Territorial Cooperation in Europe:

Coordinated Strategy or lost in Confusion?

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1. Introduction

Territorial cooperation has become a European reality. European integration in general and some of its more evident products—such as the Schengen accord, the common internal market and the introduction of the Euro in particular—have fostered the development of numerous crossborder projects and the emergence of crossborder territories. However, territorial cooperation is a considerably diverse phenomenon characterized by a multitude of different forms and structures in regard to its implementation. This increasing heterogeneity produces two necessities: first, the various forms of territorial cooperation need to be classified along analytical categories and, second, an assessment has to be made whether or not recent developments—especially at Community level—might provide for more homogeneity.

The emergence of territorial cooperation is conditioned by the interest devoted to it by international, national, regional and local actors and by the changing perception and permeability of national borders. Especially within the European Union, the "significance" of national borders has changed over the recent decades due to the European integration process and its already above-mentioned policy outcomes. Border areas have evolved to contact zones between different political, economic and social systems, where natural, human and financial resources can be exploited jointly.

At the same time, the interest in promoting territorial cooperation has constantly increased on the national, regional and local, as well as international levels. The prevailing incentives were (and still are) of pragmatic nature,[1] consisting—for instance—of an improvement of regional cohesion, a joint exploitation of regional resources and location economies, an improvement of infrastructure and communication, as well as cultural exchanges and joint initiatives in the fields of culture and tourism.

Territorial cooperation is therefore a horizontal cooperation, aligned to functionality and problem solution by serving concrete pragmatic purposes. It gains most of its legitimacy from practical advantages.

[1] Although theoretically assumed, several case studies show that transfrontier cooperation cannot be characterized as an expression of a changed political awareness or as a manifestation of an increasing regional identity, but that pragmatic incentives for initiating cooperation across borders clearly prevail. See, in general, Almut Kriele, Urs Lesse and Emanuel Richter (eds.), *Politisches Handeln in transnationalen Räumen. Zusammenarbeit in europäischen Grenzregionen* (Nomos, Baden-Baden, 2005); and, in particular, Urs Lesse and Emanuel Richter, "Einleitung", in Almut Kriele, Urs Lesse and Emanuel Richter (eds.), *Politisches Handeln in transnationalen Räumen…*, 7-12, at 9-10.

2. Forms of territorial cooperation

Territorial cooperation can adopt—as already indicated—various forms and structures, depending on the concrete needs of the involved local and regional entities, on the one hand, and on the room of manoeuvre and the respective competences of the involved regional and local actors (and, thus, from the national constitutional provisions of the respective state), on the other hand.[2] The forms of territorial cooperation, (which include, for instance, Euroregions, Eurodistricts, Working Communities or town twinning) differ in terms of size, regulatory span, fields of action and consolidation or institutionalization. They waver between sporadic information and consultation or selective cooperation (addressing very specific issues) and extensive, long-raging programmes and the creation of common institutions (like committees, associations, councils, working groups, etc.), or—to express it in a different way—range from loose cooperation to a weak institutionalization or a strong institutionalization.

According to its judicial status, territorial cooperation can be furthermore classified in associations with legal personality and associations without legal personality. Depending on the respective national constitutional law, such a legal personality can be of public or of private law nature.[3]

Because of these differing preconditions (concrete local and regional interests and national constitutional provisions regulating the competences of local and regional authorities)—which determine the concrete shape of crossborder initiatives in each case—territorial cooperation has become a complex and heterogeneous phenomenon.

Therefore, it is necessary to classify territorial cooperation (following the terminology of the EU's Interreg III programme)[4] according to certain indicators, which include the geographical scope, the involved actors, the covered thematic issues and the organizational framework.[5]

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[2] As Peter Schmitt-Egner argues, transfrontier cooperation produces functional spheres of action (Handlungsräume), which are reconstructed through the competences of the involved actors. See Peter Schmitt-Egner, "Transnationale Handlungsräume und transnationaler Regionalismus in Europa: zur Theorie, Empirie und Strategie grenzüberschreitender Zusammenarbeit", in Almut Kriele, Urs Lesse and Emanuel Richter (eds.), *Politisches Handeln in transnationalen Räumen…*, 15-34, at 22.

[3] In certain states, the national constitutional law does not allow sub-national entities to create crossborder public law entities with local and regional authorities from other states (e.g. Finland, Greece, Italy, Sweden or Slovakia). Belgium, France, Germany, The Netherlands and Luxembourg are countries, where local and regional authorities are allowed to create forms of crossborder cooperation under public law.

[4] The Interreg III programme was divided into three strands: Strand A cross-border cooperation; Strand B transnational cooperation and Strand C interregional cooperation.

Especially the geographic scope provides the basis for a division of three forms of territorial cooperation, namely crossborder cooperation, interregional cooperation and transnational cooperation.[6] The following description of these three forms of collaboration will be focused on crossborder cooperation, since it is the most widespread and common one and since it is producing the most concrete results in terms of common projects.

