



Datar



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First workshop

“Services of General Interest and Cohesion” Workshop

Round Table on European and National Debates Regarding SGIs

Round table animated by Pierre Bauby with:

- Françoise Castex, Member of the European Parliament, President of the EP Intergroup on public services,
- Philippe Herzog, Special Adviser to Commissioner Michel Barnier for the Internal Market and Services,
- Erika Szyszczak, University of Leicester, UK,
- Stéphane Rodrigues, University Paris I.

Introduction by Pierre Bauby

This round table aims at assessing the state of European and national debates on SGIs/public services, with particular attention given to the challenges facing SGIs and future cohesion policy in the European Union.

The present context of SGIs in Europe is a difficult one. SGIs receive little mention in the 5th Cohesion report and they are not present in the EU2020 Strategy. Since 1986, SGIs have been undergoing a liberalization process. At the same time, their norms and rules have been Europeanized. The role of SGIs in social and territorial cohesion was first mentioned in the Treaty of Amsterdam in 1997. This role is also integrated into the Treaty of Lisbon and the EU Charter of Fundamental Rights. However, the liberalization process of some network services has led to new polarization (economic, social, territorial, temporal and financial).

Such a situation raises questions and uncertainties: how do the advantages of the market and competition relate to the missions and objectives of general interest? Do SGIs need a framework directive to reassert their role? Is the sector-based approach the only appropriate one? Or should the



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full application of the subsidiarity principle be favoured? Or is the proper approach supplied by the market and competition? Are we still limited to these four conceptions or is a more pragmatic approach developing?

Erika Szyszczak, Public Services: Still an Irritant for the Single Market?

Despite extensive privatisation in the eighties, public services remain important in the UK. The main question is, how are public services to be made modern, responsive and accountable to consumers?

From the beginning in 1957, SGEIs were seen as a departure and not part of the internal market project. It is only since the treaty of Lisbon that we have actually recognized a role for public services, i.e., social services provided by the state.

From a legal perspective, SGEIs are handled via de-legislation and de-legalization. But if we look at the amount of soft law that has been developed since 1996 by the European Commission, a great deal of the law governing Community activity is very blurred, very confused, and yet the Commission seems to be trying to create a normative and prescriptive role through it. Liberalization directives created normative principles for SGI that recognized universal service obligations regarding access, price, continuity of service and vulnerable consumers. Article 14 of the Treaty of Lisbon, for example, could be used to create framework legislation to establish independent principles for addressing SGEIs. These principles, in turn, could be linked to the new values enunciated by the treaty of Lisbon, creating general principles of European law that would be applicable to cohesion policy. And this of course relates to the Charter of Fundamental Rights as well.

We may need a general framework for SGIs but also sector specific frameworks given the specificities of each sector involved (such as health care, education, energy and transport).

One of the issues that worries me in discourse concerning SGEIs is the fact that most of the major thinkers have argued that there is a new calibration between state and citizen. In fact, there are very complex and changing relationships between the EU, particular states, service providers, regulators and consumers/citizens. This also expresses a problem of cohesion policy. In Europe, we are going through a difficult period of public spending and it is not necessarily clear who is going to regulate cohesion policy. Article 14 TFEU could be used to create more than normative principles governing quality and the allocation of responsibilities.

Françoise Castex: The Role of the European Parliament Public Services Intergroup in Implementing the Lisbon Treaty Provisions on SGEIs

A new institutional context based on article 14 and Protocol 26 of the Treaty of Lisbon together with the Charter of Fundamental Rights resulted in the creation of the European Parliament Public Services Intergroup. Moreover, the directive on service liberalization and Member State difficulties implementing it (due to the question of whether certain services should be excluded from the competitive market) demonstrated the need for an Intergroup. Over 100 stakeholders were involved in monthly meetings. Local authorities were among these stakeholders as they have the greatest willingness and need to clarify public service rules.

Article 14 of the Treaty of Lisbon concerns legislation. Since there is no transposition, it favours the establishment of new regulations and rules rather than a framework directive that might be better adapted to the new reality.

