

# European Grouping of Territorial Cooperation – a legal form supporting cross-border cooperation in the European Union

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## **Abstract**

*European Grouping of Territorial Cooperation (EGTC) is European legal form that can be established under the Regulation (EC) No. 1082/2006 on a European Grouping of Territorial Cooperation. This measure is a part of the European Union's Cohesion Policy, which aims to gradually reduce regional disparities and promote economic, social and territorial cohesion. EGTC supports and facilitates the formalized cross-border cooperation between Member States of the European Union, as well as their regional and local public authorities. Cross-border cooperation, which is a part of the Cohesion Policy, focuses mainly on border regions, whose weakness is their periphery location. In connection with the creation of the EGTCs, Member States may adopt measures to support this legal form by their national legislation and practice. The aim of the article is to present EGTC in terms of the European material and formal sources of law that have prompted the emergence of this legal form and govern the conditions for its establishment. EGTCs have the predisposition to carry out various activities related to cross-border cooperation. The European legal framework allows the use of EGTCs as entities for implementation of cross-border public procurement.*

**Keywords:** *European Grouping of Territorial Cooperation, legal form, cross-border cooperation, European integration.*

**JEL Classification:** K19, K23, K39

## **1. Introduction**

The European Union carries out, in a pursuit of its objectives, numerous policies which are either in its exclusive competence or are performed as common or supportive one in relation to the Member States. One of the most important policies of the European Union is undoubtedly its cohesion policy. The Cohesion Policy of the European Union is an important tool used in a support of the European integration. It is the most important investment policy of the European Union. It aims to promote economic, social and territorial cohesion. Cohesion policy was grounded

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in the Treaties of Rome.<sup>3</sup> Its current legal framework is mainly contained in the Founding Treaties of the European Union.<sup>4</sup> Its goal is mostly a gradual reduction of regional differences in the regions of the European Union. The accession of new Member States has led to a deepening of the differences between the various regions e.g., in terms of their economic development. Considering that the Member States of the European Union take up a substantial part of Europe, their individual regions are very different and are struggling with problems that affect everyday lives of their people. Public authorities, especially at the local and regional level, face long-term difficulties while developing their cooperation activities through various legal and practical difficulties resulting from the diversity of legislation and procedures, which has negative consequences for the management and implementation of said activities.<sup>5</sup>

The European Union offers to the Member States and their regions various tools to support economic, social and territorial cohesion (financial, legal, and political). Economic, social and territorial cohesion is one of the areas of shared competence of the European Union and Member States. This means, that both the European Union and the Member States have retained their law-making and regulatory power. The European Union's Cohesion Policy instruments are intended to help tackle these problems and reduce regional disparities. In addition to the significant volume of financial resources, that are allocated to achieve the objectives of the European Union's Cohesion Policy, set for a specific programming period, the European Union offers other possibilities that Member States may use to promote the economic, social and territorial cohesion of their regions. One of them is the possibility of establishing a new legal form, which is the European Grouping of Territorial Cooperation, which is focusing on promoting cross-border cooperation. It was thus that the need for effective cross-border cooperation in the European Union and the problematic economic and social situation in the border regions are the material sources of the law that motivated the European Union to adopt the rules for setting up EGTCs.

The aim of the paper is to present EGTC as a legal form in terms of the European material and formal sources of law that have prompted the emergence of this legal form and govern the conditions for its establishment. The second part of the article focuses on the material sources of law, which include specifically the need for cross-border cooperation in the European Union and significant regional disparities of cross-border regions. The third part of the article focuses on the formal sources of law on the basis of which this legal form can be created. The last part of the article deals with the scientific view of this legal form.

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<sup>3</sup> The Treaty establishing the European Economic Community.

<sup>4</sup> Treaty on European Union and Treaty on the Functioning of the European Union.

<sup>5</sup> Opinion of the European Economic and Social Committee on the Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No. 1082/2006 of the European Parliament and of the Council of 5 July 2006 on a European grouping of territorial cooperation (EGTC) as regards the clarification, simplification and improvement of the establishment and implementation of such groupings COM(2011) 610 final - 2011/0272 (COD).

