SYNTHESIS REPORT:

TOWARDS A NEW COMMUNITY LEGAL INSTRUMENT FACILITATING PUBLIC LAW BASED TRANSEUROPEAN CO-OPERATION AMONG TERRITORIAL AUTHORITIES IN THE EUROPEAN UNION

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Elaborated by the
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1. GENERAL INTRODUCTION

The **initial "Terms of Reference" (ToR)** for the study have defined the overall goal, which is (…) firstly to provide solid and practical legal background information upon which to base the formulation and implementation of cross-border and transnational programmes at the Community level in the next programming period, and secondly, to provide indications of possible optimal operational solutions. In addition the ToR have also defined the most important objectives that need to be met during the research process (see ANNEX I).

Based upon these prescriptions, the Association of European Border Regions (AEBR) – as main contractor – has elaborated an **"Inception Report",** which was accepted by the European Commission (DG REGIO) in July 2003. This Inception Report allowed to clarify a number of open questions and further refined the methodological approach suggested for the study. In addition, the Inception Report also adapted the organisation of the research process and designed a provisional timetable according to the new framework conditions (the Commission's needs regarding the timely elaboration and presentation of the 3rd Cohesion Report).

In order to achieve the above-mentioned overall goal and the specific research objectives as defined in the ToR and the Inception Report, **a "three-step-approach" was adopted.**

- In the **first phase**, specifically prepared model questionnaires have been sent by the AEBR to European border regions and to different INTERREG III programme secretariats. In addition, specific questionnaires have been sent to individual border regions / cross-border structures throughout Europe and to INTERREG III programme management units. More than 60 questionnaires have been returned to AEBR, with a high response rate from European border regions and a very low return rate for INTERREG programme secretariats. In addition, the individual field researchers have produced brief "position papers" on the core issue of the study.

- During a **second phase**, a total of **8 Technical Reports for larger areas (see ANNEX II)** were elaborated that addressed specific ToR-research tasks, first on a country-by-country basis and then in a cross-country perspective. Detailed "Research Briefings" have been prepared in advance, which contained the most important core questions that needed to be addressed in each of the Technical Reports.

- The **third phase** focussed on the organisation of a **"Roundtable Debate"** in Brussels and the parallel elaboration of elaboration of the "**Synthesis Report".** The Roundtable Debate brought together the AEBR, the field researchers, representatives of DG REGIO and other DGs of the Commission and representatives of the Committee of the Regions. The synthesis report summarises the major findings of the Technical Reports, the Roundtable Debate and the received questionnaires and elaborates concrete suggestions for a new Community legal instrument for decentralised Transeuropean co-operation.

The Association of European Border Regions (AEBR) thanks all field researches involved in the study for their valuable contributions and is particularly grateful for the effective co-operation with all representatives of the European Commission and their high interest in this particularly important issue.

2. STRENGTHS AND WEAKNESSES OF LEGAL INSTRUMENTS / SOLUTIONS CURRENTLY APPLIED IN THE CONTEXT OF DECENTRALISED TRANSEUROPEAN CO-OPERATION

Based upon the rich background documentation gathered for this study (i.e. 8 Technical Reports, questionnaires received, additional documents consulted), this chapter of the synthesis will give a summary overview on the most important strengths and weaknesses of legal instruments / solutions currently applied by territorial authorities in the context of decentralised Transeuropean Co-operation.

A **first section** will **assess** in detail the **practical experiences** gained **with legal instruments** that can be directly applied in the context of **decentralised cross-border co-operation (section 2.1).**

The second section will analyse the **most important legal solutions found for managing and implementing** cross-border, transnational and inter-regional **INTERREG III programmes** during the current programming period 2000-2006 **(section 2.2).**

A final section will draw a number of **intermediate conclusions that summarise the most important findings,** which result from the previous assessment of decentralised cross-border, transnational and inter-regional co-operation **(section 2.3.).**

2.1. The practical experience with directly applicable legal instruments in the field of decentralised cross-border co-operation

2.1.1. Brief overview on the development of a legal framework for cross-border co-operation and its specific elements

Cross-border co-operation between neighbouring **regions and local authorities** that are located in geographically adjoined areas along a common border was launched in Western Europe already at an early stage (1960ies and 1970ies).[1] Due to a lack of legal and administrative competencies, many of these local and regional-level initiatives in Western Europe were however often limited in their success and could not reach substantial progress.

In parallel to these first decentralized cross-border initiatives, **several governments in Western European** have undertaken first efforts to establish more formalised foundations for bilateral or multilateral cross-border co-operation. Since the 1960ies, several bilateral or multilateral agreements have been concluded between national governments that

[1] The very first cross-border structure was founded already back in 1958 on the German-Dutch border, the EUREGIO in Gronau. It has given its name to many other similar co-operation structures that should follow its example during the next decades. Euregios have been established along other parts of the German-Dutch-Belgium borders (1973-1979), along the Belgium-Dutch and French-German border (1984-1989) and subsequently along numerous other borders throughout Europe (since the 1990s). Decentralised cross-border co-operation initiatives have also been launched very early along many borders of Scandinavian countries. Some examples are the Øresund Council of 1964 (DK/S), the North-Calotte Council of 1971 (S/SF/NOR) and the Kvarken Council of 1972.

established ad hoc working bodies or joint institutions for inter-governmental cross-border co-operation in the field of spatial or regional planning[2]. These intergovernmental structures could however only formulate recommendations and had to real decision-making power in the field of cross-border co-operation. But also a number of inter-state agreements on good and neighbourly relations at borders, which generally aim at promoting mutual understanding, co-operation, friendship and good neighbourhood, and agreements for cross-border co-operation on specific topic have been concluded.

Due to the continuing weaknesses of the legal framework conditions for decentralized cross-border co-operation, the **European Parliament** had - in some of its very early reports adopted during the 1970s - already suggested the creation of a sound and Community-wide applicable legal instrument for cross-border co-operation among regional and local authorities.[3] This instrument should allow local and regional authorities to establish cross-border co-operation structures based upon public law. These far-reaching proposals of the European Parliament have however not been considered by the European Commission due to “legal difficulties”.

The elaboration and adoption of the **”Madrid Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities” (1980)** by the **Council of Europe**[4] was an important step forward in the process of creating adequate legal framework conditions for decentralized cross-border co-operation. At date, the Outline Convention is ratified by more than 25 Member States of the Council of Europe.

In the main part of this convention, the contracting parties commit themselves (within the framework of their national laws) to a number of fundamental aims:

- Resolving legal, administrative and technical difficulties of cross-border co-operation (Article 4);
- Considering the possibility of providing territorial communities or authorities[5] with special facilities in order to engage in cross-border co-operation (Article 5);
- Supplying relevant information to other contracting parties (Article 6), to their own regional and local authorities (Article 7) and to the Council of Europe (Article 8).

In its Annex, the Madrid Outline Convention proposes 5 model agreements for the promotion of cross-border co-operation and 6 outline agreements on cross-border co-operation adapted to the needs of regional and local authorities.

In order to further improve the original Madrid Outline Convention, a “First Additional Protocol” was elaborated that came into force on 1.12.1998. The Protocol "sharpened" the Convention by substituting as much as possible facultative expressions and advocated the setting up of permanent institutions for cross-border co-operation either based upon public or private law.

Although the Madrid Outline Convention and its First Additional Protocol have become a part of the national law in those states having ratified these documents, their provisions and the system of model/outline agreements are <u>not directly</u> <u>applicable</u> in practice. They are only a framework of reference. Additional inter-state agreements had therefore to be concluded for applying the Madrid Outline Convention, which allow to actually “bridge” the diversity of national powers and legal prescriptions governing cross-border co-operation along the different borders (especially regarding public law-based co-operation).

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[2] These agreements have frequently established “Inter-state-” or “Inter-governmental commissions”.
[3] „Gerlach“-report of 1976, „Boot“-report of 1984, „Poetschki“-report of 1987.
[4] Council of Europe: European Outline Convention on Transfrontier co-operation between territorial communities (Madrid Outline Convention). European Treaties Series /106, Strasbourg 1999.
[5] Article 2 of the Outline Convention defines the term "territorial communities and authorities" as "communities/authorities or bodies which exercise regional and local functions".

Considering this, one can say that the most important merit of the Madrid Outline Convention is its catalyst function for a European-wide process that consists of legally “backing” cross-border co-operation among regional and local authorities via the conclusion of additional treaties between states.

Due to the continuing lack of a European-wide and directly applicable legal instrument, decentralised cross-border co-operation along internal and external EU-borders still operates in practice on ground of a **highly diverse and unevenly developed legal framework** that **combines**, in the majority of cases, **three different elements:**

- The use of **explicit domestic powers** that allow regional and/or local authorities from one state **to engage in decentralised cross-border co-operation** with territorial authorities from neighbouring States[6].

- Beyond the provisions on decentralised (cross-border) co-operation in national legislations defining the powers of territorial authorities, **inter-state agreements on cross-border co-operation** frequently create specific legal conditions and instruments for decentralised cross-border co-operation. One can generally distinguish between two types of agreements: (1) Inter-state agreements on cross-border co-operation over a clearly defined field of activity.[7] These agreements sometimes also directly promote decentralized co-operation among territorial authorities in the specific topic covered. (2) Agreements concluded between neighbouring States or state-like federal entities that promote decentralised cross-border co-operation over a larger range of different themes (generalised strategic cross-border co-operation). They establish a general framework for decentralised co-operation along a given border and often provide for specific legal instruments that can be directly applied by territorial authorities.

- Finally, there are a number of **other legal instruments not explicitly designed for decentralised cross-border co-operation**, but which are used in practice by territorial authorities for legally structuring their co-operation initiatives (*de facto* legal instruments). These instruments are mostly contained in the national law of different countries and only in one specific case derived from EC-law.

On ground of this somehow heterogeneous legal framework that has been progressively created during the past 15 years, decentralised cross-border co-operation could be significantly developed further. Today, cross-border co-operation between local and regional authorities takes place along most borders throughout Europe: along the current internal and external EU-borders, along the future internal and external EU-borders and along borders between other European countries that are not (yet) members of the European Union.

Within an enlarged European Union, the role of border regions further grows: Their surface will increase from now 36% of the EU territory (EU 15) to 46% (EU 25) and their share in the EU's total population will rise from now 27% (EU 15) to 32% (EU 25). Border regions will be very important especially in the new EU-Member States, as they account for 66% of their territorial surface and 58% of their total population. As a consequence, also the importance of decentralized cross-border co-operation will therefore further increase in the context of EU-Structural Funds policy after the accession of the new Member States in May 2004.

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[6] However without the security that on the other side of a border neighbouring territorial authorities enjoy a similar/comparable status in their respective internal law.

[7] E.g. transport and traffic, environment, waste and sewage water treatment, water supply, frontier workers, cultural issues, education and research, sports, judicial or administrative assistance, regulation and maintenance of the common border, security, fire protection and emergency.

Baring in mind these basic aspects, the following paragraphs will therefore assess more in detail the practical experiences gained with an application of the currently available legal instruments in the context of decentralised cross-border co-operation.

2.1.2. The availability of domestic powers allowing territorial authorities to engage in cross-border co-operation

The existence of explicit domestic powers that formally allow territorial authorities to engage in cross-border co-operation with territorial authorities of a neighbouring state generally plays an important practical role.

Throughout all European States, the central government normally retains a general competence over issues related to foreign affairs, and thus de jure also over issues related to cross-border co-operation. Only in Federal States such as Germany, Belgium or Austria, federates entities at regional level are recognised the role of an “international legal personality” for certain aspects being in their own responsibility. Regional authorities in non-Federal states and local authorities throughout all Counties generally lack of such an “international legal personality”, wherefore a specific legal base needs to be created in the domestic law that entitles them to become involved in cross-border co-operation.

