

N.O.STRA. Seminar

Capitalisation on European projects for a better knowledge and management of biodiversity in the Bouches de Bonifacio strait

Bonifacio, 4-5 June 2014



Creation of the European Grouping for Territorial Cooperation- Strait of Bonifacio International Marine Park (E.G.C.T.-P.M.I.B.B.)

Bonifacio, 5 June 2014



General governance framework for transborder territories

- Since the inclusion in the EU Lisbon Treaty of territorial cohesion as an EU aim, **territorial governance** has been granted a full place.
- Progress:
 - ✓ importance of the notion of “**specific territory**” in the governance approach, (metropolitan or transborder) with **dual specificity of transborder regions**, (overlapping of authorities and different competences and considered as the “laboratories” of European integration);
 - ✓ interest in the concept of “**multi-level**” governance (including several levels of public authorities) and “**multi-channel**” (referring to the diversity of types of stakeholders).
- Use of **transborder cooperation tools (cooperation agreement or structure having a legal personality)** like the legal and operational translation of constantly evolving partnership initiatives.

The E.G.C.T.: innovative and adjustable organisation model for transborder governance

- A new European legal instrument **introduced by regulation (EEC) n°1082/2006** (which took effect on August 1, 2007) with the aim of simplifying the territorial cooperation process between member states and organising it around a harmonised, flexible, yet stable framework.
- **Modified by regulation (EU) n°1302/2013** of December 17, 2013 (applicable from June 22, 2014).
- Aiming to allow the EU **member states' various public bodies** to come together under a new body with a legal personality (States, local or regional authorities, or any other public authority).
- May cover **three types of mission**: a public service mission, a territorial governance project and/or the implementation of the EU's regional policy.
- Structure used at the **EU's internal or external borders** (adhesion by members from non-EU countries).
- **Sustained and independent operation**, benefitting from solid European visibility

The advantages of the E.G.C.T. legal tool

- **Distinct moral entity, able to act on behalf of its members**, (employ staff, use a budget, sign contracts, make calls for tender, purchase goods and property, etc.).
- Possibility to run **intangible cooperation projects** (transborder governance) or **equipment** (joint services, infrastructure or equipment).
- Possibility to adopt the **role of management authority** within European territorial cooperation programmes and to use **tools for integrated territorial development** (2014-2020 programming).
- **Flexibility when defining functioning methods**, as this is subject to application measures within internal law of the EU member states, determining the nature of public law structures, (France, Italy, Spain and Germany) or private, as well as the national rules which apply, (example: General Code of Territorial Authorities in France).

The E.G.C.T.: obligatory elements and good flexibility...

- EGCT rules state **certain obligatory elements** for the constitution of any E.G.C.T., but allow its members **wide scope for adaptation**.

- **Two texts must be drawn up, approved and adopted by all E.G.C.T. members:**
 - ✓ a **convention** must stipulate the name, territory, aims and missions;
 - ✓ In connection with the agreement, **statutes** must be adopted, stipulating:
 - the operational procedures for the management bodies (competence and composition) and the E.G.C.T. decision-making procedures,
 - the working language(s),
 - the operational procedures (personnel management, recruitment, type of personnel contracts, etc.),
 - methods of members' financial contribution and applicable budget and accounting rules,
 - procedures in terms of members' responsibility,
 - procedures in terms of amendment to statutes

- These two documents are crucial and an **agreement by members of the E.G.C.T** on these various points is a decisive step towards the formalisation of **stable governance** and in the process of policy decision-making (drawing up and approval of strategic guidelines and the E.G.C.T.'s institutional architecture).

... but implementation is slow and differentiated

- Unlike the nature of international law of territorial cooperation between two sovereign states, the E.G.C.T. is **governed by European regulations**:
 - ✓ General scope,
 - ✓ Obligatory in all elements,
 - ✓ Directly applicable in all member States, (unlike a directive which must be transposed into national law):
 - Ambiguous legal aspect as in fact, E.G.C.T. regulations require the transposition into national law (transposition laws into French national law in 2008 and Italian law in 2009), leading to incertitude and significant implementation differences of E.G.C.T.s from one country to another,
 - In contradiction with the aim of harmonising and simplifying the applicable rules and legislation.