2.1 Crossborder cooperation

The term crossborder cooperation describes the collaboration between two or more adjacent local and regional entities situated in different but neighboring states. As such it can adopt short-term structures (like single projects for a specific purpose) or permanent long-term structures covering various thematic issues. These permanent crossborder structures are considerably diverse regarding their scope, their institutional design, their capacities and their empowerment to act in certain policy areas.

Most of these permanent crossborder structures bear the denomination **Euroregion**. A Euroregion can be paraphrased with the following broad definition: "A euroregion is a transfrontier institution, with or without legal personality, involving public and private participants, which establishes transfrontier relations of a promotional nature between local, regional or national authorities, always with the approval, or under auspices, of central government." [7]

However, this generic definition covers considerably diverse forms of cooperation which differ in terms of actors, organization and fields of cooperation.[8] Because of these differences among the Euroregions, it is difficult to determine what can then be called a "standard model" of a Euroregion. Therefore, it is necessary to revert to such a broad definition.

The level of integration of Euroregions (or transfrontier regions) varies considerably from case to case, being conditioned by internal factors (such as historical aspects, geographical and demographic dimensions, as well as the relationship with the central state) on the one hand, and external factors

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[5] See Association of European Border Regions, *Transeuropean Cooperation between Territorial Authorities. New Challenges and Future Steps Necessary to Improve Cooperation* (October, 2001), 9, available at http://www.aebr.net/publikationen/pdfs/territorialauthorities_01.en.pdf.

[6] See Charles Ricq, *Handbook of Transfrontier Co-operation*, edition 2006, 41-42; and Association of European Border Regions, *Transeuropean Cooperation between Territorial Authorities*…, 26 ff.

[7] See Ricq, *Handbook of Transfrontier Co-operation*…, 29.

[8] See Markus Perkmann, „Policy Entrepreneurship and Multi-level Governance: A Comparative Study of European Cross-border Regions, 25(6) *Environment and Planning C* (2007), 861-879.

(pertaining to the social and economic situation of the respective regions—namely, whether they are similar or complementary in regard to their economy and their social conditions) on the other hand.

Some Euroregions have crossborder institutions or organs and an own budget (usually those with a legal status), whereas others are just restricted to informal contacts and loose forms of collaboration (those without legal status). Consolidated and integrated Euroregions usually have a private- or public-law status, such as the Region Sønderjylland-Schleswig (Germany and Denmark) or the Ems-Dollart-Region (Germany and The Netherlands), whereas others have no legal personality, such as the Europaregion Tirol-Südtirol-Trentino (Austria and Italy), or even exist just formally as 'paper tigers' with no significant substance, such as the Danube-Drava-Saba Euroregion (Hungary, Croatia and Bosnia and Herzegovina).[9]

The vast majority of Euroregions are based on private law regulations and are often organized as 'twin associations', meaning that entities on each side of the border form an association, which are subsequently joined by a crossborder agreement.[10] Only a few Euroregions have a public-law status.

Some Euroregions are rather small, involving local and regional authorities of two different states, such as the Euroregion Pro Europa Viadrina (Germany and Poland) and others are quite large, such as the Carpathian Euroregion (involving entities of Hungary, Poland, Romania, Slovakia and Ukraine), which has even roughly the size of Hungary or Slovakia.

Despite these differences in their concrete design, Euroregions nevertheless have some common characteristics which can be summarized as follows:[11]

Organization:

- amalgamation of regional and local authorities from both sides of the national border;
- cross-border organizations (often with a permanent secretariat and experts and administrative staff);
- Based on bi- or multilateral accords between the respective national states or on informal cooperation agreements between the local and regional actors.

Fields of cooperation:

[9] For more information about the Euroregion Danube-Drava-Saba, see Martin Klatt and Jørgen Kühl, "National Minorities and Cross-border Cooperation between Hungary and Croatia. A Case-Study of Baranya/Hungary and Osiječko-baranjska County/Croatia", 6 *European Yearbook of Minority Issues* (2006/7), 193-210.

[10] See Markus Perkmann, *The Rise of the Euroregion. A Bird's Eye Perspective on European Cross-Border Cooperation*, published by the Department of Sociology, Lancaster University, UK.

[11] See Association of European Border Regions, *Transeuropean Cooperation between Territorial Authorities*…, 70.

- Collaboration in the areas economy, infrastructure and culture (depending on the interests of the involved actors);
- Concrete fields of action include: regional development; economic development; transport and traffic; environmental protection; culture and sports; health affairs; tourism and leisure; agricultural development; innovation and technology transfer; schools and education; communication as well as emergency services and disaster prevention.

Working methods:

- Elaboration of crossborder development strategies;
- Exchange of information, coordination of measures and common initiatives in certain policy areas;
- Participation of other local and regional institutions (like chambers of commerce or education and research institutions) in the various programmes and projects.

