

EUROPEAN UNION



Committee of the Regions

The participation of entities of outside the EU in the European Groupings for Territorial Cooperation

**This file note was written by Jürgen Pucher (Metis GmbH).
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List of Abbreviations

ACP	African Caribbean, Pacific States or Countries
BSR	Baltic Sea Region
CBC	Cross Border Cooperation
DCI	Development Cooperation Instrument
DG	Directorate General
EC	European Commission
ECF	European Cohesion Fund
EEAS	European External Action Service
EDF	European Development Fund
EEA	European Economic Area (comprising the EU plus the EFTA members Norway, Liechtenstein; Switzerland is not member of the EEA)
EEIG	European Economic Interest Grouping
EGTC	European Grouping of Territorial Cooperation
ENI	European Neighbourhood Instrument
ERDF	European Regional Development Fund
ESF	European Social Funds
ETC	European Territorial Cooperation
EUKN	European Urban Knowledge Network
FLC	First Level Control (rather common technical term for financial control according to Reg. (/EC) 1080/2006, Article 16)
FYROM	Former Yugoslav Republic of Macedonia
IPA	Instrument for Pre-Accession
JTS	Joint Technical Secretariat
MA	Managing Authority
MEP	Member of European Parliament
MLG	Multi-Level Governance
MS	Member State
OCTs	Overseas Countries and Territories
ODA	Official Development Assistance (recipients) – list defined by the OECD
OECD	Organisation for Economic Development and Cooperation
ORs	Outermost Regions
PI	Partnership Instrument
RDTI	Research, Development, Technology, Innovation
SPF	Small Project Fund
TFEU	Treaty for the Functioning of the European Union
UfM	Union for the Mediterranean

Introduction

EGTCs are instruments for cooperation which offer a range of options in Multi-Level-Governance (MLG) and might act as ambassadors in external cooperation in order to develop approaches for joint policy-making. One of the prime *raison-d'être* of EGTCs is cooperation at the sub-national, i.e. the regional and local levels – but the situation of these political-administrative levels is particularly challenging in most of the regions adjoining the EU (with the obvious exception of Switzerland and Norway).

Many adjoining states and regions around the EU are in a state of crisis and the EU itself is confronted with an enduring economic crisis. In this environment it will be particularly difficult to motivate EGTCs to go beyond the boundaries of the EU and to venture into external action.

The main working hypothesis is that EGTCs with participation of third countries will only materialise in case of dedicated action on the part of the MS which do have a specific interest in external action in certain geographic areas. From the perspectives of a LRA in a MS acting as ambassador in the geographical areas concerned is challenging and definitely requires political backing by MS.

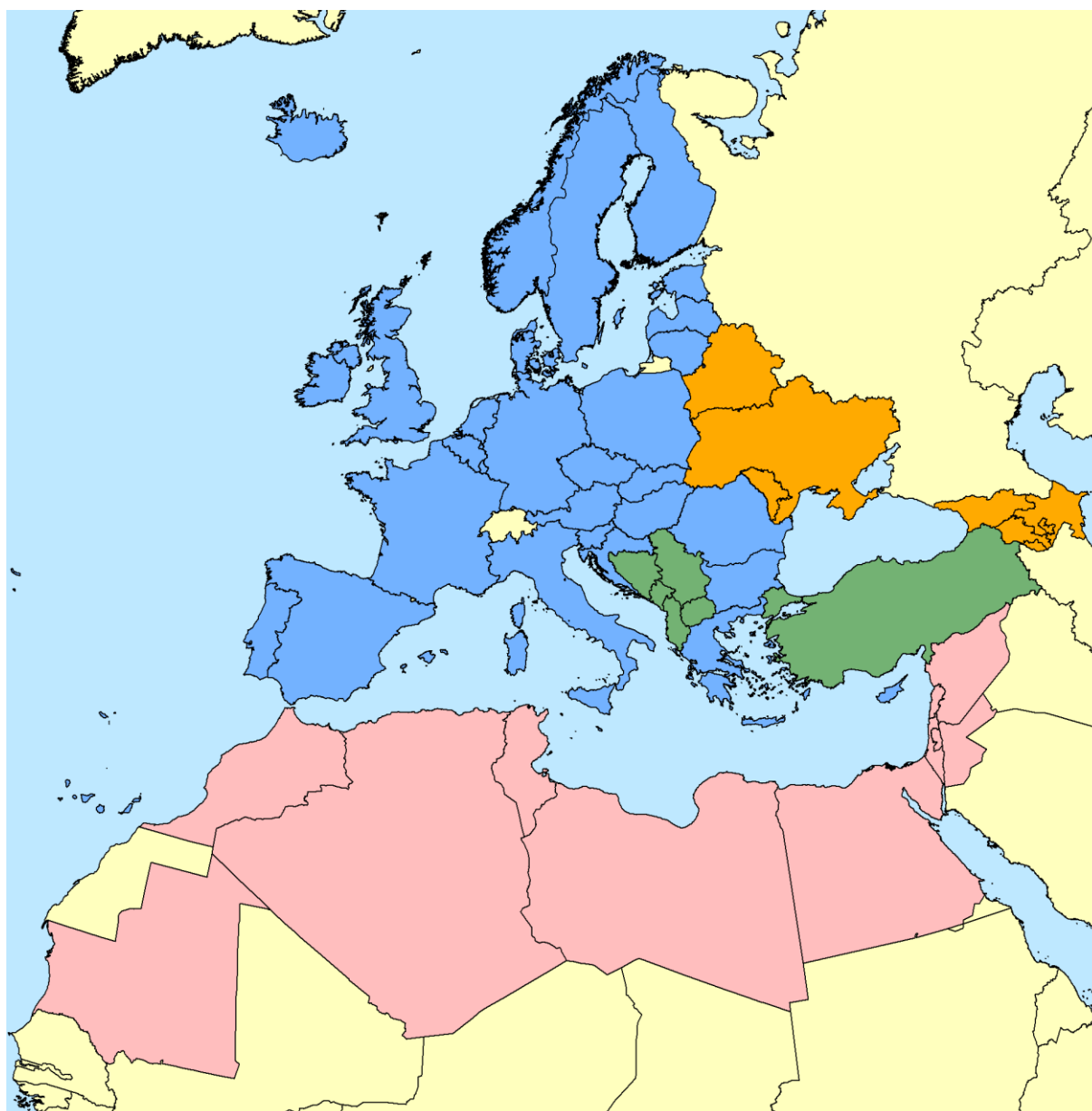
More over the Consultant sees an important role of the European Commission, the European External Action Service and the Committee of Regions in making the cooperation instrument EGTC known in the context of Neighbourhood Policy.

The Geographic Scope of the Study

External action of the European Union focuses on several categories of countries:

- IPA countries with a view to future enlargement,
- ENI countries in the regions adjoining the EU whereby sea is regarded as a common border.

Map 1. Countries in the European Economic Area, IPA II, the Eastern Partnership and the Union for the Mediterranean



Furthermore the study includes considerations on the Outermost Regions (ORs) as part of the Union as well as the Overseas Territories and Countries (OCTs) which do have specific relationships with certain MS but are in a territorial perspective not considered as part of the EU.

The following table gives an overview on the policy dimensions, the funding instruments as well as the countries, regions and territories concerned.

¹ **Blue:** European Economic Area / **Orange:** Eastern Partnership / **Pink:** Union for the Mediterranean (additional countries, Lybia has the status of an observer) / **Green:** IPA II

Table 1. Dimensions, funding instruments, countries and regions

Dimension	Key funding instrument(s)	Countries respectively regions
Union territory	ERDF - ETC	<u>Outermost Regions</u> Azores, Madeira (PT) French Guiana, Guadeloupe, Réunion Island, Martinique, Mayotte, Saint-Martin (FR) Canary Islands (ES)
Enlargement	Instrument for Pre-Accession (IPA II) which includes IPA CBC programmes	<u>IPA countries:</u> Albania, Bosnia and Herzegovina Iceland, Kosovo, Montenegro, Serbia Turkey, the Former Yugoslav Republic of Macedonia (FYROM)
European Neighbourhood Policy	Development Cooperation Instruments Partnership Instrument	<u>ENI countries:</u> Algeria, Armenia, Azerbaijan, Belarus Egypt, Georgia, Israel, Jordan, Lebanon, Libya, The Republic of Moldova, Morocco, Tunisia, Ukraine occupied Palestinian territory (oPt) Syria (suspended) Russia (specific role)
Overseas countries and territories	European Development fund (EDF)	<u>25 countries and territories</u> Listed in Annex II of the TFEU

Source: own considerations.

The note consists of the following sections:

1. New legal regime of participation of entities from outside the EU in EGTCs;
2. Scenarios of cooperation and state of play in the different geographical areas;
3. Challenges and trends (as synopsis of sections 1 and 2).

1 New legal regime of participation of entities from outside the EU in EGTCs

Before entering into more detail it is important to come back to the key intent of the EGTC as vehicle of cooperation.

EGTCs are meant to support a longer-term development agenda which requires cross-border or trans-national cooperation. The common legal framework of the EGTC Regulation is meant to provide a stable legal framework which facilitates the cooperation of mostly public bodies – in particular LRAs.

With a view to extend the instrument EGTC across external border of the EU the differences in the legal provisions and the governance of the external relations have to be considered:

- towards the Countries with an enlargement perspective there is a comparatively clear-cut position of the Union and the key instrument of IPA;
- towards the Countries being part of the neighbourhood policy several funding instruments apply and also bilateral approaches between the EU (and in some cases the MS) and the countries concerned are more important;
- towards OCTs bi-lateral relations with the respective MS and the association regime of the Union are important.

From the perspective of the European Union the Treaty for the Functioning of the European Union (TFEU) is the overarching legal framework. The following table lists the most relevant provisions of the TFEU in the context of the Study.

Table 2. Relevant Provisions in the TFEU

Articles	Subject
Article 21	Overarching principles such as democracy, indivisibility human rights and fundamental freedom, the principle of equal rights and solidarity which are also the foundation of respectively apply for External Action (thus covering IPA, ENI and various forms of development cooperation with other third Countries)
Articles 174 to 178	Stipulate the overarching provisions for Economic, Social and Territorial Cohesion and anchor the roles of ERDF and Cohesion Fund (CF)
Articles 198 to 204	Association of the Overseas Countries and Territories (OCTs) Agreement on association with the OCTs having special relations with DK, FR, NL and UK Focus on economic and social development of the OCTs and close economic relationships, support to investment
Articles 205 to 213	Provisions on External Action, i.e. in more details Articles 212 to 213 on economic, financial and technical cooperation with Third Countries. Overarching objective is the reduction of poverty (Art. 208)
Article 349	Establishes the option for specific measures for the Outermost Regions given their remoteness, insularity and their comparatively low degree of economic diversity
Article 355/6	Simplified procedure for the change of status from an OCT to an OR

Source: TFEU, own considerations.

1.1 Analysis of the new EGTC Regulation

The EGTC Regulation (EC) 1082/2006 as amended by Regulation (EU) 1302/2013 includes several provisions which are likely to raise the chance that EGTCs will go beyond the boundaries of the MS. The most important aspects are listed in the following table.

