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## The European grouping for territorial cooperation (EGTC): which potential for a fruitful governance on the EU territory

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## **The European grouping for territorial cooperation (EGTC): which potential for a fruitful governance on the EU territory.**

Key words: territorial governance, European grouping for territorial cooperation

Governance has since long been a real challenge for the European Union (COM (2001) 428 final) White Paper on European Governance). With the inclusion of territorial cohesion in the EU Treaty (Lisbon Treaty, 2009), territorial governance was also acknowledged as a major issue at stake (Barca report, 2009). Territorial governance can be understood in two ways: governance of territories (how is a territory organised) and/or territorial dimension of governance (referring to wider understanding of governance, and how this larger perspective integrates the territorial dimension – or not)(ESPON 2006, report 2 3 2 on territorial governance). Both includes at least two aspects: a) the legal, institutional and juridical framework in which it takes places, b) the governance organisation based on more informal grounds.

In this paper we want to investigate those different paths, with a focus on the new European juridical tool to organise territorial cooperation: the European grouping for territorial cooperation (EC1082/2006), and in particular which potential this instrument provides for a fruitful governance on the EU territory. Elaborating further on our work for TERCO report (ESPON 2013) we first concentrate on the current implementation of European grouping for territorial cooperation, and the challenges it is facing. We then focus on the large range of governance arrangements that existing EGTCs are illustrating, the added value of the instrument, and the future challenges it will be facing. Eventually, we then conclude on the potential of EGTC instrument for fruitful territorial cooperation, having in mind that ‘one size does not fit all’ (Barca, id), and that our hypothesis is that there is no universal – neither European - ‘best model’ of governance, but rather a best model of ‘process’ - including some fundamental prerequisites - to be adapted according to time and place.

### **1.1 EGTC: a new European legal instrument for multilevel governance and territorial cooperation**

In relation to territorial cooperation governance framework, EGTC arrangements are new, but have important implications for the governance of territorial cooperation, and as a potential instrument for territorial integration. The European Grouping of Territorial Cooperation (EGTC) was established the 5 July 2006, by Regulation (EC) 1082/2006 of the European Parliament and of the Council, and came into force on 1 August 2006. It allows public entities of different Member States to come together under a new entity with full legal personality.

EGTC is the result of a long standing desire, on the part of both local and regional authorities as well as EU institutions (in particular the Committee of the Regions and DG REGIO) to develop a more efficient instrument for territorial cooperation. The Committee of the Regions (CoR) has strongly supported and commented the creation of the regulation, as articulated through numerous opinions and reports on the subject (CoR 2002, 2004, 2006, 2008): *‘it is desirable, in terms of the future of European integration, and especially enlargement, to present a comprehensive strategy on cross-border, inter-territorial and transnational cooperation, that takes into account the growing need for the regional and local authorities to enter new, broad, structured forms of cooperation, with enlargement in mind’* (CoR 2002). Furthermore, CoR *‘underlines that by giving forms of territorial cooperation between*

*institutional actors at different levels from two or more Member States a Community legal structure, the EGTC can trigger a process of horizontal European integration in which the principles of subsidiarity and proximity are applied'*(CoR, 2008). The regulation was also strongly promoted and supported by the EU Commission DG in charge of the INTERREG programme, who wanted to implement it as a tailor-made instrument to organize INTERREG programme management and implementation. Nevertheless, despite this strong support, implementation of EGTC has so far been scarce (see infra).

The following sections will introduce the general framework of the EGTC regulation and its implementation, as well as current revision of the regulation.

#### **a: regulation**

The EGTC is the first European cooperation structure with a legal personality defined by European Law. It is designed to facilitate and promote territorial cooperation between public authorities (cross-border, transnational and interregional cooperation), in order to strengthen the territorial, economic and social cohesion of the European territory. It is an optional tool which is there to help when convenient<sup>1</sup>.

#### An EU tool with national provisions

In contrast to the usual international character governing territorial cooperation between 2 different States, the EGTC is governed by the Regulation (EC) 1082/2006 of the European Parliament and of the Council. This Regulation is complemented by national provisions adopted by each EU Member State. Therefore, EGTC initiatives are governed and regulated according to a number of frameworks:

- the Regulation (EC) 1082/2006 of the European Parliament and of the Council;
- the provisions of the Convention and the Statutes adopted by the EGTC's members; and
- the Law of the Member State where the EGTC has its registered office.

