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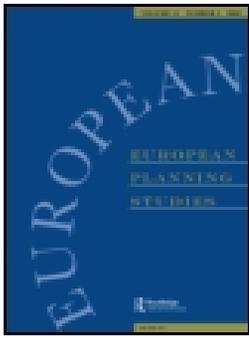
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## Territorial cooperation, supraregionalist institution-building and national boundaries: the European Grouping of Territorial Cooperation (EGTC) at the eastern and western German borders

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### ABSTRACT

The article examines the interplay of territorial cooperation, national boundaries and supraregionalist institution-building with special focus on the EU legal instrument of the European Grouping of Territorial Cooperation (EGTC). After its introduction in 2006, the EGTC triggered a new push for a post-national Europe of the (cross-border) regions under a supranational roof. As a supraregionalist institution it pledged to provide competences to territorial authorities underneath the nation-state for autonomous territorial governance. Yet, despite the fact that the EGTC relies on an EU regulation, the applicable law in practice is still very much based on national jurisdiction. Moreover, recent renationalization processes also contribute to further rebordering so that national boundaries could be felt in different aspects of territorial governance. The research article, thence, investigates which specific boundaries that occur on national level between EU member states are 'down-scaled'/'downloaded' towards the subnational (regional or local) level in the field of territorial governance. For this purpose, two EGTC projects with German participation will be scrutinized: the German-French EGTC Eurodistrict SaarMoselle and the German-Polish EGTC TransOderana. The analysis discloses the specific boundaries that either intentionally or unintentionally hinder cross-border governance processes and even impede successful EGTC foundation like in the case of the TransOderana.

### KEYWORDS

Regionalization; European Grouping of Territorial Cooperation (EGTC); cross-border cooperation; border regions; boundaries; supraregionalism

Cross-border territorial governance across inner-European borders is among the major success stories of EU-urope. It began informally and spontaneously in the 1950s and 1960s in the context of the post-war reconciliation process at the German borders with Netherlands and France. Thereafter, it was promoted by the Council of Europe (CoE) and the European Communities during the 1970s and 1980s. A boom in cross-border governance has occurred since the introduction of the joint initiative INTERREG by the European Community in 1990. With the introduction of the EU legal instrument of the European Grouping of Territorial Cooperation (EGTC) in 2006, the European Union (EU) offered subnational authorities an alternative legal framework with which to

consolidate cross-border governance through institutionalization. At present, the 150 existing Euroregions (Svensson, 2013, p. 409) and the more than 70 EGTCs (Krzymuski, Kubicki, & Ulrich, 2017) reflect the degree to which administrative systems are interwoven across borders and the rise of a European network of cross-border regions (CBRs).

However, at present, rebordering processes are occurring throughout Europe. Renationalization and protectionist discourses threaten the achievements of international cooperation and functional cross-border governance. At the ‘high’ political level, national aggression complicates international cooperation, while at the ‘low’ level, within the field of EU regional policy, most member states support EU measures. However, in cross-border governance, barriers and obstacles can also be perceived at the subnational level.

This contribution to the special issue *Cross-Border Cooperation in Europe: Networks – Governance – Territorialization* takes this point of departure to focus on the specific boundaries that are transferred (‘down-scaled’/‘downloaded’) from the national to the subnational (regional or local) dimension, to hamper or enable cross-border governance and the creation of cross-border networks and neoregionalist institutions. This contribution therefore investigates the specific kinds of national boundaries (political, legal, administrative or sociocultural) that can be experienced in territorial cooperation and supraregionalist institution-building at the eastern and western German borders. This study therefore examines the following research question: ‘What types of national boundaries can arise in territorial cooperation?’

To answer this research question, the European legal instrument of the EGTC is analysed, as it represents a new legal instrument for consolidating cross-border governance and supraregionalism, and has raised the hope of establishing some kind of a post-national framework. The geographical scope of investigation covers the peripheries of the Federal Republic of Germany, namely those at its western and eastern borders. In this context, we examine firstly the existing EGTC *Eurodistrict SaarMoselle*, which encompasses districts and municipalities from the German federal state of Saarland and the French region of Lorraine, and secondly the EGTC *TransOderana* (under construction), which is comprised of towns and municipalities from the German federal state of Brandenburg and districts, towns and municipalities from the Polish *voivodeships* of Lubuskie, Zachodniopomorskie and Wielkopolskie. In assessing the political dimension of territorial governance, making distinctions between ‘politics’/‘polity’ and ‘policy’ as analytical categories has proven useful in previous studies in political science. Against this backdrop, the network structures (‘polity’) and (inner-)institutional interactions (‘politics’) within the EGTC and the fields of action (‘policy’) in which supraregionalist institutionalization and territorial cooperation occur are scrutinized. The paper then identifies specific boundaries that either intentionally or unintentionally hinder cross-border governance processes. Finally, this contribution outlines a theoretical framework on borders/boundaries, (supra-)regionalism/-ization, governance versus networks and supraregional institution-building in the course of territorial cooperation.

### **The EGTC between territorial cooperation, supraregionalist institution-building and state borders**

Cross-border cooperation (CBC) in Europe has been widely explored by scholars from various disciplines. In addition, there have been several studies on the elaboration of

the EGTC legal instrument at the EU level (Engl, 2014; Evrard, 2016; Evrard & Engl, 2018; Krzymuski et al., 2017; Nadalutti, 2013), the adoption of the EGTC regulation into national law (Engl, 2014; Maier, 2009) and the foundation process of the EGTC and the occurrence of specific obstacles within this process (Evrard, 2016; Evrard & Engl, 2018; Krzymuski et al., 2017; Ulrich, 2017).

Against this backdrop, this article first explores how borders might affect planning processes in the field of cross-border governance and the unfolding of cross-border networks. It then outlines the development of supraregionalism by distinguishing it from the opposing notions of regionalism and regionalization. Finally, this article presents and discusses governance versus networks and territorial cooperation in the framework of cross-border territorialization.

### ***State borders: from post-conflict demarcation lines to different kinds of boundaries***

Transborder cooperation originally arose to overcome disparities in the EU Single Market and national borders through social, economic and, later, territorial cohesion (Wassenberg, Reitel, Rubió, & Peyrony, 2015). It peaked in the 1980s and 1990s, when discussions arose concerning the ‘Europe of the regions’ (Crepaz, 2016; Guérot, 2016; Hilpold, Steinmair, & Perathoner, 2016) comprised of a European ‘roof’ protecting European regions and the demise of the nation-state; however, recent studies have come to the conclusion that a ‘renaissance of the border’ is occurring. In some border regions, disputes on the national level are transmitted (or down-scaled), either intentionally or unintentionally, to the subnational level to obstruct regional or local cooperation across borders (Svensson & Balogh, 2018, p. 117). By contrast, in some border regions the opposite can be observed: member states which oppose the EU are utilizing EU measures to foster paradiplomatic endeavours across their peripheries (Scott, 2018). Such tendencies mostly concern the geopolitical and sociocultural dimensions of CBC, which can largely be traced back to historical differences or ‘scars’. Wassenberg et al. (2015) distinguish between different types of European borders, ranging from new to old-new to post-conflict borders. Post-conflict borders, to which the German-Polish border belongs, are spaces where previous conflicts are likely to break out once again.

