

What does *b-solutions* indicate about the role of EGTCs in solving border obstacles and creating innovative models of collaboration

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Introduction

In this article, the results and indications of the *b-solutions* projects concerning the role of EGTCs in solving border obstacles and creating innovative models of collaboration are examined in depth. To do so, the author has investigated the different documents that have been created as output in the *b-solutions* project carried out by the Association of European Border Regions and financed by the Committee of the Regions (Association of European Border Regions & European Commission, 2020, 2021, 2024). Through the assessment, the *b-solutions* case studies are being checked in the light of their potential to become a model project. As a result, this article aims – in the context of this special issue publication – to evaluate to what extent *b-solutions* can deliver approaches to tackle cross-border cooperation challenges and what is still missing to fulfil this mission.

The paper is structured as follows: firstly, the European Grouping of Territorial Cooperation (EGTC) will be briefly presented and its role in overcoming obstacles discussed. This is followed by analysis of *b-solutions*

documents that engage EGTCs as case studies. Subsequently, *b-solutions* and its role in addressing various EGTC border concerns and in innovating collaboration will be assessed. The author concludes with a summary and outlook.

The European Grouping of Territorial Cooperation (EGTC) and its role to overcome border obstacles

The European Grouping of Territorial Cooperation (EGTC) is an EU legal instrument that has been introduced to facilitate and strengthen cross-border, transnational and interregional cooperation of public and territorial authorities in Europe. More precisely, it was aimed – in the beginning – to support European Territorial Cooperation (ETC) in Europe by providing a legal transnational instrument to support cross-border management and coordination and to overcome national boundaries, bottlenecks and asymmetries caused by the national border that divides territories with two different legal, administrative and political systems.

Initially, thus, it served as an implementing scheme for the ETC programmes – whether they may be cross-border, transnational or interregional. In the first years, after the introduction, it was also discussed as a promoter of a Europe of the (cross-border) regions from the bottom-up (Evrard, 2016, 2017; Ulrich, 2021). Later, after the 2013 EGTC reform, it was also opened up for the management of public services and services of general and economic interest (Krzymuski & Kubicki, 2014). This will be more in-depth discussed in the following sections.

EGTC as an instrument for better cooperation, coordination, management and governance

The initial aim of the EU legislation was to create a facultative cross-border legal instrument with an own legal personality that can be applied for specific purposes by territorial and public authorities from at least two initially EU – and later also third countries – to cooperate in a more easy and efficient way in a cross-border manner in a specific project, programme, policy field or in various policy fields. Thus, at that time, the interest and the questions that were discussed revolving around the EGTC were, how can the EGTC make cooperation, coordination, management and/or governance more efficient across borders. In this context, several studies have been published by scholars (Engl, 2014, 2016; Evrard, 2016, 2017; Evrard & Engl, 2018; Krzymuski et al. 2017; Telle & Svensson, 2020) and EU institutions or European-wide think

tanks and institutes (Zillmer et al. 2018, 2020; Ocskay, 2020).

EGTC as an inclusive, innovative and participatory political opinion-formation and decision-making forum

In further academic and political discourses, the EGTC has been assumed to foster bottom-up policy-making, planning and development underneath the nation state(s) and in a cross-border fashion. This was discussed under the notion of inclusive, innovative or participatory governance (Engl, 2015; Ulrich, 2021). This shall not only innovate cross-border policies, but also to legitimise EU politics on a (cross-border) regional level.

EGTC as a coordinator for public services and services of general and economic interest

A third reading of the EGTC gained momentum after the 2013 EGTC regulation reform when the coordination of services of general and economic interest was allowed in a cross-border context (Krzymuski & Kubicki, 2014). After that, also concrete specific cross-border challenges that were often also situated in the realms of public service provision across borders (transport, health cooperation, emergency services) were discussed with focus on the EGTC (Zillmer et al. 2018; 2020).

In the following, the EGTC will be discussed in the context of the *b-solutions* project.

***b-solutions* and classification and quantity of EGTC naming**

The *b-solutions* project aimed at finding solutions to 131 cases in Europe that have been identified between 2018 and 2023. The results have been gathered in the three compendiums and one annex. To investigate the identified roles of EGTCs in solving border obstacles and creating innovative collaboration, first, an initial quantitative and categorizing assessment of the naming of the EGTC in the main project documents will be conducted, followed by an in-depth analysis in the next section.

