grounds for withdrawal under paragraph 3 of Section X.

**Paragraph 7**, which concerns ECGs established under foreign law, to a certain extent constitutes the corollary of paragraph 6. The jurisdiction of the legislating state vis-à-vis \*\*\* members of such ECGs can be justified by the fact that the activities deemed to be contrary to public policy or the general interest take place on its territory. This jurisdiction does not oblige the legislature of the state whose law primarily governs the ECGs to consider notification by the competent \*\*\* authority as a grounds for withdrawal.

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<sup>43</sup> This paraphrases Article 13 of Regulation (EC) No. 1082/2006 on the EGTC.

**Text of Protocol No. 3****Article 11 – Supervision, administrative and judicial review**

1. Decisions and acts of the ECG shall be subject to the same supervision and administrative and judicial review of the legality of acts of territorial communities or authorities as those required in the State in which the ECG has its headquarters.
  
5. Notwithstanding the rules on dissolution of the ECG under the present Protocol and the statutes, at the request of a competent authority with a legitimate interest, a competent court or the competent authority of a party where the ECG has its headquarters may order the ECG to be wound up if it finds that the ECG is acting outside the tasks entrusted to it. The competent court or authority may allow the ECG time to rectify the situation. If the ECG fails to do so within the time allowed, it may be declared wound up.

### APPENDIX to Protocol No. 3

#### XXXVI. Judicial review of legality (Article 11.1 and 11.5 of the Protocol)

- 1 At the request of the administrative or judicial authority responsible for supervision of the Grouping or at the request of the competent authority of a state to whose jurisdiction one or more foreign members of the Grouping are subject, the court specified by \*\*\* law shall declare that the founding agreement is null and void if it is inconsistent with the provisions of this law. Where rectification is possible, the relevant court shall allow time for such action to be taken. Nullity of the founding agreement shall entail its liquidation under the conditions laid down in Section XXIX.
- 2 The acts and deliberations of a public-law Euroregional Co-operation Grouping shall be subject to the same judicial review of legality as that applying to the acts and deliberations of \*\*\* territorial communities or authorities.
- 3 At the request of either of the authorities referred to in paragraph 1, the court specified by \*\*\* law shall order the winding up of the Grouping which acts contrary to the aim and purposes for which it was established and outside the confines of the tasks entrusted to it. Before issuing a final decision, the relevant court shall allow time for the situation to be remedied if such rectification is possible.
- 4 The competent authorities of all states to whose jurisdiction the members of the Grouping are subject shall be informed without delay of the court decision regarding nullity or ordering the winding up of the Grouping.

#### **Explanatory note**

*The proposals set out in **paragraphs 1 and 4** are based on Article 67 of the revised preliminary draft uniform law on territorial co-operation groupings (doc. CDLR 2006-17 of 27 April 2006).*

*The national ECG supervisory authority, which has the power to refer the matter to the competent court within the meaning of **paragraph 1** will be an administrative authority if the Grouping is a public-law entity; it will be a judicial authority (the public prosecution service) if the Grouping is a private-law entity. Under the same paragraph, the competent foreign authority will be the one responsible for the review of legality within a state to whose jurisdiction one or more foreign members of the Grouping are subject. As the agreement establishing the ECG is declared null and void retroactively by the court judgment, there is no need to wind up the Grouping, but simply to liquidate it (see paragraph 5 of Section XXIX).*

***Paragraph 2** reiterates the rule laid down in Article 11.1 of Protocol No. 3, but may apply only to public-law ECGs.*

***Paragraph 3** reformulates the rule laid down in Article 11.5 of Protocol No. 3 and Article 14 of Regulation (EC) No. 1082/2006 on the EGTC. In the case in question, the relevant court shall order the liquidation of the Grouping (see paragraph 3 of Section XXIX).*

**Text of Protocol No. 3****Article 12 – Financial audit**

1. The management and budget implementation of the ECG shall be subject to financial audit in accordance with the national law of the Party in which it has its headquarters. This State shall inform the other States whose territorial communities or authorities are members of the ECG without delay of the results of the audit and of the measures taken concerning the ECG.
2. Any other State implicated either by its direct participation in the ECG or through the participation of its territorial communities or authorities or other legal persons listed in Article 3, paragraph 1, may, only on its territory and in accordance with the national law applicable, carry out a financial audit of the ECG. The ECG and the States of the members shall be informed in advance.

