



Transfront(2006)3

PRACTICAL GUIDE TO TRANSFRONTIER CO-OPERATION



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Foreword

The present Practical Guide on Transfrontier Co-operation was drafted by the Mission Opérationnelle Transfrontalière (Ms Françoise SCHNEIDER, chargée de mission, under the supervision of Mr Jacques HOUBART) for the Council of Europe.

The Mission Opérationnelle Transfrontalière (MOT) is a network comprising inter alia about 30 groupings of territorial authorities and local authorities located on both sides of the borders of France, which had developed over the past 10 years transfrontier co-operation projects (metropolitan areas, rural areas, natural areas etc.). These projects cover 9 European States.

The MOT established in 1997 at the initiative of the DIACT (former DATAR) is an association lead by local elected representatives from border areas. It promotes interaction between local stakeholders working in the field and national and European authorities. The main goal of MOT is to help territorial and local authorities implement their transfrontier co-operation projects.

Therefore, this publication, drafted on purpose in a synoptic manner, is not a simple theoretical exercise. It summarises the results of long-lasting transfrontier co-operation initiatives and builds upon the experience and know-how of a whole network of territorial and local authorities.

This Guide drafted for Council of Europe member-states describes the legal framework for transfrontier co-operation and highlights a number of good practices and methodologies aiming at implementing transfrontier co-operation actions between territorial and local authorities located on the territory of the Council of Europe member-states.

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1. INTRODUCTION: WHAT IS TRANSFRONTIER CO-OPERATION BETWEEN EUROPEAN LOCAL COMMUNITIES AND AUTHORITIES?

While transfrontier co-operation can be defined as neighbourly relations between local communities and authorities on either side of land and sea borders (1.2), this simple definition encompasses a complex reality that has evolved steadily since the second world war (1.1) and is inextricably linked to political and historical developments in Europe.

1.1 Origins and definition

From post-war twinnings to “euroregions”

The beginnings of transfrontier co-operation, as it was subsequently formalised in the Madrid Outline Convention, date back to the period immediately after the war, as demonstrated by twinnings between municipalities and communities in European countries.

The development of economic, cultural and social exchanges and population and commuter flows between border areas – of the Benelux zone¹, for instance – have helped to bring local communities and authorities together around common concerns and problems (environmental protection of, say, a river border, cultural and economic development, use of health facilities and so on).

The existing framework and forms of transfrontier co-operation, in terms of neighbourly relations between communities and authorities on either side of national borders, stem from a number of pioneering initiatives.

The first “Euroregion” was set up in 1958, along the German-Dutch border (the Euregio around Gronau); the first Council of Europe recommendation on transfrontier co-operation, later to give rise to the Madrid Outline Convention, dates back to 1966².

¹ Belgium, Luxembourg, Netherlands

² Recommendation 470 (1966) on the draft Convention on European co-operation between local authorities

The political changes of the early 1990s redrew both the political map of Europe, with the admission of central and east European countries to the Council of Europe (and in some cases the European Union), and the map of land borders, with the emergence of borders demarcating new states.

The concurrent development of “Euroregions”, zones characterised by inter-regional transfrontier co-operation (some thirty Euroregions were set up throughout Europe during this period), is a good indication of the momentum.

Co-operation and neighbourly relations in transfrontier “service and employment areas”

The most distinctive feature of the various transfrontier co-operation initiatives is the establishment of co-operation, at the local community level between adjacent local public bodies subject to different national legal systems, on issues of common concern (the environment, cultural and economic activities, facilities, migration and so on).

These issues illustrate the geographical, environmental, urban and economic interdependence between areas on either side of borders.

First and foremost, transfrontier co-operation is a form of co-operation within cross-border “service and employment areas” traversed by all kinds of flows.

In addition to this initial approach, it is important to bear in mind the wide variety of co-operation arrangements and projects, which may just as easily involve centuries-old borders as recent ones, remote mountain valleys with a few thousand inhabitants crossed by a border as transfrontier conurbations with several million inhabitants, and crucial road or rail infrastructure projects as informal co-operation entailing straightforward neighbourly relations that prefigure more structured co-operation.

Not all participants in co-operation enjoy the same framework and facilities for entering into co-operation. Obstacles to transfrontier mobility and cultural, institutional, administrative or financial barriers to the implementation of transfrontier projects remain along many of the borders of Council of Europe member states.

Moreover, co-operation projects and activities are open-ended arrangements, which are generally experimental in nature and therefore difficult to reproduce, as they stand, from one border area to another. Such arrangements may also be seen as extensions of local spatial planning and development policies, based on a consensus between players on both sides of the border. They are consequently affected to some extent by fluctuations in the political and economic situation of each border area.

A variety of players

While co-operation between local public bodies is a recent development, both civil society representatives and the business world have often forged ahead of local authorities in instituting cross-border relations.

This guide to co-operation will focus more specifically on the rules governing relations between “local communities and authorities”, as defined by the Madrid Outline Convention³, that is, public and para-public bodies whose geographic location gives them “*powers covering a smaller area than those of the State*”⁴.

It should be noted that the principles set out in this guide may be applied to communities belonging to states that have not ratified the Madrid Outline Convention, since domestic law may provide these communities and authorities with the necessary legal basis for the successful implementation of co-operation activities (see 2.1). Likewise, the principles set out may be applied, *mutatis mutandis*, to interterritorial co-operation activities between non-adjacent communities.

Co-operation in relation to a variety of issues

Transfrontier co-operation between local communities and authorities is not an additional power assigned to border communities, but rather a means of exercising their powers. The scope of transfrontier co-operation covers the whole spectrum of local government activities and takes all the forms common to participants on both sides of the border. Co-operation may take the form of informal dialogue in an area of common concern or the building of permanent joint facilities in fields such as sanitation or health.

³ “[C]ommunities, authorities or bodies exercising local and regional functions and regarded as such under the domestic law of each State”, Article 2 §. 2

⁴ Explanatory report to the Madrid Outline Convention, Article 2

1.2 Forms and methods

Forms and methods of transfrontier co-operation vary from one transfrontier area to another. They result from a combination of two parameters: decisions and policy choices made jointly by local partners on both sides of the border, together with the legal avenues available to them under domestic law and international undertakings entered into by the states to which they belong.

Form and legal status of the undertakings

A great deal of co-operation has been – and is being – conducted informally, based on the co-ordination of activities by participants on either side of a border with a view to a joint transfrontier approach. Partner communities and authorities are bound only by an agreement in principle. This form of co-operation is often used in the early stages of co-operation or in the absence of a legal framework enabling local communities and authorities to formalise their co-operation.

Co-operation is initially formalised by means of co-operation agreements signed by the executives of local communities and authorities and subject to the approval of the deliberative assemblies of these communities and authorities. In signing such an agreement, the latter formalise their partnership, set common objectives and enter into reciprocal undertakings, while overcoming differences between countries as regards administrative and institutional structure.

Thanks to the combined effects of some domestic law and certain international agreements, such as the Additional Protocol to the Madrid Outline Convention, co-operation partners can set up and join transfrontier co-operation bodies enjoying or not legal personality and autonomy. These transfrontier bodies implement transfrontier arrangements and projects under the supervision of their members.

Substance of the undertakings

Legally, the scope of transfrontier co-operation is determined by comparing the spheres of responsibility of partners on either side of the border. Participants in transfrontier co-operation can co-operate only within their common spheres of responsibility.

Partner local communities and authorities in a co-operation arrangement will take these common competences as a starting-point in order to refine priority action areas and issues of common concern on which there is a consensus on both sides of the border.

The substance of the undertakings entered into will consequently vary considerably depending on the type of territory and players involved, how long the co-operation arrangement has been in place and the resources available. Such undertakings can range from political declarations without operational effect to the drafting of white papers or transfrontier charters setting out objectives and key projects to be implemented jointly over a 20-year period.

Geographical scope

The participants in transfrontier co-operation are communities and authorities at the sub-state level. Accordingly, the geographical scope of co-operation arrangements can range from local intermunicipal co-operation, which is the crucible of transfrontier co-operation, to inter-regional co-operation through Euroregions, depending on the strategies formulated by those involved.

In addition, depending on the issues addressed and the form of co-operation adopted, co-operation arrangements may, at a transnational level, entail establishing networks linking non-adjacent areas within the same extended geographical area.

2. WHAT IS THE LEGAL AND ADMINISTRATIVE FRAMEWORK ON WHICH CO-OPERATION MAY BE BASED?

While most Council of Europe member states have ratified the Madrid Outline Convention (33 out of 46) and even signed international agreements on transfrontier co-operation (2.3), border local communities and authorities can co-operate with communities in neighbouring states only subject to the restrictions imposed by domestic law (2.1).

Accordingly, the absence of a predefined legal framework has prompted such communities to use “de facto” tools (2.2), such as associations or foundations, in order to implement their co-operation arrangements.

2.1 General principles applicable to local communities and authorities

Discussing the legal framework for transfrontier co-operation is a complex matter, for the rules governing local communities and authorities and the powers and prerogatives assigned to them, particularly in respect of transfrontier co-operation, vary from one state to another, depending on the system of local and regional government adopted nationally.

Nevertheless, it is possible to identify common principles applicable to border communities and authorities of Council of Europe member countries, irrespective of whether they have ratified the Madrid Outline Convention. It should be noted that these principles also apply to inter-authority co-operation between non-adjacent communities.

Co-operation compliant with domestic law

Local communities and authorities play a central role in transfrontier co-operation arrangements. The combined effects of their domestic law and, subsidiarily, international agreements on transfrontier co-operation concluded by the states to which they belong will determine their “room for manoeuvre” in respect of transfrontier co-operation.

Article 2 of the Madrid Outline Convention states that “transfrontier co-operation shall take place in the framework of territorial communities’ or authorities’ powers as defined in domestic law”.

