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Does the 'European Grouping of Territorial Co-operation' Promote Multi-level Governance within the European Union?*

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Abstract

Through the analysis of Regulation 1082/2006 (also known as 'The European Grouping of Territorial Co-operation'), which enables regional and local authorities from different European Union (EU) countries to set up co-operation groupings as legal entities for projects of cross-border and trans-European significance, this article aims to assess whether the daily politics of the EU is still state driven in a zero-sum game, and conversely, whether states and state representatives are no longer the only interface between the sub-national and supranational levels and the operation of power across the various levels of governance on a local/national/supranational level in a non-zero-sum game. The article will show that a type of 'multi-level governance' is emerging in cross-border regions in which cross-border activities are empowering the regional/local level (sub-national level), permitting it to circumvent/supersede the national level through a process of negotiation and 'alliances'. Furthermore, it will be highlighted that Regulation 1082/2006 is a clear example of multi-level governance in practice.

Introduction: Intergovernmentalism *vis-à-vis* Multi-level Governance

The European integration process has reopened the debate about the autonomy and authority of the nation-state in Europe (Hooghe and Marks, 2010). Those who adopt a liberal intergovernmentalist approach argue that: first, the European Union (EU) confers legitimacy and credibility to the nation-state since co-operation reflects states' interests and needs; second, the EU institutions exercise very little power and autonomy, while sub-national actors are not even taken into consideration; and third, the state is the only gatekeeper able to resist the unwanted consequences of integration (Moravscik, 1991). Conversely, there are those who support a multi-level understanding of governance. They show that liberal intergovernmentalists neglect to consider the importance of the 'distribution of power' within the EU which can lead to an increased autonomy of different actors and to the empowerment of some agents different from the nation-state (Hooghe and Marks, 2010; Bruszt, 2008).

The multi-level concept of governance develops primarily from the study of EU regional policy. However, despite the fact that the early stage of the implementation of the EU's structural funds showed that national Member States were losing power both to the European Commission and sub-national actors, in the ensuing reforms of the funds in 1993, national Member States seemed to claw back their role as gatekeepers of the policy

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(Bache, 2010). Indeed, states were allowed to submit, without negotiating with the Commission, a Single Programming Document. This fact implied that central governments were effectively dominating the process and that sub-national authorities (SNAs) were deprived of the prerogative to distribute the funds. They could not make developmental policies on their own, could be excluded as partners and could only lobby the Commission to obtain funds. The Commission, rather than giving more power to SNAs, thus seems to act like a mediator between Member States and SNAs (Börzel and Panke, 2007).

In order to explain this re-nationalization of the funds, Hooghe and Marks (2001, 2003) further developed the multi-level governance theory in a twofold typology known as 'type 1' and 'type 2' governance. Type 1 is characterized by a limited dispersion of authority at just a few levels, and therefore is quite stable (Hooghe and Marks, 2003, p. 236). It is a more hierarchical network mode of governance, with power distributed through the three levels: sub-national, national and supranational (EU) (Aalberts, 2004). Type 2 can be seen as a mix of polycentric authorities and is a 'complex, fluid patchwork of innumerable, overlapping jurisdictions' which work at numerous territorial levels. Although multi-level governance focuses on SNAs' mobilization, the ways and the extent to which sub-national actors have started to acquire more voice in the international arena are, however, unclear and very controversial. Furthermore, the 'political alliances' which are emerging within the EU arena are still understudied.

Accordingly, within the geographical framework provided by cross-border regions (CBRs), conceived as 'bounded territorial units composed of the territories of authorities participating in a cross-border cooperation initiative' (Perkmann, 2003, p. 157), and where 'different political arenas are interconnected rather than nested, and sub-national actors operate in both national and supranational arenas, creating transnational associations and transnational governance' (Knippenberg, 2004, p. 610), this article will clarify whether cross-border co-operation activities, through Regulation 1082/2006, can be or can become the engine for emancipating local and regional communities *vis-à-vis* nation-states' dominance (Perkmann, 2003). Therefore, this article will address the following questions. Are CBRs 'new laboratories' for the implementation of a new kind of governance? Are the EU (Commission and Parliament), the Council of Europe, supra-regional institutions (that is, Committee of the Regions [CoR], the Association of European Border Regions [AEBR]) and SNAs building up an alliance to push towards a multi-level understanding of governance through Regulation 1082/2006?

To this end, a multidimensional qualitative approach was adopted for collecting, interpreting and evaluating data such as official documents, historical documents and newspaper articles in order to answer the methodological questions of 'how do actors relate to cross-border co-operation?', and 'how do they relate to each other?' The analysis is also based on face-to-face and telephone interviews. This article presents the results of a four-year research project that focused on the effects of Europeanization on governance and citizenship. For the present analysis, I will draw on ten interviews[1] that help to reconstruct the negotiation process that led to the establishment of Regulation 1082/2006.

[1] This article is part of a broader study where 50 interviews were conducted between 2007 and 2010 with representatives of local, regional, national and supranational institutions, and representatives of civil society based in Brussels.

