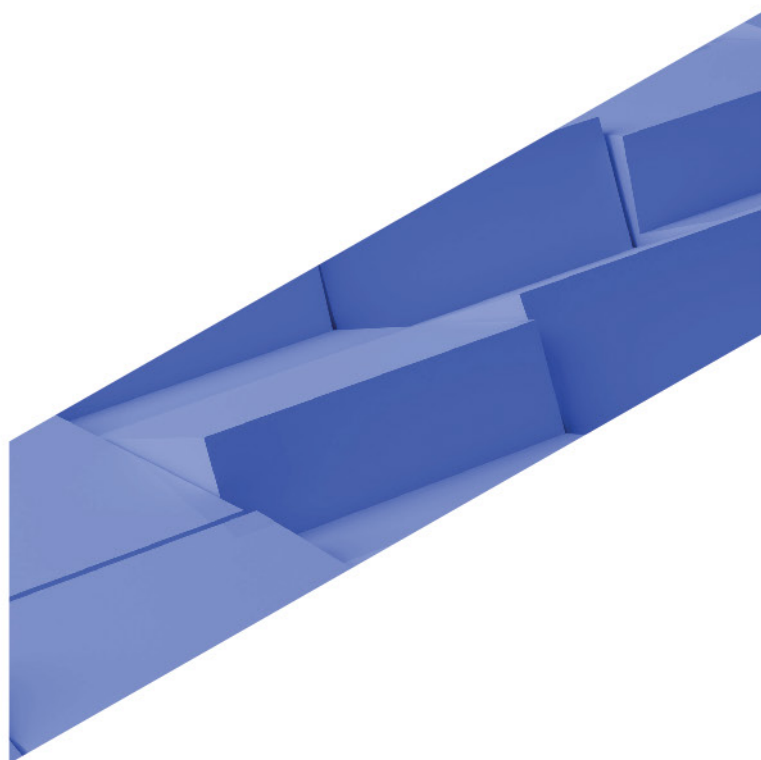




A European Status for
ECIU University (ESEU)



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Roadmap on a European legal instrument for transnational higher education cooperation



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The ESEU (European Status for a ECIU University) project supports ECIU University – and other alliances of higher education institutions such as the ‘European Universities’ – to overcome obstacles to deeper, broader, long-term, and flexible transnational cooperation through the design of a suitable institutionalised cooperation instrument at the European level.

This report builds on the work done within the ESEU project (March 2023–February 2024). From clarifying the need for a legal status (based on eight use cases¹) to analysing how we can scale existing European instruments (based on the analysis of four legal structures²) and taking into account the national context (based on in depth interviews and surveys with 11 European higher education ministries³) as well as the institutional realities (based on bilateral talks with the ECIU Executive Board Members and institutional coordinators)⁴. Based upon workshops and meetings with ECIU partner institutions and stakeholders, interviews with other alliances, EGTC-representatives and other stakeholders⁵, this report provides recommendations on the next steps to take for an institutionalised European cooperation instrument.

To begin with, the report clarifies the needs for an institutionalised European cooperation instrument for different stakeholders (Chapter 1). Transnational university alliances are facing difficulties with the sharing of financial, human, digital and physical resources, infrastructure and services, as well as with their joint educational and research activities. A European legal status can help overcome these barriers.

Next, the report reflects on different scenarios for a legal status, from adjusting current instruments such as the European Grouping of Territorial Cooperation (EGTC), to developing a new instrument like the recent European Cross-Border Association (ECBA) proposal⁶ (Chapter 2), or – in an ideal scenario – developing a dedicated European instrument for transnational cooperation in higher education (Chapter 3). In addition, the report analyses the EGTC regulation, and how to adapt it to better support the needs of transnational higher education collaboration (Chapter 4).

1

See also ESEU: legal use cases, March 2023, accessible via <https://www.eciu.eu/eu/euseu#needs-analysis>

2

See also EU Legal Structures and Their Applicability to ECIU – A Cross-Examination of EU Legal Entities in Relation to Use Cases, Lavinia Kortese, Juliette Byl, Osama Arshad, March–May 2023, accessible via <https://www.eciu.eu/eu/euseu#analysis-legal-structure>

3

See also National context and recommendations, September 2023, accessible via <https://www.eciu.eu/eu/euseu#national-context>

4

See also Workshop and bilaterals ECIU Board Members, December 2023, accessible via <https://www.eciu.eu/eu/euseu#summary>

Finally, in the conclusion of this report, advice on the next steps for an institutionalised European cooperation instrument is formulated.

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UNA Europa, EU-CONEXUS, CHARM-EU and 4EU+ are alliances associated to the ESEU-project. Eucor (an EGTC-structure) is also associated with the project. The ESEU project team also has close connections with all other university alliances and to parallel legal status pilots: EGAI, Leg-UniGR and Styx. On 16 October, the ESEU project organised a workshop to gather input for the Roadmap, with 100+ participants. More information: <https://www.eciu.eu/news/the-added-value-of-a-european-legal-status-for-university-alliances>

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The European Commission adopted a proposal to facilitate cross-border activities of non-profit associations in the EU, 5 September 2023: https://ec.europa.eu/commission/press-corner/detail/en/ip_23_4242

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Transnational cooperation between higher education institutions across Europe is at the very core of Europe's higher education sector, its European Research Area, European Higher Education Area and its European Education Area. With the European Universities' Initiative, the exploration of new levels of long-term institutionalised cooperation between higher education institutions across countries is pursued. This raises the need to overcome administrative and regulatory barriers, both at national and European level, that hinder integrated cooperation in their missions and across borders. Likewise, other cooperation networks, beyond the European Universities alliances will also profit from lowering these kind of barriers.