→ Some common principles:

1. Transfrontier co-operation provides local communities and authorities on either side of a border with a means of exercising the powers they enjoy, and does not constitute an additional power.
2. Local communities and authorities enter into co-operation solely within their common areas of competence.
3. Transfrontier co-operation takes the form of projects of common local interest. Local communities and authorities must demonstrate the benefit of such activities.
4. Communities and authorities enter into co-operation in accordance with the legislation governing their powers, procedural matters and review of their decisions.
Consequently, a local community or authority cannot exceed its powers and prerogatives under domestic law. It must comply with domestic law in signing co-operation agreements and implementing transfrontier projects (as regards public procurement contracts, management of public services and observance of fundamental principles, for instance).
5. Enforcement and regulatory powers (in town planning, for example) are excluded from the scope of transfrontier co-operation).
Local communities and authorities may, however, agree to co-ordinate their policies and strategies in these areas in accordance with the domestic law applicable to each co-operation partner.
6. Communities and authorities engage in co-operation in accordance with the international undertakings entered into by the state to which they belong, including undertakings concerning transfrontier relations and the various issues connected with the crossing of borders and transfrontier mobility in general.
7. Where the legal framework allows it, these local communities and authorities formalise their co-operation by signing transfrontier co-operation agreements or setting up co-operation bodies enjoying or not legal personality (please see below).
In this case, the domestic law of one of the partner local communities or authorities applies to the co-operation agreement or body (the law of the state in which the body's headquarters are located).

What are the implications for Council of Europe member states?

For local communities and authorities, engaging in transfrontier co-operation is first and foremost a question of marrying different legal and legislative systems, since co-operation arrangements cannot release local communities and authorities from the legal framework to which they are subject.

It should be remembered that the framework for transfrontier co-operation, particularly the Council of Europe conventions and bilateral agreements on transfrontier co-operation, does not establish supra-national law or a right to opt for the law of one of the partner communities or authorities. It lays down procedures for co-operation, in accordance with each state's domestic law.

Only states (unitary, federal or federate states) and/or regional entities enjoying autonomous legislative powers have a comprehensive view of the legal framework applicable to cross-border relations between local or regional entities and, more generally, of the various policies affected by transfrontier projects (spatial planning, transport, health, economic development and so on).

Accordingly, at the very least, it is recommended that they:

- firstly, review – in consultation with the relevant departments and, if possible, border communities – the legal, administrative and financial framework governing transfrontier relations between local communities and authorities, so as to have a clear picture and coherent interpretation of the provisions in force – for example in the form of a circular or handbook for supervisory authorities;
- secondly, identify – again, in consultation with border local communities and authorities if possible – sticking points, inconsistencies and obstacles to transfrontier co-operation, and arrive at appropriate legal solutions (passing of laws or regulations or negotiation of a bilateral agreement).

For implementing these measures, member states and/or federate entities could usefully refer to Recommendation Rec(2005)2 of the Committee of Ministers of the Council of Europe to the member states, of 19 January 2005, on good practices in and reducing obstacles to transfrontier co-operation between territorial communities or authorities.

2.2 Associations and other “de facto” co-operation bodies

Definition of “de facto” tools for transfrontier co-operation

In formalising their co-operation arrangements, local communities and authorities have used all the existing legal structures available under domestic law, including some private-law ones such as associations, foundations or – in the European Union – European economic interest groupings (EEIGs).

In many legal systems, such structures can be made up of local communities or authorities. In addition, many local communities or authorities are allowed to belong to such structures by their statutes and domestic law.

Such structures, including EEIGs, were not originally designed as tools for transfrontier co-operation, but have been used as such by border local communities and authorities in the absence of a legal solution satisfying their requirements. They may therefore be described as “de facto” tools for transfrontier co-operation.

Distinction between associations, foundations and EEIGs as transfrontier co-operation operators or players

A clear distinction should be drawn between:

- private-law structures of the association or foundation type that act as “operators” or “project managers” for local communities and authorities in transfrontier projects (one example would be a cultural association without any structural link to the local communities or authorities on whose behalf it was implementing a transfrontier cultural project) and
- private-law co-operation structures made up of local communities or authorities, or other local or regional partners, which act as political-consultation, research or discussion bodies for transfrontier co-operation arrangements.

Example: Meuse-Rhine Euregio⁵

In 1991, the Meuse-Rhine Euregio (Euroregion) adopted the legal structure of a foundation under Dutch law, bringing together the Dutch province of Limburg, the Belgian provinces of Liège and Limburg, the German-speaking Community of Belgium and Regio Aachen e.V. (Germany). Its headquarters are in the Netherlands. It possesses organs of its own: a steering committee, which oversees a bureau and committees, and a Euregional council – an advisory body responsible for transfrontier policy choices – which is made up of delegates from the political, economic and industry authorities within the various partner regions.

Advantages and limitations of this type of structure

For transfrontier partners, establishing a joint independent transfrontier structure such as an association, foundation or EEIG is prompted by both practical considerations (outsourcing the management of transfrontier co-operation by entrusting it to a separate structure under their supervision) and symbolic ones (setting up a co-ordination body and representing the transfrontier area to the outside world).

Private-law structures of this kind are particularly suitable for co-ordination, discussion, evaluation and lobbying ahead of a project or as part of the project.

However, such private-law bodies cannot exercise powers in place of the member local communities or authorities.

In this type of set-up, it is recommended – in order to avoid any confusion between the functions performed by the transfrontier structures and those exercised by member communities – that annual or long-term agreements be concluded between the structure and member communities and authorities.

Such agreements set out the objectives and goals pursued by the structure on behalf of its members in exchange for the operating funds they provide it with.

⁵ Source: www.euregio-mr.org

2.3 Tools provided by Council of Europe conventions and bilateral or multilateral treaties

The present international framework for transfrontier co-operation results from the Madrid Outline Convention and its effects (a). It contains tools suited to particular borders (b), given the undertakings entered into by the various Council of Europe member states.

a) Development of the legal framework for transfrontier co-operation following the adoption of the Madrid Outline Convention

Background

As at the end of 2005, the Council of Europe, founded by ten states in 1949, brings together 46 European countries, including all the European Union member states.

Since 1950, the Council has drawn up more than 150 international legal instruments in the form of international conventions or protocols in areas such as human rights protection, economic and social rights, culture and local and regional government.

It was in connection with its local and regional government work that the Council came to draft the Madrid Outline Convention of 20 May 1980 on transfrontier co-operation between territorial communities or authorities, which is the basic document on transfrontier co-operation.

The signatory states recognise the right of such communities or authorities to enter into co-operation within their common areas of competence by consulting one another and signing transfrontier co-operation agreements.

This convention does not contain any operational provisions, however. Through it, the signatory states undertake to facilitate and foster transfrontier co-operation (Article 1).

Afterwards it was supplemented by an initial protocol – with an operational focus – of 9 November 1995, on transfrontier co-operation, and in May 1998 by a second protocol on co-operation between non-adjacent areas.

In the intervening period, two developments altered the European institutional and political landscape. Central and east European countries

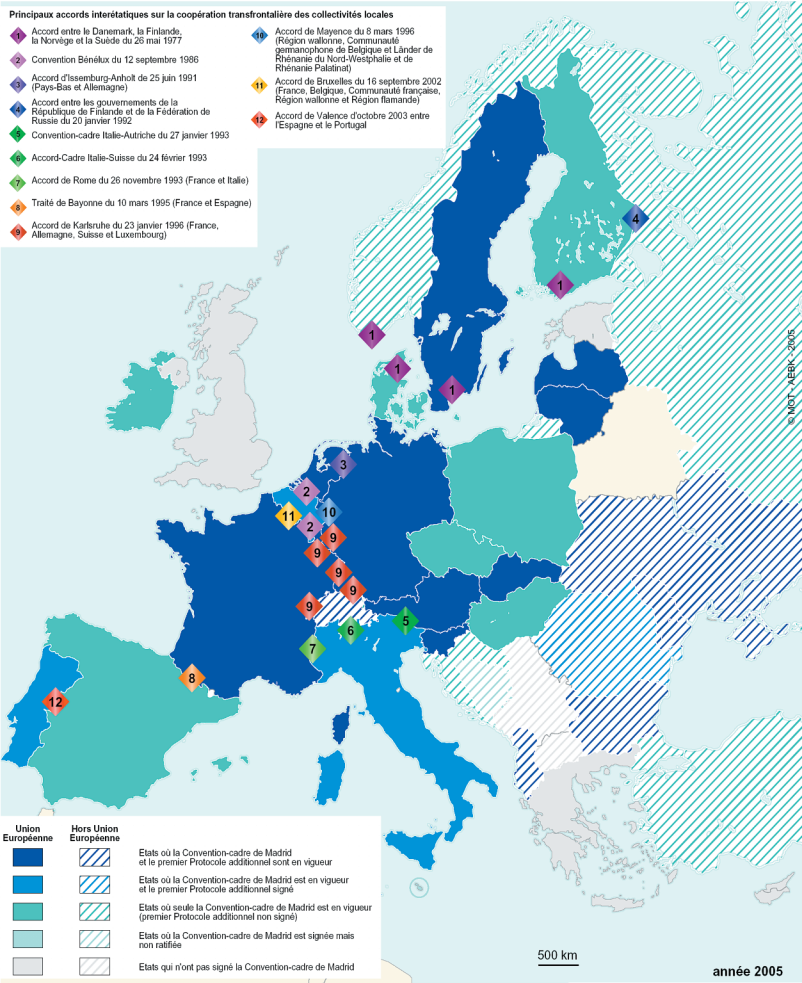
joined the Council following the fall of the Berlin Wall – with the exception of Belarus – and some of them signed and ratified the Outline Convention and the Additional Protocol to it.

State of ratifications

The map below shows the progress made with regard to signature and ratification of the Madrid Outline Convention and the Additional Protocol; each Council of Europe member state is free to decide whether or not to ratify these conventions. It also highlights examples of bilateral transfrontier co-operation agreements incorporating the principles set out in the Madrid Outline Convention.