In the three main *b-solutions* documents, the “EGTC” is mentioned several times. In the book, *b-solutions: Solving Border Obstacles. A Compendium 2020-2021*, 83 matches for “EGTC” have been made. 73 matches were identified in the publication, *b-solutions: Solving Border Obstacles. A Compendium 2022-2023*. “EGTC” and 48 matches were in the publication, *b-solutions: Solving Border Obstacles. A Compendium of 43 Cases*.

There have been four different contexts for naming the EGTC: 1) EGTC’s that have been the applicants of the case studies, 2) the functioning of an EGTC as a case study, 3) the EGTC as a solution to a cross-border obstacle and 4) the EGTC as innovative models of collaboration.

EGTCs as applicants

Cross-border consortia with members from at least two EU member

states could apply for the *b-solutions* projects and cases. What becomes obvious when looking at the applicants is that there is a high amount of EGTCs as applying institutions. That could express the cross-border character of an EGTC as it is already cross-border and entails two member states and, moreover, the probably higher European connectivity of such groupings is mirrored here.

Functioning of an EGTC as a case study

The second category of mentioning the EGTC is when it comes to the EGTC as an object of investigation itself. There is at least one project that specifically focuses on the EGTC as an organisational structure i. In the project EGTC as subsidising authority, by the EGTC Linieland van WaasenHulst, the EGTC is the interest of investigation. This project also contains the German-French-Swiss Eucor’s application as documented in the *b-solutions* report (AEBR and EU 2020a) Making EGTCs more powerful: Legal certainty for provision of personnel to the EGTC.

Analysis of *b-solutions* and the role of EGTC in solving border obstacles and creating innovative models of collaboration

The EGTC is very often mentioned in the *b-solutions* reports. Concerning the limited scope of this article, it will not be possible to name, describe and evaluate all the cases, the specific

identified obstacles and the EGTC-related solutions. Therefore, the focus of the analysis is the most prominently mentioned cases in the specific policy fields (employment, transport, health, institutional cooperation) and the general summarised conclusions concerning the solutions in the main reports and in which context and for what purpose the EGTC is considered to be used for. The analysis is structured as follows: Firstly, the EGTC will be analysed as a solution to a cross-border obstacle, as it is mentioned in the general conclusions of the *b-solutions* reports. Secondly, the use and expectation of the EGTC for innovative models of collaboration, as described in the report, will be assessed.

EGTC as a solution to a cross-border obstacle

The EGTC has been mentioned in different policy fields (employment, institutional cooperation, eGovernment) as a solution to a specific obstacle. In the field of employment, several cases have highlighted where the application or the adaptation of the EGTC is considered to be the proper solution.

One mentioned example is the question of staff employment in the EGTC concerning national public salary reception, taxation and social security. The Spanish-Portuguese Duero-Douro EGTC was described in the following way:

“The Duero-Douro EGTC (Advice Case 16) experiences difficulties when hiring

Portuguese staff in Spain because of the national applicability of taxation and of national social security rules. To hire Portuguese staff without incurring cumbersome procedure the b-solutions expert identified that the Duero-Douro EGTC needs to request changes to the legal/administrative framework both on the national and on the European level. [...] On the European level, the expert noted that allowing for two different tax numbers to be obtained for the purpose of verifying expenditure would also contribute to alleviating the obstacle, but this would require some changes in the implementation of the EGTC regulation”

(Association of European Border Regions & European Commission, 2020, p. 28).

The proposed solution by the legal expert involves changes to the EGTC, but not to the statutes or convention of a specific EGTC, but to the EU regulation governing the EGTC (which was introduced in 2006 and amended in 2013). The EGTC regulation reform of 2013 made some clarifications and specifications, but it still lacks information on EGTC staff taxation, social security indication and salary purchase.