I. Role of Supranational Actors in Fostering Co-operation: The 'Alliance' between the CoE and the AEBR

Perkmann (2003), Palermo (2007) and AEBR official documentation (AEBR, 2001) point out that local and regional border authorities have mobilized since the end of World War II in cross-border territories to solve problems both cross-border and local in nature (border workers, cross-border pollution, land-use planning or security issues) without necessarily turning to their capital cities in the hope that the Ministry for Foreign Affairs would take an interest in their local issues (EGTC Study, 2007, p. 18).

A considerable diversity of legal framework instruments is in place to facilitate cross-border co-operation.[2] The first supranational institution that dealt with cross-border co-operation and offered an international legal framework for these activities was the Council of Europe (CoE) – a non-EU institution. In 1980 the CoR[3] drafted, in collaboration with the AEBR,[4] the Convention of Madrid, which was the culmination of a long period of agreements between the CoE, EU Member States, and local and regional border authorities represented by the AEBR (AEBR, 2001, 2006).

From the outset of cross-border co-operation, the AEBR lobbied the EU to establish a European regional policy and to guarantee SNAs a European legal instrument for cross-border co-operation (AEBR, 2006, pp. 21–2). In the 1970s, the AEBR's main interlocutor was the Directorate General, which was responsible for regional policy within the Commission. However, the Commission rejected all the AEBR's proposals because it had neither major powers nor the financial means to take action (AEBR, 2006).[5]

Thus the CoE appeared to be the most appropriate and capable supranational institution able at that time to provide an ad hoc solution, through specific bilateral agreements, to respond both to regional authorities' demands for a co-operation which could overcome 'border effects' and to states' fears of losing sovereignty and control in favour of SNAs (EGTC Study, 2007). Instead, the CoE provided a convention where trans-frontier co-operation, understood as 'any concerted action designed to reinforce and foster neighbourly relations between territorial communities or authorities within the jurisdiction of two or more Contracting Parties and the conclusion of any agreement and arrangement necessary for this purpose' (Article 2(1)) could be led only by and within countries that shared a border, and it was restricted to the immediate neighbourhood (Article 2). SNAs

[2] Multilateral framework treaties and conventions concluded at the international level; bilateral or trilateral agreements and protocols concluded between nation-states providing for intergovernmental co-operation or promoting cross-border co-operation that are frequently based on international framework treaties or conventions; formal agreements, working protocols, conventions or contracts concluded by regional or local authorities; other legal instruments based on community law or national law that facilitate cross-border co-operation at a project level (AEBR, 2001, p. 34).

[3] The CoR is an advisory body representing local and regional authorities in the EU («http://europa.eu/about-eu/institutions-bodies/cor/index_en.htm»).

[4] A regional coalition which deals with cross-border co-operation.

[5] During fieldwork, one witness confirmed that: 'The AEBR initially lobbied the Commission and the EU Parliament. However, since the Commission in the 1970s and 1980s had no power at all and did not have a regional policy, we referred the issue to the CoE which drafted the Convention of Madrid. The Parliament took up the proposal, which was however rejected by the Commission, and in the 1980s it was rejected again twice' (Interview with Jens Gabbe, General Secretary of the AEBR, 17 April 2010). Furthermore, the EU Commission had twice rejected the AEBR proposal 'because the Commission was very well aware that there was no chance at that time (1970s–80s) to receive the approval of EU Member States. Even in 2006 the Commission had to fight for more than one year in order to make Member States simply accept the legal basis for the European Grouping of Territorial Co-operation' (Interview with Jens Gabbe, General Secretary of the AEBR, 17 April 2010).

were still implicitly hindered in engaging in trans-frontier co-operation by themselves; thus they could not bypass state control.

For this reason, some scholars argued that the CoE and, therefore, the 1980 Convention of Madrid, did not have any direct legal effect on cross-border activities (EGTC Study, 2007) and that it amounted to a simple declaration of intent (Decaux, 1984, p. 597). Because these weaknesses were clearly felt within the CoE itself, two protocols (1995 and 1998) were added to the Convention of Madrid (AEBR, 2001). The first one 'sharpened' its judicial register, for instance, by replacing optional clauses with compulsory ones. Moreover, it advocated the setting up of permanent institutions for cross-border co-operation.[6] Local/regional authorities 'no longer had to rely on the commitment of States to "foster and promote" such cooperation', but were fully entitled, of their own initiative, to undertake trans-frontier measures and benefit from the right to co-operate beyond national borders (this same principle is found in Regulation 1082/2006) (EGTC Study, 2007, p. 30; AEBR, 2001). The second protocol stated that 'decisions taken jointly under a transfrontier cooperation agreement shall be implemented by territorial communities or authorities within their national legal system, in conformity with their national law'. Hence, states always had the final decision concerning cross-border co-operation.

