Changing interpretation of the EGTC tool

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Abstract

The ''founding fathers'' envisaged the European Groupings of Territorial Cooperation (EGTC) as a tool to manage cross-border, transnational or interregional programmes and projects. The aim of this study is to examine the changes in the interpretation of the EGTC tool since then. The first section is dedicated to the introduction of the political and jurisdictional context in which the instrument was created, giving an overview of the discourse defining this original interpretation.

The second section presents the various ways in which local and regional stakeholders, the users of the Regulation interpret the tool. It is clear that these views are not always consistent with the original intentions. Rather, EGTCs are perceived as multi-purpose organisations implementing a new approach to territoriality through integrated cross-border interventions. The decisive characteristics of the groupings are highlighted: namely their role in cross-border integration, their flexibility, adaptability and their potential in terms of representation of the border area.

Keywords: cross-border multi-level governance, institutionalisation, functional areas, tasks of the EGTCs, the 'representation paradox'

The context for the creation of the EGTC tool

The long decade of the '90s and the promise of borderless Europe

The 1990s were characterised by optimistic expectations of a borderless world and a borderless Europe. These expectations were partly due to the fall of the communist regimes that presaged the end of the bi-polar world. The panorama of market liberalisation and the construction of democratic institutions in the post-communist countries led Francis Fukuyama (1992) to his post-Hegelian theory of 'the end ofhistory'; meaning that liberal capitalism would be the last model of human political and economic evolution, prevailing over its concurrents. Indeed, the

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threat of a global armed conflict seemed improbable at that time, while globalisation gained a new impetus. In parallel, European integration progressed in an impressive way with the creation of the political and the Monetary Union, and the extension of the Schengen system guaranteeing the free flow of people, goods, services and capital. This remarkable fading away of barriers to free movement caused some to conclude that not only historic time but also distance will come to an end (Krasteva, 2017: 17; Faludi, 2018: 5). „Some even declare the end of geography, meaning that a world of flows is erasing the world of places and will ultimately give rise to a homogenized, borderless landscape." (Diener & Hagen, 2012: 15) In 2004, the European Union welcomed eight former communist East European countries among its members in an EUphoric athmosphere. The completion of the accession process of these countries represented a symbolic culmination of the optimism of the '90's. From the point of view of our volume, it is not marginal that the then president of the European Commission, Michel Barnier, handed the draft proposal on European Groupings of Cross-Border Cooperation two and a half months after the adhesion of the EU-tens.

The above expectations can also be justified on a more general level by the challenges that the traditional source of power, namely the nation state, started facing at that time. On the one hand, the number and seriousness of the problems insurmountable by one country have been increasing: such as the proliferation of environmental disasters and other events of climate change; pandemics; international terrorism and migration; the rapid reduction of transport costs and, as a consequence, the enlarged global mobility of masses; the development and effects of cyber space, etc. These developments spotlighted the insufficiency of the tools applied at national level. On the other hand, the progress of globalisation in the form of the development of the global market, the emergence of TNCs and global institutions like the World Bank, the World Trade Organisation, etc. have raised questions about the model of national sovereignty inherited from modern ity. (Newman & Paasi, 1998; Kolossov, 2006; Warf & Arias, 2009; Popescu, 2012)

In Europe, the gradual advancement of integration through legal harmonisation, enhanced competences of the supranational institutions and authorisation of the subnational actors in numerous fields of activities resulted in new narratives on territoriality and sovereignty. (Faludi, 2018) These new narratives can be subsumed under the umbrella concept of 'multi-level governance'.

Governance itself is not a new term but its meaning has changed since the 1980s. First, it was introduced to describe new models of steering in the economic world (*corporate governance*). In the 1990s it gained political and sociological perspectives challenging the traditional discourse on statehood based on the Weberian model. (Levi-Faur, 2014) Governance theorists not only questioned the ability of the state

to govern things and processes in our complex globalised world, but more and more considered the state *overloaded / overburdened* (Jessop, 2011; Bevir, 2013; Ansell & Torfing, 2016) and becoming an inert entity whose *hollowing out* is imminent. (Stoker, 1998; Kramsch & Hooper, 2004; Rhodes, 2007; Davoudi et al., 2008; Svensson, 2014) Accordingly, new models of steering have emerged, such as New Public Management, New Public Governance, Metagovernance, Decentered Theory of Governance, etc. (Jessop 2011; Bevir 2013; Ansell &Torfing, 2016) Common components of these schools are (1) the diagnosis of the weakened sovereignty of state; and (2) the prominent role of European integration in terms of the shift from the traditional form of government to a post-foundationalist model of governance.

Since the beginning of modernity, the bureaucratic nation states have been gradually constructing the system of elements of their territorial sovereignty: from the official language and national currency, through national legislation and democratic institutions, to national symbols like national anthem, flag and coat of arms. Perhaps, the most transparent representation of territorial sovereignty consists of the state border: it is „the face of the nation to the world" (Agnew 2008, 185). In order to safeguard peace, to build up mutual trust between the European nations and to guarantee prosperity and competitiveness, the European Communities have since the very beginning been working towards open national borders and enabling free movement thereacross. The theoretic framework for this pursuit is given through multi-level governance, MLG.

In parallel with the progress of European integration, a debate on its future has become more and more lively. This debate is characterised by two major streams: (neo) functionalists promote strengthened integration where national level competencies are gradually concentrated at the European institutions; while (neo)realists or intergovernmentalists consider nation states further defining the future of Europe. (Marks 1993; Bache 2014) In his article published in 1993, Gary Marks criticised both approaches because they ignored both the third tier of governance (i.e. the subnational one) and the fact that several competencies had already been delegated to local/regional level. (Marks 1993, 392) Instead of the above two streams, Marks advocated concentration on a multi-level model of governance characterised by permanent negotiations between these three levels.

