Drawing out the Elements of Territorial Cohesion: Re-scaling EU Spatial Governance

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I. Introduction

With the entering into force of the Treaty of Lisbon, Article 3 of the Treaty on European Union requires the Union to 'promote economic, social and territorial cohesion, and solidarity among Member States'. This adds 'territorial cohesion' to its economic and social forms, legally entrenching a concept that has been steadily gaining momentum and legitimacy in European policy circles for many years even despite the Commission's frank admission in its Green Paper of late 2008 that it was unable to define it.[1] Perhaps it is territorial cohesion's uncertain character that explains its considerable success in legislative and policy terms, being so easy to sign up to and providing opportunities for local and regional interpretations based on specific historical and cultural characteristics.[2] Certainly, one simple (and relatively uncontroversial) understanding of territorial cohesion is that it means 'incorporating a spatial planning perspective into decisions that are now made primarily on economic and social grounds',[3] an understanding that places the concept firmly within the EU's pantheon of integrated policy and decision-making. An alternative, and reductionist, approach to the concept, advanced recently by the Commission, is the lessening of 'territorial concentrations of EU-27 GDP in the traditional core of Europe'.[4] Linking the idea of spatial awareness with solidarity, territorial cohesion has, more controversially, been interpreted as introducing a far-reaching interpretation of territorial cohesion as 'spatial justice' predicated

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[1] Communication from the Commission to the Council, the European Parliament, the Committee of the Regions and the European Economic and Social Committee, *Green Paper on Territorial Cohesion: Turning Territorial Diversity into Strength*, (SEC(2008)2550), Brussels, 6.10.2008 COM(2008)616 final.

[2] S Davoudi, 'Understanding Territorial Cohesion' (2005) 20(4) *Planning, Practice and Research* 433, 433 and D Evers, 'Reflections on Territorial Cohesion and European Spatial Planning' (2008) 99(3) *Tijdschriftvoor Economische en Sociale Geografie* 303.

[3] M Sint (2004) 8 *Shared Spaces* 4, cited by S Davoudi, 'Understanding Territorial Cohesion' (2005) 20(4) *Planning, Practice and Research*, 433.

[4] CEC, *Growing Regions, Growing Europe*, p ii (CEC, 2007).

on an (apparently unitary[5]) European social model.[6] The most up-to-date version of the goal of the concept is 'to encourage the harmonious and sustainable development of all territories by building on their territorial characteristics and resources'.[7]

For lawyers, the significance of territorial cohesion lies in its ability, both as a concept and through its funding, to reframe the spatial, political, and legal understanding of the EU. In particular, territorial cohesion allows regional and institutional actors within the Union to use cohesion resources to introduce new and innovative scales of governance. Since scales are socially constructed rather than ontologically pre-given[8] these are discrete acts consciously undertaken to benefit specific regions, Member States, or institutions. Territorial cohesion and the funding available through the territorial cooperation objective call into being new, 'EU places' on an individual and often rather ad hoc basis. These are evident in the newly developed macro-regional strategies, characterized as 'prime test cases of what territorial cohesion means in practical terms'[9] and in European Groupings on Territorial Cooperation (EGTCs).[10] It is possible that by facilitating the creation of new scales of spatial governance, territorial cohesion and its associated funding is creating a 'fourth tier' of governance within the EU. As the cohesion budget grows (and by 2013 it is set to be €307.6 billion[11], exceeding the budget for agriculture[12]) and as cohesion policy starts to be used to achieve political ends beyond the smoothing of social and economic differences between people and places within the EU, there are inevitably more opportunities for a range of actors to effect broader spatial and political change on new and innovative scales.

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[5] This idea of a uniform social model is highly contested and there is consistent agreement that 'the notion of the "European social model" is misleading': J Alber, 'The European Social Model and the United States' (2006) 7(3) *European Union Politics* 393–419, 394; A Sapir, 'Globalization and the Reform of European Social Models' (2006) 44(2) *Journal of Common Market Studies*, 369–90; K Aiginger and A Guger, 'The Ability to Adapt: Why It Differs between the Scandinavian and Continental European Models' (2006) 14(1) *Intereconomics* 14–23; M Jepsen and P Serrano 'The European Social Model: An Exercise in Deconstruction' (2005) 15(3) *Journal of European Social Policy* 231–45.

[6] P Doucet, 'Territorial Cohesion of Tomorrow: A Path to Cooperation or Competition?' (2006) 14(10) *European Planning Studies*, 1473, 1473 A Faludi, 'Territorial Cohesion Policy and the European Model of Society'(2007) 15 *European Planning Studies* 567–83, 568; S Davoudi, op cit, n 2, 433.

[7] Commission of the EC, *Sixth Progress Report on Economic and Social Cohesion* COM(2009)295 final.

[8] D Delaney and H Leitner, 'The Political Construction of Scale' (1997) 16 *Political Geography* 93–7,

[9] Commission of the EC, EU Strategy for the Danube Region, (Brussels, 2010) REGIO/E1/EN/ NV/OB D(2010), 1.

[10] Regulation (EC) No 1082/2006 on a European grouping of territorial cooperation (EGTC).

[11] EU Budget 2005, 15915/05.

[12] The Commission estimate that by 2013, cohesion policy will consume 36 per cent of the EU Budget (compared with 32 per cent for agriculture) EU Press Release, 'EU Budget—facts and myths', <http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/07/350&format= HTML&aged=0&language=EN&guiLanguage=en> (accessed 25 May 2010).

To explore the inter-relationship between new forms of governance and spatial developments within the EU, it is first necessary to consider the development and current interpretation of territorial cohesion. Until recently, much of the critical analysis of territorial cohesion has been the product of research in political science and critical geography, especially work related to planning.[13] But there is also much to be gained from an analysis of the relationship between law and policy on territorial cohesion, questioning its implications for a legal understanding of the EU. Here we begin our analysis of territorial cohesion in Part 1 by reflecting on its origins in spatial planning in its emergence from the European Spatial Development Perspective 1999 (ESDP),[14] the 'grand narrative'[15] of EU spatial planning. In Part II we consider the second strand of territorial cohesion, acknowledging its incorporation within the framework of existing cohesion policy and the intervention of the structural funds. Both strands are marked by a tension between the pursuit of economic liberalism on the one hand and the pursuit of less tangible aims on the other, in particular, the protection and enhancement of locality and place. We suggest that these two strands can usefully be characterized in terms of the tension between a *Europe of flows* and a *Europe of places* extending an analysis developed by Hajer, Jensen, and Richardson[16] drawing on Castells.[17] Having elaborated the two central strands of territorial cohesion, we review the current formulations of territorial cohesion in Part III, concluding that broad drafting offers something for everyone. In Part IV we suggest that the expenditure associated with cohesion policy in general and territorial cohesion in particular demonstrates that that the EU is more than a 'just' regulatory State and as we conclude in Part V, the extent of the money being spent on new and innovative spatial scales has the potential to create a fourth level of the EU, introducing greater scope for governance to embed positive integration within the EU over and above the primarily legislative regulatory project. This suggests that there is, as Castells proposed, a desire to limit the spatial logic of the *space of flows* from 'becoming the dominant spatial manifestation of power and function in our societies'.[18] By creating a

[13] See, most notably, O Jensen and T Richardson, 'Nested Visions: New Rationalities of Space in European Spatial Planning' (2001) 35(8) *Regional Studies* 703–17 and P Healey, *Making Strategic Spatial Plans: Innovation in Europe* (Routledge, 1997).

[14] Committee on Spatial Development, *European Spatial Development Perspective: Towards Balanced and Sustainable Development of the Territory of the European Union (ESDP)*, presented at the Informal Meeting of Ministers Responsible for Spatial Planning of the Member States of the EU, Potsdam 10/11 May 1999 (CSD, 1999).

