

EUROPEAN UNION



Committee of the Regions

**The EGTCs investing:
implementing EU funds.
Which role in the European Fund
for Strategic Investments?
Which procurement?**

This report was written by Jürgen Pucher (Metis GmbH).

It does not represent the official views of the Committee of the Regions.

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Abbreviations

Abbreviation	Full term
CBA	Cost Benefit Analysis
CBC	Cross-border Cooperation
CEF	Connecting Europe Facility
CF	Cohesion Fund
CETC	Central European Transport Corridor
CoR	Committee of the Regions
COTER	Commission of Territorial Cohesion Policy of the Committee of the Regions
CP	Cohesion Policy
CPR	Common Provisions Regulation (Regulation (EU) 1303/2013
DG	Directorate General
EEIG	European Economic Interest Grouping
EFSI	European Fund for Strategic Investment
EGTC	European Grouping of Territorial Cooperation
EIA	Environmental Impact Assessment
EIB	European Investment Bank
EIF	European Investment Fund
EIAH	European Investment Advisory Hub
EIPP	European Investment Project Portal
ERDF	European Regional Development Fund
ESF	European Social Fund
ESIF	EU Structural and Investment Funds
ETC	European Territorial Cooperation
EUKN	European Urban Knowledge Network
FI	Financial Instrument
ICT	Information and Communication Technology
INEA	Innovation and Networks Executive Agency
ITI	Integrated Territorial Investment
JAP	Joint Action Plan
JS	Joint Secretariat
MA	Managing Authority
MEP	Member of European Parliament
MLG	Multi-Level Governance
MS	Member State
RDI	Research, Development and Innovation
SGEI	Services of General Economic Interest
TO	Thematic Objective

Executive Summary

Investments with a genuine cross-border dimension are often challenging ventures: obvious border crossing investments are infrastructure networks but there are many other facilities and infrastructure elements where a cross-border approach bears significant potentialities be it:

- in terms of economic viability such as for health infrastructure serving a larger catchment area,
- in improved effectiveness and efficiency such as for environmental infrastructure, e.g. when it comes to river management,
- in forming a critical mass such as for RDTI infrastructure,
- in supporting specific economic factors such as could be the case for a Financing Instrument.

Possible involvement of EGTCs at different stages of an investment

The EGTC could be involved at different stages of an investment project.

Stages of the project	Potential strengths of the EGTC
Project development	<p>The EGTC representing a long-term commitment could become a safe and stable framework to guide the project through all stages.</p> <p>EGTC as a cooperation vehicle could see its specific role in <u>building a bridge</u> between countries with differing regulatory environment (such as e.g. has been the case for the Hospital de Cerdanya).</p>
Planning, implementation approach	<p>Experience with cross-border investment shows that it usually requires an intense and dedicated process management and that the pathway to shared understanding and definition of the best solution takes longer than for purely national approaches – again the stable framework of an EGTC could be an asset.</p>
Procurement	<p>The Directive on Public Procurement would allow for EGTCs a certain flexibility in the application of the national rules.</p>
Implementation	<p>Again the EGTC could act as multi-lingual and multi-level bridge in the day-to-day management of the implementation process e.g. foreseeing regular and shared monitoring of progress.</p> <p>In case of a service or a financial instrument other aspects might come in – management skills and bridging functions might be more important and of a more permanent nature.</p>

<p>Operation and maintenance</p>	<p>A continuous involvement of the EGTC in operation and maintenance seems rather likely in case of health or social infrastructure due to the aspect of staff management as well as the continuous need for supply management; with the Hospital de la Cerdanya an excellent example exists.</p> <p>When it comes to technical infrastructure the role of the expectable EGTC would be rather in management of an external service provider or a bridging function between two authorities in charge of maintenance.</p>
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The potential role of EGTCs in ESIF investment

<p>Funding Instrument</p>	<p>Considerations on the options and challenges for EGTCs</p>
<p>European Territorial Cooperation (ETC) (ERDF)</p>	<p>ETC is the Objective of Cohesion Policy (CP) where EGTC act as beneficiaries and models for the implementation of cross-border and transnational investments exist.</p> <p>In this case the EGTC as sole beneficiary might be in an attractive position coming up with a pre-negotiated and pre-discussed ‘all-in-one’ solution.</p>
<p>ERDF, Cohesion Fund (CF) (in a national Operational Programme)</p>	<p>Realistically speaking in case an EGTC ventures into a ‘mainstream’-programme the intended investment will exceed the usual volume of an ETC project.</p> <p><u>Financing challenge:</u> First there might be the pre-financing challenge. In particular in EU-13 such programmes are mostly set up at national level and the reimbursement principle is often a challenge for LRAs as the key stakeholders of an EGTC.</p> <p><u>The project set-up:</u> It is obvious that the most challenging venture is an infrastructure investment which physically crosses the border. In the view of the Consultant the most adequate option would be a project set-up which is based on cross-funding. The resulting option could be that a larger project is being split into several partial projects which are partly funded from national mainstream programmes and e.g. partly from ETC. In any case such arrangements will require a strong political backing of the EGTC in both MS.</p>
<p>Connecting Europe Facility (CEF)</p>	<p>The types of intended projects are pre-defined since the CEF is the instrument for the implementation of projects of common interest as part of the Trans-European Networks (TEN) in transport, energy and broadband networks. The scope and character of the project will involve in almost all cases authorities at national level. A fact which clearly limits the options for most of the current EGTCs to act immediately and directly in the framework of the CEF.</p>

Funding Instrument	Considerations on the options and challenges for EGTCs
	<p><u>The project set-up:</u> The Commission sees a major gap in the institutional and administrative capacity required in order to develop projects of significant European added-value. Thus with a view to this gap the potential role of EGTCs in CEF might be primarily in the preparation of the projects.</p>
Financial Instruments (FI)	<p>The common provisions on ESIF foresee the option of a cross-border or transnational FI.</p> <p><u>Financing challenge:</u> The funding volume for an FI poses quite a challenge: the Interact Study speaks of a recommended size of about 40 to 100 MEUR in order to achieve the diversification of risk and a balanced portfolio.</p> <p><u>The project set-up:</u> In any case a strong rationale for the cross-border niche addressed by the FI is required: given the numerous offers at national level it might be difficult to define the niche for the cross-border product. EGTCs could act as implementing agency or as intermediary. In order to become first choice in the development and management of a FI most probably a new set-up of EGTC would be required: partners with relevant expertise in the field would be the key asset. The concept of an EGTC acting as cross-border business development agency remains tempting and could become a model.</p>

EGTCs in the European fund for Strategic Investment (EFSI)

When looking at the EFSI the aspects of risk and timing deserve attention:

- **Risk:** the EFSI should address investment areas with as pertinent risk of market failure. On the one hand this feature might not be an incentive for the mostly public stakeholders of an EGTC; on the other hand it is often - next to the essential role of public financial incentives such as the guarantees provided under the EFSI – the dedicated involvement of public actor which makes a project with rather unprecedented aspects work.
- **Timing:** the clear intent of the EFSI to provide an investment injection with visible effect in a mid-term perspective; so far only a few of the existing EGTC have the capacity and the partnership structure to immediately start working on a large-scale investment in one of these areas. Thus it would require the expansion of existing or the set-up of a new EGTC – a process which takes its time.

According to the intervention logic of the EFSI the EGTCs could in principle appear in two roles, i.e. as:

- owner or investor: that would in most MS require the integration of the national level in existing Groupings – projects backed solely by the financial commitment of LRAs might most probably fail to be ranked as safe.
- project beneficiary in a project as part of a funds set-up as frame respectively as project bundle: the option which seems more likely given the character and intent of EGTCs, i.e. a strong involvement of LRAs

When looking at the strands of the EFSI, the infrastructure investment seems the key field where EGTCs might be entrusted with actual investment activities. The EFSI is based on a broad portfolio of topics where strategic investment should be fostered. The following reflections on the potentialities of EGTCs in investment areas of the EFSI rest on a combined view of the role of public actors in the investment area, the general strengths of EGTCs and their current portfolio. Research Development and Innovation (RDI), transport, environment protection and natural resources as well as health infrastructure would offer the most significant potentialities for EGTCs.

EFSI Themes / Types of infrastructure	Tentative assessment of the potentialities of EGTCs
<u>Research, development and innovation (RDI)</u>	In the field of RDI one of the implicit strengths of EGTCs – the provision of a regulated framework which is open for approaches in multi-level governance – might be considered as a major asset. Universities which are in large parts of Europe public entities could join groupings with other institutions at national, local and regional level. Thus the development of scientific clusters based on teaming and pooling resources and working towards international hubs could be supported.
<u>Transport infrastructure, equipment, technologies; link to TEN-T and CEF, synergy projects with Information and Communication Technologies (ICT) and energy, sustainable urban transport, urban mobility</u>	The field of transport is strongly dependant on public actors; cross-border connectivity and interoperability still pose challenges in many parts of the EU; transport infrastructure is a recurring theme in the portfolio of EGTCs but so far mostly from the perspective of strategy development. Given the long lead-in times for the development of large-scale projects in transport EGTCs could become an interesting option due to the underlying long-term commitment and the set-up of a bi- or even multi-national structure (thus supporting processes such as a cross-border Environmental Impact Assessment (EIA) or the alignment of designs according to differing norms and country-specific regulation defining the terms of use). A very interesting venture could be

EFSI Themes / Types of infrastructure	Tentative assessment of the potentialities of EGTCs
	sustainable urban transport solutions in cross-border functional areas.
<u>Environmental protection, natural resources</u>	<p>An area where the role of public actors is very strong and long-term commitment is an essential feature of any infrastructure project.</p> <p>E.g. the ecological rehabilitation of rivers which integrates mitigation of flood protection is just one of the examples which underline the potentialities for EGTCs: rivers form borders and rivers cross borders all across Europe. The EU Water Framework Directive underlines the need for integrated river basin management.</p>
<u>Health and medicine</u>	<p>The Hospital of Cerdanya is one of the showcases for the role of an EGTC in a sector where cross-border governance becomes increasingly important for reasons of efficiency and effectiveness.</p> <p>The EGTC has proven as a valuable multi-level governance (MLG) vehicle providing a framework to run the negotiations to build a bridge between the differing social security systems of two MS (as the key point to make the cross-border hospital an operative and sustainable investment).</p>

EGTCs as investors and the operative approach to the public partnership

Finally it is important to review the key legal frame works which have to be considered in the context of an investment undertaken by an EGTC. Two aspects deserve particular attention:

- Public procurement (PP): a major investment activity will include almost always public procurement.
- The Convention and the Statutes: the legal frame of the EGTC defines the scope of action and almost all aspects which are decisive for a shared major investment.

The PP Directive and the EGTC Regulation form a clear legal basis for the approach to PP in case of a major investment: procedures are aligned at European level. In case of procurement below the thresholds set out in the PP Directive the overarching principle of transparency – next to the principle of diplomacy - makes fair and open procedures a necessity. Implicitly such an approach should also consider the technical and qualitative aspects which make the procedures fair for SMEs.

Another important point is that for investment financed from ESIF the requirements related to PP procedures are particularly high in terms of compliance with all procedural aspects but also in terms of documentation: PP is

one of the most frequent sources of financial corrections in ESIF, thereby having in most cases significant financial impact. The national control and audit systems have reacted to that and have implemented quite rigid control standards.

Beyond these obvious aspects which point at the need for a particularly careful approach to procurement in the context of an EGTC its role as stable framework for cooperation could be used in order to support the use of PP as an instrument for innovative approaches such as green procurement or procurement considering life-cycle cost.

For an investment project all mandatory elements of the Convention and the Statutes are of major importance. In a strict interpretation of the legal hierarchy the Convention of the EGTC prevails over the national law of the participating MS. In factual terms the room for manoeuvre in terms of derogations appears to be quite limited since:

- The convention is subject to approval by the participating MS, i.e. by national institutions which have to understand, assess and finally share the reasoning for any derogation from national laws – this might pose a risk for a quick approval procedure.
- If – what appears to be highly plausible – the investment is financed from ESIF, i.e. most probably from ERDF (ETC) the eligibility rules of the respective programme have to be observed – and this means again to be confronted with a more or less national interpretation of the rules by the national financial control of the MS concerned

A small room for flexibility is open due to the provisions of the PP Directive which explicitly allows for the EGTC to define the applicable procurement rule according to types of contracts.

Introduction

Investments with a genuine cross-border dimension are often challenging ventures: obvious border crossing investments are infrastructure networks but there are many other facilities and infrastructure elements where a cross-border approach bears significant potentialities be it:

- in terms of economic viability such as for health infrastructure serving a larger catchment area,
- in improved effectiveness and efficiency such as for environmental infrastructure, e.g. when it comes to river management,
- in forming a critical mass such as could be the case for RDTI infrastructure,
- in supporting specific economic factors such as could be the case for a financing instrument.