Hooghe and Marks built their famous two models of MLG upon this preliminary theoretical introduction, in 2003. Their first model can be considered federalist, as it is defined by the share of competencies between territorial entities existing beside each other. The second is a rather networked-based solution where jurisdisctions can be overlapped. (Hooghe & Marks, 2003)

The European Commission published the White Paper on European Governance in 2001 (EC, 2001) defining the European discourse on the topic, based on the

concept of *good governance* and the principles of openness, participation, effectiveness, accountability and coherence. The document can be classified under the first model described by Hooghe and Marks. The White Paper on Multi-level Governance released by the Committee of the Regions in 2009, on the other hand, followed the second model, including the presentation of macro-regional strategies and cross-border cooperation structures (CoR, 2009). According to the latter approach, territorial sovereignty which was previously owned by administrative nation states, is now shared between a diverse set of actors of the global, Union, macro-regional, national and subnational scenes and their activities do not necessarily respect administrative borders; neither can the territorial scope of their performance always be clearly separated. This multi-layered or multi-scalar and multi-functional set of governance structures re-defines the interpretative frames of our world: it replaces centralised government with decentralised governance; hard spaces demarcated by strict borderlines with soft functional spaces equiped with blurring boundaries (*de-bordering*); hard policies defined by hierarchical institutional systems with soft policies developed by multi-stakeholder networks. In this study, I am interpreting EGTC as an important instrument in this process. After giving a brief overview on the gradual institutionalisation of cross-border cooperation in Europe, the first part of the study presents the road to the launch of the EGTC tool and the interpretation of the „founding fathers" while the second part introduces the ways how the users of this tool interpret it. Finally, I will point at the most important factors of this interpretation to be detailed in the further chapters of this volume.

The evolution of institutionalised cross-border cooperation in the EU

The creation of the EGTC tool cannot be separated from the history of gradual institutionalisation of cross-border cooperation. (Durand, 2014; Lange & Pires, 2018) Notwithstanding particular (mainly infrastructural) projects like the Trinational Airport of Basel, the Channel Tunnel or the Øresund Bridge, the preliminary phase of cooperation is (was) both in ontogenetic and phylogenetic senses characterised by informality (Engl, 2014a: 11; Popescu, 2012: 141). This *informal* level of cooperation used to be initiated by local actors (mayors, civil society leaders, teachers, heads of different institutions, ordinary citizens) and the cooperation itself is defined by geographic proximity and/or common natural/historic heritage. At this starting period, cooperation is rather spontaneous and flexible, it has no fixed agenda nor steady institutional background and its intensity highly depends on the „goodwill" (Popescu), commitment and interest of the persons involved.

Thanks to these encounters and exchanges, many local cooperating actors may recognise the „homogeneity of preferences and interests" (Zumbusch & Scherer, 2015: 501), the complementary advantages of the two neighbouring border areas;

and the potential benefits of stronger collaboration, the share of burdens and fruits, and the positive impacts of economies of scale. (Rechnitzer, 1999) This second level of cooperation can be defined as *functional-territorial*, since, unlike the informal level, the actors are working together according to a clear territorially-based agenda along different functional fields. The subject of functions can range from information provision, cultural, or sports activities through joint nature protection, employment services or tourist management to shared transport or health service provision. However, in each above case, sooner or later, the stakeholders will confront serious legal and administrative bottlenecks stemming from different national legislative systems. This crisis arrives as soon as the partners start cooperating in a more integrated manner. (INTERACT, 2006: 44)

Accordingly, the evolution of cooperation will result in the rise of the *normative level*[1], the level of institutionalised and regulated cross-border cooperation. It is not a coincidence that the representatives of borderlands and embryonic CBC structures have always lobbyed for a Community level solution that can ensure their long-term sustainability, stabilise their operation and create a favourable and predictable environment for their daily work. (EC, 1976: 40) Here, the bottom-up initiatives inevitably need top-down intervention: the assistance of national and Community level legislation enabling the creation and operation of real cross-border institutions.

Road to the EGTC Regulation

„Cross-border cooperation has the longest standing experience with regard to the establishment of appropriate and (predominantly) non-hierarchical cooperation mechanisms that follow a logic of multi-level governance (vertical and horizontal partnership)." (CoR, 2002b: 184) The temporal length of this experience is equal to that of the European integration: the first cross-border structure – the so-called EUREGIO – was established in 1958, one year after the Treaty of Rome was signed. At the same time, during this period cross-border cooperation was characterised by bilateral or trilateral inter-state agreements, resulting in sectoral commissions dedicated to: „spatial planning, economy and tourism, agriculture, transport and traffic, environment, waste, sewage and water supply, frontier workers, cultural issues, education and research, sports" (Ibid.: 45).

The number of regional initiatives started growing in the 1970s, in different forms: committees (the East Border Region Committee (1976) between the UK and Ireland; the Svinesunds Committee (1980) between Norway and Sweden); councils (the North Calotte Council (1971) between Finland, Sweden and Norway; theRhine-Waal Region Council (1978) between Germany and the Netherlands); working committees

1 „Naturally, not all forms of cross-border cooperation require a detailed legal basis." (AEBR, 2004a: 4)

(the Arbeitsgemeinschaft Alpenländer (1972) involving Austrian, German, Italian and Swiss regional authorities; the Alps-Adriatic Working Community (1976) with Italian, Austrian, Slovenian, Croatian and Hungarian members); and euroregions following the model of the first EUREGIO (e.g. the Dutch-Belgian-German Meuse-Rhine (1976) or the Dutch-German Ems Dollart (1977) euroregions). These examples demonstrate that no one-size-fits-all solutions can be used for the purposes of cross-border cooperation. These models „are more or less integrated, structured and developed and they vary a lot in terms of legal organisation (with or without legal personality, for example), geographic scope, extent of their competences, internal organisation or even their designation". (INTERACT, 2006: 43)

