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# Evolution and future perspectives of European Territorial Cooperation

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## Abstract

The paper analyses the evolution and future perspectives of European Territorial Cooperation. More specifically, in the first part of the research, the aim is to describe and classify the different E.U. programmes and legal instruments in order to define their legal status and to clarify in which way each one of them brings its own contribution to the general framework of European Territorial Cooperation. After doing this, the second goal of the study is to try to understand which are the future perspectives of European Territorial Cooperation and what this particular type of cooperation could add to the European integration process in the area of administrative law.

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*1. Introduction: how is the 'territorial dimension' of Cohesion Policy affecting multilevel governance models in the E.U.?*

As known, one of the main objectives of the E.U. integration process has always been to increase economic welfare for its Member States. However, practical experiences have shown how market forces can also produce a relocation of resources so that potential gains from the functioning of the single market are distributed unequally across regions and territories within the E.U.[1]

Therefore, Cohesion Policy was initially introduced to compensate regions which received less benefits from the single market. In this sense, it can still be considered as the main E.U. instrument to reduce regional disparities.

Looking into Cohesion Policy's history[2], it is possible to recognise some major changes after the turn of the millennium: on one hand, the new programming periods were characterised by the enlargement of the E.U., which led to a reorientation of operative aims[3] and funding distribution towards new Member States; on the other hand, the E.U. explicitly addressed the territorial element as a policy dimension[4].

Focusing on this last specific aspect, Cohesion Policy was instituted by the Single European Act of 1986, and afterwards confirmed by the Treaties of Maastricht, Amsterdam and Nice. According to the recalled Treaties, Cohesion Policy was meant

[1] Looking at the last decades, the 6th *Report on economic, social, territorial cohesion* by the European Commission declares that until «the crisis in 2008, disparities between regional economies in the Eu were shrinking. In 2000, average GDP per head in the most developed 20% of regions was about 3.5 higher than that in the least developed 20%. By 2008, the difference had narrowed to 2.8 times. […] However, the crisis seems to have brought this tendency to an end and between 2008 and 2011, regional disparities widened». For a more recent analysis of the phenomenon, cfr. S. IAMMARINO, A. RODRÍGUEZ-POSE, M. STORPER, *Why Regional Development Matters for Europe's Economic Future*, Working Paper, VII, 2017, Publications Office of the European Union, Luxembourg.

[2] For an historical analysis of E.U. Cohesion Policy see L. HOOGHE, G. MARKS, *Multi-level governance and European Integration*, Rowman & Littlefield, Lanham, Maryland, 2001; S. LECLERC (ed.), *L'Europe et les régions: quinze ans de cohésion économique et sociale*, Bruylant, Bruxelles 2003; V. BONCINELLI, P. CARETTI, *Sviluppo regionale*, in M.P. CHITI, G. GRECO (eds), *Trattato di Diritto Amministrativo Europeo*, Giuffrè, Milano, 2007; A. CLARONI, voice *Politiche di coesione*, in S. CASSESE, *Dizionario di Diritto Pubblico*, Giuffrè, Milano, 2006, pp. 4345 ss. I. BACHE, *Europeanization and Multi-level Governance: EU Cohesion Policy and Pre-accession Aid in Southeast Europe*, in *Southeast European and Black Sea Studies*, X, 2010, pp. 1 ss.; N. STAEK, *The European Structural Funds – Their History and Impact,* Aldershot, 1996, pp. 26 ss.

[3] See J. B. SUTCLIFFE, *The 1999 reform of the structural fund regulations: Multi-level governance or renationalization?*, in *Journal of European Public Policy*, 2001, II, pp. 290-309.

[4] A sure turning point, in this sense, was the *European Spatial Development Perspective* (*ESDP*), agreed at the Informal Council of Ministers responsible for Spatial Planning in Potsdam, May 1999. Also see F. BARCA, *An Agenda for a Reformed Cohesion Policy. A place-based approach to meeting European Union challenges and expectations*, in *EERI Research Paper Series*, 2008, Economics and Econometrics Research Institute (EERI), Brussels; *Territorial Agenda of the European Union. Towards an Inclusive, Smart and sustainable Europe of Diverse Regions*, agreed at the Informal Council of Ministers responsible for Spatial Planning in Godollo, Hungary, May 2011, where it was agreed that «the objectives of the EU defined in the Europe 2020 Strategy for smart, sustainable and inclusive growth can only be achieved if the territorial dimension of the strategy is taken into account, as the development opportunities of the different regions vary» one from another because of different variables.


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to be developed in an economic and in a social dimension. The Lisbon Treaty, however, introduced for the first time the concept of 'territorial cohesion'[5] in E.U. primary law[6], and Cohesion Policy now finds its legal basis in Title XVIII of TFUE (art. 174-178), which is significantly headed *Economic, Social and Territorial Cohesion*[7].

In a general way, the 'territorial dimension' of Cohesion Policy seems to be centred on the sustainable use of specific territorial features which have the potential to reduce disparities between European regions. In other words, the place-based approach that inspires this new dimension is based on the aim of tackling persistent underutilisation of regional potentialities and reducing social exclusion of specific areas of the E.U. territory[8].

In order to correctly address the objective of territorial cohesion, however, several questions must be answered, concerning how people use the spaces in which they live (social and economic dimension), which are the territorial implications of E.U. sectoral policies (political dimension) and, most importantly with regards to our investigation, the models and functioning of administrative cooperation between E.U. institutions, national, regional and local authorities (institutional dimension).

Focusing on the institutional dimension, it is worth reminding that Cohesion Policy is built upon the partnership[9] and the subsidiarity[10] principles, according to which

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[5] See *Green paper on Territorial Cohesion. Turning territorial diversities into strengths*, COM (2008) 616, Bruxelles, 6 October 2009.

[6] Art. 3, par. 3, TEU, states that the Union «shall promote economic, social and territorial cohesion, and solidarity among Member States».

[7] See O. PORCHIA, Artt. 174-178, in A. TIZZANO (ed.), *Trattati dell'Unione Europea*, Milano, 2013, pp. 1572 ss.

[8] In this sense, it is worth reminding that art. 174, par. 3 of the TFUE underlines the need to pay particular attention to «rural areas, areas affected by industrial transition, and regions which suffer from severe and permanent natural or demographic handicaps such as the northernmost regions with very low population density and island, cross-border and mountain regions».

[9] As a matter of fact, the partnership principle was strengthened with the adoption of Regulation 1303/2013. When in the previous programming period a partnership was organised where applicable, Member States are now obliged to organise a partnership at all stages of the programming and at all levels (art. 5 of Regulation (EU) No. 1303/2013). In this sense, the European Code of conduct on Partnership represents an additional important step forward in view of enhancing collective commitment and ownership of Cohesion Policy. The Code defines the objectives and criteria that Member States should follow in the concrete implementation of the partnership principle, but also leaves the flexibility for the practical implementing arrangements pursuant the institutional internal structure of Member States.

[10] On the principle of subsidiarity, see J. ZILLER, *Le principe de subsidiarité*, in J.B. AUBY, J. DUTHEIL DE LA ROCHELLE (eds), *Droit administratif européen*, Bruxelles, Bruylant, 2007, pp. 377 ss.; F. PIZZETTI, G. TIBERI, *Le competenze dell'Unione e il principio di sussidiarietà*, in F. BASSANINI, F. TIBERI (eds), *Commento al Trattato di Lisbona*, Bologna, 2010, pp. 133 ss.; N.W. BARBER, *The limited modesty of subsidiarity*, in *European Law Journal*, XI, 2005, pp. 308 ss.; P. CRAIG, *Subsidiarity: a political and legal analysis*, in *Journal of Common Market Studies*, L, 2012, pp. 72 ss.; A. CYGAN, *Regional governance, subsidiarity and accountability within the EU's multi-level polity*, in *European Public Law*, XIX, 2013, pp. 161 ss.; G. DE BURCA, *Proportionality and subsidiarity as general principles of law*, in U. BERNITZ (ed.), *General Principles of European Community Law*, Kluwer, London, 2000, pp. 95 ss.; A. ESTELLA DE NORIEGA, *The EU Principle of Subsidiarity and Its Critique*, Oxford, Oxford University Press, 2002; P. KIIVER, *The Early Warning System for the Principle of Subsidiarity. Constitutional Theory and Empirical Reality*, London,

structural actions should be carried out by Member States in cooperation with the European Commission, as well as with their regional and local authorities (and private parties). Under this perspective, it is easily understandable how the 'place-based' approach brought by the addition of the territorial dimension to cohesion policies has been a trigger for deep institutional changes, concretely affecting multilevel governance models connected to European Structural and Investment Funds (ESI Funds)[11].

Theoretically, multilevel governance[12] «can be defined as an arrangement for making binding decisions that engages a multiplicity of politically independent but otherwise interdependent actors – private or public – at different levels of territorial aggregation in more or less continuous negotiation/deliberation/implementation, and that does not assign exclusive policy competence or assert a stable hierarchy of political authority to any of these levels»[13].

Consequently, in accordance to the partnership and the subsidiarity principle, multilevel governance models must be aimed at ensuring a balanced and coordinated contribution able to involve local, regional, national and European actors. From this point of view, the territorial dimension of cohesion policies can also be intended as a permanent and cooperative process that encompasses various stakeholders involved in territorial development, incentivising a reshaping in distribution of powers and competences between the European Commission, Member States and their subnational authorities[14].

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Routledge, 2012; R. SCHUTZE, *Subsidiarity after Lisbon: reinforcing the safeguards of federalism?*, in *Cambridge Law Journal*, LXVIII, 2009, pp. 525 ss..

[11] See G. BRUSAPORCI, *The impact of EU multi-level regionalism strategy on Bulgarian local authorities: qualitative comparative analysis among nine border areas*, in *Southeast European and Black Sea Studies*, XVII, 2017, pp. 347 ss., where the author states that «The discourse in the literature on regionalism is linked to the analysis of globalization and the new challenges of national states. States are indeed no longer able to fully control power on both local and international levels. This has triggered a process of rescaling of spaces, legislations and institutions, entailing a reorganization of power and a need for establishment of new forms of vertical and horizontal governance».

[12] It is worth to stress that multilevel governance seems to have become a legal principle itself. This shift from a descriptive to a prescriptive notion of multilevel governance will be addressed in par. 5.

[13] Cit. P. SCHMITTER, *Neo-functionalism*, in A. WIENER, (ed.), *European Integration Theory*, Oxford University Press, Oxford, 2004, pp. 45 ss., p. 49. On the concept of 'multilevel governance', see L. HOOGHE, G. MARKS, *Multi-level governance and European Integration*, *cit.*; S. PIATTONI, *The theory of multi-level governance: Conceptual, empirical, and normative challenges*, Oxford University Press, Oxford, 2010; A.L. HÖGENAUER, *The Principle of Subsidiarity after Lisbon: Towards a Sustainable System of EU Multi-Level Governance*, in N. PAPAKOSTAS, N. PASSAMITROS (eds.), *EU: Beyond the Crisis. A Debate on Sustainable Integrationism*, Ibidem-Verlag, Hannover, 2016; A. SIMONATO, *Multilevel governance. Profili costituzionali. Il coordinamento tra Regioni, Stato e UE*, CLEUP, Padova, 2016; C. PANARA, *The Sub-national Dimension of the EU. A legal study of Multilevel Governance*, Springer, Berlin, 2015; P. STEPHENSON, *Twenty years of multi-level governance: 'where does it come from? What is it? Where is it going?*, in *Journal of European Public Policy*, VI, 2013, pp. 817 ss.

[14] See F. BARCA, *An Agenda for a Reformed Cohesion Policy*, cit., where it is stressed the importance of «the adoption of a strong policy concept (renewing the original ideas of EU founding fathers), a concentration of


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This process is, indeed, among the most evident features of the European integration project itself[15]. However, it is important to stress that the broadening of the scopes of cohesion policies to the 'territorial dimension' does not simply imply a vertical devolution of competences, but a complex transfer of powers and resources which can also follow a transnational direction[16].

More specifically, in the concrete implementation of cohesion policies and in the designing of new multilevel governance models, over the last decades there has been an increasing tendency which shows how regional and local authorities of different Member States try to develop formal and informal relations between each other's, as what was recognised in the last decades is that there might be other territorial levels (intraregional or supranational) which might be relevant for policy intervention[17].

The result of this understanding brought, in the E.U. legal framework, to the birth and the evolution of the concept of European Territorial Cooperation (ETC), which will be the object of this research.

It must be immediately understood, however, that looking into practical experiences, the nature, level and forms of European Territorial Cooperation have proven to be highly heterogeneous. Partnerships can concern fields such as regional marketing, spatial planning, cultural exchange, environmental issues, transport, tourism or public services, and the common agenda can be monothematic and limited to a single project or can embrace a long term strategy and span multiple domains. Moreover, European Territorial Cooperation may cover a large geographical scope and involve a big number of partners, or it can be limited to a small-scale cooperation. There can be weak or strong institutionalisation, as cooperation can be structured in a separate organisation with its own budget and organs, or it can be arranged without a specific institutional architecture.

From a legal point of view, E.U. legislation currently provides a variety of programmes and legal instruments related to the concept of European Territorial Cooperation, such as INTERREG programmes, European groupings of territorial cooperation (EGTCs) and European macroregional strategies. These programmes

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priorities, key changes to the governance, a new high-level political compromise and an appropriate adjustment of the negotiation process[es]».

[15] See N. BRENNER, *Globalisation as Reterritorialisation: The Re-scaling of Urban Governance in the European Union*, in *Urban Studies*, 36 (3), 1999, pp. 431 ss.; G. DELEUZE, F GUATTARI, *A thousand plateaus: Capitalism and schizophrenia*, London, Bloomsbury Publishing, 1988; B. KOHLER-KOCH, R. EISING, *The Transformation of Governance in the European Union*, Routledge, London, 1999; U. DIEDRICHS, W. REINERS, W. WESSELS, *The Dynamics of Change in EU Governance*, Cheltenham, Edward Elgar, 2011.

[16] About this phenomenon, see J. ALLEN, A. COCHRANE, *Beyond the Territorial Fix: Regional Assemblages, Politics and Power*, in *Regional Studies*, XLI, 2007, pp.1161ss; J. BOMAN, E. BERG, *Identity and Institutions Shaping Cross-Border Co-operation at the Margins of the European Union*, in *Regional & Federal Studies*, XVII, 2007, pp. 195 ss.

[17] See *Green paper on Territorial Cohesion. Turning territorial diversities into strengths*, 2009; J. GARCIA-ALVAREZ, J.M. TRILLO-SANTAMARIA, *Between Regional Spaces and Spaces of Regionalism: Cross-border Region Building in the Spanish 'State of the Autonomies*, in *Regional Studies*, XLVII, 2013, pp. 104 ss.


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and legal instruments, indeed, are not only quite different (one from another) in terms of means and nature, but they also respond to different legislative acts, pointing to the lack of a single and definite E.U. legal framework in this field.
Moving from this frame of reference, the objective of the research is twofold. The first aim is to describe and classify the different E.U. programmes and legal instruments in order to define their legal status and to clarify in which way each one of them brings its own contribution to the general framework of European Territorial Cooperation. After doing this, the second, yet, most important goal of the study is to try to understand which are the future perspectives of European Territorial Cooperation and what this particular type of cooperation could add to the European integration process in the area of administrative law.

*2. European territorial cooperation as a Cohesion Policy goal: INTERREG programmes.*
It is worth to remind that E.U. interventions[18] concerning cooperation between regional and local authorities of different Member States date back to the 1990s with the adoption of the first INTERREG programme.
At its origins, INTERREG was a Community Initiative programme, which meant that the European Commission had quite a power in defining areas of intervention financed by the E.U.. This reminder is important for two different reasons: on one hand, it underlines the political relevance that the European Commission gave since the early nineties to the development of territorial cooperation in Europe; on the other hand, it highlights that during the first INTERREG programmes there was not much of an intention to set up a legal framework at the E.U. level, as the main objective was simply to finance cross-border cooperation projects, while the legal rules were to be found in other legal sources[19].
In this sense, the initial idea behind INTERREG programmes was mainly to solve local problems between homologous territorial units. However, the current trend is towards a more dynamic form of cooperation, for what has emerged in the evolution of INTERREG programmes is that cooperation should not be limited only at dealing with problems of proximity between communities and territories laying on different

[18] Outside the umbrella of the European Union, the first forms of cross-border cooperation that took place between European borderland regions separated by a national border developed gradually from the late 1950s onwards. Pioneers were the German-Dutch region named Euregio, around Gronau, created in 1958; the Franco-German-Swiss Upper Rhine region, whose origins date back to the creation of the Regio Basiliensis in Basel in 1963; and the Franco-German-Luxembourgish region named SaarLorLux, which has existed since 1968. However, these cross-border cooperation forums and working communities came into being independently from the E.U. legal framework.