The point of departure of this contribution is that borders are complex entities (Bossong et al., 2017). Following the border heuristics of Haselsberger, borders do not represent ‘one-dimensional dividing lines’ (Bossong et al., 2017, p. 65) but are instead ‘multifaceted, multilevel and interdisciplinary institutions and processes transecting spaces in not only administrative and geopolitical but also cultural, economic and social terms’ (Haselsberger, 2014, p. 505). To distinguish between these different aspects of multidimensional borders, Haselsberger differentiates between ‘borders’ (which are national demarcation lines) and ‘boundaries’ (which are a specific category of border, e.g. geopolitical or biophysical). More precisely, Haselsberger (2014) defines a ‘border’ as a ‘legal line in space, separating different jurisdictions, nations, cultures’ while ‘a boundary is a linear concept, demarcating one particular facet (e.g. religious community)’ (p. 508). The thickness/thinness or durability/ permeability of a border is determined by the number of overlapping layers of specific boundaries (like a model kit) that makes cross-border networking, governance and cooperation more challenging. Haselsberger differentiates

between geopolitical, sociocultural, economic and biophysical boundaries (p. 512). In her view, cross-border planning, networking and governance require a national border to have a certain thinness or permeability (Schiffauer, Koch, Reckwitz, Schoor, & Krämer, 2018). From an opposing perspective, one could stress that the fact that specific boundaries exist provides an incentive for nations and their subunits to implement cross-border territorial cooperation initiatives and structures intended to mitigate border-related asymmetries. Nevertheless, the differentiation and identification of varying overlapping boundaries constituting the thickness of a border is crucial in order to focus on impeding and enabling conditions in the unfolding of cross-border networks and governance in cross-border supraregionalist institution-building.

To clarify what the term ‘supraregionalist institution-building’ is intended to mean, the following subsection defines the terms neoregionalism and regionalization/-ism.

### ***Supraregionalism: regionalism, regionalization and neoregionalism***

Supraregionalization refers to the uploading/up-scaling of competences to the level above the regional dimension. As this concept refers to the transfer of the competences of nation-states to overarching international institutions, it can be understood as a transfer of the competences of nationally demarcated subnational authorities to transborder regional institutions. From an empirical perspective, this clearly relates to the institution of the legal instrument of the EGTC, as it provides a cross-border grouping with its own legal personality. From a theoretical perspective, the notion of supraregionalism is closely linked to regionalist movements, for example the new regionalism or neoregionalism. Neoregionalism has mainly been discussed in the context of the debate over the Europe of the regions during the 1980s and 1990s. Based on the neofunctionalist premises such as those found in the governance approach, a nation-state is incapable of singlehandedly addressing the complexity of today’s societies and globalized world; rather, such issues should be managed by supranational institutions and local networks. In the context of EU territorial cooperation, nation-states were assumed to initially be hesitant to transfer competences to the regions, but in the decades mentioned previously, they actively complied with the overall paradigm of allocating competences to the regions which were formerly the sole competence of nation-states. The peak of this evolution was marked by the introduction of the EGTC which, with its legal personality, was assumed to represent some kind of supranational framework or the ‘regions of the future’ (Haselsberger, 2007).

Based on the neofunctionalist governance approach, scholars have proclaimed the emergence of a post-national Europe of the regions (Crepaz, 2016; Guérot, 2016; Hilpold et al., 2016) or ‘new regionalism’ (Keating, 2002).

Keating (1997) conceptualizes ‘new regionalism’ as a response to ‘the crisis of the nation-state and end of sovereignty’ and a ‘crisis of territorial representation’:

‘From the late 1980s, there has been a third crisis of territorial representation, a new wave of regionalism. This new regionalism is no longer a phenomenon internal to states; rather the context is provided by the EU and the global market. Its impetus can be traced to three sets of forces: functional change; institutional restructuring; and political mobilization.’ (p. 386).

Functional change, institutional restructuring and political mobilization are carried out in regional networks that span nation-state borders and administrative hierarchies. To

manage these transnational interactions ('governance'), a set of different actors in a transnational context is necessary which, in a next step, needs novel institutional structures following 'new possibilities for territorial government' (Keating, 1997, p. 387).

However, in recent years, a shift has occurred from discussing the paradigm of 'open borders' to the assessment of specific obstacles and boundaries to CBC in border regions (Beck, 2017; Colomb, 2018; Knippschild, 2011; McCall, 2013; Terlouw, 2012). Discussions on post-national CBR and the Europe of the regions are thus out of date.

To examine boundaries in cross-border regional cooperation, it is necessary to clarify what a region actually is. For this purpose, it is crucial to adopt a geopolitical perspective. Michael Keating (1997) defines 'a region' as a territory, political space, regional government, civil society or space of regional autonomy that is somewhere 'intermediate between the state and local government' (p. 390). This static understanding of regions is also shared by Isensee, who considers them to be an organizational layer below the nation-state but above municipalities (Isensee, 2016, p. 14). Regions appear to be an abstract notion, as they can take multiple forms: For example, in France the *régions/départements*, in Germany the *Bundesländer* or in Spain the *comunidades autónomas* or the territorial units above them, which are still above the local level.

Regions are either undergoing the process of becoming a region (regionalization) or claiming regional autonomy (regionalism). Generally, the concepts of regionalization and regionalism are treated as being synonymous, but they should be differentiated. Linked to the discussion of supraregionalism or the cross-border form of new regionalism is the discussion of how to govern and territorially manage CBRs, which refers to forms of structuring, steering, management and control that are mostly described as forms of governance or networks.

### Governance and networks

Cross-border regional interrelationships and paradiplomatic activities are becoming increasingly common in Europe. In addition, new forms of CBRs, institutions and organizations have been established. As in this special issue, these forms of interaction have been viewed as governance or networks (Perkmann, 2002). Governance refers to patterns and processes employed, as well as the conditions required, for the management, coordination, governing and guidance of non-hierarchical networks that include a variety of actors and are organized transnationally. *Governance* is the counterpart to *government*: political steering in the global West is not performed hierarchically and in a top-down manner by one (nation-state) government, but instead within a non-hierarchical, network-like form of governing. It is often referred to as 'governing beyond the nation-state' (Zürn, 2000) and 'governing without government' (Czempiel & Rosenau, 1992). Governance thus seeks its right to exist through a clear demarcation from government. Thus, governance is governing beyond/with/beside the nation-state but not through the nation-state alone.

Through transnationalization and globalization, the management and coordination of global and/or European economic and political flows and relations become hypercomplex.

The nation-state – at least in industrialized Western nations – is less capable of managing these complex relations on its own. Competences and implementing acts are thus either intentionally or unintentionally delegated to heterogeneous, network-like structures of actors who are able to cope with these challenges more efficiently.

Nation-states thus promote cooperation with supra-/subnational entities and, in the European context, with the EU and regions and municipalities. However, in recent times, protectionist movements and governments have been willing to impede transnational flows in order to win back control over the global economic agenda. The rebordering processes that occur through renationalization activities therefore pose a challenge to European governance and cross-border governance in Europe. The nation-state appears to be impotent, due to the hypercomplexity of international markets, the momentum of the global economy and international interconnectedness at the political level.

At the subnational level, governance can also be observed in a transborder context. The political and planning challenges that arise in cross-border regions are more likely to be managed by regional networks across borders, as nation-states are generally too distant to act, as is the case in the centralized countries Poland and France.

### **Territorial cooperation and supraregional institution-building**

Cross-border networks and governance structures are likely to be legally or politically consolidated by institutionalization processes. In the 1990s, several Euroregions were created throughout Europe, and since the 2000s Eurodistricts at the German-French border have been established (Gireaud, Nitschke, Schmitt-Egner, & Breier, 2014; Wassenberg et al., 2015).