This structure appears to offer a clear framework that can be applied across the EU Member States. However, Member States hold different interpretations of the way this regulation can be implemented. EU regulations are supposed to be directly applicable in all EU Member States and are legally binding, without Member States having to enact domestic legislation. However, a level of uncertainty and ambiguity has surrounded arrangements for EGTC, due to the fact that EGTC arrangements have to be 'complemented by national provisions' and that several aspects are kept open for decisions by Member States. In practice, EGTC

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<sup>1</sup> In its explanatory memorandum to the proposal for a revision of the EGTC regulation, the Commission clarifies the subject:

*'While the CoR in its opinion adopted in January 2011 suggested that financial and other incentives might be used to promote usage of EGTCs, and some active group endorsed this, the Commission is of the opinion that recourse to an EGTC should be a free and unbiased choice of the parties concerned, without specific incentives beyond the inherent utility of the instrument'* (COM (2011) 610 final, 2011/0272,p.3).

initiatives have to be approved by national governments.<sup>2</sup> Additionally, this flexibility for ‘national provision’ has created quite a different pattern of EGTC regulation implementation in all EU countries, introducing differences in status where this tool had the objective to harmonise implementation procedures.

### Resources, members and mandatory documents

An EGTC may carry out actions of territorial cooperation with or without a financial contribution from the EU (Art. 7 of the EGTC Regulation). The EGTC can be dedicated to the management and implementation of territorial cooperation programmes or projects co-financed by the Community through the European Regional Development Fund (ERDF), the European Social Fund (ESF) or/and the Cohesion Fund. It can also use all other EU financial instruments. Crucially, it can implement tasks without European co-funding, as long as the overall objective is territorial cooperation.

Members of an EGTC can include: Member States, regional or local authorities, or any other bodies governed by public law. This multilevel governance element to EGTC offers major added value. State and sub-national authorities can participate jointly within the same cooperation. Currently, an EGTC has to be made up of members located within the territory of at least two EU Member States. Therefore it is not possible so far to use it for bilateral cross-border cooperation with ‘neighbourhood’ countries (see infra revision).

In terms of the strategic orientation of an EGTC, members are required to unanimously agree a convention and adopt statutes on the basis of this convention. The convention sets out (Art. 8): the name, territory and objective and tasks of EGTC. The EGTC statutes contain (Art. 9): operating provisions for the EGTC's institutions and their competencies; decision-making procedure of the EGTC, language(s) functioning and financial contributions.

Agreements on these aspects of the EGTC are of particular relevance when considering obstacles and challenges involved in the governance of territorial cooperation. For example, in the convention, the exact territory of the cooperation has to be specified, as well as the objectives of the cooperation, and the tasks it will undertake. This means that all authorities participating in the cooperation have to be involved in setting goals and agreeing structures. They have to be clear on the definitions and objectives, and must agree on them. The statutes introduce an accepted frame for working together, which, once agreed, reduces uncertainties and loopholes within the cooperation. Nevertheless, it can also ‘block’ cooperation activities on very practical administrative matters, or by having to solve some specific disagreement.

### ***b: Implementation***

Despite the strong support from the Committee of the Regions (CoR) and DG Regio, EGTC has only been implemented on a very small scale (see CoR register/EGTC platform).<sup>3</sup>

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<sup>2</sup> When regional and local bodies have filed a request for EGTC-implementation with their national governments, the governments have three months to respond (Art. 4.3). The system indicates a kind of veto power for the governments. However, the regulation is formulated in such a way that the government is presumed to grant the request if it does not oppose Regulation 1082/2006, national law or goes against the national public interest or public policy. In the latter case, the government is required to give an official motivation for rejecting a request. (Talberg, et al., EGTC report, 2011) In the proposal for revision (the period for approval from national governments is extended to 6 months, but without an answer in this period, the convention ‘*should be deemed to be approved by tacit agreement*’ com 2011 610, p 7).

<sup>3</sup> Article 5 of the EGTC regulation specifies that EGTC members are obliged to inform the Committee of the Regions of future conventions and the registration and/or publication of the statutes; this opens the way for a “European register” of EGTCs to be held at the Committee of the Regions, as originally requested by the CoR (CdR 62/2004).