Ratification and implementation of the Madrid Outline Convention by EU and non-EU Council of Europe member states as at 1 November 2005

(for translation of text see page 67)



As at 1 November 2005, both of these conventions were in force in ten European Union (EU) countries (Austria, France, Germany, Latvia, Lithuania, Luxembourg, Netherlands, Slovakia, Slovenia and Sweden) and seven non-EU states (Albania, Armenia, Azerbaijan, Bulgaria, Moldova, Switzerland and Ukraine).

In sixteen member countries, only the Madrid Outline Convention is in force: the Czech Republic, Denmark, Finland, Hungary, Ireland, Poland and Spain within the EU, and Croatia, Liechtenstein, Norway, Russia and Turkey outside the EU. Belgium, Italy and Portugal (within the EU) and Romania (outside the EU) also apply the Madrid Outline Convention, and are in the process of ratifying the first Additional Protocol.

The Madrid Outline Convention is not applied in the following 13 countries: Cyprus, Estonia, Greece and the United Kingdom within the EU; Andorra, Iceland, “the former Yugoslav Republic of Macedonia”, Monaco, San Marino and Serbia and Montenegro outside the EU; and three countries that have signed it but not yet ratified it (Bosnia and Herzegovina, Georgia and Malta).

Examples of bilateral agreements

Since entry into force of the Madrid Outline Convention, some member states have negotiated and signed international agreements laying down, in accordance with the provisions of the Madrid Outline Convention⁶, procedures for transfrontier co-operation between territorial communities and authorities along some or all of their borders, thereby resolving the differences between the signatory states in terms of their political and administrative systems and local-government legislation.

These agreements include:

- Agreement between Denmark, Finland, Norway and Sweden of 26 May 1977
- Benelux Convention of 12 September 1986
- Issemburg-Anholt agreement of 25 June 1991 (the Netherlands and Germany)
- Agreement between the governments of Finland and the Russian Federation of 20 January 1992

⁶ See Article 3 § 2

- Italy-Austria outline agreement of 27 January 1993
- Italy-Switzerland outline agreement of 24 February 1993
- Rome agreement of 26 November 1993 (France and Italy)
- Bayonne treaty of 10 March 1995 (France and Spain)
- Karlsruhe agreement of 23 January 1996 (France, Germany, Switzerland and Luxembourg)
- Mainz agreement of 8 March 1996 (Walloon Region, German-speaking Community of Belgium and Länder of North Rhine-Westphalia and Rhineland Palatinate)
- Brussels agreement of 16 September 2002 (France, Belgium, French Community, Walloon Region and Flemish Region)
- Valencia agreement of October 2003 between Spain and Portugal

The agreement signed by Denmark, Finland, Norway and Sweden in 1977 (1) was a pioneering one, preceding the 1986 Benelux Convention (2) between Belgium, Luxembourg and the Netherlands on transfrontier co-operation. All the other agreements, however, date from the 1990s (7, 8 and 9) or 2000s (11 and 12).

These agreements were signed by a small group of countries belonging to the European Union (Germany (3, 9, 10), Austria (5), Belgium (2, 10, 11), Denmark (1), Spain (8, 12), Finland (1, 4), France (7, 8, 9, 11), Italy (5, 6, 7) and Portugal (12)) and three countries adjoining that group (Norway (1), Switzerland (6 and 9) and the Russian Federation (4)).

b) Transfrontier co-operation instruments introduced by the Madrid Outline Convention and bilateral agreements

Madrid Outline Convention and the Additional Protocol

The Madrid Outline Convention of 21 May 1980 is the founding document in the legal framework for transfrontier co-operation between territorial communities and authorities in Europe.

Within the meaning of this convention, transfrontier co-operation denotes any action designed to foster neighbourly relations between territorial communities or authorities located on either side of a border.

The convention does not contain any operational provisions. It is, however, accompanied by guidelines for model inter-state agreements and outline agreements, statutes and contracts to be concluded between local authorities (see 4. and 5.).

The Additional Protocol to this convention supplements the Outline Convention and lays down operational provisions concerning:

- signature of transfrontier co-operation agreements (or conventions), the basic transfrontier co-operation instrument enabling communities to formalise their co-operation (see 4. and 5.) in their common spheres of competence, in accordance with the principles outlined above (see 2.1);
- the scope for setting up autonomous transfrontier co-operation bodies enjoying legal personality, under two models outlined in Articles 4 and 5 of the protocol, reflecting the two approaches to transfrontier co-operation adopted in Europe.

Before ratifying the protocol, each country must decide whether to apply just one or both articles. Article 4 provides for the setting up of a body whose legal personality and action are determined by the law of the headquarters country.

The transfrontier co-operation body performs the functions assigned to it by member communities and authorities, which it does not supplant. This is the approach adopted in many bilateral agreements (see below).

Article 5 provides for the establishment of a public-law entity whose measures have the same legal force and effects, in each state, as if they had been taken by the member communities and authorities.

Some member states⁷ have opted to apply both articles, the others have adopted only Article 4.

Bilateral agreements

Some bilateral or multilateral agreements are drawn up according to the same model: they start by describing the geographical scope of their application and listing the communities concerned within these territories.

⁷ Albania, Armenia, Lithuania, Luxembourg, Netherlands, Slovenia, Ukraine

These agreements then lay down procedures for co-operation between these local communities and authorities.

All of these agreements provide for transfrontier co-operation agreements (or conventions) concluded between local communities and authorities within their common areas of competence as basic instruments.

Under some agreements based on the same model as the first Additional Protocol, types of entity with legal personality and autonomy that exist in one signatory country's law are made available to local/regional authorities on either side of the border.

For example, the Bayonne Treaty between France and Spain provides that the French and Spanish communities listed in the treaty may take part in, or set up *ex nihilo*, a transfrontier "consorcio".

A consorcio is a Spanish legal structure enabling Spanish public authorities at different territorial levels to engage in co-operation.

There are consequently consorcios between Spanish communities and, on the basis of the provisions of the Bayonne Treaty, transfrontier consorcios bringing together French and Spanish communities, such as the Pyrenees Working Community.

Other agreements also allow the setting up of a new structure, a local public transfrontier co-operation grouping governed by these agreements and, subsidiarily, the law of the state in which its headquarters are located; members are free to choose the location of its headquarters on either side of the border. This type of body has different names depending on the agreements⁸.

Prospects opened up by the European Union and the Council of Europe in respect of trans-European co-operation instruments

Since 2004, the European Union and the Council of Europe have been discussing the introduction of a joint "trans-European" co-operation

⁸ "Public body" in the 1986 Benelux Convention, "inter-municipal syndicate" in the 1991 Issemburg-Anholt Agreement, "Intercommunale" in the Mainz Agreement and "local transfrontier co-operation grouping" in the 1996 Karlsruhe Agreement and 2002 Brussels Agreement

instrument, covering all forms of co-operation between EU and CoE local communities and authorities.

In one scenario, this co-operation structure would be introduced through a Community regulation as part of the Community's new regional policy; it would be known as an EGCC, short for "European Grouping of Cross-Border Co-operation".

With or without legal personality, this grouping would be subject to the law of the state in which its headquarters are located. In July 2004, the aim was to adopt this regulation so that it could enter into force throughout the European Union on 1 January 2007.

At the same time, the Council of Europe drew up a draft Third Additional Protocol to the Madrid Outline Convention, which became a preliminary draft "European Convention containing Uniform Law on Transfrontier Groupings of Territorial Co-operation (TGTC)".

The purpose of this convention is to facilitate the establishment of co-operation bodies between the 46 member states. It will resolve numerous obstacles currently encountered by local communities in relation to transfrontier co-operation⁹.

⁹ Source www.coe.int

3. WHAT ARE THE PREREQUISITES FOR SUCCESSFUL TRANSFRONTIER CO-OPERATION?

Local communities and authorities entering into co-operation arrangements must satisfy the shared expectations of border areas (3.1) by defining basic parameters for their co-operation (3.2).

3.1 Co-operation context and requirements

From known situation to official co-operation

Successful implementation of a co-operation arrangement calls for rebuilding bridges in places where states have historically erected political and institutional barriers and setting the boundaries and objectives of a **project area** that reflects a **shared political commitment** on both sides of the border and affords an opportunity to develop new forms of interdependence and establish new economic, cultural and social links between local partners on both sides of the border.

Along many borders, de facto co-operation precedes co-operation between local authorities: the typical resident works in a town in one country¹⁰, lives in another town in another country and uses the services of one or more other towns for leisure or shopping, taking advantage of what each has to offer.

This general observation must be qualified, however, according to the specific border situation, particularly any restrictions on people's freedom of movement or geopolitical tensions affecting the area¹¹.

¹⁰ 520 000 border workers, source: draft revised Handbook on Transfrontier Co-operation, Council of Europe ref. LRCT(2005)5

¹¹ See The role of the euroregion in promoting and reinforcing democratic stability and transfrontier co-operation in South-Eastern Europe, report by Sraso Angeleski, Council of Europe http://www.coe.int/t/e/legal_affairs/local_and_regional_democracy/documentation/library/Transfrontier_Cooperation/default.asp#TopOfPage

In launching their arrangements, local communities and authorities consequently have to contend with a **genuine frontier effect** (legislative differences and differentials in labour costs, land and property prices and so on), which generates both momentum and tensions in transfrontier relations.

In many cases, co-operation partners have entered into co-operation in connection with a particular project, a one-off activity designed to resolve a problem or capitalise on an opportunity. First and foremost, the transfrontier co-operation arrangement must enable them to meet the specific needs and expectations of people living on both sides of the border in terms of mobility, services, environmental protection and so on.

Setting up a comprehensive, long-term arrangement

→ A strong political commitment shared by local elected representatives on both sides of the border is an essential prerequisite for co-operation.

→ It must be backed up by a joint technical team responsible for managing the transfrontier arrangement, with a view to setting common objectives that lead to practical projects meeting the needs and expectations of people living in transfrontier areas.

