

ROMANIAN GOVERNMENT ORDINANCES

ROMANIAN GOVERNMENT

EMERGENCY ORDINANCE

regarding the European Grouping of Territorial Cooperation

Having regard to the fact that Romania, as EU Member State must enable central public authorities, territorial-administrative units, bodies governed by public law, as well as associations of bodies belonging to one or more of the previous in Romania, to join similar structures belonging to other EU Member States, in order to set up legal personality entities, for implementing and managing actions of territorial cooperation to strengthen the economic, social and territorial cohesion, in compliance with Regulation (EC) No 1082/2006 of the European Parliament and of the Council of 5 July 2006 on a European Grouping of Territorial Cooperation (EGTC),

Having regard to the need to make such provisions as are appropriate to ensure the effective application of the above mentioned Regulation,

Having regard to Romanian Constitution and in particular art.115 (4) and to Regulation (EC) No 1082/2006 of the European Parliament and of the Council of 5 July 2006 on a European Grouping of Territorial Cooperation (EGTC) and in particular art. 16 (1) thereof,

The Romanian Government adopts this Emergency Ordinance.

CHAPTER I General Provisions

Art. 1 – This Emergency Ordinance establishes the legal national framework to ensure the effective application of the Regulation (EC) No 1082/2006 of the European Parliament and of the Council of 5 July 2006 on a European Grouping of Territorial Cooperation (EGTC), published in the Official Journal of the European Union no L210 of July 31st 2006 hereinafter referred to as the *Regulation*, in order to facilitate the promotion of the cross-border, transnational and/or interregional cooperation with the exclusive aim of strengthening the economic and social cohesion.

(2) The European Grouping of Territorial Cooperation, hereinafter referred to as *EGTC*, shall act for implementing territorial cooperation programmes or projects co-financed by the European Union, notably under the structural instruments, the European Regional Development Fund, The European Social Fund, the Cohesion Fund as well as for carrying out other specific actions of territorial cooperation, with or without a financial contribution from the European Union.

Art. 2. – (1) For the purpose of this emergency ordinance, the EGTC shall have the meaning of a Romanian non-profit

legal entity of private law, established on Romanian territory, with own patrimony, carrying out activities for public benefit, in order to promote the territorial cooperation with the exclusive aim of strengthening the economic and social cohesion.

(2) –The EGTC shall be made up of members, belonging to one or more of the following categories: central public authorities, territorial-administrative units, bodies governed by public law as well as associations established by these ones in Romania, on the one hand, and similar structures belonging to other EU Member States, on the other hand, acting for the purpose of facilitating and promoting the territorial cooperation, within the limits of their competencies, according to the national legislation.

(3) -The administrative-territorial units shall have the right to cooperate and to associate with other EU Member States administrative-territorial units, in compliance with the legal provision in force and within the limits of their deliberative and executive competences.

(4) Pursuant to the provisions of the Regulation, third countries shall have the right to join the EGTC, providing that their national legislation allows so.

CHAPTER II

Competent authorities

Art. 3 – (1) For the purpose of this Emergency Ordinance, the Ministry of Development, Public Works and Housing is designated as Notification Authority.

(2) The tasks of the Notification Authority shall be as follows:

a) to receive and analyze the proposed conventions and statutes drawn up in compliance with the Regulation, hereinafter referred to as *constituent documents*;

b) to issue the functioning authorization or the refusal decision for the establishment of an EGTC likely to have its registered office in Romania;

c) to issue the approval or the refusal regarding the participation of a Romanian prospective member to an EGTC having its registered office in another EU Member State;

d) to keep, at its premises, the entries referred to in subpart b), as well as the entries referred to in subpart c) in the Register of the European Grouping of Territorial Cooperation, hereinafter referred to as the *EGTC Register*;

e) to inform the Committee of the Regions of the registration of an EGTC as well as of any amendment of their convention or statutes;

f) to prohibit the activity of an EGTC having its registered office in Romania or to order the withdrawal of a Romanian member, if the activity is in contravention of public order, security, health and public morality or public interest;

g) to demand to the Legal Court the dissolution of an EGTC if the EGTC does no longer comply with the requirements set out in Art. 1 paragraph (2), and Art. 7 of the Regulation;

h) to inform the competent authorities of the Member State under whose law the EGTC member has been formed, of the EGTC activities carried out on Romanian territory, following a written request;

i) to inform the competent authorities of the Member States under whose law the EGTC members has been formed of the registration and the winding up of an EGTC having its registered office in Romania, as well as of any direct or indirect amendment of the convention and statutes;

j) to inform the competent authorities of the other Member States about any difficulties occurred during the control and audit carried out in compliance with the Regulation and in particular art.6 and with the Emergency Ordinance and in particular art.5 thereof;

k) to require and receive from the EGTC members and from the institutions having tasks in the EGTC functioning, any data, information or documents related to the EGTC activity;

l) to issue the certificate stating the EGTC's striking off, as result of its winding up;

m) any other task in compliance with the law.