### Unbalanced implementation:

By October 2011 24 EGTCs have been established in 15 countries, with different patterns in implementation:

- France, Belgium, Hungary, Slovakia, Spain, Portugal and Germany have all more than one EGTC, for crossborder cooperation. The highest concentration of EGTC implementation is between France and Belgium (those 2 MS being – with Luxembourg - also the only MS involved as members in EGTCs), North Portugal and Spain, and between Hungary and Slovakia).
- Romania, Luxembourg (which has implemented the so far unique EGTC in charge of INTERREG program), and very recently Austria, Netherlands and Slovenia all have one crossborder EGTC.
- Italy was until September 2011 involved in the existing two ‘network’ EGTCs ( in contrast with crossborder or transnational cooperation, in this case there is no geographical proximity: only 2 EGTC ‘network’ have been implemented so far), but has recently implemented also two cross-border EGTCs, including one with Slovenia, which is the first case of a bilateral cross-border EGTC between an old and a new member State.
- Greece and Cyprus are involved in the two existing ‘network’ EGTCs, but do not have any cross-border or transnational EGTC.
- No EGTC exist between EU Member States and neighbouring countries, with the exception of Banat EGTC (Hungary, Romania and Serbia). No EGTC exist in North Europe or between the UK (even though the UK was one of the first to adopt the regulation) and Ireland,

Officially, 21 EGTCs are under preparation (see CoR register), but some of them have been in this status for quite a long time so they are obviously facing some strong obstacles<sup>4</sup>.

### Main challenges

This scarcity of EGTC implementation could be explained by several challenges this regulation is facing.

1. Member States have adopted national provision to implement the regulation at different speeds.
2. Diversity of implementation due to ‘national provision’.
3. Regulation adopted too late for 2007-13 programming period.
4. Some countries already have relevant tools for territorial cooperation.
5. The regulation is not solving all problem of territorial cooperation, and is even introducing some new ones (e.g. statue of EGTC staff).
6. This European tool is still not fully acknowledged by EU institutions, including Commission DGs.

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Furthermore, an EGTC Platform was created by the Bureau of the Committee of the Regions on 26 January 2011 (ref. CDR 397/2010 pt. 6) and includes all the existing EGTC and EGTC under constitution, experts, associations and other stakeholders such as local and regional authorities, cross-border structures and supportive organizations.

4 In December 2011, 2 more EGTC were implemented, between ES/FR and HU/SK

The adoption of the national provision to implement the regulation at national level was a first major step for the formation of EGTC. The ease and speed with which EGTC Regulation 1082/2006 has been treated at national (and regional levels when required) has varied across the Member States, from 2007 until today (AT, BE and DE have yet to complete their federal processes, but EGTC regulation is already implemented). Even though the regulation is supposed to be directly applicable, the interpretation of ‘national provision’ has led to some ambiguity on this matter (see *supra*).

Another issue for the low number of EGTCs concerns the role of an EGTC as MA for the INTERREG programme, or other EU-funded programmes. Even if EGTC regulations were adopted specifically to address the following cooperation efforts, the Regulation was adopted too late to be of real use for the programming period 2007-13. Therefore, so far the EGTC has concerned ‘other specific actions’, with the exception of the INTERREG IV A Greater Region EGTC (created in 2010 see *infra*). Furthermore, it can be argued that some countries have already developed quite relevant and effective tools for territorial cooperation, and do not want EGTC as a new tool. This seems to apply particularly to Scandinavian countries. In these countries there has been a long tradition of well functioning territorial cooperation structures.

With regard to points 5 and 6 in box 1, several political, administrative or technical issues have been highlighted in relation to the creation and functioning of EGTC, meaning that they are still quite constraining. These are listed in the Commission report on ‘the application of the Regulation on a EGTC’ (COM (2011) 462 final): in terms of the creation of EGTC, issues relate to complex procedures; novelty of the instrument; insufficient awareness and acknowledgement from the national authorities and the Commission services other than DG Regio; different national implementations of EGTC regulation; impossibility of creating a bilateral EGTC with a non EU MS; potential confusion between what should be included in the convention and in the Statutes; membership limited to public authorities (with some exceptions);<sup>5</sup> and delays in the publication process. Functioning problems are mainly related to staff contract.

