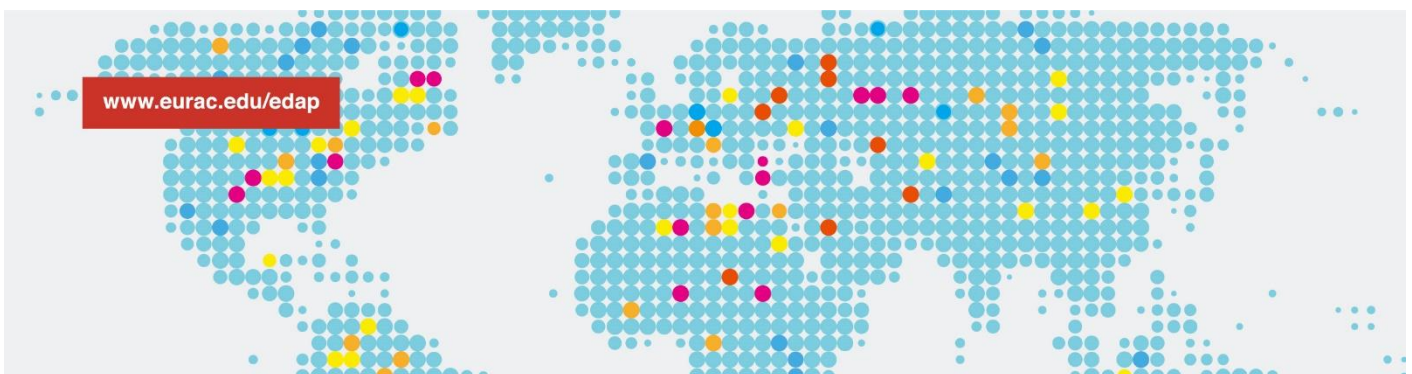




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The European Grouping of Territorial Cooperation: An Innovative Advancement of Regional Cross-Border Governance but Still Far From Being a Panacea

Bence Csizmadia



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Abstract

To overcome the detrimental impact of the so-called “*border effect*”, the European Union and its member states established the INTERREG programs in 1990. The issue of a persisting “institutional void” hampered, however, substantially the actual policy impact of these cooperation over the years. In order to tackle this issue, the *European Grouping of Territorial Cooperation* (EGTC) regulation was finally adopted in 2006 and amended in 2013 and provides since then a comprehensive institutional framework for cross-border cooperation. Through an analysis of the regulation and a comprehensive assessment of the various monitoring reports, two particular added values can be identified. First, while national governments maintain their role as gatekeepers of Regional Cross-Border Governance, the EGTC enables its members to exploit the newly provided supranational legal and institutional framework for cooperation. At the same time, institutional flexibility and various diversification opportunities concerning the policy, polity, and politics dimensions are implemented, which allows the creation of innovative and place-based territorial cooperation structures. A central conclusion of this article is that despite the EGTC regulation’s added value, this instrument constitutes no panacea concerning Regional Cross-Border Governance. Cooperation is still primarily dependent on the individual commitment by the members to create sustainable results, which is still the most decisive factor whether a cooperation succeeds or not.

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Keywords: Regional Cross-Border Governance, INTERREG, EGTC, Multi-Level Governance, border effect

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The European Grouping of Territorial Cooperation: An Innovative Advancement of Regional Cross-Border Governance but Still Far From Being a Panacea

Bence Csizmadia

1. Introduction

Since the rise of modern nation-states, regions located in the direct proximity of a national frontier are faced with the typical impact of the so-called “border effect”. While borders are integral elements of modern statehood as political, legal, and consequentially also economic lines of separation, they place these peripheral border areas in a disadvantageous situation. In order to counteract these effects, national governments addressed this issue for many years with centralistic and top-down oriented policy approaches. These efforts, however, proved to be ineffective over the years.¹ In the last few decades, political decision-makers on the national as well as the EU level strove for new sustainable solutions to overcome these disadvantageous effects. The cooperation of regional entities in heterarchical and network-like formats across the national borders turned out to be a particularly promising approach. Subsumed in this article under the term of Regional Cross-Border Governance, governments started to initiate such cooperation on a bi-national and often intergovernmental level. While states and their subnational entities were the forerunners in Europe, the deepening of the European Union integration process also led to a strategic policy shift among the EU institutions. The EU began to address the issue of Regional Cross-Border Governance with increasing intensity and developed the so-called INTERREG as central policy approach. Over the last three decades the INTERREG programs were increasingly politically valorised and continuously refined regarding their setups and program structures. Despite earning without a doubt their status as policy forerunner, the programs showed that over the years, in many aspects they persisted for room for improvement. One of the most significant and pressing shortfalls was the absence of an institutional and legal framework to overcome the hampering “institutional void” in the cross-border

¹ Böcher, Michael, Krott, Max, Tränkner, Sebastian, Germany, "Regional Governance und integrierte ländliche Entwicklung", in Böcher, Michael, Krott, Max, Tränkner, Sebastian (eds.) Regional Governance und integrierte ländliche Entwicklung. Ergebnisse der Begleitforschung zum Modell- und Demonstrationsvorhaben 'Regionen Aktiv'(VS Verlag für Sozialwissenschaften, Wiesbaden, 2008), 11–23, at 11.

context. Due to massive political opposition by various member state governments, this particular issue remained, however, for many years unresolved in the EU. In 2006, the national governments finally adopted the so-called *European Grouping of Territorial Cooperation* (EGTC). The EGTC regulation functions since then, especially in its overhauled form of 2013, as a central legal instrument to create a supranational institutional and legal framework for Regional Cross-Border Governance. One of the most salient differences between an EGTC and its “predecessors” is its genuine approach to realize a balancing act between providing a stable and reliant cooperation framework, while at the same time ensuring inherent flexibility in regard of the polity, policy and politics dimensions. While this attribute is considered a substantial milestone and innovation in the area of Regional Cross-Border Governance, it is necessary to take a closer look at the actual implementation of EGTCs. In practice, the constituted EGTCs are characterized by substantially diverging structural setups, differing financial capabilities, and considerable disparities in terms of each EGTC’s area of intervention and policy objectives. This has led to a quite heterogenous picture in terms of their actual impact and thus their individual “success rate”.² In order to shed some light on the causes of these differences, a holistic analysis of the EGTCs will be carried out by approaching the object of research both from a jurisprudential as well as from a political science perspective. Through this complementary approach, the article aims to give a concluding assessment of the actual success of the EGTC concept and whether the high expectations concerning these regulations have actually been met. This article is based on a comprehensive review of academic literature, which is complemented by an assessment of the relevant legal provisions and the relevant policy and program documents, including the various available monitoring reports from internal as well as external stakeholders.

² It must be noted, however, that the current state of research is still predominantly characterized by qualitative analyses of individual EGTCs. Holistic quantitative studies about the general efficiency, effectivity, or the place-based value of EGTCs are in the planning by the EU institutions, however, until today such quantitative analyses are still missing. While this research gap will not be closed by this article, since it would go far beyond its scope, due to the increasing number of available studies and academic publications it is nevertheless possible to draw some deductive conclusions. Through this approach it is possible to identify various general characteristics of the EGTCs, point out their strengths and weaknesses, but also highlight the challenges which the involved actors are faced with.

2. From the EUREGIO to the EGTC: Regional Cross-Border Governance as an evolutionary process in the European Union

Since the institutionalization of modern nation-states in the 17th-century, borders have become an integral element of modern statehood. They do not only define the territoriality of a state through their nature as a separating line between different jurisdictions, but they also have a multifunctional purpose.³ This variety of functions⁴ shall be illustrated by the following example: While borders as a frontier constitute the territorial ending of the state, they simultaneously also represent the beginning of the state's jurisdiction as 'foreland' or 'borderland'. They are thus considered an area of contact for transnational economic, political and socio-cultural interactions.⁵ At the same time, they also function as an economic, political, and social "barrier". Their actual functionality is primarily dependent on the given overarching political framework conditions. In times of peace and prospering trade they can be strongly permeable for economic interactions, while in times of conflicts and war they are used as hard (military) barriers and practically seal off the territory from any cross-border related activities.⁶

In the European Union, borders underwent a comprehensive transformation in terms of their functionality. They have become more permeable in some specific areas and allow a facilitated flow of economic factors. As tangible manifestations of the deepening EU integration process, the Schengen Agreement and the four market freedoms of the European Single Market allow a facilitated movement of goods, capital, services, and people.⁷ Despite these various measures, the so-called

³ The multidimensional role of borders is object of a comprehensive academic debate, which due to the limitations of this article cannot be addressed in appropriate matter. However, following definition by Keating it is useful to grasp the complexity of this process. "States are based on clearly-delineated territories. Within these state-builders seek to construct a national society, internally integrated and externally demarcated; a culture based often on language and always on shared reference points; a national economy; and a system of political domination and representation." Keating, Michael, "Re-Scaling Europe", in Andersen, Dorte, Klatt, Martin, and Sandberg, Marie (eds.), *The Border Multiple: The Practicing of Borders between Public Policy and Everyday Life in a Re-Scaling Europe*, Border regions series (Ashgate, Burlington, 2012), 23–35, at 24–25.

