

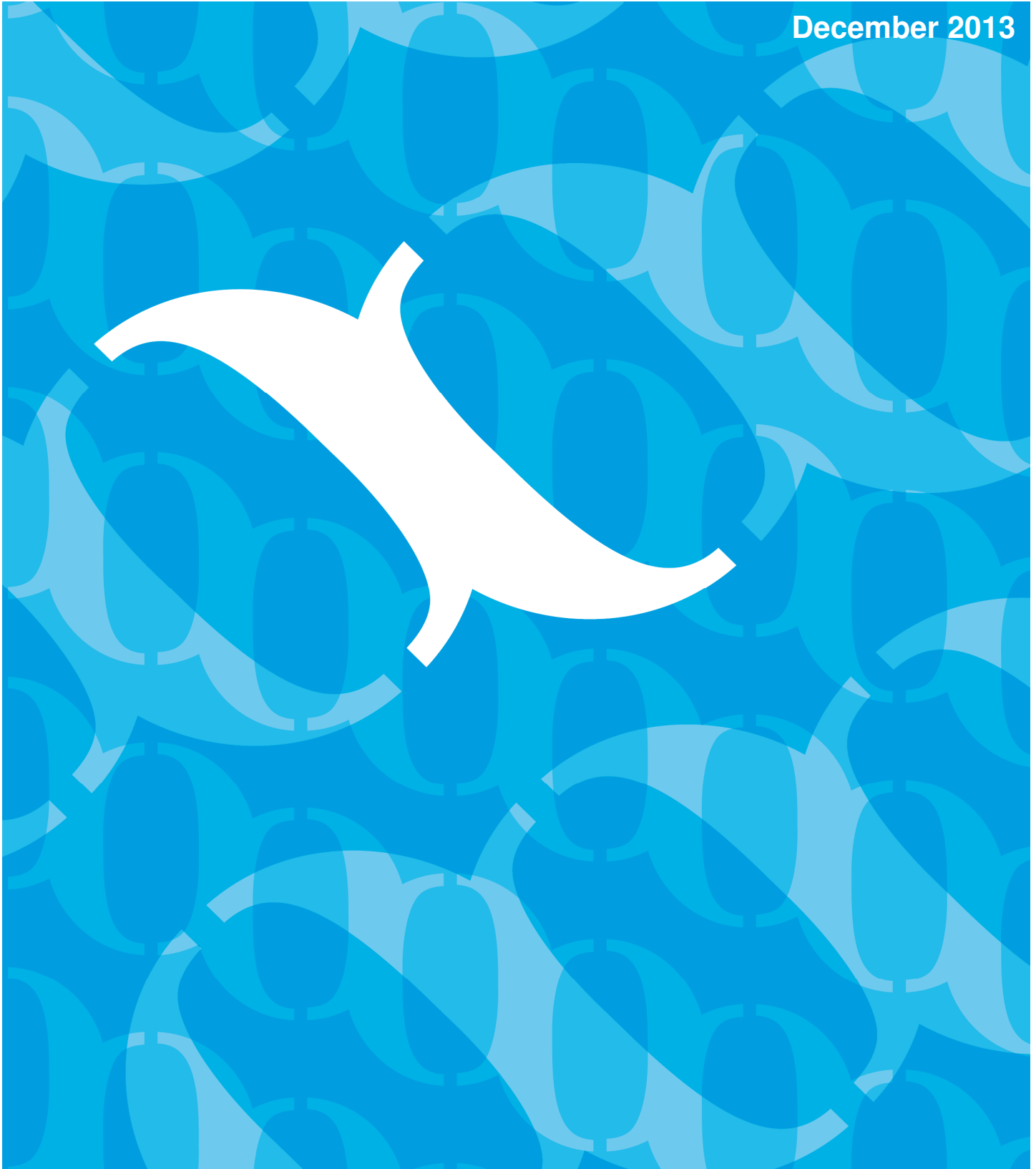


# The legal framework for cross-border cooperation

## The legal instruments available to cross-border projects



December 2013





Introduction	3
The stages in choosing a legal instrument	5
Bilateral cross-border cooperation agreements	6
The cooperation agreement	7
Cross-border structures with legal personality	8
The European Grouping of Territorial Cooperation (EGTC)	9
The European Economic Interest Grouping (EEIG)	12
The Euroregional Cooperation Grouping (ECG)	14
Forms of association with a cross-border purpose	16
The Local Grouping of Cross-Border Cooperation (LGCC)	18
The cross-border <i>consorcio</i>	20
Summary table	22



Among the main activities of the Mission Opérationnelle Transfrontalière (MOT) is the provision of assistance and information regarding the operational structures of cross-border cooperation. Since it was set up in 1997, the MOT has produced several publications and organised many conferences and seminars on the issue of the legal framework for cross-border cooperation.

Between October 2012 and December 2013, the MOT carried out, with the financial support of the national technical assistance programme Europ'Act, a project designed to raise the awareness of the players involved in cooperation about the legal and operational structures of cross-border projects.

This initiative aimed first of all to inform local players involved in cross-border cooperation about the tools available, as well as the methodology for choosing and developing cooperation tools.

The project's second objective was to facilitate the exchange of experiences and good practices between cross-border players on both sides of national borders regarding the implementation of these tools.

Lastly, in this context, the MOT wished to shed light on the EGTC tool and the opportunities created by the new regulations on cohesion policy for 2014-2020 (local development operations, integrated territorial investment, etc.).

More specifically, as part of this project the MOT ran five seminars giving information about the legal tools available to cross-border projects. Each seminar was devoted to one or more of France's borders:

- **France-Spain-Andorra: 16 September 2013 in Toulouse**
- **France-Switzerland: 3 October 2013 in Annemasse**
- **France-Italy: 10 October 2013 in Genoa**
- **France-Germany-Luxembourg: 17 October 2013 in Sarreguemines**
- **France-Belgium-United Kingdom: 29 October 2013 in Lille**

The seminars addressed the practical questions relating to the choice, structure and functioning of the legal tools available to projects. By means of comparative presentations of these tools and prominent examples of cross-border structures, the seminars provoked discussion about the relevance, value added and limitations of the different structures available to cross-border projects.

The clear message of these meetings was to stress that the choice of legal tools should stem above all from the project's dynamics (the partners' strategies and the cross-border strategies, the resources allocated, the project's concrete content and the actions envisaged). In this way, the legal structuring is tailored to the life cycle of cross-border projects and generally accompanies the maturing and continuation into the future of cooperation initiatives.

These events were aimed at cross-border cooperation practitioners (territorial authorities and their groupings, government departments, chambers of commerce and industry and professional organisations, educational institutions, businesses, European programme bodies, representatives of civil society, and cross-border structures, etc.) that have adopted legal structures for their projects or who intend to do so.

In order to summarise the seminars' most important points, the MOT has produced the present document which is aimed at helping cooperation practitioners to choose the legal form that is most appropriate for their needs.