Table 3. Key elements Regulation (EU) 1302/2013

Provisions acc. to Regulation(EU) 1302/2013	Key element
Legal basis Recital 4	The Regulation keeps Art. 175 TFEU as single legal basis, and therefore the goal of the EGTC is the economic, social and territorial cohesion, and Recital 4) mentions the goal of cooperation. The institutions rejected adding other legal basis related to External Action of the EU.
Article 3 (f) Recital 10	<p>Is the key point anchoring the option for EGTCs to include members from Third Countries and to implement activities outside the Union territory; in more detail it:</p> <ul style="list-style-type: none"> ▪ anchors the option to include Third Countries but also an explicit reference to Outermost Regions ▪ explicitly allows the implementation of EGTC activities outside the territory of the Union in order to pursue Union Cohesion Policy Objectives ▪ establishes the clear need to focus on Union Cohesion Policy Objectives – in particular territorial cohesion; specific bilaterally agreed development cooperation objectives are considered as ancillary objectives
Recital 11	<ul style="list-style-type: none"> ▪ Option to include partners from an OCT ▪ advice to develop a special approval procedure for members from OCTs and to make a clear reference to the law applicable
Article 3 (a)	<p>Eligibility of members from Third Countries; in general the rules establish a high degree of flexibility as regards the future geography of EGTCs using the terms MS, ORs, OCTs and Third Countries. The options set out in Article 3a) are:</p> <ul style="list-style-type: none"> ▪ two members from MS and one or more partners from one or more Third Countries (or OCTs) when these countries carry out jointly actions in territorial cooperation or implement jointly programmes with Union support ▪ one member from MS and one or more partners from one or more Third Countries or OCTs when the MS concerned considers <i>that EGTC consistent with the scope of its territorial cooperation or bilateral relations</i>(according to the preamble the objectives of Union Cohesion policy in particular of territorial cooperation have to govern the cooperation in the framework of EGTCs) ▪ member(s) from one or two MS and one or several OCTs but member(s) from OCT and member from MS should be from different MS ▪ The Third Country must be neighbour of one of the Member States involved in the EGTC ▪ Third Country are considered as neighbouring to MS with a

	<p>common land border or both MS and third Country are eligible in maritime or transnational programme in ETC or alternatively are eligible under another cross-border, sea-crossing or sea-basin cooperation programme</p> <ul style="list-style-type: none"> ▪ Countries neighbouring a MS or its Outermost Regions include maritime borders between the countries concerned
Article 4	The MS where the EGTC is registered has to ensure that participation of members from Third Countries has been approved by the respective country
Article 4 (a)	<p>Participation of members from an OCT:</p> <p>The MS to which the OCT is linked has to either:</p> <ul style="list-style-type: none"> ▪ approve the participation or ▪ confirm that the competent authority in the OCT have approved the participation in accordance with conditions and procedures equivalent to those in the Regulation
Article 3(1) (e)	<p>Option for the inclusion of private partners as undertakings entrusted with operation of services of general interest (e.g. social and health care etc.). The option to include such partners opens new possibilities.</p> <p>However there are obvious limits to make use of this option in many neighbouring countries: These entities are linked to the Directive on public procurement and non-EU countries have specific national legislations.</p>

1.2 Legal considerations on the set-up of an EGTC with participation of Third Countries

Article 2 of the Regulation (EU) 1302/2013 establishes a clear hierarchy in the legal provisions governing an EGTC:

1. The EGTC-Regulation and other applicable Union law;
2. The Convention;
3. The national law of the MS where the EGTC has its registered office.

In case that the participation of the Third Country is de-facto financed from IPA II or ENI-CBC it is clear that the respective provisions of these Regulations apply.

The hierarchy points at the fact that the Convention is the key common legal point of reference between MS and Third Country in the negotiation for approval and in the subsequent operation phase of the EGTC. It is evident that from the perspective of the Third Country the Convention is clearly ranked second to its national legislation.

The convention is meant to lay down the constitutive elements of the EGTC. According to Reg. (EU) 1302/2013 the convention is subject to MS approval and the participation of any partners from Third Countries will require a national approval procedure.

The Regulation foresees several compulsory elements. The most relevant ones with a view the inclusion of members from third Countries or OCTs are:

Table 4. Key elements of the Convention with a view to participation from Third Countries or OCTs

Compulsory element in the EGTC Convention	Considerations of the Consultant
Objectives and tasks of the EGTC	According to Article 7(3) of the EGTC Regulation MS may limit the scope of action for EGTCs exceeding tasks financed with Union support. However, such restrictions may not concern the investment Priorities according to Article 7 in the Regulation (EU) 1299/2013 (on ETC); the priorities listed for IPA-CBC and ENI-CBC do comply with the priorities established in the ETC regulation. This fact can be used as a lever in convincing the national competent authorities in the Third Country concerned.
Applicable Union law and national law	<p>Legal provisions of the MS:</p> <ul style="list-style-type: none"> ▪ where the EGTC has its registered office ▪ secondly of the MS where the EGTC organs act <p>With a view to the participation of a Third Country these stipulations should be kept - to the extent possible - simple and transparent.</p> <p>Given the fact that the approval of the participation of a LRA or a non-profit organisation will in most cases pose a significant challenge for any competent authority in a Third Country it is for sure beneficial if only the legal specificities of one MS have to be scrutinised in the approval phase.</p>

<p>Applicable Union law and national law directly relevant to the intended EGTC activities</p>	<p>This is the <u>first crucial point in the Convention where the relevant legal provisions of the Third Country have to be anchored in the Convention</u>; a proper and clear definition of this point will for sure facilitate the discussion and negotiation process.</p> <p>The understanding of the legal implications in each country must be evident for all partners in the EGTC – depending on the Third Country and its political administrative system one has to be prepared for a long negotiation process given the fact that a substantial number of materials might have to be translated and be subject to mutual interpretation and exchange between national authorities of two or more countries.</p>
<p>Arrangements for the involvement of Third Countries or OCTs</p>	<p>This is the <u>second key point</u> since it has to be checked in detail which legislation is touched in the Third Country.</p> <p>In case of the involvement of the LRAs –a desirable objective for setting-up an EGTC– it touches the sensitive issue of local and regional self-government, which is a challenge in many of the countries concerned.</p> <p>De-facto there will be a distinct difference between IPA and ENI countries since one can expect that clarity on such issues can be achieved far more easily in IPA countries which are in an ongoing process of alignment of their national laws with Union principles and laws.</p>
<p>Arrangements for the Member’s liability</p>	<p>The <u>liability is the third crucial point</u> since it defines the financial responsibility and it might become a stumbling block in the negotiations with the national level since for example LRAs have very limited financial capacities in most Third Countries.</p>
<p>Rules and principles governing the hiring of staff</p>	<p>Hiring of staff is a major step in the consolidation of an EGTC. However with the view to the participation of Third Countries this is a step which should be considered at a later stage given all the imponderabilities in the venture as such.</p> <p>It is evident that for citizens coming from neighbouring countries (such as IPA or ENI countries) an employment in the EU will be considered in most cases as an attractive option but means in practice an additional administrative challenge since hiring staff from Third Countries will require national approval in the MS. National labour market regimes in MS tend to be rather restrictive in the current economic crisis.</p>

Control arrangements	<p>An important point which cannot be neglected – in particular with a view to the high probability that match-funding will come from IPA or other Union funding sources; this means also in the end an automatic involvement of the national level in the Third Country.</p> <p>Decentralised management in IPA or other ENI programmes refers to the national level of the neighbouring countries.</p>
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Source: Regulation (EU) 1302/2013, own considerations.

1.3 The approval procedure in Third Countries

According to Article 4 in the Regulation (EU) 1302/2014 the approval in Third Countries foresees two options:

1. conditions and procedures equivalent to those laid down in this Regulation – de facto a ‘mirror’ regulation to the EGTC Regulation,
2. bi- or multi-lateral agreement between at least one MS represented in the EGTC and the Third Country

From the perspective of a MS, the EGTC Regulation is a stable legal framework at Union level whereas from the perspective of a Third Country the first and most likely point to consider an EGTC is its emergence and development as part of a cooperation programme financed from Union sources such as IPA-CBC or ENI-CBC. For evident reasons the option 1 – the adoption of a mirror regulation – is the preferred option since in the end only a stable legal basis makes the instrument EGTC attractive. However, setting-up such a mirror regulation can be expected to be a lengthy and difficult process and definitely will need a strong impetus to start the process. In IPA Countries there is a certain likelihood that a ‘mirror’ regulation will be set-up in the stepwise process of alignment of the legal provisions but it is evident that this is a long-term process.

Thus in the opinion of the Consultant the second option of a bi- or multi-lateral agreement for an individual EGTC is in the end the likely one.

In a broad and overarching perspective the underlying key question is the willingness of the national governments in many Third Countries to support cooperation at the sub-national level, i.e. primarily of LRAs, with partners of MS. This is a very sensitive issue in many of the Third Countries with deep implications related to capacity-building – and in many cases also the

strengthening of democracy - at local and regional levels. Even in the more centralised MS one can observe that this is a long-term process – the more so it is a significant challenge in most of the IPA and ENI countries. Any decentralisation process supporting soundly anchored local and regional self-government necessitates significant reforms in the political-administrative system – in particular in the fiscal system in order to strengthen the financial capacities of LRAs. Key claims from the LRA in Third Countries (such as e.g. the countries in the Eastern Partnership) refer to public administrative reform, and support to local democracy building, more financial autonomy and increased fiscal capacity.²

Representatives of the LRAs in Third Countries have stated that the perception of actors in External Action of the Union often limits LRAs to a facilitating role despite their crucial role in democracy building and provision of services.³

In case of ENI and IPA countries the national approval for the participation of a LRA from a Third Country will require strong backing from national authorities in the MS and from the respective representatives of Commission services. One cannot expect that national authorities from Third Countries will enter negotiations only with partners from the sub-national level of MS. Thus in the end it will be more effective and far more promising to consider the inclusion of the national level of the Third Country in the partnership.

In most cases the active participation and interest of the national level in the Third Country but also in the Member States will be crucial in order to ‘make the EGTC happen’ and should be considered as an advantage rather than an obstacle. It will lower the resistance and it will tend to avoid sophisticated control arrangements between the sub-national partner and the national authority in charge of approval from the Third Country. The EGTC thus could become an instrument where a positive MLG regime can evolve based on internal negotiation, discussion and decision-making rather than external control functions exercised by a national authority (thus also persistently limiting the actual room for involvement of the partner from the Third Country).

In case of a newly established EGTC it is evident that the national approval procedure should be run prior to the approval procedure in the Third Country.

For institutions from ORs and OCTs as partners the situation is completely different – the challenges stemming from the legal aspects are far smaller.

² Cf. e.g. CDR 4290-2013, Time to rethink the Eastern Partnership – Report from the Conference of Local and Regional Authorities (CORLEAP) for the Eastern Partnership p.1.

³ Cf. CDR 4290-2013.

In practice the scope of work for legal experts in the MS and the Third Country is significant. A successful approval procedure will require - next to strong commitment – also the willingness of all parties involved to develop a shared understanding of all EU and national provisions concerned. The following documents have to be translated and subject to negotiations at level of the EGTC partners and the national authorities:

- applicable national and Union laws;
- applicable laws of the Third Country to the language spoken by the competent national authorities in the MS involved;

- Convention – and in practice also the statutes since at least the Third Country will have an interest in all proceedings as well as the compliance between the two documents;

- (positive) opinion of the competent authority of the MS in order to facilitate the negotiations.

One can imagine that the discussion and negotiation process between the future EGTC partners will require the strong involvement of intermediaries such as Commission representatives and representatives of MS embassies in order to build an atmosphere of mutual trust and keep the process going in order to come to a result within a reasonable time frame.

The following table presents as tentative assessment regarding the approval procedure in Third Countries.

Table 5. Tentative assessment regarding the approval procedure in Third Countries

Type of Country	Approval procedure in the Third Country respectively OCTs
IPA	Ongoing process of adoption of EU principles and legislation; continuous process of alignment thus also the national authorities in the Third Country will be more inclined to support the EGTC as part of the EU <i>Acquis</i>
ENI	<p>For sure the most challenging situation owing to the fact that many of the countries concerned are in a state of acute crisis (such as Ukraine, Syria) or marked by territorial conflicts (e.g. occupied territory of Palestine) or in turbulences after the Arab Spring (such as Tunisia) or subject to an autocratic regime (e.g. Belarus). It is highly unlikely that a stable longer-term shared commitment will be established.</p> <p>But there are also largely stable countries e.g. Egypt, Israel or countries which are in a specific situation which would allow for deepening cooperation in a short- to mid-term perspective such as Moldova (despite</p>

	the territorial conflict over Transnistria which can be considered as a frozen conflict).
OCTs	<p>According to the new EGTC Regulation, Article 16 the national provisions should also ensure the effective application of the Regulation by the respective OCTs in case these are neighbouring other MS or ORs of a MS.</p> <p>Member State legislation; from the MS concerned (FR, NL, UK, DK) in particular FR has already collected experienced in the national approval procedure owing to the fact that many EGTCs have their seat in FR. However, the FR legislation restricts the participation of entities from outside the EU to Member States of the Council of Europe, which goes against the Regulation.</p>

Source: own considerations.

1.4 Perspective of the national authorities in the MS

In practice on side of the MS the inclusion of a partner from a Third Country will mean that also the Ministries for Foreign Affairs will be involved since the contents and implications of bilateral agreements will have to be considered. Thus the time span according to Regulation (EU) 1302/2013 given for national approval (6months) might become a challenge and the likelihood of interruptions in the approval procedure is quite high.

A short review of the Competent Authorities in relevant MS⁴ reveals the broad variety of institutional players which are in charge of the national approval procedures. In some MS the Ministry of Foreign Affairs is either the Competent Authority (PL) or it is involved in the process (BG, ES) thus one of the key players to be involved has a prominent position in the approval procedure. But in most MS concerned the Competent Authorities are rather Ministries dealing with ‘home affairs’ (such as regional development, internal affairs, etc.) which will for sure not be in the position to approve an EGTC with participation from a Third Country in their own capacity.

