

the **m**ot

2 The law and practice
of cross-border
co-operation



Mission
Opérationnelle
Transfrontalière

guides

Table of Contents

- 3 EDITORIAL
- 4 THE LEGAL FRAMEWORK OF CO-OPERATION AND ITS EVOLUTION
- 7 MAP OF INTERSTATE AGREEMENTS ON CROSS-BORDER CO-OPERATION (APRIL 2002)
- 8 OPERATIONAL TOOLS OF CROSS-BORDER CO-OPERATION
- 12 PRACTICAL APPROACH: LEVEL OF CO-OPERATION AND LEGAL TOOLS
- 14 FIELD EXPERIENCE

THE "CENTRE HARDT-UPPER RHINE" LCCG
TRINATIONAL AGGLOMERATION OF BASEL
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BIDASOA-TXINGUDI CONSORCIO

This guide continues the work, begun by the MOT and the SCET in January 2000, of forming a documentary and legal "toolbox" able to facilitate the implementation of cross-border operational projects initiated by territorial authorities and/or a decentralised State, in conjunction with partners from neighbouring countries. All of the texts that make up the legal basis, updated on 15 April 2002, will be freely accessible on the website www.espaces-transfrontaliers.org when the site is up and running. Paper copies of the summary of the legal documents, *Niveau de coopération et outils juridiques*, and the recommendation document *Réflexion sur le droit de la coopération transfrontalière et propositions d'évolution*, are available in French on request from the MOT.

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Working toward operational cross-border law

How is a cross-border project – bringing together territorial authorities, their groupings and any other public or private entity from different countries – achieved?

For a long time, it was very difficult to answer this question: geographical, political and economic data differ from one border to another and, since each project takes place in a certain context, there are no “interchangeable” formulas or ready-to-use recipes. In addition, the legal basis of this co-operation varies according to the domestic law of each State and the international and bilateral agreements that it has signed and ratified. Finally, there has been a sometimes large distance between the agreements, the law and on-the-ground practices, which undermined their real effectiveness.

In order to reduce this gap, the MOT has been working since January 2000 toward the formation of a documentary and legal “toolbox” based on the field experience that it has described and analysed.

It is this basis that has given content to this thematic guide No. 2 devoted to “The law and practice of cross-border co-operation”. It is on this basis that the dialogue between field practitioners, legal professionals, national and European authorities is now organised, to favour the development of real operational law in support of co-operation projects. ●

Jacques Houbart

The legal framework of cross-border co-operation

Local actors, especially the French territorial authorities and their groupings, co-operate with their counterparts from the other side of the border on the basis of different legal provisions under domestic or international law. These agreements make it possible to adapt tools of co-operation between public or private institutions or authorities – tools that are specific to the domestic law of each State – to efforts in cross-border co-operation.

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One of the preferred approaches to handling the legal framework of cross-border co-operation is the introduction of co-operation structures, often represented by an acronym: LCCG, EEIG, LMES, PIG etc. (cf. box page 5). These different legal forms used by the French and foreign authorities illustrate the legal principles governing cross-border co-operation actions, forming a constrictive legal framework from which the territorial authorities are unable to free themselves.

SOURCES OF CROSS-BORDER CO-OPERATION LAW

On the French borders, this legal framework of cross-border co-operation is relatively complex and flows from two distinct sources:

- bilateral agreements negotiated with neighbouring States which define special mechanisms of cross-border co-operation for certain authorities and local public actors located on both sides of the border (cf. map page 7);
- internal French law, in this case the provisions of the General Code for Territorial Authorities (GCTA) governing the decentralised co-operation of territorial authorities and their groupings, that is, all co-operation actions with foreign territorial authorities, whether they are from bordering countries or not.

Furthermore, this legal framework was not “totally” thought through, but has undergone a large number of modifications in the 1990s (cf. timeline, page 6). The provisions contained in the GCTA underwent successive revisions, from the voting in of the 1992 law on the Territorial Administration of the Republic of France to the law on the status of local mixed economy societies in 2002. During the same period, France negotiated, signed and ratified bilateral treaties defining specific mechanisms of cross-border co-operation with Italy (Rome Agreement in 1993) and Spain (Bayonne Treaty in 1995) for the whole border zone, as well as with Luxembourg, Germany and Switzerland at the border of the Alsace and Lorraine regions (Karlsruhe Agreement in 1996). An agreement with Belgium, covering the whole border, is now pending signature.

This negotiation process is closely related to the desire to define,

- operation and its evolution

for each border, practical mechanisms for applying the 1980 Madrid Framework Agreement. The signatory States of this international agreement under the Council of Europe – including France and all of the neighbouring countries – recognise the right of territorial authorities to co-operate across borders. Until 1994, France conditioned the application of this framework agreement, which did not have operational implications, to the signing of bilateral agreements with neighbouring States.

Since this date, France has continued to define operational provisions on a border-by-border basis.

The Madrid Framework Agreement led to the writing of a 1st supplementary protocol in 1995, ratified by France.

The interministerial circular of 21 April 2001 on decentralised co-operation refers, for its application, to the provisions of the GCTA. This double framework thus sets the legal parameters of cross-border co-operation in terms of:

- **the regions concerned:** all borders are or will be covered by an agreement, except for the southern part of the French-Swiss border;
- **actors in cross-border co-operation:** these are exclusively territorial authorities and their groupings, along with certain local public institutions associated with authorities under the Karlsruhe Agreement. The other local actors cannot rely on the provisions contained in the GCTA or the bilateral agreements to carry out cross-border co-operation actions;

- **responsibilities** likely to enter into the framework of cross-border co-operation actions: this excludes police and regulatory powers;

- **procedures to be followed:** the authorities co-operate in respecting the current provisions of their domestic law;

- **co-operation mechanisms:** freely negotiated and signed by the partner authorities, the co-operation agreement represents the joint legal tool of cross-border co-operation;

- **usable co-operation structures.**

A SYSTEM OF “MONITORED FREEDOM”

The principles governing this legal framework are the result of two competing limitations. The States are required to provide the territorial authorities with full autonomy in their co-operation effort with their counterparts from the other side of the border. But the local authorities, which are not subject to international law, can only co-operate in accordance with provisions of their internal national legal system (provisions of the GCTA for the French authorities). The legal framework of cross-border co-operation must also provide legal security to the authorities engaged in co-operation actions outside of the national territory. The legal principles governing cross-border co-operation is also a part of a “monitored freedom” system. The different provisions mentioned above do not create an additional responsibility accorded to the border territorial authorities or a special “cross-border law” zone. In reality, cross-border co-operation

Common acronyms and abbreviations in cross-border co-operation

Karlsruhe Agreement: “Agreement between the Government of the French Republic, the Government of the Federal Republic of Germany, the Government of the Grand Duchy of Luxembourg and the Swiss Federal Council acting on behalf of the cantons of Solothurn, Basel-Stadt, Basel-Land, Aargau and Jura, on cross-border co-operation between territorial communities and local public authorities”, signed in Karlsruhe on 23 January 1996.