Chapter 1 Stakeholder analysis

During the many interviews and workshops that were conducted in the past 12 months in the framework of the ESEU project, it became apparent that a clear understanding of the added-value of a possible European legal status is not always available. Yet, a good understanding of the need for a legal status is key for securing the necessary buy-in of all relevant actors and stakeholders. Given that the exact needs differ depending on the integration ambitions of each transnational university alliance, "a European Legal Statute will not be a single solution for a single problem"⁷(ECIU, 2022) . In a previous report (March 2023), the ESEU project formulated eight use cases to explain the specific needs of the alliance for such a status.⁸ This chapter builds upon the ECIU use cases and explains how a European legal status can serve learners, staff, public authorities, and society in general.

As mentioned, a European legal status for transnational cooperation between higher education institutions will be beneficial for a variety of stakeholders. The table on the next page provides an inventory of the possible benefits:

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See also Why Europe needs a Legal Statute for universities, February 2022, accessible via <https://www.eciu.eu/news/why-europe-needs-a-legal-statute-for-universities>

8
See also ESEU: legal use cases, March 2023, accessible via <https://www.eciu.eu/eu/eseu#needs-analysis>

Stakeholder**Benefits of a European legal status**

Learners (both degree students and lifelong learners)

- Support the development of European identity and sense of belonging as learners will receive services from a European organisation instead of a national one
- Support the development of seamless student mobility between HEIs in the alliance as institutions can easily share data, develop integrated education programmes, and pool resources
- Support easier degree/credit recognition, issue of certificates and credentials from the alliance (for example, a European legal status is needed to issue the ECIU University e-sealed micro-credentials⁹)
- Enable the issuing of a European Degree
- Help with outreach to and applications of learners from within the EU and within an embedded knowledge and talent strategy from outside the EU, adding formal legitimacy to support learners in a European ecosystem
- Provide learning opportunities at the European level
- Help to invest in and manage facilities and services that support learning, such as a European interuniversity campus or digital education platforms
- Help to manage learners' private data in a secure way by formalising data management protocols across HEIs instead of leaving it up to different national organisations
- Help to manage Intellectual Property Rights (IPR) developed during the learning journey, e.g., the ownership of IPR

Staff

- Help to facilitate staff mobility and providing clarity on tax, social security and the complex human resource dimension in transnational careers
- Help in the recruitment of staff and harmonisation of employment requirements
- Simplify, clarify, and centralise the administration of contracts to the benefit of employees
- Support the development of a European identity and sense of belonging, as the staff will be recruited by a European organisation instead of a national one, and communication will be via this European entity
- Support safeguarding of academic freedom as it can overcome interference in the work of staff
- Safeguard employee social security

⁹
See also: <https://www.eciu.eu/news/a-milestone-reached-eciu-university-is-the-first-european-alliance-to-issue-e-sealed-micro-credentials>

Benefits of a European legal status

- Clarify the rules and regulations that come with taking part in a transnational university network, such as liability, commitments, finances and governance (decision-making)
- Clarify an organised entry and exit strategy for partners of the alliance
- Build a European institutional identity and increase institutional visibility and attractiveness, a useful tool for competitiveness in recruiting both learners and staff or attracting third-stream funding
- Support institutional collaboration on quality assurance using existing tools (e.g., EQAR, ESGs, European approach to quality assurance of joint degrees) and new tools at the European level, and in line with the objectives of the Bologna Process and the European Commission
- Help streamline and harmonise processes on Intellectual Property Rights, data collection and management and hiring

Stakeholder

University leadership and higher education institutions

- Respond to the needs of HEIs for simplifying transnational collaboration (e.g., in the field of HR, funding, data management)
- Offer more transparency and clarity for MS authorities, help create more coherence and clarity in defining a joint framework for transnational cooperation in HE, for example, for audit and control, clarifying where the funding for alliances goes and how it is used
- Simplify additional funding and investments to enhance the impact, effectiveness and efficiency of public funding
- Raise the European and international visibility of the higher education sector and outreach of alliances and their members, creating a competitive advantage for both

**University leadership and higher education institutions
EU & EEA Member States**

Stakeholder**Benefits of a European legal status**

University ecosystem

- Enable research, education, and innovation ecosystems to connect providing access to a broader network across Europe and beyond, for example, in the Global Gateway initiative of the European Commission in which for the African countries a similar structure is envisaged fostering cooperation with European networks including upskilling opportunities
- Simplify signing contracts with and receiving funding from ecosystem partners (e.g., public authorities, NGOs, industry, employers)