The fact that such investment plans in most cases require long periods to mature is again acting in favour of EGTCs which are vehicles to support cooperation as a long-term commitment. The experience with EGTCs acting as catalyst or intermediary for investment or as investor is still limited: so far the most prominent example is the cross-border hospital situated in a mountainous region at the Spanish-French border.

The Report seeks to explore the main implications for EGTCs when venturing into a major investment activity be it a physical investment or a financing instrument. At the same time it seeks to give a hint on the most probable options in each of these cases. A major limiting factor for the majority of EGTCs are the constraints in terms of financial and staff capacity. Most of the EGTCs expressed their focus on the ETC-programmes as ‘home grounds’ and now in early 2016 the start of the call has either happened or is expected in the short-term in most programmes. Thus most EGTCs will be eagerly preparing project applications in order to consolidate their portfolio, their finances and staffing.

Across Europe the number of EGTCs is still small (about 50 in early 2016) and the majority of EGTCs is rather focused on soft policy elements such as strategy-building or people-to people actions. A significant number of EGTCs does not predefine the themes but clearly states that the development and implementation of cooperation projects is their major purpose. The projects in the programme 2007-13 reveal a diversity of topics such as transport, childcare, nature protection, waste management, energy etc.

In an aggregate view on the intents, the cornerstones according to the statutes and conventions and the ongoing projects one can see the following broad-brush picture:

- development of transport infrastructure and mobility management ranks among the prime concerns in the work and intent of Groupings: be it from the perspective of cross-border conurbations such as the Eurometropolis, Chaves-Verín or Nova Gorica-Gorizia, or for the accessibility and labour mobility in dominantly rural regions along the borders of Hungary, Slovakia, Romania, Poland or in mountainous areas such in the border regions of France, Spain or Portugal or as a transnational north-south development axis (CECT);
- on second place in quantitative terms is the cluster of tourism development, entrepreneurship and rural development which have to be seen as closely interlinked strategic goals and project rationales - this reflects the dominant concerns in the largest geographical groups of EGTCs, i.e. those involving the Member States Hungary, Slovakia and Romania¹ as well as those in France, Portugal and Spain²;
- the protection and development of natural heritage is another common feature of a visible number of groupings – recent developments between French and Italian actors should be highlighted – two Groupings focussing on the development of vulnerable coastal areas have recently emerged;
- finally the strong role of many Groupings in awareness-raising, the start and the continuous management of a public discourse on major development issues, the furthering of education and training and active European citizenship is an important asset in the current portfolio of EGTCs: this activating and catalyst function is an essential element in the mission statement of many of the Groupings in the densely populated and economically highly integrated regions of the Member States Belgium, France, Germany and Luxembourg; in operative terms several of these groupings are active in the management of Small Project Funds, i.e. the support to small but visible bottom-up initiatives.

EGTCs are first and foremost vehicles of cooperation for institutional actors in LRAs: constant adjustment, their work is marked by the constant interplay between two key functions, i.e.:

¹ Currently 17 groupings.

² Currently 9 groupings.

- the management of short-term action plans and
- the management of a broad discourse on longer-term visions.

The third and most important aspect in the context of this Study – the development, planning, implementation and operation of physical infrastructure – is so far a tiny fragment in the portfolio of EGTCs.

But still in the meantime examples exist – first and foremost the example of the Hospital of Cerdanya – which point at the potentialities of EGTCs to become the vehicle to implement investment projects of a more demanding character.

In our view the following considerations are decisive for the future role of EGTCs in investment projects:

- **For which types of investment EGTCs pose a clear advantage compared to national institutions?** Our first tentative assumption is that it will be those cases where the alignment or the agreement on shared regulatory policies governing the investment and its future operation call for a more demanding process.
- **Which capacities are needed to become a first choice in carrying out an investment?** It is evident that in particular such investment will be given into safe hands, i.e. to institutions which do have a strong political backing and offer skilled staff

1 EGTCs Implementing EU Funds

1.1 Investment in the context of EGTCs

It is important to note that in case of EGTCs implementing investments the type of investment will be of a cross-border or even transnational character. Thus considerations on the range of investment options where EGTCs might have a clear advantage compared to national institutions - in terms of implementation of the investment and eventual ownership and operation - are an important element for this Study.

Just a few exemplary considerations on the issue:

Table 1. Exemplary considerations along different types of infrastructure

Type of investment	Considerations
Cross-border transport infrastructure	<p>A single case of standard transport infrastructure might not justify the set-up and/or involvement of an EGTC but transport infrastructure as vital part of a broader development strategy for a cross-border region or the development and implementation of a cross-border infrastructure package might justify using the EGTC as driving force.</p> <p>Another obvious point could be the upgrade of public transport in cross-border functional areas such as the Eurométropole. Such investments are quite challenging since regulatory aspects are vital to the economic success of the investment.</p>
Shared health infrastructure	<p>Example of the Hospital Cerdanya.</p> <p>The regulatory policies governing the investment (i.e. the agreement related to health insurances) are at least as important as the investment as such; thus the EGTCs provided a stable frame and a sustained momentum to negotiate and come to the agreement.</p>
Other types of infrastructure	<p>For other exemplary types of infrastructure please see the considerations included in Section 2. on the EFSI.</p>

Source: own considerations.

It is evident that in the practice of ETC the intensity of cross-border cooperation underlying infrastructure investment differs to huge extent across the various types of investment. Many projects in particular in the cross-border strand include small-scale investment elements on both sides of the border and these are linked by soft elements such as exchange of expertise or shared curricula in

education and training or complementary information offers etc. In the view of the consultant this – quite frequent – type of investment project is of limited interest for this Study.

As indicated above the focus will be on the identification of types of infrastructure where EGTCs offer clear advantages compared to other institutions.

Capacity requirements to implement significant investment projects

The implementation of investment projects poses considerable challenges in terms of financial and administrative capacities. The following table gives an outline on key aspects related to these capacities.

Table 2. Capacities for the implementation of investment projects

Capacity	Considerations
Financial	<ul style="list-style-type: none"> ■ Reimbursement principle in ESIF puts a considerable financial strain on the investing institutions due to the long periods of pre-financing – one advantage of EGTCs could be the shared financial backing and the stable institutional frame in order to negotiate and conclude contracts between the partners to the EGTC
Staff	<p>It is evident that the implementation of larger investment projects requires dedicate and experienced staff which acts as a team. The following types of expertise are particularly important:</p> <ul style="list-style-type: none"> ■ <u>Leadership and management</u> – projects of a certain magnitude which are set-up between at least two MS will be given most probably only to trusted and experienced hands. ■ <u>Fund-raising capacity</u> – it is obviously a major advantage if the leading staff has experience with fund-raising, e.g. in the context of EIB (which requires documentation according to certain standards and has a strong role in the EFSI). ■ <u>Thematic expertise</u> – an obvious asset if it can be provided in-house be it part of the core team or as expert on basis of an agreement with a partner institution. ■ <u>Procurement</u> – such expertise will usually not be available in-house but is of course the key element for the implementation of the investment. ■ <u>Accountancy</u> – despite the previous and current simplification efforts the administrative burden linked to the implementation of projects in ESIF is considerable and requires solid know-how of project accountancy – this could be one of the major assets of an EGTC in terms of becoming first choice in the implementation of an cross-border ESIF investment.

Source: own considerations.

The aspect of staffing is essential when it comes to the point to make an EGTC the first choice in implementing a cross-border (or any kind of) investment. The actual staff capacity in the majority of EGTCs is quite small. Thus to some extent it might prove difficult for many EGTCs to develop their profile as implementers of investment projects. About 36 of the 56 EGTCs³ report staff thereof in the majority of cases the staff is hired directly by the EGTC. According to the figures provided one can estimate that by end 2015 about **180 persons** across the EU work on a regular basis for an EGTC.

Still staffing remains challenging in practical terms and several EGTCs have reacted to that:

- several have reported that staffing is avoided in order to avoid legal problems or in order to travel light, i.e. to have limited fixed costs,
- the EGTC Euroregion Pyrenees-Méditerranéenne has split staff, i.e. staff hired according to two national regimes; the Eurodistrict Strasbourg-Ortenau has recently amended its statute in order to allow for this option,
- several EGTCs count on staff in the administration working for the EGTC,
- insecure jobs due to limited contracts (based on projects) are an obvious impediment to staff development (in terms of experience and skills).

The involvement in the stages of an investment

Before going into the details of various different financing instruments it is useful to go through the stages of the usual project cycle of an investment project and to capture those points where the general idea of an EGTC could pose a significant advantage to other institutions.

In principle all stages of an investment could be in the hands of an EGTC. In each of the investment stages the Grouping might act in a supportive role – evidently the supporting role can be more pronounced if the EGTC disposes of qualified and experienced staff.

The table below looks in more detail at the different stages in preparing and implementing an investment: in each stage the EGTC can show a distinct profile.

³ In the reporting period 2015.

Table 3. The potential role of EGTCs in the different stages of an investment

Investment stage	Considerations on the role of EGTCs
Project development	<p>The EGTC representing a long-term commitment could become a safe and stable framework to guide the project through all stages. EGTC as a cooperation vehicle could see its specific role in <u>building a bridge</u> between countries with differing regulatory environment (such as e.g. has been the case for the Hospital de Cerdanya).</p> <p><u>(Infrastructure) Investment:</u> A first major step should be a feasibility study eventually paired with a first Cost-Benefit-Analysis (CBA) which should result in a shared view on the key parameters of the project. This might at first sound like a standard task but in case of major cross-border investments it is essential to capture different notions and perceptions in both MS (or even several MS) concerned.</p> <p>Critical aspects could be differing technical norms, different operation modes and approach to funding of maintenance and operation (such as e.g. the differing social security systems of FR and ES in case of the Hospital or the maintenance of a road in a mountain region such as in case of the EGTC Portalet). It is evident that it needs considerable expertise to pinpoint all crucial aspects in particular when it is a genuine cross-border construction – e.g. parts of a transport or energy network such as a bridges or tunnels.</p> <p><u>Financial instruments:</u> in case of such instruments financed from ESIF the ex-ante assessment required by the EU Regulations⁴ fulfils a function similar to the feasibility study for an investment project; additionally considerations on state-aid might be important (and here national notions and perceptions might differ).</p> <p>It is evident that the more profound the involvement of the EGTC in this stage, the stronger will be its profile in the subsequent phases.</p>
Planning, implementation approach	<p>Planning and design of a cross-border investment should be based on a sound understanding of technical norms on either side of the border. This might again sound obvious but experience with cross-border investment shows that this requires an intense and dedicated process management; a task which is even more demanding such as in case of a language barrier. This could be a major strengths of an EGTC.</p> <p>Next to technical planning also different approaches to implementation might lead to rather complex preparatory steps which are quite demanding in terms of skills requirements. A</p>

⁴ Cf. Common Provisions Regulation (CPR), Preamble, Recital 35

Investment stage	Considerations on the role of EGTCs
	<p>currently rather far-fetched scenario (but still plausible with a view to EFSI could be the following approaches):</p> <ul style="list-style-type: none"> ■ Setting up a <i>Public-Private Partnership</i> (which has significant influence on the funding mix, the role of national Authorities in developing the regulatory framework and the requirements for the procurement procedure. ■ In case of investment in infrastructure for Science, Technology and Innovation (STI): e.g. developing the framework to run a so-called <i>Competitive Dialogue</i> as quite demanding but more flexible and open approach to procurement in case that the exact specifications and technological requirements are not clear from the start due to the rather innovative character of the investment. ■ Other quite specific proceedings in the preparation of a shared investment. <p>It is evident that such procedures take their time and the EGTC representing a longer-term commitment to cooperation might be a suitable vehicle for such a project.</p>
Construction – Public Procurement	<p>In almost all cases an investment will include public procurement (PP).</p> <p>One can assume that in case an investment becomes part of the portfolio of an EGTC its size will mean that an international tender procedure in line with the EU-Directive(s) on Public Procurement has to be launched. It is important to note that also in case of smaller procurements in a cross-border context it is hard to argue for a purely national public procurement procedure (e.g. when referring to the elaboration of any preparatory study; it is evident that mixed or bi-cultural teams of experts might provide significant added-value in terms of pinpointing different perceptions and approaches according to national legislation or even planning ‘traditions’).</p> <p>A key role of the EGTC could be its bridging function in the process. Ideally speaking the bridging function at this stage would stem from the involvement in the planning phase.</p> <p>Generally speaking the risk inherent to public procurement is high since a mistake in public procurement might cause partial or full ineligibility of expenditures.</p>
Implementation	<p>The technical implementation of a physical investment is most probably part of the building contract and public involvement will be in the hands of the national authorities which are in charge of the supervision of the construction process.</p>

