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## FINAL REPORT

**Title: EGTC as subsidising entity**

**Name of advised organisation: EGTC Linieland of Waas and Hulst**

**Name of contracted expert: Martijn De Bruijn**

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## **I. Summary**

The border park (Grenspark) Groot Saeftinghe is located on the border between Belgium and the Netherlands and includes the municipalities of Hulst, Beveren and Sint-Gillis-Waas. The park consists of the Verdrongen Land van Saeftinghe, the Hedwige-Prosper project, surrounding polders and agricultural activity and the transition to the port area. In 2011, the EGTC Linieland van Waas en Hulst was established, which now comprises eight partners: the municipalities of Hulst, Beveren, Sint-Gillis-Waas and Stekene, the provinces of East Flanders and Zeeland, Interwaas and the Scheldt Left Bank Corporation. The EGTC acts as an umbrella organisation and employer for part of the Grenspark team.

In 2020, the Port of Antwerp-Bruges launched a project call for nature-inclusive agriculture in this area, targeting Flemish farmers. This resulted in nine approved project proposals in 2020 and three in 2021 in a second call.

A new innovation fund for water and climate will be established in 2024 for both Flemish and Dutch farmers. Grant applications will go through the border park, but Dutch and Flemish applications will then be dealt with separately. Flemish grants are managed by the Port of Antwerp-Bruges and Dutch grants, from the Province of Zeeland, by the municipality of Hulst. The EGTC would like to streamline this granting by managing the entire process.

The obstacle is the uncertainty among Dutch partners about the possibility and desirability of the EGTC's role as grant provider.

The EGTC Linieland van Waas en Hulst has legal personality and is recognised in both Belgium and the Netherlands. There are no legal obstacles for the EGTC to provide subsidies. Both Flemish and Dutch regulations support this possibility. There are, however, different roles that the EGTC could play in the granting process. These roles have different implications for the EGTC organisation and require different administrative arrangements.

Therefore, the recommendation is to first organise a kick-off meeting with all the Dutch and Flemish parties involved to clarify the implications of the possible roles, what role is desirable for the EGTC and what administrative arrangements are necessary for this.

## II. Description of the obstacle

### *Cross-border context*

Grenspark Groot Saeftinghe is located on the border between Belgium and the Netherlands, on the territory of the municipalities of Hulst, Beveren and Sint-Gillis-Waas. The Verdrongen Land van Saeftinghe and the Hedwige-Prosper project are its green heart. The surrounding polders, agricultural activity and the transition to the port area complete the border park.

The EGTC Linieland van Waas en Hulst was established in 2011 and covers the territory of municipalities of Beveren, Hulst, Sint-Gillis-Waas and Stekene. Besides these municipalities, the province of East Flanders, the intermunicipal partnership Interwaas, the province of Zeeland and the Scheldt Left Bank Corporation are currently also part of the EGTC.

The EGTC acts as an umbrella organisation and is the employer of some of the staff of the Border Park Team.

In 2020, the Port of Antwerp - Bruges set up the Agricultural Innovation Fund for farmers on the Scheldt Left Bank focusing on nature-inclusive agriculture. For the first project call, nine local farmers submitted a project proposal, and a jury approved them all. Three more projects were approved for a second call in 2021.

Both the Netherlands and Flanders have farms in and around the Groot Saeftinghe Border Park, so it is only natural that innovative agriculture should be supported on both sides of the border. Therefore, a new innovation fund will be set up in 2024 focusing on water and climate, two themes tailored to the current challenges of agriculture in the area, for which both farmers in Flanders and the Netherlands can apply.

Applications can be submitted to the border park, and thus the EGTC itself, but processing of the applications is then done in parallel in the Netherlands and Flanders. Flemish applications are assessed by the Port of Antwerp-Bruges, which also provides the Flemish funding, and Dutch applications by the municipality of Hulst with funding coming from the province of Zeeland.