The EGTC is also mentioned in the employment sector linked to business clusters:

“The Lazdijai District Municipality (LT) on the Lithuanian-Polish border (Advice Case 12) plans to create a cross-border business incubator in cooperation

with Polish local authorities. On the basis of the advice of this project, it became evident that there was a lack of clarity regarding the detailed legal and administrative framework for such a project, and some confusion about the nature of the actual or perceived obstacles to cooperation [...]. Thus, the adviser noted that progress could be achieved by using existing provisions for flexibility and joint projects, which are already provided for in the existing Polish-Lithuanian Agreement of 1996, and in using current EU legal instruments to establish a European Grouping of Territorial Cooperation (EGTC) or a European Economic Interest Grouping (EEIG). The creation of such a legal entity, within the existing bilateral agreements, would allow for the cross-border business incubator to enter into life”

(Association of European Border Regions & European Commission, 2020, p. 50).

As it can be seen in this Lithuanian-Polish case, the solution proposal of the advisor is the set-up of an EU cross-border legal instrument – an EGTC or a European Economic Interest Grouping (EEIG) – to start up this cross-border business incubator. For that, it should be noted that the EGTC is only open to public entities – national, regional, local authorities, public institutions – as being members of it, whilst the EEIG is open to private entities. Thus, the EEIG is the private counterpart of the public EGTC. The responsible actors, thus, need to decide whether they want a cross-

border structure dominated by public and territorial authorities (EGTC) or by businesses and private actors (EEIG).

Concerning the eGovernment field, the creation of an EGTC has also been discussed concerning procurement:

“Alternatively, if such changes could not be secured to procurement law, an amendment of the Regulation on the functioning of European Groupings of Territorial Cooperation could be made to introduce the possibility to regulate the use by EGTCs of different national thresholds for tendering procedures, effectively using EGTC regulations to derogate from normally applicable procurement law. Both proposed solutions would require a change of law at European level”

(Association of European Border Regions & European Commission, 2020, p. 30).

In general, the field of procurement is a difficult administrative task that underlies the EU law but also national law. Here, procurement requirements can be also identified in the statutes of the EGTC. In practice, the procurement law remains a hindrance. Therefore, flexible cross-border legal mechanisms are needed to overcome these obstacles and avoid new ones with an incomplete cross-border legal toolbox.

In the field of institutional cooperation, the EGTC itself is not the solution, but its incomplete character presents specific obstacles, particularly concerning taxation.

“Eucor – The European Campus EGTC (Germany-France-Switzerland) (Advice Case 30) had raised concerns about its capacity to continue cooperating because of uncertainties as regards tax administration’s issues. Composed by five universities from three different countries, Eucor has offices in Freiburg (DE) and Strasbourg (FR), whose personnel is seconded by the two local academic institutions. Because of the two offices, the EGTC is confronted with a complex situation where two different tax administrations meet. In the light of a full analysis of the legal framework applying to the obstacle presented by Eucor, the advice indicated that the European directive offers a solution to clarify which legislation prevails. This allowed to overcome the huge complexity of the legal and administrative ‘overlapping’ for the cross-border structure of the campus” (Association of European Border Regions & European Commission, 2020, p. 44).

This example illustrates how an EGTC, which is theoretically designed to facilitate cross-border cooperation, can in practice activate existing or create new boundaries. A second amendment of the EGTC regulation, or a complementary regulation like the introduction of the European Cross-Border Mechanism regulation, is needed to complete the initial intention of the introduction of the EGTC.

After these specific EGTC-related solutions to obstacle case studies, the following section will analyse the

summarised key findings concerning the solutions with a focus on the EGTC.

In the 2021 published Compendium 2020-2021, the main summarised solutions are the following ones:

- *“In this sense, possible solutions to ease interactions in a cross-border context include:*
- *adjusting applicable legal frameworks in favour of cross-border interactions;*
- *harmonising administrative practices in a number of areas;*
- *strengthening cross-border cooperation by formally recognising it;*
- *supporting actors in applying the existing law more effectively,*
- *involving more actors in cross-border cooperation practices”*
(Association of European Border Regions & European Commission, 2021, p. 154).