Finally, it is important to point out that because some national governments, such as Italy, feared that SNAs would use cross-border co-operation activities as a 'back door' to put forward wider political demands[7] and to develop a network of international relations, the actors engaged in the drafting of the Convention opted for a bilateral legal framework whose scope was more limited than previously envisaged by its proponents (EGTC Study, 2007, p. 29). This initially called for multilateral agreements with the possibility to bypass the state and directly deal with the structures engaged in cross-border co-operation and falling within local/regional areas of responsibility (that is, treatment of water, refuse collection, the development of local/public transport or public health services).[8]

In conclusion, the Convention of Madrid and the added protocols have been the result of a bottom-up mobilization on the part of CBRs through the active role played by a transnational institution – the AEBR. Indeed, the AEBR, on behalf of local/regional cross-border authorities, pressed the CoE at the supranational level to obtain an agreement to facilitate co-operation between local authorities of various CoE member states, particularly between neighbouring authorities (AEBR, 2001, 2004; interviews with CoR, EU Commission and AEBR officers). The interaction of the AEBR with the CoE in cross-border co-operation is highly significant. Indeed, through the CoE, the AEBR marked itself out as an important player in cross-border co-operation because this alliance had served to advance the AEBR's status as a political player. Furthermore, CBRs which were initially represented mainly by the AEBR acted as test cases for cross-border co-operation policy proposals (see AEBR, 2006). At the same time, the Commission was initially very weak in enhancing cross-border co-operation and did not want to take any action that

[6] In this article I will use 'cross-border co-operation' as synonymous with 'trans-frontier co-operation'.
[7] Separatism is always felt by some national leaders as a potential threat.
[8] Recently, the Council has drafted a legal instrument in the form of 'Protocol No. 3 to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities concerning Euroregional Co-operations Groupings (ECGs)' (CoE, 2009). The present version of the legal instrument is under proposal and it would obviate the need for countries to adopt their own national legislation or amendments.

could alienate nation-states.[9] Finally, the parameters of cross-border co-operation were initially determined by high-level inter-state negotiations. Accordingly, although the Convention of Madrid and the added Protocols can be seen as the beginning of a breach to the absolute dominance of nation-states in EU policy-making, cross-border co-operation was still intergovernmental in the 1980s on the grounds that to be effective it had to be ratified by states. Besides, the rules set up under the international convention did not necessarily have a common legal impact upon each national legal system even when state ratification occurred.

In terms of multi-level governance (MLG), this shows that a dispersion of governance across multiple jurisdictions began with a negotiation process between supranational, transnational and national actors. This structure corresponds to type 1 MLG, where there are still a limited number of jurisdictional levels. Moreover, decision-making is not exclusive of the domestic arena. In analyzing the process that has led to the drafting of Regulation 1082/2006, the next section will assess the role played by other actors such as the Commission, the European Parliament (EP), the AEBR and the CoR in cross-border co-operation, with a view to establishing whether we can speak of a common approach to cross-border co-operation and how different jurisdictions related to each other.

II. Who is behind the 'European Grouping of Territorial Co-operation'? Alliance of the Commission, AEBR and CoR

The CoR and AEBR Role

The Commission launched Regulation 1082/2006 ('European Grouping of Territorial Co-operation', EGTC), which is the first European legal basis for territorial co-operation, both to facilitate the interaction between partners and to bestow EU normative ideas, values and codes to territorial co-operation (Commission, 2012). This implies that programmes can be independently led by the actors making up the EGTC without necessarily having to rely on Commission funds.

It has been suggested by some regional officers and CoR representatives[10] that one of the main reasons for introducing this Regulation was that previous cross-border co-operation in some EU CBRs did not always guarantee continuity. Moreover, several regional border officers argued that cross-border co-operation lacked a juridical structure and implemented mainly 'short-term' projects. Officers from the Slovenian–Italian border, where the establishment of the Upper Manin Adriatic Euroregion EGTC[11] is under discussion, agreed that:

> while a Community Initiative Programme (i.e. Interreg) project lasts 6, 12 or 24 months, the EGTC is stable and long lasting. The EGTC is the empirical result of the integration process because boundaries do not exist any more within the EGTC and border territories are joined. (Interview with Saverio D'Eredità, Project Manager, Informest, Trieste, 4 February 2010)

[9] Interviews with Filippo Terruso, Administrator, CoR, 2 April 2009 and Gianluca Spinaci, Policy Analyst, CoR, 20 February 2009.
[10] Interviews with F. Terruso, Administrator, CoR, 2 April 2009; G. Spinaci, Policy Analyst, CoR, 20 February 2009, L. Comelli, Director, Managing Authority for the Programme 2007–13, 19 December 2007 and 14 September 2009.
[11] Upper Manin Adriatic Euroregion, which includes the Veneto and Friuli-Venezia-Giulia regions (Italy), the Izola, Koper and Piran municipalities (Slovenia) and the Istria and Primorje-Gorski counties (Croatia).