[15] P Schoen, 'Territorial Cohesion in Europe' (2005) 6(3) *Planning Theory and Practice* 389.

[16] This analysis was first adopted by M Hajer, 'Transnational Networks as Transnational Policy Discourse: Some Observations on the Politics of Spatial Development in Europe' in A Faludi and W Salet (eds), *The Revival of Strategic Planning* (Kluwer, 2000) and taken up by O Jensen and T Richardson, 'Nested Visions: New Rationalities of Space in European Spatial Planning' (2001) 35(8) *Regional Studies*, 703–17, 705.

[17] M Castells, The Information Age: Economy, Society and Culture, Vol 1, The Rise of the Network Society (Blackwell, 1996).

[18] Ibid, 409.

Europe of places, territorial cohesion has the capacity to challenge the emphasis on economic development as the paradigm understanding of the EU and in the process refashioning our understanding of law, governance, and territory within the EU.

II. The Spatial Planning Strand

The story of territorial cohesion from a planning perspective begins in earnest with the development of a European spatial planning agenda in the late 1980s.[19] At this time the EU had no dedicated spatial policy and in many cases the objectives of its policies—at least as defined in the Treaties—had no explicitly spatial character. And yet it was becoming clear that many of the EU's key policies were having profound (and adverse) impacts on land use patterns and landscapes in the Member States—agricultural policy, environmental policy, transport policy, regional policy, and energy policy being the main examples. Recognizing this, an ad hoc committee operating under the authority of ministers responsible for spatial planning (the Committee on Spatial Development (CSD)) began a process of negotiations and meetings. It focused on 'spatial planning', a 'Euro-English' phrase developed as a neutral term not directly linked to any Member State though clearly related to German *Raumplanung* and Dutch *Ruimtelijk Planning*.[20] The expression was subsequently widely adopted, including in the United Kingdom, where it was initially a rather alien concept.[21] Preparations for the European Spatial Development Perspective (ESDP) began at the Liège Council in 1993 and were taken up by successive presidencies of the Council resulting in the *Leipzig Principles* in 1994, the Noordwijk *First Official Draft* in 1997, and the *First Complete Draft* in Glasgow in 1998 before being finally adopted in Potsdam in 1999.[22] The ESDP was much delayed in part due to the Commission's lack of competence for spatial planning and other outlets for these integrationist ideas were identified over the years. As a result, despite this apparent trajectory it was not, according to Williams, 'a linear process' and other EU programmes such as INTERREG and Trans-European Networks were clearly affected by the ministerial discussions on spatial planning.[23]

[19] D Stead and B Waterhout, 'Learning from the Application of the ESDP; Influences on European Territorial Governance', 2008 DISP 172.1 21, 30.
[20] K Boehme, Nordic Echoes of European Spatial Planning: Discursive Integration in Practice, Nordregio 2002, Stockholm, 11.
[21] Planning Policy Statement 1 requires local authorities to focus on spatial planning, *Planning Policy Statement 1: Delivering Sustainable Development* (London: ODPM, 2005)
[22] Commission of the EC, *European Spatial Development Perspective: Towards Balanced and Sustainable Development of the Territory of the European Union* (ESDP) (Brussels, 1999).
[23] RH Williams, 'Constructing the European Spatial Development Perspective: Consensus without Competence' (2000) 33(8) *Regional Studies* 793–97, 794.

Rather than granting the Commission competence for spatial planning, the ESDP was developed instead by a Committee of Spatial Development (the CSD), staffed by senior national officials with leadership rotating with the EU presidency so that interest waxed and waned accordingly. This was mitigated by the introduction of the 'Troika method' in 1996, where chairing was shared by previous, current, and future EU presidencies, thereby introducing greater consistency.[24] In practice, as Faludi notes, the 'driving force behind the ESDP has been a handful of individuals, some of them in surprisingly junior positions'.[25] This 'core planning community' was more than merely 'a band of roving planners', by exhibiting trust, and interaction, it formed something of an epistemic community.[26] Supplemented by the objectives of key Member States, notably France[27], Germany,[28] and the Netherlands,[29] these initiatives then combined to produce the European Spatial Development Perspective (ESDP), representing a first attempt to coordinate and integrate social, economic, and environmental policies from a spatial perspective under a banner of sustainable development. Most importantly this Committee, through the ESDP, sought to influence the thinking or 'spatial positioning' of planners and policy-makers in the Member States when drawing up development plans, applying for financial assistance from the EU or giving consent for individual housing, transport, commercial, or energy projects by incorporating European spatial principles in regional funding decisions. In essence the ESDP provided a European reference point or 'mental map' of the significance of the locality or project in terms of European economic development and, consequently, the impact of this on the EU's position and strength in a global market.

More specifically, the main idea driving forward the ESDP project was that the integration of spatial factors into the implementation of Community policy at an early stage would help avoid regional disparities and additionally realign economic growth away from the core of commercial activity, hopefully producing a more even geographical distribution of growth. This called on a particular vision of economic liberalism, one where efficiency and growth were to be achieved via 'polycentric' development, the spatially balanced distribution of

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[24] R Rusca, 'The Development of a European Spatial Planning Policy' in C Bengs and K Bohme (eds), *The Progress of European Spatial Planning* (Nordregio, 1998), 41

[25] A Faludi, 'The European Spatial Development Perspective—What Next?', (2000) 8(2) *European Planning Studies*, 244

[26] A Faludi, 'A Roving Band of Planners', Shaping Europe: The European Spatial Development Perspective (1997) 23(4) *Built Environment*, 281–287.

[27] A Faludi and J Peyrony, 'The French Pioneering Role' (2001) 27(4) *Built Environment*, 253–62.

[28] A Faludi, 'The German Role in the ESDP Process' (2001) 27(4) *Built Environment*, 269–77 .

[29] A Faludi and B Waterhout, 'The Usual Suspects: The Rotterdam EU Informal Ministerial Meeting on Territorial Cohesion' (2005) 96(3) *Tijdschrift voor Economische en Sociale Geografie* 328–33.

economically active areas capable of contributing to the global economy.[30] Such a pattern of development was to be facilitated by high levels of 'frictionless' mobility (of people, goods, and services), brought about by the completion of the trans-European transport network (TEN-T), particularly involving high speed railways, and the expansion of road infrastructure and regional airports.[31]

While then this early step towards a European spatial policy might be mistaken as a move away from a liberal market territorial integration paradigm towards a market correcting planning approach (akin to that which characterized planning in the 1960s), in fact the formative shape of European level spatial planning policy, represented by the ESDP, far from replicated the standards of national welfare spatial policies. Instead, the nascent spatial policy was 'constrained by the dilemmas and ambiguities of the global European construction process'[32] and ultimately, the ESDP raised competing visions. As Hajer, Jensen, and Richardson have suggested, it framed the EU spatial planning project both as 'a *Europe of flows*', a monotopia where frictionless mobility and efficiency facilitate the competitiveness of all, not just already wealthy city and regions, to achieve an 'optimum level of competitiveness'[33,34] with towns characterized as 'nodes' along the way and as a *Europe of places* where the distinctiveness of localities was to be protected, emphasizing the historically rooted local spatial organization of human experience.[35] It did not seem to be able coherently to reconcile the two.

From a legal perspective, although it represented an undeniably significant step towards European-wide spatial planning, without a legal base in the EU Treaties, the ESDP did not have legal status. The methods by which it sought to influence decision-making are therefore particularly interesting, invoking indirect methods such as mutual learning and the establishment of networks of experts,[36] in order to generate a sense of 'European positioning'. The ESDP performed multiple roles and was successful as a means of indirectly influencing decision-making.[37] However, the dismantling of the CSD and the consequential moving of the spatial planning agenda to the work of the structural funds

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[30] Polycentricity is represented in the ESDP by the metaphor of a 'bunch of grapes', replacing, variously, the 'blue banana', the 'Dorsale Europeene' (the backbone of Europe) and, most recently, the 'pentagon', all graphic representations of concentrated economic activity at the 'core' of the EU.