Thus, general conclusions suggest an “adjustment” of the already existing legal tools to enhance their functionality. Moreover, the effectiveness of the existing law needs to be further applied. More concrete named solutions are the following ones:

- *“Establishing cross-border bodies and entities, including in the form of European Groupings of Territorial Cooperation (EGTC);*
- *raising awareness and increasing the knowledge of the applicable legal framework;*
- *preparing practical guides for the many stakeholders involved in a specific project;*

- *co-managing and coordinating actions between the various actors participating in a given project;*
- *adopting common protocols or Memoranda of Understanding;*
- *organising joint trainings;*
- *using available funds such as Interreg” (Association of European Border Regions & European Commission, 2021, p. 155).*

The EGTC is often named as a central solution. However, it needs to be well defined what it is aimed for. And the question is: What is the exact obstacle and how can the creation of an EGTC solve it? How can we prevent new boundaries from arising (see case examples, e.g. taxation, staff employment, procurement). To address these issues, the specific EGTC solution needs to be further checked in detail for each obstacle and case study.

EGTC as innovative models of collaboration

After analysing the EGTC as a solution to a cross-border obstacle, now it will be scrutinised concerning the stated possibility of the EGTC being used as innovative models of collaboration. Also here, the author focuses on specific highlighted cases in the policy fields of transport and health and then assesses the summaries of the *b-solutions* reports.

In the policy field of transport, the EGTC is considered, in a specific case,

to be an instrument to plan a public maritime transport service:

“The French Riviera Chamber of Commerce and Industry – CCINCA (Advice Case 19) is responsible for planning public maritime transport service on a coastal section between France and Italy. However, because of the limitation of the competences of local authorities outside national boundaries in the field of maritime transportation, projects have been blocked, preventing cross-border accessibility and modal shifts in transport. It was advised that the set-up of a public maritime cross-border transport service could be achieved on the basis of an amendment to the current French legislation in order to allow local authorities to regulate, manage and finance such a project. Also, as a more concrete step within the competence of the cross-border partners, the adviser suggested that the creation of a European Grouping of Territorial Cooperation would facilitate the coordination of the planning phase, as well as the management of finances through European Regional Development Funds ([ERDF] such measure falling under Category Two)” (Association of European Border Regions & European Commission, 2020, p. 34).

This would match with the possibility of using the EGTC for the coordination of services of general economic interest which is possible since the EGTC regulation reform from 2013. Thus, it is

a good model for creating such a cross-border body which shall coordinate the planning phase and the ERDF funds.

Besides this proposal for creating an EGTC to coordinate cross-border public service, also the most famous existing cross-border public service EGTC is discussed in the *b-solutions* project and documents – the French-Spanish EGTC Cerdanya Hospital:

“The Cerdanya Hospital EGTC (France-Spain) (Advice Case 26) has experienced significant challenges to the creation of stable cross-border teams of hospital professionals because of lack of recognition of diplomas across the border. Such teams are necessary for the proper functioning of the hospital. A specific proposal was set out in order to speed up the procedures for approval of contracting French doctors. This would involve an amendment to Spanish national law that would introduce a deadline by which the Spanish Ministry of Education and Vocational Training would have to provide a reply to any request with further provisions to allow that. In the absence of a reply within a designated “non-response period”, the hospital could proceed to hire the doctor in question. An alternative amendment put forward envisaged the delegation of the recognition of diplomas to the local medical association, thus moving the decisions closer to the region, reducing the bureaucratic burden of recruitment and maintaining crucial hospital staffing levels in a cross-border context”

(Association of European Border Regions & European Commission, 2020a, p. 38).

This demonstrates that the EGTC legal instrument and its EU regulation are not the barriers, but rather national regulations concerning diplomas, education and qualifications. This innovative model of collaboration in the field of public service and health, in the form of an EGTC, therefore, also faces national barriers and obstacles.

Following these two examples of the EGTC as innovative models of collaboration, some conclusions from the final report of 2024 will now be presented, where the role of the EGTC in the analysed cases will be discussed:

“Building on the ninety cases collected between 2018 and 2021, this compendium is filled with forty-one new cases selected in 2022 and 2023. This evidence-based document enables us to:

- *Further prove the existence and persistence of cross-border legal and administrative obstacles in border regions;*
- *Acknowledge the enduring impact of these obstacles on the socio-economic development of border regions, and the daily lives of approximately one-third of the EU population;*
- *Identify the various political, technical and legal means of addressing and resolving legal and administrative obstacles;*