→ This arrangement must be long-term, giving rise not only to a joint strategy, for instance in the form of a white paper or a charter, but also to working out joint projects based on a shared working culture and affording an opportunity to offset differences in terms of organisational and operational aspects, working languages and administrative and political cultures.

3.2 How do local communities initiate a co-operation arrangement?

Such an arrangement calls, firstly, for elected representatives to know one another other well and to enjoy a relationship of trust so that they can affirm a political commitment to establishing co-operation between neighbouring communities, and, secondly, for the respective specialist departments to make a co-ordinated effort to put in place the co-operation project or arrangement, whether it involves an area with a few thousand inhabitants or a euroregion.

Priority action areas

The initiative may come from a small group of communities or authorities, which will head the arrangement and will subsequently be joined by other

communities and participants. It should be noted at this point that co-operation arrangements are iterative, rather than linear, processes.

They evolve and develop in terms of partnerships and objectives as the various partners gain a better understanding of the area, identify issues and launch the first projects.

The initial focus should be on a number of key points making it possible to lay the foundations for long-term transfrontier co-operation:

- firstly, gaining a mutual understanding of participants on both sides of the border, with a view to agreeing on a perimeter for the transfrontier arrangement;
- secondly, conducting a forward assessment with a view to identifying common issues and deciding on the objectives to be pursued and the first activities to be implemented.

Instituting initial political and technical working procedures

In order to carry out these tasks, it is essential – after the initial informal approaches – to:

- establish a **political management structure**, which may simply take the form of an **informal transfrontier steering group** meeting at regular intervals to review progress and ensure that it is in line with the objectives originally set. This group will be made up of representatives of the initial communities and authorities behind the project, and may be enlarged to include other participants as work progresses;
- set up a **technical working group**, for example by co-ordinating representatives of the departments responsible for town and country planning and development; this group, which will meet more frequently than the steering group, will be responsible for monitoring progress, conducting initial technical exchanges, carrying out any initial research, organising meetings of the political steering group and possibly setting up sub-groups on specific issues;
- decide on the partners' **working language(s)** and set **initial timeframes** for partner communities and authorities to formalise their common objectives (setting a work schedule);
- lay down a number of working procedures for the political steering committee (for example, a co-chairmanship or rotating

chairmanship, meeting venues alternating between the different territories, frequency of meetings, reports and so on).

From a legal perspective, there is no need during this initial phase to sign a co-operation agreement setting out an anticipated framework for co-operation, since such an agreement is likely to turn out to be overly restrictive or incomplete in terms of the activities to be undertaken by the local communities and authorities. However, an agreement of a “technical” nature establishing the rules governing the functioning of the steering committee and in particular the financial or other contributions of each of the partners may appear to be necessary in the light of the domestic law of the partners and *inter alia* of the provisions governing the allocation of budgetary resources.

It should be noted, however, that elected representatives taking part in meetings, together with the technical specialists brought on board, must comply with the same rules, principles and internal and external audits as if they were co-operating with communities and authorities in their own country.

As explained in section 2, such arrangements cannot release them from the rules and procedures laid down in the domestic law governing each community. Each country’s domestic law will therefore generate constraints in the form of decisions to be taken – particularly votes and deliberations by deliberative assemblies on the financing of such arrangements – or approval to be obtained from the authorities responsible for monitoring and supervising local communities.

Given the variety of systems of organisation of territorial communities and authorities in Council of Europe member states, it is impossible to set out all the requirements that have to be met. It is, however, advisable to observe two principles in respect of such arrangements:

- keep the deliberative assemblies of local communities and authorities informed of work by the “political group” and involve them in it, particularly when a budget allocation has to be approved for initial activities;
- keep representatives of federate or federal states and of supervisory authorities informed of the work and, where possible, involve them in it, or even in the political steering group; taking part in the discussions from the outset will familiarise them with the issues and

difficulties faced by the communities; rather than simply passing final judgment on local initiatives, such authorities should be involved at an early stage and become partners in transfrontier arrangements within their areas of competence.

This plan of action will make it possible to carry out the tasks outlined below. In this initial phase of co-operation, the idea is to determine the basic parameters of the co-operation arrangement with a view to formalising it through a co-operation agreement.

Identifying partners in the transfrontier area in order to agree on a working perimeter

The first transfrontier task is to agree on a working perimeter, which will result from the perimeter of the various communities and authorities on both sides of the border.

As regards co-operation partners, in this initial phase the idea is to adopt a broad approach, taking into consideration parameters such as political support (who backs which aspects of the arrangement) and legal aspects (the powers enjoyed by each level of communities and authorities).

Partners may include local communities, groupings of communities, specialist public bodies, semi-public companies, associations, local chambers or decentralised departments of the central, federate or federal state. In this context, the perimeter is determined at three levels, involving:

- the elected representatives, who must make clear who is in and who is not in the community of interests,
- the technical specialists, who help to analyse the appropriateness of this or that division of labour;
- the people who actually experience the area day to day, identify with a project, demonstrate a sense of belonging and subscribe to the idea of a shared future.

Once the perimeter has been agreed, a **common appellation** needs to be found for the transfrontier area, so that it can be clearly identified by residents, states, European bodies and other co-operation areas.

This perimeter serves as an initial indication, a reference perimeter for the discussion of ideas and joint projects; many transfrontier projects will not

involve the whole of this area, but merely part of it. Other projects may necessitate a change of scale and therefore a larger perimeter, depending on the strategy adopted by the participants.

Identifying objectives and deciding on the initial activities to be undertaken

The second task partners must carry out, or attempt to carry out, is to formulate common objectives and projects that satisfy the transfrontier needs and expectations identified within the area.

This may prove to be a difficult exercise, for it requires viewing separate authorities as a single unit so as to have an objective view of existing dynamics and obstacles within the transfrontier area, work with reliable transfrontier data, marry the *modi operandi* of different communities and authorities on either side of the border and address politically sensitive issues. Transfrontier co-operation is based on an effort to reach a consensus and set shared objectives.

In order to avoid any sticking points, the main purpose of this initial activity is to yield a preliminary understanding of:

- the transfrontier area as a whole (its strengths and weaknesses, pressing deficiencies and needs, how the area will have changed in ten years' time);
- the policies pursued by the identified stakeholders and the local/regional development strategies put in place (on which points do they coincide, how can they be co-ordinated, etc.) with a view to pinpointing structures, services and resource people in the area who can assist politicians in promoting the initial arrangement.

The aim is to:

- **identify common problems, issues and objectives to be formalised as part of a co-operation agreement,**
- **and, in an ideal world, generate – from this early stage – a set of coherent, jointly designed projects with limited objectives, calibrated on the limited legal, human and financial resources available.**

Conclusion: some recommendations to be followed (+) and pitfalls to be avoided (-)

- + Avoid trying to meet too many different demands,
- + Set timeframes,
- Don't try to research every aspect before launching the first activity: it is important not to overlook the catalyst effect and pilot value of a first few practical projects, even if these are not particularly ambitious (map, telephone directory, etc.),
- + Take care to use reliable, standardised data so as to have an overview that constitutes a shared assessment,
- Avoid focusing too much on the position at a single point in time, at the expense of a projective assessment of the transfrontier area in 10 years' time,
- Avoid working unilaterally and only as the last step putting together the findings of separate research conducted on either side of the border,
- + Identify priority action areas,
- Avoid delay in tackling the agreed joint objectives,
- + The standard of the assessment and of the implementation of the recommendations depend on the standard of organisation.

4. HOW DO TRANSFRONTIER CO-OPERATION ARRANGEMENTS EVOLVE?

In many transborder areas, co-operation has been initiated in connection with a common issue, opportunity, one-off project or event involving authorities on both sides of the border (see 3.2). If an integrated co-operation arrangement is to continue, it is essential to use this initial impetus and any implications it may have for – or links with – other fields as a basis for identifying the scope for co-operation between local players and partners so that these avenues can gradually be pursued.

4.1 From initial contact to setting up joint projects

A recurrent, open-ended process

Co-operation arrangements necessitate an effort to arrive at a consensus on a common vision. Accordingly, in consolidating transfrontier co-operation arrangements following the start-up phase outlined in section 3.2, the aim is not so much to introduce an additional tier of authority as to institute joint management in preparation for the implementation of transfrontier projects. A number of activities may be put in place in turn (or at the same time in the case of the first two), so as to enable the transfrontier co-operation arrangement to evolve and to give rise to coherent practical projects.

→ Formulating a joint strategy

The initial research phase consists in formalising a common vision, coming up with a comprehensive blueprint for the area, in the form of a charter or white paper, and putting together objectives and practical transfrontier projects in various fields¹².

¹² For more information on this process, see the following examples:

- Strategy for a Transfrontier Metropolitan Area, Franco-Belgian Greater Lille: Ypres, Courtrai, Lille, Mouscron, Roulers, Tournai: <http://www.grootstad.org/pdf/MementoScreen.pdf>
- European Development Pole Agglomeration Charter (France/Belgium/Luxembourg): <http://www.agglo-ped.org/charte.cfm>
- "Strasbourg-Ortenau: Strategies and Plans for Joint Development" white paper, <http://www.strasbourg-ortenua.org>
- White Paper for the Basque Bayonne-San Sebastian Eurocity: <http://www.basque-eurocity.com/page.asp?IDPAGE=106>

A transfrontier GIS¹³ may be used for this process, which entails an assessment of the area's strengths and weaknesses and the issues it faces, followed by a project development phase. It is generally formalised by a co-operation agreement signed by the partners.

It should be noted that such planning is always indicative, as projects must be incorporated into the respective local planning documents. Nevertheless, this process – which has not been undertaken in all transfrontier areas – serves a strategic purpose, affording an opportunity to identify the various planning issues and ensure co-ordinated development of the transfrontier area.

→ Local/regional management phase

The local/regional management process consists in mobilising the relevant local/regional players and public-private partnerships in order to foster project development. The aim is to consult these players in order to make sure projects are feasible, to bring potential financial backers on board, to lay down project implementation procedures and to refine operational parameters. This management phase also affords an opportunity to involve as many public and private players as possible in activities designed to promote or establish public-private partnerships.

