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Status and Perspectives of Territorial Cohesion with
Respect to European Spatial Development Policy (ESDP)

- Normative and Governance Aspects-

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2 Status and Perspectives of Territorial Cohesion with Respect to European Spatial Development Policy (ESDP) - Normative and Governance Aspects

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Introduction

Treating ‘Territorial Cohesion’ (TC) is similar to Plato’s cave parable: *you are watching phenomena, like shadows on the wall of a cave, which could be interpreted in one way or another; but you cannot perceive the reality hidden from you which causes these phenomena on the wall.* Contrary to political demands for more transparency in European policies and more opportunities for the involvement of citizens, the insight into TC policy procedures appears to be widely secluded from the public and even hidden from research interests, and perhaps from many official experts involved in the debates as well. When lengthy procedures have come to an (interim) end and formal, political decisions have materialized in final (conference) documents which are submitted to the public, and are hence available to the scientific community, it is too late in most cases for any public or scientific involvement in the procedure and its results.

Due to EU finances – e.g. ESPON projects – there is a lot of research, but attributions to the transparency of the scientific and political implications are restricted. Politically, the EU channels the results, in particular by financing only limited research mandates, through influencing the time of publication of the results, and by using the research findings in a politically selective manner. For example, comparing studies on the governmental systems of various member states sometimes provides a rather simplified (‘standardized’) view of the constitutional, administrative and legal internal structures of these member states, but rarely illustrates how the systems work in their complexity, or provides a more sophisticated base for comparative considerations. Research information has increasingly become an important policy control tool that the EU gets involved in and then politically tries to control areas of competence and administration normally managed by the member states and not primarily by the EU. In particular, territorial cohesion-related political areas such as regional/spatial planning and urban policy are an example of this problem.

Even the sophisticated research now available in the wide ocean of internet information sometimes produces only irrelevant and outdated findings. The access to and freedom of information does not apply to EU practices. Many freely distributed information sheets and brochures only allow for a politically channelled,

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sometimes rather outdated view. It is the same with relevant documents with respect to the current *Status and Perspectives of Territorial Cohesion* in the EU, to those which are cited, mentioned and referred to in this paper. Existing deficiencies in information can only be balanced based on respective presumptions or even on speculations in many cases.

2.1 Main Sources of Information

The European Treaties and the European Constitution as a primary basis for TC

The primary basis for normative and governance aspects of TC are the European Treaties. On the one hand there is the important Treaty of the European Community (TEC).² On the other hand there is the Draft of a Treaty Establishing a Constitution, 2003 (DraftTCE).³ The latter might have been useful for prognostic purposes but must be considered as having currently failed.⁴ The TCE nevertheless provides information about what the probable content of a future European Constitution based on a new or modified approach shall be. Specifically referring to the aspect of spatial development policy, a document of great relevance is the European Spatial Development Policy (ESDP).⁵ This programme is currently in a transitional stage and will be expire soon and then be replaced by a new policy approach. This stage is often called the post-ESDP-period. A pure amendment of the ESDP is not to be expected. Decisions have been made, however, which now assure a certain continuity with respect to the future development of the EU territory. A political ‘road map’ of the EU Cohesion/Territorial Cohesion Policy (‘Territorial Agenda’)⁶ is planned. It

² European Community (2001)

³ European Convent (2003) Draft of a Treaty Establishing a Constitution for Europe, submitted by the European Convent to the European Council in Rome in 2003 (2003/C 169/01) (DraftTCE)

⁴ Due do to a recent EC Council resolution (6/2006), the German Presidency has been commissioned to submit a report about how to revive the European Constitutional Procedure in 2007. This resulted in the Berlin Declaration on the occasion of the 50th anniversary of the Treaty of Rome in March 2007 looking forward ‘to a new legal base’ to be effective before the next European Election 2009. The new Portuguese Presidency already submitted ‘Draft Treaty’ documents amending the TEC to the Intergovernmental Conference (IGC) in charge of the treaty amendment on 24/07/2007. This reflects the new terminology applied avoiding any designation as constitution. In respect to the TC issue the new draft documents appear to take over the respective articles of the DraftTCE without major deviation.

⁵ European Spatial Development Policy (*ESDP*), finally adopted at the Potsdam Conference in 1999.

⁶ See Territorial Agenda of the EU, Guidance Note as of 26/06/2006, agreed upon at the Informal Ministerial for TC held in Leipzig on 25 May 2007. In reference to the separate document “Territorial State and Perspectives of the EU;” see below, footnotes 12 and 13.

was presented to the public in May 2007 during the German EU-Presidency. In this paper political definitions with respect to further Territorial Cohesion were given. So far, as the revision of the ESDP has to be implemented within the political realm of the Directorate General (DG) XVI of the EU Commission, it is legally based on its competence for the regional/cohesion policy. At the same time this policy has elements of a sectoral task, as it is connected to the complex regional/coherence fund system. But DG XVI politically is trying to extend this sectoral approach to a cross-sectoral political approach. Regional/spatial policy of DG XVI is primarily restricted to sectoral fund management, as the competence for a comprehensive spatial development policy remains, according to Art. 5, par. 1 TEC, with the Member States. Hence, the competence for spatial planning is not explicitly transferred to the Community. Various efforts, however, have been made by the Commission/DG XVI to overcome these restrictions and to extend EC competence to respective areas of competences in the realm of the Member States.