Investment stage	Considerations on the role of EGTCs
	<p>However, the EGTC might again act in a bridging and coordinating role. This is particularly important in case of unforeseen events during the construction process where facilitation or mediation might be needed: this could be for example an unexpected difficulty in completing the procurement procedure or aspects of the investment which have appear and have not been discussed at the start of implementation.⁵</p> <p>In case of a service or a financial instrument other aspects might come in – management skills and bridging functions might be more important and of a more permanent nature.</p> <p>Depending on the type of funding source – in case that ERDF is being used the EGTC should have sound expertise related to the reporting requirements (documentation, elaboration of (financial) reports etc.).</p>
Operation and maintenance	<p><u>(Infrastructure) Investment:</u> It is evident that in case the EGTC should be in charge of operation and maintenance this will be subject of agreements in the framework of the EGTC. The aspect needs to be clarified in the development phase.</p> <p>At this stage it is difficult to make general statements on the role of the EGTC since it depends on the character of the investment.</p> <p>The Hospital de Cerdanya is so far the only example known to the Consultant where the initial investment <u>and</u> the operation of the infrastructure are in the hands of the EGTC. Another example is the EGTC Pourtalet which has been founded foremost in order to manage the maintenance and operation of a mountain pass road linking France and Spain.</p> <p>A continuous involvement of the EGTC in operation and maintenance seems rather likely in case of health or social infrastructure due to the aspect of staff management as well as the continuous need for supply management. When it comes to technical infrastructure the role of the expectable EGTC would be rather in management of an external service provider or a bridging function between two authorities in charge of maintenance.</p>

⁵ One might take the bridge at Schlosshof – Devinská Nová Ves (a municipal part of the City of Bratislava, as an example) over the border river March/Morava (albeit not done in the framework of an EGTC it helps to illustrate some of the challenges related to cross-border transport infrastructure: e.g. the procurement process had to be interrupted and redone due to a complaint; negotiations at a later stage dealt with aspects such as the option for crossing for emergency cars, the correct handling of VAT and the position of the bridge as border-crossing in the meaning of the Schengen agreement; all these steps have proven as difficult and time-consuming steps in implementation).

Investment stage	Considerations on the role of EGTCs
	<u>Financial instruments:</u> In case of a financial instrument it is evident that the EGTC could have a prominent role such as e.g. providing the framework for the cross-border management board.

Source: own considerations.

Interesting perspectives have also been brought up by the EGTC Eurometropole⁶ which is currently not involved in any major investment project but has supported this Study with its valuable expertise on the ground: the EGTC underpins the role of the Grouping as facilitator and in building bridges across borders and government levels. A major point in strategy-building is the recurring focus on those areas where common interests are most obvious and the preparation of (investment) projects serving common interests is most required: currently the infrastructure areas under close scrutiny are transport and water management.

1.2 Key aspects related to the implementation of EU-Funds

Applying for ESIF - EGTCs as eligible applicants

The challenge for EGTCs starts at the application stage – the type of organisation is well known in ETC but hardly so in mainstream programmes which are implemented at national level. It is evident that two major challenges appear: the capacity to pre-finance and the eventual access to two national ESIF programmes which are built on an entirely national project logic.

The following table summarises basic reflections on the main challenges and options in ESIF programmes.

Table 4. Consideration on EGTCs as Applicants

Funding Instrument	Considerations on the options and challenges for EGTCs
ETC (ERDF)	ETC is the Objective of Cohesion Policy (CP) where EGTC act as beneficiaries and models for the implementation of cross-border and transnational investments exist. But still genuine cross-border infrastructure and its underlying

⁶ We would like to thank Mr. Séverine Flahault and Mr. Romain from EGTC Eurometropole Maurer for supporting us with their contribution.

Funding Instrument	Considerations on the options and challenges for EGTCs
	<p>requirements – such as a clear mechanism for the cost-split and mutual agreements on procurement and financial control) might pose a challenge for the programme management. In this case the EGTC as sole beneficiary might be in an attractive position coming up with a pre-negotiated and pre-discussed ‘all-in-one’ solution.</p>
<p>ERDF, CF (in a national Operational Programme)</p>	<p>There seems to be not much precedence for the position of EGTCs as applicants for investment in Operational Programmes from the period 2007-13.</p> <p>Realistically speaking in case an EGTC ventures into a ‘mainstream’-programme the intended investment will exceed the usual volume of an ETC project.⁷</p> <p><u>Financing challenge:</u> First there might be the pre-financing challenge. In particular in EU-13 such programmes are mostly set up at national level and the reimbursement principle is often a challenge for LRAs as the key stakeholders of an EGTC.⁸</p> <p><u>The project set-up:</u> It is obvious that the most challenging venture is an infrastructure investment which physically crosses the border. In the view of the Consultant the most adequate option would be a project set-up which is based on cross-funding. This might sound difficult at first but in the end seems to be the more realistic approach. When applying in a national mainstream programme the EGTC might not encounter difficulties to register as applicant in the MS where it has its seat, i.e. the MS which is decisive for the legislation, but it will most probably encounter such difficulties if applying for ESIF in a national mainstream programme in the second MS. The resulting option could be that a larger project is being split into several partial projects which are partly funded from national mainstream programmes and e.g. partly from ETC.</p> <p>In any case such arrangements will require firstly a strong political backing of the EGTC in both MS and secondly a clear-cut approach in the Convention of the EGTC (for the latter aspect please see Section 3).</p>
<p>CEF</p>	<p>The types of intended projects are pre-defined due to the fact that the CEF is the instrument for the implementation of projects of</p>

⁷ Investment volumes in cross-border programmes might be of quite considerable size – e.g. the Hospital of Cerdanya had an investment volume of about 31 MEUR.

⁸ In order to cope with this challenge e.g. Slovakia has introduced a system of pre-financing; i.e. national funds are being used to cover expenditures (major invoices such as in construction projects) which have undergone a pre-check through the financial control; which means a significant relieve for the beneficiary in terms of pre-financing capacity

Funding Instrument	Considerations on the options and challenges for EGTCs
	<p>common interest as part of the Trans-European Networks (TEN) in transport, energy and broadband networks. Thus one point becomes obvious: the scope and character of the project will involve in almost all cases authorities at national level. A fact which clearly limits the options for most of the current EGTCs to act immediately and directly in the framework of the CEF.</p> <p><u>The project set-up:</u> The Commission sees a major gap in the institutional and administrative capacity required in order to develop projects of significant European added-value. In previous years many MS had difficulties to develop and implement such projects. Thus with a view to this gap the potential role of EGTCs in CEF might be primarily in the preparation of the projects.</p> <p>Examples⁹ of CEF-funded projects show a number of studies related to road and railways connections.</p>

Source: own considerations.

Investment preparation in ESIF

Generally speaking the requirements related to investment preparation for ESIF comply with international standards such as required by the EIB.

In case of substantial (infrastructure) investment in the framework of ERDF or CF many projects would be classified as Major Projects.¹⁰ If such projects are intended the fact should be outlined in the respective Operational Programme and a list of such projects should be provided.

The general approach to such projects is noteworthy since the respective Article in the CPR¹¹ sets out general standards which should be met in any case by any bankable project:¹² such as the provision of a feasibility study including an option analysis, a Cost-Benefit Analysis (CBA) in economic and financial terms, and an analysis of the environmental impact.

Major projects in ESIF are subject to an appraisal procedure which is understood as an independent quality review of an expert either done by the MS or by the

⁹ Cf the Annexes to the recent Study on *The potential of closing missing links of small scale infrastructure in Europe's border regions for growth and employment - Recommendations for the way ahead*, Study commissioned by the CoR.

¹⁰ In the meaning of Common Provision Regulation (CPR), Article 100, referring to projects exceeding a total of 50 MEUR total eligible cost, respectively in case of transport a total of 75 MEUR.

¹¹ Article 101.

¹² Also with a view to eventual cross-funding, i.e. in particular the combination with EIB loans.

Commission.¹³ The quality review should provide *clear statements on the investment's feasibility and the economic viability*.¹⁴ The Commission has foreseen the option to consult the EIB on such projects thus confirming the Bank's expertise in project assessment.

Regarding the environmental impact a substantial investment might require an Environmental Impact Assessment (EIA). If an investment bears the potentiality of transboundary environmental impact the EU Directive¹⁵ on EIA encourages the option to set-up a joint body.¹⁶ It is evident that in such case an EGTC could raise its profile by either acting as legal framework for the process or as back-up for a specific body which thus could be kept smaller and in ideal case would be embedded in a bi-cultural working structure.

Specificities of the Cohesion Fund (CF)

The funding portfolio of the Cohesion Fund (CF) is quite narrow in comparison to the ERDF. The Fund is intended for larger infrastructure investment projects which should establish the Trans-European Networks in Transport and Energy (TEN-T respectively TEN-E) and investment into the environment and related actions such as investment into housing provided it is targeted at energy efficiency or renewable energy use.¹⁷ Furthermore land rehabilitation and also investment in risk management is eligible; for the latter case the Regulation underpins explicitly the importance to consider cross-border risks¹⁸ – an aspect which is evident for large-scale flood risk mitigation programmes.

In the framework of ESIF programmes the Investment Priorities (IP) of ERDF and CF should be aligned but the objectives related to CF should be labelled specifically.

Implementation in ESIF

The decisive steps in ESIF implementation range from procurement to financial reporting.

¹³ Cf. (CPR), Preamble, Recital 93.

¹⁴ Cf. CPR, Article 102.1.b).

¹⁵ Directive 2014/52/EU of 16 April 2014 on the assessment of effects of certain public and private projects on the environment; the approach is in accordance with the Convention on EIA in a transboundary context (also known as Espoo-Convention).

¹⁶ Cf. Directive 2014/52/EU, Preamble Recital 4.

¹⁷ Cf. Regulation (eU) 1300/2013, Preamble, Recital (8).

¹⁸ Ibidem, Recital (10).

Table 5. Decisive steps in implementation of an investment in ESIF

Decisive steps	Major points to be observed
Public Procurement (PP)	<p>According to a recent estimate¹⁹ it is assumed that about 48% of ESIF is spent through PP – at the same time it ranks among the main reasons for errors detected either in the verifications of expenditure or as part of sample controls of the Audit Authority.</p> <p>The role of the EGTC must be a model for a safe and competent approach to PP since its performance will be in the end observed by two or more MS. Thus it is highly advisable to include procurement experts from both MS concerned in the proceedings in order to safeguard the maximum experience.</p>
Process management and progress monitoring	<p>Investment with a cross-border dimension will in most cases be quite demanding in terms of process management. In many MS the rules on project implementation (e.g. the communication of changes as well as the intervals for reporting) are quite strict and thus concise planning and progress monitoring are of utter importance.</p>
Financial reporting	<p>In general the expertise in financial reporting and all related routines must be strength of an EGTC a trusted partner in ESIF implementation. Thus the EGTC must have sufficient staff capacity and experience to perform the project accountancy and administration safely and timely.</p> <p>Financial reporting – i.e. the submission of all accounting documents to financial control²⁰ - is subject to national rules. Thus in case of a split project differing rules might have to be observed.</p>

Source: own considerations.

The major point in ESIF is the strive of the Managing Authority (MA) for a timely implementation of the projects. It is widely understood that large investment projects bear the risk of unforeseen issues which might impede the implementation but from the perspective of the MA the risk of decommitment according to the so-called n+3 rule²¹ is pending. The challenge is expected to become even greater in the first years of the newly introduced requirement for annual accounting. It might take its time until all parties involved, i.e. the MA, the Certifying Authority (CA)²² and also the Audit Authority (AA) got to the timely completion of all tasks – this might lead to even stricter requirements for beneficiaries in terms of timely implementation.

¹⁹ Cf. DG for Regional and Urban Policy 2015, p. 7.

²⁰ In accordance with the CPR, Article 125.(4) – the control might be in hands of the Managing Authority (MA) or might be delegated to so-called Intermediate Bodies.

²¹ Cf. CPR, Article 136: *The Commission shall decommit any part of the amount in an operational programme that has not been used [...] by 31 December of the third financial year following the year of budget commitment under the operational programme.*

²² The body being in charge of drawing up and certifying the payment requests to the Commission.

Connecting Europe Facility (CEF)

The Connecting Europe Facility (CEF)²³ is the main EU co-funding instrument for TEN investment with allocating 30.4 BEUR for the period 2014-2020: it is a facility to fund studies and investment for large-scale infrastructure in the fields of transport, energy and Information and Communication Technologies (ICT - broadband). The Facility is managed by the Innovation and Networks Executive Agency (INEA).