Another form of crossborder cooperation are so called **Working Communities**, which usually cover a larger geographic scope than Euroregions and mostly involve regional (and seldom local) actors.[12]
This can be exemplified by the Working Communities ARGE ALP and ALPE ADRIA, which have been founded by the alpine regions, or the „internationale Bodenseekonferenz" (among regions of Austria, Switzerland Germany and the Principality of Liechtenstein).
In most of the cases, these Working Communities have no legal personality and mainly serve as platforms for exchanging information and experience and for establishing contacts.
Similar characteristics can also be ascribed to the **Eurodistricts**, which likewise do not have a clear legal status and serve predominantly as a forum for the intensification of crossborder contacts being concentrated on a certain conurbation.[13] An example is the Eurodistrict Straßburg-Ortenau between France and Germany, which has been initiated by a joint franco-german declaration in 2003 with the purpose of giving a new impetus to the transfrontier activities between the two cities Strasbourg and Kehl. Other examples are the Eurodistrict Region Freiburg/ Centre et Sud Alsace or the Trinational Eurodistrict Basel.

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[12] See Association of European Border Regions, *Transeuropean Cooperation between Territorial Authorities*…, 77 und 79.
[13] Ricq, *Handbook of Transfrontier Co-operation*…, 30.

The organization of the Eurodistrict Straßburg-Ortenau (according to its cooperation agreement it has a Eurodistrict council, an advisory committee and various working groups of experts) as well as its fields of cooperation (like environment, infrastructure, transport and traffic, education, research as well as communication and media) show, that there is almost no difference between this form of cooperation and certain Euroregions.

Generally, it is quite difficult to draw clear divisions between the various forms of crossborder cooperation, since in concrete cases, these forms can be mixed. The Eurodistrict Region Freiburg/ Centre et Sud Alsace, for instance, indeed denominated as Eurodistrict, is, however, organized as a Working Community without legal personality and without financial authority.[14] The purpose of the Working Community is—according to the cooperation agreement—to further develop the crossborder cooperation into an Eurodistrict with legal personality. Therefore, the Working Community (bearing the denomination Eurodistrict) can be considered a pre-stage for a more intense and consolidated form of cooperation.

These various characteristics and partially overlapping institutional setups among the various forms of crossborder cooperation show that each definition of a Euroregion or a Eurodistrict must be very generic in order to cover all the different peculiarities. Furthermore, it becomes evident that there is a considerable heterogeneity in terms of intensity (and quality) of cooperation as well as regarding the degree of organization (existence of common institutions and their working method) of a Euroregion or Eurodistrict.

2.2 Interregional cooperation

An interregional cooperation is the collaboration between non-adjacent local and regional authorities. Also interregional cooperation can be formulated both as short-term or long-term programmes. Its main purpose is to foster exchange of information and experience and to represent common interests.

Possible forms are community- or town-twinnings, bilateral regional partnerships or multilateral regional networks; they vary again from case to case in terms of internal organization and intensity of collaboration.

[14] The cooperation agreement is available at http://www.freiburg.de/servlet/PB/show/1155051/Eurodistrikt_Vereinbarung.pdf.

Most of the strategic interregional cooperation occurs in bilateral regional partnerships or multilateral regional networks. Fields of collaboration include regional development, research and innovation, environmental protection or cultural activities.

Selected examples of multilateral networks are the Four Motors for Europe (founded 1988), the Alliance of Maritime Regional Interests in Europe (founded 1993) or the Black Sea Euroregion (founded in 2008). The network Four Motors for Europe has been founded among the regional entities Baden-Württemberg (D), Rhône-Alpes (F), Lomardia (I) and Catalunya (E). It has no legal personality and no independent institutional structures and is rather based on ad-hoc meetings of working groups or a conference of the political leaders of the four entities.

The collaboration aims at enhancing the regional economy, an increased cooperation in the areas of art and culture as well as at fostering the political influence of the four entities within the European Union.

2.3 Transnational cooperation

Transnational cooperation is linked to a specific geographic area and involves both regional and local as well as national authorities situated in this specific area. Transnational forms of collaboration are multilateral and deal with spatial planning, aiming at an integrated and jointly planned spatial development of the respective area, such as the Baltic Sea Region Programme.

Especially the EU Programmes Interreg IIC and IIIB, which financially support spatial planning activities, have contributed to the dissemination of transnational cooperation.[15]

The concrete form and intensity of cooperation is differing from case to case, with most of the structures having, however, a kind of managing committee.

2.4 Is territorial cooperation lost in confusion?

This brief assessment of the various forms of territorial cooperation shows that the classification of territorial cooperation as generic term and crossborder, interregional and transnational cooperation as subordinated categories is a rather theoretical concept. Undoubtedly, as an analytical tool it is very useful

[15] See Association of European Border Regions, *Transeuropean Cooperation between Territorial Authorities*…, 60.

to approach the phenomenon of territorial cooperation, but in practice one has to cope with hybrid and overlapping structures, which are often hard to classify or to assign to one of the three subcategories.
Examples are the Black Sea Euroregion or the Carpathian Euroregion which possess, due to their geographic scope, also elements of transnational cooperation.
Especially the field of crossborder cooperation appears to be diffuse due to the many diverse forms of collaboration.
On the ground, there are Euroregions with the character of Working Communities, Eurodistricts which are similar to Euroregions, Eurodistricts conceptualized as a Working Community or Euroregions with transnational elements, with the result that territorial cooperation does no longer seem as a coordinated strategy but rather as a heterogeneous—even confusing—phenomenon, being, as a consequence, difficult to assess or scientifically analyzed (especially from a comparative perspective).