Art. 4 – (a) EGTC shall be registered in the EGTC Register.

(2) The EGTC Register shall be public and shall be kept by the Notification Authority.

(3) The Notification Authority shall be bound to provide copies of the entries in the EGTC Register and of the documents submitted for the establishment, as well as other information resulting from the EGTC Register, at the expenses of the persons submitting the request.

(4) The documents provided for in paragraph (3) may be required and provided by mail or by any other means specified by the law.

(5) The fees charged for the copy and/or other information provision, regardless of the communication means, shall not exceed the administrative costs of their provision.

(6) The level of the fees charged shall be approved by order of the Minister of Development, Public Works and Housing.

(7) The amounts collected shall form the State budget revenue.

Art. 5 – The control and audit of the management of public funds by an EGTC shall be conducted by the authorized institutions in compliance with the legal provisions in force.

CHAPTER III

The establishment and registration of the European Grouping of Territorial Cooperation

Art. 6 – (1) In order to set up an EGTC on Romanian territory, the following documents shall be required:

a) the constituent documents, namely the statutes and the convention, signed by the EGTC members, containing all the elements provided in Art. 8 and 9 of the Regulation;

b) the local council or the municipal council's approval, if the Romanian applicant/applicants is/are administrative-territorial units;

c) the documents and/or permissions certifying for each potential member of the EGTC that the Member State under whose law it has been formed approves the prospective member's participation in the EGTC, according to the law and the Regulation;

d) the consent of central public authorities having tasks in the EGTC activity field, according to the legal provisions in force.

(2) The competences that the bodies referred to in Art. 2 subpart (2) perform as public authority cannot be subject of an agreement.

(3) The documents provided in Art. (1) shall be submitted in Romanian language.

Art. 7 – (1) The Romanian and the foreign prospective members, as they are defined in Art. 2, paragraphs (2) and (4), shall be bound to obtain the participation approval issued by the Notification Authority, respectively by the similar competent authorities in other Member States, for the association in an EGTC.

(2) After the unanimously approval of the proposed statutes and convention by the members, the prospective EGTC Romanian members' representatives shall submit to the Notification Authority an Application Form, accompanied by the following documents:

a) the constituent documents, namely the statutes and the convention, signed by all the EGTC prospective members, translated and certified in Romanian language;

b) the local council or the municipal council's approval, if the Romanian applicant(s) is/are administrative-territorial units.

(3) The Notification Authority shall verify the fulfillment of the requirements provided in Art. 8 and 9 of the Regulation and shall decide upon granting or not the participation approval, within 30 calendar days from the receipt of the Application Form, accompanied by the documents referred to in paragraph (2).

(4) In order to grant the participation approval, the Notification Authority shall require the opinion of the central public authorities having tasks and competences in the EGTC field of activity. The opinion shall be delivered in 10 working days from receiving the application sent by the Notification Authority.

(5) The decision of the Notification Authority regarding the participation approval may be disputed in compliance with the provisions regarding the administrative disputes.

Art.8 – (1) The EGTC members shall unanimously agree upon the convention and statutes, amended according to the observations formulated by the Romanian Notification Authority and by the competent authorities from the Member States under whose law the other prospective members have been formed, as the case may be.

(2) After the agreement referred to under paragraph (1), the EGTC members shall submit to the Notification Authorities the Application Form as well as the documents referred to under paragraph 6, for issuing the functioning authorization.

Art.9 – (1) On the basis of the participation approvals delivered for the other members of EGTC, the Notification Authority shall verify the compliance with the obligations set out in Art. 8 and 9 of the Regulation and shall decide, upon issuing or not of the functioning authorization for the EGTC, within 30 calendar days from the receipt of the Application Form accompanied by the documents referred to under Art. 6 paragraph (1).