These institutions are directly linked to the Europeanization processes of national and subnational administrations. Through Europeanization, national borders are increasingly legally penetrated, which leads to debordering but also rebordering and the creation of new borders where none existed previously. Debordering leads to rebordering (Newman, 2006) and rescaling of territory (Perkmann, 2007), which is consolidated by the institutionalization of cross-border governance institutions (Nelles & Durand, 2014). In general, Euroregions and other cross-border institutions are mostly based on legally non-binding association agreements. The following subsection discusses the EGTC as a novel legal instrument intended to further promote territorial cooperation and supraregional institution-building.

### **The EGTC as a legal instrument for territorial cooperation and supraregionalist institution-building**

The EGTC was introduced by the EU in 2006; it represented the first cross-border legal instrument for legal entities under public law that encompasses both a legal personality for a cross-border grouping and anchoring in Union law (Engl, 2014; Evrard, 2016; Evrard & Engl, 2018; Krzymuski et al., 2017; Zillmer et al., 2018).

The EGTC thus provides territorial and public units across borders with a legal personality, and is therefore highly independent *vis-à-vis* the respective members' nation-states (Engl, 2014). According to Neyer (2017), the EGTC offers subnational authorities new legal resources for the organization of networks and for governance (p. 333). Conversely, however, the EGTC is still dependent on national law: the decision as to in which country the seat of the grouping is located determines which national law is applied for the whole grouping. A 2013 amendment to the 2006 EGTC regulation provided the option to choose a divergent national law for specific tasks of the EGTC, even if the seat is located on the other side of the border (Krzymuski & Kubicki, 2014). Moreover, the recently established

European Cross-border Mechanism (ECBM) enables the expansion of national law across a border with regard to specific projects or activities. Under the ECBM, the national law that has been chosen due to the location of the seat can be enriched by the national law of the adjacent neighbouring territorial authority, to address a specific problem that could not be solved by the seat's national law (e.g. a problem involving incompatibilities between the public transport laws of two countries).

The EGTC is an EU instrument intended to 'facilitate and promote cross-border, trans-national and/ or interregional cooperation' (Art. 1 (2), EGTC Regulation). Its goal is to enforce cross-border governance and CBRs by providing a more effective means by which to organize and govern cross-border initiatives, programmes, cooperation and activities.

The EGTC legislation is a so-called 'limping regulation' (*hinkende Verordnung*) that needs to be transposed into national law. This may lead to asymmetries in cross-border governance, as the territorial organization and hence the implementation, approval and controlling bodies may be allocated to different hierarchical levels in each country. Germany, for example, is a federal decentralized country, and the EGTC regulation therefore ought to be implemented in the federal states (*Bundesländer*), while, in France and Poland, due to the centralized organization of these two states, the regulation has been implemented at the national level. To create an EGTC (through the development of statutes and a convention), the convention needs to be approved by different administrative levels (national and regional) in both member countries. This asymmetry in cross-border governance can hinder interactions across borders or render governance less participatory (Engl, 2015). Furthermore, legal boundaries can be perceived, due to diverging cross-border administrative organization.

Beyond the EGTC, the CoE was fostering CBC in Europe long before the European Communities, and was the first international organization in Europe to enable cooperation across borders, which was previously the sole privilege of the nation-state (Perkmann, 2002). This fact, combined with the gradual convergence of cross-border regional (as opposed to state) cooperation through instruments such as the EGTC, has prompted debate over supraregional (Evrard, 2016; Haselsberger, 2007) institutionalization beyond the nation-state.

The 1980 'European Outline Convention on Transfrontier Co-operation' (Madrid Outline Convention) was the first attempt to structure, initiate, bundle and, to some extent, institutionalize CBC in Europe, which did not previously exist in an international law context (Bussmann, 2005; Niedobitek, 2001). This convention entitles the subnational authorities of CoE member states to engage in bi- or multilateral CBC agreements with adjacent neighbours across borders. Although the Madrid Outline Convention is considered an important milestone in CBC, especially as a booster of several Euroregions (Eisendle, 2011, p. 17), it has nevertheless been viewed as an imprecise and non-binding legal document (Eisendle, 2011, p. 17; Jóskowiak, 2017; Krzymuski et al., 2017; Nadalutti, 2013, p. 759). The CoE therefore introduced three additional protocols in 1995, 1998 and 2007 to clarify several aspects of the Outline Convention. However, the additional protocols have not been ratified by every CoE member state and are therefore valid only in certain border regions (e.g. that across the German-French border). One of the main examples of bilateral agreements based on the Madrid Outline Convention between France and Germany is the Karlsruhe Agreement (1996). Germany, France,

Luxembourg and the Swiss Federal Council (*Bundesrat*) entered into this agreement with the purpose of promoting CBC among the French, German, Luxembourgian and Swiss territorial and public authorities within the framework of their competencies (Bussmann, 2005). Based on the Karlsruhe Agreement, the Regio Pamina was established, which became an EGTC in 2016. The EGTC is therefore one option for further institutionalizing CBC. As it is an optional legal instrument, other legal forms can also be applied to legally institutionalize cross-border governance.

With the legal dimension of CBC having been delineated, the following subsection outlines the research design employed in this article and further discusses how the data was gathered, the cases selected and the method chosen, before establishing a link to the empirical analysis.

### Research design: cases, materials, methods and data collection

This article examines territorial cooperation and supraregionalist institution-building in Europe, with an emphasis on the EU legal instrument of the EGTC and a focus on the eastern and western borders of Germany. For this purpose, two EGTCs are analysed: the German-Polish EGTC TransOderana (under construction) and the German-French EGTC Eurodistrict SaarMoselle. Both entities are multi-level and multi-actor, but mainly encompass local authorities as members. Moreover, both groupings have been planning to create an EGTC quite early after the introduction of the EGTC regulation, and can therefore be considered one of the first EGTC projects with participation by German territorial authorities. Thus, a most-similar approach is chosen for the comparison of the case studies with regard to the conditions for CBC. Nevertheless, there is one major difference with regard to the cooperation 'output': while the EGTC Eurodistrict SaarMoselle was established in 2010, the EGTC TransOderana has still not concluded its foundation process (Ulrich, 2017). Here, the initially stated assumption that nation-state borders are transmitted from the national to the regional/local scale may be observable, as the foundation process may be hampered by legal, administrative, economic, political, cultural or social boundaries.

The data collection was mainly conducted by means of documentary analysis of grey literature (including founding documents, reports, and other legal and administrative documents), secondary sources (scientific articles) and expert interviews. With regard to the EGTC Eurodistrict SaarMoselle, a representative was interviewed twice, once in March 2015 and once in November 2016, to make it possible to track the process of developments in cooperation. Concerning the EGTC Eurodistrict SaarMoselle, four interviews were conducted – one with the legal advisor and one with the project manager of the grouping as well as two with representatives of the towns and municipality of both sides of the border. The data gathered from the interviews provides additional information about blank or grey spaces and clarifies political processes. In the following, both EGTC case studies are revised.

The analytical framework used to scrutinize governance, network structures and interaction consists of the analytical categories 'polity', 'politics' and 'policy', which are mostly applied in the field of political sciences. In the following, the political dimensions of governance are distinguished among the commonly used differentiations between polity (actors/structures), politics (processes) and policy (contents/domains).

## The German-French border: the case of the Eurodistrict SaarMoselle EGTC

The German-French border experienced shifts after the Second World War: Alsace (*Elsaß*) and Lorraine (*Lothringen*), which had been a point of contention between Germany and France for centuries (Wassenberg et al., 2015), were reintegrated into French territory, while after the war the *Saarland* became an autonomous state of France until reunification with Germany in 1957. These border disputes arose shortly after the Second World War. Subsequently, in the late 1950s and early 1960s, CBC at the German-French border was widely promoted.

