

EGTC: A tool for fostering spatial justice in European borderlands

Estelle Evrard

research scientist (Maître Assistante) in geography
Department of Geography and Spatial Planning, University of Luxembourg

Abstract

Border areas are peripheries whose functions have been transformed under the impetus of the European integration process. From former frontlines, they have become interfaces, so that they are often portrayed as “laboratories of European integration”. Yet, as their spatiality is shaped by sometimes two contradictory forms of territorialities; that of Member States and of the European Union (EU), they are unequally able to shape their own future. This contribution uses legal geography and spatial justice to discuss three main manifestations of this situation. Firstly, as Member States use the border as a resource and a marker of sovereignty, European borderlands’ own interests are often given lesser priority. Secondly, as demonstrated by the Cross-Border Review (EC, 2017), they face a number of legal obstacles hindering their effective access to EU law. Thirdly, multi-level mismatch limits borderlands’ effective capacity to steer their own development. This contribution outlines the extent to which the EGTC instrument partially tackles these challenges and enhances procedural justice for European borderlands; also shedding light on the interrelations between law and space in European borderlands. It reveals that law dedicated to European borderlands is paramount for them to have effective capacity to shape their own future and for the EU to develop an integration process that is more just towards European borderlands.

Keywords: EGTC, spatial justice, legal geography, EU integration, Cohesion Policy

I. Introduction

Border areas are peripheries whose functions have been transformed under the impetus of the European integration process. From former frontlines, they have become interfaces and exemplary for the EU, often portrayed as “laboratories of European integration”. The EU’s internal borders remain, however, resistant

Ocskay, Gy (ed) (2020) *15 years of the EGTCs. Lessons learnt and future perspectives*. Central European Service for Cross-border Initiatives (CESCI), Budapest, pp. 245-266. / ISBN 978-615-81265-1-9

to isotropy. Differences in regulations, taxation and cultural practices remain important whereas disparities in living standards have diminished between countries (Geoconfluences, 2006). A recent study led by Politecnico di Milano estimates that the legal and administrative obstacles in border areas lessen their GDP by several points (Camagni et al., 2017). Border areas remain peripheral as they often lack command capabilities to remedy these obstacles. This relationship of domination between the centre and the periphery is also reflected in the fiscal and regulatory leverage that can allow "windfall effects" (Casteigts, 2014) as Member States establish competitive regulatory or tax regimes. Border areas are therefore places of "intrinsic inequity" (Casteigts, 2013) forged by the complex interrelationship of European and Member States' territorialities (Evrard, submitted). On the one hand, the EU Single Market regulation shapes a transnational space of mobility, allowing frictionless trade and free movement of people. The EU aspirational territoriality is soft and mobile (Pullano, 2009) fostered by the EU sole regulatory competence. On the other hand, nation-states-based differences in taxation, regulation, culture and language remain dominant. They are anchored and contained spatially by the nation-state territory, a striated form of territoriality (Pullano, 2009 referring to Deleuzian understanding). Border areas are located at the interstice of changing nation-state territoriality as the EU construction expands. They are partly shaped by Member States' striated territoriality and partly shaped by the EU soft and mobile territoriality without having capacity to act on them. Over the years, their main response aimed at building trust with the neighbour institutionalising cross-border cooperation (e.g. Euroregion) to deal with concrete problems and to develop cross-border infrastructures and projects.¹

As the EGTC provides EUropean borderlands with legal capacities to act in their own interest, it represents a paradigm shift in EUropean² regional policy. Using legal geography and the notion of spatial justice, this contribution will examine this shift by considering the following three hypotheses. Firstly, and for the first time, the nature of the EU's support to cross-border areas is not only financial and political (e.g. Interreg programmes), but also legal. EUropean border areas are

1 The notion of EUropean borderlands takes into account that "borders simultaneously divide and unite, repel and attract, separate and integrate" (Buchanan, 1995: 392) in a specific and unique way, partly driven by the EU integration process (O'Dowd, 2001). The notion of borderland encompasses the three elements identified by Haselsberger (2014: 509): the border as a line ("linear, hard and static dividing element, fixed in a particular territory"), a frontier ("zonal, soft and fluid element dividing element, defining an area immediately beside a state border") and a boundary (composed of "geopolitical, sociocultural, economic and biophysical categories").

2 This paper refers to the EU as the "world's first truly postmodern international political form" (Clark & Jones, 2008: 301 quoting Ruggie, 1993: 140). By using this definition, we indicate the specificity of the European Union within the broader European context.

given the institutional and legal means to build-up transnational capacity for action. The nature of the EU's support towards EUropean border areas changes and expands. Secondly, it is the first EUropean legal instrument aligning legal capacity (law) with a cross-border area (space). In creating a spatio-legal category established and recognised in EUropean (and Member States') laws, the EGTC provides cross-border areas with visibility and centrality. Thirdly, and as a consequence, the EU regulation adapts law to "geographic specificities" (as referred to in Art. 174 TFEU). The regulation provides dedicated and tailored means to adapt to local circumstances and specificities. In this sense and as it provides EUropean borderlands with the legal capacity for action, it is a tool enhancing spatial justice. Drawing upon legal geography and spatial justice, this contribution demonstrates that – when law and space are aligned – decisions can become more equitable as they are taken in accordance to and for space.

Firstly, we place the EGTC regulation in the context of the literature on European integration and territorial cohesion and demonstrate how – by adopting a legal regulation – the EUropean approach shifts. Then, after a brief presentation of legal geography and spatial justice, we outline how both notions infuse the European spatial development context as a decisive context for cross-border areas. Thirdly, we explore how by aligning law with space, the EGTC regulation reduces the "structural inequity" (Casteigts, 2013: 12) affecting border areas and provides them with renewed room for manoeuvre. Despite this, we suggest in the concluding section that EUropean borderlands continue to face a number of structural inequalities that are largely constitutive to their deep nature, that of being transcended by EU and nation-states' territorialities.