The legal background of these early institutions show very broad diversity starting with structures without legal status, through bodies ruled by private law (associations, foundations) to organisations of public law (e.g. the French *syndicats mixtes* and *groupements d'intérêt public*). They became actors on the international scene thanks to the Council of Europe (CoE) which „[i]n encouraging regional cross-border cooperation, […] sought to develop new legal instruments and to identify frontier regions as illustrative laboratories for the problems and potentialities of European integration." (O'Dowd, 2003: 17) That time, the CoE and the European Community considered the issue differently: „While the European Community followed rather a market-driven approach and perceived borders as barriers to a common Europen economic area that should be reduced, the Council of Europe helped to legitimise and publicise sub-state cross-border cooperation efforts…" (Evrard & Engl, 2018: 211)

The CoE discussed the first proposal on the topic as early as 1966. The Report on a Draft Convention on European Cooperation between Local Authorities was tabled by the Italian Giuseppe Sibille to the Consultative Assembly but the Committee of Ministers did not include it in its agenda. In 1972, Viktor Freiherr von Malchus presented his report on European border areas (the report was published in an extended version in 1975) which has given stimulus to legislative steps.

There is a consensus between scholars and practitioners that the Outline Convention on Transfrontier Cooperation between Territorial Communities or Authorities (known briefly as the 'Madrid Outline Convention') adopted by the CoE in 1980 and entering into effect in the following year should be considered as the breakthrough of institutionalised cross-border cooperation (CoE, 1980). The convention not only provided a theoretical and legal frame for CBC but also presented different model agreements designed for inter-state and local/regional application.

In the following years several bi- or multilateral inter-state agreements used the Madrid Convention as a framework for ruling the establishment and operation of cross-border structures, like the Isselburg-Anholt Agreement between Germany

and the Netherlands (entered into force in 1993); the Bayonne Treaty between France and Spain (1997); the Rome Agreement between France and Italy (1993); the Treaty between Austria and Italy (1993); the Karlsruhe Agreement between France, Germany, Luxembourg and Switzerland (1997), etc. (CoR, 2001: 39–51; Engl, 2014a; 2016) Based on these treaties new legal instruments of different border areas like the *Consorcio* (Spain-France), the *Openbare lichaam* and the *Zweckerband* (the Benelux countries and Germany), and the *Groupement Local de Coopération Transfrontalière* (France, Germany, Belgium, Luxembourg and Switzerland) appeared on the scene (INTERACT, 2006: 49).

All these solutions keep the state-centric character of ruling cross-border cooperation (Nicolini, 2014) preventing their widespread utilisation, partly as a result of the hesitant approach of the CoE Member States concerning the application of the Outline Convention (Engl, 2016). It was the reason why after the adoption of the first (1995) and the second (1998) protocols of the Madrid Convention, in 2000 the Council of Europe commissioned a survey and study on a new tool to enable local actors to establish cross-border organisations without inter-state agreements. The so-called *Lejeune Report* formed the basis of the Third Protocol introducing the Euroregional Co-operation Grouping (ECG). (CoE, 2009) The Protocol presents many similarities with the EU EGTC Regulation when defining ECG as an independent legal entity involving mainly public authorities (in any case, keeping the decision-making in the hands of these public bodies) (Art 3(1)), having „the most extensive legal capacity accorded to legal persons under that State's national law" (Art 2(2)) within the framework of the competences of its members (Art 7(1)). An ECG may have the state as member and shall be registered in the country where its seat is located. The mission of the ECG is „to promote, support and develop, for the benefit of populations, transfrontier and interterritorial co-operation between its members in their common areas of competence and in keeping with the competences established under the national law of the States concerned" (Art 1(2)). By the adoption of the Third Protocol, the Council of Europe has created the largest possible space for cross-border local cooperation, ensuring legal entity status to the euroregions. However, up to the time of writing, no ECG has yet been registered.

In parallel with the efforts made by the Council of Europe, in 1974, three members of the European Parliament (EP) presented a proposal for a resolution on internal border policy of the Community. The EP commissioned one of them, Horst Gerlach, with the elaboration of the draft resolution that was approved in 1976 by the REGI Committee; but the Plenary did not support the proposal. The Gerlach Report targeted the establishment of the so-called European Joint Authority (EJA) which

„shall be a legal person under Community law and shall possess in each Member

> *State the greatest measure of legal and executive authority accorded to legal persons by the statutory provisions of that Member state. In particular it may acquire assets in the form of personal and real estate, found enterprises under national private law or participate in existing enterprises" (EC 1976, 12),*

and shall be

> *„able to develop the broad range of local authority activities, such as public utilities (transport services, water, gas, electricity, leisure, medical and social services) and environmental protection, emergency services, promotion of industry, etc., to the benefit of participating local bodies" (Ibid.: 35).*

The initiative was not received positively by the Commission and the Council. „Instead, the Commission implemented an approach of supporting regional development and cooperation at borders between member states through special financial contributions." (Engl, 2014a: 12) This was the InterregI Community Initiative, triggered in 1988.

Scholars share the view that the proliferation of cross-border organisations in the '90s stemmed from the financial aid supported by the Interreg programmes rather than the legal frameworks provided by international agreements based on the Madrid Outline Convention (see Telle & Svensson 2020).

