

**SIMILARITIES AND DIFFERENCES OF INSTRUMENTS AND
POLICIES OF THE COUNCIL OF EUROPE AND THE EUROPEAN
UNION IN THE FIELD OF TRANSFRONTIER CO-OPERATION**

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Summary

The importance of transfrontier/cross-border co-operation (TFC/CBC) as an instrument of building Europe's unity and promoting prosperous economic and social development has been growing considerably since the 1950s. The expansion of TFC/CBC was particularly noticeable during the last fifteen years due to the substantial political transformations in Central and Eastern Europe - the collapse of communism and the establishment of democratic political systems. Another significant factor of the development of transfrontier co-operation was the continued process of integration between the Western European countries within the framework of the European Union. These two processes converged as certain countries from Central and Eastern Europe gained the status of EU candidate countries. Their efforts were finally met with success when the EU enlargement towards the East became reality in May 2004.

Since in the processes of political transformation and European integration transfrontier cooperation was of vital importance, the two major European institutions – the Council of Europe (CoE) and the European Union (EU) – have made it their priority. Despite the different nature of the CoE's and EU's instruments, they both serve to promote the balanced regional and local development and to reduce the barriers resulting from the existence of the international borders.

The Council of Europe focuses on the following areas of TFC: 1.) drafting international legislation and setting standards relating to transfrontier co-operation, 2.) promotion of the idea of transfrontier co-operation, 3.) providing legal advisory and training assistance to the concerned bodies and the creation of a database on TFC.

The European Outline Convention on Transfrontier Co-operation, adopted in 1980 in Madrid, is of vital importance as it has laid foundations for further development of TFC in Europe, and constitutes a basis for legislation on TFC in Europe. The Convention deals with the problems of establishing and developing transfrontier co-operation on the basis of agreements concluded between local authorities on both sides of the border. Regional and infrastructure development, protection of the environment and prevention of natural disasters were defined as the main fields of co-operation. In the 1990s the Convention was supplemented with two protocols which granted regional and local authorities the power to conclude transfrontier cooperation agreements (Additional Protocol) and regulated the question of co-operation

between non-adjacent territories, the so-called “interterritorial co-operation” (Protocol No. 2).

The remaining instruments regulating TFC are the Committee of Ministers’ Political Declarations and Recommendations addressed to Member States. Political Declarations express the CoE’s political will to develop TFC and urge the CoE’s bodies and the Member States to undertake particular initiatives. Recommendations relating to particular actions in the field of TFC propose specific solutions that are recommended to the Member States.

In order to promote the idea of TFC, the Council of Europe focuses on the organisation of conferences and seminars devoted to the related issues. The conferences and seminars are aimed at representatives of central, regional and local authorities, as well as NGOs and concerned experts. The promotion of the concept of TFC also allows for improving the effectiveness of TFC mechanisms and for stimulating TFC in particular regions. Moreover, the Council of Europe seeks to provide advisory and legal assistance to the bodies concerned with TFC, especially in reference to the adoption and implementation of the Madrid Outline Convention and its additional protocols’ provisions.

As distinct from the CoE’s, the EU’s instruments provide above all financial and technical support to cross-border initiatives. The EU finances the development of CBC through programmes implemented under the Structural Funds. The most important programmes are Interreg, Phare, Tacis and Cards, the first applying to border areas within the EU and the two latter to the EU external borders in particular regions of Europe.

Interreg is the largest of the four programmes, and its third programming period (2000-2006) is currently under way. Under Interreg three types of cross-border co-operation are funded: Strand A concerns co-operation between authorities of adjacent regions; trans-national cooperation involving national, regional and local authorities is financed under Strand B; finally, Strand C promotes interregional co-operation. Interreg III A’s priorities include stimulating balanced development of cross-border regions through the implementation of infrastructure projects, projects strengthening local economic centers, natural resources management schemes and “soft” cultural and social projects. Interreg’s vital component is the Interact programme designed to facilitate co-ordination of Interreg’s activities and the exchange of experiences at Community level.

The Phare CBC programme, addressed to candidate countries, aims to develop cross-border co-operation in the regions adjacent to the EU, with the emphasis put on infrastructure schemes, the development of local economies and, to a lesser extent, socio-cultural projects.

Tacis (aimed at Western Newly Independent States) and Cards (the Western Balkans countries) fosters cross-border co-operation outside the EU. Since 2004 the co-ordination of the two programmes with Interreg has been strengthened to allow the implementation of common projects in the regions covered by different programmes.

The essential changes will be made to the EU's instruments of CBC after 2007. In order to improve the effectiveness of CBC, the EU is planning to launch new programmes: „European Territorial cooperation” objective of Structural Funds implemented by European Grouping of Crossborder Co-operation (EGCC), Instrument for Pre-Accession (IPA) and the European Neighbourhood and Partnership Instrument (ENPI). EGCC is intended to foster CBC within the EU through the creation of a common legal basis for bodies from different countries, concerned with EU cross-border projects. The two remaining programmes IPA and ENPI, oriented towards the neighbour countries of the EU, will replace the existing Phare, Tacis and Cards. IPA will apply to countries with membership perspectives (South Eastern European countries), whereas ENPI will concern all other EU neighbours. Both programmes accentuate the importance of cross-border co-operation.

Both the Council of Europe and the European Union seek to achieve the same goal in the field of cross-border co-operation which is the construction of an integrated and stable Europe. Both institutions put great emphasis on the sub-national level of the implementation of CBC projects, the commitment of regional and local actors and their partnership in the implementation of common initiatives based on joint programming and management.

The recourse to both the CoE's and EU's instruments of cross-border co-operation is voluntary and optional. The euroregion structure is the main form of institutionalisation of CBC developed by the two institutions. However, despite many similarities between the CoE's and EU's instruments of CBC, they present several differences. The EU provides mainly financial assistance, whereas the CoE encourages cross-border co-operation by means of legal instruments and through the promotion of scientific and research work. The CoE's instruments are of a universal nature and all European countries can benefit from them. The EU programmes are geographically diversified and can only be applied to particular European regions. The status of particular

countries in relation to the EU (candidate countries, countries with membership perspectives, neighbour countries) is also becoming an important criterion. Thanks to its substantial funds the EU is able to develop cross-border co-operation in a more comprehensive manner through the implementation of varied programmes ranging from large infrastructure schemes to small-scale cultural projects. The CoE acts in a more selective manner focusing on chosen aspects of transfrontier co-operation (e.g. the legal framework for TFC). Despite these differences further strengthening and co-ordination of co-operation between the Council of Europe and the European Union in the area of European cross-border co-operation is necessary. The model of such co-operation is the complementarity of initiatives and activities of both the institutions in the area of TFC/CBC.

I. Introduction

Transfrontier Co-operation (TFC) is one of the most important instruments for building an integrated and united Europe. TFC allows for reducing the negative consequences of the existence of international borders; consequences which can be seen in many spheres of life, particularly at regional and local levels. The main objective of TFC is to overcome these barriers resulting from socio-economic differences between border areas. This aim is achieved through the co-operation between local communities in the implementation of projects concerning infrastructure, economy, joint ecosystem management, cultural exchanges and people-to-people contacts in border regions. TFC also plays a key role in defusing problems connected with security at frontiers and the global security of the European continent, with particular reference to border areas and the countries which are not the part of the Schengen area. Over the last fifty years transfrontier co-operation in Europe proved itself to be an essential instrument for preventing conflicts, fostering the continent's unity, integrating the European nations and promoting economic development of often peripheral border regions.

Since the beginning of the 1990s considerable development of TFC has been observed, which is due to three factors. The first one is the growing integration within the EU where crossborder co-operation is an important instrument for strengthening the EU's cohesion. Secondly, given the EU enlargement, cross-border co-operation constitutes a significant instrument for integrating new EU Member States. Moreover, cross-border co-operation plays a key role in fostering neighbourly relations between the EU Member States and adjacent

states as it serves as a major instrument for deepening the co-operation between the border areas of the EU Member States and non-member neighbouring countries.