**It is the desire of the border park, and by extension the EGTS Linieland van Waas en Hulst, to not only be the mailing address for applicants, but also the organisation responsible for selecting applications and providing grants.** For the Flemish partners, this is not a problem. However, the Dutch partners doubt whether this is possible and desirable.

Interviews reveal two obstacles:

1. According to the province of Zeeland's grant regulation, Zeeland grants must benefit Zeeland and this is unlikely to be the case if Zeeland grants were paid out to Flemish farmers.

2. There is uncertainty whether the EGTC Linieland of Waas and Hulst may provide grants even if Flemish grants would go to Flemish beneficiaries and Dutch grants to Dutch beneficiaries.

The client for this study, EGTS Linieland of Waas and Hulst, is particularly interested in the second question and that is what the remainder of this analysis will focus on.

There appeared to be a misunderstanding here. The reason that on the Dutch side the grant scheme was transferred from the province to the municipality of Hulst was mainly to find a solution to the first obstacle, namely the potential ability to finance Flemish farmers. This ultimately turned out to be impossible even by the municipality of Hulst.

## **Analysis of the potential legal obstacle**

### *Legal personality*

It follows from Article 1.3 of the EGTC Regulation that each EGTC has legal personality and enjoys in each Member State the widest legal capacity accorded to legal persons in the national law of that Member State (Article 1.4 EGTC Regulation). An EGTC is primarily governed by the rules of the EGTC Regulation and its statutes. If a particular matter is not covered by these, laws of the Member State where the EGTC has its seat apply (Article 2.1 EGTC Regulation).

The EGTC acquires legal personality on the date of registration or publication of the convention and statutes, whichever comes first (Article 5.1 EGTC Regulation).

The statutes of the EGTC Linieland van Waas en Hulst were published in the Belgian Official Journal on 8 July 2011, and Article 7 of these statutes clarifies that the EGTC is governed by the law applicable to public legal entities in the Flemish Region.

The EGTC Linieland of Waas and Hulst is also registered in the Register of Governmental Organisations on the Dutch website Overheid.nl as a public body<sup>1</sup>.

### *Terms of reference of the EGTC*

Article 7.2 of the EGTC Regulation states that an EGTC acts within the framework of the tasks entrusted to it, namely facilitating and promoting territorial cooperation to strengthen the economic, social and territorial cohesion of the Union, and removing obstacles to the internal market. The same article states that a Member State may impose restrictions on the tasks that an EGTC may carry out.

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<sup>1</sup>

[https://organisaties.overheid.nl/28153047/Europese\\_Gemeenschap\\_voor\\_Territoriale\\_Samenwerking\\_EGTS\\_Linieland\\_van\\_Waas\\_en\\_Hulst](https://organisaties.overheid.nl/28153047/Europese_Gemeenschap_voor_Territoriale_Samenwerking_EGTS_Linieland_van_Waas_en_Hulst)

However, the Dutch EGTC Regulation Implementation Act does not impose any specific restrictions. In fact, in Article 20 it explicitly says that EGTCs established in the Netherlands can provide subsidies in the context of European territorial cooperation that are co-financed by the European Community or by organs of one or more Member States. The Flemish Government Decision (C - 2008/35149) and its amendment on 03/11/2008 designating the competent authority does not impose any restrictions either.

The statutes of the EGTC Linieland van Waas en Hulst (Article 6.2) state that the EGTC's objective is to promote and support cross-border consultation and cooperation between the participants within the framework of the development vision Linieland van Waas en Hulst. In particular by initiating and implementing cooperation projects in the areas mentioned in the vision, namely port and economy, mobility, nature and recreation, and housing and liveability. It is not necessary for every member of the EGTC to be authorised to carry out the selected tasks (Article 7.2 EGTC Regulation).

The Dutch members, province of Zeeland and municipality of Hulst, have the authority to provide grants and the broad terms of reference in the statutes of EGTC Linieland of Waas and Hulst do not stand in the way of providing grants. This analysis is shared by the Flemish Government's Agency for Internal Affairs.