3. Legal ambiguity as a cause for heterogeneity?

The complexity and the lack of transparence in the field of territorial cooperation (and crossborder cooperation in particular) can be explained by the legal ambiguity resulting from the lack of a common European legal framework.
The most significant European-wide instrument for transfrontier cooperation, namely the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities and its two additional Protocols (provided by the Council of Europe), has not produced—or was not even intended to provide—a common legal basis. It is rather a normative framework which has to be filled in with substance by bi- or multilateral interstate agreements defining the concrete shape and legal nature or transfrontier cooperation.
Furthermore, conventions of the Council of Europe have to be ratified by the member states in order to become legally effective in the respective national state. However, even after a ratification, these instruments are restrictedly legally binding, since there is no international or supranational authority that can control and eventually enforce the actual compliance with a convention.
Thirteen of the 47 member states of the Council of Europe have not yet ratified the European Outline Convention on Transfrontier Co-operation. Regarding the Additional Protocols, the number of non-ratifications is even higher (30 in the case of the Additional Protocol and 31 in the case of the Second

Protocol). This means that roughly two thirds of the CoE's member states have not ratified all the three documents. In these countries, a legal base for territorial cooperation is often lacking.

Due to the legal peculiarities of the CoE conventions (normative framework which has to be concretized by each state), the significant legal basis for territorial cooperation is still to be found in the respective national constitutions on the one hand and bi- or multilateral interstate agreements on the other hand. Since territorial cooperation is an interaction between local and regional authorities across state borders, which is not covered by public international law (as it only recognizes states as subjects of law), respective national constitutional provisions are needed, which allow for such an interaction. Lacking or insufficient national provisions need to be complemented by interstate agreements. "When it comes to public national law, authorizing a regional authority to act beyond national borders means either losing control and accepting that cross-border activities will be subject to the territorial sovereignty of the neighboring state, or trying to extend the scope of a state's own public laws to the territory of the neighboring State, disregarding its territorial sovereignty (which, if done unilaterally, is prohibited by public international law)."[16]

Interstate agreements are, therefore, necessary to set the legal basis for territorial cooperation and to define the entities which are entitled to participate, the legal status (private- or public-law) of such forms of cooperation as well as the fields of collaboration.

Each interstate agreement, however, includes different provisions and produces, thus, different outcomes in terms of forms and intensity of territorial cooperation. The 1986 Benelux Convention among Belgium, Luxembourg and The Netherlands provides for the establishment of a cross-border public body—a legal entity under public law with common organs and the possibility to manage its own budget—or a cross-border common organ, which is organized as private-law entity. Another example is the 1996 Karlsruhe agreement among France, Germany, Luxembourg and Switzerland, which also sets the legal basis for creating a public-law entity with financial autonomy, namely the local transfrontier cooperation grouping. In other cases, interstate agreements do not even provide for specific private- or public-law based form of cooperation, such as the 1993 Agreement between Austria and Italy. In such cases, and in border areas not covered by an interstate agreement, local and regional authorities often collaborate on an informal basis, establishing forms of cooperation without legal personality and without institutionalization.

[16] Committee of the Regions, *The European Grouping of Territorial Cooperation – EGTC*, January 2007, CdR 117/2007 (Study), 18.

Thus, these agreements support different forms of transfrontier cooperation and the level of integration of such collaboration depends on the detailed provisions contained in each interstate agreement or national constitution.

Also the European Union has, until 2006, not provided for any specific community-law based form of transfrontier cooperation. Its programmes for financial assistance for territorial cooperation (such as Interreg, Phare, Tacis and Cards) did not include any specific rules about the concrete structure of crossborder collaboration.

However, this has significantly changed in July 2006, when the Council and the European Parliament adopted a new Regulation on a European Grouping of Territorial Cooperation (EGTC) (hereinafter “the EGTC Regulation”).[17] “The EGTC is to be seen as an instrument for integrated territorial (multilevel) governance in coherent areas split by borders. [It] is expected to contribute to legal strengthening of cooperation in a given area and to increased visibility and legitimacy of such cooperation.”[18]

This Regulation is the first Community legal instrument which grants substantial rights to local, regional and national authorities to set up specific joint structures for a more efficient collaboration.

4. A new community legal framework: On the way towards clarity?

In July 2004, the European Commission proposed five regulations dealing with the 2007-2013 period of Structural Funds and its various instruments. This package of regulations also included a Regulation on a European Grouping of Crossborder Cooperation. This draft regulation was subsequently discussed and amended by enlarging, among others, its scope to territorial cooperation in general (which, as already stated in the introductory section, also includes crossborder cooperation as well as transnational and interregional cooperation). As a consequence, the regulation was renamed as the Regulation on a European Grouping of Territorial Cooperation, which was finally adopted on 5 July 2006.

The legal basis of this Regulation is Article 159(3) of the EC Treaty,[19] which allows the adoption of specific actions outside the Funds in order to ensure economic and social cohesion.[20]

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[17] Regulation 1082/2006 of the European Parliament and of the Council of 5 July 2006 on a European Grouping of Territorial Cooperation, OJ 2006 L 210, 19-24.

