



“Cross-border territories: Day-to-day Europe”



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Workshop 12

“The legal instruments of cross-border cooperation”

❖ **Presidents**

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❖ **Moderation of the discussion**

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❖ **Presentation of the framing memorandum**

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❖ **Session 1: Legal instruments and cross-border governance**

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❖ **Session 2: Legal instruments and operational cross-border projects**

- EUROPA 1, fire-boat on the Rhine (FR/DE)

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❖ **Presentation of the recommendations**

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State of play: a legal framework ill-adapted to the realities of cross-border territories

According to the Council of Europe, cross-border cooperation encompasses any action intended to develop neighbourly relations between territorial institutions or authorities located on either side of borders.

Faced with “border effects” (growth of flows; competition between territories and between their actors; economic and social interdependencies; different institutional, political, legal and cultural systems on either side of borders; etc.) and with the distortions and opportunities that they generate, cross-border cooperation actors have developed joint strategies and policies to ensure the quality of life of populations and the development of cross-border living areas.

The heterogeneous legal environment, a source of legal complexity and even uncertainty, has significant consequences for the daily life of the inhabitants who spend time on both sides of the border (border workers, schoolchildren, persons seeking treatment in a hospital located in the neighbouring state, etc.), but also for all public- and private-sector actors involved in cross-border affairs.

This management of “border effects” involves identifying savings of resources and means through pooling of knowledge and competencies.

This is achieved by cross-border cooperation projects: joint definition of strategic priorities for the future of the cross-border territory (observation and planning), cross-border establishment and management of public services and facilities, and sponsorship of “integrated” cooperation projects (Eurodistrict, Euroregion).

The initiation of such projects requires first of all that the local authorities at least have the power to sign cooperation agreements with their neighbours. The projects also need a satisfactory legal framework providing legal security and stability, enabling long-term commitment and good management.

By “legal framework”, this workshop refers to:

- the regulatory environment within which the populations of cross-border territories live
- the legal structuring of cooperation projects. The current tendency is to strengthen the legal structuring of cooperation projects through the establishment of joint cross-border structures.

Identification of needs

❖ Need for political leadership of cross-border cooperation: political governance

Cross-border governance, in the political sense of the term, can be defined as a process in which the political decision-makers concerned (at local, regional and national levels) discuss together:

- the content of the cross-border project, in order to meet the needs of the territory and its inhabitants,
- the definition of a legal framework adapted to the specific aspects of cross-border cooperation¹.

The reality of integrated and sustained cross-border projects necessitates prior expression of a strong shared political will on either side of the border, enabling the definition of joint strategies and actions on each topic of cooperation.

Cross-border governance enables notably:

- empowerment of political decision-makers,
- establishment of coordination and arbitration structures,
- better acceptance of the law of the neighbouring state: cross-border cooperation projects remain subject to the law of one of the partners, a situation leading to a certain distrust of partners subject to the law of the other state. In this context, governance structures generate greater acceptance of non-national regulations.

❖ Need for a cross-border legal “toolbox”

- Typology of legal instruments for cross-border cooperation

The margin for manoeuvre of authorities with regard to cross-border cooperation differs from one border to another. It depends as much on the institutional capacity of the authorities to sign cooperation agreements with other authorities, their regulatory powers in the areas of cooperation (according to progress in decentralisation) and the permeability of domestic law² as on the existence of agreements between states defining cooperation procedures.

Although changes in the legal framework of cross-border cooperation are dependent on the will of the states³, local cooperation actors have used all the legal instruments available in domestic law, bilateral agreements and Community law to formalise their cooperation projects. Some of these instruments are dedicated to cross-border cooperation (the local grouping for cross-border cooperation (LGCC)⁴ and the European grouping of territorial cooperation (EGTC)⁵, others are used by default.

The table below gives a typology of the legal instruments used for the implementation of cross-border projects on European borders. They can be used by cross-border actors according to their legal form, the domestic law that governs them and the international undertakings given by the states to which they belong.

Beside each legal form, examples are given of the states where that legal form is used.

¹ See the sheet on the Lille-Kortrijk-Tournai Eurometropolis

² Under French law the capital of *sociétés d'économie mixte* (institutionalised public-private partnerships) is open to foreign local authorities of neighbouring countries.

³ See Article 152 of the Treaty establishing the European Community

⁴ The LGCC was introduced by the 1996 Karlsruhe agreement between France, Luxembourg, Germany and Switzerland and the 2002 Brussels agreement between France and Belgium.

