

# **Management, Governance and the Economics of Atmosphere of Territorial Cooperation within EGTCs: An Interdisciplinary Analysis**

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**Abstract:**

The European Grouping of Territorial Cooperation (EGTC) is a new European legal form for cross-border, interregional and transnational cooperation. The EGTC is designed to improve the governance of territorial cooperation by giving the collaboration of subnational public actors a legal personality in its own right. In addition, it is often speculated that territorial cooperation, and especially EGTCs, may support European integration: cooperation among subnational actors would represent “a bottom-up approach to Europe” (Pasi 2007), and the crucial question is, how EGTCs may also contribute to democracy and legitimacy in cross-border cooperation.

By taking an interdisciplinary perspective, we scrutinize this question from an economics viewpoint and broaden the scope of economic analysis of CBC and the EGTC, respectively. This is done along a line of argument that is common (or at least familiar) to researchers from both political science and economics: input, output, and throughput. In this paper, we focus on the intermediate level, considering the throughput encapsulated in the legal form of the EGTC. Interestingly enough, this level of analysis has always been prominent in the analysis of the “economic institutions of capitalism” (Williamson 1975), while it has long been neglected in the study of democracy and legitimacy (Schmidt 2010). A truly interdisciplinary

analysis that expands the arguments of (new) institutional economics to communicative and deliberative processes is still underdeveloped.

Our comparative analysis, first, uses the Law & Economics of private corporate law in order to scrutinize the EGTC as a bundle of specific rights. The analytic unbundling of the different rights contained in the legal form allows a discussion of property rights, decision rights, and information rights, as well as coordination rules. These different kinds of rights specify the EGTC's organizational costs and the internal transaction costs, respectively. Secondly, broadening the focus of (institutional) economic analysis, we elaborate on the "economics of atmosphere" that is especially promising for taking full account of the provision of common goods in EGTCs.

## 1. Introduction

The European Grouping of Territorial Cooperation (EGTC) is a legal innovation, i.e. a new European legal form for cross-border, interregional and transnational cooperation. The EGTC is designed to improve the governance of territorial cooperation by giving the collaboration of subnational public actors a legal personality in its own right. Improved management of territorial cooperation within such a legal entity is expected to have beneficial economic effects in a variety of policy fields. In addition, it is often speculated that territorial cooperation, and especially EGTCs may support European integration: cooperation among subnational actors is always "closer to the citizens" (Pasi 2007, 73), while EGTCs require even intensified collaboration due to its formal legal structure. In short, territorial cooperation represents "a bottom-up approach to Europe" (ibid.) and the crucial question is, how EGTCs may also contribute to democracy and legitimacy in cross-border cooperation.

A general economic analysis of the EGTC ought to encompass all kinds of public goods that are produced or that are to be provided across borders and within EGTCs. By taking the interdisciplinary challenge seriously, we also broaden the scope of economic analysis of CBC and the EGTC, respectively, along a line of argument that is common (or at least familiar) to researchers from both political science and economics: input, output, and throughput.

Against this backdrop, an analysis of the EGTC may be undertaken from different angles. Often, an *input* focus is chosen, i.e. the history of and the incentives for

territorial cooperation are analyzed. Thus, the development and current status of *participation* is under scrutiny. Historical trends as well as the relevant driving forces (of e.g. cross-border cooperation) may also foster the use of the EGTC. First empirical analyzes support the hypothesis that the legal innovation EGTC indeed meets the needs of its addressees, i.e. is adopted by the targeted territories.

A second perspective may be the *output* of territorial cooperation in general, or of EGTCs in particular. While a quantitative impact assessment of the EGTC is still developing, a number of qualitative approaches have been presented, following the numerous and diverse analyses of the effects of territorial cooperation (and, at the same time, competition) in general. In this respect the workability or *problem-solving capacity* of different forms of territorial cooperation (incl. EGTCs) is the crucial criterion.