II. Anchoring the specific challenges of border areas within the EU territorial development³

First of all, it should be remembered that the European Union is first and foremost thought as a political construction rather than a geopolitical construction. As Merje Kuus explains in her book dedicated to the production of knowledge in the European institutions, the EU is thought of by those who make it as an "anti-geopolitical" project: "integration has enabled European nation-states to overcome their historical antagonisms and to overcome the violence inherent in territorial policies. Europe is a geographical concept [...] that seems to take shape nowhere

3 The argumentation in this section has been expanded from parts of the article "How does European law shift borders? The proposal for a regulation to resolve legal and administrative obstacles in a cross-border context"

(Evrard, 2020, published in French).

in particular” (Kuus, 2014: 12). The EU’s relationship with its hold on the EU territory remains complex (Luukkonen & Moilanen, 2012 for a synthesis). The constitutionalisation of “territorial cohesion” alongside the objectives of economic and social cohesion in the European Treaty (Art. 3) emerged as the outcome of a twenty years discussion; articulated around the ESDP, the Territorial Agenda and the need to take account of the territorial dimension to European policies (Evers, 2011; Faludi, 2013), besides pursuing the objectives of the Cohesion policy. Yet, European policies have been challenged to effectively address their respective territorial impact as shown by the discussion on the Territorial Agenda 2020 (Zaucha et al., 2014) and current discussion on its revision (Martin et al., 2018). Its effective implementation has been deemed rather timid (Faludi, 2010; Zaucha et al., 2014; Jones et al., 2018).

Besides this spatial/territorial development, factors framing the EU’s complex approach towards space and territory and the EU’s approach towards border areas more specifically, is shaped by a number of additional considerations. Firstly, borders are strongly associated with Member States’ sovereignty. Weiler suggests that the EU “does not reject [state] boundaries: it guards them, but it also guards against them” (1999: 341). The EU project therefore attempts to develop “new, more democratic, and consensual ways of managing border change to replace the long European tradition of inter-state war, violence and coercion” (O’Dowd, 2001: 68). Secondly and therefore, the border should be ‘transformed’ as interface to facilitate the expansion of the Single Market. Under the cohesion policy, financial incentives have also contributed greatly to enhanced cross-border cooperation and reducing disparities. Aiming at reducing development gaps between regions, border areas have been supported since the 1990s (Dühr, 2018). The function of the EU-inner borders has been progressively shaped by the EU integration. As the EU competences have expanded over recent decades, barriers to interregional and transnational flows have progressively been levelled, thus facilitating the expansion of cross-border interdependencies. Under the realm of labour mobility, cross-border work has become, for instance, one particularly well integrated field. Legal provisions (e.g. against discrimination, facilitating recognition of qualifications) have set a framework providing legal security to employers and employees allowing the expansion of cross-border work (Council, 1968). On the contrary, the absence of EU integration in the field of social law (i.e. minimum wage) partly reinforces disparities between regions and cross-border labour mobility; likewise, the absence of coordination in the field of taxation reinforce territorial competition (Faludi, 2018; Casteigts, 2013; O’Dowd, 2010). Thirdly, the EU and Member States’ relationship with sub-national authorities greatly influences the effective legal and political support attributed to cross-border cooperation. States have long feared that by developing cross-border relations, some of their territorial authorities could give rise to “a network of international relations parallel to those of the state”, a “para-

diplomacy” (Levrat, 2007: 20; Duchacek et al., 1988). Thus, states have long been reluctant to define legal arrangements allowing cross-border co-operation between sub-national entities (Comte & Levrat, 2006; Lejeune, 2004). In accordance with the principle of non-interference in internal affairs and sovereign equality between states (Colavitti, 2014), the EU is prevented from actively addressing nation-state borders more directly. Therefore, international conventions laying down a regulatory framework to accompany cross-border relations have initially been developed under the initiative of the Council of Europe. The 1985 Madrid Convention and its three additional protocols (1998, 2001, 2013) is a striking example. However, their implementation requires their ratification in national law and the adoption of bi- or multi-national treaties. As a result, the legal impact of these conventions and treaties and the opportunities for local and regional authorities to co-operate across borders have remained limited. This is particularly due to the late and hesitant implementation of state ratifications and implementations (Engl, 2016). While this fear has not entirely disappeared, especially from the perspective of regionalist movements in some Member States (Colomb & Tomaney, 2016), the latter are realising that cross-border cooperation and regionalism do not necessarily go hand in hand. The ISIG sums up well the fact that the challenge for border areas is not geopolitical but functional: ”The purpose of cross-border cooperation policies and practices is not to acquire new legal forms, financial opportunities or capacities; it is to overcome the problems that the border imposes on communities that it divides” (ISIG, 2013: 9).

Gradually, however, within border areas, a gap is emerging between highly integrated policy sectors due to European competences and nationally anchored competences. The crisis in the Schengen Area in 2016-17 and the recent COVID-19 sanitary crisis are immediate illustrations of this: by temporarily and exceptionally re-establishing border controls, some Member States made use of a national prerogative that nevertheless disrupted the free movement of people and goods, a Community competence (Evrard et al., 2018). These asymmetries of competence are all the more striking in the most integrated border areas.

Since the 1990s, numerous studies have shown that cross-border interdependences in certain areas have grown to such an extent that a dozen areas can be analysed as ”polycentric cross-border metropolitan regions” (ESPON/University of Luxembourg, 2010). These interdependencies are such that they have significant local impacts on transport, spatial planning, housing and even in the areas of unemployment benefit management and taxation (Council of Europe, 2019) and that concerted territorial development strategies are emerging (UniGR-CBS Arbeitsgruppe Raumplanung, 2018; Decoville & Durand, 2018). The intensity of the flows and their nature at each border depends largely on the national policies conducted in the social, economic and fiscal fields. In this sense, European and

national laws – as well as many other parameters (linguistic, cultural, historical, geographical) – influence the nature and intensity of the exchanges taking place at the borders.

Sub-national authorities associated with cross-border cooperation are legally ill-equipped to face these asymmetries. On the one hand, the extent of cross-border cooperation is circumscribed to the sum of the competences that the institutions involved have in common (“lowest common denominator”, Comte & Levrat, 2006). From an institutional point of view, on the other hand, no legal and institutional framework predicts how a legitimate decision should be taken (Levrat, 2007). As they face “institutional ambiguity” (Hajer, 2006), actors associated in cross-border cooperation need to define their “own rules of the game”, i.e. bi- or multilateral rules for cooperation allowing them to anticipate and manage conflict (Evrard, 2017). This structural difficulty is compounded by the fact that each of the associated entities often has a differentiated relationship with its national or regional supervisory authorities.