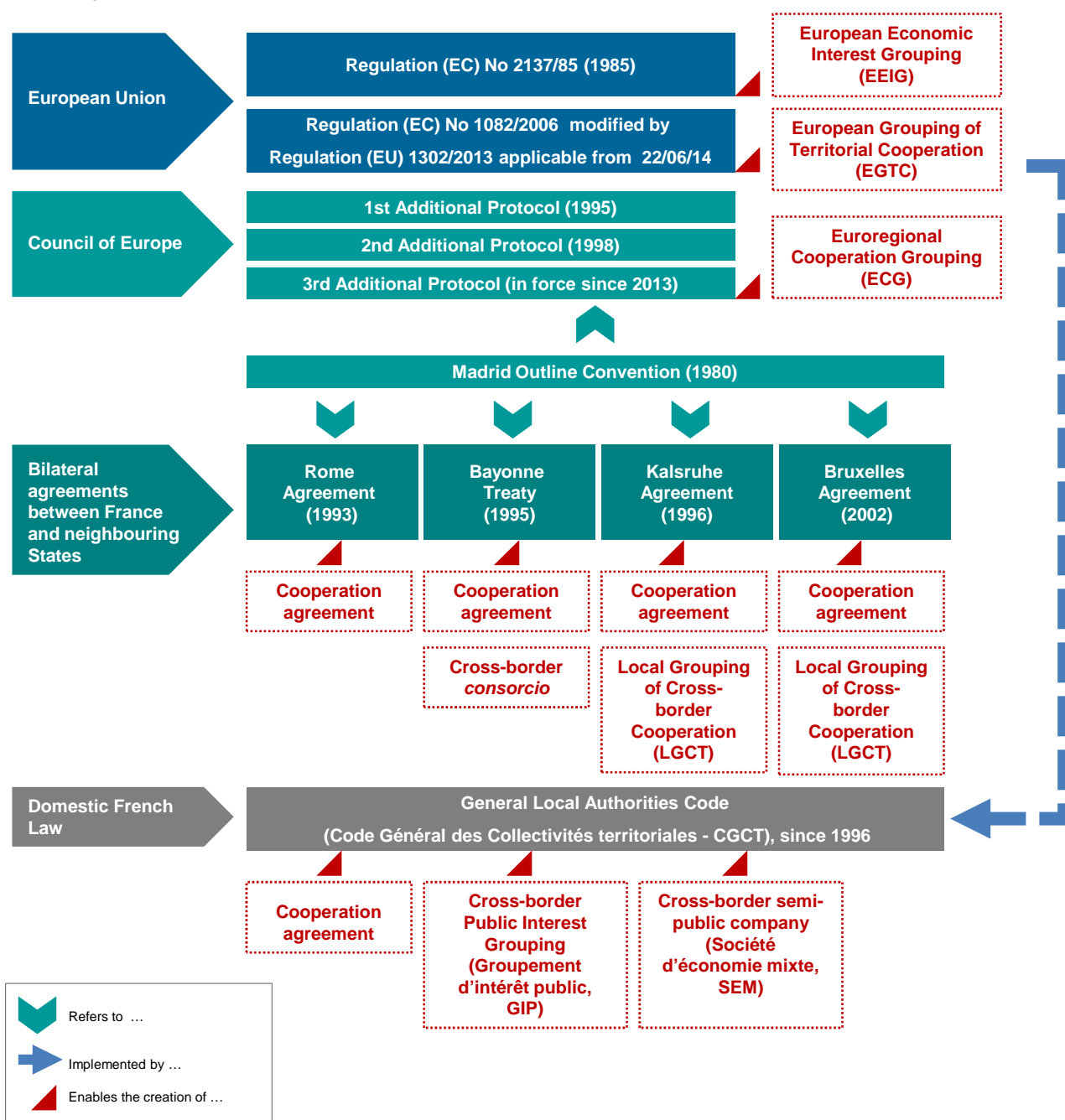
## How this document is organised

This document aims to provide a summary of the main legal tools that can be used to set up cross-border projects at France's borders. It contains a series of factsheets that set out for each tool its definition, its legal basis, the scope of its use and its main advantages and limitations.

Each tool is illustrated by two examples of structures that have been set up at France's borders and that were presented in the five information seminars.

This guide also sets out the main stages that need to be gone through in the choice of a legal tool, as well as providing a table that summarises the different tools.

## The legal basis for cross-border cooperation





A cross-border cooperation structure is the legal and operational expression of partnership initiatives that are continually evolving. It is a dynamic process in which it is the objectives that the cooperation aims to achieve that help to determine the appropriate cross-border legal instrument. Cooperation structures are tailored to the life cycle of projects and correspond to a particular need dictated by the maturing, deepening and continuation into the future of the cooperation initiative.

Thus, in the process of identifying the most appropriate legal form for a cross-border cooperation initiative, it is recommended to follow the stages set out below:

## 1. Define the operational parameters of the future cooperation tool

- Determine the added value of a legal tool (cooperation agreement or structure with legal personality) for the cross-border project.
- Define the future structure's tasks (areas of activity, actions envisaged), the parameters of its intervention (territory, timetable) and its resources (financial and human, working language).
- Identify the structure's future members and the cross-border cooperation tools that they can legally participate in (cooperation agreement or structure with legal personality).
- Define the bodies and systems of representation for the future members (e.g. an assembly, committee, commissions or working groups, etc.) and procedures for decision-making.

## 2. Choose the legal form (and the location of the registered office for structures with legal personality)

- Take account of the location and legal form of future members.
- If there are several legal tools available, compare their advantages and drawbacks (with regard to the procedures for setting up the structure, the operating rules, etc.).
- Choose the location of the registered office, which will determine the law that will govern structures with legal personality (compare the different legal regimes available in order to determine that which is most advantageous for the cross-border project).

## 3. Draw up the documents needed to create the new tool

- Draw up draft statutes and convention for the cross-border structure with legal personality or the draft cooperation agreement. Depending on the legal form chosen, the obligatory content of these documents varies (European law, domestic law, bilateral agreements).

## 4. Draw up the first budget and the work programme

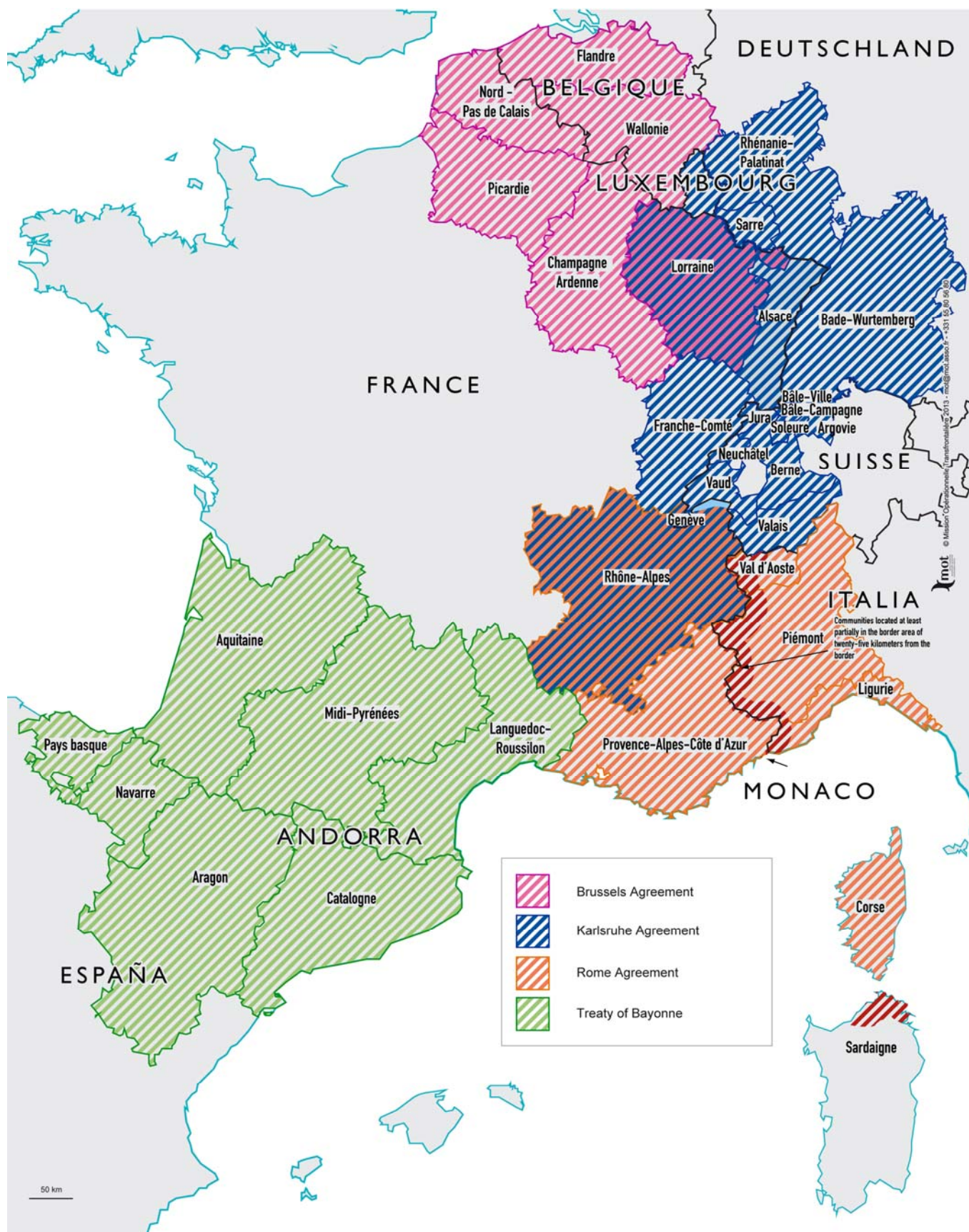
- Draw up the work programme for the future structure (or agreement), together with the planned budget, in order to ensure that the tool is operational as soon as it has been created.