At the turn of the millennium, after the decade of the second wave of euroregions (already involving the post-communist countries as well) the Committee of the Regions, supported by the Association of European Border Regions (AEBR[2]), undertook the initiator role. Under the professional leadership of the then secretary general of the AEBR, Mr Jens Gabbe, the experts of the two institutions drafted a comprehensive study on the legislative and financial background and existing solutions of „trans-European" cooperation in Europe, and, based on a comparative analysis of different options, made a proposal to create so-called 'European Co-operation Areas' (ECA). (CoR, 2002b) These new institutions were designed to establish either European Working Communities (EWC) or European Joint Authorities (EJA) in each strand of cooperation (cross-border, „inter-territorial", transnational). Every form would have its own legal personality but working communities could apply for „light forms of coopereation", while EJAs could be „granted extensive executive

2 AEBR, founded in 1971 with the aim of representing the interests of cross-border structures of Europe, has been playing a decisive role in the policy-shaping process since the very beginning. In 1979, the association registered in Gronau (Germany) became an observer at the Council of Europe and participated in the design of the Madrid Outline Convention. In the '70s and '80s, the organisation issued three reports addressing the the European Parliament and intensively took part in the preparation of the Interreg tool. During the 1990s, the AEBR played a role similar to the INTERACT, established in 2002 in the fields of policy-making, awareness raising and knowledge transfer. (*cf.* CoR, 2002b: 143–144)

authority in order to carry out essential public tasks." (CoR, 2002b: 194) The authors listed other potential tasks where the new institutions could effectively be applied:

> *„regional development, economic development, agricultural development; transport and traffic, communications; innovation and technology transfer, energy; tourism and leisure; schools and education, social cooperation, culture and sports; emergency services and disaster prevention, health affairs, waste disposal, public security; environmental protection and nature conservation". (Ibid.: 196)*

The main aim of the proposal was to create „purpose-orientated entities with their own legal personality governed by Community law". (Ibid.: 189)

In parallel with the works of the study, in March, 2002, the CoR adopted an own-initiative opinion (CoR, 2002a). The document underlined the importance of trans-European cooperation (meaning three forms of territorial cooperation) in enhancing European integration, decreasing economic fragmentating impacts of frontiers, and contributing to the creation of „Citizens' Europe" where people understand and respect diversity. (CoR, 2002a: 2) The CoR recommended the European Commission to consider European Cooperation Area and to formulate a „framework regulation covering areas of European cooperation". (Ibid.: 8)

The document has not received positive feedback. As Christian Gsodam and Alfonso Alcolea Martínez remember: „… when the CoR presented its own-initiative opinion in 2002, the European Commission's Directorate General for Regional Policy was fiercely opposed to the idea of creating legal structures under EU law to facilitate European territorial cooperation." (Gsodam & Alcolea Martínez, 2014: 43–44) The reasons behind the opposition were that (1) „the European Economic Community had no competence in the field of territorial policies and territorial cooperation" (Engl, 2014b: 148); (2) the Commission's permanent view was that „it would not be for the European Union to create legal cross-border structures. This would be done by the Member States in bilateral agreements" (Gsodam & Alcolea Martínez, 2014: 44); and (3) it was expected that the Council (i.e. the national governments) would be against the creation of such structures „endangering" the status quo and national territorial sovereignty (Ibid.).

However, as a result of the study and lobbying by the CoR, the White Paper on European Governance (EC, 2001: 17) included a delegated task instructing the Commission to „examine how the framework for trans-national co-operation of regional or local actors could be better supported at EU level, with a view to presenting proposals by the end of 2003" (Gsodam & Alcolea Martínez, 2014: 44).

Accordingly, in 2003, DG REGIO assigned the AEBR to elaborate a study providing „solid and practical legal background information upon which to base the formulation and implementation of cross-border and transnational programmes

at the Community level in the next programming period, and […] indications of possible optimal operational solutions". (AEBR, 2004b: 4)[3] The Terms of Reference of the call included the task to investigate the opportunity of „the EU's accession to the Madrid Outline Convention of the Council of Europe" (Ibid.: 57); as well as the analysis of further solutions of institutionalisation of cross-border cooperation within or outside the Interreg programmes.

On the one hand, the study excludes the opportunity of accession to the Madrid Outline Convention because of the lack of an European constitution (national „statute"); the missing national level adoptions of the Convention and the legislative procedures of the EU which would additionally necessitate the creation of a separate regulation. On the other hand, the authors recommended that the tools proposed by the CoR in the previous study (CoR, 2002b) should not be ignored; however, considering the name of the European Cooperation Area, understood rather geographically, should be replaced. The concept of an Interreg-specific tool designed exclusively for managing cross-border, transnational or interregional programmes has similarly been rejected since it would prescribe the involvement of state-level actors of these programmes, preventing the establishment of purely regional or local alliances, and it would needlessly limit the potential activities of the members of such an entity. Finally, similarly to the previous document (CoR, 2002b), the authors of the study outline an „incremental" and a „strategic/political" solution. The first model consists of the amendment of existing tools and initiatives of the EU (the European Economic Interest Grouping (EEIG), the European Cooperative Society (ECS), the European Association (EA)). The second solution would mean the creation of new Community law-based instruments of the European Special Purpose Authority (ESPA) and the European Public Law Agreement (EPLA). As the authors highlight, the two new tools would create „no new tier of territorial self-government" (AEBR, 2004b: 68), it would be flexible enough „in order to respect the diversity of legal framework conditions for decentralised public-law based co-operation in different EU-Member States and in neighbouring Third Countries" (Ibid.), and it would „not independently execute sovereignty rights on foreign territory" (Ibid.: 70). The ESPA is designed to „elaborate, manage and implement EU-programmes supporting cross-border, transnational and inter-regional co-operation" (Ibid.: 73), while in the case of EPLA, „a territorial authority will be given the possibility to establish a delegated execution of own tasks by another territorial authority, […] in the name of the delegating authority…" (Ibid.: 71) The so-called European Public Interest Grouping setup for a specific purpose by the EPLA may provide general services, create structures facilitating the implementation of EU co-

3 Hereby, I would like to express my gratitude to Mr Martín Guillermo Ramírez, current secretary general of the AEBR for providing me with the three versions of the cited study (the Synthesis Report, the Summary Position Paper and the Brief Summary Report).

operation programmes (e.g. joint secretariat or intermediary body) and cooperation projects. (Ibid.: 78) Although, the instruments can be applied in all three forms of territorial cooperation, the explanatory chapters focus instead on direct cross-border cooperation involving authorities with contiguous territories: „Joint cooperative structures with decision-making powers should guarantee the equal representation of partners on both sides of the border." (AEBR, 2004a: 1)

The main advantage of an independent new entity is that it has a stable, long-term strategic character freed from the volatility of changing majorities and ad-hoc goals of local authorities: a fundamental condition for „implementing sovereign rights on the other side of a border without impinging on national competencies" (Ibid.: 9) and the creation of cross-border soft spaces and territorial identities.

