



LEG-UNIGR: BLUEPRINT FOR A LEGAL ENTITY FOR CROSS-BORDER UNIVERSITY ALLIANCES

SWOT analysis of potential legal entities



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1. Executive summary: SWOT analysis of potential legal entities

The key factor for ‘European University’ or regional alliances, as higher education institutions (HEIs) *per se*, is the establishment of a deeper cooperation in education and research, with asset sharing allowing to maximise access to and the utilisation of available resources and infrastructure, as well as to increase efficiency and effectiveness. The establishment of a legal status may be considered symbolic, even if it images a governance integration, but it builds capacity, and support access to shared common resources such as financial, human, digital and physical resources.

The inevitable outcome is the development of joint educational and research activities which will empower the HEIs to work collectively on a long-term vision of their respective alliances, with the support of EU, transnational, and national financial instruments to achieve real sustainability.

The following output refers to the second specific objective of the Leg-UniGR project with the aim to support the development of UniGR as a transregional university alliance by identifying the most appropriate legal entity to progress. It focuses on the initial objective of the Erasmus+ call for proposals to examine a full European legal status and gives an outline on the current state of play regarding the existing European legal status.



2. Initial objective

A European legal status was referred to explicitly in the Erasmus+ call for proposals: "Pilot institutionalised EU cooperation instruments to explore the feasibility for a possible *European legal status* for alliances of higher education institutions". Incidentally, this orientates the quest for a solution which respects to the following principles:

- Compliance to the vision and the mission of a higher education institution (HEI).
- Compliance to a European regulation, existing or to be created, while respecting national laws and regulations.
- Ensuring the respect of the subsidiarity of higher education organisation within the member states.
- Enabling a smooth implementation with the partner universities of the alliances.



3. Reference to the legacy of UniGR

Already during the first analysis of the University of the Greater Region (UniGR) in 2014 (see deliverable [D2.2 UniGR foundations](#)), it became clear that the European Grouping of Territorial Cooperation (EGTC) was the only European legal form which could be considered for higher education institutions, particularly in a cross-border context. This consideration was reiterated by the EUCOR alliance during its presentation at the Leg-UniGR event on 16th October 2023 (see deliverable [D2.3 Event “UniGR foundation event and progress towards a new legal entity”](#)). Similarly, other associations of universities or higher education institutions have considered this legal form (examples: [EGTC European Campus of Studies and Research](#) and [EGTC Lake Constance Arts & Sciences Association](#)). In this context, it should be therefore emphasised that the usage of an EGTC legal form has a priority in the field of higher education.

Although the EGTC provides a solid European regulatory basis, especially regarding the visibility and credibility on national and European level, this legal personality has its limits in the following aspects in particular:

- Place of incorporation.
- Access to funding instruments.
- Multiple sites of operations.
- Coordination, where the general secretariat, which coordinates the grouping, may still rely on decisions taken at national level.
- Audit processes.



4. Vision and mission of a higher education institution & of higher education institutions groupings

Per se, a university (from Latin *universitas* 'a whole') is an institution of higher (or tertiary) education and research which awards academic degrees in several academic disciplines¹. Universities typically offer both undergraduate and postgraduate programs.

Additionally, the word university is derived from the Latin phrase *universitas magistrorum et scholarium*, which crudely means "community of teachers and scholars"².

Taking these aspects into account, a higher education institution should be:

- A unique house or seat of knowledge transfer for the community.
- A large and diverse institution of higher learning created to educate for life and for a profession and to grant degrees.
- A community of teachers and learners.

In a nutshell, the primary purpose a university is to provide a learning environment in which faculty, staff, and students, *i.e.*, the "community", can discover, examine critically, preserve, and transmit the knowledge, the competences, the perceptiveness, and the values that will help ensure the quality of life of future generations. Considering groupings of HEIs, the same approach can be taken, leading to:

- Integration.
- Organisation.
- Students and courses.

In terms of financial resources, higher education is, to a decisive extent, financed from public budgets in Europe. A public university is defined as an institution that receives much of its funding from the regional, state, or federal government, that is from public, taxpayer money. UniGR is operating in this context, as a grouping of public universities.

For UniGR, the vision and mission are the following:

- **Vision:** Provide the Knowledge Square to and for the Greater Region for teaching, research, innovation, and service to society.
- **Mission:** Develop and implement cross-border education and research.

