

### Frontier cooperation, a functionalist construction space, or Euro-region vs. European Grouping of Territorial Cooperation

Popoviciu, Adrian-Claudiu

Veröffentlichungsversion / Published Version

Zeitschriftenartikel / journal article

#### Empfohlene Zitierung / Suggested Citation:

Popoviciu, A.-C. (2011). Frontier cooperation, a functionalist construction space, or Euro-region vs. European Grouping of Territorial Cooperation. *EuroImes*, Supl. 3, 31-44. <https://nbn-resolving.org/urn:nbn:de:0168-ssoar-293743>

#### Nutzungsbedingungen:

Dieser Text wird unter einer CC BY Lizenz (Namensnennung) zur Verfügung gestellt. Nähere Auskünfte zu den CC-Lizenzen finden Sie hier:

<https://creativecommons.org/licenses/by/4.0/deed.de>

#### Terms of use:

This document is made available under a CC BY Licence (Attribution). For more information see:

<https://creativecommons.org/licenses/by/4.0>

# FRONTIER COOPERATION, A FUNCTIONALIST CONSTRUCTION SPACE OR EURO-REGION VS. EUROPEAN GROUPING OF TERRITORIAL COOPERATION

Adrian-Claudiu POPOVICIU

**Abstract:** *The philosophy of the cross-border cooperation it is based on the central idea according to which if one or more border regions consider that they can solve better a series of issues together, than if they would approach them individually. The cross-border cooperation it is based upon the principles of partnership, subsidiarity and upon that of the existence of a concept or common strategy of cross-border development. The principle of partnership implies the existence of two types of relations: the partnership on vertical between the national, regional and local levels on each side of the border and the partnership on horizontal established between the partners on the both sides of the border. The experience shows that the cross-border cooperation operates better and has more success in the areas where the initiative of constitution belonged to the local and regional actors. This down-to-up approach is in conformity with the principle of subsidiarity.*

**Keywords:** *frontier cooperation, functionalism construction, Euro Region, European Grouping of Territorial Cooperation*

## 1. David Mitrany and the paradigm of cross-border cooperation

Even if, in his work, do not appear examples of cross-border structures with functional elements, Mitrany considers that this space is, particularly, a benefited one for the development of such forms of organization. The main statement of Mitrany is included in his work *A Working Peace System, an Argument for the Functional Development of International Organization*: „There is a good way of testing these ideas, in their general nature, by looking at them in the light of two problems which in the traditional systems have had to remain-in the realm of theory, but which, because they seem so baffling, may serve to show how solid could the achievement of a functional order be. The first is the pivotal problem of peaceful change. Whether ends justify means or

not, certain it is that ends must determine means. Now the method here advocated would be valueless for certain formal changes, and it is therefore necessary to point out that the meaning and purpose of peaceful change have hitherto been greatly confused by an excessive attention to formal issues. As the claimants for revision or changes since the World War have almost all wanted changes of frontiers, so the reformers in their turn have laid the emphasis on the possible use of art. XIX of the Covenant to that end. It was easy for more cautious students to show how difficult in fact that would be, and it would be still easier to show that changes of frontiers could not be served by the functional method.<sup>1</sup> But then the functional method by implication denies that there is much progress to be made through changes of frontiers. The only sound sense of peaceful change is to do internationally what it does nationally: to make changes of frontiers unnecessary by making frontiers meaningless through the continuous development of common activities and interests across them. A change of frontier is bound to disturb the social life of the groups concerned, no matter whether it comes about peacefully or forcibly. The purpose of peaceful change can only be to prevent such disturbance; one might say indeed that the true task of peaceful change is to remove the need and the wish for changes of frontiers. The functional approach may be justifiably expected to do precisely that: it would help the growth of such positive and constructive common work, of common habits and interests, making frontier lines meaningless by overlaying them with a natural growth of common activities and common administrative agencies” (Mitrany, 1943:26-27).