Thus the national approval procedure within the MS will require in most cases inter-ministerial coordination and implicitly a massive political backing of the EGTC in order to perform the exercise within a reasonable time frame.

With a view to the participation of partners from Third Countries the national approval procedure for a newly established or the expansion of an existing

⁴ I.e. those with an external border.

EGTC is equally demanding: e.g. the provisions for the simplification of the amending procedure shall not apply in case of a new member from Third Countries or OCTs – in such case according to the amended Article 4, lit. 3a) the consultation with all MS represented in the EGTC is needed, because it is necessary to enable all participating Member States to check whether such accession is in line with its public interest or public policy.⁵

In terms of legal preconditions, the new Article 4 (3a) (b) foresees that the Third Country or OCT must have adopted (a) *equivalent conditions and procedures to those laid down in this Regulation*; or that there must be (b) *an agreement concluded between at least one Member State under whose law a prospective member is established and that third country*. In the first case, the Third Country or OCT must have adopted internal rules on EGTC.⁶ In the second case, one of the Member States involved and the Third Country or Countries and the OCTs involved can conclude an agreement following any of the forms foreseen in the Vienna Convention on the Law of Treaties of 1969, being the exchange of notes and letters the most simple and efficient way.

1.5 Legislation governing Enlargement, Neighbourhood Policy and External Action

Next to the Regulations governing ETC and Cohesion Policy the key legislation governing enlargement and external action are subject to brief review. The review focuses on the provisions for the Instruments for Pre-Accession (IPA) and European Neighbourhood Instrument (ENI) and the corresponding Implementing Regulation for CBC programmes under ENI and as part of IPA.

At first one has to be aware of the fact that CBC or transnational cooperation is seen quite differently by major players in Cohesion Policy as compared to major players in External Action. Some of the European institutions such as DG Regio or the CoR consider ETC as one of the truly European elements in the Union's Cohesion Policy. From the perspective of actors in External Action, mainly the European External Action Service and DG DEVCO, CBC is understood as complementary element aiming mostly at local capacity building. Given the magnitude of problems and the scope and implications of acute crisis in many parts of the EU's neighbourhood one has to see that the key challenges from the perspective of External Actions clearly exceed the scope of action of EGTCs. Thus currently it might be difficult to gain much attention for the potential

⁵ Regulation 1302/2013, Recital 16.

⁶ The adoption of the Regulation on European Grouping of Economic by the IPA countries can be considered as a comparable case.

value-added of EGTC when approaching major players in EU's external policies.

Key points with a view to fostering the external dimension of EGTCs are the following ones:

- *Geographical eligibility* – the countries eligible under ENI and IPA are listed in the Annexes of the relevant regulations; CBC under IPA in principle refers to adjoining territorial units; CBC under ENI - next to adjoining eligible territorial units - offers also the option to include major social, cultural or economic centres – this is important since many of the regions along the land borders have a rural character and many institutions which might be interesting partners for LRAs from MS have their seat in one of the larger cities.
- *Eligibility of applicants* – CBC under IPA and ENI as well as Sea Basin Programmes have the explicit and implicit agenda of fostering cooperation at the sub-national, i.e. the regional and local levels; under both regimes public and private bodies are eligible⁷; the provisions for CBC under IPA and ENPI do explicitly refer to EGTCs respectively sole beneficiaries.
- *Thematic scope of actions* – for CBC under IPA and ENI the thematic scope of actions is largely aligned with the Investment Priorities under ETC.

The following table comprises the more detailed result of the scrutiny of the overarching common implementing rule and the IPA and ENI regulations with a view to setting-up an EGTC with Union support under the cooperation strands of IPA and ENI.

⁷ See e.g. Reg. (EU) 447/2014 (Implementing Rules for IPA), Article 26.

Table 6. Review of the Regulations governing Enlargement and Neighbourhood Policy

Regulation	Key point with relevance for EGTC
<p>Reg. (EU) 236/2014 Common Implementing Rules for the Union Instruments Financing External Action</p>	<p>The regulation governs next to ENI and IPA also the Development Cooperation Instrument (DCI) and the Partnership Instrument. It covers the period 2014-2020.</p> <p>Rules for programming with the explicit exception of IPA CBC [thus falling under the implementing provisions for IPA CBC (see below)].</p> <p>Article 6(2) stipulates the option to establish CBC programmes under ENI and IPA; in case of IPA a multiannual action programme for seven years may be developed.</p> <p>Article 6(5) foresees the consistency of provisions under IPA CBC with the Regulations 1303/2013 (CPR) and 1299/2013 (ETC) – thus de-facto establishing the option for EGTCs.</p> <p>Article 9 established the geographical eligibility for ENI and DCI; Article 10 includes the fundamental provisions for IPA II.</p>
ENI and IPA II	
<p>Reg. (EU) 232/2014 Regulation on European Neighbourhood Instrument (ENI)</p>	<p>Defining the geographical scope of ENI.</p>
<p>Reg. (EU) 231/2014 Instrument for Pre- Accession II (IPA II)</p>	<p>Defining the geographical scope of IPA II.</p> <p>The Regulation governs also the Indicative Strategy Papers for 2014-2020 at country level outlining priority areas.</p> <p><u>Annex III – thematic priorities for territorial cooperation</u> (CBC, transnational): the list comprises key priorities which are usually anchored in ETC programmes – covering the following Thematic Objectives (TOs) according to the definition of Regulation 1301/2013 (ERDF), Article 5: TO 8 (promoting sustainable labour and labour market mobility), 6 (preserving the environment and cultural heritage), 7(sustainable transport), 11 (governance and capacity-building), 1 (strengthening RDTI) and 3 (enhancing competitiveness).</p>

<p>Reg. (EU) 447/2014 Implementing Rules for IPA II</p>	<p>The implementing rules are of key relevance since here the term ‘sole beneficiary’ respectively EGTC is being introduced to IPA. Article 5(4) stipulates that the framework agreement between the Partner country and the EU inter alia has to include the provisions on eligibility.</p> <p><u>Title VI, Chapter II on CBC:</u></p> <p>Article 30 – eligible territory are the adjoining territorial units (NUTS level 3 or equivalent).</p> <p>Article 33 – in programmes with MS the Regulations 1299/2013 on ETC and 1303/2013 (CPR) shall apply; thus implicitly the rules on sole beneficiaries according to Articles 12(3) and 13(5) of Reg. 1299/2013 apply – sole beneficiary must be registered in a MS but MS must not participate in the programme.</p> <p>Article 40(4) includes the reference to sole beneficiaries, i.e. EGTCs, sole beneficiary shall be located in a participating country. It is important to note that the sole beneficiary is not introduced for CBC between IPA countries or between IPA and ENI countries.</p> <p>Article 48 - foresees the discontinuation of the programmes if the financing agreement is not being signed within a year after adoption of the programme.</p>
<p>Reg. (EU) 897/2014 Implementing CBC Programmes under ENI</p>	<p>Key potential financing source for EGTCs with participation of EU partners along external land borders.</p> <p><u>General framework and principles:</u></p> <p>Contents of programmes are compatible with the basic requirements for ETC programmes; in term of partnership-building it foresees the inclusion of local stakeholders and authorities and the civil society – this is of major importance with a view to EGTCs.</p> <p>It clearly defines the key role of the national authority (NA), i.e. the national level of the respective country: the NA is the ultimate responsible body for the implementing provisions of the financing agreement.</p> <p>The programmes have to foresee a minimum of 10% national co-financing - possible also as contribution of staff thus in principle also LRAs with a low financing capacity would have the option to participate.</p> <p><u>Project implementation:</u></p> <p>One has to note the key role of Call Documents since there the eligible applicants are defined – <u>it would be utmost important that EGTC are mentioned there in order to raise awareness.</u></p>

	<p>Article 39c) defines project categories - an EGTC would fall under i) integrated projects.</p> <p>Article 45 - foresees the option of EGTCs as eligible applicants (coverage within the programme area).</p> <p>Article 46 – Lead Partner Principle, each beneficiary being responsible for the share of Union funds.</p> <p>Article 57 – financial support to third parties [up to € 60,000.- e.g. in case EGTCs would be in charge of a Small Project Fund (SPF)].</p>
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Source: Regulations (EU) as quoted, own considerations

Please note that this section summarises the legal framework for EGTCs expanding to Third Countries eligible under the frameworks of ENI and IPA. The strategic guidance documents are subject of the analysis in the second section on scenarios of cooperation.

1.6 The Overseas dimension

A very specific theme is the governance of cooperation with Third Countries from the perspective of ORs and OCTs. A detailed consideration of all aspects and potential legal implications exceeds the scope of this study. The considerations will be limited to a brief reference to the guiding legal framework for the Development Cooperation Instrument (DCI) and the Partnership Instrument (PI) and the specific position of the OCTs.

The general principles for support are included in Regulation (EU) 236/2014, i.e. the common implementing rules for financing external actions.

Table 7. Overview on the Regulations governing the potential financing instruments for the overseas dimension of EGTC

Regulation	Key point with relevance for EGTC
Reg. (EU) 233/2014 Development Cooperation Instrument (DCI)	<p>Poverty reduction as the primary objective.</p> <p>Specific role in the support to the EU-Africa strategic partnership (it is important to note that Northern Africa is covered by ENI) Minimum of 20% of the assistance to basic social services and secondary education.</p> <p>The assistance may be provided as part of geographic programmes, thematic programmes (one on Global Public Goods and Challenges and one on Civil society and Local Authorities – the latter being in principle of high interest for the approach of EGTCs) and a Pan-African programme.</p>

	<p>Programmes shall take the form of Multi-Annual Indicative Programmes (MIPs) based on strategy papers drawn up by the Union.</p> <p>Geographic programmes should support inter alia also the aspect of capacity-building for civil society and local authorities.</p> <p>The key eligible countries are the Official Development Assistance (ODA) recipients following the definition of the OECD excluding ACP as well as IPA and ENI countries and countries eligible under EDF (such as OCTs).</p> <p>Financial envelope for the period 2014-2020 amounting to € 19.6 billion.</p>
11 th EDF agreement	<p>EDF is the main funding source for cooperation with the 79 ACP countries and OCTs, the 11th EDF is for the period 2014-2020 € 34 billion for the 79 ACP countries.</p> <p>€ 343 million for the OCTs (thereof € 338 for territorial and regional programmes).</p> <p>To the extent possible alignment with DCI and PI but respecting the provisions of the Cotonou Agreement⁸. The revised Cotonou Agreement allows next to support for intra-ACP cooperation also for support to cooperation between ACP countries and Rs and OCTs.</p>
Reg. (EU) 234/2014 Partnership Instrument	<p>Partnership Instrument for Cooperation with Third Countries</p> <p>Overarching objectives: support to the external dimension of EU 2020 but in general cooperation with all countries which are of interest for the Union; thus no restrictions in terms of geographic eligibility.</p> <p>Based on Multi-Annual Indicative Programmes.</p> <p>Total financing volume for the period 2014-2020: € 970 million Implementation governed by the European External Action Service (EEAS).</p>

Source: relevant EU Regulations.

It is evident that these instruments work on a different policy level compared to IPA and ENI. An external cooperation action of an OR will require quite dedicate action of the MS concerned: the legal framework establishes the financial frameworks but does not specify the scope of action in much detail. Thus the legal framework in principle allows financing Third Country

⁸ Cotonou Agreement: the overarching framework for the relation between the EU and ACP countries.

participation in the framework of an EGTC but the Regulations do not include explicit references to this instrument.

The poverty reduction is the overarching policy objective of these instruments. But still there are aspects where cooperation in the framework of an EGTC could be developed as part of specific cooperation between OCT or ORs and other Third Countries. As one of the examples one can consider the aspect of Civil Society and Local Authorities as essential element of geographic and one thematic programme in the framework of the DCI: the annexes foresee inter alia the support to capacity building of local authorities and mobilising their expertise to support a territorial approach to development which is perfectly in line with TO 11 and its specification under Article 7. (iv) in Regulation (EU) 1299/2013 (ETC).

1.7 The specific role of Overseas Countries and Territories (OCTs)

The OCTs comprise 25 territories – mostly islands - with highly fragile environments and economies. The OCTs are marked by the specific bilateral relationships to the respective MS; OCTs concern four MS: DK, FR, NL and UK. The population total of the 25 OCTs amounts roughly to 1.2 million.

In accordance with Articles 198 to 204 of the TFEU with Council Decision 2013/755 EU the Union has set up a legal reference framework the so-called Overseas Association Decision.