Since 2006, the EGTC regulation (EC & EP, 2006) “enables regional and local authorities from different Member States [...] to set up joint groupings with a legal personality to implement cooperation programmes and projects” (EU Regional policy, 2007: 12). It represents a turning point in many ways. By providing the legal personality to a cross-border institution, this regulation gives a strong political mandate to facilitate the creation of a new scale of territorial governance within and between Member States. In so doing, cross-border cooperation is not only legally facilitated internally but also recognised externally (Chilla et al., 2012; Engl, 2016; Evrard, 2016; Evrard & Engl, 2018). Cross-border areas are given the means to pursue their own cooperation objectives. In the next section, we briefly introduce legal geography and spatial justice to fully capture the significance of this tool.

III. European borderlands under the perspective of legal geography and spatial justice

Although legal geography and spatial justice are two fields of research, having emerged independently from one another and from relatively diverse conceptual approaches, several authors have combined them recently (i.e. Philippopoulos-Mihalopoulos (2010 and 2015), and analysing more specifically the objective of territorial cohesion Holder & Layard (2011). In addition, the notion of spatial justice was investigated by several EU-financed research projects (COESIFY, IMJINE, RELOCAL) as a possible conceptual foundation for rethinking the policy of local development in the EU. We use them to fully capture the significance of the EGTC within the broader EU territorial development debates.

III.1. Legal geography, spatial justice and European territorial cohesion: a brief introduction

Legal geography emerged primarily in the early 2000s following the spatial turn on the one hand and critical legal studies on the other (Bravermann et al., 2014). It understands space and law as constitutive to social life, rather than given or static. As space and law are implicated in an array of social relationships, both are produced through social and political action. Legal geography proceeds therefore “from the premise that the legal co-creates the spatial and the social while the spatial co-creates the legal” (Layard, 2016). Specifically, it looks at “the manner in which law, as a set of processes, texts, and practices, is shaped by the geographic dimensions of social and political life, and the ways in which the geography of social life is in turn structured by law” (Blomley & Labove, 2015: 8481). By considering how space shapes law and reciprocally law shapes space, legal geography attempts to unravel power relationships – how they order, classify, and organise social relations.

Legal geographers understand spatial orderings as simultaneously legal orderings. Consider the pairs: employee and workplace, property owner and land, refugee and state territory, citizen and state territory. Blomley & Labove notice that it becomes hard to isolate them from one another (2015: 13). The spatial is co-constitutive to the legal, they are “entangled”. “Law and space [...] are constantly conditioned by each other, allowing one to emerge from within its connection to the other” (Philippopoulos-Mihalopoulos, 2015: 4). The legal category confers a set of rights enshrined in a spatially bounded area. These rights hold specific meanings in society, they are opposable to others. Blomley names them “splices.”⁴ As a result of social relations defined at a specific time, these categories are not fixed and should not be taken for granted. Legal geography is particularly interested in analysing how – through what power relations, technologies, discourses and practices – these spatio-legal arrangements are renegotiated. Legal geographers are urged therefore to become “spatial detectives” to “search out the presence and absence of spatialities in legal practice and of law’s traces and effects embedded within places” (Bennett & Layard, 2015).

Spatial justice is a relatively older concept which has emerged in geography and urban studies, originating from radical thinkers Harvey (1973) and Soja (2010). This field of research is particularly wide as the debates on the notion of justice are central to democracies and public debates, at all scales. Key questions then are: “Is homogeneous treatment in space the condition for spatial justice, or even its definition? Or is a just policy a policy of rebalancing inequalities, with forms of

4 The terms ‘nomosphere’ (Delaney, 2015) and ‘lawscape’ (Philippopoulos-Mihalopoulos, 2015) express a similar idea, that of considering entangled spatial and legal categories and the power dynamics associated to them.

positive discrimination? Or should the “just” policy be non-interventionist in the territories and simply accompany territorial dynamics?” (Gervais-Lambony & Dufaux, 2009: 12, translated from French). The latest operationalisations of the concept have put distributive and procedural justice at the centre of spatial studies analyses (Israel & Frankel, 2017; Madanipour et al., 2017). Distributive justice refers to policy measures aiming at reducing “objectively-defined” socio-spatial structural inequalities (Gervais-Lambony & Dufaux, 2009: 8). Spatial justice appears therefore as the horizon of public policies, and spatial planning in particular. Procedural justice signifies the equity of decision-making processes, their legitimacy and effective participation. Spatial justice debates have also been largely influenced by non-geographers, Rawls and Sen in particular. As summarised by Rauhut, the Rawlsian’s aspatial theory of justice is based upon “the idea that society should be obligated to provide a fair share of opportunities and resources to individual citizens” (2018: 11). Sen argues that “where the market is unable to mitigate and/or counteract inequality (meaning that some people are unable to access the essential commodities of life or that they are denied the opportunity to change their current personal situation simply because of their specific geographical location), public action is required” (Rauhut, 2018: 117).

In this vein, the concept of spatial justice has been used in the European spatial development literature (Connelly & Bradley, 2004) to study the urban context (Dabinett, 2010) and analyse the notion of sustainability. More recently, this concept came back to the fore as a possible theoretical tool for rethinking the concretisation of the notion of territorial cohesion (by European planners Doucet, 2006; by legal geographers Holder & Layard, 2011 and geographers: Jones et al., 2018; Rauhut, 2018; Lang & Görmar, 2019 and Blondel & Evrard, 2019). Indeed, art. 174 TFEU can be analysed as a provision aiming at increasing spatial justice. It acknowledges that geography shapes local conditions of living and social relations: “particular attention shall be paid to rural areas, areas affected by industrial transition, and regions which suffer from severe and permanent natural or demographic handicaps such as the northernmost regions with very low population density and island, cross-border and mountain regions”. Consequently, the EU aims at “reducing disparities between the levels of development of the various regions and the backwardness of *the least favoured region*.” (emphasis ours: using a Rawlsian terminology). To implement this goal, the EU uses two main instruments. On the one hand, structural funds are financial means that can be analysed as the redistributive side of the spatial justice. On the other hand, regional policy is governed through multi-level governance (e.g. principle of partnership) that can be analysed as the procedural side of spatial justice as it allows local and regional authorities to effectively contribute to the implementation (and to a lesser extent to the design) of the regional policy. Even though a number of limitations have been observed on the effectiveness of these