Abroad, there are examples of granting EGTCs. For example, the EGTC Euregio Tirol-Südtirol-Trentino has the EuregioScienceFund, which gives grants to multiannual research projects between the three regions.<sup>2</sup>

### *Grant funding in the Netherlands*

Article 4.21(1) of the General Administrative Law Act states that a grant means the claim to financial resources provided by an administrative body for the purpose of certain activities of the applicant, other than as payment for goods or services provided to the administrative body.

The general rules for providing grants in the Netherlands are contained in grant regulations of granting administrative bodies, mainly provinces and municipalities. Besides a grant ordinance, the province of Zeeland has a grant decree where more precise rules are described for each grant scheme. Each grant scheme is a separate chapter in that decree.

According to the grant regulation, it is possible to mandate another administrative body to implement a grant scheme. In 2007, this was applied for a grant scheme for making houses more sustainable, where implementation was mandated to a foundation. This foundation tested simple matters and received a cooperation agreement with obligations. Certain matters did remain the province's responsibility,

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<sup>2</sup> <https://www.unitn.it/en/ateneo/110230/the-european-region-tyrol-south-tyrol-trentino>

such as the handling of appeals. In two other cases, the organisations Stimulus and BJJ12 were mandated. These are organisations with extensive experience in implementing all kinds of regional, national or European grant schemes.

### *Supervision of public funds*

Article 6.1 of the EGTC Regulation states that "supervision of the management of public funds by an EGTC shall be organised by the competent authorities of the Member State where the EGTC has its registered office. The Member State where the EGTC has its registered office shall designate the competent authority for this task before agreeing to the EGTC's participation in accordance with Article 4."

The Ministerial Decree of 15 June 2011 authorising the Flemish partners to be part of the Linieland of Waas and Hulst EGTC designates the Flemish Audit Authority as supervisor of the EGTC's management of public funds.

If required by the national law of the other Member States concerned, the authorities of the Member State where the EGTC has its registered office shall make arrangements for the competent authorities in the other Member States concerned to be able to carry out checks on the EGTC's acts carried out in those Member States on their territory and to exchange all appropriate information in this regard (Article 6.2. of the EGTC Regulation).

## **Analysis of other relevant aspects**

In addition to the legal ambiguity analysed earlier, interviews reveal that there is also ambiguity about exactly what role the EGTC would want to play in the sub-subsidiary process and what would be the appropriate solution for this.

Indeed, in general, the granting process consists of a substantive and accompanying part where a call is communicated, project partners are matched and project proposals are substantively tested against the objectives of the call. The other part is legal-technical where project proposals are analysed for their budgetary aspects, tested for compatibility with state aid rules, etc. Both parts require very different roles and competences of the granting organisation.

Similar discussions played out within cohesion policy where, in the 2014-2020 programming period, under Article 7 of the ERDF regulation, cities became intermediary bodies for managing funds to support sustainable urban development strategies. In practice, again, a distinction was often made between a substantive steering role for cities and a judicial-technical role for managing authorities. Several possible scenarios were elaborated in a 2015 European Commission publication<sup>3</sup>.

In the case of granting by a Flemish and Dutch party, there is also the fact that the regulations will differ. For example, Zeeland grants of less than EUR 50,000 do not require financial justification, whereas other countries do. Marcel Sinke of the Province of Zeeland indicated that this was sometimes solved in a joint grant call with foreign parties by setting general basic conditions with subsequent additional conditions per country.

### *Arguments for and against a substantive steering role for the EGTC*

The main argument for a substantive role for the EGTC in cross-border grantmaking is that this role is closely aligned with the EGTC's objective and current capabilities. The EGTC has strong local roots, knows the main stakeholders in the region and the main challenges of the cross-border area. By fulfilling a substantive support role in grantmaking, the EGTC can play these strengths. For example, by ensuring that the grant call is known to the local target group, by facilitating contacts between different potential applicants and by substantively testing applications against the cross-border vision for the area.

At the same time, the legal-financial handling of the grants remains a task of the direct grant providers (Province of Zeeland and Port of Antwerp-Bruges) and with it, the legal and financial risks associated with grant awarding. For example, the legal review of applications, the handling of appeals or the financial control of projects.