The development of cross-border co-operation in Europe has therefore become one of the priorities of the two major European institutions – the Council of Europe (CoE) and the European Union (EU). The Council of Europe’s Vienna Declaration of 9 October 1993 stipulates that: “The creation of a tolerant and prosperous Europe does not depend only on cooperation between States. It also requires transfrontier co-operation between local and regional authorities, without prejudice to the constitution and the territorial integrity of each State. We urge the Organisation to pursue its work in this field and to extend it to cooperation between non-adjacent regions.”¹ The European Union, among other documents, underlines in its Explanatory Memorandum to the EU Commission’s proposal of the Regulation of the European Parliament and of the Council establishing a European grouping of cross-border cooperation (EGCC) that: “The harmonious development of the entire community territory and reinforced economic, social and territorial cohesion imply a stronger cross-border co-operation and the adoption of measures to improve the implementation conditions for cross-border co-operation.”²

In order to realise the objectives of cross-border co-operation both the Council of Europe and the European Union have elaborated a number of instruments which, despite the similar definitions of the aims of cross-border co-operation and related issues, differ in certain aspects. The EU allocates far more substantial funds to cross-border co-operation and its instruments are more developed. Although the Council of Europe’s financial resources and the scope of its actions are more limited, the institution’s contribution to the development of transfrontier co-operation remains significant. Firstly, the Council of Europe groups together all European countries, including the non-EU members. In spite of a rather limited scope of issues covered by the Council of Europe’s instruments of transfrontier co-operation (they focus on “soft” projects, with the exclusion of “hard” infrastructure schemes), its commitment to the selected fields is of great importance (e.g. establishment of international standards of transfrontier co-operation).

¹ *The Vienna Declaration*, Council of Europe, 9 October 1993, www.age-of-the-sage.org/vienna_declaration.html

² *Proposal for a Regulation of the European Parliament and of the Council establishing a European grouping of cross-border cooperation (EGCC)*, COM(2004) 496 final, 14 July 2004, http://europa.eu.int/eur-lex/en/com/pdf/2004/com2004_0496en01.pdf

The present report's objective is the presentation and comparison of the Council of Europe's and the European Union's instruments of cross-border co-operation. The first two chapters outline the characteristics of the instruments of cross-border co-operation employed by the two institutions and focus on particular programmes.

The final part is devoted to the comparison of the mechanisms used by the two institutions in the field of transfrontier co-operation, with the particular emphasis put on the presentation of similarities and differences between them.

II. Terminology

The two institutions, the Council of Europe and the European Union, use different terminology in the field of transfrontier co-operation, particularly in reference to the main term "transfrontier/cross-border co-operation"³. In its nomenclature the CoE applies the term "transfrontier co-operation" in the context of the co-operation between communities divided by an international border and international relations between their local or regional authorities. The Madrid Outline Convention and its additional protocols use this term in reference to such relations which are not directly subject to the regulations of international law.

The notion of "cross-border co-operation", which in fact has the same meaning as transfrontier co-operation, is used by the EU institutions - the European Commission and the Committee of the Regions. "Cross-border co-operation" is defined as the co-operation of adjacent regions in order to foster the integrated regional development and to develop local economic and social centres through the implementation of infrastructure projects as well as "soft" projects (connected with culture or people-to-people contacts).

³ Opinion 24 (2004) on the draft outlook report of the Committee of the Regions on "A new legal instrument for cross-border co-operation", the Congress of Local and Regional Authorities, 27 May 2004

III. The Council of Europe towards transfrontier co-operation

1. The outline of transfrontier co-operation instruments of the Council of Europe.

The Council of Europe's approach to transfrontier co-operation is selective and the institution focuses on chosen aspects of TFC. Three main CoE's orientations can be distinguished. The first orientation concerns the establishment of international legislation encouraging TFC, as the major obstacle to the implementation of TFC was the lack of international laws regulating cross-border initiatives of local authorities in border areas. Local authorities did not have powers to initiate and conduct freely transfrontier or international co-operation and were dependent on central authorities in this aspect. It was thus a primary concern to establish appropriate legal instruments allowing local authorities to carry out TFC tasks in conformity with their respective national laws. The legal acquis concerning TFC is mainly made up of the Madrid European Outline Convention and its two protocols of fundamental importance to TFC development at continental level.

Other CoE documents relating to TFC are the European Charter of Local Self-Government and the political declarations adopted by the CoE's Committee of Ministers. Although part of these documents does not directly apply to TFC, the Vienna Declaration or the Helsinki Declaration additionally strengthen the powers of local authorities and their leeway to carry out TFC operations as they encourage development of self-government and decentralisation. The CoE also issues political declarations to promote the concept of TFC in particular European regions, e.g. the Vilnius and Chisinau Declarations.

Other important legal instruments are Recommendations of the Committee of Ministers referring to TFC. Recommendations address particular TFC issues and they are intended to encourage member countries to take action.

The second priority area of the CoE activities is the promotion of the TFC concept through the organisation of intergovernmental, regional, local and specialist conferences and seminars devoted to transfrontier co-operation. The conferences and seminars allow citizens' circles and local bodies to be reached; they also provide a possibility to develop better management and implementation methods for this type of co-operation. Such meetings also constitute a platform for exchanging opinions and experiences, establishing relations between bodies involved in TFC.

Thirdly, the CoE is committed to providing advisory and training assistance to bodies interested in developing TFC at national as well as regional level. In the case of assistance given to central authorities, an example of legal advice provided to Ukraine on the draft law on TFC in 2003 can be cited. The second situation can be well illustrated by the CoE's contribution to the establishment of the Prespa/Ohrid Euroregion in the border area between Albania, "the former Yugoslav Republic of Macedonia" (FYROM) and Greece or the "Eurobalkans" region near the border between Bulgaria, "the former Yugoslav Republic of Macedonia" and Serbia and Montenegro.

It is also worth noticing that CoE has been financing the establishment of a TFC database. Thanks to the CoE's support a considerable number of reports, studies and research papers analysing transfrontier problems and presenting new, more effective mechanisms of TFC implementation have been prepared.

2. The CoE's actors involved in transfrontier co-operation

Several bodies are committed to the CoE's actions in the field of TFC. The Steering Committee on Local and Regional Democracy (CDLR) acts under the auspices of the CoE's Committee of Ministers and is responsible for the implementation of projects promoting democracy at regional and local levels. The projects realised by CDLR encourage decentralisation and stimulate citizens' participation in political life at regional level. The Committee of Experts on Transfrontier Co-operation (LR-CT) assists the CDLR in achieving this objective. The LR-CT is responsible for monitoring the implementation of the Madrid Outline Convention and its protocols. Additionally, it aims to define problems relevant to the development of TFC and to propose new solutions, particularly in the legal sphere. The LR-CT also acts as an intermediary in exchanging information and experiences relating to the area of TFC. The LR-CT has the power to put forward proposals for legal solutions at intergovernmental level.

The Committee of Advisors for the Development of Transfrontier Co-operation in Central and Eastern Europe was set up following the substantial changes of political systems in Central and Eastern Europe, which opened new perspectives for the development of TFC. The Committee gives support to TFC initiatives of the countries from the region and promotes the ratification of the European transfrontier conventions.

Another significant CoE's actor of TFC is the Congress of Local and Regional Authorities (CLRAE), a consultative body made up of representatives of local and regional authorities. One of the CLRAE's priorities is the promotion of

peace, tolerance and the balanced development through regional and cross-border co-operation.

3. Legal instruments of the Council of Europe in the area of TFC

a) The European Outline Convention and its Protocols

The Council of Europe was early in becoming involved in problems of co-operation between territorial communities and authorities at frontiers. One of the CoE's first legal documents dealing with TFC was Resolution No. 15 of 1960 of the Standing Conference of Local Authorities concerning "the integration of the natural regions astride frontiers". It is however the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (ETS No. 106)⁴, signed in Madrid on 21 May 1980 and taking effect on 22 December 1981, that is of utmost importance to TFC. The Madrid Outline Convention is the principal CoE's legal instrument which has laid foundations for further European legislation on TFC. The main objective of the Convention is to facilitate and promote the conclusion of transfrontier agreements between territorial communities and authorities on both sides of the border within their legal powers as defined in domestic law. The Convention compels the signatory states to seek to conclude such agreements and to accept resulting legal regulations with due regard to their respective constitutional provisions relating to TFC. The Madrid Outline Convention constitutes a legal framework for TFC development at sub-national level in spite of the non-restrictive nature of the Convention's stipulations. The Convention's adoption is voluntary and does not prevent its signatories from getting involved in any other forms of TFC not specified in the document⁵.

The Convention defines the key terms such as "transfrontier co-operation" and "territorial communities or authorities" and thus ensures their orderly classification in the field of international law. The Madrid Outline Convention specifies two major forms of co-operation:

- 1) concerted action and exchange of information;
- 2) the conclusion of agreements and arrangements involving the establishment of specific legal ties.

⁴ European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (ETS No. 106) <http://conventions.coe.int/Treaty/en/Treaties/Html/106.htm>

⁵ See: clauses of art.3 of the above-mentioned Convention

The Convention also mentions models of inter-state agreements establishing the legal basis for transfrontier co-operation. The proposed models allow for the reduction of problems which may be encountered when local authorities from different states, operating under different domestic laws, become involved in TFC as each signatory state may specify the authorities competent under its domestic law to exercise control or supervision with regard to the territorial communities and authorities concerned.