Chapter 2

Scenarios for a European legal status

The Council Conclusions of 21 April 2022 on a European strategy empowering higher education institutions for the future of Europe underline Member States' aim to take steps

“to overcome the obstacles to a deeper, long-term and flexible transnational cooperation and design institutionalised cooperation instruments for higher education institutions. The aim is to give alliances, on a voluntary basis, the latitude to act together, make common strategic decisions, experiment joint recruitment, design joint curricula or pool resources and human, technical, data, education, research and innovation capacities.”¹⁰

There are three possible scenarios for progress with an institutionalised European cooperation instrument in higher education to give a European legal status to transnational collaborative partnerships between HEIs, including beyond European University alliances:

Scenario 1: Do nothing

Scenario 2: Design a new European legal instrument

Scenario 3: Adapt an existing European legal instrument

Before we can analyse the three scenarios in more depth, two issues must be kept in mind. First, university alliances have very different levels of ambitions when it comes to transnational cooperation which in turn leads to **diverse needs for a legal status**. For some, a simple cooperation agreement or existing national instruments will be enough, but for others, it will not be sufficient. Moreover, needs and ambitions are not static, they develop over time. An upcoming publication of PPMI shows that in Q4 of 2023, of the 50 existing European University alliances, 9 already have a legal status and 11 are in the process of developing one.¹¹ These numbers show the fast-changing reality of transnational cooperation and the need for appropriate legal structures.

Second, it must also be kept in mind for all scenarios that a European legal status does not work in isolation and a legal status on itself will not solve all transnational collaboration challenges. With the current Treaty competences, a competence division between the European Commission and Member States where many relevant issues for transnational HE cooperation (such as taxes, social security/

¹⁰ Council conclusions on a European strategy empowering higher education institutions for the future of Europe 2022/C 167/03.

¹¹ Study not published yet, expected for Q4 2024

HR regulations) are dependent on national legislators, will not be overcome with the development of a legal status. To truly overcome fundamental challenges in transnational cooperation, **an overall European framework law on Higher Education and Research is needed** (e.g., regulation law on governance, quality assurance, funding, accountability, access, staff regulations, salaries, student policies and tuition fees, academic freedom, etc.)¹². A legal status can be a step towards a European framework law, a building block. However, it is not an end solution. Without a broader legal framework, the European Universities Initiative and advanced collaboration in education, research and innovation will remain vulnerable.¹³

Such a framework would be possible if the call for a **shared competence on education** by the Members of the European Parliament comes to fruition.¹⁴ In turn, this would lead to more coherence in European higher education cooperation and the removal of some of the remaining obstacles to higher education cooperation despite the harmonisation achieved through the intergovernmental Bologna Process.

Scenario 1 Do nothing

As stated in Chapter 1, a European legal status for European Universities will have many benefits to many stakeholders. Moreover, the ESEU use cases (March 2023) describe why a legal status is needed. However, there are also other options that could fully respond to the needs for transnational collaboration of European Universities without the creation of a legal status.

Existing (national) legal instruments – regulations, agreements, foundations, associations, and initiatives such as collaboration through a covenant – can also serve some of the needs of higher education institutions when engaging in transnational collaboration. Such statuses can be dynamic and tailor-made. For instance, a contractual arrangement could serve the needs for both flexibility, continuity, and deep collaboration.¹⁵

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See also the ESEU use cases developed for ECIU, accessible via <https://www.eciu.eu/eu/eseu#needs-analysis>

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See also The Legal-political dimensions of the European Research Area and the European Higher Education Area; Towards a European Framework Law on Higher Education and Research. Peter Kwikkers, Barend van der Meulen, Jeroen Huisman, Kurt Willems, Guido Bünstorf, Frank Hendrickx. TriasNet Consultants, Alphen aan den Rijn, 2021

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22 November 2023 EU Treaties reform: MEPs call to strengthen EU capacity to act https://www.europarl.europa.eu/doceo/document/TA-9-2023-0427_EN.html

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See also The Legal-political dimensions of the European Research Area and the European Higher Education Area; Towards a European Framework Law on Higher Education and Research. Peter Kwikkers, Barend van der Meulen, Jeroen Huisman, Kurt Willems, Guido Bünstorf, Frank Hendrickx. TriasNet Consultants, Alphen aan den Rijn, 2021

Lavinia Kortese et al. (2023), in their analysis of existing EU legal structures and their applicability to ECIU, recommended that stretching the mould of the current Foundation under Dutch law appears to be most suitable option for ECIU at this point in time, considering the complexity related to national law and adopting new legal instrument.

Stretching the mould *“entails not only the continued use of the Foundation under Dutch law, but would also involve seeking to use that legal structure to the best of its abilities (for example, by examining further opportunities offered to engage in revenue-making activities) as well as advancing such activities through EU (and national) level funding mechanisms such as Erasmus+ and Horizon Europe.”*¹⁶

The downside of relying on national statutes, regulations and agreements are made clear in Chapter 1, and also in the first deliverable of the ESEU project: The eight ECIU use cases.¹⁷ Many issues alliances are facing in transnational collaboration remain untackled. For example, a national status for transnational cooperation is **not stable, certain, and recognisable** by external stakeholders and Member States, and therefore not the preferred way forward. Alliances need a stronger legal foundation. National structures bring many challenges when hiring staff abroad, e.g., the need for double registration, the risk of double taxation, and the navigation through national labour and social security laws. National legal structures are usually not tailored towards delivering education, resulting in issues in the field of developing, offering and issuing education and education credentials. If joint facilities, data or IPR must be managed, bought or owned, a national legal status does not solve the issues that come with transnational collaboration. Therefore, a European solution is urgently needed.