Rome Agreement: “Agreement between the Government of the French Republic and the Government of the Italian Republic concerning cross-border co-operation between territorial authorities”, signed in Rome on 26 November 1993.

GCTA (CGCT): General Code of Territorial Authorities.

Madrid Framework-Agreement: “European Framework Agreement on cross-border co-operation of territorial communities or authorities”, signed in Madrid on 21 May 1980.

DEALA (DAEL): Delegate for external action of local authorities

EEIG: European Economic Interest Grouping

PIG (GIP): Public interest grouping

LCCG: local cross-border cooperation grouping (Karlsruhe Agreement)

LMES (SEML): local mixed economy society

Bayonne Treaty: “Treaty between the French Republic and the Kingdom of Spain on cross-border co-operation between territorial authorities”, signed in Bayonne on 10 March 1995.

► is understood as a mechanism by which responsibilities held by the authorities on both sides of the border are exercised, applied to one or more projects that present a common interest. It is conditioned on compliance with the provisions of domestic law applicable to the authority in question. For example, the signing of a co-operation agreement by a French municipality must be authorised by a resolution by the Municipal Council, submitted to legal approval by the *préfet* under the conditions of common law. In practice, in the context of a cross-border co-operation action, an authority can only attempt what it can accomplish on its own territory. In the same way, the authority or the grouping must seek out the foreign partner with the same responsibility, regardless

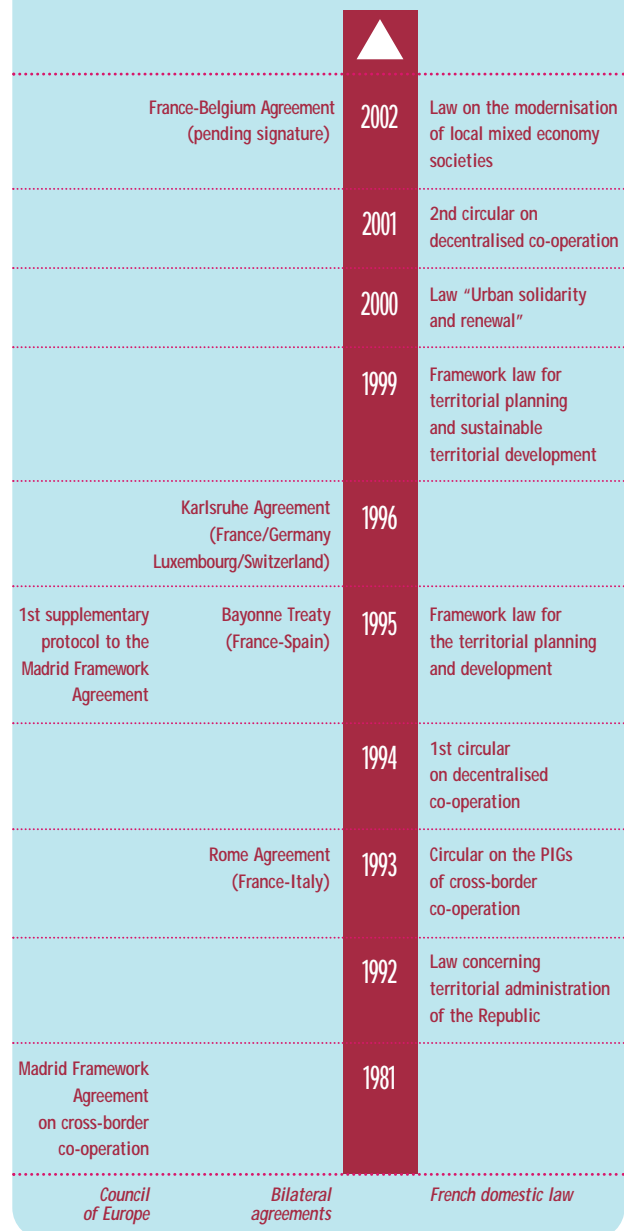
Legal principles governing cross-border co-operative efforts

Territorial authorities and their groupings co-operate on both sides of the border:

- in equivalent fields of responsibility,
- in accordance with the procedures laid down in their statutes,
- in conformity with national law,
- in conformity with international commitments made by the State and to which they are subject (including bilateral agreements on cross-border co-operation),
- to complete a cross-border project that presents a shared interest.

of territory-related differences. On the French-Genevan border, the canton of Geneva is, in terms of economic development, the counterpart of the *Communauté de Communes du Pays de Gex*, which brings together 25 municipalities from the Ain plain. Finally, authorities on both sides of the border must prove their interest in the action. This interest will differ by authority. In this context, border authorities have complete freedom to undertake cross-border co-operation actions in their equivalent fields of responsibility. In practical terms, one observation is called for: the legal mechanisms implemented as part of cross-border projects – for general interest, responsibilities, de facto management risk, etc. – are identical to those existing in domestic law. The only difference lies in the need to coordinate between different laws. The various aforementioned agreements and legal texts organise this coordination by defining joint mechanisms of co-operation, without laying out exemptions from the common law of territorial authorities. ■