The legal implications of the specific bilateral relationships between OCTs and MS are quite complex and have in part also become subject of a vivid debate among legal experts focusing on the aspect to which extent the Treaty applies since the inhabitants of OCTs are EU citizens but Union law does not apply since it is not EU territory.

Key pillars of the Overseas Association Decision are next to economic competitiveness and strengthened resilience also the *cooperation and integration between the OCTs and other partners and the neighbouring regions*.⁹ Also in the relations with OCTs there is an attempt to move away from a classical development approach to support of sustainable development, fragile island environments.

⁹ Council Decision 2013/755 (Overseas Association Decision), Recital 2.

Article 5 of the Council Decision 755/2013 establishes priorities of mutual interest which partly fit to thematic priorities in ERDF/ETC e.g. sustainable management of natural resources, promotion of green growth, mitigation of climate change impact and in particular lit. g) *the promotion of social, cultural and economic exchanges between the OCTs, their neighbours and other partners*. Article 7 of the Decision is devoted to regional cooperation and integration with the ORs.

The Decision includes a clear reference to EGTCs: **Article 8 of the Decision 2013/755 EU explicitly refers to the option for OCTs to participate in an EGTC**. The EGTC should be subject to the rules and the objectives of cooperation in the Decision and the EGTC Regulation. Article 93 on regional financing - i.e. in the terminology of the Decision the principle of financing for operations involving institutions or partners from more than one OCT - states that EGTCs are eligible for Union support (cf. lit h).

In general Union support to participation of OCTs in regional integration organisations should focus on capacity-building of relevant regional organisations, development of regional markets in the context of these organisations and cross-border investment. Moreover the Decision seeks to establish cooperation mechanisms which strengthen the role of LRAs in OCTs. Part II develops the areas of cooperation between the Union and the OCTs with a strong focus on the concerns of fragile island environments (and economies), i.e. integrated coastal zone management, sustainable management of water, fish stock and forests etc. but also other key development issues such as maritime transport, RDTI, education, tourism and fight against organised crime.

Part III is the economic centrepiece of the new association regime: in line with the provisions in the TFEU, it firmly anchors that OCTs may participate under the best possible conditions in the Union's internal market.¹⁰

According to Article 77 Union support is based on the following financial instruments – EDF, instruments and programmes financed from the Union's general budget, EIB. The Decision stipulates specific provisions for support from the 11th EDF for the period 2014-2020.¹¹ Activities eligible for financial support comprise inter alia sector policies, institution-building and integration of environmental aspects. Explicit reference is made to capacity development and Technical Assistance (TA). The Decision foresees the need to develop a Programming Document for the Union support to the OCT.

¹⁰ Article 51 establishes the principle of the most favourable treatment (in comparison to trade regimes with other Third Countries).

¹¹ For more details please see Annex II of the Council Decision 755/2013 (Overseas Association Decision).

1.8 Bilateral association agreements between the EU and Third Countries

An important point is that the EU has concluded bilateral agreements with a number of Third Countries. These so-called Association Agreements cover a broad range of issues and are subject of a political dialogue in the framework of the association council.

In most cases the centrepiece of the agreements is on trade liberalisation and accompanying issues such as competition policies, state aid, and state monopolies. The agreement the related protocols govern products of key interest (e.g. in case of the Mediterranean countries agricultural products) and definitions related to the rules of origin.

The agreements also outline the areas for cooperation which in principle concur with the general ideas anchored in the EU legislation on external action.

A further important point in these agreements is the dialogue on social matters, in particular migration but also the combat against organised crime.

Generally speaking these association agreements with ENI countries – similar to the Stabilisation and Association Agreements in case of IPA countries – reveal limited added value as policy levers in furthering EGTCs: the references to regional cooperation, regional development are not sufficiently specific in order to add momentum to the debate on EGTCs.

However, the Association agreements of 2014 with Ukraine and Moldova included chapters on cross-border cooperation that pave the way to develop EGTCs: The Association agreement with Ukraine¹² included a Chapter 27 on cross-border and regional cooperation, and the Association agreement with Moldova¹³ included a Chapter 20 on regional development, cross-border and regional level cooperation. Art. 447 of the Agreement EU-Ukraine and Art.108 of the Agreement EU-Moldova say the same: *"The Parties shall support and strengthen the involvement of local and regional-level authorities in cross-border and regional cooperation and the related management structures, to enhance cooperation through the establishment of an enabling legislative framework, to sustain and develop capacity-building measures and to promote the strengthening of cross-border and regional economic and business networks"*. The definition of the EGTC can be a part of this *"enabling legislative*

¹² OJEU L 161/3 of 29/05/2014. Available at http://eeas.europa.eu/ukraine/docs/index_en.htm.

¹³ Council decision 2014/492/EU, OJEU L 260/1 of 30/08/2014. Available at <http://eeas.europa.eu/moldova/>.

framework". Moreover, Art. 108 of the EU-Moldovan agreement adds the engagement to develop *"the capacity of local public authorities to promote cross-border cooperation in compliance with EU regulations and practices"*, which is even a stronger basis for the EGTC.

Therefore, we may expect positive developments from the newest association agreements, which do not mention explicitly the EGTC but whose provisions surely cover this legal tool.

1.9 Summary of the legal analysis

1.9.1 Establishment of an EGTC with participation of Third Countries

To foresee an option in the legal framework has to be considered as a first step. Given the experience with the EGTC legislation which has entered into force in 2006 and the first EGTCs being established in 2008 and the first peaks in the number of EGTCs founded in the years 2010 and 2011 one cannot expect a rapid emergence of EGTCs with an external dimension: one has to see the fact that the explicit reference to EGTCs has been foreseen in the legal frameworks governing enlargement and neighbourhood policies only in 2013/2014.

In many respects the Study is implicitly taking a concentric view: in legal terms but also seen from a practical perspective. For some of the territories concerned the likelihood for the emergence of EGTCs is by far higher than for others. Some of the key arguments in this regard are listed in the table below.

Table 8. Considerations on the emergence of EGTCs in Third Countries

Type of country/region	Key point	Considerations on the likelihood for the emergence of EGTCs
Outermost Regions (ORs)	No legal obstacles since ORs are part of the Union thus Union legislation applies	<p>EGTC as sea-basin approach or as sea-land cooperation is so far limited to two examples (ARCHIMED, AMPHICTONY).</p> <p>Partnerships with neighbouring regions are unprecedented but could be of interest; another policy option could be to transform existing cooperation platforms of ORs into EGTCs.</p>

IPA countries	CBC-programmes financed from IPA and ERDF are of key interest since the countries with an enlargement perspective are in a process of alignment of their national legislation with Union law	Given there is strong backing from the national level in MS and Candidate Country this could become an area of high likelihood since also the national level in the candidate countries cannot oppose the instrument and there are some MS involved which have seen a dynamic development of EGTCs in the recent past.
ENI CBC	A large number of countries in this group is in a state of crisis and a major challenge is the marginalised position of the LRAs in many of these countries	From the current perspective a low likelihood with a few exceptions has to be stated. However there are positive cooperation signals from existing EGTCs which are active in the Mediterranean and also the recent developments in the Eastern Partnership document the general interest – however it will need strong backing from all tiers (EU, MS) to give momentum to the process.
OCTs	Legal obstacles are quite likely to be overcome but current prime policy interest of external cooperation are organisations for regional integration;	Low likelihood due to disperse territories and low density and capacity of actors (the 26 territories have a population total of about 1.2 million). The exception is the announced idea of EGTC between Saint-Martin and Sint-Maarten, a French OR and a Dutch OCT sharing the same island.

Source: own considerations.

1.9.2 EGTC anchored in the Regulations governing IPA and ENI

EGTCs are firmly and explicitly anchored in the overarching regulations governing IPA II and ENI CBC and also the association regime with OCTs¹⁴. However, it is important to note that also the subsequent layers of guidance documents have to foresee the option of EGTCs and should raise awareness for their development in the framework of CBC programmes (or in case of IPA also in the framework of transnational programmes). Generally speaking the elaboration of the guidance documents is part of the responsibility of the Managing Authority (MA) of the programme. In case of IPA CBC and ENI

¹⁴ For more detailed references related to IPA II and ENI CBC please see table 6; regarding OCTs Article 8 of the Council Decision 2013/755/EU, (Overseas Association Decision) explicitly refers to EGTCs.

CBC next to the MA also the relevant national authorities are involved in the elaboration process in order to ensure compliance with the complete legal framework for ERDF, ETC, IPA II and ENI CBC. These documents are either endorsed or approved by the Monitoring Committee.

The notion of guidance documents comprises the guidance documents for applicants and beneficiaries and in case of ENI also the Call Documents which stipulate the eligibility of applicants. In all these documents the EGTCs could be mentioned in order to raise awareness in the respective programme areas. It would be also decisive to foresee the option that the development of an EGTC could be the objective of an operation (project): for many LRAs in IPA and ENI countries even fund-raising for the meetings, translation works and required legal expertise might be a challenge for the staff and financial capacities.

Ample room to define the mission of EGTCs with an external dimension in legal terms

In terms of the thematic scope of an EGTC the legal frameworks for territorial cooperation under ENI and IPA are sufficiently aligned with the provisions of the Regulations governing ETC and ERDF in order to open a broad range of options regarding the mission of EGTCs with an external dimension.

In the view of the Consultant the legal framework is not a limiting factor. In practice the key point is that the agenda of the EGTC mobilises strong political backing from the national level in the MS and the Third Country. Thus the preparation of such an EGTC (or the extension of an existing one) will require involving diplomacy and policy-makers at all tiers of government and the EU.

The national approval procedures as key challenge

The national approval procedure for the establishment or the extension of an EGTC with an external dimension will be the obvious challenge for both sides: for the MS authorities as well as for the authorities in the Third Country. For the MS since in most MS with external land or sea borders the competent authority for the approval of EGTCs is rather oriented towards domestic affairs. For the Third Country due to the need to thoroughly check the Convention and underlying Union and national laws of a MS for compliance with:

- Firstly the national laws governing the thematic scope of the EGTC.
- Secondly the national principles and provisions for self-government of LRAs.

2 Scenarios of cooperation and state of play in the different geographical areas

Generally, the border areas are characterised by sparsely populated regions in the North, a much higher population density along the Central European borders, and in the South around the sea basins a concentration of population in the coastal regions.¹⁵

The section includes a brief review of the current socio-economic and political situation in the IPA and ENI Countries as well as the options to finance cooperation under external action. The areas under consideration in this section are:

- Enlargement countries, Association and Stabilisation (IPA).
- Neighbourhood countries, i.e. the recipients of funding from ENI.
- Outermost Regions, Outermost Countries and Territories, in some cases countries eligible for the EDF.

Further on in this section potential policy levers will be outlined – as already stated in the first section EGTCs venturing into the external dimension will need strong policy levers and political backing to overcome manifold challenges respectively hurdles for cooperation in legal, administrative and political terms. The review of countries with a view to the likelihood for participation in an EGTC in the mid-term perspective will follow a concentric approach starting with the countries having an enlargement perspective.

2.1 The situation in IPA Countries – Countries with an Enlargement Perspective

IPA II covers the group of countries with an enlargement perspective. Despite the fact that further enlargement is not very likely in the next five years still this group of countries is in an important process of negotiation with the EU.¹⁶ The option to use of IPA foresees a much stronger alignment with the principles and implementing rules of the EU Cohesion Policy. In addition to this, the IPA countries are supposed to implement the EU *Acquis* and therefore they should implement the EGTC Regulation sooner or later. However, Croatia did it in the date of its accession to the EU and not earlier.

¹⁵ European Commission 2014a), p.6.

¹⁶ With the exception of Iceland

In general the status as IPA country is seen as a factor which increases the likelihood of the participation of partners in an EGTC: these are joint programmes with strongly aligned routines, the underlying periodicity is the same, the political backing and the options for dialogue at different levels are much more developed - in short the stability of Union support is comparatively higher than in many ENI countries.

But still one has to be aware of the fact that this group of countries is far from being a homogeneous group of Candidate Countries. The following table presents a tentative assessment of the current and future capacity in territorial cooperation and – derived from this perspective – the likelihood for the participation in an EGTC. The assessment of the likelihood is done in three stages (H) – high, (M) – medium and (L) – Low.