Cross-border governance between Germany and France in the context of European integration has quite a lengthy history. After periods of aggression between 1870/71 and 1945, post-war approaches aimed to sustainably promote conciliation and peace over the long term in the CBR region through informal, spontaneous civic encounters in the 1960s. In the context of Jean Monnet's impetus for economic integration, the German-French approach to reconciliation through cooperation has served as the engine of the European peace establishment process. Informal, spontaneous and, later, institutionalized cross-border initiatives in the German-French border area led to the first post-conflict cooperative endeavours within the European integration process. Based on these first post-war contacts in the context of European integration, it can be stated that territorial cooperation is based on more than six decades of cross-border interaction, which, compared to the history of the eastern German border regions, appear to constitute a long history of cooperation.

Concerning the legal development of CBC, France and Germany took full advantage of legal instruments offered by both the CoE (both countries signed the Madrid Outline Convention, as well as three additional protocols) and the EU (six EGTCs applied with German and French members). In the 1990s, CBC was also fostered throughout Europe by INTERREG funds. Many cross-border institutions ('Euroregions', 'European Regions', 'Euregios' and 'Regios') were created in this period. In the 2000s, a new impetus for deepening the CBC between France and Germany was proclaimed in the context of the 40th anniversary of the Élysée Treaty. German chancellor Gerhard Schröder and French president Jacques Chirac endorsed a national impetus for the supraregional institution building of so-called 'Eurodistricts' to promote territorial cooperation at the German-French border (Gireaud et al., 2014). In the following years, several Eurodistricts were created at this border. After the introduction of the EGTC instrument by the EU in 2006, six EGTCs further institutionalized already existing supraregional institutions or enabled new institutionalized cooperation at the German-French border (Zillmer et al., 2018): the cross-border EGTCs Eurodistrict Strasbourg-Ortenau (created on January 25, 2010), the EGTC Eurodistrict SaarMoselle (founded May 6, 2010), the EGTC Eurodistrict PAMINA (created December 2, 2016) and the broader and theme-specific EGTCs INTERREG 'Programme Grande Région'/GECT 'Secrétariat du Sommet de la Grande Région' (created March 29, 2010, dissolved and recreated on August 28, 2013, together with members of Luxembourg and Belgium), the EGTC European Urban Knowledge Network Limited (EUKN EGTC, created December 3, 2012, together with members of the Netherlands, Belgium, Cyprus, Czech Republic, Hungary, Luxembourg and Romania) and EUCOR, the European Campus (created January 27, 2016 together with member universities from Switzerland). The Treaty

of Aachen, which was signed by Emmanuel Macron and Angela Merkel in January 2019, serves as a further step towards national promotion of German-French cooperation in other policy fields.

The German-French border is thus a highly interwoven and supraregionally institutionalized region, based on the long-term history of CBC in the European integration context. The example of the EGTC Eurodistrict SaarMoselle is subsequently used to showcase supraregionalist institution-building and collisions thereof with specific (national) boundaries.

### **Actor networks ('polity') – supraregionalist institution-building**

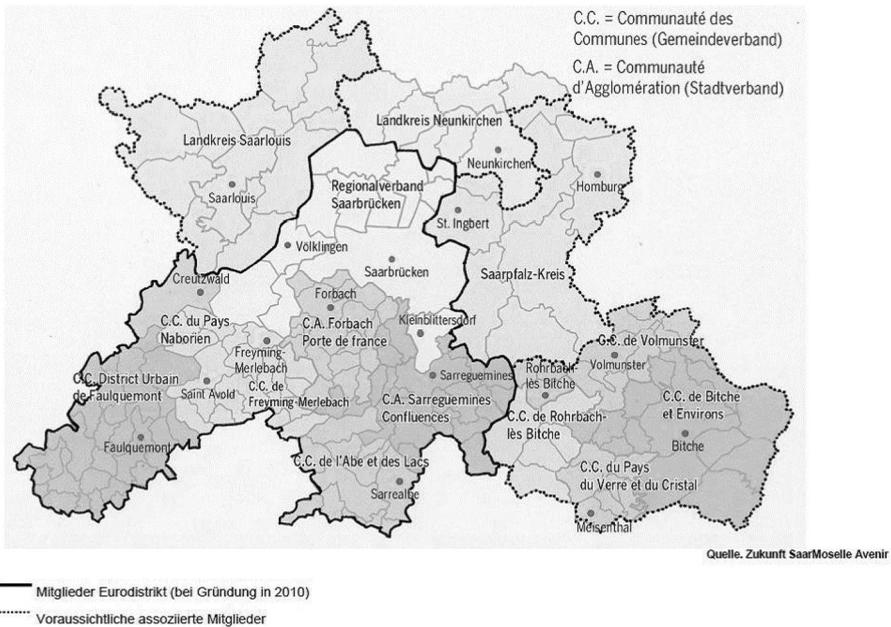
The EGTC Eurodistrict SaarMoselle is a German-French cross-border regional grouping that was granted legal status through registration after approval by the authorities responsible for the EGTC in 2010. The CBR of this EGTC encompasses 800,000 inhabitants and is comprised of the *communautés d'agglomération* Forbach Porte de France and Sarreguemines Confluences, the *communauté de communes* du Pays Naborien, de Freyming-Merlebach, the *district urbain* of Faulquemont, du Warndt and de l'Albe et des Lacs on the French side and the *Regionalverband Saarbrücken* and the associated body *Saarpfalz-Kreis* on the German side (Zillmer et al., 2018, p. 31). The regional association ('*Regionalverband*') Saarbrücken is composed of the townships of the state capital Saarbrücken, the towns Friedrichsthal, Völklingen, Pütlingen and Sulzbach, and the municipalities Großrosseln, Heusweiler, Quirschied and Riegelsberg (Art. 2 Statutes Eurodistrict SaarMoselle). The supraregional extension covers the territory of the EGTC members. The seat of the cross-border institution is in Sarreguemines, France, and the operational office is situated in Saarbrücken. The applicable law is French public law (Zillmer et al., 2018, p. 31).

This EGTC is governed on multiple levels, as it consists of regional associations, districts and municipalities. Cross-border governance thus includes a diagonal dimension, as different levels cooperate and interact with each other. Nonetheless, the local dimension is dominant in the grouping, especially due to the fact that the grouping's French territory is fragmented and split into small administrative units. More precisely, the French side of the EGTC consists of two municipal associations and five local government associations representing several municipalities and local governments. The German side has a single official member that is organized into a regional association that includes the city of Saarbrücken (Figure 1).

### **Institutional interaction ('politics')**

The Eurodistrict SaarMoselle has existed since 1997, when, prior to the implementation of the EGTC, it took the form of a collaborative venture between local and intercommunal members under the name 'Zukunft SaarMoselle Avenir Association'. The goal of the partners was to increase the visibility of the grouping and to speak with one voice *vis-à-vis* other institutions on the supranational, national and subnational levels, and to promote continuity with regard to long-term planning.

The grouping was founded on May 6, 2010 by the formulation of a convention that consisted of nine articles and statutes comprising 31 articles.