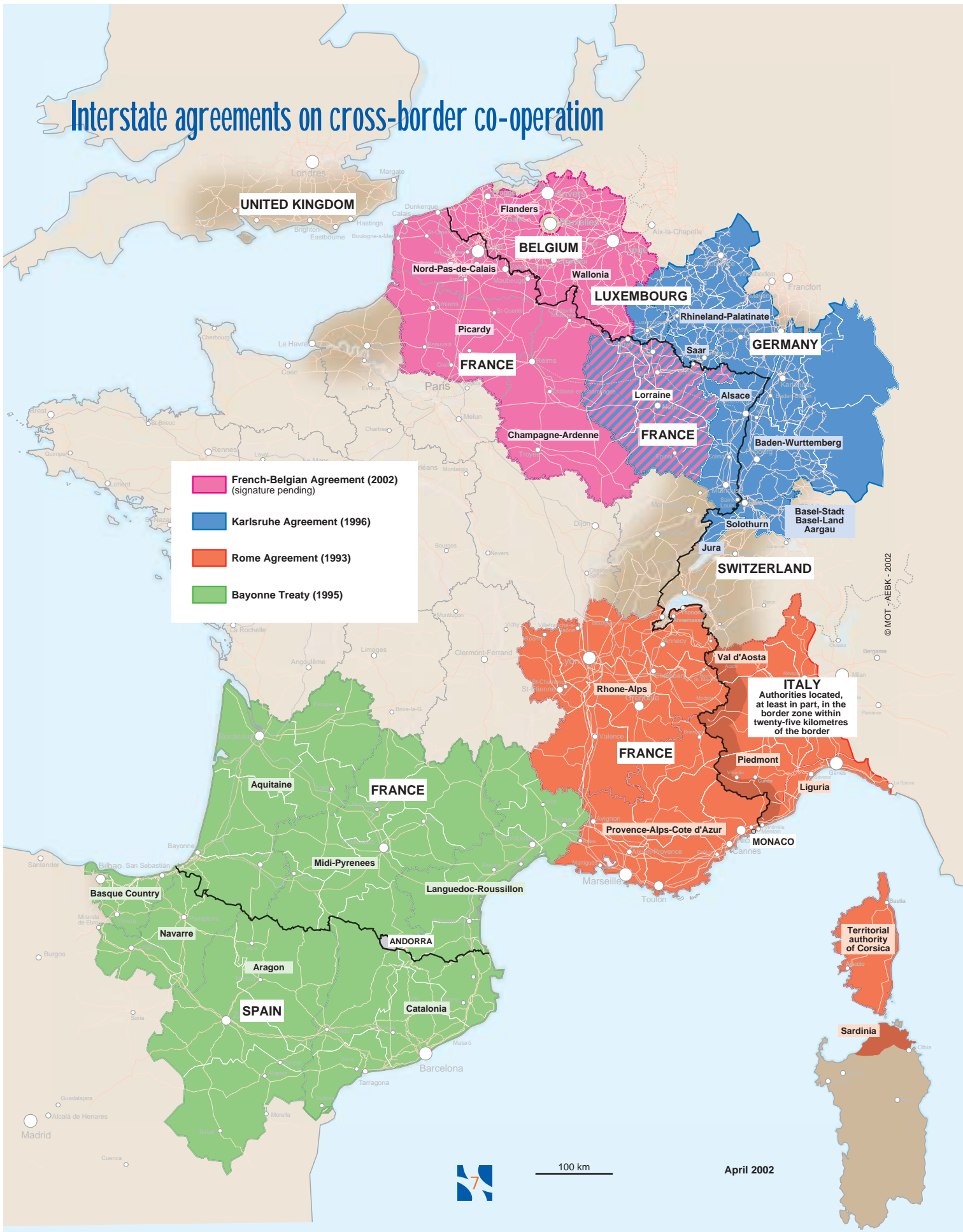
Construction of the French legal framework of cross-border co-operation



For more information

Look on the website www.espaces-transfrontaliers.org – under *Documents-Fonds juridique* – for the four bibliographical entries on cross-border co-operation agreements.

Interstate agreements on cross-border co-operation



Operational tools of cross-border co-operation

The first step in formalising an effort in cross-border co-operation is the signing of an agreement, which may lead to the creation of a legally independent structure. In practice, it is important to make the distinction between tools intended for cross-border use – expressly provided for by the GCTA or the bilateral agreements – from *de facto* tools, used by the local actors in the absence of a legal solution able to meet their operational needs.

The local actors formalise their projects by signing a cross-border co-operation agreement, a shared legal tool that allows them to define joint objectives and mutual commitments.

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The cross-border co-operation agreement is the shared legal tool that allows authorities and local actors to co-operate. By signing an agreement, they formalise their partnership, defining joint objectives and mutual commitments, while overcoming differences in administrative and institutional organisation between the States.

FROM THE AGREEMENT TO OUTSOURCING THE MANAGEMENT OF CROSS-BORDER CO-OPERATION

The signatories to the agreement are completely free to define its content and especially its scope, in accordance with the legal framework of cross-border co-operation.

Certain agreements are limited to enumerating objectives that the signatories agree to implement. In this case, the agreements are most often letters of intent without a real legal or financial commitment. Other agreements are more operational in nature and define all of the legal parameters necessary for the completion of a cross-border operation or project.

For example, the contracting authority of the Mimram pedestrian walkway (named for the prizewinning architect) – which will connect Strasbourg to Kehl via the *Jardin des Deux Rives* – was given directly to the city of Kehl. The commitments, especially financial, of Kehl and of the *Communauté urbaine de Strasbourg* will be



determined through a cross-border co-operation agreement. In the same way, a large number of research-oriented structures (the cross-border workshop GROOTSTAD in Lille) and political concerted action structures (the interregional conferences and councils such as COTRAO and SaarLorLux) were created without a legal personality, on the basis of simple agreements. This arrangement may prove insufficient when several cross-border projects are to be run, a situation that implies more complex management methods. It is difficult for territorial authorities or other local actors, on either side of the border, to exercise the functions of contracting authority jointly (defining the project, financing, selecting and overseeing the completion of the project, etc.) through a simple agreement.

STRUCTURES DEVOTED TO CROSS-BORDER CO-OPERATION

The question of creating joint structures for cross-border purposes quickly came up when a number of local actors wanted to “outsource” the management of their project by entrusting it to a third-party structure that they would control. In practice, the signing of a cross-border co-operation agreement usually precedes the creation of the structure. This step is often driven by both practical motivations (managing jointly) and symbolic motivations (representing the cross-border territory).