Due to these highly different constitutional and legal framework conditions for territorial authorities, the Council of Europe - in its Madrid Outline Convention and the Additional Protocol - demands States that they recognise and respect within their jurisdiction the right of territorial authorities to engage in cross-border co-operation (e.g. by granting permission to territorial authorities to conclude specific co-operation agreements). Partly as a consequence of the Madrid Outline Convention’s influence, but also due ongoing reform-processes promoting decentralisation / regionalisation and devolution of powers in several European States, significant progress could be achieved during the past 10-15 years.

In the Federal States of the European Union (Germany, Austria, Belgium), especially the state-like federal entities at regional levels have quite substantial domestic powers that enable them to become involved in decentralised cross-border co-operation.

In **Germany,** the state-like territorial entities (Länder) are constitutionally empowered to conclude international agreements/treaties with foreign states on matters linked to their own competencies (Art. 32 Basic Law) and can, in the context of a delegated execution of state functions, transfer sovereignty rights to cross-border entities (Art. 24-1a Basic Law).[8] Both provisions generally enable the Länder to establish private and public law-based cross-border co-operation. Backed by the constitutional guarantee of local autonomy and self-government (Art. 28-2 Basic Law) as well as by provisions in the respective Länder-constitutions, local authorities in Germany (counties, cities and municipalities[9]) are generally entitled to initiate a wide range of cross-border co-operation activities. These activities normally cover all topics that are of local relevance/interest and which can also be subject for inter-municipal co-operation within Germany. Due to their lacking international legal status, local authorities can freely establish co-operation only on ground of private law.

In **Austria**, the Federal Constitution enables the Länder to conclude international agreements/treaties with neighbouring states/state-like federal entities on matters linked to

[8] Both activities need however the approval of the Federal Government.
[9] Kreise, Städte, Gemeinden.

their own competencies (Art. 16-1, 2, 3 Federal Constitution).[10] This allows the Länder in principle to initiate own cross-border co-operation activities based on public law as well as on ground of private law. In practice, however, the Länder judge the entire procedure of concluding agreements as being far to complicated, wherefore the motivation to use it is correspondingly small. In addition, also the use of private law is not worth considering, since some neighbouring states such as Germany will not conclude such agreements involving local government. Local authorities in Austria (towns and municipalities[11]) can only get involved in cross-border co-operation on ground of private law, as they are not able to set up / join public-law based cross-border co-operation structures with a multi-functional purpose orientation. This restriction is mainly a consequence of the very narrow definition of the "localisation principle" contained in the Federal Constitution (Art. 116a). According to this article, local authorities are not entitled to establish multi-purpose inter-municipal co-operation structures that transgress the borders of a Land.

Since the federalisation of **Belgium** as a whole back in 1993/94, the constitutional settings regarding sub-national governance have substantially changed. According to Art.167 §3 of the Belgium Federal Constitution, the 3 "Regions" and the 3 "Communities" as federal entities have the right to conclude international treaties on matters of their competencies.[12] As a consequence, "Regions" and "Communities" can conclude international cross-border agreements themselves or establish cross-border bodies based on public law.[13] Local-level authorities and local public bodies in Belgium (municipalities, provinces, centres for public welfare, water and so-called polder-boards, "intercommunales") are legally competent to get involved in cross-border co-operation, which includes the setting up of cross-border structures. Local authorities may conclude autonomously formal agreements with partners across national borders, but only in matters that are "personnalisable". In all other matters, cross-border agreements follow a hierarchical line from the municipality or province, to the Region and the Community and to the Foreign Office of the Federal government.[14]

In several other EU-Member States (France, Luxembourg, Sweden, Portugal, Italy), domestic law contains an explicit reference that makes it possible for territorial authorities to become involved into decentralised cross-border co-operation. Many of these references have been introduced into domestic legislation on territorial authorities by recent country-internal reforms. But the actual intensity of co-operation initiatives that might be launched on ground of these provisions remains highly variable.

France is a decentralised unitary state with four levels of government (central state, region, département, municipalities), of which only the local levels have a constitutional status (department, municipalities). During the past 12 years, various internal reforms of the "General Act on Territorial Authorities"[15] and specific government decrees (1992-1995, 1999, 2001) have substantially improved the possibilities of regions, departments and municipalities – as well as their groupings - to become directly involved into decentralised co-operation. On ground of these provisions, territorial authorities have the liberty to sign "conventions on cross-border co-operation", which are the first operational step necessary to formalise co-operation. The contracting parties have all liberties to define the content and

[10] These agreements / treaties are formally concluded by the President of the Republic with an approval by the Federal Government.
[11] Städte und Gemeinden
[12] Furthermore, the Special Law of 5 May 1993 regulates and consolidates the further federalisation of foreign affairs in Belgium, granting the Communities the competences they now exercise.
[13] They do not need to use "escape clauses" such as contracts based on civil law or higher ranking inter-state agreements.
[14] See Backhaus, Schäfer, The structure of Local, Regional and National Government Administration in the Netherlands, Germany and Belgium and Institutional Implications from an Economists Point of View, November 1999, page 13.
[15] Code Général des Collectivités Territoriales, CGCT.

range of application of such a convention,[16] but French territorial authorities are however only entitled to realise those aspects in a cross-border context that they are formally entitled to accomplish on their own territory.[17] Decentralised cross-border co-operation must also be in conformity with the procedures defined by the specific statutes of each territorial authority, be submitted for a control of legality to the Prefect (representative of the Central state) and respect the international obligations of the state.

In the **Grand Duchy of Luxembourg,** Article 107 of the Constitution defines municipalities as the only autonomous territorial entities of self-government with a proper legal base. They administer their patrimony and their interest through locally elected representatives, under the overall control of the central state. In parallel to the ratification of the Council of Europe's "Charter on local self-government", a major reform of aspects related to local government was adopted by the national government ("Act on Municipalities" of December 1988). The Act on Municipalities has recently been modified by the Law on inter-municipal co-operation of February 2001. On the one hand, this law enables local authorities of Luxembourg to establish public law based municipality's association among them (syndicats de communes). On the other hand, Article 3 explicitly authorises local authorities and "syndicats de communes" of Luxembourg to participate in foreign public organisms with legal personality under conditions laid down in international agreements. Vice versa, Article 3 also allows foreign municipalities and their co-operation structures to join their Luxemburg counterparts in a municipality's association set up on ground of the law of Luxembourg, as long as their domestic law entitles them to do so.

In **Sweden**, the "Local Government Act" of 1991 defines that local authorities (municipalities, counties) are allocated competencies that allow them carrying out tasks of public interest on their own territory.[18] Within Sweden, municipalities and counties can establish co-operation among each other, which was during the 1970s-1990s mostly based on private law[19] and more recently also on public law[20]. Swedish local authorities have also an explicit right to conclude private law-based conventions / agreements with municipalities and counties of neighbouring countries (Chapter 3 §20 of the "Local Government Act"). These conventions/agreements can also include that the management of cross-border activities is delegated to another local authority. Mandatory tasks can only be transferred to a local authority of another state on ground of an approving law. In addition, a recent law on "export of local services and cross-border emergency services" (2001) has also introduced further flexibility regarding the narrow definition of the localisation principle for a realisation of local public tasks.

Portugal is a unitary state with a partial degree of regionalization. The central government has exclusive legislative powers in all fields and general powers in areas of national sovereignty. Only for the peripheral archipelagos/islands Azores and Madeira, statutes on a partial regional autonomy have been elaborated. On the continental mainland, local authorities are the only decentralized and directly elected level of self-government (communes, parishes). Local authorities have sector-specific powers that – in some fields – are shared among communes and parishes and can establish inter-municipal co-operation

[16] Definition of the partnership and the objectives, joint tasks and responsibilities, ways to overcome administrative and institutional differences, creation of cross-border structures with legal personality etc.
[17] This implies that a French territorial authority needs always to search for a foreign territorial authority that holds the same / corresponding competencies, for which co-operation should be established, in their respective national context.
[18] Localisation principle: Local authorities can formally not operate beyond their own administrative limits and also not beyond the borders of the Kingdom.
[19] Simple agreements, shareholder companies, co-operatives and foundations.
[20] The "Swedish Local Authority Grouping" has a legal personality and is free to act independently from its members. In its structure and organization, the grouping has resemblance with a local authority. Local authorities can transfer to the Grouping all of their tasks, including tasks linked to sovereignty rights.

structures based on public law within the country. The national law of September 1999, defining the powers attributed to local authorities in Portugal, explicitly foresees in its article 31 that local authorities can participate in decentralized co-operation projects and interest associations within the European Union or with other countries of the Portuguese-speaking Community. The provision does however not contain a reference that provides for a direct involvement into legally more structured cross-border co-operation initiatives.

Italy is a regionalised state with four government levels (central, regional, provincial and municipal). The central governmental level has the power to issue and enforce laws on all issues and represents the country in matters of national sovereignty. There are 15 Regions with an ordinary Statute and 5 Regions with a special Statute. Primary or exclusive legislative competencies are attributed to the Regions with a special Statute, while the Regions with ordinary Statute are attributed secondary or competitive legislative competencies (with the State). The regions have the power to issue laws, administrative acts, and plans within their respective area and in their specific competencies.[21] Regional laws must conform to the principles of national laws and they can not stand against the interests of the other Regions. Within these limits they are similar to national laws. In case of the special status region Trentino, the overwhelming majority of legislative competencies have been delegated to the two provinces Trento and Bolzano. Provinces and Municipalities have the authority to enact administrative acts/regulations and plans in their respective field of competencies.[22] With regard to decentralised co-operation, Italian regions and local authorities were traditionally only allowed to practice international activities on ground of explicit and formal government consent. First steps towards a more permissive position have however been realised by a recent constitutional reform that was implemented by the state law no. 131 of 5th June 2003. The new Title V of the Constitution (esp. Article 117) recognizes to the region - among other aspects[23] -, the power of concluding agreements with other States or their sub-national entities on aspects relating to their legal competences and “in the cases and forms determined by state laws”. In case of such agreements, regions are however still bound to inform in advance the central government, which can raise objections within 30 days (the objections can also refer to “national interests”, a juridical entity which leaves open a wide scope of interpretation).

In many other EU-Member States (Spain, Finland, Netherlands, Greece, Denmark, United Kingdom, Ireland), the existing domestic legislation on territorial authorities does not contain an explicit reference that allows regions or local authorities to become involved into decentralised co-operation. Within these countries, however, regional and local authorities have implicit possibilities to engage - within certain limits - into cross-border co-operation. These possibilities are sometimes result from an evolution of the constitutional jurisdiction made by the Supreme Court (e.g. Spain), but more frequently from a use of private law-based provision (Netherlands, Finland, Denmark).

In **Spain,** no explicit references or provisions on powers of sub-national territorial authorities regarding cross-border co-operation are contained in the Constitution or in the legal framework for local-level authorities. The Constitution formally allocates powers in the field of external relations, external trade and external health exclusively to the State (Art. 149-1). Only more recent jurisprudence of the Constitutional court on Article 149-1.3 allowed to some extent establishing a doctrine that recognises to territorial authorities an existence of powers regarding external activities (i.e. also covering cross-border co-operation). The exact content

[21] Traffic, transport, public works, lake navigation and harbours, environment (agriculture and forests, hunting and fishing, mining) and health
[22] Provinces: traffic and transport, disaster prevention, environment and health. Municipalities: collective transport, traffic management and land use.
[23] It also attributes to the regions the duty to implement international agreements in their fields of competence, however by respecting the procedure approved by the state.

of potential regional and local powers remains however vague and still is subject to various disputes on the exact interpretation. Based upon this supreme jurisprudence, many "Autonomous Communities" have introduced provisions on foreign relations in their respective statutes.[24] But also in case of the local-level authorities (provinces, municipalities)[25], the jurisprudence of the Constitutional court allows to assume that these territorial entities can – according to the principle of a free administration of their own interests – establish relations with foreign territorial authorities.