¹⁶ See also EU Legal Structures and Their Applicability to ECIU – A Cross-Examination of EU Legal Entities in Relation to Use Cases, Lavinia Kortese, Juliette Byl, Osama Arshad, March–May 2023, accessible via <https://www.eciu.eu/eu/eseu#analysis-legal-structure>

¹⁷ See also the ESEU use cases developed for ECIU, accessible via <https://www.eciu.eu/eu/eseu#needs-analysis>

Scenario 2

Design a new European legal instrument

The creation of a new legal entity could provide greater stability and legal certainty to university alliances. Ideally, such an entity would be fully tailored to the needs of higher education institutions. As such an instrument does not exist yet, the obvious way forward can be the design of a new instrument. However, as the EU does not have any competence in the field of education, and as Member States are not keen on setting up entirely new structures (one of our findings from our interviews with national policy makers)¹⁸, the realisation of a dedicated structure, fully tailored to the needs of higher education institutions might take a very long time. Many years, if not decades, are needed to develop a European regulation, build political support, define the details, present a proposal, adopt and implement it. Especially in areas where the subsidiarity principle is a key concern.

An example of the difficulty of proposing new instruments is the **recently announced proposal to facilitate cross-border activities of non-profit associations in the EU**¹⁹. The Proposal for a Directive of the European Parliament and of the Council of the European Union on European Cross-Border Associations (ECBAs) supports the needs of non-profit associations, e.g., it helps in responding to the need for recognition as a European entity, overcoming the obligation of double registration (i.e., the need to register in another Member State) when an association engages in activities in another Member State. The instrument, however, was not designed for universities either, and does not respond to all the needs and use cases of European Universities (e.g., in the field of hiring staff, investing in and managing facilities, buying goods and services). The functions as mentioned by the European Commission, such as harmonised rules on transfer of registered office, are far from sufficient for alliances. Moreover, the initial proposal stems from 1992 with the Proposal for a Council Regulation on the Statute for a European association.²⁰ This long process of more than 30 years shows the time it takes for proposing new European legal instruments, not to mention an instrument that is tailored to a single sector in an area where the European Commission does not have any competence.

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See also National context and recommendations, September 2023, accessible via <https://www.eciu.eu/eu/eseu#national-context>

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See also European Commission press release, 5 September 2023, Commission facilitates the activities of cross-border associations in the EU, https://ec.europa.eu/commission/presscorner/detail/en/ip_23_4242

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See also Proposal for a COUNCIL REGULATION (EEC) on the Statute for a European association /* COM/91/273FINAL - SYN 386 */

Although it can be expected to take a long time and it is dependent on politics and good will, designing a new instrument, fully tailored to the needs of higher education

institutions is the ideal way forward in the long term. To realise this, an **experimental space** to pilot and pave the way forward, is needed. The current policy pilots that run until Spring 2024 are a good start, but the process cannot end after a 12-month-pilot. The topic is complex, alliances are diverse, needs develop fast, and therefore, a follow-up is needed. The next phase of the policy pilot must enable higher education institutions to co-create a dedicated instrument, that serves the needs of higher education institutions in transnational cooperation, together with policy makers at the European and national level. Adapting an existing instrument (see Scenario 3) could be a way to create such an experimental space that builds trust between actors, makes the needs of HEIs visible, and may in time lead to the development of a dedicated instrument for higher education. The future Community of Practice for European University Alliances, could be a framework for such co-creation.²¹

Scenario 3

Adapt an existing instrument

An easier way forward in the short term is to adapt an existing instrument. Two existing instruments seem particularly promising: the European Grouping of Territorial Cooperation (EGTC) and the European Economic Interest Grouping (EEIG). After studying four existing European cooperation instruments, Kortese et al. (2023) identified the EGTC as a possible legal instrument for transnational cooperation for ECIU University. The EGTC responds to many of the ECIU University needs and ESEU use cases and is already used by other academic networks such as Eucor (associated partner to the ESEU project) and the University of the Greater Region²² (also involved in a policy experimentation pilot on the legal status).

²¹ See European Universities – Community of Practice – Erasmus+ call ERASMUS-EDU-2024-EUR-UNIV-2 deadline 6 February 2024.

²² <https://www.uni-gr.eu/en>

However, the EGTC also had some downsides (which exist for all available legal structures – not just the EGTC). For instance, its focus on territorial cooperation instead of academic cooperation, the focus on cross-border cooperation rather than cooperation across countries that are in different regions of the EU as is the case of ECIU members, the need to have public and private operations controlled by different legal entities, or the limitation of employee mobility to three months due to tax and social protection regulations. Although the EGTC is not a perfect instrument in the current state, it could provide a good basis for adaptation to the needs of higher education institutions. More elaboration on what aspects should be adapted to respond better to the needs of higher education institutions will be presented in Chapter 4 of this report.