In the agreements, domestic French law, like the aforementioned treaties, provides for the use of pre-existing legal forms in the domestic law of each State, allowing co-operation between territorial authorities (PIG, CLCT, *Consortio*) or with private legal entities (LMES).

In 1992, the GCTA, in its chapter devoted to cross-border cooperation, authorised the French and foreign territorial authorities to create specific structures of cross-border co-operation, which would have a legal personality and thus be distinct from the authorities they comprise: cross-border co-operation PIG and LMES. Only one PIG has been created and two are planned. The limited use of this structure can be explained primarily by the impossibility of organising the equal involvement of authorities within the PIG, since foreign authorities have to remain minority. Although no LMES was created, the system governing this structure was made considerably more flexible by the law “Urban solidarity and renewal” (2000) and the law on the modernisation of LMESs (2002), which brings the LMES system, based on the participation of territorial authorities from other States of the European Union, into line with the system of LMESs under shared law, making possible equal involvement among French and foreign authorities.

French domestic law also organises the involvement of French territorial authorities in structures governed by the laws of another State. These provisions were implemented during the creation

The creation of a joint, autonomous and cross-border structure is driven as much by practical reasons (joint project management) as by symbolic reasons (external representation of the cross-border territory).

of structures provided by treaties (LCCG and *Consortio*) and with their head office in another country.

Although the Rome Agreement, signed in 1993, only provides one tool of cross-border co-operation (the cross-border co-operation agreement), the Bayonne Treaty (1995) defines the mechanisms of involvement of French and Spanish authorities in three structures: on the Spanish side, the *Consortio*, and on the French side, the cross-border co-operation PIG or the LMES with the management of public services as its exclusive goal. Both of these structures are already provided by the GCTA.

A *Consortio* (Bidasoa-Txingudi) was set up since the agreement became effective. Since 1999, it has allowed the municipalities of Hendaye, Irun and Fontarabie to carry out a concerted action on joint actions in the areas of tourism, culture, social action and economic development.

The Karlsruhe Agreement, signed one year later, is innovative as it authorises the local authorities, mentioned in its Article 2, to create local cross-border co-operation groupings (LCCG). The LCCG is governed by the provisions of the Agreement and secondarily by the law governing EPCIs from where the head office is located: in France, it takes the form of a *syndicat mixte*. A public law legal person, it can carry out all missions and services that present

Which tools on which borders?

All French borders: co-operation agreement, association subject to provisions relative to the associational system existing in each State, LMES under certain conditions (cf. Article L.1522-1 GCTA);

Borders with Member-States of the European Union: cross-border co-operation PIG and EEIG subject to provisions of domestic law governing membership in an EEIG;

Border between the Alsace and Lorraine regions and Luxembourg, the German *Länder* and the neighbouring Swiss cantons: LCCG, for the authorities mentioned by the Karlsruhe Agreement;

Territory of Autonomous Spanish Border Communities: *Consortio* for the authorities mentioned in the Bayonne Treaty.



- ▶ an interest for each of the member authorities, with the exception of the exercising of police and regulatory powers. Two structures were created on the basis of these provisions: the Hartheim-Fessenheim LCCG, which will provide the contracting authority for a footbridge over the Rhine, and the LCCG associating Wissembourg and Bad-Bergzabern in order to complete a potable water conveyance system.

DE FACTO CROSS-BORDER CO-OPERATION STRUCTURES

This refers to a practice of cross-border co-operation that is common to all French borders. Since the launch of the 1st Interreg programme, French and foreign authorities have had access, beyond the tools provided by the specific agreements, to the full palette of usable tools in each domestic legal system to support their cross-border co-operation projects. In particular, they have used the associational system and the EEIG system. These generalist-oriented structures are less constrictive legally in how they are formed and managed.

Associations are governed by the laws where the head office is located. Its limits in terms of *de facto* cross-border co-operation are inherent to all associations: it can be formed as long as it has an autonomous activity relative to the member authorities and does not substitute for them (risk of *de facto* management).

This system was used by the trinational agglomeration of Basel, to allow a technical and political concerted action between the fifty authorities and EPCIs involved, in order to finalise operational projects. In view of the number of authorities involved, the creation of a public structure (LCCG) would have presented operational difficulties.

The French system of cross-border co-operation, manifested through the existence in domestic law of tools devoted to cross-border decentralised co-operation (PIG and LMES), does not exist in the legal system of neighbouring countries.

The EEIG, a tool of transnational co-operation defined by European regulations, is open to the authorities and other actors within the European Union. Its purpose is to facilitate, improve and develop the economic activity of its members.

This definition was interpreted very broadly by local actors, with cross-border EEIGs acting as research structures (Basque Eurocity), training structures (Euroinstitut de Kehl) or tourism promotion structures (Sud Mont-Blanc).

In practice, leaders of cross-border projects have used the full palette of legal tools under public and private law available in each domestic legal system, going beyond the provisions contained in the bilateral agreements or the GCTA.

FROM AGREEMENTS TO CROSS-BORDER PRACTICES

In practice, the number of *de facto* structures exceeds the number of tools created on the basis of the GCTA or the treaties, apart from the co-operation agreements. The formation of these associations and EEIGs represents a solution for a large number of authorities faced with overly complex legal arrangements or in the absence of other satisfactory legal solutions to complete their cross-border projects.

The formation of these structures by territorial authorities or their groupings has not yet given rise to any significant case law legitimising or prohibiting the used of these legal forms as supports for cross-border co-operation. The risk of legal disputes, however, is limited by two factors:

- the nature of the missions entrusted to these associations and EEIGs (research structures under the authorities, technical or political concerted action structures, structures to promote one-time projects or to promote a territory)
- their composition, which in certain cases associates representatives of States (Association of the Agglomeration of the EDP, Euroinstitut de Kehl EEIG).

These two types of structures can also be used by other actors of cross-border co-operation, not taken into account in the aforementioned agreements: public institutions, PIGs, LMESs, State services (SGAR), or private actors (employers' associations or structures). These bodies cooperate on the basis of their statutes and provisions contained in the domestic law that governs them. ■

For more information (in French)

- Look on the website www.espaces-transfrontaliers.org – under *Documents-Fonds juridique* – for the bibliographical entries by border concerning the tools of cross-border co-operation used by the various borders.
- Interministerial circular dated 21 April 2001 concerning decentralised co-operation.
- *Guide de la coopération décentralisée, Echanges et partenariats internationaux des collectivités territoriales* (La Documentation française).