The legal base lies in a constitutional contradiction which, according to Art. 5 TEC, states that the EC is restricted to the competence explicitly attributed to it; but the EU/EC treaties provide clear legally defined areas of competence, orientate them with respect to the goals to be achieved by the EU, supported by emergency competence regulations.⁷

In the past the ESDP was worked out '*intergovernmentally*', but with participation and financial support by the Commission (DG XVI). As the EU Commission felt that it had no control of managing functions, the Commission (DG XVI) discontinued this cooperation, referring to reasons of 'comitology'. Within its proper competence the Commission (DG XVI) has prepared an ESDP discussion paper⁸ supported by national experts.

Other policy instruments of the Commission involve the preparation and publication of reports on cohesion policy, of which the 3rd Report on Economic and Social Cohesion⁹ is currently the most relevant, because it also deals with aspects of TC. A key role in the post-ESDP-process is played by a document which continues to be a subject of discussion.¹⁰ There are many versions of this, reflecting various disputes, agreements and unanswered questions between the (Informal European

⁷ David (1993) pp 1021-1029

⁸ Working Group on Spatial and Urban Development (SUD) (2003) Managing the Territorial Dimension of EU Policies after Enlargement, 1/9.2003

⁹ ECE (2004)

¹⁰ The preceding paper was the so-called "Mermaid Paper" (a result of a former Stockholm Conference). The present paper goes back to the conference of the above-mentioned Informal European Council, which is sometimes called the 'Informal Ministerial Meeting on Regional Policy and Territorial Cohesion', which took place on 29 November 2004 in Rotterdam and 20/21 May 2005 in Luxembourg. 'Informal' hints at the legal implication, i.e. the subjects discussed by the ministers (with attendance by the EU Commission) do not or at least do not totally belong within the EU's realm of competence, but are primarily within member states' realm of competence.

Council of) Ministers for regional/spatial Development and the EU Commission, represented in particular through the DG XVI. This document is called ‘Territorial State and Perspectives of the European Union – Towards a Stronger European Territorial Cohesion in the Light of the Lisbon and Gothenburg Ambitions’, hereafter referred to and cited as TSPDoc. There are various versions of this paper and it will be the base for the ‘Territorial Agenda of the EU’. It is currently incomplete and in the phase of being edited. The permanent status of the edition is not available free of charge on the internet because there are discussions between the national ministers, Member State governments and the Commission.

The 2005 version (hereafter cited as TSPDoc 2005) has been widely available to general researchers¹¹ and a more recent extended version is currently (September 2006) available, hereafter cited as TSPDoc 2006.¹² Although the general structure appears to be the same to a certain degree, there are nonetheless huge differences. The contents were more than doubled, to about 70 pages. A still incomplete framework of priorities and sub-priorities were developed. It appears as if the ‘stakeholder’ policy approach has been intensified in order to get control of spatial development-relevant sectoral actors on both the member states’ and EU levels.¹³ The shorter 2005 version is in many respects less confusing than the 2006 version, in particular as it provides a summary. The 2006 version is a more confusing than enlightening document, which has three organisational levels: parts, chapters and margin/text numbers and a table of contents without page references. Politically-speaking, the 2006 version certainly allows readers to draw a wide range of political conclusions from it and thus to reach a political consensus on it. In a way, the document contrasts with recently published, comparatively rigidly formulated EU-Regional Fund distribution guidelines, which otherwise do not reflect any influence derived from TSP documents.

¹¹ It was submitted by the (Informal) EU Council to the European Conference of Ministers responsible for regional/spatial planning – CEMAT and was published as CEMAT document CHF 83(2005) 14 (English only), although it is in substance of course an EU-Council Document.

¹² First Draft presented to all 25 EU member states on 6 June 2006, further developed by the Coming Presidencies Group - CPG/Editorial Group, to be presented to the CPG-meeting on 21 June 2006. The Territorial Agenda of the EU has been finally agreed on the occasion of the Informal Ministerial Meeting on Urban Development and Territorial Cohesion in Leipzig on 24/25 May 2007, based on an updated version of the above mentioned political background paper ‘Territorial State and Perspectives of the EU- TSPDoc’, see <http://www.bmvbs.de/en/Spatial-development-1876.963636/Territorial-Agenda-of-the-EU.htm>

¹³ An EU Stakeholder Conference under the Rotterdam Agenda on territorial cohesion with the title: *Territorial Cohesion and the Lisbon Strategy: Exploiting Europe’s Territorial Potentials*, Amsterdam, tried to get ‘stakeholders’ cooperation in June 2006.