principals and means, one should not forget their underlying principles and the innovations of this policy. Law is instrumental in framing this policy's implementation process. It is through a number of agreed formal and informal set of rules and procedures (e.g. regulations, managing bodies, operational programmes) that this policy operates. It is also local and regional spatialities that frame how the policy is implemented. Part of these rules define the geographic categories of island, cross-border and mountain regions, thus establishing their eligibility to funding (for an example: art 7.1. ERDF regulation 2006; Montfort, 2009). The NUTS system is the most visible manifestation of this attempt to divide space EU-wide according to a set of coherent statistical principles. It is also a major policy instrument used to define spatial categories and therefore which law applies. This quick overview demonstrates that law and geography, space and justice are intrinsically linked and connected to one another within the EU regional policy context. Before turning more specifically towards EUropean borderlands, we bring in an additional conceptualisation which articulates legal geography with spatial justice.

Philippopoulos-Mihalopoulos is one of the few scholars using geography of law and spatial justice. He takes distance from procedural and distributive understandings of spatial justice as he accounts them for being “too aspatial” and not sufficiently reflecting the legal dimension of justice. He grounds his theorisation of spatial justice on Massey's understanding of space, whereas space is “a product of interrelations and embedded practices, a sphere of multiple possibilities, a ground of chance and undecidability, and as such always becoming, always open to the future” (Philippopoulos-Mihalopoulos 2013: 8, quoting Massey, 2005). His understanding of justice rests on Derrida's. Justice is an “experience of the impossible”, which is always yet “to come”, and comes from within the calculability of the law (Philippopoulos-Mihalopoulos, 2013, quoting Derrida, 1992). In his understanding, law⁵ compartmentalises space, it divides, allocates and governs (2010: 8). Therefore, “law and space cannot be separated from each other. They are constantly conditioned by each other, allowing one to emerge from within its connection to the other” (Philippopoulos-Mihalopoulos, 2015: 4). This constant process through which law emerges from space is a “lawscape”. For him, justice unfolds as law withdraws from space:

“[...] When a geopolitical presence is not tolerated, when two peoples are forced to ‘share’ the same space at the same time, when the industry moves into the forest, when the ship moves into the fish stock: there is conflict. Spatial justice is the movement out of this conflict while delving deeper into it. [...] Justice finds its space in the movement of escape, of withdrawal: withdrawing from judgment, from justice itself, from

5 In this context, law is understood in a wide sense as the “written and oral law, but also embodied social and political norms” (Philippopoulos-Mihalopoulos, 2015: 1).

one's own justice, and away from the space of the other's claim. [...] If law is found together with space in a fold of doubt and self-limitation, then justice is precisely this going-against yet through the law in attempting to cross the line of law's normative geometry while being inscribed within it. Spatial justice comes through and despite the law" (Philippopoulos-Mihalopoulos, 2010: 8).

This conceptualisation is particularly illuminating as justice is understood as the outcome – yet never “achieved” – of a constant struggle between space and law. Besides considering how law and space co-construct one another (legal geography), this conceptualisation urges us to consider the active relation, the tensions between them and how/whether – as a result – justice unfolds by renegotiating law and space.

III.2. European borderlands spatial justice challenges

In this section, we discuss four main forms of spatial injustice constitutive to European borderlands.

Conflicting laws challenge effective access to law

The recently released Cross-Border Review⁶ demonstrates how cross-border activity is impeded by legal and administrative obstacles. As national legislation is “border-blind”, the EC-led cross-border review observed diverging national legislations, incompatible administrative processes or lack of common territorial planning (ec.europa.eu). This review demonstrates a clear connection between border areas and a systematic reduction in access to rights (and infrastructure), therefore questioning the equity of law in space. Using Philippopoulos-Mihalopoulos’ reasoning, the Cross-Border Review demonstrates that – as framework conditions allow – cross-border movement expands, thus shaping cross-border spatiality, and requiring adaptation on the side of law. Yet, in many situations, the obstacle prevails: access to rights conferred by EU treaties is either not effective or made cumbersome. Law does not adapt to cross-border practices (spatiality) and therefore becomes unjust. The Cross-Border Review shows also that in other situations, law overcomes the

6 The Cross-Border Review conducted by the DG REGIO from 2015 to 2017 aims to “respond to the challenges still persisting in border regions, despite 25 years of funding through the Interreg programmes” (Cross-Border Review homepage). It consisted of a public consultation, workshops with practitioners, a study to identify administrative and legal obstacles to cross-border cooperation (https://ec.europa.eu/regional_policy/en/policy/cooperation/european-territorial/cross-border/review/) and on a study carried out by the Politecnico di Milano assessing the negative impact of obstacles on a series of indicators (Camagni et al., 2017). Results of the study “Easing legal and administrative obstacles in EU border regions”, the public consultation and expert workshops are publicly available: https://ec.europa.eu/regional_policy/en/policy/cooperation/european-territorial/cross-border/review/. The author of this paper acted as one of the three scientific external experts for the study.

obstacles and adapts to cross-border space. Then, the outcome is just. As European integration expands, cross-border spatiality requires adaptation of law to reach more just outcomes. Even though the Cross-Border Review sheds light on this reality, this situation is relatively unknown to legislative and administrative authorities. The regulation proposal for a “European Cross-Border Mechanism” (EC, 2018) represents a policy paradigm shift (Engl & Evrard, 2019) and would allow such obstacles to be overcome (Evrard, 2020). Yet only, *a posteriori*, after the obstacle is identified, therefore leaving cross-border areas in a form of injustice as law is often not conceived or implemented taking their needs into account.

As European borderlands are shaped by competing and cooperative strategies, how equitable can they be?