The EGTC's Regulation consists of just 18 articles.[12] It is a European Community instrument which:

> provides public actors at different levels (member states, regional and local authorities mainly) with a simple but solid legal tool for developing and implementing a territorial cohesion policy, at cross-border, transnational and inter-regional levels.[13]

This means that the EGTC is authorized to act directly on behalf of its members, community institutions or third parties because it represents them all equally and 'speaks' on behalf of everyone (EGTC Study, 2007, p. 74). This implies that the actors are 'equal' within this structure. It self-regulates, which theoretically implies that the partners can agree on and give themselves common rules and procedures (Commission, 2012).

Turning to the legal aspects, it is generally recognized both by jurists and my interviewees that Regulation 1082/2006 is imprecise in defining whether the EGTC will have legal personality under Community or national law.[14] The first draft of the EGTC was rather vague in defining the kind of law applicable for it.[15] The final document (Regulation 1082/2006, Article 2) specified that an EGTC is governed by the laws of the Member State where the EGTC has registered its office. However, recognizing that states exert an important role in defining a given EGTC, because national law enables an EGTC to acquire legal personality (Article 5), by no means implies that national law takes precedence over Community law for the creation of the EGTC (EGTC Study, 2007, pp. 69–87).[16] In the study on the EGTC carried out by the Groupe d'Etudes Politiques Européennes (GEPE), it has been suggested that although a compromise occurred between the supranational and national level in finally drafting the EGTC, Community law has priority over national law (EGTC Study, 2007). And indeed, in the Proposal suggested by the Commission on 14 March 2012 it is clarified that 'an EGTC and its acts and activities shall be governed by the following: (a) this Regulation and, where applicable, other *Union law* concerning activities of the EGTC' (Commission, 2011a; emphasis added).

Official EU documentation, AEBR and CoR documents clearly indicate that the two main actors which supported the Commission and the EP in adopting this legal tool and played an active role in drafting the Regulation were the AEBR and the CoR. The role entrusted to the CoR in cross-border co-operation is highlighted by Article 265 of the Treaty on European Union (TEU), where the consultative competence of the CoR within co-operation issues was officially recognized (EGTC Study, 2007, p. 59). A bond between the CoR and the Commission was 'formally' created because both institutional bodies

[12] These articles define an EGTC (Article 1), its applicable law (Article 2), the members that may form an EGTC (Article 3), the EGTC's establishment and acquisition of legal personality (Articles 4 and 5), the rules on an EGTC's management of public funds (Article 6), the tasks an EGTC can carry out (Article 7), the rules on the convention (Article 8) and statutes of an EGTC (Article 9), the organizational principles (Article 10), as well as the EGTC's budget (Article 11), its dissolution and its liquidation (Articles 12–14). There then follows a very important article on the jurisdiction as regards EGTC's acts (Article 15), and the final provisions (Articles 16–18).

[13] «http://www.interact-eu.net/download/application/pdf/773101», *Community Initiative Programme Interreg IIIA Italy-Slovenia*, 2000–06.

[14] Interview with Gianluca Spinaci, Policy Analyst, CoR, 20 February 2009.

[15] The Regulation stated that: 'The applicable law is from one of the Member States concerned. In case of a dispute between members, the competent jurisdiction is that of the Member State whose law was chosen' (Article 4(5)).

[16] The fact that Community law is superior to national law is confirmed by Article 15, which establishes that 'except where otherwise provided for in this Regulation, Community legislation on jurisdiction shall apply to disputes involving an EGTC'. This means that the rules governing co-operation taking place under the EGTC are subject to judicial control.

were actively engaged in this field and worked to represent local/regional authorities' needs. Within the EU cohesion policy framework, the CoR used its specific capacity as a community body to promote joint concerns together with the AEBR in an efficient way through own-initiative opinions, and regular meetings, public relations work in Brussels and lobbying via CoR members. In turn, as a European regional association, the AEBR could often react faster and more efficiently thanks to its strong network in Brussels and Europe-wide (AEBR, 2006, pp. 31–2).

In the process that has led to the drafting of the EGTC the CoR pointed out the vital necessity of improving communication between different countries, regions and local entities. It exercised pressure on the Commission for the implementation of Regulation 1082/2006, since it would allow local-regional-national authorities to start up co-operation without the need for an international agreement between different Member States (Hübner, 2008). In its opinion of March 2002, the CoR recommended the Commission 'take the initiative in formulating framework legislation on cross-border, interterritorial and transnational cooperation, in the form of a framework regulation covering areas of European cooperation' (CoR, 2002, p. 7). The CoR based its opinion on a study led by the AEBR in 2001 entitled 'TransEuropean Cooperation between Territorial Authorities', which was written for the CoR and was used by the Commission as a basis for the EU regulation (AEBR, 2006, p. 26).

The CoR was also important in naming Regulation 1082/2006. While in 2004 the Commission proposed the establishment of the European Grouping of Cross-border Co-operation (EGCC) through Regulation 2004/0168, the CoR disliked this terminology, supported in this by the EP[17] and the AEBR. Both the CoR and the EP stated that the label 'EGCC' did not include all the three kinds of co-operation taking place between Member States, regions and local authorities. Therefore, the CoR suggested changing the acronym to 'EGTC' (European Grouping of Territorial Co-operation). It has been explained that this 'name also reflects its potential use in transnational and interregional cooperation as set out in Art. 1 of the proposal for a regulation' (CoR, 2004a). Accordingly, the CoR stressed the importance of the transnational character of co-operation (CoR, 2004a).