A quick dive into the EEIG model for university cooperation

Another cooperation model that responds well to the needs of higher education institutions is the EEIG. A European Economic Interest Grouping (EEIG) is designed to make it easier for companies in different countries to do business together, or to form consortia to take part in EU programmes.²³ It was based on the pre-existing French *groupement d'intérêt économique* (G.i.e.). Several thousand EEIGs now exist, also active in research and development fields.

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See Council Regulation No 2137/85 of 25 July 1985 on the European Economic Interest Grouping (EEIG): <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31985R2137:en:HTML>

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In 1985, with the aim of facilitating and promoting the economic activities of companies or other legal entities by pooling their resources, activities and competences in cross-border contexts, the legal concept of the EEIG was created as a new legal instrument at the level of the EU. See also <https://univ-unita.eu/Sites/unita/en/Evento/1300>

ESEU's sister project, the EGAI project, studies the possible adaptation of the EEIG to become a European Grouping of Academic Interest (EGAI).²⁴ The project aims to analyse and promote the use of the EEIG as an instrument of institutionalised transnational university cooperation, with the ultimate goal of designing a new type of grouping, specifically designed for academic purposes. UNITA (another European University Alliance) choose the EEIG model as it is agile and easy to adapt to the needs of the organisation.²⁵ Only a Conseil de Gérance (supervisory board) is needed to set it up, the rest of the elements are flexible. Staff can also be hired by the EEIG.

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An interview with Barbara Gagliardi, EGAI project coordinator, Università di Torino, took place on 20 November 2023.

Downsides mentioned by EGAI's coordinator are the economic focus: **limited to economic activities**. In other words, it is geared towards market-oriented activities that yield profit. Therefore, there are challenges for non-profit higher education

activities like awarding scholarships. The model could be good for lifelong learning activities and services for partners (e.g., the development of a digital campus for societal partners). **A political issue** is that the academic community is not very comfortable with the economic nature of the EEIG. Another issue is the limited recognition as a university. This becomes clear with **national competitive funds addressed to universities**. In some states it is not possible to provide national competitive funds to an EEIG as it is not recognised as a university. Another issue is the liability of an EEIG: members have unlimited liability for the debts of the grouping, which is not ideal. Some higher education institutions are legally not allowed to participate in such a structure, moreover, it requires trust from partners while they might not know each other very well yet when setting up a legal structure such as an EEIG. Instead, a provision for limited liability would be key so that partners are only liable in relation to the property and assets that the participating institutions contribute to the new legal entity.

UNITA Alliance uses the EEIG now.²⁶ The classical statute of the EEIG had to be adopted, this was managed within three years. First, the statute was analysed and drafted, this took approximately one year, internal processes for approval took another six months, the registration was done in early 2023, and the establishment itself took six months. It could be possible to do the process quicker, as no external approval was required. The three years for UNITA was also caused by the internal decision-making processes. No external approval was needed, approval from internal partners was enough. For more details about the EEIG and an adoption towards an EGAI, we refer to the EGAI project.

²⁶

See also "European Economic Interest Grouping UNITA – Universitas Montium (EEIG): <https://univ-unita.eu/Sites/unita/en/Pagina/unita#eeig>

Chapter 3

The ideal legal structure

We can conclude from Chapter 2 that doing nothing is not an option given that 20 European University alliances already have or are in the process of setting up a legal instrument. Ideally a new dedicated instrument for higher education institutions would be developed, but due to the time and the political will it takes, it is very unlikely that this will be achieved within 10 years. Therefore, the best approach is to adapt what we already have and experiment with how we can tailor it to higher education. To adapt an existing structure, it is important to think of some key features such an instrument should ideally have. Chapter 3 identifies some key features of an ideal legal structure for higher education institutions.²⁷

Again, it must be clear from the onset that any legal status should not be compulsory for European University alliances or any future form of formal university networks. Alliances differ in aims and scope and as a result do not have similar ambitions in terms of pooling resources and establishing joint structures. Regardless, for those who aim to establish a common European structure, we can identify some common needs that such a structure should serve.

A legal status for networked higher education institutions must respond to the **eight use cases** as identified by ESEU.²⁸ It should enable alliances to hire staff, receive funding from various sources, provide education at the European level, create revenue on continuous education (so: having revenue-making activities not-for profit), invest in and manage facilities, manage data-related issues, manage intellectual property rights, and buy and own goods and services (see figure on page 20). Moreover, a legal status should **serve all four missions** of universities: from education, to research, to innovation and service to society.

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Also see "Why Europe needs a Legal Statute for universities", ECIU University paper 10 February 2022. <https://www.eciu.eu/news/why-europe-needs-a-legal-statute-for-universities>

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See also ESEU: legal use cases, March 2023, accessible via <https://www.eciu.eu/eu/eseu#needs-analysis>

1. The hiring of staff

2. The receiving of public and private funding in a flexible manner from various sources

3. The provision of flexible learning paths at EU level

4. The creation of private revenue on continuous education

5. The investment into and management of facilities

6. The investment of data-related issues

7. The investment of issues related to Intellectual Property Rights (IPR)

8. The buying and owning of goods and services

Another crucial aspect of a legal status is the concept of limited liability, where partners are only liable in relation to the property and assets that the participating institutions contribute to the new legal entity.