[18] INERACT Handbook, *The European Grouping of Territorial Cooperation (EGTC)* (European Commission, Belgium, 2008), 14.

[19] See European Parliament, Committee on Regional Development, *Report on the Proposal for a Regulation of the European Parliament and of the Council on Establishing a European Grouping of Cross-border Cooperation (EGCC)*, 21 June 2005, 20,

The added value of this new Regulation is clearly pointed out by the following statement: “the adoption of this binding regulation constitutes a major step for territorial cooperation, as it provides public actors at different levels (member states, regional and local authorities, mainly) with a strong legal tool for developing and implementing a territorial cohesion policy, at cross-border, transnational and interregional levels.”[21]

One of the main driving forces behind the adoption of the EGTC Regulation have been the recent Eastern enlargements,[22] which increased the EU’s diversity not only in cultural but also in economic terms—considering the fact that some of the new member states’ regions (especially the border regions) are economically much less developed compared to other (especially old member states’) regions.

Secondly, many regional and local entities still face problems when they try to cooperate with counterparts from another state. These problems or obstacles stem mainly from differences between the legal framework, the administrative structures and the financial arrangements of the national states. Furthermore, many local and regional actors that are not much experienced in the field of transfrontier activities often do not have enough knowledge regarding available tools and appropriate measures.[23] Such difficulties and such a lack of knowledge can, *inter alia*, impede the establishment of suitable cooperation structures and the implementation of EU-funded programmes. “Our experience with INTERREG has demonstrated the need for fully joint structures for managing such programmes. To assist programme partners in this regard, the European Commission proposed a new instrument—the European Grouping of Territorial Cooperation.”[24] The motivation for the new EC Regulation was and is thus twofold: firstly, it aims at further enhancing the economic cohesion within the European Union by creating a new tool that enables (border) regions to enter into a closer cooperation with each other, in order to better exploit their

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at http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+REPORT+A6-2005-0206+0+DOC+PDF+V0//EN&language=EN.

[20] Art. 159(3) of the EC Treaty states: “[i]f specific actions prove necessary outside the Funds and without prejudice to the measures decided upon within the framework of the other Community policies, such actions may be adopted by the Council acting in accordance with the procedure referred to in Article 251 and after consulting the Economic and Social Committee and the Committee of the Regions.” See the EC Treaty, available at http://eur-lex.europa.eu/LexUriServ/site/en/oj/2006/ce321/ce32120061229en00010331.pdf.

[21] INTERACT, *The EGTC and INTERREG/European Territorial Cooperation Objective Programmes*, at http://www.interact-eu.net/egtc_and_interreg/67.

[22] Both the enlargement of May 2004 with 10 new member states and the enlargement of January 2007 with two new member states.

[23] See Assembly of European Regions, *Europäischer Verbund für Territoriale Zusammenarbeit – Anmerkung*, 2, at http://www.a-e-r.org/fileadmin/user_upload/MainIssues/RegionalPartnership/EGTC/D-Explanatory-Note_02-06.doc.

[24] Statement of Danuta Hübner, Regional Policy Commissioner, in the frame of the Conference "Prosperity and Sustainability - Local Cooperation in the Baltic Sea Region," held in Visby (SE) on 17 August 2006, available at http://www.interact-eu.net/1177144/1177146/0/0.

inherent potential. Secondly, it has also been tailored for an effective implementation of the EU-funded programmes, especially within the new member states.

Last but not least, it could also contribute to a harmonization of the heterogeneous forms of CBC that have emerged in Europe in recent decades.

4.1 A General Description of the EGTC Regulation

In order to overcome the obstacles to territorial cooperation, the EGTC Regulation provides for the creation of cooperative groupings on Community territory, called 'European Groupings of Territorial Cooperation'.[25] Members of an EGTC can be member states, regional authorities, local authorities, bodies governed by public law and associations of bodies belonging to one of these four categories. The participation of private entities is, thus, excluded as such. However, the term "body governed by public law"[26] includes any body which has legal personality, whose purposes serve the needs of the general interest (without having industrial or commercial character) and which is mostly financed by the state, by regional or local authorities or other bodies governed by public law. The members of an EGTC must be located on the territory of at least two EU member states (Art. 3). Each prospective member shall notify its respective EU member state about its intention to participate in an EGTC. Within three months, the EU member state shall approve the member's participation in an EGTC. A member state can prohibit such participation if it considers that it is not in conformity with the Regulation or the respective national law or due to reasons of public interest or public policy (Art. 4). The EGTC Regulation therefore refers to the limits posed by the respective national law. The latitude of judgment lies, thus, within the hands of the member states. However, the states must explain the reasons for justifying the prohibition of participation. Theoretically, this could open the possibility for appealing a states' reasoning in front of national courts. The national courts could eventually approach the European Court of Justice in order to request a preliminary ruling.

The recourse to this new tool of establishing an EGTC is optional, meaning that national, local and regional authorities are not obliged to use this form of cooperation. This clause was mainly inserted in order to take into account the various existing (and functioning) forms of crossborder cooperation and

[25] See para. 8 of the Preamble of the EGTC Regulation.