When analysing functional integration in cross-border areas, scholars have analysed the porosity of the border as a result of differences and differentials between two sides of the border (e.g. prices, taxation, regulatory constraints) (Decoville & Durand, 2018: 4). Patterns of integration are particularly heterogeneous, some regions being particularly interdependent, others being more homogenous. The border is often used as a resource (Sohn, 2014). Casteigts (2013: 12) sees therefore borders as “place of intrinsic inequity”. He sees inequality between communities: when commuters contribute to the production of wealth in one State, while their training and the social expenditure relating to their families are borne by another State”. Border areas are shaped by a spatiality of their own, consisting in the complex interrelation made of competition and cooperation as different national sets of regulations, land-use patterns, societal values are in contact at the border despite/against the background of the EU regulatory framework. This “intrinsic inequality” questions the capacity of the cross-border area to define dedicated “rules of the game” in capacity to address it. It therefore calls for a dedicated form of regulation which takes into account the fair distribution of resources and fair access to public services in a cross-border functional space.

Conflicting EU and Member States’ territorialities?

The reintroduction of border controls as a response from some European Member States to handle several crises (e.g. terror attacks and migration in 2015, and Covid-19 in 2020) demonstrates how intertwined cross-border, national and European arenas actually are, and not only as spaces, but also as levels of regulation. When a number of Member States’ competences (e.g. security, health, migration) are considered to take priority over EU competence (e.g. the Single Market), the EU’s management of borders in an orderly manner becomes easily challenged. The EU’s and Member States’ laws and territories contradict one another. By exercising their sovereign right to control borders in case of need (law), Member States challenge the effectiveness

of the EU Single Market (space). As a consequence, as cross-border work and flows are impeded, the functioning of cross-border areas is *de facto* called into question (Evrard et al., 2018). Border areas are usually ill-equipped to face such situations, as they don't hold regulatory power, are often weakly institutionalised and are symbolically at the margins.

For whom?

Spatial justice allows, finally, to thematise the citizens' effective access to live, work, study, shop and access public services across the borders (ESPON CPS project, Zillmer et al., 2019) and also their ability to participate (and be represented) in decision-making processes of relevance to cross-border practices (Evrard, 2019). This raises a myriad of complex questions for which research needs to be conducted: which arenas, how to frame cross-border legitimacy and representativeness, how to build public participation processes that effectively contribute to decision-making processes across borders?

This brief overview demonstrates that spatial justice in European borderlands is intrinsically linked to the complex relationship between the EU supranational integration process and the Member States' own interests, as border (and territory) is often used as resource and marker of sovereignty. Taking spatial justice as an analytical lens allows attention to shift onto the role of law in shaping space and to envisage another spatio-legal equilibrium, capacitating the cross-border area. The EGTC represents a major milestone in this direction.

IV. The EGTC: a spatio-legal ordering

Over the years, border areas have attempted to structure their cooperation by systematically institutionalising it (Perkmann, 2003; Blatter, 2004). They have lobbied at the Council of Europe and the European Union for a unified legal instrument (Comte & Levrat, 2006). A number of tools have been defined to frame cross-border cooperation legally in the form of treaties of general provisions (e.g. most recently Euroregional Co-operation Groupings in the framework of the Council of Europe, 2009) and more specific provisions (e.g. tax treaties, ZOAST). Within the EU, the EGTC is the first European legal instrument aligning legal capacity (law) with a cross-border area (space). Although we invite the reader to refer to the other contributions in this book for the latest analysis of this tool, we emphasise four essential aspects of the EGTC regulation (Evrard, 2016: 10). Firstly, the EGTC is equipped with legal personality (EC & EP, 2006: Art. 1). It has its own budget, may employ staff, launch and answer calls for tenders, and participate in projects relating

to territorial cooperation (EC & EP, 2006: Art. 7). Secondly, the members of the EGTC set-up its convention and statutes. Thirdly, the EGTC operates on a truly cross-border space, defined according to Member States' administrative boundaries. Fourthly, the EGTC is devoted to a set of tasks that shall aim at "facilitat[ing] and promot[ing] territorial cooperation to strengthen Union economic, social and territorial cohesion, and the overcoming of internal market barriers" (ibid).

The EGTC tool directly contributes to enhancing spatial justice for EUropean borderlands as it acknowledges their needs and capacitates them to act accordingly. The EGTC regulation exemplifies the adaptation of EU law to EUropean borderlands' spatiality. In so doing, the regulation ensures EUropean borderlands are equally able to act. As summed-up by Peters,

"if a municipality in a Member State can set up a joint body with a neighbouring municipality inside the same Member State to run a bus line or a water sewage treatment plant or if a region can manage a nature park or a regional development agency together with its neighbour region inside the same Member State, the [EGTC] Regulation allows them to do the same thing across the border, inside the Community. There is an aspect of non-discrimination in it" (EU Regional policy, 2007: 12).

The regulation ensures that EUropean borderlands are on equal footing with other local and regional authorities in the EU; the Single Market is made more efficient and equitable. We review briefly the elements constitutive to this capacitation.

Firstly, the tool establishes an effective capacity to act and to engage the responsibility of the cross-border organisation, which is therefore not bound to the commitment and the agenda of its members. In so doing, this regulation establishes an institution the main rationale of which is to act in the interest of the cross-border space. EUropean borderlands therefore can be represented, visible, present their own specificities and act in their own interest. Law provides EUropean borderlands a means for action. As the EGTC defines its own rules (e.g. convention, statutes), this legal form adapts to the multifaceted institutional setting within EU Member States. As indicated earlier, one of the most important barriers to cross-border cooperation is multi-level mismatch (i.e. heterogeneity of authorities associated to the cooperation, ESPON/University of Luxembourg, 2010; Chilla et al. 2012). Allowing (sub)-national authorities to define their own rules of the game contributes to ensuring the reliability of decision-making processes and their transparency. Giving the EGTC the capacity and obligation to define the rules of the game between its members and for its own functioning reinforces its effective capacity to act in and according to space. Secondly, this capacity to act is circumscribed to a "perimeter" (i.e. cross-border spatiality). Law adapts to space as it accepts that a Member State's law applies across borders, and therefore, despite the border. Within a specific cross-border space – characterised by cross-border interdependencies, a

spatiality – the law of one Member State shall apply. National territory gets porous to its neighbouring Member State's law as to the EGTC's activities (Chambon, 2015). This pragmatic solution allows the applicable law to be clearly defined, therefore easing access to law and its applicability in space. This alignment of law and space confers certainty to cross-border cooperation. Thirdly, the EGTC regulation allows bodies associating the civil society to decision-making processes to be set up (e.g. the EGTC Lille-Kortrijk-Tournai) and/or sector specific representatives interested in cross-border matters (e.g. chambers of trade and industry, cross-border commuters, universities). Again, this allows the specificity of cross-border areas to be effectively addressed. All in all, the regulation equips the EGTC tool with effective autonomy and capacity to act tailored to EUropean borderlands. It can therefore effectively contribute to enhancement of the procedural dimension of spatial justice. The EGTC demonstrates that law and space cannot and should not be treated as autonomous categories. Rather, tracing the effect of one upon the other, such as investigating how they are recursively interrelated, is paramount.