(2) If the conditions set out in the Regulation are met, the Notification Authority shall issue the functioning authorization necessary for completing the EGTC constitution procedure at the competent legal court.

(3) If the Notification Authority does not issue the functioning authorization, it shall communicate its grounded decision to the EGTC members, within 30 working days from the date receiving the Application Form and the documents necessary for decision-making.

(4) The refusal of Notification Authority to issue the functioning authorization may be disputed as per the terms of administrative disputes.

Art. 10 – (1) The EGTC representatives shall submit to the competent court where the EGTC has its registered office, a request accompanied by the functioning authorization issued by the Notification Authority and the documents referred to in Art. 6 paragraph (1), within 5 working days from the date of delivery of the functioning authorization.

(2) The competent legal court shall verify the legality of the request and of the documents referred to in Art. 6, paragraph (1) and shall decide, by means of a conclusion, upon its registration in the EGTC Register, within 10 working days.

(3) The approval conclusion shall be communicated to EGTC, at the registered office specified in the request, and shall be sent by its representatives to the Notification Authorities, to ensure the registration in the EGTC Register.

(4) The refusal conclusion shall be subject to appeal, according to the provisions of the law. The final decision of the competent legal court shall be sent to the EGTC at the registered office specified in the request, which shall send it forward to the Notification Authority for the registration in the EGTC Register.

(5) The registration in the EGTC Register shall be made by the Notification Authority within 24 hours from the receipt of the approval conclusion or of the final decision of the appeal legal court.

(6) EGTC shall acquire legal personality on the day of its registration in the EGTC Register. After the registration, the EGTC shall send, at its own expense, a notice to the "Official Journal" of Romania and the Official Journal of the European Union for publication, in compliance with the provisions set out in Art. 5 of the Regulation.

(7) The EGTC shall be bound to send to the Notification Authority the proof of fulfillment of the obligations set out under paragraph (6).

Art. 11 – An EGTC registered on the Romanian territory shall be governed by the Regulation, the statute and the convention, as well as the provisions of the Romanian law as referred to in Art. 2, paragraph (1), subpart c) of the Regulation.

Art.12 – The documents issued by an EGTC shall contain expressly its name, accompanied by the mention "European Grouping of Territorial Cooperation" or the initials "E.G.T.C."

Art. 13 – The procedure for issuing the participation approval for a Romanian entity as described in Art. 2 paragraph (2) to participate in an EGTC established on another EU Member State territory is the one set out in Art. 7

CHAPTER IV

Organization and functioning of the European Grouping of Territorial Cooperation

Art. 14 – (1) The constituent documents shall specify the organization and functioning of the EGTC, in compliance with the Art. 3 and Art. 8 -10 of the Regulation.

(2) The EGTC shall be liable for its debts undertaken after its establishment.

(3) The EGTC members shall be jointly unlimitedly liable for EGTC's debts, each member's share being fixed in proportion to its contribution.

Art. 15 – The Notification Authority shall have the right to request at any time both EGTC and the institutions involved in its functioning, any data, information and documents regarding the activities carried out by EGTC, including for checking the compliance with the requirements set out in Art.1 paragraph (2) of the Regulation.

CHAPTER V

Amendments to the European Grouping for Territorial Cooperation constitutive documents

Art. 16 - (1) Any amendment to the EGTC convention and statutes shall be adopted unanimously by the EGTC members.

(2) The amendments of the convention and statutes shall be sent to the Notification Authority for the authorization, accompanied by the convention and statutes reinforced and by the EGTC members' approval, in compliance with the provision of this Emergency Ordinance and in particular Art. 7 and 8 and of the Regulation and in particular Art. 4, paragraph (6) thereof.

CHAPTER VI

Dissolution and liquidation of the European Grouping of Territorial Cooperation

Art. 17 – The EGTC shall be wound up in the following situations:

- a) compulsory winding up;
- b) court decision;
- c) voluntary winding up.

Art. 18 – The EGTC shall be compulsorily wound up on the following grounds:

- a) termination of the period it was established for;
- b) the accomplishment or, as the case may be, the failure to reach the purpose it was established for;
- c) the withdrawal of the Romanian members of the EGTC established on Romanian territory;
- d) the number of members has fallen below the minimum prescribed by Art. 3, paragraph (2) of the Regulation.

Art. 19 – (1) An EGTC shall be wound up, by court decision, in case of declaration of insolvency of EGTC or at the request of a third party or Notification Authority, when an EGTC carries out any activity in contravention of the purpose it was established for or of a provision on public order, public security, public health, public morality or public interest.