This phase, which is not included in bilateral agreements, is essential for making the transition from research to project launch; it calls for effective technical and political co-ordination between the transfrontier project's various partners. It leads to the establishment of joint co-ordination bodies, which are also responsible for putting together a team of technical specialists to prepare for the transition to the operational phase (see 4.2 below).

→ Project implementation

The operational phase is one of investment and implementation of transfrontier projects by local partners. It includes the introduction of transfrontier services in the broad sense of the term (services for the public and for local/regional players – transport, tourism, social welfare, cultural

¹³ Geographic Information System, an information and cartographic data base bringing together all the cartographic data relating to a particular area

activities and so on) as well as the building of transfrontier amenities and facilities.

During this phase, local partners must agree a contracting authority to take responsibility for administrative, technical and financial aspects of the project. This role may be assigned to one of the project partners, or to more than one partner if the nature of the project lends itself to such an arrangement (a multi-site project, for example), or to a separate structure with the necessary legal capacity (see 4.2 below).

Work to be undertaken on an ongoing basis

Alongside these three phases, a number of activities may be undertaken on an ongoing basis, including:

- launch of pilot and trial projects;
- training for participants and awareness-raising among transfrontier partners;
- presentation of the project and internal and external communication, by means of publications or the media;
- internal tasks: setting up a legal monitoring system, conducting a project evaluation, drawing up a management chart and developing technical co-operation.

Measures of the intensity of partnerships between participants in a transfrontier arrangement

| | |
|----|--|
| 0 | No contract ⇓ |
| 1. | Information sharing ⇓ |
| 2. | Dialogue with a view to learning more about one another ⇓ |
| 3. | Communication with a view to joint action ⇓ |
| 4. | Joint decisions |

4.2 Putting agencies in place

The consolidation phase of transfrontier co-operation also entails establishing a standing transfrontier organisation, which may take a variety of forms depending on each authority concerned, the nature and scale of the partners, and the objectives.

Common principles

As in the start-up phase (see 3.2), the aim is to secure both:

- political support for the transfrontier arrangement; and
- technical support, by a dedicated team, for the arrangement as a whole as well as individual co-operation projects.

Three principles are crucial:

- the political support body, irrespective of its form, can never take the place of the member communities or authorities in making decisions, and consequently does not constitute a new tier of authority.

It has a co-ordinating function and is where consensus is reached on the most appropriate strategies and the transfrontier projects to be launched. Each of the political support body's member communities or authorities retains exclusive competence for operational decisions (amending town planning documents, approving funding, issuing permits, making staff available and so on);

- in the field of transfrontier co-operation, as in matters of domestic law, there is no body or legal entity that can act as a policy-making authority, consultancy, town planning or development agency, chamber of commerce, public utility operator and network manager all at the same time.

Accordingly, when setting up transfrontier agencies, the aim is not to try and set up a single entity that will act in all these capacities (planning, management, implementation and so on), but rather to institute a transfrontier *modus operandi* geared to the actual nature of the transfrontier area;

- like co-operation arrangements, the mechanism is modifiable. Many areas that started out by setting up an informal forum have later, as their arrangements have evolved, established a permanent entity (association, foundation, public-law instrument) to manage their arrangements or implement their projects (see 4.3 below).

Need for a management body in order to sustain a transfrontier area

At the very least, each transfrontier area will have such a management structure. It brings development partners together on an equal footing and co-ordinates the transfrontier area's activities.

All kinds of bodies preside over transfrontier areas, ranging from informal forums to contracting authorities (local transfrontier co-operation groupings, for example). These bodies have various names: bureaux, commissions, standing committees and so on.

Need to set up operational teams

Transfrontier operational teams constitute the first structured level of transfrontier co-operation. They differ in this respect from one-off transfrontier projects, which do not have ongoing resources at their disposal and are not part of a comprehensive strategy. They may be made up of staff provided by the various partners and/or staff recruited as part of the transfrontier arrangement, possibly answerable to an autonomous structure (such as an association).

Such teams have a structuring effect on the transfrontier area. They help to define it and to sustain it by embodying the co-operation and ensuring its long-term survival, in accordance with an agreed strategy for mobilising resources.

They bring local authorities together, give transfrontier activity a visible presence, build up experience and develop specific expertise. They embody the development of transfrontier areas at the local level in a practical way by establishing work practices based on common interests and joint projects.

Designating the contracting authority for project implementation

Setting up a transfrontier project, irrespective of its nature and scope, is a complex operation.

It is essential to decide who will act as the contracting authority for the transfrontier project (project development, funding, choice and monitoring of project implementation, recruitment of a project co-ordinator and so on) – that is, the legal entity to be answerable for the smooth running and successful completion of the project. It is difficult for local/regional authorities or other local partners, located on different sides of the border, to perform these functions on a joint basis.

A number of scenarios are possible:

- the partners assign this task to a separate structure, such as a cultural association in the case of a transfrontier cultural project;
- one or more partners implement the project on behalf of all the partners, depending on its location and specifics; or
- the partners decide to set up a dedicated structure for the project (see 5).

4.3 A practical example: transfrontier urban districts

Example: transfrontier urban districts along French borders

Transfrontier co-operation is confined mainly to urban areas, which generate all kinds of flows. Transfrontier districts are subject to a two-way pull, retention of national sovereignty competing with the need to address local issues.

The map and tables below summarise the different arrangements entered into by six transfrontier urban districts along French borders, their partnerships and their areas of work.

For more comprehensive information about these examples, the following sites may be consulted:

Transfrontier Intermunicipal Standing Conference: <http://www.grootstad.org>

European Urban Development Pole: <http://www.agglo-ped.org>

Strasbourg-Ortenau-Kehl:
<http://www.strasbourg-ortenau.org>

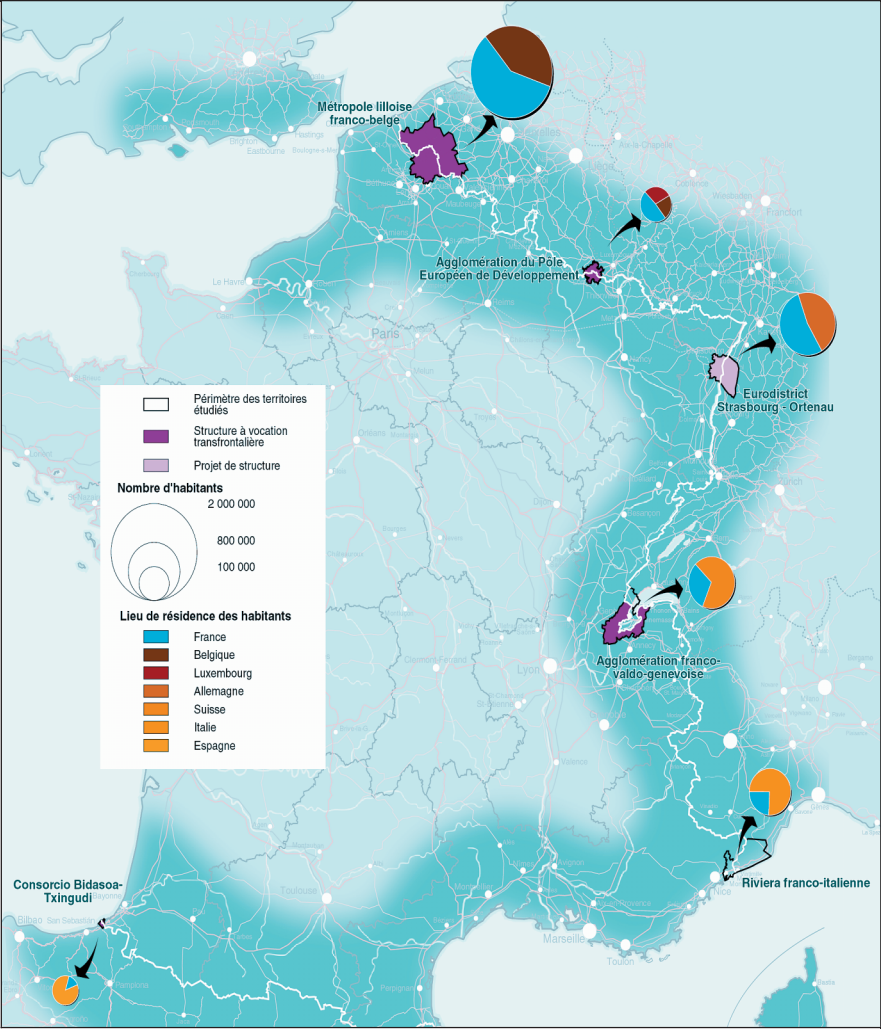
Bidasoa-Txingudi Consorcio:
<http://www.bidasoa-txingudi.com>

Nyon (France)-Vaud-Geneva Urban District:
<http://www.crfginfo.org>

Agglomération franco-valdo-genevoise :
<http://www.crfginfo.org>

MAP OF TRANSFRONTIER URBAN DISTRICTS PRESENTED

(for translation of text see page 68)



I. Transfrontier Intermunicipal Standing Conference

Territory covered: Lille/Tournai/Courtrai/Ypres/Roulers/Mouscron (population 1.8 million)

Co-operation structure: Transfrontier Intermunicipal Standing Conference (Conférence Permanente Intercommunale Transfrontalière, or COPIT), founded in 1991 and registered as an association in 2001 under the 1901 Act; its members are the Greater Lille Urban Community and four intermunicipal companies (2 Flemish, 2 Walloon) bringing together the Belgian border municipalities

Planning instrument: Strategy for a Transfrontier Metropolitan Area (2002)

Issues addressed as part of transfrontier co-operation: making a unified metropolitan district out of a complex, fragmented area, water resource management, landscape development, economic competition and complementarity, mobility and accessibility, development of higher education, cultural development, languages, transfrontier local planning