⁵ Community regulation 1082/2006 of 5 July 2006.

Typology of cross-border cooperation instruments used on European borders

Legal basis Type	Domestic law	Cross-border cooperation agreements between states	Community law
Cooperation agreement	Private-law agreement (IT) Public-law agreement	Cross-border cooperation agreement (BE,DE,LU,FR,CH,IT,ES, etc.)	
Non-profit private structure	Association (BE,LU,DE,FR,IT, etc.) Foundation (NL, CH, etc.)		<i>European association*</i> European economic interest grouping EGTC under private law
Public-private partnership	Cross-border SEML (local PPP) (FR)		
Public-law structure	Consorcio (ES) European District (FR)	Local grouping for cross-border cooperation (BE,DE,LU,FR,CH)	EGTC under public law

**Community regulation under discussion since 1992*

- **Typology of cross-border cooperation projects**

The process of legal structuring of a cross-border project must proceed step by step, without short-cuts. The legal instruments (simple agreement or joint structure) must be adapted according to the border⁶, typology and project maturity.

Project content changes over time and the legal instrument must be adapted to the scope of the project. Cooperative projects are iterative, not linear. They change and develop in terms of partnerships and objectives as the various partners progress in understanding of the territory, definition of the issues and launching of the first projects.

Updatable projects

For a cooperation project to be successful, the outline and objectives of a project territory must be defined, representing a political will shared on either side of the border. They must enable the formation of new solidarities and the establishment of new economic, cultural and social links between local actors on either side of the border.

The steps in cross-border cooperation can be broken down as follows: 0. Ignorance; 1. Collaboration to get to know each other (identification of needs and common issues); 2. Coordination; 3. Coproduction (projects).

⁶ As stated previously, the range of instruments available on each border depends mainly on the signing of agreements between states.

Diversified contents

Cross-border strategic planning

Cross-border “strategic planning” takes the form of the formalisation of a common outlook, the preparation of an overall project for the territory (in the form of a charter, a white paper, a set of objectives) and concrete cross-border projects in different areas. These elements, defined jointly, must be transposed into the respective local planning documents.

It is usually formalised by a cooperation agreement signed between the partners. This approach, which has not been implemented on all cross-border territories, nevertheless plays a strategic role, since it enables overall definition of planning issues and coordinated development of the cross-border territory.

Establishment and management of cross-border services and facilities

The operational phase covers investment in and implementation of the cross-border projects of local actors. It concerns both the establishment of cross-border services (services to persons, transport, tourism, social or cultural action, etc.) and the provision of cross-border facilities and developments. The partners must identify novel, experimental solutions for operating the service or facility on the scale of the cross-border territory by combining the various mechanisms for funding, for action by the partners and for personnel recruitment on either side of the border.

Integrated projects in cross-border territories

The legal framework provides a conventional response to the establishment and management of cross-border public services and facilities.

In order to last, cross-border cooperation must not be limited to individual projects. Some cross-border territories have introduced “integrated projects” based on overall political leadership of the territory, in order to provide a joint response to the expectation and needs of the inhabitants.

These projects take various names (Eurocity, Eurodistrict, Euroregion) according to the territorial scale concerned. From the legal point of view, continuity of cross-border projects must be ensured within the framework of a permanent organisation. This organisation is established using cross-border cooperation instruments dedicated initially to the management of cross-border public services and facilities (LGCC, European District under French law, etc).

Multi-level cross-border governance: a vertical and horizontal partnership

Multi-level governance aims to achieve organisational, territorial and institutional cohesion over a cross-border territory by promotion of dialogue between all the public and private actors at local, regional and national levels concerned by the development of the cross-border territory.

It is an essential component of the preparation of viable cross-border cooperation projects based on a horizontal partnership (all the local private and public actors concerned must participate in project definition and implementation) and/or on a vertical partnership (between the political and technical levels). The objectives are as follows: political leadership, long-term vision and knowledge of the socio-economic and cultural realities of the cross-border living area.

The EGTC is likely to play a role in strengthening cross-border governance by allowing a State, with its regulatory power, to be a member of a cross-border structure alongside local authorities. This new instrument is likely to provide cross-border cooperation actors with a “forum” for discussion in order to draw up innovative and ambitious measures adapted to cooperation actions.

Interim conclusion: which instruments to which projects?