## 5. Create the cooperation tool

- Follow the specific procedures depending on the legal tool chosen.
- For structures with legal personality: deliberation by each future member in order to authorise the signature of the convention establishing the structure and of its statutes.
- For EGTCs, ECGs and structures arising from bilateral agreements (e.g. LGCCs, *consorcios*)
  - For French members, communication of the convention and statutes, as well as the decision of the future of body's assembly, to the regional Prefect who is competent to authorise the participation of the future body's members and its creation if its registered office is in France.
  - Modification, where necessary, of the draft convention and statutes following the regional Prefect's observations.
  - Fresh deliberations by the assemblies of the future body's members.
  - Signature of the convention and statutes by the future members' authorised representatives.
  - Launch of the procedure to set up the structure (in accordance with the law of the country in which the registered office is located).



# Bilateral cross-border cooperation agreements





# The cooperation agreement

## Definition

The cooperation agreement represents a contractual commitment on the part of the territorial authorities that have signed it to implement a project or cross-border initiative in their common areas of competence, with the exception of the exercise of police and regulatory powers. It is the common law tool of cross-border cooperation.

## Legal basis

The cooperation agreement is provided for under French law (Code Général des Collectivités Territoriales – General Local Authorities Code) and by all of the bilateral intergovernmental agreements signed by France with its neighbours: the Rome Agreement (1993, with Italy), the Bayonne Treaty (1995, with Spain and Andorra since 2012), the Karlsruhe Agreement (1996, extended in 2004, with Germany, Switzerland and Luxembourg) and the Brussels Agreement (2002, with Belgium).

## Use

An agreement can be used for different purposes (governance, consultation, intangible or tangible projects). In addition, it makes it possible to set up cross-border governance structures without legal personality. There is no standard cooperation agreement, but the Council of Europe has drawn up models that can be used as examples.

## Advantages

The agreement is a very flexible tool that can be utilised at any level and with any type of player (as long as it complies with the relevant provisions set out in domestic law and bilateral agreements). It also offers a large degree of flexibility in the definition of the agreement's content. This tool makes up for the absence of an appropriate legal structure for a cooperation project. Moreover, it is advantageous for projects with a limited lifespan since it does not create a permanent structure.

## Limitations

Given that the cooperation agreement simply formalises the commitments made by the signatories, the implementation and completion of the cross-border project rely on the signatories, which can lead to difficulties in the event of inaction by one of the partners. The agreement does not make it possible to create autonomous bodies that can take decisions and manage the cross-border project's budget and finances. Each of the signatories applies its own legal regime to the actions it carries out under the agreement, which can make implementing the cross-border project more complex.

### **PARTNERSHIP AGREEMENT BETWEEN KENT AND PAS-DE-CALAIS**

The Pas-de-Calais Conseil Général and Kent County Council signed a partnership agreement in November 2005 (amended in March 2009). This agreement provides for cooperation in particular on the inclusion of the Pas-de-Calais Strait on UNESCO's World Heritage List, public services, culture, education and tourism.

The advantages of this solution are: flexibility (absence of administrative or financial constraints), legitimacy (to call on players on either side of the border with a view to envisaging cooperation projects), the reflex to think of cross-border solutions that becomes established in the territorial authority and making relations with the neighbouring country commonplace.

This tool also has limitations: based on encouragement rather than being binding, it mainly relies on interpersonal relations and may sometimes be perceived by staff within the authorities as adding to their workload.

The results are nonetheless positive since this flexible tool makes it possible to initiate projects for cooperation in many fields between the territorial authorities, but also between players in the two territories.

#### **Further information:**

→ On the MOT's website : <http://www.espaces-transfrontaliers.org/ressources/territoires/frontieres/frontieres-en-europe/frontiere-france-royaume-uni/frontiere-france-royaume-uni-2/>

→ On the Pas-de-Calais website: <http://www.pasdecalais.fr/Europe/Connaitre-les-interlocuteurs-du-Pas-de-Calais/Dans-l-Union-europeenne/Angleterre-le-Comte-du-Kent>

→ On Kent's website : [http://www.kent.gov.uk/business/our\\_international\\_work/international\\_partners.aspx](http://www.kent.gov.uk/business/our_international_work/international_partners.aspx)

### **PARTNERSHIP AGREEMENT BETWEEN NICE AND GENOA**

After initial cooperation initiatives in 2010 (with notably the signature of letters of intention), a partnership agreement was signed between the Nice-Côte d'Azur metropolis and the city of Genoa on 11 February 2011 in Genoa.

This protocol is aimed at reinforcing the cohesion and attractiveness of the two territories, as well as promoting a joint economic development project focusing on four themes: the rail link between Nice and Genoa, "motorways of the sea", digital innovation (Smart Cities), and cooperation and lobbying.

The advantage of this solution is that it is a light structure without legal personality (with a political body – the management committee – and operational teams from the two cities' technical departments, which make up the cross-border cooperation unit).

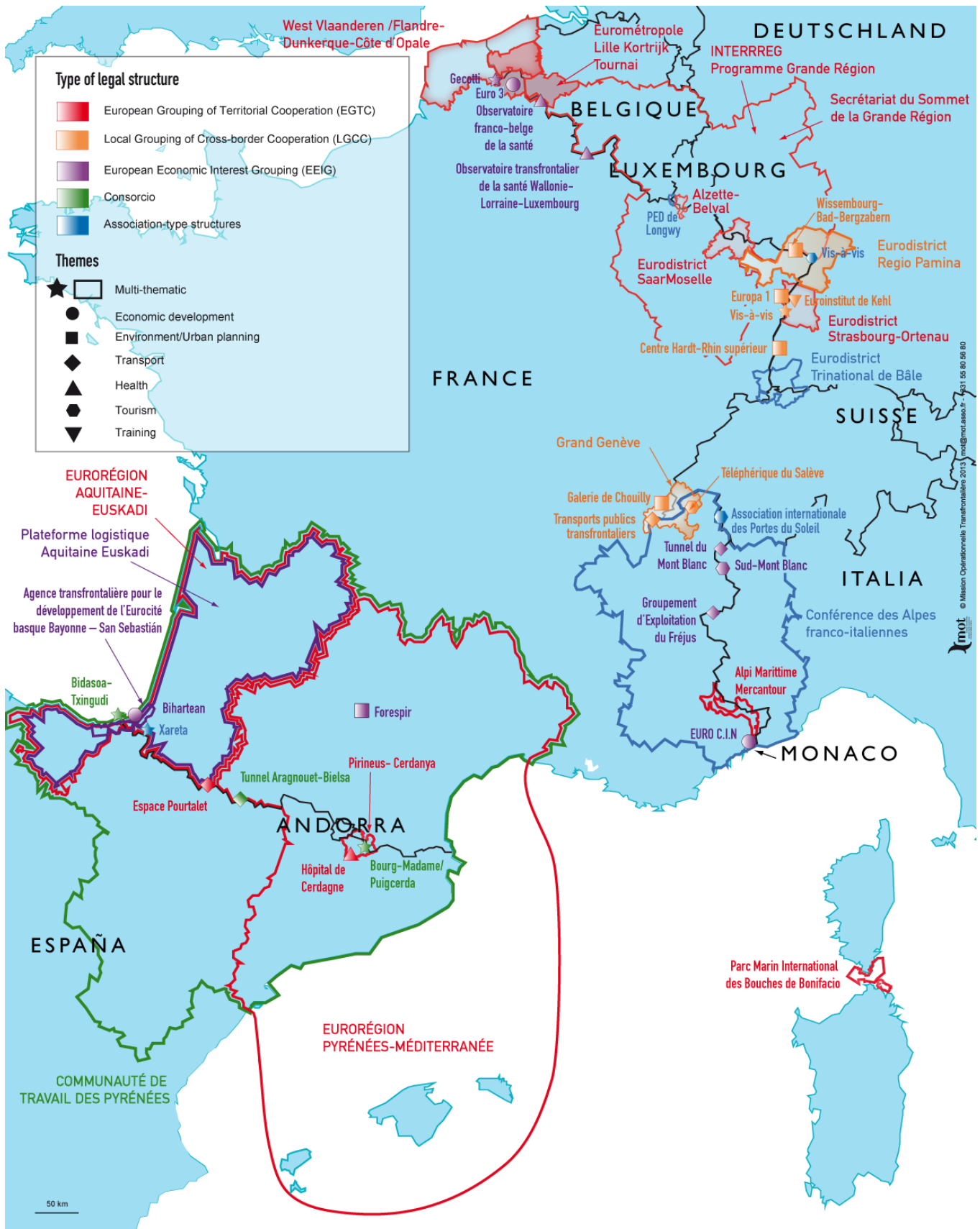
However, this cooperation depends on the involvement of the two parties (implementation by consensus) and requires permanent political and technical bodies, as well as a budget.

