

Sixteenth Council of Europe Meeting of the Workshops for the implementation of the European Landscape Convention – Landscape and Transfrontier Cooperation, the Landscape knows no boundary – 1st and 2nd of October 2015 – Andorra

I. Introduction

First of all, it is necessary to clarify some notions. Transfrontier cooperation is generally defined as cooperation between adjacent local and regional authorities of different countries. Inter-territorial cooperation is generally defined as cooperation between non- adjacent local and regional authorities of different countries.

Transfrontier and inter-territorial cooperation between local and regional authorities has known a remarkable evolution in Europe these last decades. Forty to thirty years ago, transfrontier and inter-territorial cooperation between these authorities on a public legal base was not allowed and unknown. Today, the opposite is true: what was unauthorized and unknown then, has become the norm and is taken for granted: more and more local and regional authorities are working together on a legal base with their counterparts in other countries.

The Council of Europe (CoE) and the European Union have developed a whole range of legal instruments that permit and foster this cooperation.

Lots of European countries have also concluded agreements with their neighboring countries facilitating transfrontier and inter-territorial cooperation for their local and regional authorities. It is not possible within the scope of this contribution to mention or explain all of them, so hereafter follows some examples. The Benelux countries concluded the Benelux Convention of 12 September 1986 on Transfrontier Cooperation between Local Authorities. This will be succeeded by a new Benelux Treaty concerning Transfrontier and Inter-territorial Cooperation, signed on the 20th of February 2014 in The Hague, but not yet ratified. The Netherlands concluded the so-called Anholt Treaty of 23th of May 1991 with Germany and the Land North Rhine-Westphalia. France concluded transfrontier cooperation agreements with all of its neighboring countries in order to facilitate transfrontier cooperation of its local and regional authorities with their counterparts on the other side of the border.

Hereafter follows a short explanation of the legal instruments developed by the CoE and the European Union.

II. CoE

II.1. The CoE has played and is still playing a pioneering role in transfrontier cooperation.

The Council of Europe was the first international institution that tackled the problem of the lack of a suitable legal basis for transfrontier cooperation. The work of the CoE led to the drafting of the European Framework Convention on transfrontier cooperation between territorial communities or authorities. This Framework or Outline Convention is also referred to as the Madrid Convention, where it was signed on 21 May 1980.

The Framework Convention creates no rights or obligations for local and regional authorities, but focuses exclusively on the Member States. The Member States which have ratified this Convention – that are all the Member States of the CoE, except Andorra, Estonia, Greece, Iceland, Malta, San Marino, Serbia, the former Yugoslav Republic of Macedonia and the United Kingdom – are required

to make efforts to facilitate and to promote transfrontier cooperation between local and regional authorities on both sides of the border, within the scope of their respective powers.

The Member States should for that purpose conclude agreements with their neighboring countries which allows their local and regional authorities to cooperate with each other. Examples of those agreements are attached to the Framework Convention. Such agreements may cover regional development, environmental protection, the improvement of public services, etc., and may include the setting up of transfrontier associations or consortia of local authorities.

Important results were achieved on the basis of this Convention – so is for instance the before mentioned Benelux Convention on Transfrontier Cooperation based on this Convention - but there remained, however, some major obstacles, in particular of a legal nature.

II.2. Therefore, an Additional Protocol No. 1 to the Framework Convention was concluded on the 9th of November 1995, which has been ratified by 24 of the Member States of the Council of Europe.

The Protocol aims to strengthen the Framework Convention by expressly recognizing, under certain conditions, the right of local and regional authorities to conclude transfrontier co-operation agreements, the validity in domestic law of the acts and decisions made in the framework of a transfrontier co-operation agreement, and the legal corporate capacity ("legal personality") of any co-operation body set up under such an agreement.

II.3. Local and regional authorities not only work more and more with adjacent authorities on the other side of the border, but also more and more with non-adjacent authorities in other countries. In order to anticipate this, the CoE drafted an Additional Protocol No. 2, which was opened for signature on the 5th of May 1998.

This Additional Protocol is ratified by 23 member States of the Council of Europe and makes the Framework Convention and the Additional Protocol No. 1 *mutatis mutandis* applicable on inter-territorial cooperation of local and regional authorities.

II.4. An Additional Protocol No. 3 was opened for signature on the 16th of November 2009 and has been ratified by six Member States.

This Additional Protocol provides for the legal status, establishment and operation of “Euroregional Cooperation Groupings (ECG)”.

Legal personality and aim. The ECG is a legal person, governed by the law of the Member State in which it has its headquarters. The aim of an ECG is for transfrontier and inter-territorial co-operation to be put into practice for its members, within the scope of their competences and prerogatives.

Membership. Local and regional authorities, as well as the Member States themselves¹ and – under certain conditions - all legal persons established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character. Individuals may not be members of an ECG.

Establishment. The partners of an ECG shall, as appropriate, inform, notify or obtain authorization from their national authorities regarding the establishment of such a grouping.

¹ Central authorities didn't originally participate with their local and regional authorities in transfrontier cooperation bodies. The agreements didn't originally mention central authorities as partners in transfrontier cooperation bodies. This changed with the Third Protocol and the EGTC Regulation of 5 July 2006 (see hereafter), which specifically includes central authorities as possible partners of an ECG and EGTC respectively.

Authorization may be refused if membership of the ECG would violate this Additional Protocol or provisions of national law, including the powers and responsibilities of prospective members, or if membership is not justified for reasons of public interest or of public policy of the Member State concerned.