[19] About this initial approach towards cross-border cooperation of E.U. policies, see D. STRAZZARI, *Harmonizing Trends vs Domestic Regulatory Frameworks: Looking for the European Law on Cross-border Cooperation*, in *European Journal of Legal Studies*, IV, 2011, pp.151 ss.; N. LEVRAT, *La coopération territoriale: adaptation de la coopération transfrontalière aux nouveaux territoires du projet européen*, in *Revue des affaires européennes*, III, 2006, pp. 495 ss.


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sides of Member States' borders[20], but should be a matter of putting together genuine projects for transnational areas by implementing strategic territorial development policies[21].

This increased understanding led immediately to some minor modifications[22], and afterwards to a reshaping of the general legal framework by abolishing INTERREG as a Community Initiative programme and including it in the European Structural and Investment Funds (ESI Funds), leading to the birth of the legal concept of European Territorial Cooperation[23].

The turning point was the adoption of Regulation (EC) No 1083/2006, which set three objectives for the 2007-2013 ESI Funds programming period: the Convergence objective, the Regional competitiveness and employment objective, and the European territorial cooperation objective (art. 3, par. 2). As an immediate consequence of this choice, funds related to INTERREG programs fell under the umbrella of the ordinary E.U. law concerning the management of ESI Funds, and in particular the European Regional Development Fund (ERDF).

This, however, was only another step forward in the evolution of the legal concept of European Territorial Cooperation. When the 2007-2013 ESI Funds programming period was coming to an end, practical experiences showed that rules concerning INTERREG programmes had to be strongly revisited in order to adapt them to the specific needs of the European Territorial Cooperation objective. This led for the first time to the adoption of a dedicated Regulation.

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[20] In particular, the Europe 2000 studies provided inspiration for the setting up of the Community initiative INTERREG IIC in 1997, which complemented the existing INTERREG initiative on cross-border cooperation by introducing E.U. funding for transnational cooperation across larger contiguous areas.

[21] About the mentioned evolution, see H. COMTE, *Les acteurs et la légitimité des projets stratégiques transfrontaliers*, in H. COMTE, N. LEVRAT (eds.), *Aux coutures de l'Europe – Défis et enjeux juridiques de la coopération transfrontalière*, L'Harmattan, Paris, 2006, pp. 185 ss, where the Author argues that «Il ne s'agit plus seulement de traiter des problèmes de proximités entre des communautés et des territoire séparés par une frontière mais bel et bien de fonder de véritables projets de territoires transfrontaliers» (pp. 185-186). For a general overview of the evolution of INTERREG programmes, see B. WASSENBERG, B. REITEL, J. PEYRONY, *Territorial cooperation in Europe – A historical perspective*, Publications Office of the European Union, Luxembourg, 2015.

[22] See B. WASSENBERG, B. REITEL, J. PEYRONY, *Territorial cooperation in Europe – A historical perspective, cit.* where it is underlined that «After Interreg I, which provided the opportunity for a trial run at European level, Interreg II, which ran for six years (1994-1999), introduced a number of innovations. First, apart from the three new Member States, the eligible areas also involved certain EFTA countries (particularly Norway), which provided support for their border areas. In addition, cooperation was no longer limited to neighbouring regions but also took account of two new dimensions. Interreg IIB took over the funding of cross-border energy networks, which had been the responsibility of the REGEN initiative during the previous phase, in accordance with a principle of territorial continuity (where one issue is shared by all the territorial stakeholders). Interreg IIC, introduced in 1997 in four regions bringing together large contiguous areas of several Member States, and then Interreg IIIB, beginning in 2000, in which each European region would be involved in at least one programme, represented a new strand of Interreg, namely transnational cooperation» (p. 32).

[23] See DG Regio, *From INTERREG III to European Territorial Cooperation*, Brussels, 2007.


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As a consequence, for the 2014-2020 programming period E.U., rules concerning ESI Funds destinated to the European Territorial Cooperation objective[24] resulted from the interaction of three different legal sources: Regulation (EU) No 1303/2013 (which sets out common provisions to all ESI Funds); Regulation (EU) No 1301/2013 (that sets out specific provisions concerning the ERDF, which is the European Fund that concretely finances INTERREG programmes), and Regulation (EU) No 1299/2013 (which sets specific rules with regards to the European Territorial Cooperation objective).

More specifically, Regulation (EU) No 1303/2013 and Chapter I of Regulation (EU) No 1301/2013 applied to European Territorial Cooperation and to the related programmes, except where specifically provided for by Regulation (EU) No 1299/2013 (or where those provisions can only apply to the Investment for growth and jobs goal).

In a general way, it is possible to state that Regulation (EU) No 1299/2013 defined, for the European Territorial Cooperation programmes, the priority objectives and organisation of the ERDF, the criteria for Member States and regions to be eligible for support from the ERDF, the financial resources and the criteria for their allocation. Moreover, it laid down those provisions which were perceived as necessary to ensure effective implementation, monitoring, financial management and control of operational programmes.

In line with the evolution of INTERREG programmes, European Territorial Cooperation was organised in the three following strands: 1) *cross-border cooperation*[25], which took place between adjacent regions in order to promote integrated regional development between neighbouring land and maritime border regions in two or more Member States; 2) *transnational cooperation*[26], which covered larger transnational

[24] For the 2014 – 2020 programming period, the global amount of funds (2.75% of Cohesion Policy budget) to be destined to the European Territorial Cooperation objective was entirely provided by the European Regional Development Fund (ERDF). This budget supports cross-border cooperation, transnational cooperation and interregional cooperation, and includes also ERDF allocation for Member States to participate in EU external border cooperation programmes supported by other instruments (Instrument for Pre-Accession Assistance and European Neighbourhood Instrument).

[25] For *cross-border cooperation*, the regions to be supported are the NUTS level 3 regions of the Union along all internal and external land borders, and all NUTS level 3 regions of the Union along maritime borders separated by a maximum of 150 km. The power to design eligible regions is of the European Commission, which adopts a decision, by means of implementing acts, setting out the list of cross-border areas to receive support cooperation programme. These implementing acts are adopted in accordance with the advisory procedure referred to in art. 150, par. 2, of Regulation (EU) No 1303/2013. For a more detailed analysis of cross-border cooperation, see L.D. SOUSA, *Understanding European cross-border cooperation: A framework for analysis*, in *Journal of European Integration*, VI, 2013, pp. 669 ss..

[26] Similar rules are set for *transnational cooperation*, as the Commission assumes a decision, by means of implementing acts, setting out the list of transnational areas to receive support by cooperation programme and covering NUTS level 2 regions, while ensuring the continuity of such cooperation in larger coherent areas based


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territories, involving national, regional and local partners with a view to achieving a higher degree of territorial integration of those territories; 3) *interregional cooperation*[27], which had the aim of reinforcing the effectiveness of Cohesion Policy by promoting exchange of experience focusing on thematic objectives among partners throughout the Union, mainly by the identification and dissemination of good practices.

Leaving aside specific rules set for interregional cooperation programmes (which have an auxiliary role in order to ensure efficiency of Cohesion Policy and are almost entirely built at the E.U. level), it was provided that the European Commission had to communicate to each Member State its share of the global amounts for cross-border and transnational cooperation. On the basis of the amounts communicated, each Member State had to inform the Commission whether, and how, it had used the transfer option provided for in art. 5 of Regulation (EU) 1299/2013[28], and the resulting distribution of funds among the cross-border and transnational programmes in which the Member State participated.

The European Commission, after receiving these information from Member States, adopted a decision – by means of implementing acts in accordance with the advisory procedure referred to in art. 150, par. 2, of Regulation (EU) No 1303/2013 – setting out a list of all cooperation programmes and indicating the global amount of the total ERDF support for each programme.

Looking into European Territorial Cooperation's objectives, these responded to the principle of thematic concentration, as it was stated that «at least 80 % of the ERDF allocation to each cross-border cooperation and transnational programme shall be concentrated on a maximum of four of the thematic objectives set out in the first paragraph of Article 9 of Regulation (EU) No 1303/2013»[29]. To this extent, the ERDF had to contribute within its scope as set out in art. 3 of Regulation (EU) No 1301/2013 to the general thematic objectives indicated in Regulation (EU) No 1303/2013 for all ESI Funds.

However, it is important to stress that, in addition to the investment priorities set out in art. 5 of Regulation (EU) No 1301/2013, the ERDF could also support other thematic objectives which were specifically indicated for each European Territorial Cooperation strand in art. 7, par. 1, of Regulation (EU) No. 1299/2013. Among the

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on previous programmes, taking account, where appropriate, of macro-regional and sea-basin strategies. Art. 3, par. 3.

[27] According to the nature of this strand of European Territorial Cooperation, *interregional cooperation* support from the ERDF may cover the entire territory of the Union without exclusions.

[28] Art. 5 of Regulation (EU) No. 1299/2013 states that «Each Member State may transfer up to 15 % of its financial allocation for each of the components referred to in points (a) and (b) of Article 4(1) from one of those components to the other».

[29] Art. 6, par. 1 of Regulation (EU) No. 1299/2013.


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others[30], it was provided that, under transnational cooperation, priority investments could also concern the promotion of institutional capacity of public authorities and stakeholders by developing and coordinating macroregional and sea-basin strategies.
The cooperation programme is the most important document of every INTERREG initiative. It was provided that the participating Member States had to confirm, in writing, their agreement to the contents of a cooperation programme prior to its submission to the Commission. This agreement also had to include the formal commitment of all participating Member States to provide the necessary co-financing in order to implement the cooperation programme.
Every cooperation programme consisted of priority axes, and every priority axis had to correspond to a thematic objective and include one or more of the investment priorities of that thematic objective. However, a priority axis could combine, in duly justified cases, one or more complementary investment priorities from different thematic objectives in order to achieve the maximum contribution to that priority axis[31].
For each priority axis, cooperation programmes had to indicate the investment priorities and the corresponding specific objectives as well as the expected results, alongside a detailed financial plan. Moreover, cooperation programmes set the implementing provisions which identify the managing authority, the certifying authority and the audit authority, the body or bodies designated to carry out control tasks, and they lay down the procedure for setting up the joint secretariat.
In addition, cooperation programmes had to describe the integrated approach to territorial development having regard to the Partnership Agreements of the participating Member States and, where those Member States participate in macro-regional strategies and sea basin strategies, the contribution of the planned interventions to those strategies.

[30] As set in art. 7 of Regulation (EU) No. 1299/2013, the other additions concern, under cross-border cooperation: promoting sustainable and quality employment and supporting labour mobility by integrating cross-border labour markets, including cross-border mobility, joint local employment initiatives, information and advisory services and joint training; promoting social inclusion, combating poverty and any discrimination by promoting gender equality, equal opportunities, and the integration of communities across borders; investing in education, training and vocational training for skills and lifelong learning by developing and implementing joint education, vocational training and training schemes; enhancing institutional capacity of public authorities and stakeholders and efficient public administration by promoting legal and administrative cooperation and cooperation between citizens and institutions. Under interregional cooperation, enhancing institutional capacity of public authorities and stakeholders and efficient public administration by: disseminating good practices and expertise and capitalising on the results of the exchange of experience in relation to sustainable urban development, including urban-rural linkages pursuant to point (3)(b) of Article 2; promoting the exchange of experience in order to reinforce the effectiveness of territorial cooperation programmes and actions as well as the use of EGTCs pursuant to point (3)(c) of Article 2; strengthening the evidence base in order to reinforce the effectiveness of cohesion policy and the achievement of the thematic objectives through the analysis of development trends pursuant to point (3)(d) of Article 2.
[31] See art. 7 of Regulation (EU) No. 1299/2013.


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For what is more interesting to this research, the cooperation programme sets the actions taken in order to involve the partners referred to in art. 5 of Regulation (EU) No 1303/2013, and the role of those partners in the preparation and implementation of the cooperation programme.

In accordance to the nature of European Territorial Cooperation, operations selected under cross-border and transnational cooperation had to involve beneficiaries from at least two participating countries[32] and could be implemented in a single country only if cross-border or transnational impacts and benefits were identified. However, an EGTC or another legal body established under the laws of one of the participating countries could be the sole beneficiary of an operation if it was set up by public authorities or bodies from at least two participating countries[33].

Looking at the institutional architecture of European Territorial Cooperation programmes, as generally provided for any programme financed by ESI Funds, Member States had to designate (for every programme) a single managing authority, a single certifying authority and a single audit authority.

Managing authorities were responsible for the functions laid down in Regulation (EU) No 1303/2013[34], including management verifications, in order to ensure uniform standards across the whole programme area. However, where an EGTC was designated as managing authority, such verifications could be carried out by or under the responsibility of the managing authority at least for those Member States and third countries or territories from which there are members participating in the EGTC, whereas controllers had only to be used in the remaining Member States and third countries or territories (not included in the EGTC). In case no EGTC was designated, the managing authority could be authorised by the participating Member States to carry out verifications on the whole programme area[35].

Furthermore, whether the managing authority did not carry out verifications under point a) of art. 125, par. 4, of Regulation (EU) No 1303/2013[36] throughout the whole programme area, or where the verifications were not carried out by or under the

[32] Where there are two or more beneficiaries of an operation in a cooperation programme, one of them shall be designated by all the beneficiaries as the lead beneficiary. The functions of the lead beneficiary are set in art. 13 of Regulation (EU) No. 1299/2013.

[33] See art. 12, par. 3, of Regulation (EU) No 1299/2013.

[34] Functions of the managing authority are set in art. 125 of Regulation (EU) No. 1303/2013, and include the management of the operational programme, the selection of operations and the financial management and control of the operational programme.

[35] Member States participating in a cooperation programme may designate the managing authority also for being responsible of carrying out the functions of the certifying authority. Such a designation shall be without prejudice to the apportionment of liabilities in relation to the application of financial corrections among the participating Member States as laid down in the cooperation programme.

[36] These are aimed at verifying that the co-financed products and services have been delivered, that expenditure declared by the beneficiaries has been paid and that it complies with the applicable law, the operational programme and the conditions for support of the operation.


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responsibility of the managing authority for those Member States from which there were members participating in a EGTC, each Member State had to designate the body or person responsible for carrying out such verifications in relation to beneficiaries on its territory.

Also looking at the provisions concerning the auditing authority, specific rules were provided if compared to the general ones set for other ESI Funds. In particular, Member States participating in a cooperation programme could authorise the audit authority to carry out directly its functions in the whole territory covered by a cooperation programme. They also had to explicitly specify whether the audit authority had to be accompanied by an auditor of a Member State.

If the audit authority did not have the above mentioned authorisation, it had to be assisted by a group of auditors composed of a representative from each Member State participating in the cooperation programme in carrying out its functions[37].

Given this legal framework, what clearly emerges from its analysis is that, for the 2014–2020 programming period, the content requirements of cooperation programmes were strongly revisited in order to adapt them to the specific needs of European Territorial Cooperation, leading for the first time to the adoption of a dedicated Regulation. These special requirements covered matters necessary for the effective implementation of the above mentioned programmes on the territory of participating Member States, and seem to concern a variety of aspects.

In particular, due to the involvement of more than one Member State, the general rule laid down for the management of ESI Funds according to which each Member State could adopt national rules on eligibility of expenditure was not considered appropriate for the European Territorial Cooperation objective. Therefore, with the adoption of Regulation (EU) No 1299/2013, a clear hierarchy of rules was established with a strong move towards ones set at the E.U. level in order to avoid any possible contradiction or inconsistency between different E.U. Regulations and between those Regulations and national rules.

However, it is worth stressing how the analysis of Regulation (EU) No 1299/2013 has also revealed that rules concerning European Territorial Cooperation set at the E.U. level were not always absolutely binding and, especially from an institutional perspective, Member States were still allowed to organise and implement cooperation programmes in many different ways.