Table 9. Review of the IPA Countries

Country	Tentative assessment regarding the role in territorial cooperation	Likelihood for the participation in an EGTC in 2014-2020
Albania	Uptake of CBC with neighbouring countries (Montenegro, Kosovo, FYROM) in 2010; fair performance – environment, tourism and natural heritage as shared priorities; intent to simplify implementation structures; Participation also in CBC and transnational programmes with MS.	M First experiences with CBC gathered, participation in trilateral CBC programme with MS: IT-Albania-Montenegro
Bosnia and Herzegovina	Very difficult economic environment, social unrest in February 2014; challenging rather costly decentralised structures; IPA implementation subject to direct management due to lack of reliable structures; Focus on sector policies, no particular measures for regional development and territorial cooperation at country level.	L In principle the geographic situation would favour CBC - land border with MS CR, e.g. interest of CR for access to ports but lack of administrative and governance capacity at all tiers of government
FYROM	CBC with MS (BG, GR) and IPA countries (Albania, Kosovo) has met high interest; Cooperation with Serbia might be envisaged in the medium-term.	M CBC has met comparatively high interest; continuation of CBC programme with BG and GR is likely

Iceland	<p>Accession process was put on hold and IPA funding stopped;</p> <p>Referendum on the continuation of the accession process is pending.</p>	<p>L</p> <p>In addition to the mentioned factors, the lack of land borders is determinant</p>
Kosovo	<p>Start with CBC with FYROM and Albania in 2010 – but generally slow pace of implementation;</p> <p>Set-up of a CBC-programme with Serbia expected in the medium-term, on basis of ongoing dialogue between the two countries facilitated by the EU.</p>	<p>L</p> <p>No land border with MS; in general slow take-up of CBC</p>
Montenegro	<p>Participation in five CBC programmes in the period 2007-2013 [Albania, BiH, Serbia, CR, since 2011 also with Kosovo and in two transnational programmes (SEE, Mediterranean and in IPA Adriatic)];</p> <p>Comparatively good performance and visible effect on capacities in project implementation.</p>	<p>M</p> <p>Land border with MS CR, sound experience gathered in the 2007-13 period; CBC Programmes with MS: CR-Montenegro-BiH and IT-Albania-Montenegro; in transnational cooperation eligible in Danube, Adriatic-Ionian and Mediterranean programmes</p>
Serbia	<p>Also in the past Serbia has been very active in CBC with neighbouring countries; in particular the cooperation with HU was quite dynamic;</p> <p>Under IPA next to programmes with Kosovo and BiH also the development of a CBC programme with FYROM is expected in the short-term, with Kosovo it is envisaged in the medium-term as result of the dialogue facilitated by the EU.</p>	<p>H</p> <p>CBC with MS (HU, RO, BG and CR) thereof partners from HU very active in development of EGTCs; a partner from Serbia participates in the EGTC Bánát Triplex Confinium in the capacity of an observer</p>

Turkey	<p>CBC with BG had seen a lagging development in the past with significant decommitment due to massive difficulties in implementation; cooperation will be continued ;</p> <p>A CBC programme with CY is very unlikely to materialise in the period 2014-2020; No participation in transnational programmes except of Black Sea Programme (for the latter there is interest to continue cooperation); also interest to start CBC with Georgia.</p>	<p>L</p> <p>No experience with EGTCs in BG, slow up-take of CBC-programmes by Turkey</p>
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Source: Indicative Strategy papers 2014-2020 at country level and own consideration.

The assessment points clearly at the highest likelihood for Serbia that partners will participate in an EGTC. In case of Serbia, seven partners are already involved in the EGTC Bánát Triplex Confinium in the capacity of observers.¹⁷ Countries with a medium likelihood are Montenegro, FYROM and Albania – these countries have also demonstrated a strong interest in CBC.

Next to the CBC with MS also the transnational strand of ETC is quite interesting from the perspective of IPA II countries. IPA II countries can participate in four transnational ETC Programmes, thereof three new programmes due to the new programme architecture in the period 2014-2020.

Table 10. Participation of IPA countries in transnational cooperation programmes

Transnational ETC Programme	Programme area – eligible countries
Danube	MS: DE, AT, HU, CZ, SK, SI, BG, RO, CR IPA II: Serbia, Bosnia and Herzegovina, Montenegro ENI: Moldova, Ukraine
Balkan - Mediterranean	MS: GR, CY, BG IP II: Albania, FYROM
Adriatic Ionian	MS: IT, GR, CR, SI IPA II: Albania, BiH, Serbia, Montenegro
Mediterranean (Interreg Med)	MS: CY, CR, FR, IT, GR, MT, PT, ES, SI, UK IPA II: BiH, Albania, Montenegro ENI: Turkey, Morocco, Algeria, Tunisia, Lybia, Egypt, Jordan, Palestine and Lebanon, Syria (suspended)

Source: IPA II – Indicative Multi-Country Strategy 2014-2020, website of ETC SEE.

However in the development of EGTCs the bilateral CBC approach is by far dominant in numbers.

¹⁷ These are the municipalities of Ada, Žitište, Čoka, Kanjiža, Novi Kneževac, Senta, Nova Crnja and Kikinda.

2.2 Situation of the ENI Countries – the partners in the Neighbourhood Policy

The following brief review of the ENI Countries is based on the official documents of the EC elaborated in the framework of the Neighbourhood Policy. The information is drawn mostly from the Single Support frameworks for ENI support for the new period starting in 2014 – the periodicity of the documents differs – which can be seen as a first indicator for the stability of the relationships between the EU and the respective country.

The assessment of the likelihood for the participation in an EGTC in the period 2014-2020 reflects the assessment of the Consultant which is based mainly on:

- current key issues at stake and likely consequences in the mid-term horizon (mostly referring to open or lingering conflicts),
- stability and risks of the relationship according to the assessment in the SSF of ENI,
- geographic situation – CBC across a landlocked border has a higher probability for the development of an EGTC.

The assessment of the likelihood was done in three stages (H) – high, (M) – medium and (L) – Low. The table presenting the review can be found in Annex1. The main result of the review is that currently only three countries could be considered as having a medium potential with as view to promoting EGTCs as vehicle of cooperation. These countries are Morocco and Tunisia and Moldova.

When considering these three countries one has to be aware of two geographic specificities with major impact on the potentialities for cooperation – firstly the long eastern external border of the EU, secondly the Mediterranean Sea basin as a lively, densely populated cross-road situated between Europe and Africa.

2.2.1 The external eastern border

The long external land border of the Union with the neighbouring countries Russia, Belarus, Moldova and Ukraine has recently become a reminder of the fragile geo-political situation in these territories. Seen from today's perspective none of the countries can be labelled as stable partner in the neighbourhood. To some extent the only exception is Moldova as the smallest ENI country along this border. De-facto currently most of this land border has to be labelled as

barrier to joint development efforts despite a number of interesting points of departure such as divided cities or cultural areas.

Already in the recent past the Russian Federation has had a specific status in the Neighbourhood Policy. In the period 2014-2020 it is intended that Russia takes part in seven CBC-Programmes with support from ENI. However, current relations reveal significant tensions and this type of relations might be suspended.

In brief the current focus from the part of the Union is on border management and development of cross-border infrastructure in the fields of energy and transport (one has to consider the vast area concerned: e.g. the border between FI and Russia has a length of about 1,300 km).

2.2.2 The Mediterranean area

The area is marked by striking economic and social contrasts between EU MS and southern countries bordering the Mediterranean. Key policy concerns from the perspective of the EU are migration, organised crime such as trafficking of human beings and drugs, security issues and the political turbulences following the Arab Spring.

Major shared concerns refer to environmental and climate change issues such as marine pollution and growing water shortage. The starting point for CBC has been the regional and sub-national initiatives for de-pollution of the Mediterranean Sea (initiatives backed by Horizon 2020, the Barcelona Convention for the protection of the maritime environment and the Union for the Mediterranean (UfM). To this end the major incentive for cooperation is quite comparable to the situation in BSR in the mid 90ies.

2.2.3 The Programming Document for EU support to ENI Cross-Border-Cooperation 2014-2020

The total financial envelope amounts to € 500 to 600 million of Union funds. ENI CBC should focus on three strategic objectives:

- promote economic and social development in regions on both sides of common borders;
- address common challenges in environment, public health, safety and security;

- promotion of better conditions and modalities for ensuring the mobility of persons, goods and capital.

In the period 2014-2020 three formerly trilateral programmes have been split upon request of the participating countries into six bilateral programmes and the sea-basin programme Mid Atlantic has been introduced. The following table provides an overview on the structure of ENI CBC programmes and the current state of play as regards the existence of EGTCs in the MS concerned.

Table 11. Overview on ENI CBC programmes

ENI CBC Programme	Countries involved	Existence of EGTCs in MS involved	Existence of EGTCs along border stretch / shared sea border
Land border programmes			
Kolarctic/Russia	FI, SE, Norway, Russia	No	No
Karelia/Russia	FI, Russia	No	No
South East FI /Russia		No	No
EE/Russia		No	No
LV/Russia		No	No
LT/Russia		No	No
PL/Russia		Yes	No
LV/LT/Belarus		No	No
PL/Belarus/Ukraine		Yes	No
HU/SK/RO/Ukraine		Yes, dynamic development	Yes
RO/Moldova		Yes	No
RO/Ukraine		Yes	No
Sea-crossing programme			
Italy/Tunisia		Yes (Archimed)	---
Sea-basin programmes			
Baltic Sea Region	FI, SE, DK, EE, LV, LT, PL, DE, Russia, Belarus, Norway	None	
Black Sea	RO, BG, GR, Turkey, Russia, Ukraine, Moldova, Georgia, Armenia, Azerbaijan	YES (GR, BG, RO)	No

Mediterranean	ES, UK (Gibraltar), PT, FR, IT, MT, GR, CY, Turkey, Morocco, Algeria, Tunisia, Lybia, Egypt, Jordan, Israel, Palestine and Lebanon, Syria (suspended)	Yes (GR, CY ES, PT, FR)	Yes Exfini Poli Amphictony Archimed
Mid-Atlantic	ES, PT, UK (Gibraltar), Morocco		

Source: European Commission, 2014a) p. 18.

The review shows that there are two hot spots where EGTCs with an external dimension could be expected based on the assumption that already existing EGTCs increase the likelihood of further development:

- the MS RO and HU – in particular development of EGTCs in HU was marked by strong dynamic in the recent past,
- the Mediterranean area where the existing EGTCs support the inclusion of partners from Third Countries.

2.2.4 Policy initiatives with relevance for the Union’s Neighbourhood Policy

Any dedicate effort to support the external dimension of EGTCs will have to use all possible policy levers for cross-border and transnational cooperation. ENI as a policy instrument is embedded in a considerable range of policy initiatives. Common to all these initiatives are the large territories involved –a fact which points at the implicit and explicit agenda to foster cooperation across many countries and developing a shared understanding of the challenges and the need for adequate policy responses.

The table below presents the most prominent policy initiatives with relevance for ENI.

Table 12. Overview on Major Policy Initiatives under ENI

Political initiatives	Funding instruments, policy dimensions	Members
Northern Dimension	<p>ENI Regional East Programme</p> <p>Initiative of the EU for dialogue and cooperation, economic stability and cooperation and sustainable development of the fragile environment.</p> <p>Two main partnerships:</p> <ul style="list-style-type: none"> ▪ on environment ▪ on public health and social wellbeing <p>The initiative also seeks to integrate the work of BEAC and CBSS, as well as the Arctic Council and the Nordic Council.</p>	<p>EU, Russia, Norway, Iceland</p> <p>Belarus in practical cooperation</p>
Barents Euro-Arctic Council (BEAC)	<p>Forum for intergovernmental and interregional cooperation in the Barents Region.</p> <p>Working Groups on indigenous people, education and youth, economic cooperation, environment, transport etc.</p> <p>Examples of project financed under ENI Kolarctic on support to indigenous culture, youth, bio-diversity and climate change.</p>	<p>MS: DK, FI, SE</p> <p>Iceland, Norway, Russia</p> <p>The cooperation is based on specified member regions</p>
Council of Baltic Sea States (CBSS)	<p>Long-standing cooperation in the fields of maritime policy and sustainable development, culture, youth affairs, border management, civil protection and nuclear safety.</p> <p>Specific project support facility – inter alia as seed financing for projects to be submitted in the transnational cooperation programme for the Baltic Sea Region (BSR), ENI-CBC</p>	<p>MS: DK, DE, FI, EE, LV, LT, PL, SE</p> <p>Iceland, Norway, Russia</p> <p>European Commission</p>

Political initiatives	Funding instruments, policy dimensions	Members
Eastern Partnership	<p>ENI</p> <p>Eastern partnership flagship initiatives</p> <p>The <u>bilateral dimension</u> supports political association and economic integration with the EU, sector cooperation and mobility of citizens.</p> <p><u>Multilateral dimension:</u></p> <p>Thematic platforms for exchange on e.g. energy, transport, people-to-people contacts</p> <p>It is important to note that in the Declaration resulting from the summit in 2013¹⁸ the potential role and contribution of EGTCs has been highlighted.</p> <p><i>Flagship initiatives</i>, which are regional cooperation programmes in the fields of: energy, environment, response to disasters, border management, and support to small businesses.</p>	Armenia, Azerbaijan, Georgia, Moldova, Ukraine
Southern Neighbourhood	<p>Key support from ENI</p> <p>The cooperation covers a wide range of sectors; including democratic development, rule of law and good governance; economic development; social sectors and social protection; human development and migration.</p> <p>Forms of support through:</p> <ul style="list-style-type: none"> ▪ Regional projects and programmes ▪ interregional programmes and ▪ probably as most interesting point support to CBC with two ongoing programmes ('The Mediterranean Sea Programme' and 'The Italy-Tunisia Programme'). 	Algeria, Egypt, Israel, Jordan, Lebanon, Libya, Morocco, Palestine*, Syria and Tunisia.