The various levels of European spatial policy

It is necessary to distinguish between the various levels of European spatial policy. There is an older 'layer' based on a European Council legal basis. This will be widely disregarded here, as the respective CEMAT (European Conference of Ministers Responsible for Regional/Spatial Planning) primarily and politically concentrates on dealing with aspects of sustainability. Territorial Cohesion, however, is dealt with within the realm of member states through informal European Councils, held by the (EU) Ministers for Spatial Development under the EC/EU treaties. This informality derives from the fact that Spatial Planning was not within the EU's original realm of competence. CEMAT brings together a wide range of ministers (including non-EU, but European Council member states) who are responsible for regional/spatial planning. Concerning this, we will hereafter concentrate mainly on EC/EU law, organisation, and administration.

Within the EU/EC's legal and administrative structure, member states politically interact in two very different ways: within the organisational and procedural frameworks provided by the EU/EC treaties and its implementation by the Commission (e.g. in EU Commission- controlled sub-commissions etc.), and in areas of proper member state competence with more or less reference to EU/EC activities, independently in a so-called '*intergovernmental*' manner. Spatial planning is one of the member states' political activities, where they have the choice to get involved in terms of competence in one way or another, and where, respectively, the Commission/the specific DG in charge has to politically respond to this componential '*weakness*', as do other EU bodies (the European Parliament) and entities (the Committee of the Regions) as well.

The ESDP is, for example, an approach by member states and the Commission, where inter-governmental and the genuine EU/EC competence of the Commission were interrelated and brought to political decision making. Concerning various reasons discussed hereafter in more detail, this approach was discontinued by the Commission and therefore new organisational and procedural measures for TC are needed in the post-ESDP-period. A large change is due to the fact that organisational and procedural co-operation between the Commission and member states, as earlier applied for during preparation of the ESDP, has substantially changed since the final adoption of the ESDP in 1999 (see below, 2.4). The distribution of power and competence between the EU and member states is only one of various issues and not even the key aspect when the governance issue is raised. Governance covers a wide range of aspects, as European policy¹⁴ has to be run and implemented in a complex multi-level governance system. There are various EU-mandated research approaches which provide a comparative view of the situation, but politically and scientifically it is not clear what standardised consequences have to be derived from the stated multi-level structure.

¹⁴ ECE (2001)

2.2 Terminology applied

Territorial cohesion within the trilogy of economic, social, and territorial cohesion

The terminology used in official documents and in various research papers is not at all consistent. Only selected aspects can be focused upon here. Obviously, territorial cohesion is just one aspect of the terminological trilogy of economic, social, and territorial cohesion which is addressed in Art. I 13, par. 2 DraftTCE as an area of (future) shared EU competence. It is difficult to say whether the territorial aspect is adding something new to economic and social cohesion or whether it is already contained in these two aspects. The TSPDoc¹⁵ rather indefinitely designates TC as an integral part of economic and social cohesion. Therefore TC cannot be interpreted by its wording alone. There is a need for additional consideration of the legal background of the distribution of competence.

As mentioned before, the competence issue is rather complex. The distribution of power between the Commission and member states is just one aspect. The issue is further related to inner-constitutional structures: with respect to other European institutions, e.g. the European Parliament (EP), the member states' federal/central state structures and, additionally, even to that of their inner-governmental structures related to the various ministerial departments involved, and their regional and local structures etc. This complexity has to be taken into account, even though it is in many respects not under direct EC law control and influence.

Territorial cohesion policy - objective or instrument?

A further complication arises from the biased character of TC as a policy objective and as an instrument or a policy tool. It is not uncommon in planning that, depending on consideration of the various levels of legislation, government and administration objectives and tools change their quality.

TC as a policy objective has to be considered as depending on higher ranking political objectives, like the following:

- *'Lisbon and Gothenburg Ambitions'* with a territorial dimension, such as:
 - Exploiting the endogenous potential of an area, including natural and cultural values
 - Promoting an area's integration and connectivity to other areas
 - Territorial governance: promoting horizontal and vertical coherence

- The fundamental EU goals of *'economic and social cohesion, conservation of natural resources and more balanced competitiveness of the EU territory in a territorial setting'*¹⁶

¹⁵ TSPDoc (2005) p 4

¹⁶ ESDP (1999)

- The ESDP principles:
 - Development of a balanced polycentric urban system and new urban partnerships
 - Securing parity of access to infrastructure and knowledge
 - Sustainable development, prudent management
 - Protection of nature and cultural heritage.

From this set of higher ranking objectives and goals, three specific strategic policy objectives for strengthening TC are identified by the EU Ministers for Spatial Development and the Commission,¹⁷ which have to be translated into more specific priorities:

- Improving the strength and diversity of urban centres/networks as motors for territorial development
- Improving accessibility and territorial integration
- Preserving and developing the quality and safety of Europe's natural and cultural values/developing sustainable urban-rural linkages,
- All with special regard to strengthening the territorial capital of areas with weak economic structure/physical or geographical handicaps

The instrumental aspect of TC covers the wide range of territory-related (spatial or territorial) development policies. They are only within the realm of the ministers for spatial planning to a certain extent, but are to be implemented by various political 'stakeholders'.