### ***c: Revisions***

Several positive steps have been taken to further develop EGTC provisions and to address some of the issues identified above. According to Art. 17 of Regulation 1082/2006, the Commission was to present an evaluation of EGTC before the European Parliament and the Council of Ministers by August 2011, and go on to propose a revision of the regulation. In this perspective, important work on a revision of the EGTC regulation was going on in 2010 and 2011.<sup>6</sup>

#### Proposal for revision of the EGTC regulation, and reaction from stakeholders

After the evaluation was presented in August 2011, and taking into account all comments

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<sup>5</sup> private entities already have an EU instrument to collaborate, the European Economic Interest Grouping .

<sup>6</sup> CoR has already adopted two ‘*avis d’initiative*’ on the subject (2008 and January 2011). Contributions from MS, established EGTCs, EGTCs under preparation, local and regional authorities and other stakeholders fed into the CoR own initiative opinion on the new perspectives for the revision of the EGTC regulation (January 2011) and the legislative work of the EU institutions.

made by main actors (see Note 5), the Commission presented its proposal for revision

*‘The message from all groups (involved in consultation process), and most especially the active EGTCs and those under preparation, was clear: the instrument is useful and has potential going beyond its anticipated functions, but the procedures for operating and especially setting up EGTCs are more complex and uncertain than they should be’* (COM 2011 610 final 2011/0272 COD).

Several problems are addressed in response to the weaknesses and areas of potential improvement identified in the Report referred to above.<sup>7</sup> These changes concern the membership (bilateral cooperation through EGTC is now allowed between 1 MS and 1 non MS), the content of the convention and statutes of an EGTC, its purpose, the process of approval by national authorities, applicable law for employment and for procurement, approaches for EGTCs whose members have different liability for their actions and more transparent procedures for communication.

A joint consultation on the proposal from the Commission was organized by the CoR and a draft opinion was subsequently published by the CoR (5 December 2011).<sup>8</sup> The introduction expresses very positive feeling concerning the proposal, but goes on to further clarifications:

- the CoR *‘considers that use of EGTCs should be voluntary: only territories or networks that will gain a real benefit from setting up an EGTC are using this tool to perpetuate and formalise their cooperation effort’*. This is clearly in line with the Commission proposal, but the CoR nevertheless *‘calls on the European Commission to take more account of the EGTC as a preferred tool for implementing European territorial cooperation policy and to incorporate the EGTC more effectively into legislation relating to cohesion policy for the period 2014-2020’* (COTER, 2012)<sup>9</sup>.
- The CoR is happy with the evolution on non-EU Member States and *‘welcomes the introduction of specific provisions at the external borders of the EU and the inclusion of overseas territories in EGTC partnerships’* as well as supporting *‘the possibility of creating a "bilateral" EGTC consisting of members drawn from a single Member State and members from a single non-EU state or an overseas territory’* (COTER, 2012).
- The CoR is nevertheless still worried about strong future divergences, as it *‘has identified 79 authorities, designated by the 27 Member States, which are entitled to receive and process requests to set up EGTCs’* and *‘notes that questions on the interpretation of Regulation (EC) No 1082/2006 may receive different answers from these authorities, as shown in the matter of the law governing EGTC staff or EGTCs whose members have limited liability’* (COTER 2012), and about permission for *‘national provisions’* in relation to the implementation of the regulation which are giving discretionary power to Member States which hampers harmonisation.
- Eventually, concerning the potential empowerment of EGTC, CoR *‘emphasises that an EGTC acts on behalf of its members and does not exercise their powers. The EGTC*

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<sup>7</sup> Commission report (Com 2011) 462 final.

<sup>8</sup> DRAFT OPINION of the Committee of the Regions, 5 December 2011; COTER V 022 (to be discussed in CoR commission on territorial cohesion policy (COTER), plenary 15-16 February 2012.

<sup>9</sup> This has been integrated in the Commission proposal on regulation for territorial cooperation COM 2011 611 final, 2011/0273 COD

*is not a tool for merging members' powers but rather for implementing cooperation projects or programmes' (COTER, 2012).*

## **1.2 EGTCs: diversity of governance arrangements and added value.**

A large diversity of governance arrangements exist already. On the one hand, EGTC implementation are used in different type of cooperation (crossborder, 'network',... see supra), at different moment of their evolution. This can be interpreted as a positive aspect of EGTC instrument, linked to its flexibility and adaptability.

On the other hand, as was discussed supra the EGTC regulation has been implemented by Member States at different rates. It has also been implemented in different forms, sometimes with quite substantial divergences. The inclusion of 'national provisions' mean that there can be (and are) important differences in approach. These can be found in relation to the opportunities for non-EU 'third countries' to participate. In addition, the potential scope of the cooperation (limited, unlimited) and the potential involvement of Central State authorities differ. There are also divergences in the application of public or private law. These differences between Member States are an obstacle for harmonisation, contradicting the fact that this was an objective which the EGTC regulation had initially intended to achieve.