⁴ Chilla, Tobias, Evrard, Estelle, Christian Schulz, "On the Territoriality of Cross-Border Cooperation: 'Institutional Mapping' in a Multi-Level Context", 20 *European Planning Studies* (2012), 961–960, at 962; Rausch, Ulrike, *Grenzüberschreitende Kooperationen: Der kanadisch-US-amerikanische Nordosten und die Oberrheinregion im Vergleich* (Leske und Budrich, Opladen, 2000), 21.

⁵ Anderson, James, O'dowd, Liam, "Borders, Border-Regions and Territoriality: Contradictory Meanings, Changing Significance", 33 *Regional studies* (1999), 593–604, at 596.

⁶ Jaschitz, János, "Együtt Vagy Szétválasztva? Kísérletek a Két Komárom Térszerkezeti Súlyának Megállapítására", 9(1) *Észak-magyarországi Stratégiai Füzetek* (2012), 33–43, at 33–34; Svensson, Sara, "The Bordered World of Cross-Border Cooperation: The Determinants of Local Government Contact Networks within Euroregions", 25(3) *Regional & Federal Studies* (2015), 277–95, at 280-281.

⁷ Although borders have become less physical in the EU, they are not "vanishing" into a "borderless world", as claimed by some scholars [Keating, *Re-Scaling Europe*..., 24]. Instead they pursue a more differentiated

“negative border effects” can nevertheless be observed in all border regions. This effect materializes in several aspects. While borders are situated in a peripheral location within the states, they are in general more secluded from the economic processes within their countries, which tend to be carried out in the core-regions.⁸ Borders unfold additionally in an automatic delimiting effect on economic activities, namely by cutting off the economic actors from natural economic hinterlands and markets.⁹ Tariffs, different legal systems, language barriers or socio-cultural differences are one of the manifold factors which in general contribute to this disjunctive effect and which increase the detrimental economic status.¹⁰

The border effect is, however, not at all a side issue in the EU. In 2015, more than 37.5% of the EU’s general population lived in direct proximity to national borders, thus making this issue a matter of central importance.¹¹ While in reality many border regions continue to be objects of political negligence, the EU member states as well as the EU itself addressed the issue of regional development in the border areas with increasing political awareness.

Especially within the approach of cross-border cooperation between public authorities and private actors turned out to be one of the most promising undertakings and became over the years an object of increasing political

function logic and can be reinstated in given situations, which was in fact exercised by several EU member states during the asylum and migration crisis in the last few years. Gualini, Enrico, “Cross-Border Governance: Inventing Regions in a Trans-National Multi-Level Polity”, 39(152) *disP - The Planning Review* 39 (2003), 43–52; at 44; Johnson, Corey et al., “Interventions on Rethinking ‘the Border’ in Border Studies”, 30(2) *Political Geography* (2011), 61–69, at 68; Schmitt-Egner, Peter, “Transnationale Handlungsräume Und Transnationaler Regionalismus in Europa: Zur Theorie, Empirie und Strategie Grenzüberschreitender Zusammenarbeit Zwischen Regionen”, in Kriele, Almut, Lesse, Urs, Emanuel Richter (eds.), *Politisches Handeln in Transnationalen Räumen*, (Nomos, Baden-Baden, 2005), 15–34, at 21; Sousa, Luis De, “Understanding European Cross-Border Cooperation: A Framework for Analysis”, 35(6) *Journal of European Integration* (2013), 669–87, at 669–670.

⁸ Larger distances to the core regions and a less degree of infrastructural development are only some factors which contribute to higher transportation and transaction costs, which make in turn economic activities in general less attractive. Rietveld, P., “Transport and Communication Barriers in Europe”, in Cappellin, Riccardo, Batey, Peter W. J. (eds.), *Regional Networks, Border Regions and European Integration. European research in regional science* (Pion, London, 1993), 47–60, at 50–51; Topaloglou, Lefteris, Kallioras, Dimitis, Manetos, Panos, Petrakos, George, “A Border Regions Typology in the Enlarged European Union”, 20(2) *Journal of Borderlands Studies* (2005), 67–89, at 70.

⁹ Blatter, Joachim, *Entgrenzung der Staatenwelt? Politische Institutionenbildung in grenzüberschreitenden Regionen in Europa und Nordamerika* (Nomos, Baden-Baden, 1st ed., 2000), 26; Gabbe, Jens-Dieter, Malchus, Viktor, Stumm, Thomas, *Cooperation between European Border Regions: Review and Perspectives* (Nomos, Baden-Baden, 2008), 13; Garcia-Duran, Patricia, Toni, Mora, Millet, Montserrat, “Measuring the Impact of EU Support for Cross-Border Regional Cooperation”, 7(3) *Journal of Contemporary European Research* (2011), 345–62, at 348; Medeiros, Eduardo, “(Re)Defining the Euroregion Concept”, 19(1) *European Planning Studies* (2011), 141–58, at 148; Pénczes, János, Tagai, Gergely, “The Potential Effects of the ‘Melting’ of State Borders on the Border Areas of Hungary”, 9(1) *Észak-magyarországi Stratégiai Füzetek* (2012), 5–19, at 7.

¹⁰ Gabbe, Malchus, Stumm, *Cooperation...*, 14.

¹¹ European Commission, *Cross-Border Cooperation in the EU* (European Commission, Brussels, 2015), 11; *Ibid.*, 37.

valorisation. While there is without doubt still substantial room for improvement, especially in terms of funding compared to the other EU mainstream programs, Regional Cross-Border Governance has come a long way since its first appearance on European soil.

2.1. The constitution of the EUREGIO as a pioneer of Regional Cross-Border Governance in the EU

The “hour of birth” of Regional Cross-Border Governance in Europe dates back to 1954. Located at the Dutch-German border, the cooperation, which received its final name “EUREGIO” in 1958, was the first of its kind and constituted the first cross-border cooperation between municipalities, towns, and administrative districts. With 140 members today and a territorial scope covering around 3.4 million inhabitants, this cooperation operated for many years outside the institutional framework of the EU. Despite relatively limited financial support by the EU institutions, the EUREGIO managed to go through a comprehensive institutionalization process, which led to well-functioning working structures.¹²

Considered a typical “success story” of Regional Cross-Border Governance, the EUREGIO as well as the 18 succeeding cross-border cooperation pendants remained, as mentioned, for a long time outside of the EU institutional framework and were only supported with modest financial contributions.¹³ The Council of Europe, as other significant European International Organization, managed to realize already in 1980 with the so-called “Madrid Convention” an international law based legal framework

¹² The institutional structure of the EUREGIO experienced a continuous upgrade over the years. After its establishment the association was equipped with an own working group in 1956. In 1971 it was provided with a secretariat, as coordinating entity, which was financed through a joint budget by the public authorities. In order to increase the democratic legitimacy, and through that the public acceptance, an assembly was established in 1978, which was open to political decision-makers from the various territorial levels. Since 1999 the EUREGIO is finally established as legal entity by being embedded within the respective legal systems of the countries. Engl, Alice, *Zusammenhalt und Vielfalt in Europas Grenzregionen: Der Europäische Verbund für territoriale Zusammenarbeit in normativer und praktischer Dimension* (Nomos, Baden-Baden, 2014), at 24; Engl, Alice, “Europaregionen und EVTZ: Konkurrenz oder Komplementarität?“, in Krzymuski, Marcin, Kubicki, Philipp, Ulrich, Peter (eds.), *Der Europäische Verbund für territoriale Zusammenarbeit. Instrument der grenzübergreifenden Zusammenarbeit nationaler öffentlicher Einrichtungen in der Europäischen Union* (Nomos, Baden-Baden 2017), 43–63, at 43–44; Perkmann, Markus, “Policy Entrepreneurship and Multilevel Governance: A Comparative Study of European Cross-Border Regions”, 25(6) *Environment and Planning C: Government and Policy* (2007), 861–79, at 869; Van Winsen, Bart, “Political Cooperation in EUREGIO: Democratic Dimensions in Cross-Border Cooperation”, 8(1) *European View* (2009), 153–61, at 154.

¹³ Medeiros, Re-Defining..., 141–143; Perkmann, Markus, “Construction of New Territorial Scales: A Framework and Case Study of the EUREGIO Cross-Border Region”, 41(2) *Regional Studies* (2007), 253–66, at 260.

for Regional Cross-Border Governance.¹⁴ The EU, respectively its predecessors, remained widely passive in the meantime due to the reluctance of the member states and their political decision-makers to support similar cooperation schemes.¹⁵ The introduction of the European Single Market and the Schengen Agreement during the 1980's eventually led to a comprehensive transformation of the functionality of borders within the EU. Faced with the new framework conditions, this also triggered a significant political shift among the EU member states, who eventually supported a large-scale political and financial support of cross-border cooperation within the EU. This led to the establishment of the INTERREG programs in 1990. As a first community approach tackling the border effects in the given areas, and through that facilitating the economic integration within the EU, the programs received for the first time budgetary allocations on a consistent basis.¹⁶ Over the following years, the INTERREG programs experienced a steady political and financial valorisation, leading to the program's extension. While the first INTERREG-supported cross-border cooperation initiatives were established for the cooperation of so-called NUTS 3 regions, which are in direct proximity (not more than 150 kilometres of distance) to the border and have between 150,000 and 180,000 inhabitants, in the following years this approach was extended by the interregional and transnational strand by adding

¹⁴ Engl, *Zusammenhalt...*, 112; Palermo, Francesco, "The 'New Nomos' of Cross-Border Cooperation", in Palermo, Francesco, Poggeschi, Giovanni, Rautz, Guenther, Woelk, Jens (eds.), *Globalization, Technologies and Legal Revolution: The Impact of Global Changes on Territorial and Cultural Diversities on Supranational Integration and Constitutional Theory* (Nomos, Baden-Baden, 2012), 71–91, at 77.