[26] Bodies governed by public law are defined according to the second subparagraph of Art. 1(9) of the EC Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the Coordination of Procedures for the Award of Public Works Contracts, Public Supply Contracts and Public Service Contracts (OJ L 134, 30 April 2004), 114. The

should guarantee their future existence. Thus, other structures and forms of cooperation (mainly based on bilateral treaties and similar agreements) that have developed over the last decades need neither be replaced by an EGTC nor are there any impediments to the establishment of other such forms of transfrontier cooperation in the future.

The responsibilities of an EGTC are codified in Article 7, which states that "the tasks of an EGTC shall be limited primarily to 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."[27] However, Article 7 retains that an EGTC can also carry out other actions of territorial cooperation, which are not funded by the European Union. The importance of this additional clause is twofold: Firstly, it should guarantee that EGTCs may continue to exist even after a possible termination of EU funding or—equally—that an EGTC may be created even without EU funding; and, secondly, it generally enlarges the scope and the field of action of an EGTC by not limiting its task just to the implementation of EU funds and programmes.

Another important aspect of the Regulation is that it opens principally also the possibility for entities of third countries to participate in an EGTC. The participation of such entities must, however, be legally based on and permissible under the legislation of the respective third country or an agreement between the EU member state and the third country.[28]

Furthermore, EGTCs are vested with legal personality and it is left open whether this legal personality is of a private- or public-law nature. Article 1 states that "an EGTC shall have in each Member State the most extensive legal capacity accorded to legal persons under that Member State's national law. It may, in particular, acquire or dispose of movable or immovable property and employ staff and may be party to legal proceedings."[29] On an international level, an EGTC is treated as an entity of the member state where it has its registered office, which means that its acts are governed by the law of this member state.

Each EGTC is founded by a unanimous convention that specifies the name, the members and the territory of the respective EGTC, as well as its registered office and its objectives and tasks. The members of an EGTC consequently adopt a statute, which regulates the EGTC's organs (which, according to Art. 10,

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respective article, as well as a list of bodies and categories of bodies governed by public law, are reproduced at http://www.cor.europa.eu/migrated_data/CoR_EGTC_Members.pdf.

[27] *Ibid*., Art. 7.

[28] See *Ibid*., para. 16 of the Preamble of the EGTC Regulation.

[29] *Ibid*., Art. 1.

should be at least an assembly and a director), their composition and competences, as well as the decision-making procedure of the EGTC and its working language(s).[30]

The statute shall be registered and officially published on the national level and also announced in the Official Journal of the European Union.

Between August 2006 and August 2007, the EU member states had a time of one year to adopt necessary national provisions in order to ensure an effective application of the EGTC Regulation. On the one hand, the national states have to undertake the respective approximation of national laws (for example, enabling the state to participate in an EGTC), and on the other hand, national provisions are required in order to cover elements which have been left open in the Regulation (such as the types of tasks which an EGTC can take over, the legal regime applicable to an EGTC, the identification of an authority which is responsible for the notification of an EGTC as well as the question whether partners from third countries can participate in an EGTC or not).[31]

However, most of the countries have not respected (or could not respect) the deadline of August 2007 and have adopted the respective national provisions later[32] or even not yet at all. At the time of writing this paper (February 2009), 13 member states have passed the necessary national laws.[33] This delay is predominantly caused by legal complexities. An EGTC is a new legal entity which has so far not existed in the national laws. Therefore, all the relevant provisions, such as concerning the procedure for the registration of an EGTC, must first be discussed and adopted on the national levels. "However, such measures may take rather a long time to adopt, because in many countries this is quite a new era, where drafting and adopting rules is likely to be complicated."[34]

4.2 Pros and Cons for more uniformity through the EGTC Regulation

As already mentioned above, thus far, within the European Union, no legal instrument had existed that was directly applicable in all member states and provided for such a concrete form of crossborder

[30] *Ibid*., Arts. 8 and 9.
[31] INTERACT Handbook, *The European Grouping…*, 17.
[32] By mid-November 2007 only Bulgaria, Hungary, the United Kingdom and Portugal had adopted the respective rules or adapted their national legislation.
[33] A table reflecting the state of play of the national provisions can be downloaded at http://www.cor.europa.eu/pages/EventTemplate.aspx?view=folder&id=2a35663b-5cd7-41e7-88e5-a148f1747e43&sm=2a35663b-5cd7-41e7-88e5-a148f1747e43.
[34] Committee of the Regions, *The European Grouping of Territorial Cooperation…*, 133.

cooperation. It is clearly an instrument which can potentially foster transboundary cooperation and enhance the creation of transfrontier institutions. But can it likewise contribute to a harmonization of territorial cooperation?

Certain aspects of the Regulation favour a possible harmonization effect, above all the direct applicability of the Regulation in the member states. Furthermore, the Regulation states that an EGTC has legal personality (with the authority to manage its own budget) and it determines an assembly and a director as minimum requirements in terms of transfrontier organs. These provisions create a European-wide legal basis with certain common obligations for transfrontier cooperation applicable in all states, which has never existed so far.