## 2. Cross-border cooperation in the European Union

European territorial cooperation, the cornerstone of European integration, is particularly important in terms of creating a common European area. It has clear European added value – helps to ensure, that borders do not mean barriers, contributes to the rapprochement of Europeans and tackling common problems, easing the exchange of ideas, and supporting strategic actions aimed at achieving common goals.<sup>6</sup> Cross-border cooperation is a significant part of the European Union's Cohesion Policy and a key element of the European Union policy towards its neighbours. Territorial cooperation is considered to be an essential tool for achieving the cohesion objectives and therefore receives a new support and the funds allocated to it are increased. However, it is necessary to adopt concurrent measures aimed at removing obstacles that block its development.<sup>7</sup> European territorial cooperation plays an important role in removing barriers linked to borders and in strengthening cross-border cooperation. Its programs<sup>8</sup> have achieved many results for the benefit of the citizens in the field of cross-border security, transport, education, energy, health care, training and job creation. Nonetheless, significant economic potential remains untapped in border areas. The reason is lack of trust or even negative attitudes among neighbouring countries.<sup>9</sup>

The legal base for territorial cooperation between regions of the European Union is in the Treaty of the Functioning of the European Union. In order to promote its overall harmonious development, the European Union shall develop and pursue its actions leading to the strengthening of its economic, social and territorial cohesion. In particular, the European Union shall aim at reducing disparities between the levels of development of various regions and the backwardness of the least favoured regions.<sup>10</sup> Mainly border areas are often peripheral, underdeveloped or marginalised areas. Sometimes the borders are historical scars. The main aim of cross-border cooperation is to reduce the effect of borders as administrative, legal and physical barriers, tackle common problems and exploit untapped potential.<sup>11</sup>

The cross-border cooperation of public authorities is also supported through the possibility of cross-border public procurement within the European Union. Despite the fact that EU legislation implicitly allowed for cross-border joint public

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<sup>6</sup> European Commission. (2019a). Cooperation between regions and member states. Available online: [https://ec.europa.eu/regional\\_policy/sk/policy/cooperation/](https://ec.europa.eu/regional_policy/sk/policy/cooperation/) [cit. 10.10.2019].

<sup>7</sup> Opinion of the European Economic and Social Committee on the Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No. 1082/2006 of the European Parliament and of the Council of 5 July 2006 on a European grouping of territorial cooperation (EGTC) as regards the clarification, simplification and improvement of the establishment and implementation of such groupings COM(2011) 610 final — 2011/0272 (COD).

<sup>8</sup> Interreg I – V.

<sup>9</sup> European Commission. (2019b). Cross-border cooperation in the European Union. Available online: [https://ec.europa.eu/regional\\_policy/sk/newsroom/news/2015/09/cross-border-cooperation-in-the-european-union-an-opportunity-for-europe-s-border-regions](https://ec.europa.eu/regional_policy/sk/newsroom/news/2015/09/cross-border-cooperation-in-the-european-union-an-opportunity-for-europe-s-border-regions) [cit. 10.10.2019].

<sup>10</sup> Article 174, Treaty on the Functioning of the European Union.

<sup>11</sup> European Union. (2011). European territorial cooperation: building bridges between people. European Union. 152 p. ISBN: 978-92-79-20900-0.

procurement, contracting authorities are still facing considerable legal and practical difficulties in purchasing from central purchasing bodies in other Member States or jointly awarding public contracts. Cross-border joint public procurement may be carried out through (1) centralized public procurement activities provided by a central purchasing body operating in a Member State, (2) cooperation between public contracting authorities from various Member States or contracting authorities from various Member States, or a (3) joint body, which is set up by public contracting authorities from various Member States or contracting authorities from various Member States.<sup>12</sup> Such entity could be European grouping of territorial cooperation, whose cross-border nature has potential to ease cross-border joint public procurement. Penetration of cross-border purchasing in public procurement is a gauge of the extent to which public procurement rules have successfully created transparent and competitive markets for public purchasing across all European Union Member States.<sup>13</sup> There is a great need for contracting authorities to have additional flexibility to choose a procurement procedure, which provides for negotiations. A greater use of those procedures is also likely to increase cross-border trade, as the evaluation has shown that contracts awarded by negotiated procedure with prior publication have a particularly high success rate of cross-border tenders.<sup>14</sup>