The solutions introduced by the Madrid Outline Convention refer to TFC in such fields as regional, urban and rural development, environmental protection, the improvement of public facilities and services and mutual assistance in emergencies.

The essence of the Madrid Convention is its universality as the Convention applies to the whole European continent. Up to now the Convention has been ratified by 33 and signed by further 3 of the 46 Member States of the Council of Europe.

The Convention contains only general guidelines concerning TFC. However, due to the collapse of communist regimes in Central and Eastern Europe in the 90s as well as the growing European integration, further development of the legal framework regulating TFC at international level became necessary. On the basis of the Madrid Outline Convention two further Protocols were signed, and work on the third protocol is under way.

The Additional Protocol to the European Outline Convention (ETS No. 159)⁶ was signed on 9 November 1995 and came into effect on 1 December 1998. It reinforces TFC between territorial communities and authorities by means of granting local authorities of signatory states, under certain conditions, the powers to conclude TFC agreements with partners from other states. The TFC agreements shall be concluded with due regard to the signatories' respective domestic laws. Decisions taken jointly under TFC agreements shall be implemented by territorial communities and authorities within their national legal system, in conformity with their national law. Another important feature of TFC agreements is the possibility of setting up a transfrontier co-operation body which may have legal personality.

⁶ Additional Protocol to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (ETS No. 59)
<http://conventions.coe.int/Treaty/en/Treaties/Html/159.htm>

Protocol No. 2 to the EOC (ETS No.169)⁷ further develops regulations concerning international co-operation between territorial communities and authorities and introduces the possibility of concluding and implementing joint agreements not only between neighbouring authorities of other states but also between foreign non-neighbouring authorities having common interests. This new instrument of TFC is defined by the Protocol as “interterritorial co-operation”. The Protocol, which was signed on 5 May 1998 and took effect on 1 December 2001, was a response to the appeal for continued development of TFC launched by the CoE’s Vienna Declaration of 1993.

The European Outline Convention and its two Protocols constitute references to regional agreements on TFC such as the Basel Agreement (between cantons of Switzerland, France and Germany) and the Karlsruhe Agreement (between cantons of Switzerland, France, Germany and Luxembourg). Both agreements are the legal instruments of the regions which are economically, culturally and politically closely-knit. The agreements include more precise and detailed regulations than those of the European Outline Convention, tailored to the specificity of the two regions and the needs of the local communities. The Karlsruhe Agreement has introduced the local cross-border co-operation group which is a new legal form of CBC.

Currently, the CoE is working on the third protocol to the European Outline Convention. The protocol’s objective is to establish “transfrontier grouping of territorial co-operation” (TGTC) which will allow euroregions, local authorities or communities to operate within the same legal framework. On 7 February 2006, a draft of the Convention containing the uniform law on TGTC⁸ was presented by the Committee of Experts on TFC (LR-CT). The question of providing a legal framework for euroregions as the primary implementors of TFC is nowadays gaining more and more importance as the number of euroregions has considerably grown and their institutional systems vary widely. A new convention was necessary as the bodies involved in the implementation of TFC had been encountering problems due to differences in administrative and legal systems of particular countries. Activities of particular bodies participating in TFC are regulated by the legislation of the country of their origin. However, the implementation of joint projects was often hindered

⁷ Protocol No. 2 to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (ETS No. 169)
<http://conventions.coe.int/Treaty/en/Treaties/Html/169.htm>.

⁸ Revised Preliminary Draft European Convention Containing a Uniform Law on Transfrontier Groupings of Territorial Co-Operation (TGTC), LR-CT (2006) 4 Item 5.b of the agenda
[http://www.coe.int/t/e/legal_affairs/local_and_regional_democracy/documentation/library/transfrontier_cooperation/LRCt\(2006\)4.pdf](http://www.coe.int/t/e/legal_affairs/local_and_regional_democracy/documentation/library/transfrontier_cooperation/LRCt(2006)4.pdf)

because of differences in legal systems and administrative procedures applied by bodies from particular countries.

In this respect, the objective of the third protocol – currently in preparation - is to establish international legal provisions that would facilitate setting up separate legal units of cross-border co-operation. The third protocol will allow all bodies involved in cross-border projects to operate within a single legal procedure. The future legal instrument will include clearly defined principles which, together with national legislation, shall allow setting up legal bodies capable of effective and smooth management of cross-border projects.

The legal basis regulating the operations of TGTC will be the law of the country where the headquarters of such a grouping will be situated. Each TGTC will have a legal personality automatically recognized by each country whose bodies participate in such a grouping. The adoption of the convention by the member states of the CoE shall be optional and voluntary.

The CoE's efforts to draft a legal basis for TGTC are pursued in parallel with the EU's work to establish the European Grouping of Cross-border Co-operation (EGCC) which will generally perform similar functions. Simultaneously, both the EU and the CoE and their member states actively co-operate in drafting legal provisions, e.g. the Commission of the EU takes part in the process of working out the instrument of TGTC⁹, which was well received by the Committee of Advisers. From the Council of Europe's point of view, both instruments – CoE's TGTC and EU's EGCC – should be complementary in terms of their objectives and the area they may apply to.

Currently, the elaboration and implementation of the third protocol of the Madrid Outline Convention is one of the priorities of the concerned institutions of the Council of Europe in the framework of the development of cross-border co-operation.

b) Political Declarations of the Council of Europe

The Committee of Ministers' political declarations constitute an important instrument making possible the CoE's commitment to the development of TFC. Not only do declarations express and affirm the CoE's political will to develop TFC at continental level but they also encourage other CoE's institutions and

⁹ Fifth annual report to the Committee of Ministers covering the year 2005, Committee of Advisers for the Development of Transfrontier Co-operation in Central and Eastern Europe, DG1(2006)4, 7 February 2006

member states to come up with specific initiatives and to implement them. In this context special importance is given to declarations promoting selfgovernment and decentralisation as well as the reinforcement of local authorities' powers to carry out, in conformity with their domestic law, tasks at international level.

The European Charter of Local Self-Government is more than a political declaration since it is a genuine international treaty, signed on 15 October 1985 and which entered into force on 1 September 1988¹⁰. It aims to promote the principles of local self-government, strengthen local authorities' powers to establish co-operation with partners from other states and implement cross-border initiatives under the domestic law of each state. The Charter also set common European standards for safeguarding the rights of local authorities.

One of the declarations emphasising the role of TFC in promoting unity and democracy in Europe was the Council of Europe's Vienna Declaration of 9 September 1993¹¹. The Declaration's statements relating to TFC underline the importance of co-operation between local authorities of different states alongside international co-operation between states as a significant instrument of ensuring stability on the continent.

In the Vienna Declaration the heads of States and Governments of the Council of Europe's Member States urged the Council of Europe's Committee of Ministers to pursue its efforts to develop and extend TFC on the continent. The Committee of Ministers responded, among other initiatives, by drawing up Protocol No. 2 to the European Outline Convention.

The Helsinki Declaration on regional self-government¹², adopted by the conference of European Ministers responsible for local and regional authorities in July 2002, deals with common principles concerning the workings of regional authorities. It has some bearing on TFC insofar as it puts emphasis on the decentralisation and development of democracy at subnational level and asserts the regional authorities' powers to co-operate with their foreign counterparts.

¹⁰ European Charter of Local Self-Government, Strasbourg, 15 October 1985
<http://conventions.coe.int/Treaty/EN/Treaties/Html/122.htm>

¹¹ The Vienna Declaration, Council of Europe, 9 October 1993
www.age-of-the-sage.org/vienna_declaration.html

¹² Helsinki Declaration on regional self-government, MCL-13 (2002) 8 final, 27 – 28 June 2002, Helsinki
http://www.coe.int/T/E/Legal_Affairs/Local_and_regional_Democracy/Conference_of_Specialised_Ministers/2002_Helsinki/2002HelsinkiDeclaration.asp

The Committee of Ministers has also adopted declarations referring directly to TFC. The Vilnius Declaration on Regional Co-operation and the Consolidation of Democratic Stability in Greater Europe of 3 May 2002¹³ underlines the significance of regional co-operation in the democracy-building process, protection of human rights and the rule of law at grassroots level. The Declaration urges the Council of Europe to consider its regional programmes one of its top priorities. The Declaration stresses the importance of euroregions as the major instrument of TFC implementation.