The by far dominant investment focus is on transport.²⁴ *Based on an analysis of the transport infrastructure plans of Member States, the Commission estimates that investment needs in transport amount to EUR 500 000 million over the entirety of the TEN-T network for the period 2014-2020, of which an estimated EUR 250 000 million will need to be invested in the core network of the TEN-T.*²⁵

The Regulation emphasises that *institutional and administrative capacity are essential prerequisites for effective delivery of the objectives of the CEF.*²⁶ A specific allocation funded from CF is foreseen for the development and implementation of projects in those countries which are eligible for funding from this Fund.

In order to use the CEF-Funds efficiently the use of Financial Instruments should be duly considered in particular when it comes to projects in the fields of energy and ICT. The CEF-Regulation also encourages the option of Public-Private Partnerships (PPPs). Grants for works should be used for *projects of common interest that, in accordance [...] demonstrate, in particular, significant positive externalities and are not commercially viable [...].*²⁷ The regulation clearly defines upper limits for grant-funding of studies and works in particular in road and rail construction.²⁸

The type of intended projects is clearly pre-defined since it should be projects of common interest as part of the TEN. Implicitly the targeted projects necessitate the involvement of national authorities for development and set-up. EGTCs as public bodies established by MS might participate.²⁹

²³ Established with Regulation (EU) No 1316/2013.

²⁴ The breakdown of the overall envelope amounting to 30.4 BEUR is as follows: 22.4 BEUR for transport, 4.7 BEUR for energy and 0.3 BEUR for ICT.

²⁵ Regulation (EU) 1316/2013, Recital (15).

²⁶ Ibidem. Recital (20).

²⁷ Regulation (EU) 1316/2013, Recital (49).

²⁸ Cf. Regulation (EU) 1316/2013, Article 10.

²⁹ Cf. Regulation (EU) 1316/2013, Article 9.1).

The uptake of the Facility has been quick: about 50 % of CEF budget has already been allocated to TEN-T projects in the first call in September 2014.³⁰

Summary - the potential role of EGTCs in ESIF and CEF investment

EGTC could develop into an asset in the implementation of investment in ESIF but a major hurdle might be the capacity in pre-financing and the national logic of mainstream programmes in ESIF. Three main aspects deserve due consideration:

- **Eligibility as applicant:** it is evident that the EGTC will in principle rather easily qualify as applicant in ETC and in case of a national ESIF programme in the MS which provides the guiding legal framework – but in the latter case it might encounter difficulties if e.g. a project is split in partial projects with parts being financed in two MS; in principle EGTCs could act as applicants in CEF but one has to see that projects in CEF necessitate the involvement of national authorities.
- **Investment preparation:** in case of a substantial investment with cross-border character the value-added of a EGTC becomes apparent since – despite EU/EIB standards for the preparatory documents such as feasibility studies or CBA and EIA - all related steps require a cross-border perspective and have to lead to a shared view; with a view to the CEF Groupings could become an instrument to foster project development
- **Implementation:** investment in ESIF require mostly experienced staff; a basic requirement which is expected from an EGTC are proficient skills and experience related to process management and reporting; most probably the decisive step in terms of a safe implementation is public procurement – for this step the bridging function of an EGTC might be an asset (for more in-depth considerations on public procurement please see Section 3).

Involvement of EGTCs in Financial instruments (FI)

In general, Financial Instruments (FIs) are flexible mechanisms and can be used alongside grants to support activities with revenue generating potential. The main advantage is that in case of a FI funded from ESIF the funds can be reused thus being more sustainable and the leverage or multiplier effect of the Instrument: the instruments aim at acting as *catalyst for attracting private investment*.³¹

³⁰ Claus Doll, Werner Rothengatter, Wolfgang Schade, 2015, p. 14.

³¹ Interact 2013, p. 26.

Experience in the period 2007-2013 shows³² that the majority of MS has made use of the option; about 1,000 FIs have been established by the end of the period with a total volume of approximately 17,000 MEUR. The dominant target of the instruments had been business development (91%); only a small fraction (6%) had focussed on urban development projects. In financial terms loans slightly dominated (51%) as compared to guarantees (48%). The option to use SF for such instruments is strongly concentrated in financial terms – IT, DE, UK and GR have accounted for 55% of SF donated to FIs. The most marked contributions in EU-13 have come from PL (7%) and HU (5%).

An important argument is that repayable instruments might increase the quality of investments³³ since the fact that it needs to be repaid might strengthen the aspect of due diligence as compared to the receipt of a grant amounting to up to 85% of the investment.

Finally FIs increase the flexibility of programmes: cross-funding is possible, i.e. to combine funding from a grant with a FI but the FI may not be used to pre-finance a grant provided under ESIF.³⁴

The key arguments are in favour of a cross-border or transnational FI could be summarised as follows: *The core of ETC is operating across borders and hence ETC programmes seem to be a natural attraction for investors. Operating across borders is what investors wish, as borders often create artificial barriers and reduce the chance of maximising profits. Multi-country FIs implemented through ETC could address weaknesses of FIs implemented in limited geographical territories of national or regional Operational Programmes.*³⁵

The common provisions on ESIF foresee the option of a cross-border or transnational FI: MAs may provide financial contributions to *financial instruments set up at national, regional, transnational or cross-border level, managed by or under the responsibility of the managing authority.*³⁶

In practice one has to see that managing an ETC programme is per se a challenge and so far did not leave room in any EU territory to take the vision of cooperation one step further: *FIs seem attractive for ETC programmes which look at it with interest. However, because of the asymmetry of knowledge and expertise between programme stakeholders and financial institutions, ETC programmes are not making any commitments yet.*³⁷

³² Cf. Wishlade, Michie 2014, p. 2-3.

³³ Cf. Wishlade, Michie 2014, p. 1.

³⁴ Cf. CPR, Article 37.(9).

³⁵ Interact 2013, p. 6.

³⁶ CPR, Article 38.1.b).

³⁷ Interact 2013, p. 4.

So far there has been only one attempt to start a FI in the framework of ETC – the Europe Regions Funding (EUREFI)³⁸ has been a project in the Interreg IV programme Greater Region. The intended size intended had amounted to about 4 MEUR thereof 1.12 MEUR from ERDF. The intent of the Instrument had been assistance to SMEs when expanding into neighbouring markets by strengthening their own financial resources. The Instrument ceased to operate in 2012 and funds had been returned to the programme.

Guiding thoughts regarding FI in ETC and the role of EGTCs in particular are as follows:

Geographical considerations: so far FI funded from ESIF had a significant role in only eight MS³⁹ whereas in the majority of the others it had accounted for rather marginal shares: a tendency towards such instruments one can rather expect in highly integrated urban regions where gradients between wages and cost of living are comparatively small; such areas might be e.g. cross-border functional areas and economic core areas of Europe with rising social challenges in urban areas. In rather peripheral and sparsely populated areas the focus on infrastructure improvement is likely to dominate thus also shaping the role and focus of EGTCs.

- Strong rationale for the cross-border niche required: a major impediment might be the strong competition from various (business development) agencies, partly acting as Intermediate Bodies for ESIF programmes – given the numerous offers at national level it might be difficult to define the niche for the cross-border product. In the view of the Consultant this increases the likelihood that an approach will be rather undertaken in the framework of an ETC programme. However, most ETC-programmes reveal a strong focus on the traditional grant model – in particular in EU-13 (moreover these programmes strongly focus on investment activities at local level).
- A new set-up of EGTC required: EGTCs could act as implementing agency or as intermediary since in accordance with the Regulation the MA may entrust implementation tasks to a body governed by public law⁴⁰ – thus an EGTC would be a suitable legal form. But in practice the direct involvement of *a public undertaking or a body governed by public law*⁴¹

³⁸ Cf. Interact 2013, p. 23

³⁹ Situation by the end of 2013 according to Wishlade, Richie 2014, p. 4: IT (24% of total donations from SF to FI), DE (11%), UK and GR (10% each), PL (7%), ES (6%), PT and HU (5% each)

⁴⁰ Cf. CPR, Article 38.4.b.iii)

⁴¹ The EGTC Regulation does not allow for the inclusion of purely private profit-making partners but e.g. regional business agencies such as have been established in many MS could qualify as partners; the major

with the necessary experience in the Grouping would be required in order to qualify as effective and efficient solution for implementation; currently there is no precedence for such an EGTC which would rather act as cross-border business agency since the major added-value could be substantiated guidance to entrepreneurs from both countries. It is important to note that the degree of involvement of the EGTC could in principle be handled quite flexible since the task division with the MA(s) could be subject of negotiations.

- Quite demanding preparatory steps: in order to set-up a FI it is required to deliver a sound ex-ante assessment⁴² covering market analysis which demonstrates the underlying rationale (the FI should address a market failure or a suboptimal investment climate) but also lessons learnt from similar instruments implemented in the past; in general the main intent of FIs is the establishment of new enterprises⁴³ or the expansion of existing ones.
- Limits posed by the programme strategy: when looking at ETC-programmes as the most probable area where a cross-border or transnational FI or at least its nucleus will be developed a clearly limiting factor is that the ETC-programme has to offer a suitable Investment Priority⁴⁴ where the FI offers clear advantage compared to the traditional grant model (in order to make it a successful pilot venture) – ETC allows for a maximum support rate of 85% from ERDF – a fact which is a strong incentive for most programme managements and thereby attracting public institutions, public equivalents and non-profit organisations whereas the private sector is in most cases rather recipient⁴⁵ than beneficiary.
- The funding volume poses another challenge: the Interact Study⁴⁶ speaks of a recommended size of about 40⁴⁷ to 100 MEUR in order to achieve the diversification of risk and a balanced portfolio although examples start from 10 MEUR. It is evident that if a FI is too small the administration cost will be disproportionate and outweigh the effects. Moreover one has to see that for many ETC programmes a project amounting to 10 to 20 MEUR is considered a very large project;⁴⁸ but the other scenario of a

exemption would be undertakings which have been entrusted with the operation of a Service of General Economic Interest; an exemption which is not relevant in the discussion of FIs.

⁴² Cf. CPR, Article 37.

⁴³ Cf. CPR, Article 37.4.

⁴⁴ In the meaning of Regulation 1301/2013, Article 5 (ERDF Regulation).

⁴⁵ E.g. as recipient of new training offers developed in the framework of a ETC-project.

⁴⁶ Cf. Interact 2013, pp. 15-16.

⁴⁷ Cf. Interact 2013, p. 26; statement of representative of the European Investment Fund (EIF) if the EIF is delegated the implementation task.

⁴⁸ In particular in EU-13 where average ETC-project sizes are about 200,000 to 500,000 MEUR.

FI funded from several programmes seems a less likely option given the competition from established national instruments.

- Compliance with State aid requirements: any cross-border FI as instrument targeting economic activities would have to comply with State Aid, i.e. either providing net subsidy equivalents which fit to the provisions and limits of De minimis or which comply with notified aid schemes in both countries or the Scheme would have to be set-up specifically – a procedure which requires considerable expertise and is definitely taking its time.

Given the considerations above the likelihood of a FI emerging in an ETC programme is quite small. But the concept of an EGTC acting as cross-border business development agency remains tempting and could become a model given the increasing challenge for small and micro-enterprises to get access to financing.

The degree of involvement of the EGTC in the implementation of the FI could be quite flexible but the most logical perspective would be a cross-border business agency which offers guidance on business plans next to access to targeted financing. A likely model could be a Grouping involving experienced business agencies from two or several MS.

2 Role and situation of EGTCs in the EFSI

2.1 Introduction to the framework of the EFSI

Regulation (EU) 2015/1017

The key target of the European Fund for Strategic Investment (EFSI) is to overcome the lack of investment in Europe. The Fund should support mainly three main strands:

- the generation of the infrastructure (primarily for transport, energy, Science, Technology and Innovation (STI) and social) for a modern knowledge economy;
- productive investment: *The purpose of the EFSI should be to help resolve the difficulties in financing and implementing strategic, transformative and productive investments with high economic, environmental and societal added value*⁴⁹;
- As access to finance for entities having up to 3,000 employees – the underlying idea is to offer a wide range of financial products such as equity, debt and guarantees;

The implicit agenda of the Fund is job generation through investment.

The EFSI is intended as guarantee fund in order to act as a stimulus for new investment. The intervention logic is based on the provision of an incentive funding (backed by EIB loans and funds from the General Budget of the EU) in order to leverage a significant volume of private investment funds (the intended leverage effect is approximately 1:5). It is set-up as a mid-term plan⁵⁰ being intended as injection taking effect rather quickly.

The EFSI is intended to address market failures: *projects supported by the EFSI shall typically have a higher risk profile than projects supported by EIB normal operations and the EFSI portfolio shall have overall a higher risk profile than the portfolio of investments supported by the EIB.*⁵¹

⁴⁹ Preamble, Recital (13).