[31] M Hajer, op cit, n16.

[32] G Giannakourou, 'Towards a European Spatial Planning Policy: Theoretical Dilemmas and Institutional Implications' (1996) 4(5) *European Planning Studies*, 595, 602.

[33] O Jensen and T Richardson, op cit, n 13, 51.

[34] CSD, op cit, n 14, 3, O Jensen, 'Imagining European Identity: Discourses Underlying the ESDP' in A Faludi (ed), *European Spatial Planning* (Cambridge MA: Lincoln Institute of Land Policy, 2002), 105–20, 113.

[35] M Hajer, O Jensen, and T Richardson, op cit, n 16.

[36] Most notably, ESPON, the European Spatial Planning Observatory Network.

[37] A Faludi, 'The Application of the European Spatial Development Perspective' (2003) 74(1) *Town Planning Review* 1.

committee inevitably led to a focus on narrowly defined financial concerns.[38] This in turn cleared the way for the emergence of an alliance between policy agendas on spatial planning and cohesion, which has found expression in the concept of territorial cohesion.

III. Cohesion Policy—Adding a Territorial Dimension

Although undoubtedly arising from the ambit of the emergent European spatial planning agenda, the specific roots of territorial cohesion are more difficult to pinpoint. The concept has been described as the idea of Jacques Delors, former President of the European Commission, and Michel Barnier, former EU Regional Commissioner, and was promoted by French regional planners with their interest in pursuing redistributive policies within a regional context, the so-called 'aménagement du territoire'. Such intervention is based not merely on relative GDP (as in EU cohesion policy) but is rooted within the French administrative model. As described by Faludi, a long-standing chronicler of the spatial planning and cohesion processes, there is 'a cultural dimension to this. Europeans, it is argued are rooted in the soil . . . In their desire to continue to live where they have for generations they deserve public support. So, subsidising services is justified for the sake of the 'European model of society.' As such, the concept emerged in the report *Regions and Territories in Europe*, adopted unanimously by the Assembly of European Regions in Antwerp in 1995[39] under the guidance of another French politician, Robert Savy, President of the Limousin Regional Council.

Following lobbying by the Assembly, a brief appearance of territorial cohesion in the Amsterdam Treaty in 1997 in the context of services of general economic interest[40] signalled its potential significance, and the concept was duly included in several subsequent Commission reports on the state of cohesion in the Union. In its *Second Report on Economic and Social Cohesion: Unity, Solidarity, Diversity for Europe, its People and its Territory* (2001), for example, territorial cohesion was used to describe the undesirable nature of uneven development in the EU particularly the concentration of population and economic activity at its 'core',[41] against the backdrop of the EU's enlargement. In an associated progress report, the Commission mentioned territorial cohesion as an explicit objective of cohesion policy, at the root of which is the promotion of sustainable

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[38] K Bohme, 'Territorial Cohesion: A Policy Phenomenon in Europe or a Global Issue?' (2005) 6(3) *Planning Theory and Practice* 387, 390.

[39] Assembly of European Regions, Regions and Territories in Europe (Limousin Regional Council, 1995).

[40] Article 7D EC (introduced by the Treaty of Amsterdam); now Article 16 EC.

[41] Commission of the EC, *Third Report on Economic and Social Cohesion: A New Partnership for Cohesion: Convergence, Competitiveness and Cooperation* (Brussels, 2004).

development,[42] but failed to elaborate as to its meaning. It was this rather uncertain concept that was then incorporated into cohesion policy when the need to prepare for a new period for structural funds, to run from 2007 to 2013 led to a reconsideration of European spatial development policy, particularly given the growing political understanding that spatial development would not be part of the Community's competence.

At this point, the Commission, and in particular the Directorate-General for Regional Policy, 'heard the challenge loud and clear' and 'reframed cohesion policy in terms of Lisbon'.[43] The understanding of the concept as a third dimension of cohesion policy was then included in the Draft Constitutional Treaty, Article I-3 of which proposed that the 'Union shall promote economic, social and territorial cohesion, and solidarity among Member States'. Perceived as a legislative 'reshuffling' of the terminology, to help overcome the issues surrounding the lack of EU competence in spatial planning,[44] the Draft Constitution neatly (and relatively uncontroversially) captured the European spatial planning agenda in the phrase 'territorial cohesion'. The Conference of the Representatives described this 'strengthening of economic, social and territorial cohesion' in the language of cohesion, aiming at 'reducing disparities between the levels of development of the various regions and the backwardness of the least favoured regions'.[45] This explicitly economic meaning was, however, to be mediated by sustainable development, as suggested by the Rotterdam principles: '[t]he incorporation of the territorial dimension, as well as the concept of territorial cohesion can add value to the implementation of the Lisbon and Gothenburg strategy by promoting structured and sustainable economic growth'.[46] In this sense territorial cohesion was a mechanism of integration, perceived as necessary if the goals of structural innovation and sustainable economic growth, identified following the Lisbon and Gothenburg meetings of the European Council, were to be achieved. Here it attempted to reconcile visions of *flows* and *places* by rolling them together in the malleable language of sustainability.

Yet this was not the only tension, for cohesion policy has its own concerns. Whilst ostensibly redistributive, imbued with the aim of reducing disparity, its normative foundations sit easily alongside calls for solidarity among Member States.[47] Cohesion is, after all, according to Article 158 TEC, to 'aim at

[42] Commission of the EC, *First Progress Report on Economic and Social Cohesion* COM(2002)46 final, 4.
[43] A Faludi, op cit, n 18, 4.
[44] Note that in the case of town and country planning, unanimity in decision-making is required (Article 175 EC).
[45] Conference of the Representatives of the Governments of the Member States (2004) Article 220.
[46] EU Informal Ministerial Meeting (2004) Rotterdam, 29/11/2004, confirmed by EU Informal Ministerial Meeting on Territorial Cohesion, *Presidency Conclusions,* 20/21 May 2005 in Luxembourg.
[47] As in Article 2 TEC.

reducing disparities between the levels of development of the various regions and the backwardness of the least favoured regions or islands'[48] through the structural funds and the cohesion fund. Yet the practical operation of cohesion funding has been captured by the political arguments for the 're-nationalization' of cohesion funds making it much less redistributive than it at first sight appears. Certainly analysts have broadly rejected the notion that Member States remain 'gatekeepers'[49] of structural funds and confirm that the Commission have been able to continue to focus structural funds on the poorest in the community (as defined by average GDP) whilst maintaining control of area designation and methodologies of financial allocation.[50] Nevertheless, as the 2006 General Regulations emphasize, cohesion policy 'shall be aimed at reducing the economic, social and territorial disparities which have arisen particularly in countries *and regions* whose development is lagging behind and in connection with economic and social restructuring and the ageing of the population'.[51] Since many Member States have regions whose development can be said to be 'lagging behind', this provides a useful mechanism to support poorer regions within richer Member States through 'convergence' funds, which attract over 80 per cent of the total cohesion budget and there are now 100 regions within 18 Member States that currently benefit from convergence funding. Moreover, if regions are ineligible for convergence funding they are then allocated money from the regional competitiveness objective instead. This objective, funded by the ERDF and the European Social Fund, attracts 15.8 per cent of the funding cycle's allocation or €55 billion.[52] Similarly, all regions are eligible for funding from the third objective (and the most significant for territorial cohesion) for European territorial cooperation,[53] which has provided the means for 'a sort of undercover territorial cohesion policy'.[54] With a current budget of €8.7 billion[55] (or 2.44 per cent of the total) the fund provides ample opportunity to pursue grander ambitions. All in all, cohesion moneys are allocated in such a

[48] Article 158 (inserted in 1992 at Maastricht).