### APPENDIX to Protocol No. 3

#### XXXVII. External financial supervision (Article 12 of the Protocol)

1. The Grouping's balance sheet and profit and loss account shall be certified by auditors independent from the members comprising the Grouping, in accordance with the rules applicable to the external financial supervision of legal entities established under the same laws as the Grouping and with internationally accepted audit standards.
2. The audited accounts shall be forwarded to the supervisory authorities of each member of the Grouping. The management bodies of the Grouping shall provide any additional information required for supervision by both the \*\*\* and foreign competent authorities.
3. If the \*\*\* state is a member of a Grouping established under foreign law, it may arrange for external financial supervision of the activities of this Grouping on national territory, in accordance with \*\*\* rules in this area. This shall also apply to the supervisory authority to which any \*\*\* member of this Grouping is subject. The results of the audit shall be forwarded to the competent authorities in the foreign state upon the latter's request.
4. The supervisory authority of a \*\*\* public-law Grouping shall exchange with the foreign states that are members of the Grouping or to whose jurisdiction the foreign members of the Grouping are subject the necessary information for the financial supervision of the Grouping's activities on the territory of those states.

#### **Explanatory note**

**Paragraph 1** in this Section provides for the mandatory external supervision of the financial management of the ECG subject to the legislation of the state in which the Grouping's headquarters is located, in accordance with Article 12.1 of Protocol No. 3. This supervision relates to the balance sheet and profit and loss account. Where applicable, the legislation which is declared to be applicable must comply with "internationally accepted audit standards", to quote the expression used in Article 6.3 of Regulation (EC) No. 1082/2006 on the EGTC.

As Article 12.1 also requires all other interested states to be informed of the results of the audit, **paragraph 2** obliges all ECGs to forward the audited accounts to the supervisory authorities of each member of the Grouping. The wording of this paragraph is taken in part from Article 6.5 of the Genevan law of 14 November 2008 on transfrontier co-operation bodies (LOCT).

**Paragraph 3** is intended to facilitate the application of Article 12.2 of Protocol No. 3, which provides that any interested state may arrange on its territory for financial supervision of the activities of an ECG established under legislation which is not its own. It applies to a Grouping established under foreign law whose members include the legislating state or legal entities subject to its own domestic law. It is suggested that the financial supervision of the activities of this Grouping on the national territory can be carried out either at the request of the legislating state itself, or at the request of the supervisory authority of any member subject to the jurisdiction of that state. The results of the audit must be forwarded to the competent foreign authority for supervision of the ECG. It should be noted that this obligation cannot be extended to private-law ECGs which, in principle, are not subject to administrative review by any authority likely to request such information.

Lastly, **paragraph 4** refers to the financial supervision which a foreign state may carry out on its territory in respect of members of an ECG established under \*\*\* law subject to the jurisdiction of that state. This is not a matter which falls within the competence of the legislating state; it is for this reason that the proposed wording in this paragraph merely states that the supervisory authority of a GEC established under \*\*\* public law must obtain the appropriate information from the competent authorities of the other interested states.<sup>44</sup>

<sup>44</sup> This proposal is partly based on Article 6.2 of Regulation (EC) No. 1082/2006 on the EGTC, which authorises the states concerned to make arrangements for auditing, on their territory, the activities of an EGTC established under foreign law, with the assistance of the state where it has its headquarters, where this is provided for under the national legislation of those states.

**Text of Protocol No. 3**

**Article 15 – Applicability of other treaties**

This Protocol shall not affect the applicability of treaties existing between the Parties in matters of transfrontier or interterritorial co-operation or the ability of the Parties to conclude new treaties on the subject if they so wish.