⁵⁰ See Article 9.(3) - EU guarantee granted until July 2019; Article 11 - aggregate net payments from the General Budget of the Union capped with € 16 billion.

⁵¹ Regulation (EU) 2015/1017, Article 5.

The EFSI targets projects in a broad range of topics: in the frame of infrastructure investment support transport and energy networks, STI infrastructure, resource efficiency and natural resources to urban and rural development. The EFSI supports greenfield investment, i.e. construction of new infrastructure or productive investment, but also the extension, rehabilitation or upgrade of existing assets.⁵²

Projects have to be viable and also bundles of projects might be supported. One of the preconditions is – such as for any bankable project in the sense of EIB – is the elaboration of a Cost-Benefit-Analysis (CBA) which complies with the standards set by European institutions such as the EIB or the Commission.

The EFSI allows for cross-funding: *Member States should be able to use European Structural and Investment Funds to contribute to the financing of eligible projects that are supported by the EU guarantee [...].*⁵³

Governance, decision-making and supporting structures

The EFSI is governed by a Steering Board⁵⁴ and the so-called Investment Committee.⁵⁵ In the selection of projects the Investment Committee has to apply a scoreboard of indicators⁵⁶ in order to ensure a transparent assessment of actual and potential investments.

It is evident that the Fund is intended to act pro-actively thus supporting structures respectively facilities have been set-up:

- The European Investment Advisory Hub⁵⁷ (EIAH) in order to support project development and preparation; it should build on good practice in existing programmes⁵⁸.
- The European Investment Project Portal⁵⁹ (EIPP) intended as a transparent portal of current and future projects - the minimum size of projects for the portal is EUR 10 million and the projects should be in high value-

⁵² Cf. Regulation (EU) 2015/1017, Annex II Investment Guidelines.

⁵³ Regulation (EU) 2015/1017, Preamble, Recital 43.

⁵⁴ Regulation (EU) 2015/1017, Article 4.2.b) and Article 7 on the Steering Committee: four Members thereof three appointed by the Commission and one by the EIB, decisions taken in consensus.

⁵⁵ Consisting of eight independent experts – representing key investment topics and the Managing Director of the EFSI, decisions taken by simple majority.

⁵⁶ As stipulated in the Delegated Regulation C(2015) 5176 final as of 22.07.2015.

⁵⁷ Regulation (EU) 2015/1017, Preamble, Recital (50).

⁵⁸ Cf. Regulation (EU) 2015/1017 – referring to programmes such as ELENA (European Local Energy Assistance), JASPERS (Joint Assistance to Support Projects in European Regions) or JESSICA (Joint European Support for Sustainable Investment in City Areas or JASMINE (Joint Action to Support Micro-finance Institutions in Europe).

⁵⁹ Cf. Regulation 2015/1017, Preamble, Recital (55).

added economic sectors as defined on the portal - these are knowledge and digital economy, energy, transport, social infrastructure, resources and environment⁶⁰

Project examples

Since the EFSI is a new facility experience with as well as the number of approved projects is limited. But it is important to see that the first wave of projects will set the standards and the perception of EFSI-projects in the longer run.

The information available reveals a strong focus of EFSI-investment on renewable energies and it points at an emerging project pipeline in large-scale investment in more resource-efficient production⁶¹ as well as social infrastructure.

Information on the approaches to improved access to financing for SMEs and mid-cap entities shows that many MS have so far taken up the opportunities offered by the EIB under EFSI – according to the information available the EFSI option has met particular interest in CZ, HU, IE, PT, SI.⁶²

The following table illustrates the scope and characteristics of approved EFSI-projects.

Table 6. EFSI - Project examples

Project type	MS	Investment in MEUR	Project characteristics and underlying EFSI rationale
<i>Investment in infrastructure and production</i>			
Energy infrastructure	ES	326	Extension of natural gas supply network in rural areas. EIB financing as incentive to attract other investors such as banks.
Energy infrastructure	NL	653	Offshore wind power plant. Financing gap in the renewable energy sector.
Industrial production –	FI	1,200	Extension and upgrade of a paper pulp mill with resource efficient technologies (renewable, waste

⁶⁰ Cf. EIPP website - https://ec.europa.eu/priorities/european-investment-project-portal-eipp_en

⁶¹ I.e. the first two products focus on industries which are marked by substantial consumption of energy respectively natural resources.

⁶² Cf. EFSI Factsheet on SME-financing presenting a selection of signed agreements, as of January 2016.

Project type	MS	Investment in MEUR	Project characteristics and underlying EFSI rationale
paper pulp mill			water treatment). EIB financing crucial in order to attract other investors.
Energy efficiency of buildings	FR	800	Insulation and ventilation system of buildings in residential areas – access to long-term loans for homeowners – investor is a PPP. Long-term loan as incentive for other investors to join.
Large energy infrastructure	DK	2,000	Investment framework for large-scale renewable energy projects (offshore wind etc.) in Northern and Western Europe. EIB equity participation in order to increase the Fund's market credibility.
Hospital	UK	450	Construction of a hospital in Birmingham as PPP. EIB loan helps to relieve the project from uncertainties related to financing costs.
<i>Access to finance</i>			
Loans for start-ups and SMEs	NL	200	Non-profit organisation backed by the public sector, NGOs and banks – founded to provide loans to start-ups and SMEs. EIB loan helps to extend the programme.

Source: EFSI Factsheets on projects.

Other projects listed on the EFSI-website of the EIB⁶³ point at further investment plans in the renewable energy sector in AT, IT-systems for commercial banks (ES), a fund for remediation of brownfields mainly in FR but also in BE, a fund for medium-sized infrastructure projects (based in FR but intended to invest in Northern and Western Europe) and investment in dairy production (DK).

⁶³ Project pipeline as announced on the EFSI website of the EIB.

2.2 The potential role of EGTCs in EFSI

The EFSI-Regulation mentions explicitly the option for cross-border projects: *in that context, it should be possible to establish multi-country platforms to promote cross-border projects or a group of projects across Member States.*

According to the so-called Investment Guidelines:

- EGTCs are in principle eligible beneficiaries – public sector entities (also territorial ones) are listed⁶⁴;
- cross-border projects are explicitly mentioned⁶⁵.

According to the intervention logic of the EFSI the EGTCs could in principle appear in two roles, i.e. as:

- owner respectively as investor,
- project beneficiary in a project as part of a funds set-up as frame respectively as project bundle.

The following table summarises the tentative assessment regarding the differences in the role.

Table 7. Reflections on the differing roles of EGTCs in the EFSI

Owner / Investor	Beneficiary of a sub-project
<p>EGTCs have so far been mostly vehicles of cooperation for LRAs – in particular in EU13; the largest investment sum reported for an EGTC has amounted to about 32 MEUR⁶⁶.</p> <p>With a view to <u>existing EGTCs</u>: an investment strategy of a significance comparable to the examples as indicated in the table on EFSI-project examples would in most MS require the integration of the national level in existing Groupings – projects backed solely by the financial</p>	<p>This seems to be the more probable option; e.g. one of the EFSI-projects in the EIB pipeline foresees a fund for remediation of brownfields⁶⁷ intended to become active in FR but also in BE.</p> <p>Such project bundles might be an opportunity for EGTCs to come in in the management and implementations of one of the intended sub-projects.</p>

⁶⁴ Regulation 2015/1017 – Annex II, 2.

⁶⁵ Regulation 2015/1017 – Annex II, 8.a)

⁶⁶ Approximate investment volume for the construction of the Hospital of Cerdanya

⁶⁷ See the project pipeline under <http://www.eib.org/projects/pipeline/2015/20150248.htm>; the so-called GINKGO FUND II is set-up by a French entity having an intended total volume of about 160 MEUR and it targets *investments to clean up impaired sites ("brownfields") acquired from public and private owners, using environmentally sound remediation techniques, with the end goal of selling the repositioned property to third parties, thus supporting urban renewal and regeneration.*

Owner / Investor	Beneficiary of a sub-project
<p>commitment of (sometimes small) LRAs might most probably fail to be ranked as safe.</p> <p>The set-up of a <u>new EGTC</u> in order to develop and implement such an investment strategy might be an interesting venture. A major impediment is the experience made so far with the time required for a EGTCs of a certain scale and scope to become operative: all major existing EGTCs have been marked by long lead-in times.</p>	

Source: own considerations.

The character of projects

A further point in the considerations of the role of EGTCs in EFSI is the differentiation in the potential role according to the character of the projects. This refers to the main three orientations of the Fund.

One has to see that an EGTC is primarily an instrument set-up by public institutions – an instrument in principle being open for participation of private entities. But one has to see that with the European Economic Interest Grouping (EEIG) also a registered and acknowledged cooperation vehicle for predominantly private actors exists. Public entities might join an EEIG. Examples show that EEIGs have also become active on transport corridors⁶⁸, logistic centres⁶⁹ and renewable energy⁷⁰ – both ventures and issues of the EFSI which have also been taken up in EGTCs. One may not forget that the EFSI is intended to provide leverage to private investment through public incentives such as guarantees and loans. Thus the EEIG might be considered as the cooperation framework more apt to build bridges between the public and the private sector.

⁶⁸ E.g. the EEIG on the Rhine-Alpine Corridor as the major North-South-connection between the major sea ports in the North and the South thereby crossing some of Europe's most dynamic regions – cf. <http://www.corridor-rhine-alpine.eu> or the EEIG Rotterdam-Genoa Corridor or the EEIG Corridor North-Sea-Mediterranean where Eurotunnel and Network Rail have become members in 2015 (cf. <http://www.rfc-northsea-med.eu/en/pages/facts>).

⁶⁹ E.g. the EEIG Europlatforms – an association of logistic centres see <http://www.europlatforms.eu>

⁷⁰ E.g. the European Renewable Energy Centers Agency EEIG.

Table 8. Assessment of potentialities of EGTCs related to the strands of the EFSI

Strand of the EFSI	Reflections on the involvement of EGTCs
Infrastructure investment	<p>In the view of the Consultant this might be the <u>key field where EGTCs might be entrusted with actual investment activities.</u></p> <p>But still it is important to note that the infrastructure projects approved in EFSI so far have been in hands of either large stock companies with diversified shareholders or/and are heading for Public-Private-Partnerships. So far none of the projects has been a purely public venture.</p>
(Large-scale) Productive investment	<p>In general this is considered <u>not to be an option for EGTCs as investing partner</u>; one option could be to strengthen the profile in a consultative role – so far the examples for such investments have focussed on resource efficient productions – an EGTC could become a hub in knowledge transfer between MS with a wide gradient in know-how.</p>
Access to financing	<p>In general this is also considered not to be an option for EGTCs.</p> <p>The models set-up so far foresee that banks or other entities use the EIB loan as incentive or basis to leverage funding by other investors – this is a strategy which will hardly be set-up in the framework of a EGTC; the situation might be different in case of a financing instrument (see section 1).</p>

Source: own considerations.

The types of infrastructure investment in the framework of the EFSI

The EFSI-Regulation mentions several key themes related to infrastructure. So far only one of the themes, i.e. social and health infrastructure, is the guiding element for the development of an EGTC. But still there are several other topics where an EGTC as a vehicle for long-term cooperation and commitment could act as engine.

The following table summarises tentative reflections on the topics addressed in the EFSI-Regulation and the potentialities of EGTCs.