In this paper, we focus also on the intermediate level, considering the *throughput* realized by an EGTCs. Interestingly enough, this level of analysis has always been prominent in the analysis of the “economic institutions of capitalism” (Williamson 1975), while it has long been neglected in the study of democracy and legitimacy (Schmidt 2010). A truly interdisciplinary analysis that expands the arguments of (new) institutional economics to communicative and deliberative processes is still underdeveloped.

Our comparative analysis, first, uses the Law & Economics of private corporate law in order to scrutinize the EGTC as a bundle of specific rights. The analytic unbundling of the different rights contained in the legal form allows a discussion of property rights, decision rights, and information rights, as well as coordination rules. These different kinds of rights specify the EGTC’s organizational costs and the internal transaction costs, respectively. A discussion of these cost is a promising endeavor not only from an economic and management point of view but also and especially from an administrative science perspective.

Secondly, broadening the focus of (institutional) economic analysis, we elaborate on the “economics of atmosphere” that is especially promising for taking full account of the provision of common goods in EGTCs.

Accordingly, the paper is structured as follows. Section 2 lays the foundation for the analysis of the provision of common goods across borders. The co-evolution of CBC and governance structures is depicted (2.1), and an interdisciplinary perspective on input, output and throughput related to CBG is developed that encompasses efficiency, legitimacy, and ‘atmosphere’ (2.2). In section 3 this approach is

applied to the management, governance and the economics of atmosphere within the EGTC, analyzing its institutional design (3.1) and exploring the potential of an economics of atmosphere of the EGTC (3.2). Section 4 summarizes and concludes.

## **2. Provision of Public Goods in Cross-border Cooperation**

The most fundamental challenge behind territorial cooperation is the incongruence of political territory on the one hand and the geographical range of a 'problem' that needs collective action on the other. Put differently, there is no "perfect mapping" (Breton 1965) that would match regional needs and preferences for common goods with the production of such common goods. Obviously, this is especially true for border regions. By making borders within the EU more permeable, European integration facilitates the joint production of common goods. At the same time, however, this opportunity reveals the crucial governance problem of transnational, cross-border joint-ventures. In order to make such joint-ventures work, innovative governance mechanisms have to be invented. Thus, not surprisingly, "... border regions have become a fertile ground for territorial cooperation and institutional innovation" (de Sousa 2013, 669, italics added). European integration facilitates beneficial collective action among regions, but also reveals the lasting difficulties for cooperation that require institutional innovations.

### ***2.1 A short history of Governance of CBC***

The history of territorial cooperation in Europe after WWII can indeed be read as a sequence of institutional (and partly legal) innovations, both bottom-up and top-down. Bottom-up institutional innovations stem from the various actors of cross-border, interregional, or transnational cooperation in search of appropriate forms of governance. Top-down institutional/legal innovations originate from both the Council of Europe and the European Union. Obviously, these two mechanisms of creating legal innovations are

interdependent. Basically, all legal initiatives of the EU or the Council of Europe are designed to solve governance issues that are difficult for regional or national actors to manage.

The history of post-war territorial cooperation among contiguous regions started as early as in 1958 with the first Dutch-German Euroregion. From the beginning, there was a search for the appropriate legal form of such cross-border cooperation – spanning from purely informal agreements to mostly registered associations in accordance with the law of one of the participating regions' country. The decentralized bottom-up search for such legal innovations was first accompanied by establishing the Association of European Border Regions in 1971 that acted as an „institutional entrepreneur“ , mobilizing attention to and increasing political awareness of the specific needs of border regions. Despite this political support and although the number of cross-border cooperations continued to grow, the fundamental governance issue remained unsolved.