#### **Further information:**

→ On the MOT's website: <http://www.espaces-transfrontaliers.org/bdd-territoires/territoires/territory/show/riviera-franco-italo-monegasque/>



# Cross-border structures with legal personality





# The European Grouping of Territorial Cooperation (EGTC)

## Definition

The European Grouping of Territorial Cooperation (EGTC) is a permanent and autonomous structure with legal personality (with the ability to enter into contracts, employ staff, manage a budget, issue calls for tender, and acquire and dispose of movable and immovable property) governed by public or private law. As is the case for all cross-border structures, using the EGTC tool requires choosing the national law that will govern it (the law governing the place where the registered office is located), which excludes the application of transnational law. An EGTC may be set up by "contracting authorities", i.e. structures that are subject to public procurement rules as defined by the European Directive 2004/18/EC, such as States, regional or local authorities, bodies governed by public law, etc. and associations formed by one or several such contracting authorities.

## Legal basis

The EGTC tool was created by Regulation (EC) No 1082/2006. It is applicable at the European Union's internal borders and at its external borders (under certain conditions). This regulation is the subject of implementing measures in the domestic law of Member States, which determine the structure's character of legal entity governed by public law (as in France, Italy, Spain, Germany and Luxembourg) or private law, as well as the national rules that apply to it. EGTCs that have their registered office in France come under the regime for "syndicats mixtes ouverts" ("open joint associations") referred to in Articles L.5721-1 et seq. of the Code Général des Collectivités Territoriales (CGCT).

## Use

This instrument aims to "facilitate and promote territorial cooperation" (Article 1 of Regulation No 1082/2006). It can be used for projects of intangible cooperation (including cross-border governance) or tangible cooperation (equipment, infrastructures or joint services) in its members' common areas of competence. It can also take on the role of managing authority (or intermediate body) for European territorial cooperation programmes or be the vehicle for tools for integrated territorial development (2014-2020 period).

## Advantages

The EGTC is a structure with legal personality that has high visibility in Europe and that has the ability to manage a cross-border project for its members. It can have quite varied members, enabling in particular partnerships between territorial authorities and States, as well as the participation of members from non-EU countries. Lastly, we may note the large degree of flexibility in the definition of EGTCs' mode of operation.

## Limitations

The experience of the structures that have been set up has highlighted the length and complexity of the procedure for creating and modifying EGTCs and the absence of a procedure for consultation between the approving national authorities. In addition, EU Member States sometimes have different interpretations of the provisions of Regulation 1082/2006. Lastly, EGTCs have only been incorporated into domestic legal systems to quite a limited degree (few mentions of EGTCs, difficulty in identifying provisions that apply to the operation of EGTCs).

### THE ALZETTE-BELVAL EGTC

This EGTC governed by French law, which was set up in 2012, brings together French and Luxembourg municipalities, as well as the higher levels of government (the French State and the Grand Duchy of Luxembourg, the Lorraine Region, and Moselle and Meurthe et Moselle Departments).

The EGTC's objective is to strengthen the cross-border partnership (facilitate and increase cooperation between private and public players) across a territory that is undergoing major changes, with two large-scale regional development programmes (with notably an operation of national interest - Opération d'intérêt national - OIN) on the French side).

#### Further information :

→ On the MOT's website :

<http://www.espaces-transfrontaliers.org/bdd-territoires/territoires/territoire/show/ecocite-alzette-belval/>

→ On the Communauté de communes Pays Haut Val d'Alzette (CCPHVA) website :

<http://www.ccpvha.com/Entreprendre/Amenagement-du-territoire/GECT-Alzette-Belval>

→ On the Esch-sur-Alzette's website :

[http://www.esch.lu/laville/international/Pages/CT\\_GECTAlzette\\_Belval.aspx](http://www.esch.lu/laville/international/Pages/CT_GECTAlzette_Belval.aspx)

### THE SAARMOSELLE EURODISTRICT EGTC

This Franco-German EGTC was created in 2010 after long discussions. It took over from the association Zukunft SaarMoselle (set up in 1997). This change was warranted by the need to reinforce the technical team, to have its own financial assets, to sign contracts with the European, national and regional levels, and to be more visible in the European arena. The choice and structuring of the EGTC took place with the support of the MOT.

Among this tool's advantages are: the long-term political commitment of its members, greater visibility and political recognition with respect to third parties, and the ability to enter into contracts and take advantage of external financing. The main drawback is that its operations are governed by the law of only one of the countries concerned (its registered office being in Sarreguemines, FR), whereas the operational team is based in Saarbrücken in Saarland (DE), which creates disparities in terms of status within the team (staff made available by the EGTC's members). In addition, it is difficult to determine who receives the VAT for the services provided by the Eurodistrict. Lastly, the awarding of public procurement contracts takes place according to French procedures, which German service providers are not always familiar with.

#### Further information :

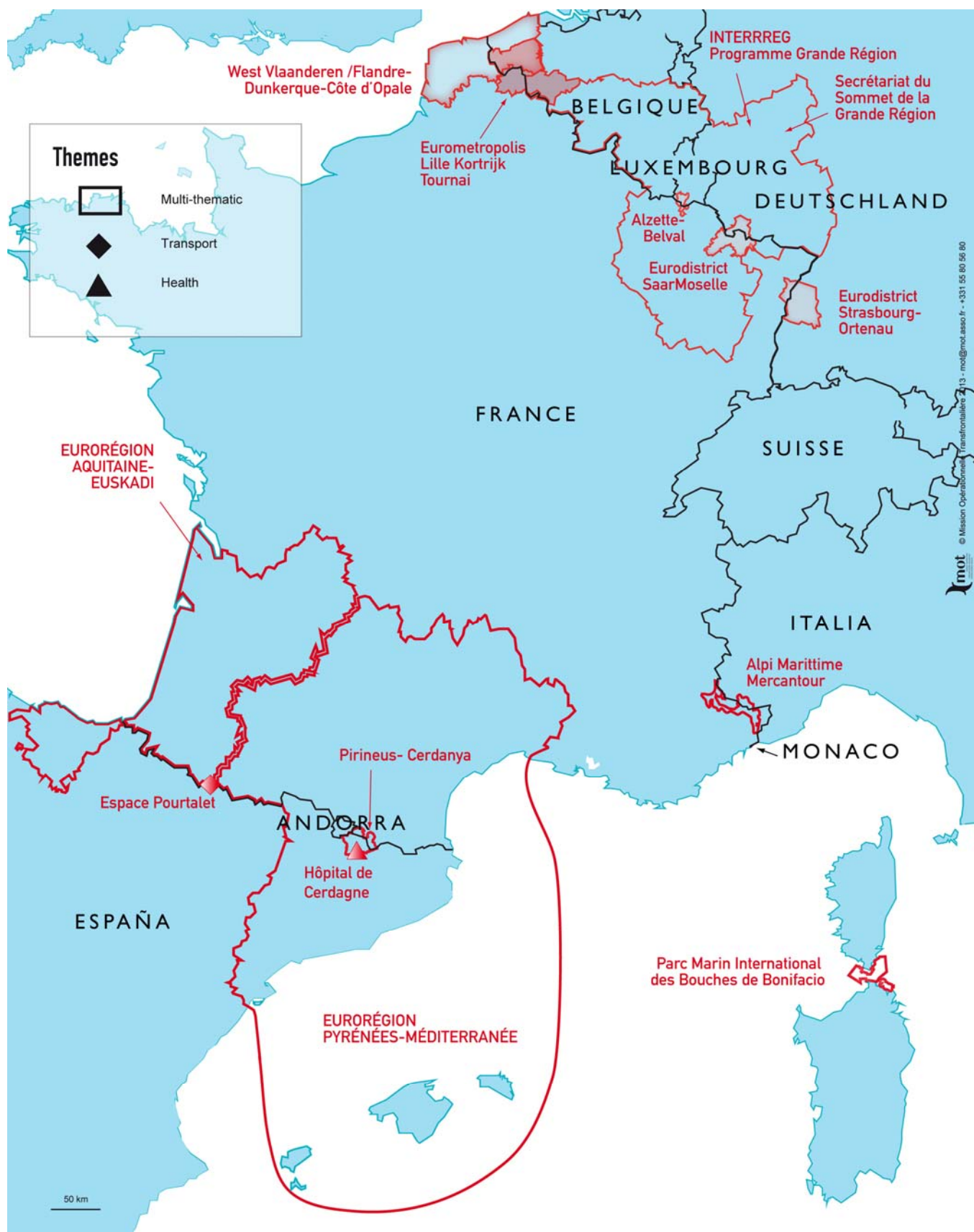
→ On the MOT's website :