My reasoning starts from Mitrany’s idea and aims the functionalist theoretic pattern as the most adequate method (Bărbulescu, 2001:46-47) in realizing the process of sectorial integration. Considering that the primary elements of the European construction are of functionalist nature, I believe that the elements of the functionalist theory can generate the apparition of integration elements at the level of the mycro-communitary structures. In my reasoning I also took into consideration the results of the researches made by my colleagues inside the Euroregional Studies Institute.

The European Union and the Council of Europe concedes a very big interest to the issues of borders and frontier spaces, this aspect being connected to the tendency of progressive weakening of the political dividing lines and the disappearance of economic barriers. The European construction fundamentally needs these cross-border spaces in order to demonstrate its viability, authenticity and legitimacy; the cross-border regions are privileged laboratories of the European construction (Ricq, 2000:11).

Once with the globalization of economic trades, the regions are being involved in a sort of transnational frenzy. Encouraging this new sphere of action into the field of international relations was due to the adoption of some laws that aimed decentralization, a generator fact of European cooperation

between regions. Threw them there are established not only equal relations in the common interest actions, but especially competences are given to the territorial collectivities in the international order. Any cross-border region is formed of a space, a number of human collectivities and a network of relations that are being connected between the collectivities and the space they are on, but which are disturbed by the legal constraints of the frontier.

Every cross-border region has its own characteristics, depending on its territory, which is coordinated by one or more urban poles, or which has a diffuse urbanize. It is still to be retained a last fundamental approach for the border regions, which makes the difference between the relations of functional or organic type and those of conflictual type. This distinction is important for these regions, for, more than others, these take part to a double game of functional, contractual and/or conflictual relations. On the one hand, theoretically it is always possible to be solved in common, with the partners, issues assembling to environment, communication, and on the other hand, considering the systems they are compulsory interdependent in, cross-border relations are equally marked of conflicts. Therefore, in many border spaces it is posed the question about the possible or wanted apparition of the “cross-border conscience”, of “cross-border culture” which could be based on a real partnership and not upon a mutual “right to interfere” (Ricq, 2000:17).

## **2. The Euro-region, the pattern of cross-border cooperation in the vision of the Council of Europe.**

After this presentation of the concept of cross-border cooperation and of the areas in which this transnational relationship can solve the communities' problems in a more efficient way, I will also analyze the institutional arrangements under which the national State creates a legal framework conducive to conduct the cross-border relations. The *European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities*<sup>1</sup> is at the origin of the process of developments of the cross-border cooperation, addressing it in a legal instrument of reference for any possible form of cross-border cooperation<sup>2</sup>, being the translation of several years of reflection and efforts of the Council of Europe. This Convention is the keystone of the new edifice on which the European construction had to give priority in the border areas. „The member States of the Council of Europe,

---

<sup>1</sup> Source: <http://conventions.coe.int/Treaty/en/Treaties/Html/106.htm>

<sup>2</sup> *European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities*, Madrid, 21 May 1980, <http://conventions.coe.int/Treaty/en/Treaties/Html/106.htm>, accessed at 28 November 2011.

signatories to this Convention, Considering that the aim of the Council of Europe is to achieve a greater unity between its members and to promote co-operation between them; Considering that, as defined in Article 1 of the Council of Europe Statute, this aim will be pursued in particular by agreements in the administrative field; Considering that the Council of Europe shall ensure the participation of the territorial communities or authorities of Europe in the achievement of its aim; Considering the potential importance, for the pursuit of this objective, of co-operation between territorial communities or authorities at frontiers in such fields as regional, urban and rural development, environmental protection, the improvement of public facilities and services and mutual assistance in emergencies; Having regard to past experience which shows that co-operation between local and regional authorities in Europe makes it easier for them to carry out their tasks effectively and contributes in particular to the improvement and development of frontier regions; Being resolved to promote such co-operation as far as possible and to contribute in this way to the economic and social progress of frontier regions and to the spirit of fellowship which unites the peoples of Europe, ...”<sup>3</sup>.