**APPENDIX to Protocol No. 3****XXXVIII. Applicability of existing treaty rules (Article 15 of the Protocol)**

The existence and the powers and responsibilities of bodies under \*\*\* law established in accordance with treaties negotiated by \*\*\* in the field of transfrontier or territorial co-operation shall be unaffected by this law.

***Explanatory note***

*The provision is based on Article 68 of the revised preliminary draft uniform law on territorial co-operation groupings (doc. CDLR (2006) 17 of 27 April 2006). Its aim is to ensure that the legal rules established on the one hand by Protocol No. 3 and on the other by treaties negotiated in this field with other States Parties to the Protocol can co-exist.*

**Text of Protocol No. 3****Article 16 – Scope of Application**

1. Each State shall, in a declaration deposited with the Secretary General of the Council of Europe at the time of ratification, acceptance, approval or accession, designate the categories of territorial communities or authorities and legal persons mentioned under Article 3, paragraph 1, which it excludes from the scope of this Protocol.

**APPENDIX to Protocol No. 3****XXXIX. Exclusion from the scope of application (Article 16.1 of the Protocol)**

This law shall not apply to the following categories of territorial communities or authorities [to be specified].

Nor is it applicable to the following categories of legal persons, governed by \*\*\* law: ... [to be specified].

***Explanatory note***

*Under paragraph 1 of Article 16 of the Protocol, each state that envisages excluding one or more categories of territorial communities or authorities or other legal entities from the scope of application of the Protocol is required to designate them when it deposits its instrument of ratification, acceptance, approval or accession. Ideally, the declaration deposited with the Secretary General of the Council of Europe to this effect should be the subject of a prior decision by the legislative body of that state, in particular to enable the scope of Sections II and V to be clearly delimited. If a State Party subsequently decides to modify this list, this too should preferably be subject to a prior decision of the legislative body of that state.*

**Text of Protocol No. 3**

**Article 18 – Terms and definitions**

The terms and definitions used in this Protocol have the same meaning and purpose as the same terms and definitions given in the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities, its Additional Protocol and Protocol No. 2.

### APPENDIX to Protocol No. 3

#### XL. Terms and definitions (Article 18 of the Protocol)

- 1 For the purposes of this law, the following definitions shall apply:
  - “territorial communities or authorities”: public communities, institutions or authorities exercising local and regional functions and regarded as such under the domestic law of the state to whose jurisdiction they are subject, and Groupings of such public communities, institutions or authorities within the jurisdiction of the same state; autonomous public communities or institutions vested with their own legislative power under the law of the state to whose jurisdiction they are subject shall also be regarded as “territorial communities or authorities”;
  - “transfrontier co-operation”: any concerted action designed to promote, support and develop, for the benefit of the local populations, relations between territorial communities or authorities located in adjoining areas within the jurisdiction of two or more states, including the conclusion of agreements with the territorial communities or authorities of other states;
  - “interterritorial co-operation”: any concerted action designed to promote, establish and develop, for the benefit of the local populations, relations between territorial communities or authorities within the jurisdiction of two or more states, other than relations of transfrontier co-operation between neighbouring authorities, including the conclusion of agreements with the territorial communities or authorities of other states;
  - “transfrontier co-operation agreement”: any agreement coming under one or more national legal systems, concluded by territorial communities or authorities located in adjoining areas within the jurisdiction of different states, or by ECGs with these communities or authorities in their common fields of competence, in conformity with each state’s own constitutional provisions, in accordance with the applicable national laws and according to the procedures laid down therein;
  - “interterritorial co-operation agreement”: any agreement coming under one or more national legal systems, concluded by territorial communities or authorities located in non-adjoining areas within the jurisdiction of different states or by ECGs with these communities or authorities in their common fields of competence, in conformity with each state’s own constitutional provisions, in accordance with the applicable national laws and according to the procedures laid down therein;
  - “Protocol No. 3”: the protocol No. 3 to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities concerning Euroregional Co-operation Groupings (ECGs) opened for signature in Utrecht on 16 November 2009.
  - “Headquarters”: the premises of an ECG (or one of its premises) constituting its registered office and indicated in its statutes.
2. Unless expressly provided otherwise in this law, the term “Grouping” shall mean a Euroregional Co-operation Grouping (ECG) under \*\*\* law.