[49] I Bache and G Bristow, 'Devolution and the Gatekeeping Role of the Core Executive: The Struggle for European Funds' (2003) 5(3) *British Journal of Politics and International Relations*, 405–27, 406–7.

[50] J Bachtler and C Mendez, 'Who Governs EU Cohesion Policy? Deconstructing the Reforms of the Structural Funds?' (2007) 49(3) *Journal of Common Market Studies* 535–64, 557.

[51] Council Regulation (EC) No 1083/2006, Article 3(1).

[52] European Commission, *Cohesion policy 2007–13: Commentaries and official texts* (Luxembourg, 2007).

[53] 2006 Regulation re-establishing the European Regional Development Fund (ERDF) as 'support for cross-border, transnational and interregional cooperation' Regulation (EC) No 1080/2006 on the European Regional Development Fund and repealing Regulation (EC) No 1783/1999 (OJ 1999 L 210/1, Article 2.

[54] A Faludi, 'The Learning Machine: European Integration in the Planning Mirror' (2008) 40 *Environment and Planning A* 1470–84, 1472.

[55] Commission of the EC, (CEC), *Working for the Regions: EU Regional Policy 2007–2013*, (Brussels, 2008) 2.

way that 2004 Member States still receiving about half of the funding avail-able,[56] although Poland will be the single largest beneficiary.[57]

Moreover, although the professed aim in Article 158 is to reduce disparities, cohesion funds are currently the 'financial incentives'[58] of the Lisbon Agenda, called into action when the 2000 Lisbon objectives ran out of steam. Allocations for funding are 'earmarked' requiring 2004 Member States to use 60 per cent of Convergence expenditure and 75 per cent of Regional competitiveness and employment expenditure to promote competitiveness and create jobs,[59] as set out in the 2005 Guidelines for Growth and Jobs, the 're-launched' Lisbon Agenda.[60] Here the Commission have tried to reconcile both competition and convergence with growth, submitting that '[c]ohesion policy targets the goal of economic convergence and seeks to unlock the latent potential for high growth'.[61] Yet even this focus on 'unlocking' a fixed asset is reminiscent of understandings of capitalism predicated on spatial fixity.[62] Critics have argued that this 'infatuation'[63] with Lisbon amplifies the central tension at the heart of cohesion policy where the disparity cohesion aims to redress is itself an inevitable consequence of enhanced competition which its pro-grammes aim to promote.[64] Such a 'solution' is limited, illustrating 'one feature specific to policy-making at EU level, namely that solutions to contradictions are often more discursive than real. Stating that there is no contradiction resolves the contradiction, and naming the solution becomes the solution.'[65] The language of 'territorial capital' is intended to resolve these disparities, yet by using a location's distinctive qualities to promote economic development this shapes territorial development in the image of economic development, rather than promoting locality for its own sake. It appears to emphasize *flow* over *place*.

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[56] The Commission's recent 'indicative allocation' shows Spain and Italy to be the second and third most funded recipients (with €35,217 and €28,812 thousand respectively), Commission of the EC, op cit, n 92, 25.

[57] Poland is the single largest recipient (with €67,284 thousand), Commission of the EC, op cit, n 92, 25.

[58] J Pellegrin, 'Regional Innovation Strategies in the EU or a Regionalized EU Innovation Strategy? Conceptual and Empirical Underpinnings of the EU Approach' (2007) 20(3) *Innovation: The European Journal of Social Science Research*, 203–21, 209.

[59] 2006 General Regulations, Article 9(3).

[60] Integrated Guidelines for Growth and Jobs (2005 to 2008) set out in Council Decision 2005/600/EC of 12 July 2005.

[61] Commission of the European Communities, *Strategic Objectives 2005–2009* Europe 2010: A Partnership for European Renewal Prosperity, Solidarity and Security, Brussels, 26 January 2005 COM(2005)12 final.

[62] D Harvey, *The Limits to Capital* (Blackwell, 1999).

[63] A Faludi, 'Making Sense of the Territorial Agenda' (2007) 25 *European Journal of Spatial Development*, 1.

[64] C Rumford, *European Cohesion? Contradictions in EU Integration* (Palgrave Macmillan, 1999).

[65] J Pellegrin, op cit, n 58, 210.

IV. Territorial Cohesion—Still Contested

There are then, we suggest, these two broad strands to territorial cohesion, one based on the trajectory of spatial planning, which despite its lack of a formal legal base continues through networks and 'positioning' to influence and shape the policy debate and a second strand of cohesion policy into which territorial cohesion has now been located. Given that cohesion policy has been reformulated in order to implement an EU-wide competition policy embracing a *Europe of flows*, the question is whether territorial cohesion policy offers any more than an 'add on' and whether it has any independent, substantive scope.

In the repeated attempts at agreeing a definition, the French view that territorial cohesion was concerned with the promotion of locality for its own sake appeared at one point to be gaining ground, notably when Michel Barnier was the Commissioner for DG Regio. In its third report on the subject, *A New Partnership for Cohesion: Convergence, Competitiveness and Cooperation* (2004), the Commission defined territorial cohesion as being both additional and 'reinforcing'. The report articulated this as requiring in 'policy terms', a way 'to help achieve a more balanced development by reducing existing disparities, preventing territorial imbalances and by making both sectoral policies which have a spatial impact and regional policy more coherent'.[66] Strikingly, the Commission stated the rationale for territorial cohesion to be that 'people should not be disadvantaged by wherever they happen to live or work in the Union'.[67] This even suggested that territorial cohesion might come to mean something more than integration and support for regional development, hinting at a substantive form of solidarity, inaugurating a form of spatial justice that could be practically implemented through cohesion funds.[68]

Under Commissioner Hübner, however, the Commission in its Fourth Report, *Growing Regions, Growing Europe* (2007) changed its focus, presenting a narrowly conceived version of territorial cohesion, with the concept taken to mean the lessening of 'territorial concentrations of EU-27 GDP in the traditional core of Europe'.[69] It was at this point that a strongly economic interpretation of the concept began to become more prevalent albeit still within the twin strands of the 'glocal'[70] empowering city regions to engage with global

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[66] CEC, *A New Partnership for Cohesion: Convergence, Competitiveness and Cooperation—Third Report on Economic and Social Cohesion* (CEC, 2004), 27.

[67] Ibid.

[68] J Holder and A Layard, 'Relating Territorial Cohesion, Solidarity and Environmental Justice' in M Ross and Y Borgmann-Prebil (eds), *Promoting Solidarity in the EU* (Oxford University Press, 2010).

[69] Commission of the EC, *Growing Regions, Growing Europe* (Brussels, 2007), xii.

[70] E Swyngedouw, 'Reconstructing Citizenship, the Re-Scaling of the State and the New Authoritarianism Closing the Belgian Mines' (1996) 33 *Urban Studies*, 1499–521; N Brenner, 'Between Fixity and Motion: Accumulation, Territorial Organization and the Historical Geography of Spatial Scales' (1998) 16 *Environment and Planning* D; *Society and Space* 459, 481.

competition. The Fourth Report, DG Regio thus identified access to services of 'general economic interest' as 'of major importance in achieving economic, social and territorial cohesion'.[71] It aimed 'to combine high productivity with high levels of employment—to avoid sacrificing one for the other—and to do so throughout a city or region so as to maintain territorial cohesion'.[72] It also promoted the idea of 'polycentric development' with towns seen as important because of the services they can offer to surrounding rural areas.[73] Central here is a concern to improve transport infrastructure and networks given that 'many of the gains from investment accrue outside the city in which it occurs'.[74] These statements emphasize a neo-liberal understanding of Europe as a homogenous site based on *flows* rather than a collection of culturally, historically, and socially situated *places*. They bring to mind Healey's description of the shift towards the 'promotion of place as a product in an external marketplace',[75] capable of overriding the relationships between biological and social diversity and cultural identity.