The framework Convention does not have as ambition to regulate all situations of cross-border cooperation. It provides, in particular, that its provisions „shall not prevent the Contracting Parties from having recourse, by common consent, to other forms of trans-frontier co-operation. Similarly, the provisions of this Convention should not be interpreted as invalidating existing agreements on co-operation.”<sup>4</sup>. This leaves a gate opened for future developments, thereby contributing to the success of the implementation of the Convention, both in terms of ratifications by States as well as its use by the cross-border organizations. The first finding that we can do aims the link that the framework Convention makes between the cross-border and all the neighbourhood relationships in general. Secondly, the provisions mentioned by the framework Convention are less restrictive, with a particular structure of a relatively short agreements, subject to the common system provided by the general international law of treaties, and a series of annexes under the form of "models and sketches of agreements, of statutes and contracts" which, „intended for guidance only and have no treaty value”<sup>5</sup>.

This agreement insists that each State to facilitate and promote cross-border cooperation between territorial collectivities and that such cooperation

---

<sup>3</sup> Preamble European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities.

<sup>4</sup> Art. 3, point 3 of European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities.

<sup>5</sup> Art. 3, point 3 of European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities.

may take the form of agreements concluded directly between these authorities, under the agreement of the States. The Convention distinguishes two basic forms of cooperation: a) cooperation through the exchange of information; b) concluding of agreements or arrangements which give rise to the creation of precise legal links. This Convention is particularly interesting as it is addressed to the European countries as a whole. It can be so signed or even ratified by all Member States of the Council of Europe, even by States with special guest status near the Council of Europe.

Even though today we relate always to the framework Convention, the Euro-regions, as institutionalized forms of cross-border cooperation have appeared after the Second World War. It is considered that the first Euro-region<sup>6</sup> was created after an accident occurred at the border between Germany and Holland in 1958. A young man suffered a stroke and had to be transported to a distance of 100 km to the nearest hospital in his country, though less than a kilometre across the German border was a hospital that would have been able to provide the necessary medical aid (Zaharia, Brăilean, 2011: 126). After this tragic event it was decided to open the borders, and the children could attend the school nearest to their home, even if it was in the neighbouring country. Subsequently the two communities have begun to develop partnerships in areas that are today by common interest: social and cultural cooperation, economic development, inter-communal cooperation and community assessment services<sup>7</sup>.

The conditions for the optimal development of a Euro-region are the minimal economic balance, the common cultural elements and the historical heritage. Based on these criteria, a number of European institutions have promoted the development of Euro-regions<sup>8</sup>. Within the European Union it was launched in 1975 a financial instrument of regional policy, the European Fund of Regional Economic Development, which responded to a vision essentially economic, i.e. supporting the regions falling under the Community average as the level of development. Although both the Council of Europe and the European Union are involved in the development and consolidation of European regions, it should be noted the difference in orientation of the two international bodies in this area. Thus, if the European Union's regional policy

---

<sup>6</sup> <http://www.euregio.de/cms/publish/content/showpage.asp?pageid=213>, accessed at 25 November 2011.

<sup>7</sup> <http://www.euregio.de/cms/publish/content/showpage.asp?pageid=215>, accessed at 25 November 2011.

<sup>8</sup> It should be noted, first, the role of the Council of Europe through its documents relating to cross-border cooperation, and through the work of the Standing Conference of Local and Regional Authorities of the Council of Europe (founded in 1975 and transformed in 1994 into the Congress of Local and Regional Authorities of Europe).

aims, inter alia, an economic end, the Council of Europe attaches a great importance to the conservation of cultural heritage, specific to each region, intercultural dialogue, the development and preservation of ethnic or religious groups, as well as interregional institutional development.

As an example of good practice in the establishment and development of this instrument of territorial and institutional organization, promoted by the Council of Europe and supported by the European Union, i.e. the Euro-region, we consider necessary to present a case.