Main tools used in the practice of cross-border co-operation on french borders

TYPE	APPLICABLE LAW	PURPOSE LAID OUT BY THE AGREEMENTS	ADVANTAGES	DISADVANTAGES	APPLICATION (EXAMPLES)
Cross-border co-operation tools provided by French domestic law					
<ul style="list-style-type: none"> Cross-border co-operation agreement 	<ul style="list-style-type: none"> GCTA and legal system chosen in the agreement 	<ul style="list-style-type: none"> Purpose within the responsibilities of the signatories 	<ul style="list-style-type: none"> Formula usable by all cross-border co-operation actors on all borders Can create a structure without a legal personality 	<ul style="list-style-type: none"> The provisions are implemented under the responsibility of each signatory 	<ul style="list-style-type: none"> Health co-operation agreement
<ul style="list-style-type: none"> LMES 	<ul style="list-style-type: none"> GCTA 	<ul style="list-style-type: none"> Construction management operations, operation of industrial/commercial public service, or any other general interest activity 	<ul style="list-style-type: none"> Membership without prior conditions within the European Union Equal participation of member authorities Possibility of delegating contracting authority 	<ul style="list-style-type: none"> Limited purpose and missions (Article L.1521-1 GCTA) Capitalisation necessary 	<ul style="list-style-type: none"> Management of the Rectangle d'Or project (France-Vaud-Geneva agglomeration), planned
<ul style="list-style-type: none"> PIG 	<ul style="list-style-type: none"> GCTA 	<ul style="list-style-type: none"> All actions required by an interregional and cross-border co-operation project or programme 	<ul style="list-style-type: none"> Membership without prior conditions within the European Union Structure devoted to the completion of cross-border co-operation 	<ul style="list-style-type: none"> Absence of equality between the French and foreign authorities Regulated by the State Limited duration 	<ul style="list-style-type: none"> Transalp PIGs PIG project for management of the Interreg III programme in Lorraine-Sarre-Palatinat
Cross-border co-operation tools provided by bilateral agreements					
<ul style="list-style-type: none"> <i>Consorcio</i> 	<ul style="list-style-type: none"> Bayonne Treaty and Spanish law 	<ul style="list-style-type: none"> Public facilities or services Coordinate the decisions of member authorities 	<ul style="list-style-type: none"> Flexibility of the <i>Consorcio's</i> functioning system 	<ul style="list-style-type: none"> Decree authorising the participation of French territorial authorities No typical status Participation limited to authorities mentioned in the Bayonne Treaty 	<ul style="list-style-type: none"> Bidasoa-Txingudi <i>Consorcio</i>
<ul style="list-style-type: none"> LCCG 	<ul style="list-style-type: none"> Karlsruhe Agreement 	<ul style="list-style-type: none"> Mission and service which present an interest for the member authorities 	<ul style="list-style-type: none"> Public law legal person Possibility to delegate contracting authority 	<ul style="list-style-type: none"> Decree if the head office is not in France Participation limited to authorities mentioned in the Karlsruhe Agreement 	<ul style="list-style-type: none"> "Centre Hardt-Upper Rhine" LCCG Wissembourg Bad Bergzabern LCCG (contracting authority)
De facto cross-border co-operation tools					
<ul style="list-style-type: none"> Association 	<ul style="list-style-type: none"> Law where the head office is located 	<ul style="list-style-type: none"> Pursue a goal other than sharing profits 	<ul style="list-style-type: none"> Possible membership of any legal person or individual Legal autonomy relative to its members Easily formed 	<ul style="list-style-type: none"> Risk of <i>de facto</i> management Limited goal and mission (no possibility of delegating contracting authority) 	<ul style="list-style-type: none"> Association of the cross-border agglomeration of the EDP, COPIT, ATB, Association Saar-Moselle Avenir
<ul style="list-style-type: none"> EEIG 	<ul style="list-style-type: none"> European regulations and domestic laws 	<ul style="list-style-type: none"> Facilitate and develop its members' economic activity 	<ul style="list-style-type: none"> Possible membership of any legal person or individual Legal autonomy relative to its members Easily formed when there is no capital 	<ul style="list-style-type: none"> Exclusion of any purely administrative activity Limited goal and mission (no possibility of delegating contracting authority) Existence of a financial risk 	<ul style="list-style-type: none"> Sud Mont-Blanc EEIG Basque Eurocity EEIG Euro6 EEIG

Practical approach: level of co-operation

To gain a better understanding of the mechanisms governing legal cross-border arrangements, one must begin not with usable structures, but with the content of the efforts of cross-border co-operation that are undertaken by local actors and with the corresponding tools. These efforts, depending on their progress, can be classified according to three levels: strategic planning, territorial management and project completion.

The various structures presented in this guide are the legal and operational translation of partner efforts carried out progressively across borders, around shared themes, issues or problems as diverse as industrial conversions, alternating migrations, health, water, protected natural spaces or, more generally, the formation of cross-border agglomerations. In this dynamic process, it is not the chosen legal form that defines the project, but the nature of the effort undertaken by the authorities that determines the choice of structure. Practical application makes it possible to identify three levels of cross-border co-operation which translate, for each site, the degree of the co-operation's progress, but also the finalities and objectives pursued by the actors in question, from both sides of the border. Each level generates different needs in terms of the legal arrangement and operational tools.

PLANNING TO BETTER UNDERSTAND THE CROSS-BORDER TERRITORY

Many cross-border co-operation projects began with a "strategic planning" effort in order to gain a better understanding of the cross-border territory and to prepare and program the implementation of projects.

The objective is not to do cross-border regulatory planning – legally impossible – but to have a strategic vision, the main elements of which are :

- seeking out a shared vision of the territory's future by favouring a broad approach that can lead to a shared spatial vision, or a project-oriented thematic approach ;
- identifying issues, actors and dynamics at work ;
- the coordinated observation of the territory through the definition

The choice of an arrangement and legal form is closely tied to the degree of progress of the process of cross-border co-operation as well as to the finalities and objectives pursued by the actors from both sides of the border as part of this process.

of strategic orientations for the territory's development according to shared themes (for example: the "white book" on the Basque Eurocity or the GROOTSTAD project at Lille Métropole).