Nevertheless, by now even the subsequent failure of the Draft Constitution could not halt the head of steam which had built up around territorial cohesion, with ministers concluding in Luxembourg 2005 that a key challenge was 'to integrate the territorial dimension into EU policies with the aim of achieving a coherent approach to the development of the EU territory, on the basis of the concept of territorial cohesion'.[76] The territorial cohesion agenda continued to be advanced, particularly by the German Presidency which delivered the *Territorial Agenda of the European Union: towards a More Competitive and Sustainable Europe of Diverse Regions* in 2007.[77] This 'action-oriented political framework for our future cooperation'[78] remained remarkably faithful to many of the interpretations and aims of the ESDP, but also committed European spatial planning ministers to further strengthen territorial cohesion in order to achieve both greater competitiveness and sustainable development. Territorial cohesion was not defined by the *Agenda*, but seemed to encompass several elements: *integration*: furthering 'territorial integration of places where people

[71] Commission of the EC, Commission of the EC, *Growing Regions, Growing Europe* (Brussels, 2007), 60.

[72] Ibid, 14.

[73] Ibid, 59.

[74] Ibid, 103.

[75] P Healey, 'The Place of "Europe" in Contemporary Spatial Strategy-making' (1998) 5(2) *European Urban Regional Studies* 139–53, 140.

[76] EU Informal Ministerial Meeting on Territorial Cohesion (2005) Luxembourg 20–21 May 2005, Presidency conclusions, cited by Davoudi, 'Understanding Territorial Cohesion', 434.

[77] German Presidency, *Territorial Agenda of the European Union: Towards a More Competitive and Sustainable Europe of Diverse Regions* (2007) based upon German Presidency, *Territorial State and Perspectives of the European Union: Towards a Stronger Territorial Cohesion in the Light of the Lisbon and Gothenburg Ambitions* (2007).

[78] Ibid, para 2.

live',[79] including making better use of available resources in European regions;[80] *cooperation*: encouraging cooperation 'involving the various actors and stakeholders of territorial development at political, administrative and technical levels';[81] to be achieved through 'an intensive and continuous dialogue between stakeholders of territorial development', a process labelled 'territorial governance';[82] and *coherence*: promoting the coherence of EU policies with a territorial impact, both horizontally and vertically, so that they support sustainable development at national and regional level.

In this context of territorial cohesion policy, the *Territorial Agenda* set several priorities for the development of the EU: strengthening polycentric development and innovation through networking of city regions and cities; encouraging partnership and territorial governance between rural and urban areas; promoting regional clusters of 'competition and innovation' in Europe (including strengthening their international identity and specialization as a way of becoming more attractive for investment); supporting the strengthening and extension of trans-European networks; promoting trans-European risk management, including assessing the impacts of climate change; and strengthening ecological structures and cultural resources, the last producing so-called 'added value for development'.[83]

It was left to the *First Action Programme for the Implementation of the Territorial Agenda* (2007), drawn up by the Portuguese Presidency, to firm up this list of priorities, 'encouraging a structured but flexible process of cooperation'[84] on territorial cohesion. A tightly written document, with clearly set out lines of action and responsibility, a main aim of the Programme was to ensure that the territorial dimension is taken adequately into account both when reviewing current policies and designing future policies of the EU.[85] Ministers responsible for spatial planning thereby committed themselves to reviewing key EU dossiers, notably on climate change, sustainable development, rural development policy, the Lisbon Agenda, transport policy, and cohesion policy. The overall aim of the Action Programme was the *europeanization* of spatial policy, meaning in this context achieving 'better coordination between the spatial policies of the Member States by introducing a European dimension and defining and implementing common priorities'.[86]

Even despite this 'to do' list, the concept remained largely indeterminate. This ambiguity was clearly signalled by the Commission in its 2008 *Fifth Progress Report on Economic and Social Cohesion* in which it acknowledged the pressure it

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[79] Ibid, para 3.
[80] Ibid, para 3.
[81] Ibid, para 4.
[82] Ibid, para 5.
[83] Ibid, paras 25–27.
[84] Portuguese Presidency *First Action Programme*, 2.
[85] Ibid, 3.
[86] Ibid, 15.

faced to develop an agreed definition of territorial cohesion and accompanying indicators (as the 2008 Green Paper subsequently confirmed). The Commission even voiced the belief of some Member States that the term adds little to existing cohesion policy, since 'territorial cohesion is already integrated in cohesion policy and that the economic, social and territorial elements of cohesion policy cannot be separated.'[87] While Commissioner Barnier was prepared to take the lead in determining the content of the concept, Commissioner Hübner was now much more concerned to agree a definition by consensus.

Consequently, rather than occupying the intellectual territory and defining the concept itself, DG Regio under Commission Hübner published the Commission's *Green Paper on Territorial Cohesion: Turning Territorial Diversity into Strength* in 2009.[88] This presented the definition of 'territorial cohesion' as a blank canvas, pending resolution, calling for a European-wide debate on the meaning of territorial cohesion. The Green Paper did offer its own, somewhat inconclusive, definition of the concept, beginning with a flowery description of the diversity of the EU territory and settlement patterns ('From the frozen tundra in the Arctic Circle to the tropical rainforests of Guyane, from the Alps to the Greek Islands, from the global cities of London and Paris to small towns and villages dating back centuries...') and continuing:

[T]erritorial cohesion is about ensuring the harmonious development of all these places and about making sure that their citizens are able to make the most of inherent features of these territories. As such, it is a means of transforming diversity into an asset that contributes to sustainable development of the entire EU.[89]

While this seemed to add little except a nod to endogenous value emphasizing economic development in its reference to 'inherent features' and promoted integrated decision-making in its linkage with sustainable development thereby incorporating spatial planning, the Green Paper nevertheless put territorial cohesion centre stage. Its statements made it clear that the future development of territorial cohesion was not entirely tied up with the fate of the EU's constitutional project and that the concept now carried independent weight in EU policy-making circles, almost regardless of its formal legal status. Such a level of activity on matters spatial and territorial also continued to suggest a departure for the EU in terms of the development of concepts and policies and 'the acknowledgment and valorisation of knowledge on spatial issues'.[90]

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[87] Commission of the EC, *Growing Regions, Growing Europe: Fifth Progress Report on Economic and Social Cohesion*, COM(2008)371 final, p 6.

[88] Commission of the EC, *Green Paper on Territorial Cohesion: Turning Territorial Diversity into Strength*, COM(2008)616 final.

[89] Commission of the EC, op cit, n 126, 4.

[90] E Gualini, '"Territorial Cohesion" as a Category of Agency: The Missing Dimension in the EU Spatial Policy Debate' (2008) *European Journal of Spatial Development*, 1, 7.

Indeed the most recent intervention, contained in the 2009 *Sixth Progress Report on Economic and Social Cohesion*, saw the Commission consolidate this two-pronged definition. While it relayed both the reaction to the open textured quality of the Green Paper[91] the Commission felt bold enough to extract 'a broad agreement on the goal and basic elements of territorial cohesion' from the Green Paper's responses. 'The goal of territorial cohesion' it said, 'is to encourage the harmonious and sustainable development of all territories by building on their territorial characteristics and resources.' To achieve this the Commission identified 'three basic elements' as commonly supported by respondents: (1) concentration (achieving critical mass while addressing negative externalities), (2) connection (reinforcing the importance of efficient connections of lagging areas with growth centres through infrastructure and access to services), and (3) cooperation (working together across administrative boundaries to achieve synergies).