The CoR also was backed by the EP in relation to keeping a register of EGTCs. The EP supported the request in its second reading, after which it was taken up by the Commission in its revised proposal, which stipulates that the CoR must be informed of the establishment of an EGTC (Commission, 2006, Article 3[3]). Furthermore, while the Commission initially stated that 'the convention is notified to all its members and to the Member States', CoR's Recommendation 11 was accepted in Article 5(1) of Regulation 1082/2006.[18]

[17] 'The second important contribution of the CoR was its desire – shared by the Parliament – not to limit this legal instrument to cross-border cooperation, but also to use it in trans-European cooperation including transnational and interregional cooperation as well as cross-border cooperation. On similar lines, but using the term "territorial cooperation" – which has the advantage of tying in with the third priority objective of the forthcoming programming period for the Structural Funds – the European Parliament also requested this amendment, which was accepted by the Commission and the Member States without any problems' (EGTC Study, 2007, p. 62; Recommendation 1 of Opinion 62/2004, OJ C 71, 22 March 2005, p. 49). The term 'trans-European co-operation' is consistent with the terminology used in the study carried out in 2001 by the Association of European Border Regions on behalf of the CoR (AEBR, 2001).

[18] 'The convention is notified to all its members, and to the Member States, and to the Committee of the Regions. The Committee shall enter the convention in a public register of all conventions of trans-European cooperation' (CoR, 2004b).

The CoR has to monitor EGTC regulation enhancement by EU Member States. Consequently, a group of experts has been set up for this task.[19] Both the EP and the Commission are aware of the important role the CoR is called to play in launching and encouraging Member States to apply the measures required for the implementation of the EGTC in the EU as soon as possible. The Commission presses and encourages the CoR to fulfil this role (CoR, 2008) and it supports the EGTC 'politically and morally', working 'hand in hand' with the CoR on this matter (Hübner, 2008). Furthermore, the Commission would take 'legal action' against those Member States which refuse to take the necessary steps towards the implementation of the EGTC. Further to this, the CoR has to enhance the EGTC 'by political mobilization, dissemination of information, research findings and communication actions' (CoR, 2006, p. 6). Finally, the fact that the official website of the EGTC is available on the CoR webpage must not be underestimated. This shows that the CoR is actively involved in this specific EU policy (EGTC Study, 2007; AEBR, 2001) and it aims to strengthen its role in defending and promoting the EGTC in all European border areas – both between EU Member States and those states outside the EU (CoR, 2012a).

At present, 25 EGTCs have been created, affecting 22 million Europeans, and dozens of EGTCs are being planned or considered by Member States (CoR, 2012a). The CoR, together with the EP (European Parliament, 2011), defend this type of legal agreement. This is done on the grounds that the EGTC can contribute not only to territorial, but also to social, cohesion. Indeed,

> [the EGTC] has the best capacity to bring the different cultural and linguistic communities closer to each other, promote peaceful coexistence in a diverse Europe and make European added value visible to the citizen. (European Parliament, 2011, p. 10)

Most important, the EGTC can offer the right tool for building Europe at a territorial level through the active involvement of EU citizens (European Parliament, 2011, pp. 10–11).

In its 2004 Annual Report, the AEBR voiced the frustration of local/regional border authorities not able to cope effectively with transnational/cross-border issues, highlighting the necessity of creating a 'legal instrument on *decentralized* cross-border cooperation' with the task of co-ordinating funding in order to contrast the 'natural' nation-state tendency to finance projects which start and end within national borders (AEBR, 2004). The important role played by the AEBR in pressing for the EGTC has been acknowledged by both regional and supranational officers. One of them stated that:

> One of the actors who wanted the EGTC is the AEBR, which was established in the 1970s. This association always pushed for the creation of a legal instrument under public law and it carried out a study under the auspices of the European Commission in 2004, which was a preliminary study of the EGTC regulation. [. . .] [T]here was also a clear awareness on the part of the European Parliament and the Commission that this instrument was needed. (Interview with Elise Blais, Project Manager, Interact,[20] 12 May 2009)

It is clear that the AEBR, the CoR and the Commission realized that transnational co-operation could only be improved with the effective and decisive participation of the

[19] See the website: «http://www.cor.europa.eu».
[20] Interact is the Vienna-based programme that promotes and supports good governance of European territorial co-operation programmes.

local/regional level, supported by Community action, in accordance with the subsidiarity principle enshrined in Article 5 of the Treaty (CoR, 2004a, b).

