



Parliamentary Assembly
Assemblée parlementaire

<https://pace.coe.int>

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

Doc. 11936

04 June 2009

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

Request for an opinion

Committee of Ministers



Letter from the Chairperson of the Ministers' Deputies to the President of the Assembly dated 27 May 2009

Dear President,

At the 1058th meeting of the Ministers' Deputies (27 May 2009, items 2.3.b. and c.), the Committee of Ministers decided to invite the Parliamentary Assembly to give an opinion on the draft additional Protocol to the European Charter of Local Self-Government on the Right to Participate in the Affairs of a Local Authority (document CM (2009) 76)¹, and on the draft Protocol No. 3 to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities concerning Euroregional Co-operation Groupings (ECGs) (document CM (2009) 77) during its forthcoming part-session in June 2009, under the urgent procedure provided for in the Rule 50 of the Rules of Procedure of the Assembly.

The request to resort to this urgent procedure is made in order to allow for the draft Protocols to be opened for signature on the occasion of the 16th Session of the Conference of Ministers responsible for Local and Regional Authorities (Utrecht, the Netherlands, 16-17 November 2009)

I enclose a copy of the two draft Protocols.

I am confident that an early opinion of the Assembly will greatly assist the Committee of Ministers in the finalisation of these texts.

Yours sincerely,

(signed) Meta BOLE, Chairperson of the Ministers' Deputies

Mr Lluís Maria de Puig, President of the Parliamentary Assembly of the Council of Europe

Strasbourg

1. See [Doc. 11935](#)

Draft Protocol No. 3 to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities concerning Euroregional co-operation groupings (ECGs)²

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.

2. See document CM(2009)77 of the Committee of Ministers (5 May 2009). This document was declassified at the 1058th meeting of the Ministers' Deputies (27 May 2009).

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 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 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 Article 19, paragraph 2;
- 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 16, paragraphs 1 and 3, and of Article 13, paragraph 4, 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.... on..., 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.

Appendix – Draft explanatory report

The Third Protocol was drawn up within the Council of Europe by the European Committee for Local and Regional Democracy (CDLR). It was opened to signature by the Parties to the European Outline Convention on Transfrontier Co-operation on 2009.

The text of the explanatory report prepared on the basis of the Committee's discussions and submitted to the Committee of Ministers of the Council of Europe does not constitute an instrument providing an authoritative interpretation of the text of the Third Protocol, although it may facilitate the understanding of its provisions.

General

The development of transfrontier co-operation between territorial communities or authorities has been a constant priority for the Council of Europe. Its main contribution to the definition of the legal framework for this co-operation has been the European Outline Convention on transfrontier co-operation between territorial communities or authorities (the Madrid Convention) of 1980, followed by two protocols adopted respectively on 9 November 1995 and 5 May 1998.

These three main legal instruments have been supplemented by a number of recommendations adopted by the Committee of Ministers, in particular Recommendation Rec(2005)2 on good practices in and reducing obstacles to transfrontier and interterritorial cooperation between territorial communities or authorities.

Across Europe, the one area where most developments have been recorded since the 1980s, is the establishment of groupings of territorial communities or authorities – often self-labelled “Euroregions” – that aim at fostering mutual information, co-ordination of activities and direct action, depending on means and circumstances, between the members. The proliferation of “Euroregions” in most if not all European states and across Europe’s multiple borders has prompted requests for the harmonisation of the rules applicable to them. The legal status of these groupings varies widely from state to state and they enjoy no recognition at European level.

The European ministers responsible for local and regional government, meeting in Budapest on 24-25 February 2005, acknowledged the need for “a clear and effective legal framework for institutionalised co-operation between territorial communities or authorities (euro-regions)” (Agenda for Delivering good local and regional governance, “Budapest Agenda”). The Heads of state and government of the member states of the Council of Europe, meeting in Warsaw on 16-17 May 2005, decided “to develop further transfrontier co-operation, as necessary, and standards of democracy and good governance, including proper functioning of our civil services”. At their subsequent session (Valencia, 15-16 October 2007) the European ministers confirmed the goal of establishing a “clear and effective legal framework for institutionalised co-operation” and agreed to “continue the work engaged in the Council of Europe on a draft Protocol to the Madrid Outline Convention on Euroregional co-operation Groupings”.