- *Emphasise the need for sustained political support and commitment at all levels, alongside concrete actions;*
- *Illustrate that improved cross-border cooperation requires the collaboration of all levels of government - local, regional, national, and European;*
- *Highlight that most of the identified obstacles stem from national laws, due to divergent national legal frameworks that do not take into account the specificities of the cross-border context;*
- *Explore solutions such as establishing or using cross-border structures like European Groupings of Territorial Cooperation (EGTC), or the adoption of bilateral agreements to overcome these legal obstacles;*
- *Demonstrate that border regions would benefit greatly from an EU legal tool, such as the amended proposal for a Regulation on ‘Facilitating Cross-Border Solutions’ to overcome obstacles to cross-border cooperation.”* (Association of European Border Regions & European Commission, 2024, p. 156).

In comparison to the former *b-solutions* reports, the final states that cross-border legal tools shall be explored rather than established, as formulated formerly. Thus, here it is used a more cautious wording. Moreover, not only cross-border legal entities are mentioned but also bilateral agreements. The conclusions, hence, suggest a diversified approach, using different instruments to solve specific cross-border obstacles, rather than

relying solely on the creation of an EGTC as a panacea, which is also stipulated in the further text:

“The results of the b-solutions’ key findings show that financial resources like Interreg and administrative tools like EGTCs are fundamental to enable cooperation across borders, but they alone are not enough to solve legal and administrative obstacles” (Association of European Border Regions & European Commission, 2024, p. 159).

As stated in the policy recommendations, a “complementary way to tackle border obstacles” should be pursued (Association of European Border Regions & European Commission, 2024, p. 160).

An EU wide legal tool could be a further instrument to address the remaining legal obstacles in cross-border cooperation. This tool could be based on the amended proposal for a ‘Regulation on Facilitating Cross-Border Solutions’, adopted by the European Commission on 12 December 2023. It could lead to communication between the different cross-border institutions through so-called Cross-Border Coordination Points (CBCPs) and to the creation of a new legal tool, the “Cross-Border Facilitation Tool” (see Association of European Border Regions & European Union, 2024, p. 159).

This EU instrument could solve the specific barriers in the border regions, including those that cannot be resolved

by the EGTC regulation alone. The author agrees with this statement in the conclusion of the final *b-solutions* report:

“With an EU-wide instrument, legal and administrative obstacles, perceived threats and defensive positions could turn into innovative solutions, real opportunities and a collective reaction towards a Europe of the regions where no border region is left behind” (Association of European Border Regions & European Commission, 2024, p. 159).

Summary and Outlook

The European Grouping of Territorial Cooperation has played a relevant role in the *b-solutions* project and can be found in various contexts in the reports and documents. Reviewing the documents, EGTCs appears in several different connotations – as actors seeking solutions, as *b-solutions* case studies, as solutions to obstacles and as innovative collaboration models. Here, the two latter contexts are examined more in detail.

With regard to the narrow extent of this article, it was not possible to scrutinise all the cases, the specifically identified obstacles and the EGTC-related solutions. Hence, the focus of the analysis was mainly on the highlighted cases in the reports within the specific policy fields (employment, transport, health, institutional cooperation) and on the general summarised conclusions with reference to the EGTC.

What the analysis of solutions to specific case studies has revealed is that the creation of the EGTC brings no complete solution to obstacles, but can also sustain existing ones or even create new ones. For example, legal concerns in the fields of taxation, social security contributions and ages levels cannot be managed in a cross-border context.

When analysing the EGTC as innovative models of collaboration, the EGTC as a coordinator and manager of cross-border services of general and economic interest/ public services (i.e. transport, health, nature protection, energy, infrastructures) appeared to be a promising approach as this is possible to do so since the EGTC regulation reform in 2013. This is an innovative and citizen-centred usage of this legal instrument and thus “Europe on the ground.”

Yet, legal boundaries remain despite the creation of an EGTC as seen in the case of the Spanish-Portuguese Cerdanya Hospital. Therefore, the EGTC as an incomplete legal instrument for dealing with cross-border obstacles. Further steps indeed need to be taken. One possibility is a novel amendment of the EGTC regulation. Another option is to create a flexible legal cross-border mechanism that complements the EGTC and completes the EU legal toolbox to overcome the obstacles and bottlenecks in the EU border regions, to exploit the potentials of the border regions and to build a “Europe of cross-border regions”.

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