Tasks. The ECG performs the tasks which its members entrust it with. There is a great flexibility on the reasons why an ECG can be founded. It can be given all types of functions, from sharing information, through the harmonization or coordination of positions, to the actual implementation of initiatives and projects. The tasks can also involve the implementation of territorial cooperation programmes which the EU finances. These objectives can be pursued without the requirement of the ECG of adopting the statute of an EGTC.

Supervision, administrative and judicial review. Decisions and acts of an ECG shall be subject to the same supervision and administrative and judicial review of the legality of acts of local and regional authorities as those required in the State in which the ECG has its headquarters.

Where an ECG carries out any activity in contravention of the provisions on public policy, public security, public health or public morality of the Member States to which its members belong, or in contravention of the public interest of these States, the competent authority or body of these States may prohibit that activity on its territory or require those members that fall under its jurisdiction to withdraw from the ECG unless the latter ceases the activity in question. Review of the competent authority's or body's decision by a judicial authority shall be possible.

This Third Additional Protocol contains also provisions for the duration, liabilities, dispute settlement and the financial audit of an ECG.

An appendix has been drafted in order to facilitate the implementation of this Protocol. It contains more detailed, but optional provisions for the establishment and operation of ECGs.

III. European Union

The EU has also been active with regard to cross-border cooperation. The Regulation No. 1082/2006 of the 5th of July 2006 provides for the establishment of cooperative groupings with a legal personality, "European groupings of territorial co-operation (EGTC)" and provides the conditions for so doing.

This Regulation has been modified by the Regulation No. 1302/2013 of the 17th of December 2013.

57 EGTC's have been established. 12 are under construction.

The objective of an EGTC is to facilitate transfrontier and inter-territorial cooperation between its members, with the aim to strengthen economic and social cohesion.

Membership. Member States, local and regional authorities, undertakings entrusted with operations of services of general economic interest in compliance with applicable Union and national law, as well as their counterparts of adjacent non-EU Countries.

Establishment. A prospective member of an EGTC must notify its Member State. Following this notification, the Member State approves the prospective member's participation in the EGTC, unless such participation is not in conformity with national law relating to the powers and competences of the prospective member or not justified for reasons of public interest or of public policy of that Member State.

Tasks. Primarily, the tasks of an EGTC may concern the implementation of cooperation programs, or parts thereof, or the implementation of operations supported by the Union through the European Regional Development Fund, the European Social Fund and/or the Cohesion Fund.

Member States may limit the tasks that EGTCs may carry out without financial support from the Union.

IV. What kind of instrument to choose for transfrontier and inter-territorial cooperation?

Different agreements and instruments for transfrontier cooperation have been mentioned. What to choose from?

There is no real need to choose between an ECG, an EGTC or another legal type of body – or even no body at all is possible, just informal cooperation without a legal base may be appropriate.

Before choosing the type of cooperation form or structure, one has to identify the needs and what are the obstacles which hinder transfrontier cooperation. Once this has been done, the appropriate form or structure can be decided. If the cooperation is limited to one specific issue, a light form of transfrontier cooperation may be advisable, without the setting up of a cooperation body. If the need arises for cooperation in different fields, a more structured cooperation will be necessary with the setting up of a legal transfrontier cooperation body.

ECGs and EGTCs can co-exist; the same territorial authorities can be members of different bodies.

But by statute, an ECG can perform the tasks of an EGTC and comply with the provisions of the amended EGTC Regulation 1082.

An ECG is easier to set up and is by definition more attuned to the needs of territorial authorities than an EGTC.

ECG is not subject to any control from the CoE but can benefit from the support (legal and political) of the CoE (Centre of Expertise for Local Government Reform and Congress of Local and Regional Authorities).

First determine what kind of cooperation you want and then choose the appropriate form or structure for it, and not the opposite!

V. Some examples of transfrontier cooperation with regard to landscapes

V.1. *The Three Countries Park* in the area of the Euregio Meuse Rhine is a cooperation aimed at the scenic value of the area. The initiative started as a Benelux-project. The Three Countries Park is a cooperation between nine partners in The Netherlands, Belgium and Germany. The goal is to preserve, develop and manage the rural area around the cities of Maastricht, Heerlen, Aachen and Liège.

V.2. *Network of nature parks of the Grande Région* (border area between Belgium, France, the Grand Duchy of Luxembourg and Germany). The Grande Région has 21 nature parks. They represent 21.5% of the territory and 12% of the population of the Grande Région (14.052 km² and 1.37 million inhabitants). The nature parks have local support and are recognized as partners by the regional, national and European actors. The protection of the heritage and local development are central.

V.3. *Benelux Convention on Nature Conservation and Landscape Protection.* This agreement provides for an inventory of valuable nature areas and landscapes in the border areas. Three permanent

working groups are responsible for the details of nature conservation policy. An application of this Benelux agreement is the Border Park "De Zoom – Kalmthoutse Heide".

This Border Park is a cross-border nature reserve with different biotopes (heaths, pools, dunes, meadows, forests). The ecological and cultural-historical values make the area worth to retain. This Border Park is founded on the initiative of the Benelux Union as the first cross-border naturel park. The Border Park is a voluntary partnership of owners and managers. The administrators and owners, both public authorities and private individuals, work on joint nature and water management. Recreation, information and education are not forgotten.

Thank you for your attention!
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