**Figure 1.** Map of the Eurodistrict SaarMoselle; source: Zukunft SaarMoselle Avenir.

As articulated in the statutes, the EGTC Eurodistrict SaarMoselle is comprised of the following official organs: an assembly, a board, a president and a vice-president, both of whom are also *de jure* part of the board (Art. 16 (1) of the Statutes EGTC Eurodistrict SaarMoselle). The president of the EGTC is responsible for carrying out the function of the 'director' as it is intended and defined in the EU legislation on the EGTC (Art. 16 (2) of the Statutes EGTC Eurodistrict SaarMoselle). Additionally, he or she, as well as the vice-president, is selected by the members of the assembly for two years, and the responsibility for the presidency and the vice-presidency switch between the French and the German side every two years (Art. 17.1 (1–3) of the Statutes EGTC Eurodistrict SaarMoselle). The assembly is composed of representatives of the member authorities, with the German and the French members each taking half of the seats in the assembly (Art. 18.1 (1–3) of the Statutes EGTC Eurodistrict SaarMoselle). Finally, in the EGTC's daily work, for example that of the working groups on transport, spatial planning, tourism, business development and locational marketing, the representatives apply bilingualism when it comes to correspondence and reporting.

### **Fields of activities ('policy')**

The purpose of the supraregionalist institution of the EGTC Eurodistrict SaarMoselle is defined in article 1 of the statutes, which states that the EGTC shall assure the sustainable development of the border area by supporting, promoting and coordinating CBC among municipalities and municipal associations with regard to the development of the Eurodistrict SaarMoselle and the initiation, accompaniment and implementation of intercommunal cooperation projects that are developed on the level of the Eurodistrict

SaarMoselle and visible to its citizens (Art. 1 (2) of the Statutes EGTC Eurodistrict SaarMoselle).

The concrete tasks of the EGTC SaarMoselle are 1) to undertake cross-border projects in the common policy areas, 2) to support its members in the elaboration and implementation of CBC that is in their interest, 3) to support and promote cross-border networks that contribute to the realization of the goals of the Eurodistrict, 4) to take responsibility for the joint location marketing of the Eurodistrict, and 5) to promote the interests of the EGTC's role with regard to regional, national and European institutions and to collect and distribute information concerning the cooperative projects of its members within the territory of the Eurodistrict (Zillmer et al., 2018, p. 31, Art. 4 of the Statutes EGTC Eurodistrict SaarMoselle).

Finally, its objectives are 'to ensure the sustainable development of the region by supporting CBC in two key areas: 1. Support the development of the Eurodistrict's territory,' and to 2. 'initiate, monitor and implement inter-communal cooperation projects' (Zillmer et al., 2018, p. 31). These measures should be implemented using the budget allocated to the grouping by its members and that provided through national funding and co-funding by EU funds such as the INTERREG funds.

With regard to its purpose, tasks and objectives, it can clearly be stated that the grouping is following an integrated territorial development approach, which is to be achieved through the supraregionalist institutionalized form of an EGTC.

### ***Boundaries in CBC: legal, administrative, sociocultural and institutional dimensions***

Although the aim of this EGTC is to promote cross-border territorial governance through supraregionalist institution-building, national boundaries that hamper CBC to varying degrees remain. When applying Haselsberger's approach to classifying boundary layers with reference to the durability or permeability and thickness or thinness of a nation-state border, it is possible to identify geopolitical and sociocultural boundaries that may hinder CBC.

In particular, the different territorial organizations of the two states complicate daily work and simple administrative acts. Furthermore, the application of French public law made the recruitment of German staff for the cross-border grouping complicated, as the personnel did not satisfy the requirements of the French law concerning public officials. After several years, the EGTC Eurodistrict SaarMoselle decided to amend its statutes and to expand its hiring practices to make it possible to hire under German public law also.

Not only the territorial organization in terms of decentralization but also the aspect of self-government and (cross-border) institutional autonomy is likely to be hampered due to the general French unitary and centralist state organization and, in addition, by the general asymmetry of a federal and a centralist state in Germany and France. During the practical implementation of the EGTC Eurodistrict SaarMoselle, these differences and obstacles also posed difficulties with regard to employment law and the autonomy of regional self-government.

The sociocultural dimension of the CBR provides a mixed picture: post-war reconciliation policy after the Second World War, through economic integration and territorial cooperation, led to a high level of interrelationship of cross-border governance. National promotion of CBC through the Chirac-Schröder impetus for CBC also ensured support

for supraregional structures from the national layer. Nevertheless, sociocultural boundaries can be perceived in the daily work of the EGTC. As the interviewed representative of the EGTC Eurodistrict SaarMoselle stated, several prejudices held by both Germans and French continue to exist, which are hard to explain:

And as I said, these sensitizations, in other words the image of one's neighbour, they are to some extent greatly distorted, no matter what one does or thinks, that the border is perhaps no longer there. But one can tell that there is a great deal of prejudice there which actually can't be explained.<sup>1</sup>

In general, the reconciliation policy promoted by the elites of both countries has been fruitful, and (cross-border) regional/local decisionmakers have long been promoting cross-border sociocultural exchange through initiatives, cultural events and festivals in cross-border settings.

Institutionally, as discussed above, an approach was chosen to integrate both sides equally within the cross-border organization. Bilingualism is fostered, and both sides treat the organs in much the same manner. Therefore from an institutional perspective, no asymmetries or obstacles can be detected within the EGTC.

### **The German-Polish border: the case of the TransOderana EGTC (under construction)**

As with Germany's post-war relations with France, relations between Germany and Poland have followed an approach that emphasizes reconciliation, as this border can be classified as a 'post-conflict' border (Wassenberg et al., 2015). However, the reconciliation policy in the context of European integration and CBC was only able to develop after 1990 when the Iron Curtain fell; this enabled both the reunification of Germany and hence the integration of the former German Democratic Republic into the Federal German Republic, and the transformation of Poland into a representative democracy with a free market economy. The first legal landmark between Germany and Poland was the legal recognition of the Oder-Neisse border in the 'Treaty between the Federal Republic of Germany and the Republic of Poland on the confirmation of the frontier between them' (German-Polish Border Treaty), which was signed on November 14, 1990 (Eberwein & Ecker-Ehrhardt, 2001, p. 55). Through this agreement, the Federal German Republic, for the first time, acknowledged the *Oder-Neisse-Grenze* as the border between Germany and Poland (Morhard, 2001, p. 87). This treaty under international law represented a tipping point in German-Polish relations, as it led to peaceful interaction between these countries. Following the border recognition treaty, the 'Polish-German Treaty of Good Neighbourship and Friendly Cooperation' (Treaty of Good Neighbourship – June 17, 1991) was another milestone in terms of CBC between Germany and Poland, as it contains a set of agreements to cooperate in various policy fields on the subnational level (Morhard, 2001, p. 90). The Treaty of Good Neighbourship thus marks the initiation of collaboration between these two countries on the subnational level and also institutionalized a governmental commission for regional and transborder cooperation. Additionally, the treaty refers to the legal conventions of the CoE such as the previously mentioned Madrid Outline Convention (Jóskowiak, 2017, p. 16). However, the CoE instruments cannot be applied in the German-Polish border region, as the Madrid Outline Convention itself