¹⁸ Joint Declaration of the Eastern Partnership Summit Vilnius, 28-29 November 2013.

Political initiatives	Funding instruments, policy dimensions	Members
Black Sea Synergy	<p>ENI Regional East Programme</p> <p>ENI CBC Black Sea Basin mainly targeting local authorities.</p> <p>Mainly encouraging regional cooperation.</p> <p><u>Environmental Partnership</u> was launched in March 2010 including measures on biodiversity conservation as well as integrated coastal zone and river basin management.</p> <p>Other priorities include tackling pollution and promoting environmental integration, monitoring, research and eco-innovation.</p>	MS: RO, BG, GR, Armenia, Azerbaijan, Georgia, Moldova, Ukraine, Russia, Turkey
EUROMED Union for the Mediterranean	<p>ENI Regional South Programme</p> <p>ENI Mediterranean</p> <p>Key initiatives:</p> <ul style="list-style-type: none"> ▪ the de-pollution of the Mediterranean Sea, including coastal and protected marine areas; ▪ the establishment of maritime and land highways (ports and rail connections); ▪ a joint civil protection programme on prevention; ▪ a Mediterranean solar energy plan; ▪ a Euro-Mediterranean University; ▪ the Mediterranean Business; ▪ Development Initiative. 	MS:ES, UK (Gibraltar), PT, FR, IT, MT, GR, CY, Albania, Algeria, Bosnia and Herzegovina, Egypt, Israel, Jordan, Lebanon, Mauritania, Monaco, Montenegro, Morocco, Palestine, Syria (suspended), Tunisia and Turkey

Source: ENI website

2.3 Outermost Regions and Outermost Countries and Territories

Scenarios of cooperation, and therefore for the EGTC, can be foreseen between ORs and OCTs, and in the area of the so called 'Greater Neighbourhood'. In general, the situation of these territories and their area of cooperation are very different and it is strongly conditioned by the geography.

The year of 2010 has marked a new beginning for the design of the new cohesion policy after 2013 as well as a chance for outermost regions to play a part in the new economic strategy for Europe (Europe 2020): *“In the period 2007-13, the outermost regions will benefit from Community investment totalling €7.8 billion under the ERDF, ESF, EAFRD, EFF and the Programme of Options Specifically Relating to Remoteness and Insularity (POSEI).”*¹⁹

A platform has been formed to group all the Outermost Regions but it has no legal personality. The platform has studied the possibility of establishing an EGTC with the purpose of giving permanence to their cooperation and defence of their common interests at the EU level. One specific scenario looks at ORs and OCTs sharing land borders: Sint-Maarten-Saint Martin, French Guyane and Brazil.

There is no direct use of the EDF in Cross-Border Cooperations foreseen in the EU budgetary framework. But the Multiannual Financial Framework for the External Action Financing Instruments says that the EDF *“aims to ensure more flexibility and fast reaction in case of unexpected events. Regional funding will include allocations to cover unforeseen needs with a regional dimension. A new shock-absorbing scheme will be set up which will help ACP countries to mitigate the short-term effects of exogenous shocks such as economic crisis or natural disaster.”* This could leave some room for manoeuvre regarding financing options looking at possible EGTC activities in OR and OCT.

Combining the regional integration tools in view of enhancing the role of outermost regions into their neighbourhood has also been discussed at the Third Forum on Outermost Regions (October 2014). The discussions included inter alia the implementation of the Economic Partnership Agreements and the ERDF/EDF funds.

2.4 Macro-regional strategies

A second significant policy level is the macro-regional strategies which are being developed with strong direct support from the Union.

The three macro-regional strategies do reveal a significant external dimension and in particular the strategy for the Baltic Sea Region (BSR) can serve as model how a shared strategy can evolve from the shared concern for the maritime environment.

¹⁹ See: http://europa.eu/rapid/press-release_IP-10-547_en.htm.

The Strategies for the Danube Region (EUSDR) and for the Adriatic Ionian (EUSAIR) pose a significant potential to act as policy lever for new EGTCs along the external border – in particular since these are mostly IPA countries and thus one can assume a stronger political willingness from the part of the member countries. The following table outlines the key features of the strategies.

Table 13. Macro-regional strategies

Strategy	Funding instruments, policy dimensions	Members
<p>EU Strategy for the Baltic Sea Region</p>	<p>Transnational cooperation programme for the Baltic Sea Region (BSR), ENI-CBC</p> <p>Three key objectives:</p> <ul style="list-style-type: none"> ▪ saving the sea ▪ connecting the region ▪ increasing prosperity <p>Elaborate system of support through National Contact Points, Priority Area Coordinators and Horizontal Action Leaders.</p> <p>The Communication from 2012²⁰ states in the section on governance that the option of EGTCs should be explored in order to strengthen administrative sustainability</p>	<p>MS: DK, DE, EE, FI, LV, LT Norway, Russia</p>
<p>EU Strategy for the Danube Region</p>	<p>Transnational cooperation programme for the Danube Region (first time in 2014-2020); participation of Third Countries possible with sources from IPA II and ENI.</p> <p>Strategy built on 11 priority areas which largely correspond to TOs for ERDF and thus ETC:²¹ transport, energy, culture and tourism, environment, knowledge society, competitiveness, people and skills, institutional capacity and cooperation.</p> <p>EGTCs are explicitly mentioned in the Action Plan²² related to Priority 10 (Institutional Capacity and Cooperation).</p> <p>Priority Area Coordinators should act as policy lever to develop projects; a project generation facility has been established (project generation for the transnational ETC programme).</p>	<p>MS: DE, AT, HU, CZ, SK, SI, BG, RO, CR IPA: Serbia, Bosnia and Herzegovina, Montenegro ENI: Moldova, Ukraine</p>

²⁰ COM(2012) 128 final concerning the EU Strategy for the Baltic Sea Region.

²¹ With the exception of security.

<p>EU Strategy for the Adriatic Ionian Region (EUSAIR)</p>	<p>Transnational cooperation programme Adriatic Ionian (for the first time); participation of Third Countries possible (IPA II)</p> <p>The Strategy rests on four pillars:</p> <ul style="list-style-type: none"> ▪ blue growth through maritime technologies and governance (maritime strand of EU 2020) ▪ environmental quality - marine environment and terrestrial habitats ▪ connecting the region – maritime transport, link to hinterland, energy networks ▪ sustainable tourism <p>EGTCs are not mentioned explicitly in the Strategy²³</p>	<p>MS: IT, GR, CR, SI IPA II: Albania, BiH, Serbia, Montenegro</p>
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Source: websites of the EU Strategies²⁴.

Only the Strategies for the Baltic as well as the Danube Regions mention EGTCs explicitly as an option to be considered. In the most recent Strategy, the one for the Adriatic Ionian Region, this is not the case. Also the report from the Commission on the governance of macro-regional strategies²⁵ makes no explicit reference to EGTCs.

For the EUSDR and in particular for the EUSAIR one has to state that the internal policy mechanisms are still under development. But all macro-regional strategies do have the major advantage that a tailored financing and policy instrument acts as an engine behind: the corresponding transnational ETC programmes.

However, these macro-regional strategies will create a supportive environment but cannot be expected to have a strong immediate influence on development of EGTCs. One could rather imagine EGTCs as an offspring of successful projects such as has been the case with the transnational EGTCs in the Mediterranean area.

²² SEC(2010) 1489 final, Commission Staff Working Document Action Plan, accompanying document to the European Strategy for the Danube Region.

²³ COM(2014) 357 final, Communication of the European Commission concerning the European Union Strategy for the Adriatic Ionian Region.

²⁴ <http://adriatic-ionian.eu>; www.danube-region.eu; www.balticsea-region-strategy.eu.

²⁵ COM(2014) 284 final, Report from the Commission on the governance of macro-regional strategies.

2.5 Other Initiatives of potential interest

Last but not least at European level several associations representing the specific interests of border regions do exist – these are:

- Association of the European Border Regions (AEBR).
- Network of European Eastern Border Regions (NEEBOR).

Last but not least the Carpathian Convention²⁶ is a policy initiative set-up between MS (CZ, HU, PL, RO, SK) and the non-member states Serbia (IPA) and Ukraine (ENI). The Framework Convention on the Protection and Sustainable Development of the Carpathians (Carpathian Convention) was adopted and signed by the seven parties and entered into force in January 2006. It is supported by the European Commission and the United Nations. The Secretariat of the Carpathian Convention as administrative structure has its seat in the UN in Vienna. The initiative has launched several ETC projects and there are permanent structures of cooperation closely linked to it, like the Carpathian Euroregion.

2.6 Summary – Scenarios of Cooperation and state of play in the different geographical areas

2.6.1 Thematic challenges

The scope and magnitude of challenges in most of the Third Countries under consideration opens the question of the potentialities of EGTC in this regard. For the majority of ENI countries it seems evident that the substantial challenges in the area can only be addressed at national and multi-lateral level. Examples – next to the primary objective of poverty reduction - are marine pollution, fight against organised crime, migration, asylum, public health combating communicable diseases such as tuberculosis or HIV.

The focus along the EU Eastern external border lies on effective border management thus seeking to prevent illegitimate activities but facilitate legal trade and transit instead.

Seen from the perspective of large-scale challenges local and regional CBC initiatives and EGTCs as bottom-up approaches might be limited to a rather complementary role. This role includes among others the development of small-

²⁶ For more details please see: <http://www.carpathianconvention.org>.

scale cross-border infrastructure or the function as umbrella for people-to-people cooperation strengthening social cohesion via cultural ties.

From the perspective of support to development one can see two fundamental options for a contribution of EGTCs to external action:

- a strong agenda which raises also national interest and is backed up by high-level policy makers at European, MS and Third country level such as e.g. an EGTC for the protection of a major natural asset,
- or rather an open framework for strategy development and capacity building – in this case the key contribution of EGTCs to development efforts could be rather to show and jointly develop a model of territorial governance under broad participation.

However both general models will encounter a major institutional challenge – the deficits in the capacities of LRAs in most neighbouring countries.

2.6.2 Local and regional self-government as the overarching institutional challenge

EGTCs are meant as vehicle of cooperation for the sub-national level. Local authorities are in a difficult situation in some of the IPA countries but definitely in all ENI countries. Effective regional administrations or governments exist only in a limited number of these countries. Thus the EGTC as a bottom-up initiative will encounter major difficulties in such an environment. But it is evident that participation in CBC programmes supports capacity development in this regard (as can be seen by the examples of Serbia or Montenegro).

One policy element of critical importance for the successful implementation of CBC programmes is the institutional capacity of local and regional authorities in the ENP countries and Russia to take part in this type of cooperation. In this context, questions of local government reform are of particular importance, and are often part of national reform agendas as reflected in the ENP Action Plans or equivalent documents. In this regard, suitable cross references to national reform agendas and ENP documents should be included in joint operational programmes.²⁷

²⁷ European Commission, 2014a), p. 5.

A key point of reference in this regard is the so-called Madrid Convention²⁸ which was set-up in 1980 and is meant as a legal reference framework which should facilitate and support cross-border cooperation between all tiers of governments, in particular between LRAs: the Convention grants in principle the right of LRAs to cooperate across borders, and is considered as a milestone in local democracy. Since the Convention was set-up and elaborated by the Council of Europe its territorial significance refers only to the Third Countries along the eastern external border and Turkey.

The rights granted as part of an international agreement on basis of the Convention can be limited by the signatory states – and some MS have decided to do so. By 2014 in total 36 Member States²⁹(out of 47) of the Council of Europe have signed and ratified the Convention. All initiatives based on the Convention have to conform to the national laws of the states concerned. Thus all initiatives have in the end to be based either on interstate treaties or must be anchored unilaterally in national law. However, the Convention had a strong role in creating a pathway towards cross-border cooperation agreements across the EU and thus also paved the way for the emergence of EGTCs and Euroregions.

