



Protocol No. 3 to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities concerning Euroregional Co-operation Groupings (ECGs)

Utrecht, 16.XI.2009

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Preamble

The member States of the Council of Europe, signatory to this Protocol No. 3 to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (ETS No. 106),

Wishing to facilitate co-operation between territorial communities or authorities belonging to different States in keeping with States' political and administrative structures and international commitments;

Being resolved to supplement for this purpose the legal framework provided by the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities and its Protocols of 9 November 1995 (ETS No. 159) and 5 May 1998 (ETS No. 169);

Considering the Declaration of the Third Summit of the Heads of State and Government of the Council of Europe (Warsaw, 16 and 17 May 2005) and the Action Plan adopted at the Summit, which foresees the development of "transfrontier co-operation, as necessary";

Aware of the difference between States in terms of the political and administrative organisation of territorial communities and authorities;

Wishing to forestall the difficulties that could arise from the diversity of national law in the field of transfrontier or interterritorial co-operation;

Wishing to meet the needs of those member States that are resolved to harmonise further their national law;

Aware that for a number of member States framework legislation may be sufficient, in particular having regard to the current state of their national law, which includes the relevant provisions of European Community law as adopted by the competent institutions of the European Union,

Have agreed as follows:

Part I

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 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.

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.

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.

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.

Article 4 – Establishment of the ECG

1 The ECG shall be established by a written agreement between its founding members.

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.

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."

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.

5 Authorisation may be refused if membership of the ECG would violate this Protocol or provisions of national law, including the powers and responsibilities of prospective members, or if membership is not justified for reasons of public interest or of public policy of the party concerned. In such a case, the Party shall give a statement of its reasons for withholding approval.

6 Each State may, in a declaration deposited with the instrument of ratification or at any subsequent time, waive the requirement of information, notification or authorisation referred to in paragraph 4, in general, or for specific categories of territorial communities or authorities or for specific types of co-operation.

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.

8 The territorial communities or authorities, members of the ECG, shall inform their national authorities that the ECG has been lawfully established.

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.

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.

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.

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.

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.

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.

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 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.

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.

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.

5 A State on whose territory it is intended to set up the headquarters of an ECG may prohibit the registration or publication of notice of an ECG if one or more of its prospective members has limited liability.

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.

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.

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.

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.

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.

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.

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.

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.

Part II

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.

Article 14 – Information

- 1 The Parties shall inform their territorial communities or authorities of the measures taken to implement this Protocol.
- 2 The Parties shall notify the Secretary General of the Council of Europe of measures taken to implement this Protocol.
- 3 The Parties shall forward to the Secretary General of the Council of Europe all appropriate information on ECGs set up pursuant to this Protocol.

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.

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.
- 2 For the purpose of applying this Protocol, autonomous public communities or authorities vested with their own legislative power under the national law of the Party in whose jurisdiction they are situated shall be considered as "territorial communities or authorities", without prejudice to the provisions of paragraph 1.
- 3 Any declaration made under paragraph 1 may be altered by a notification addressed to the Secretary General. Such notification shall become effective on the day of its receipt.

Article 17 – Reservations

No reservations in respect of this Protocol shall be permitted.

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.

Part III

Article 19 – Signature and entry into force of the Protocol

1 This Protocol shall be open for signature by the States signatory to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities. It shall be subject to ratification, acceptance or approval. A Signatory to this Protocol may not ratify, accept or approve it unless it has previously or simultaneously ratified, accepted or approved the European Outline Convention. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

2 This Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date of deposit of the fourth instrument of ratification, acceptance or approval.

3 In respect of any Signatory State which subsequently expresses its agreement to be bound by it, the Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date of deposit of the instrument of ratification, acceptance or approval.

Article 20 – Accession

1 After the entry into force of this Protocol, any State which has acceded to the European Outline Convention may also accede to this Protocol.

2 Accession shall be effected by the deposit with the Secretary General of the Council of Europe of an instrument of accession, which shall take effect on the first day of the month following the expiration of a period of three months after the date of its deposit.

Article 21 – Denunciation

1 Any Party may, at any time, denounce this Protocol by means of a notification addressed to the Secretary General of the Council of Europe. Such denunciation shall become effective on the first day of the month following the expiration of a period of six months after the date of receipt of such notification by the Secretary General.

2 If this Protocol is denounced, the legal personality and capacity of the ECGs established prior to the denunciation shall be unaffected.

Article 22 – Notifications

The Secretary General of the Council of Europe shall notify the member States of the Council of Europe and any other State which has acceded to this Protocol of:

- a any signature;

- b the deposit of any instrument of ratification, acceptance, approval or accession;
- c any date of entry into force of this Protocol in accordance with Articles 19 and 20;
- d any domestic legislation implementing the provisions of this Protocol pursuant to Article 13, paragraph 1;
- e the approval of the appendix, or parts thereof, by the Committee of Ministers of the Council of Europe;
- f any declaration received in application of the provisions of Article 4, paragraph 6, Article 13, paragraph 4, and of Article 16, paragraphs 1 and 3, or any notification of modification of such declarations;
- g any other act, notification or communication relating to this Protocol.

In witness thereof the undersigned, being duly authorised thereto, have signed this Protocol.

Done at Utrecht, on the 16th day of November 2009, in English and French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe and to any State which has acceded to this Protocol.