¹⁵ The central governments of the states were in general very reluctant or downright refused to participate in any such cooperation. This derived from the fact that the central authorities would have been required to cede some decision-making competencies to the regional level, which additionally, due to the cross-border nature of the cooperation, touched upon to some degree the area of foreign policy. This, however, was inconceivable for the governments at that time thus leading in many cases to a straight dismissal of this topic. In the EU this materialized for example in the failed adoption of the so-called "Gerlach report", a regulation proposal issued within the European Parliament, which called for the establishment of regional cross-border associations in the EU. The report included further proposals concerning a substantial delegation of competences to the newly constituted associations, which should be additionally complemented by significant financial support. In the limelight of these demands not only the European Commission but also the majority of parliamentarians in the European Parliament, as delegates of their member states at that time, firmly rejected the report and issued their criticism that any such undertaking would severely undermine the sovereignty of the member states. Engl, *Zusammenhalt...*, 140–145.

¹⁶ Miosga, Manfred, "Die Umsetzung Der Gemeinschaftsinitiative INTERREG Im Nordrhein-Westfälisch-Niederländischen Grenzraum. Ein Beitrag Zur Diskussion um die Problemlösungsfähigkeit Europäischer Politik in Multilateralen Mehrebenensystemen", in Grande, Edgar, Jachtenfuchs, Markus (eds.), *Wie Problemlösungsfähig ist die EU? Regieren Im Europäischen Mehrebenensystem* (Nomos, Baden-Baden, 2000), 257–81, at 260; Ramirez, Martin Guillermo, "The Association of European Border Regions (AEBR) Activities with the European Union", in Wassenberg, Birte, Beck, Joachim (eds.), *Living and Researching Cross-Border Cooperation (Volume 3): The European Dimension Contributions from the Research Programme on Cross-border Cooperation of the University Strasbourg and the Euro-Institute* (Franz Steiner Verlag, Stuttgart, 2011), 283–97, at 290.

new territorial scopes to the framework.¹⁷ The extension of the territorial scope was accompanied by a steep numerical rise of cooperation initiatives.¹⁸

The consistent further development of cross-border cooperation materialized in many different aspects. While initially, cooperation was limited to a small selection of local or small-scale regional public authorities, it is now open to supranational, national, regional, and local actors and can also involve non-governmental actors.¹⁹ A similar diversification was carried out in terms of the policy goals. While initially limited to only a few policy areas, today the various strands of cross-border cooperation can select from an extensive array of potential policy objectives, which serve the purpose to support territorial cohesion in the EU.²⁰ However, despite this large number of potential intervention areas, the INTERREG programs -- now subsumed under the roof of European Territorial Cooperation²¹ - in many cases lack

¹⁷ The transnational cooperation, also called INTERREG B strand, spans over a large contiguous area and can include territories from several nation states. In general, the areas of cooperation are aligned around specific geographic entities like rivers, seas, or mountains (e.g., Alpine Space, Danube Space, Baltic Sea Region, North Sea Region etc.). The justification of this particular geographic scope is based on the premise that despite the size of the cooperation area the participating actors are faced with similar geospatial challenges and therefore require a coordinated strategic approach. The INTERREG C strand was constituted as latest strand in 2000. In contrast to its counterparts this strand has no cooperation area which is based on a contiguous space of more or less adjacent territories, but is instead exclusively constituted on functional aspects. Participating actors are therefore not required to be in mutual territorial proximity, but must have common regional policy challenges, which demand the elaboration of new joint solutions.

¹⁸ With only 26 cross-border cooperation supported by the community in 1988, the total number rose to more than 107 in 2016 [Levarlet, Francois et al., Research for REGI Committee - Review of Adopted European Territorial Cooperation Programmes (European Parliament, Brussels, 2016), 20.], thus contributing to a wide-spanning territorial coverage within the EU. Regional Cross-Border Governance can nowadays even be realized across the external borders of the EU (e.g., within the framework of IPA-CBC & ENI CBC).

¹⁹ While private actors are able to participate in cross-border cooperation, such governance formats remain widely dominated by public authorities as involved actors. This is due to several reasons: First, the large bulk of policy objectives related to cross-border cooperation touch upon policy areas, which lie foremost or nearly exclusively within the area of responsibility of the public authorities, thus limiting the involvement of private actors from the beginning. Second, while financial support is provided by the ETC programs among others, these financial contributions are based on the principle of EU reimbursements, which as a consequence require advance payments. The lack of financial resources among private actors as a result often exclude non-governmental actors from the participation in cross-border cooperation as full-members. Non-governmental actors, especially stemming from academia and research, are therefore in many cases involved as complementary actors, like for example as advisors and experts. Beck, Joachim, "Der EVTZ und seine Akteure – Territoriale Entwicklungssteuerung im Kontext transnationaler Institutionenbildung", in Krzymuski, Marcin, Kubicki, Philipp, Ulrich, Peter (eds.), *Der Europäische Verbund für territoriale Zusammenarbeit. Instrument der grenzübergreifenden Zusammenarbeit nationaler öffentlicher Einrichtungen in der Europäischen Union* (Nomos, Baden-Baden 2017), 343–368, at 353–354; Bundesministerium für Verkehr, Bau und Stadtentwicklung, *Metropolitane Grenzregionen Abschlussbericht des Modellvorhabens Der Raumordnung (MORO). Überregionale Partnerschaften in Grenzüberschreitenden Verflechtungsräumen* (Bundesamt für Bauwesen und Raumordnung, Berlin, Bonn, 2011), 92–93; *Ibid.*, 98; Gualini, *Cross-Border Governance...*, 48; Miosga, *Die Umsetzung der Gemeinschaftsinitiative...*, 259–260.

²⁰ Cross-border cooperation can for example select from various policy objectives which are constituted in the European Territorial Cooperation Regulation (Regulation (EU) No. 1299/2013) among others.

²¹ The three INTERREG program strands are merged under the goal of the so-called European Territorial Cooperation (ETC), which pursues the aim to reinforce territorial cooperation between governmental and non-

a comprehensive territorial impact.²² While there are various reasons for this, such as ill-adjustments in the programming process or lack of comprehensive alignment with place-based policy challenges, the most detrimental impact can be found in the institutional dimension.

2.2. The “institutional void” as hampering factor in Regional Cross-Border Governance

While networks require in general a certain degree of institutionalization to provide a stable framework for cooperation, concerning INTERREG programs this particular issue was a heavily disputed political topic. The national governments were neither willing to delegate competencies to the regional respectively local level, nor were they open to create any kind of supranational institutional or legal framework for cross-border cooperation. Both aspects were however required to overcome the “institutional void”, which was hampering the cooperation success. The reluctance to approve of any kind of cross-border related supranational institutions or legal frameworks, therefore, limited the room for action for regional and local actors. Central governments remained, as a result, the sole decision-makers in regard of whether a cooperation was even realized and which kind of administrative or financial support was overall provided.²³ Even if the initiation of a cooperation was approved by the member states, actors could only resort at best to the creation of an association governed under public law or they could create a cooperation under private law.²⁴ The establishment of a public law body was, however, accompanied by rigorous legal requirements, due to which many regional and local authorities

governmental authorities. Due to EU streamlining measures the goal of European Territorial Cooperation is now one of the two main goals of EU Cohesion Policy, thus resembling its increasing political importance.

²² Dühr, Stefanie, Nadin, Vicent, “Europeanization through Transnational Territorial Cooperation? The Case of INTERREG IIIB North-West Europe”, 22(3) Planning Practice and Research (2007), 373–94, at 382; Hachmann, Verena, “From Mutual Learning to Joint Working: Europeanization Processes in the INTERREG B Programmes”, 19(8) European Planning Studies (2011), 1537–55, at 15; Kaiser, Tamás, “Territorial Dimension and Integrated Approach in the Post-2013 Cohesion Policy: Building Flexible Types of Governance”, in Ágh, Attila, Kaiser, Tamás, Koller, Boglárka (eds.), 10 Years After. Together for Europe series (Blue Ribbon Research Centre et. al., Budapest 2014), 94–117, at 102; Zillmer, Sabine et al., Territorialer Zusammenhalt in der künftigen Kohäsionspolitik. Endbericht im Rahmen des Ressortforschungsprojektes „Die territoriale Dimension in der zukünftigen EU-Kohäsionspolitik“, (Bundesministerium für Verkehr, Bau und Stadtentwicklung, Berlin, 2012), 48.