One has to consider that for the Third Countries in the area of the Mediterranean no similar shared legal reference framework exists.

2.6.3 Practical challenges in implementation

In order to develop plausible scenarios of cooperation the key factors determining the likelihood of cooperation in the framework of EGTCs need to be highlighted. For the analysis three different perspectives have been taken into account:

²⁸ European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities.

²⁹ The non-member states which have signed and ratified it in 2014 are: Albania, Armenia, Azerbaijan, Bosnia i Herzegovina, Georgia, Liechtenstein, Moldova, Monaco, Montenegro, Russia, Switzerland, Turkey; in the MS EE, GR, UK and MT the Convention did not enter into force.

Table 14. Perspectives and key factors determining the likelihood of cooperation

Perspective	Key factors
Likelihood of cooperation between MS and Third Countries	<p>The <u>political stability of the country</u> – EGTCs will not venture into cooperation with countries marked by open crisis such as the Ukraine in the current situation; as the brief review of IPA II and ENI countries has shown – the number of countries which can be labelled as actually largely stable partners is quite limited.</p> <p><u>the political-administrative system of the countries</u> – EGTCs are rather intended to involve the sub-national level such as regions and the local level – building and strengthening of local and regional administrative tiers and local democracy is a challenge in many of these countries.</p> <p><u>Shared borders</u> increase the likelihood of shared development goals which will be regarded as important by the governments of such countries.</p> <p><u>The existence of a preceding multilateral framework</u> granting the right of local and regional authorities to cooperate, like the Madrid Outline Convention of 1980 in the Council of Europe.</p>
The perspective of the EU MS	<p>The <u>evolution of EGTCs in the period 2006 to 2014</u> in those parts of the EU which are crucial with a view to Neighbourhood Policy and territorial cohesion– e.g. HU has seen a boom of EGTCs in recent years (albeit their scope of action is rather limited and mostly dependant on the implementation of projects in ETC cross-border cooperation), developments in RO become visible whereas in other MS such as the EE, LV and LT the general development of EGTCs is rather lagging.</p> <p><u>The policy focus of the MS with a view to territorial cohesion and economic development</u> - it is important to note that in many cases the challenge is at least twofold – the Union parts which are crucial for Neighbourhood Policy from the perspective of territorial cohesion in contiguous areas are to a large extent regions which are particularly challenged in economic terms.</p>
The perspective of enlargement of existing EGTCs	<p><u>The geo-political situation in the EU and the respective adjoining regions</u> the <u>existence of functioning CBC programmes</u> as a longer-term, multi-annual stable frameworks which offer opportunities to jointly develop and finance projects on a longer-term basis as the review has shown this is far more likely under conditions of IPA II but even in this case limited to certain countries (Serbia, Montenegro, FYROM, Albania).</p> <p><u>The scope of action and the mission statement of the EGTC</u> – one has to consider that there are EGTCs with a quite distinct portfolio which do not consider the option of geographical enlargement.</p>

Source: own considerations.

3 Common challenges and trends

This section is understood as synthesis of the two previous sections. It summarises the main legal and operational aspects to be considered for EGTCs with an external dimension.

*The European Grouping of Territorial Cooperation (EGTC) can be a useful tool for implementing permanent, visible, flexible and accountable cooperation structures: The EGTC can empower peer regional and local authorities to carry out bottom-up initiatives and to manage a programme or a part of it. These groupings can facilitate the EU co-funding of projects and ensure that action is sustainable.*³⁰

Many adjoining states and regions around the EU are in a state of crisis and the EU itself is confronted with an enduring economic crisis. In this environment it will be particularly difficult to motivate EGTCs to go beyond the boundaries of the EU and to venture into external action.

The emergence of EGTCs with an external dimension will require dedicate action from players at all levels; i.e. from the European level to the LRAs. The role of promoters at European and national levels will be decisive.

3.1 The challenge of the external dimension

3.1.1 The challenging situation in the Neighbourhood

A key result of the analysis in Section 2 is that there are only a few countries in the European Neighbourhood where the emergence of EGTCs in the medium-term (i.e. during this funding period) is a likely perspective.

The most promising partner countries where the participation in an EGTC has a comparatively high likelihood are shown below:

³⁰ CDR 4290-2013 at:
http://cor.europa.eu/en/activities/Documents/CORLEAP%20annual%20meeting%202013/time-to-rethink-the-eastern-partnership%20_en.pdf

Table 15. Tentative list of ENI and IPA II countries offering perspective for EGTC participation in the medium-term

Neighbourhood area	Neighbouring MS	Policy levers and Instruments
IPA II – SE Europe Serbia, Montenegro, FYROM	HU, CR, BG, RO	EUSDR, EUSAIR IPA II CBC Transnational ETC programmes Danube, Interreg Med, Adriatic Ionian
ENI Eastern external border Moldova, (Ukraine)	RO, HU	Eastern partnership, EUSDR, Carpathian Convention ENI CBC Transnational ETC programme Danube
ENI Mediterranean (Northern Africa) Tunisia, Morocco	IT, FR	UfM (Barcelona Process) ENI CBC (Tunisia) Transnational Programme Interreg Med

Source: own considerations.

Next to the limited number of countries the table also shows the ample range of policy levers which exist in terms of strategies and financing.

It is obvious that in three years the situation might look quite differently - e.g. owing to the fact that also other IPA-II countries have strengthened their governance capacities - and provided that adjoining MS show a very active interest in such models.

From the current perspective this might sound discouraging. However, seen from a pragmatic point of view it could be understood as the invitation to strongly focus the efforts to promote the external dimension of EGTCs: the number of countries where it is likely to materialise is small, the range and number of policy levers is considerable.

With a view to the ORs it is important to note that all MS concerned (FR, ES, PT) have collected ample experience with the instrument of EGTCs – a detailed focus on this aspect might be a worthy subject for one of the venues of the Conference of the Outermost Regions.

The potential of OCTs with a view to setting-up an EGTC is considered as rather low:

- from the socio-geographic situation due to their disperse character, the low population totals and the low degree of diversification of the economy and

- from the policy perspective in particular owing to the fact that the integration of these island economies in regional organisations (mainly in order to strengthen trade relations and economic ties) is the key objective.

From the four countries concerned FR and NL have already gathered experience with EGTCs; in particular the experience of FR is a valuable asset since partners from FR are involved in different types of EGTCs thus the MS has collected ample experience with the instrument.

3.1.2 Enlargement of existing EGTCs

An assessment of the likelihood of an enlargement of existing EGTCs points at two hot spots where EGTCs with an external dimension could be expected (based on the assumption that already existing EGTCs increase the likelihood of further development):

the MS RO and HU – in particular the development of EGTCs in HU was marked by strong dynamic in the recent past – generally speaking the mission statements of the EGTCs in this area point at broad approaches to development but a considerable share of the EGTCs did not yet reach a state of consolidation³¹.

The Mediterranean area – in this area two EGTCs exist which follow in their projects quite inclusive approaches with topics of key interest also for the adjoining countries

3.1.3 The role of the sub-national level in the neighbouring countries

The role of the sub-national level in the neighbouring countries has to be considered as an overarching challenge for the set-up of the EGTC.³²

EGTC are meant as vehicles for cooperation mainly focussing on the involvement of the sub-national level – the empowerment of regional and local level is a challenge even in many MS with a centralised administrative-political system such as HU, SK, PL, RO or BG; it is even more challenging in countries adjoining the EU along the eastern external border despite the fact that with the Madrid Convention at least a common legal reference framework exists. This

³¹ Thereby the Consultant means that many of these EGTCs did not yet manage to have a small though stable staff plus a small though stable budget which gives room for manoeuvre even when no ETC-projects are being implemented.

³² Cf. also Annex 1: for a considerable number of the countries under concern the need for public sector reform is perceived as crucial point for the success of Union support policies – this refers in most cases to all tiers of government but in particular to LRAs.

still marks a sharp difference to the Mediterranean where no comparable shared legal framework exists.

The obvious challenge for the regional and local level is partly the delegation of competencies but in all cases the transfer of respectively the basis to raise adequate funds in order to meet even the basic legal requirements such as proper maintenance or expansion of public utilities. The situation is aggravated by the enduring economic crisis in the EU which clearly limits the development options in adjoining border regions.

One has to see clearly that most of the countries adjoining the EU have no tradition whatsoever in multi-level governance. A strong involvement of national authorities in any future EGTC will be expected.

Given this state of development, the limited capacities and resulting options in policy-making for the sub-national level in regions adjoining the EU the emergence of EGTCs is not likely without significant political backing of the MS and the national authority in charge of the relevant Union funding instrument.

3.1.4 The mission of existing and future EGTCs

The first question when explaining the rationale of an EGTC to people who have never heard about it before will be: what for should we set up an EGTC? The instrument is still fairly unknown in many MS and thus the number of ambassadors in EGTC development is still quite small: one has to consider that currently about 80 persons work on a permanent basis in EGTCs throughout the whole Union.

Showing the potential added value of the EGTCs as tool for cooperation means to present its role in practice. In a rough categorisation the mission of the existing EGTCs could be summarised as in the following table.

Table 16. Types of existing EGTCs and considerations on the external dimension

Types of existing EGTCs	Considerations with as view to the external dimension
Strategy, policy and project development in a CB context	<p>By far the most frequent type.</p> <p>One of the major added value for partners from Third Countries is the option to share experiences in capacity- and strategy-building at the level of LRAs</p>
EGTCs in the Mediterraneansea basin Strategy, policy and project development in a transnational context	<p>Of specific interest due to external dimension of the Mediterranean (Interreg Med) and Adriatic-Ionian programme.</p> <p>Three existing ones (Amphictony, Archimed and ExfiniPoli) focussing on subjects such as culture, social services, tourism, sustainable development, waste and job creation at the local level – which would be a perfect match to the challenges for the adjoining ENI countries.</p>
Planning, governance and management for cross-border conurbations	<p>Probably the group of existing EGTCs which can be considered as best consolidated.</p> <p>Along the eastern external borders there are no CB conurbations of a comparable size but there are divided cities.</p>
Planning, management of CB infrastructure (hospital, border road in mountainous area, planning of a transport corridor)	<p>Infrastructure is an issue which will raise the attention and the establishment of an EGTC could really contribute to improved planning and implementation.</p> <p>Lack of respectively lacking maintenance of infrastructure is the key concern of LRAs in all neighbouring countries – thus sound projects might easily find supporters.</p>
Management of a CBC programme	<p>Currently one example for the period 2007-13; no continuation.</p> <p>Most probably not a meaningful option for several reasons (first of all the new period just started, different regimes of ETC vs. IPA II CBC or ENI CBC etc.).</p>
Intergovernmental networks	<p>The European Urban Knowledge Network is one example which can be considered as an offspring of the URBACT programme.</p> <p>The principle of a think tank for specific policies consisting of Ministries and universities would be very attractive since in particular the academic world in the neighbouring countries has a high interest on shared research and could thus also further the case of local governance.</p>

Source: EGTC Monitoring Report, own considerations.

De facto the relevant regulations open a vast range of options for future EGTCs – again a very practical example – EGTCs might act as providers of Services of General Economic Interest.

From the perspective of actual support to territorial development one can see two fundamental options for a contribution of EGTCs to external action:

- a strong agenda which raises also national interest and is backed up by high-level policy makers at European, MS and Third Country level such as e.g. an EGTC for the protection of a major natural asset,
- or rather an open framework for strategy development and capacity building – in this case the key contribution of EGTCs to development efforts could be rather to show and jointly develop a model of territorial governance under broad participation.

In both cases the wording of the objectives is decisive since one has to consider that EGTCs are unprecedented in the neighbouring countries and any kind of overly technical formulations might at first hand convince the programme management but might pose serious problems in the subsequent approval. Thus the formulation of the mission statement of the EGTC should also consider the following aspects:

- sound shared agenda which justifies a longer-term commitment and at first hand is clearly understood in its approach (vague formulations and objectives will impede the discussion respectively the negotiation process at the inception stage),
- selection of a theme where the national level in the Third Country has established a clear legal framework which involves to some extent also sub-national tiers – the legal implications have to be clear-cut otherwise the period required for approval in the Third Country will be prohibitive.

3.2 Considerations on the legal framework

3.2.1 EGTC anchored in the Regulations governing IPA and ENI

EGTCs are firmly anchored in the overarching regulations governing IPA and ENI and also the association regime with OCTs.

However, it is important to note that also the subsequent layers of guidance documents – which are developed by the authorities in charge of programme management³³ - have to foresee the option of EGTCs and should raise awareness for their development in the framework of CBC or transnational programmes.