### 3. European Grouping of Territorial Cooperation

European Grouping of Territorial Cooperation (EGTC) is a legal form that is used for creating structures for cooperation between the public authorities in the European Union. It was established by Regulation<sup>15</sup> (EC) No. 1082/2006 under the Cohesion Policy provisions for the 2007 – 2013 programming period<sup>16</sup>. The European Grouping of Territorial Cooperation is a legal entity established on a voluntary basis and in order to improve the conditions for the implementation of actions of territorial cooperation. It was not created by the European Union as an instrument, which is going to replace the already had been existing models of cooperation, it is mostly an alternative to the inter-governmental cooperation models.

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<sup>12</sup> the Law no. 343/2015 Coll. on public procurement.

Public contracting authority or contracting authority may award contracts on the basis of dynamic purchasing system operated by a central purchasing body from another Member State or award contracts by setting up framework agreement concluded by central purchasing body from another Member State. In that case, the public procurement shall be carried out in accordance with the national law of the Member State, where the central purchasing body is located.

<sup>13</sup> European Commission. (2017). Measurement of impact of cross-border penetration in public procurement. European Commission. 194 p. ISBN 978-92-79-56973-9.

<sup>14</sup> Directive 2014/24/EU of the European parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC.

<sup>15</sup> Regulation is a binding legislative act. It must be applied in its entirety across the European Union. Regulations are directly applicable in all the Member States as soon as they enter into force and do not need to be transposed into national law.

<sup>16</sup> For the analysis of EGTC regulation in EU legislation see Cătălin-Silviu Săraru, *The European Groupings of Territorial Cooperation Developed by Administrative Structures in Romania and Hungary*, „Acta Juridica Hungarica”, Volume 55, Number 2/June 2014, p. 151-154.

Tasks of the EGTC are generally in line with the objectives of European Territorial Cooperation. The tasks may include specific actions in the field of territorial cooperation between the members with or without financial support from the European Union. EGTCs may be entrusted with the implementation of programs co-financed by the European Union from the European Regional Development Fund, the European Social Fund and the Cohesion Fund, or other cross-border cooperation programs which may use European Union funds. Examples of such activities include operation of cross-border facilities of transport or hospitals, the implementation or management of cross-border development projects and the exchange of expertise and good practice.<sup>17</sup> An EGTC may act within the confines of the tasks given to it, which can be limited to the facilitation and promotion of territorial cooperation to strengthen economic and social cohesion and be determined by its members on the basis that they all fall within the competence of every member under its national law.<sup>18</sup> EGTCs are currently involved in diverse activities at local, regional, national and European level. The objectives and tasks of an EGTC are governed by the EU regulations and set out in its convention and statute.

EGTC may be established on the territory of Member States of the European Union. The main objective of an EGTC is to facilitate and promote cross-border, transnational and interregional cooperation between its members with the exclusive aim of strengthening economic and social cohesion. An EGTC has legal personality,<sup>19</sup> which shall be made up of members, within the limits of their competences under national law, belonging to one or more of the following categories: Member States; regional public authorities; local public authorities or bodies governed by public law. EGTC must be made up of members located on the territory of at least two Member States. Establishment of EGTC is strictly regulated under the European legal provisions. Member States can also adopt legislation that specify national conditions of EGTC establishment.<sup>20</sup> Each prospective member must notify the Member State under whose law it has been formed of its intention to participate in an EGTC and send a copy of the proposed convention and statutes to the Member State. Any amendment to the convention and any substantial amendment to the statutes must also be approved by the Member States.<sup>21</sup> An EGTC shall be governed by a convention concluded unanimously by its members.<sup>22</sup> The

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<sup>17</sup> European Parliament. 2019. European Groupings of Territorial Cooperation (EGTCs). Fact Sheets on the European Union. Available online: <http://www.europarl.europa.eu/factsheets/en/sheet/94/europske-zoskupenie-uzemnej-spoluprace-ezés-> [cit. 10.12.2018].