From this point of view, the possibility to create a legally recognised transnational body is particularly interesting. On one hand, it seems that Regulation (EU) No 1299/2013 encourages Member States to assign the functions of the managing

[37] The group of auditors had to be set up within three months of the decision approving the cooperation programme. It had the power to draw up its own rules of procedure and was chaired by the audit authority for the cooperation programme.


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authority to an EGTC, or at least to make such a grouping responsible for managing the part of a cooperation programme that relates to the territory covered by that EGTC; on the other hand, there is no legal obligation to set this type of transnational body.
It is therefore necessary to analyse this phenomenon quite accurately, in order to understand what EGTC's are, to which rules they respond, and what is their relationship with European Territorial Cooperation.

*3. The need of an institutional body to manage ETC programmes: European Groupings of Territorial Cooperation*

Historically, the presence of permanent cooperation structures has always been considered a useful tool in order to achieve advanced and stable forms of cooperation between regional and local authorities of different States[38]. Nonetheless, the process of institutionalisation of cross-border organisations across the European territory has not been easy[39].
As already recalled, the flourishing of territorial cooperation agreements can be dated back to the 1990s[40], due to the attention showed to the matter both by the E.U. and the Council of Europe[41]. In that favourable context, subnational authorities

[38] See O. KRAMSCH, B. HOOPER, *Cross-border governance in the European Union*, Routledge, London, 2004; X. OLIVERAS, A. DURÀ, M. PERKMANN, *Las regiones transfronterizas: Balance de la regionalización de la cooperación transfronteriza en Europa (1958–2007)*, in *Documents D'Analisi Geografica*, LVI, 2010, pp. 21 ss., where it is argued that cross-border cooperation finds its higher expression in the creation of cooperation-based organizations oriented towards the coordination of horizontal and vertical policies and joint actions.

[39] In general, about institutionalization of cross-border cooperation, see N. VEGGELAND, *Regional Governance, Euroregions, Flexibility, Power and Rights*, in R. KICKER, J. MARKO, M. STEINER (eds.), *Changing Borders: Legal and Economic Aspects of European Enlargement*, Peter Lang, Frankfort, 1998, pp. 46 ss.; J. MARKO, *Beyond the Nation State: Problems of Regionalisation in Western and East Central Europe*, in R. KICKER, J. MARKO, M. STEINER (eds.), *Changing Borders: Legal and Economic Aspects, cit*, pp. 65 ss.; T. CHRISTIANSEN, *Borders and territorial Governance in New Europe*, in R. KICKER, J. MARKO, M. STEINER (eds.), *Changing Borders: Legal and Economic Aspects, cit*, pp. 78 ss.; M. PERKMANN, N. SUM (eds.), *Globalization, Regionalization and Cross-Border Regions*, Macmillan, Palgrave, 2002; ID, *Construction of New Territorial Scales: A Framework and Case Study of the EUREGIO Cross-border Region*, in *Regional Studies*, II, 2007, pp. 253 ss.

[40] During the 1990s, the increasing importance of global flows combined with steps forward in Europe with regard to trade liberalisation and the establishment of a single market, created the preconditions for more robust integration. Simultaneously a new theoretical approach often labelled 'new regionalism' was developed as a framework to interpret and analyse the new forms of regional cooperation emerging at this time. As highlighted by M. KEATING, *The new regionalism in Western Europe. territorial restructuring and political change*, Edward Elgar, Cheltenham, 1998, by the late 1990s, «there was not a border in Western Europe that was not covered by some sort of transfrontier programme» (p. 180). See also M. PERKMANN, *Building Governance Institutions Across European Borders,* in *Regional Studies*, XXXIII, pp. 657 ss.; L.K. WILLIAMS, *The Baltic Sea Region: Forms and Functions of Regional Co-operation*, in *BaltSea Net Working Papers*, 2001.

[41] For a better analysis of the relations between international and E.U. law, see A. ENGL, *Future Perspectives on Territorial Cooperation in Europe: The EC Regulation on a European Grouping of Territorial Cooperation and the Planned Council of Europe Third Protocol to the Madrid Outline Convention concerning Euroregional Co–operation Groupings*, in *European Diversity and Autonomy Papers*, III, 2007.


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started to develop a variety of external actions blurring the domestic/international division that conferred monopoly on international relations to central States.

As a result of the evolution occurred in the last decades, existing agreements concerning territorial cooperation can be classified, from an institutional perspective, in three different typologies: non-binding cooperation agreements without a permanent joint governance structure; private law associations with a cross-border purpose; binding legal instruments that confer a strong legal personality to the organisation.

Especially at the early stages of cross-border cooperation, the most common among these typologies was the non-binding cooperation agreement signed by territorial authorities. The non-binding nature of such agreements represented – and currently represents – nothing more than a political commitment of the interested actors to develop joint initiatives. In these cases, governance structures are usually informal, flexible and without legal personality.

The second typology of legal instrument, instead, was built through simplified organisational structures, which often assumed the form of private non-profit associations or non-governmental organisations acting as bodies governed by the private law applicable to the location of the headquarters.

Finally, with the aim of taking territorial cooperation to a new level by creating autonomous bodies capable of managing territorial cooperation initiatives, several instruments conferring legal personality to crossborder organisations were established both by E.U. and international law[42].

Regarding the international conventions adopted within the Council of Europe framework aimed at establishing a regulatory framework for territorial cooperation, these were set in accordance with the Madrid Outline Convention of 1980 and its three Protocols (1998, 2001, 2013), and were to be implemented by ratification and by further approval bi- or multilateral international treaties[43]. However, the legal impact

[42] It is important to recall that, in the initial phases of this process, the E.U. and the international law legal frameworks were considered interdependent because E.U. law did not provide any legal instrument which enabled to create a cross-border organisation. About this initial stage, see M. CASTEIGTS, *Cadre juridique et enjeux politiques du financement de la cooperation transfrontalière en Europe*, in Y. LEJEUNE (ed), *Le droit des relations transfrontalière entre autorités regionals ou locales relevant d'Etats distincts, Les experiences franco-belge et franco-espagnole*, Bruyant, Bruxelles, 2005, who observes that «le dispositive de soutien et d'accompagnement de la cooperation transfrontière en Europe est marqué par une situation paradoxale qui affecte sa coherence: ses instruements financiers sont mis en place par l'Union européenne au titre de l'initiative INTERREG mais son cadre juridique est fixé par la Convention-cadre de Madrid, négociée sous l'égide du Conseil de l'Europe» (p. 165).

[43] Particularly interesting, for the influence played in the designing of EGTCs, was the Karlsruhe Agreement. This provided substantial common rules for the setting up and functioning of a cross-border body. The model was represented by the so-called *Groupement local de cooperation transfrontaliére* (GLCT), whose legal regulation is to be found partly in the Karlsruhe Accord and partly in the constituting documents of the body itself. On the Karlsruhe Agreement see B. PERRIN, *Coopération transfrontalière des collectivités locales: contenu et limites de l'Accord quadrilatéral de Karlsruhe*, in *Revue Administrative*, CCLXXXIX, 1996, pp. 81 ss.


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of these conventions and treaties, and the resulting opportunities for local and regional authorities to cooperate formally across state borders and especially to create a transnational institutional body, remained rather limited, mainly due to the hesitant ratification and implementation by many States.

Moving the analysis to the E.U. legal framework, it seems that a much more effective legal instrument was set. In particular, the turning point was the creation of the European grouping of territorial cooperation (EGTC), which occurred with the adoption of Regulation (EC) No 1082/2006[44], afterwards amended by Regulation (EU) No 1302/2013[45].

From a general point of view, it is possible to state that the idea behind the creation of EGTCs was to reduce the difficulties encountered by Member States and, more specifically, by regional and local authorities, in implementing and managing activities of territorial cooperation within the framework of different national laws and procedures.

In this regard, Regulation (EC) No 1082/2006 has provided subnational authorities a legal instrument to conclude a cross-border convention with homologous foreign counterparts[46] in order to establish a common territorial cooperation body, regardless of the fact that such possibility was previously granted according to their domestic legal order.

As stated in art. 1, parr. 3, 4, of Regulation (EC) No 1082/2006, EGTCs have a fully recognised legal personality, and they have in each Member State the most extensive legal capacity accorded to legal persons under that Member State's national law. In particular, it is clearly specified that they can acquire or dispose movable and immovable property, employ staff and be parties of legal proceedings.

From a legal point of view, a hierarchy of applicable rules is established by art. 2 of Regulation (EC) No 1082/2006. According to the recalled provision, the acts of EGTCs are governed, primarily, by the above mentioned Regulation; where expressly

[44] For an overview on the political process that led to the adoption of Regulation (EC) No 1082/2006, see E. NADALUTTI, *Does the 'European Grouping of Territorial Co-operation' Promote Multi-level Governance within the European Union?*, in *Journal of Common Market Studies*, IV, 2013, pp. 756 ss.

[45] For a complete overview on the amendments to Regulation (CE) No 1082/2006, see S. CARREA, *La riforma del "Gruppo europeao di cooperazione territoriale: luci ed ombre del regolamento n. 1302/2013*, in *Diritto dell'Unione Europea*, pp. 367 ss.

[46] See L. DE SOUSA, *Understanding European Cross-Border Cooperation: A Framework for Analysis*, in *Journal of European Integration*, VI, 2013, pp. 669 ss., where the Author argues that «Cross-border co-operation arrangements have now been integrated into the EU legal framework. The proponents of this new bottom-up approach to territorial co-operation argue that cross-border co-operation will move from being marginal, specialized and (often) informal set of arrangements to become stronger, more legally certain and transparent organizational features of the EU institutional architecture. The new EGTCs are expected to play a greater role in setting the regional policy agenda». See also P. ULRICH, *Territorial cooperation, supraregionalist institution-building and national boundaries: the European Grouping of Territorial Cooperation (EGTC) at the eastern and western German borders*, in *European Planning Studies*, XXVIII, 2020, pp. 57 ss.


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authorised by the Regulation, by the provisions of the convention referred to in articles 8 and 9; finally, in case of matters not or only partially regulated by the Regulation, by the laws of the Member State where the EGTC has its registered office[47].

This means that the convention, which is to be adopted unanimously by all the members, is the most relevant agreement concerning the creation and the functioning of an EGTC.

It specifies the name of the EGTC and its registered office, the extent of the territory in which the EGTC executes its tasks, the objective and the tasks of the EGTC, the conditions for its dissolution, the list of all EGTC's members, and the list of the EGTC's organs and their respective competences.

Furthermore, the convention defines the provisions concerning the applicable law of the Member State where the EGTC has its registered office for the purposes of the interpretation and enforcement of the convention, the applicable law of the Member State where the EGTC's organs act, and the applicable law directly relevant to the EGTC's activities carried out under the tasks as specified in the convention.

Finally, the convention sets the appropriate measures for mutual recognition, including ones necessary for the financial control of the management of public funds, as well as specific arrangements for liability of the EGTC and its members. It also indicates the rules applicable to the EGTC's staff, the principles governing the arrangements concerning personnel management and recruitment procedures[48], and the procedures for amending the convention and for the adoption of the statutes.

In fact, alongside the convention, the functioning of an EGTC is also set by its statute. However, especially after modifications occurred with the adoption of Regulation (EU) No 1302/2013, the statute is clearly subordinated to the convention, as it is stated that it «shall be adopted unanimously on the basis of, and in accordance with, the convention».

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[47] For a more deep insight on the relation between different legal sourse governing GECTs, see S. CARREA, *La disciplina del Gruppo europeo di cooperazione territoriale (GECT) tra diritto dell'Unione europea, autonomia statutaria, e diritto internazionale privato: un tentativo di sintesi*, in *Diritto commerciale internazionale,* 2012, pp. 611 ss; Committee of the Regions (CoR), *The European Grouping of Territorial Co-operation* (EGTC), 2007, Brussels.

[48] As a result of the joint statement of the European Parliament, the Council and the Commission attached to Regulation 1302/2013, when applying art. 9, par. 2, of Regulation (EU) No 1082/2006 as amended, Member States will endeavour, when assessing the rules to be applicable to the EGTC staff members as proposed in the draft convention, to consider the different available employment regime options to be chosen by the EGTC, be it under private or public law. In particular, where employment contracts for EGTC staff members are governed by private law, Member States will also take into account relevant EU law, such as Regulation (EC) No 593/2008, as well as the related legal practice of the other Member States represented in the EGTC. On the contrary, where employment contracts for EGTC staff members are governed by public law, national public law rules will be those of the Member State where the respective EGTC organ is located. However, national public law rules of the Member State where the EGTC is registered may apply as regards EGTC staff members already subject to these rules prior to becoming an EGTC staff member.


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Although subordinated, EGTCs' statutes must definitely be recognised as complementary to the convention, as they have to at least specify the operating provisions of the EGTC organs and their competences (and the number of representatives of the members in each organ), the decision-making procedures, the working language, and the general arrangements for its functioning, particularly having regard to the procedures of personnel management and recruitment.
Moreover, the statutes must indicate the arrangements for the financial contributions and the applicable accounting and budgetary rules of each of the EGTC members, the arrangements for their liability in accordance with art 12, par. 2, of Regulation (EC) No 1082/2006, the authorities responsible for the designation of independent external auditors and, finally, the procedures for amending the statutes.
It is important to underline, however, that this autonomy granted to the EGTC members in designing the structural and functional profiles of the EGTC in both the convention and the statute is counterbalanced by some mandatory rules set by Regulation (CE) No 1082/2006.
As an example, with regards to the organisational structure, although statutes may provide for additional organs, art. 10, par. 1, of Regulation (CE) No 1082/2006 states that an EGTC must have, as a minimum, an assembly composed by representatives of each member, and a director, who represents the EGTC and acts on its behalf.
Also looking at the functional profile, a certain level of autonomy seems to be granted to the participating members, as it is set that the competence to define the EGTC tasks is assigned to its members. However, it is furtherly specified that each task must be determined as falling within the competence of every EGTC member, unless the Member State approves the involvement of a participant established under its national law even if this is not competent for all the tasks specified in the convention[49].
Finally, the rules concerning the composition of an EGTC and the procedure for its establishment are particularly interesting to our analysis, as these were significantly amended by Regulation (EU) No 1302/2013[50].
As for the first aspect (with regards to the provisions concerning the EGTC composition), leaving aside the possible involvement of third countries (which is regulated by a particular set of rules that will not be object of this analysis), an EGTC

[49] EGTC tasks cannot concern the exercise of powers conferred by public law or duties whose object is to safeguard the general interests of the State or of other public authorities, such as police and regulatory powers, justice and foreign policy. Under this perspective, the only exclusions concern the definition of terms and conditions of the use of an infrastructure that the EGTC is managing, and the terms and conditions subject to which a service of general economic interest is provided, which can both be decided by the EGTC assembly.

[50] See Commission of the European Union, *Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 1082/2006 of the European Parliament and of the Council of 5 July 2006 on a European grouping of territorial co-operation (EGTC) as regards the clarification, simplification and improvement of the establishment and implementation of such groupings*. COM (2011) 610 final. Brussels, 6 October.


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can now see the participation of the following entities: Member States or authorities at national level, regional and local bodies, public undertakings within the meaning of point b) of art. 2, par. 1, of Directive (EC) No 17/2004, bodies governed by public law within the meaning of art. 1, par. 9, of Directive (EC) No 18/2004, undertakings entrusted with operations of services of general economic interest, and, finally, associations consisting of bodies belonging to one or more of these categories.

To this end, it must be pointed out that the previous formulation of art. 3 of Regulation (CE) No 1082/2006 excluded as possible members of an EGTC national public authorities, limiting the involvement only to Member States. However, as a result of the difficulties registered because of the differing status and competences of national, regional and local bodies in different Member States, one of the major modifications introduced by Regulation (EU) No 1302/2013 was exactly to allow national public authorities to become members of an EGTC alongside or even without the formal participation of their Member State.

With regards to the provisions governing the procedures for the establishment of an EGTC, instead, the general rule set by art. 4 of Regulation (EC) No 1082/2006 is that the initiative to establish an EGTC comes from the prospective members, who must inform and apply to their Member State in order to obtain their approval.

According to the original version of art. 4, when potential members filed a request for the establishment of an EGTC to their national governments, these had a three months period to respond[51], and Member States approved the request if it did not oppose the provisions of the Regulation, of national law or if it did not go against the national public interest or public policy.