In 1980 an important initiative to address this issue was taken by the Council of Europe resulting in the “European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities”. This Madrid Convention sought to promote cross-border cooperation by providing model agreements. However, it turned out to be at best a partial solution. The application of the Madrid Convention was impaired by its inclusion of bi- or multilateral international contracts as a necessary precondition. Some of the subsequent international contracts contain a more general applicable legal form, namely the Local Grouping of Cross-Border Cooperation (LGCC). But since this legal form can only be used by the regional bodies of the contracting parties, LGCCs could not serve as a general solution to the governance problems of territorial cooperation.

In contrast to the legal innovations by the Council of Europe, the EU supported territorial cooperation primarily financially. Although the establishment of the Committee of the Regions in 1994 gave also more political importance to the regional level, it was from 1990 onward that the INTERREG

program led to an increased interest from the regions in territorial cooperation due to the massive financial support it provided. But it was precisely the management of those EU funds in a transnational context which made the unsolved governance issues obvious and urgent.

It may be surprising how long it took the EU to tackle this institutional/legal issue, although the obvious success of INTERREG supported the trend towards a 'New Regionalism' in Europe and helped the EU to diversify the European multi-level governance system. Since from a Public Choice perspective strengthening the regional level (and thereby bypassing the member states) is in the interest of the supranational level, it could have been expected that the EU would be much quicker in breaking down barriers to even more effective support of the regions.

After some earlier (and essentially fruitless) attempts to establish European legal forms, finally in 2006 the first draft of what later became the EGTC was presented. Vis-à-vis the EU practice of financial support, this initiative was a real legal innovation: "The Regulation triggered a lively debate, since the EU was for the first time 'legislating' on the governance and legal structures of regional policy, rather than on usual (and important) business such as the provision of a multi-annual plan and financial framework" (Spinaci/Vara-Arribas 2009, p. 6).

## ***2.2 Efficiency, Legitimacy, and 'Atmosphere' in CBC***

Legal forms may solve the governance problem of CBC and enable the joint production of common goods across borders as it helps actors to organize and manage collective action. Formal institutions encapsulated in legal forms balance external and internal transaction costs and shape appropriate governance structures and mechanisms, e.g. for CBC.

Cross-border joint-ventures in tourism, culture and sports, transport and infrastructure, education and training, or regional development contribute to internalizing interregional externalities and improve the overall welfare

in the regions involved. But what about territorial cohesion beyond economic indicators? How can CBC contribute to the provision of fundamental public goods such as democracy and legitimacy in processes of regional European integration? And finally: Is CBC indeed “...a kind of Europe closer to the citizens, a bottom-up approach to Europe“ (Pasi 2007, 73)?

These questions are especially important since there has been a long-lasting controversy in political science about the European Union’s democratic deficit. The scientific measurement of the scale and scope of that deficit has most commonly taken a systems theoretical stance, following Easton (1965) and his distinction of the input into and the output of the political system. Elaborating on this concept, legitimacy and (quality of) democracy is either “input-oriented” or “output-oriented” (Scharpf 1999). Whereas “input” means the participation of a relevant number of constituents and the representation of their (constitutional) preferences in the political process, “output” describes the effectiveness of political measures and thus the problem-solving capacities of institutions, irrespective of how (and especially how participatory) the political decisions were taken. The two perspectives mirror the idea of democratic self-governance as “government by the people” and “government for the people”.

Due to the systems theoretical legacy of this approach, the working properties of the political system are not analyzed in the first place, taking “the system” as a “black box”. But even in the limits of systems theory, a further elaboration of the intermediate “throughput” is a promising endeavor (Schmidt 2010). In addition to participation, representativeness, and effectiveness, “throughput” renders performance criteria such as accountability, transparency and efficiency (the latter within the process). Basically, all criteria related to the throughput measure procedural legitimacy (ibid, p. 8).

Despite the terminological or metaphorical proximity of economic and the political science approaches towards the production of (all kinds of) common goods, contentwise there is a huge gap that calls for interdisciplinary bridging (or scientific CBC, if one likes). We contend that bridging the gap

requires broadening the scope of economics and even the focus of the already enriched “hybrid model” of institutional economics.