Another important declaration - the Chisinau Political Declaration on Transfrontier and Interterritorial Co-operation between States in South-Eastern Europe, adopted on 6 November 2003¹⁴, has a regional dimension. Its main objective was to promote and reinforce instruments of co-operation in South Eastern Europe. The declaration also constituted a considerable complement to a number of initiatives implemented in the area to strengthen regional cooperation, e.g.: Stability Pact for South Eastern Europe and Stabilisation and Association Process of the European Union as well as regional initiatives such as those implemented under Central European Initiative, SEECF, SECI and Adriatic-Ionian Initiative.

c) Recommendations

Recommendations of the Committee of Ministers to Member States are a very important instrument for carrying out the CoE's missions. They set out policy guidelines concerning various issues (e.g. legal matters, health, culture) for the CoE's member states. The Committee of Ministers has so far adopted several recommendations relating to TFC and intended to stimulate its development¹⁵.

¹³ Vilnius Declaration on Regional Co-operation and the Consolidation of Democratic Stability in Greater Europe, Council of Europe, 3 May 2002

http://cm.coe.int/stat/E/Public/2002/adopted_texts/declarations/2002dec4.htm

¹⁴ Chisinau Political Declaration on Transfrontier and Interterritorial Co-operation between States in South-Eastern Europe, Council of Europe, 5-6 November 2003

[http://press.coe.int/cp/2003/557a\(2003\).htm](http://press.coe.int/cp/2003/557a(2003).htm)

¹⁵ List of Recommendation on Transfrontier Co-operation adopted by the Committee of Ministers:

- [Rec\(2005\)3E of 2 February 2005](#) - Recommendation of the Committee of Ministers to member states on teaching neighbouring languages in border regions (adopted by the Committee of Ministers on 2 February 2005 at the 913th meeting of the Ministers' Deputies)
- [Rec\(2005\)2E of 19 January 2005](#) - Recommendation of the Committee of Ministers to member states on good practices in and reducing obstacles to transfrontier and interterritorial co-operation between territorial communities or authorities (Adopted by the Committee of Ministers on 19 January 2005 at the 912th meeting of the Ministers' Deputies)

The recommendations set objectives of the proposed actions and specify the measures necessary to implement them.

d) The Council of Europe's activities towards promotion and enhancement of the TFC across Europe

Since TFC is one of the Council of Europe's priorities, the Council of Europe puts great emphasis on promoting the idea of TFC, developing better methods of transfrontier co-operation, stimulating contacts and exchanges of experiences between bodies involved in TFC. These objectives are mainly achieved through the organization of conferences, seminars and meetings devoted to the TFC issues. Such meetings are organized at national as well as regional levels involving representatives of central and local authorities, territorial communities and various experts. These activities are particularly important in Central and Eastern Europe where different forms of transfrontier co-operation are not as widespread and developed as in Western Europe; the Committee of Advisers for the Development of TFC in Central and Eastern Europe plays a key role in promoting TFC. Recently, the Committee's activities have been focused on initiatives in South-Eastern Europe, Caucasus and Central and Eastern Europe (the Kaliningrad region of Russian Federation, Lithuania, Slovakia, Hungary).

Over the last years, a great number of conferences and seminars has been organized under the auspices of the Council of Europe. The conferences and seminars concerned promotion of the legal framework of the Madrid Outline Convention as well as specific aspects of TFC implementation in particular regions. In the latter case, it is particularly important to set down mechanisms allowing the implementation of the Madrid Outline Convention's regulations and the adjustment of local legislation to standards established by the Convention. The CoE's assistance in defining the key areas of development for the regions concerned with TFC is also of great significance, the main fields are as follows: infrastructure development (extension of customs and transport networks), teaching of foreign languages, cultural or economic co-operation).

The conference held in Warsaw on 21-22 April 2005 to mark the 25th anniversary of the Madrid Convention was a very important event. The

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- [Rec\(2002\)3 of 6 March 2002](#) - on transfrontier co-operation in civil protection and mutual assistance in the event of natural and technological disasters occurring in frontier areas
 - [Rec\(2000\)1 of 12 January 2000](#) - on fostering transfrontier co-operation between territorial communities or authorities in the cultural field

participants emphasized the convention's significance for the development of transfrontier co-operation in Europe, particularly in the present circumstances. The necessity to pursue efforts to lift barriers hampering the development of the cross-border co-operation involving local bodies was also stressed. In this respect, the question of preparing the third protocol of the Convention was brought up; the protocol would set up a universal legal instrument regulating the workings of euroregions. This proposal is being implemented through continued work on TGTC. The participants of the conference also drew attention to potentially new areas of developing transfrontier co-operation on the basis of the Madrid Convention – co-operation between European and Western African states.

Another CoE's instrument of TFC development in Europe is the creation of a publicly accessible database on TFC¹⁶. The Council of Europe has also financed several reports, studies, analyses and handbooks. The analyses refer to both case studies of particular examples of TFC and the elaboration and presentation of instruments of TFC implementation.

The problems of the EU enlargement to Eastern Europe and related possibilities constitute a great challenge for the European community. This question is a priority for the Council of Europe as the institution considers the EU enlargement as a positive factor encouraging the reinforcement of the continent's unity and stability based on shared democratic values and the respect for human rights. In response to this challenge the Committee of Experts of the Steering Committee on Local and Regional Democracy has drawn up a document entitled: "Developing dialogue, co-operation and trust across European frontiers: the role and contribution of the Council of Europe" which was a follow-up to the proposals for an Action plan of the Council of Europe prepared by the Committee of Advisers¹⁷.

The principal challenges in the area of TFC for the Council of Europe were defined in the document as follows: making borders a platform of co-operation and dialogue and not the dividing lines separating European communities; development of local authorities; alleviating social and economic disparities which are visible in border areas; elaboration of the legal framework for co-

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<http://www.coe.int/t/e/legal%5Faffaires/local%5Fand%5Fregional%5Fdemocracy/Documentation/>

¹⁷ "Developing dialogue, co-operation and trust across European frontiers: the role and contribution of the Council of Europe" CM(2004)227, appendix 6, 17 December 2004
<https://wcd.coe.int/ViewDoc.jsp?id=802345&BackColorInternet=9999CC&BackColorIntranet=&BackColorLogged=FDC864>

operation between euroregions and promotion of the Council of Europe's legal contribution (Madrid Convention and its protocols).

The concrete actions proposed in the document include, among other points, technical assistance provided by the CoE's institutions to parties involved in transfrontier projects (reduction of negative effects of migration, protection of cultural heritage, common actions to ensure "soft security" of borders), promotion of the concept of transfrontier projects (through studies, seminars and conferences) as well as the elaboration of a new legal instrument regulating the workings of Euroregions. The Plan of Action was submitted to the Committee of Ministers for consideration at the Third Summit of the Heads of State and Government held in 2005.

The Practical Guide on Transfrontier Co-operation published by the CoE in February 2006¹⁸ was intended to promote the implementation of the Madrid Convention in Europe on the practical level. The guide is above all aimed at local authorities interested in conducting cross-border projects with their neighbours. It describes particular steps and stages of implementing transfrontier initiatives (from searching for possible partners and establishing contacts with them to achieving the goals of co-operation and avoiding possible stumbling blocks). The guide presents, from the practical point of view, different initiatives – simple as well as more complex multiannual ones.

e) Legal and advisory assistance in the field of TFC the European community

Apart from the promotion of TFC the Council of Europe's institutions undertake specific actions whose objective is to implement the regulations set out in the legal acquis on TFC. An essential instrument in achieving this task is financing and providing legal and specialist support to national, regional and local bodies which involved in TFC. The CoE's assistance consists mainly in supporting the implementation of the Madrid Outline Convention and its Protocols' regulations. In 2004, at the Russian Federation's request the draft law on TFC was assessed. Similar legal advice on preparing a draft law on TFC was given to Ukraine in 2003. The CoE also gives consultations and advice concerning actions to be taken after the ratification of the Madrid Outline

¹⁸ Practical Guide to Transfrontier Co-operation, Secretariat Memorandum prepared by the Directorate of Co-operation for Local and Regional Democracy Directorate General I - Legal Affairs LR-CT (2006) 6, Item 7 of the agenda
[http://www.coe.int/t/e/legal_affairs/local_and_regional_democracy/documentation/library/transfrontier_cooperation/LRCt\(2006\)6.pdf](http://www.coe.int/t/e/legal_affairs/local_and_regional_democracy/documentation/library/transfrontier_cooperation/LRCt(2006)6.pdf)

Convention. The CoE organised a consultation meeting on follow-ups after the ratification of the MOC for Bosnia and Herzegovina in 2004.

Among the initiatives undertaken at local level the CoE's Committee of Advisers commitment to setting up the Prespa/Ohrid Euroregion in the border area between Albania, FYROM and Greece and the Nis-Skopje-Sofia Euroregion at frontiers of Bulgaria, FYROM and Serbia can be cited. While carrying out these initiatives the CoE has been co-operating with the East-West Institute and they have organised together meetings between regional authorities and government representatives and experts. The work aimed at drawing up a statute of the Euroregion and regulating all legal aspects of its workings. The efforts to establish the Nis-Skopje-Sofia region met with success and the Euroregion called "Eurobalkans" came into existence on 21 September 2003.