The Carpathian Euroregion<sup>9</sup> includes border areas of five countries: Poland, Slovakia, Hungary, Ukraine and Romania with a population of over 16 million inhabitants and an area of 161,000 km<sup>2</sup>. It functions under the Agreement on the establishment of an interregional Association the Carpathian Euro-region and of the Statute of the interregional Association Carpathian Euroregion.



### Carpathian Euroregion.

Source: <http://www.tradecarp.com/index.php?:40:ro:Home>

The goal of the Carpathian Euroregion is to organize and coordinate the activities, to promote the cooperation between economic, scientific, ecological, cultural, sporting and educational actions, to facilitate contacts with

<sup>9</sup> [http://www.carpathianfoundation.org/cf/web/branch\\_ro/index.jsp?id=27](http://www.carpathianfoundation.org/cf/web/branch_ro/index.jsp?id=27), accessed at 25 November 2011

the bodies, organizations and international institutions. The basic role of the euro-region is to facilitate contacts and facilitate the establishment of cooperation between citizens, institutions, local and regional authorities. In its practice, this activity depends on the specific needs. Another important role of the Euro-region is to prepare and inspire the preparation of documents necessary for the development of the regions in this part of Europe. This strategy is very important for the members of the region.

The objectives of the Carpathian Euro-region are: to promote the local interests of the regions concerned through strengthening the economic, cultural, scientific and tourist links regions of the neighbouring States; influencing the reducing of tensions and building of good-neighbourly relations; lobbying near the national authorities with a view to streamlet the cross-border traffic by opening of new border crossing points. From the structural point of view, this Euro-region consists of a Council of the Carpathian Euro-region and Confronting work commissions. The EC council is composed of representatives of Member States and chaired by a President and decides the strategy of the Euro-region, as well as on issues of interest to the entire Euro-region. Working committees are divided into five major areas of interest for the proper development of the Euro-region: the Committee on Regional Development - Hungary; the Committee for Tourism and the Environment – Poland; The Committee for the Development of Trade-Romania; The Committee for Social Infrastructure-Ukraine; The Committee for the Prevention of Natural Disasters – Slovakia.

In the end of the analysis dedicated to the instrument of territorial planning that responds to some needs of functional type in the social organization, we must add up to what is stated, that the Euro-region now has an inhibitory capacity at the level of the nationalist or racist manifestations, through the promotion of the diversity of partners and the rejection of the idea of a homogeneous Europe. „The unification of Europe has no chance of success if we ourselves do not find a balance between unity and decentralisation” (Rarița, 2004: 236), believes Chris Neubourg, professor at the University of Limburg in Maastricht. Regions and Euro-regions have a special feature in this balance. On the one hand, the force of a United Europe is not from its market of 490 million people, but especially from this diversity of the market diversity capable to highlight the citizen, and on the other hand, the Europe of regions contains a risk highlighted by the ethnic entities. Here, at this level, interferes the force of the Euro-regions because they contain the necessary elements required to the balance between unity and decentralisation flaunting that they consist of at least two different nationalities, two entities. However, there is also a breakdown in the cross-border cooperation, the Euro-regions’ poor regulatory powers in the constitutions of European countries (Rarița, 2004: 237).



### 3. The European Union between Euro-region and the European Grouping of Territorial Cooperation

We state above the, somehow, different position on the part of the two Euro regions in large organizations, we mean the European Union and the Council of Europe. If until 2007, the Euro-regions were, from a legally point of view, private organisations, in particular non-governmental organizations, which determined a specific limitation in attaining their objectives fully, fact underlined by the European Parliament<sup>10</sup>, after approving the regulation on the establishment of European Grouping of Territorial Cooperation (EGTC)<sup>11</sup>, the cross-border development experienced an unexpected reviriment. Thus, since the budget exercise 2007-2013, at the level of the European Union we have available two institutional mechanisms that are established for the reinforcement of the three types of cooperation: cross-border, regional and inter-regional.