3.2.2 Coordination between ETC and IPA / ENI

For the set-up of an EGTC or the implementation of a project in the framework of an EGTC it is important that programme management bodies provide pragmatic support rather than administrative obstacles. In IPA-CBC and ENI-CBC – such as in any ETC-programme – the sound governance from the part of the programme management is the key for success.

Most potential pitfalls can be overcome provided that there is a regular and open dialogue between the two authorities involved, i.e.

- the national authority in case of IPA II or the EU delegation in case of ENI and
- the MA.

Obvious points for good practice in programme management and implementation are:

- at the application stage: the sound coordination of calls and corresponding information events at national level across the whole programme area (which can be quite challenging) and the quality of guidance documents,
- during implementation: option for support from bi-cultural experienced staff – which is particularly important since an EGTC is yet unprecedented in these programmes be it as sole beneficiary or be it a project aiming at the set-up of an EGTC, clear guidance on procurement as the major risk of irregularities and recoveries in ETC and in IPA/ENI

3.2.3 Convention of the EGTC as the key document

The key common legal point of reference between MS and Third Country in the negotiation for approval and in the subsequent operation phase of the EGTC is the Convention. It is evident that from the perspective of the Third Country the Convention is clearly ranked second to its national legislation. In case of a

³³ In case of IPA CBC the MA (ERDF) and the National Authority (in charge of IPA), in case of ENI CBC the MA (ERDF), the National Authority (ENI) and the EU Delegation.

newly established EGTC it is evident that the national approval procedure of the MS should be run prior to the approval procedure in the Third Country.

The scope of work for the legal experts from both sides involved – i.e. the MS and the Third Country – poses a significant challenge. Strong support from all governmental and administrative tiers will be needed in order to foster the approval procedure. Success will only be achieved if policy levers are used and an atmosphere of mutual trust allows tackling the obvious challenges in communication such as language barriers, the gradual development of a shared understanding of several legal aspects in differing national provisions and similar issues.

In case of ENI and IPA countries the national approval for the participation of a LRA from a Third Country will require strong backing from national authorities in the MS and from the respective representatives of Commission services. One cannot expect that national authorities from Third Countries will enter negotiations only with partners from the sub-national level of MS. Thus in the end it will be more effective and far more promising to consider the inclusion of the national level of the Third Country in the partnership.

3.3 Use of policy levers

It is important to make EGTCs known actively. In this context we would like to highlight two types of policy levers: the policy initiatives and the EU Strategies for macro-regions:

- ENI as a policy instrument is embedded in a considerable range of policy initiatives such as the Eastern Partnership or the Union for the Mediterranean.
- A second significant policy lever are the macro-regional strategies which are being developed with strong direct support from the Union; the three macro-regional strategies do reveal a significant external dimension and in particular the EU Strategy for the Baltic Sea Region (BSR) can serve as model how a shared strategy can evolve from the shared concern for the maritime environment; unfortunately the reference to EGTCs in these Strategies is not a common standard – in the EU Strategies for BSR and the Danube Region explicit references can be found, in the Strategy for the Adriatic Ionian Region this is not the case.

3.3.1 Examples of supportive PR actions

As has been stated several times: dedicated support will be needed from all levels involved – in our view a communication strategy for EGTCs should count on persons, i.e. practitioners from EGTCs - next to illustrative guidance documents persons and stories will raise the attention and the awareness in the neighbouring countries.

Table 17. Examples of support actions to promote the idea of EGTCs in the context of the Neighbourhood Policy

Level	Proposed actions
European level	<ul style="list-style-type: none"> ▪ Guidance on setting-up an EGTC and its real practical added-value – from EGTC practitioners for interested partners ▪ Setting-up a list of practitioners who would be willing to participate in discussion for a, road shows etc. at EU-Strategy and Programme levels
EU Strategy level	<ul style="list-style-type: none"> ▪ Targeted information to Interact (Interact Points act as engines in the promotion of the Strategy in case of EUSDR and EUSBSR) and the PACs ▪ Highlighting those development issues where LRA participation is the key pre-condition for the success of territorial policies and see for examples among EGTCs which are tackling this issue – in short a promotion of EGTCs tailored to the key issues of the Region ▪ Raise the interest of EU-Delegations in the neighbouring country
Programme management	<ul style="list-style-type: none"> ▪ Targeted information for programme practitioners: examples, implications and added-value for the programme; raising the interest of the MA (being in charge of EGTC) and the National Authority being in charge of the ENI or IPA II part ▪ Examples on how EGTCs could be encouraged in the Manuals for Applicants and Beneficiaries ▪ As a secondary guidance element: detailed explanation regarding the implications for financial flows in the framework of an EGTC (which could be done with the support of Interact) ▪ Integration of success stories to road shows for CBC and transnational programmes

Source: own considerations.

4 References³⁴

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³⁴ Looking at the huge amount of acts and regulations covered in the paper, they are not included in the reference chapter. They can be found in the footnotes

Annex 1

Review of the ENI Countries

Country	Assessment	Likelihood for the participation in an EGTC
Algeria	<p>Policy focus 2014-2017:</p> <ul style="list-style-type: none"> ▪ Justice reform and strengthening of citizen participation in public life ▪ Labour market reform and employment creation ▪ Support to the management and diversification of the economy <p>High risk due to the perception of an asymmetric relationship from different parts of the EU; a major problem from the perspective of the EU are the deficits in governance and instable government.</p>	L
Armenia	<p>The three SSF priority sectors 2014-2017 are:</p> <ul style="list-style-type: none"> ▪ Private sector development; ▪ Public administration reform; ▪ Justice sector reform <p>Major risk is the lack of government commitment to coordination of the sector policies – public administration reform is considered as a key requirement; dedicate support to CSOs as ancillary measure.</p>	L
Azerbaijan	<p>Strong growth rate fuelled by oil and gas revenues thus vulnerable to price developments on global markets – extraordinary economic growth 2003 to 2011 – poverty rate has dropped significantly; increasing disparities between regions.</p> <p>SSF priority sectors 2014-2017 are:</p> <ul style="list-style-type: none"> ▪ Regional and rural development ▪ Justice sector reform ▪ Education and skills development <p>Major risk for sectorial approaches is linked to low institutional capacities.</p>	L

<p>Belarus</p>	<p>Policies pursued by President Lukashenka's regime prevent the EU from offering Belarus full participation in the Eastern Partnership.</p> <p>All programmes funded by the EU are to the benefit of Belarusian people at large and include significant support to civil society.</p> <p>SSF priority sectors 2014-2017 are:</p> <ul style="list-style-type: none"> ▪ Social inclusion ▪ Environmental challenges (industrial pollution waste management, radioactive pollution) ▪ Local and regional economic development <p>Numerous regulations over international development cooperation imposed by the government, civil society is subject to repressive pressure.</p>	<p>L</p>
<p>Egypt</p>	<p>Support mainly in the form of annual programmes.</p> <p>In 2014-2015 EU's assistance to Egypt under the ENI will focus on three priority sectors:</p> <ul style="list-style-type: none"> ▪ Poverty Alleviation, Local Socio-Economic Development and Social Protection; ▪ Governance, Transparency and Business Environment; ▪ Quality of Life and Environment. <p>In the wake of the political changes the economic situation remains difficult. Living conditions have deteriorated since the global recession in 2008 and as a consequence of the political instability. Poverty and lack of basic services are keys challenges. On top fiscal constraints and limited governance capacities pose major risks in cooperation.</p>	<p>L</p>

<p>Georgia</p>	<p>Economic recovery but 20% of the territory remain beyond control of the central government (South Ossetia, Abkhazia). Little genuine local self-government.</p> <p>Support through country action programs and multi-country action programmes.</p> <p>SSF priority sectors for 2014-2017 are:</p> <ul style="list-style-type: none"> ▪ Public Administration Reform – in particular participatory forms of government ▪ Agriculture and Rural Development – rural poverty remains a key concern ▪ Justice Sector Reform <p>Major risks stem from tensions in the Caucasus, the lack of willingness for administrative reform, inability to reform central and local governance systems.</p>	<p>L</p>
<p>Israel</p>	<p>Israel receives limited funding from the European Neighbourhood Instrument (ENI) because of its advanced economy.</p> <p>In the framework of the Middle East Peace Process, the EU allocates €5 million per year to civil society organisations for local and international initiatives in Palestine, Israel and Jordan, through the EU Partnership for Peace Programme.</p> <p>Israel is the only non-European state to be a full partner in Horizon 2020 Research Programme.</p>	<p>L</p>
<p>Jordan</p>	<p>In 2010, the EU-Jordan Association Council agreed on an <i>advanced status</i> partnership.</p> <p>SSF priority sectors for 2014-2017 are:</p> <ul style="list-style-type: none"> ▪ Reinforcing the rule of law for enhanced accountability and equity in public delivery ▪ Employment and private sector development ▪ Renewable energy and energy efficiency <p>The country is a small economy with limited natural resources and high dependency on tourism, the massive influx of Syrian refugees has aggravated the budgetary constraints; high youth unemployment and scarcity of basic resources may lead to rising tensions.</p>	<p>L</p>

Lybia	Libya has no Association Agreement with the EU and thus remains outside most of the structures of the European Neighbourhood Policy (ENP). It only has observer status in the Barcelona process and the Union for the Mediterranean (UfM).	L
Moldova	<p>Moldova is the poorest country in the European Neighbourhood region. Recent economic recovery due to recovery of the agricultural sector. The small and open economy remains prone to external shocks. Civil service is poorly paid and the fragmented local public administration requires urgent modernisation. Sustained labour migration and brain drain; de-population of rural areas.</p> <p>The EU cooperates with Moldova in the framework of the European Neighbourhood Policy and its eastern regional dimension, the Eastern Partnership. The key goal is to bring Moldova closer to the EU.</p> <p>The three SSF priority sectors for 2014-2017 are:</p> <ul style="list-style-type: none"> ▪ public administration reform, ▪ agriculture and rural development, ▪ police reform and border management. <p>The Association agreement of 2014 between the EU and Moldova mentions the cross-border cooperation, and the "enabling legislative framework", which can be a solid basis for the EGTC.</p> <p>Moldova participates also in regional programmes funded under the ENPI/ENI (mainly in transport, energy and environment).</p>	M
Morocco	<p>Morocco is the largest recipient of European Union funds under the European Neighbourhood Policy; the country gradually became a privileged partner of the European Union in the field of political and economic cooperation as well as trade and technical and development cooperation.</p> <p>Budget support (i.e. finance support for national reform programmes) has become the preferred instrument of cooperation with Morocco. Between 2011 and 2013, 80% of EU's financial commitments took the form of sector budget support.</p>	M

Palestine	<p>Continuous deteriorating economic situation.</p> <p>The European Commission is the biggest donor of financial assistance to the Palestinians - PEGASE is the key financial mechanism for support to the Palestine Authority.</p> <p>Focus on support to refugees (via United Nations Refugee Works Agency – UNRWA), investment to the health care and social services sector.</p>	L
Syria	<p>The EU has suspended all its cooperation with the Syrian government in 2011.</p> <p>Support through the ENI will continue to provide direct development assistance to support the affected population inside and outside Syria in complementarity to humanitarian aid in sectors such as education and early recovery.</p>	L
Tunisia	<p>Tunisia benefits from cooperation assistance under the European Neighbourhood Instrument (ENI) and from other EU financial instruments.</p> <p>The EU rapidly responded to the economic and political challenges in the aftermath of the 2010/11 revolution and increased significantly the amount allocated to Tunisia for the period 2011-13 in order to facilitate the transition process.</p> <p>The ongoing CBC programme Italy – Tunisia is one of the interesting policy levers for the set-up of an EGTC (partners from IT are currently part of several EGTCs – thereof three with a Mediterranean dimension).</p>	M

<p>Ukraine</p>	<p>From an EU perspective the border areas are an important gateway for energy and transport.</p> <p>EU assistance to Ukraine takes mainly the form of country Action Programmes funded every year under the ENI. Ukraine benefits also from regional and multi-country Action Programmes funded under the ENI.</p> <p>The current focus of EU-support is the macroeconomic stabilisation of the country; the fragile situation did not allow to elaborate the MIP.</p> <p>The Association agreement of 2014 between the EU and Ukraine mentions the cross-border cooperation, and the "enabling legislative framework", which can be a solid basis for the EGTC.</p> <p>One measure which is of particular interest with a view to EGTCs is the: Ukrainian civil society support programme (strengthening the role of civil society to contribute to policy-making and hold the government to account).</p>	<p>M</p>
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Source: SSFs, ENI website.