<http://www.espaces-transfrontaliers.org/bdd-territoires/territoires/territoire/show/eurodistrict-saarmoselle/>

→ On the Eurodistrict's website : [www.saarmoselle.org](http://www.saarmoselle.org)



# The European Grouping of Territorial Cooperation (EGTC)





# The European Grouping of Territorial Cooperation (EGTC)

The European Parliament and the Council of the EU have approved on the 17 December 2013 a new regulation on the EGTC instrument :

**Regulation (EU) No 1302/2013 of the European Parliament and of the Council of 17 December 2013 amending Regulation (EC) No 1082/2006 on a European grouping of territorial cooperation (EGTC) as regards the clarification, simplification and improvement of the establishment and functioning of such groupings**

The Member States have to issue the necessary domestic rules or legislation for the creation procedures and the smooth functioning of the EGTCs.

This new regulation will help to clarify, simplify and improve the establishment and functioning of EGTCs.

## 1. Facilitating the establishment of EGTCs:

### • Partnership:

- Undertakings entrusted with the operation of services of general economic interest will now be able to participate in EGTCs (Article 3).
- An EGTC can now be formed by members from a single Member State and from one or more third countries neighbouring the Member State, including its outermost regions (Article 3a). This is possible under certain conditions, notably: (1) that the ability to participate in an EGTC for a member belonging to a third country or overseas territory is provided for by the legislation of the third country concerned or by agreements between the EU Member State and the third country concerned; (2) the EGTC's registered office, which determines the legal regime governing the EGTC, must be located in the EU State which the EGTC's members belong to.

### • Approval by national authorities

- Following the submission of a request to set up an EGTC, if no objection is raised by the national authorities within a six-month deadline, the request is deemed to be approved (Article 4, paragraph 3). Formal approval shall however be necessary in the Member State in which the EGTC is to have its registered office.
- The approval by the national authorities shall solely concern the EGTC's convention (Article 4, paragraph 3). Regarding its statutes, the approving authorities shall only verify that they are consistent with the convention.
- In case of non-approval, the Member State must give a statement of its reasons for withholding approval and, where appropriate, suggest the necessary amendments to the convention (Article 4, paragraph 3).

### • Accession of new members

- In case of accession of a new member from a Member State that has already approved the convention, such participation shall only be approved by this Member State (Article 4, paragraph 6).

## 2. Facilitating the functioning of EGTCs:

### • Law applicable to EGTCs

- Greater flexibility is provided for concerning the law applicable to EGTCs. The convention must now specify (Article 8, paragraph 2):
  - "(g) the applicable Union law and national law of the Member State where the EGTC has its registered office for the purposes of the interpretation and enforcement of the convention;"
  - "(h) the applicable Union law and national law of the Member State where the EGTC's organs act;
  - "(j) the applicable Union and national law directly relevant to the EGTC's activities carried out under the tasks specified in the convention;"
  - "(k) the rules applicable to the EGTC's staff, as well as the principles governing the arrangements concerning personnel management and recruitment procedures;"
- In an annex to the legislative resolution passed by the European Parliament on 20 November, a joint statement by the European Parliament, the Council and the Commission explained :
  - "Member States will endeavour, when assessing the rules to be applicable to the EGTC staff members as proposed in the draft convention, to consider the different available employment regime options to be chosen by the EGTC, be it under private or public law. "

### • Insurance required in the case of EGTCs with limited liability:

- In the case of an EGTC whose members have limited liability, any Member State concerned may require that "the EGTC (shall) take out appropriate insurance or that it (shall) be subject to a guarantee provided by a bank or other financial institution established in a Member State that it be covered by a facility provided as a guarantee by a public entity or by a Member State to cover the risks specific to the activities of the EGTC." (Article 12, paragraph 2a).



# The European Economic Interest Grouping (EEIG)

## Definition

The European Economic Interest Grouping (EEIG) is a permanent and autonomous structure with legal personality (with the ability to enter into contracts, employ staff, manage a budget, issue calls for tender, and acquire and dispose of movable and immovable property) governed by public or private law. As is the case for all cross-border structures, using the EGTC tool requires choosing the national law that will govern it, which corresponds to the law governing the place where the registered office is located; this excludes the application of transnational law.

The creation of an EEIG is open to any legal entity, whether governed by public or private law, as well as to natural persons (engaged in economic activities) that belong to different Member States of the European Union. It must be set up by at least two members belonging to two distinct States of the European Union. An EEIG may not therefore be created at one of the Union's external borders (for example with Switzerland, Monaco or Andorra).

## Legal basis

This form of structure is provided for by Regulation (EC) 2137/85, which applies to the Member States of the European Union. In addition to the European regulation, Member States' domestic legislation defines the legal regime governing EEIGs set up within their borders.

## Use

Its purpose is "to facilitate or develop the economic activities of its members and to improve or increase the results of those activities [...]. Its activity shall be related to the economic activities of its members and must not be more than ancillary to those activities" (Article 3 of Regulation 2137/85).

In practice, the EEIG has been used as a de facto tool for cross-border cooperation, in the absence of other appropriate tools, to promote cross-border economic activities, the development of a cross-border territory or to support the management of cooperation programmes (as a joint technical secretariat).

## Advantages

The advantage of setting up an EEIG is that it creates a legal person that makes it possible to involve a very broad and diverse range of partners compared with other cooperation tools. In addition, the procedures for setting up and dissolving this type of structure are relatively simple.

## Limitations

One limitation is the restricted scope of intervention, which must be related to the economic activity of its members and which excludes any activity that is purely administrative. Also, as a legal person governed by private law, the EEIG may not take the place of its members in carrying out their responsibilities (no delegation of project management).

### THE EURO 3 EEIG

This EEIG governed by Belgian law was created in 1991 by the French and Belgian chambers of commerce in the Lille-Kortrijk-Tournai Eurometropolis area.

EURO 3 aims to be a forum for exchanges, the adoption of positions and formulation of concrete proposals regarding the cross-border economic issues that affect the development of businesses, and works alongside the Eurometropolis EGTC to provide concrete services to businesses.

The EEIG structure was chosen in 1991 in the absence of another tool dedicated to cross-border cooperation and because of this tool's economic dimension. Later on, the EGTC and ECG structures were not considered since associations and non-profit organisations (such as chambers of commerce in Belgium) and EPEs (economic public establishments, chambers of commerce and industry in France) may not participate as partners in them.

This solution offers the possibility of having a formal and autonomous structure that makes it possible to signal a strong desire for cross-border cooperation and, without being a substitute for the actions of each of the members, makes it possible for the representatives of the economic sphere to speak with one voice and to adopt common positions on major projects. Other advantages of the EEIG are the simple formalities required and flexible administrative management.

#### Further information:

→ On the EURO 3's website : [www.euro3.org](http://www.euro3.org)

### THE BIHARTEAN EEIG

The BIHARTEAN is an EEIG governed by Spanish law that was set up in 2010 by the Bayonne-Basque Country Chamber of Commerce and Industry and the Gipuzkoa Chamber of Commerce.

Its remit is to support businesses in their cross-border projects, to develop cross-border economic projects, and to provide a common range of economic services and training.

The EEIG tool was chosen following a support assignment carried out by the MOT. This structure was deemed to be easier and faster to set up and also more in line with the rhythm of the businesses that the EEIG advises.

This regime was preferred to the EGTC, which demanded a much longer process to set up and which was less well-suited to a partnership formed of chambers of commerce.