The work on a draft third protocol started in 2004 in the Committee of experts on transfrontier co-operation (LR-CT) under the authority of the European Committee on Local and Regional Democracy (CDLR). The initial objective was the drawing up of a convention containing a “uniform law” on the legal status of transfrontier and interterritorial co-operation bodies. After the European Community started working on a regulation on the legal status of crossborder co-operation bodies (Commission proposal of 14 July 2004, to become Regulation (EC) No 1082/2006 of the European Parliament and of the Council of 5 July 2006 on a European Grouping of territorial co-operation (EGCT)), the work was reoriented towards the drafting of a third protocol to the Madrid Convention, that would provide the core provisions for the establishment and functioning of transfrontier and interterritorial co-operation bodies while at the same time being fully compatible with the EC Regulation.

This work was conducted in the LR-CT committee and its successor committee, the LR-IC (Committee of experts on local and regional institutions and co-operation). The European Committee on Local and Regional Democracy approved the draft third protocol on 24 April 2009. The Committee of Ministers of the Council of Europe adopted the text of the protocol on ... and agreed to open it for signature and ratification on the occasion of the 16th session of the Council of Europe conference of ministers responsible for local and regional government, meeting in Utrecht (The Netherlands), on 16-17 November 2009.

The third protocol

If the Madrid Convention and its Additional protocol have cleared the way to the establishment of fruitful forms of dialogue and co-operation between territorial communities or authorities across two or more borders, the structured co-operation between the same territorial entities is faced with huge difficulties. Crossborder co-operation between member states of the Council of Europe, be it at interstate level or at the level of territorial communities or authorities, is still hampered by a number of factors related to the differences in the political systems, functions and powers of territorial communities or authorities, legal traditions, languages, etc.

The simple solution offered by the Additional protocol consists of enabling the establishment of transfrontier co-operation bodies with or without legal personality, and in the latter case, linking the legal personality to the law applicable in the headquarter state (article 4, paragraph 1). Accordingly, the nature and extent of the legal personality of the body in question may vary considerably depending on the law of the headquarter state.

The third protocol provides a solution to the situation arising from this wide variety of situations, through the provision of “hard core” rules on the establishment, membership, operations and responsibilities of the groupings, thus enabling the establishment of ECGs that, while still subject to the law of the headquarter state, have nevertheless in common an “harmonised” set of governing rules.

This can only enhance the legal security of the entities establishing the ECG and of the parties that enter into any legal relationship with it.

The existing transfrontier and interterritorial co-operation bodies are not required to transform themselves into the “new” ECG. The bodies that already exist may continue to operate under the existing arrangements.

Territorial communities or authorities and the other entities concerned may also use the provisions of Regulation (EC) 1082/2006 in order to establish a European Grouping of Territorial Co-operation. The two bodies do not exclude each other. However, prospective members will choose, in view of the objectives of their co-operation and the means at their disposal, which of the two instruments may accommodate their expectations and goals adequately.

In order for the basic requirements of the protocol to be fully met, the Parties may have to adjust, review or adopt implementing legislation or provisions. In order to facilitate this task, the third protocol – following the example of the Madrid Outline Convention – foresees the establishment of model legislation that the Parties – but also any member state wishing to become a Party to the protocol – may adopt as such or reformulate according to their legal traditions. These provisions will be drafted by the European Committee on Local and Regional Democracy (CDLR) and approved by the Committee of Ministers before they are appended to the third protocol.

In conclusion, the third protocol constitutes a further step towards the simplification of the procedures enabling the creation of effective transfrontier co-operation bodies. Experience will show whether the provisions of this protocol meet the needs of territorial communities or authorities.

Article 1

The article is broadly drafted to ensure a maximum flexibility in co-operation, while limiting co-operation from two important aspects: firstly it is made clear from the very beginning that this protocol does not create new fields of competences. Local and regional authorities will always have their own spheres of competences defined by the constitutional and legal order of their member state and co-operation is thus limited to these spheres of competences. Secondly, since co-operation in a legal form also requires agreement-making powers, the limitation further guarantees that no additional agreement-making powers are conferred on local or regional communities or authorities under this Protocol.