This formulation is hardly contentious. It continues to satisfy those concerned with integration, particularly in the spatial planning community since the reference to 'harmonious and sustainable development' can be understood to entail balance and coordination and the language of sustainability appears to impose some form of restraint on unbridled development. Conversely, the reference to 'building on territorial characteristics and resources' again refers to the liberal economic paradigm's use of territorial endogenous advantages to promote economic development. It leaves open rather fundamental questions as to why a critical mass should be sought—is this to facilitate efficiency or liveability? It does not suggest why 'lagging areas' should be connected—is it for their own sake or because this will facilitate economic flow? Nevertheless, it is this rather open textured definition that those benefiting from cohesion funds including regions, newly developed macro-regions, and EGTCs, can draw on. Ultimately, territorial cohesion is still a concept used 'in different ways by different people, by different governments and by different interest groups'.[92]

V. Territorial Cohesion—More than a Regulatory State?

While the commitment to economic development and growth intertwining cohesion policy with the Lisbon Agenda continues to keep competitiveness and economic development at the forefront of policy-making, the development of the territorial cohesion concept and the funding attached has the potential to provide greater opportunities for a *Europe of places,* even potentially creating a

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[91] Commission of the EC, *Sixth Progress Report on Economic and Social Cohesion* COM(2009)828 final, 11.
[92] House of Lords European Union Committee, 19th Report of Session 2007–8 *The Future of EU Regional Policy* HL Paper 141 (2008), 36, per Professor John Bachtler.

fourth level of the EU. Central to understanding how territorial cohesion is to work in practice, particularly in its relationship with the European Territorial Cooperation Objective are the developing 'prime test cases'[93] of territorial cohesion, the macro-regional strategies, and the European Groupings on Territorial Cooperation (EGTCs).

In the framework formulated by the Commission, macro-regions can be either spatially or functionally defined; they are to be areas 'including territory from a number of different countries or regions associated with one or more common features or challenges'.[94] Once delineated, they are to become the focus for an integrated approach, incorporating public actors at the national, regional, and local level, and focusing on economic, social, and environmental concerns, attempting to implement holistic sustainable governance on the ground. These proposals are expansive, moving on from the Baltic to include the Danube[95] and possibly the Carpathian Mountains, the Alps, and the Mediterranean.[96] The strategies are transboundary, developed at a scale between the EU and the Member State. While they remain under development, they appear to be creating innovative and distinctive EU places at a new spatial scale.

EU places have also been created through the European Groupings on Territorial Cooperation (EGTCs)[97] including, for example, at Strasbourg-Ortenau. Here, a cross-border administrative entity, a 'Eurodistrict', was proposed in 2005 by Gerhard Schröder and Jacques Chirac during the celebrations of the 40th anniversary of the Elysée Treaty, coming into effect in 2010 as a legal entity with legal personality. There are now 13 EGTCs, including Lille-Kourtrijk-Tournai between France and Belgium, Galicia-Norte Portugal between Spain and Portugal, and Ista-Granum and Karst-Bodva both on the boundary between Hungary and the Slovak Republic. Broadly their aims are to create a 'common space' that benefits both its citizens and contributions to European integration.[98]

Under the 2006 Regulation establishing EGTCs, Member States, regional and local authorities, as well as some other bodies governed by public law may establish an EGTC to strengthen transboundary economic and social cohesion.[99] An EGTC has legal personality under European law and in the law of the respective Member States[100] and can be held legally accountable.[101]

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[93] Commission of the EC, op cit, n 9.
[94] DG Regio, 'Macro-regional strategies in the European Union', 2009 available at <http://www.interact-eu.net/macro_regional_strategies/283> (accessed 25 May 2010).
[95] Commission of the EC, op cit, n 9.
[96] EU Observer, 'EU "macro-regions" could get own funding from 2014' 7 October 2009 available at <http://euobserver.com/886/28787> (accessed 25 May 2010).
[97] Regulation (EC) No 1082/2006 on a European grouping of territorial cooperation (EGTC).
[98] <http://www.lillemetropole.fr/index.php?p=986&art_id> (accessed 25 May 2010).
[99] Article 1(2).
[100] Article 1(3) and (4).
[101] Article 15.

An EGTC may not, however, exercise 'powers conferred by public law' nor may it exercise 'duties whose object is to safeguard general interests of the State or other public authorities, such as police and regulatory powers, justice or foreign policy'.[102] The introduction of the EGTCs has been fraught, with some Member States attempting to resist unmediated implementation of the Regulation by labelling it a 'disguised directive'.[103] The 2006 Regulation has succeeded in introducing a transparent, legally binding framework for international cooperation, which the Council of Europe had attempted to implement for decades through the Convention of Madrid[104] and which the INTERREG programmes had attempted to support with little success given the administrative and legal difficulties faced by cross-border collaborations.

Now, as this kaleidoscope of EGTCs continues to fan out across the EU (a further 19 groupings have been proposed[105]), the repetition of place-making throughout the 'territory of the EU'[106] has the potential to substantially re-pattern the EU itself, creating a *Europe of places* on multiple (including local, national, and EU) levels. These are all characterized as EU places since, as the Commission maintained when introducing the 2006 Regulation, to prohibit such groupings would be to infringe the principle of non-discrimination. As Peters, a lawyer for DG Regio rationalized the debate:

If a municipality in a Member State can set up a joint body with a neighbouring municipality inside the same Member State to run a bus line or a water sewage treatment plant or if a region can manage a nature park or a regional development agency together with its neighbour region inside the same Member State, the Community Regulation allows them to do the same thing across the border, inside the Community.[107]

This idea of spatial non-discrimination and EU, rather than Member State, place-making is fostered by the many references in policy documents to 'the Territory of the EU' as a given, physical reality.[108] In one sense, this merely attempts to emphasize the spatiality of the ongoing legal project: since its earliest

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[102] Article 7.
[103] *Inforegio: Regions as Partners: The European Territorial Cooperation Objective* (2007) 24 *Panorama*, 13.
[104] G Janssen, 'European Groupings of Territorial Cooperation: Experiences and Prospects' in H Kilper ed. *German Annual of Spatial Research and Policy 2009: New Disparities in Spatial Development in Europe* (Springer, 2009), 179.
[105] <http://portal.cor.europa.eu/egtc/en-US/Projects/preparation/Pages/welcome.aspx> (accessed 25 May 2010).
[106] CSD op cit, n 14, 1, Commission of the EC, (CEC), *Unity, Solidarity, Diversity for Europe, its People and its Territory, Second Report on Economic and Social Cohesion*, COM(2001)24, Commission of the EC, (CEC), *Fifth Progress Report on Economic and Social Cohesion: Growing Regions, Growing Europe* COM(2008)371 final; European Parliament, *Territorial Cohesion in Regional Development European Parliament Resolution on the Role of Territorial Cohesion in Regional Development* (2004/2256(INI)), 2004.
[107] *Inforegio*, op cit, n 103.
[108] Ibid.

days the EU has been supranational, conceived of as a *sui generis* project. Yet the project to build 'spatial Europe', acknowledging and valuing knowledge on spatial issues, also appears to have a further strand: to develop the idea of the territory of the EU as a whole and EU places within.[109] As Peters concedes, 'unfortunately' not all Member States consider cooperation across the border as internal cooperation inside the Community, preferring to characterize it as external cooperation between different legal, and so spatial, entities.[110] The EU spatial project spearheaded by DG Regio makes no distinction between places that straddle borders and places that are within a Member State: they are all within the 'territory of the EU'.