II. European Urban Development Poland (Belgium, France, Luxembourg)

Territory covered: Longwy Community of Municipalities, Belgian and Luxembourg border municipalities (population 123 000)

Co-operation body: transfrontier association set up in May 1995 in the form of an association under France's 1901 law, bringing together regional and central government departments, municipalities and EPCIs [public intermunicipal co-operation bodies])

Planning instrument: Transborder Urban District Charter (1999)

Issues addressed through transfrontier co-operation: job and wealth creation, training, organisation of the transfrontier district, communication and transport networks, the district's natural and cultural heritage, creating brand-awareness of the district

III. Strasbourg-Ortenau-Kehl

Territory covered: Strasbourg Urban Community, Ortenaukreis (population 800 000)

Co-operation body: new Strasbourg-Ortenau Eurodistrict (co-operation agreement)

Technical arrangements: in respect of the Eurodistrict, a Franco-German working group prior to establishing a GLCT [local transfrontier co-operation grouping]; in respect of planning: Joint Syndicate for the Strasbourg Regional Development Plan; in respect of training: Kehl GLCT Euroinstitut, of which

the Alsace region, the Bas-Rhin département and the Land of Baden-Württemberg are also members

Planning instrument: “Strasbourg-Ortenau: Strategies and Plans for Joint Development”, transfrontier white paper (2004)

Issues addressed as part of transfrontier co-operation: spatial planning (transfrontier planning and operational town planning), transfrontier economic development, training and research, communications infrastructure and mobility, landscape and environment

IV. Bidasoa-Txingudi Consorcio

Territory covered: municipalities of Irun, Hendaye and Fontarrabie (population 73 000)

Support body: Bidasoa-Txingudi Consorcio, founded in 1998

Issues addressed as part of transfrontier co-operation: tourism, culture, education, social welfare, economic development, employment, training, housing, transport, environment

V. Nyon-Vaud-Geneva Urban District

Territory covered: Canton of Geneva, District of Nyon, 9 border EPCIs grouped together within the ARC [regional co-operation association] (722 000 inhabitants)

Co-operation body: at the planning stage

Technical arrangements: Franco-Genevan Regional Committee (which instigated the project), the 2004-2006 urban district project, the steering committees of the “Etoile Annemasse Genève” and “Rectangle d’Or” projects

Planning instrument: Nyon-Vaud-Geneva Urban District Charter (1997)

Issues addressed as part of transfrontier co-operation: town and country planning, transport and housing issues, economic activities and training, health services, environment

VI. French-Italian Riviera

Territory covered: French Riviera Urban Community (Communauté d’Agglomération de la Riviera Française, or CARF), Municipality of Ventimiglia, Province of Imperia (population 270 000)

Technical arrangements: transfrontier syndicate, steering committees

Issues addressed as part of transfrontier co-operation: spatial planning, economic development, local public services (water, waste, transport), major facilities (transfrontier health community, university centre)

5. SETTING UP A JOINT BODY: WHAT FORM SHOULD IT TAKE, AND HOW ARE ITS STATUTES DRAFTED?

Before drafting the statutes, (5.3), it is important to decide on the legal structure appropriate to the partners, objectives and functions (5.1), and to identify the advantages and disadvantages of the various conceivable types of legal set-up (5.2).

5.1 Choosing the appropriate management structure for the co-operation arrangement

The various existing types of transfrontier co-operation entity are the legal and operational reflection of partnership arrangements that have gradually developed across borders in connection with such diverse common issues, challenges or problems as the restructuring of industry, alternating migration, health, water, protected nature areas and, more generally, the establishment of Euroregions.

In this dynamic process, the project is defined not by the legal structure adopted but by the objectives of the participant communities choosing the type of entity.

The set-up and legal entity chosen depend a great deal on the stage reached in the transfrontier co-operation process and the aims and objectives pursued by participants on both side of the border as part of that process.

Accordingly, before taking a joint decision on a given legal set-up, partners in the co-operation arrangement can apply the following methodology by answering the questions below.

1. Does the entity need to have legal personality? (Is it necessary to establish a joint entity? What added value or benefit would it provide in comparison with the conclusion of a straightforward transfrontier co-operation agreement making it possible to set up transfrontier consultative organs?)
2. Who are the main partners, what is their status and what competences do they enjoy in relation to the overall arrangement?
3. What are their objectives as part of this transfrontier partnership?

4. What kinds of tasks will they be assigning the entity and what resources will it have for performing them?
5. What types of legal entity are available to all the project partners, and what are their main features?
6. For each type of entity, feasibility will depend on three factors:
 - how suitable the entity's purpose, role and modus operandi are for the transfrontier project;
 - the implications of the project partners' involvement in the joint entity in terms of the length of time it will take to set up and administrative and financial working procedures;
 - whose law is to govern operation (staff, funding and so on) and supervision of the entity.

5.2 Advantages and disadvantages of different transfrontier set-ups

| Type | Law applicable | Advantages | Disadvantages | Examples |
|--|--|--|--|---|
| Informal co-operation between local communities and authorities | Law of each party | Enables local communities and authorities to engage in co-operation in the absence of a legal framework or scope for formalising their co-operation. | Communities are bound only by an agreement in principle. No joint political or technical instrument is put in place. | Informal co-operation in respect of investments or research on both sides of the border, leading to the implementation of a joint transfrontier project. |
| Transfrontier co-operation agreement between local communities or authorities | Law of one of the signatories, as specified in the agreement | Approach adopted in all bilateral co-operation agreements and in the Additional Protocol to the Madrid Outline Convention. Can establish an entity without legal personality. | Each signatory is responsible for implementing the provisions. | Political statement of intent. Establishment of a Euroregion without legal personality, implementation of a project by a community on behalf of all the transfrontier partners. |
| “De facto” co-operation instrument established by local communities or authorities or other local partners | Law of the headquarters country | It is often possible for legal entities or natural persons to be members. Enjoys legal independence from its members. Easy to set up. | Cannot be used on all borders. Limited purpose and role in terms of the scope of transfrontier co-operation (consultation, lobbying). | Setting up an entity to undertake consultation, lobbying and research, enjoying the necessary legal personality and financial autonomy to act on behalf of its members and to represent the territory to the outside world. |

| | | | | |
|--|---|---|--|---|
| Autonomous structure established by an international agreement and set up by local communities and authorities | The agreement plus the law of the country | Setting up a dedicated entity with its own technical team to implement transfrontier co-operation projects and act on behalf of its members and under their supervision in performing its functions, making investments or putting in place transfrontier services. | Partnership and scope restricted to communities and public bodies and to the territories specified in the agreement. Establishment procedure can be lengthy and complex. | Public body (Benelux Convention). Local transfrontier co-operation grouping (Karlsruhe Agreement). Making public investments, putting in place transfrontier public services. |
|--|---|---|--|---|

5.3 How are the statutes drafted?

Drafting process

It should be emphasised that drafting is generally a recurrent process necessitating a great deal of to-ing and fro-ing between the prospective members in order to:

- draw up statutes complying with the various requirements of members' domestic law and the international agreements on transfrontier co-operation applicable to the border in question, so as to prevent any impediments to operation of the future organisation;
- arrive at a *modus operandi* consistent with both the needs and tasks to be assigned to the entity and the minimum operational requirements of a transfrontier body: equal representation of the authorities involved, a rotating chairmanship, agreed working languages, criteria for making budgetary contributions in proportion to the partners' resources, and so on;
- enable members to look ahead to the near future and set timeframes or make provision for the entity to evolve (is it of limited duration, can new members be admitted, can its remit be modified?).

It should be noted that some bilateral agreements (see 2.) provide that, prior to adopting the statutes, partners must, in accordance with their respective legislation, conclude a preliminary agreement as a basis for drafting the statutes and which is additional to them.

Substance of the statutes

The substance of the statutes will depend on a combination of two parameters, the first of which is the legal structure chosen. The more sophisticated and complex it is (a public-law structure, for example), the less leeway the partners will have when it comes to deciding on the entity's organs and *modus operandi*. The partners will have a great deal more freedom to draft a co-operation agreement establishing an entity which does not have legal personality.

The second constraint relates to the objectives of the entity, the establishment of which should generally allow joint transfrontier responsibilities to be outsourced. The statutes must be drafted in such a way as to allow the entity to do its job, and the member communities to supervise and fund it. The complexity of the statutes will depend on the scope and nature of the transfrontier co-operation tasks assigned to the entity as compared with those retained by the members.

For example, a straightforward agreement specifying the resources made available and the objectives will suffice as a co-ordinating tool enabling chambers of trade or industry or town planning agencies to carry out joint studies. On the other hand, the statutes of a transfrontier entity responsible for building and managing transfrontier public facilities will contain considerably more detail regarding its prerogatives and funding and the supervisory arrangements.

Model statutes

While few, if any, national sources set out standard models, partners can usefully compare the statutes of entities performing a similar role in their respective regions or countries. They can also draw inspiration from the models appended to the Madrid Outline Convention, combining them with the specific requirements of domestic law and the international agreements applicable to transfrontier relations between the entity's partners¹⁴.

The provisions of the Karlsruhe Agreement (see section 2) relating to the statutes of local transfrontier co-operation groupings (Article 12) afford a useful model as regards the essential points that the statutes of a co-operation body must cover, irrespective of its legal structure: Local authorities may also draw inspiration from article 17 of the Uniform Law appended to the draft Convention on Groupings of Territorial Co-operation (GTC) (please see 2.3b).

¹⁴ These outline agreements form Appendices 2.1 to 2.16, relating to: structures without legal personality (2.1 Consultation group between local authorities, 2.2 Co-ordination in the management of transfrontier local public affairs), co-operation structures enjoying legal personality and autonomy (2.3 Private-law transfrontier associations, 2.6 Organs of transfrontier co-operation between local authorities, 2.16 Transfrontier co-operation grouping having legal personality) and co-operation in particular fields (2.7 economic co-operation, 2.8 spatial planning, 2.9 to 2.11 nature reserves).