<sup>18</sup> Regulation (EC) no. 1082/2006 of the European parliament and of the Council of 5 July 2006 on a European grouping of territorial cooperation (EGTC).

<sup>19</sup> An EGTC has 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 and immovable property and employ staff and may be a party to legal proceedings.

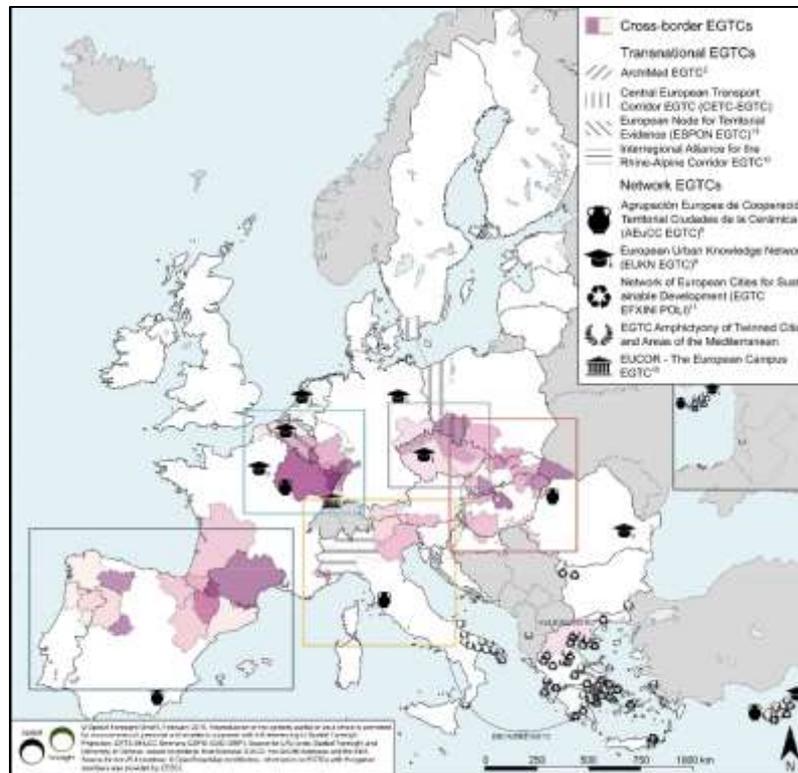
<sup>20</sup> e.g. Slovakia adopted the Law no. 90/2008 Coll. On European Grouping of Territorial Cooperation.

<sup>21</sup> Regulation (EC) no. 1082/2006 of the European parliament and of the Council of 5 July 2006 on a European grouping of territorial cooperation (EGTC).

<sup>22</sup> The convention must specify the name of the EGTC and its registered office, which shall be located in a Member State under whose laws at least one of the members is formed; the extent of the territory in which the EGTC may execute its tasks; the specific objective and tasks of the EGTC, its duration

statutes of EGTC must be adopted on the basis of the convention by its members acting unanimously.<sup>23</sup> Bodies that an EGTC must set up are: an assembly, which is made up of representatives of its members, and a director, who represents the EGTC and acts on its behalf. An EGTC can establish an annual budget.

**Figure 1: Territorial dimension of EGTCs in the European Union**



Source: European Committee of the Regions (2018)<sup>24</sup>

and the conditions governing its dissolution; the list of the EGTC's members; the law applicable to the interpretation and enforcement of the convention, which shall be the law of the Member State where the EGTC has its registered office; the appropriate arrangements for mutual recognition, including for the purposes of financial control; and the procedures for amending the convention.