As this approach is rather pragmatic, the Intergroup is focusing on both transversal and sector-based approaches. The Intergroup appreciated Commissioner Barnier's initiative as well as the EC Communication on the Single Market Act that aimed to re-launch the Single Market. The general proposals of this Communication allow an ambitious sector-based approach to be coupled with a more transversal one (a Communication on SGIs), with a special status for some public service operators, in particular in the field of the social economy.



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Stéphane Rodrigues: Supporting a Pragmatic and Progressive Approach on SGIs

Why support a pragmatic and progressive approach on SGIs? First, the Treaties as well as European legislation have evolved and Article 14 constitutes a real mandate for the European legislator. Second, recent legislative practice involves returning to framework instruments. The dispositions of Article 114 TFEU on the “Approximation of Laws” concern harmonization measures for provisions regulating the establishment and operation of the internal market. And it seems to me that we could look at the 2010 Green Paper on European contract law, which offers us all possible options for harmonizing the field of SGEIs. It is a toolbox enabling us to develop an inter-institutional agreement on the basis of which decisions can be made concerning the available options or even a European code, etc.

Philippe Herzog: SGIs as Key Issue for Competitiveness and Solidarity in Europe

In the present context of crisis, ambition and pragmatism are needed. SGIs should be considered as key issues for competitiveness and solidarity in Europe and they should be promoted as such. In that perspective, the work that needs to be done is not only legal but also economic in nature and touches on issues of governance. There needs to be an action plan that promotes SGIs as a condition for exiting the crisis and meeting present needs.

In regards to the legal issue: today, European law on SGIs is biased and outdated. Existing law relates to contradictory objectives: freedom of service provision, on the one hand, and public service obligation, on the other hand. In particular, it is clear that these contradictions reveal political questions. The Treaty of Lisbon innovated by introducing a political arbitration power concerning these questions, with “free competition” counter-balanced by shared institutional responsibility. The treaty thus established a political power and enabled the adoption of a global approach on SGIs.

In regards to the economic aspect: it should not be neglected and SGIs should have a place in economic governance. The economic and social context shows the increasing need for SGIs in such sectors as health, education and training, inclusion, sustainable development and the fight against poverty. However, the current economic context limits public investment and expenditure. In order to exit the crisis and meet new needs, investment in priority public infrastructure is required. In many cases, such infrastructure is interconnected and of common interest to several Member States. But who is to decide on priorities?

In regards to governance: the redefinition of development needs is a real issue and should be a matter of collective effort. Quality issues are also important and we need to be able to compare SGIs in Europe. Another observation is that a lot of Member States have difficulty in financing and maintaining SGIs. The market is not working well and the state is confronting its challenges. We need a new framework to ensure the development of a new entrepreneurial spirit to meet developing societal needs. This means that missions and governance need to be redefined. Local authorities and civil society have to be stake holders in the process. Michel Barnier’s “Towards a Single Market Act” has paved the way for change, but he needs support.

Pierre Bauby Launches a Second Round of Discussions Concerning the Link between SGIs and Economic, Social and Territorial Cohesion

Erika Szyszczak

She pointed out that there was very little regarding the quality and substance of universal service obligations in the liberalisation directives, with disputes to be settled by mediation rather than litigation. It is not just an issue of soft law. This is becoming very de-legalized. The people who most need the services have very little access to the institutions. The law can defend these ideas but enforces them as well.



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Françoise Castex

There is an evident link between cohesion policy and public service missions. Cohesion policy is a tool of redistribution and solidarity at the EU level. However, budgetary constraints and the logic of “I want my money back” also limit cohesion policy action. This is a fundamental break on significant investment.

Stéphane Rodrigues

The Green Paper on territorial cohesion affirms that access to SGEIs is one of the main instruments in the EU to link territories and ensure cohesion (even if this is not mentioned in the 5th Cohesion Report). However, cohesion policy is not only an EU objective but also an objective for the Member States. The Treaty imposes some obligations in this regard (Articles 174 and 175 TFEU).

Philippe Herzog

The point is that the link between SGIs and cohesion is over-determined by financing problems. So first, from a budgetary perspective, cohesion policy should be defended and supported and then a link between SGIs and cohesion can be aimed at. Considering the heavy constraints on public budgets, the EU2020 Strategy focuses on three main objectives (the fight against poverty, integration in training and employment and network infrastructure) to better use limited public budgets. In order to prioritize expenditure as a lever of investment, public-private partnerships should be organised to make necessary investment more dynamic.