Also regarding this aspect, however, several modifications were set by Regulation (EU) No 1302/2013 with the aim of enhancing the implementation of the new instrument. On one hand, the experience gained from established EGTCs proved that the three-month period for the Member States' approval procedure was rarely respected; on the other hand, there was a necessity to simplify the procedure in order to reduce possibilities for Member States to reject a prospective member's participation request, as the effective implementation of this new legal instrument was often undermined by a diffident approach towards it by national governments.

Consequently, the current formulation of art. 4 of Regulation (CE) 1082/2006 still states that each prospective member must notify the Member State under whose law it has been formed of its intention to participate in an EGTC alongside a copy of the proposed convention and statute. Following the notification, the Member State which has received it, taking into account its constitutional structure, approves the prospective member's participation in the EGTC and the convention, unless it considers such participation or the convention not in conformity with Regulation

[51] See art. 4, par. 3, of Regulation (EC) No 1082/2006.


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(CE) 1082/2006, with any other Union law concerning the acts and activities of the EGTC, or with national law relating to the powers and competences of the prospective member. Furthermore, the approval can be denied if the participation of a prospective member is not justified for reasons of public interest or of public policy, or if the EGTC statutes are inconsistent with the convention[52].

It is also set that in the event of a non-approval, which is to be decided on the basis of national rules, the Member State must clearly express its reasons for the rejection and, after Regulation (EU) No 1302/2013, must suggest the necessary modifications to the convention for the request to be accepted.

Another amendment concerned the approval procedure timeline, as the decision must now be assumed within a period of six months from the date of receipt of the notification. Moreover, a rule concerning tacit approval was added, as the current formulation of art. 4, par. 3, of Regulation (CE) No 1082/2006 specifically declares that if «the Member State which has received the notification does not raise an objection within that period, the participation of the prospective member and the convention shall be deemed to be approved». The only exception to this rule concerns the Member State where the registered office of the EGTC is located. In this case, the interested Member State must formally approve the convention in order for the EGTC to be established, and it is also clearly specified that the competent courts for the resolution of any dispute concerning the approval procedure are the courts of the Member State whose decision is challenged.

Having completed this brief legal recognition of the rules governing EGTCs, it is now possible to state how practical experience shows that the original intention of facilitating the implementation of European Territorial Cooperation programmes has been if not entirely, at least partially achieved[53].

As a matter of fact, the European Grouping of Territorial Cooperation is the first legally binding crossborder instrument with direct effect in all Member States, and especially after the amendments to Regulation 1082/2006, it has been increasingly used not only to apply for and manage ESI funds, but also for other E.U. funded projects and programmes and for cooperation outside E.U. funding, broadening the same concept of European Territorial Cooperation.

However, although there is no doubt that the EGTC instrument supports multilevel governance structures enhancing cross-border bottom-up approaches that allow

[52] According to art. 13 of Regulation (EC) No 1082/2006, central governments are also able to abort an EGTC grouping on its territory if it carries out activities in contravention of a Member State's provision on public policy, public security, public health or public morality. Such prohibitions, however, must not be determined by means of arbitrary or disguised restriction on territorial cooperation between the EGTC's members. Also, it is set that a review of the competent body's decision should be possible in front of a judicial authority.

[53] See Committee of the Regions (CoR), *EGTC Monitoring Report 2013. Towards the New Cohesion Policy*, 2013, Brussels.


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more intensified levels of cooperation, it is also necessary to point out that not all the amendments to Regulation 1082/2006 can be deemed directed towards strengthening the level of autonomy of regional and local authorities.

In particular, even though the approval procedure for a prospective member participation to a EGTC has been enhanced by providing a duty for Member States to explain the reasons behind a rejection, the vagueness and the possible extensive interpretation of the recalled legal concepts such as public interest or public policy still seem to provide a sort of central governments' veto power able to interrupt the approval procedure.

Furthermore, it is also clearly set that EGTC tasks must be determined as falling within the competence of every EGTC member. As a consequence, the possibility to approve the involvement of a participant established under its national law even if this is not competent for all the tasks specified in the convention is nothing more than an option for Member States, allowing them to continue to act as gatekeepers of external action of regional and local authorities.

In this direction, the broadening of the EGTC membership to national public authorities, which was necessary to overcome practical problems in the concrete implementation of EGTCs, reinforces the idea that the possibility of creating such transnational bodies with strong subnational authorities' involvement still depends mostly on the institutional structure of the interested Member State, and particularly on the internal partition of competences between national and subnational authorities.

In fact, legal rules concerning regional and local authorities competences are still in the domain of Member States and the decisions on disputes concerning subnational authorities participations in a EGTC are taken by national courts, meaning that national law always remains on the background of every EGTC initiative.

Before exploring these aspects by measuring in which way national legal orders affect regional and local authorities' participation to territorial cooperation initiatives, one last E.U. instrument must be analysed, as parallel to the creation of EGTCs, E.U. institutions started to support also a functional approach towards European Territorial Cooperation with the adoption of macroregional strategies[54].

*4. The functional approach: E.U. macroregional strategies*

The concept of 'macro-regionalisation' is deeply inserted in a historical trajectory which builds on international cooperation. As a matter of fact, the idea of countries

[54] Significant are the opening words of R. BENGSTONN, *An EU Strategy for the Baltic Sea Region: Good Intentions Meet Complex*, SIEPS – Swedish Institute for European Policy Studies, European Policy Analysis, September, Issue 9/2009: «In the more or less constant evolution of functional cooperation in the European Union, it now appears to be the time to add yet another notion – that of 'macro-regional cooperation' – to the standard vocabulary of EU integration» (p. 1).


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taking concerted actions around a macroregional area is not entirely new. This kind of approach can be traced back to 1952[55], when the Nordic countries set up the Nordic Council, whose primary focus of interest was the management of the Baltic Sea, which is common to its members.

These marcoregional approaches, however, were entirely carried on by States in the framework of international law[56]. The E.U. macroregional strategies, instead, seem to encourage also some forms of participation of regional and local authorities, which adds something new to the original concept of macroregionalisation.

Although the first E.U. macroregional strategy was formally adopted only in 2009, references connected with this new type of approach can be found in many of the E.U. documents related to territorial development adopted in the previous decade. From the analysis of these documents, it is possible to recognise the increasing importance given to the coordination of multiple sectoral policies and financial instruments with a territorial impact as well as a new focus on common regional features and challenges as unifying factors in transnational cooperation, with a particular emphasis on action-driven cooperation based on joint challenges implemented at different geographical scales. In other words, the screening of these documents makes it rather clear that the concepts of 'macroregion' and of 'macroregional strategy', even if not explicitly mentioned, were definitely present between the lines in many of the major E.U. political documents concerning territorial development of the beginning of the new millennium.

As an example, the document entitled *Territorial State and Perspective of the European Union*[57] explicitly mentioned the notion of macroregion in its opening chapter,

[55] In 1951 Hans Hedtoft, the Danish Prime Minister, proposed the institution of a common consultative assembly for the Scandinavian countries. This proposal was immediately accepted by Denmark, Norway, Iceland and Sweden, resulting in the creation of the Nordic Council in 1952. This Nordic cooperation forum was then expanded to include Finland in 1955, followed by the Faeroe Islands and Aland Islands in 1970 and Greenland in 1984, the last three each having autonomous status. It is largely an inter-parliamentary cooperation body, with 87 representatives from the five countries and three autonomous territories. Since 1996, the Nordic Council has held ordinary annual meetings and also extraordinary meetings on particular topics. Political cooperation extends well beyond mere consultation or information exchange. Since its creation, the Council has established common rules for its members concerning the organization of the labour market and social security. In 1954 it also implemented a Nordic passport union, guaranteeing the free movement of citizens among its member states. The fact that this entered into force in 1958, well before the first Schengen agreements were signed, demonstrates the pioneering nature of Nordic cooperation in this area. In 1971, the Nordic Parliamentary Council was supplemented by an intergovernmental body, the Nordic Council of Ministers, which meets regularly to discuss common problems and matters of cross-border cooperation.

[56] This meant that the use and definition of the term *macro-region* has traditionally been in the hands of scholars working in the field of international relations. In this context, a macro-region can be considered as an agglomeration of a limited number of states linked together by a geographical relationship and by a degree of mutual interdependence. This definition also implies that States are the only sovereign administrative units involved.

[57] Informal Ministerial Meeting, *The Territorial State and Perspectives of the European Union – Towards a Stronger European Territorial cohesion in the light of the Lisbon and Gothenburg Ambitions*, Luxembourg, 2005.


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linking it to the need for a territorial approach in the design and implementation of E.U. policies. In particular, by stressing the necessity to identify common regional features, it was assumed that some territorial specificities are shared between regions belonging to a certain geographical area, providing a certain level of territorial identity[58].

Moreover, the need to synergize regional territorial capital was perceived as an incentive to better integrate territorial development policies, implying that regions cannot fully enjoy their own territorial capital if they are not integrated with their neighbours or, more generally, with other European regions[59].

Another E.U. document interesting under this perspective was the *Territorial Agenda of the European Union*[60]. This document did not explicitly mention the notion of macroregion. Nevertheless, in the paragraph entitled "*New Challenges: Strengthening regional identities, making better use of territorial diversity*", the need for a better integration of E.U. policies in regional and local practices was stressed by arguing that a stronger regional and local involvement in European territorial development approaches could pave the way for the development of a 'meso' level of coordination able to serve as a more efficient interface between different territorial levels of government.

A specific reference to what will be later identified as a macroregional strategy was also clearly visible in this document, which significantly suggested that «joint trans-regional and integrated approaches and strategies should be further developed in order to face natural hazards, reduce and mitigate greenhouse gas emissions and adapt to climate change […] integrated trans-European and cross-border strategies […] should be adopted»[61].

As a result of this process of emergence of the notion of macroregion[62], in 2009 the E.U. launched its first macroregional strategy for the Baltic Sea Region (EUSBSR), followed by the macroregional strategy for the Danube region (EUSDR), the one for the Adriatic and Ionian region (EUSAIR), and the one for the Alpine region (EUSALP).

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[58] See the *Territorial State and Perspective of the European Union, cit.* (p. 5).

[59] See the *Territorial State and Perspective of the European Union, cit.*, where it is argued that «A further task of the EU is to facilitate trans-European territorial integration, by stimulating the development or conservation of areas and networks of European importance, the trans-European structuring elements for the EU territory and their connection to secondary networks» (p. 9).

[60] Informal Ministerial Meeting on Urban Development and Territorial Cohesion, *Territorial Agenda of the European Union – Towards a more competitive and sustainable Europe of diverse regions*, Leipzig, 25th of May 2007.

[61] Cit. *Territorial Agenda of the European Union*, (p. 7).

[62] For a deeper analysis of all the E.U. documents which contained some direct or indirect reference to macroregional strategies, see A. DUBOIS, S. HEDIN, P. SCHMITT, J. STERLING, *EU macro-regions and macro-regional strategies – A scoping study*, in *Nordregio Electronic Working Paper*, IV, 2009.


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According to the definition given at the time of the adoption of the macroregional strategy for the Baltic Sea Region by the E.U. Commissioner for Regional Policy, a macroregion was to be intended as «an area including territories from a number of different countries or regions associated with one or more common features or challenges»[63].

The novelty of the concept of macroregional strategy in the E.U. context is to take a comprehensive approach to the interested territory rather than merely viewing it as an administrative area for various cooperation schemes pertaining to parts of that territory. In particular, the process of macro-regionalisation is conceived as a shift from territorial to functional regions[64]. This, of course, has significant implications for the interested territories particularly in terms of a rescaling of public intervention, leading to variable geometries of governance.

The so called approach *à géométrie variable*[65], more specifically, must be intended both in a territorial and in an institutional perspective. Looking at it from a territorial perspective, it means that areas interested by some policy fields (for example, environment) can differ quite considerably from those relevant for others (for example, infrastructures), as the main focus of macroregional strategies seems to be to find the appropriate territorial scale – in terms of efficacy and efficiency – of public intervention[66].

Form an institutional perspective, instead, the approach *à géométrie variable* should imply that macroregional strategies incentivise synergies and cooperation schemes not only between homogeneous administrative units as generally designed by INTERREG programmes, but also between non homogeneous public authorities of

[63] European Commission, *Macro-regional strategies in the EU – A Discussion Paper*, presented by Commissioner Pawel Samecki in Stockholm, 18th of September, 2009. S. DUHR, *Baltic Sea, Danube and macro-regional strategies: a model for transnational cooperation in the EU?*, in *Notre Europe*, LXXXVI, 2011, argues that this «definition has both a territorial and a functional dimension. From a territorial perspective, it implies that a number of nation-states and regions are involved, thus requiring cooperation across national borders […]. The functional dimension of the concept suggests that in the first instance the macro-region concept is based on large natural or landscapes systems».

[64] On the concept of 'soft spaces' and functional regions, see A. FALUDI, *Beyond Lisbon: soft european spatial planning*, in *The Planning Review*, XLVI (182), 2010, pp. 14 ss.; ID, *Territorial cohesion and subsidiarity under the European Union treaties: a critique of "Territorialism" underlyning*, in *Regional studies*, IX, 2013, pp. 1594 ss.; J. HARRISON, *Configuring the new "Regional World": on being caught between territory and networks*, in *Regional Studies*, I, 2013, pp. 55 ss.; HAUGHTON G., ALLMENDINGER P., OOSTERLYNCK S., *Spaces of neoliberal experimentation: soft spaces, post-politics and neoliberal governmentality*, in *Enviroment and Planning*, I, 2013, pp. 217 ss.

[65] On the approach 'à géométrie variable', see D. STEAD, *European Macro-regional Strategies Indications of Spatial Rescaling*, in *Planning Theory & Practice*, I, 2011, pp. 163 ss.

[66] Interesting in this sense are the words of A. DUBOIS, S. HEDIN, P. SCHMITT, J. STERLING, *EU macro-regions and macro-regional strategies*, cit., «tailor-made solutions for each macro-region are needed in order to ensure that the macro-regional approach delivers added-value and helps to release undeveloped potential within a macro-region» (p. 10).


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different Member States (from the national to the regional and local level) if this proves to be more efficient in tackling issues of common interest.

To fully understand what macroregional strategies are, it is necessary to analyse its legal framework. This, however, can result somehow difficult since, with the adoption of the first macroregional strategy[67], the European Commission set a general rule which was later identified as the 3 no's rule[68]: no to new funds[69], no to new legislation, no to new institutions. Nevertheless, the absence of a Regulation expressly destined to set specific rules for macroregional strategies must not mislead our analysis, as the existing legal framework can still help us to correctly identify what macroregional strategies are.

In this sense, although many references are certainly present also in Regulation (EU) 1299/2013, the most important part of the legal rules related to macroregional strategies can be found in Regulation (EU) 1303/2013, which, as already remembered, was the Regulation that laid down common provisions to all ESI Funds for the 2013-2020 programming period.

In particular, art. 2 of Regulation (EU) 1303/2013 has set the official definition of macroregional strategy by stating that this must be intended as «an integrated framework agreed by the Council and, where appropriate, endorsed by the European Council, which may be supported by the ESI Funds among others, to address common challenges faced by a defined geographical area relating to Member States and third countries located in the same geographical area which thereby benefit from strengthened cooperation contributing to achievement of economic, social and territorial cohesion».

The expression macroregional strategy is also present in other provisions of Regulation (EU) 1303/2013. First of all, it is used in art. 11, which indicates the content of the Common Strategic Framework[70], by providing that this document must establish, among the others, the «priority areas for cooperation activities under

[67] See the *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions concerning the European Union Strategy for the Baltic Sea Region*, COM (2009) 248/4, Bruxelles, 10 June 2009.

[68] On the meaning of the three no's expressed by the European Commission, see P. JOENNIEMI, *The EU Strategy for the Baltic Sea Region: A Catalyst for What?*, DIIS Brief August, Copenhagen, 2009; A. STOCCHIERO, *Macro-Regioni Europee, del vino vecchio in una botte nuova*, CeSPI Working Papers, LXV, 2010.

[69] This first no means that macroregional strategies do not have budget lines of their own and have been, since the very first adoption, funded by existing European budgets and programmes. Indeed, from this particular point of view, macroregional strategies were also imagined as a measure to combat the E.U. financial and economic crisis by proposing better mechanisms for the comprehensive coordination of scarce budgetary resources.