Member states | commission | stakeholders

TC reflects the difficulty of coping with the political intention to co-ordinate/control without having the respective legal competence. In this situation there can only be an appeal to voluntary subjection of the addresses, and the EU tries to achieve this through budgetary incentives. The TC conceptually follows these control potentials. The strategy of the future EU Cohesion Policy will play a key role within the European Territorial Cooperation (ETC) strand.¹⁸ This implicates an informal approach of bringing existing stakeholders in line with TC based on analyses and priorities of elaborated assessments of '*territorial state and perspectives of the EU*', which are considered to be finally adopted in the concentrated form of '*Territorial Agenda*' mentioned above.

The member states' ministers who are responsible in their respective countries will meet in Informal Ministerial Meetings on Regional Policy and Territorial Cohesion, as they have done in May 2007 in Leipzig. They are well aware of the fact that they are not masters of the "*Territorial Agenda*" procedure. They do not have

¹⁷ TSPDoc (2005) p12

¹⁸ TSPDoc (2005) p 21; TSPDoc (2006) p 74

a “formal obligation or incentive to take the territorial impact in account into the EU policy process.”¹⁹ They rely on a so-called ‘*evidence-based*’ approach and the aforementioned ‘*stakeholder approach*’, with respect to their internal governmental structures and to the EU organisational structure. The Commission was asked to create an accountable contact point for territorial cohesion and for integrating the territorial impact into the EU policy development. This could be implemented through an impact assessment procedure and inter-service consultation (which refers to political co-ordination of the various DGs involved). This obviously reminds one very much of the strategies applied in the past to establish controlling powers for EU environmental policy.

Territorial cohesion – European spatial development policy

To a certain degree, TC is taking over the role of spatial development policy in the post-ESDP-process. In respect to the ambiguous distribution of powers and competence in the relevant fields of politics within the realm of the EU and member states, both TC and ESDP illustrate the same feature, i.e. that the borderline between both areas of competence is difficult or even impossible to draw due to their overlapping and competing structures. The unsolved overlapping of powers and competence (including a shared exercise, which does not precisely say where to draw the borderline) applies as well to TC.

2.3 Expanding Territorial Cohesion in the constitutional Debate

Current legislation: Art. 16 TEC

The terminology of ‘*territorial cohesion*’ is already contained in Art. 16 TEC (Nice version)²⁰, but in a slightly different context, as it is applied in Art. I 13, par. 2 DraftTCE. Under the current EU legislation the aforementioned Art. 16 TEC applies to a specific aspect of EU policy: services of general economic interest.²¹ This regulation has gained great political importance in some member states, such as France, whereas in other countries, for instance in Germany, this regulation has never become a large issue of spatial development policy. In the German language this may be partly related to the following reasons: On the one hand “territorial” has a linguistic parallel to the French general and specifically administrative-legal language. On the other hand ‘*territorial*’ e.g., in the context of (GDR-) “Territorialplanung”, has always been terminologically avoided in documents in the Federal Republic of Germany, in particular because the German language has a proper linguistic equivalent (“Raum”, “räumlich”, “Raumordnung”, etc.).²² In

¹⁹ TSPDoc (2006) p 71

²⁰ A respective regulation has become part of Art. 36 European Charta of Basic Rights, and as such has been transferred to Art. II 36 DraftTEC

²¹ see Doc. Com/2000/0580 final

²² see David (2005a) pp 1151ff

any case, these general economic services are very close to the spatial planning policy aspects of providing equal conditions in spatial infrastructure (traffic, communication, education, etc.). Otherwise it is not easy to determine how closely Art.16 TEC is connected to the wide range of cohesion competences regulated in Title XVII (Economic and Social Cohesion). This title, comprising the Art.158-173 TEC, primarily forms the legal basis for the regional/cohesion policies within the realm of DG XV. Thus, under the current TEC legislation, TC is not an explicit part of social and economic cohesion. Nevertheless the DG XVI tries to include TC in its political activities, but it ostensibly does not want to provoke conflicts within the proper realms of other DGs or of the member states. An advantage for co-ordination efforts is that the addressees of the co-ordination are at the same time probable beneficiaries of the (regional/cohesion/urban policy) funds, which are distributed under the responsibility of DG XVI.

Territorial Cohesion in the Draft of a Treaty Establishing a Constitution for Europe (DraftTCE)

The DraftTCE transfers the regulation of Art. 16 TEC to Art. II 36 DraftTCE²³, but expands TC further to the pivotal regulations respective to the goals and distribution of competence:

- Determination of additional constitutional goals: to promote ‘territorial cohesion’ (Art. 1, par. 3 DraftTCE: “it shall promote economic, social and territorial cohesion [...]”)
- Determination of an explicit (shared) competence in the ‘principal area’ of “economic, social and territorial cohesion” (Art. I 13, par. 2, Art. III 116 DraftTCE)

The regulations of Art. III 116 – 120 DraftTCE which would replace the current Art. 158 – 162 TEC consequently include TC as part of a threefold cohesion policy explicitly covering economic, social and territorial cohesion. In the view of the Commission, the new Constitution would have transferred “a more stable and less disputable legal base for its political and administrative work” to DG XVI. At any rate, in respect to both the other DGs and to the member states, the legal situation under the new Constitution would not be substantially changed.