Despite globalization and the rise of the 'glocal',[111] these developments acknowledge that territory still matters. As de-territorialization scholars have argued, even if 'the traditional Westphalian image of political space as a self-enclosed geographical container is today becoming increasingly obsolete, territoriality remains a fundamental component of state power and an essential geographical scaffolding for the globalization process'.[112] Territory remains, yet as a result of ongoing re-scaling it is acquiring a less settled pattern, there is less a ladder of hierarchy and more an adventure playground with a 'mixture of constructions, multiple levels, and encouragement of movement—up, down, sideways, diagonally, directly from high to low, or low to high'.[113] This is evident at EU level as well where the re-patterning is clearly evident in the role played by territorial cohesion and its funding. Just as the State still expresses itself on the sub- and supranational scale, so territorial cohesion now provides increasing opportunity for the EU (or more precisely, the agents of the EU) to do so as well.

This creation of new spatial scales through cohesion provides new opportunities for both European institutions and sub-national actors to become influential, independent actors in EU policy-making at that level.[114] For example, the transnational Eurodistrict in Strasbourg/Ortenau shares common institutions including a single president, staff, and budget while there has been much discussion over whether the Baltic Macro-region will be allocated its own funding line in the next budget cycle.[115] While Community institutions

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[109] E Gualini, op cit, n 90, 7.

[110] *Inforegio*, op cit, n 106, 11.

[111] E Swyngedouw, 'Reconstructing Citizenship, the Re-Scaling of the State and the New Authoritarianism Closing the Belgian Mines' (1996) 33(8) *Urban Studies* 1499–521; N Brenner, 'Between Fixity and Motion: Accumulation, Territorial Organization and the Historical Geography of Spatial Scales' (1998) 16 *Environment and Planning* D; *Society and Space* 459–81.

[112] N Brenner, 'Beyond State-centrism? Space, Territoriality, and Geographical Scale in Globalization Studies' (1999) 28 *Theory and Society* 39–78, 40.

[113] J Anderson, 'The Shifting Stage of Politics: New Medieval and Postmodern Territorialities?' (1996) 14 *Environment and Planning D: Society and Spare* 133–53, 151.

[114] J Sutcliffe, 'The 1999 Reform of the Structural Fund Regulations: Multi-level Governance or Renationalization?' (2000) 7(2) *Journal of European Public Policy* 290.

[115] EU Observer, op cit, n 96.

increasingly characterize the Baltic as a 'European Sea',[116] the Danube is referred to as an 'internal EU waterway'[117] or a 'Region' that is 'an integral part of the European Union to be more fully realised'.[118] While the language of seas and waterways has facilitated the delineation of marine and aquatic spatial units, particularly in light of the Water Framework Directive[119] and the Marine Strategy Directive,[120] such political and spatial enclosure may become more contentious in future, when land-based, macro-regional strategies such as the Alps or the Carpathian Mountains are developed. The Commission, after talking with the Member States involved, decided not to rely on EGTCs for the Baltic on the basis that the work 'does not involve any legal responsibility and therefore there is no necessity to have a legal entity'. They also concluded that establishing 'an EGTC would have created an additional body and it was felt that the Strategy should not generate an additional layer of administration' which would conflict with the strategy's mantra of 'no new institutions'.[121] The alternative however has meant that the Commission have identified themselves as being able to 'fulfil the need for an independent, multi-sector body that can guarantee the necessary co-ordination, monitoring and follow-up of the action plan, as well as a regular updating of the plan and strategy as necessary'.[122] To some extent, in both macro-strategies and EGTCs Member States have been displaced both spatially and (though it remains incipient) legally at this new spatial scale of EU places. They are located within the territory of the EU where all places are created equal, whether they straddle borders or not.

    This focus on cohesion policy in general and territorial cohesion in particular emphasizes once again the importance of bringing 'expenditure (back) into EU Research'.[123] A focus on expenditure is concerned with the development and understanding of the EU itself, questioning in particular the paradigmatic understanding of the EU as a 'regulatory State'. This 'obvious' insight[124] was developed by Majone in his argument that the Commission's lack of independent budget-raising capacity and its consequent inability to engage in significant

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[116] Commission of the EC, *Communication from the Commission Concerning the European Strategy for the Baltic Sea Region*, Brussels, 10 June 2009 COM(2009)248 final, 6.
[117] 'Danuta Hübner calls for a European Danube Strategy', Brussels, 6 October 2008, IP/08/1461.
[118] Commission of the EC, op cit, n 9, 1.
[119] Directive 2000/60/EC establishing a framework for Community action in the field of water policy (OJ 2000 L 327/1).
[120] Directive 2008/56/EC establishing a framework for community action in the field of marine environmental policy (Marine Strategy Framework Directive) (OJ 2008 L 164/19).
[121] Personal email communication from DG Regio dated 30 November 2009 on file with the authors.
[122] Ibid, 1.
[123] N Robinson, 'More than a Regulatory State: Bringing Expenditure (Back) into EU Research' (2007) 5 *Comparative European Politics*, 179–204.
[124] M Moran, 'Understanding the Regulatory State' (2002) 32 *British Journal of Political Science* 391–413, 404.

redistribution or stabilization, has left the EU confined to regulation. For Majone, this alone is possible since 'regulatory policy-making puts a good deal of power into the hands of the Brussels authorities while, at the same time, giving the possibility of avoiding tight budgetary constraints imposed by the members'.[125] Analyses of cohesion policy are significant, since to the extent that this claim about expenditure can be challenged, then so can the underlying assumption that the EU is limited, unable to 'become, a state in the modern sense of the concept'.[126] If, as cohesion analysts suggest, the provision of expenditure can entice or enable a State to engage in redistribution or stabilization policies, then cohesion transforms the EU into more than 'just' a regulatory State.

VI. Territorial Cohesion and New Scales of Governance

If the EU is to do more than regulate then this raises the question particularly for lawyers of how it is to intervene. 'Negative' integration, removing barriers to trade and obstacles to undistorted competition, has conventionally been understood as the 'main beneficiary of supranational European law'.[127] The creation of an economically, politically, and spatially level playing field has been interpreted as a legal project well suited both constitutionally and institutionally to the supranational level.[128] Here regulation is a useful tool for EU lawyers to pursue economic efficiency and reduce barriers to trade, both tangible and intangible, underpinning the legal creation of the single market.

This contrasts with the more limited potential for the EU's supranational actors to bring about measures of 'positive' integration[129] and they have often relied on 'new modes of governance'[130] with three 'defining characteristics':[131] (1) their departure from the Community method of legislating through regulations and directives, relying on 'soft law' and voluntarism instead; (2) their negotiation by public and private actors at different levels of

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[125] G Majone, *Regulating Europe* (Routledge, 1996), 66.

[126] Ibid, 287; G Majone, 'The Rise of the Regulatory State in Europe' (1994) 17 *West European Politics* 77.

[127] F Scharpf, *Governing in Europe: Effective and Democratic?* (Oxford University Press, 1999), 50.

[128] F Scharpf, 'The Joint-Decision Trap Revisited' (2006) 44 *Journal of Common Market Studies* 845–64, 854.

[129] G De Burca, 'The Constitutional Challenge of New Governance in the European Union' (2003) 28 *European Law Review* 814–39; S Regent, 'The Open Method of Coordation: A New Supranational Form of Governance' (2003) 9 *European Law Journal* 190–214; S Borrás and K Jacobsson, 'The Open Method of Co-ordination and New Governance Patterns in the EU' (2004) 11 *Journal of European Public Policy* 185–208.

[130] DM Trubek and LG Trubek,, 'New Governance and Legal Regulation: Complementarity, Rivalry, and Transformation' (2007) 13 *Columbia Journal of European Law* 529.