#### Further information:

→ On Bihartean's website : [www.bihartean.com](http://www.bihartean.com)



# The European Economic Interest Grouping (EEIG)





# The Euroregional Cooperation Grouping (ECG)

## Definition

The Euroregional Cooperation Grouping (ECG) is a permanent and autonomous structure with legal personality (with the ability to enter into contracts, employ staff, manage a budget, issue calls for tender, and acquire and dispose of movable and immovable property) governed by public or private law depending on the location of the registered office.

This tool is quite similar to the EGTC. Both the EGTC and the GEC, present strong similarities: they are instruments of cooperation pursuing a mission of general interest, they represent a new legal entity that can carry out a project of European cooperation with or without territorial continuity between members, the types of potential members are quite similar.

As is the case for all cross-border cooperation structures, using the ECG requires choosing the national law that will govern it, which corresponds to the law governing the place where the registered office is located; this excludes the application of transnational law.

The following entities can be part of an ECG: territorial communities or authorities, States (which these authorities come under) and any entity with legal status that acts in the general interest that is not of an industrial or commercial nature and that meets specific criteria:

- the majority of the funding for its activities comes from the State, territorial communities or authorities, or similar entities
- or its management is controlled by these latter entities
- or its administrative, management or supervisory body is made up of members more than half of whom are appointed by the State, territorial communities or authorities, or similar entities.

The ECG is governed by the provisions of the agreement adopted unanimously by its founding members and its statutes, which form part of the agreement, and subsidiarily, by the law governing the place where the registered office is located. In this respect, the signatory States must choose the regime in their domestic law that the ECG will be governed by.

In terms of the participating partners, the territorial communities or authorities must have a majority of votes in the ECG's assembly.

## Legal basis

This structure was created by the third additional protocol to the Madrid Outline Convention on Transfrontier Cooperation between Territorial Communities or Authorities. Signature of this protocol commenced in 2009 and it came into force on 1 March 2013 (1 May 2013 in the case of France). At 1 December 2013, five countries had ratified the protocol: France, Switzerland, Germany, Ukraine and Slovenia.

## Use

An ECG can "promote, support and develop, for the benefit of populations, transfrontier and interterritorial cooperation between its members in their common areas of competence and in keeping with the competences established under the national law of the States concerned" (Article 1 of Protocol No 3).

This tool can be used on the territory of a Member State of the Council of Europe which has ratified the ECG protocol. An ECG may also include among its members territorial communities or authorities in a State that has not ratified the protocol. This is only possible if:

- this State has a common border with a State that has already ratified the ECG protocol and which is the State in which the ECG's is or will be located, and
- these two States sign an agreement to this effect.

## Advantages

The use of the ECG makes it possible to create a legal person which manages the cross-border project on behalf of its members. In the case of a piece of equipment or public infrastructure, the ECG becomes the owner and operator of it on behalf of its members. This tool makes possible partnerships between States and territorial authorities on either sides of national borders.

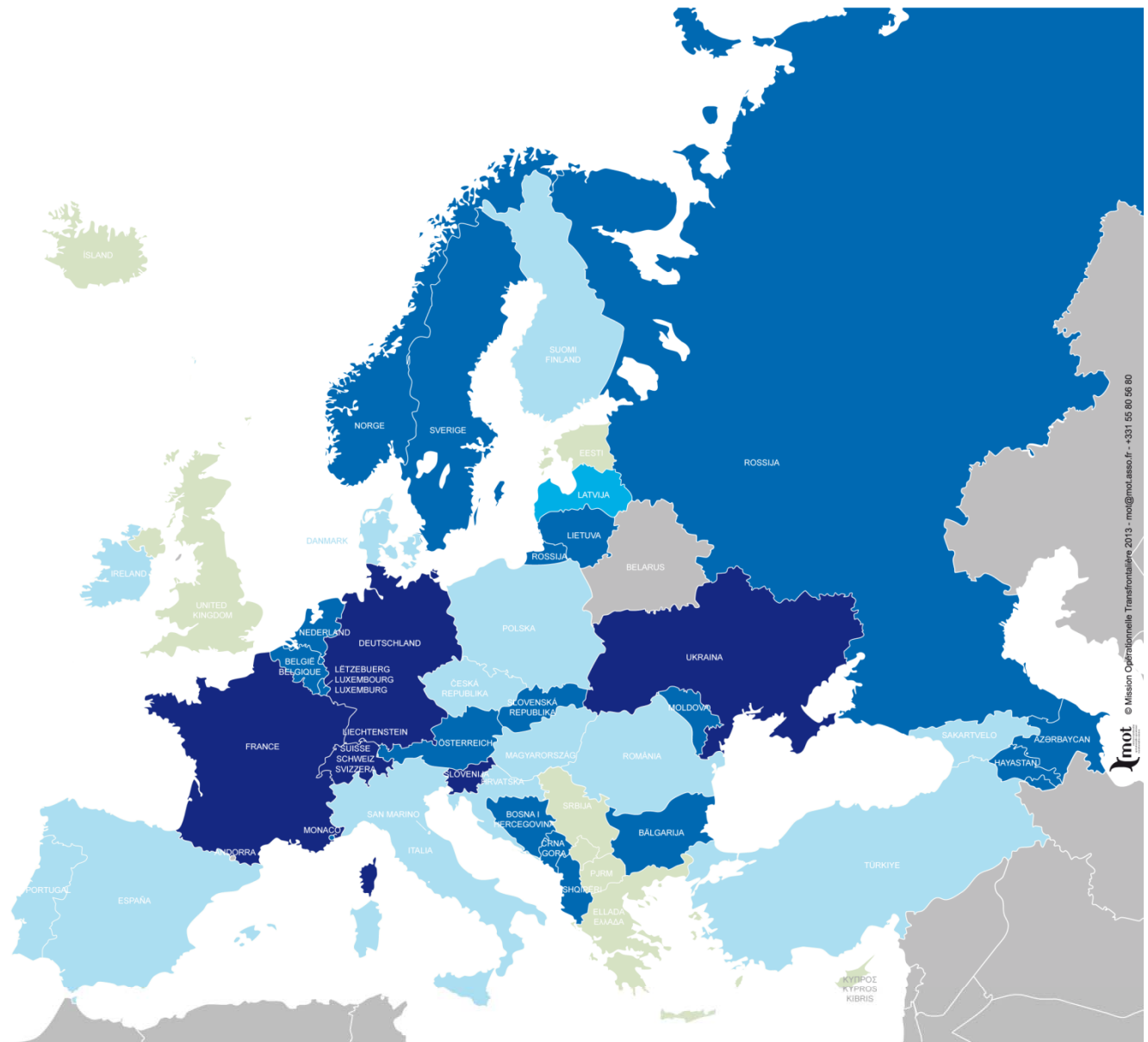
## Limitations

The legal regime for ECGs has not yet been stabilised. No ECGs have yet been set up and those States that have ratified Protocol No 3 have to adopt implementing measures to incorporate the protocol into their domestic law.

The adoption of changes to the agreement and of substantive changes to the statutes (that result in changes to the agreement) require a fresh procedure of authorisation by States which is identical to the procedure for setting up the ECG.



# The Euroregional Cooperation Grouping (ECG)



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- States where the Outline Convention of Madrid and its three additional protocols are in force
- States where the Outline Convention of Madrid, its first and its second additional protocol are in force
- States where the Outline Convention of Madrid and its first additional protocol are in force
- States where the Outline Convention of Madrid is in force
- States where the Outline Convention of Madrid is not in force



# Forms of association with a cross-border purpose

## Definition

Associations are permanent and autonomous structures with legal personality (with the ability to enter into contracts, employ staff, manage a budget, issue calls for tender, and acquire and dispose of movable and immovable property) governed by the private law applicable to the place where the registered office is located. It can be made up of regional or local authorities or other partners (public or private) located on either side of France's borders (depending on the regime governing the registered office's location).

## Legal basis

The creation of different forms of associations with a cross-border purpose is possible in France (under the regime of Act 1901; under Alsace-Moselle law, Articles 21-79 of the local Civil Code) and in the neighbouring States (Belgium, Luxembourg, Germany, Switzerland and Italy). A local authority's ability to belong to such associations depends on the regime governing associations in the place where the association's registered office is located and on the domestic law of each future member.

## Use

The use of associations as bodies of cross-border cooperation is based on practice. It is not provided for in any legal text, with the exception of the Brussels Agreement (on French-Belgian cross-border cooperation), which states that French and Belgian local authorities may set up associations governed by Belgian law.