**Explanatory note**

Since Protocol No. 3 has been opened for signature by states which have not signed the Additional Protocol of 9 November 1995 to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities nor Protocol No. 2 concerning interterritorial co-operation of 5 May 1998, it was deemed appropriate to reproduce, in a systematic manner, the definitions given by the Outline Convention and its three protocols and thereby to enable these concepts to be expressly introduced in domestic law.

In the first bullet point of **paragraph 1**, the generic term “institutions” has been added to the public communities or authorities exercising local or regional functions so that the term “territorial communities or authorities” also encompasses public institutions with limited territorial competence, Groupings of territorial communities and other public-law entities. The term “authorities exercising local or regional functions” is more a reference to the organs of public-law legal entities with limited territorial competence.

In accordance with Article 16.2 of Protocol No. 3, autonomous public communities or institutions vested with their own legislative power are also regarded as “territorial communities or authorities.”

By virtue of the definitions of transfrontier co-operation agreements and interterritorial co-operation agreements given in this Section, written agreements establishing an ECG and laying down its statutes, as an integral part of the agreement in question, can also qualify as such agreements. Each contracting territorial community or authority’s capacity to enter into such agreements is determined by the constitutional and legal provisions of its national law.

The term “headquarters” shall mean the sole or main head office of any legal entity provided it is specified in that entity’s statutes. It is not imperative for this to be where the ECG’s central administrative offices are located.

**Paragraph 2** implies that the only ECGs for which a State Party to Protocol No. 3 may draw up a detailed statute in accordance with this Appendix, are those governed by the law of that state. As a result of the principle set out in Article 2 of the Protocol, such groupings must have their official headquarters in the territory of that state.

The jurisdiction of the legislating states vis-à-vis these ECGs is also determined by the \*\*\* nationality of the territorial communities or authorities which are members thereof, but it may also apply to the participation of foreign territorial communities or authorities, specifically or in a manner similar to national territorial communities or authorities (see Sections II.2, V.1 and 3, VII.4, XVI, XVII.4, XXIII.1, 3 to 6, XXIV.2, XXV.1 and 2, XXVII, XXVIII.2, XXX, XXXIII. 1 and 4)

Furthermore, the jurisdiction of the legislating state also extends to the activities of ECGS established under foreign law on \*\*\* territory, where the legislature of the state to whose jurisdiction this territory is subject so decides (see Sections XXIV, XXXV and XXXVII.3).

The proposals in the Appendix applying to all ECGs, regardless of the national law which governs them, should, if adopted by a legislature, be regarded as national rules of substantive private international law (see Sections XXIV.3 and XXVI.2).

### APPENDIX to Protocol No. 3

#### **XLI. Transfer of headquarters to the territory of another State Party to the Protocol (not mentioned in the Protocol)**

- 1 Headquarters may be transferred to the territory of another state whose territorial communities or authorities are members of the Grouping. The transfer shall not give rise to the winding up of the legal entity. It shall transform the Grouping, without any break in continuity or change in purpose, into a Euroregional Co-operation Grouping, whose personality shall thereafter be governed by the national law of the state to which its headquarters has been transferred.
- 2 The law of the state to which the headquarters has been transferred shall nonetheless apply without prejudice to the \*\*\* rules of public policy, which shall remain applicable to the Grouping.
- 3 The provision in paragraph 2 of Section XXII shall be applicable to the agreement recording the transfer of the headquarters.
- 4 The transfer of a Grouping's headquarters and the agreement recording the transfer and the consequent amendment of the founding agreement and the statutes shall be disclosed in the manner provided for by the legislation applying to legal entities established under the same laws as the Grouping.
- 5 A Grouping against which winding up, liquidation or similar proceedings have been brought may not transfer its headquarters.
- 6 A Grouping which has transferred its headquarters to another state shall be considered, for the purposes of any dispute arising prior to the transfer, as having its headquarters on the national territory of the state in which it was registered prior to transfer, even if an action is brought against the Grouping after the transfer.