In this first case, with limited operational implications, an informal co-operation structure created on the basis of an agreement is sufficient. This effort can also be carried by a pre-existing structure (Comité Régional Franco-Genevois). This choice raises the question, however, of the perpetuation of the structure after the completion of the planning effort. To carry this effort, other authorities have resorted to the *de facto* cross-border co-operation structures: associations (Lonwy European Development Pole oversight body) or EEIGs (Cross-border agency of Basque Eurocity).

SHARED MANAGEMENT TO PREPARE FOR THE IMPLEMENTATION OF CROSS-BORDER PROJECTS

The "territorial management" effort corresponds to a phase of mobilising territorial actors and public and private partnerships that are useful for favouring the emergence of projects. It leads to the creation of partner-based concerted action structures, the purpose of which is also to host a technical team to prepare for the changeover to an operational phase.

This management phase, without a direct implication in terms of contracting authority, makes it possible to associate the largest possible number of public and private actors around promotion actions or actions to seek out public and private partnerships. The territorial management structures must authorise a broad partnership, while hosting a technical team sufficient to prepare the operational phase.

Although the use of an informal structure – created on the basis

and legal tools

of a cross-border co-operation agreement – remains possible, an autonomous structure becomes necessary to have a specific technical team and budget, along with a margin of autonomy relative to the member authorities.

In practice, this effort leads the authorities to set up general-purpose territorial organisational structures.

Consequently, the authorities have favoured *de facto* cross-border co-operation structures, authorising the establishment of this broad and relatively informal partnership between different types of partners.

Nothing prevents the authorities involved, however, especially when there are few of them, using other types of structures, like the *Consorcio* (Bidasoa-Txingudi *Consorcio*).

SETTING UP CROSS-BORDER CONTRACTING AUTHORITY

The operational phase corresponds to the phase of cross-border investment by local actors. It also involves the setting up of cross-border services in the broad sense (human services, services for territorial actors – transport, tourism, social action, etc.) as well as the completion of cross-border facilities and planning. During this phase, the local actors must decide on assigning the contracting authority, that is, the project's administrative, technical and financial responsibility. This can be entrusted to one of the project's partners, to several among them if the nature of the project so allows (multi-site project, for example), or can be delegated to a third-party structure with the necessary legal capacity.

For the completion of cross-border facilities and planning, the GCTA and the bilateral agreements offer different legal solutions to organise the cross-border contracting authority. The most successful one is the local cross-border co-operation grouping.

Strategic planning, territorial management, and the setting up of cross-border contracting authority are all logical steps in the progression of a cross-border co-operation effort.

For the setting up of “cross-border services”, the constraints are not so strict. The legal framework does not allow the creation of integrated cross-border public services.

The cross-border services cannot substitute for existing services. The legal arrangements used can, here again, fall under private law.

In conclusion, the cross-border legal arrangements and the structures used are achieved by seeking out appropriateness between the strategies of the field actors, the pursued objectives and the resources used.

They are also set apart by the fluid nature of the process of cross-border co-operation, which leads the authorities to adapt their tools depending on the development of their co-operation process. ■

How to decide on a form of cross-border co-operation?

- 1 Is a structure with a legal personality needed?
- 2 Who are the main partners, what type of partners are they and what are their responsibilities relative to the project?
- 3 What objectives are they pursuing through this cross-border partnership?
- 4 What types of missions will they entrust to this structure and with which resources?
- 5 What are the legal forms usable at the border in question and their main characteristics?
- 6 For each legal form, three series of criteria are going to determine the structure's feasibility:
 - appropriateness of the social goal, missions and methods of intervention of the structure in the cross-border project;
 - consequences of the participation of the project partners in the joint structure in terms of time required to form the structure and mechanisms of administrative and financial functioning;
 - consequences of the choice of a legal system on the mechanisms of practical functioning (personnel, financing, etc.) and of control over the structure.

Field experience

Association for the sustainable development of the trinational agglomeration of Basel

Begun in the mid-1990s, co-operation within this French-German-Swiss agglomeration, which includes around fifty authorities, gave rise this year to the creation of a cross-border association to carry a territorial management effort. ■

Each co-operation project generates an original legal arrangement depending on the actors and stated objectives.

The examples presented below illustrate the diversity of the strategic choices of the project leaders in formalising and structuring their cross-border co-operation effort, a diversity that is related in particular to the state of progress of the co-operation. ■

The “Centre Hardt-Upper Rhine” LCCG

As the first application of the Karlsruhe Agreement, this LCCG, created in 1998 in the form of a “syndicat mixte”, intended to become the shared tool serving the expansion of a French-German population basin. Its first mission is to build a bridge over the Rhine to connect the German and French sides. ■

Cross-border health community of Menton-Vintimille

The signature of a health co-operation agreement between the competent authorities on both sides of the border should lay the foundation for a community of health in order to improve the response to the needs of inhabitants and to seek out complementarity in the management or creation of facilities. ■

Cross-border Bidasoa-Txingudi Consorcio

On the basis of co-operation begun in 1990, the three border municipalities of Hendaye, Irun and Fontarrabie chose to create a cross-border *Consorcio*, governed by Spanish law, able to design and carry a joint policy of economic, social, tourist and cultural development. ■

The “Centre Hardt-Upper Rhine” LCCG

The co-operation from both sides of the Rhine, between the municipalities of the “Essor du Rhin” district and the German border municipalities first took shape through the twinning between the municipalities of Hartheim and Fessenheim.

This cross-border partnership was decisive to define the orientations of the cross-border co-operation which involve planning, the economy, tourism, and recreation with the completion of a bridge over the Rhine between Hartheim and Fessenheim as a prerequisite. The Karlsruhe Agreement, which took effect in 1997, provided a legal framework to these authorities which began pioneering work on the arrangement of a LCCG. It is governed by the provisions of the Karlsruhe Agreement and secondarily by the provisions applicable to public co-operation institutions in the country where the head office is located. Located in France, this LCCG falls under the system of joint unions. To ensure equality between the member authorities, the presidency is given to an elected German and the vice-presidency to an elected French person.