CHARM-EU (associated partner to ESEU) described their needs in a white paper on the governance of European Universities²⁹, such as the need for a recognition and visibility of the trustworthy partnership and being a university at the European level and across Member States. This also means the possibility of issuing credentials, facilitating of quality assurance and recognition and receiving an Erasmus+ Charter.

In the same publication, CHARM-EU formulated a list of 20 points that a future European legal structure should cover, such as the applicable law, powers, governance, financial accountability, staff, and dissolution.

29

See also Xavier Pons Rafols (University of Barcelona) and others, December 2022, White Paper on the Governance of European Universities: The case of CHARM-EU, <https://www.charm-eu.eu/sites/default/files/2023-03/D2.6%20White%20Paper%20on%20CHARM-EU%20Governance.pdf>

Chapter 4

EGTC regulation analysed

As they currently stand, none of the examined European legal statutes are more suitable to ECIU than the Dutch Foundation³⁰ under which the 12 partner universities jointly operate. Regardless, given that the realisation of a new European legal structure is only a longer-term solution, the further development and adaptation of the EGTC instrument could be a viable alternative for transnational cooperation in higher education. In what follows, a short overview of the EGTC is provided including a list of recommendations on how to adjust the instrument in order to make it more amenable to transnational higher education cooperation.

The EGTC structure

A European Grouping of Territorial Cooperation is an independent European legal entity aims to facilitate territorial cooperation³¹ by providing public entities which engage in cross-border cooperation the option “to come together under a new entity with full legal personality (...) and deliver joint services”³². The EGTC regulation was initially developed in 2006 and subsequently amended in 2013.³³ Upon creation, the EGTC must have a registered office located in a Member State where at least one of the EGTC’s members is established (art. 1.5 EGTC regulation). The national law of the Member State in which the registered office of the EGTC is located applies for several matters, such as the acts of the EGTC’s organs that are not regulated by the regulation and the budget and debts (art 2.1.c and art 11.2 EGTC regulation).

Via a convention, the EGTC’s organs and competences are listed. Many specific matters are left at the discretion of the EGTC’s members to organise via the EGTC convention (art. 8 EGTC regulation). EGTCs must have at least an assembly and a director. The assembly is composed of representatives of all the EGTC’s members and has the power to decide on the annual budget of the entity. The director represents the entity and acts on its behalf. The statutes of individual EGTCs may provide for other bodies as long as they have clearly defined competences. Importantly, the EGTC is liable for the acts of the above-mentioned bodies vis-à-vis third parties, even if these acts do not fall within the EGTC’s functions (art. 10 EGTC Regulation).

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See also EU Legal Structures and Their Applicability to ECIU – A Cross-Examination of EU Legal Entities in Relation to Use Cases, Lavinia Kortese, Juliette Byl, Osama Arshad, March–May 2023, accessible via <https://www.eciu.eu/eu/eseu#analysis-legal-structure>

31

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).

32

For more information on the EGTC, see: https://ec.europa.eu/regional_policy/policy/cooperation/european-territorial/european-grouping-territorial-cooperation_en

33

Regulation (EC) No 1302/2013 of the European Parliament and of the Council of 17 December 2013

Adjusting the EGTC to the needs for higher education institutions

As stated above, the traditional aim of an EGTC is “to facilitate and promote, in particular, territorial cooperation (...) with the aim of strengthening Union economic, social and territorial cohesion” (art. 1.1 EGTC regulation). Nevertheless, some European University consortia are also using the EGTC structure for academic cooperation (e.g., Eucor) or aim to do so (e.g., University of the Greater Region & EUt+). As the EGTC was not developed specifically for the needs of transnational higher education cooperation, some sector-specific challenges arise. The question becomes, how could we adapt the EGTC regulation to the needs of higher education institutions for the benefit of their learners?

Based on the previous deliverables of the ESEU project, interviews with European University alliances, EGTC-representatives and other legal experts, seven recommendations on how to adapt the EGTC regulations to respond better to the needs of European Universities are proposed.

1. Remove the explicit consent of all involved Member States

For the creation of an EGTC, the explicit consent of the competent authorities in all the Member States where partner universities are located is required (art 4.3 EGTC regulation). This administratively heavy procedure that is fully dependent on the approval of Member States is a challenge for higher education institutions that are part of alliances with numerous members from many different Member States, as is the case not only of ECIU but of other European University alliances. Additionally, every change in the convention would require the renewed agreement of all national authorities, which can be tricky to acquire when there are many Member States involved. It could be an incentive for alliances to keep the convention as minimal as possible, to avoid complex procedures when making a change to the convention. However, it is also a matter of principle and European University alliances want to be able to act, expand, and change their legal structure independent from Member States (art. 4.6.6.a. EGTC regulation).