Role of EU Member States

Within the EGTC legal framework, the role played by Member States, and the way they perceive Regulation 1082/2006 helps us to understand the kind of governance that is promoted within and by the EU. The analysis of official EU, CoR and AEBR documentation, the interviews carried out for the present analysis between 2007 and 2010, highlight that the EGTC is negatively perceived by states as a 'new' institutional tool, allowing SNAs to exercise competencies ('high politics', such as defence and foreign policy) without states' control (Interview with Alfonso Andria, Italian MEP, 31 July 2009; CoR, 2007; Palermo, 2007). Member States' fears explain why the EGTC, though being an EU *Regulation*, has not yet been adopted by all 27 EU Member States, and why many argue that this EU Regulation seems to be more a Directive. The CoR repeatedly emphasizes that the EGTC is not an institutional tool that aims to merge members' power. Conversely, its scope is to implement co-operation projects or programmes (CoR, 2012a). The CoR strongly points out that the establishment of EGTCs must not be left to the discretion of each Member State: the Regulation itself must set out 'the relevant scenarios' (CoR, 2012a, p. 4).

Nevertheless, while Member States initially did not have any control over the implementation of this EU tool, this has changed with the Commission's proposal of 14 July 2004 for a Regulation establishing a European Grouping of Cross-border Co-operation (EGCC), in which Article 8 states that 'the legal capacity of the EGCC is recognized in each member state'. Afterwards, both the EP and the Commission understood that without states' 'approval', they would never be able to launch the EGTC. This explains why Member States eventually obtained the power to control the application of the EGTC (CoR, 2009).

Dirk Peters, Legal Officer in the Legal Unit of DG Regio, Inforegio,[21] who participated in the negotiations of the Regulation on the EGTC, clarified in 2007 that:

> The Commission's original proposal did not foresee that the member states themselves could become members of an EGTC; neither was there to be any ex-ante control procedure by the central authorities. On the first point, we discovered that it was necessary to take the central authorities on board, as competencies are very asymmetric between member states [. . .] it became obvious that the whole Regulation could only be adopted when the member states gained the power to exercise ex-ante control. (European Regional Policy, 2007, p. 13)

However, it is interesting to analyze Article 4 of Regulation 1082/2006 more closely. It states:

> The Member State concerned shall, taking into account its constitutional structure, approve the prospective member's participation in the EGTCs unless it considers that such participation is not in conformity with this Regulation or national law, including the

[21] 'The mission of the Directorate General for Regional Policy is to strengthen economic, social and territorial cohesion by reducing disparities between the levels of development of regions and countries of the European Union. In this way the policy contributes positively to the overall economic performance of the EU' («http://ec.europa.eu/dgs/regional_policy/index_en.htm»).

> prospective member's powers and duties, or that such participation is not justified by reasons of public interest or of public policy of that Member State. In such a case, the Member State shall give a statement of its reasons for withholding approval.

The most problematic issue here is the parameter of 'national law' and its potential expansion, rather than the Regulation and the issues of public interest and policy. As the CoR explained,

> the question is that of direct effect: if it exists, then the rights derived from Community law must take precedence over the interests of the Member State's authority; but if the production of legal effect is made conditional on respecting certain national rules, e.g. in relation to the approval procedure provided for in Article 4(3) of the EGTC Regulation, then a prohibition under national law may take precedence. (CoR, 2007, p. 131)

Hence, both supranational and local/regional representatives in the area under analysis share the views expressed by the project manager at Informest:[22]

> This regulation is the result of a fiercely negotiated political agreement between EU member states. Many EU member states did not want to adopt this EU instrument. Eventually, a compromise was achieved. That is to say that at the EU level an 'intergovernmentalist' view is still more powerful than a communitarian one. Member states have the perception that the EGTC could really subvert the division of competencies between the regional and national level. (Interview with Saverio D'Eredità, 4 February 2010)

Member States' opposition to the EGTC is perceived as unjustified by the supra-regional level. Although this analysis shows that nation-states are unquestionably central in the establishment and application of EGTCs, because being 'legislators' they must adopt provisions which give effect to the EGTC (Article 4), the findings highlight the compromises achieved 'behind doors' which do not usually appear in official documentation.[23]

Officially, both the CoR[24] and the EP welcomed the inclusion of Member States alongside SNAs within the EGTC because only in this way would multi-level governance become effective within the EU (EGTC Study, 2007). Additionally, their inclusion may blur the distinction between states and regions and hence the idea of full sovereignty. States, in being members of an EGTC together with SNAs, put themselves on the same level as local/regional authorities and 'accept' that within the EGTC all the actors involved work together as 'equal' partners. Therefore, it is no longer the case that states are final arbiters in governance (see Kohler-Koch and Eising, 1999). Rather, states need to adapt to the new challenges put forward by the EU (Aalberts, 2004, p. 40).

Nevertheless, some of the interviewees indicated that within the CoR there is a concern that states are likely to prove stronger than regions within the co-operation, and therefore, may destabilize the EGTC. Accordingly:

[22] Informest (Service and Documentation Centre for International and Economic Co-operation), created by Italian Act of Parliament 19/1991, was legally established in December 1992 by the Italian Regional Administrations of Friuli-Venezia-Giulia and Veneto and by the Italian Trade Commission.