According to the Constitution of **Finland**, the president of the republic, in co-operation with the government, is responsible for the country's foreign policy. The basic competence to sign international agreements may only be delegated by the Head of State to other bodies under certain conditions and in specific fields (e.g. management of EU-programmes; trade agreements). In Finland, there are 6 provinces (läänit) that were established only for the purpose of central government administration. At a lower level, 19 "regional councils" (kaakunnan liitto)[26] have been established by the "Regional Development Act" of 1994 that are only responsible for overall regional development. Local authorities, as the directly elected level of autonomous self-government, do not have the power to conclude international agreements without prior authorisation of the central level. They may however establish informal contact with foreign partners, while official information must be channelled via the Ministry of Foreign Affairs. The domestic powers of local authorities are mainly derived from the "Local Government Act" and sector-specific laws. These sources allow, among other aspects, inter-municipal co-operation within Finland, which can take place on ground of public law[27] as well as on ground of private law[28]. In the context of cross-border co-operation involving local authorities from neighbouring countries, Finnish local authorities can use the private law for legally structuring mutual co-operation. They are however prohibited from creating cross-border structures based on public law or from sharing decision-making responsibilities.

As a decentralised unitary state, the **Netherlands** has three levels of governments (Central government, provinces and municipalities). The Central government has exclusive legislative powers in all fields and general powers in areas of national sovereignty, including foreign policy. Concerning the political and administrative organisation of sub-central level of government, the Constitution stipulates that provinces and municipalities are established (and disbanded) by law[29] and outlines the degree of supervision that is to be exercised by central government over lower levels of government. Voluntary co-operation between local and provincial authorities within the Netherlands can be initiated on ground of the "Joint Regulations Act" (1984/85)[30]. The municipalities can freely decide both the extent of the voluntary co-operation, but also the number of municipalities participating in any given co-operation. Provinces have however to divide their territory into "areas for co-operation", which has the consequence that municipalities located within such an area are not allowed to

[24] Examples are the autonomy statute of Aragon (Art. 40-1) and the autonomy statute of Extremadura (Art. 6-2).
[25] The domestic legal framework governing local authorities in Spain is characterised by a double dependency: On the one hand, the central state has adopted a framework law on local authorities (1985) that has been completed, on the other hand, by additional laws of Autonomous Communities regarding the organisation of their respective local authorities system.
[26] The "regional councils" are composed of members elected by the municipalities of the regions in question. They are responsible for regional planning and distribution of central government funds and Structural Funds.
[27] The most important form of co-operation is the local authorities association (samkomuner), which is a public law-based authority having an own legal personality, own administrative staff and own financial resources.
[28] Private law-based co-operation can take place in shareholder companies, co-operatives, associations and foundations. The most important form is the shareholder company.
[29] The most important legal sources adopted on ground of these constitutional provisions are the "Law governing the supervision of provinces" (1962), the "Joint Regulations Act" or "Law on co-operation between decentralized public authorities" (1984/85), the "Municipal law on the supervision of municipalities" (1986) and a number of major revisions of the legislation on provinces and municipalities adopted in 1994.
[30] Wet gemeenschppelijke regelingen.

co-operate with municipalities in other areas, unless decided otherwise by the provinces.[31] On ground of domestic law, local authorities in the Netherlands are not competent to enter into formal relations with foreign authorities (this also includes cross-border co-operation). In practice, however, local authorities have already for a long period used private-law based contracts as an "escape clause"[32] to pursue cross-border co-operation activities with neighbouring territorial authorities.

In **Greece** the legislation pertaining to the organisation and functioning of all local and regional territorial structures is very specific and somehow contradictory with regard to cross-border co-operation. Greece is divided in 13 Regions at NUTS II level (Peripheries) and their executive level is appointed by the central government in order to implement centrally planned programmes or Community Initiative Programmes such as INTERREG. Due to their general function that aims at securing the execution of national policies within their administrative context, regions can not conclude cross-border co-operation agreements and are mostly concerned with safeguarding international treaties/agreements concluded by the national government. The 51 prefectural self-government institutions (Nomoi) and the local self-governments (cities and municipalities[33]) have a certain degree of freedom to organise cross-border cooperation structures and are also allowed to fund these activities. The legal provisions are however rather vague on how far local authorities can actually proceed in the conclusion of agreements on cross-border cooperation. Prefectures have a certain degree of autonomy to negotiate cross-border co-operation agreements, but they are quite powerless when it comes to an implementation of cross-border co-operation programmes. Especially larger municipalities/cities (with strong budgets) play an important role in cross-border co-operation, as they can directly negotiate with respective territorial units of self-governance in neighbouring countries. Local authorities have however frequently to struggle with restrictions coming from the Regions regarding a conclusion of cross-border cooperation agreements. They also need to ask the Region's permission for some practical steps that have to be taken for implementing cross-border cooperation activities[34].

In **Denmark**, the Constitution defines that only the central government is responsible for foreign policy (§ 19), which normally also covers cross-border co-operation. Local authorities (municipalities, counties[35]) can therefore not conclude binding agreements and are furthermore restricted by the principle of territoriality, which defines that their activities need to be related to their territory. Due to these limitations, one can say that the Constitution and the Local Authorities Act have not proved very helpful and tend to formally hinder decentralised cross-border co-operation. Practice has however shown that local authorities have a certain range of *de facto* possibilities to engage in decentralised cross-border co-operation unless this does not lead to a transfer of domestic competencies towards foreign territorial authorities.

Under the constitutional set-up in the **United Kingdom**, the central government retains exclusive powers regarding foreign policy and a large degree of control over EU funding for cross-border cooperation programmes. Recently, the creation of Scottish Executive and Parliament, and Welsh Assembly has seen the devolution of substantial powers to the former and somewhat lesser powers to the latter.[36] The devolution to the Welsh and Scottish

[31] Lately, the Dutch government has been reconsidering the municipal co-operation based on this act. The reason for this reconsideration lies in the fact that decisions are being taken by inter-municipal bodies lacking democratic legitimacy.
[32] Based on the assumption that local authorities are also legal bodies according to civil law, which can conclude private-law based contract.
[33] Dimoi, Kinotites.
[34] For example they need to ask for permission to take the official car if they want to use it in the neighbouring country!
[35] Kommuner, Amtskommuner.
[36] Following the passage of the Scotland Act (1998) and the Government of Wales Act (1998)

national levels has already had a substantial impact in enabling the effective decentralisation of the management of Interreg Programmes supporting cross-border co-operation. Northern Ireland has always had separate government administration but the political (i.e. ministerial) level had been suspended for quite some time – known as "direct rule" by the British government. In England, the ongoing process of devolution to set up regional bodies at the NUTS II level remains politically contentious. As a result, authority over the administration of cross-border schemes and the power to conclude agreements on cooperation issues remains the prerogative of central government. The local level of self-government in the United Kingdom (county councils, district councils, boroughs, unitary authorities and various other authorities) have no explicit domestic powers referring to cross-border co-operation. However, nothing prevents local authorities in the UK to use the freedom of contractual agreement that is recognized to each legal entity (e.g. using private law).

In the **Republic of Ireland,** decentralised cross-border co-operation has little tradition. Some experience exists in southern parts of the Irish Sea (mainly through INTERREG) and along the land border shared with the United Kingdom (Ireland/Northern Ireland). Mostly as an influence of the implementation of EU Structural Funds Programmes, the Ireland is now divided into 2 administrative areas at NUTS II level (Border, Midland and Western and Southern and Eastern)[37] and 8 Regional Authorities at the NUTS III level (since 1994).[38] Despite this element of devolution to the regional level, the Central government's Department of Finance still retains ultimate authority in terms of the management and implementation of Interreg Programmes. Local government exists at the level of 29 Counties and a number of other local level authorities (cities, municipalities). These local authorities have no explicit original domestic powers to become involved in decentralised cross-border co-operation and lack of substantial influence on EU-Structural Funds programmes supporting cross-border co-operation.

The 3 future EU-Member States analysed in the context of this study (Poland, Slovakia, Hungary) are generally characterised by a relatively centralised system of territorial organisation that is defined in the respective Constitutions adopted at the beginning of the 1990s. Subsequent state-internal reforms involving regionalisation and decentralisation / re-allocation of powers have sometimes created new problems in the field of decentralised cross-border co-operation. In parallel, however, the adherence to and implementation of the Madrid Outline Convention has generally favoured a country-internal re-definition of **powers allocated to territorial authorities, which explicitly recognises their right to become involved in decentralised cross-border co-operation.**

In **Poland**, a number of legal instruments anchored in national law can be practically applied by regional/local authorities for "strategic level" cross-border cooperation". For "project level cooperation", the legal provisions of Polish national law are not yet sufficient. The most important provision is contained in Article 172 of the Constitution, which stipulates that units of local self-government shall have the right to join international associations of local and regional authorities as well as to cooperate with local and regional authorities of other states.[39] The principles governing an exercise of these rights were subsequently specified in separate laws,[40] of which the most important is the "Act on a Participation of Units of Local Self-Government in International Associations of the Local and Regional Communities" of September 2000. Articles 3 and 4 of this law contain however quite substantial limitations

[37] These administrative areas were established in 1999 and each region is represented by a Regional Assembly.
[38] The Regional Authorities have a general function to promote the co-ordination of public services in their region, and to monitor the impact of EU assistance
[39] Such powers were put in question by Polish central state officials up to the middle of the 1990s.
[40] Act on the Provincial Self-Government from 5 June 1998 (Article 12 point 2 and Article 18 point 14) and of the Act on Local Self-Government from 8 March 1990 (Article 18 point 12a and art. 84a).

restricting the operational capacities of decentralized co-operation[41] and placing such activities under a relatively tight control of the central state[42].

In **Hungary**, a number of legal sources enable territorial authorities to organise cross-border co-operations freely without the preliminary consensus of the central government and define the legal instruments and possibilities of cross-border co-operation. The first important source is the "Act on Self-Government" of 1990, which has introduced considerable administrative autonomy for local and regional level authorities and was a real break-through as opposed to the „council system" characterising the socialist decades.[43] On ground of this Act, local authorities and counties are furthermore permitted to sign co-operation agreements with foreign partners and to join international co-operation structures without the need of governmental permit.[44] Other important national sources are the Act of 1996 on "Regional Development and Physical Planning" and the "Governmental Decree on the National Regional Development Concept" of 1998, which both mention explicitly the role of international co-operation or cross-border co-operation in the context of a country-internal implementation of the EU's regional policy.

With the establishment of the legal order of the **Slovak Republic** on 1 January 1993, neither the Constitution nor the national "Act on Municipalities" (September 1990) stipulated a possibility for Slovak municipalities to associate with municipalities from abroad or to get involved into cross-border co-operation[45]. As a direct effect resulting from an implementation of the Madrid Outline Convention, the Slovak government has subsequently included a new Article 21 into the "Act on Municipalities" that entitles municipalities to engage in cross-border co-operation.[46] Further paragraphs of the new Article stipulate the limits of such membership and lay down provisions regarding a necessary cooperation with the state administration (the duty of the municipality to send a copy of an agreement to the Regional Office, which assesses the agreement; role of state administration as a member of the co-operation, if requested by the municipality). A very important restriction is however contained in

[41] Article 3: Entering into an association may not involve remitting of execution of public tasks of the entering local self-government unit to the association or to any members associated in it, or it may not involve transferring of any real properties or property rights on non-material interests vested in the local self-government unit in favour of the association or any members associated in it.