- 1. The constituent communities or local public bodies [and other bodies];*
- 2. Its purpose, tasks and relations with [its members], particularly with regard to responsibility for activities undertaken on their behalf;*
- 3. Its name, the location of its headquarters, the geographical area concerned;*
- 4. The powers and responsibilities of its organs [at the very least: a management organ, an assembly representing the members, a technical team to carry out the various tasks], their working procedures [and working relations], the number of representatives of the members [within the management organs and the assembly of members];*
- 5. Procedure for convening a meeting of the members;*
- 6. Quorums;*
- 7. Deliberation procedures and the majorities required;*
- 8. Operational procedures, particularly in relation to staff management;*
- 9. Rules governing members' financial contributions and the budgetary and accounting procedures;*
- 10. Rules governing changes to the statutes, particularly the admission and withdrawal of members;*
- 11. The duration and rules governing dissolution of the entity;*
- 12. Rules for its liquidation once it has been dissolved.*

Depending on the entity's tasks, the partners may decide to set up additional organs (scientific committee, monitoring committee, working group) or provide for involvement of outside partners in the entity's operation and financing. This necessitates agreements between the body and such outside partners or, legal framework permitting, conferment on them of associate member or observer status. There may also be provision for adopting rules of procedure additional to the statutes.

Entity without legal personality

A co-operation agreement between local communities and authorities may provide for establishing an entity without legal personality. The specific constraints that must be taken into consideration relate to the entity's lack of legal personality; tasks such as staffing, budget management, calls for tenders and performance of various functions all have to be shared out among the different members. Many Euroregions operate on this kind of informal basis, which calls for effective co-ordination between the transfrontier entity's partners.

Summary of points 3, 4 and 5: methodological pointers relating to institutional and legal aspects of setting up transfrontier projects

Phase 1 Making contact and getting to know the transfrontier area

There are three essential requirements for starting a transfrontier project:

a. Understanding the local context, which gives rise to constraints on, and stimuli to, transfrontier co-operation: it takes in the geographical context, the economic context (links of interdependence), the social context, the cultural context, the historical context, the linguistic context, the administrative context and the political context (elections).

b. Formulating objectives as a basis for joint action within the area,

c. Identifying transfrontier project partners:

→ on the basis of their powers and responsibilities in relation to the objectives pursued and the projects to be implemented

→ on the basis of their legal capacity to take action as part of transfrontier co-operation.

Phase 2 Formalising transfrontier co-operation through a transfrontier co-operation agreement

During this phase, two components of the transfrontier agreement must be agreed:

a. The tasks the signatories to the agreement undertake to carry out towards meeting the pre-agreed objectives:

→ within the limits of their competences and in accordance with domestic law;

→ in this connection, the signatories retain absolute freedom to determine their obligations and to decide, in accordance with their common interests, on the allocation of tasks and financing, the domestic law applicable and the contracting authority;

→ this agreement affords the signatories a legal guarantee.

b. The resources (material, financial and human) contributed by each signatory towards carrying out these tasks.

Phase 3 Developing a tailor-made transfrontier operational instrument

a. Different types of legal undertakings:

→ either a “**contractual**” **legal undertaking** (co-operation agreement), instituting long-term transfrontier co-operation procedures and giving rise to informal structure

→ or an “institutional” undertaking setting up a transfrontier co-operation body with legal personality, in which case consideration must be given to the legal structure that can be used for the entity.

b. A “recurrent methodology”: with a view to determining the appropriate set-up, it is important to review and refine the criteria already applied with a view to formalising the transfrontier co-operation arrangement:

→ the entity’s objectives, drawing a distinction between “specialist” and “general” bodies within a wide-ranging transfrontier co-operation project in a particular geographical area;

→ the structure’s prospective members;

→ the structure’s tasks and resources, with a view to attaining its objectives.

Lastly, the choice of legal structures available to the identified partners within the transfrontier area should also be specified.

6. WHAT NATIONAL AND EU FUNDING IS AVAILABLE FOR TRANSFRONTIER PROJECTS?

At the time of writing this guide, local communities and authorities are at a pivotal stage, particularly as regards Community funding. The current programming period ends on 31 December 2006, with a new Community funding round starting on 1 January 2007.

6.1 General principles

Need to reconcile legal capacity with financial capacity: arranging co-financing of projects

The issue of funding for transfrontier projects is a key concern for partners in transfrontier arrangements. Transfrontier co-operation activities are generally funded from the budgets of the various local communities and authorities initiating them.

The main difficulty lies in the fact that having the legal capacity to initiate a transfrontier activity or make a transfrontier investment does not necessarily mean local communities and authorities have the financial capacity to undertake the activity or investment in question.

Many authorities have limited human, financial and material resources for co-operation.

Owing to their inter-regional or international scope and financial cost, many projects involving capital investment, networks and transfrontier services cannot be funded by the competent border local communities and authorities alone.

In their transfrontier arrangements, these should therefore think in terms of co-financing – mobilising all the levels of government concerned in order to fund the project.

For example, the powers enjoyed by the state and regional levels may give them an interest in sub-regional transfrontier projects in so far as these fit in with their own policies.

This approach does mean, however, that the project's operational parameters (purpose, aims, activities, project co-ordinators, duration, cost) must be sufficiently well-defined; transfrontier project partners and contracting authorities must have reached a consensus and taken a decision in principle in this connection.

In respect of projects with an economic focus, local communities and authorities may also opt to set up public-private partnerships in accordance with the legal structures and procedures appropriate to each project and each transfrontier area.

Eligibility for outside funds and programmes

There are special programmes promoting transfrontier co-operation (see below), particularly those set up under Community regional policy.

These programmes can co-finance projects. They require initial financing from the project partners, and in some cases funds have to be advanced between the time the application is accepted and the time the Community share of the co-financing is paid.

Not all transfrontier projects necessarily qualify for outside funds, and project leaders must obtain information from the fund management authorities or Community or other bodies about eligibility requirements, allocation procedures and application deadlines. They can also make enquiries with the (central, federate or federal) government departments acting as national and local liaison points for these institutions.

In this connection the partners should take careful note of the deadlines when programmes for which transfrontier projects are eligible call for project submissions.

Partners can work backwards from the submission deadlines to make sure they:

- have as clear project parameters as possible and are able to give full details of the transfrontier partnership;

- have designated a lead applicant to be responsible for the various partners during the co-financing application process,
- have confirmation from partners on both sides of the border, including undertakings from deliberative assemblies regarding the share of project funding to be borne by local communities and authorities (match funding in the form of a financial contribution or a contribution in kind, in the case of European projects);
- put together an application satisfying the requirements of each co-financing programme.

6.2 Type of funding

Regional funding

Depending on their scope, backing authorities and objectives, transfrontier projects may qualify for regional funds, for example in fields such as spatial planning and economic or social development.

Each project co-ordinator should check:

- whether there is a form of regional co-financing for projects of that type involving co-operation between authorities in the region;
- the requirements for eligibility for co-financing, to make sure the transfrontier project qualifies, or at least that part of it implemented or financed within the region.

National funding

Similar approaches may be made in respect of national funding, either to the departments and ministries responsible for transfrontier co-operation or to the departments responsible for the field in which the project will be implemented.

For example, project authorities can find out whether a transfrontier project in the culture or tourism field qualifies for the ordinary funding available to that type of project from the relevant ministries.

International funding

Transfrontier project partners can also apply for funding from the programmes and funds set up by organisations such as the European Union, or for specialised funding from United Nations agencies like the World Health Organisation (WHO), Unicef and HCR.

As regards the European Union's internal borders, it is worth noting the existence of the Community initiative programme Interreg, a regional policy instrument that finances trans-European co-operation projects and includes a strand dedicated to cross-border co-operation (strand A). At present, like all Community regional programmes, it operates on the basis of programming periods, with the current programming period ending on 31 December 2006.

Interreg¹⁵ aims to stimulate trans-European co-operation with a view to harmonious, balanced and sustainable development of the European continent and better local/regional integration with candidate countries and other neighbouring countries.

In order to qualify for Interreg funding, project authorities and their partners must be located within the same programme area and come from two or more neighbouring countries. Once the project has been submitted to the programme authority, it is evaluated and selected by a programming committee; a monitoring committee is then responsible for approving subsequent modifications.

The monitoring committee also lays down selection criteria relating to projects' transfrontier or transnational scope, and conducts monitoring and evaluation. Lastly, for any Community funding application, project authorities must ensure that at least equivalent national match funding, in the form of a financial contribution or a contribution in kind, is available. As with other programmes, project partners must designate a lead applicant and have a single bank account in order to receive Interreg funds.

¹⁵ The list of Interreg programmes may be consulted on the Interact site, <http://www.interact-eu.net>

A number of programmes have developed a similar model in respect of external borders between the European Union and neighbouring countries, including:

- PHARE (support for transfrontier co-operation with member states and between candidate countries, national programmes extended to the external borders of Bulgaria and Romania in 2004);
- TACIS (support for transfrontier co-operation in western border areas of Russia, Belarus, Ukraine and Moldova);
- CARDS (western Balkans: regional, transnational, transfrontier and inter-regional co-operation between beneficiary countries and the European Union and between beneficiary countries and other countries in the region).

These programmes are to be revised in the context of the new 2007-2013 programming period and Objective 3, “European Territorial Co-operation”; the PHARE and CARDS programmes are to be replaced by the IPA (Instrument for Pre-Accession Assistance), and the TACIS programme by the ENPI (European Neighbourhood and Partnership Instrument).

7. CONCLUSION: HOW CAN TRANSFRONTIER INTER-AUTHORITY CO-OPERATION BE SUSTAINED?

The process of developing transfrontier co-operation may be more or less complex depending on the partners' size and functions, agreements, treaties, cultural traditions and common languages; it takes a different form in almost every transfrontier area.

It is consequently very difficult to identify a model that is universally and uniformly applicable, particularly given that this form of co-operation is still in its infancy, gradually finding its niche as it adapts to a wide range of geographical and legal contexts.