[70] The Common Strategic Framework is a strategic document which establishes guiding principles to facilitate the programming process and the sectoral and territorial coordination of Union intervention under the ESI Funds and with other relevant Union policies and instruments. In particular, it is an act meant to facilitate the preparation of the Partnership Agreement and programmes in accordance with the principles of proportionality and subsidiarity, also taking into account national and regional competences, in order for the specific and appropriate policy and coordination measures to be decided.


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the ESI Funds, where appropriate, taking account of macro-regional and sea basin strategies».

Indeed, the Common Strategic Framework, which is prepared by the European Commission and attached to the Regulation, must be considered crucial for the later procedures concerning E.U. financial instruments, as it establishes the «strategic guiding principles to facilitate the programming process and the sectoral and territorial coordination of Union intervention under the ESI Funds and with other relevant Union policies and instruments, in line with the targets and objectives of the Union strategy for smart, sustainable and inclusive growth, taking into account the key territorial challenges of the various types of territories».

There should be no surprise, then, that also the Common Strategic Framework contained some important references to macroregional strategies. In particular, under point 7 (which is headed «Cooperation Activities») it was stated that «Member States shall seek to ensure successful mobilisation of Union funding for macro-regional and sea-basin strategies in line with the needs of the programme area identified by the Member States. Ensuring successful mobilisation may be done, among other actions, by prioritising operations deriving from macro-regional and sea-basin strategies by organising specific calls for them or giving priority to these operations in the selection process through identification of operations which can be jointly financed from different programmes. Member States shall [also] consider making use of relevant transnational programmes as frameworks to support the range of policies and funds needed to implement macro-regional and sea-basin strategies».

In this sense, it was explicitly set that «Member States shall, where appropriate, ensure that the objectives of macro-regional and sea-basin strategies form part of the overall strategic planning in Partnership Agreements […] and in programmes in the regions and Member States concerned in accordance with the relevant provisions of the Fund-specific rules».

The mention of the Partnership Agreement and of the programmes is quite significant, as it is through these documents that Member States agree with the European Commission the access to ESI Funds[71]. For what is more interesting to our investigation, the Partnership Agreement must indicate «an integrated approach to territorial development supported by the ESI Funds or a summary of the integrated approaches to territorial development based on the content of the programmes, setting out», among the others, «the main priority areas for cooperation under the

[71] More specifically, according to art. 2 of Regulation (EU) No. 1303/2013 the Partnership Agreement is «a document prepared by a Member State with the involvement of partners in line with the multi-level governance approach, which sets out that Member State's strategy, priorities and arrangements for using the ESI Funds in an effective and efficient way so as to pursue the Union strategy for smart, sustainable and inclusive growth, and which is approved by the Commission following assessment and dialogue with the Member State concerned».


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ESI Funds, taking account, where appropriate, of macro-regional strategies and sea basin strategies»[72].

Also the rules concerning the approval of single programmes financed by ESI fund contained a specific reference to macroregional strategies, as it was set that where «Member States and regions participate in macro-regional strategies or sea basin strategies, the relevant programme, in accordance with the needs of the programme area as identified by the Member State, shall set out the contribution of the planned interventions to those strategies»[73].

From this analysis, it is possible to imply the following consequence: although no specific Regulation was adopted, it took only four years from the birth of the first macroregional strategy (EUSBR) for this new legal tool to find place, and by this formal recognition, in a legislative act of the E.U.

Particularly interesting is the reference made in the official definition of macroregional strategy to the strengthened cooperation instrument. This seems to be redesigned in some of its main characters in order to adapt it to the specific needs and the declared objective of macroregional strategies, which is to create a more efficient system of management of E.U. resources able to accomplish, in the interested area, a better coordination of public interventions financed by ESI Funds and other E.U. financial instruments.

As known, the rules set for strengthened cooperation (artt. 20 TUE and 326 ss. TFUE) provide that this must involve a minimum of nine Member States, and that it must be opened to further adhesion by all the remaining Member States. These conditions, however, are not applicable to macroregional strategies, which are based on a territorial approach towards a defined geographical area, by this excluding Member States of different parts of the E.U. territory.

Furthermore, there is also another reason that makes the reference to the strengthened cooperation instrument so interesting to our investigation. If normally strengthened cooperation is entirely built between the E.U. and the State level, macroregional strategies seem to ensure some form of involvement of regional (and local) authorities[74].

This distinctive trait is proven by the procedure followed to adopt the macroregional strategy for the Alpine region (EUSALP), in which it seems possible to identify three different phases.

The first phase saw a prominent role of subnational authorities (in particular regional authorities) which started to promote the future adoption of the macroregional strategy by building networks and signing informal agreements. These documents,

[72] Art. 15 of Regulation (EU) No. 1303/2013.

[73] Art. 27, par. 3, of Regulation (EU) No. 1303/2013.

[74] See S. GÄNZLE, K. KERN, *Macro-regional Strategies: A New Mode of Differentiated integration in the European Union*, Paper for CEPSA Annual Conference, 2011.


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however, were merely programmatic, and their content was limited to a preliminary identification of the common issues to the different territories involved in the macroregional strategy and of possible actions to be taken in order to tackle them[75].
The second phase, instead, required the involvement of Member States' national governments. In particular, moving from the above mentioned agreements, subnational authorities and their central governments started to negotiate the main elements of the future macroregional strategy and finally proceeded to the adoption of the formal documents which were later presented to E.U. institutions by one of the participating Member States[76].
This phase was not only very important from a political point of view, but also legally inevitable, as regional authorities were – and still are – unable to autonomously present these initiatives to E.U. institutions. Furthermore, it must not be underestimated that the involvement of central governments ensured the rationalisation of the future macroregional strategy with pre-existing transnational cooperation programmes, coherently with the declared aim of realising better synergies between different forms of public interventions financed by E.U. funds.
Finally, during the third phase, the procedure to adopt the macroregional strategy was brought at the E.U. level. In particular, the leading Member State (France) presented the intention to establish the strategy to the European Council. Once received this communication, the Council recommended to the European Commission to take all the institutional steps in order to concretely formalise it.
To that end, the European Commission started a consultation process through opened online surveys where all the interested stakeholders (not only regional and local authorities, but also members of the civil society) were asked to give their contribution to the strategy by highlighting which objectives were considered more relevant and which were the main obstacles to their fulfilment.

[75] In particular, the 29th of June 2012 the Arge-Alp Working Community adopted a Resolution on the future adoption of a macroregional strategy for the Alpine Region. Significant are the words of the Resolution: «1. Le Regioni Alpine si pronunciano a favore di una strategia macroregionale europea per le Alpi. Sono convinte che una strategia macroregionale costituisca il quadro d'azione idoneo per realizzare, sulla base dell'identità comune dell'arco alpino, una collaborazione sempre più stretta ed efficiente a tutti i livelli (Unione Europea, stati nazionali, regioni); 2. Le Regioni propongono il documento d'iniziativa ai rispetti-vi governi nazionali, invitandoli a promuovere l'elaborazione di una strategia macroregionale europea per le Alpi; 3. Le Regioni presentano un documento d'iniziativa elaborato collettivamente, che propone obiettivi concreti nei settori […] in cui è possibile creare un valore aggiunto attraverso un quadro operativo europeo comune, che consenta piena collaborazione a tutti i livelli secondo il principio della multi-level governance».

[76] More specifically, two different documents were drafted by a commission made of representatives of national and regional authorities of all the participating members: the 'Intervention document for the implementation of a European Union Strategy for the Alpine Region', which had the aim of setting the objectives and the main elements of the future strategy, and the 'Political Resolution towards a European Union strategy for the Alpine Region', that contained the commitment of central governments and regional authorities to make all the necessary institutional steps to promote the formal adoption of the strategy at the E.U. level.


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Once completed the consultation process, the European Commission adopted two distinguished but connected official documents: a Communication[77] and an Action Plan[78].

The Communication is a general document in which the Commission manifests the official intention to establish the macroregional strategy by indicating the motivations behind the need of an integrated approach, the general guidelines and the main objectives of the strategy.

As for the Action Plan, this document specifies the objectives of the strategy and explains which actions will be taken in order to achieve the expected results. Under this point of view, it is interesting to highlight how the Action Plan also indicates some *flagship projects* as examples of the measures to be taken in the future procedures to access ESI Funds.

Both the above mentioned documents were first brought to the attention of the European Parliament, the European Economic and Social Committee and the Committee of the Regions, and finally approved by the Council, leading to the formal adoption of the macroregional strategy.

Moving our analysis to the third no expressed by the European Commission (no to new institutions), this means that macroregional strategies are to be managed without the creation of new institutions. In other words, the implementation of macroregional strategies is a matter of competence of existing administrative structures (both at the European and at the national level).

Standing to the indications provided by the European Commission's Report concerning the governance of macroregional strategies[79], these present a three-level governance system: a strategic level, a coordination level and an implementation level. These levels are, of course, inter-related.

Looking into the strategic level of governance, this concerns the political leadership of the strategy, as what was recognised was that a high-level and structured political dimension providing overall direction, setting priorities and taking key decisions, was crucial for the effectiveness of macroregional strategies. This level is responsible for the strategy, setting priorities and addressing key matters, such as the alignment of funding to the macro-regional approach. It should also ensure that authorities

[77] *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions concerning a European Union Strategy for the Alpine* Region, COM (2015) 366 final, Bruxelles, 28th of July, 2015.

[78] *Commission Staff Working Document, Action Plan, Accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions concerning the European Union Strategy for the Alpine Region*, COM (2015) 366 final, Bruxelles, 28th of July, 2015.

[79] *Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions concerning the governance of macro-regional strategies*, COM (2014) 0284 final, Bruxelles, 20th of May, 2014.


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involved in the implementation process are able to work effectively with sufficient resources.

In the initial years after the adoption of the first macroregional strategies, the system relied heavily on the European Commission for strategic leadership. As a matter of fact, it was the Commission that ensured momentum by organising key events such as the annual meeting. Furthermore, the European Commission was central both in the report and in the evaluation activities, acting as a key facilitator and guarantor of the E.U. dimension of the strategy.

However, over-dependence on E.U. institutions as principle driving forces was not considered fully desirable, and the same European Commission highlighted that, in order to succeed, macroregional strategies needed a better balance between its role and the leadership provided by the involved countries and regions. It was therefore suggested to take the general strategic leadership at a ministerial level. In particular, Ministers hosting the National Contact Point are now the ultimate decision makers, and together they constitute a regular decision making formation. They are also responsible for evaluating progress and for seeking breakthroughs when stalemates occur.

Still looking at the political leadership of the strategy, it was also decided that the presidency of the macroregional strategy had to be assigned on the base of a rotation principle with a timeline of one year, by this ensuring the involvement of all the participating countries.

Moving our analysis to the governance level related to coordination activities, it can be defined as the *trait d'union* between the authorities in charge of the strategic leadership and the ones responsible of the concrete implementation of the strategies at the national level. It includes tasks such as operational guidance, reporting and evaluation of performance, national/regional coordination, and facilitation of major events. Also this level of governance has a dual articulation, at the E.U. and at the national level.

Looking at the E.U. level, as happened for the leadership of macroregional strategies, in the initial stages the Commission was extensively involved in coordination activities. However, it was once again highlighted that day-to-day technical support diverted resources from the Commission's core tasks. Therefore, the need of a major and more defined role of National Contact Points was suggested.

In particular, National Contact Points have started to take on a major role in coordination activities, as they ensure a constant dialogue both with the European Commission, on one side, and with the involved national, regional and local authorities on the other. With regards to this las point, it is important to highlight that most National Contact Points have set up a national coordination platform,


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bringing together national, regional and local stakeholders to facilitate the implementation of macroregional strategies at all territorial tiers of government.
Finally, looking at the governance level related to the implementation of the strategies, this is entirely a matter of competence of Member States, which are free to allocate the related financial resources at the territorial level of their choice as long as this complies to the European rules set for the related E.U. fund or financial instrument.
However, it must be underlined that the European Commission has endorsed an increased involvement of regional authorities in the implementation stage, also by making a better use of existing regional associations[80].
As the analysis shows, macroregional strategies may have significant repercussions for the existing institutional capacities within the interested area. They influence both existing institutions and the implementation of E.U. legislation, requiring the alignment of projects funded through ESI Funds as well as other E.U. financial instruments to the macroregional approach. This means that, although it could still be to early to evaluate the long-term impact of E.U. macroregional strategies, it is still possible to imply that these have the potential to complement the existing architecture of multilevel governance in the European context.
In this sense, macroregional strategies differ from projects financed by INTERREG programmes as they are subject to almost no legal rules, meaning that national, regional and local authorities are given an overall strategic framework to develop joint actions with foreign counterparts on the basis of an efficiency evaluation of the expected results. As a matter of fact, macroregional strategies are something which is of course linked, but not formally part of the European Territorial Cooperation.
The absence of a clearly defined legal framework, however, also implies that joint actions developed in the context of a macroregional strategy are somehow left to the spontaneous initiative of the interested public authorities, from the national to the regional and local level. Looking at macroregional strategies from the perspective of the level of autonomy of regional and local authorities, this means that the possibility to implement forms of administrative cooperation in the framework of a macroregional strategies is something that depends almost entirely on their political capacity[81] to carry on the European integration process by joining forces with foreign counterparts.

[80] See *Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions concerning the governance of macro-regional strategies*, COM (2014) 0284 final, Bruxelles, 20th of May, 2014

[81] The notion of 'political capacity' was firstly drawn by M. KEATING, *The New Regionalism in Western Europe: Territorial Restructuring and Political Change*, Cheltenham, Edward Elgar, 1998, pp. 135 ss.


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*5. Multilevel governance and European Territorial Cooperation: the transformation of the concept of multilevel governance from a descriptive to a prescriptive notion*

As the previous pages have shown, during the last decades there has been a constant evolution of E.U. law concerning cooperation between territorial authorities of different Member States. This evolution has obviously produced an influence on national legal orders[82], due to the general principles of primacy and effectiveness of E.U. law. At the same time, however, it would be a mistake to overestimate the impact played by the above-mentioned legal sources. In fact, the analysis of the European Territorial Cooperation tools and legal instruments has clearly highlighted how references to domestic legal orders are still important and meaningful.

This relationship between the European and national legal orders in the context of European Territorial Cooperation can be better understood by looking at the evolution of the concept of multilevel governance.

The majority of the studies that have analysed this concept in the past have dealt with it mainly from a political science perspective, while legal scholars have tended to use the same notion only as a descriptive formula in order to frame the existence and the role of subnational authorities in the E.U.. This may even be seen as a paradox considering that, as a matter of fact, it was a major legislative act which led to the first formulation of this concept.

In particular, the emergence of the concept of multilevel governance was a direct consequence of the reform of ESI Funds that occurred in 1988[83]. It was only from this moment that ESI funds had to be administered through partnerships established within the Member States, consisting of representatives of national, regional and local authorities. Therefore, it was from the study of the renewed European structural policy, and particularly of the partnership principle, that in the early 1990s Gary Marks developed and launched the concept of 'multilevel governance'[84].

The multilevel governance analysis framework was later extended to the whole spectrum of E.U. action, and in this way multilevel governance became a general theory used by scholars to explain the functioning of the E.U.

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[82] For an interesting example, see decision n. 258/2004 of the Italian Constitutional Court, where the constitutional judges rejected the thesis of the central government according to which the national law enforcing the Madrid Convention on crossborder activities by subnational units – a statute requiring the subnational units to obtain the agreement with the government before concluding a crossborder agreement – was applicable to a convention concluded within the framework of an INTERREG program. According to the Court, the above mentioned convention had to be considered as part of E.U. law. The Court also considered legitimate the creation of a crossborder body if this occurred within the framework of an INTERREG program context.

[83] See Council Regulation (EEC) No. 2052/88 of 24 June 1988.

[84] See G. MARKS, *Structural policy in the European* community, in A. SBRAGLIA (ed.), *Europelitics:Institutions and Policymaking in the "New" European* Community, Washinghton DC, The Booking Institute, 1992, pp. 191 ss.; ID, *Structural policy and multilevel governance in the EC*, in A. CAFRUNY, G. ROSENTHAL (eds), *The State of the European Community*, vol. 2, Boulder, Lynne Rienner, 1993, pp. 391 ss.