In Europe, however, supporters of competitiveness through competition and supporters of competitiveness through cohesion oppose one another. We haven't yet managed to move beyond the Sapir Report. We thus need solid arguments to defend SGIs and cohesion. One way to develop such arguments is to base them on the evaluation of structural fund expenditures to determine whether they are effectively promoting cohesion. This represents a political fight. We need to adapt to the new method launched by the European Commission, i.e. to examine expenditure in relation to the objectives of EU2020. This means that each Member State has to be equipped with strategic capacity, raising the question of the development of strategic capacity in new Member States. It means that the States will have to negotiate with the regions and also consider the cross-border level. Territories are getting increasingly complex. Who are the partners: macro-region, regions etc.? The analysis of funding modes is also essential.

General Discussions:

- What is the conditionality of SGI action involving both economic and political conditionality?
- What has been the impact of enlargement on the SGIs?
- The cohesion policy seems to be centred on regional and territorial cohesion while SGIs are absent from the debate on cohesion policy: how are these two issues to be linked?
- In the UK, there is a particular legal interpretation of article 14 concerning the role of SIG in promoting social, economic and territorial cohesion? Is cohesion an issue as far as the UK is concerned?
- Member States have blocked the evaluation of public services. Can the European Parliament serve as a tool for going beyond this brake on evaluation?
- What is the most relevant level for public action?
- What are the right questions to raise in evaluating the quality of the public social services?
- Would SGIs have something to lose if Common Agriculture Policy (CAP) were abandoned? What is the link between SGIs and CAP?
- How to interpret the fact that the Barca report doesn't mention the SGIs?



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- SGIs are not eligible for structural funds. How can this obstacle be circumvented?
- In regards to the programming dimension, how to aim at strategic objectives instead of aiming at categories of eligible expenditure (as is presently the case)?
- How to contribute to harmonization of universal services in a voluntaristic approach?
- Is it possible to pursue the battle in favour of cohesion policy in the present financial context? Could adapting the campaign for cohesion to the objectives of EU2020 Strategy represent a solution?
- How can the relevance and modernization of SGIs be justified from the perspective of a national competitiveness and cohesion policy?
- How to link SGIs and territorial appeal?

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Second workshop

“Cross-Border Cooperations” group

1. Parliamentary Mission on Cross-Border Cooperation. Borders and Their Territories

Etienne Blanc, Member of Parliament

A Diagnosis of Cross-Border Regions

Because the deputies of the cross-border territories emphasized the fact that cross-border territories in France were facing specific competitiveness problems in comparison with neighbouring countries, the French Prime Minister launched a study of cross-border territories in 2009.

The first finding was that 340,000 French people commute to a neighbouring country for work whereas only 10,000 citizens of neighbouring countries commute to France. The commuting trend has reversed in less than 50 years. 20% of France’s territory and 10 million French people are affected by such cross-border phenomena and the decisions taken by neighbouring countries. Two phenomena, in particular, are worth noting: the need for cross-border investment in transportation and economic relocation to neighbouring countries, which creates serious difficulties for local public authorities. The fact that fiscal and social systems are different across the border and often more favourable in neighbouring countries explains why many companies decide to relocate.

France is unable to use its assets to negotiate the use of large spaces, which are sorely lacking in neighbouring countries such as Switzerland. France does not know how to take advantage of the economic and demographic dynamics of cross-border regions in terms of regional development and management strategies. Local authorities take some initiatives to discuss issues of common interest with neighbouring countries but state strategies are not very visible. Indeed cross-border populations



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present many problems in terms of reimbursement of medical care, training, social security and unemployment benefits and these are all challenges to the French system.

Proposals of the Parliamentary Mission

19 proposals have been made to develop a cross-border strategy:

- First package of proposals: to build means and strategies to develop a cross-border economy
- Second package: to meet the service needs of cross-border populations in transportation, communication, water supply, health care, recycling, etc.
- Third package: to make simplify spatial planning, organisation and use of cross-border territories by signing common agreements.