Even if these mechanisms or territorial planning tools function in the same purpose, between them there are differences of institutional design and legal construction. As I pointed out, the existing Euro-regions are initiatives of the border regions and other local entities in several countries (not necessarily Member States of the EU), which have not any defined status in the context of the European Union. In most cases, the Euro-regions are either non-governmental organizations, or do not have a legal personality, and the concept of "Region" is not legally protected. Another aspect determining the Euro regions takes into account the concentration of these, mainly on the various cultural, economic, social, administrative common areas, and the form of cooperation can take various organizations: community of interests, without legal personality, economic community, non-profit, community work without legal personality.

The Association of the European Frontier Regions<sup>12</sup> established that an Euro-region can identify itself upon the following characteristics: it is an association of local and regional authorities, on both sides of the border, sometimes with a parliamentary assembly; it is a cross-border association with a permanent secretariat and a technical and administrative team with their own resources; It has a legal status governed by private law, or associations or foundations on both sides of the border, in accordance with national legislation

---

<sup>10</sup>*Report on the Role of „Euro-regions” in the Development of Regional Policy (2004/2257(INI)) Committee on Regional Development Rapporteur: Kyriacos Triantaphyllides*, <http://www.europarl.europa.eu/sides/getDoc.do?type=REPORT&reference=A620050311&format=XML&language=EN>, accessed at 25 November 2011.

<sup>11</sup>*Regulation (EC) No 1082/2006 of the European Parliament and of the Council of 5 July 2006 on a European Grouping of Territorial Cooperation (EGTC).*

<sup>12</sup> <http://www.aebr.net/>, accessed at 25 November 2011.

in force; It can also be organizations with public-law legal regime, created on the basis of agreements between the partner States.

Until 2007, at the level of the European Union, it did not exist, even if the budgetary allocations were and are significant, that institutional instrument capable not only to attract but also to consume the Community funds, and also to manage the cooperation programs. As I stated before, the outstanding feature of cross-border activities within the EU is considering the financial component, fact that results in a tremendous growth of cross-border cooperation since 1988, when there were released the first community support schemes dedicated to cross-border initiatives in Western Europe, and, after the '90s, the initiatives originary in Eastern and Central Europe. From the 26 initiatives in 1988, when the Commission launched its first pilot project, the number almost tripled, to over 70 in 1999<sup>13</sup>.

We believe that this trajectory from the problem to the body is specific to the method promoted by David Mitraný, because the European Union, recognizing the problem of disparities between border regions, has developed a Community programme to mitigate them. The ways to solve the common issues of the border communities have determined and then created a specific legal instrument of the European Union.

We note that this approach respects the logic of the functionalist method:



By the end of the programming period 2000-2006, very few programmes INTERREG have been managed directly by the joint body for drawing up integrated management<sup>14</sup>, for instance, Euro-regions or other cross-border structures with legal personality (only 6% from the INTERREG IIIA programs have been managed in this way). In turn, the managing functions [mainly, Managing Authority (MA), Certifying Authority (CA) and Joint Technical Secretariat (JTS)] have been accomplished by the regional or national institutions, (regional councils, ministries, etc) from one or more participating

---

<sup>13</sup> *Report on the Role of „Euro-regions” in the Development of Regional Policy (2004/2257(INI))* Committee on Regional Development Rapporteur: Kyriacos Triantaphyllides, <http://www.europarl.europa.eu/sides/getDoc.do?type=REPORT&reference=A6-2005-0311&format=XML&language=EN>, accessed at 25 November 2011.

<sup>14</sup> Interact Point Tool Box, *Study on organisational aspects of cross-border INTERREG programmes - Legal aspects and partnerships*, 2006, [http://www.interact-eu.net/interact\\_studies/63](http://www.interact-eu.net/interact_studies/63), accessed at 20 November 2011.

countries<sup>15</sup>.