In terms of the organisational infrastructure for managing and implementing the EGTC, an EGTC is required to appoint (Art. 10):

- an assembly made up representatives of the EGTC members, which fulfils key tasks such as establishing an annual budget; and
- a director representing the EGTC and acting on its behalf.

EGTC members may also decide to set up additional institutions. For example, a number of arrangements include a consultative assembly of non-public authorities. Additionally, the ways in which multi-level governance approaches are applied appear to vary. Only a small amount of EGTCs are really using a multi-level governance structure. Most include partners from the same level of authority on both side of the border. One of the consequences is that membership can become quite large (maximum up to now being 170 municipalities members in one EGTC).

### ***a: Existing EGTCs : identification of governance arrangements***

Based on desk research analysis of this new form of territorial cooperation, it is apparent that specific arrangements for EGTCs already appear to differ on several governance issues, and it is possible to distinguish between different EGTC arrangements. These differences in arrangements are summarised in the table here under.



**Table 1: Governance arrangements**

Type of cooperation	All established EGTCs are for cross-border cooperation, even if some cover quite large areas around borders. There are two exceptions: EGTC Archimède (Islands) and Amphictiony (urban municipalities), which are cooperation networks with no geographic proximity.
Authorities involved	The only States involved in EGTC as members are Belgium, France and Luxembourg. The main members of EGTC are sub-national authorities, but are usually from the same level on both sides of border (municipalities with municipalities, regional level with regional level, etc.). Only 6 EGTCs have a real multi-level governance structure, involving different level of public authorities on both sides of the border. Only one EGTC includes a non-EU Member State (Serbia). There were no bilateral cross-border EGTCs between ‘old’ and ‘new’ Member States until September 2011. The first one has now been established between Italy and Slovenia.
Actors involved	Public authorities. Some private sector and civil society actors are involved through established organisations in some EGTCs, but only in very few cases. Furthermore it is difficult to estimate how intense the involvement of these organisations is.
Competences/objectives	In the majority of the cases EGTCs have a large range of objectives but they never have delegated competences. EGTCs are mainly in charge of undertaking ‘missions’ and supporting and implementing projects.  Two EGTCs are targeted on one specific project (a cross-border hospital; and a cross-border natural reserve).
Law	In the 15 countries with established EGTCs, two have chosen to implement the regulation under private law (GR, SK).
Joint structure	Two clearly identified joint structures, with specific hired staff (EGTC LIKOTO and Greater Region), but several joint working organisations, with a director and some staff working partly in them, in national (local) structures.
Languages	Two languages are mostly used (sometimes three).

Sources: CoR Platform, Metis 2008, 2009, 2010.

***b: Case studies: divergence and convergence in relation to governance issues***

The diversity of EGTCs implementation and governance arrangement is also illustrated through more in depth investigation on specific case studies. Three governance case studies were investigated in depth in the TERCO project:<sup>10</sup>

<sup>10</sup> The research was carried out by experts of the territories involved: IGEAT, University of Brussels for the Eurometropole LIKOTO, VATI institute (Budapest) for the Danube area, and University of Luxembourg (LP ESPON project Metroborder) for the Greater Region, under the supervision of IGEAT

Eurometropole Lille-Kortrijk-Tournai (LIKOTO, BE-FR border) one of the best example so far of a real multi-level governance implementation, with a strong strategy process to build a Eurometropole;

Danube area: illustrates the potential links between EGTC and macro-regional strategies, with one existing EGTC (ISTER GRANUM) and one potential EGTC (Ulm –Vienna-Budapest);

Greater Region: so far the unique EGTC which functions as managing authority of a INTERREG programme (Lux-FR-BE).

Later on we could also investigate on a fourth case study ‘network’ EGTC: AMPHICTIONY (municipalities from Gr, FR; IT, CY)

The research is based partly on desk research into existing documents and includes a detailed documentary analysis (juridical agreements, operational programme, literature on the EGTC - see annexes and bibliography). It is also based on in depth, mainly face to face, interviews with key actors and stakeholders of the EGTC.