Finally, put into the broader context, the EGTC complements the governance of EUropean borderlands. It can be used to manage Interreg funding so that the EGTC's strategic goals are aligned with Interreg funding. It can also be used as a transnational scale of governance and facilitate the cooperation with other levels of governance, from the local to the EU.

Deeper research would be required to systematically analyse how the tool is effectively implemented in the EU. Today, it seems that the EGTC potential is underused and that EGTCs follow a rather traditional pattern of cooperation where each individual member's core activities primarily relate to a (sub)-state authority and where the EGTC acts primarily as an agent relying on its members (Evrard & Engl, 2018).

V. Conclusion

This contribution has emphasised the specificity of EUropean borderlands using legal geography and spatial justice. By being partly shaped by Member States' striated territoriality, and partly shaped by the EU soft and mobile territoriality, EUropean borderlands are unequally able to shape their own future. We have identified three main reasons. Firstly, as Member States use the border alternatively as a resource (e.g. tax) and a marker of sovereignty (e.g. reintroduction of border controls), EUropean borderlands' specificities and interests are often put in the background. Secondly, EUropean borderlands face a number of legal obstacles hindering their effective access to EU law (EC, 2017). As access to law can be restrained, EUropean borderlands can be places of unequal access to law and therefore are more likely to face unjust situations. Thirdly, multi-level mismatch limits EUropean borderlands'

effective capacity to steer their own development, so that they remain peripheral in decision-making processes affecting their own interests.

Against this background, the adoption of the EGTC tool represents a paradigm shift in many ways. Firstly, for the first time, the EU provides them not only with financial support (e.g. Interreg, distributive justice) but also with a legal tool tailored to European borderlands' needs (procedural justice). The EGTC instrument works essentially by – on the one hand – allowing European borderlands to align law with their spatiality, thus establishing a cross-border cooperation area, recognised in law and – on the other hand – by providing this new entity with legal capacity (i.e. capacitation). The EGTC tackles some of the limits of the multi-level mismatch as European borderlands are given the institutional means to define their rules of the game in law and according to *their* interests and spatiality. It also provides European borderlands with enhanced visibility, centrality and recognition EU-wide, thus making them less peripheral. Even though the EGTC provides more procedural justice to European borderlands, it does not allow tackling the first two challenges identified earlier (i.e. border used as a resource and legal obstacles). If it passes, the Regulation “on a mechanism to resolve legal and administrative obstacles in a cross-border context” (EC, 2018), in discussion at the time of writing, would represent another step forward directly addressing the latter challenge (Evrard, 2020). Yet only *a posteriori*, after the obstacle is identified, therefore leaving cross-border areas in a form of injustice as law is often not conceived or implemented taking their needs into account.

This contribution demonstrates that, as EU integration expands, it becomes even more necessary to consider how it – and especially EU law – shapes space. Equipped with the notion of spatial justice, the objective of territorial cohesion represents a helpful compass in that respect. It puts emphasis on socio-spatial relationships, allows critical consideration of how spatial injustices emerge and are reproduced and therefore how adjustments can be made. This contribution has shed some light onto the interrelationship of law and space in European borderlands. It reveals that law dedicated to European borderlands is paramount: for them to have the capacity to effectively shape their own future; and for the EU to develop an integration process more just towards European borderlands.

Bibliography

- Bennett, L., & Layard, A. (2015) Legal Biography: Becoming Spatial Detectives, *Geography Compass*, 9:7, 406-422.
- Blatter, J. (2004) From 'spaces of place' to 'spaces of flows'? Territorial and functional governance in cross-border regions in Europe and North America, *International Journal of Urban and Regional Research*, 28:3, 530-548.
- Blomley, N. & Labove, J., (2015) Law and Geography, *International Encyclopedia of the Social & Behavioral Sciences*, 2nd edition, 13: 8481-8485.
- Blondel, C. & Evrard, E. (2019) Territorial development + Local autonomy = Spatial (in)justice? *JSSJ*, 13: 1-12. <https://www.jssj.org/article/partir-de-lautonomisation-du-local-pour-interroger-linjonction-au-developpement/>
- Braverman, I., Blomley, N., Delaney, D., & Kedar, A. (Sandy) (2014) Introduction. Braverman, I., Blomley, N., Delaney, D., & Kedar, A. (Sandy) (eds.) *The Expanding Spaces of Law: A Timely Legal Geography*, Stanford University Press, Stanford, 1-29. doi: 10.11126/stanford/9780804787185.003.0001
- Buchanan, R. (1995) Border Crossings: NAFTA, Regulatory Restructuring, and the Politics of Place, *Indiana Journal of Global Legal Studies*, 2:2, 371-394.
- Camagni, R., Capello, R., Caragliu, A., & Toppeta, A. (2017) *Quantification of the effects of legal and administrative border obstacles in land border regions*, Final Report, European Commission, Brussels.
- Casteigts, M. (2013) Les paradoxes de l'équité territoriale. Sedjari, A. (ed.): *Droits humain et développement des territoires : vers un nouveau modèle de gouvernance*, L'Harmattan, Paris-Rabat, 29-51. halshs-01529778
- Chambon, M. (2015) L'espace et le territoire : le droit public à l'épreuve de l'extranéité, *IRENEE*, Université de Lorraine, 2 :35, 95-121.
- Chilla, T., Evrard, E. & Schulz, C. (2012) On the Territoriality of Cross-Border Cooperation: "Institutional Mapping" in a Multi-Level Context, *European Planning Studies*, 20:6, 961-980.
- Colavitti, R. (2014) Le statut des collectivités infra-étatiques européennes. Entre organe et sujet, *Droit et gestion des collectivités territoriales*, Tome n° 34, Éducation, formation, recherche. Quelle place pour les collectivités territoriales ?, 663-668.
- Colomb, C., & Tomaney, J. (2016) Territorial Politics, Devolution and Spatial Planning in the UK : Results, Prospects, Lessons Territorial Politics, *Planning Practice and Research*, 31:1, 1-22.