²³ Art. II 36 DraftTCE: “The Union recognises and respects access to services of general economic interest [...] in order to promote the social and territorial cohesion of the Union.”

2.4 Main Facets of the TC-Issue

The need for co-operation, given the undetermined distribution of power and competence

Territorial Cohesion is related to a set of objectives and goals on various levels of abstraction, which need to be specified and implemented by both co-ordinating (cross-sectoral) and sectoral instruments in the competence of a wide range of public and private-sector actors, which in official policy documents are sometimes called *stakeholders*.

The role of the EU Commission, in particular DG XVI, and the EU Ministers who are responsible for regional/spatial development, is specific to the issue of TC as both have related powers and competences in the field of spatial development. A wide range of powers and competences undisputedly remains with the member states;²⁴ but significant powers and competences with regard to budgetary funding remain in the EU. There is, however, a disputed, overlapping area of power and competences, which, for various reasons, remains explicitly undetermined in the mutual interest of all concerned.

'Comitology' earmarks a fairly new general strategy of the Commission; the argument being that harmonising EU internal organisational and procedural structures would simplify and make more transparent the existing system of various different types of participation/co-operation. The TC debate was consequently linked with these new organisational structures and brought this new comitology philosophy²⁵ into line, in order to attribute a better managing control to the Commission.²⁶ Member states, however, followed the new line and took up their collaboration in the new committees and kept their intergovernmental independence by continuing the post-ESDP-debate in an organisational structure attributed to an 'Informal EU Council of Ministers for Spatial/Regional Planning'.²⁷ The Ministers continued their work, in spite of a refusal of financial and bureaucratic support by

²⁴ This is why conferences of these EU Ministers are designated as meetings (sometimes as 'informal meetings') of the '*Informal European Council of Ministers responsible for Regional/Spatial Planning*', as regional/spatial planning is not considered a proper EU competence, substantially belonging to the competence of member states. The designations are rather ambiguous as are the translations into EU-membership-languages. See further 'Resp. to Ambiguity', Arnim v. (2006) Das Europa Komplott, Wien, p 48, referring to the multitude of organisational forms of activity under the designation of the European Council.

²⁵ TSCdoc (part. C, chap.5, subs.7) p 21. The present version of the document is discussed by the CPG (Coming Presidents Group), and by the Informal Conference of Ministers for Spatial/Regional Planning (supported by an editorial unit). The CPG represents in particular the member states in charge of past, present and coming EU presidencies. It co-ordinates the content, and prepares graphics and maps etc.

²⁶ Sub-Committee on Spatial Development-CDRC SUD. SUD is the author of the above-mentioned (see footnote 7) expert document

²⁷ see footnote 24

the Commission. The editorial work on the aforementioned TSCDoc is a substantial result of this continuity, but is currently, as mentioned, still in a draft status.

For both the EU and the member states TC is not at all an isolated policy aspect. It is a co-ordinating and controlling policy within the context of other related legal and political principles, goals, objectives and procedural/organisational measures. Thus far, TC must be understood in a dialectic way, where clearness and ambiguity are mixed. Scientific research and terminology cannot determine a strict borderline between sectoral and cross-sectoral aspects. Approaches to determining whether European Development Policy should be interpreted according to a German, French or a third, perhaps Dutch, conceptual understanding²⁸ cannot distinctly be related to one member state's philosophy, because European Development Policy comprises elements of all of them. It has various elements with a changing structure over the course of time. It is in the member states' interest to avoid too much regulation, and to keep the TC a flexible instrument.

Non-monolithic structure of the key actors

In particular, it is the financial tools of the EU coherence policy, with substantial EU budget resources distributed through a sophisticated EU funding system, which changes TC from an idealistic concept into a policy with a rather strong political impact. In this respect TC is connected to funds collection and distribution, in terms of the organisation, procedures and policy (e.g., the basic principles to be applied) on all legislative and governmental levels (for the budgetary context see below 2.4; for the governance context see chapter 2.5).

Neither the EU nor its member states should be considered as monolithic bodies. Inside of their governmental structures various bodies/organs/administrational entities equipped with a considerable amount of independence due to their constitutional status (according to the EU/EC treaties) are involved in the legislative and administrative process. They used to have controversial positions due to their political power-conserving interests. On national and supra-national levels this needs to be balanced before agreements can be reached, or it can even lead to failure and in most cases to '*package solutions*' which sometimes reflect political compromise rather than rational considerations.