All the development and presentation can be found in TERCo scientific report. Here we concentrate on the main findings following the main issues at stake when speaking about governance (see TERCO report): how cooperation is initiated; how cooperation is mobilised; what the driving forces are; which type(s) of partnership are involved; and what the motivation(s) to further institutionalise and formalise territorial cooperation efforts are. Additionally, in relation to EGTCs in particular, whether there is any kind of joint structure in charge of the cooperation, whether it is more centrally or locally driven, and which potential of delegation of competences are at stake are all salient points.

The key points illustrated by case studies are that the initiating, mobilising and driving forces are convergent and rely on political will at different levels. They also are closely linked to the opportunity structures in the EU framework and the funds that are provided. However, a legal framework and evolution towards a Europe with no internal borders are also important drivers.

Considerable divergence on objective between EGTCs can also be noted. Some focus on a European macro-regional strategy; others are more locally oriented, and/or link to the functional needs of a territory. Partnerships are very diverse, from an exhaustive multi-level governance (from state to local level, both side of the border) to limited local member partnerships, or multi-level governance excluding the local level.

The motivations for further formalisation of territorial cooperation efforts through an EGTC are also varied. These include attempts to reduce multi-level governance mismatches in relation to territorial cooperation and implementing specific territorial cooperation programmes. However, in terms of motivation for formalisation all EGTCs converge on the visibility aspects of the region, mainly towards EU and national level.

The joint structures that are being implemented are also very diverse in nature, some having truly joint structures with extended missions and others having implementation responsibilities. Diversity is also present concerning the way the cooperation is driven, from local to national, or an interaction of both.

*c: added value*

Such diversity and convergence trends can be considered as positive. They show permanent and shared added values of EGTC (convergence), and prove that EGTC is suitable for a large variety of territorial cooperation (diversity).

An innovative EU tool for legal framework

Notwithstanding the problems presented in relation to the implementation of EGTC, according to the Commission (see report (COM 2011)/462 final) the EGTC tool is extremely useful when implemented and is providing security, stability and visibility for territorial cooperation groupings. For the first time, a legal instrument has been designed by the EU for public authorities which offers the opportunity for public authorities – independently of their level of competence – to become part of a common legal entity to implement territorial cooperation objectives, within the territory they define. EGTC provides a structure for sub-national authorities from different countries, including non-EU Member States, to cooperate within an EU legal framework. All levels of authorities can be involved, from local to national.<sup>11</sup> The EGTC has a legal personality (it can hire staff; can be responsible for a common budget; can launch public procurement procedures). It gives the possibility for those territorial cooperation actors to act concretely and implement action.

Institutionalisation and visibility

Even if the framework of an already established cooperation programme (see e.g. INTERREG programme Greater Region), the EGTC reinforces de facto the institutionalisation. The link established between sub-national authorities and the EU is being reinforced and diversified. The EU does not only stand for financial support but also for legal support, and is becoming more and more important for the project development in the field of territorial cooperation, providing e.g. the opportunity that the cooperation between national and sub-national authorities between different countries could be formalised in an harmonised way all over EU. The formal character of the EGTC reinforces the attention of the European Union, other cross-border areas and local decision makers on the structure. It allows EGTCs to represent the joint interests of the members to external players, amongst them to EU institutions. It also has strong EU support from CoR, with a platform for exchange and knowledge.

Helping stability and sustainability of cooperation, organising multilevel governance

EGTC helps to create a more stable and sustainable environment for territorial cooperation by institutionalising cooperation as its creation requires the formulation of a convention, and statutes that clarify cooperation. The EGTC therefore provides a sustainable framework of the cooperation which is clear for all partners. As it is suitable for diverse aspects of territorial cooperation, it does not have to be adapted at each new step the territorial cooperation is taking. Such changes can take place within the existing framework. Also, in the context of multi-lateral cross-border cooperation, the very heterogeneous organisation of political tasks is considered one of the most obstructive factors in cooperation (ESPON, Metroborder report, 2010). The EGTC framework constitutes a new opportunity to bring all partners into a

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<sup>11</sup> For instance, nation states cannot be associated to a legal entity in the framework of the Madrid Convention (settled by the Council of Europe) - only subnational authorities may be members.

consultation process, and to decide on a common strategy and action plan for cooperation. Partners also have to define their own ‘rules of the game’ in a formalised way. The agreement forms a binding framework, reducing the uncertainties of the cross-border context. This opportunity to bring all partners together in a more binding framework should help to reduce so called multi-level mismatches and to organise vertical and horizontal multi-level governance.<sup>12</sup>

### 1.3 Future challenges

#### Administrative complexity, financial resources

The EGTC regulation has been created, amongst other things, to address the problem of administrative complexity. However, until now it has not proved very successful in this respect, due to significant divergences in implementation at national level. Furthermore, it has become apparent that when EGTCs are implemented, new problems arise (e.g practicalities regarding staff status, or call launching procedure). The improvements presented in the proposal for revision of the EGTC regulation could help to reduce some administrative obstacles, but the major difficulties linked to diverse national provision remains.