Despite the reluctance of the Commission to propose a new instrument for territorial cooperation, the third Cohesion Report published in 2004 informs the audience on the preparation of

> *„a European cooperation structure ("Cross-border regional authority"), in order to allow Member States, regions and local authorities to address – both inside and outside Community programmes – the traditional legal and administrative problems encountered in the management of cross-border programmes and projects. The aim would be to transfer to this new legal structure the capacity to carry out cooperation activities on behalf of public authorities." (EC, 2004a: XXXI)*

As Evrard and Engl (2018) underline, apart from the theoretically and practically well-based lobby of the CoR and the AEBR, the rationale for the change was the reform of the Cohesion Policy of which European Territorial Cooperation became the third objective; and the reports of the Court of Auditors from 1995 and 2004 warning that the Interreg projects hardly had cross-border character.[4] Accordingly, the Commission proposed in July, 2004 (EC, 2004b) to create a „special instrument enabling joint cross-border administration of programmes and projects" (Engl, 2014a: 17). Even the naming of the proposed instrument (European Grouping of *Cross-border* Cooperation, EGCC) clearly alluded to a narrow geographic scope. At the same time, EGCC was presented by the draft regulation as a tool for managing cross-border, *transnational* and *inter-regional* cooperation. The brief and concise legal document defines the groupings as legal entities whose aim is „to facilitate and promote cross-border co-operation between Member States, as well as regional and local authorities, with the aim of reinforcing economic, social and territorial cohesion" (Art 1(3)). In these terms, an EGCC may manage programmes and

4 The INTERACT study on organisational aspects of cross-border Interreg programmes published in 2006 had a very similar starting point, stating that only 6% of total INTERREG funds are managed by cross-border structures. (INTERACT, 2006: 2)

projects and carry out tasks assigned to it by its members, within the confines of members' competences (Art 3).

During the negotiations between the EU institutions, the name of the tool was changed from Cross-border to Trans-European (in harmony with the then comprehensive meaning of the term covering all three strands of European Territorial Cooperation) and, later on to Territorial Cooperation groupings (being connected to the reform of the Cohesion Policy). In parallel, greater emphasis has been given to the general *territorial* character of the tool instead of its *cross-border* nature. (See e.g. CoR, 2005)

The draft regulation was included in the Cohesion Policy regulatory package with a view to speeding up its approval before 2007. (Engl, 2014a: 17) Several Member States wanted to leave the proposal out of the package. In particular, Germany and Spain opposed the proposal (Gsodam & Alcolea Martínez, 2014: 44). Finally, the Regulation EC 1082/2006 was adopted together with other Cohesion Policy regulations, on 5 July, 2006; it entered into effect on 1 August, 2006; it was allowed to be applied from 1 January 2007 and the Member States were obliged to apply it from 1 August, 2007. The Regulation was amended in 2013 as part of the new Cohesion Policy package.

The above presentation of the prehistory of the EGTC demonstrates that the preliminary intention was to create a stable legal solution to the challenges of cross-border structures, such as euroregions. During the lengthy legislative process, the mission was broadened to include further forms of territorial cooperation; and the tool created in 2006 was designed to manage territorial programmes rather than to solve those problems identified by the Gerlach Report in 1976.

The law in action: the users' interpretation of the EGTC tool

In his study, Matteo Nicolini (2014: 112) adapts the differentiation between 'black-letter law' and 'law in action' to the case of the EGTC Regulation where the latter one „can also be labelled as 'law in evolution'". According to the theoretical background of this differentiation it is not enough to analyse legal documents but the researcher has also to investigate the application of the rules: how they are put in practice.

According to the black-letter aspects of the Regulation, the EGTC tool has been designed to:

- „overcome the obstacles hindering territorial cooperation" (EC, 2006: Preamble 8);
- to implement „territorial cooperation programmes or projects co-financed by the Community" or carry out „actions of territorial cooperation which

are at the sole initiative of the Member States and their regional and local authorities with or without a financial contribution from the Community" (Ibid., Preamble 11);

- at all three levels of territorial cooperation (Art 1(2));
- within the limits of „the facilitation and promotion of territorial cooperation to strengthen economic and social cohesion" (Art 7(2)), „primarily […] the implementation of territorial cooperation programmes or projects co-financed by the Community through the European Regional Development Fund, the European Social Fund and/or the Cohesion Fund" (Art 7(3)), however it may
- carry out other specific actions of territorial cooperation between its members (Ibid.).

Based on the rules stipulated in the black-letter law, the EGTC tool was envisaged to be widely applied in the whole territory of the EU with a view to smoothing the implementation of territorial cooperation programmes and projects, to ensure the sustainability of the results of the programmes and projects and, through the above, to enhance territorial cohesion of the Union.

Between 2009 and 2011, during the revision of the Regulation, the policy-makers had to conlude that the application of the tool had not met the expectations in geographic and management terms. Rather, the instrument was applied to purposes different from the intentions of the „founding fathers".

Chilla et al. (2017) analyse the policy diffusion process of institutional innovation presenting the factors of learning, competition, mimicry and coercion, as well as the spatial dimension of spreading new solutions. The authors highlight the role of proximity in increasing the mimicry effects. The scientific analyses and the annual Monitoring Reports of the CoR always draw attention to the geographic concentration of the groupings along special patterns. While some countries (like France, Spain, Hungary and Slovakia) give a home to many EGTCs, the tool is not aplied at all in the Nordic and Baltic States. The reluctance of Nordic states is justified by the availability of advanced mechanisms and structures already in existence among these countries. (Engl, 2016; Chilla et al., 2017) In other countries the moderate number of such institutions is explained by the late approval of the relevant national provisions (such as in Austria and Italy). (CoR, 2010: 5) A further factor is the attitude at government level to cross-border insitutionalised development in general. Some countries have strong traditions of local and regional level cooperation, e.g. the Benelux Countries or France, which have always been very active in institutional innovation in CBC. The popularity of the tool in the

eastern countries can partly be explained by the resource needs of local and regional authorities and the lack of strong cross-border structures evolved earlier in the West (weak „institutional thickness"). (Chilla et al., 2017: 14)

Finally, one can mention the differences between national legislation and the procedure connected to the approval of the groupings. In some countries (e.g. Italy, Poland, Romania) many national level authorities are involved in the issuing of the approval, making the whole process too complex to try. On the contrary, in the Netherlands, even the approval and registration phases are united in one act.