Conclusions

It is therefore necessary:

- To develop a fair system for financing cross-border infrastructure;
- To create a real governance of cross-border issues at the government level;
- To develop a strategic observatory of cross-border experiences to help develop a more global vision.

EGTC may represent a good tool for reinforcing the territorial governance system of cross-border regions.

The French state and territories must be better organised and competences must be more clearly defined.

General Discussions

- What can the European level contribute to solving the common questions?
- How to act at the European level to avoid social and fiscal dumping?
- How to modify state aid systems when European Funds intervene?
- What have been the consequences on cross-border regions of Switzerland's inclusion in the Schengen area two years ago?
- What about the next programming period: can it be more territorialised to take into account cross-border needs?
- How to apply Article 174 of territorial cohesion including cross-border areas?
- How can France and Switzerland jointly influence the European Commission?

2. Cross-Border Transport and Dynamics: The Challenges of Scale

Hervé Joan-Grangé, Code

On the basis of experiences in several cross-border regions, three main elements turn out to be essential for local authorities:

- They must know how to define their positions;
- They must understand and know the other partners;
- They must build a collective approach.

Cross-border regions in Champagne-Ardenne, Lorraine, Picardie and Wallonia present important economic differences and raise the issue of territorial cohesion. This makes it relevant to create bounds with cross-border partners.

The example of the construction of the TGV between France and Spain shows how the building of exchange systems drastically transforms the territories. Partnership relations evolve in terms of distance and space in Europe. One objective of transport connexions is to develop the economy, to



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gain market shares and to be part of the European and international markets. The Barcelona-Lyon TGV line was launched:

- Within a complex institutional context;
- On the basis of abundant cooperation but lack of governance;
- Without any common or shared vision.

These particulars explain why there have been a large number of initiatives but no global or strategic vision.

It is therefore necessary to express a community of interests within a European framework to increase the competitiveness of the territories. Tools have to be developed in different sectors to coordinate cross-border actions and make cross-border territories more attractive (Transcards Eurocorridor in the transport sector, Metropolis card in culture and tourism, etc.).

General Discussion

- Isn't there bias in the multi-level governance system? It is not enough to bring regions together because the state also intervenes; territories are involved both horizontally and vertically.
- Interest for a global vision exists but decisions are taken at the highest level of the state. What is the impact of political changes on such a global vision?
- What is the importance of "proximity" compared to a "global vision"? Doesn't proximity always prevail?
- Can we conclude that territories are in competition against each other?
- Despite the increasing links between territories and despite the fact that times of growth and competitiveness are reduced, the phenomenon of periphery remains. In such a situation, what does accessibility and cohesion mean?
- How could a Mediterranean area be defined?
- What type of conditionalities exist?
- Do we have to focus funds on the economic motors or favour the regions facing difficulties? Can it be concluded that there is a tendency to concentrate on certain territories to the detriment of others?
- Doesn't the Grand Paris Express project show that the existence of multiple approaches can meet different but complementary needs?

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Third workshop

“Governance” group

Conditionality vs. Sovereignty: How Should Multi-Level Governance Be Coordinated?

Jan Olbrycht, Member of the European Parliament

Conditionality and Macro-Conditionality

Conditionality has several meanings. We are not here referring to macro-conditionality but rather to conditionality within cohesion policy. What might be the tools here? Given strong pressures on public finances, proposing projects corresponding to the 7 priorities of the EU2020 Strategy will be a condition on the receipt of EU funding. This is a necessary type of conditionality.

Introduction of Territorial Cohesion in the Treaty of Lisbon

An important success for cohesion was the Treaty of Lisbon's introduction of territorial cohesion. With the exception of France's spatial planning system, this notion is new to European administrative culture. In the European debate, cohesion has been defined as follows: cohesion is reached when each EU inhabitant enjoys the same access to public services. However, neither the White nor Green papers on cohesion discuss the issue of territorial cohesion.

The Place of Macro-Regions?