The ECG must be established on the territory of a Council of Europe member state which is also a Party to the Protocol. Its membership shall therefore include entities that belong to Parties, subject to the provision of Article 3, paragraph 2.

The term “national law” used throughout the text and comments follows the same terminology which is already used by the Additional Protocol and Protocol No. 2. National law covers the entire constitutional and legal system of the respective Council of Europe member state, i.e. including not only the law created by the national, regional or local authorities (and the subsequent executive provisions: regulations, decrees, etc.), but also Community law if the state in question is a member state of the European Union. Moreover, it is made clear from the very beginning that an ECG can only be established in a member state of the Council of Europe, Party to the Protocol.

The name “Euroregional Co-operation Grouping” (ECG) tries to reflect the fact that local and regional communities and authorities established on a territorial basis and other public or private law entities as specified in more detail under Article 3 that participate in transfrontier and interregional co-operation intend to create sustainable networks and not new territorial entities.

Article 2

For the sake of legal certainty and simplicity, paragraph 1 provides that the legal personality of the ECG is obligatory, in contrast to the provision in this regard of the Additional Protocol (Article 3). Secondly, the law applicable to the agreement and to the actions of the ECG shall be the law of the state in which the ECG has its headquarters. However, there are several instances where the law of other states is also applicable as can be seen from Article 1, paragraph 2; Article 7, paragraphs 1, 2 and 4 (with regard to restrictions); Article 4, paragraphs 7 and 9, Article 9, paragraphs 2 and 3 (with regard to liabilities); Article 10, paragraph 2 (on dispute settlement); Article 11, paragraph 3 (on administrative and judicial review); Article 12, paragraph 2 (on auditing) and Part II on implementing provisions.

Paragraph 2 endows the ECG with the most extensive legal capacity available to legal persons in the member states where it is established. This capacity may be that of the legal persons mentioned under Article 3, paragraph 1, the choice being left to the members when establishing the ECG.

Paragraph 3 makes clear that the members shall choose the type of legal entity that suits their needs, having regard to the solutions available in the legal order of the headquarter state.

Paragraph 4 establishes the principle of budgetary autonomy and paragraph 5 enumerates in a non-exhaustive list other legal capacities necessary for the proper functioning of a body with legal personality without excluding the possibilities which might follow from the Appendix.

Article 3

Paragraph 1 defines the possible members. ECGs are primarily established by and for territorial communities or authorities of the Parties. However, under this provision member states themselves may become members if one or more of their territorial communities or authorities are members.

The other legal persons listed under paragraph 1 of this Article entitled to be members include those created specifically for goals of general interest, but not industrial or commercial goals, as long as 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

Paragraph 2 must be seen in the form of an “opening clause” under which territorial communities or authorities from non-Parties to this Protocol may take part in founding or become members of an ECG.

For this to happen, these authorities must belong to a State that has a frontier with a Party to the Protocol which is or will become the headquarter state for the ECG and that State must have concluded an agreement (treaty) with that Party.

This agreement would only make the accession of these new members envisageable.

The words “without prejudice to the provisions of this Protocol” ensure that the agreement concluded between the non-Party State and the State in which the ECG has its headquarters respect and protect the provisions of the Third Protocol, and therefore the (possible) other States whose territorial communities or authorities are members of this ECG.

With regard to paragraph 3, it has to be taken into consideration that Council of Europe legal instruments foresee territorial and functional cooperation by territorial communities or authorities as their main purpose since they carry out tasks in the general interest of their populations. However, other legal persons pursuing goals of general interest may be members. In order to avoid the risk of these special interest organisations overruling territorial communities or authorities in the policy development and decision-making processes of the respective ECG, paragraph 3 makes it clear that territorial communities or authorities of the Parties must retain the majority of the voting rights in an ECG and therefore its control.

Article 4

Under paragraph 1, an ECG must be established by the written agreement of its founding members thereby implying unanimity.

Paragraph 2 constitutes a guarantee that prospective members will comply with all necessary procedures and requirements in their respective legal system, thus making sure that when they join the ECG they are fully authorised to do so.

Under paragraph 3, the agreement must specify the essential and therefore mandatory characteristics of the ECG, namely the list of members, name, headquarters, duration, object and tasks, plus the geographical scope. Furthermore, under Article 9 paragraph 1, ECG members may be jointly liable and, if the liability of at least one ECG member is limited as a result of the national law under which it is established, then paragraph 3 additionally provides that the name of the ECG shall include the word "limited". The national law of the other ECG members will determine whether they too can limit their liability.