Output legitimacy may be easily integrated into economics, since e.g. Law & Economics focusses, most generally, on the workability of institutions. Also throughput describes processes that are conventionally studied by economists. In fact, as we will describe in more detail below, such an analysis is a centerpiece of institutional economics and may e.g. use transaction costs and their (relative) minimization for predicting or improving governance structures in companies, associations or in politics. Obviously, however, intrinsic transaction “benefits” of participation are beyond the scope of economic analysis.

In a programmatic sketch, Williamson (1975) outlined a possible expansion of economics in general, and his transaction cost economics in particular towards an “economics of atmosphere”: “The standard economic model (...) assumes that individuals regard transactions in a strictly neutral, instrumental manner. However, it may be more accurate, and sometimes even essential, to regard the exchange process itself as an object of value. Concern for atmosphere tends to raise such systems issue; supplying a *satisfying exchange relation* is made part of the economic problem, broadly construed (ibid, p. 38f., emphasis original).

Participation in CBC as an “object of value” in itself may indeed motivate actors, apart from the functionality of the cooperation’s “output” (Svensson 2014). Participation rights may give the parties involved in CBC a “procedural utility” comparable of the “input” in democratic decision-making on a much wider scale (Frey/Benz/Stutzer 2004).



### **3. Management, Governance, and the Economics of Atmosphere in EGTCs**

#### ***3.1 The Institutional Design of the EGTC***

In the following, we first provide a short discussion of the economic rationale behind corporate law in sect 3.1.1 to which we then apply the EGTC regulation in sect. 3.1.2 while summarizing our findings in sect. 3.1.3.

##### **3.1.1 The Economic Rationale of Corporate Law**

The Law & Economics of private corporate law sees companies, be they in public or private ownership, as a nexus of incomplete contracts, both explicit and implicit ones (Kraakman R et al. 2009, Schaper 2012, Eckardt 2012b).<sup>1</sup> The different stakeholders involved – that is the owners of a company, its employees, its creditors and the state (representing the public) – pool their resources to gain from team production. Due to the contingencies and uncertainties of the future, it is not possible to write ex ante complete contracts which deal with all possible future events. Accordingly, a number of different fields of law have evolved over time to cope with some of the resulting effects. Corporate law takes into account some of the resulting aspects.<sup>2</sup>

Corporate law provides different legal forms for an enterprise, forming its constitution by delineating the overlapping actions spaces of the stakeholders which cooperate in a world of uncertainty. Accordingly, it makes

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<sup>1</sup> This section draws heavily on Eckardt (2012a).

<sup>2</sup> Labour law, contract law, public regulations etc. are other fields of law which are also concerned with the resulting problems.

available instruments to cope with (potentially and actually arising) conflicts among the different stakeholders. In particular, it states rules necessary to ensure the ownership rights of the resources pooled in the joint undertaking for the different proprietors. Besides, rules are laid down to decide on how the related (positive and negative) gains are to be divided among the different owners.

Thus, firstly, corporate law eases cooperation among the different resource owners by securing their ownership rights. This takes place by assigning well-defined property rights and decision rights to the different stakeholders.

Secondly, corporate law reduces information problems, in particular those resulting from asymmetric information and principal-agent relationships. Its main instruments are decision-making rights, information rights and disclosure duties. Principal-agent problems occur in different forms. They are most prominent in the relationship between owners and management if owners do not themselves run their enterprise. Rules in regard to the decision-making structure of a company and the distribution of decision rights as well as information rights and disclosure duties between owners and managers are means to reduce these asymmetries.<sup>3</sup>

Principal-agent problems between management (as representatives of the owners) and employees are dealt with by co-determination rights and by employee participation rights. While labor law can be seen as a legal field which primarily deals with these aspects when individual labor relations are concerned, participation and co-determination rights as laid down in corporate constitutions can be seen as a supplementary problem- and conflict-resolution mechanism. Moreover, principal-agent relations are also