[131] B Kohler-Koch and R Rittberger, 'Review Article: The 'Governance Turn' in EU Studies' (2006) 44 *Journal of Common Market Studies* Annual Review 27–49.

decision-making within the framework of subsidiarity and the emergence of networks where all relevant actors are included in the process of defining policy goals; and (3) instruments, and no distinction is made between steering subjects and steering objects.[132]

Throughout the EU, governance is spatially significant in the way in which new or multi-level governance crosses spatial, and political, lines contributing to positive integration. As Kohler Koch and Rittberger note, '[i]n the European multi-level system the executive is crossing levels of jurisdiction easily, whereas the territorial reach of parliaments is more limited'.[133] The academic roots of multi-level governance in cohesion policy remain important: scholars identify 'the distinctiveness of [multi-level governance] not just in the vertical diffusion of authority across levels of government but even more so in the horizontal dispersion of authority in which jurisdictions are task-specific, intersecting and flexible'.[134] For lawyers this requires a new sensitivity, engaging with scale and situation, challenging the legal conception of privileging time over space.[135] Conventionally analysing law *in situ* is legally resolved by reference to jurisdiction, calling on sovereignty within the defined space. EU lawyers have expertly demonstrated that sovereignty is not a monolithic concept maintaining that while law remains distinctive, amounting to more than a mere expression of political will,[136] sovereignty can be understand as both non-exclusive and plural.[137] Similarly, geographers have disaggregated space and, consequently, jurisdiction.[138] Jurisdiction is primarily (though not entirely[139]) predicated on spatial scale and to the extent that cohesion policy in general and territorial cohesion in particular are redrawing spatial scales, this has implications for governance.

In practice, as the scholars working on multi-level governance demonstrated early on, the EU has always operated on multiple scales with cohesion funding long supporting this multi-scalar activity. The first two structural funds or

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[132] Ibid.

[133] Ibid, 41–2.

[134] Ibid. See also L Hooghe and M Keating, 'The Politics of European Union Regional Policy' (2004) 11(3) *Journal of European Public Policy* 367–94; L Hooghe and G Marks, *Multi-level Governance and European Integration* (Rowman & Littlefield, 2001); L Bruszt, 'Multi-level Governance—the Eastern Versions: Emerging Patterns of Regional Developmental Governance in the New Member States' (2008) 18(5) *Regional and Federal Studies* 607–27.

[135] N Blomley, 'The Boundaries of Property: Lessons from Beatrix Potter' (2004) 48(2) *The Canadian Geographer/Le Geographe canadien* 91–100, 92.

[136] K Armstrong, 'Integration: Theorizing the Legal Dimension of European Integration' (1998) 36(2) *Journal of Common Market Studies* 155–74.

[137] M Wilkinson, op cit, n 44, 178.

[138] N Brenner, 'The Limits to Scale? Methodological Reflections on Scalar Structuration' (2001) 25(4) *Progress in Human Geography* 591–614 and N Brenner, 'Urban Governance and the Production of New State Spaces in Western Europe, 1960–2000' (2004) 11(3) *Review of International Political Economy*, 447–88.

[139] M Valverde, 'Jurisdiction and Scale: Legal 'Technicalities' as Resources for Theory' (2009) 18 *Social & Legal Studies* 139–57.

solidarity mechanisms, the Member State controlled Social Fund (ESF) and the European Agricultural and Guarantee Fund (EAGGF), were introduced in 1958 while the European Regional Development Fund (ERDF) was created in 1978[140] to assist those regions affected by industrial decline and to counterbalance the significant financial support allocated to the agricultural industries of the Member States. Yet ultimately, although regions receive the cohesion funds, this is still facilitated by the Member State through the planning and allocation process. Where the development of territorial cohesion differs is that its macro-regional strategies and the legal underpinning of EGTCs enable EU place-making projects to be more than merely superficial delineating administrative objects giving the potential for both legal and political personality. Just as the opportunities for a 'Europe of the Regions' have been limited where it has been conceptualized as regions actively involved 'upstream' in policy-formulation and legislating[141] so EGTCs and macro-regions are unlikely to have any standing to influence policy-making throughout the EU as a whole. Yet just as regions are required to implement legislation 'downstream'[142] and are active participants in the cohesion process so macro-regions and EGTCs could in time be involved with implementing EU law and policy themselves 'on the ground'. It is here that multi-level governance appears to have flourished and may develop still further at this fourth level of the EU.

Lawyers have long recognized this fracturing in constitutional law and have questioned apparent unqualified (re)assertion of the Westphalian State.[143] The 'new governance' that has become central to modern studies of EU law has required a new (or rediscovered) understanding of law. As this analysis demonstrates, however, in its connection with territory and jurisdiction it is also spatially situated. Specifically, any acknowledgement of EU legal pluralism needs to be overlaid onto the political and geographical project that has interpreted the EU across multiple, politically constructed scales with an awareness that through devices such as macro-strategies and EGTCs actors of the EU are creating new 'EU places'.

VII. Conclusion

When EU actors engage in place-making activities, delineating EU places or providing the resources for regions or places to delineate themselves, these are

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[140] Council Regulation No 724/75, 18 OJ Eur Comm (OJ 1975 L 73/1). It was created in order to 'correct the principal regional imbalances within the Community', ibid, 2.

[141] J Hunt, 'Devolution and Differentiation: Regional Variation in EU Law' (2010) *Legal Studies* (forthcoming).

[142] C Jeffery, 'Sub-National Mobilization and European Integration: Does it Make Any Difference?' (2000) 38(1) *Journal of Common Market Studies* 1–23.

[143] M. Wilkinson, 'Constituting Europe: Flexibility or Finalité' (2002) 22 *Oxford Journal of Legal Studies* 177–87.

political constructions. The boundaries and the articulation of place have mean-
ing: resonating cultural, historical, and spatial situatedness. So far, these delin-
eations in the Baltic and the Danube and in the EGTCs, have no explicit legal
implications, except that the Baltic Strategy has explicitly been introduced as a
response to the perceived failure of traditional legal instruments.[144] From an
institutional perspective, the precise status of the macro-regions and EGTCs
remains tentative. It is unclear, for example, whether the Baltic Strategy is
'geared towards something instrumental, functional and structural' or whether
it is 'about branding the region as a coherent sphere of cooperation in the
European consciousness and in the minds of the EU member states themselves
in the region'.[145] EGTCs meanwhile appear to be evolving under the radar;
there is currently a striking lack of academic research on their operation or
impact.

   It may be that in time to come these 'EU places' will have acquired sufficient
formal status to implement legislation 'downstream' in their own right.
Certainly these place-making activities and the role played by territorial cohe-
sion have the potential to convert the dominant trajectory from a *Europe of flows*
into a *Europe of places*. This may require lawyers to engage productively with the
spatial scale of EU law, engaging in debates not only about sovereignty or legal
pluralism but also with the effects of multiple spatial scales and their implica-
tions for law. While legal delineations are, as Ford notes, often wrongly ima-
gined to be either 'the product of aggravated individual choices' or 'a natural
and inevitable function of geography'[146] increasingly Lefebvre's argument that
space is 'produced' is persuasive at all scales, from the city, to the region, to the
supra-regional level.[147] The production is achieved, at least in part, by actors at
EU, State, regional, and local levels acting through legal and political processes,
invoking their expressions of expertise. There is an attempt via the EU's spatial
project and the twin strands of territorial cohesion to re-scale governance on the
ground.

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[144] In particular the 1974 Baltic Convention and (to a lesser extent) the 1992 OSPAR Convention.
[145] P Joenniemi, 'The EU Strategy for the Baltic Sea Region: A Catalyst for What?' DIIS Brief,
2009, 1.
[146] R Ford, 'The Boundaries of Race: Political Geography in Legal Analysis' (1994) 107 *Harvard
Law Review* 1841–952, 1857.
[147] H Lefebvre, *The Production of Space* (trans) D Nicholson-Smith, (Blackwell, 1991); N Brenner,
op cit, n 48.