[42] Article 4: (§1) The body constituting the local self-government units adopts a resolution about entering into association by absolute majority of votes of the statutory composition. (§2) The resolution being referred to in paragraph 1, shall become effective after obtaining acceptance of the minister competent for foreign affairs. (§3) The local self-government unit delivers the resolution to the minister competent for foreign affairs through the province governor (voievode), enclosing its opinion hereto. (§4) The body constituting the local self-government units, together with the resolution referred to in paragraph 1, delivers statutes of the associations which it is going to enter, or other document setting forth principles of the association activity, list of its members and official translation of these documents into Polish. The provincial council presents also "Priorities of the foreign cooperation of the province (voivodeship)". (§5) The minister competent for foreign affairs gives consent for entering into the association, or refuses to give such consent under administrative decision.

[43] Article 1 (1): The self-governments of the villages, towns and the capital city – including its districts – (from hereto referred to as local self-governments) have the right to proceed individually in the local public affairs belonging to its own scope of authority (from hereto referred to as local public affair).

[44] Article 1 (6c): Within the framework of the present Act, the local self-government may (…) freely enter into partnership with other local self-governments, join regional and national interest federation organisation and for the sake of the representation and protection of its own interests and co-operate with any other local self-governments from abroad and enter international self-governmental organisations which concern its scope of activities and authority."

[45] According to Art 119 of the Constitution, the government of the Slovak Republic decides on principal matters related to foreign policy. The Act of the Slovak National Council No 369/1990 on Municipalities (September 1990) allowed local authorities only to associate with other Slovak municipalities in order to perform issues of common interest and, on ground of a decision of the municipality's council, to associate in permanent or temporary nation-wide, regional or interest associations for fulfilling common tasks and for representing common interests and needs or for another reason.

[46] Article 21: The Paragraph 1 reads as follows: "Within the scope of its competence, the municipality may co-operate with the territorial and administrative units or authorities of other states that carry out local functions. It has the right to become a member of an international association of territorial units or territorial authorities."

paragraph 3, which stipulates that "if an agreement requires the establishment of a special authority, such an authority must be of private law nature." Finally, also the Act No. 302/2001 on "Self-government of Higher Territorial Units", establishing a regional level in Slovakia, included from the beginning on a provision that entitles regional authorities to co-operate with territorial and administrative units or authorities of other states carrying out regional functions.

2.1.3. Inter-state agreements promoting cross-border co-operation on a specific topic

Throughout Europe, a large number of formal agreements or protocols have been concluded that aim at promoting cross-border co-operation only in one particular topic or theme. Such single-purpose agreements have been concluded between neighbouring states, between regional entities of Federal States and between non-equivalent public authorities (e.g. Federal regional entities & states; Federal regional entities & local authorities). This process started in Western Europe already back in the 1950ies and continued to further expand along many other borders of EU-Member States and, more recently, also along borders among Central and Eastern European Countries.

The existing agreements cover a broad variety of specific aspects that particularly influence on daily life in border areas. Examples are cross-border security and emergency (judicial or administrative assistance, fire fighting/fire protection, rescue/emergency services), the provision of local public services (transport, water provision, sewage water treatment), culture and education/sports or the management of joint natural parks and transport issues.

Most of **the agreements concluded only between states** normally provide for strategic-level inter-governmental cross-border co-operation on the specific topic, but only in exceptional cases for decentralised project-specific co-operation (i.e. at local levels). There are however some examples along the borders of different Benelux-countries (B/NL, B/L, B/F, B/D, NL/D, L/D) that have also established a quite elaborated legal framework for decentralised cross-border co-operation. Especially in the field of co-operation on mutual assistance in case of natural disasters, they have allowed launching project initiatives at a local level[47].

- Many of the former Belgian provinces have signed lower level agreements with their neighbours in France, Germany or the Netherlands dealing with a simultaneous and co-ordinated application of relief organisation plans (e.g. agreement between the governor of the province of Hainaut and the prefect of the Nord-Pas-de-Calais region in 1987; agreement between the governor of the province of Liège and the Queen's commissioner of the Dutch province of Limbourg).

- A more recent example is the administrative agreement between the prefect of the Départment Nord (France), the governors of the Belgian provinces of Hainault and

[47] Mutual assistance agreements normally identify the competent authorities to give and receive the request for assistance and regulate matters such as the realization of operations or intervention plans. They also contain rules for urgent medical care and for a simplification of cross-border movement of ambulance services, provide for a reduction of formalities concerning border crossings for rescue teams and define financial reimbursement / compensation arrangements for service providers or third parties. On ground of these agreements, there have been practical actions that reinforce co-operation in this area (e.g. joint exercises, installation of special permanent telephone lines between two neighbouring regional authorities, rapid information exchange through computer-assisted information systems and publication of cross-border dictionaries in order to facilitate communication).

West and East Flanders and the mayors of Belgian border local authorities on assistance in response to disasters or serious accidents (1999).

In case of **agreements concluded by regional-level Federated authorities of Federal states with neighbouring states or territorial authorities, single-topic** cross-border co-operation can be considered to be at least partly and sometimes even fully decentralized (due to an involvement of territorial authorities as contracting parties).

Examples for inter-state agreements or protocols providing for intergovernmental co-operation in specific fields:

- **Agreements on spatial planning: Belgium-Netherlands-Luxembourg (1969), Belgium-Germany (1971), Switzerland-Germany (1973), Austria-Germany (1974), Netherlands-Germany (1976).**
- **Agreements on mutual assistance in case of natural disasters, severe accidents and civil protection: Belgium-Luxembourg (1970), Germany-France (1977), Germany-Belgium (1980), Belgium-France (1981), Germany-Switzerland (1984), Belgium-Netherlands (1984), Germany-Netherlands (1988), Poland/Germany (1997), Austria-Slovak Republic (1999).**
- **Agreements on public health care (Norway-Sweden of 1993) and on co-operation of police, customs and / or tax authorities (Belgium-Germany of 2000, Italy-Switzerland 2000 and 2003).**
- **Agreements on water supply (Slovenia-Croatia of 1996) and on open-water management (Poland-Germany of 1992/2001, Poland-Ukraine of 1996)**
- **Agreements on small border traffic: Poland-Germany (1992), Poland-Czech Republic (1995, 1996, 1999), Poland-Lithuania (1998), Poland-Slovak Republic (1999), Poland-Belarus (2000).**
- **Agreements on tourism: Austria-Hungary (…), Poland-Lithuania (1997), Poland-Russia (2002).**
- **Agreements on cooperation in the field of culture science and education: Belgium-Germany (1956), Belgium-Luxembourg (1967), Poland-Russia (1993), Poland Lithuania (1998), Poland-Slovak Republic (2000), Poland-Ukraine (2001).**
- **Agreements on frontier workers, employment in border areas and a cross-border labour market: Italy-Switzerland (1974), common Nordic labour market (1982), France-Switzerland (1983), Austria-Hungary (1997).**
- **Agreements on transport and communication: Poland-Lithuania (1992), Poland-Belarus (1992), Poland-Slovak Republic (2001).**
- **Agreements on shipping and/or protection of the river Rhine between France-Germany-Switzerland-Luxembourg-Netherlands (1963), of the rivers Mosel and Saar between Germany-France-Luxembourg (1961), of the Lake Geneva between France-Switzerland (1977/1980).**
- **Agreements on mutual information in nuclear matters: Spain-Portugal (1980), France-Luxembourg (1983), Finland-Sweden (1987), France-Belgium (1988)**

Examples for agreements concluded by regional-level Federated authorities of Federal states with neighbouring states or territorial authorities:

- **Agreement between Luxembourg and the Land Rheinland-Pfalz (D) on the management of a hydroelectric plant on the river Our (1958).**
- **Agreement between Luxembourg and the Land Rheinland-Pfalz (D) on a joint natural park (1964).**
- **Agreement between Belgium and the Länder Nordrhein-Westfalen and Rheinland-Pfalz (D) on a joint natural park (1971).**
- **Treaty between the city of Schaffhausen (CH) and Büsingen (D) on water supply (1972).**
- **Treaty between Luxembourg and the Land Rheinland-Pfalz (D) on water management (1974).**
- **Agreement between Switzerland and the Land Baden-Württemberg (D) concerning fishing in the lower Rhine (1977).**
- **Treaty between the Land Baden-Württemberg (D) and the canton of Schaffhausen (CH) on drainage (1976).**
- **Agreement between the Land Nordrhein-Westfalen (D) and the Netherlands on a joint natural park (1977).**
- **Agreement of the Land Baden-Württemberg (D) and the municipality of Rhinau concerning the meadowland and the practising of fishing and hunting on the German territory (1982).**
- **Agreements between the German-speaking Community (B) with Luxembourg on educational issues (2002).**
- **The River Meuse Discharge Treaty between the Flemish Region (B) and the Netherlands (1995).**
- **Agreements of the Länder Brandenburg, Saxony and Mecklenburg-Vorpommern with Poland on co-operation in case of natural disasters (2002)**

2.1.4. Inter-state agreements promoting generalised cross-border co-operation among territorial authorities

The conclusion of inter-state agreements or treaties promoting generalised cross-border co-operation on a broader range of themes has become the most “popular” approach for creating a suitable legal framework that can be directly applied by regional and local authorities of neighbouring states within a specific cross-border area. Frequently, these agreements also create new / additional legal instruments based on private or public law that allow territorial authorities to legally structure their co-operation initiatives, both at strategic level and at project level.

Already at an early stage, two multilateral agreements have laid foundations for a promotion of decentralised co-operation across borders of Scandinavia. On ground of the **Treaty of Helsinki (1962),** but especially with the Agreement between Denmark, Finland, Norway and Sweden concerning co-operation over Nordic national frontiers between local authorities **(“Nordic Convention”, 1977),** local authorities are entitled to establish border crossing contacts without involvement of central state authorities and to launch co-operation initiatives in a wide range of fields of common interest. Cross-border co-operation can take place in the same manner as co-operation of local authorities within one specific country, but only on ground of private law. This restriction can be explained by the specific legal framework conditions of Scandinavian states, which are not suitable for setting up public-law based inter-municipal co-operation entities across a border.

After the adoption of the Madrid Outline Convention of the Council of Europe in 1980 a larger number of **inter-state agreements or treaties on decentralised cross-border co-operation** have been concluded, especially during the past 15 years. These “application agreements” enable territorial authorities to become involved in decentralised cross-border co-operation and often also provide for specific legal instruments that can be directly applied in the context of mutual co-operation.

Currently, there are **10 “application agreements”** based upon the Madrid Outline Convention **that cover a substantial part of the borders among the current 15 EU-Member States (B/NL/L, D/NL, I/A, F/I, F/E, D/L/F/CH, D/B, F/B, E/P).** But also the **3 new EU-Member States Poland, Hungary and Slovakia** that were assessed in the context of this study have concluded a number of “application agreements” based upon the Madrid Outline Convention. A complete coverage can be observed in the case of Poland[48] and the Slovak Republic (agreements concluded with all neighbouring countries), whereas Hungary is contracting party only in case of one agreement with a neighbouring country (see box below).

There are however **still a number of border areas within the EU for which such inter-state agreements promoting decentralized cross-border co-operation have not yet been concluded (e.g. D/A, D/DK, borders of Greece, F/UK, UK/Ireland).** Despite this lack of inter-state agreements, decentralised cross-border co-operation is launched either on ground of formal competencies for territorial authorities derived from the respective national legislation (D/A, Greece) and/or by using *de facto* liberties that central state authorities grant in the field of decentralised co-operation (e.g. DK/D[49], Greece). If a legal structure were established for cross-border initiatives, they are normally based upon private law. Only in

[48] The agreements of Poland are based on the model agreements annexed to the Madrid Outline Convention, especially to the General Provisions (art. a, c, e, f), Annex 1.2 (art. 6 and provisions referring the commissions for the trans-frontier cooperation) and Annex 1.4.