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<sup>3</sup> Besides legal rules, a variety of different solutions to the problems resulting from principal-agent relations have evolved, like incentive-based payment schemes to reduce owner-management conflicts of interest. These are not part of the following discussion.

predominant in the relationship between creditors and debtors, causing moral hazard behavior and potentially resulting in adverse selection. Since asymmetric information may lead creditors to restrict capital supply and/or to require higher interest rates (because an extra charge for the higher risks due to asymmetric information is included), companies are better off when information asymmetries are reduced. Again, corporate law supports this by offering clearly delineated ownership rights and by providing information rights and disclosure duties both for owners as well as for owners and the other stakeholders of a company.

Thirdly, company law contributes to reducing transaction costs by stating procedural rights and conflict resolution mechanisms. In regard to international business and CBC, stating what law applies becomes prominent if there are different jurisdictions involved. On the one hand, it is important to secure property rights by eliminating legal gaps. On the other hand, such coordination rules assist in reducing transaction costs in regard to international business and CBC.

A legal form suited for CBC by municipalities has to meet at least the following three requirements. Firstly, it has to provide an inexpensive legal framework which requires few resources for setting up a corporation and meeting its regular tax and accounting obligations since usually municipalities in border regions have only a weak tax base. Secondly, it must provide secure ownership rights, including limited liability so as not to endanger the financial health of involved municipalities (and their citizens) due to CBC, but at the same time also providing secure property rights for creditors so as to reduce problems of getting access to outside finance. Thirdly, it must reduce principal-agent problems due to information asymmetries by providing clear information to business partners, customers and authorities about the company. In this way trust in CBC increases. Finally, by being a not too complex corporate form, information and consultation costs for inter-municipal CBC about legal and administrative questions are drastically reduced, referring back to the requirement of providing an inexpensive legal form.

### **3.1.2 The EGTC Provision in a corporate law perspective**

The EGTC is a novel European legal instrument designed to facilitate and promote cross-border, transnational and interregional cooperation. The EGTC is a legal entity and is meant to enable regional and local authorities and other public bodies from different member states to set up inter-municipal CBC by establishing organizations with a legal personality.

In the following we analyze what property rights, decision-making rights, information rights and coordination rules the EGTC Provisions (Regulation 2006, 2013) grants its various stakeholders. For a classification see Table 3.1 below.

The EGTC Regulation comprises 18 articles. Its structure roughly follows the life cycle of a company. As concerns the definition of property and ownership rights the following provisions apply. First it sets out the main characteristics of an EGTC (art.1) where it is already stated that the EGTC has legal personality (art 1 (3)), while also dealing with the question of the applicable law in art.2, thus providing the first of a number of coordination rules.

Artt.3 and 3a then turn to the question of who should be entitled to be member and thus one of the owners of an EGTC, differentiating between different levels of jurisdictions and members from different types of jurisdictions (EU member states vs. third countries and overseas countries or territories (OCT)).

The establishment of an EGTC is regulated in artt.4 and 4a, where it is first stated who should be allowed to initiate its establishment, followed by a number of provisions dealing with its set-up which concerns its relation to the different member states to which the municipalities and other public entities belong which make up an EGTC. Here, also provisions for changes in membership (= ownership structure) and tasks are stated.

Art.7 deals extensively with the tasks an EGTC should be allowed to pursue as well as – again – the rights of member states to limit the scope EGTCs within its jurisdiction are allowed to follow (see also art.13). Art.14 even

states under what circumstances member states or courts are able to order the dissolution of an EGTC which does business outside its legal scope of tasks.

Finally, a more precise statement of the liability of an EGTC (for acts of its organs, see art.10(3) and in regard to its debts and among its members (art.12) is laid down.

There are only few provisions which are intended to reduce principal-agent problems between owners and management (art.7(5), art.10(1b)) and the EGTC and its creditors (art.12(2a) sen.3, art.12(3)).