(2) If an EGTC carries out any activity in contravention of the purpose it was established for or of a provision on public order, public security, public health, public morality or public interest, the competent body having tasks in the field shall notify the Notification Authority as soon as it becomes aware of it.

(3) The Notification Authority, on the basis of the competent body notification and of the opinion of the administrative authority at central level, shall have the right to limit or prohibit the activity of an EGTC on Romanian territory or to order to the Romanian members of an EGTC established on another Member State's territory to withdraw from the EGTC, unless the EGTC ceases the activity in question.

(4) The winding up shall fall under the competence of a court of justice where the EGTC registered office is located.

Art. 20 –An EGTC may be wound up also by its members' decision. The decision shall be sent to the Notification Authority within 15 working days, in order to be registered in the EGTC Register.

Art. 21 – (1) The EGTC winding up shall have as effect the opening of the dissolution procedure.

(2) In case of the winding up referred to in Art. 18, the liquidator shall be designated by court decision.

(3) In case of the winding up referred to in Art. 19, the liquidators shall be designated by the EGTC members by the dissolution decision.

(4) The liquidators shall be natural or legal persons, mandated in compliance with the law.

Art. 22 –After having been designated, the liquidators shall draw up the inventory and shall conclude a balance sheet reflecting the accurate level of assets and liabilities. They shall keep a chronological record with all the liquidation operations.

Art. 23 – (1) The liquidators shall be bound to continue the legal operations in progress, to collect the debts, to pay the creditors and, should there be cash shortage, to transform the remaining assets in cash, putting forward to sale tangible and intangible assets through public procurement.

(2) The liquidators may carry out only those operations that are necessary for the accomplishment of the operations in progress.

Art. 24 – (1) The amounts due to the creditor known which refuses the settlement of the due liabilities shall be recorded in his account.

(2) – If the settlement of liabilities can not be done immediately or if the liabilities are not acknowledged, the

liquidation shall not be concluded prior to the creditors being provided the due warranties.

Art. 25 – The liquidators shall be the only to be held liable for the damages incurred by creditors.

Art. 26 - Both towards EGTC and its members the liquidators must comply with the mandate rules.

Art. 27 – Within two months after the winding-up is ended, the liquidators shall be bound to submit the balance sheet and the ledger where the liquidation operations are described, to the Notification Authority and to publish in a newspaper having national circulation a notice stating the deposition of these documents.

Art. 28 – If no complaints are registered within 30 free days since publicity formalities, the balance sheet shall be considered finally approved and the liquidators, authorized by the court shall remit to the EGTC members the balance after the liquidation together with the records and the EGTC documents. Only afterwards the liquidators shall be cleared and they shall be given a proof document in this sense.

Art. 29 – (1) The complaints regarding the liquidators' balance sheet may be formulated by any third party and deferred to the court where the liquidated EGTC has its registered office.

(2) All the complaints shall be solved by a single decision. The decision issued by the court shall have executive power and shall be subject only to appeal.

(3) After the conclusion of the liquidation, the liquidators must ask for the EGTC to be struck off the EGTC Register.

Art. 30 –, The dissolution-liquidation decision shall be communicated to the Notification Authority and the striking off certificate shall be delivered within 15 working days from the dissolution date.

Art. 31 – (1) The Grouping shall cease at the date of the striking off in the EGTC Register.

(2) The striking off shall be performed on the basis of the proof document delivered by the liquidators in accordance with the provisions set out in Art. 29 certifying that they are cleared from the undertaken obligations.

Art. 32. – The EGTC shall send, at its own expense, the document that proofs the dissolution and a certificate delivered by the Notification Authority regarding the striking off in the EGTC to the “Official Journal”, in view of publication in the Official Journal of Romania, Part IV and a notice concerning this matter in the Official Publications Office of the European Communities, in view of its publication in the Official Journal of the European Communities.

PRIME-MINISTER
CĂLIN POPESCU-TĂRICEANU

Bucharest, November 12th 2007.
No 127.

Counter-signs:
Minister of Development,
Public Works and Housing,
Lázló Borbély
Minister of Interior and Administrative Reform
Cristian David
b. State Secretary of the European Affairs
Department,
Aurel Ciobanu-Dordea
Minister of Economy and Finances,
Varujan Vosganian