#### **Explanatory note**

*The transfer of the headquarters of an organisation to the territory of another state without the winding up of the pre-existing legal entity is possible in respect of European Economic Interest Groupings (EEIGs),<sup>45</sup> European Companies (ECs)<sup>46</sup> and European Co-operative Societies (ECSs).<sup>47</sup> It therefore seemed beneficial to provide for this possibility for ECGs in the Appendix to Protocol No. 3.*

*The consequence of transferring an ECG's headquarters to the territory of another state under whose law certain foreign members are established is to change the national law which mainly applies to the Grouping. The point is that a change of this kind constitutes an amendment to the founding agreement - and indeed a substantial amendment for public-law ECGs (see Article 4.2 of Protocol No. 3). Under Article 6 of the Protocol, amendments of this sort must follow "the same procedures and form" as for the adoption of the original agreement (requiring unanimous approval).*

*The provisions in this Section are based on Article 8 of Regulation (EC) No. 2157/2001 of 8 October 2001 on the Statute for a European company, Article 7 of Regulation (EC) No. 1435/2003 of 22 July 2003 on the Statute for a European Co-operative Society, Articles 10 and 11 of the revised preliminary draft uniform law on territorial co-operation groupings (doc. CDLR (2006) 17 of 27 April 2006) and Article 15 of the Benelux Convention on transfrontier and interterritorial co-operation of 20 February 2014.*

<sup>45</sup> See Article 14 of Regulation No. 2137/85 of 25 July 1985 on the European Economic Interest Grouping (EEIG).

<sup>46</sup> See Article 8 of Regulation No. 2157/2001 of 8 October 2001 on the Statute for a European Company (EC).

<sup>47</sup> See article 7 of Regulation No. 1435/2003 of 22 July 2003 on the Statute for a European Co-operative Society (ECS).

*The proposal in this Section contains just one exception to the change of applicable national law: compliance with the legislation on public policy in the legislating state on whose territory the ECG headquarters was formerly located. These provisions (for example, the rules governing access to public documents or the use of official languages in debates, minutes and official documents) should be upheld by the Grouping even after its transfer.*



**APPENDIX to Protocol No. 3****XLII. Conversion of an existing transfrontier co-operation body into an ECG (not mentioned in the Protocol)**

1. The conversion of a public or private-law body having legal personality under \*\*\* law and including territorial communities or authorities subject to the jurisdiction of different states into a Euroregional Co-operation Grouping shall give rise neither to the winding-up of the existing body nor to the creation of a new legal entity.
2. The headquarters may not be transferred from one state to another in accordance with Section XLI above on the occasion of the conversion.
3. The management or administrative organ of the body in question shall draw up a conversion proposal and a report explaining and justifying the legal aspects of the conversion and indicating the implications for members and staff of adopting the form of a Euroregional Co-operation Grouping.
4. The conversion proposal shall be publicised in accordance with the legislation applying to the category of legal entity to which the body belongs, at least one month before the date of the meeting of the deliberative assembly called to take a decision on the conversion.
5. The deliberative assembly of the body in question shall approve the conversion proposal and the statutes of the Euroregional Co-operation Grouping.
6. The conversion of the body in question and the resulting new statutes shall be published in the manner provided for by the legislation applying to the category of legal entity to which the Grouping belongs following the conversion.
7. The rights and obligations of the body to be converted at the date on which these formalities are completed shall be transferred automatically to the Euroregional Co-operation Grouping.

**Explanatory note**

*The provisions in this Section are based on Article 37 of Regulation (EC) No. 2157/2001 of 8 October 2001 on the Statute for a European Company, Article 35 of Regulation (EC) No. 1435/2003 of 22 July 2003 on the Statute for a European Co-operative Society and Article 18 of the revised preliminary draft uniform law on territorial co-operation groupings (doc. CDLR (2006) 17 of 27 April 2006).*