Similarly, in response to the Chisinau Declaration the Secretariat and the Committee of Experts have undertaken actions to conclude and implement inter-state agreements based on the model of the Madrid Outline Convention. In order to achieve this objective informal meetings were organised in 2004, where talks over the present state of local co-operation in the region and perspectives of its development were initiated.

IV. The EU instruments of cross-border cooperation

1. The outline of the EU policy and instruments of its implementation in the field of cross-border co-operation

Both the EU and the Council of Europe consider the development of cross-border (transfrontier) co-operation as one of their important priorities. For the EU cross-border co-operation is an important instrument of ensuring the balanced development and integration of the European continent¹⁹. Thanks to its universal dimension CBC constitutes an instrument that promotes internal unity of the EU area and fosters and reinforces neighbourly relations between the EU's external neighbours. One of the objectives of the EU's cross-border cooperation is to prevent isolation of border areas. Often peripheral and marginalised by policies focusing on countries' economic development, border areas are economically and socially underdeveloped and the existence of an

¹⁹ par. 3 Communication from the Commission to the Member States of 2 September 2004 laying down guidelines for a Community initiative concerning trans-European cooperation intended to encourage harmonious and balanced development of the European territory (2004/C 226/02)

international border cutting across neighbouring communities can hamper co-operation in a variety of fields such as economic or social issues.

However, the EU instruments of CBC differ from those employed by the Council of Europe. Their main feature is that they focus on financial support of initiatives and programmes implemented within the frame of CBC. The EU, having more substantial financial resources than the Council of Europe, is able to undertake more comprehensive actions.

The EU's key instruments of CBC are its programmes financed through Structural Funds (SF). The most important are Interreg, Phare, Tacis and Cards. Due to the drafting of the EU budget for the period of 2007-2013, the EU is currently working on a significant reform of its financial instruments. As a consequence, mechanisms of the above-mentioned programmes have been changed.

An establishment of new instruments of CBC is planned: the European Neighbourhood and Partnership Instrument (ENPI) designed to encourage co-operation with EU neighbouring states and a pre-accession Instrument for Pre-accession Assistance (IPA).

In order to reinforce the EU's internal cohesion and facilitate the implementation of CBC, another instrument - European Grouping of Cross-border Co-operation (EGCC) is being elaborated. The distinction between instruments of CBC applying to areas within internal EU borders (e.g. Interreg) and to areas outside the EU (e.g. Phare, Tacis and Cards) is quite significant. The above-mentioned instruments are managed by other EU institutions, function in specific ways and are allocated different budgets.

Currently, the European Union however seeks to elaborate a single legal instrument (EGCC) which would be applicable to both EU Member States and the countries from outside the EU. The new instrument will be funded through different financial channels – the Structural Funds and ENPI or IPA. The introduced changes are intended to encourage the closest possible integration of these financial instruments.

It is worth noting that the EU allocates considerable funds to development of CBC in Europe. In fact, the EU is the largest donor of financial aid to CBC; funding of cross-border initiatives represents 5-10 percent of the European Regional Development Funds' (ERDF) financial resources. The new budget plans for 2007-2013 provide for a substantial increase in the funding up to EUR 7.5 bn.

Within the framework of the EU Cohesion Policy a sum of EUR 7.5 bn²⁰ (initially, even EUR 13.2 bn was planned²¹) is to be earmarked for the European territorial co-operation objective.

2. The EU actors involved in the development of CBC

The management and coordination structure of the EU's support of CBC is quite intricate and involves many actors. The Regional Policy Directorate-General (DG Regio) of the European Commission is responsible for implementing the EU Regional Policy which includes crossborder co-operation within the EU's internal borders. The DG Regio manages three major funds: the European Regional Development Fund (ERDF) which operates in all 25 Member States; the Instrument for Structural Policies for Pre-Accession (ISPA) which provides assistance to candidate countries in environmental protection and developing their transport networks; the Cohesion Fund which provides assistance in environment and transport projects to the 13 Member States whose gross national product (GNP) per capita is below 90% of the EU-average. Among these funds ERDF is a main instrument for financing Interreg which fosters CBC within the EU internal borders.

Another important actor in the EU's regional policy is the Committee of the Regions (CoR), a consultative body of the European Commission, Council of the European Union and European Parliament. The CoR, set up in 1994, is composed of representatives of the Member States' local authorities. The CoR has an influence over the EU decision-making process and its role is particularly noticeable in representing interests of the EU's local communities. The CoR is putting a lot of emphasis on the development of CBC. As far as cross-border cooperation with EU's external neighbours is concerned the competent bodies are the European Commission's DG External Relations and DG Enlargement.

3. Legal basis for the EU's actions in the field of cross-border co-operation

The legal basis for the EU's actions within the framework of CBC is constituted of three EU policies: the Cohesion Policy, European Neighbourhood Policy (ENP) and pre-accession policy for acceding countries.

²⁰ 15-16 December European Council conclusions on the financial perspective for 2007-2013, http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/misc/87677.pdf

²¹ Proposal for a Regulation of the European Parliament and of the Council laying down general provisions establishing a European Neighbourhood and Partnership Instrument, COM(2004) 628 final, 29 September 2004 http://europa.eu.int/comm/world/enp/pdf/getdoc_en.pdf

The report adopted by the European Commission on 14 July 2004 relating to the cohesion policy's reform has some bearing on CBC issues as it sets out "European territorial cooperation"²² as one of the objectives. Drawing on its experience with the Interreg programme the EU seeks to reinforce co-operation within the EU by means of developing joint CBC programmes and establishing networks for co-operation and exchange of opinions. CBC is perceived as an instrument for promoting sustained cohesion between the member countries. The report also proposes setting up after 2007 a new legal instrument designed to establish a cross-border co-operation structure (the above-mentioned European grouping of cross-border co-operation) by means of which cross-border programmes, co-financed by the EU, shall be implemented.

The importance of CBC has also been affirmed by the EU instruments of co-operation with acceding and neighbouring countries: Stabilisation and Association Process (SAP) aimed at the countries from the Western Balkans and Partnership and Co-operation Agreement (PCA) concluded with the countries from Eastern Europe.

The new instruments of co-operation with EU's external neighbours after 2007 are set up by European Neighbourhood Policy which stems from the concept of "Wider Europe". CBC is one of the concept's components.

4. Presentation of the current EU's internal instruments for supporting CBC

a) Interreg Community Initiative Programme

Interreg²³ is the largest Community initiative financed under the Structural Funds (SF). In operation since 1990, it is the first EU's instrument of financial assistance to CBC. The Interreg III initiative, programmed for the period 2000-2006, is a follow-up to the Interreg I and Interreg II initiatives. Interreg I (1990-1993) and Interreg II (1994-1999) focused on supporting the development of border regions and used cross-border co-operation as an instrument of promoting better integration within the EU. In the 1990s under Interreg I and

²² Proposal for a Regulation of the European Parliament and of the Council establishing a European grouping of cross-border co-operation (EGCC), COM(2004) 496 final, 14 July 2004 http://europa.eu.int/eur-lex/en/com/pdf/2004/com2004_0496en01.pdf

²³ Communication from the Commission to the Member States of 2 September 2004 laying down guidelines for a Community initiative concerning trans-European cooperation intended to encourage harmonious and balanced development of the European territory INTERREG III (2004/C 226/02) http://europa.eu.int/eur-lex/pri/en/oj/dat/2004/c_226/c_22620040910en00020027.pdf

Interreg II 90 projects, whose combined costs amounted to 6,5 billion euro, were financed. In addition to the EU funding, the schemes implemented under Interreg I and II were funded through external financial resources (Member States, regional, local or private bodies). For the period 2000-2006, the Interreg III initiative has a budget of 4,875 million euro and is financed solely by the ERDF.

Interreg III is made up of 3 strands. The first Strand A, a follow-up to Interreg I and II A, aims to finance cross-border co-operation between authorities of adjacent regions in order to develop cross-border social and economic centres through common development strategies, fostering thus the balanced development of the continent. Strand B, a follow-up to Interreg II C, refers to trans-national co-operation involving national, regional and local authorities, mainly in spatial planning and aims to promote better integration within the EU through the formation of large groups of European regions. Strand III C is a new initiative covering the former RECITE and Ecos/Ouverture programmes, and finances interregional co-operation between regions or cities in different countries, mainly on specific projects. Strand III aims to improve the effectiveness of regional development policies and instruments, particularly in underdeveloped regions.