ECIU University has full partners in 11 EU Member States, and one in Norway. The history of the ECIU network shows that the partnerships are not set in stone, partners come and go. Needing the approval of all 12 national ministries of education to approve the set-up of a legal structure for ECIU University, including forwarding the draft convention and statutes, then asking permission and approval to create an EGTC, does not seem to be an agile way forward and seems to be conflicting with the academic independence desired by ECIU University.

The rule that if the application is not approved within six months, the prospective member and convention shall be deemed to be approved, makes it a bit more workable, but such a silent approval within a period of six months is not an ideal start to a working relationship. Moreover, this rule can imply an undesirable six-month delay in setting up the legal structure, adding new partners to the network or making any other changes to the convention. A solution could be to shorten it to three months. An alternative could be a clause that an EGTC only need the approval of the Member State where the EGTC is registered, to avoid needing the approval of many authorities.

The UNITA alliance started with an EGTC proposal 10 years ago but, because of the need for explicit approval of all the Ministries which took too much time, the proposal fell through. Because UNITA was looking for something simple that can be set up fast – they were only in the first phase of the alliance collaboration – they quit the EGTC proposal and are now looking into a European Grouping of Economic Cooperation instead (see Chapter 3).

2. Possible recognition as a higher education institution

To enable alliances, or other networks of higher education institutions, to deliver higher education at the European level, the joint legal entity needs to be considered in principle as a higher education institution. Its mandate, however, can be limited in comparison with its members, i.e., founding universities. Only then can alliances provide learning paths and diplomas at the European level, or receive Erasmus+ mobility funds. Therefore, the adapted EGTC regulation should allow joint entities of higher education institutions to be recognised as higher education institutions, unless the

law of the participating Member States of the EGTC states otherwise. Access to the Erasmus Charter for higher education would also be welcome. Including alliances in the general quality framework for European and international cooperation activities and recognising them as higher education institutions that may carry out activities within Erasmus+, is important. To realise this, recognition from Member States as a higher education institution is needed. Only after this recognition could a Charter follow.³⁴

The possibilities and challenges of an EGTC in relation to provision of higher education diplomas, administrative resources and study credits, must be further investigated. For example, Eucor issues degrees through its respective member universities but it would be important to know if the EGTC structure helps to solve some of the administrative challenges posed by conferring joint degrees.

The strong emphasis on territorial cooperation for the aim of strengthening Union economic, social and territorial cohesion must be adapted to further include academic missions. CHARM-EU proposes a “European University Grouping” instead of the³⁵ current name “European Grouping of Territorial Cooperation”. Moreover, the involvement of ministries must be clarified. If ministries must be involved for particular functions of an alliance under the EGTC, the involvement of ministries on higher education and research would be appropriate in order to emphasise the academic dimension rather than the territorial dimension of the instrument. In addition, the cohesion dimension of the EGTC should explicitly be extended to Horizon/Erasmus+ and other funding programmes. Different EU funding mechanisms are relevant. Finally, an explicit invitation to European Universities to use the instrument, and a statement that higher education institutions can start an EGTC, would be a welcome signal.

3. Clarity on the provision of staff³⁶

The provision of staff (and secondments) from member universities to the EGTC should not be subject to VAT. The EGTC regulation is not clear on this topic, and clarity is needed to enable alliances to operate with personnel provided by the partner universities to the alliance. For example, for Eucor, both German and French authorities give different indications

³⁴
See also <https://erasmus-plus.ec.europa.eu/resources-and-tools/erasmus-charter-for-higher-education>

³⁵
See also Xavier Pons Rafols (University of Barcelona) and others, December 2022, White Paper on the Governance of European Universities: The case of CHARM-EU, <https://www.charm-eu.eu/sites/default/files/2023-03/D2.6%20White%20Paper%20on%20CHARM-EU%20Governance.pdf>

³⁶
See also Annex 1 of this report, an Eucor note on adapting EGTC to European Universities: main challenges in respect of the use cases.

on the country where VAT is due. Lack of clarity can lead to financial risks and further costs for alliance (e.g., hiring expensive tax consultants).

The EGTC regulation should state that the provision of staff by the members to the EGTC is possible and should be exempted from VAT if (1) it is clearly documented that the provision of staff is not a service that is relevant to the internal market of the EU, and (2) it is a service provided by the member universities to their EGTC without any commercial objective.

4. Clarity on the hiring of staff³⁷

Hiring staff for the alliance rather than individual higher education institutions is an important obstacle in transnational collaboration that must definitely be overcome with the adapted EGTC. Although an EGTC could streamline processes for the hiring of staff (e.g., by preventing the need to set up offices in all Member States where staff are hired as is currently the case for ECIU which has had to set up offices in Belgium and Italy), more guidance is needed. For instance, the adapted regulation should clearly specify that staff can be hired directly for the EGTC in a different country than the headquarters of the legal entity. In other words, the EGTC regulation should state that the employment of staff in offices of the EGTC that are not located in the seat country is possible either under the law of the country of the decentralised office or under the law of the country in which the EGTC has its seat. This clarification will ensure that the unnecessary administrative burden of setting up multiple legal entities in different Member States is overcome.³⁸

5. Strong preference for limited liability

As regards financial and budgetary aspects, the liability of EGTCs is regulated in Member States' law (art. 12 of the EGTC regulation). Some EGTCs are liable for all their debts and the liability of the members is unlimited, unless otherwise stated. This is a problem, as not all higher education institutions are able to assume unlimited liability. Instead, ensuring that the adapted EGTC has limited liability – where partners are only liable in relation to the property and assets that the participating institutions contribute to the new legal entity – would be key to ensure buy-in from different members of the partnership.