However, the EGTC Regulation is characterized by some important features which can impede possible approximation tendencies.

First, the recourse to this legal framework is not mandatory, which means that local and regional authorities are always entitled to create also other forms of cooperation. This might be the case, where an interstate agreement does already provide a sound basis for transfrontier collaboration. Thus, the tool of an EGTC might be rather used in border areas, which are not yet covered by such an agreement.

Secondly, the Regulation is restricted by the limitations stemming from national law (since the final decision on whether an entity is entitled to participate in an EGTC is in the hands of the national state and is dependent on the respective national legislation). Furthermore, many characteristics of an EGTC are determined by the respective national law of the state, where the EGTC has its headquarter. Therefore, an EGTC with the same members and same tasks will have different features if it has its headquarter in state A or state B because of the different legal framework provided by each state.

Thirdly—and closely linked to the second point—certain aspects are left open for a concrete determination by the national enactments (above all the competences and the legal status of an EGTC). The member states decide in their respective national provisions the legal status and the competences of an EGTC (i.e. whether it is just entitled to manage Community funds or whether it can carry out activities outside EU funding). Different national provisions can create legal uncertainty and obviously constrain the creation of an EGTC in practice. If, for instance, country A decides in its national provisions that an EGTC is of public law nature and can take over tasks outside EU funding, whereas country B allows a private-law EGTC just for the management of EU funds, the local and regional authorities would—in order to establish a transfrontier for the collaboration in various areas independently of EU funds—

probably have to recourse to another form of cooperation, such as a private-law Euroregion, Eurodistrict etc.

Finally, non-EU countries are entitled to participate in an EGTC just under certain conditions outlined above. The establishment of a 'bilateral' EGTC between entities of one EU member state and entities of a third state is in any case not possible, since an EGTC must be composed of entities from at least two EU member states. Therefore, any bilateral forms of territorial cooperation between an EU state and a third state necessarily has to adopt a form other than the EGTC.

5. Conclusion

Due to the outlined features of the EGTC Regulation, its possible impact on a harmonization of territorial cooperation remains questionable. "[T]he Community regulation under discussion, far from producing a uniform effect, is in fact likely to widen the disparities between the situations of local authorities with respect to territorial cooperation in the EU. […] [A]uthorities that do not operate within a legal framework will not be able to take advantage of the opportunities provided by this Regulation owing to the numerous references to provisions of national law."[35]

However, it opens prospects which must not be neglected. First of all, it represents an important judicial complementation for those areas, where no bi- or multilateral agreement has provided so far for legal instruments for transfrontier collaboration. Secondly, the EGTC relieves the state of its role as monitoring authority and turns it into a partner of territorial cooperation. This asymmetry in partnership (state authorities versus local and regional actors) can lead to a symmetry in competences, since actions falling into the responsibility of the national state can also be carried out by an EGTC if the respective national authority is participating (usually these state competences have been excluded from cooperation). It therefore takes better into account the institutional diversity of states (federal vs. unitary systems, big vs. small states). Furthermore, transfrontier activities often initiated through the Interreg programmes can be institutionalized and sustained through the creation of an EGTC. Finally, the EGTC structure can also lead to a better profiling of territorial cooperation in front of the European Union, the national states and the populations concerned.

[35] Committee of the Regions, The European Grouping of Territorial Cooperation…, 130.

Another aspect which needs to be taken into consideration is the fact of judicial control. Because of the nature of a regulation, the present EGTC Regulation will be subject to the ruling of the European Court of Justice, which may interpret its scope and whose decisions will be binding for the EU member states. The ECJ might act as a motor for further extending and deepening the scope of the EGTC Regulation through the interpretations undertaken in its case law. Let us imagine, for instance, a case in which a local or regional entity insists upon its right to participate in an EGTC (guaranteed through the EGTC Regulation), whereas the respective national state counters that, according to the constitutional law, this entity has neither the right to conclude treaties with regions from other countries nor the right to establish transnational law institutions. On the grounds of these provisions of national constitutional law, the respective state could, in theory, prohibit the participation of the respective entity in an EGTC because its participation is not in conformity with national law (which, according to Art. 4 of the EC Regulation, is a justified reason for the prohibition of an EGTC). Whether such a case could or would represent a conflict between EU law and national law and how the ECJ would interpret and rule on it remains to be seen. However, if analyzed in this perspective, the limits posed by national law could prevail, since there is an explicit reference to these limits within the EGTC Regulation.

In the end, national (constitutional) law remains the crucial legal basis for the possibility of local and regional entities to engage themselves in territorial cooperation. Thus, whether or not territorial cooperation becomes more coherent depends on their good will to promote conform or similar models of transfrontier collaboration. "Since many Member States do not have well-developed national legislation in this area, this is certainly one of the interesting positive effects of the Regulation."[36]

[36] Committee of the Regions, The European Grouping of Territorial Cooperation…, 131.

6. Bibliography

Association of European Border Regions, *Transeuropean Cooperation between Territorial Authorities. New Challenges and Future Steps Necessary to Improve Cooperation* (October, 2001), available at http://www.aebr.net/publikationen/pdfs/territorialauthorities_01.en.pdf.