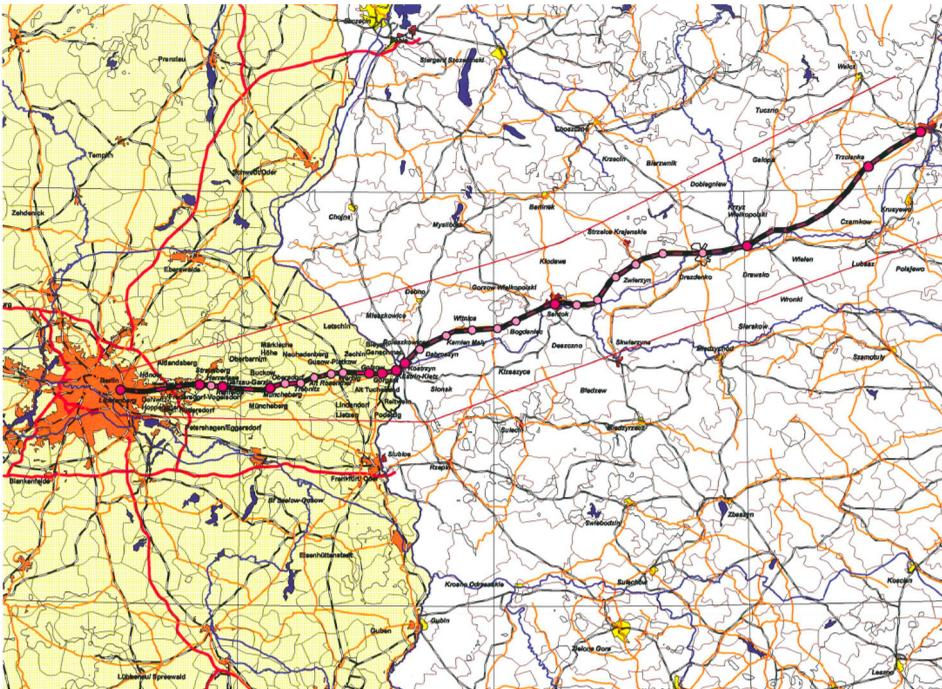
has been ratified by Poland, but not the additional protocols of 1995, 1998 and 2009 (Bussmann, 2005).

Poland acceded to the EU in May 2004. It became part of the EU Single Market seven years later, in May 2011, and has been part of the Schengen area since December 2007. While Germany is part of the Eurozone, Poland continues to use its own national currency.

With regard to CBC, two forms of cross-border governance institutions have emerged at the German-Polish border (Jajeśniak-Quast & Stokłosa, 2000; Ulrich, 2017). Firstly, town-twinning projects have been initiated under the label of 'Europeanized' cross-border cities such as the Eurocity Guben-Gubin (1998), the European city Görlitz-Zgorzelec (1998) and the Frankfurt-Słubice cooperation centre (2010). Secondly, cross-border European regions ('Euroregions') were established between 1991 and 1995, directly after the introduction of the Treaty of Good Neighbourship: the Euroregion Neisse-Nisa-Nysa (1991), the Euroregion Spree-Neisse-Bober (Sprewa-Nysa-Bóbr) (1993), the Euroregion Pro Europa Viadrina (1993) and the Euroregion Pomerania (1995). All of these institutions are based on public or private law but do not apply cross-border legal forms with legal characters such as the EGTC. The EGTC has thus not been applied so far at the German-Polish border. The following case study represents the first EGTC foundation initiative at the German-Polish border; however, to date, this EGTC has not been implemented, as several obstacles to the foundation process have arisen.

### **Actor networks ('polity') – supraregionalist institution-building**

The TransOderana EGTC Ltd. (under construction) is a territorial grouping of towns, municipalities and districts that aims to construct an EGTC along the former Royal Prussian Railway line '*Ostbahn*', which was an important magistral line across Europe that connected the Prussian capital Berlin with the East Prussian capital Königsberg (now Kaliningrad). It was created during the middle of the nineteenth century and was destroyed after the Second World War. This former railway has experienced two steps of revitalization: in 1999, a local citizens' initiative organized itself into a transport forum which in collaboration with transport stakeholders entered into discussions on opportunities to regenerate this cross-border railway line. In 2006, the '*IGOB Interessensgemeinschaft Eisenbahn Berlin-Gorzów*' ('Community of interest concerning the railway Berlin-Gorzów EEIG') was established through the application of the EU cross-border private legal instrument, the European economic interest grouping (EEIG). The core goal of this initiative was to resume operations on a stretch of the former *Ostbahn* railway of approximately 253 km from Berlin to Piła, Poland (Pupier, 2011). The application of the private EEIG law made it possible to attract private investors and, with their financial support, to re-establish the train connection along the historical line on the section from Berlin to Piła. However, the territorial authorities that were involved in the discussions concerning the revitalization of this railway since the beginning could only be associate members of this private consortium. They therefore sought to have a say in specific (cross-border) regional matters. For this purpose, the representatives of the territorial authorities along the railway line (mostly at the local level, including municipalities and towns) decided in 2010 to transform the EEIG into an EGTC, with the aim of creating a model region along the railway line. In this regard, the EGTC



**Figure 2.** Map of the territory of TransOderana EGTC; source: Pupier, 2011; graphic by Karl-Heinz Bossan/ Joint State Plannings Authority of Berlin-Brandenburg, September 2010.

Eurodistrict SaarMoselle has been highly influential and has served as a role model in terms of institutional design, founding documents and financing (Pupier, 2011), as the structures of both cross-border territorial institutions are dominated by municipal members.

On the German side, the planned EGTC consists of seven municipalities and four towns (with all of these being situated within the federal state of Brandenburg, including the municipalities and towns situated in the district Märkisch-Oderland), covering about 100,000 inhabitants, whereas on the Polish side it consists of 13 municipalities, three districts (Gorzowski, Czarnkowsko-Trzcianiecki and Wałecki) and the State College in Gorzów Wielkopolski, covering a population of about 590,000. The composition of the membership involves multiple actors; in addition, it places a greater emphasis on local actors, including territorial authorities from the local and district levels, and the participation of a state college (Figure 2).

The territorial members decided to establish the EGTC in 2010 and concluded the foundation documents in 2013. In June 2013, the foundation of the EGTC TransOderana was celebrated in Seelow (Brandenburg), and the original EEIG legal structure was subsequently dissolved (Ulrich, 2017, p. 389). Although the documents required for the incorporation of the EGTC have been created, it has not been established as of the time of writing. This can be traced back to sceptical attitudes on the part of the authorities responsible for approval in both countries, namely the Polish Ministry of External Affairs (*Ministerstwo Spraw Zagranicznych – MSZ*) and the Brandenburg Ministry of the Interior and Communities (*Ministerium des Innern und für Kommunales Brandenburg – MIK*) (Ulrich,

2017, p. 405). In addition, the changes among personnel on the Polish side after the local elections (November 2014) and national parliamentary elections (October 2015) have served to prolong the process of establishing the first planned EGTC at the German-Polish border.

### ***Institutional interaction ('politics')***

The creation of the institutional structure of the planned EGTC and the relationships between its organs were highly influenced by the EGTC Eurodistrict SaarMoselle. The institutional design and the balanced representation of actors from both countries are thus similar to those of the previously presented statutes and convention of the German-French EGTC.

The organs of the grouping shall include a director, a general assembly and a council (Art. 8 Draft Convention TransOderana EGTC). The general assembly represents the legislative body, as it is primarily responsible for making decisions, with each member having one vote (Art. 9 (4) Draft Convention TransOderana EGTC). The director and deputy director represent the executive body, and they are symmetrically represented by German and Polish officials (Art. 13 and 14 Draft Convention TransOderana EGTC). Finally, the council of the grouping is the body for coordination and control, which includes both German and Polish members (Art. 10–12 Draft Convention TransOderana EGTC). The seat of the EGTC shall be located in Gorzów Wielkopolski, Poland, while its office is to be located in Seelow, Brandenburg (Art. 4 Draft Convention TransOderana EGTC). As the seat of a grouping determines the national law that is applied within a cross-border territorial institution, Polish law shall be applied in the context of matters that are not regulated through the EGTC regulations and the statutes/conventions.