Under paragraph 4, the territorial communities or authorities must inform, formally notify or request and obtain authorisation from their national authorities that they wish to become a founding member of an ECG or to accede to an ECG. On the basis of notification, the central authorities can have recourse to their national supervisory legal instruments in order to control the legality or constitutionality of a draft agreement; second, the provisions of Article 16 allow each state already at the time of ratification to designate all the types of territorial communities or authorities and public or private law entities it wants to exclude from the scope of application of this Protocol. Finally, most countries in any case prescribe in their national constitutional systems that regional or local authorities have to seek prior consent for such activities.

In some states however, these requirements (information, notification, prior consent) may not be applicable. Under paragraph 6, these states can therefore declare, at the moment of ratification or later on, that they do not intend to make use of these provisions, either in general, or for specific types of territorial communities or authorities, or for specific types of co-operation.

Paragraph 5 is a well-known clause for protecting public policy or the political interests of the state.

The registration or publication requirement in paragraph 7 provides legal certainty and maintains the transparency of the work of public entities such as territorial communities or authorities. Registration or publication must conform to the legal practice of the states concerned. For agreements setting up public law entities this may include publication in the national Official Gazettes, whereas agreements setting up private law entities are usually registered with administrative or judicial authorities.

Paragraph 8 adds to the legal security by introducing a requirement of information of the states to which the members belong about the entry into force of the ECG.

The agreement shall be written in the language(s) of the headquarter state and of the members, whereby all versions shall have the same legal validity. This avoids the problem of the "authentic" language for the purposes of interpretation and disputes. This does not exclude, however, if it is agreed, an agreement drawn up in fewer languages, provided they are the languages of the members.

Article 5

Paragraph 1 makes it clear that the provisions specifying the detailed structure for the operation of an ECG must be set out in the accompanying statutes which nevertheless form an integral part of the agreement to be concluded unanimously by the founding members.

The list of contents of the statutes is non-exhaustive and lays down the minimum requirements. The law applicable to all issues to be included in the statutes may not always be the law of the state in which the ECG has its headquarters, as was already outlined in the comment under Article 2.

Paragraph 2 determines the language(s) of the text for the sake of legal certainty, in line with the provisions of Article 4 paragraph 5. The working language need not be one of the languages of the statutes or the agreement.

Paragraph 3 mentions explicitly the obligation for the statutes to contain rules on membership, including the withdrawal of members, and the consequences of it. The circumstances under which members may wish to opt out of the ECG and the conditions of such opting out shall be specified in the statutes. These may include

withdrawal with immediate effect, for example if the members fundamentally disagree with the action of the ECG and believe they are not in a position to oppose it. The statutes shall also cover the dissolution of the ECG and its legal consequences.

Article 6

For the sake of legal certainty, it is stipulated that any amendments to the agreement and any major amendments to the statutes need to follow the same procedure that was followed for the establishment of the agreement and statutes. This applies to the requirements of information, notification or prior approval, as well as publication, languages etc.

Article 7

Paragraph 1 provides for maximum flexibility as regards the reasons why an ECG shall be established: either for particular issues such as disaster prevention or for overall territorial co-operation in all areas of competence of the prospective members. The tasks of the ECG may also include the implementation of territorial co-operation programmes co-financed by the European Union, notably the Structural Funds, as well as the management of any financial resources allocated to the ECG and the granting of financial aid to third parties. This goal may be pursued without the ECG having to adopt the status of an European Grouping of Territorial Co-operation (EGTC) under EC Regulation 1082/2006.

The second sentence of paragraph 1 again makes clear that neither this Protocol nor an agreement can create new competences which the members do not already enjoy.

Paragraphs 2 and 3 must be read in conjunction. Paragraph 2 again provides for the utmost flexibility with regard to what sort of legal acts may be used for achieving the tasks of the ECG under the national law of the State in which the ECG has its headquarters. In addition, members – according to the subsidiarity principle – must facilitate the implementation of the ECG's decisions where it lacks the necessary executive power or effective legal mechanisms to enforce them.