Table 9. Infrastructure in the EFSI-Regulation and potentialities of EGTCs

Themes / Types of infrastructure	Tentative assessment of the potentialities of EGTCs
<p><u>Research, development and innovation (RDI)</u></p>	<p>An area where EGTCs could reveal significant added-value given the effective pooling of resources as well as the set-up of lasting structures which demonstrate a critical mass.</p> <p>In the field of RDI on of the implicit strengths of EGTCs – the provision of a regulated framework which is open for approaches in MLG – might be considered as a major asset. Universities which are in large parts of Europe public entities could join groupings with other institutions at national, local and regional level. Thus the development of scientific clusters based on teaming and pooling resources and working towards international hubs could be supported.</p>
<p><u>Transport infrastructure, equipment, technologies; link to TEN-T and CEF, synergy projects with ICT and energy, sustainable urban transport, urban mobility</u></p>	<p>The field of transport is strongly dependant on public actors; cross-border connectivity and interoperability still pose challenges in many parts of the EU; transport infrastructure is a recurring theme in the portfolio of EGTCs but mostly from the perspective of strategy development. So far the EGTC Portalet is the EGTC with the most accentuated focus on transport infrastructure.</p> <p>Given the main intent of the EFSI plan this would mean to rather head for large-scale (infrastructure) projects. Given the long lead-in times for the development of such projects EGTCs could become an interesting option due to the underlying long-term commitment and the set-up of a bi- or even multi-national structure (thus supporting processes such as a cross-border Environmental Impact Assessment (EIA), the alignment of designs according to differing norms etc.).</p> <p>A very interesting venture could be sustainable urban transport solutions in cross-border functional areas.</p> <p>Equipment and technologies is rather in the hands of entities which are not necessarily public ones – but still the adjustment of public infrastructure for the use of new technologies might be a task for public infrastructure operators.</p>
<p><u>Energy infrastructure, energy efficiency, renewable energy</u></p>	<p>Renewable energy (wind power) has been a focus of the investment projects so far approved in the framework of the EFSI – none of these projects is a public venture; thus one can assume that this type of projects will prevail: for such projects EGTCs do not pose significant advantages – the long periods to set-up might rather act as disincentive.</p> <p>In technical terms the increase and the character of renewable energy production as rather numerous facilities necessitates downstream investment in the energy grids – which would in principle necessitate cooperation across border between the (mostly public) infrastructure providers.</p>

Themes / Types of infrastructure	Tentative assessment of the potentialities of EGTCs
ICT	This is rather an area where public interventions should focus on those (mostly remote) areas where one can speak of a sub-optimal investment climate. In general it seems that this is rather an area where a guiding and regulatory role of the public sector is needed but generally speaking it is not an area where actual public investment is decisive.
Environmental protection, natural resources	An area where the role of public actors is very strong and long-term commitment is an essential feature of any infrastructure project. E.g. the ecological rehabilitation of rivers which integrates mitigation of flood protection is just one of the examples which underline the potentialities for EGTCs: rivers form borders and rivers cross borders all across Europe. The EU Water Framework Directive underlines the need for integrated river basin management.
Health and medicine	The Hospital of Cerdanya is one of the showcases for the role of an EGTC in a sector where cross-border governance becomes increasingly important for reasons of efficiency and effectiveness. The EGTC has proven as a valuable multi-level governance (MLG) vehicle providing a framework to run the negotiations to build a bridge between the differing social security systems of two MS (as the key point to make the cross-border hospital an operative and sustainable investment).
Social infrastructure	In comparison to health infrastructure the sector of social infrastructure (education, social care) is still marked by a stronger local element since for many of the facilities economies of scale are less important than provision of services in those territorial entities where services are most needed. Thus – with the exception of cross-border functional areas – the emergence of cross-border infrastructures in this area seems less likely.

Source: Regulation (EU) 2015/1017, Preamble, Recitals 16-20, Article 7.(8).

The reflections on the potentialities of EGTCs in investment areas of the EFSI rest on a combined view of the key points, i.e.:

- the role of public actors in the investment area,
- the expectable character of projects in the EFSI,
- the general strengths of EGTCs,
- the portfolio of current EGTCs.

The result is that RDI, transport, environment protection and natural resources and health infrastructure would offer the most significant potentialities for EGTCs.

The aspect of risk

Another aspect which deserves due consideration is the aspect of (economic) risk. One of the key features of EFSI projects should be the above-average risk profile speaking mostly in terms of financing risks: the EFSI should address investment areas with as pertinent risk of market failure respectively risk-adverse investment behaviour of parts of the banking sector. This feature might not be an incentive for the mostly public stakeholders of an EGTC.

On the other hand it is often - next to the essential role of public financial incentives such as the financial guarantees provided in the framework of the EFSI – also the dedicated involvement of a public actor which makes a project with rather unprecedented aspects work: these could be major infrastructures for STI with long lead-in times or new offers in transport infrastructure.

The aspect of timing

It is important to note that the set-up of an EGTC takes considerable time. Given the list of topics foreseen for public investment in the framework of the EFSI it is evident that so far only a few of the existing EGTC have the capacity and the partnership structure to immediately start working on a large-scale investment in one of these areas. Thus it would require the expansion of existing or the set-up of a new EGTC – a process which takes its time. This might be in conflict with the clear intent of the EFSI to provide an investment injection with visible effect in a mid-term perspective.

Competing funding resources

Finally a geographical divide might become increasingly apparent. In particular in the EU-13 Cohesion Policy (CP) and the inherent approach to offer grants in public investment is at first the far more attractive offer. Generally speaking the EFSI might become more interesting as funding instrument for the MS in the EU-15 where funding opportunities from CP are far more limited.

3 EGTCs and the approach to the public partnership

3.1 Public Procurement

Legal framework related to Public Procurement (PP) by EGTCs

When considering Public Procurement by an EGTC up to five main legal frameworks have to be considered:

- EU Directive on Public Procurement⁷¹.
- EGTC Regulation⁷².
- The Convention of the EGTC⁷³.
- Eligibility Rules at programme level in case of a ETC-programme⁷⁴.
- The national procurement laws of the countries involved.

It is evident that none of the provisions in the Convention of the EGTC or in national laws on public procurement might contradict the EU Directive respectively the EGTC Regulation.

Public Procurement (PP) is a key element in case the EGTC is directly involved in investment activities, i.e. the tendering of construction works. According to the Common Provisions Regulation (CPR)⁷⁵ the expenditure of EGTCs is considered as public expenditure: EGTCs are considered as public bodies and thus PP applies: a fact which is also confirmed in the amended PP Directive which explicitly mentions EGTCs. In general the EGTC in this context is considered as one public entity.⁷⁶

⁷¹ Directive (2014/24/EU).

⁷² Regulation (EU) 1302/2013.

⁷³ Article 2 of Regulation 1302/2013 establishes a clear legal hierarchy where the Convention prevails national law – but de facto it is evident that contradictions to national law in the Convention will not be accepted during the approval procedure; thus also the room for derogations and exceptions is considered to be rather small.

⁷⁴ Article 18.2 of Regulation 1299/2013 on ETC foresees the option to set-up programme-specific rules on eligibility on expenditure which in principle would be in the hierarchy above national legislation; however, in practice these rules cannot venture into substantial derogations from national procurement laws. In some.

⁷⁵ Cf. Regulation (EU) 1303/2013, Article 2(16): '*public law body*' means any body governed by public law within the meaning of point 9 of Article 1 of Directive 2004/18/EC of the European Parliament and of the Council and any European grouping of territorial cooperation (EGTC) established in accordance with Regulation (EC) No 1082/2006 of the European Parliament and of the Council (regardless of whether the EGTC is considered to be a public law body or a private law body under the relevant national implementing provisions.

⁷⁶ It is important to note that at first Public Procurement in the context of (infrastructure) investment activities should not be confused with the notion joint public procurement which refers to either several contracting authorities from different MS which award a public contract, conclude a framework agreement or operate a dynamic purchasing system or to a contracting authority from one MS using the centralised purchasing system of another MS.

The amended PP Directive⁷⁷ stipulates that EGTCs have to choose the national procurement law which they apply – this can be:

- either the law of the MS where the EGTC has its registered office
- or the MS where the EGTC carries out its activities.

The principles which guide the application of national law in the PP Directive correspond with the options foreseen in Article 8 of the EGTC Regulation.⁷⁸

It is important to see that the provisions of the PP Directive leave room for manoeuvre - these provisions can apply unlimited or for a limited period or for specific type of contracts etc. The flexibility could be considered when elaborating and negotiating the Convention of the EGTC.

Article 39 of the PP Directive provides further useful hints on what should be subject of an agreement related to PP in case that two or more MS cooperate: next to the relevant applicable national provisions such agreements should cover also *the internal organisation of the procurement procedure, including the management of the procedure, the distribution of the works, supplies or services to be procured, and the conclusion of contracts.*⁷⁹

In the view of the Consultant the obvious intent of the PP Directive is to provide a room for flexibility in the application of national provisions when it comes to joint procurement by entities of two or more MS or by a EGTC set-up by two or more MS but still the following guiding principles must be kept: definition of a clear national legal base, a clear division of responsibilities and a clear reference to types of contracts; i.e. whether these are contracts for services or works.

Thresholds in public procurement (PP) according to the Directive

An important point is that above certain thresholds the PP Directive applies, thus providing a clear and concise normative framework but also a shared point of reference and a clear guidance on how to proceed in procurement.

With a view to the focus of the Study on investment the table below outlines the most relevant thresholds.

⁷⁷ Directive (2014/24/EU) Article 39.(5).

⁷⁸ With the minor difference that the Directive on PP does not mention the option to choose the laws of the MS where the EGTC's organs act.

⁷⁹ Article 39.(4) – although this does not refer to EGTCs it is useful since these are the cornerstones which should also be anchored in case that the Convention would foresee a more flexible approach to the applications of provisions in accordance with Article 39.(5).

Table 10. Thresholds in PP

Threshold in EUR (net value)	Type of Contract
5,186,000	Public works; i.e. construction works – this refers to the key activity of an investment.
134,000	Public supply and service contracts awarded by central government authorities – this might be relevant for investment preparation.
207,000	Public supply and service contracts awarded by sub-central government authorities – also potentially relevant for investment preparation.

Source: Directive 2014/24/EU, Article 4.

When looking at these thresholds it becomes obvious that also in case of relatively small investment projects most probably the provisions of the EU-Directive – as transposed into national procurement laws - will apply.

The PP Directive⁸⁰ includes the overarching technical rules, time limits, the formats to publish the contract notice, the requirements to publish the information related to qualitative selection etc. This is set out for a set of pre-defined procedures, the most prominent ones being the open procedure⁸¹ and the restricted procedure.⁸² The PP Directive also clearly defines the circumstances under which e.g. a negotiated procedure without prior publication, or more complex procedures such as the competitive procedure with negotiation, the competitive dialogue or the innovation partnership⁸³ may be applied.

Thus in almost all cases of a more substantial public investment an EU-wide open or restricted procedure in accordance with the guiding rules of the PP Directive will have to be chosen. This also clearly reduces the weight respectively the implications of differences or specifications in national procurement laws for the key part of the investment, i.e. the works. The cornerstones of the proceedings in PP are set in the Directive.

The more complex and sophisticated the procedure the more experience is required on the part of the contracting authority.

⁸⁰ Cf. Directive (2014/24/EU), Articles 25 to 32.

⁸¹ Ibidem, Article 27.

⁸² Ibidem, Article 28.

⁸³ Simply speaking these options based on Articles 29 to 31 of the Directive signify an increasingly intense dialogue between bidder and contracting authority in case of rather unprecedented and highly innovative approaches.

External contracts in investment preparation

The situation differs for preparatory studies required for the investment. In some of these cases the net contract volumes might be below the thresholds for service contracts as stipulated in the PP-Directive.

The obvious starting point is to sort out the scope of preparatory studies required and to come to a shared view on the major fields of expertise required to conduct the studies. In case of service contracts below the thresholds set at EU-level sharp differences in the thresholds anchored in national rules on PP between the MS might occur.

But according to European Court of Justice Transparency⁸⁴ in PP has to be understood as an overarching rule in case of purchases which could be in principle of interest for parties from other MS. Thus even though the provisions of the PP Directive might not directly apply, the principle is understood as overarching rule:

***Sub-threshold contracts:** The Directive does not cover contracts that are valued below the thresholds, but these contracts may be subject to Treaty principles, provided that they are or may be of interest for undertakings of other Member States (cross-border interest).*⁸⁵

In particular for an EGTC acting mostly in the framework of an ETC-programme it is hard to argue to exclude bidders from the neighbouring country. Thus it is evident that next to question of diplomacy also the avoidance of infringement to this principle of the eventual cross-border interest respectively the eventual relevance for the Single Market⁸⁶ is a major reason to launch also sub-threshold procedures - which might be regulated differently in the MS constituting an EGTC - according to a fair and transparent procedure inviting bidders from all MS concerned.

The underlying notion of cross-border public procurement

PP is an important economic pillar in the EU and thus also a major potentiality for the Single Market. The monitoring of cross-border PP is of interest in this regard. When discussing cross-border public procurement two different terms are being used:⁸⁷

⁸⁴ Cf. Austrian procurement guide for programme bodies and beneficiaries in SF programmes, 2014, p. 7.

⁸⁵ Sigma 2014, p. 18.

⁸⁶ In German this principle is labelled as *Binnenmarktrelevanz*.

⁸⁷ Cf. Ramboll, HTW Chur, 2011, p. 10 and in more detail p. 20: *Application of principles of the Treaty to sub-threshold contracts and contracts only partly covered: The procurement directives do not cover contracts valued below the EU financial thresholds, but these contracts may nevertheless be subject to the principles of the*

- direct cross-border procurement: firms operating from their home markets bid and win a contract in a different MS;
- indirect cross-border procurement: firms bid through subsidiaries or affiliates or domestic bidders include foreign subcontractors, foreign bidders act as consortia with local bidders.