- The **legal framework of an E.G.C.T.** therefore comes:
 - ✓ From European 2006 regulations, modified in 2013,
 - ✓ Binding provisions drawn up by E.G.C.T. members (agreement and articles),
 - ✓ The law of the member State in which the E.G.C.T. is recorded.

Political and institutional backing of the E.G.C.T.–P.M.I.B.B.

- 1992: **EU decision** to create an international marine park between Corsica and Sardinia.
- 1993: adoption of the **Franco-Italian protocol** defining the modalities for creation of the International Marine Park of the Strait of Bonifacio (P.M.I.B.B.) by the two countries' Ministers of the Environment.
- 2004: adoption of a **joint declaration** for the constitution of the P.M.I.B.B. by the Presidents of the Corsican Environment Office (O.E.C.) and the National Park of Maddalena Arcipelago (P.N.A.L.M.)
- 2009: **deliberation of the Corsican Assembly** validating the creation of the P.M.I.B.B.
- 2010: adoption of the **Franco-Italian statement of intention** regarding the creation of the P.M.I.B.B. by the two countries' Ministers of the Environment.

Procedures for establishing the E.G.C.T.–P.M.I.B.B.

- 2009: **drafting of the European agreement and the statutes** leading to the creation of the E.G.C.T.-P.M.I.B.B. governed and expertised by lawyers.
- 2010: **referral to the French and Italian competent authorities** for interministerial consultations and validation.
- Between 2009 and 2011: **validation of the agreement and the articles** by the partners' supervisory authorities and deliberative bodies (O.E.C. Board of Administration and Consiglio Direttivo of the P.N.A.L.M. in 2010/Corsican Assembly in 2009 and 2011).
- 2011: **official referrals** to the Corsican Prefect by the O.E.C.(prefect's decree of 10 October, 2011 authorising the O.E.C. to become part of the E.G.C.T. through Italian law) and the Presidency of the Italian Council of Ministers by the P.N.A.L.M.(decree of September 2012, authorising the creation of the E.G.C.T.-P.M.I.B.B.).
- 2012: **signature of the agreement and the statutes** leading to the creation of the E.G.C.T.-P.M.I.B.B. by the Presidents of the O.E.C. and the P.N.A.L.M.

Founding members, applicable law and term of the E.G.C.T.-P.M.I.B.B.

- The **founding members** are the O.E.C. and the P.N.A.L.M. (article 6 of the agreement).
- The E.G.C.T.-P.M.I.B.B. is governed by EEC Regulation n°1082/2006 of the European Parliament, by the agreement and statutes, as well as by **Italian law**. (article 6 of the agreement).
- Under Italian transposition law (n°88 July 7, 2009), it takes on a **legal personality under public law**.
- The E.G.C.T.-P.M.I.B.B. is constituted until **31 December, 2080**.



Acquisition of legal personality of the E.G.C.T.-P.M.I.B.B. And entry into force of the agreement

➤ Procedure on an Italian national basis (statutory seat):

- ✓ Registration of the agreement and the statutes in the E.G.C.T. register established by the Italian Council of Ministers in order to acquire legal personality (March 11, 2013 in position n° 5).
- ✓ Certification of the agreement and the statutes by notarial act in La Maddalena. (May 23, 2013).
- ✓ Official publication of the agreement, the statutes and the notarial act in the Official Gazette of the Italian Republic (GU Second Part n° 69 on June 13, 2013).
- ✓ Registration of the E.G.C.T.–P.M.I.B.B. in the European E.G.C.T. register (November 4, 2013 in n° 38/46 E.G.C.T. created on this day).