Perhaps the main reason for the smooth conduct of the community was the lack of an appropriate legal framework for the establishment of such joint management structures. But this problem has been remedied by the Community institutions for the current financial exercise, by the proposals made in the framework of community cohesion policy. Therefore, the need to create a an adapted instrument pressed the European Commission to propose, on 14 July 2004, a regulation of the European grouping for territorial cooperation (EGTC). Regulation EGTC<sup>16</sup>, it refers to a legal instrument, whose validity is not limited to the programming period 2007-2013, it is meant to be used for: implementing territorial cooperation programmes or projects co-financed by the Community, in particular under the structural funds in accordance with the Regulation (EC) No 1083/2006 and Regulation (EC) No 1080/2006 of the European Parliament and of the Council of 5 July 2006 on the European Regional Development Fund; either to realize actions of territorial cooperation at the initiative of the Member States, regions and their local communities, with or without the community's financial contribution. Another reason for creating this common integrated management mechanism is considering the implementation of the principle of non-discrimination, according to which cooperation should not be more difficult between two partners from different Member States than between partners located in the same Member State<sup>17</sup>.

Even if initially the Commission proposed that the legal form of organization to have territorial jurisdiction in cross-border area, it was decided to have proficiency in all three major areas of intervention: cross-border, transnational and inter-regional cooperation, being approved on 5<sup>th</sup> of July 2006. After the approval of the Regulation, which was directly applicable in all the 25 + 2 EU Member States from 1 august 2006, the Member States have had to carry out the legislative framework necessary to ensure the effective application of the regulation, within one year.

The European Grouping of Territorial Cooperation (EGTC) it is like the euro-regions a cross-border entity, but, unlike these, the grouping has legal personality recognised both at Member State level, as well as the European Union level. In accordance with article 4, paragraph 4 of the regulation, EGTC has, in all Member States the most extensive legal capacity accorded to legal

---

<sup>15</sup>*The European Grouping of Territorial Cooperation (EGTC), WhatUse for European Territorial Cooperation Programmes.AndProjects?*, Wien, 2008 p. 8, <http://portal.cor.europa.eu/egtc/en-US/Pages/welcome.aspx>.

<sup>16</sup>*The Regulation (CE) no. 1082/2006 of the European Parliament and of the Council from the 5th of July 2006 regarding an European grouping of territorial cooperation (GECT).*

<sup>17</sup>*The European Grouping of Territorial Cooperation (EGTC), WhatUse for European Territorial Cooperation Programmes.AndProjects?*, Wien, 2008, p. 8.

persons under the national law of the Member States. In particular, EGTC may acquire or dispose of tangible or intangible “assets”, can engage staff and may sue and be sued.

According to the rules of organisation and functioning of EGTC we can identify four main models of organization of this legal instrument:

1. The launching of the Grouping in order to implement the territorial cooperation programmes. Example: EGTC as Managing Authority (MA) and/or Joint Technical Secretariat (JTS) in INTERREG IVA Programme;
2. The realization of EGTC for the implementation of projects co-financed in the field of territorial cooperation in the framework of the structural funds (FEDR, FSE). Example: it could cover the performance of cross-border transport or health services in inside of a programme's objective of cooperation or two programmes of national convergence;
3. The European grouping of territorial cooperation created in order to develop and implement projects funded by the European Union other than those listed above; Example: FP 7 for Research and Technical Development or CIP (The Frame Programme for Innovation and Competitivy) can co-finance cooperation projects presented by entities from two Member States;
4. EGTC realized for achieving common objectives of the communities outside any funds of the Union.

As I mentioned above, in accordance with article 4 of the regulation every EGTC shall enjoy the maximum legal and contractual capacity accorded to the legal persons in any Member State of the Union, and in terms of participation in its establishment, the regulation requires the existence of the legal authorities of at least two Member States<sup>18</sup>. Are allowed to be members of an European grouping of territorial cooperation, the following entities: (a) Member States; (b) regional authorities; (c) local authorities; (d) bodies governed by public law within the meaning of the second subparagraph of Article 1(9)<sup>19</sup> of Directive 2004/18/EC of the European Parliament and of the

---

<sup>18</sup> Art. 3 of Regulation (EC) No. 1082/2006.