Comte, H. & Levrat, N. (2006) *Aux Coutures de l'Europe – Défis et Enjeux Juridiques de la Coopération Transfrontalière*, L'Harmattan, Paris.

Connelly, S. & Bradley, K. (2004) Spatial justice, European spatial policy and the case of polycentric development, *ECPR workshop on European Spatial Politics*, 1–14.

Council of Europe (2009) *Protocol No.3 to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities concerning Euroregional Co-operation Groupings (ECGs)* – Utrecht, 16.XI.2009 – Council of Europe Treaty Series No. 206 (2010)

Council of Europe (2019): *Une répartition équitable de l'impôt dans les zones transfrontalières – conflits potentiels et possibilités de compromis*, Recommendation 438 (2019).

Dabinett, G. (2010) Spatial justice and the translation of European strategic planning ideas in the urban sub-region of south Yorkshire. *Urban Studies* (Edinburgh, Scotland), 47:11, 2389-2408. doi: 10.1177/0042098009357964

Decoville, A. & Durand, F. (2018) Exploring cross-border integration in Europe: How do populations cross borders and perceive their neighbours? *European Urban and Regional Studies*, <https://doi-org.proxy.bnl.lu/10.1177/0969776418756934>

Delaney, D. (2015) Legal geography I: Constitutivities, complexities, and contingencies, *Progress in Human Geography*, 39:1, 96–102. doi: 10.1177/0309132514527035.

Doucet, P. (2006) Territorial Cohesion of Tomorrow: A Path to Cooperation or Competition?, *European Planning Studies*, 14:10, 1473–1485. doi: 10.1080/09654310600852449.

Duchacek, I., Latouche, D. & Stevenson, G. (1988) *Perforated Sovereignities and International Relations, Trans-sovereign Contacts of Subnational Governments*, New York, Greenwood Press.

Dühr, S. (2018) A Europe of "Petites Europes": an evolutionary perspective on transnational cooperation on spatial planning. *Planning Perspectives*, 33:4, 543-569. doi: 10.1080/02665433.2018.1483262.

EU Regional policy (2007) The European Grouping of Territorial Cooperation – Interview with D. Peters, *Panorama magazine*, (24), 11-13.

EC & EP (2006) Regulation No. 1082/2006 on a European Grouping of Territorial Cooperation (EGTC), European Council and European Parliament, *Official Journal of the European Union* L 210 (July 2006)

EC (2017) *Communication from the Commission to the Council and the European Parliament: Boosting growth and cohesion in EU border regions* {SWD(2017) 307 final}, European Commission, Brussels.

EC (2018) Proposal for a Regulation of the European Parliament and of the Council on a mechanism to resolve legal and administrative obstacles in a cross-border context, 29.05.2018 (COM(2018) 373 final). European Commission, see https://ec.europa.eu/commission/publications/regional-development-and-cohesion_en.

Engl, A. & Evrard, E. (2019) Agenda-setting dynamics in the post-2020 cohesion policy reform: the pathway towards the European cross-border mechanism as possible policy change, *Journal of European Integration*, 42:7, 917-935, doi: 10.1080/07036337.2019.1689969

Engl, A. (2016) Bridging borders through institution-building: the EGTC as a facilitator of institutional integration in cross-border regions, *Regional and Federal Studies*, 26:2, 143-169.

Evers, D. (2011) A Solution in search of a problem: A “garbage can” approach to the politics of territorial cohesion. *European Journal of Spatial Development*, 1:1.

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.

Evrard, E. (2017) *La Grande Région Saar-Lor-Lux : Suprarégionalisation transfrontalière?* Rennes, Presses Universitaires de Rennes.

Evrard, E. (2019) The EPA Alzette-Belval. A National Tool to Address Spatial Disparities at the Lorraine-Luxembourg Border, *RELOCAL Case Study*, 18:33, University of Eastern Finland, Joensuu.

Evrard, E. (2020) Comment le droit européen déplace les frontières ? La proposition de règlement visant à lever les obstacles juridiques et administratifs à la coopération transfrontalière. *Annales de Géographie*, 2020:733–734, 46-66.

Evrard, E. & Engl, A. (2018) Taking Stock of the European Grouping of Territorial Cooperation (EGTC): From Policy Formulation to Policy Implementation. Medeiros, E. (ed.) *European Territorial Cooperation. Theoretical and Empirical Approaches to the Process and Impacts of Cross-Border and Transnational Cooperation in Europe*. Springer, Cham, 209-227.

Evrard, E., Nienaber, B. & Sommaribas, A. (2018) The Temporary Reintroduction of Border Controls Inside the Schengen Area: Towards a Spatial Perspective, *Journal of Borderland Studies*, 35:3, 369-383, <http://hdl.handle.net/10993/33868>.