➤ Procedure on a community level:

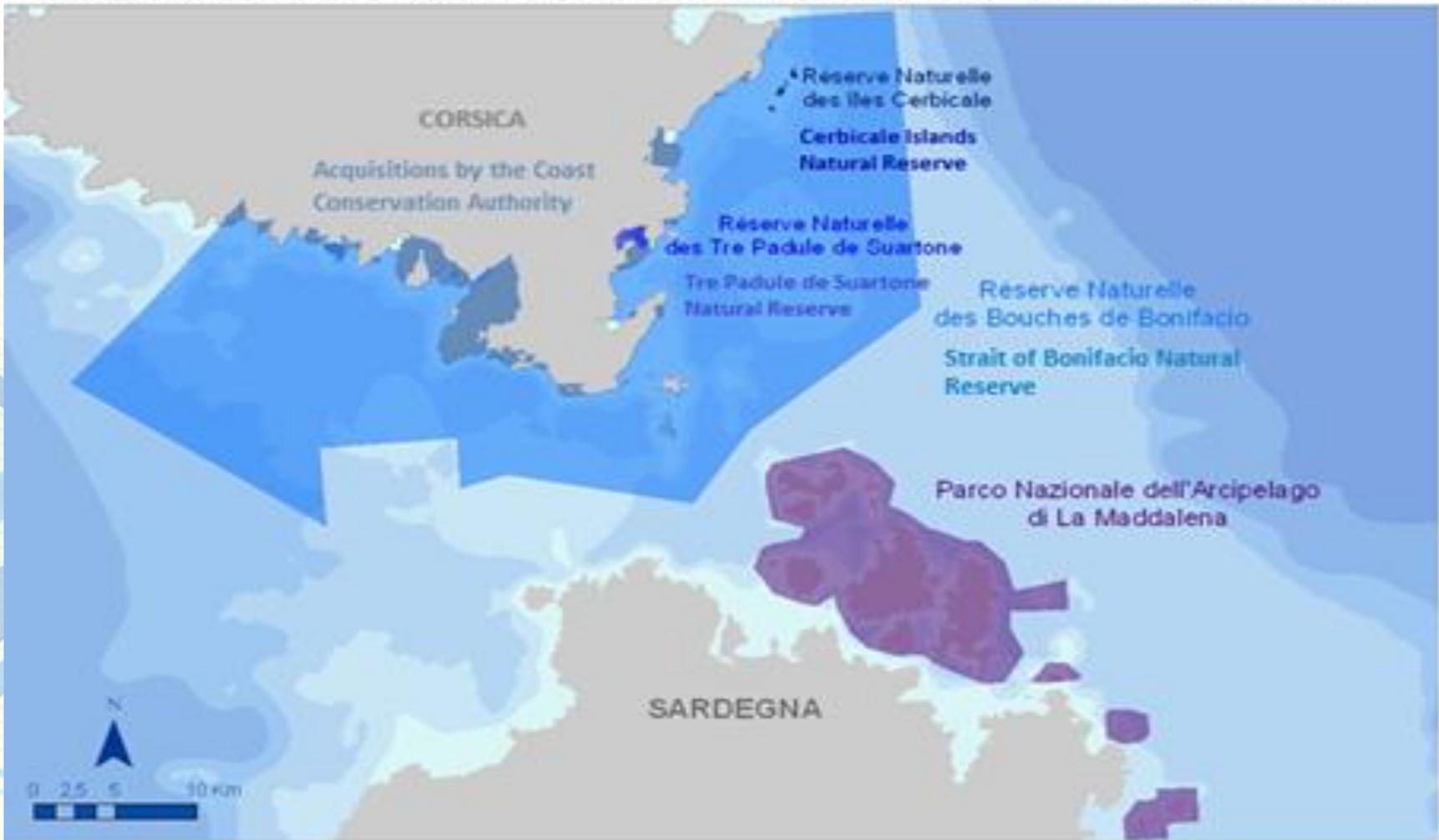
- ✓ Publication in the EU Official Journal (J.O.U.E. S 115 of June 15, 2013).