<sup>19</sup> Art. 1(9) “Contracting authorities” means the State, regional or local authorities, bodies governed by public law, associations formed by one or several of such authorities or one or several of such bodies governed by public law. A “body governed by public law” means any body: (a) established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character; (b) having legal personality; and (c) financed, for the most part, by the State, regional or local authorities, or other bodies governed by public law; or subject to management supervision by those bodies; or having an administrative, managerial or supervisory board, more than half of whose members are appointed by the State, regional or local authorities, or by other bodies governed by public law. Non-exhaustive lists of bodies

Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts.

The Union's Member States have three very important roles in determining the profile of a EGTC: they must designate the authorities responsible for<sup>20</sup> for the implementation of the regulation and lays down the involvement of prospective members that fall under their jurisdiction<sup>21</sup>; designates the authority competent to supervise the management of public funds by a EGTC<sup>22</sup>; the Member States also become members of EGTC<sup>23</sup>. Under the terms of the Regulation 1082/2006 the participation of private entities is excluded, but there may be invoked the provisions of Article 1 (9) of Directive 2004/18/EC, which lays down the criteria for the definition of a public body. Under these circumstances, also a private entity can be considered as potential constitutive member of an European group of territorial cooperation. Whatever the situation, the Member States are obliged to regularly inform the Commission of any amendments to the lists of bodies and categories of bodies which may participate in the formation of a group. In addition, we must not forget the possibility of using another legal instrument, subject to the community states level, that of the public-private partnership (EGTC and private entities), in order to ensure project management, but also for those legal entities that may not become members of EGTC to have a role in its management.

Objective and tasks of the European grouping of territorial cooperation are laid down by its members through the Convention concluded between the members, subject to the not-assuming of some public areas closely linked to the sovereignty of the State<sup>24</sup>. However we interpreted the community

---

and categories of bodies governed by public law which fulfil the criteria referred to in (a), (b) and (c) of the second subparagraph are set out in Annex III. Member States shall periodically notify the Commission of any changes to their lists of bodies and categories of bodies.

<sup>20</sup> Art. 16 (1), Regulation (EC) No. 1082/2006.

<sup>21</sup> Art. 2 (2), Regulation (EC) No. 1082/2006.

<sup>22</sup> Art. 6 (1), Regulation (EC) No. 1082/2006.

<sup>23</sup> Art. 3 (1), Regulation (EC) No. 1082/2006.

<sup>24</sup> Art. 13 Regulation (EC) No. 1082/2006 "Where an EGTC carries out any activity in contravention of a Member State's provisions on public policy, public security, public health or public morality, or in contravention of the public interest of a Member State, a competent body of that Member State may prohibit that activity on its territory or require those members which have been formed under its law to withdraw from the EGTC unless the EGTC ceases the activity in question. Such prohibitions shall not constitute a means of arbitrary or disguised restriction on territorial cooperation between the EGTC's members. Review of the competent body's decision by a judicial authority shall be possible".

or national rules, by setting up an European grouping of territorial cooperation, its members should not make it an end in itself but a means to reach the objectives of common interest of border communities or otherwise.

#### 4. Conclusions

In a glance, we can affirm that EGTC is a legal instrument drawn up under the legislation of the European Union, not on the basis of international law, as is the Euro-region. Thus, it does not require ratification or negotiation of bilateral or multilateral treaties, but it is binding and directly applicable in all Member States. As a result, the regulation itself allows to local and regional authorities in the various Member States as well as to certain bodies governed by public law, or associations of all these authorities to set up joint groups with legal personality for the implementation of cooperation programmes and projects. Another issue examined above relates to the legal personality of the group, which can be private or public, depending on the applicable national legislation (this possibility is being let opened by the Regulation). In particular, the EGTC has the most extensive legal capacity accorded to legal persons inside the Member States through the national legislation<sup>25</sup>.