[23] 'It is obvious that as in any Regulation, the Commission sits together with member states and it negotiates. [. . .] At the last moment the norm that states could be members of the EGTC was introduced. But I do not see the sense of it' (Interview with Jens Gabbe, General Secretary of the AEBR, 17 April 2010).

[24] Therefore, the CoR 'is pleased that the Member States – and not just the regional and local authorities – can also be involved in setting up a European grouping of trans-European cooperation and can thus play a part in boosting economic and social cohesion in Europe through cross-border, transnational and interregional cooperation' (CoR, 2004b, p. 4).

> This asymmetry between actors, thus regions on one hand and states on the other, can create some problems. This asymmetry emerges within the EGTC as well. I personally think that states should not participate in an EGTC. But this is not the case, for the present. I think that territorial co-operation should be led on a regional-local and not a national basis. The problem is that there are small states in the EU which are in particular contexts. (Interview with Filippo Terruso, Administrator, CoR, 2 April 2009)

However, there is the need to analyze EGTCs on the ground in order to better evaluate this issue.

Recently, the Commission (14 March 2012) has raised an additional issue in relation to the bodies which can participate in an EGTC. Indeed,

> differing status of local and regional bodies in different Member States results in the fact that competences may be regional on one side of a border, but national on the other side, especially in smaller or centralized Member States. Consequently, it should be clarified that national authorities may become members of an EGTC alongside the Member State. (Commission, 2011a)

This issue could clearly emerge in the above mentioned Villa Manin Adriatic EGTC, where a small state like Slovenia (national authorities) deals with regional authorities (Friuli-Venezia-Giulia Italian region Managing Authority)[25] is created. This EGTC has some political-administrative problems. This is due to the fact that the small state of Slovenia, which it is not yet regionalized, would enter the EGTC as a state. As suggested above 'there is thus a problem of balancing the relationship between a Region (Friuli-Venezia-Giulia) on one side, and a state (Slovenia with its regional development ministry) on the other'.[26] Furthermore, the Friuli-Venezia-Giulia region, and specifically the city of Trieste, would be the place where the EGTC office would be set up. Hence, as regional Friuli-Venezia-Giulia officers highlighted during official meetings in Villa Manin in 2007 and repeatedly during the interviews carried out for this analysis, Friuli-Venezia-Giulia will have a major role within the EGTC because the city of Trieste will co-ordinate cross-border co-operation activities. However, it is also pointed out that 'all the members of the EGTC will have equal dignity and Friuli-Venezia-Giulia will be not superior to the other actors which will compose the EGTC'.[27] This quote clarifies the perception that representatives of Friuli-Venezia-Giulia have of the region. In saying that 'all actors are equal' it is implied that Friuli-Venezia-Giulia puts itself on the same level as national actors, given that Slovenia would join the EGTC as a whole.

National Level vis-à-vis the Regional Level

Turning now to the question whether cross-border co-operation tools (that is, the EGTC) have contributed to the development of a greater cohesion among states and regions and strengthened the sub-national level, it can be seen that the public or private nature of the EGTC matters. Regulation 1082/2006 does not provide a clear choice between these two

[25] This is presently happening for the implementation of Interreg 2007–13.
[26] Interviews with Filippo Terruso, 2 April 2009 and Saverio D'Eredità, 4 February 2010.
[27] Interview with Giorgio Tessarolo, Regional Director of International Affairs (until 2008), Friuli-Venezia-Giulia, 9 January 2007.

options.[28] The study led by the CoR in 2007 shows that 'a non-profit legal entity governed under public law becomes the rule, while only in a few Member States the EGTC is permitted under private law' (EGTC Study, 2007, p. 73; Commission, 2011b, p. 36). It seems that there is a common agreement both at the local/regional and at the supranational levels that the private character of the EGTC would be more advantageous both for its effectiveness and for acquiring more autonomy of action *vis-à-vis* the central state. A CoR representative stated:

> While the public legal nature of an entity gives you greater authoritativeness, the private legal nature provides greater autonomy of action in relation to contracts, for hiring personnel and for managing activities. Certainly, this character would better suit the EGTC which has different nuances. Moreover, an entity of public legal personality is more controlled by the state than an entity of private legal personality. (Interview with Gianluca Spinaci, 20 February 2009)

It is thus suggested that the EGTC could be the instrument which effectively promotes co-operation beyond a strictly national frame of reference (EGTC Study, 2007, p. 55), devolves competencies from the state to the sub-national level and joins together different actors from different levels, thus corroborating the MLG type 2 theoretical framework (Hooghe and Marks, 2010). Furthermore, the EGTC is designed to autonomously manage some programmes, thus bypassing the state (Interview with Dirk Peters, December 2007).