[49] Region Sönderjylland/Schleswig, Kooperation Fyns Amt – KERN, Storstöms Amt – Kreis Ostholstein – Lübeck.

case of the UK/Ireland-border, the recent process of solving the political tensions has also led to a conclusion of specific agreements that provide for cross-border co-operation[50].

Inter-state agreements based upon the Madrid Outline Convention covering borders of the current 15 EU-Member States:

- **“BENELUX Convention” between the Netherlands, Belgium and Luxembourg (signed in 1986, came into effect 1991).**
- **“Isselburg-Anholt Agreement” between Germany and the Netherlands (signed in 1991, came into effect in 1993).**
- **“Vienna Agreement” between Italy and Austria (signed in January 1993, came into effect 1995).**
- **“Rome Agreement” between France and Italy (signed in November 1993 came into effect 1994).**
- **“Treaty of Bayonne” between France and Spain (signed in 1995, came into effect in 1997).**
- **“Mainz-Agreement” between regional Federal entities of Germany - the Länder Nordrhein-Westfalen and Rheinland-Pfalz - and Belgium - the Walloon region and the German-speaking Community (signed in 1996, came into effect 1998).**
- **“Karlsruhe Agreement” covering cross-border co-operation between France, Germany, Luxembourg and Switzerland (signed in 1996, came into effect in 1997).**
- **The “Basel-Agreement” between the governments of Switzerland, Germany and France on cross-border co-operation in the Upper-Rhine Area (signed in 2000, came into effect 1998).**
- **Agreement between France and Belgium (signed in 2002, currently in the process of ratification).**
- **“Valencia Agreement” between Spain and Portugal (signed in 2003, came into effect in 2004).**

[50] The land border between these two EU-Member States is a specific case, firstly, due to the fact that the UK did not sign the Madrid Outline Convention and, secondly, as a consequence of the general political problems that characterize the Ireland/Northern Ireland area. In 1999, as part of the process following the signing of the “Belfast Agreement” of 10th April 1998 (commonly known as the “Good Friday Agreement”), the British-Irish Agreement was signed on 8th March 1999 that provides for the creation of several cross-border cooperation bodies, under the auspices of a North-South Ministerial Council (NSMC). It was given domestic effect within the UK by the passage of the North/South Co-operation (Implementation Bodies) (Northern Ireland) Order in 1999 and within the Republic of Ireland by the passage of the British-Irish Agreement Act of 1999.

Inter-state agreements on cross-border co-operation between territorial communities or authorities based upon the Madrid Outline Convention covering borders of Poland, Hungary and the Slovak Republic:

- **Agreement between the Polish Republic and Belarus (1992).**
- **Agreement between the Polish Republic and Ukraine (1993).**
- **Agreement between the Polish Republic and the Czech Republic (1994).**
- **Agreement between the Polish Republic and Republic of Lithuania (1995).**
- **Agreement between the Polish Republic and the Slovak Republic (signed in 1994, came into effect in 1995).**
- **Agreement between the Slovak Republic and the Czech Republic (signed in 2000, came into effect in 2001).**
- **Agreement between the Slovak Republic and Ukraine (signed in 2000, came into effect in 2001)**
- **Agreement between the Slovak Republic and Hungary (signed in 2001, came into effect in 2001).**
- **Outline Treaty between the Slovak Republic and the Republic of Austria (signed in 2003, has not yet entered into force).**

These agreements generally help to further enhance and legally strengthen decentralised cross-border co-operation throughout Europe. With an elimination of basic legal uncertainties regarding decentralised co-operation, they could help to establish legally more solid arrangements for long-term oriented cross-border structures (strategic co-operation) and for cross-border project initiatives.

Last but not least, inter-state agreements also help cross-border co-operation schemes to strengthen their “internal legitimacy” (more transparent procedures for the internal functioning) and their “external legitimacy” (with regard to other administrative structures and the individual citizens).

Despite these generally positive aspects highlighted above, **one can observe that not all inter-state agreements have generated the same positive effects on an intensification of decentralised cross-border co-operation within their respective border areas.**

- Potential practical effects are, in the first place, strongly conditioned by the general scope of co-operation[51] that is “allowed” under such agreements and especially by the nature/quality of concrete legal instruments[52] that might be applied in the context of decentralised cross-border co-operation.

[51] A larger number of clearly defined “topics” for co-operation; general co-operation within the limits of the respective national competencies allocated to territorial authorities; no limitation whatsoever with regard to co-operation topics or competencies; enumeration of the type of actors that can be involved in co-operation etc.

[52] Private-law based or public law-based legal instruments; legal instruments already existing in the context of the national legislation of one or more of the contracting parties; new legal instruments that did not exist prior to the conclusion of the agreement (ex-novo instruments), etc.

- A closely related aspect that conditions practical effects of inter-state agreements is the extent to which territorial authorities actually use the agreement provisions or instruments in the context of decentralised cross-border co-operation.

By considering the above-mentioned indicators, one can establish the following "ranking order" among the different inter-state agreements: (1) Far reaching agreements, (2) well-developed agreements and (3) comparatively weak agreements.

Far reaching cross-border co-operation agreements

The most far reaching agreements are the **Benelux-Convention (B/NL/L),** the **Anholt-Agreement (D/NL),** the **Mainz-Agreement (D/B),** the **Karlsruhe-Agreement (D/F/L/CH)** and the not yet applied **agreement between Belgium and France (2002).** These agreements generally promote decentralised cross-border co-operation and provide territorial authorities with a wider range of different legal instruments for co-operation, mostly on ground of public law. A common feature of all agreements is that they allow establishing new and public law-based cross-border co-operation structures (*ex-novo* structures), which derive their existence not from existing national legal provisions.

Due to considerable similarities in the respective agreement provisions, one can identify two larger sub-groups:

The **first sub-group** is composed of the Benelux-Convention, the Anholt-Agreement and the Mainz-Agreement. The agreements provide for 3 basic co-operation instruments that are more or less similar: (1) the establishment of public law-based cross-border single purpose associations (*ex-novo*) for local and regional authorities, (2) the conclusion of public law-based agreements and (3) the establishment of other joint cross-border structures.

There are however two noteworthy aspects that slightly distinguish the agreements of this first sub-group: One aspect is that the Benelux-Convention allows a transfer/delegation of regulatory and administrative competencies to a "public-law based cross-border body"[53], whereas the Anholt- and Mainz-Agreements explicitly prohibit such a transfer/delegation to the "public law-based local purpose association".[54] The other aspect is that "joint cross-border structures" under the Benelux-Convention do not possess an own legal personality and can not manage financial resources or hire personnel, whereas under the Anholt- and Mainz-Agreements the "Local Working Community" can have a legal personality based on public law.

The **second sub-group** is composed of the Karlsruhe-Agreement and the future Belgium/French agreement. Compared to the first sub-group, both agreements provide for a larger number of specific co-operation instruments that can be applied in the context of decentralised cross-border co-operation and are nearly identical. Some of these instruments have similarities with instruments contained in the Benelux, Anholt and Mainz-Agreements,[55]

[53] Approximate translation of Article 3 (1) in the Benelux-Convention: If territorial authorities or bodies mentioned under article 1 decide to create a public law-based cross-border body, they can delegate to it regulatory or administrative powers.

[54] Approximate translation of Article 5 that is identical in the Anholt-Agreement and the Mainz-Agreement: (1) The public law-based local purpose association is not allowed to adopt legal provisions or administrative acts that create obligations for Third Parties. (2) The members of the public law-based local purpose association are obliged to take, within the scope of their domestic powers, the measures necessary for accomplishing the tasks assigned to the co-operation structure.

[55] (1) Cross-border local purpose associations → Public law-based cross-border body (Benelux) or Public law-based local purpose association (Anholt /Mainz). (2) Co-operation agreement providing for a mandate / delegation

whereas others are more or less influenced by the approach adopted inter-state agreements covering southern French border areas (i.e. Rome-Agreement, Bayonne-Agreement, see below).[56]

Despite the strong similarity among the Karlsruhe and Belgium/French agreement, one can observe a number of differences that are mostly related to the institutional and language-specific settings prevailing in each of the respective border areas covered.

Since their entry into force, **the co-operation instruments provided for in 4 of the far-reaching Agreements[57] have been applied in practice at various occasions (see overview tables on the practical application below).** The most intense application can be observed in case of the Benelux-Convention (B/NL/L), the Anholt-Agreement (D/NL) and the Karlsruhe-Agreement (D/F/L/CH). In all these cases, the Agreement provisions have been applied for generalised strategic co-operation (i.e. Euregios and similar cross-border structures), but also for long-term oriented or project-based co-operation focussing on a single topic (i.e. fire fighting, natural parks, culture, tourism, fresh-water provision). The Mainz-Agreement (D/B) has until now only been applied in two cases.

/ concession in the field of a provision of public services → Administrative agreements (Benelux) or Public law-based agreement (Anholt /Mainz). (3) Co-operation structures without legal personality → Joint cross-border body without legal personality (Benelux).

[56] General right to conclude co-operation agreements. Co-operation agreement providing for public tendering. Joining / creating a body for decentralised co-operation with own legal personality based on the internal law of one of the contracting parties.

[57] The French-Belgium Agreement has yet no practical application experience.

Basic instruments provided for in the most far-reaching inter-state agreements on decentralised cross-border co-operation		
Agreement	**Public law-based ex-novo structures *)**	**Other instruments *)**
Benelux-Convention (B/NL/L)	Public law-based cross-border body (Article 3, Organismes publics, openbare lichamen).	Administrative agreements based on public law (Article 2, Accords administratifs, administratieve afspraken). Joint cross-border structures without legal personality (Article 2, Organes communs, gemeenschappelijke organen).
Anholt-Agreement (D/NL) Mainz-Agreement (D/B)	Public law-based local purpose association (Articles 3-5, Zweckverband, openbare lichamen, Intercommunale)	Public law-based agreement (Article 6, Öffentlich-rechtliche Vereinbarung, lichte regeling, Convention de droit public). Local Working Community on ground of a written agreement (Article 7, Kommunale Arbeitsgemeinschaft, gemeenschappelijke organen, Groupe de travail communal).
Karlsruhe-Agreement (D/F/L/CH) Belgium / French Agreement	Cross-border local purpose associations (Articles 11-15, Grenzüberschreitender örtlicher Zwckverband, Groupement local de co-opération transfrontalière)	General right to conclude co-operation agreements (Articles 3 and 4, Kooperationsvereinbarungen, Conventions de coopération). Co-operation agreement providing for a mandate/delegation/concession in the field of a provision of public services (Article 5, Übertragung und Überlassung von Aufgaben bei der Erbringung öffentlicher Dienstleistungen, Mandat, délégation et concession de service public). Co-operation agreement providing for public tendering (Article 6, Vergabe öffentlicher Aufträge, Passation de marchés publics). Joining / creating a body for decentralised co-operation with own legal personality based on the internal law of one of the contracting parties (Article 10, Einrichtung mit Rehtspersönlichkeit / Organismes dotes d'une personalité juridique). Creation of co-operation structures without legal personality (Article 9, Einrichtungen ohne Rechtspersönlichkeit, Organismes sans personnalité juridique).
*) The relevant agreement articles and the original names of the legal instrument are indicated in brackets in the respective fields below.		