The Interreg III's budget break-down is as follows: Strand A receives 50% of the funding, minimum 14% is allocated for Strand B and minimum 6% for Strand C. Schemes implemented under Interreg III receive co-financing from Member States.

It is worth drawing attention to the main principles of Interreg III, affirmed by the European Commission. Firstly, programmes implemented under the Interreg III initiative are based on joint programming and common strategy development. The key element is joint management of programme implementation by cross-border mechanisms and institutions (e.g. Euroregions or working communities). Secondly, special emphasis has been put on "bottom-up" approach. An important role in initiating, implementing and evaluating programmes has been given to regional cross-border structures based on regional or local communities which co-operate with national authorities. Interreg III A provides for implementation of two types of programmes: the first applies to the entire border whereas the second type includes regional levels programmes designed for parts of the border.

Although Interreg applies to the EU Member States, close co-ordination with Phare, Tacis and Cards programmes involving non-member countries is provided for. An important component of Interreg III is the Interact programme

whose objective is to encourage and facilitate coordination and exchanges of experience at Community level of actions undertaken under Interreg III. Within the framework of Interact technical assistance and trainings for institutions managing and implementing programmes under Interreg are financed. Interact promotes the establishment and consolidation of joint structures for programming, monitoring and management. It offers databases and information concerning projects implemented under Interreg and the initiative itself. Interact was launched in 2002 and its total budget up to 2006 amounts to 25 million euro.

b) Phare-CBC Programme

Phare-CBC Programme²⁴, established in 1994, aims to support candidate countries' border areas through cross-border co-operation with EU regions. Phare designed as a programme for Eastern Europe candidate countries promoted their integration with the EU Member States and among themselves. It is worth noticing that Phare contributed to reducing marginalisation of border areas particularly through the implementation of infrastructure schemes and programmes stimulating economic development. Phare also intended to prepare the concerned regions for joining Interreg after they had become EU members. The other important Phare feature is joint programming and implementation management. The co-ordination of Phare CBC and Interreg has however proved to be quite problematical.

The first phase of Phare realised in the period 1994-1999 covered 15 state borders and financed projects whose total costs amounted to 1 billion euros²⁵. The second phase, programmed for 2000-2006 was intended as an equivalent of Interreg III. Between 2000-2003 343 programmes were financed under Phare CBC for the total amount of 645.3 million euros, which constituted 10% of the whole Phare programme. Moreover, through the programme an additional sum of 350 million euros was received as co-funding from national funds²⁶. Phare CBC was implemented by means of three mechanisms: infrastructure and institution building projects, Grant Schemes and Joint Small Project Funds.

²⁴ Commission Regulation concerning the implementation of a programme for cross-border cooperation in the framework of the PHARE programme, No 2760/98, 18 December 1998

²⁵ Practical Guide to Cross-border Cooperation, Association of European Border Regions (AEBR) Third Edition 2000

²⁶ Phare Cross-border Co-operation, Interim Evaluation of Phare Support Allocated in 1999-2002 and Implemented until November 2003, Thematic Evaluation Report, February 2004, http://europa.eu.int/comm/enlargement/eva_report_cross_border.pdf

Given the fact that 8 Eastern European countries beneficiaries of Phare entered the EU in 2004, changes were made to the programme. The new EU Member States could benefit from the Interreg programme and Phare CBC was extended to cover external borders of Romania and Bulgaria. Phare CBC support was focused on financing infrastructure and environment projects, institution building, local economies and, to a lesser extent, social and cultural projects. In 2003 Phare CBC was reinforced by the External Border Initiative (EBI) which was allocated a budget of 33 million euros. The EBI's objective was to finance investments in the field of CBC at the future EU's external borders and to prepare the candidate countries for participation in Interreg and Neighbourhood Programmes.

c) Tacis CBC and Cards

The Tacis's component promoting cross-border co-operation - Tacis CBC²⁷, set up in 1996, applies to the Eastern European countries: Russia, Ukraine, Moldova and Belarus. Tacis is based on the EU policies within the framework of Partnership and Co-operation Agreements (PCA) and, since 2004, on the new Neighbourhood Policy. Tacis CBC's support focuses mainly on fostering development of border regions through infrastructure projects (particularly construction and extension of customs), projects relating to environmental protection and natural resources management as well as the promotion of private businesses and economic growth. These objectives were realised by means of large- projects and small scale projects in support of local authorities' efforts to develop CBC. Up to now Tacis CBC has been implemented in three programming phases: 1996-1999 (with a budget of 110 million euros), 2000-2003 (an annual budget of 30 million euros) and 2004-2006.

Due to insufficient co-ordination of actions financed under different funds a decision was made in 2004 to establish an integrated Interreg IIIA/Tacis CBC programme which is designed to pave the way for a new instrument for Neighbourhood Policy - ENPI. Currently 13 such programmes are being conducted.

²⁷ Tacis Cross Border Co-operation (CBC), P.8.1.6.

<http://europa.eu.int/comm/archives/leader2/rural-en/euro/p8-1-6.pdf>

Indicative Programme for the Tacis Cross-Border Co-operation (CBC) Programme 2000-2003

http://www.delrus.cec.eu.int/ru/images/pText_pict/298/ip2003_cross_border.pdf

Tacis Cross-Border Cooperation: Strategy Paper and Indicative Programme 2004-2006, European Commission, 21 November 2003

The Cards²⁸ programme involving the Western Balkans countries also aims to promote CBC.

5. New instruments of support for CBC to be implemented after 2007

In view of the work on drafting the EU's budget for the period of 2007-2013, the EU enlargement and the attempts to improve the effectiveness of current CBC instruments the EU is planning to introduce new mechanisms of support for CBC.

The new instruments include:

- “European Territorial co-operation” objective of Structural Funds, promoting CBC within the EU;
- Instrument for Pre-Accession Assistance (IPA), designed for the countries with membership prospects;
- European Neighbourhood and Partnership Instrument (ENPI) for other EU's neighbours.

Due to the increased number of EU internal borders after the enlargement in 2004, it was necessary to improve mechanisms supporting the CBC within the EU. The EU attaches more importance to development of CBC, which is reflected in the higher status accorded to the instruments supporting CBC. The present Community initiative Interreg will be transformed into the 3rd objective of the Structural Funds – the „European Territorial cooperation” objective²⁹, which will give more significance to the role of CBC in the framework of EU policies and activities.

The changes are aimed to strengthen CBC through joint programmes, co-operation between transnational zones and establishment of the network of experience-sharing within the EU. Also the funds allocated for this purpose will be considerably increased. Until now, the total amount of EUR 5.85 bn was available for Interreg. Under the initial plans, the sum of up to EUR 13.24 bn

²⁸ Council Regulation (EC) on assistance for Albania, Bosnia and Herzegovina, Croatia, the Federal Republic of Yugoslavia and the Former Yugoslav Republic of Macedonia, repealing Regulation (EC) No 1628/96 and amending Regulations (EEC) No 3906/89 and (EEC) No 1360/90 and Decisions 97/256/EC and 1999/311/EC, No 2666/2000, 5 December 2000
http://europa.eu.int/comm/external_relations/see/docs/cards/2666_00_en.pdf

²⁹ See: article 6 and chapter III of Proposal for a Regulation of the European Parliament and of the Council on the European Regional Development Fund, COM(2004)495 final, 14 July 2004

was to be granted to the „European Territorial cooperation” objective³⁰, which was to constitute 4 percent of all the Structural Funds. After the December 2005 summit of the Council of the EU, this sum has however been reduced to EUR 7.5 bn. The shares of the cross-border, transnational and inter-regional cooperation are 77%, 19% and 4% respectively³¹. The funding for this objective will constitute 75 percent of the costs of implemented projects and will be carried out through the European Regional Development Fund.

Under this initiative, support will focus on stimulating cross-border economic and social co-operation through, among other things, development of small businesses, tourism, cultural exchange, joint management of the environment, transport networks and social infrastructure (health, culture and education systems). Additionally, support will be given to cross-border co-operation of maritime regions (separated by water maximally up to 150 km). The objective of the co-operation in this field is, among other things: water management, risk prevention, development of research and technical network. Information policy and experience-sharing between regional and local authorities in the areas of cross-border co-operation are a significant element of the EU support.