As a result, unlike the preliminary expectations, the EGTC tool could not spread over the Continent quickly and effectively. The 2011 Report by Alberto Núñez Feijóo for the CoR concluded that EGTC was prevented from „becoming the ideal Community legal instrument for institutionalising and consolidating territorial cooperation in the Union" (CoR, 2011b: point 22). The Committee of the Regions even made a recommendation to setup an EU-level fund supporting financially the establishment and operation of EGTCs in order to increase their number and their role in European territorial policies. (Ibid.: point 17)

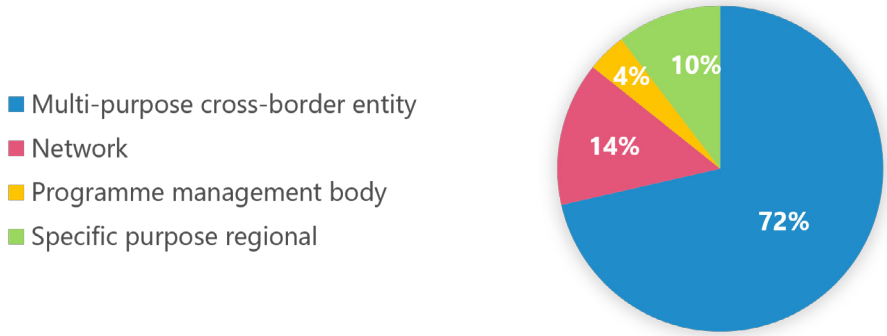
Similarly, „[t]he instrument is hardly used for the original intent of functioning as a managing authority (MA)". (Zillmer et al., 2018: v). Experiences and studies show that local and regional stakeholders apply the tool especially for implementing territorial projects. Up to the time of writing this study, three EGTC set-ups supported programme implementation at MA level (the two Grande Région EGTCs dedicated to the 2007-2013 and the 2014-2020 ETC and Interreg programmes, as well as, the ESPON Managing Authority). The PAMINA, the Rába-Danube-Váh and the Via Carpatia EGTCs manage part of a programme (namely, the Small Project Fund), while the EGTC GO is the only grouping implementing cross-border ITI as an intermediary body. To sum up: programme management is not a typical function performed by EGTCs.

Even more, the focus of the vast majority of the groupings greatly differs from the black-letter sense of the Regulation. On the one hand, by interlinking the territorial cooperation strand of Cohesion Policy with the EGTC, the Regulation envisaged the establishment of EGTCs of a territorial classification, namely cross-border, transnational and interregional groupings were expected to settle. The existing EGTCs can rather be classified by their functions. Many times, it is hard to decide, which geographic category is the most suitable for a grouping. For instance, the CETC EGTC connects regional authorities from Sweden, Poland, Hungary and Croatia; stretching over the territory of six different transnational programmes. The EUCOR EGTC involves five universities from a clearly delineated geographic (border) area. However, it is not self-evident that this grouping should be categorised

together with the Summit of the Greater Region or the PAMINA EGTCs operating partly on the same territory because EUCOR has a specific sectoral focus.

As a consequence, a functional typology seems to be more fruitful. According to this approach, the 77 groupings registered so farcan be classified as multi-purpose cross-border entities (55); networks (11); programme management bodies (3); and specific purpose cross-border groupings (8).

Figure 1: Functional typology of EGTCs



Source: Own elaboration based on EGTC Monitoring Reports

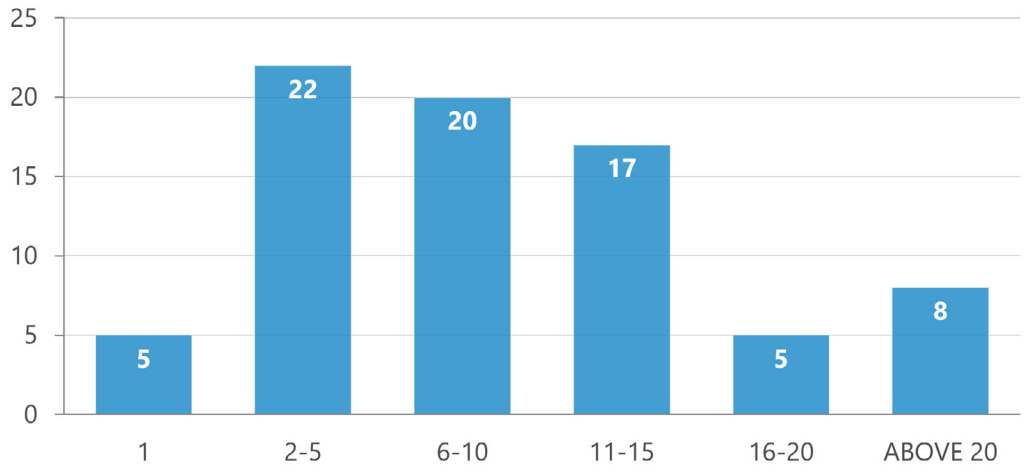
When applying the above typology, the geographic concerns can be overcome. From a geographic point of view, network EGTCs can be either transnational or interregional. Some of the cross-border groupings are focusing on one concrete mission, for example: the famous Hospital of Cerdanya EGTC; the university cooperation within the EUCOR; the protection and valorisation of natural assets in the case of Geopark Karawanken or Bonifacio Strait Nature Park EGTCs; the development of a cross-border railway within the Eisenbahnneubaustrecke Dresden-Prag EGTC; etc. However, 72% of the total number of groupings established so far have a multi-purpose regional character. These EGTCs are concerned with the integrated development and integration of a border area in a comprehensive way. Based on the information and data available in five EGTC Monitoring Reports (CoR, 2011a; 2014; 2017; 2018; 2020), the EGTCs perform a wide variety of tasks, including symbolic political issues (e.g. peace building, Euro-Atlantic integration, security); economy (business development, tourism, entrepreneurship, cross-border trade, etc.); green issues (energy, climate change, waste management, nature protection, etc.); social issues (culture, health, social services, active aging, etc.); knowledge society (R&D&I, ICT-development, scientific research); regional branding, mobility, spatial planning and development, as well as governance.