The forms of association with a cross-border purpose make it possible to carry out actions of cross-border political and technical consultation, actions to promote a cross-border activity or project, and studies, particularly as part of cross-border strategic planning initiatives.

## Advantages

The use of this type of structure makes it possible to involve a broad and diverse range of partners and to make up for the lack of tools dedicated to cross-border cooperation. It is a flexible structure that is easy to set up and to dissolve. Associations are particularly well-suited to actions carried out downstream of operational projects, particularly cross-border governance initiatives.

## Limitations

Since associations are legal entities governed by private law they cannot take the place of member territorial authorities in carrying out their responsibilities (risk of "de facto management"). Generally, due to their limited financial resources, these bodies do not offer the same guarantees as cross-border cooperation bodies governed by public law.

### THE BASEL TRINATIONAL EURODISTRICT (ETB)

Set up in 1995, the Basel Trinational Eurodistrict (in French Eurodistrict Trinational de Bâle – ETB) is an association governed by Alsace-Moselle law that currently comprises 85 members (municipalities, cantons, a region, a department and a Regionalverband, etc.).

Following a study commissioned by the Canton of Basel (and carried out by the MOT), the EGTC structure did not appear advantageous. The tool chosen was an association governed by Alsace-Moselle law, which is moreover similar to German law.

The structure of an association has many advantages for the ETB: flexibility, a small team, external auditor, etc.

The difficulties relate to labour law (staff contracts are governed by French law, which sometimes creates difficulties for the Swiss members, which are not entirely familiar with French legislation) and the long payment periods of the European subsidies (INTERREG IV Upper Rhine programme), which are difficult for an association's cash flow.

#### Further information :

→ On the MOT's website :

<http://www.espaces-transfrontaliers.org/bdd-territoires/territoires/territory/show/eurodistrict-trinational-de-bale/>

→ On the ETB's website :

[www.eurodistrictbasel.eu](http://www.eurodistrictbasel.eu)

### THE FRANCO-ITALIAN ALPS CONFERENCE (CAFI)

The Franco-Italian Alps Conference (in French Conférence des Alpes franco-italiennes – CAFI) is an unrecognised association governed by private Italian law that was set up on 10 July 2000 by the six French departments and three Italian provinces in the border region and the Autonomous Region of the Valle d'Aosta.

The form of an association was chosen following a study that compared the different legal tools available to the future members. In 2000, the tools for cross-border cooperation between France and Italy were very limited and an association appeared to be the tool that would be easiest to put in place and manage.

After the structure's creation, the members continued to discuss the possibility of modifying the tool. The CAFI requested several times that Italy and France revise the French-Italian Rome Agreement of 1993. It began looking at the benefits and costs of the EGTC in 2010. The change to an EGTC was deemed too onerous (procedures to put in place, daily management) and without real value added compared with the association structure.

Since 2011, the CAFI's members have been working to ensure that the association's statutes comply with Italian law (with a view to applying for legal recognition). In parallel, they are planning to put the change to an EGTC back on the agenda.

#### Further information:

→ On the MOT's website :

<http://www.espaces-transfrontaliers.org/bdd-territoires/territoires/territory/show/conference-des-alpes-franco-italiennes/>

→ On the CAFI's website : <http://cafiweb.eu/>



# Forms of association with a cross-border purpose





# The Local Grouping of Cross-Border Cooperation (LGCC)

## Definition

The LGCC is a permanent and autonomous structure with legal personality (with the ability to enter into contracts, employ staff, manage a budget, issue calls for tender, and acquire and dispose of movable and immovable property) governed by public law. As is the case for all cross-border cooperation structures, using the LGCC requires choosing the national law that will govern it, which corresponds to the law governing the place where the registered office is located; this excludes the application of transnational law.

## Legal basis

This structure is provided for by two bilateral agreements on cross-border cooperation between local authorities: for the French-Belgian border, the Brussels Agreement of 2002, and for the borders between France, Luxembourg, Germany and Switzerland, the Karlsruhe Agreement of 1996.

Subsidiarily, the LGCC is also governed by the domestic law applicable to the place where the registered office is located, which will apply to a number of operating procedures: budgetary and financial management, staff management, public procurement law and taxation. LGCCs that have their registered office in France come under the regime governing "syndicats mixtes ouverts" ("open joint associations" cf. Articles L.5721-1 et seq. of the Code Général des Collectivités Territoriales).

## Use

The purpose of an LGCC is to carry out tasks and provide services that are of benefit for all of its members and fall within the scope of their respective competences, e.g. implementing projects to provide equipment, managing cross-border public services, putting infrastructures in place and implementing territorial governance initiatives. It can also take on the role of managing authority (or intermediate body) for European territorial cooperation programmes or be the vehicle for integrated territorial development tools (2014-2020 period).

## Advantages

The advantages of the LGCC stem from its status as a legal entity governed by public law, i.e. it is a unique, permanent and autonomous structure (which can employ staff, issue calls for tender and sign contracts in accordance with the provisions of ordinary law that apply to bodies of the same nature in the State in which it has its registered office).

The LGCC can manage the cross-border project on behalf of its members; in the case of a piece of equipment or a public infrastructure, the LGCC becomes the owner and operator of it on behalf of its members.

## Limitations

The list of potential members of LGCCs is limited: only the territorial authorities and public bodies mentioned in the Karlsruhe Agreement and the Brussels Agreement may participate in and set up this type of structure.

An LGCC's activities must be exclusively cross-border in nature, be of benefit to all of its members and fall within the scope of their respective competences.

### THE EUROPA 1 LGCC

The Europa 1 LGCC, which is governed by French law and was set up in 2007 by the Bas-Rhin Fire Service, the Bas-Rhin Department and the Ortenaukreis (Germany), operates the first cross-border fireboat in Europe. Its tasks include notably putting out fires, supplying land-based equipment with water, and rescuing and evacuating passengers.

The cross-border legal forms of the EEIG, GIP (groupement d'intérêt public - public interest grouping) or SEM (société d'économie mixte - semi-public company) were not appropriate and the EGTC did not yet exist at the time when it was decided to create the structure in 2005. The LGCC therefore appeared to be the tool that was best suited to the project, all the more so since other LGCCs (which the Bas-Rhin Department and the Ortenaukreis were members of) already existed in the Upper Rhine and had demonstrated their effectiveness.

The LGCC that was set up has several advantages: flexible management, a rotating chairmanship, and funding that constitutes mandatory expenditure for the member territorial authorities. The LGCC's limitations are felt above all at the time of its creation (in France, procedures for the authorisation of its establishment involving processes of approval at local and national levels; specific national rules).

#### Further information:

→ On the website of the Bas-Rhin Fire Service (SDIS 67): <http://www.sdis67.com/fr/le-bateau-pompe-europa-1/le-bateau-pompe-europa-1>

### THE GREATER GENEVA LGCC

This LGCC governed by Swiss law was set up in 2012 and brings together French and Swiss territorial authorities (from the local level to that of the region/canton) around the French-Vaud-Geneva conurbation.

Its establishment followed on from a long process of cooperation, which notably included the creation of the French-Geneva Regional Committee in 1973 and the implementation of the Conurbation Project from 2007 onwards.

Several stages were gone through in the LGCC's creation. In 2009, the idea arose of having a structured dialogue partner for the Swiss Confederation to discuss projects in this territory. At the time, the LGCC was the only applicable tool to structure a permanent system of legal and administrative governance for this French-Swiss conurbation.

Discussions are under way to determine whether it would be advantageous to replace the LGCC structure by an EGC or an EGTC, with notably the participation of the French State as a full member.

#### Further information

→ On the MOT's website:

<http://www.espaces-transfrontaliers.org/bdd-territoires/territoires/territory/show/grand-geneve/>

→ On the Greater Geneva's website : [www.grand-geneve.org](http://www.grand-geneve.org)



# The Local Grouping of Cross-Border Cooperation (LGCC)





# The cross-border *consorcio*

## Definition

The cross-border *consorcio* is a permanent and autonomous structure with legal personality (with the ability to enter into contracts, employ staff, manage a budget, issue calls for tender, and acquire and dispose of movable and immovable property) governed by Spanish public law. This tool may be used by French and Spanish territorial authorities, their groupings, and the Andorran Cross-Border Cooperation Body since Andorra's signature of the Bayonne Treaty.