E.G.C.T.-P.M.I.B.B. Action Perimeter

(article 4 of the agreement)

Delimitazione dell'ambito d'azione del G.E.C.T. – P.M.I.B.B. / Delimitation of the E.G.T.C.-P.M.I.B.B. field of action



Aim and missions of the E.G.C.T.-P.M.I.B.B.

➤ **Aim:**

- ✓ To jointly promote and protect, manage and promote the natural and cultural resources of the Strait of Bonifacio, in order to implement a joint strategy in terms of sustainable development of this cooperation area (article 5 of the agreement).

➤ **Example of specific missions:**

- ✓ Implement a common action plan,
- ✓ Propose to the competent authorities suitable measures to strengthen maritime security in the international Strait of Bonifacio,
- ✓ Acquire equipment with the aim of harmonising management methods,
- ✓ Organise training and experience exchanges,
- ✓ Produce common communication tools,
- ✓ Seek out regional, national and/or community financing

E.G. C.T.-P.M.I.B.B. facilities

- The **administrative headquarters** are in Italy at Casa del Parco, Spargi, 07024 La Maddalena (article 2 of the agreement).
- The **technical-scientific support units** shall be located in Lavezzu lighthouse and at Casa del Parco à Spargi (article 3 of the agreement).
- The **public reception centres** shall be located at the Montlaur Barracks (Bonifacio) and in Stagnali on Caprera Island (La Maddalena).



Internal organisation of the E.G.C.T.-P.M.I.B.B.

(article 11 of the agreement)

➤ **Management bodies:**

- ✓ Members' assembly,
- ✓ president and vice-president,
- ✓ director and deputy director,
- ✓ College of auditors.

➤ **Assisted by:**

- ✓ council of territorial representatives,
- ✓ scientific committee.

Assembly of E.G.C.T.-P.M.I.B.B. members

(article 12 of the statutes)

➤ **The assembly of members is composed of representatives and founding members having legal capacity to commit them within the E.G.C.T.-P.M.I.B.B.:**

- ✓ 4 representatives for the P.N.A.L.M. (8 votes),
- ✓ 8 representatives for the O.E.C. (8 votes).

O.E.C. representatives:

- Pierre GHIONGA(O.E.C. President)
- Valérie MERMET (territorial advisor)
- Fabienne GIOVANNINI (territorial advisor)
- Jean-Charles ORSUCCI (territorial advisor)
- François ORLANDI (General Council)
- Sébastien-Marc ROCCA SERRA (General Council)
- Thierry CAMBON (Mayor's representative)
- Antoine FERACCI (environment associations)

P.N.A.L.M. representatives (worth two votes):

- Giuseppe BONANNO (Presidente del P.N.A.L.M.)
- Agostino BIFULCO (Consiglio direttivo P.N.A.L.M.)
- Pietro DETTORI (Consiglio direttivo P.N.A.L.M.)
- Tommy GALLO (Consiglio direttivo P.N.A.L.M.)

Nomination rules within the E.G.C.T.-P.M.I.B.B.

(article 13 of the statutes)

➤ The assembly of members appoints :

- ✓ the **president and the vice-president**: the presidency is alternated for a period of 3 years, (first P.N.A.L.M. mandate),
- ✓ the **director and the deputy director**: management is alternated for a period of 4 years (first O.E.C. mandate),
- ✓ the **college of auditors**: 3 members and 2 alternate members (1 member and 1 alternate member are appointed by the Minister of the Economy and Finance),
- ✓ The **territorial representatives committee** (lists defined in article 22 of the statutes),
- ✓ the **scientific committee**: 12 members specialising in natural, environmental and territorial sciences, appointed by the founding members (6 each).

Operating structure of the E.G.C.T.-P.M.I.B.B.

P.N.A.L.M.:

- The President (G. Bonanno)
- The Director (C. Pignatelli)
- Personnel working on the E.G.C.T.-P.M.I.B.B.