- ESPON & University of Luxembourg (2010) *METROBORDER Project – Cross-border polycentric metropolitan regions*, Final Report, at www.espon.eu.
- Faludi, A. (2010) Beyond Lisbon: Soft European Spatial Planning. *DisP – The Planning Review*, 46:182, 14-24. doi: 10.1080/02513625.2010.10557098
- Faludi, A. (2013) Territorial cohesion, territorialism, territoriality, and soft planning: A critical review. *Environment and Planning A*, 45:6, 1302-1317. doi: 10.1068/a45299
- Faludi, A. (2018) *The Poverty of Territorialism – A Neo-Medieval View of Europe and European Planning*. Edward Elgar. doi: 10.4337/9781788973618
- Geoconfluences (2012) Différentiel (exploitation du), online dictionary : geoconfluences.ens-lyon.fr
- Gervais-Lambony, P., & Dufaux, F. (2009). Justice... spatiale ! *Annales de Géographie*, 118 :665–666, 3-15. doi: 10.3917/ag.665.0003
- Hajer, M. a. (2006). The living institutions of the EU: Analysing governance as performance. *Perspectives on European Politics and Society*, 7:1, 41–55. doi: 10.1080/15705850600839546
- Harvey, D. (1973) *Social justice and the city*, University of Georgia Press.
- Haselsberger, B. (2014) Decoding borders. Appreciating border impacts on space and people. *Planning Theory & Practice*, 15:4, 505-526. doi: 10.1080/14649357.2014.963652
- Holder, J. & Layard, A. (2011) Drawing out the Elements of Territorial Cohesion: Re-scaling EU Spatial Governance, *Yearbook European Law* 30, 358–380. doi: 10.1093/yel/yer016
- ISIG (2013) *Manual on removing obstacles to cross-border cooperation*, Study conducted for the Council of Europe, available under <http://isig.it/en/manual-on-removing-obstacles-to-cbc-2014/>
- Israel, E., & Frenkel, A. (2017) Social justice and spatial inequality: Toward a conceptual framework. *Progress in Human Geography*, 42:5, 647-665.
- Jones, R., Teemu, M., Weckroth, K., Luukkonen, J., & Meyer, F. (2018) Re-conceptualising Territorial Cohesion Through the Prism of Spatial Justice: Critical Perspectives on Academic and Policy Discourses, Regional and Local Development in Times of Polarisation. Lang T., & Görmar F. (eds.) *Regional and Local Development in Times of Polarisation*. New Geographies of Europe, Palgrave Macmillan, Singapore, 97-120. doi: 10.1007/978-981-13-1190-1

- Kuus, M. (2014) *Geopolitics and Expertise – Knowledge and Authority in European Diplomacy*, Wiley-Blackwell.
- Lang, T., & Görmar, F. (2019) (eds.) *Regional and Local Development in Times of Polarisation – Re-thinking spatial policies in Europe*. Lang T., & Görmar F. (eds.) *Regional and Local Development in Times of Polarisation. New Geographies of Europe*, Palgrave Macmillan, Singapore, doi: 10.1007/978-981-13-1190-1
- Lejeune, Y. (2004) Vers un droit européen de la coopération transfrontalière. *Annales de Droit de Louvain*, 64 :3, 15-17.
- Levrat, N. (2007) *Le groupement européen de coopération territoriale GECT*. Étude réalisée par le GEPE sous la direction du Professeur Nicolas LEVRAT dans le contexte du programme de recherche du CdR. CDR117-2007_ETU, Comité des Régions, Bruxelles.
- Luukkonen, J. & Moilanen, H. (2012) Territoriality in the Strategies and Practices of the Territorial Cohesion Policy of the European Union: Territorial Challenges in Implementing “Soft Planning”, *European Planning Studies*, 20:3, 481-500. doi: 10.1080/09654313.2012.651806
- O’Dowd, L. (2001) Analysing Europe’s Borders. *Boundary and Security Bulletin*, 9:2, 67-79. Retrieved from www.dur.ac.uk/ibru/publications/view/?id=189
- O’Dowd, L. (2010) From “borderless world” to a “world of borders”: “bringing history back in.” *Environment and Planning D : Society and Space*, 28:1, 1031-1050.
- Madanipour, A., Shucksmith, M., & Talbot, H. (2017) Locality and spatial justice: A conceptual framework. *RELOCAL Working Paper Series* (1). RELOCAL – Resituating the Local in Cohesion and Territorial Development.
- Martin, D., Mehlbye, P., & Schön, P. (2018) Towards a European territorial agenda post-2020: what should it consider and include? *Territorial Thinkers’ Briefing November 2018:03*, <https://territorialthinkers.eu>
- Monfort, P. (2009) *Territories with specific geographical features* (No. 2). European Commission, Brussels.
- Perkmann, M. (2003) Cross-border regions in Europe: significance and drivers of regional cross-border co-operation. *European Urban and Regional Studies* 10:2, 153-171.
- Philippopoulos-Mihalopoulos, A. (2010) Law’s spatial turn: Geography, justice and a certain fear of space. *Law, Culture and the Humanities*, 7:2, 187-202. doi: 10.1177/1743872109355578

- Philippopoulos-Mihalopoulos, A. (2013) Spatial justice in the lawscape. Brighenti, A.M. (ed.) *Urban Interstices: The Aesthetics and the Politics of the In-between*, Routledge, 88-102, doi: 10.4324/9781315548807-4
- Philippopoulos-Mihalopoulos, A. (2015) *Spatial Justice: body, lawscape, atmosphere*. Routledge, Oxon. doi: 10.4324/9781315780528
- Pullano, T. (2009) The Evolving Category of Territory: From the Modern State to the European Union. *GARNET Working Paper*, 64:09, 1-30.
- Rauhut, D. (2018) A Rawls-Sen Approach to Spatial Injustice. *Social Science Spectrum*, 4:3, 109-122.
- Ruggie, J. G. (1993) Territoriality and beyond : Territoriality in modernity problematizing international relations. *International Organizations*, 47:1, 139-174.
- Sohn, C. (2014) Modelling cross-border integration: the role of borders as a resource. *Geopolitics*, 19:3, 587-608. doi: 10.1080/14650045.2014.913029
- Soja, E. (2010) *Seeking spatial justice*, Minnesota University Press, London.
- UniGR-CBS Arbeitsgruppe Raumplanung (2018) L'aménagement du territoire transfrontalier en pratique: Réflexions pour un dialogue entre chercheurs et praticiens de la Grande Région, *UniGR-CBS Working Paper*, <http://hdl.handle.net/10993/35878>.
- Weiler, J.H.H. (1999) *The constitution of Europe*, Cambridge University Press, Cambridge.
- Zaucha, J., Komornicki, T., Böhme, K., Świątek, D., & Żuber, P. (2014) Territorial Keys for Bringing Closer the Territorial Agenda of the EU and Europe 2020. *European Planning Studies*, 22:2, 246-267. doi: 10.1080/09654313.2012.722976.
- Zillmer, S., Silke, H., Holstein, F., Lürer, C., Stumm, T., Schürmann, C., Marques da Costa, E., Da Costa, N., Ockerl, P., Peterlin, M., Berlina, A., Turunen, E., Teräs, J. (2019) *Cross-border public services – final report*, ESPON, Luxembourg, <https://www.espon.eu/CPS>.