<sup>23</sup> The statutes of an EGTC must contain, as a minimum, all the provisions of the convention together with the operating provisions of the EGTC's organs and their competencies, as well as the number of representatives of the members in the relevant organs; the decision-making procedures of the EGTC; the working language or languages; the arrangements for its functioning, notably concerning personnel management, recruitment procedures and the nature of personnel contracts; the arrangements for the members' financial contributions and the applicable accounting and budgetary rules, including on financial issues, of each of the members of the EGTC with respect to it; the arrangements for members' liability; the authorities responsible for the designation of independent external auditors; and the procedures for amending the statutes.

<sup>24</sup> European Committee of Regions. (2018). EGTC monitor report 2017. European Union. 199 p. ISBN: 978-92-895-0950-3.

The European Union evaluates the activities of EGTCs and adapts the legal framework in a way that the EGTCs could be more efficient, simpler and more flexible instrument, which will contribute to the improvement of territorial cooperation reinforced through the Founding Treaties of the European Union. The main objectives of the EGTC regulation amendment were to better facilitate the foundation of EGTCs, clarify certain provisions and enable more extensive use of the EGTC instrument.

According to the Regulation (EU) no. 1302/2013<sup>25</sup>, possibilities of establishment of EGTC are extended. Compared to the original measure, the new Regulation inserts an Article which allows accession of members from third countries or overseas countries or territories, whereas the condition of setting up the EGTC on the territory of at least two Member States has been preserved. A third country may be the next member of the cooperation under the condition, that it is neighbouring at least one of those Member States, including its outermost regions, where both the Member States and third countries jointly carry out territorial cooperation actions. Besides that, the aim of the new regulation was to simplify the establishment and operating of EGTCs. The European Parliament also managed to ensure that, under the legislative framework governing the 2014 – 2020 programming period, the representatives of EGTCs could participate in the monitoring committees of programmes.

#### **4. Scientific insight on EGTC as a legal form in the European Union**

EGTCs are the subject of many empirical studies (e.g. Evrard – Engl, 2018; Telle – Svensson, 2019; Jaansoo – Groenendijk, 2014; Coean, 2010), which demonstrate the benefits and weaknesses of this type of European legal form in terms of the objectives of European territorial and cross-border cooperation the EU seeks to achieve. Analysing the significance of the EGTC tool for European territorial cooperation is a multifaceted task encompassing different phases of a policy cycle. It can be clearly argued, that EU legislation on EGTC represents a turning point the EU addresses territorial cooperation. It is a European-wide legal basis with common obligations which has never existed in any other similar form. Many Member States of the European Union and their regions have already experienced this type of legal form and EGTCs are operating in their territory. Most of the existing EGTCs are territorially anchored cooperation areas set up by local and regional authorities, a minority being interregional or transregional.<sup>26</sup> However, there are still Member States where no EGTC has been established. (Figure 1).

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<sup>25</sup> Regulation (EU) no. 1302/2013 Of the European Parliament and of the Council of 17 December 2013 amending Regulation (EC) No 1082/2006 on a European grouping of territorial cooperation (EGTC) as regards the clarification, simplification and improvement of the establishment and functioning of such groupings.

<sup>26</sup> Evrard E., Engl A. (2018). *Taking Stock of the European Grouping of Territorial Cooperation (EGTC): From Policy Formulation to Policy Implementation*. In: Medeiros E. (eds) *European Territorial Cooperation*. The Urban Book Series. Springer. ISBN 978-3-319-74887-0.

The use of EGTC instrument can be seen as an advantage for cooperation within EU cohesion policy. EGTC confer a common legal personality to cross-border organizations, which makes cooperation more binding.<sup>27</sup> Recent criticism of the EGTCs, which mainly criticizes the purpose-setting of these entities, in order to facilitate access to the EU financial instruments intended to support territorial and cross-border cooperation, mainly backed by Interreg programmes, is actual. There is still greater emphasis put on EGTC management within new EU Cohesion Policy programming periods.<sup>28</sup> EGTC is promoted as a tool that can facilitate the emergence of a supra-regional scale of governance.<sup>29</sup> EGTC can be also considered as one of the reference model for the organization of a stable and multilateral territorial cooperation relationship, capable of simultaneously involving subjects from different states and different government levels.<sup>30</sup> In the term of cohesion, border areas are understand as contact zones between different political, economic and social system, where resources (natural, human and financial) can be exploited jointly. However, despite the considerable improvement of the EGTC legal basis, the possible effect of the EGTC for further institutional cross-border integration is still rather limited due to a narrow design of institutions and a low level of actor involvement.<sup>31</sup> We agree with the opinion, that establishing an EGTC is not a panacea for all difficulties of cross-border cooperation. EGTCs offer several opportunities for soft spatially dispersed cross-border cooperation such as additional competences, higher obligations for implementation and stability, which can often help to overcome some challenges. But, EGTCs are obliged to exist for a fixed duration and create new bureaucratic challenges. At the same time, language difficulties and the dependence on political personal changes can persist.<sup>32</sup> In addition, the EGTC still faces many legal and administrative obstacles, related to its nature of public entity and the slow reaction of national legal system to the introduction of this kind of European legal entity.