Discussion of macro-regions has been a perverse effect of this. Yet if we consider the Baltic Sea Region, we see that this initiative has nothing to do with cohesion. If macro-regions are integrated into cohesion policy, how will financial resources be distributed? The Baltic Sea Region was initially created because various actors were willing to work together. Is this a matter of cohesion policy or rather of the creation of multi-level action? With the introduction of territorial cohesion, the time had come to seize this opportunity to obtain funding, with territorial cohesion meaning all territories. Macro-regions can be considered a territorial strategy, a way to work together that is not a cohesion policy. Who is going to coordinate action at this level, which Commissioner?

How to Define Cohesion?

When talking about cohesion policy, we have to consider the national level since national financing envelopes will be important.

Cohesion is the aim of the EU but we discuss cohesion policy. One of the objectives of the European Union is to reduce disparities: cohesion policy is not the only EU policy to contribute to that goal. Some thus refer to “policy of growth and development” instead of cohesion policy, reflecting their fear that cohesion policy will be exclusively focused on the poor.

Before 2013, what are the contours of economic, social and territorial cohesion policy? Its aim has been to reduce disparities by reinforcing economic processes leading to growth. Indirectly, it is a growth policy.

Governance System: A Contract-Based System and Challenge to Power

In political discourse, local and regional authorities are important partners of the European Union. These partnerships have yet to be operationalized, however, because direct relationships between regions and the UE are not supported by the Member States. It is true that when discussing multi-level governance, European funds can influence local and regional authorities. With the exception of Alsace, European funds in France are managed by the State administration. The question arises, do EU funds block or influence administrative reforms? In Poland, the regions are strong because they have European funds. If we refer to multi-level governance when preparing cohesion policy, it is in



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reference to horizontal cooperation between territories as well as vertical cooperation between different levels. It implies that competences are clearly defined so that the actors can work together. This approach is new in the new Member States. A contract-based relationship (of the partnership or development type) could be the key to multi-level governance. The content of such a contract between the European Commission and the governments might include priorities, a discussion of project types and the control system (financial rules). The European Commission could require Member States to implement a concrete governance system in their respective country. Multi-level governance clearly represents an important challenge to the various levels of public authority.

Conclusion

Conditionality must therefore be based on territorial cohesion and linked to a contract and the multi-level governance system.

For the time being, the partnership contract has yet to be clarified. The same holds for the role of the European Commission, the Member States and the regions. At the European level, however, there is an obligation to prepare the system even if the European Commission can not impose it due to the subsidiarity principle. This contract should reinforce the obligations of the various signatories to respect the priorities of the EU2020 Strategy.

Territorial cohesion should involve all EU territories. Cohesion policy is a tool that can contribute to changes in a country and its administrative capacity; it is not merely a source of investment.

General Discussions

- While conditionality depends on the administrative structure of each country as defined in the contract of partnership, each country may present a different vision of cohesion: what common criteria will be established by the European Commission to evaluate whether this works or not? Isn't there a risk that the European Commission will interfere with the administrative structure of a country?
- Can structural reforms come from integrated EU policies within the cohesion policy?
- What is the difference between a contract of partnership and the design of an operational program?
- Isn't the contract of partnership an advanced form of the National Strategic Reference Framework with stricter requirements in terms of priorities and governance? Is this contract something new or a positive evolution of what already exists?
- National sovereignty is the limit of cohesion. If the contract is working well, to what extent will it bring about more territorial cohesion?
- How do relationships between regions and the European Commission develop? Are there still obstacles?

EU Cohesion Policy and Changing Patterns of Governance in Central and Eastern European Member States: The Case of Poland

Marcin Dabrowski, Austrian Academy of Sciences, Institute for European Integration Research, Vienna

EU Added Value in Governance

The key added value of EU influence on governance is the partnership that needs to be organised within cohesion policy. The key questions concerning the new Member States are therefore:

- What is the scope for embedding this multi-level governance?
- What is the impact of the partnership principle?
- What are the mechanisms and depth of the changes?

Vertical Partnership

The Structural Funds created a new environment for vertical partnership for more integrated cooperation between the various levels.



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Over both programming periods experienced by the new Member States, there have been changes in the governance system of the funds. New responsibilities have been created to manage the funds. Structural funds have created greater investment capacity, making the regions less dependent on government funding. Nevertheless, some centralisation remains to the degree that the government imposes guidelines for regional operational programmes administered by regional authorities and the own financial resources of regional authorities are limited.