Budgetary context

Thus, the issue of TC was substantially connected to a compromise for the proportion/percentage of the member states' budgets to be contributed to the EU-budget, forming the financial base for feeding the EU regional/cohesion funding system. In member states such as France and Germany, a restriction on annual national contributions to the EU budget under the inner-governmental responsibility of the respective Ministries of Finance had important effects on member states' spatial policies, by overriding and controlling the policies of the respective ministers in

²⁸ David (2004) pp 146ff; AIDRU (2005) pp 181-194

charge of spatial planning (France: “Aménagement du Territoire”; Germany: “Raumordnungsminister”).²⁹ On the other hand, the Ministers of Finance’s political interest in spatial planning/development boosted its usually weak political position, in particular in its function as a cross-sectoral co-ordination tool.

The inner-governmental responsibilities for spatial planning should be identical with the responsibility for urban and regional planning. This varies from member state to member state, and is dependent on the inner-governmental distribution of responsibilities between the various ministerial departments. Thus, in Germany, urban affairs are together with spatial planning (“Raumordnung”) in a ministry bundling responsibilities for transport, construction and urban affairs³⁰. Regional economic planning (“regionale Wirtschaftspolitik”), however, is administered by a different department³¹ and, of course, the substantial budget responsibilities are under the control of the Ministry of Finance. The fact that the Foreign Office is in charge of EU representation makes it even more obvious that the internal decision-making process concerning spatial planning issues by member states is loaded by inner-governmental conflicts and controversies. In most cases there is no public notice or information.

2.5 Governance Aspects of Territorial Cohesion

In the TSPDoc³² the governance issue is addressed in the broad definition of the scope of TC as ‘governance philosophy’, describing the concept of how TC could be implemented within the framework of ‘territorial governance’. This refers in particular to the distribution of rules and responsibilities among the different levels of government (supra-national, national and sub-national) and the underlying processes of negotiation and consensus building.³³ In addition to this, however, the internal structures of EU and member states’ institutional bodies and sub-bodies are part of the governance issue.

²⁹ David C H (2005)

³⁰ “Bundesministerium für Verkehr, Bauen und Wohnen” (Federal Ministry of Transport, Building and Urban Affairs). Spatial planning appears neither in the German nor in the English designation of the ministry and has a sub-departmental status in Germany.

³¹ Bundesministerium für Wirtschaft (Federal Ministry of Economics).

³² TSPDoc 2005/2006, Part A: Defining the Scope, 1. Territorial cohesion and the added value of territorial development policies – governance policy.

³³ OECD (2001) p 135 and p 142

Translation of policy concepts into tailor made policies for territories

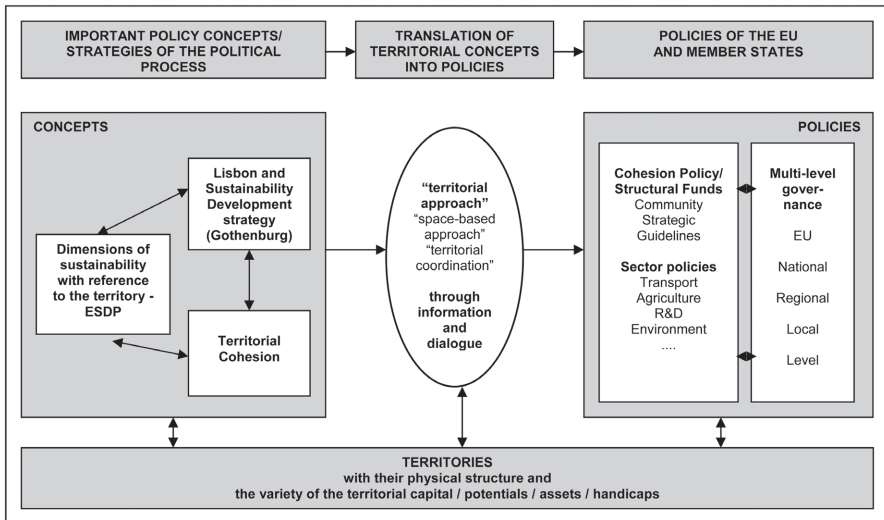


Fig. 1: Diagram taken from the TSPDoc; in TSPDoc 2006 it is not included anymore. Source: TSPDoc (2005) p 11

The diagram shows the ambition of EU cohesion policy to be extended to multi-level governance (EU, national, regional, local level); in particular involving the relevant sector policies (transport, agriculture, R&D, environment, etc.). This strategic approach is very similar to the environmental policy approach, but differs insofar, as that up to now territorial cohesion has not had the explicit powers legally requiring cross-sectoral consideration that environmental policy does.