Examples for a practical application of the Benelux-Convention (1991)		
Name & Date	**Partners**	**Type of co-operation**
Administrative Agreement		
Cross-border Medical Help Essen-Roosendaal (1993)	Municipalities of Essen and the region Westelijk Noord-Brabant	Specific inter-municipal co-operation
Assistance Agreement Baarle Nassau and Hoogstraten (1995)	Municipalities of Baarle Nassau and Hoogstraten	Specific inter-municipal co-operation
Delta-tourism Delta Rhin-Escaut (1998)	Municipalities of Anvers, Bergen op Zoom and Rotterdam	Specific inter-municipal co-operation
Joint cross-border environmental road, Baarle (2001)	Municipalities of Baarle Nassau, Baarle Hertog and Alphen-Chaam	Specific inter-municipal co-operation
Euroregional protocol in case of catastrophes in the Scheldemond area (2003)	Provinces of Zeeland, West-Flanders, East-Flanders and municipalities of the Euregio	Specific inter-provincial co-operation
Co-operation agreement between the province of North-Brabant and the province Anvers (2003)	Provinces of North Brabant and Anvers	General inter-provincial co-operation
Cross-border structure (without legal personality)		
Inter-municipal concertation structure West-Flanders and Zeeland (1992)	Municipalities of Hulst, Beveren, St.Gillis-Waas, Stekene, Axel	General inter-municipal co-operation
Landscape park Campine-Zeeland (1998)	Municipalities of Anvers, Stabroek, Reimerswaal, Woensdrecht	Specific inter-municipal co-operation
Joint structure of Baarle (1998)	Municipalities of Baarle Nassau and Baarle Hertog	General inter-municipal co-operation
Euregio Scheldemond (1999)	Provinces of Zeeland, West-Flanders, East-Flanders	General inter-provincial co-operation
Public law-based cross-border body		
BENGO (1992)	Municipalities of Turnhout, Anvers, Breda, Tilburg and others	General inter-municipal co-operation
Euregio of Center Benelux (Middengebied, 2002)	Provinces of Anvers, Limbourg, Brabant-Flamand, Noord-Brabant and Limburg	General inter-provincial co-operation
Well-being of elderly people, Assenede-sas van Gent (2002)	Municipality of Terneuzen and CPAS of Assenede	Specific inter-municipal co-operation
Academy of music and singing, De Noorderkempen (2003)	Municipalities of Baarle Hertog, Hoogstraten, Merksplas, Ravels, Rijkevorsel and Baarle Nassau	Specific inter-municipal co-operation

Examples for a practical application of the Anholt-Agreement (1991)					
Initiative / Border	**Admin. Level**	**Members**	**Legal form**	**Own secretariat**	**Responsible for INTERREG**
Euregio's					
Euregio Maas-Rhein B-NL-D	Initiative of provinces	Provinces, municipalities, others	"Stichting" according to NL-law (private law)	At the province of Limburg, NL	Yes
Euregio rhein-maas-noord NL-D	Regional/ local initiative	Municipalities, Kreise, Chamber of commerce	Public law-based local purpose association (Anholt Agreement)	At the city of Mönchen-gladbach	Yes
Euregio Rhein-Waal NL-D	Regional/ local initiative	Municipalities, Kreise	Public law-based local purpose association (Anholt Agreement)	Yes	Yes
EUREGIO NL-D	Regional/ local initiative	Municipalities, Kreise from D & NL	Local Working Community, based on public law (Anholt Agreement)	Yes	Yes
Ems-Dollard Region NL-D	Regional/ local initiative	Municipalities, Kreise, Chamber of commerce	Public law-based local purpose association (Anholt Agreement)	Yes	Yes
Other initiatives					
Eurode NL-D	Joint local initiative	Municipalities Kerkrade and Herzogenrath	Public law-based local purpose association (Anholt Agreement)	Sitz in Kerkrade, gehört zur Euregio Maas-Rhein	No
Dinxperlo-Suderwick/ Bocholt NL-D	Joint local initiative	Municipalities Dinxperlo and Stadt Bocholt	Agreement	No, contact officials in each municipality	No
Neue Hanse Interregio NL-D	Initiative of Länder and provinces	German Länder Niedersachsen und Bremen and the Dutch provinces Groningen, Friesland, Drenthe und Overijssel	Joint declaration (private law)	Yes, government district Oldenburg D	No
Deutsch-Niederlän-discher Naturpark Mass-Schwalm-Nette NL-D	Joint local initiative	11 Dutch municipalities, German public law-based purpose association Naturpark Schwalm Nette	Public law-based local purpose association (Anholt Agreement)	Yes, Roermond NL	No

Examples for a practical application of the Karlsruhe-Agreement (1997) and the Mainz-Agreement (1998)				
Initiative / Border	**Administrative level**	**Partners**	**Legal Form**	**Secretariat**
Karlsruhe-Agreement				
Centre Hardt-Rhin Supérieur, D-F (1998)	Local / municipal co-operation	Commmunauté de Communes « Essor du Rhin », municipalities Hartheim, bad Krozingen, Eschbach city of Staufen, municipalities association « Gewerbepark Breisgau »	Cross-border local purpose associations (based on Articles 11-15)	Fessenheim (F)
Regio PAMINA, D-F (2001)	Regional/provincial/local co-operation	Région Alsace, Département Bas-Rhin, 8 Kreise/kreisfreihe Städte, 2 regional planning associations	Cross-border local purpose associations (based on Articles 11-15)	Lauterbourg (F)
Co-operation in the field of fresh-water provision, D-F (1999)	Local / municipal co-operation	Municipalities of Wissembourg and Bad-Bergzabern.	Co-operation agreement (based on Articles 3-4)	No
Muli-thematic co-operation Municipalities Dahner Felsland / Communauté de Communes Vallée de la Sauer, D-F (1997)	Local / municipal co-operation	Monicipal co-operation associations of Dahner Felsland and Vallée de la Sauer	Co-operation agreement (based on Articles 3-4)	No
Co-operation between fire-fighting brigades, D-L (1998)	Local / municipal co-operation	Mompach, Metzdorf and municipalities Trier-Land	Co-operation agreement (based on Articles 3-4)	No
Tourism information office Germany-Luxembourg, D-L (2000)	Local / municipal co-operation	Mertert-Wasserbillig, municipalities of Trier-Land	Co-operation structure without legal personality (based on Article 9)	No
Mainz-Agreement				
Co-operation in the field of fire-fighting, B-D (1998)	Local / municipal co-operation	Municipalities of Hellenthal, Büllingen and Prüm	Public law-based agreement	No
Co-operation in the field of protection against fire, B-D (1998)	Local / municipal co-operation	Municipalities of St. Vith and Prüm	Public law-based agreement	No

Well-developed cross-border co-operation agreements

Well-developed agreements are the **Bayonne-Treaty (E/F)** and the **Valencia-Agreement (E/P),** with the latter not yet having practical application experience. Both agreements generally aim at promoting decentralised cross-border co-operation and provide territorial authorities with a range of practical legal solutions for legally structuring their co-operation initiatives. These agreements allow public law-based cross-border co-operation, but they do not provide for instruments that enable territorial authorities to establish *ex novo* co-operation structures.

The basic approach adopted by both inter-sate agreements is quite similar and can be summarised as follows.

- A first general instrument common to both agreements is the general right of territorial authorities to conclude **"co-operation agreements":** Through a conclusion of co-operation agreements, other instruments are made accessible to territorial authorities.

- The establishment of a **co-operation structure without a legal personality:** In practice, this instrument has mainly the function to recognise already existing cross-border co-operation structures in the respective border areas that have been created without major problems.

- The **adherence to / establishment of a co-operation structure** with an own legal personality, based upon public law of one of the contracting parties: This means in practice that territorial authorities are granted a "right of access" to already existing co-operation structures in the respective neighbouring country and are permitted to create - jointly with neighbouring territorial authorities - a co-operation structure governed by the national law of one of the countries involved.

At date, **practical application experience in the field of cross-border co-operation only exists for the Bayonne-Agreement.** Along the French-Spanish border, a number of agreements on cross-border co-operation have been signed in the area among neighbouring regions and/or local authorities. Until now, there is however only one cross-border structure created on ground of a Spanish-law based solution following the provisions of the Bayonne-Agreement ("Consorcio Bidasao-Txingudi" of 1998, which groups together the 3 border municipalities/cities Hendaye, Irun and Fontanaribia).

In the near future, one can expect the creation of a second cross-border structure that will use the Spanish legal instrument of the "consorcio": The "Working Community of the Pyrenees" (Communauté de Travail des Pyrénées, CTP), originally founded in 1983 as a French law based association, is currently undertaking its conversion into an "inter-administrative consorcio" according to Spanish law mainly for the reason to be able taking over executive functions in the field of project implementation (i.e. realisation of joint investments, management of joint infrastructures etc.).

One important reason that might help explaining the relatively limited use of national-law based solutions for public-law based co-operation along the French-Spanish border are certainly the practical disadvantages of the French legal options[58] and the rather tight control of the French central state authorities, especially if a Spanish-law based option is chosen[59].

[58] Société d'Economie Mixte: Limited objectives and mission of the structure, necessary provision of capital for the company. Groupement d'intérêt public: Lack of parity between French and Spanish authorities represented in the structure, control by the central state and limited duration.
[59] A decree from the highest administrative court / control institution in France (Conseil d'Etat) is necessary that authorizes a participation of French territorial authorities.

Basic instruments provided for in well developed inter-state agreements on decentralised cross-border co-operation		
Agreement	**Framework instrument**	**Other instruments that can be used on ground of a concluded “convention”:**
Bayonne Agreement (E/F)	Right to conclude co-operation agreements (Articles 3 and 4).	Co-operation agreement providing for an adherence to / creation of a body for decentralised co-operation with own legal personality based on public law of one country (Article 5, 6): • Spanish territorial authorities may adhere to / participate in the creation of the French “Groupement d’intérêt public de cooperation transfrontalier” or the “Société d’économie mixte”. • French territorial authorities may adhere to / participate in the creation of the Spanish “Consorcios”. Co-operation agreement providing for public tendering (Article 8, Passation de contrats publics). Creation of co-operation structures without legal personality (Article 7, Organes communs sans personnalité juridique).
Valencia Agreement (E/P)	Right to conclude co-operation agreements (Articles 4-7).	Co-operation agreement providing for an adherence to / creation of a body for decentralised co-operation with own legal personality based on public law of one country (Article 11): • Spanish territorial authorities may adhere to / participate in the creation of the Portuguese “Associacao de Dreito Publico” or “Empresa Intermunicipal”. • Portuguese territorial authorities may adhere to / participate in the creation of the Spanish “Consorcios”. Creation of co-operation structures without legal personality such as “Working Communities” or “Working Groups” (Article 10).

Comparatively weak cross-border co-operation agreements

Comparatively weak agreements with application experience are the **Nordic Convention (S/SF/DK/NOR),** the **Rome-Agreement (F/I),** the **Vienna-Framework Agreement (A/I),** the **Basel-Agreement (D/F/CH)** and **all inter-state agreements** that were **concluded by Slovakia or Poland with their respective neighbouring countries.** There are a number of features common to two or more of these agreements that might help explaining their comparatively weak status:

- These agreements normally make a general declaration stating that the contracting parties support decentralised co-operation among territorial authorities in a broad variety of thematic fields.

- Beyond the promotion of decentralised co-operation, most of the agreements also foresee an establishment of "intergovernmental commissions" on cross-border co-operation[60] or in exceptional cases regional commissions (Basel-Agreement[61]).

- Some agreements provide territorial authorities with a very limited range of practical co-operation tools. The most frequent approach is to grant the right to territorial authorities for concluding "co-operation conventions/agreements", but also to allow using other forms" of cross-border co-operation (e.g. establishment of private-law based co-operation structures). All agreements do not contain specific legal solutions/instruments that allow territorial authorities to establish public-law based cross-border co-operation bodies.

- Interesting aspects that characterise especially the agreements concluded by Italy (Vienna & Rome) are that cross-border co-operation themes are clearly enumerated[62] and that a rather narrow border area is defined in which the agreement provisions can be applied in Italy (25km from the border line).