In contrast to that joint procurement in accordance with the PP Directive refers to procurement procedures launched by two or several contracting authorities from different MS.

Role of SMEs in public procurement (PP)

SMEs are the main engines of job growth in the EU and PP accounts for almost one fifth of the GDP of the EU. Thus the access of SMEs to the market of PP in the EU is a vital aspect of safeguarding and strengthening the economic momentum. There is raising concern about the aggregation of demand which might contain increasing barriers for SMEs to accede the market. Major underlying reasons are the increasing use of central purchasing systems paired with the focus on economies of scale – in particular with the fiscal austerity policy in many MS.

A recent study⁸⁸ on the SME's access to PP includes a couple of interesting facts – in general SMEs account for about 30% of contracts in terms of value; when adding sub-contracting or joint bid arrangements the share raises to about 45%.

The Study marked out that the following aspects are decisive:

- Type of contract: the share of SMEs in above-thresholds contracts in public works corresponds to the average (in sharp contrast to supply contracts where SMEs clearly underperform).
- Subject of the contract: a dominant share of SMEs is reported for manufacturing, average shares⁸⁹ are found for supply of machinery and equipment as well as in construction.
- Type of procurer: the share of the contract volumes was high for SMEs in case of PP launched by LRAs (37%) as compared to utilities (15%).

Treaty, provided that they present certain cross-border interest for companies located in other Member States (see, for example, C- 507/03 Commission v Ireland). In certain circumstances, even low-value contracts maybe of cross-border interest. For example, when national borders straddle conurbations (see C-147/06 and C-148/06 SECAP and Santorso).

⁸⁸ PwC, IFC GHK and Ecorys, 2014, p 6.

⁸⁹ Between 25% and 32%.

- Tender procedure: SMEs perform far better in open (34%) or restricted procedures (29%) as compared to various negotiated procedures (19%).
- Market aggregation: joint purchasing has a significant negative impact on SMEs whereas framework agreements seem not to have any adverse impact on the access of SMEs to contracts.

Regarding cross-border procurement the Study concluded that based on data between 2009 and 2011 there is no statistical evidence related to a significant disadvantage for SMEs:

Between 2009 and 2011, 1.26 percent of all contracts above thresholds were awarded to economic operators located in a foreign country. In terms of the aggregate value of these contracts, this corresponds to 3.1 percent of all above-threshold procurement. The analysis does not reveal significant difference between the proportions of SMEs among the companies winning domestic or direct cross-border contracts. SMEs won 56 percent of domestic public contracts and 54 percent of cross-border contracts. In terms of value, SMEs' share was lower in cross-border procurement (22 percent) than domestic procurement (29 percent).⁹⁰

It is most probable that PP for the key subject of this study - which is public (infrastructure) investment - will be usually launched as open or restricted procedure in line with the PP Directive. At first there seems to be no significant disadvantage for SMEs from statistical evidence. Given the investment types under concern the chances for SMEs to participate in tenders are high: the investments are understood as non-standard 'products' involving most probably a high level of specifications in works, eventually requiring also the purchase of manufactured equipment.

Still it is interesting to take a look at the general recommendations stemming from the Single Market Act initiative which include a range of options to improve the access for SMEs to the market of PP.

The table below gives an overview on the main points which have to be considered.

⁹⁰ PwC, IFC GHK, EcoRys, 2014, p. 6.

Table 11. Recommendations for improved access of SMEs to PP

Challenge / barrier for SMEs	Mitigation measures	Relevance for PP in the framework of EGTCs
Overcoming difficulties relating to the size of contracts	<p>Subdivision of the contract into lots or parcels.</p> <p>Allow for grouping of tenderers.</p> <p>Enhancing knowledge about subcontracting.</p>	Evidently these are quite relevant points but in particular the subdivision of the contract must be based on double-checked evidence since it ranks among the frequent infringements of the provisions on PP.
Ensuring access to relevant information	<p>Specific rules regarding publication of contract notices.</p> <p>Enhancing information about rejection of bidders.</p> <p>Providing relevant information and help to SMEs on administrative procedures</p>	It is evident that the EGTC should act as model in this regard; language barriers should be avoided and the inclusion of experienced procurement experts should safeguard the support for tenderers during the procedure.
Setting proportionate qualification levels and financial requirements	<p>Rules regarding evaluation of groups of tenderers.</p> <p>Rules regarding qualification and financial resources of the applicants.</p>	This seems to be one of the key points to grant access also to groupings of smaller companies.
Alleviating the administrative burden	<p>Simplification of the rules regarding the administrative certifications.</p> <p>Simplification of the rules regarding tenders' submitting.</p> <p>Simplification of the applicable legislation.</p> <p>Simplification of the access to tender documentation</p>	This is a second major point which should be duly observed when developing Terms of References (ToRs); it points at the need that in order to ensure fairness it might be best if the EGTC involves procurement experts from both MS in order ensure the fair access for regional SMEs from both MS
Tender phase and selection	<p>Giving sufficient time to draw up tenders.</p> <p>Putting emphasis on value for money rather than on price.</p>	In some MS there is a tendency that the national procurement laws restrict the options to consider value for money as the guiding criterion thus implicitly favouring the price competition; however this is not in all cases a disadvantage for SMEs which are often more flexible in this regard

Source: guidance document to the Small Business Act Survey.

Summary – EGTCs acting in Public Procurement (PP)

The PP Directive and the EGTC Regulation form a clear legal basis for the approach to PP in case of an investment. In case of a major investment procedures are aligned at European level. In case of procurement below the thresholds set out in the PP Directive the overarching principle of transparency – next to the principle of diplomacy - makes fair and open procedures a necessity. Implicitly such an approach should also consider the technical and qualitative aspects which make the procedures fair for SMEs.

Another important point is that for investment financed from ESIF the requirements related to PP procedures are particularly high in terms of compliance with all procedural aspects but also in terms of documentation: PP is one of the most frequent sources of financial corrections in ESIF, thereby having in most cases significant financial impact. The national control and audit systems have reacted to that and have implemented quite rigid control standards.

Beyond these obvious aspects which point at the need for a particularly careful approach to procurement in the context of an EGTC its role as stable framework for cooperation could be used in order to support the use of PP as an instrument for innovative approaches such as green procurement or procurement considering life-cycle cost. In case the MS involved in the EGTC have different levels of expertise the room for flexibility as provided in the PP-Directive could be used: according to the Directive the provisions related to PP of an EGTC can apply unlimited or for a limited period or for specific type of contracts etc. A prerequisite is, that the Convention of the EGTC allows for flexibility in this regard.

Even this rather sketchy summary of PP in the context of EGTCs makes it obvious that – when considering an investment - in-house experience with public procurement would be an obvious asset.

3.2 The role of the EGTC’s Convention

Options in accordance with the EGTC Regulation

In case an EGTC plans an investment or is set-up with the purpose of an investment several options to anchor the key provisions on the investment exist.

The table below outlines the main options:

Table 12. Main options for EGTCs to anchor key provisions on major investment activities

Option	Key aspects
Convention	<p>The key document which ranks highest in the hierarchy of documents.</p> <p><u>Strength</u>: anchoring the investment plan there represents the strongest commitment and many mandatory elements of the Convention are essential in case of an investment plan (in particular the objectives, tasks, duration, applicable national law, liability, financial control).</p> <p><u>Challenge</u>: the Document is subject to approval by the MS where it is registered.</p>
Annexes, side letters to the Convention	<p><u>Strength</u>: in order to keep the Convention as the lasting overarching element of the EGTC unchanged, even in case of necessary amendments or specifications this option could be useful; such annexes adopted by all partners of the Grouping and subject to notification of the MS concerned still represent a strong commitment.</p>
Statutes	<p>The list of mandatory elements of the Statutes⁹¹ point at the intent to focus on the internal proceedings to ‘make the EGTC work’ such as decision making or the arrangements for functioning.</p> <p>Thus the Statutes seem to be less of interest with a view to a major investment with one exception: it should include the arrangements for its member’s financial contributions, which is of major interest in case of investment financed from ESIF and the long periods of pre-financing required.</p>
Contracts	<p><u>Strength</u>: contracts between members of the Grouping on specific aspects of the investment increase the flexibility and might be supportive in cases where rather timely operative decisions and agreements are needed – such cases could be contracts related to mutual obligations during the construction phase or related to maintenance and operation.</p> <p><u>Challenge</u>: the possible scope and purpose of such contracts should be subject to clear and transparent rules set up at the level of the EGTC; the Statutes should clearly define which organs of the EGTC are in principle entitled to decide on respectively to conclude contracts as well as the scope and the financial limits of the contracts.</p>

Source: own considerations.

A second major point to be considered is that the involvement of the EGTC in the investment activity may vary. A stepwise perspective of increasing involvement could be as follows:

⁹¹ In accordance with Article 9 of Regulation (EU) 1302/2013.

- Planning, strategy.
- Investment preparation including technical design and developing the tender documents.
- Contracting and implementation of the investment.
- Operation and maintenance.

The more of these steps are in the hands of the EGTC the more the investment will dominate the portfolio of the EGTC. The mandatory scope of the Convention is stipulated in the EGTC-Regulation and many of the elements are essential for a major investment activity.

Examples of relevant clauses in existing EGTCs

The two major examples of EGTCs which have the explicit objective to manage infrastructure have the following scope of action:⁹²

- Hospital of Puigcerdà: plan, build and operate a hospital with 64 beds.
- Portalet/Pourtalet: management of the border crossing in the Pyrenees – an existing mountain pass road with a length of about 56 km, in particular the maintenance of the road (state of the road and in particular the maintenance during winter months).

The EGTC Hospital de la Cerdanya illustrates the long preparatory phases which have been required for the development of the project – the intense phase lasted from 2007 to 2014:

- Upon initial intents in the late nineties of the last century, finally in 2008 a framework agreement on cross-border cooperation in health had been set, which was followed by a more detailed agreement for improved access of the population to medical facilities which prepared the ground for the establishment of the EGTC and the Facility.
- In parallel the development of EGTC gained momentum from the first declaration of intent in March 2007 over the start of the EGTC in 2010.
- The Facility was constructed and equipped in the period from 2010 to 2014.

The detailed overview and analysis of the Convention and the Statutes can be found in Annex 1 to this Study.

⁹² Cf. Metis 2014.

General findings derived from the detailed analysis are:

- The Convention and Statutes of the EGTCs are in many regards showcases of diplomacy and include quite elaborate systems of checks and balances – a fact which is mirrored in the staffing of the main organs and the mutual assignment of control tasks and in general a policy of open books and accounts.
- The examples show that in particular the operational targets and tasks should be thoroughly discussed and reflected.
- The prospect of the management of assets leads to additional considerations on targets and tasks in the different phases of the investment as well as for the later stages of operation and maintenance.
- The example of the Hospital de la Cerdanya anchors an overarching principle in the event of dissolution: the operation of the facility must not be suspended.
- Both examples Hospital de la Cerdanya and Espacio Pourtalet are EGTCs for which investment respectively operation and/or maintenance of infrastructure is the main *raison d'être* – but still in both cases a wider element of cooperation has been added; in the end this is in both cases the support to development activities in a wider territory.

Summary: key aspects to be reflected in the Convention and Statutes

The following table presents the mandatory elements of the EGTC’s Convention⁹³ and the key aspects which should be considered when intending a major investment project.

Table 13. Mandatory elements of Convention and Statutes relevant for investment projects

Element	Implications for investment projects
Convention	
Objective and tasks	<p>The place where the actual involvement in the investment activity should be defined in order to document the mutual interest in the investment.</p> <p>At the same time – as the example of the Hospital de la Cerdanya shows – it is useful to clearly define all operational targets and tasks in order to define the scope of action and the legal capacity of the EGTC related to the investment.</p>

⁹³ Cf. Article 8 of Regulation (EU) 1302/2013.