The Commission, in particular DG XVI, expects that if a formal shared competence of the Union and member states would be created through the ratification of the EU Constitution, this would strengthen the European mandate for TC, thus backing the responsibility to promote a coherent approach to territorial development by both the EU and national policies. The governance philosophy behind this is that the Constitution would not substantially change the situation of the allocation of competencies, but might allow the Commission to interpret the explicit shared responsibility as a mandate for more structured EU (i.e., Commission-run) initiatives.³⁴ The Commission's current TC argumentation is under strong political pressure caused by the constitutional debate, with regard to the application of the principle of subsidiarity.³⁵ Thus, the Commission avoids initiatives which could clearly be interpreted as a political approach to expanding EU responsibilities to

³⁴ TSPDoc (2005) p 13

³⁵ See the protocol on the application of the principles of subsidiarity and proportionality amending the text of the Constitution, derivative of EU 2003/ C 169/95, 18.7.2003; see further: David (2005a) pp 1129-1134

the disadvantage of the existing member states' responsibilities. The Commission therefore restricts itself to inner (EU) organisational approaches, which are without doubt within its realm. Although EU internal ('inter-service') co-ordination of the various EU policies with territorial impact is explicitly addressed as an object of TC policy, DG XVI has a competence in one of these sector policies: regional/coherence policy. At present the Commission avoids claiming a comparably strong co-ordination/control role as it has in other cross-sector related policies, such as environmental policy.

Instead of this, it resorts to the future EU cohesion policy strand of European Territorial Co-operation (abbreviated in the TSPDoc as ETC in this context). The reason given for this is "that its focus, the trans-European dimension, plays a key role both in strengthening the structure of the European territory and in promoting better territorial governance in the EU."³⁶ Asking only for co-ordination ostensibly avoids any harder internal collision within the Commission and appeals to voluntary co-operation between the DGs involved.

The extension of this governance philosophy to all levels of administration down to the local level is another questionable issue. Considering the TC objectives respective to the Lisbon and Gothenburg ambitions, from the supra-national (i.e., EU) and national levels implicates the creation of a rigidly restricted funding policy which only supports projects in line with this and excludes issues which do not fit into the concept. Thus the local level, in particular (e.g., peripheral) areas which expect more equal infrastructural endowments from TC, will often face disappointment if other better-off areas receive funding. The lessons of good-practice projects cannot be transferred everywhere. The coming stakeholder conferences in 2006 and 2007 will probably make the political expectations connected with TC on local and regional levels more transparent. Some participants will probably face the prospect of falling through the grid created in the Lisbon and the Gothenburg strategy.

The debate about the distribution of regional/cohesion fund resources in terms of the percentage that can be expected for member state territory overall, and for certain designated areas in particular, will certainly be revived on the more abstract level of TC policy, even if the existence of a direct link between TC and fund distribution is officially and explicitly denied.

TSPDoc argues prudently that TC might even apply to areas of weak economic structure or to those physically or geographically handicapped.³⁷ This may, however, be of little comfort to those regions and localities not optimally qualified when watching other better-off areas receive support.

Negative structural consequences will be experienced on a national policy level rather than by the EU as a whole, which will appear as a benefactor to those few fortunate enough to receive EU funds. The responsibility for those who receive

³⁶ TSCDoc (2005) p 21 (6)

³⁷ So does Michel Delebarre, President of the Committee of the Region, in his address to the Amsterdam shareholder-meeting on 28 June 2006, *The Lisbon Strategy and TC: Towards a New Kind of European Governance*.

no EU funds, however, remains with the member states. German constitutional experience shows that Federal State (“Länder”) co-operation supported by selected federal financial aid tended to corrupt the federal system, so that the federal system with its clear distribution of (in particular financial) competences and powers then had to be restored. This is currently again an actual subject of a reform of the German federal system (“Föderalismusreform”). It shows that ideas of co-operation cannot replace the need for a clear delimitation of the range of powers in case of overlapping areas of competence.

2.6 Achieving Territorial Cohesion through the Results of Scientific Research

Scientific co-operation has proved to be a possible and reliable way to reach a mutual understanding of a political situation and to come to a respective resolution during the ESDP preparation procedure. This was one of the reasons behind the establishment of the ESPON programme, which is not dealt with in this paper.

As the preceding diagram shows, this strategic idea of implementing TC has been chosen under the designation “territorial approach through information and dialogue.” In recent political debates key words appear, such as ‘evidence-based policy’ or the use of ‘evidence-based synthesis documents’.³⁸ The series of stakeholder conferences which will occur before the envisaged final TC policy paper is adopted during the German presidency in 2007 are intended to fit into this strategy.

From a scientific point of view, the mixture of policy objectives and scientific methods or findings raises some questions. Determining political goals and objectives can and should be rationally orientated to scientific findings. But political directives cannot be substituted through research findings.

The elaboration of the 3rd Report on Economic and Social Cohesion in 2004 was substantially based on ESPON project findings, but is independent from these findings in its political conclusions and propositions. The ESPON researchers were not involved in the elaboration of the report, nor was it made transparent in what respects the report follows or diverts from the research base provided by ESPON. The selection for the report was made politically, and not scientifically. This is not an allegation; it merely states how research-based policy is used. The borderline between policy and research should be kept in mind, however.