The **most intense application experience** of these Inter-State Agreements[63] in the field of decentralised cross-border co-operation can be observed **along the borders of Scandinavian countries,** but also along the borders of **Poland** and of the **Slovak Republic.**

- Along the borders of Scandinavian countries, Poland and the Slovak Republic, a large number of permanent cross-border co-operation structures (i.e. Euregios and similar structures) have been established by territorial authorities (see overview table below). These apparently "homogenous" co-operation structures operate either on a non-formal basis (no legal entity existing) or on ground of private law-based entities that are frequently set up on each side of a border[64] and/or for the common cross-border structure[65].

- In the case of Poland, one can also observe that co-operation agreements concluded between territorial authorities have prepared the ground for an establishment of other

[60] Their aims are normally to discuss and solve issues of cross-border co-operation that can not be solved at the regional and local levels and/or to enhance/facilitate cross-border co-operation in general.
[61] In parallel to the inter-governmental commission, the Agreement also establishes the "Regional Commission Oberrhein".
[62] The list of topics is however rather general and allows a relatively wide scope of activities.
[63] Sometimes coupled with a use of domestic powers of territorial authorities in the field of decentralized co-operation.
[64] In case of a bilateral Euroregion, this could for example mean that in practice two national-law based associations are set up on either side of the border that are the basic "legal fundaments" for the joint cross-border co-operation initiative.
[65] This could mean that private law of one country is used for legally underpinning the joint cross-border structure.

inter-municipal “cross-border regions”[66] or cross-border initiatives in the field of nature-conservation/nature parks[67].

- The lack of possibilities for public-law-based cross-border co-operation in Scandinavia has recently stimulated the emergence of an interesting initiative between the governments of Finland and Sweden. Since 2001/2002, they explore the possibility of creating an “international local authorities association” for the cities Haparanda (SK) and Tornea (SF) that based on public law. An enquiry committee was established for this purpose and has explored how the body needs to be shaped in order to be in conformity with the domestic legal context in both countries. The committee has recommended the conclusion of an inter-state agreement between both countries.

Along the **French-Italian border** (Rome-Agreement) and the **Austrian-Italian border** (Vienna-Agreement), the **application experience is rather limited.**

- The Rome-Agreement only allows territorial authorities to conclude co-operation conventions, which enables territorial authorities only to establish reflection groups or cross-border structures without a legal personality. Such cross-border conventions have, for example, led to the creation of the “Conference des trois Provinces” of 1997[68] and the “Protocol des Hautes Vallées” of 2000.[69] More far-reaching and legally solid permanent co-cross-border operation structures can however not be established on ground these conventions.

- In case of the Vienna-Agreement, one can observe that only one permanent cross-border structure has been created along the Austrian-Italian border that makes explicit reference to the bilateral agreement. By using a public-law based agreement concluded between the Austrian Land Tirol and the Italian autonomous provinces Trento and Bolzano, the “Europaregion Tirol” was established[70].

[66] Cross-Border Region of the Union of Municipalities of Upper Silesia and Northern Moravia. Cross-Border Region of Cieszyn Silesia. Cross-Border Region of Beskid Żywiecki. Cross-Border Region of Beskid Sądecki.
[67] Bilateral Conservation Area of the Lower Odra Valley. “Black Triangle” Cross-Border Area. “Izera” Bilateral Peat Reserve. “Karkonosze / Krkonose” Bilateral Biosphere Reserve. “Tatras” Bilateral Biosphere Reserve. “Eastern Carpathians” International Biosphere Reserve. Green Lungs of Europe. “Białowieża” Cross-Border World Heritage Site.
[68] Founded on ground of a public-law convention with the following members: The Italian provinces Imperia and Cuneo and the French Département Alpes Maritimes.
[69] Italian Members: Communautés de montagne Alta Valle Susa, Bassa Valle Susa, Valli Chisone e Germanasca, Pinerolese Pedemontano e Val Pellice. French Members: District de Haute Maurienne, Sivom du Canton de Modane, District du Canton de St. Michel de Maurienne, Communauté de Communes du Briançonnais, Sivom de l’Argentière-la-Bessée, Sivom de Guillestre, District du Queyras.
[70] For this euroregional co-operation initiative, the initially planned public-law based co-ordination body could actually not be realized.

Examples for a practical application of comparatively weaker Inter-State Agreements on cross-border co-operation	
Name	**Borders covered**
Along the borders between Scandinavian Countries	
Øresund-Region	DK/SE
North Calotte Council *)	SF/SK/NOR
Kvarken Council *)	SF/SK
Mid-Nordic Committee *)	SF/SK/NOR
Archipelago Co-operation, Skärgården *)	SF/SK
Tornedalen	SF/SK
Haparanda/Tornio	SF/SK
Bothnian Arc	SF/SK
Gränskommittén Östfold – Bohusnän/Dalsland	SK/NOR
ARKO	SK/NOR
MittSkandia	SK/NOR
Along the borders of Poland and Slovakia	
Euroregion Nysa (1991)	PL/D/CZ
Euroregion Spree-Nysa-Bóbr (1993)	PL/D
Euroregion Pro Europa Viadrina (1993)	PL/D
Euroregion Pomerania (1995)	PL/D
Euroregion Carpathian (1993)	PL/UKR/SK/H
Euroregion Tatras (1994)	PL/SK
Euroregion Glacensis (1996)	PL/CZ
Euroregion Beskidy (2000)	PL/SK/CZ
Euroregion Dobrava (2001)	PL/CZ
Euroregion Śląsk Cieszyński (1998)	PL/CZ
Euroregion Silesia (1998)	PL/CZ
Euroregion Bug (1995)	PL/UKR
Euroregion Niemen (1997)	PL/BY/LT
Euroregion Puszcza Białowieska (2002)	PL/BY
Euroregion Baltic (1998)	PL/DK/SK/LT/LV/RUS
Euroregion Bílé-Biele Karpaty (2000)	SK/CZ
Euroregion Pomoravie (1999)	SK/CZ/A
Euroregion of Podunajský Trojspolok (2001)	SK/H
Euroregion Ipeľ-Ipoly (2002)	SK/H
Euroregion Neogradiensis (2000)	SK/H
Euroregion Slaná – Rimava (2000)	SK/H
Euroregion Kras (2001)	SK/H
Euroregion Váh-Dunaj-Ipeľ (1999)	SK/H
*) Part-financed by the Nordic Council of Ministers (NCM)	

2.1.5. Other legal instruments that are "de facto" used in the context of cross-border co-operation

There are a number of legal instruments that are not explicitly designed for decentralised cross-border co-operation, but which are *de facto* used by territorial authorities for mutual co-operation. In the majority of cases these instruments derive from country-specific legal provisions in civil law, but sometimes also from Community law.

These legal instruments can be considered an "escape clause", i.e. they mostly help to "fill the gap" that is created by a non-existing adequate legal framework for decentralised co-operation.

National private law

An association is easy to establish and generally allows an adhesion of various types of legal entities. Associations have legal autonomy from their members, an own organisation and an own budget. They have a permanent functioning and allow – dependant upon the provisions of domestic law – to employ own personnel and to pass contracts. A frequent limitation of associations is however that they can not be delegated activities that aim at realising construction works or infrastructure development.

Due to these advantages, the associative private law of different EU-countries is often used for establishing permanent cross-border co-operation structures among territorial authorities and for setting up a legal framework for project-level co-operation.

Many Euroregion-like structures have frequently created national structures on either side of the border that are based upon the country-specific private or public law, with – at the second level – a common "rooftop" for the cross-border element that is based upon private law. There are also a number of other examples for cross-border initiatives that have been established along the borders of Belgium, Luxembourg and France, but also along the borders of Germany, Austria and Italy (see overview table below).

The EC-Regulation on "European Economic Interest Groupings" (EEIGs)

The only *de-facto* legal instrument based on Community law currently used in the context of decentralised cross-border co-operation is the European Economic Interest Grouping (EEIG).

The EEC-Regulation 2137/85 provides a uniform legal framework that has precedence over national law and establishes a set of directly applicable standard rules on EEIGs. The binding provisions of the Regulation concern the conditions under which EEIGs are formed, the principles of their internal organisational structure and the protection of third parties with specific provisions on liability and disclosure) and members (see the provisions on members' prerogatives).

Despite this common framework, EEIGs are still governed by various national legal provisions in the different EU-Member States. The internal law of the State in which the EEIG has its official address governs, for example, the grouping's contract and also the grouping's internal operation.[71] National law also governs the consequences of unlimited joint and

[71] In some cases it is the law generally applicable to all legal persons (Netherlands). In other cases, it is the law applicable to a body with legal similarities to the EEIG such as the Groupement d'Intérêt Economique (GIE –

several liability of members (Article 24.1), the causes of liquidation of the grouping and methods of liquidation (Article 35), the bankruptcy of an EEIG, the taxation law applicable to members provided that fiscal transparency is respected (Article 40), and lastly insolvency and cessation of payments. Moreover, in areas not covered by the Regulation which relate essentially to the grouping's economic activity, the specific provisions of National law would be applicable.

In principle, EEIGs may also be used as a legal structure for co-operation among bodies governed by public law (e.g. regional and local authorities, public research centres, universities, etc.), provided that their activities or one of these activities can be considered "to be of an economic nature, even if minimal or indirect".[72]

The suitability EEIGs for **strategic level cross-border co-operation among territorial authorities** has however been questioned at various occasions:

- The EEIG has mostly an economic function, but its activities must be related to the economic activities of its members and can only be of an ancillary nature (i.e. develop or facilitate economic activities of its members). Despite a possibly wide interpretation of the notion "activities with an economic nature", EEIGs are not entitled to realise purely administrative activities. Furthermore, territorial authorities can not delegate own activities/tasks that are related to wider economic development of a cross-border area to an EEIG or entrust the Grouping with an executive mandate for implementing specific development activities.

- Another obstacle to the use of EEIGs for the purpose of strategic level cross-border co-operation derives from the particular legal relation between EEIGs, third parties and public law bodies, which can only be controlled by a specific national law, not by the members of an EEIG. Relations between third parties under national law are not applicable, so that in fact a new representative body would need to be created in accordance to one of the national laws implied. Due to this, EEIGs can not take over the management responsibility[73] for a joint co-operation programme without the establishment of another structure.

But also in the context of **project-level cross-border co-operation**, not all activities can be pursued in the context of an EEIG. In the case of cross-border activities such as joint spatial planning, housing, education, people-to-people measures or nature park development, for example, a commercial activity is not the prime reason for co-operation.

No use is made of EEIGs in the context of decentralised cross-border co-operation at projects level along the borders of Scandinavian Countries and along borders of South-East Europe (i.e. Greece). But also along the borders between B/NL, D/NL, D/NL/B, B/L, L/D and L/F, DK/D, D/A, practically no use at all is made of EEIGs. One important reason that might help explaining this lacking practical use along many borders is the existence of far-reaching inter-state agreements and of more suitable legal instruments for decentralised cross-border co-operation, which offer considerable advantages compared to the evident limitations of EEIGs (i.e. restricted thematic scope of application, other limitations of EEIGs). Another explanatory aspect is that project-level co-operation, with its limited time horizon, is mostly

Economic Interest Grouping) especially also under French, Belgian, and Luxembourg law, or the Offene Handelsgesellschaft (OHG - General Partnership) under German and Austrian law.

[72] See The EEIG: an instrument for transnational co-operation: A practical handbook for SMEs 2nd edition (European Commission, DG Enterprise), page 97.

[73] One can assume that this will most likely require contact with third parties under public law.

realised on ground of pragmatic solutions and arrangements[74] that do not imply an establishment of a legal structure for the respective initiatives.