	Identified need	Examples of instruments (refer to project sheets) <i>*Structures being formed</i>
Strategic planning	Definition of a joint strategy for the cross-border territory (Charter, white paper, etc.) Transposition into local planning documents on either side of the border	Cross-border cooperation agreement
Management of services and facilities	Implementation of a public service or facility on the scale of a cross-border territory by combining the various mechanisms for funding, for action by the partners and for personnel recruitment on either side of the border.	LGCC Europa 1, Fireboat on the Rhine (FR-DE) LGCC Cross-border public transport (CH-FR) SEML Initialité (FR-BE) EEIG Sanicademia (IT-AU) EGTC Cerdagne cross-border hospital (FR-ES)*
Integrated projects	Political leadership of the cross-border territory, in order to provide a joint response to the expectations and needs of the inhabitants, topic by topic. Ensure continuity of the cross-border project within the framework of a permanent organisation.	LGCC Regio PAMINA (FR-DE) Foundation under Dutch law, Meuse-Rhine Euroregion (BE-DE-NL) EGTC Eurodistrict Oderland-Nadodrze, EDON (DE-PL)*
Multi-level governance	Organisational, territorial and institutional cohesion over a cross-border territory by promotion of dialogue between all the public and private actors at local, regional and national levels concerned by the development of the cross-border living area.	EGTC "Alps/Upper Adriatic" Euroregion (IT-AU-SI-HR)* EGTC Lille-Kortrijk-Tournai Eurometropolis Eurodistrict (FR-BE)* EGTC EIXO ATLANTICO (ES-PT)*

Proposal for recommendations

Support and guide the development of legal instruments for cross-border cooperation

Recommendation 1: Promote the capitalisation of experience by setting up databases identifying good practices⁷ and networking cooperation actors, in particular those involved in the establishment of EGTCs.

Recommendation 2: Develop technical assistance with the operational and financial arrangements for cross-border projects on European borders⁸ (implementation of individual projects and governance of territory projects).

Offer an adequate legal “toolbox” to actors

→ Towards adaptation and coordination of domestic law on cross-border matters

Recommendation 3: Recommend to legislators that they adapt the domestic legal framework to cross-border cooperation, border by border:

- adapt the legal environment to the realities of cross-border territories, including through the promotion of innovative legal solutions⁹,
- allow participation by foreign local authorities in instruments or bodies already defined in domestic law¹⁰.

In compliance with a principle of reciprocity, these initiatives, taken on one side of the border, must be followed by similar measures on the other side of the border¹¹.

Recommendation 4: Promote the signing of bilateral or multilateral agreements, the establishment of joint committees, intergovernmental conferences, etc., to facilitate discussion on obtaining consistency of the domestic legislations on either side of borders.

Recommendation 5: Ensure that the domestic law of the 27 European Union member states is made compatible with the EGTC regulation as quickly as possible.

Recommendation 6: Ensure the ratification of the Madrid framework agreement and its supplementary protocol, and monitor its effective application in domestic law.

→ Facilitate access of third countries to the EGTC

Recommendation 7: Ask the Community legislator to amend the EGTC regulation to authorise the establishment of EGTCs between a single EU member state and a third country, allowing the EGTC to be used for bilateral operational projects¹².

Recommendation 8: Ask the legislator to allow the most favourable possible interpretation of the EGTC regulation so that a third country may participate in an EGTC when only one of the member states providing members of the EGTC has signed an agreement with that third country¹³.

⁷ Refer to the EGTC expert group of the Committee of the Regions: <http://cor.europa.eu/en/activities/egtc.htm>

⁸ Calling upon the know-how acquired by the MOT network, for example, and on the future EUROMOT.

⁹ E.g. the right of experimentation under French law.

¹⁰ Within the framework of the 1995 Bayonne treaty (between France and Spain), the Spanish authorities permit French local authorities to be members of *consorcios*.

¹¹ France has adopted in its national law a measure enabling the establishment of European districts under French law (on the LGCC model) on all French borders. However, unless the neighbouring states adopt regulations allowing local authorities to be members of a European district, this initiative cannot achieve the expected result.

¹² Article 3 paragraph 2 of regulation 1082/2006: “An EGTC shall be made up of members located on the territory of at least two Member States.”

¹³ Preamble 16 of regulation 1082/2006: Entities from third countries can participate in an EGTC “[...] where the legislation of a third country or agreements between Member States and third countries so allow.”