O.E.C.:

- The President (P. Ghionga)
- The Director (P. Vellutini)
 - The director of the R.N.B.B.(Maddy Cancemi)
- Personnel working on the E.G.C.T.-P.M.I.B.B.

*The E.G.C.T.-P.M.I.B.B. shall function as a **central coordination unit***

Italian law

E.G.C.T.-P.M.I.B.B.:

- The President (G. Bonanno)
- The Director (P. Vellutini)
- G. Cancemi and M. Tourscher (O.E.C. staff made available)
- P.N.A.L.M. staff made available
- Recruitment of new staff for the E.G.C.T.-P.M.I.B.B.

Operating, financing and control rules of the E.G.C.T.-P.M.I.B.B.

- The director proposes **internal regulations** which must be approved by unanimous deliberation by the assembly of members defining the rules of operation and organisation (article 33 of the statutes).
- Concerning **financing**, an initial payment of 100,000 euros per member, which may be funded by community, national or regional contributions and/or through an increase in the members' annual contribution (article 25 of the statutes).
- **Administrative, budgetary and financial controls** carried out in conformity with Italian law, involving communication of information by the Italian control bodies to the equivalent authorities in France upon request by the latter (article 27 of the statutes).

Protection of the P.M.I.B.B. brand and logo

The “Parc Marin International des Bouches de Bonifacio” **brand** (+Italian) and the P.M.I.B.B. **logo** are protected at community level by the Office of Harmonisation in the Internal Market (O.H.M.I.) in order to restrict their use (article 2 of the statutes).

Unis pour préserver.
Uniti per preservare.

pmibbb

Parc Marin International des Bouches de Bonifacio - G.E.C.T. - Parco Marino Internazionale delle Bocche di Bonifacio

Il s'agit de notre patrimoine. Si tratta del nostro patrimonio.

France et Italie, Corse et Sardaigne, unies pour un patrimoine commun.

Les Bouches de Bonifacio constituent un patrimoine exceptionnel, aux paysages remarquables et à la biodiversité extrêmement riche, mais **un patrimoine naturel fragile** qu'il convient de préserver afin de le transmettre aux générations futures.

Sous le couvert de l'Europe, le **Parc Marin International des Bouches de Bonifacio** devient en 2012 une réalité avec la constitution d'un **Groupeuropéen de Coopération Territoriale**. Aboutissement d'une démarche initiée il y a maintenant 20 ans, l'**Office de l'Environnement de la Corse et le Parc National de l'Archipel de La Maddalena** donnent naissance à un **espace unique de coopération** qui permettra de renforcer les liens et de réaliser des actions coordonnées à plus grande échelle, sur des problématiques environnementales qui s'affranchissent des frontières des États.

Francia e Italia, Corsica e Sardegna, unite per un patrimonio comune.

Le Bocche di Bonifacio costituiscono un patrimonio eccezionale, dai paesaggi straordinari e dalla biodiversità incredibilmente ricca, ma sono anche **una risorsa naturale fragile** che deve essere conservata in modo tale che essa sia trasmessa alle generazioni future.

Sotto l'egida dell'Europa, il **Parco Marino Internazionale delle Bocche di Bonifacio** prende forma nel 2012 con la creazione di un **Gruppo Europeo di Cooperazione Territoriale**. Risultato di un processo avviato 20 anni fa, l'**Ufficio per l'Ambiente della Corsica e il Parco Nazionale dell'Arcipelago di La Maddalena** danno vita ad uno **spazio di cooperazione** unico che consentirà di rafforzare le relazioni esistenti e di realizzare azioni coordinate su più ampia scala, riguardanti problematiche ambientali comuni che oltrepassano le frontiere degli Stati.

pmibbb

Logo of the European Union, G.E.C.T., Corsica, and other partner organizations.