Horizontal Partnership at Regional Level

Three different channels can be mentioned here:

- Steering committees involving social and economic partners have created new channels for regional stakeholders to stimulate relationships at the regional level, even though the final decision on projects is taken by the Marshal. But this approach has been criticized as being clientelist and interest-driven.
- Monitoring committees are better perceived by regional stakeholders who see them as a new channel for participation.
- Regional consultations of the Regional Operational Programme are perceived as a beneficial practice for a superior end product. The indirect consequence of such consultations is better mobilisation and cooperation between local actors to formulate joint recommendations.

Project Level Partnership

Joint EU funded projects represent a new form of horizontal cooperation. But they are still facing problems, such as limited partnership experience, competition for funding, lack of trust and, in some cases, cooperation is seen as a hassle.

The ongoing programming period has led to a growing number of partnership-based projects because of incentives for inter-communal projects.

Cooperation extends beyond the project at hand. As a result, there has been a dynamic social learning process among actors.

Conclusion

Considering the lack of experience with partnership in the new Member States, the structural funds have contributed to social capital by developing culture.

General Discussions

- Can the growing emphasis on place-based EU cohesion policy work in Central and Eastern European countries, particularly those characterized by a high degree of centralization?
- Is there a capacity to deliver a partnership-based regional development policy?
- How is project level cooperation to be promoted?

Political Capacity and Efficiency Conditions of a Structural Policy (Spanish, British and French Cases)

Romain Pasquier, CRAPE/CNRS, Rennes

The Issues

The political capacity of the regions in Europe raises a series of questions:

- What is the impact of cohesion policy in the western regions of Europe?
- What are the effects of it on regional development strategies?
- How to are the differences between regions to be explained?
- How is regional political capacity to be defined?



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Added Value of Cohesion Policy?

Cohesion policy intervenes in territories which already have a long history. Cohesion policy is one of the major mechanisms of territorial Europeanization. Indeed, it transmits norms and problem-solving, public policy and analytical techniques and helps diffuse them throughout national political and administrative systems. Is ours more of a top down or bottom up approach? The question is, what happens when a European policy encounters territories as well as other processes, including decentralization, empowerment, etc.? From the point of view of the bottom up approach, territories are not passive recipients. Approaches will thus differ in accordance with territorial tradition.

Key Criteria of Political Capacity

The different approaches are explained by different levels of political capacity. Political capacity depends on:

- Institutional resources
- Economic resources (co-funding capacity)
- Dynamics of identification (territorial identities that may or may not be characterized by a shared vision of development)
- Territorial history
- Intergovernmental relationships, i.e., the ability of regional actors to access central actors, to overcome political cleavages, etc.
- Political leadership.

Forms of governance vary in accordance with territorial resources. Territorial reactions to European policies vary. The manner in which structural funds are used varies. Cohesion policy has deeply marked the territorial mode of governance.

Changes Brought about by European Policies

The management and governance systems of the structural funds vary quite a lot among older and newer Member States.

In Western Europe, European policies have led to greater regionalization of political action and the creation of new political strategies such as lobbying, cross-border cooperation, new ways of analysing and solving problems and new occupations. These policies have not, however, had the effect of modifying administrative structures.

In Eastern Europe, European policies have had more impact on institutional reorganisation.

General Discussions

- The impact of cohesion policy is under-estimated due to the fact that, in the West, nothing was known about dialogue and partnership. Important progress has since been made with regards to partnership mechanisms.
- What constitute “sticks” for the regions? How will Europe be equipped to control the manner in which structural funds are used by new Member States?
- The processes of CEE countries and the way political capacity criteria might be applied there need to be compared.
- How is identity to be defined?
- Political capacity can be used to explain differential success within a state.
- The question of how a territory perceives itself vis-à-vis the state and the EU is important to understanding why no institutional capacity has been created to manage the structural funds in some regions. How does this impact regional development?
- How can such criteria influence regional strategy and the way development strategy is thought about?
- Does the territorial narrative exist in all regions and what is its influence on the territorial vision and on implementation of structural funds?

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