A PREREQUISITE TO CO-OPERATION: HOW TO OVERCOME A RIVER BORDER?

To overcome the obstacle that the Rhine represents, the first mission entrusted to the LCCG in 1998 was the completion of a bridge over the Rhine connecting the municipalities of Hartheim and Fessenheim, with one lane reserved for pedestrians and bicyclists and the other lane for light vehicle (3.5 t) traffic using alternating one-way. To complete this project, the member authorities of the LCCG had to take into account the provisions of the French-German

Treaty of 30 January 1953 on bridges crossing the Rhine; it provides that the construction of these bridges is under the responsibility of the States. An agreement between the States proved to be necessary. It was completed in February 2001 through an exchange of letters between the French and German governments, which entrusts the delegated contracting authority to the LCCG and settles the questions of liability and taxation. This agreement prefigures a framework agreement on the completed crossing of the Rhine on the initiative of territorial authorities. ■

Bibliographical entry

Name: the “Centre Hardt-Upper Rhine” LCCG

Date created: 22 October 1998

Border: French-German

Geographical zone: Guebwiller district, Ensisheim canton

Actors: Communauté de communes “Essor du Rhin”, Municipalities of Hartheim, Bad Krozingen, Eschbach, city of Staufen in Breisgau, Zweckverband “Gewerbepark Breisgau”

Legal tool: LCCG in the form of a “syndicat mixte”, provided by the

Karlsruhe Agreement, head office at 2 rue du Rhin, 68740 Fessenheim

Contact person: Mrs. Carole Fritz, Communauté de communes “Essor du Rhin”

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3 questions for: Mr. Zimmerle, DIRECTOR, COMMUNAUTÉ DE COMMUNES “ESSOR DU RHIN”

What were the motives for creating a co-operation structure?

The co-operation projects and in particular the project to build a bridge over the Rhine, as a prerequisite for cross-border development, were formulated when the municipalities of Hartheim and Fessenheim became twin municipalities. The provisions of the Karlsruhe Agreement solidified the projects and expanded the partnership to include neighbouring French and German authorities through the formation of the first local grouping for French-German cross-border co-operation.

What is the main purpose of this structure?

The LCCG is meant to become the joint tool serving the development of the cross-border basin, making it possible to overcome the institutional and administrative organisational differences (which limited cross-border relations

before), although the grouping remains a public institution governed by French law. Among its missions, the grouping is initially responsible for completing a bridge over the Rhine, as a first step in the co-operation process.

What are the long-term objectives of the member local actors and territorial authorities?

Since the conditions for completing the bridge were laid out in summer 2001 following an exchange of letters between the German and French governments, the French and German authorities are already starting the next phase, that is, the implementation by the grouping, beginning in 2005, of cross-border projects in the area of tourism development (in particular bicycle paths) and economic development (to take advantage of existing real estate assets on both sides of the Rhine).



Association for the sustainable development of the trilingual agglomeration of Basel

Although the initial exchanges in the area of cross-border co-operation within the trilingual agglomeration of Basel date back to the 1970s, it is in the framework of the Interreg II programme that the French (Communauté de Communes des Trois Frontières, SIVA), Swiss (Cantons of Basel-Stadt and Basel-Land) and German (Landkreise Lörrach and Weil, Regionalverband Hochrhein-Bodensee) partners have undertaken a joint planning effort to gain a better understanding of the agglomeration's modes of operation. This effort led to the concept of the Trilingual Agglomeration of Basel (T.A.B.), which, by defining cross-border projects, has led the actors to consider this cross-border territory as a coherent space, an agglomeration seeking out its own institutions.

With the Interreg II programming period coming to an end, the members of the T.A.B. wanted to institutionalise the effort to allow a continuation of the work that was begun. After examining the different usable legal forms, the local actors chose the association, creating an association governed by Alsace-Moselle law in January 2002, with head office in Saint-Louis, the association of the trilingual agglomeration of Basel.

The choice of the association form made it possible to bring together within one structure more than 50 partner authorities, from the canton to the municipality, making it a cross-border territorial management structure. To ensure equality among

the members, the president and the two vice-presidents are elected for two years as part of a revolving presidency by which the presidency alternates between representatives of each country.

Although the association form is meant to be a long-term structure, this tool only corresponds to one step in the process of cross-border co-operation. The work within the association is to make it possible to deepen the themes and identify projects which will be implemented by the *ad hoc* LCCG formed with a limited partnership. ■

Bibliographical entry

Name: Association for the sustainable development of the trilingual agglomeration of Basel

Date created: 28 January 2002

Border: French-German-Swiss

Geographical zone: Basel agglomeration

Actors: all of the Swiss, French and German authorities and groupings of authorities making up this agglomeration (around fifty)

Legal tool: local association (in Alsace-Moselle) with head office in Alsace

Contact person: Mr. Brodbeck, General Director of Services, Communauté de Communes des Trois Frontières

3 questions for Mr. Brodbeck, GENERAL DIRECTOR OF SERVICES, COMMUNAUTÉ DE COMMUNES DES TROIS FRONTIÈRES

What were the motives for creating a co-operation structure?

The agglomeration partners, connected through an agreement, wanted to move from a situation of an informal association – considered too superficial and insufficiently recognised – to an association with a legal personality. This approach gave the association a legal personality that is distinct from that of each of its members, and authorises it to carry out most of the legal actions that are indispensable to the completion of its objectives.

What is the main purpose of this structure?

The purpose of the association for the sustainable development

of the territory of the trilingual agglomeration of Basel is to deepen the co-operation among its members around all themes related to territorial planning, and to coordinate and initiate their actions.

What are the long-term objectives of the member local actors and territorial authorities?

Projects and initiatives presenting a shared interest, in particular structure-providing facilities, can be carried on a case-by-case basis by local cross-border co-operation groupings created for the purpose.

The cross-border health community

Menton-Vintimille

The cross-border territory that extends from the French-Monacan border to the basin of Vintimille-Bordighera is a part of a vast French-Italian conurbation stretching from Nice to Imperia. In the area of health facilities, the geography of this coastal strip is the reason for the distance and dispersion of health facilities and health care centres between Nice and Menton as well as between Vintimille/ Bordighera and San Remo.