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After some years from the first studies, this concept started to appear in many official E.U. documents[85]. Significant in this sense are the words of the Commission's White Paper on European Governance of 2001: «The Union needs clear principles identifying how competence is shared between the Union and its Member States. In the first place this is to respond to the public's frequent question 'who does what in Europe?' A common vision is needed to answer this question. The White Paper has highlighted [. . .] a Union based on multilevel governance in which each actor contributes in line with his or her capabilities or knowledge to the success of the overall exercise. In a multi-level system the real challenge is establishing clear rules for how competence is shared – not separated; only that non-exclusive vision can secure the best interests of all the Member States and all the Union's citizens».

Eight years after the Commission's White Paper, the Committee of the Regions published the White Paper on Multilevel Governance, which defined multilevel governance as a «coordinated action by the European Union, the Member States and local and regional authorities, based on partnership and aimed at drawing up and implementing EU policies». Therefore, «Multilevel governance is not simply a question of translating European or national objectives into local or regional action, but must also be understood as a process for integrating the objectives of local and regional authorities within the strategies of the European Union. Moreover, multilevel governance should reinforce and shape the responsibilities of local and regional authorities at national level and encourage their participation in the coordination of European policy, in this way helping to design and implement Community policies»[86].

According to this definition, multilevel governance appears to be a dynamic concept ('coordinated action', 'translating into local or regional action', 'process for integrating the objectives', etc.) that consists of two major elements: not only the need of implementing E.U. policies at the regional and local level, but also a more intense involvement of subnational authorities in E.U. policymaking both at the E.U. and at the national level.

The 'dynamic' notion of multilevel governance emerging from the Committee of the Regions' White Paper is, therefore, fundamentally procedural, as it lays down certain guidelines in relation to how decisions are to be made. However, given the nature of the above mentioned documents, it is still not possible to state that the concept of

[85] In the *Sixth Periodic Report on the Social and Economic Situation and Development of the Regions of the EU*, published in 1999, the European Commission itself used for the first time the expression multilevel governance in an official document, where it argued that 'the delivery system developed for the structural funds is characterized by multi-level governance, i.e., the Commission, national governments, and regional and local governments are formally autonomous, but there is a high level of shared responsibility at each stage of the decision making process. The relationship between these is, accordingly, one of partnership and negotiation, rather than being a hierarchical one' (p. 143).

[86] Committee of the Regions, *White Paper on Multilevel Governance*, CdR 89/2009, pp. 17 ss., 18 June 2009.


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multilevel governance has become a legal concept[87]. Nonetheless, it is looking at EU secondary law that we can find the clear foundation of multilevel governance as a legal notion.

In particular, it cannot be considered a surprise that the main reference to multilevel governance can be found in Regulation (EU) No 1303/2013. This Regulation indicates multilevel governance as a legal principle that, along with subsidiarity and proportionality, must be respected by Member States when creating partnerships with subnational authorities and other economic and social actors for the implementation of cohesion policy.

Like in the Committee of the Regions' White Paper, also in Regulation (EU) No 1303/2013 multilevel governance emerges as a 'procedural' concept, and, more specifically, as a 'governance method' that requires the involvement of subnational authorities and coordinated actions between different levels of government.

Furthermore, Regulation (EU) No 1303/2013 also contains indications concerning the *ratio* of multilevel governance when it states that respect for the principles of partnership and multilevel governance is required «in order to facilitate achieving social, economic and territorial cohesion and delivery of the Union's priorities of smart, sustainable and inclusive growth».

However, Regulation (EU) No 1303/2013 also highlights that the ultimate purpose of a partnership in the context of the E.U. regional policy is «to ensure the ownership of planned interventions by stakeholders and build on the experience and the know-how of relevant actors»[88]. The expression 'ownership by stakeholders', indeed, also suggests that the participation of subnational authorities in the framework of cohesion policies could contribute to address the democratic deficit of the E.U. as a form of participatory democracy[89].

Focusing on what is more interesting to the scope of this research, the inclusion of multilevel governance as a key principle of Cohesion Policy sets aside any remaining doubt in relation to the nature of multilevel governance as a legal concept. More

[87] A step forward came once again from the Committee of the Regions in 2014 with the adoption of the Charter of Multilevel Governance. This was the first attempt to try to 'codify' a set of rules concerning multilevel governance. Particularly interesting are these words: «Against this background, the Committee of the Regions (CoR) wants to strengthen MLG in the different strategic priorities of the EU and in the different stages of the decision-making process at European level. MLG thus acquires a new quality: from analytical tool it becomes a principle and a programme for action. This demands very concretely the establishment of structured political processes for monitoring and analysing governance in the EU» (p. 2). The Charter too, however, is only a political document embodied in a resolution of the Committee of the Regions. As such, it does not have a legally binding effect.

[88] Point 11 of the Preamble of Regulation Regulation (EU) No 1303/2013.

[89] The notion of participatory democracy is used in the sense of every form of arrangement, apart from traditional representative and direct democracy, through which citizens are somehow enabled to express their influence in public life. On the concept of participatory democracy, see C. PATEMAN, *Participation and Democratic Theory*, Cambridge, Cambridge University Press, 1970.


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specifically, multilevel governance emerges as a principle of procedural nature, which must be respected by the Member States in the field of Cohesion Policy, of which European Territorial Cooperation is an essential part.

However, given that constitutional arrangements vary asymmetrically across the E.U., it must also be underlined that the European Union's notion of 'multilevel governance' is necessarily minimal. It must be so especially because E.U. law can only require Member States to respect a certain 'method' or 'approach' when implementing E.U. policies, but it cannot impose a specific multilevel structure on them[90].

In other words, although the constitutive elements of the principle of multilevel governance are rooted in E.U. law by laying down a framework for regional and local authorities' participation in Cohesion Policy, this principle cannot oblige Member States to create certain participation channels for subnational authorities or to use those provided at the Union level. This means, ultimately, that the principle of multilevel governance can open doors and windows, but it is largely up to Member States and their regional and local authorities to seize the opportunity.

Therefore, the concrete declination of the principle of multilevel governance cannot be found only in the framework of E.U. law, as there are two parallel dimensions of it: one supranational (the E.U.) and one national (the Member States). This means that multilevel governance is an asymmetrical legal concept. There is a common basis for it in E.U. law, along with 27 different national declinations of it in accordance with every single national legal system.

About this domestic law dimension of the multilevel governance principle, in the context of this research we can only recall that all Member States have a constitutional framework that includes regional and/or local authorities and that their role has increasingly grown in many different ways over the last fifty years[91]. Therefore, the evolution and constant growth of European Territorial Cooperation tools and legal instrument cannot be disassociated from the increased power claims that regional and local authorities are making upon central governments in the national institutional context.

[90] It must be reminded, under this particular perspective, that art. 4, par. 2, TEU states that the «Union shall respect the equality of Member States before the Treaties as well as their national identities, inherent in their fundamental structures, political and constitutional, inclusive of regional and local self-government».

[91] As a matter of fact, the greater presence of regional and local authorities at the E.U. level is closely linked to the constitutional evolution that has taken place in many Member States since the beginning of the European Community project. Important examples of this wave of decentralization that occurred in almost all Member States between the 1970s and the early years of the new century transition are the Italian Regions becoming operational in 1970 and the Constitutional Reform of 2001, the full transformation of Belgium into a federal state in 1994, the progressive creation of a 'unitary decentralised state' in France since 1982, and the constitutional reforms in Germany in 1994 and 2006 aiming to strengthen the position of the German Lander.


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These two different driving forces of the multilevel governance principle, indeed, imply that while in the past the legal capacity of subnational authorities to perform crossborder cooperation or to set a crossborder cooperation body was dealt at the State level, by means of domestic provisions or international agreements the State decided to agree upon, today the regulatory framework of the E.U. on one side, and the increased role of regional and local authorities at the national level on the other, seem to undermine this finding. In particular, by seeking to learn from each other and to exploit complementary assets in pursuing their own development projects, regional and local authorities have come to contest the monopoly of the State in foreign relations and are given the chance to exercise their autonomy[92] - usually guaranteed at the Constitutional level - not only inside national borders, but also in their relations with foreign authorities.

*6. A possible classification of European Territorial Cooperation tools and legal instruments*

In the previous pages the analysis has been conducted with regards to the legal framework for the ESI Funds 2014-2020 programming period. As known, this legal framework has recently been substituted by a new set of Regulations which will state the rules for the 2021-2027 programming period. However, instead of analysing them in the first part of the research, the choice was to 'frame the picture' of European Territorial Cooperation to the ESI Funds programming period that has just come to an end, while the future perspectives of European Territorial Cooperation will be the object of the next paragraph.

Therefore, it is now time to try to formulate a possible classification of the tools and legal instruments analysed in the previous paragraphs. Indeed, although these are quite connected making the distinction between them blurred and not so immediate to understand, they still maintain their independency. A more careful investigation can also show how these tools and legal instruments may be complementary one to another, and when they are all put together, they seem to draw an overall framework of European Territorial Cooperation, each one of them providing its own contribution to the general picture.

[92] On the concept of public autonomy in the Italian legal tradition, see M.S. GIANNINI, *Autonomia pubblica (teoria generale e diritto pubblico)*, in *Enc. dir*, IV, Milan, 1959, pp. 356 ss., «Si è discusso se il tratto tipico dell'autonomia locale sia effettivamente la autonomia dell'indirizzo politico-amministrativo. […] Il potere di dare a se stessi un indirizzo è posseduto da ogni soggetto, sia esso pubblico o privato. […] Or questo potere, allorché il soggetto è un ente esponenziale di un ordinamento giuridico generale, cioè di una comunità comprendente persone di ogni età sesso religione categoria classe ecc., è, per definizione, potere d'indirizzo politico, perché la comunità non emette che delle manifestazioni politiche, nel senso rigorosamente scientifico del termine. Stato, regione, provincia e comune hanno tutti, pertanto, un potere di indirizzo politico. Ciò che varia è il contenuto del potere stesso: esso ha cioè elementi di composizione diversi in ragione della natura e delle funzioni della comunità e del suo ente esponenziale. […] Il potere d'indirizzo politico-amministrativo degli enti locali territoriali è inoltre delimitato dalle norme dello Stato. Talune materie sono ad esso sottratte senza riserva: i rapporti con altri ordinamenti originari» (p. 365).


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Following the order in which they have been presented and described in this research, the most important legal instrument with regards to European Territorial Cooperation can surely be identified in INTERREG programmes. As a matter of fact, the notions of European Territorial Cooperation and INTERREG programmes are usually used as synonyms.

More specifically, INTERREG programmes represent the official financial instrument related to the European Territorial Cooperation objective, providing a constant flow of funds for the implementation of cooperation programmes across national borders.

As the analysis has shown, there has been a constant evolution of these programmes which have been strengthened over the last decades to better pursue the objective of territorial cohesion, by this contributing to the European integration process. Apart from the growth of money destined to INTERREG programmes, which, however, remains rather limited in comparison to funds destined to the other objectives of Cohesion Policy, the 2014-2020 period must be considered a turning point because for the first time in E.U. history a specific Regulation was adopted on this subject.

Starting from this moment, the E.U. legislator has provided a clear set of rules specifically designed for INTERREG programmes, while still leaving a certain degree of autonomy to Member States in order to define the most suitable solution to implement them, especially from an institutional perspective. This autonomy, however, cannot exclude the participation of regional and local authorities both in the policymaking and in the implementation phases, as it must necessarily comply with the principles of partnership and multilevel governance.

From a general point of view, the evolution of the INTERREG legal rules may also have reached a point to where European Territorial Cooperation can be considered as an autonomous policy sector of the E.U., inserted in the context of Cohesion Policies, which finds its legal framework at the European level in the combination of Regulation (EU) No 1299/2013, specifically designed for European Territorial Cooperation, and Regulations (EU) No 1303/2013 and No 1301/2013, where applicable.

The clear definition of the legal framework that governs European Territorial Cooperation also implies that it has become increasingly important to understand what is part of it, and what, conversely, is not. This is proven by the analysis conducted with regards to another legal instrument related to European Territorial Cooperation: EGTCs.

As the investigation has shown, the original intention that led to the adoption of Regulation (EC) No 1082/2006 was to overcome problems faced by regional and local authorities of different Member States in implementing cooperation programmes financed by INTERREG. To reach this objective, the above mentioned Regulation provided a legal instrument for subnational authorities in order to establish a


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common legal body with foreign counterparts in order to manage cooperation programmes, regardless that such possibility was previously allowed according to their domestic legal orders.

As it has already been pointed out, however, one of the major amendments to Regulation (EC) No 1082/2006 was to allow national public authorities to become members of an EGTC, even without any form of participation by subnational authorities. If we add to this finding the facts that, on one hand, the same Regulation clearly sets that EGTCs can also be created to manage activities outside the framework of INTERREG programmes, and on the other hand, that there is no mandatory rule to establish a EGTC in the implementation phase of an INTERREG programme, the conclusion that can be reached is that European Groupings of Territorial Cooperation find their roots in European Territorial Cooperation, but are not necessarily a part of it.

From a legal point of view, the consequence is that EGTCs are subject to the ETC's legal framework only when these are created in order to manage INTERREG cooperation programmes, while in other cases the legal rules governing a EGTC must be recognised exclusively in Regulation (EC) No 1082/2006, which, as already pointed out, leaves great flexibility to the EGTC members as it is up to them the drafting of the convention and the statute.

From a more general perspective, instead, this same flexibility could also imply that EGTCs may be intended not only as a way to enhance cooperation between subnational authorities in the framework of European Territorial Cooperation, but as a possible tool for every form of administrative cooperation inside the E.U. territory when the creation of a transnational body with legal personality appears to be necessary, if not even merely convenient, in the concrete administrative task.

Finally, our focus must shift to macroregional strategies, which, as it has already been underlined, are not formally part of European Territorial Cooperation, nor more generally of Cohesion Policy. This is proven by the references contained in the same ESI Funds Regulations, where it clearly emerges that macroregional strategies are something external to it. External, however, does not mean that there are no connections between macroregional strategies and cohesion policies[93].

As a matter of fact, if it is true that macroregional strategies were imagined as a measure to create a mechanism for the comprehensive coordination of E.U. financial instruments in order to face common issues shared by more than one Member State (and third countries) in a defined geographical area, the circumstance that the majority of E.U. funding is provided within the Cohesion Policy framework should

[93] See DG Regio, *Study on Macroregional strategies and their links with Cohesion* Policy, Luxembourg, Publications Office of the European Union, 2018, Final report.


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imply that the concrete implementation of macroregional strategies should also comply with the multilevel governance principle.

This seems confirmed by the analysis of the macroregional strategies' governance structure, which seems to highlight that the main role of National Contact Points set at the ministerial level is not to manage the whole strategy, but to serve as facilitators able to create communication channels not only in a horizontal direction with their foreign counterparts, but also in a supranational (with the E.U. Commission) and in a subnational direction (with their regional and local authorities)[94].

In conclusion, it is possible to assume that in the future macroregional strategies could have the potential to constitute an intermediary level of governance between Member States and the E.U. with an active involvement of regional and local authorities in accordance to the multilevel governance principle. To reach this goal, however, macroregional strategies should embrace the entire E.U. territory, which, at the moment is only a remote possibility considering that after a first phase of what has been called a 'macroregional fever' that led to the approval of the first four strategies[95], no new strategy was adopted.

Building on these findings, it is now possible to state that from a legal point of view European Territorial Cooperation is a policy sector of the E.U. within the bigger framework of Cohesion Policy. It is financed by INTERREG funds and it is subject to a particular set of rules contained in a Fund specific Regulation, but also to general principles related to ESI funds such as the partnership and the multilevel governance principles.

As for the European Grouping of Territorial Cooperation, this is a legal tool which enables national, regional and local authorities of different Member States to create a transnational body with full legal personality that can be used as the managing authority of INTERREG programmes, as well as for other purposes of transnational relevance.