### ***Fields of activities ('policy')***

The main goals of the TransOderana EGTC were to create a model region across the national border and along a railway line, and to promote economic activities in this sparsely populated and structurally weak region. The objectives of the grouping are defined as follows (Art. 5 Draft Convention TransOderana EGTC):

1. to expand and deepen German-Polish cooperation,
2. to reduce existing social and economic disparities,
3. to carry out joint projects and other activities within the scope of the competences of its members, to develop a modern, economically attractive region with a competitive economy, high-quality education and working conditions and innovative solutions in the field of public services (*'Daseinsvorsorge'*).

In 2006, when the EEIG was the legal framework for cooperation, the territorial authorities established working groups to determine future measures, in a document titled *'Ostbahn future visions 2025'*, which identified opportunities for cooperation in the future. The targeted goals were rather technical but served as a first attempt at conceptualizing visions for the cross-border territory. These measures include the renovation of the railway route, including the introduction of modern railway connections, a coordinated European Rail

Traffic Management System (ERTMS), railway station regeneration, sustainable transport, enhancement of cross-border tourism and the development of the rural region (Ulrich, 2017, p. 388). After the creation of the EGTC and the desire to establish a model region along the *Ostbahn*, four fields of action were defined by the member authorities (Kujath, Musekamp, & Boßan, 2011, p. 172; Kujath & Rösler, 2010):

1. management of endogenous potentials (including the accessibility and socioeconomic development of the region, sustainable mobility and freight transport and spatial development in the region),
2. consciousness raising of the Eurodistrict as a model region,
3. management of regional networks (railway as infrastructure for social and economic networks and as the core of network logistics), and
4. the management of demographic change (monitoring of regional demography and demographically oriented interface management).

It should also be noted here that the emphasis of the fields of action represents a nexus of technical, logistical and economic support of the railway line and innovative and sustainable forms of cross-border public services. The EGTC ought to represent a legal framework for executing several projects that contribute to the fulfilment of the fields of action (ideally, co-financed by INTERREG funds). However, as has been noted previously, this EGTC has not yet been established, on account of the various obstacles that have thus far impeded the foundation process.

### ***Boundaries in CBC: legal, administrative, sociocultural and institutional***

Emphasizing the boundaries in the governance processes across borders, it should be noted that firstly, from an institutional perspective, an equilibrium of representation of both sides is mirrored in the institutional triangle within the EGTC. Furthermore, the EGTC emphasizes bilingualism, as both languages are working languages in the grouping. In addition, the German-Polish border, which has a relatively brief history when it comes to CBC in a European integration context, serves as an example of a post-conflict border being transformed into a border of cross-border regional cooperation. Against this backdrop, many symbolic cross-border initiatives and governance structures such as town-twinning projects and Euroregions were created in the 1990s. The German-Polish border region has therefore evolved to become an interwoven, cooperative and connected transborder space.

Nevertheless, supraregionalist institution-building is hampered by national boundaries, which are manifested in the form of legal, administrative and political obstacles. After the Polish local and parliamentary elections, the mayors of the towns on the Polish side changed, which has slowed down the foundation process. At the Polish national level, with the change of government, CBC with Germany has not been actively promoted politically by the Polish government.

Further asymmetries have been created due to the uneven member structure in the grouping:

On the Polish side, three districts (*powiat*) participate in the EGTC, while the only potential district on the German side, Märkisch-Oderland, has abandoned its originally

planned membership due to the allegedly dual structure of the EGTC with regard to the local self-government of the district in the fields of labour market policy, tourism, CBC, economic development and health care (Ulrich, 2017, p. 403). The interviewed representatives on the German and Polish sides and the member of the European Parliament (MEP), the vice-chair of the Committee on Regional Development, neglected the existence of dual structures in the district of Märkisch-Oderland. Rather, the MEP argued that the EGTC is an instrument for the ‘intelligent outsourcing’ of administrative costs and the reduction of operating costs. He emphasized that the EGTC involves the bundling and joint performance of tasks, and not the transfer of competencies.

Beside these political obstacles, legal and administrative boundaries have proven crucial and have had a major impact on the failed implementation of the supraregional institution. As has been mentioned previously, the EGTC regulation requires an implementing act by the national administrations. As Germany is a decentralized country, each federal state is assigned the responsibility to implement the EGTC regulation. Brandenburg’s implementation of the EGTC regulation of November 22, 2007 is only two paragraphs long and is somewhat vague and imprecise – as is the case in the other German federal states. Nevertheless, it has led to uncertainty with regard to crucial aspects such as the legal character of the grouping (public versus private law) or liability issues. In contrast to other German EGTC cases, this uncertainty has led to severe obstacles to the foundation process. By contrast, the Polish implementing provision (at the national level) contains 23 articles and is far more comprehensive and precise when it comes to competences, legal character (association law can be applied) and practical application aspects, such as the liability of the Polish members (limited liability). As the Polish regulation states that the members are liable to a limited extent while, in contrast, the Brandenburg regulation leaves a blank space on liability issues, it can therefore be concluded that the Brandenburg members are liable for the actions taken by the entire grouping. This has been one of the pivotal reasons why the EGTC has still not been implemented. In 2015, the EGTC founding documents were submitted to the approval authorities as stated in the implementing provisions, namely the Ministry of Foreign Affairs of the Republic of Poland and the Brandenburg Ministry of the Interior and Communities, for informal examination. After rounds of negotiations, only the Ministry in Warsaw provided an informal and cautious positive evaluation, while the MIK was reluctant and has not changed its position to this day. Taking this into account, the EGTC TransOderana is the first EGTC that has not been concluded in such an advanced state of progress. Supraregionalist institution-building has thus been hampered by legal, political and administrative boundaries at the national level.

## Discussion and outlook

This article contributes to the discussion of the ‘return of the national border’, in the context of boundaries being transferred from the national to the subnational (regional/local) dimension. The notions of ‘networks’ and ‘governance’ (and, to a certain extent, also ‘territorialization’) that are discussed in this special issue can be classified as post-national approaches that understand the nation-state as present, active and legitimate but question its ability to cope with complex states of affairs alone.

Supraregionalist institution-building has been fostered by the CoE and the EU throughout Europe, particularly through the EU legal instrument of the EGTC, which has led to the

creation of more than 70 EGTCs in Europe. In addition, in Germany, there exist several EGTCs, which are primarily located at the western German border. On the one hand, this peculiarity can be explained by the long-term commitment of Germany to CBC in a European integration context at the borders to the Netherlands, France, Belgium, Luxembourg and also Switzerland (since the 1950s and 1960s). On the other hand, it can be assumed that asymmetries and boundaries (legal, political, administrative, cultural and social) are less pronounced at these border regions. The western German border regions are therefore more favourable for CBC in general and the creation of EGTCs in particular.