This is why the Menton hospital complex “La Palmosa” and its Italian counterpart the local health unit No. 1 of the Province of Imperia – in particular the management of the “Saint Charles” hospital in Bordighera – collaborated to define a joint concept of a cross-border community of health based in the principle of proximity.

This cross-border health approach is to be implemented in two ways: quantitative and qualitative strengthening of cross-border services, making it possible to respond more fully to the needs of inhabitants of the cross-border population basin, and exchanges, programming and planning, to better manage the shared health resources.

USE OF A CONTRACTUAL TOOL

To carry out this co-operation, the two institutions relied on the existing provisions of each country's domestic law, since the Rome Agreement on cross-border co-operation only applies to co-operation between territorial authorities.

The French public Health Code, like the Italian national health plan, recognises the right of public health institutions to participate in international co-operation actions, leading in this case to the signing of a health co-operation agreement; the agreement concerning the Menton-ASL1 cross-border community of health was signed in February 2002. It will be supplemented by thematic agreements (dialysis, medical imaging, geriatrics, perinatal period, emergency services). ■

Bibliographical entry

Name: Cross-border health community

Date created: 18 February 2002

Border: French-Italian

Geographical zone: Eastern Maritime Alps, Ponente Ligure (Comprensorio Ventimigliese)

Actors: The Menton hospital complex “La Palmosa”, Azienda Sanitaria

Locale No. 1 Imperiese

Legal tools: Health co-operation agreement

Contact person: Mr. Balli, ASL No. 1 Imperiese

DR

3 questions for Mr. Barabino, GENERAL DIRECTOR OF A.S.L. NO1 IMPERIESE

What were the motives for creating a co-operation structure?

Given the respective distance of the Menton and Vintimille medical centres from the existing facilities in Nice and San Remo, it was in the full interest of the signatories of this agreement to take advantage of the proximity of the territories to provide joint responses to the health needs of the inhabitants of the cross-border basin.

What type of organisation does the agreement put in place?

The establishment of this health community gave rise to the formation of a technical group made up of French and Italian doctors

and technicians with cross-border expertise, meeting every two weeks to discuss the implementation of the agreement and working in particular on seeking out European financing (Interreg III).

What are the long-term objectives of the agreement's signatories?

The actors have set for themselves the initial objectives of completing three significant projects that will give a practical content to this cross-border approach: setting up a joint dialysis service in Vintimille by sharing already-existing facilities, building a cross-border perinatal centre in Menton, and setting up cross-border training meant for nurses leading to a French-Italian diploma.



The cross-border Bidasoa-Txingudi Consorcio

This structure, governed by Spanish law, carries a local co-operation effort between the border municipalities of Hendaye, Irun and Hondarribia, that is, the territory where the Bidasoa river flows into the Txingudi Bay. This effort supplements locally the co-operation carried out within the Basque Eurocity by the Communauté d'Agglomération de Bayonne-Anglet-Biarritz and the Diputación Foral de Guipúzcoa, which gave rise to the creation of an EEIG. To strengthen the consistency of the co-operation in the Bayonne-San Sebastian cross-border conurbation, the *Consorcio* joined the EEIG at the end of 2001.

CO-OPERATION PRECEDED THE LAW

The formation of the *Consorcio* in 1998 follows a co-operation effort begun in 1990 by the three municipalities based on economic, social and cultural development. In 1993, a coordination authority was created, without a legal personality, called Eurodistrict. The signing in 1995 and then the entry into force in 1997 of the Bayonne Treaty provided them with the legal framework to deepen their co-operation. The French-Spanish agreement allows the local authorities to create autonomous cross-border co-operation structures, including the *Consorcio*, which is, in Spain, the shared legal tool to supplement collaborations that involve public entities from different levels.

This *Consorcio* functions according to an annually revolving presidency, between French and Spanish elected officials. The *Consorcio* pays the costs related to the personnel and offices that are provided by the member municipalities. The rest of the budget is devoted to joint actions.

The missions of the *Consorcio* address research and the implementation of actions covering the following themes: tourism (planned creation of a joint body), culture, social and economic development (plan to offer data communications services to citizens and businesses). ■

Bibliographical entry

Name: Cross-border Bidasoa-Txingudi *Consorcio*

Date created: 23 December 1998

Border: French-Spanish

Geographical zone: Basque Eurocity

Actors: border municipalities of Hendaye (France), Irun and Hondarribia (Spain)

Legal tools: cross-border *Consorcio* governed by Spanish law, provided by the Bayonne Treaty

Contact person: Mr. Saragueta, coordinator of the cross-border *Consorcio*

3 questions for Mr. Saragueta, COORDINATOR OF THE CROSS-BORDER *CONSORCIO*

What the motives for creating a co-operation structure?

The progressive disappearance of borders, related to the European structure, and of corresponding economic activities (customs, etc.) represented the triggering factor; this co-operation effort also relied on the existence of constant relationships (social, cultural, economic) that the municipalities wanted to deepen. They favoured the *Consorcio*, the only structure that, when it was formed, provided equal representation among the French and Spanish municipalities.

What is the main purpose of this structure?

The work of the *Consorcio* is organised around a series of joint themes: culture, sports, tourism, businesses, jobs and public services, which give rise to different types of actions, aimed at gaining

a better understanding of the cross-border context (comparative studies), ensuring joint promotion (organisation of events), organising connections between local actors (signing of agreements), and discussing the establishment of joint services (tourism) or investments (creation of a heritage trail).

What are the long-term objectives of the member local actors and territorial authorities?

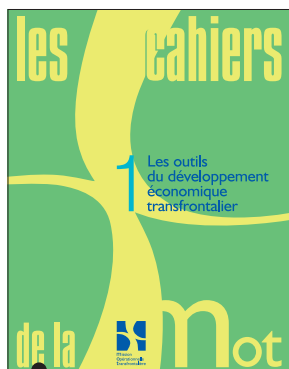
Based on already completed work, the member authorities of the *Consorcio* would like to deepen their co-operation, in particular by setting up joint waste-collection services and actions concerning physical communication networks (transports) and the provision of information to inhabitants of the cross-border basin.

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