EGTC does not provide additional financial resources in itself, except that the partners can decide a common budget on their own, giving some stability to the cooperation, and not relying on EU programming strategy. Nevertheless, in the current crisis situation, partners usually rely on EU funds for their EGTCs, and EGTCs were initially created with the prior aim of managing EU funds for the territorial cooperation objective. In general, the issue of resource is a crucial point for all EGTC members.

#### Agreeing focus, overcoming tension

EGTC is an extremely useful instrument for addressing challenges in relation to agreeing focus and identifying common goals and strategies. To implement it, members must at least agree on statutes, which clarifies the operational management of the cooperation, and a convention, which has to present the territory, name, and objectives and tasks of an EGTC. So partners have to agree on a focus in order to be able to sign the agreement. The process of strategy building, which is an important asset for a territorial cooperation, can progress from this point.

With regard to implementing a strategic vision, the EGTC could implement a cross-border strategy on behalf of all partners (e.g in the way the managing authority for INTERREG IV A is implementing the operational program) but there is a clear reluctance at this stage to advance the implementation of a supra cross-border regional structure (as national supra-municipalities) with a delegation of competences (see supra CoR draft opinion on revision of EGTC regulation).<sup>13</sup>

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<sup>12</sup> For further development on this issue, see (Evrard, Chilla, 2011, TERCO report, annexe)

<sup>13</sup> As was underlined by E. Evrard and T. Chilla (Greater Region case study, TERCO, 2011), institutions who are members of an EGTC may also delegate part of their own competences to the EGTC in order to ‘facilitate and promote cross-border, transnational and/or interregional cooperation [...] with the exclusive aim of strengthening economic and social cohesion’ (art 1§2, European Parliament and Council, 2006).

Considering tension and conflict, EGTC is not in itself a solution to tensions between partners, and territorial cooperation is not the framework where all negotiations on the territory take place, but it can be a place of consultation and dialogue. EGTC members are involved in a binding agreement and will have some regular meetings of different EGTC institutions. Such an environment provides additional opportunities to overcome obstacles, and to avoid lack of communication between partners. Nevertheless, as illustrated in case studies (see TERCo report), EGTC in itself is not sufficient to boost cooperation, or to solve conflicts of interest.

### Demonstrating impact

Demonstrating impact remains a weak point for territorial cooperation – and a matter of debate concerning possibilities to ‘assess’ some major impact which are not possible to be directly counted by statistical method - and interviewees insisted on the importance of having concrete projects which have tangible impacts for citizens. But they also underlined that a broader perspective must be part of the cooperation; not all projects can directly impact citizens but this does not mean they are not beneficial. In this sense, EGTC provides an organised framework for reflection, and most importantly, provides visibility for cooperation at EU and national level. It also is a step towards organising civil society, which on the one hand could more easily identify a joint organisation, and on the other hand, when implemented by the EGTC, can be involved in the cooperation through an official organisation (e.g. a Forum).

However, the EGTC itself cannot be considered as a way to reinforce the visibility of cross-border cooperation towards citizens. Local visibility of the cooperation is being reinforced on the basis of concrete projects (harmonisation of prices on both sides of the border for public transport, cultural activities, exchange of students and pupils). This mainly depends on the concrete mandate given to the EGTC.

### Changing political and institutional environment

The majority of the experts interviewed welcome the EU initiative to establish a legal framework for cross-border cooperation. They consider it as constituting a step towards better facilitation of cooperation. At the same time, they underline that EGTC should not be considered as a ‘one size fits all’ solution.