In comparison with other cooperation structures, which have no legal personality, in essence, this means the ability to act as an autonomous body, having in its own budget the possibility of employment of staff and legal proceedings. Another innovation brought by this instrument concerns the opened possibility of various legal bodies to carry out this group, thereby increasing the number of possible partnerships. All types of "bodies governed by public law" may become members, and the possibility for Member States to participate in EGTC constitutes an important change of the territorial cooperation community vision. This possibility is especially important in Member States where there are no regions (Slovenia and Luxembourg) and contributes to the implementation of the concept of multi-level governance and the increasing importance of territorial cooperation dimension in the overall vision of the European Union.

A very important aspect that should be emphasized concerns the fact that EGTC does not create an intermediary administrative level, and its members do not totally transfer their competences to the grouping, only those that are necessary for applying the assumed mission. This instrument of

---

<sup>25</sup> Art. 1(4) Regulation (EC) No. 1082/2006 "An EGTC shall have in each Member State the most extensive legal capacity accorded to legal persons under that Member State's national law. It may, in particular, acquire or dispose of movable and immovable property and employ staff and may be a party to legal proceedings".

territorial cooperation has also the goal to eliminate a discriminatory reality inside the European Union on the Intern Market, embodied by the different feature of facilitating the cooperation between two partners from different countries, to the cooperation between two partners from the same country. EGTC does not eliminate all the existing legal forms of cooperation, but comes with a new alternative, it is true, more consolidated.

Unlike the lack of legal protection of the Euro-region concept, that of EGTC is officially recognized by the European Commission as “label” protected by the European Union. A final aspect that I wish to emphasize aims the possibility that these groups of cooperation, due to the multiple variants of associating the associates, but also to the existence of a junction between the communitary and national legislation, to result, in a longer or shorter time, in a specific heterogeneity of forms of delivering them, which then could affect the major objectives of the Community regional policy.

## BIBLIOGRAPHY

- Report on the Role of „Euroregions” in the Development of Regional Policy (2004/2257(INI))*, Committee on Regional Development, Rapporteur: Kyriacos Triantaphyllides.
- Regulation (EC) No 1082/2006 of the European Parliament and of the Council of 5 July 2006 on a European Grouping of Territorial Cooperation (EGTC).*
- Interact Point Tool Box, Study on organisational aspects of cross-border INTERREG programmes - Legal aspects and partnerships, 2006
- The European Grouping of Territorial Cooperation (EGTC), What Use for European Territorial Cooperation Programmes And Projects?*, Vienna, 2008.
- Bărbulescu, Iordan Gheorghe (2001), *Uniunea Europeană – aprofundare și extindere: de la Comunitățile Europene la Uniunea Europeană*, București, Editura Trei.
- Mitrany, David (1943), *A Working Peace System an Argument for the Functional Development of International Organization*, London, Oxford University Press.
- Rarița, M. (2004), „Euroregiunile – începutul unei noi Europe” in *Analele Universității Dunărea de Jos*, Philosophy Series, Galați.
- Ricq, Charles (2000), *Manual de cooperare transfrontalieră pentru uzul colectivităților locale și regionale în Europa*, 3<sup>rd</sup> Edition, Centrul de informare și documentare al Consiliului Europei la București.
- Suli-Zakar, Istvan; Horga, Ioan (editors) (2006), *Regional Development in the Romanian - Hungarian - Cross - Borderspace - from National to European Perspective*, Debrecen, Debreceni Egyetem Kossuth Egyetemi Kiadoja.
- Zaharia, R.; Brăilean, T. (2011), *Regionalizare și globalizare - suport de curs*, Universitatea Al.I. Cuza – Iași, Centrul de Studii Europene.