Although it is still too early to provide an objective evaluation of the added value of the Regulation 1082/2006, ongoing EGTCs show how local and regional authorities are better able to collaborate in different parts of Europe with this new legal tool (CoR, 2012b). A very brief analysis of the longer-standing EGTCs established in Europe (such as the Eurométropol Lille-Kortrjk-Torunai, Ister-Granum EGTC established in 2008 between Hungary and Slovakia and the AECT Galicia-Norte de Portugal) highlights that the main objective pursued through this instrument is stronger internal cohesion within the cross-border conurbation. As demonstrated by the ongoing EGTCs, the main quality to envisage so far is its capacity to improve the co-ordination process and the continuity of actions taken. Moreover, the commitment of the actors and partners involved within the EGTC has been strengthened (Metis GmbH, 2010). It has also emerged that the EGTC legal personality is helping the process to participate in European territorial co-operation and other EU-funded programmes. Finally, the EGTC offers a solid political background and contributes to fostering development through territorial co-operation.

Conclusions

This article has argued that both the process leading to Regulation 1082/2006 and the content of the Regulation itself provide further evidence of a multi-level governance

[28] 'Article 5: Acquisition of legal personality and publication in the *Official Journal*: 1. The statutes referred to in Article 9 and any subsequent amendments thereto shall be registered and/or published in accordance with the applicable national law in the Member State where the EGTC concerned has its registered office. The EGTC shall acquire legal personality on the day of registration or publication, whichever occurs first. The members shall inform the Member States concerned and the Committee of the Regions of the convention and the registration and/or publication of the statutes. 2. The EGTC shall ensure that, within 10 working days from registration and/or publication of the statutes, a request is sent to the Office for Official Publications of the European Communities for publication of a notice in the *Official Journal of the European Union* announcing the establishment of the EGTC, with details of its name, objectives, members and registered office.'

approach to the EU polity. Indeed, the analysis has shown that SNAs have been able to mobilize effectively around this legislation at the supranational level through the lobbying of a variety of associations and bodies, ranging from the CoR to the AEBR.

The findings consistently suggest that the drafting and application of the EGTC trigger various forms of alliance among supranational institutions. The Commission, the CoR, the AEBR and the CoE understand the importance of supporting each other in order to achieve a more effective territorial cohesion and have found ways of collaborating and interacting together. Rather than behaving as independent actors, these institutions have built an alliance around the EGTC in trying to push for its application against the constraints of Member States. One could say that these institutions have become more influential precisely thanks to mutual support and collaboration. In particular, the Commission actively looked for allies to spread its norms and fulfil its integrative mission. This co-operation developed especially with the CoR and the AEBR.

CoR representatives perceive themselves as having acquired a more influential role within the EU regional policy arena; moreover, other institutions (including the Commission and the AEBR) look to the CoR as *the* actor who is in charge of promoting the EGTC within EU Member States. Therefore, this analysis shows that the CoR has more than a consultative role in the EU policy and governance process, and that the EGTC is an emblematic case for testing the political role played by the CoR.

The AEBR, in turn, emerges as a very dynamic player in the drafting of the EGTC. This analysis has shown its direct and crucial role in linking cross-border sub-national requests to the EU level and in boosting co-operation between supranational institutions. It also applied direct pressure on the CoE initially, and afterwards on the Commission, to enhance cross-border co-operation and the approval of the EGTC Regulation.

These conclusions provide further arguments in determining the importance of the multi-level institutional context drawn by Hooghe and Marks (2001). Indeed, even though states are clearly still crucial actors within the EU, there is a common position shared by the CoR and the Commission that 'good governance' and effective participation is achieved through different actors each contributing, in line with their capabilities or knowledge, to the success of the overall exercise (Commission, 2001, p. 35). Accordingly, it becomes clear that the main concern pursued by both institutions is that competences are shared, not separated (CoR, 2009; Commission, 2001).

Finally, this research has indicated that there are some elements which show there has been a move from a 'zero-sum game' to a 'non-zero-sum game', with actors at different levels learning to co-operate with each other and compromise when necessary. It is suggested that at the supranational level has developed a more negotiated, contextually defined system of institutional exchange which is changing to some extent the zero-sum nature of intergovernmental relationships, where one institution's gain (the state) corresponds to another institution's loss (sub-national, supranational). It is evident that a concerted action between supranational and sub-national actors has put pressure on states to make concessions, and at the same time these actors have had to compromise with the Member States, acknowledging their concerns. In this context, the Commission appears to have played a pivotal role in managing a diverse group of actors and in mediating between the state and the other territorial levels.

Furthermore, through the drafting of the EGTC, SNAs now have a legal EU tool which allows them to establish cross-border co-operation agreements with cross-border states, overcoming nation-state gatekeeping capacity. According to Regulation 1082/2006, the EGTC can both facilitate social and political interaction across national boundaries, blurring borders, and also encourage multiple actors to collaborate on the same level, including local authorities, regions and states. Thus, this analysis demonstrates that supranational institutions mobilize at the EU level and entertain relations among themselves that would hardly have developed had it not been for cross-border co-operation and the drafting of the EGTC. Finally, it can be argued that we are witnessing a redefinition of centre–periphery relations.

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