³⁸ The designations appear already in the resolutions of the informal ministerial meeting in Luxemburg, 20/21 May 2005

2.7 Normative and Governance Perspectives of TC

Linking TC with the Lisbon and Gothenburg considerations implies that the political fate of TC is dependent on long range political objectives. According to a widespread political assessment, these objectives may not be reached in the near future or may never be reached at all. The authors of the TSP-document were wise enough not to speak of Lisbon and Gothenburg goals or objectives, but merely of ‘ambitions’. This may be a reflection of their well-founded strategic scepticism.

The political attractiveness of TC for many European regional and local authorities (and their citizens) arises less from long-term political expectations, but instead from the attractiveness of receiving financial funding for short or middle-term projects which are partly or fully financed through EU programs in the realm of various General Directorates. The interconnection between the underlying funding system and TC is in many cases not very close.

Sometimes it may only be affected through DG XVI’s attempted political approach of establishing TC as a co-ordinating policy objective which would allow them to exercise control functions respective to the other territory-related national and EU policies. This implies an extension of the proper sector competence (for Regional/Coherence Policy) to a cross-sectoral competence (as the German “Raumordnung” defines itself), which is in its legal dimension more disputed than distinct. In the past, the EU’s internal organisational DG structure has been fairly resistant to any EU-internal co-ordination, and even if agreement is reached on the common Lisbon/Gothenburg considerations, this will presumably bring about no change. Scepticism applies thus far.

The EC funding of specific economic projects (this can be applied to many research projects too) based on procedural mutual involvement of the Commission and selected regional and local bodies (‘stakeholders’) will continue to intensify the bypassing of standard channels of co-operation between the Commission and member states, as regulated in the EU/EC treaties. This tendency will be politically supported by the European Parliament and by other EC bodies, e.g., the Committee of the Region, which until now has not had the legal status of an EC institution, nor have its members any EU law-determined status.³⁹

The discrepancy between the specific project-related involvement of the Commission (i.e., DG XVI), allowing punctual political profiling, and the continuity of general responsibility resting with the various levels of member states’ governments and administrations (e.g., regional and local development or urban policy) leads to a contradictory picture of TC instead of producing a consistent, publicly understood and agreed-upon policy pattern.

Given this general situation and due to member states’ competition for EU-funding, ‘intergovernmental’ co-operation within the informal European Council of

³⁹ see Doc. EP, Resol, 14 January 2003, 2002/2141, in reference to the so-called *Napolitano Report*, on the role of regional and local authorities in the European integration (2002/141), further, Committee of the Region Doc. 237/2002

Ministers for spatial/regional development, which is operating beyond the formalised EU comitology channels and procedures, will result in agreements which can be characterized by a high level of abstraction and a low overall regulatory effect rather than by formulating operational criteria for TC. In fact, those formal regulations directly controlling the distribution of EU (regional/cohesion) funds,⁴⁰ which are within the clear competence of the Commission, are in the political focus.

As long as the relevance of TC for the formulation of these regulations is indefinite or even non-existent, political decisions made by the European Council of Ministers for regional/spatial planning will receive only limited political appreciation. In the medium and long-term the EU comitology system presumably will prevail over intergovernmental co-operation. It must be taken into account that the national ministers represented here not only have to distinguish themselves with regard to the Commission and its respective DGs, but moreover with regard to their national, inner-governmental ministerial colleagues, who are not at all politically willing to consent to cross-departmental policy approaches, which is what TC purports to be.

2.8 Going back to the Roots of TC?

Going back to the conceptual roots of TC, as found in early French publications,⁴¹ ostensibly the idea of TC cannot be fully dismantled from the idea of creating cohesion through efforts to diminish existing (economic, social and territorial) disparities.⁴² Disadvantaged regional and local entities must at least receive a long-term perspective, for example, ultimately being attached to the infrastructural status of the better-off regions and cities. In the German constitution this is addressed by the constitutional term ‘equivalence of living conditions’ (“gleichwertige Lebensbedingungen”, Art. 72, par. 2 GG). It must be made clear that this is an ideal goal which might only be reached in the far future or never at all. It does, however, describe the need for a consistent concept covering the totality of the territory in a view contrary to reducing TC to a set of selected localities and projects matching the Lisbon/Gothenburg ideas. Rather than attracting stakeholders’ attention by expectations of funding, consent to TC should be pursued by a coherent policy approach transforming TC from a more sector-orientated policy to a cross-sector co-ordinating and controlling competence. Only a TC policy which is transparent to the public and respects both the principle of subsidiarity and the governmental structure of the member states will get permanent political acceptance by the public stakeholders and citizens needed for its implementation.

⁴⁰ see e.g., the respective regulations in the *Official Journal*, L410, vol. 49, 31 July 2006

⁴¹ see the basic analysis by Husson, *L’Europe sans Territoire* (2002), summarised by David (2004) above footnote 7 and footnote 22

⁴² DG XVI intensifies to use urban policy as a new political approach of cohesion policy to attract a broad public interest; see EU Doc. Cohesion Policy and the Cities, a public consultation project (2006); further the consultation with reference to cohesion policy in support of growth and jobs, Community strategic guidelines 2007-2013, Report (2005)

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