²³ Gabbe, Cooperation between European..., 11; Zillmer, Sabine et al., Territorialer Zusammenhalt..., 15.

²⁴ The simplest type of cross-border cooperation can be realized without the constitution of an EGTC-based institutional structure. Although there are still many examples for such approaches, the absence of a legal basis limits the potential activities considerably. Due to the inability to manage own funding or adopt legally binding decisions they are from the start restricted to be foremost a platform for the mutual exchange of information and the coordination of domestic activities. Engl, Konkurrenz oder Komplementarität..., 47.

failed to create such a complex framework.²⁵ Far more often the actors resorted to the creation of private law based bodies, which were basically joint bi- or multinational private associations with limited legal liabilities.²⁶ While some of these turned out to be successful private law-based cooperation, the requirement to create so-called “twin associations” in each country constituted a substantial obstacle for the actors. In order to create such twin-associations, each part of the association had to comply with the legal provisions of each involved countries’ legal system, which turned out to be also very challenging. This resulted not only in a general low level of institutionalization and to some degree even in structural fragmentation within the established cooperation, but furthermore significantly limited the potential scope and depth of the policy objectives.²⁷ The lack of a resilient and stable institutional working structure often resulted in the situation that decision-making processes, which were additionally often based on unanimous voting procedures, were often prone to disruptions (e.g., stalemates between public actors during a vote). In order to avoid such unwanted situations, the participating actors often focussed on very symbolic and easily achievable policy goals, thus turning the cooperation in numerous cases to “window dressing” initiatives or “fair-weather cooperation”.²⁸

2.3. The adoption of the EGTC Regulation and its political contestation among the EU member states

To overcome this apparent institutional shortfall, the European Committee of Regions (CoR) actively lobbied since its establishment in 1994 in favour of the creation of a legal instrument to facilitate and improve cross-border cooperation in the EU. The position of the CoR was however initially firmly refused not only by the already mentioned member states, and thus by the Council, but also by the European

²⁵ For the creation of a body operating under public law actors were obliged to constitute domestic legal bodies (e.g., association of local or regional authorities, public interest group), or the cooperation had to be based on a bilateral treaty between the respective central governments.

²⁶ Engl, *Zusammenhalt und Vielfalt...*, 33-35.

²⁷ Deppisch, Sonja, “Governance Processes in Euregios. Evidence from Six Cases across the Austrian–German Border”, 27(3) *Planning Practice and Research* (2012), 315–32, at 321; Derya, Zeyrek, “Formen Grenzüberschreitender Zusammenarbeit in Europa,” in Kriele, Almut, Lesse, Urs, Richter, Emmanuel (eds.), *Politisches Handeln in Transnationalen Räumen* (Nomos, Baden-Baden, 2005), 52–64, at 60; Gualini, *Cross-Border Governance...*, 47-49; Medeiros, Eduardo, “Territorial Impact Assessment and Cross-Border Cooperation”, 2(1) *Regional Studies, Regional Science* (2015), 97–115, at 103.

²⁸ Beck, *Der EVTZ und seine Akteure...*, 355; Bundesministerium für Verkehr und digitale Infrastruktur, *Metropolitane Grenzregionen, Abschlussbericht des Modellvorhabens...*, 98; Sousa, *Understanding European Cross-Border...*, 676; *Ibid.*, 682.

Commission (EC).²⁹ Due to the consistent political pressure by the CoR, the EC, however, finally gave in and started together with the European Parliament (EP) to support the demands. In 2004 the EC drafted a legislative proposal,³⁰ which again faced firm refusal by the member state governments, who feared that such a supranational legal instrument would irretrievably hollow out their sovereignty in this particular policy area. This resistance was finally overcome when Germany and Austria, as acting EU presidencies in the first half of 2006 and 2007, actively endorsed the CoR's demands.³¹ After lengthy and cumbersome negotiations, the *European Grouping of Territorial Cooperation (EGTC)* (Regulation (EC) No 1082/2006) was finally adopted on July 5, 2006. While the regulation constituted an already groundbreaking achievement, soon after being put in place new debates arose concerning an eventual adoption of the EGTC regulation. The facilitated involvement of third countries and non-governmental actors within the EGTC cooperation constituted a central matter of importance according to the CoR, who again heavily promoted the following consultation process between 2009 and 2011. This led to the initiation of the revision process and materialized finally in the adoption of the amended regulation (Regulation (EU) No. 1302/2013) on December 17, 2013.³² The EGTC constitutes overall a major advancement in the area of Regional Cross-Border Governance through putting such cooperation on a whole new supranational legal and institutional basis. It is, however, no stand-alone or new concept, nor is it aimed to substitute the classical INTERREG supported cooperation.³³ Instead, it provides the opportunity for actors to increase their leeway in terms of the policy, politics,

²⁹ Gsodam, Christian, Martinez, Alfonso Alcolea, "New EU Rules for the EGTC: How the Committee of the Regions Shapes Territorial Cooperation in Europe" in Zwilling, Caroline, Engl, Alice (eds.), *Functional and More? New Potential for the European Grouping of Territorial Cooperation (EGTC)*, (EURAC Research, Bozen/Bolzano, 2014), 39–80, at 43–44.

³⁰ Eisendle, Andreas, *Der Europäische Verbund für Zusammenarbeit (EVTZ): Ausgewählte Rechtsfragen zur Verordnung (EG) 1082/2006* (EURAC Research, Bozen/Bolzano, 2011), 49.

³¹ Greiter, Andreas, "Der EVTZ in der Praxis: Das Beispiel des EVTZ Europaregion Tirol-Südtirol-Trentino oder „Wer etwas will, findet einen Weg. Wer etwas nicht will, findet Gründe"." in Bußjäger, Peter, Woelk, Jens, Gamper, Anna, Happacher, Esther (eds.), *Der Europäische Verbund territorialer Zusammenarbeit* (New Academic Press, Vienna, 2011), 84; Kiefer, Andreas, "The European Grouping of Territorial Cooperation (EGTC) and the Euroregional Cooperation Grouping (ECG)", in Wassenberg, Birte, Beck, Joachim (eds.), *Living and Researching Cross-Border Cooperation (Volume 3): The European Dimension Contributions from the Research Programme on Cross-border Cooperation of the University Strasbourg and the Euro-Institute* (Franz Steiner Verlag, Stuttgart, 2011), 110.

³² Engl, *Zusammenhalt und Vielfalt...*, 210–211; Gsodam/Martinez, *New EU rules for the EGTC...*, 47.

³³ Engl, Alice, "Future Perspectives on Territorial Cooperation in Europe: The EC Regulation on a European Grouping of Territorial Cooperation and the Planned Council of Europe Third Protocol to the Madrid Outline Convention Concerning Euroregional Co-Operation Groupings, 3 European Diversity and Autonomy Papers - EDAP Papers (2007)", at <http://aei.pitt.edu/id/eprint/8901> (24 March 2017).

and foremost polity dimension. Two particular aspects can be identified, which constitute the added value of EGTCs and therefore distinguishes them from the regular ETC/INTERREG-based cooperation. First, the new institutional and legal basis creates a more stable structural framework for cooperation. Second, through the accompanying structural flexibility actors have the opportunity to adapt the specific cooperation to the given political, economic, or geospatial framework conditions, which significantly facilitates the realization of more tangible and place-based policy goals. These two main innovations shall be outlined in the following chapter in more detail.

3. Overcoming the „institutional void“: The EGTC as new facilitating supranational legal and institutional framework

3.1. The EGTC's legal embeddedness and the maintenance of national actors as gatekeepers

The persisting legal and institutional “void” regarding classic INTERREG-supported cross-border cooperation constituted a substantial challenge for involved actors and often significantly hampered the cooperation success. The adoption of the EGTC regulation was therefore accompanied by particularly high expectations among local and regional authorities, who hoped for a substantial improvement of the cross-border related framework conditions. Despite their consent to the EGTC regulation, the central governments of the member states were, however, still highly suspicious concerning the impact of this legal instrument and demanded various concessions. Such a requested admission was a legal safeguard to ensure their role as consistent gatekeepers of the Regional Cross-Border Governance activities. This was accommodated in the regulation by the strict realization of the EGTC under the premise of the *subsidiarity principle*³⁴ (Recital (15) Regulation (EU) No 1082/2006), which is carried out in the form of a legal double anchoring. The creation of an EGTC must not only be based on EU secondary law but must also comply with the legal provisions by the respective national law where such cooperation is realized (Art. 1 (3-4) Regulation (EU) No 1082/2006). Despite the formal primacy of Union law over

³⁴ The principle of subsidiarity is defined by the European Parliament as follows: “When applied in the context of the European Union, the principle of subsidiarity serves to regulate the exercise of the Union’s non-exclusive powers. It rules out Union intervention when an issue can be dealt with effectively by Member States at central, regional or local level and means that the Union is justified in exercising its powers when Member States are unable to achieve the objectives of a proposed action satisfactorily and added value can be provided if the action is carried out at Union level.” European Parliament, “The Principle of Subsidiarity. Fact Sheets on the European Union.”, <http://www.europarl.europa.eu/factsheets/en/sheet/7/the-principle-of-subsidiarity> (7 December 2017).