A possible disadvantage is that the EGTC therefore does not build up this specific legal and financial knowledge and is and remains dependent on external partners for

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<sup>3</sup> [https://ec.europa.eu/regional\\_policy/en/information/publications/reports/2015/scenarios-for-integrated-territorial-investments](https://ec.europa.eu/regional_policy/en/information/publications/reports/2015/scenarios-for-integrated-territorial-investments)



these aspects.

### *Arguments for and against an additional legal technical role for the EGTC*

In theory, the EGTC could also be mandated by grant providers to carry out the entire grant-making process. This would then include tasks such as legal review of applications against the state aid scheme, analysis of the financial elements of the application, handling of appeals, disbursement of grants, financial control of projects, and reporting to the grant providers. One advantage is that this builds the EGTC's knowledge and capacity to support an entire grant process from start to finish. In the future, this would make it easier for the EGTC to implement other cross-border grant schemes as well.

A clear disadvantage is that this knowledge is currently not present within the EGTC. In fact, this knowledge is so specific that both in Flanders and the Netherlands there is a tendency to place this knowledge in the hands of a limited number of organisations that are then responsible for the implementation of several regional, national and European grant schemes. In Flanders, VLAIO<sup>4</sup> fulfils this role for grants for companies; in the Netherlands, the organisation STIMULUS<sup>5</sup> in North Brabant plays a central role in managing EU and national programmes in the south of the Netherlands.

This means that the EGTC first needs to invest in this specific knowledge and capacity and certainly runs financial and legal risks in the first iterations of the grant scheme. It is likely to be challenging to recruit people with this specific knowledge and there is a risk of competition over manpower between the EGTC and other granting organisations in the region.

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<sup>4</sup> <https://www.vlaio.be/en>

<sup>5</sup> <https://www.stimulus.nl/>

### III. Description of possible solutions

It follows from this analysis that there are no legal barriers preventing the EGTC Linieland van Waas en Hulst from acting as a granting body under the condition that Dutch grants go to Dutch farmers and Flemish grants go to Flemish farmers. The EGTC has legal personality and is also recognised as a public body in the Netherlands. According to the EGTC Regulation, an EGTC can act as a granting body. There is no state or regional regulation that precludes this and the statutes of the EGTC also give a broad mandate.

At the same time, interviews revealed that there are different roles that the EGTC Linieland of Waas and Hulst could play in granting and that depending on the role chosen, different administrative steps are required.

**A first necessary step is therefore a kick-off meeting between all the parties involved on the Flemish and Dutch sides: the province of Zeeland and Port of Antwerp - Bruges as grant providers, the EGTC for its role in grant provision, the Flemish government as the public law framework for the EGTC.**

The purpose of this kick-off meeting should be to clarify the implications of the different roles the EGTC can take on in the granting process, which role is desirable for the EGTC and what administrative arrangements should then be made to achieve this.

- In any case, an agreement seems necessary between the EGTC and the province of Zeeland that regulates who has responsibility for matters concerning the guidance and/or implementation of the Zeeland grant scheme.
- If the EGTC's role would also involve implementation tasks of the Zeeland grant scheme, the province of Zeeland should prepare a mandate decision mandating the Linieland van Waas and Hulst EGTC to implement the innovation grant scheme.

There is no need to amend the statutes of the EGTC or draft an EGTC-specific grant regulation.

Since the beginning of 2024, the Switch Point Border Obstacles<sup>6</sup> in the Flemish-Dutch border region has been in the process of being set up, with an anticipated start day in September 2024. This project, co-financed by Interreg, aims to tackle border obstacles that arise in cross-border cooperation by issuing opinions to the border region council of Flemish and Dutch administrators from the border region. In any case, it seems appropriate to inform the Switch Point about this cross-border granting issue and, if necessary, try to reach administrative agreements.

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<sup>6</sup> <https://interregvlandeu.eu/schakelpunt-grensbelemmeringen/over-ons>

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