Assembly of European Regions, *Europäischer Verbund für Territoriale Zusammenarbeit – Anmerkung*, http://www.a-e-r.org/fileadmin/user_upload/MainIssues/RegionalPartnership/EGTC/D-Explanatory-Note_02-06.doc.

Committee of Experts on Transfrontier Co–operation, Report on the Current State of the Administrative and Legal Framework of Transfrontier Co–operation in Europe (2006 edition) at http://www.coe.int/t/e/legal_affairs/local_and_regional_democracy/documentation/library/transfrontier_cooperation/tfc_current_state_tc_2006_en.pdf.

Committee of the Regions, *The European Grouping of Territorial Cooperation – EGTC*, January 2007, CdR 117/2007 (Study).

Council of Europe, *Practical Guide on Transfrontier Co–operation* at http://www.coe.int/t/e/legal_affairs/local_and_regional_democracy/documentation/library/transfrontier_cooperation/practical_guide_en.pdf.

Engl, Alice, "Future perspectives on territorial cooperation in Europe: the EC regulation on a European grouping of territorial cooperation and the planned Council of Europe third protocol to the Madrid outline convention concerning euroregional co-operation groupings", *European Diversity and Autonomy Papers* (2007) No.3.

European Parliament, Committee on Regional Development, *Report on the Proposal for a Regulation of the European Parliament and of the Council on Establishing a European Grouping of Cross-border Cooperation (EGCC)*, 21 June 2005 at http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+REPORT+A6-2005-0206+0+DOC+PDF+V0//EN&language=EN.

Gabbe, Jens, "Regionen und Regionalisierung in Europa–Die Rolle der Grenzregionen und der grenzüberschreitenden Zusammenarbeit", in Gu Xuewu (ed.), *Grenzüberschreitende Zusammenarbeit zwischen den Regionen in Europa* (Baden–Baden, 2002).

Grom, Ingrid, *Regional grenzüberschreitende Zusammenarbeit als Beitrag zur Förderung der europäischen Integration. Die Einheit Europas setzt das Überwinden von Grenzen voraus* (Berlin, 1995).

Halmes, Gregor, "Zusammenarbeit im Europa der Regionen: Die Entstehung des rechtlichen Rahmens", in Gu Xuewu (ed.), *Grenzüberschreitende Zusammenarbeit zwischen den Regionen in Europa* (Baden–Baden, 2002).

INTERACT Handbook, *The European Grouping of Territorial Cooperation (EGTC)* (European Commission, Belgium, 2008).

Klatt, Martin, and Kühl, Jørgen, “National Minorities and Cross-border Cooperation between Hungary and Croatia. A Case-Study of Baranya/Hungary and Osiječko-baranjska County/Croatia”, 6 *European Yearbook of Minority Issues* (2006/7), 193-210.

Kriele, Almut, Lesse, Urs and Richter, Emanuel (eds.), *Politisches Handeln in transnationalen Räumen. Zusammenarbeit in europäischen Grenzregionen* (Baden–Baden, 2005).

Parliamentary Assembly of the Council of Europe, “Transfrontier Cooperation”, Doc. 11475, 3 January 2008, at http://assembly.coe.int/Main.asp?link=/Documents/WorkingDocs/Doc08/EDOC11475.htm.

Pasi, Paolo and Ferrara, Walter (eds.), *Come funzionano le Euroregioni. Esplorazione in sette casi* (Istituto di Sociologia Internazionale di Gorizia, Gorizia, 2000).

Perkmann, Markus, “Cross–border Regions in Europe. Significance and Drivers of Regional Cross–border Co–operation”, 10(2) *European Urban and Regional Studies* (2003), 153–171.

Perkmann, Markus, „Policy Entrepreneurship and Multi-level Governance: A Comparative Study of European Cross-border Regions, 25(6) *Environment and Planning C* (2007), 861-879.

Perkmann, Markus, *The Rise of the Euroregion. A Bird’s Eye Perspective on European Cross-Border Cooperation*, published by the Department of Sociology, Lancaster University, UK.

Ricq, Charles, *Handbook of Transfrontier Co-operation*, 2006 edition.

Schmitt–Egner, Peter, “Transnationale Handlungsräume und transnationaler Regionalismus in Europa: zur Theorie, Empirie und Strategie grenzüberschreitender Zusammenarbeit”, in Kriele Almut, Lesse Urs and Richter Emanuel (eds.), *Politisches Handeln in transnationalen Räumen. Zusammenarbeit in europäischen Grenzregionen* (Baden–Baden, 2005), 15–34.

Student, Thomas, *Regionale Kooperation zwischen Integration und Konkurrenz. Zusammenarbeit an der deutsch–niederländischen Grenze im Rahmen der Ems Dollart Region und der Neunen Hanse Interregio* (Baden–Baden, 2000).

Zeyrek, Derya, “Formen grenzüberschreitender Zusammenarbeit in Europa”, in Kriele Almut, Lesse Urs and Richter Emanuel (eds.), *Politisches Handeln in transnationalen Räumen. Zusammenarbeit in europäischen Grenzregionen* (Baden–Baden, 2005), 55–64.