Both cases analysed have several commonalities: both are cooperation structures at German peripheries, both cooperate with territorial authorities from centralistic states, both have a multidimensional character with an emphasis on the local dimension, both have their seats abroad (and apply either French or Polish law), both follow an integrated territorial development approach and both were planned to be created in 2010 and were among the first EGTCs to be planned in the EU. However, the results are highly divergent (Table 1 illustrates the findings). The EGTC Eurodistrict SaarMoselle was founded in 2010, whereas the TransOderana EGTC (although influenced by the EGTC Eurodistrict SaarMoselle) has not been implemented at the time of writing. While in both border regions, symbolic forms of subnational cross-border governance as approaches of reconciliation and European integration politics are highly developed – in France since the 1960s, and in Poland since the 1990s – the recent national attitude on the part of Poland towards CBC with Germany indicates an ambivalent picture. While the German-French cooperation has been referred to as a ‘friendship’ or the ‘engine of Europe’ (with the result of four Eurodistricts and six established EGTCs) and was even ‘refreshed’ through the Treaty of Aachen in January 2019, the Polish government, represented by the right-wing conservative Law and Justice Party (PiS), has ceased to actively promote CBC with Germany. Moreover, the case study on the TransOderana EGTC revealed that the political changes that occurred after the 2014 local elections in Poland acted as a decelerator of cross-border interactions within the process of founding the EGTC TransOderana. This indicates that even if the EGTC is intended to consolidate CBC in the long term, whether this legal structure will be *de facto* utilized depends on political will. Institutionally, both EGTCs attempt to balance the deliberative and decision-making participation rights of both sides of the grouping and to consider both languages equally. Social and cultural boundaries are admittedly difficult to measure, especially in these institutional structures. The main obstacles identified in both case studies were legal-administrative boundaries based on diverging national territorial structures. Due to the centralistic organization in France, these processes have been described as moving slowly. The French subnational authorities have limited competences in very few policy fields. However, the process of founding the grouping was concluded. Conversely, the case of the TransOderana EGTC yields a completely different picture: it is not only the centralistic approval authority in Poland that has served as an obstacle (although it was initially reluctant to agree to the foundation of this EGTC), but the federal state of Brandenburg as well. This result may be interpreted as opposing the view that decentralized structures favour CBC in Europe, as there are other factors that have an impact on successful CBC. In this case, the imprecise implementing provision of the federal state of Brandenburg produces uncertainty which results in the unwillingness of potential members (both districts and municipalities) in Brandenburg to participate in the grouping

**Table 1.** Comparison of both EGTC.

CBR	Countries	Eurodistrict SaarMoselle EGTC Germany, France	TransOderana EGTC Germany, Poland
	Duration of CBC in EC/ EU context	Since 1960s	Since 1990s
	Part of EC/EU	Both since 1957 (Treaty of Rome)	FRG since 1957, former GDR after reunification, Poland since 2004
	Part of EU Single Market	Both since 1992	Germany since 1992, Poland since 2011
	Part of Schengen Area	Both since 1995	Germany since 1995, Poland since 2007
	Bilateral territorial cooperation treaties	> Élysée Treaty (1963) > Agreement between Chirac-Schröder (2003) > Treaty of Aachen (2019)	> Treaty of Good Neighbourship (1991)
	Cross-border governance institutions	4 Eurodistricts and/ or 6 EGTC (3 cross-border and 3 theme-specific)	4 Euroregions, 3 town twinning projects, no EGTC founded so far
EGTC	Foundation date	6 May 2010	Not founded yet, planned since 2009
	Geographical layer	mostly local: regional associations, districts and municipalities	mostly local: districts and municipalities. Districts only on Polish side
	Seat	Sarreguemines, France; operational office in Saarbrücken, Germany	Gorzów Wielkopolski, Poland; office is to be located in Seelow, Germany
EGTC – Polity	Applied law	French public law	Polish law
	Members	DE: regional association including city of Saarbrücken (representing about 500,000 citizens) FR: several municipalities organized in districts (representing about 300,000 citizens)	DE: Towns and municipalities (representing about 100,000 citizens) in Brandenburg PL: Districts, towns, municipalities, state college (representing about 600,000 citizens)
	Involved Actors	<b>Approval Authorities:</b> DE: Ministry of Economics and Science of the Saarland; FR: Prefecture Lorraine prefecture in the city of Metz (both fostering creation)	<b>Approval Authorities:</b> DE: Brandenburg Ministry of the Interior and Communities PL: Polish Ministry of External Affairs
EGTC – Politics	Attitude of Actors towards EGTC	Saarland: Active promotion of EGTC creation by members who have been already organized in an association France: Promoting CBC to Germany. In general, the political support through the Chirac-Schröder agreement (2003) and Treaty of Aachen (2019), political support is provided by the subnational dimension	Brandenburg: First active promotion by districts, later rejection of only potential district and refusal by approval authority; PL: After parliamentary election in 2015 and local elections in 2014, no active promotion of CBC in Poland
EGTC – Policy	Policy approach	Integrated territorial development approach	Technical, logistical and economic support of the railway line and innovative and sustainable form of cross-border public services in the CBR along the line
Boundaries		<b>Legal and administrative boundaries:</b> > French public law complicates recruitment of German staff > amendment to German law with regard to employment  <b>Sociocultural boundaries:</b> > Bilingualism in CBC and EGTC > Still stereotypes on both sides, yet Treaty of Aachen aims to foster also cultural exchange	<b>Legal, administrative and political boundaries:</b> > Local/ national elections led to a more sceptical attitude towards CBC > Uncertainty regarding double structure with local self-governments > Imprecise, blurry implementation of EGTC regulation in Brandenburg > uncertainty in liability and financial issues  <b>Sociocultural boundaries:</b> > Language barrier > Bilingualism in CBC and planned EGTC

and, in addition, the refusal of the approval authority MIK to register such a grouping, which would be the first EGTC at the German-Polish border.

Therefore, in both cases, administrative-legal boundaries complicated the foundation process or the mode of operation, which resulted in completely different outcomes: the TransOderana EGTC experienced political boundaries that impeded a successful EGTC accomplishment, which could not be identified to such extent in the German-French context. While, in the German-French case, the national layers have frequently been active in providing new impetus for CBC to their subunits (most recently, through the Treaty of Aachen in January 2019), German-Polish territorial cooperation relies on national CBC agreements between Germany and Poland dating to the beginning of the 1990s. This lack of national support for CBC in the border regions in Germany and Poland can be interpreted as a form of boundary-drawing in CBC, which, in combination with the imprecise and unclear implementation of the EGTC regulation on the regional level, is a toxic combination that complicates the foundation process. In summary, legal and administrative boundaries can be overcome through the provision of political support. Political boundaries, by contrast, are more difficult to overcome. To address political boundaries on the subnational level, political signals on the national level are crucial. A new treaty between Germany and Poland on CBC could be key to overcoming this deadlock.

### **Policy recommendations: what can other regions learn?**

From a planning perspective, regions should not rely on national treaties but could instead focus on creating coherent and sound preconditions for successful cooperation. Besides political boundaries, the main reason for the failure to complete the process of establishing the EGTC has been the legal and administrative uncertainty associated with issues such as financing and liability caused by Brandenburg's imprecise and vague 2007 implementing provision. In the scant two articles of this provision, no additional information (e.g. concerning type of legal personality or legal liability) is provided. In contrast, the Polish implementing provision features 29 articles, which regulate liability and legal concerns.

As a result, the approval authority in Brandenburg MIK is therefore likely to react hesitantly should the German members be liable for the entire grouping.

To overcome this impasse, it is recommended that the region of Brandenburg (or other regions) should focus on the implementing provision of the EGTC in the federal state and consider legal amendments if the implementing acts leave uncertainties. The federal state of Bavaria has previously demonstrated that implementing provisions are not set in stone: after the adoption of the EGTC regulation in 2007/2008 in federal state law, Bavaria amended the implementing provision in 2017 by adding an optional limitation of liability (*fakultative Haftungsbeschränkung*<sup>2</sup>) to the legal document. This step clarified several doubts and uncertainties. In conjunction with political support from the national level, clarification concerning legal, financial and administrative uncertainties and boundaries promises to be key to successful supraregionalist institution-building.

### **Note**

1. German: *‘Und wie gesagt, diese Sensibilisierungsmaßnahmen, also das Bild des Nachbarn ist teilweise immer noch zum Teil stark verzerrt, egal was man macht oder denkt, dass die Grenze*

womöglich nicht mehr da ist. Aber man merkt, dass da sehr viel Vorurteile da sind, die sich eigentlich nicht begründen lassen.'

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