## Legal basis

This tool is governed by the Bayonne Treaty and subsidiarily by national Spanish law (which applies to certain aspects of the structure's operations: budgetary and financial management, staff management, public procurement law and taxation). In terms of national Spanish legislation, Act 7/1985 of 2 April 1985 governing the basis for the local regime applies to *consorcios*. It was supplemented by the Royal Legislative Decree 781/1986 of 18 April 1986 (Articles 57-87).

If one or more autonomous communities become members of a cross-border *consorcio* without other Spanish local authorities being members, this *consorcio* is governed by Act 30/1992 on the legal regime for public administrations (this is the case for the *Consorcio* of the Working Community of the Pyrenees, see below).

In other cases, the specific legislation of the autonomous community in which the *consorcio* will have its registered office applies, irrespective of the territorial authorities that participate in it (foreign local authorities or Spanish local authorities that are governed by the law of another autonomous community).

## Use

The purpose of a *consorcio* is to develop intangible or tangible cross-border projects, to set up and manage public equipment or services and to lead cross-border governance in its members' common areas of competence. It can also take on the role of managing authority (or intermediate body) for European territorial cooperation programmes or be the vehicle for integrated territorial development tools (2014-2020 period).

## Advantages

A cross-border *consorcio* is a legal entity governed by public law, i.e. it is a unique, permanent and autonomous structure, which in addition has a very flexible operating regime. The *consorcio* can manage the cross-border project on behalf of its members. In the case of a piece of equipment or a public infrastructure, the *consorcio* becomes owner and operator of it on behalf of its members.

## Limitations

The creation of a *consorcio* is restricted solely to the regional and local authorities listed in Article 2 of the Bayonne Treaty (mainly authorities at the municipal, intermediate and regional levels, and their groupings) and it may only have its registered office in Spain since it is governed exclusively by Spanish law. Another limitation is the absence of a standard status given that *consorcios* are governed by the different legislations of the Spanish autonomous communities.

### THE CONSORCIO OF THE WORKING COMMUNITY OF THE PYRENEES (CTP)

The *Consorcio* of the Working Community of the Pyrenees (*Consorcio de la Communauté de travail des Pyrénées* – CTP) was created in 1983 in order to give the Pyrenees a cross-border cooperation structure. In 1993, this community, whose members were the French regions and Spanish autonomous communities in the border area, as well as the Principality of Andorra, set itself up as an association.

In 2005, it adopted the status of a *consorcio*, a legal entity under Spanish law. Having been made up solely of Spanish and French partners to begin with, in 2012 Andorra joined the *consorcio*, having signed the Bayonne Treaty. The status of cross-border *consorcio* enabled the CTP to become the managing authority for the French-Spanish cross-border cooperation programme (POCTEFA) for the 2007-2013 period.

Between 2011 and 2012, the original association was wound up.

#### Further information:

→ On the MOT's website:

<http://www.espaces-transfrontaliers.org/bdd-territoires/territoires/territoire/show/communaute-de-travail-des-pyrenees/>

→ On the CTP's website:

[www.ctp.org](http://www.ctp.org)

### THE CONSORCIO BIDASOA-TXINGUDI

The *Consorcio* Bidasoa-Txingudi was set up by three border municipalities: Hendaye (FR), Irun and Hondarribia (ES).

In 1993, these local authorities signed a cooperation agreement to create a "Bidasoa-Tixngudi Eurodistrict" aimed at promoting economic, social and cultural cooperation in this cross-border territory.

The signature of the Bayonne Treaty (1995) marked an important advance since it gave territorial authorities an appropriate legal framework to effectively implement the 1993 agreement.

Thus, on 23 December 1998, the municipal authorities of Irun, Hondarribia and Hendaye set up the *Consorcio* Bidasoa-Txingudi on the basis of an inter-administrative cross-border cooperation agreement.

#### Further information:

→ On the MOT's website:

<http://www.espaces-transfrontaliers.org/bdd-territoires/territoires/territoire/show/consorcio-bidasoa-txingudi/>

→ On Bidasoa-Txingudi's website:

[www.bidasoa-txingudi.com](http://www.bidasoa-txingudi.com)



# The cross-border *consorcio*





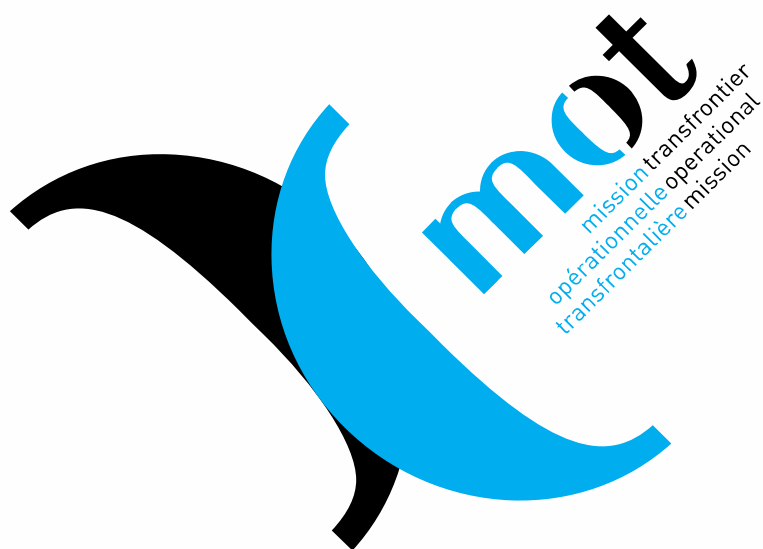
# Summary table

Instrument	Applicable law	Scope of application	Legal character	Purpose	Possible activities	Possible partners
<b>Cooperation agreement</b>	CGCT* Bilateral agreements (Brussels, Karlsruhe, Rome, Bayonne) Legal regime chosen in the agreement	All of France's borders	Contractual commitment	Purpose in the signatories' common competences	Tangible and intangible projects	Territorial authorities
<b>EGTC</b>	Regulation (EU) 1302/2013, amending Regulation (EC) 1082/2006  National legislation (law governing location of registered office)	The EU's internal borders and external borders (under certain conditions)	Legal person governed by public law (in FR, DE, IT, ES, LUX) or private law	To facilitate and promote territorial cooperation in particular, including cross-border, transnational and/or interregional cooperation	Tangible and intangible projects Management of European funds	Member States or authorities at national level, regional and local authorities, public undertakings (Directive 2004/17/EC), bodies governed by public law (Directive 2004/18/EC), undertakings entrusted with providing SGEIs
<b>EEIG</b>	Regulation (EC) 2137/85 National legislation (law governing location of registered office)	The EU's internal borders	Legal person governed by private law	To facilitate or develop the economic activity of its members, to improve or increase the results of this activity	Exclusion of purely administrative activities Activities linked to its members' economic activity	Legal entities governed by public or private law Natural persons engaged in economic activity
<b>ECG</b>	Protocol No 3 to the Madrid Outline Convention  National legislation (law governing location of registered office)	Member States of the Council of Europe that have ratified the 3 <sup>rd</sup> Protocol and their neighbours (under certain conditions)	Legal person governed by public or private law	To promote, support and develop cross-border and interterritorial cooperation	Tangible and intangible projects in its members' common areas of competence	States, territorial authorities, legal entities established for the specific purpose of meeting needs in the general interest (under certain conditions)
<b>Association</b>	National legislation (law governing location of registered office)	FR, DE, LUX, BE, IT, CH	Legal entity governed by private law	To support cooperation without taking the place of its members	Tangible and intangible projects	Legal entities governed by private or public law Natural persons
<b>GLCT</b>	Karlsruhe Agreement Brussels Agreement	FR, DE, LUX, CH borders FR-BE border	Legal entity governed by private law	To carry out actions and provide services that are of benefit to its members	Tangible and intangible projects Management of European funds	Territorial authorities mentioned in the Karlsruhe Agreement and the Brussels Agreement
<b>Consorcio</b>	Bayonne Treaty	FR-ES border (and Andorra)	Legal entity governed by Spanish public law	To put in place and manage public equipment or services To coordinate members' decisions	Tangible and intangible projects Management of European funds	Territorial authorities mentioned in the Bayonne Treaty









**Ce guide est cofinancé par l'Union Européenne dans le cadre du programme Europ'Act.  
L'Europe s'engage en France avec le Fonds européen de développement régional.**

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