national law (principle of *lex superior derogat legi inferior*), which is in this case a primacy of application,³⁵ national governments are able to maintain a central role during the initiation phase and also afterwards, namely during the implementation process, by defining the setup and the areas of intervention of the particular EGTC.³⁶ This strong role of national governments becomes particularly apparent when looking at the formal preconditions of the initiation process. As such, every individual EGTC based cooperation is required to be constituted on the basis of a “convention” and a “statute” (Art. 8 and 9 Regulation (EU) No 1082/2006).³⁷ Both documents must be in full compliance with the domestic legal provisions of each member state, which is involved in the EGTC directly or indirectly (e.g., through subnational authorities, public bodies, or the national authorities themselves). If an infringement with the domestic laws is identified, each member state has the right to deny its approval before the initiation process. The legal constitution process, therefore, requires not only the approval by the participating full members (e.g., subnational authorities) but also by the involved EU member states. Even after the initial adoption of the two documents strict provisions remain in place regarding any amendments to the basic documents. While for the statute a formal notification of the national governments is sufficient, in case of the convention an additional formal approval by all members is again necessary (Art. 4 (6) Regulation (EU) No 1082/2006). After the initiation of the EGTC any kind of infringement with the legal regulations or provisions constituted within the two documents, for example during the implementation of the policy objectives, further empowers the concerned national authorities to trigger a dissolution of the EGTC. The rather strict conditions concerning the EGTC’s dissolution limits, however, on the other hand the potential leeway of national

³⁵ The so-called “primacy of EU law” constitutes a superiority of Union law of over national laws. As fundamental principle it has been enshrined by the Court of Justice of the European Union (CJEU) in the ‘*Costa versus Enel case*’ of 15 July 1964 and obliges member states to comply with legal acts issued by the EU [Eur-Lex, “Precedence of European Law”, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM%3A114548> (30 December 2019)].

For an in-depth legal analysis of the relevant hierarchy of norms and the mentioned primacy of application of Union law concerning the EGTC see: Kubicki, Philipp, “Unionsrechtliche Grundlagen eines EVTZ und mitgliedstaatliche Durchführung“, in Krzymuski, Marcin, Kubicki, Philipp, Ulrich, Peter (eds.), *Der Europäische Verbund für territoriale Zusammenarbeit. Instrument der grenzübergreifenden Zusammenarbeit nationaler öffentlicher Einrichtungen in der Europäischen Union* (Nomos, Baden-Baden 2017), 93–129.

³⁶ Nadalutti, Elisabetta, “Does the ‘European Grouping of Territorial Co-Operation’ Promote Multi-Level Governance within the European Union: The ‘European Grouping of Territorial Co-Operation’”, 51(4) *JCMS: Journal of Common Market Studies* (2013), 756–71.

³⁷ The convention is the main legal document and defines the basic framework of the EGTC (e.g. group of members, territorial scope etc.), while the statutes determine the internal organization and *modus operandi*.

governments and prevents in particular that the EGTCs functioning is stalled based on sheer political motivations.³⁸ At the same time the position of national governments, as firm gatekeepers of Regional Cross-Border Governance, remains guaranteed.

3.2. Overcoming the “moral hazard” through increased liabilities and a new joint institutional framework

Due to the above-mentioned explicit subordination under a particular country’s domestic law, the activities within an EGTC are more separated from the typical intergovernmental bargaining and provides through that more clarity in regard to the prevailing legal situation in case of any arising dispute.

With the legal embeddedness of the EGTC and the adoption of a legally binding agreement, the actors are required to specify the “rules of the game” concerning the policy goals, the institutional setup or the individually assigned tasks, which, already from the beginning provides a high degree of transparency. Although this necessary initial deliberation process among actors can be a quite cumbersome process, it provides several benefits for the constitution and implementation process of an EGTC. By having a comprehensive knowledge about the basic rules and “modus operandi” of the EGTC, the actors have in general a reduced information deficit not only regarding the general activities but also towards each other. This ultimately also decreases the “moral-hazard”³⁹ among them and thus reduces the general transaction costs within the cross-border cooperation. Another tangible benefit is that through the constitution of institutional structures, the adoption of legally binding documents, and in some cases through the contribution of own financial resources, the ownership among public actors towards the cooperation is further increased. This can act as a motivator for them to establish their involvement right from the beginning in a more sustainable way.⁴⁰

³⁸ This right of the member states is however limited by the obligation that such a dissolution has to be explicitly justified in written form and must be subsequently followed by a formal judicial procedure in order to decide whether the dissolution was legitimate (Art. 4 (3) and Art. 14 Regulation (EU) No 1082/2006).

³⁹ Moral hazard is defined as follows: “Moral hazard is the risk that a party to a transaction has not entered into the contract in good faith, has provided misleading information about its assets, liabilities or credit capacity. In addition, moral hazard may also mean a party has an incentive to take unusual risks in a desperate attempt to earn a profit before the contract settles. Moral hazards can be present any time two parties come into agreement with one another. Each party in a contract may have the opportunity to gain from acting contrary to the principles laid out by the agreement.” Kenton, Will, “Moral Hazard <https://www.investopedia.com/terms/m/moralhazard.asp> (4 March 2019).

⁴⁰ Görmar, Wilfried, “EVTZ und transnationale Zusammenarbeit zur Raumentwicklung aus nationaler Perspektive“, in Krzymuski, Marcin, Kubicki, Philipp, Ulrich, Peter (eds.), *Der Europäische Verbund für*

A substantial improvement to overcome the institutional void and legal fragmentation within the area of cross-border cooperation is further the opportunity to create a joint office/secretary for the EGTC, which functions in most cases as a central entity for the coordination of activities. The selection of the office's home country is in this regard of particular importance. As such, the EGTC acquires legal personality under the country's domestic law (Art. 1 (4) Regulation (EU) No 1082/2006),⁴¹ which provides another tangible advantage. Due to the constitution of legal liability in one specific country, the EGTC itself can act as one legal entity, which among others facilitates the application procedure for EU and general public tenders significantly.

However, while these aspects constitute a substantial improvement in regard to overcoming the legal fragmentation and creating some coherency within the cooperation, the divergence between the respective national legal systems remains an issue. Differing degrees of administrative decentralization, accompanied by different allocated competences to individual governmental authorities, or even just various administrative traditions are in fact still significant challenges within the EGTC and do unfold still a significant detrimental effect on the cooperation.⁴²

3.3. Funding opportunities and budgetary provisions

A significant institutional added-value of the EGTC regulation is the provided possibility to create own budgets. Before the EGTC regulation, many INTERREG supported cooperation were characterized by financial over-dependency from the programs, which constituted a particularly problematic issue. Due to the comprehensive external funding many actors showed to some degree a rent-seeking

territoriale Zusammenarbeit. Instrument der grenzübergreifenden Zusammenarbeit nationaler öffentlicher Einrichtungen in der Europäischen Union (Nomos, Baden-Baden 2017), 419–445, at 426.

⁴¹ The particular country's law becomes effective in the area of the EGTC's financial control (Art. 6) or liquidation, insolvency, cessation of payments and liability (Art. 12). Eventual judicial disputes within an EGTC, which are not regulated by EU law, are additionally be dealt with by the responsible domestic court (Art. 15 (2) Regulation (EU) No 1082/2006).

⁴² In order to illustrate this, we shall give some examples: Polish authorities do not allow unlimited liability, while Czechia does not accept EGTCs with limited liability. Slovenian EGTCs are constituted under private law, while Italian ones fall under public law. EGTCs established with French partners must have the EGTC office in France. Slovak municipalities have significantly less competences than their Hungarian counterparts. In comparison to the Austrian provinces Hungarian counties have much more limited competences and financial capabilities. Hegedüs, Dániel, "Critical Analysis of the EGTC Regulation: Will the European Border Regions Have an Effective MLG-Platform for Territorial Cooperation?", in Ágh, Attila, Kaiser, Tamás, Koller, Boglárka (eds.), *The New Horizons of the Cohesion Policy in the European Union: The Challenge of the Danube Strategy. Together for Europe series*, (Blue Ribbon Research Centre, King Sigismund College Budapest, 2011), 126–52, at 165–168; Zillmer, Sabine et al., *European Grouping of Territorial Cooperation as an Instrument for Promotion and Improvement of Territorial Cooperation in Europe* (European Parliament, Brussels, 2015), 38.

behaviour. The implementation of policy objectives was therefore in numerous cases not directed towards the creation of maximum policy impact, but firmly focused on how to achieve the most effective access to funding. This, however, aligned not necessarily with the underlying premise of creating best place-based added value.⁴³ The financial over-dependency led also to a substantial “head-to-mouth existence” among numerous the cooperation. In case of a revision or realignment of the funding programs, this led to severe consequences for such cooperation, which found themselves in the worst case without sufficient funding.⁴⁴

From an institutional and also financial point of view, EGTCs provide in this regard a unique opportunity to create diversified budgetary capabilities, through which an EGTC can avoid the above mentioned over-dependency on one or few financial sources. This allows them to be constituted in a more sustainable way.⁴⁵

The diversification of the budget materializes in the following way: EGTCs can integrate funding from various EU programs and beyond that also incorporate external financial resources (Art. 11 Regulation (EU) No 1082/2006). External funding can be of public nature (e.g., allocations by national or subnational authorities) or private nature. This gives the participating actors more independence in terms of the general policy implementation. A central precondition is, however, that the EGTC must publish an annual budget report, which has to be unanimously approved by the members of the assembly. The budgets must be further in full compliance with the financial regulations of the country, in which the EGTC has its registered office (Art. 2 (1) (c) in conjunction with Art. 11 Regulation (EU) No 1082/2006).