Current implementation challenges which were discussed (see supra) could evolve with the revision of the regulation, which could significantly improve the current situation. Nevertheless, the fact that the Member State still has what some consider as a ‘discretionary’ power seems to remain as a real obstacle to further development of the EGTC framework. This is an illustration of balance of power at stake across all EU territories. Local and regional authorities would certainly appreciate a framework in which they could deal directly with the EU institutions, in order to have their existence and specificities acknowledged and to further develop a cross-border strategy for their territory. In this respect, all interviewees call for a more common EU regulatory framework to avoid the (national) administrative discrepancies and support harmonisation – a framework that EGTC was supposed to provide, but which has been hindered strongly by national provision. The European Commission could also

appreciate to have direct link towards subnational authorities organised in a EU legal framework.

Nevertheless, the current Commission proposal on territorial cohesion funds for the next programming period, if it is indeed providing a common framework, is requesting more concentration of funds on specific priorities and is quite constraining with regards to the selection of those priorities which are imposed from a restricted list. This is quite contradictory with the ‘one size does not fit all’ principle, and the importance of taking into account the expertise of actors ‘on the ground.’ EGTCs already involved in a process of strategy building in a democratic way and identifying priorities on their territories (all actors agree that more concentration on priorities is needed) could be even more frustrated by this development.

## **1.4 Conclusion: which potential for a fruitful territorial cooperation**

### **Diversity and flexibility but not localism and relativism**

Territorial cooperation efforts have become increasingly diverse in the European Union and beyond with many different EU driven programmes as well as ‘independent’ bilateral and multilateral efforts taking place. This means that increasingly complex measures are required to coordinate cooperation efforts. There are now considerable risks in terms of overlap and duplication. On the other hand, this produces opportunities to work together and creates synergies. As of yet, the impact of newer forms of territorial cooperation as EGTC (or macroregion strategies see TERCO report) is either limited or not entirely clear. EGTCs have only been implemented on a limited scale and in a limited time period and until today had no impact on INTERREG programmes (except the Greater Region).

EGTCs formalise relations between different levels of government across borders. Therefore, such structures are particularly valuable in relation to achieving synergies on different scales. It provides a European legal framework for the organisation multi-level-governance structures. However, as of yet, only one EGTC is setup as a managing authority for an INTERREG programme (Greater Region) and only a few EGTC includes representatives from several levels of public authorities. The initiating, mobilising and driving forces, identified in the in-depth case studies are convergent and rely on political will at different levels. They also are closely linked to the opportunity structures in the EU framework: evolution towards no internal border, common legal background and funds.

It is important to underline here that organisation of governance depends from moment in time: maturation time is needed from informal towards institutionalised cooperation. It is important to jump at some point from informal structuring to more structured, more visible and more stable framework, but it does not mean that it should become too constraining or rigid, or centrally driven. In any case, it should always remain open and flexible: cooperation depends on will and agreement of partners, and doors should not be closed for evolution. Also, type of actors involved can evolve through this maturation, and be adapted to different objectives e.g. with associated ad hoc partners. As well, the question of the relevant territory for the cooperation is a key question. Each cooperation should have the possibility to be at

‘géographie variable’, and an agreed balance between functional and political aspects has to be found, as well as a possibility for adaptation.

An ideal territorial cooperation implementation process should therefore be able to tackle the challenges of being:

- Multiscalar (geographical scale)
- Multilevel (public authorities)
- Multichannel (different types of actors)

And to have the possibility to evolve between and/or to adapt to those ‘multi’ possibilities, and to adapt its type of governance

- On a time scale
- Related to objectives.

This means that there is not one ‘ideal’ organisation with its specific instrument, an issue which is shared with political studies on governance. Current cross-border territorial cooperation have at least to find a balance between a need to flexibility and adaption, and the need for stability and accepted common rules. Also, the process of ‘stabilisation’ of territorial cooperation should more fruitfully come at the right time of evolution, and not block first attempt and necessary maturation.

Nevertheless this does not mean that governance flexibility should evolve towards an absolute ‘à la carte’ pattern. The need to adapt better to specific situation should not lead to rigid localism. On the contrary all interviewees from local levels public authority asked for a common European frame which would harmonize ‘the rules of the games’, and provide security and stability. In this respect, EGTC instrument, with its ground for stability and its large possibility of adaptation, should and could be a major help.

Current proposal from the Commission on the organisation of different EU funding, as well as proposal for revision of the EGCT tool for cooperation will also help to go towards a more stable framework, with common ‘rules of the games’, but the quite restrictive interpretation of Eu 2020 agenda as the main criteria for territorial cooperation could be rather counter productive.

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