Finally, macroregional strategies can be intended as an intergovernmental agreement able to serve as a coordination tool in order to adopt an integrated approach to common issues of a defined geographical area and try enhance the effectiveness of programmes financed by ESI Funds as well as by other E.U. financial instruments. As the concrete experiences have shown, however, the intergovernmental character of macroregional strategies does not exclude an active participation of regional and

[94] See S. GÄNZLE, K. KERN, *Macro-regional Strategies: A New Mode of Differentiated integration in the European Union*, cit., where the authors argue that «Macro-regional strategies […] aim to improve horizontal and vertical coordination among the different countries, sub-national governments, and stakeholders in the macro-region. This opens new opportunities for the transnational cooperation of sub-national governments, but it also provides new options for stakeholder participation».

[95] Cfr. S. DUHR, *Baltic Sea, Danube and macro-regional strategies: a model for transnational cooperation in the EU?*, cit.


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local authorities not only in the implementation stage when E.U. funded projects are concretely realised, but also as first promoters of the strategy.

*7. Future perspectives of European Territorial Cooperation in the 2021/2027 ESI Funds programming period*

As recalled in the previous pages, starting from 2021 a new programming period of ESI Funds is going to begin. From a general point of view, the next programming period (2021-2027) will be characterized by the need to contrast the socio-economic impact of the coronavirus pandemic across the European Union. As a matter of fact, the European Commission's Spring 2020 Economic Forecast[96] pointed to a deep and uneven recession, noting the various uncertainties that surround both the estimates and future recovery of the European economy.

This exceptional situation led to a unified approach at the Union level, and to a major plan of investment which will be managed within the framework of Cohesion Policy in order to prevent further deterioration of the economy and boost a sustainable and resilient recovery of economic activities[97]. It is not possible in the context of this research to analyse all the concrete measures that the E.U. has adopted to face the new challenges connected this economic crisis. Briefly, according to the Next Generation EU plan, the main objective of the new ESI Funds programming period is to lead the E.U. to a green[98] and digital transition.

Looking at the legal framework of Cohesion Policy, as already happened for the 2014-2020 programming period, also for the 2021-2027 period there is a general Regulation that sets common rules for all ESI Funds (Regulation (UE) No 1060/2021), and Fund-specific Regulations that may establish specific rules to complement it[99].

For what is more interesting to our investigation, Regulation (UE) No 1060/2021 confirms the central role of the partnership and the multilevel governance principles

[96] See European Commission, *Economic Forecast Spring 2020*, Luxembourg, Publications Office of the European Union, May 2020. According to this document, the E.U. economy was projected to contract by 7.5 % and 7.75 % in 2020, before partially rebounding the following year. The labour market was also expected to suffer, with the unemployment rate forecast to rise by 2.3 % in the E.U. territory by the end of the year. Setting numbers aside, it is undeniable that, although with a different impact throughout different countries, this major economic shock has hit all Member States.

[97] See *Council Regulation (EU) No 2094*/2020 of the 14th of December 2020, establishing a European Union Recovery Instrument to support the recovery in the aftermath of the COVID-19 crisis.

[98] The importance of tackling climate change in line with the Union's commitments to implement the Paris Agreement and the United Nations Sustainable Development Goals is proven by the circumstance that all the Funds should contribute to mainstreaming climate actions and to the achievement of an overall target of 30 % of the Union budget expenditure supporting climate objectives. In this context, the Funds should support activities that would respect the climate and environmental standards and priorities of the Union and would do no significant harm to environmental objectives within the meaning of Article 17 of Regulation (EU) No. 2020/852.

[99] See art. 1 of Regulation (UE) No 1060/2021, where it is specified that Fund-specific Regulations establish rules to complement the above mentioned Regulation and shall not be in contradiction with it. In case of doubts between Regulation (UE) No 1060/2021 and Fund-specific Regulations, the first one prevails.


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in the context of Cohesion Policy by stating that the «principle of partnership is a key feature in the implementation of the Funds, building on the multi-level governance approach and ensuring the involvement of regional, local, urban and other public authorities»[100].

The importance of the role of regional and local authorities is furtherly stressed in art. 8 of Regulation (UE) No 1060/2021, which declares that partnerships «shall operate in accordance with the multi-level governance principle and a bottom-up approach»[101].

Focusing the analysis on European Territorial Cooperation, Regulation (UE) No 1059/2021 seems to follow the same path of Regulation (EU) No 1299/2013, as it lays down specific provisions for Interreg programmes. This means that, as happened in the previous ESI Funds programming period, Regulation (EU) No 2021/1060 and Regulation (EU) No 2021/1058[102] apply to Interreg programmes, except where specifically provided for otherwise under those Regulations and in the ETC Regulation or where Regulation (EU) No 2021/1060 can only apply to the Investment for jobs and growth goal.

Although very similar in their main contents, the comparison between Regulation (UE) No 1059/2021 and his ancestor immediately points out that the new legislative act contains a much more detailed regulation than the previous one. As a matter of fact, the majority of the rules set in Regulation (EU) No 1299/2013 were confirmed in their general terms by the new Regulation, but were furtherly specified in order to solve uncertainties and misinterpretations occurred in the previous programming period. As a consequence, rather than analysing Regulation (UE) No 1059/2021 in every single part, it seems more useful to point out the novelties to the general European Territorial Cooperation legal framework that has already been described in the second paragraph of this research.

To this end, the first novelty to be mentioned concerns INTERREG strands, as Regulation (UE) No 1059/2021 has added to the original three strands (cross-border, transnational and interregional cooperation) a fourth one, named 'outermost regions

[100] Point 14 of the Preamble of Regulation (UE) No 1060/2021, which continues by stating that in «order to provide continuity in the organisation of partnership, the European code of conduct on partnership for Partnership Agreements and programmes supported by the European Structural and Investment Funds established by the Commission Delegated Regulation (EU) No 240/2014 […] should continue to apply to the Funds».

[101] It is worth to stress that the multilevel governance principle is recalled also in Point 4 of the Preamble of the ETC Regulation, which clarifies that in all the stages of INTERREG programmes «the principles of partnership and multi-level governance should be taken into account, while ensuring that the scale of partnership for a programme remains effective».

[102] Regulation (EU) No 2021/1058 sets specific rules for the European Regional Development Fund and on the Cohesion Fund.


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cooperation'[103]. Moreover, the 'cross-border cooperation' strand was organised in two different sub-strands: internal[104] and external cross-border cooperation.
As a matter of fact, the major innovation brought by Regulation (UE) No 1059/2021 was to provide a common set of rules to be applied to all INTERREG programmes no matter if the participating authorities belong to Member States, third countries[105], partner countries[106] and outermost regions (OCT), while specific rules for external and outermost regions' cooperation programmes are set in specific chapters of the same Regulation[107].
This intention is immediately reflected in the heading of Regulation (UE) No 1059/2021, which points out that, differently from the previous period, the rules concerning INTERREG programmes will not involve exclusively the European Regional and Development Fund, but will also concern the instrument for Pre-Accession Assistance (IPA III), the Neighbourhood, Development and International Cooperation Instrument (NDICI) and the funding for all the outermost regions for the 2021-2027 programming period established as a programme by Decision 2013/755/EU (jointly referred to as the external financing instruments of the Union)[108].
However, the fact that internal and external cooperation find a common basis of rules in Regulation (UE) No 1059/2021 does not mean that there are no differences among them. Indeed, while cooperation between authorities of Member States can be performed directly after the approval procedures set in the first section of Chapter III, in order to implement a cooperation programme which sees the involvement of a third country, a partner country or an outermost region, a financing agreement must be previously concluded between the Commission and each participating third

[103] See art. 3 of Regulation (UE) No 1059/2021.
[104] Internal cross-border cooperation can be performed between adjacent border regions of two or more Member States or between adjacent border regions of at least one Member State and one or more of the third countries referred to in art. 4, par. 2 of Regulation (UE) No 1059/2021 (regions of Norway, Switzerland and the United Kingdom, as well as Andorra, Liechtenstein, Monaco and San Marino.
[105] According to art. 2 of Regulation (UE) No 1059/2021 «'third country' means a country which is not a Member State and does not receive support from the Interreg funds or which contributes to the general budget of the Union ('Union budget') by external assigned revenue»
[106] According to art. 2 of Regulation (UE) No 1059/2021,«'partner country' means an IPA III beneficiary or a country or territory covered, for Interreg A and B programmes, by the Neighbourhood area listed in Annex I to Regulation (EU) 2021/947 or the Russian Federation, or for Interreg C and D programmes, a country or territory covered by any geographic area under NDICI, and which receives support from the external financing instruments of the Union»
[107] Respectively Chapters VIII and IX of Regulation (UE) No 1059/2021.
[108] Although these financing instruments find their rules in other legal sources, Regulation (UE) No 1059/2021 sets out additional specific objectives as well as the integration of these funds into Interreg programmes, the criteria for third countries, partner countries and OCTs and their regions to be eligible and certain specific implementation rules.


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country, partner country or outermost region[109] in accordance with art. 112, par. 4, of the Financial Regulation[110].

Moreover, the distinction is furtherly emphasised by art. 10, which sets specific cross-fund provisions for external cooperation when cooperation programmes are funded from both the ERDF and external financial instruments, and by art. 12, which provides a mechanism to recover funds destinated to external cooperation whether the approval procedures' deadlines or the financial agreements signed in accordance to art. 59 of Regulation (UE) No 1059/2021 are not respected. In these cases, it is set that the ERDF contribution to that programme will be redistributed to internal cooperation programmes of the involved Member States.

Another important novelty brought by Regulation (UE) No 1059/2021, which seems to enhance the multilevel governance principle in the context of European Territorial Cooperation, is the one regarding the monitoring activity of the adopted INTERREG programmes. While in the past ESI Funds programming period this task was performed by the Commission[111], the new Regulation provides that, in agreement with the managing authority, Member States and, where applicable, third countries, partner countries and outermost regions participating in that programme must set up a committee to monitor the implementation of the respective Interreg programme within three months from its approval. It is also explicitly set that the composition of the monitoring committee must ensure a balanced representation of the relevant authorities, including intermediate bodies, bodies jointly set up in the whole programme area or covering a part thereof (including EGTCs), and representatives of the programme partners referred to in Article 8 of Regulation (EU) No 2021/1060 (which includes regional and local authorities).

Looking at EGTCs, Regulation (UE) No 1059/2021 continues to stress the importance of this legal tool in the context of European Territorial Cooperation, endorsing the possibility to assign to an EGTC the role of managing authority[112]. However, the new Regulation provides more flexibility to Member States and their regional and local authorities, as the references to EGTCs is always[113] complemented by the possibility to use also other crossborder legal bodies as defined in art. 2[114].

Finally, Regulation (EU) No 1059/2021 has added two Interreg-specific objectives compared to the ones of the previous Regulation: an objective to address cooperation issues on safety, security, border crossing management and migration; and a second

[109] See art. 59 of Regulation (UE) No 1059/2021.
[110] Regulation (EU, Euratom) No 1046/2018.
[111] See art. 14 of Regulation (EU) No 1299/2013.
[112] See Point 30 of the Preamble of Regulation (UE) No 1059/2021.
[113] See Point 30 of the Preamble and artt. 20, 23, 25 and 29 of Regulation (UE) No 1059/2021.
[114] Art. 2 of Regulation (UE) No 1059/2021 defines a 'cross-border legal body' as a «legal body established pursuant to the law of one of the participating countries in an Interreg programme provided that it is set up by territorial authorities or other bodies from at least two participating countries».


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objective to support the strengthening of institutional capacity, to enhance legal and administrative cooperation, and to intensify cooperation between citizens and institutions and the development and coordination of macroregional and sea-basin strategies.

In this sense, it is particularly interesting the possible action to support this last INTERREG specific objective of a better governance set in art. 14, par. 4, letter b), which can be directed at enhancing the efficiency of public administrations by promoting legal and administrative cooperation and cooperation between citizens, civil society actors and institutions, in particular with a view of resolving legal and other obstacles in border regions.

If considered alone, the above mentioned provision does not seem to add much to the legal framework of European Territorial Cooperation. If linked to the negotiation process that led to the adoption of the ESI Funds Regulations for the 2021-2027 programming period, instead, this provision can open a completely new perspective not only in the context of European Territorial Cooperation, but possibly to the whole European integration process.

In this sense, it must be reminded that in 2017 the European Commission published a Communication with regards to border regions[115] which highlighted that one of the major problems in performing cross-border activities was that while legal and administrative obstacles were mainly faced at a local level, possible solutions could only be developed at higher governmental tiers. As a consequence, the need to overcome these issues had to be faced by taking measures able to involve all layers of government and public administrations.

This understanding led the European Commission[116] to propose the adoption of a new Regulation in order to create a general mechanism to solve legal and administrative obstacles in cross-border regions as part of the Cohesion Policy legislative package[117].

Briefly, the intention of this legal tool, also known as the European Cross-border Mechanism (ECBM), was to allow one Member State to apply their domestic

[115] See EUROPEAN COMMISSION, *Communication from the Commission to the Council and the European Parliament Boosting growth and cohesion in EU border regions*, COM (2017) 534 final.

[116] It was the Luxembourg Presidency of the European Council in 2015 that paved the way for the creation of the European Cross-border Mechanism by setting up a Working Group. This working Group recognised «the value and necessity of thoroughly exploring a specific tool for the attribution and application of specific provisions for the improvement of cross-border cooperation and recommended a follow-up by the incoming Presidency Trio to further explore the existing opportunities for the efficient cooperation in border areas in Europe and to further analyse the necessity for developing adequate and complementary tools together with the European Commission, to be considered separate-ly or in the framework of the preparation of the legislative package for Cohesion policy post-2020». See *Presidency Conclusions of the Luxembourg Presidency of the Council of the European Union on the occasion of the Informal Ministerial Meetings on Territorial Cohesion and Urban Policy*, Luxembourg, November 2015.

[117] See EUROPEAN COMMISSION, *Proposal for a Regulation of the European Parliament and of the Council on a mechanism to resolve legal and administrative obstacles in a cross-border context*, COM (2018) 373 final.


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provisions in another Member State for a concretely defined case in the context of a joint project (which could be an item of infrastructure or any service of general economic interest).

In particular, the proposal differentiates between two different mechanisms: the European Cross-border Commitment, which was meant to be self-executive, and the European Cross-border Statement, which instead required a legislative procedure in the involved Member States.

More specifically, the Cross-border Commitment would allow competent authorities to sign an agreement, which by force of its conclusion would permit one Member State to 'pull over the border' legal provisions from another neighbouring State derogating from its 'normally' applicable national rules, while the Cross-Border Statement would need a further legislative procedure at the national level, committing one Member State to derogate from the 'normally' applicable national rules by means of a formal legislative act.

In other words, in case of the self-executing Commitment, the 'normally' applicable national rules would remain, but the Commitment would create a derogation; in case of the Statement, instead, the 'normally' applicable national rules would be formally amended to allow for an explicit derogation.

To comply with the subsidiarity principle, however, the proposition also stated that these mechanisms would have been adopted only on a voluntary basis, as Member States could also continue to use other effective mechanisms to resolve legal obstacles[118]. Nevertheless, according to art. 5 of the proposed Regulation, whether a Member State decided to use the above mentioned mechanisms, they would have been obliged to establish a national and, in the case of Member States with regional authorities with legislative powers, also a regional Cross-border Coordination Point.

Looking at the procedure for the conclusion of a Commitment or a Statement, this would have begun with the preparation and submission of the initiative document. According to the bottom-up approach inspiring this new legal tool, the proposed Regulation established who could be the initiator, referring to public or private bodies responsible for initiating or both initiating and implementing a joint project, one or more local or regional authorities located in a given cross-border region or exercising public powers in that cross-border region, a body with or without legal personality set up for cross-border cooperation located in or covering at least partially a given cross-border region, including EGTCs, Euroregions, and similar bodies, or finally an organisation set up on behalf of cross-border regions with the aim of promoting the interests of cross-border territories and of facilitating the

[118] See art. 4 of the proposed Regulation.


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networking of players and the sharing of experiences (such as the Association of European Border Regions)[119].

In particular, the initiative document would have to include a description of the joint project and of its context; the corresponding legal obstacle in the committing Member State as well as of the rationale for resolving the legal obstacle; a list of the specific legal provisions of the transferring Member State resolving the legal obstacle or, where no appropriate legal provision exists, a proposal for an ad hoc legal resolution; a justification for the area of application; the foreseeable duration or, where duly justified, its unlimited duration; a list of the competent committing and transferring authority or authorities. It is also specifically set that the derogation from the 'normally' applicable domestic law would have to be limited to the strict minimum with regards to both the territory it would have covered and its duration.