Paragraphs 3, in contrast, sets the limits by prohibiting ECGs from exercising regulatory powers, legislative competences, measures to affect the rights and freedoms of individuals or levying taxes. For reasons of consistency of legal terminology within the Council of Europe legal framework, its wording is based on the more abstract formulation of Article 4, paragraph 2, letters b and c of the Additional Protocol to the Outline Convention.

In member states, local or regional communities or authorities may exercise not only their “own”, i.e. exclusive or shared competences according to the constitutional division of powers, but also those of the State, if these have been delegated to them. In order to avoid “subdelegation” without the consent of the original authority, paragraph 4 prohibits, as a rule, members other than the states themselves from delegating the implementation of central authority competences to ECGs.

Article 8

These provisions are included for the sake of legal clarity. They do not contain any rules on withdrawal or exclusion of members which should be regulated by the Statutes in accordance with national law.

Article 9

Paragraphs 1 to 3 provide a comprehensive system of liabilities for any possible breach of law by the ECG's bodies or the ECGs themselves. The joint liability of members – if the ECG cannot be held liable itself – follows a similar “subsidiarity” provision in Article 12 of the EC Regulation. It is clear that the liability of the ECG includes debts of whatever nature and the joint responsibility of the members is incurred if the assets of the ECG are not sufficient to honour its obligations.

The wording “any breach of the law to which it may be subject” covers the national law of the state where the ECG has its headquarters, the law of the territories where the ECG operates and the founding agreement including the statutes. If a member acts on behalf of an ECG, such as under Article 7 paragraph 2, and violates the respective law so that the ECG is held responsible by a third party in accordance with paragraph 1 of this Article, then the ECG has the right to seek redress against the member under the provision in Article 10 paragraph 1. However, as follows from Article 2 paragraph 2, the liability of members may be limited.

Paragraphs 4 and 5 thus follow the same system insofar as other members may then also limit their liability or – if this is not possible under national law – the prospective headquarter state may prevent the establishment of such an ECG. It is understood that limited liability covers the case of members which, under the national law under which they are established, have no liability at all.

Article 10

Rules on dispute settlement are a necessary part of providing legal security for all members and third parties involved in territorial co-operation activities. Since there is no transnational court system which may be addressed, any institutionalised dispute settlement must either provide rules for the choice of courts of one of the member states involved or provide for arbitration mechanisms.

Dispute settlement must be effective and fair. Paragraphs 1 and 2 provide the rules for deciding which organs or courts are competent and therefore which law is applicable for deciding disputes, either between the members of the ECG or between an ECG and third parties, as long as the parties concerned fall under the jurisdiction of Council of Europe member states which are bound to democracy and the rule of law. Thus paragraph 3, despite its general formulation, provides for arbitration mechanisms in particular for situations where neither the claimant nor the defendant fall under the jurisdiction of a Council of Europe member state. Paragraphs 2 and 3 therefore provide for a differentiated approach with regard to third parties which are usually beneficiaries: as a rule (see paragraph 2), the competent organs or courts in disputes with third parties are those where the third party resides or has its seat or headquarters as long as this is within the jurisdiction of a Council of Europe member state. However, the first sentence of paragraph 3 allows also for the conclusion of an arbitration agreement as an exception from this rule if the parties involved agree on this in advance. The second sentence of paragraph 3 makes the prior conclusion of an arbitration agreement a binding obligation for ECGs in their dealings with third parties if they do not reside or do not have their seat or headquarters in a Council of Europe member state.

Paragraphs 4 and 5 specify the rights of third parties in more detail. In particular, paragraph 5 establishes a minimum standard for the use of legal remedies which can also be found in the EC Regulation.

Article 11

For the sake of legal security, paragraph 1 enumerates all types of review of ECG that may be possible according to the law in force in the states Parties to the Protocol. Thus, the acts of the ECG shall be subject to the same type of supervision and administrative and judicial review as may exist in the headquarter state for the acts of legal persons made of territorial communities or authorities. Moreover, the exercise of supervision and administrative and judicial review implies the obligation for ECGs to provide any information necessary for the competent authorities to be able to carry out their supervisory function.