The European Commission has proposed establishing of a new legal unit - European Grouping of Cross-border Co-operation (EGCC) – responsible for the implementation of cross-border programmes and European funds in border regions³². EGCC will be set up by local and regional authorities. The creation of this instrument was a response to difficulties encountered by regions and local communities during the implementation of common CBC projects. The main difficulties stem from the fact that local bodies operating under different domestic laws must act in conformity with their respective legal systems. EGCC is aimed to promote cross-border co-operation between regional and local communities at the Community level; the recourse to the instrument will be voluntary. EGCC may also have a legal personality. Its main objective will be the management and implementation of programmes co-financed by the Community funds. EGCCs will be set up in virtue of European cross-border co-operation agreements concluded at the initiative of the concerned bodies. An important feature of the EGCC is its flexibility, the specific structure of EGCCs

³⁰ Proposal for a Regulation of the European Parliament and of the Council laying down general provisions establishing a European Neighbourhood and Partnership Instrument, COM(2004) 628 final, 29 September 2004 http://europa.eu.int/comm/world/enp/pdf/getdoc_en.pdf

³¹ 15-16 December European Council conclusions on the financial perspective for 2007-2013 http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/misc/87677.pdf

³² Proposal for a Regulation of the European Parliament and of the Council establishing a European grouping of cross-border cooperation (EGCC), COM(2004) 496 final, 14 July 2004 http://europa.eu.int/eur-lex/en/com/pdf/2004/com2004_0496en01.pdf

- their objectives and methods of action are to be defined in each particular case of a cross-border co-operation agreement. The final shape of EGCC is however still under discussion.

The two other instruments – IPA³³ and ENPI³⁴ – aimed at EU's neighbours - also put great emphasis on CBC. Under IPA and ENPI, financial and technical assistance will be granted to support cross-border co-operation between the Member and non-Member States as well as co-operation only between non-Member countries.

IPA will be oriented towards candidate countries – Turkey, Croatia, and FYROM as well as potential candidate countries such as Albania, Serbia, Montenegro and Bosnia and Herzegovina. ENPI is open to all EU neighbours - beneficiaries of the European Neighbourhood Policy, i.e. Russia, Ukraine, Belarus, Southern Caucasus and South Mediterranean countries.

IPA and ENPI will replace the current instruments - Phare, Tacis and Cards. The funds of the IPA and ENPI will constitute approximately 12 percent of funding allocated for the European Territorial Co-operation³⁵.

The above-mentioned instruments vary according to the geographical areas and categories of the countries which they are aimed at (countries with membership prospects and those that do not have them); they have however a number of common features. Primarily, they are based on the principle of „common benefit”. The joint implementation of the programmes, based on joint programming, joint management and joint financing, is intended to bring benefits to both parties. It breaks with the principle that has been applied so far which says that the EU support can be used to benefit the EU states or candidate countries. These instruments will function on the basis of one set of rules for all involved parties. This regulation will level disparities between mechanisms for Member and non-Member States as the disparities have seriously impaired the effective implementation of cross-border projects. The objective pursued by the EU is to provide a possibility of participation of Member States as well as candidate and partner countries in CBC on equal

³³ Proposal for a Council Regulation establishing an Instrument for Pre-Accession Assistance (IPA), COM(2004) 627 final 29 September 2004
http://europa.eu.int/eur-lex/lex/LexUriServ/site/en/com/2004/com2004_0627en01.pdf

³⁴ Proposal for a Regulation of the European Parliament and of the Council laying down general provisions establishing a European Neighbourhood and Partnership Instrument, COM(2004) 628 final, 29 September 2004 http://europa.eu.int/comm/world/enp/pdf/getdoc_en.pdf

³⁵ Conference report. Cross-Border Cooperation within IPA 2007-13, INTERACT Conference, 9-10 March 2006, Rome

terms. All parties involved in CBC will be guaranteed an equitable participation in it; they will also take joint responsibility for the programming and decision making structures in charge of implemented and financed CBC programmes.

IPA will aim to reinforce stability, security and the balanced development of the continent. The instrument, within Regional and Cross-Border Co-operation Component, will finance capacity and institution building and investment. IPA is intended to provide funding not only for cross-border co-operation between Member States and candidate countries, but also only among candidate countries. The major objectives of the cooperation are: cross-border economic and social development, joint environmental initiatives, combating criminality, increasing border security as well as administrative co-operation and promotion of “people to people” contacts.

The programming of IPA projects will be carried out in three stages. The first one - Multi-annual Indicative Financial Framework (MIFF) – sets general objectives for three years (updated annually) and is designed for particular countries and programme components. On the basis of MIFF the European Commission in co-operation with particular countries elaborates Multi-annual Indicative Planning Documents (MIPD), which is followed by specific annual and multi-annual programming by country and by programme component.

The projects will be implemented through a fully decentralized management structure (contracting, granting and payments). The European Commission will give priority to integrated projects in which particular partners will be able to implement various elements of a given project. Moreover, the framework of IPA makes it possible to implement both symmetrical projects in which both involved parties undertake the same activities on their side of the border and simple projects, carried out mainly on one side of the border and benefiting all parties involved in the project.

According to initial arrangements, the total sum of approximately EUR 469 million has been granted to implement integrated ERDF/IPA projects³⁶, which has yet to be discussed at the Council of the EU.

Similarly, ENPI affirms the importance of stimulating cross-border co-operation. The projects implemented in the framework of ENPI CBC will be based on agreements on other EU activities oriented towards countries concerned by this instrument – the European Neighbourhood Policy, the

³⁶ Conference report. Cross-Border Cooperation within IPA 2007-13, INTERACT Conference, 9-10 March 2006, Rome

Strategic Partnership Road Maps with Russia, the Northern Dimension and the Barcelona Process.

ENPI will foster cross-border co-operation between land and sea border areas. Similarly as IPA, the ENPI's task is to achieve four principal objectives: foster the economic and social development of border areas, address common challenges (risk prevention, protection of the environment, cultural co-operation, education, health, etc.), ensure efficient and secure borders and promote "people-to-people" contacts.

Under ENPI, the implementation of multiannual programmes will be based on joint programming and management following the main principles of ENPI CBC – partnership, complementarity and co-financing. The total ENPI CBC budget is planned at approximately EUR 1.1 bn, 80 percent of which will be allocated for cooperation in border land regions and 20 percent – for maritime border regions³⁷.

V. Comparison of the EU's and CoE's instruments of transfrontier (cross-border) cooperation

1. Similarities

A common feature of the CoE's and EU's approaches to transfrontier/cross-border cooperation is a strong conviction about relevance and importance of such co-operation. Since both institutions aim to build an integrated and strong Europe based on democratic values and respect for human rights, they put great emphasis on the development of CBC/TFC as it considerably contributes to realising their objectives. Both institutions develop their respective instruments of CBC/TFC in order to achieve the same general aims which are stability, security and unity of the European continent. The CoE's and EU's instruments are above all intended to develop mechanisms of co-operation along all the borders of the continent, EU's internal borders as well as the external borders of non-member countries. As a result, the CoE and EU, through the initiatives implemented within the framework of CBC/TFC, exercise their influence over the whole European continent.

Another important objective of CBC/TFC is to counteract negative consequences caused by the existence of safe borders. The barriers resulting

³⁷ Conference report. Cross-Border Cooperation within ENPI 2007-13, INTERACT Conference, 9-10 February 2006, Helsinki

from the existence of secured borders often affect economic and social development of border areas. These barriers also hamper contacts, co-operation and trade between communities on both sides of the border. Both the CoE and the EU consider these facts as a serious obstacle to the harmonious and balanced development of the border regions and their local communities all over the continent. The CoE and EU's programmes stimulating CBC/TFC are intended to provide solutions to these problems.

There is no divergence in the understanding of the idea and principles of CBC/TFC between the two institutions. Although two different terms are used, in fact they refer to the same concept (see: chapter 2) of co-operation at local and regional levels between border areas. Both the CoE and EU underline the local and regional dimension of cross-border co-operation and the importance of its local and regional actors, i.e. local and regional authorities, local communities and NGOs.

The emphasis put on the bottom-up approach is intended to improve the effectiveness of instruments whose main role is to serve the concerned local communities. The instruments of cross-border co-operation operate at local level. Central authorities should therefore interfere to the least possible extent in local and regional authorities' operations and ensure appropriate conditions in which the latter can freely exercise their functions. The instruments of CBC shall both stimulate and support local actors' initiatives. One of the effects of the CoE and EU's policies relating to CBC/TFC is better co-ordination of the operations between national, local and regional authorities.

A significant principle governing the mechanisms of support and implementation of TFC/CBC is the reference to the domestic law of concerned countries. All TFC/CBC operations must be conducted in conformity with the national laws of the bodies involved in TFC/CBC, having regard however to the provisions of the international treaties that may apply.

All CoE's and EU's instruments of TFC/CBC are optional but in case of ratification of related legal documents (e.g. the Madrid Outline Convention and its protocols) they become obligatory for the signatory countries. The recourse to the EU's financial instruments is also optional and voluntary.