The main decision-making rights within an EGTC are stated in art.8 on its convention, in art.9 on its statutes and in art.10 on its organization. Art.9(2e) states some decision-making procedures concerning the personnel of an EGTC.

Art.5 and art.8 (2) provide regulations on what information regarding the legal personality of an EGTC and the content of its convention have to be made publicly available. Art.12(2a) sent.2 and 3 regard some information rights concerning creditors of an EGTC.

Coordination rules concerning the applicable law prove very prominent in the EGTC Regulation. They are detailed regarding the convention, organs, the EGTC's task execution, budget, personnel, liquidation, insolvency, cessation of payments and jurisdiction (see art.2, art.8 (2g-j), art.11, art.12, art.15).

Although the EGTC is a supranational legal form, member states still have a lot of say in regard to its setting up and operating. This holds in particular for the member state where an EGTC has its registered seat (art.2). Member states have to implement procedures for the working of EGTCs with a registered seat under their jurisdiction. They are also responsible for controlling the management of public funds (art.6). Besides, member states might prohibit any activity of an EGTC on their territory, if this endangers their "provisions on public policy, public security, public health or public

morality” (art.13). A member state is also free to prohibit the registration of EGTCs with limited liability on its territory (art.12). In case of conflicts, Union legislation should apply before the courts of the member state where the registered office is (art.15). In addition, EGTCs should not impede citizens’ national constitutional rights against public entities which are members of an EGTC (art.15 cif.3).

Table 3.1: Overview of the EGTC Regulation

	Owners	Member States (MS) - Owners	Owners - Management	Employees	Creditors
Property rights	art.1(3, 4): legal personality art.3: composition by members from MS art.3a: members from MS, third-countries or overseas countries or territories (OCT) art.4(1): initiative for establishment art.7: Tasks according to convention within confines of art.7(2,3) art.8(2 l): arrangements conc. liability of members art.10(3): liability for acts of its organs against 3rd parties art.12(1, s.2): liability for its debts art.12(2): members are liable for other member’s actions	art.4(2): notification of MS art.4(3): approval procedure by MS art.4(6): changes in convention or statute art.4(6a): new members art.4a: members form OCT art.13: prohibition of activities not allowed by MS art.14: dissolution by MS or court order if EGTC acts outside the confines of art.7	art.7(5): task execution by members art.10(1b): director		art.12 (2a, s.3): additional risk provisions can be ordered by MS for ltd. EGTCs art.12(3): no liability of MS for EGTCs
Decision-making rights	art.8 (1): Convention art.8(2n): procedures for adoption of statutes and amendments of convention			art.9(2e): personnel	

	Owners	Member States (MS) - Owners	Owners - Management	Employees	Creditors
	art.9: Statutes art.10: Organization				
Information rights	art.5: legal personality art.8(2): content of the convention				art.12(2a, s.2): "Ltd." As aprt of an EGTC's name art.12(2a, s.3): publication of other documents of ltd. EGTCs
Coordination rules	art.2: applicable law art.8(2g) : applicable law conc. convention art.8(2h) : applicable law conc. EGTCs organs art.8(2i) : applicable law conc. members form third countries or OCTs art.8(2j): applicable law conc. EGTC's task execution activities art.11(2): budget art.12(1s1): liquidation, insolvency, cessation of payments art.15: competent jurisdiction			art.8(2k) : applicable law conc. personnel	

Source: Own composition.

### 3.1.3 Assessment of the EGTC Provision

Summarizing the provisions in the EGTC Regulation according to the criteria defined by the Law & Economics of corporate law, one finds that property rights regarding the members of an EGTC are well elaborated thus

providing secure ownership rights for inter-municipal CBC. In regard to rules for mitigating principal-agent. Problems, there are only few explicit provisions regarding owner-management, owner-creditor or owner-employee conflicts. With respect to decision-making rights, there is broad scope for individually establishing provisions provided by the EGTC's convention and statute. Together this might enhance efficiency since it allows the particularities of quite differing administrative cultures to apply rules according to their preferences.