³⁷

See also Annex I of this report, an Eucor note on adapting EGTC to European Universities: main challenges in respect of the use cases.

³⁸

Another interesting aspect is the Swedish Professor Privilege applies to patentable results generated by researchers (teachers) employed by Swedish universities. In this regard which country's law that will apply on hired staff becomes even more relevant

6. The private dimension

A welcome improvement would be the possibility to adapt the EGTC towards the public and private sector. When creating revenue, the tax dimension must be included. Tax advice on sponsorship is needed to be in line with the regulation.

Furthermore, only public institutions or public companies participate in EGTCs. Article 3 of Regulation 1082/2006 foresees that private entities that are considered contracting entities in a public procurement can be admitted as members of an EGTC. This legal difficulty in incorporating private universities and higher education institutions could be overcome if the design of the legal entity for European Universities envisages something akin to a mixed model between EGTCs and EEIGs, i.e., the possibility of both public bodies and private companies and entities to enter these legal entities.³⁹

Finally, many universities are limited in receiving private funding for continuous education. It would be beneficial if an adapted EGTC could overcome this issue.

7. The European dimension

As the recommendations above suggest, despite being a European instrument, as it stands the EGTC is still strongly rooted in national law. For instance, regarding tax or hiring of staff among other issues. The adaptation of the instrument for transnational higher education cooperation should ensure that, as much as possible, the EGTC is a European legal instrument that does not create parallel legal entities in multiple Member States leading to duplicate administration on the central level. The adapted EGTC should keep administrative procedures lean so that alliances can focus on achieving the wider missions of transnational cooperation.

Finally, it should be noted that Regulation 1302/2013 of the amended EGTC established, among other aspects, a new article 3a allowing the participation in an EGTC of public bodies from third countries or from overseas countries or territories. Specifically, from 2013 onwards, an EGTC is allowed to consist of members located in the territory of at least two Member States and one or more third countries, which are neighbours of at least one of those Member States, including

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See also Xavier Pons Rafols (University of Barcelona) and others, December 2022, White Paper on the Governance of European Universities: The case of CHARM-EU, <https://www.charm-eu.eu/sites/default/files/2023-03/D2.6%20White%20Paper%20on%20CHARM-EU%20Governance.pdf>

their outermost regions. In terms of European Universities, this is a positive dimension, both for reasons of geographical proximity, academic and scientific impact, as well as favouring academic partnership for the future accession of candidate countries.⁴⁰ Considering the expansion of this article could ensure that the EGTC helps to broaden the horizons of the European Universities Initiative so that it is outward looking when it comes to transnational cooperation in higher education and builds bridges with other regions of the world.

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See also Xavier Pons Rafols (University of Barcelona) and others, December 2022, White Paper on the Governance of European Universities: The case of CHARM-EU, <https://www.charm-eu.eu/sites/default/files/2023-03/D2.6%20White%20Paper%20on%20CHARM-EU%20Governance.pdf>

Conclusion

At the moment, there is no tailored European legal instrument for higher education institutions to overcome obstacles in transnational cooperation, while there are many expectations for joint activities at the European level. Therefore, a dedicated instrument must be designed. A dedicated European instrument for transnational cooperation between higher education institutions would help overcome many of the obstacles that institutions face in delivering joint education, engaging in joint research and innovation, and making a joint contribution to society.

To realise such a dedicated legal instrument that serves the specific needs of the higher education sector, an experimental space to pilot recommendations and pave the way forward is needed. The current Erasmus+ policy experimentation pilots on a European legal status, that run until Spring 2024, of which ESEU is one, are a good start. But the experimentation space should not end after this pilot phase of only 12 months. The topic is complex, alliances and higher education institutions and their needs are diverse and continuously developing. Therefore, a follow-up is needed.

A next phase of the policy pilot, possibly in the framework of the future Community of Practice for European Universities, must continue to enable higher education institutions to work in co-creation mode with policy makers at the European and national level towards a tailored instrument serving the needs of higher education institutions in transnational cooperation. This will also ensure that there is full understanding, especially at the national/regional level, of what practical obstacles higher education institutions concretely face when cooperating across borders and how these obstacles can be overcome.

Adapting an existing instrument such as the EGTC along the lines recommended in this report (**see Chapter 4**), could be a way to create such an experimental space, and to develop towards a fully-fledged European legal instrument for transnational higher education cooperation. Although previous attempts to design European legal instruments show that the process takes time and it is dependent on politics and the good will of Member States, designing a new dedicated instrument for transnational higher education cooperation is the ideal way forward in the long term.

ESEU (European Status for a ECIU University) project supports ECIU University.

The map on the next page shows cases the ECIU University members that are part of the ESEU-project.



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