In the same way, the acts of the members which are territorial communities or authorities shall continue to be subject to the usual supervision and administrative and judicial review under the national law applicable to them. These provisions are meant simply to confirm what is already provided in Article 3, paragraph 4 of the Madrid Outline Convention and in Article 6 of its Additional Protocol.

Paragraph 4 repeats a general safeguard clause that protects the states against activities of the ECG that are against public order or fundamental interests in the states in which it operates. Negative decisions by the competent authorities or bodies of the state in question shall be subject to judicial review.

Paragraph 5 provides for the possibility of the ECG being wound up if it acts outside its tasks.

Article 12

Paragraphs 1 and 2 regulate the requirements for the financial audit of the management of an ECG. In paragraph 1, the reference to “national law” must be understood as covering also administrative and technical regulations that may not have legislative status but need to be complied with. Paragraph 1 contains for the state carrying out the audits an obligation to inform all states concerned, for the sake of legal certainty.

In particular paragraph 2 makes it clear that not only auditing bodies established under the national law of the state in which the ECG has its headquarters may carry out financial audits, but also other states in which the ECG is operational. The information may prove especially helpful if the audit concerns an ECG which has a state among its members, in order to prevent any conflict arising from states auditing each other.

With regard to auditing standards the states of members of an ECG will have to use their own standards under national law which may acknowledge internationally accepted audit standards or Council of Europe standards.

Article 13

This article serves the purpose of making it clear that implementing measures must follow in the Parties, even if no deadline is given for these measures to be adopted. In order to facilitate the drafting of national legislation applicable to ECGs, an Appendix will contain model legislation to be used by the Parties that so wish. It is also explicitly stated that the Appendix is optional and can be used as such or redrafted in full or in part. In any case, the Appendix is not an authoritative interpretation of this Protocol. In the event of conflict, the courts remain free to decide whether national law complies with the Protocol, even in cases where the Appendix has been copied and incorporated.

The Appendix may be drafted at a later stage and subsequently added to the Protocol. The provision of paragraph 6 follows those of Article 3 of the Madrid Outline Convention. It differs, however, from the Madrid Convention in that the approval of the Committee of Ministers is required. In this way, the provisions of the Appendix will be more authoritative and also be better known by the Parties.

Article 14

The purpose of this provision is threefold: first, the information of territorial communities or authorities on implementing measures will enable them to decide whether they wish to create or join an ECG or not; second, the notification to the Secretary General and through him/her the information of other Parties will provide them with the relevant information on the legislation in force in neighbouring states, for instance, and facilitate the decision of potential partners to create or join an ECG; thirdly, once ECGs are established, information on their scope, membership, statutes, etc. may prove very useful to other Parties and public opinion in general.

Article 15

This provision repeats a well-known clause for protecting the freedom of action of the Parties.

Article 16

This article enables the States to specify according to their national law which types of territorial communities or authorities or other legal persons pursuing goals of general interest. It corresponds to the similar provision of Article 2 paragraph 2 of the Madrid Outline Convention in respect of territorial communities or authorities.

Paragraph 2 covers Länder, Cantons, autonomous regions and other entities which constitutionally may not be considered as "territorial communities or authorities" in the States in which they are situated, but are nonetheless covered by the same terminology for the purpose of this Protocol.

For the sake of legal security, the categories of entities that the member state may refuse the possibility of establishing or joining in an ECG must be listed in a notification that, in accordance with paragraph 1, is mandatory. The list may be modified, however, at any time. At the time of the notification, the State is not yet a Party to the Protocol.

Article 17

Since one of the difficulties in the field of territorial co-operation identified in the preambular provisions is the diversity of national law, the body of provisions from Part I of the Protocol must be seen as the minimum regulatory requirement for overcoming this obstacle. Moreover, the detailed rules from the Appendix are optional and in no way binding. Hence, there is no need to allow reservations.

Article 18

This is a standard provision aimed at ensuing consistency of interpretation between the various legal instruments of the Council of Europe on transfrontier co-operation.

Article 19

It is understood that only Parties to the Madrid Outline Convention can be Parties to this Protocol. It is not necessary additionally to be a Party to the Additional Protocol or Protocol No. 2 to the Madrid Outline Convention.

Article 20 – Accession

Article 21 – Denunciation

Article 22 – Notifications

These last articles are standard provisions in line with Council of Europe's legal practice.