Figure 2: Fields of activities of the EGTCs

Source: Own elaboration based on EGTC Monitoring Reports

Each of the groupings deliver a range of one to 27 tasks. The majority identified two to 15 different fields of activities but even those mentioning just one task are in practice interested in several topics. For instance, Arrabona EGTC targets 'urban and territorial development', while UTTS indicated 'employment' which obviously involves many further potential subjects.

Figure 3: Quantity of tasks per EGTC



Source: Own elaboration based on EGTC Monitoring Reports

'Specific purpose' does not mean that the EGTC has one single task. Instead, these groupings concentrate on one development or service which involves several interconnected tasks. E.g. Hospital Cerdanya EGTC's particular objective is to manage cross-border health services in the mountainous French-Spanish border area. However, this objective includes not only operating the hospital (provision of the services), but also the performance of research and innovation, education, employment, mobility and social inclusion related tasks. Network EGTCs also have a multifold set of missions, containing eight to ten tasks on average. It means that the groupings established so far do not follow the path set by the Regulation: they hardly manage programmes or a part of an EU programme; andthey are not designed to implement and maintain the results of a project. Rather, the EGTCs should be considered as multi-purpose organisations realising their own agenda (programme?) through the implementation of many projects, actions, initiatives, and interventions. As Palermo puts it (2014: 146): „Those implementing cross-border coperation are also largely those who develop it. In some sense, the actors involved have to be able to transcend the framework."

The duality of the preliminary intentions and the reality had been raised during the revision process of the Regulation, between 2009 and 2013. As a consequence, the aspects of operations to be realised without the utilisation of EU Cohesion Policy Funds, e.g. in the form of provision of services of general economic interest, gained a stronger emphasis in the amended legislation. In addition, the new Cohesion Policy package adopted in 2013 enabled the groupings to manage integrated territorial investments (ITI) and Joint Action Plans (JAP). (EC, 2013) By these modifications, the EU institutions reflected two phenomena: (1) on the one hand, the policy-makers realised that the vast majority of the new organisations concentrated on the development of contiguous cross-border areas following the euroregional thinking; and (2) on the other hand, the amendments mirrored the multi-purpose character of the existing EGTCs.

The draft regulations of the Cohesion Policy beyond 2020 equips the instrument with further capacities, e.g. the management of Small Project Funds and, as governance forms of functional areas, the ability to carry out integrated interventions.

As Engl (2014b: 151) puts it: „… these additional functional dimensions are more important than the initially conceived primary goal of programme management". „ However, in practice it has to be recognized that the large majority of existing EGTCs do not provide 'innovative' solutions with regard to the provision of public services; they seem to focus on crossborder regional development, spatial planning and management issues and seem to be mainly based on small-scale partnerships on the local or regional level". (Chilla et al., 2017: 9)

Their objectives do not differ from „cross-border institutions that often preceded them" (Svensson, 2014: 87). 72% of the EGTCs are, in reality, *euroregional co-operation groupings* whose aims and, in many cases, even their structure remains the same (or very similar to) as it was before the establishment of the new legal form (Engl, 2016). The difference consists in their stability (Svensson, 2014), institutional sustainability (Fink, 2014) and reliability (Zumbusch & Scherer, 2015). Surprisingly or not, EGTCs as entities of network governance representing and managing soft spaces in a flexible way, are „strongly institutionalized, territorial oriented organizations" (Zumbusch & Scherer, 2015: 516): „[t]hey are able to offer a stable framework for long lasting continuity, for simplified decision making processes and for an enhanced potential to deal also with conflict-driven issues in the region" (Ibid.).

Conclusion: A first taking stock of the tool[5]

> *„The European added value of the instrument is strongly confirmed. Through the cooperation of members from different MS and Third countries, decision-making can be facilitated, objectives and strategies can be jointly developed across national borders, independence from unitary political decisions is maintained and the instrument benefits from a high European visibility." (Zillmer et al., 2018: vi)*

Apart from the above advantages, the shift from a rather economic (EU) approach to territorial cooperation to a more legal- and governance-based (CoE) one can be detected through the EGTC tool. Engl (2016: 144) quotes De Sousa (2013: 685):

> *"Cross-border co-operation arrangements have now been integrated into the EU legal framework. The proponents of this new bottom-up approach to territorial co-operation argue that cross-border co-operation will move from being marginal, specialized and (often) informal set of arrangements to become stronger, more legally certain and transparent organizational features of the EU institutional architecture. The new EGTCs are expected to play a greater role in setting the regional policy agenda."*

The present study aimed to draw attention to the fact that, unlike the intentions of the „founding fathers" presented in the black-letter law (introduced by Marcin Krzymuski in this volume), the applicants of the tool interpret the mission of the EGTC for their own bottom-up, complex and strongly territorialised purposes. Accordingly, the experiences of the first one-and-a-half decade history of the instrument can be summarised not around cross-border, transnational or interregional programme or project management but based on four terms: integration, flexibility, adaptability and representativity.

5 The studies of this volume will give a second, much broader taking stock of the EGTC tool, from different perspectives.