Both the CoE and the EU underline the partnership of the bodies concerned with TFC/CBC, which is well illustrated by the common TFC/CBC structures based on joint programming and management. Both equality of rights and shared responsibility of all actors stimulate concerned parties and allow them to

use the support or allocated resources more effectively as it is better suited to local needs.

There is no divergence in defining key issues relating to TFC/CBC between the CoE and the EU. For instance, both institutions are committed to the reduction of barriers to TFC/CBC resulting from different legal systems of the concerned parties. In order to overcome these difficulties, the two institutions have started work on drafting the appropriate legislation. The CoE is still debating the elaboration of the third protocol to the Madrid Outline Convention which will set up “Transfrontier grouping of territorial co-operation” (TGTC), whereas the EU is working on the introduction of a new mechanism - European Grouping of Crossborder Co-operation (EGCC). Both instruments will allow the bodies operating under different legal systems to conduct joint actions on the same legal basis.

The most important form of CBC/TFC are Euroregions which constitute a platform for the coordination of actions undertaken by different actors – regional and local authorities, social organisations and NGOs.

Since the beginning of 1990s this form of institutionalisation has been flourishing all over Europe. Nowadays Euroregions are established on almost all EU borders and they benefit from the CoE and EU instruments of CBC/TFC. The two institutions can be said to act in a complementary manner. The CoE focuses on the establishment of Euroregions and the elaboration of legal framework for these structures, whereas the EU supports the Euroregions’ activities and the implementation of specific projects.

Since both institutions attach great importance to the promotion of CBC/TFC, they are involved in organizing trainings, conferences, seminars, offering internships and disseminating related information. The CoE and EU also support research and studies concerning the present state of CBC/TFC as well as exploring new possibilities of improving the existing mechanisms of co-operation. In such cases both institutions often undertake joint initiatives or fund joint programmes.

2. Differences

Despite many similarities between the CoE’s and EU’s objectives in promoting CBC/TFC their respective instruments also differ in certain aspects, mainly because of the different natures of the institutions and their methods of operating. The CoE is an international organisation grouping together nearly all European countries (with the exception of Belarus), whose aim is to develop

democracy, defend human rights and the rule of law and promote security and stability on the whole continent. The 46 CoE member countries have different political and economic systems. The EU is a political and economic union of 25 European countries and promotes their further integration. The two institutions have different potential for exercising their influence, which has an impact on the decision-making processes and the financial resources available. The EU assigns substantial financial resources for the development of CBC. Within the framework of the EU Cohesion Policy a sum of 7,5 billion euro³⁸ euros is to be allocated to European territorial co-operation objective. The EU's financial mechanisms are also far better developed and thus allow to cover a wider area. The CoE's financial commitment is considerably smaller.

The above-mentioned factors have an impact on the means of action employed by the two institutions. The CoE has drafted a number of legal instruments which shape up cross-border co-operation. The key documents are the European Outline Convention and its two protocols, Political Declarations and Recommendations, all of which serve as a legal framework for cross-border co-operation at continental level.

Compared to the CoE, the EU employs mainly measures of financial and technical assistance to promote the development of CBC/TFC, the EU programmes such as Interreg, Phare-CBC, Tacis-CBC, Cards are above all designed to finance specific cross-border initiatives. The instruments applied by the two institutions often focus on different aspects of the CBC/TFC. Since the CoE attaches great value to the promotion of the idea of cross-border co-operation, it funds research and scientific initiatives involving experts. The CoE also provides legal and organisational assistance in setting up cross-border structures, e.g. Euroregions. The CoE finances almost exclusively "soft" projects aiming to establish contacts and co-operation between local communities.

The EU, within the framework of cross-border co-operation, aims to implement infrastructure projects, foster economic and social development and encourage social and cultural exchanges. A considerable part of the EU funds are allocated to "hard" infrastructure projects. As it can be seen the EU programmes focus on the implementation of cross-border projects, whereas the CoE's initiatives are intended to establish co-operation as well as to ensure appropriate external conditions for its implementation (e.g. international legislation, appropriate

³⁸ 15-16 December European Council conclusions on the financial perspective for 2007-2013
http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/misc/87677.pdf

political environment and acceptance on the part of the countries' decisionmaking bodies).

The two institutions also have a different geographical approach to CBC/TFC solutions. Legal documents adopted by the CoE are of a universal nature, they apply to all the European states that have ratified them. The EU instruments apply exclusively to its Member States and EU neighbours. In fact, due to the EU enlargement the instruments of CBC currently cover nearly all the continent. One of the characteristics of the EU financial instruments of CBC is their geographical diversification. One set of instruments is employed for EU Member States (Interreg), another group of instruments is oriented towards Eastern European countries (Taxis) and the Cards programme covers the Western Balkans countries.

Currently, with the ongoing changes made to the EU financial instruments, the geographical factor is gradually disappearing giving way to the growing importance of the status of particular states in relation to the EU. The instruments to be implemented after 2007 will be divided into those aimed at the countries with membership perspectives (IPA) and the other group of EU neighbours (ENPI).

The CoE's legal instruments of CBC/TFC do not have a geographical dimension. However, the degree of intensity and methods of promotion and monitoring of TFC operations are adjusted to specific needs and conditions of particular European regions and their communities. The CoE is actively involved in the Balkans region, in Central and Eastern Europe and recently in the Caucasus, because it considers TFC to be insufficiently developed in these regions. The "two-step" approach is characteristic of the CoE. On the one hand, the institution, together with central, regional and local authorities, is committed to drafting the legal framework for TFC at continental level. On the other hand, the CoE focuses on the implementation of selected specific projects at regional level, for instance the establishment of particular Euroregions; it also provides legal assistance to particular countries or regions.

A wide range of the EU instruments coupled with the EU's considerable funds allow for stimulating in a more complementary manner various aspects of cross-border activities ranging from training, fostering people-to-people contacts to the financing of large infrastructure schemes. Despite the considerable disproportion of funds between the CoE and the EU, the CoE seeks to reach the areas where the EU is less involved. For example, the CoE has committed itself to developing teaching of foreign languages in border areas as language skills play an important role in increasing the quality of co-

operation and people-to-people contacts. The CoE has also given support to towns divided by an international border.

VI. Final conclusions

Co-operation of the EU and CoE in the field of the TFC/CBC

In order to achieve the objectives of transfrontier co-operation set out respectively by the Council of Europe and the European Union, further co-operation between the two institutions is necessary. Both institutions emphasise the importance of close co-operation to develop transfrontier co-operation and grant high priority to this issue. The co-operation between the CoE and the EU is based on the Joint Declaration on Partnership and Co-operation which is a legal framework for joint specific operations implemented under joint programmes of the CoE and the EU. Although TFC does not constitute a distinct topic included in the joint programmes, one of the programmes' priorities, affirmed during the last quadripartite meeting of the CoE and the EU in Brussels on 22 March 2004, is defined as the promotion of a Europe without dividing lines. A number of the CoE and EU joint projects (e.g. the Joint Programme to promote democratic governance and social development in Kaliningrad/North-West Russia or the Social Institutions support programme in South Eastern Europe³⁹) refer to the development of CBC. The co-operation of the CoE and the EU is particularly noticeable in the region of the Western Balkans and in Eastern Europe.

The CoE's and EU's respective initiatives relating to the elaboration of the legal status of Euroregions (TGTC/EGCC) should also be compatible. The common feature of the two initiatives is an attempt to standardise the legal status of transfrontier units and their legal relations with territorial authorities. The adoption of complementary solutions will have a significant impact on the further development of CBC in Europe.

Model for co-operation

Despite the ongoing co-operation between the CoE and the EU in the field of TFC/CBC, further reinforcement and closer co-ordination of the co-operation seems indispensable, new areas of co-operation need to be explored. Both institutions are faced with new challenges, namely the development of

³⁹ European Commission / Council of Europe Joint Programmes Scoreboard report, DSP(2004)21, 1 October 2004 [http://jp.coe.int/programmes/general/DSP\(2004\)21_E.pdf](http://jp.coe.int/programmes/general/DSP(2004)21_E.pdf)

TFC/CBC in the regions where it is not sufficiently developed or those affected by serious social and economic underdevelopment, lacking stability and security, particularly Eastern and South Eastern Europe or Caucasus. Further extension of the legal framework of the TFC/CBC and the standardisation of the definitions and legal provisions employed by the two institutions in this field also prove to be an important issue for consideration.

The model of co-operation between the CoE and the EU in the area of TFC/CBC should be based on the principle of complementarity between the two organisations and the operations undertaken by them. The various aspects of TFC/CBC presented in this report confirm the existence of “specialisation” of the two institutions committed to TFC/CBC, their privileged areas of involvement. It is however important that their numerous initiatives remain coherent and contribute to building a distinctly harmonised policy.

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