The formal intention is to implement and fully support the development of the "Knowledge Square" approach, which encompasses education, research, innovation, and service to society.

¹ <https://en.wikipedia.org/wiki/University>

² https://en.wikisource.org/wiki/1911_Encyclop%C3%A6dia_Britannica/Universities



5. Change of paradigm for finding a legal status for UniGR

Our initial objective was to elaborate a comparison of the different legal options, in view of the legacy of UniGR but also within the context of ‘European universities’ *per se*. Some have already a legal status as non-for-profit “association internationale sans but lucratif (a.i.s.b.l.)” under Belgian law, or foundations under Dutch law, such as ECIU.

At the start of the project, in May 2022, ECIU already published a position paper on legal entities for alliances of universities (see below in chapter 6). This inevitably changed the approach to analysing the possibilities of establishing or incorporating a legal entity for UniGR and for other alliances.



6. Comparison of legal structures

A position paper was published very early on in the project phase by ECIU³. Later, a comprehensive review was generated by Utrecht University/ECIU⁴. The approach was centred from ECIU viewpoint, as a Dutch foundation and it examined the current options for the development of a legal status for alliances of universities. The study also considered that the current mode of operation of the European University Alliances is “considered unsustainable in the long-term, among others, due to uncertainty related to their governance structures and legal status”⁵.

Considering a legal status for an alliance of universities is an effort which is profoundly dependent from the strategic development which is envisaged by the presidents and rectors:

- A rather loose alliance which respects the autonomy of each partner, and where common programmes and courses are developed from a European perspective, including students’ and teachers’ mobility.
- A profound cooperation scheme with a shared strategy, with the objectives to “fuse” the partners in one pan-European entity able to register students, hire staff at all levels, deliver courses, programmes, acquire assets, run facilities, buy services, and most importantly, ultimately deliver diploma. This is the paragon of integration.

In contrast to regular European University alliances and from its inception, UniGR, is a cross-border alliance of universities, from a politically defined region, the Greater Region, which operates with its own political instruments.

The document “D2.2 UniGR foundations” on the legacy of UniGR already illustrated the multiple possibilities which were considered for UniGR in a cross-border context:

European entities:

- European Grouping for Territorial Cooperation (EGTC).
- Local Cross-border Cooperation grouping (GÖZ/GLCT).
- Euroregional Cooperation Grouping (ECG).
- European Economic Interest Grouping (EEIG).

Associations:

- gGmbH.
- Association sans but lucratif, a.s.b.l.
- Association internationale sans but lucratif, a.i.s.b.l.

Considering the ECIU approach, the EGTC, even with its reported defaults, appears as the best solution, in comparison to the other structures considered in the use cases.

³ [Why European Universities need a Legal Statute](#) (February 2022)

⁴ EU Legal Structures and Their Applicability to ECIU: A Cross-Examination of EU Legal Entities in Relation to Use Cases - Erasmus+ Project “A European Status for ECIU University” (ESEU Project), Work Package 2 – Task 2.2, March-May 2023

⁵ Craciun et al. The European Universities Initiative: first lessons, main challenges and perspectives – _Study requested by the CULT Committee – _European Parliament, January 2023, p. 53-54.



	Use Case 1	Use Case 2	Use Case 3	Use Case 4	Use Case 5	Use Case 6	Use Case 7	Use Case 8
	Hiring of staff	Receiving public & private funding	Providing flexible learning paths	Creating private revenue on continuous education	Investing into & managing facilities	Managing data-related issues	Managing IPR-related issues	Buying & owning goods & services
NL Foundation	Need to navigate differences in i.a. national tax & social security law	Account to be taken of non-profit nature NL foundation	No automatic recognition & quality assurance subject to national law	Consideration of legislation on cross-subsidising & of non-profit nature of foundations	Account to be taken of non-profit nature NL foundation	Data management subject to GDPR	IPR subject to national law	Foundations can buy goods & services
EGTC	Need to navigate differences in i.a. national tax & social security law	Geared mainly to public domain	No automatic recognition & quality assurance subject to national law	Instrument mainly aimed at public domain & aimed at structural matters, not teaching activities	Investments possible	No provisions on management of data	No provisions on IPR	EGTC can dispose of property & services
SE	Staff needs to be hired in subsidiaries & additional criteria on worker involvement	Limited possibilities public funding	No automatic recognition & quality assurance subject to national law	Need for verification if companies can provide education	Investments possible	No provisions on management of data	No provisions on IPR	SE can buy & own goods & services
SCE	Staff needs to be hired in subsidiaries & additional criteria on worker involvement	Public & private possible, but regard for national law on cooperatives	No automatic recognition & quality assurance subject to national law	Need for verification if companies can provide education	Investments possible	No provisions on management of data	No provisions on IPR	SCE can buy & own goods & services
EIT (KIC)	Subject to national law & dependence EIT	Subject to national law & dependence EIT	No automatic recognition & quality assurance subject to national law	Subject to national law & dependence EIT	Subject to national law & dependence EIT	No provisions on management of data	No provisions on IPR	Subject to national law & dependence EIT