Integration

Multi-purpose EGTCs represent a new level of cross-border functional integration that was the main objective of former euroregions (Telle 2017). From this point of view, these groupings „show a "cooperation trajectory" starting from less formalised cooperation towards more formalised and intense cooperation. Euroregions, eurodistricts, working communities and other formalised cooperation forms have been important predecessors for many EGTCs." (CoR, 2010: 5) Thanks to their legal stability, the groupings have stronger capacity and greater potential to integrate borderlands (Engl, 2016) based on a new approach to spatial planning (Durand, 2014) through integrated strategies and more coherent coordination (Zillmer et al., 2018). The tool enables the local stakeholders to construct new functional spaces across the border (Nicolini, 2014; Engl, 2016; Evrard, 2017), fulfilling the normative needs of functional level cooperation.

Flexibility

The EGTC literature shares the view that the Regulation allows flexible application of the tool that is fundamentally underpinned by the colourful diversity of the objectives, tasks and missions of the existing groupings presented in this study. As Telle underlines, this flexibility is one of the major reasons for the „mushrooming" of such institutions (Telle, 2017: 97): „... euroregions are voluntary associations of public entities and have fluid and fuzzy membership and geographical boundaries[…]. According to the theory of soft spaces, this fluid and fuzzy nature enables quick adaptation to changing opportunity structures." Accordingly, although the EGTC instrument means a stricter institutional form than former solutions, this is still not accompanied with hardening of soft spaces (Othengrafen et al., 2015: 225).

Adaptability

In compliance with its flexibility, the EGTC instrument is easily adaptable to different contexts. (Nicolini 2014) „EGTCs are currently in the implementation process, and only very few of them are actually focussed on structural funds administration: The EGTC tool has developed more as a tool for tailor-made implementation for multiple purposes…" (Chilla et al., 2017: 2)

As a consequence, there is „no single institutional pattern or methodology" (Engl, 2016: 148) to follow when creating a grouping: „there are as many 'laws in action' as there are EGTCs" (Nicolini, 2014: 115). Or, to put it differently: „Every national as well as regional context and every EGTC development has its own path and motivations." (Chilla et al., 2017: 15) If every grouping has its own territorial-functional context that is reflected in their objectives, structure and activities, no

normative methods to measure the performance of these tools are applicable: it does not make sense to create a normative model according to which the EGTCs can be scored more or less in an evaluation document. On the contrary, only one criterion may be used: Whether and how the particular EGTC fulfils its purposes set in the founding documents.

Representativeness

Analysing integration raises the questions of governance and representation. As stated above, EGTC means a qualitative step in cross-border territorial integration: „… EGTCs may disclose functional purposes that are not limited to the administration of EU-funds but may touch the overall governance of a given territory." (Engl, 2014b: 156) It means „a certain degree of territorial-administrative autonomy vis-à-vis central governments in order to function as spaces of bottom-up governance" (Popescu, 2012: 143), "including novel expressions of sovereignty related to contractualised forms of governance" (Lissandrello, 2004: 90). In this way, the purely technical solution targeting the implementation of cross-border, transnational or interregional programmes and projects becomes a political tool (Nicolini, 2014: 102). Once the EGTC tool gains a political aspect, the concerns of competences, legitimacy and representation occur.

After the adoption of the Regulation, the doyen of CBC, Mr Jens Gabbe, who played a decisive role in the design of the EGTC, permanently highlighted that the groupings were not equiped with competencies but tasks. In this way, the conflicts of interest between the respresentatives of governments and governance structures seemed to be avoidable. Indeed, the Member States managed to build several restricting conditions into the text of the Regulation which guarantee state-level control over the establishment and operation of the groupings (Gsodam & Alcolea Martínez, 2014: 45). In the amended Regulation, this room for intervention has been enlarged further since not only the hard-to-define public security, public health and public interest (!) may offer the opportunity to prohibit the activities of the EGTC but even registration can be denied if the texts of the Convention and the Statutes (although this is no longer an obligatory annex of the registration document) do not comply.

At the same time, when allowing the participation of undertakings providing services of general economic interest (SGEI) in the membership of a grouping and the right to define the fees of these (cross-border) services, the same amendment remarkably broadens the autonomy of the EGTCs. Although, it is hard to imagine how cross-border public services can be provided without competencies and responsibilities.

It is also true that the concerns regarding the state level interventions have not proven to be justified. Up to now, one grouping, the Karst-Bodva EGTC (SK/HU),

was dissolved in 2017 and two further EGTCs' winding up is in progress (the UTTS and the Novohrad-Nógrád, both at the Hungary-Slovakia border). In each case, the groupings themselves terminated their activities triggering the dissolution process, without confrontation with the state administration.

Concerning legitimacy and representation, one can conclude that among the potential forms and instruments, EGTC can most justly claim to become „the main representative of a cross-border space, acting on its behalf" (Evrard, 2017: 140). However, as numerous scholars draw to our attention: the EGTC projects are limited to a closed group of regional elites without the involvement of ordinary citizens or at least the civil society associations of the border area (Gsodam & Alcolea Martínez, 2014; Engl, 2016; Lange & Pires, 2018). Notwithstanding the very rare examples of citizens' involvement (e.g. the Lille-Kortrijk-Tournai, the Meuse-Rhine and the PAMINA EGTCs), the groupings exclusively involve the particular governance tiers represented in the structure. This phenomenon can be called as the 'representation paradox'.

Figure 4: The representation paradox

Source: Own elaboration

The representation paradox consists of the dual and opposite process of institutionalisation and socialisation. While during the last 60 years, cross-border cooperation in Europe has been gradually creating stable and formal institutions achieving high level of autonomy against governmental institutions, accompanied with legitimacy in cross-border developments; in parallel, these structures lost their social basis, the strength of informality and spontaneity. Consequently, EGTCs can represent the cross-border territory covered by their members – but not the people living there. It is a challenge yet to respond in the future…

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