Element	Implications for investment projects
Duration conditions for dissolution	It is evident that in case of a major investment and a far-reaching commitment the conditions for dissolution as well as legal succession and/or cession should be subject to an intense debate; one of the examples which has been analysed points at the need to take also precautions for a smooth transition in case of a dissolution.
Applicable national law for the interpretation and enforcement of the Convention	Could be the MS where the EGTC has its registered office: from a pragmatic point of view it will lower the complexity of audit and control arrangements and might also speed up the approval process.
National law directly relevant to the EGTC's activities as set in the Convention	<p>In case of a major investment intent this is the place to settle the provisions on PP. In accordance with the PP Directive there is room for flexibility in particular as regards specific types of contracts.</p> <p>Two points deserve attention in order to guide the discussion process towards the most effective approach:</p> <p>The <u>character of the investment</u>: this might vary to a huge extent between a road connection, a bridge crossing a border river or a cross-border hospital. In some of the cases sub-projects might be defined (e.g. in case of a bridge with access roads) in other cases it is evident that there is just one set of construction activities (e.g. one building).</p> <p>The <u>backing with substantiated procurement expertise</u>: an obvious asset from a pragmatic perspective is the availability of long-standing practical experience with PP and works contracts related to the particular type of investment.⁹⁴</p> <p>In addition the specificities of the funding source ESIF should be duly considered: two examples explicitly refer to the specific conditions for projects financed from ESIF and in particular from ETC. This has become even more important in the period 2014-2020: in particular the Eligibility Rules set up at programme level⁹⁵ in principle prevail over national rules.⁹⁶</p>
Arrangements for liability of the EGTC and its members	<p>The general principles are laid down in the EGTC-Regulation.⁹⁷</p> <p>Liability is obviously a key point for concise provisions when it comes to financing an investment; in particular with a view to back up the</p>

⁹⁴ Works contracts for major construction activities are comprehensive and usually quite sophisticated contracts where national authorities performing regularly construction activities have ample expertise and contract models; also international standards exist – e.g. FIDIC accounts for high standards in contracting works.

⁹⁵ In accordance with Regulation (EU) 1299/2013, Article 18.2.

⁹⁶ Although in practice there will be hardly a contradiction to any national rule – still these rules might provide the shared interpretation of the options for simplification as foreseen in the CPR and the Delegated Act (481/2014) or might define important guidance for financial control performed by the designated controllers.

⁹⁷ Cf. Regulation 1302/2013, Article 12 but additional points might have to be considered such as proposed in Article 12: *The EGTC's members may provide in the statutes that they are to be liable, after they have ceased to be members of an EGTC, for obligations arising out of activities of the EGTC during their membership.*

Element	Implications for investment projects
	financial capacity as safe applicant for the provision of grants under ESIF. The provisions on liability are also essential when there is an intent for cross-funding consisting of ESIF and a loan from EIB.
Arrangements for mutual recognition and financial control	<p>Part of the profound expertise of the EGTC should be the know-how in accounting and financial reporting in line with the requirements of the respective ESIF-programmes; the EGTC's standards in accounting and control should be as close as possible to the standards of the financial control for the relevant ESIF-programme, be it as ETC or a national ERDF or CF programme.</p> <p>As both examples show it is advisable in case of investment funded from ESIF/ETC to anchor the specificities related to financial control in the Convention.</p>
The terms and conditions of the use of infrastructure	<p>This is easy in case of a road but in many other cases – which at a first glance might look simple - it still requires in-depth discussions.⁹⁸</p> <p>As the example of the Hospital de la Cerdanya shows the clarification of the terms of use might even be the pre-requirement for the implementation of the investment.⁹⁹</p>
Statutes	
Decision-making and organs competences	<p>It is evident that substantial decisions on the investment must be taken by the legitimate organ with the most comprehensive competences but it is also crucial to consider the decision-making in case of operative questions which might require faster responses.</p> <p>In particular the example of the Hospital de la Cerdanya shows the Executive Office as the operative engine for the day-to-day management of the investment.</p>
Arrangement for its members' financial contributions	<p>This is the obvious key element when considering a major investment activity.</p> <p>Investment funded from ESIF requires sufficient capacity to stand long periods of pre-financing until the reimbursement is done.</p>

Source: EGTC-Regulation, own considerations.

⁹⁸ As can be shown from the example of a pedestrian and cyclist bridge over the border river March/Morava a lot of details had to be clarified: whether the bridge is a border-crossing point in the sense of the Schengen agreement, the use by emergency cars, people in wheelchairs and carriages.

⁹⁹ Without prior agreement on the terms of payment for the medical treatments of citizens from both MS the Hospital could not have been built and operated as cross-border facility.

Summary – the role of the legal frame of the EGTC (Convention, Statutes)

A shared investment represents a strong (financial) commitment from the partners in the Grouping. If this is known at the initial stage of the EGTC one can expect that all parties involved will invest in due diligence to establish a stable framework for cooperation on a long-term basis. The legal frame of the Grouping is set up with the Convention and the Statutes. The Convention is now the key reference document which is subject to approval by the MS involved.

For an investment project all mandatory elements of the Convention and the Statutes are of major importance, just to highlight a few ones: in the Convention the objectives and tasks, the national law applicable to the activities, arrangements for liability and financial control have to be set out.

In a strict interpretation of the legal hierarchy the Convention of the EGTC prevails over the national law of the participating MS. In factual terms the room for manoeuvre in terms of derogations appears to be quite limited since:

- The convention is subject to approval by the participating MS, i.e. by national institutions which have to understand, assess and finally share the reasoning for any derogations from national laws – this might pose a risk for a quick approval procedure.
- If – what appears to be highly plausible – the investment is financed from ESIF, i.e. most probably from ERDF (ETC) the eligibility rules of the respective national ERDF programme or of the ETC programme have to be observed – and this means again to be confronted with a more or less national interpretation of the rules by the national financial control of the MS concerned.

A small room for flexibility is open due to the provisions of the PP Directive which explicitly allows for the EGTC to define the applicable procurement rule according to types of contracts.

In the Statutes the internal structure and the decision-making processes are defined. The internal structure of the most prominent example of a Grouping dealing with infrastructure investment and management reflects in particular the need to have a small dedicated operative unit. It needs a unit which can take efficiently and effectively charge and deals with the numerous day-to-day questions during the investment process.

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Annex 1

Detailed analysis of the Convention and Statutes for the EGTCs Hospital de la Cerdanya and Espacio Pourtalet

It is important to note that the examples below have been developed when Regulation (EU) 1082/2006 was in force. The former EGTC-Regulation did foresee different minimum contents for the Convention and the Statutes.

The table below illustrates how provisions on investment have been anchored in the Convention respectively the Statutes.

Table 14. Detailed Analysis of the Conventions and Statutes of the EGTCs Hospital de la Cerdanya and Espacio Pourtalet

Element	Examples of Conventions and Statutes <i>EGTC Hospital de la Cerdanya</i>	Examples of Conventions and Statutes <i>EGTC Espacio Pourtalet</i>
<i>Convention</i>	<i>April 2010</i>	<i>May 2011</i>
Objective and tasks	<p>Clear target to open as soon as possible a cross-border hospital in Cerdanya/Cerdagne.</p> <p>Mission statement:</p> <ul style="list-style-type: none"> ▪ Construction. ▪ Operation. ▪ Management. <p>To set-up an operation and business plan, to finance the works and purchase of equipment.</p> <p>Also major elements to engage all possibly interested stakeholders and to disseminate.</p>	<p>In principle the EGTC can act also in the entire territory [autonomous region Aragon (ES) and Pyrénées-Atlantiques (FR)] in order to implement cross-border projects.</p> <p>The key objectives are formulated as follows:</p> <ul style="list-style-type: none"> ▪ Adequate maintenance of the mountain road over the pass Pourtalet (1,800 metres of altitude) – a border-crossing road with a total length of 56 km. ▪ Programmes, projects and activities in tourism, accessibility and cultural heritage.

Element	Examples of Conventions and Statutes <i>EGTC Hospital de la Cerdanya</i>	Examples of Conventions and Statutes <i>EGTC Espacio Pourtalet</i>
Specific objectives and tasks related to the investment	<p><u>Statutes:</u></p> <ul style="list-style-type: none"> ▪ Purchase, possession of mobile and immobile assets and the right of ownership. ▪ Conclusion of contracts, request for guarantees, loans and grants. ▪ Exercise the legal capacity in the frame of the public assets. ▪ Preparation of real estates for construction. ▪ Preparation and implementation of construction works, improvement and enlargement of health centres. ▪ Cooperation with public and private bodies from ES and FR in the framework of agreements and contracts. 	<p><u>Statutes:</u></p> <ul style="list-style-type: none"> ▪ To keep the road in a good state of repair and properly maintain it. ▪ To conclude contracts on staff, works, services and equipment. ▪ To cooperate with Spanish and French public or private legal entities in the framework of contracts and agreements.
Operation	EGTC is also in charge of facility's operation: provision of ambulatory and hospital services but also work on regional health strategies and plans	No specific clauses but the main <i>raison d'être</i> of the EGTC is the maintenance of the mountain road
Duration conditions for dissolution	<p>Unlimited duration.</p> <p>It is explicitly anchored in the Statutes that in the event of dissolution all parties see that this has no adverse effect on the medical services rendered by the Facility.</p>	<p>10 years with an option for prolongation (same period).</p> <p>Might be dissolved in mutual consent or if period expires; but also if objectives cannot be reached</p>
Applicable national law for the interpretation and enforcement	Legislation of State and Catalonia; but without prejudice to eventual application of EU-legislation or French legislation of deemed appropriate.	Spanish legislation.

Element	Examples of Conventions and Statutes <i>EGTC Hospital de la Cerdanya</i>	Examples of Conventions and Statutes <i>EGTC Espacio Pourtalet</i>
National law directly relevant to the EGTC's activities as set in the Convention	<u>Statutes:</u> Reference to EGTC-Regulation 1082/2006 and provisions in the Convention; in principle the most expansive legal capacity in accordance with Spanish and French legislation.	Not specified.
Thereof procurement	Spanish Act on procurement (with a specific clause on EGTC referring explicitly to EU-legislation).	No specific provisions neither in the Convention nor in the Statutes.
Arrangements for liability of the EGTC and its members	<u>Statutes:</u> The EGTC is liable for debts; the liability is apportioned to the Members of the EGTC according to shares as stipulated in the Statutes.	<u>Statutes:</u> In accordance with Article 12 of Regulation (EU) 1082/2006 the Members will be liable for debts of the Grouping pro rata in accordance with their shares in financial participation (50/50).
Arrangements for mutual recognition and financial control	Financial audit and control is in hands of the respective Catalan authority - information to French counterparts is explicitly foreseen. <u>Statutes:</u> In case of EU-funding the provisions on the control of EU-funding prevail.	Financial audit and control is in hands of the respective Spanish authority. Budget and annual accounts will be subject of an external audit. The financial control will respect the French provisions for financial control of <i>Collectivités Territoriales</i> . <u>Statutes:</u> In case of EU-funding the respective EU-Regulations will govern the control.
Statutes	Established in April 2010	May 2011
Decision-making and organs	<ul style="list-style-type: none"> ▪ <u>Management council</u>: agrees on master plan and adopts multi-annual action plans; the latter containing the 	<ul style="list-style-type: none"> ▪ <u>Assembly</u>: approval of budget and accounts; of purchase and sale of assets, of contracting of works, services and

Element	Examples of Conventions and Statutes <i>EGTC Hospital de la Cerdanya</i>	Examples of Conventions and Statutes <i>EGTC Espacio Pourtalet</i>
competences	<p>budgets for investment; approves also the management of services; decision on budget and approval of annual balance sheet; major staffing decisions and approval of plans and designs for the investment and designation of an independent external auditor; some of the functions may be delegated to the Executive office; decisions are taken by simple majority.</p> <ul style="list-style-type: none"> ▪ <u>Advisory Council</u>: mainly in charge of the territorial health project; no direct involvement in the investment activity. ▪ <u>President and Vice-president</u>: governing the sessions of the Management Council but also establishment of Working Groups. ▪ <u>Executive Office</u>: established in order to provide flexibility and safeguard efficiency and headed by a managing director; in the end the Office develops the plans and strategies and proposes it to the Management Council; management of contracts and capacity to act as party to the contract; capacity to take up loans; take measures in order to guarantee the optimal functioning of the hospital. 	<p>equipment; of financial liabilities such as loans; the designation of external auditors; decisions are taken by qualified majority (two thirds)</p> <ul style="list-style-type: none"> ▪ <u>President</u>: proposes the annual activity plans to the Assembly ▪ <u>Director</u>: legal representation, preparation of activity plans and budgets; financial management
Arrangement for its members' financial contributions	<p><u>Statutes</u>:</p> <ul style="list-style-type: none"> ▪ <u>Investment</u>: clear-cut split related to a maximum of 31 MEUR for investment; the split refers to the national match-funding excluding EU-funds (60/40); also provisions in case the intended amount for investment is exceeded. ▪ <u>Operation</u>: cost for medical services are in principle taken 	<p><u>Statutes</u>:</p> <p>Cost-sharing on an equal basis; in case of decisions on investment the members will respect the decisions taken by the respective organs of the EGTC in conformity with EU, Spanish and French legislation.</p>

Element	Examples of Conventions and Statutes <i>EGTC Hospital de la Cerdanya</i>	Examples of Conventions and Statutes <i>EGTC Espacio Pourtalet</i>
	over by the health insurance of the persons treated; the details for reimbursement of costs with French health insurance are subject of a separate technical agreement.	

Source: Conventions and Statutes of the EGTCs.