In practice, most EGTCs utilize the aforementioned budgetary opportunity by pursuing a twofold approach. First, in order to realize the project implementation successfully, the EU funds are still used as the leading financial source. However, to cover the expenses in regard of the daily operations (e.g., fix costs like the rent for the office, personnel, etc.), most EGTCs constitute obligatory membership fees for each full-member and try to attain additional funding from the governmental

⁴³ Boman, Julia, Berg, Eiki, “Identity and Institutions Shaping Cross-Border Co-Operation at the Margins of the European Union”, 17 *Regional & Federal Studies* (2007), 195–215, at 201; Lindloff, Karsten, *Kooperation Erfolgreich Gestalten* (Dortmunder Vertrieb f. Bau- u. Planungslit., Dortmund, 2003), 217.

⁴⁴ Heintel, Martin, *Regionalmanagement in Österreich: Professionalisierung und Lernorientierung* (Institut für Geographie und Regionalforschung, Wien, 2005), 93.

⁴⁵ Beck, *Der EVTZ und seine Akteure...*, 361.

authorities.⁴⁶ The membership fees proved to be a particularly valuable source of income for most cooperation. The majority of EGTCs -or at least the 53 which reported their budget to the CoR for the 2018 EGTC monitoring report - operate with an average annual budget of around EUR 613,000. In the last two years, the total sum increased by 9.5 %, which constitutes a very positive development in terms of creating self-sustaining financial structures. However, both values must be put into perspective. As such the individual annual budgets show substantial differences from case to case. While the aggregated annual budget of all EGTCs sums up to EUR 52 million, more than EUR 20 million is part of the EGTC Hospital Cerdanya's annual operating budget. The various EGTCs, therefore, have sharply diverging budgetary capabilities.⁴⁷ This is also the result of the different financial capabilities of the individual EGTC members, whose individual membership fees range from EUR 0.0034 to EUR 1.0 per capita.⁴⁸ The diversification of the financial allocations is also carried out concerning the EU program funding. While the European Regional Development Fund is still the primary source of income, the EGTC, depending on its internally constituted policy objectives, can participate at tenders of the European Social Fund (ESF), the Cohesion Fund (CF), Connecting Europe Facility (CEF), the Instrument for Pre-accession Assistance CBC programs (IPA-CBC) and the European Neighbourhood Instrument CBC programs (ENI-CBC). Despite the sizeable potential funding portfolio, the actual available financing opportunities are much more limited. Projects in the area of infrastructure for example, which can be financed through the Connected Europe Facility or the Cohesion Fund, are often large-scale projects, which demand substantial pre- and co-financing financing by the governmental authorities of an EGTC. This constitutes an often-insurmountable financial obstacle for most EGTCs, since their members are either incapable of allocating such large amounts of money to the cross-border cooperation or are just unwilling to do so.

Another detrimental aspect is the general setup of the EU mainstream programs. While the EGTC regulation stipulates that projects must be explicitly constituted around cross-border related issues, the majority of mainstream programs have an

⁴⁶ Bundesministerium für Verkehr und digitale Infrastruktur, Leitfaden Zur Gründung Eines EVTZ für Akteure Der Grenzüberschreitenden Zusammenarbeit (Bundesministerium für Verkehr und digitale Infrastruktur, Berlin, 2014), 24–25.

⁴⁷ Zillmer, Sabine et al., EGTC Monitoring Report 2017 (Committee of Regions, Brussels, 2018), 109.

⁴⁸ Hegedüs, Critical Analysis of the ETGTC Regulation..., 164; Pucher, Jürgen, Hauder, Nicole, *EGTC Monitoring Report 2015. Implementing the New Territorial Cooperation Programmes* (Committee of Regions, Brussels, 2016), 122–123; Ibid., 6; Zillmer et. al., EGTC Monitoring Report 2017, 109–111.

exclusively national scope and consequentially cannot be utilized. This eventually complicates the feasibility and potential success of the intended goal attainment,⁴⁹ which is also validated by the practical experiences of the EGTCs. Among the 68 EGTCs in total, only 15 EGTCs indicate that they attained EU funding outside the ETC programs.⁵⁰ This prominence of the ETC programs derives from their typical setup. With a high community co-financing rate of 85 % and a distinct program alignment around cross-border related issues, the members are enabled to realize a more unproblematic application at tenders and are thus able to concentrate on an effective project goal attainment. Over 33 cooperations stated in the 2018 monitoring report that they were partner or lead partner in 83 ERDF funded ETC projects, which constitutes an average of 2.5 projects per EGTC for that year.⁵¹

3.4. Internal structural setup of an EGTC

The possibility to create an overarching institutional framework for cross-cooperation does not come with a rigid structural scheme but provides a significant amount of flexibility for the actors. EGTC members are enabled to adapt the governance structure to the particular place-based challenges or the general circumstances. Through this, a bottom-up oriented approach can be more easily attained.⁵² By following the premise of “as specific as it must be and as open as it can be”⁵³, the EGTC regulation stipulates only few regulatory cornerstones.

Only two mandatory organs are constituted as minimum institutional provisions, which gives the members considerable leeway regarding the structural design of the cross-border cooperation.

The first mandatory organ of an EGTC is the so-called “assembly”, which functions as the central decision-making body, where the strategic decisions are especially being made by the full members. This includes issues like the adoption of the annual budget, strategic drafting of projects, matters concerning staff or infrastructure, or any other vital activities. The EGTC members participating in the assembly are usually represented through the highest political representatives of governmental delegates (Art. 10 (1) (a) Regulation (EU) No 1082/2006). The actors within the assembly have not only their role as decision-makers but also the function to step up

⁴⁹ Pucher, Hauder, EGTC Monitoring Report, 2; Ibid., 20.

⁵⁰ Zillmer et. al., EGTC Monitoring Report, 111.

⁵¹ Ibid., 117–118.

⁵² Sousa, Understanding European Cross-Border Cooperation..., 679.

⁵³ Bundesministerium für Verkehr und digitale Infrastruktur, Leitfaden zur Gründung eines EVTZ...,32.

as promoters in two directions. As delegates of their administrative entities, they must represent the interest of their particular administration towards the other members of the EGTCs. At the same time, they are also obliged to not only advocate the joint decisions by the assembly towards their governments, but in the best case they should also try to increase the political support towards the EGTC at home.⁵⁴ The second -also mandatory- organ of the EGTC is the “director”. The director acts according to the regulation on behalf of the EGTC and steps up as its representative (Art. 10 (1) (a) Regulation (EU) No 1082/2006). The daily operative tasks are thus often delegated to the director, who oversees the coordination and the procedural steering of the activities within the EGTC. The particular competencies of a director differ from case to case and depend on the given framework conditions. Such determining factors can be the size of the EGTC, the financial capabilities of the members, or the number and depth of the various constituted policy objectives, which claim a diverging amount of procedural steering efforts.

In practice, some EGTC directors are only delegated employees from a member (Parc européen / Parco europeo Alpi Marittime - Mercantour), while others are hired explicitly as full-time EGTC employees (MASH European Grouping of Territorial Cooperation). Some directors can even rely on large administrative capacities and have additional staff members at their disposal, who have full-time positions and contribute to the work with their specific expertise (e.g., Arrabona EGTC Ltd.). Depending on the given structural capabilities, the task of the director can include not only the management and coordination of the EGTC but also duties such as fundraising, public procurement, project implementation, or external marketing among others. Especially less equipped directors are, however, often faced with the substantial challenge to manage all these tasks in an effective way. This often has a detrimental impact on the implementation activities as such.⁵⁵

Beyond that, members of the EGTC are free to create additional organs to the two mandatory ones and are thus able to further differentiate the governance structure of the given cooperation. This is, however, again constituted under the premise that none of the bodies are allowed to infringe national or EU law (Art. 10 (2) in

⁵⁴ Svensson, Sara, “Cross-Border Regions in Policy Networks: The EGTC as a Tool of Interest Representation”, in Engl, Alice, Zwilling, Caroline (eds.), *Functional and More?: New Potential for the European Grouping of Territorial Cooperation (EGTC)* (EURAC Research, Bozen/Bolzano, 2014), 83–97; at 89–90.