Irrespective of the geographical area and partners involved, the sustainability of transfrontier co-operation arrangements between local communities and authorities depends on three factors; political governance and public support, sustainable technical resources and a shared working culture, and incorporation of transfrontier strategies into local, regional and national policies.

7.1 Political governance and citizen support

Co-operation: a complex, cross-sectoral process

If transfrontier co-operation is to last, it must not be confined to one-off projects, but become a component in its own right of the spatial planning policies of all concerned on both sides of the border.

Looking in detail at the fields in which co-operation takes place, transfrontier co-operation arrangements can address all kinds of spatial planning and development issues and numerous areas of public policy (transport, health, waste, planning and so on).

In practical terms, one observation must be made: the legal mechanisms in transfrontier projects – respect for the public good, compliance with powers and procedures, and so on – and the required methodologies and working methods are identical to those in co-operation between communities of the same country.

The main difference lies in the need to marry different legal systems, different *modi operandi*, different practices and cultures and, in some cases, different working languages.

These differences can give rise to difficulties inherent in any transfrontier project, which must not be underestimated.

Participants face numerous legal, cultural, economic, fiscal and methodological stumbling blocks, which may gradually be resolved as the co-operation arrangement develops.

Bringing political authorities and citizens on board

As explained in the previous sections, transfrontier co-operation calls for political support from elected representatives and communities on both sides of the border, and provides scope for a joint solution to meeting the expectations and needs of those living in transfrontier areas.

Accordingly, it is important that transfrontier co-operation has clear objectives understood and supported by the public, deliberative assemblies and associations; that partners and the public be kept regularly informed of how projects are progressing; and that the projects genuinely meet the community's needs.

Elected representatives and deliberative assemblies should be kept regularly informed and be involved in transfrontier arrangements.

In political charge of the project there needs to be something of a “transfrontier management team” that is able to address questions to do with transfrontier citizenship, coherent policy for the transfrontier area and cultural differences of local-policy approach.

As far as inhabitants are concerned, it is important to:

- communicate with them about transfrontier strategies,
- encourage them to express their views and to become involved,
- show how the project objectives are in the interests of border citizens,

so as to generate a genuine desire to identify with the transfrontier area.

This process may involve publications, workshops, symbolic occasions, shared cultural events and the setting up of information and advice points for border residents, affording an opportunity to strengthen their sense of belonging to the transfrontier area.

7.2 Sustainable resources and shared working knowledge

A stable organisation: the core of the co-operation arrangement

While political support is essential, it is also important to ensure the continuity of the transfrontier arrangement by means of a standing organisation (see section 5) with stable resources from the partners' budgets.

These resources can be used to fund a secretariat and, if possible, a team of professionals (economists, town and country planners) able to implement an annual or long-range programme of projects and joint events, forming the core of the co-operation arrangement.

It should be noted that such contributions need not be purely financial: they could take the form of provision of staff, premises or computer facilities.

The partners must also decide a scale (or scales) apportioning the financial cost among themselves. Many areas have opted for population size as the apportionment criterion. Partners contribute to the joint budget in proportion to the number of inhabitants they represent.

Need for shared working culture

In addition to material resources, it is important to develop a shared transfrontier way of thinking.

Project management calls for considerable technical expertise, the specialist staff on both sides need to be familiar with the other country and other national system, and lastly there has to be effective co-ordination between technical teams and elected representatives.

Border zones present opportunities for partners from different backgrounds to learn about one another and reap the benefits of cultural diversity, which somewhat broadens the scope for solutions to economic, social and environmental problems.

This inherent cultural diversity must go hand in hand with developing a basic shared working approach:

- politically and culturally, since ways of thinking differ from one country to another;
- in economic and social policy, as regards thinking on development;
- in town-planning, economic and financial matters, with a view to setting up the project;
- legally, since the project raises questions of national sovereignty and above all involves different legal systems;
- environmentally, because pollution is no respecter of borders,
- etc.

7.3 Incorporating transfrontier strategies into local, regional and national policy

The last factor is incorporation of transfrontier strategy into local policy.

It is particularly important to incorporate the transfrontier dimension into each side's planning and programming instruments as the timeframes for preliminary studies and project implementation can be very lengthy. The administrative and legal culture differs from one side of the border to the other, as do the prerogatives of the relevant government departments.

It could well be that a transfrontier project entered into by one municipal or regional team will end up being implemented by a different one; transfrontier plans are forward-looking, formulating strategies for the area for the next 10, 20 or 30 years.

Accordingly, it is important that co-operation partners:

- build transfrontier objectives into local policies, and particularly into planning instruments such as urban development plans,

- incorporate these policies into the organisation of public services, for instance when a public transport concession comes up for renewal;
- incorporate the transfrontier dimension into thinking on public investment strategy: in order to achieve economies of scale, it may be worth considering co-ordination of networks (water, sanitation, electricity) and building shared facilities (for water purification and household waste removal, for example).

But long-term thinking must not stop project partners launching pilot projects as a means of giving practical effect to co-operation arrangements and demonstrating to the public that there are concrete, immediate benefits. The best way to bring about lasting co-operation is to implement practical projects that actually meet the needs of those living in border areas.

8. SOME INTERNET SITES TO CONSULT

a) At the European level

European Union

Europa – European Union portal

<http://www.europa.eu.int>

Europa – Inforegio regional policy

http://europa.eu.int/comm/regional_policy

Europa - Inforegio regional policy - Interreg III

http://europa.eu.int/comm/regional_policy/interreg3

Europa – Enlargement site

<http://www.europa.eu.int/comm/enlargement>

Europa – the European Union in the world – Euromaid Co-operation Office

http://europa.eu.int/comm/euromaid/index_fr.htm

Europa - SCADPlus – Regional policy

<http://europa.eu.int/scadplus/leg/en/s24000.htm>

Europa - SCADPlus - EURES: the European Employment and Job Mobility Network

<http://europa.eu.int/scadplus/leg/en/cha/c10527.htm>

Europa - SCADPlus – Free movement of workers

<http://europa.eu.int/scadplus/leg/en/s02305.htm>

Europa - SCADPlus – Enlargement

<http://europa.eu.int/scadplus/leg/en/s40000.htm>

Europa – European neighbourhood policy

http://europa.eu.int/comm/world/enp/index_en.htm

Interact

<http://www.interact-eu.net>

Interact – Interreg programmes

<http://www.interact-eu.net/604900/604902/656368/0#>

Interact – The various websites of Interreg IIIA programmes in Europe
<http://www.interact-eu.net/download/application/pdf/766196>

Interact – Data base of transfrontier projects
<http://www.interact-eu.net/604900/604903/0/0>

Swiss/European Union trans-European co-operation
<http://www.interreg.ch>

ORATE – European Spatial Planning Observation Network (ESPON)
<http://www.espon.lu>

Réseau Interdisciplinaire pour l'Aménagement du Territoire Européen (RIATE)
<http://www.ums-riate.fr/index2.html>

Council of Europe
General site
<http://www.coe.int>

Transfrontier co-operation
http://www.coe.int/T/F/Affaires_juridiques/D%E9mocratie_locale_et_r%E9gionale/Coop%E9ration_transfrontali%E8re/

Eurorégions
http://www.coe.int/T/F/Affaires_juridiques/D%E9mocratie_locale_et_r%E9gionale/Coop%E9ration_transfrontali%E8re/Euror%E9gions/6Euroregions.asp#TopOfPage

b) Bodies

Mission Opérationnelle Transfrontalière
www.espaces-transfrontaliers.org

Association of European Border Areas (AEBR)
<http://www.aebr.net>

Assembly of European Regions

<http://www.a-e-r.org>

Conference of Peripheral Maritime Regions of Europe (CRPM)

<http://www.crpm.org>

Association Française du Conseil des Communes et Régions d'Europe (AFCCRE)

<http://www.afccre.asso.fr>

IRE Network - Innovating Regions in Europe

<http://www.innovating-regions.org>

TRANSLATION OF TEXT IN MAP ON PAGE 21

Main inter-state agreements on transfrontier co-operation between local communities

1. Agreement between Denmark, Finland, Norway and Sweden of 26 May 1977
 2. Benelux Convention of 12 September 1986
 3. Isseburg-Anholt Agreement of 25 June 1991 (Netherlands and Germany)
 4. Agreement between the governments of Finland and the Russian Federation of 20 January 1992
 5. Italy-Austria Outline Agreement of 27 January 1993
 6. Italy-Switzerland Outline Agreement of 24 February 1993
 7. Rome Agreement of 26 November 1993 (France and Italy)
- Bayonne Treaty of 10 March 1995 (France and Spain)
Karlsruhe Agreement of 23 January 1996 (France, Germany, Switzerland and Luxembourg)
Mainz Agreement of 8 March 1996 (Walloon Region, German-speaking Community of Belgium and Länder of North Rhine-Westphalia and Rhineland Palatinate)
Brussels Agreement of 16 September 2002 (France, Belgium, French Community, Walloon Region and Flemish Region)
Valencia Agreement of October 2003 between Spain and Portugal

European Union

Non-European Union

States in which the Madrid Outline Convention and the first Additional Protocol are in force

States in which the Madrid Outline Convention is in force and the first Additional Protocol has been signed

States in which only the Madrid Outline Convention is in force (first Additional Protocol not signed)

States in which the Madrid Outline Convention has been signed but not ratified

States that have not signed the Madrid Outline Convention

2005 year

TRANSLATION OF DETAILS FROM MAP ON PAGE 41

Titles:

Franco-Belgian Greater Lille
European Urban Development Pole
Strasbourg-Ortenau Eurodistrict
Nyon-Vaud-Geneva Urban District
French-Italian Riviera
Bidasoa-Txingudi Consorcio

Key:

Perimeter of possible entity
Existing transfrontier entity
Planned entity
Number of inhabitants
Inhabitants' place of residence
France
Belgium
Luxembourg
Germany
Switzerland
Italy
Spain