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<sup>27</sup> Telle, S., Svensson, S. (2019). *An organizational ecology approach to EGTC creation in East Central Europe*, Regional & Federal Studies, DOI: 10.1080/13597566.2019.1566904.

<sup>28</sup> Jaansoo, A., Groenendijk, N. (2014). *Cross-border delivery of public services: How useful are EGTCs?* In 54<sup>th</sup> ERSA Congress, St. Petersburg, 26-29 August, 2014.

<sup>29</sup> Evrard, E. (2016). *The European Grouping of Territorial Cooperation (EGTC): Towards a Supraregional Scale of Governance in the Greater Region SaarLorLux?*, „Geopolitics”, 21:3, 513-537, DOI: 10.1080/14650045.2015.1104667.

<sup>30</sup> Coen, L. (2010). *The European Grouping of Territorial Cooperation (EGTC) as a Strategic Agreement for Cooperation Policies*, „The Planning Review”, 46:183, 95-107, DOI: 10.1080/02513625.2010.10557115.

<sup>31</sup> Engl, A. 2016. *Bridging borders through institution-building: the EGTC as a facilitator of institutional integration in cross-border regions*, Regional & Federal Studies, 26:2, 143-169, DOI: 10.1080/13597566.2016.1158164.

<sup>32</sup> Caesar, B. (2017). *European Groupings of Territorial Cooperation: a means to harden spatially dispersed cooperation?*, „Regional Studies, Regional Science”, 4:1, 247-254, DOI: 10.1080/21681376.2017.1394216

## 5. Conclusion

The European Grouping of Territorial Cooperation is a legal form to facilitate the cross-border cooperation of public bodies in the regions of the European Union. It is an instrument contributing to the European Union's Cohesion Policy. Territorial and cross-border cooperation is enshrined in the Founding Treaties of the European Union. Significant funding is earmarked for this area in each programming period. In addition to financial resources, the European Union also offers other instruments and one of them is the possibility of setting up a cross-border legal entity - the EGTC. Material source of the EGTC laws is the need for cross-border cooperation in the European Union and the widening regional disparities in the border areas of the EU Member States. Formal sources of the EGTC laws are European Union regulations that are directly and in its entirety in the Member States. Member States may encourage the adoption of specific legal standards at national level to facilitate the establishment of an EGTC on their territory. EGTCs can carry out various activities. One is also cross-border procurement. Cross-border public procurement should be facilitated by the creation of an EGTC that would be conducting such cross-border procurement for its members. However, more than ten years after the adoption of the EGTC legal framework at European level, there are still countries in which such an entity is not located. Existing EGTCs have a different character depending on the status of their members. EGTCs are also subject to scientific interest and empirical assessments of their contribution to cohesion policy objectives. The scientific literature also presents the criticism of an EGTC in relation to its purposeful founding with the vision of raising funds from the European Union programs aimed in particular at promoting territorial cooperation. In addition, there are still legal and administrative barriers and uncertainties at the national levels of the Member States regarding the establishment and existence of an EGTC. The European Union is also seeking to clarify the relevant legal framework to make an EGTC more efficient and operational. The legal institutions adopted by the European Union and the Member States in connection with the creation of an EGTC may be subject to further research.

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