⁵⁵ Committee of the Regions, *The EGTCs Investing: Implementing EU Funds. Which Role in the European Fund for Strategic Investments? Which Procurement?* (EU Publications Office, Luxembourg, 2016); 12–13; *Ibid.*, 23.

conjunction with Art. 9 (2) (f) Regulation (EU) No 1082/2006). In reality, only very few of the EGTCs resort to this option of creating additional governance structures.⁵⁶ The governance structure of an EGTC can also be adapted after its initiation, namely for an example, if the EGTC experiences a detrimental development, which is caused for example by an ill-designed framework (Art. 4 (6) Regulation (EU) 1082/2006). This is a very useful instrument to counteract a so-called “network-sclerotization”. Such sclerotization can materialize among others in decreasing activity or even a withdrawal by members from the cooperation process due to the lack of positive results during the policy implementation.⁵⁷ A further instrument to prevent such a detrimental development is the opportunity to create an optional “fail-safe” mechanism. This mechanism can be established in two ways. First, the EGTC can be constituted for a limited period and thus requires a consistent vote in favour of its prolongation. If such a prolongation is not carried out, a dissolution process will automatically be triggered. The second possibility is that the EGTC members can set out a list of specific conditions, under which the cooperation must be dissolved. Such a condition can be for example the failure to meet the required attendance rates at assembly meetings, the lack of acquiring proper funding, or the inability to adopt specific decisions (Art. 8 (2) (d) Regulation (EU) No 1082/2006). Both fail-safes have several advantages. They can function as a motivator among members to create tangible results and maintain their commitment, or it can prevent the otherwise cost-intensive maintenance of the cooperation in case of a far progressed “network-sclerotization”. While this option would be a reasonable precautionary measure, very few EGTCs have embedded this useful mechanism in their primary documents.⁵⁸

⁵⁶ Some EGTCs utilized this opportunity by realizing a quite innovative approach. An example is the HELICAS EGTC, which established a so-called “board of directors”, where particular tasks are managed within the body by a group of specifically elected representatives, who jointly decide as body on the majority of affairs. In case of need the board can constitute additional working committees to assist its work. Zillmer, EGTC Monitoring Report 2017..., 98–100.

⁵⁷ Fürst, Dietrich, "Flexibilisierung politisch-administrativer Steuerung durch grenzüberschreitende Kooperation?", (2)2 Zeitschrift für Staats- und Europawissenschaften (2004), 263–280, at 273.

⁵⁸ Bundesministerium für Verkehr und digitale Infrastruktur, Leitfaden zur Erstellung eines EVTZ..., 29; Zillmer, Sabine et al., European Grouping of Territorial Cooperation as an Instrument for Promotion and Improvement of Territorial Cooperation in Europe (European Parliament, Brussels, 2015); 33.

4. The territorial scope, membership structure, and policy objectives of an EGTC

4.1. The territorial scope

The balance between providing a comprehensive institutional framework and maintaining a significant degree of flexibility is also pursued in terms of the membership structure and the territorial scopes. All three classic ETC/INTERREG strands, namely the cross-border (A), the transnational (B) and interregional cooperation (C) strand can be realized within the framework of an EGTC (Article 1 (2) Regulation (EU) No. 1302/2013). However, in fact most cooperations are aligned around the cross-border scope. As of December 2017, 59 of the 68 established EGTCs had this particular territorial coverage, while only nine entities were constituted as transnational or interregional territorial cooperation.⁵⁹ The prominence of the cross-border strand derives from the consideration of avoiding institutional and procedural over-complexity, which comes along with an inflated membership structure.⁶⁰ EGTCs, therefore, resort to more narrow and simpler membership structures, to avoid an overload of the coordination and governance process. With the adopted amendment of the EGTC regulation in 2013, the potential membership structure of an EGTC was also extended to the cooperation with third countries across the external borders of the EU. Given the already mentioned minimum actor-constellation of two public entities, one has to be from an EU member state, including EU territories from the outermost regions (Azores, Canaries, Guadeloupe, French Guiana, Madeira, Martinique, Réunion, Saint-Martin, Mayotte), while the other can be located in a neighbouring non-EU territory. Third countries must carry out the same legal and institutional alignment process than the EU member states EGTC (Art. 3a (2) Regulation (EU) No 1302/2013). This is, however, for these countries much more complicated and cumbersome due to the lack of the already adapted EU's *Acquis Communautaire*. Despite this new structural opportunity in regard to the EU's pre-accession (IPA) and neighbourhood policies (ENI), EGTCs with third country involvement remain overall rare exceptions.⁶¹ The highest

⁵⁹ Zillmer et. al., EGTC Monitoring Report 2017, 108.

⁶⁰ Due to the mandatory compliance with the national legal system of each participating governmental authority, the institutional alignment process needs with each member more and more effort. Zillmer, *European Grouping of Territorial Cooperation as an Instrument for...*, 36.

⁶¹ Csizmadia, Bence "Regional Cross-Border Cooperation in the Danube Region. A Promising Approach within the Enlargement Policy of the EU?", 5 KKI Studies (2019), at https://kki.hu/wp-content/uploads/2019/09/T-2019_05_danube.pdf (30 December 2019).

concentration of EGTCs can be found within the EU borders, namely along the national borders of France, Hungary, Portugal, Slovakia, and Spain.⁶²

4.2. The membership structure

Regarding the eventual realization of a Multi-Level Governance cooperation scheme, the EGTC regulation provides the opportunity to establish a network with public authorities stemming from different administrative levels (Art. 3 (1) (a-d) Regulation (EU) No 1082/2006). The only limitation for such an approach is that each public authority must have the required competency to participate within the framework and to consequentially be authorized to carry out the implementation of the specific policy objective (Art. 7 (2) Regulation (EU) No 1082/2006). In practice, the overwhelming majority, namely 42 out of 68 EGTCs, have a single-dimension membership structure where actors are stemming from the same administrative level. The membership of an EGTC is, however, as already mentioned, not only open to classic public authorities, but also to bodies governed by public law, like for example public undertakings or undertakings entrusted with services of general interest (Art. 3 (2) (d-f) Regulation (EU) No 1082/2006). The involvement of private law bodies is also provided as an option. These bodies must be, however, commissioned with a service of general interest. Through the involvement of private law bodies, new and innovative policy approaches with specific place-based added-value can be realized. A prime example of such an innovative and multi-dimensional actor involvement is the *EGTC Hospital de la Cerdanya*, which provides health care services through a binationally operated hospital in the cross-border region of Spain and France.⁶³ While Cerdanya constitutes without doubt one of the most prominent examples in regard of the EGTC's potential policy innovation capability, other examples like EGTC ESPON prove that the EGTC can generate as legal instrument also in other policy areas (in this particular case in the area of research) innovative approaches and tangible benefits to improve the cross-border cooperation in the EU.⁶⁴ The EGTC is also open for other actors, like for example non-governmental

⁶² Zillmer et al., EGTC Monitoring Report 2017, 106.

⁶³ For the billing of the medical services a new and unique process was developed between the two countries in order to be compliant with the regulatory requirements of the Spanish as well as the French health care system. This constitutes a particularly innovative approach in order to realize a tangible impact for the cross-border region. Görmar, *EVTZ und transnationale Zusammenarbeit...*, 433.

⁶⁴ The EGTC ESPON (European Observation Network for Territorial Development and Cohesion) functions since its original establishment in 1998/1999 as an expert-network for actors from the sphere of public administration,

organizations. These can be involved through so-called “extended partnerships”, where the actors are involved on an ad hoc basis in specific projects. The membership structure of the EGTC can further be extended by new actors even after its establishment. If the new actors are located within a country, which is already participating within the EGTC, the only precondition is that the national government of this country is required to approve of this admission. In case of the involvement of an actor whose country is not yet participating, the adoption of the convention is necessary, which requires unanimous approval by all members (Art. 4 (6) and 6a Regulation (EU) No 1082/2006). This gives the EGTC new leeway in terms of cautiously expanding the actor constellation and thus to prevent a detrimental overload of the internal governance processes already in the beginning. This opportunity was actively exploited by several EGTCs. In 2015 more than 16 cooperations reported that they have extended their membership structure during the implementation process,⁶⁵ while two years later another 15 EGTCs exploited this opportunity.⁶⁶

4.3. The policy objectives

The premise of carrying out a flexible approach can also be observed regarding the policy dimension. The selection of particular policy objectives is required to be in strict compliance with the overarching aims of the EU, namely to pursue and actively support the aims of strengthening economic, social and territorial cohesion (Art. 174 TEU in conjunction with Art. 1 (2) and 7 (2) Regulation (EU) No 1082/2006). With the ERDF functioning as one of the central funding opportunities for EGTCs, the policy objectives must be aligned around the Cohesion Policy Objectives of 2014-2020, which are defined in form of 11 different *Thematic Objectives* (TO) in the Common Provisions Regulation (Art. 9 (EU) No 1303/2013).⁶⁷ However, the array of policy

politics, science and economy. Its main aim is to support research activities in the area of spatial planning (e.g., collection of data sets, development of indicators, drafting of analyses, or the coordination of research activities with other institutions). Although network-building and with it the exchange of information is an integral element of Regional Cross-Border Governance in general, the ESPON approach is genuine in terms of the underlying premises, its setup and functionality, thus proving that new innovative approaches can be realized through the EGTC approach. Zillmer, Sabine, Lueer, Christian, Toptsidou, Maria “Der EVTZ aus raumentwicklungs- und kohäsionspolitischer Sicht“, in Krzymuski, Marcin, Kubicki, Philipp, Ulrich, Peter (eds.), *Der Europäische Verbund für territoriale Zusammenarbeit. Instrument der grenzübergreifenden Zusammenarbeit nationaler öffentlicher Einrichtungen in der Europäischen Union* (Nomos, Baden-Baden 2017), 447–475, at 470–471.