Limitations of the E.G.C.T. legal tool

- **The objectives of harmonisation are in contradiction** with the sovereignty of member States and the differentiated national provisions, as well as the approval procedures by the member States of the E.G.C.T., whose creation is underway.
- **Length and complexity of the procedures** and creation and modification of the E.G.C.T.
- **Absence of consultation** between the national approval authorities.
- **Diverging interpretations** of the provisions of regulations 1082/2006 by the EU member States.
- Absence of definition of a coherent legal framework for **employing staff** and the problem of managing **multinational personnel**: the diversity of statuses within the same team leads to a differentiated treatment of personnel, (application of labour law, social security benefits, payment of taxes, contributions to retirement funds, etc.).
- **Poor legal integration** of the E.G.C.T. in internal legal systems (in particular regarding E.G.C.T. functioning).

Clarification, simplification and improvement of the rules of creation and operation of the E.G.C.T.

(EU regulation n° 1302/2013 of December 17, 2013 modifying regulation n° 1082/2006)

- **Overall aim:** to lift hurdles to the constitution of new E.G.C.T.s, while ensuring the continuity of existing E.G.C.T.s and enabling their functioning.

- **Enabling the creation of E.G.C.T.s:**
 - ✓ Openness to new partnerships:
 - Companies responsible for operating services of general economic interest;
 - Neighbouring third countries of the EU member State responsible for the partnership(s) (if provided for by the internal law of the third country or through agreement with the member State/if the E.G.C.T. headquarters are located in the member State).
 - ✓ Approval procedure by the national authorities:
 - Time limit for approval will be extended from 3 to 6 months upon notification of the request for creation/approval considered acquired beyond this timeframe by tacit agreement/ formal approval required in the State where the E.G.C.T. has its headquarters;
 - Approval focused solely on the agreement/verification of the compatibility of the statutes with the agreement;
 - obligation to give reason for any refusal of the agreement and to propose modifications.
 - ✓ Application procedure for new partners :
 - Accession of a new partner belonging to an EU member State, already having approved the agreement will not have to be approved by the latter.

Clarification, simplification and improvement of the rules of creation and operation of the E.G.C.T.

(EU regulation n° 1302/2013 of December 17, 2013 modifying regulation n° 1082/2006)

➤ **Facilitate the functioning of E.G.C.T.s:**

- ✓ **Applicable law:**
 - More flexibility, with distinction in the agreement of the application:
 - Of EU law and law of the headquarters for interpretation and application of the agreement,
 - Of EU law and national law of the member State in which the management bodies operate,
 - The provisions of EU law and national law to carry out missions defined by the agreement,
 - Rules regarding E.G.C.T. staff, principles concerning recruitment procedures and management methods.

- ✓ **Joint declaration by the European Parliament, the Council and the Commission:**
 - For the interpretation of rules applicable to E.G.C.T. staff, the member States will consider the various employment regimes offered to the E.G.C.T. (private or public law).

Conclusions

- The E.G.C.T. approach is particularly appropriate for a **better understanding of governance systems**, permitting knowledge of the numerous stakeholders, the territories with their variable geography and cooperation, (including territories in non-EU member States) and the development, over time, of territorial cooperation.
- It is an interesting instrument as it offers a **formalised cooperation model**, integrating with temporal and spatial flexibility, while supplying a lasting and stable structure.
- It is a rare or even unique **instrument, allowing the coming together of all levels of power** operating in a given territory, from a micro (local) to a macro (national) level.
- It is interesting to analyse in terms of political science, as it provides for the possibility of **new European political transborder organisms**.
- The slow European construction process leads to abandonments of national sovereignty, and enables a rise in strength, (relative and differentiated according the State) of the EU's infranational levels of authority. In this context E.G.C.T.s may appear as **precursors of strengthened European integration**, involving all levels of public powers in several member States.
- There is a long term question of the **legitimacy of these transborder spaces, organised** as political bodies with a different status from the rest of the national territory:
 - ✓ If they develop, with time, there will be a need for serious thought as to the limits and challenges of their existence,
 - ✓ With an approach that would cross the institutional and national sovereign imperatives and economic, social, geographical and political requirements of these organised infranational territories, which appear as new entities governed by European law.