Another very important effect of corporate law in reducing transaction costs is assigning clear conflict resolution mechanisms. The EGTC Regulation is characterized by an abundance of coordination rules as to the applicable law for quite a number of different contingencies.

For one, this results from the specific characteristics of the EGTC as a legal form for public entities in pursuing CBC with a high potential of problems arising from its international nature. However, at the same time it is exactly this that adds to increased transparency, accountability and efficiency. By this, legitimacy at the throughput level is enhanced by providing just such a legal form.

All in all, the EGTC Regulations seem to provide a workable framework for setting up a legal form for public entities from different member and non-member states with its own legal personality to provide common goods to their citizens and at the same time fostering democracy.

### ***3.2 Towards an Economics of Atmosphere of the EGTC***

So far, our analysis has resulted in important insights into the throughput of the EGTC and the output of a (qua EGTC) formalized CBC. However, “[a]lternative modes of organization sometimes differ in nontrivial atmospheric respects” (Williamson 1975, p. 39) that go beyond efficiency, transparency and accountability.



Recognizing that "... relations themselves are valued, requires that organizational effectiveness be viewed more broadly than the usual efficiency calculus would dictate" (ibid.). Interestingly enough, "[a] full discussion of atmosphere and its ramifications raises a wider set of *sociopolitical issues*" and "... is reserved for those transactions for which *attitudinal spillovers* are thought to be especially strong" (ibid., italics added).

Against this backdrop, the potential weaknesses of the legal design of the EGTC may be viewed in a different light. The abundance of coordination rules may in fact be functional to cross-border joint-ventures that address "sociopolitical issues". The orthodox economics' standard of efficiency can never be met in the presence of interregional externalities. The economics of atmosphere might lead to a quite different conclusions: promoting input legitimacy may be a highly welcome "attitudinal spillover".

#### **4. Summary and Outlook**

An analysis of the EGTC may be undertaken from different angles. Often, an *input* focus is chosen, i.e. the history of and the incentives for territorial cooperation are analyzed. A second perspective may be the *output* of territorial cooperation in general, or of EGTCs in particular. In this respect the workability or problem-solving capacity of different forms of territorial cooperation (incl. EGTCs) is the crucial criterion.

In this paper, we focus on the intermediate level, considering the *throughput* realized by and within an EGTCs. Interestingly enough, this level of analysis has always been prominent in the analysis of the "economic institutions of capitalism" (Williamson 1975), while it has long been neglected in the study of democracy and legitimacy (Schmidt 2010), where the systems theoretical triad of *input – output – throughput* originates from. We seek to contribute to a truly interdisciplinary analysis that expands the arguments of (new) institutional economics to communicative and deliberative processes.

Opening the black box of throughput leads to the analysis of management and governance of EGTCs and of possible governance structures as encapsulated in the EGTC regulation. We use the Law & Economics of private corporate law in order to scrutinize the EGTC as a bundle of specific rights. The analytic unbundling of the different rights contained in the legal form allows a discussion of property rights, decision rights, and information rights, as well as coordination rules. These different kinds of rights specify the EGTC's organizational costs and the internal transaction costs, respectively.

Summarizing the provisions in the EGTC Regulation according to the criteria defined by the Law & Economics of corporate law, the EGTC Regulations seem to provide a workable framework for setting up a legal form for public entities from different member and non-member states with its own legal personality to provide common goods to their citizens.

Embarking on a journey beyond governance structures, we contend that a general economic analysis of the EGTC ought to encompass all kinds of public goods that are produced or that are to be provided across borders and within EGTCs. Drawing on the concept (or at least, the promise) of an 'economics of atmosphere', we offer new insights on the claim that CBC may contribute to democratization and to bottom-up approaches of European integration. By that, we also sketch the possible directions of future research.

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