⁶⁵ Pucher, Hauder, EGTC Monitoring Report 2015, 5.

⁶⁶ Zillmer et. al., EGTC Monitoring Report 2017, 107.

⁶⁷ The CPR consists of following Thematic Objectives (TOs): (1) strengthening research, technological development and innovation; (2) enhancing access to, and use and quality of, ICT; (3) enhancing the competitiveness of SMEs, of the agricultural sector (for the EAFRD) and of the fishery and aquaculture sector

objectives for an EGTC goes even further, namely by potentially including the areas of intervention of the ERDF, ETC, IPA, and ENI regulations.⁶⁸ Despite the large array of potential policy objectives, the overwhelming majority of EGTCs concentrate in fact on goals located in the area of research and development, environmental protection, and infrastructural interconnections.⁶⁹ The second group of potential policy objectives are not designated to be covered by the aforementioned regulations, however, they nevertheless provide tangible potential added value. The potential goals are located, among others in the domain of fire control, civil protection, provision of water supplies, waste and water management, flood protection, promotion of culture and tourism, health, management of protected areas and business parks, youth and sports projects, which are all realized within a cross-border, transnational or interregional scope Art. 1 (2) and Art. 7 (3) Regulation (EU) No 1302/2013).⁷⁰ In terms of the policy goal-attainment, the national governments maintain during the constitution of the EGTC their right to step up as gatekeepers of the cooperation. Policy objectives must be therefore in strict compliance with the domestic legal provisions of each participating state. Some areas of interventions are, however, explicitly excluded from the framework and are not allowed to be addressed within an EGTC.⁷¹ The national governments further possess the right to veto ex ante all policy objectives within an EGTC, which are not explicitly covered by the CPR's Thematic Objectives. This however does not apply for policy goals, which are explicitly covered by the *Investment priorities* of the ERDF regulation (Art. 7 Regulation (EU) No. 1299/2013). As gatekeepers, the countries uphold the right to monitor the implementation process. In case of an

(for the EMFF); (4) supporting the shift towards a low-carbon economy in all sectors; (5) promoting climate change adaptation, risk prevention and management; (6) preserving and protecting the environment and promoting resource efficiency; (7) promoting sustainable transport and removing bottlenecks in key network infrastructures; (8) promoting sustainable and quality employment and supporting labour mobility; (9) promoting social inclusion, combating poverty and any discrimination; (10) investing in education, training and vocational training for skills and lifelong learning; (11) enhancing institutional capacity of public authorities and stakeholders and efficient public administration.

⁶⁸ These are constituted within three different regulations, namely the European Territorial Cooperation Regulation (Regulation (EU) No. 1299/2013), Common Provisions Regulation (Art. 9 Regulation (EU) No 1303/2013) and the European Regional Development Fund Regulation (Art. 3 (1) Regulation (EU) No. 1301/2013). In terms of establishing cooperation across the external borders of the EU the Instrument for Pre-Accession (Regulation (EU) No. 231/2014) and the European Neighborhood Instrument (Regulation (EU) No. 232 /2014) provide even more potential policy objectives.

⁶⁹ Zillmer, *European Grouping of Territorial Cooperation as an Instrument...*, 54-55.

⁷⁰ Engl, *Future Perspectives on Territorial Cooperation*, 20; Pucher, Hauder, *EGTC Monitoring Report 2015*, 128.

⁷¹ These are the areas of police and regulatory powers, justice and foreign policy or other policy goals, which safeguard the general interest of the particular state (Art. 7 (4); Art. 13; Art. 16 Regulation (EU) No. 1303/2013).

infringement with the regulations and provisions the governments can call upon the EGTC, which must immediately stop its non-compliance with the set-out rules. If the members of the EGTC refuse to do so, the involved national government can invoke a dissolution of the network under the already aforementioned conditions.⁷²

Although the policy dimension of the EGTC provides overall a broad array of potential policy objectives, which can be additionally quite innovative in terms of their goals, the majority of cooperation primarily focus on the project-realization of more small-scale policy interventions, while large undertakings are waived due to the aforementioned lacking alignment of many funding programs with cross-border related challenges, or simply due to the missing financial and administrative resources.⁷³ Another major issue is the still often persisting unsatisfactory mobilization of public actors in regard of Regional Cross-Border Governance. Despite the successful adoption of the EGTC regulation, its following amendment, and the consistent numerical rise of EGTCs all across the territory of the EU, only a limited number of cooperations are evenly supported by all of their involved public actors in a proactive and comprehensive way. The ultimate success of an EGTC, however, stands and falls with the support from the involved authorities. Public actors, regardless from which administrative level, are required to commit themselves to these cooperations through the substantial provision of financial and political support and must beyond that participate in a sustainable manner. Examples like the EGTC Cerdanya are a valid proof that an EGTC can create a tangible place-based impact through a comprehensive commitment-readiness by these. Unfortunately, the majority of EGTC cooperations are, however, far from showing similar promising framework conditions and are instead foremost used for the realization of small-scale projects and the attainment of policy objectives, which include primarily general networking and coordination activities.⁷⁴ While this is still a significant improvement to the pre-EGTC era, there is still significant room for improvement. The EGTC regulation nevertheless already provides to a large degree, the necessary tools to realize new, innovative, and especially more large-scale policy approaches. These must be, however, utilized by the involved actors to eventually create even

⁷² See chapter 3.1.

⁷³ Zillmer, EGTC Monitoring Report 2017, 33; Ibid., 122; Zillmer, Luuer, Toptsidou, Der EVTZ aus raumentwicklungs- und kohäsionspolitischer Sicht..., 459.

⁷⁴ Beck, Der EVTZ und seine Akteure..., 361-363.

more a tangible place-based impact in all of the EU border-regions and through that, further promote the aim of a comprehensive territorial cohesion in the Union.

5. Conclusion

Regional Cross-Border Governance has come a long way since its first appearance in Europe. While cross-border cooperation schemes were in the first decades realized foremost outside the institutional framework of the EU and received in most cases only limited financial support by the public authorities, the issue of the negative “border-effect” led to a consistent increase of political awareness towards this issue. In 1990 the pressing issue of socio-economic deprivation in border-regions finally led to the adoption of the INTERREG programs, which started with small-scale cross-border cooperation between directly adjacent regional and local entities. The programs were consistently advanced in the subsequent years, namely by adding new territorial scopes, actor constellations, and policy objectives. With providing an increasingly comprehensive policy framework, which materialized in an increasing number of cross-border schemes, these particular approaches had nevertheless several persisting shortfalls within the EU. The most salient issue in this regard was the absence of a resilient institutional and legal framework for cross-border cooperation. The resulting “institutional void” limited in many cases the cooperation intensity and eventually also the policy impact of the cooperation. In numerous cases this led to “fair weather cooperation” in the cross-border area. In order to achieve a turning point, the CoR fiercely advocated the establishment of a legal framework to overcome the cross-border cooperation related difficulties. Despite the firm resistance of the EU member states the regulation of the European Grouping of Territorial Cooperation was in 2006 adopted and amended in 2013. The national refusal of this regulation was overcome due to the provided safeguard of maintaining the strong national gatekeeping role by the member states. During the initiation of an EGTC but also during the implementation of the policy objectives, the involved national governments have strong monitoring and intervention capabilities and can even initiate the dissolution of the EGTC in case of deliberate misconduct by the participating members.

The regulation, since its adoption, is considered a significant milestone due to the EGTC’s basic attributes. The provision of a comprehensive institutional framework, while simultaneously maintaining structural flexibility, is a central advantage. The

legal double anchoring, namely both within national and Union law, as well as the EGTC's parallel adoption of legal personality under the law of the country where the EGTC office is constituted, is one decisive aspect of creating such a reliable framework. By being constituted on clear legal conditions the moral hazard between all involved actors can be substantially decreased, which in turn increases the potential implementation effectivity. At the same time, the EGTC regulation provides a substantial degree of structural flexibility, manifold diversification opportunities in terms of policy objectives and funding, and also the realization of new options concerning the territorial scope and membership structures. This allows the EGTC to not only create more self-sustainable functionality, but through the constitution of unique policy objectives and internal network-structures the participating members are more enabled to tackle specific place-based challenges. However, while the regulation provides manifold new innovations and solutions for long-time persisting challenges regarding effective Regional Cross-Border Governance, numerous EGTCs fail to comprehensively exploit these opportunities. Insufficient alignment between place-based challenges and the funding programs, limited provision of administrative and financial resources, and in various cases a still insufficient mobilization of the involved actors results in an overall low-scale policy impact. Despite the provided valuable toolset, the constitution of an EGTC is therefore no panacea for cross-border regions, but is still first of all depending from the political mobilization and the commitment-willingness of its actors. However, if such favourable framework conditions are present, the constitution of an EGTC can facilitate and uplift the cooperation tremendously and can unfold the desired place-based added-value.

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