After the initiative would have been presented, the key actors in the Member States requested to conclude a Commitment or Statement were to be the respective national and/or regional Cross-border Coordination Points competent to set appropriate connections with all the competent authorities in the Member State and with their counterparts in the neighbouring Member State. In particular, within a three months deadline, the Cross-border Coordination Point would have had to react and decide whether to launch a procedure leading to the conclusion of a Commitment or a Statement, or if a resolution to the legal obstacles submitted by the initiator could be found within the existing legal framework.

According to the proposed Regulation, when the initiative document would have been considered complete, the Cross-border Coordination Point would have had to prepare a draft Commitment or Statement and reach an agreement on the text with the transferring Member State. Afterwards, the signed Commitment or Statement would have had to be transmitted not only to the initiator, but also to the Cross-border Coordination Point of the neighboring Member State, the competent authority of its own Member State, the EU coordination point and the authority or body designated by the committing Member State for its official publication.

Given their different nature, specific rules were set for the implementation phase of the Cross-border Commitment and the Cross-border Statement.

In particular, the proposed Regulation stated that the Commitment would have been implemented either by amending existing administrative acts based on the 'normally' applicable law or by adopting new administrative acts based on the law 'pulled over the border'[120]. Whether more than one public authority would have been competent for different aspects of a complex legal obstacle, the Commitment should also be accompanied by a timetable for each of them. However, in full respect of the

[119] See art. 8 of the proposed Regulation.
[120] See art. 18 of the proposed Regulation.


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subsidiarity principle, it was also clearly set that the adoption and transmission of the amended or of the new administrative acts would have been governed by the national law on administrative procedures.
With regards to the Cross-Border Statement, instead, it was provided that this would have been implemented by one or more submissions of proposals to the competent legislative body in order to amend the national law to cover the necessary derogations[121].
As a result of these procedures, the law of the neighbouring Member State could have been applied in the committing Member State as incorporated into its own legislation.
As the analysis shows, the proposed Regulation was very ambitious, if not even revolutionary, in its contents. For what is more interesting to the scope of this research, its approval could have had furtherly enhanced the role of regional and local authorities in a classical bottom-up approach, enabling them to solve legal and administrative problems in implementing European Territorial Cooperation programmes by creating a channel of communication with competent national authorities at the central, and where appropriate, also at a regional level.
However, during the negotiation process for the new Cohesion Policy legislative package, the choice was to put aside this new instrument. The reason for this choice can be found in two main causes.
The first one can be recognized in the COVID 19 pandemic, which forced both E.U. institutions and Member States to direct all their efforts in finding the appropriate measures to contrast the consequences of the economic crisis, setting aside other priorities[122].
The second one, instead, is specifically linked to the legal consequences of this new instrument, as considerable resistances were raised for its compliance with national constitutional frameworks as well as with E.U. law.
Looking at this last aspect, the most important issues that were highlighted regarded not only the choice of the Regulation as the most suitable legal source to introduce the new mechanism, but also its compliance with the subsidiarity and the proportionality principles[123].
While these issues are addressed by the proposed Regulation and appear to be solvable without too much concerns, it is truly its compliance with national

[121] See art. 19 of the proposed Regulation.
[122] See COUNCIL OF THE EUROPEAN UNION, *Presidency Report. Cohesion policy legislative package 2021-2027 – Overall state of play of negotiations*, Brussels, 19 June 2020, where it was stated that, «considering the fact that the ECBM Regulation is not linked to the MFF discussions, the file has so far received a lower level of priority».
[123] See SWEDISH PARLIAMENT, *Note to the President of the Council of the European Union on the subject: Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on a mechanism to resolve legal and administrative obstacles in a cross-border context [doc. 9555/18 - COM(2018) 373 final]- Reasoned opinion on the application of the Principles of Subsidiarity and Proportionality*, 2018.


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constitutional frameworks that blocked the adoption of this new instrument. As a matter of fact, once approved, the core of the Regulation would have been to apply the rule of law from one Member State to another, which would have immediate implications for States' sovereignty. In this sense, although the proposal outlined that constitutional law was respected due to the Regulation voluntary character, the truth is that many questions arise.

The first one concerns the same voluntary character of the Regulation. It has been argued[124] that the proposed Regulation can be considered voluntary only with regards to which mechanism is chosen, but it is still obligatory in the sense that each Member State must necessarily decide which option to choose. Furthermore, the 'either…or' formulation[125] seems to exclude the development of new solutions in the sense of the possibility to choose to set up a mechanism that does not already exist. This interpretation is supported both by the explanatory memorandum, which indicates the option to continue to use the effective mechanisms already put in place, and by text of the proposed Regulation, which uses the formulation "existing mechanisms".

From a different point of view, according to the proposed Regulation, the concrete implementation of the European Cross Border Mechanism, especially in the case of the European Cross Border Statement, would necessarily require the initiation of the process described in the previous pages, by this enabling potential initiators, and particularly local authorities and private parties, to put a legislative procedure in motion without any formal attribution by domestic law.

Finally, other possible issues can be easily identified[126]: the first one regards the concrete implementation of the ECBM in federal/regional States where regional authorities have legislative powers. About this possibility, the proposed Regulation adopts a minimal approach, as art. 2, par.2 states that where «a Member State comprises several territorial entities with legislative powers, this Regulation shall also apply to those territorial entities including their respective authorities or legal provisions».

If this provision appears respectful of the internal partition of legislative powers between national and regional authorities, it must be also pointed out that the procedure that is imagined in the Regulation seems applicable only in cases of a rigid

[124] See F. SIELKER, *The European Commission's proposal for a cross-border mechanis, (ECBM): Potential implications and perspectives*, in *Journal of Property Planning and Enviromental Law*, III, 2018, pp. 219 ss.

[125] Article 4 establishes that a Member State «shall either choose the mechanism or choose to use existing ways to solve legal problems, or, with regard to a certain border, with one or more Member States, join an existing effective way set up formally or informally by one or more neighboring Member States».

[126] See F.E. GRISOSTOLO, *Verso una territorialità del diritto «a geometria variabile» in area europea? Osservazioni sul meccanismo per eliminare gli ostacoli giuridici e amministrativi in ambito transfrontaliero proposto dalla Commissione europea*, in *Federalismi*, XXVII, 2020.


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separation of competences[127], while the majority of federal and regional systems are often organised in the sense that those same legislative competences are shared between central and regional authorities.

Even more complex seems to be the eventuality that, once a Commitment or a Statement is concretely put in place, the rule of the transferring Member State which has been pulled over the border is modified in its own legal system. Since the proposed Regulation does not explore this eventuality, the alternative seems to be twofold: if the reference is intended to the legal source, its modified version would immediately apply also in the committing Member State; if the reference is made to the text of the law pulled over, instead, a new Commitment or Statement should be signed to allow the modified version of the foreign law to be applicable in the committing Member State[128].

Both these solutions, however, does not seem suitable if explored in their concrete consequences. The first one, indeed, would allow the transferring Member State to decide unilaterally on the rules to be applied in the committing one, by this trespassing the original intention of the Regulation with a clear invasion of the committing Member State's sovereignty; the second one, instead, would surely be respectful of that sovereignty, but would also imply that a new procedure must be put in place. In the meantime, however, the original law pulled over the border would be applicable in the committing Member State while its modified version would be applicable in the transferring Member State, by this creating a legal obstacle instead of solving it.

As proven by these brief considerations, times were not mature to formally adopt this new Regulation in the framework of the 2021-2027 legislative package. Probably, a deeper investigation from a comparative perspective, exploring the legal consequences that the new mechanism would produce in all Member States, could help to overcome many of the doubts and uncertainties highlighted in the previous pages.

Nevertheless, there is no doubt that only to imagine such a revolutionary legal instrument represents an absolute novelty in the context of European Territorial Cooperation. By proposing a mechanism activable only in presence of legal and administrative obstacles, the E.U. legal order is trying to build a new path in the European integration process able to strengthen legal and administrative

[127] See art. 10, par. 1 of the proposed Regulation.

[128] This alternative reflects the classical distinction between formal and material reference: the first one occurs when the reference is made to an external legal source, meaning that every modification of it is automatically incorporated in the law that operates that reference; the second one, instead, occurs when the reference is made not to the legal source, but to the text of the law. In this case, the provisions object of reference are 'incorporated' in the law and their future modification does not apply to the law that in which the reference is contained. On this distinction, see C. MORTATI, *Istituzioni di diritto pubblico*, I, CEDAM, Padova, 1969, p. 307.


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relationships between Member States at all administrative levels in the context of European Territorial Cooperation, while still being respectful of national constitutional frameworks. In this sense, what clearly emerges from the analysis of the proposed Regulation is that many of its rules must be complemented by national legislation, confirming our findings with regards to the double dimension of the multilevel governance principle: a minimal approach at the E.U. level which necessarily needs to be expanded by domestic provisions in order to be fully effective.

*8. Conclusions*

As we are arriving to the end of this research, some brief final considerations must be made with regards to the evolution and the future perspectives of European Territorial Cooperation.

As described in the previous pages, since the European Commission introduced in 1990 the INTEREG Community initiative programme, there has been a constant evolution of the E.U. legal framework which has led to the emergence of the concept of European Territorial Cooperation.

Thanks to this evolution, European Territorial Cooperation seems to have become an autonomous policy sector offering both financial programmes and legal instruments that directly address the goal of territorial cohesion supporting cooperation schemes across European borders, by this increasing the visibility of the E.U. and its funding mechanisms while engaging with great variety of partners at all administrative levels. In this sense, cooperation cannot be intended as an end to itself, but as something necessary to achieve the goals of the European project.

Through European Territorial Cooperation financial programmes and legal instruments, subnational authorities are now routinely involved in transboundary cooperation networks which provide channels for top-down, bottom-up, and horizontal learning. Essentially, European Territorial Cooperation does not represent a coercive policy. Instead, it encourages processes in which actors at all levels of government choose to engage.

This implies that these forms of cooperation, which make use of different governance models, can also be considered as laboratories of European integration as a whole, as cooperation requires stakeholders, and particularly regional and local authorities, to demonstrate inventiveness in establishing constructive relations with their foreign partners. As highlighted in the context of this research, European Territorial Cooperation finds its concrete declination in a set of extremely elaborate instruments of integration which transcend national borders and turn them into interfaces that link territories at scales and around issues that are both different and complementary.


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In particular, by encouraging partnership approaches, they make it possible to go beyond existing national frameworks while still according to them due respect. In this sense, it must be pointed out that differently from what has happened in the context of international law, which builds foreign activities of subnational authorities in terms of opposition and exclusion of national States[129], European Territorial Cooperation has always guaranteed a role to them. In particular, national States' involvement in the procedural framework for the enactment of ETC programmes and legal instruments can also be considered as a way to guarantee them a privileged position with regards to the external activities of their territorial communities, allowing them to maintain a supervision power in order to ensure that the general policy and the international relations of the State as a whole are not compromised.

As a consequence, the E.U. legal framework of European Territorial Cooperation must necessarily comply with national legal frameworks, which are characterised by a great variety of measures and forms since every Member State provides different limits to his territorial authorities competences.

In this sense, the analysis has highlighted that there is no single or obvious method of performing European Territorial Cooperation. As a matter of fact, its richness can be recognised in all the multiple approaches which differ from one region to another, as the involved actors must demonstrate the capacity of finding the best suitable solutions to respond to the continually evolving needs of the crossborder activity concretely put in place and to comply with national legal frameworks.

In other words, despite the existence of a general regulatory framework at the E.U. level, European Territorial Cooperation does not appear to be unique when concretely put in practice. Conversely, it seems to be marked by three characteristics: singularity, diversity and complexity.

Singularity implies that each crossborder region is unique in terms of its history and its distinctive geographical and political features. Therefore, there is not a single history of European Territorial Cooperation, but rather as many histories as there are border regions.

As a consequence, when concretely performed, European Territorial Cooperation is also marked by the diversity of stakeholders, forms and dynamics. In this sense, a specific system of stakeholders is involved in each region, steering the development of crossborder relations in its own distinctive way. In some cases, it is civil society that pushes for cooperation while in other case it is local or regional authorities who show initiative. Moreover, this specificity and diversity are reflected in the innumerable forms taken by cooperation (legal, political and institutional).

[129] See D. STRAZZARI, *Harmonizing Trends vs Domestic Regulatory Frameworks: Looking for the European Law on Cross-border Cooperation*, *cit.*.


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Finally, the complexity of European Territorial Cooperation stems from the first two characteristics: each cooperation programme seems to require an in-depth analysis to determine its situation and development and the diversity of its stakeholders and cooperation arrangements.

Despite these characteristics, there is no doubt that the evolution of European Territorial Cooperation programmes and legal instruments implies a new idea of territory[130]. This element, particularly at the current stage of the European integration process, can no longer be exclusively seen as a space delimited by national and/or administrative borders[131], as nowadays territories are partially redefined on the base of concrete objectives determined in previous political agreements between E.U. institutions, central governments, regional and local authorities.

Looking at the future of European Territorial Cooperation, instead, two final considerations can be made.

The first one regards its importance in the context of the European integration process, not only as a way to create communication channels able to link subnational authorities on different side of national borders, but also as a way to promote economic growth in the E.U. territory as a whole. In particular, as proven by the analysis conducted on behalf of the European Commission by the Politecnico of Milan in 2017[132], regulatory barriers, resulting from the fragmentation of the Single Market due to different national legal frameworks, continue to affect the markets for services and products between land border regions causing significant losses in both GDP and employment rates. The study highlights that, even if only the 20% of the existing obstacles were removed, border regions would increase their GDP by 2%.

This means that, although discussions concerning the European Crossborder Mechanism were put aside to prioritise the adoption of financial instruments to respond to the economic losses caused by the Covid-19 pandemic, it is highly probable that negotiations will start again once the overall economic situation will be restored. About this eventuality, it is worth to stress that, since the ECBM does not directly affect the consistency nor the management of any specific E.U. fund, it is also possible that discussions will continue before the expiring of the 2021-2027 ESI Funds programming period.

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[130] On the evolution of the concept of territory, especially from a geopolitical perspective, see J. AGNEW, *The territorial trap: The geographical assumptions of international relations Theory*, in *Review of International Political Economy*, I, 1994, pp. 53 ss.; N. BRENNER, *Beyond state-centrism? Space, territoriality, and geographical scale in globalization studies*, in *Theory and Society*, I, 1999, pp. 39 ss.; S. ELDEN, *Missing the point: Globalization, deterritorialization and the space of the world*, in *Transactions of the Institute of British Geographers*, I, 2005, pp. 8 ss..

[131] See J. JACOBS, K. VAN ASSCHE, *Understanding empirical boundaries: A systems-theoretical avenue in border studies*, in *Geopolitics*, I, 2014, pp. 182 ss.

[132] See EUROPEAN COMMISSION, *Quantification of the effects of legal and administrative border obstacles in land border regions*, Luxembourg, Publications Office of the European Union, 2017.


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The second consideration, instead, is more general and looks at the overall objectives European Territorial Cooperation. As highlighted in the context of this research, European Territorial Cooperation appears to have a double dimension: an internal one, which takes place only between Member States, and an external one, which sees the participation of countries which are not part of the Union.

While the internal dimension focuses mainly on the development of the E.U. integration process by bringing together territories and citizens on different sides of national borders, the external one has a different objective, which is to pave the way for further adhesions of new countries to the European Union. In this sense, encouraging the participation of third countries to INTERREG programmes is also seen as a way to help them familiarise with E.U. procedures concerning ESI Funds, giving them a taste of what would happen in case of a future formal participation to the E.U.

Although this objective can be considered as important as the first one, it must also be pointed out that regulating internal and external cooperation in the context of a unique policy sector such as European Territorial Cooperation could also slow down the development of the first dimension.

This could happen because, if the regulatory framework would be narrowed only to the internal dimension of European Territorial Cooperation, it would be possible to consider cooperation between subnational authorities pertaining to different Member States almost as an internal form of cooperation within the E.U. territory. Consequently, European Territorial Cooperation would become a notion entirely rooted in the E.U. legal framework, while external cooperation could as well gain its autonomy by receiving a dedicated regulation which could help to address the specific issues due to the different relation between the E.U. and the third country domestic legal orders.


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