Table 7: Compatibility Matrix – Summary of results

Figure 1 - Source: ESEU project (<https://www.eciu.eu/eu/eceu>)

From a functional point of view, the EGTC, even if not perfectly suited for academic cooperation, fulfils most of the needs for a cross-border alliance of universities. The conditions would be the following:

- A not-for-profit structure under public law.
- Compliance to a European regulation.
- Operations in a cross-border context.
- Financially auditable.



7. Strategic approach

Complementarily to the ECIU approach, UniGR choose to examine the pertinence and the structure of a legal entity within the fundamental missions of a higher education institution in a European context.

The necessary considerations were the following:

- Not-for-profit structure and public law are mandatory elements.
- European regulation is the support for the structure.
- Cross-border operation is key.
- Financials aspects will be audited by the Court of Auditors of the country where the head office is located.

Other initiatives were also examined, not forcibly with the higher education sector:

- [European Campus of Studies and Research](#)
- [Eucor – The European Campus](#)
- [Lake Constance Arts & Sciences Association](#)
- [Rhine-Alpine corridor](#)

Ultimately, the knowledge square approach was used to define the final conditions for drawing up the future statutes of the UniGR grouping.



8. Internal market and the European Cross-border mechanism for HEIs groupings

The European single market, also known as the European internal market or the European common market, is the single market comprising mainly the 27 member states of the European Union (EU). The "Four Freedoms" of the single market are:

- Free movement of goods.
- Free movement of capital.
- Freedom to establish and provide services.
- Free movement of people.

Most important for the European universities are obstacles which concern freedom to establish and provide services and free movement of people, including social protection, cross-border taxation avoidance, financial rules, and reporting or auditing to financially supporting organisations. All these currently depend on national law, by subsidiarity, and there is no legal basis to circumvent them.

Internal border regions cover 40 % of the EU's territory, account for 30 % of its population (150 million people) and are home to almost 2 million cross-border workers. In May 2018, the European Commission published a proposal for a regulation on a mechanism to resolve legal and administrative obstacles in a cross-border context (ECBM). The mechanism would enable the application, in a given Member State and in relation to a common cross-border region, of the laws of a neighbouring Member State if the laws of the former are a legal obstacle to the delivery of a joint project. Later, the proposal's compatibility with the Treaties, as well as the choice of legal instrument and its voluntary nature was questioned ⁶.

A new framework was elaborated and adopted by REGI Committee in July 2023 (Committee on Regional Development). It should simplify access to healthcare, education, and business opportunities in the cross-border context. Further, the European Parliament adopted the corresponding resolution. For the time being, there are high expectations for the implementation of such a cross-border mechanism, which will facilitate higher education in Europe⁷.

⁶ Legislative train Schedule / European Parliament: [Proposal for a Regulation on a Mechanism to resolve legal and administrative obstacles in a cross-border context](#) (last update in October 2023).

⁷ INL - Legislative initiative procedure / 2022/2194(INL): ["Amending the proposed mechanism to resolve legal and administrative obstacles in a cross-border context"](#), July 2023



9. Conclusion

In summary, it can be concluded that:

- The EGTC appears as a reasonable legal structure for a cross-border alliance, considering the benefits it may give to the grouping of HEIs.
- The most crucial element is the recognition of the grouping of HEIs as a HEI itself; this capacity is key in collecting funding, emitting diploma and certificates for the grouping.
- The most representative feature is probably the full recognition through the obtention of the Erasmus Charter.

The Regulation (EC) No 1082/2006 of the European Parliament and of the Council of 5 July 2006 on a European Grouping of Territorial Cooperation (EGTC) could positively evolve to support joint higher education services and facilitate cross-border, transnational or interregional cooperation between higher education institutions in the European Union (EU).