Along several borders that are not (yet) covered by far-reaching inter-state agreements (e.g. F/I, F/S, F/B or F/UK), some use was made of EEIGs mostly for cross-border projects focussing on joint promotion activities in the field of urban development and business or tourism development (see text box below).

The only significant use of EEIGs was made along the Belgo-French border, especially in the context of the previous INTERREG IIA programme "Nord-Pas-de-Calais/Wallonie"[75] (1994-1999). The EEIG-formula has been used for around 5% of the INTERREG projects, but the utility of the Community-law based instrument has however clearly proved its practical limits. EEIGs were not always justified for the purpose of the project and not geared towards co-operation between public-law based territorial authorities. In addition, EEIGs have been very time- and resource consuming in the set-up process and subsequently created difficulties in their practical handling.

Examples for a practical application of national associative law used in the context of cross-border co-operation	
Legal instrument used	**Examples**
Non-profit-making association according to the law of Luxembourg (ASBL, association sans but lucratif de droit luxembourgeois)	• The **"Interregional Council of Chambers of Crafts"** (1989) covers the chambers of crafts of the Grand Duchy of Luxembourg (L), of the Länder Saarland and Rheinland-Pfalz (D), of the Départements Meurthe-et-Moselle, Meuse, Moselle (F) and of the Belgium Province of Luxemburg (B). • The **"Interregional Environmental Council"** covers the Grand Duchy of Luxembourg (L), the German Länder Saarland and Rheinland-Pfalz, the region Lorraine (F) and the Province of Luxemburg (B). • The **"EUREGIO SAAR-LOR-LUX-RHIN"** is an association of local authorities and local authority groupings located in the European Greater Region. • The **"Museum Association of the European Greater Region"** (2002).
French nation-wide associative regime. (Association sur base de la loi "1901".)	• The **"Permanent Cross-border Conference of Inter-municipal co-operation structures"** (1991) in the urban metropolitan area of Lille is composed of local co-operation bodies from France and Belgium (Walloon Region, Flemish Region). • The **"Cross-border Association for the agglomeration of the European Development Pole"** (1996) covers 25 municipalities located in France, Luxembourg and Belgium.
French locally-specific associative regime (Association de droit alsacien-mosellan, articles 21 suivantes du Code Civil local)	The **"Association for the sustainable development of the tri-national urban agglomeration territory Bâle"** (2001) covers different territorial authorities from France Germany and Switzerland (municipalities, inter-municipal co-operation structures, Départements and Cantons).
Association according to Italian private law	The **"Association of the Conference for the French-Italian Alps" (C.A.F.I.),** set up in 2000, which is composed of the Italian provinces Imperia, Cuneo, Turin, the autonomous region of Vallée d'Aoste and the French départements Alpes Maritimes, Alpes de Hautes Provence, Hautes Alpes, Isère, Savoie, Haute Savoie.

[74] Other flexible solutions have been found such as informal joint arrangements, the lead partner principle (one responsible partner acting in the name of the project partnership), ad-hoc consortia, joint management boards etc.
[75] Provisional summary findings of the Commission's ex-post evaluation on INTERREG II (1994-1999).

Examples for a practical application of EEIGs in the field of cross-border co-operation

ISLEK OHNE GRENZEN EWIV (L/D/B): 17 municipalities from Luxembourg, Belgium and Germany.

GEIE EUROCIN (F/I): The Italian and French members are the ATL Cuneo, Unioncamere, Ente Porto Savona, Comune di Cuneo, Cambres de commerce de Asti, Cuneo, Imperia, Alessandria, Genova, Marseille et Nice, SITRACI Cuneo, Bre Banca Cuneo.

GEIE SUD MONT-BLANC (F/I) : The Italian and French members are the Société Funivie Piccolo San Bernardo S.P.A and the Régie touristique autonome de la Rosière.

GEIE AGENCE TRANSFRONTALIERE DE L'EUROCITE BASQUE (F/E): The Spanish and French members are the Diputación Foral de Guipuzcoa and the Communauté d'agglomération de Bayonne Anglet-Biarritz.

GEIE EUROINSTITUT DE KEHL (F/D): On the French side, partners are the State, the region Alsace, a département, universities and on the German side the Land Baden-Württemberg, Kreise and a university.

2.2. Legal solutions found for managing and implementing INTERREG III programmes supporting Transeuropean co-operation

The INTERREG III Community Initiative supporting decentralised Transeuropean co-operation (2000-2006) is implemented through a large number of different programmes covering specific types of actions:

- Cross-border co-operation between adjacent regions under **INTERREG III Strand A (INTERREG IIIA)** aims at developing cross-border social and economic centres through common development strategies.

- Transnational cooperation under **INTERREG III Strand B (INTERREG IIIB)** involves national, regional and local authorities and aims at promoting a better spatial integration within the Union through the formation of large groups of European regions.[76] These programmes also promote better integration between the current EU-Member States, new EU-Member States and other candidate countries or neighbouring countries.

- Interregional cooperation under **INTERREG III Strand C (INTERREG IIIC[77])** aims to improve the effectiveness of regional development policies and instruments through large-scale information exchange and sharing of experience (networks). Strand C particularly focuses on underdeveloped regions and those undergoing structural adjustment.

- Two other **programmes implemented under Article 53 of the INTERREG Guidelines** supplement the three above mentioned Strands of the INTERREG III Community Initiative. They aim at establishing networks that promote a sharing of experiences and best practices: The **ESPON-programme** (European Spatial Planning Observatory Network[78]), financed jointly by the European Union and the fifteen EU-Member States as well as other neighbouring states and the **INTERACT-programme** (INTERreg - Animation, Coordination, Transfer), which seeks to build on the experience and lessons of INTERREG I and INTERREG II, and to improve the effectiveness of implementation of INTERREG III during the current programming period.

In order to establish truly joint co-operation and management structures for the different INTERREG III programmes, the INTERREG III Guidelines have suggested that the competent authorities may consider the Community regulation on “European Economic Interest Groupings” for an establishment of specific structures. Previous experience with a practical application of EEIGs in the field of decentralised cross-border co-operation has however shown that this Community instrument is not suitable for legally structuring strategic-level co-operation structures that need to be established for the management of INTERREG Community Initiative Programmes (CIPs).

[76] Transnational cooperation programmes follow the recommendations of the European Spatial Development Perspectives (ESDP) to encourage a sustainable and balanced development of the European territory.
[77] INTERREG IIIC continues previous activities supported under the RECITE and ECOS-Ouverture programmes, two innovative pilot project programmes ran under the former Article 10 of the ERDF regulation for 1994-1999.
[78] It is a network of cooperation between national spatial planning institutes and will focus on the observation and analysis of territorial and regional development trends in Europe, financing research studies in the field of spatial planning.

The following paragraphs will therefore assess the direct implications for the practical management and implementation of INTERREG III activities, which result form the diversity and partial weaknesses of legal instruments for decentralised cross-border co-operation and especially from the complete absence of a clear legal framework for transnational and inter-regional co-operation.

This assessment will cover both, the practical experiences gained with a setting up of appropriate management and implementation structures for INTERREG III programmes (strategic level co-operation) and the establishment of management structures at the level of individual projects.

2.2.1. INTERREG IIIA programmes supporting cross-border co-operation

For strategic co-operation at the level of INTERREG IIIA programmes, the principal programme partners have frequently concluded specific “Interreg-agreements”, “partner conventions” or “memoranda of understanding” that specify particular tasks and responsibilities of the different programme management structures (e.g. Managing Authority, Payment Authority, Joint Technical Secretariat).

Within this wider context, no case is known where an EEIG has been used as a legal instrument for establishing joint programme-level structures that are responsible for administrative and financial management, co-ordination, implementation and monitoring of INTERREG IIIA programmes.

Along the current internal EU-borders, one can basically observe three practical solutions.
- A truly cross-border and fully decentralised programme management structure.
- A one-sided joint programme management structure.
- A bi-national programme management structure.

Truly cross-border and fully decentralised programme management structure

The most important feature of truly cross-border programme management structures is that already existing cross-border structures or specifically created cross-border structures with an own legal personality based on public law are normally entrusted with substantial tasks in the context of the INTERREG IIIA programme management (i.e. assuming the role/parts of the role of the Managing Authority, the Paying Authority and the Joint Technical Secretariat).

Under this option, one or more programme-specific conventions or agreements were frequently concluded among the principal programme partners. They define the basic responsibilities with regard to the programme, specify the role of the different programme management structures (e.g. Managing Authority, Payment Authority, Joint Technical Secretariat) and / or regulate a delegation of administrative/technical and financial management tasks to the cross-border structures. The most developed agreements also regulate aspects related to eligibility and defined the nature of a cross-border project.

For the 3 INTERREG IIIA programmes covering borders between the Netherlands, Belgium and Germany (NL/B/D, NL/D),[79] specific “Interreg-Agreements” have been concluded among the main programme partners, including existing Euregios or similar cross-border structures located in the programme area, which regulate all important aspects of the management and

[79] INTERREG IIIA programme Euregio Maas Rhein (NL/B/D); INTERREG IIIA programme EUREGIO / Euregio Rhein Waal / euregiorhein-maas-nord (D/NL); INTERREG IIIA programme Ems Dollart Region (D/NL).

implementation process. Among these programmes, basically 2 different models can be observed: (1) The first model is that of the programme NL/B/D, where the Euregio Maas-Rhein[80] was delegated all strategic management functions (Managing & Paying Authority, JTS).[81] (2) The second model is that of the programme “Ems Dollart” (D/NL, see text box) and the tri-Euregio programme (EUREGIO / Euregio Rhein-Waal / euregio rhein-maas-nord (D/NL), where substantial parts of the administrative programme management as well as the role of the JTS have been delegated to existing Euregios and a public bank is formally acting as Paying Authority (Investitionsbank Nordrhein-Westfalen, IB-NRW). The IB is entitled to terminate the contract and demand repayment of subsidy in full or in part, e.g. if the subsidy has been obtained through false or incomplete statements, the project partner has failed to submit required reports or if the subsidy awarded has been partially or entirely misapplied for purposes other than those agreed upon. For the tri-Euregio programme, specific agreements have been concluded with each of the existing Euregios for the administrative/technical management of the respective sub-programmes. In addition, a formal Joint Technical Secretariat was established at the Euregio Rhein-Waal (D/NL). Technical secretariats also exist for each sub-programme (located at the respective Euregios concerned), which are the actually responsible actors for operational programme secretariat work. According to the current level of experience, the strategic arrangements for these INTERREG IIIA programme management do operate satisfactory.

In case of the INTERREG IIIA programme “PAMINA” (D/F), the public-law based cross-border local purpose association Regio PAMINA (set up on ground of Articles 11-15 of the Karlsruhe-Agreement) is acting as the single Managing and Payment Authority and also takes over the function of a Joint Technical Secretariat.

For the INTERREG IIIA programme “Moselle-Sarre-Palatinat Occidental” (D/F), a cross-border public interest grouping based on French law (GIP) was established. The GIP was allocated the role of the single Managing and Paying Authority for the bilateral INTERRREG IIIA programme and the members of the GIP-general assembly are also acting as the Steering Committee. On ground of unanimity, they decide on the joint management of the programme and jointly allocate / control EU-funding coming from the programme.

A rather specific case is the management of the INTERREG IIIA programme UK-Northern Ireland/Ireland, where an inter-state agreement[82] has created a joint cross-border body that is allocated a considerable degree of decentralized programme management functions (see text box below).

For the INTERREG IIIA programme „Ems Dollart Region“ (D/NL), the Ministry of Economy of the Land Lower Saxony is formally acting as Managing Authority and a public bank is acting as Paying Authority (Niedersächsische Landestreuhandstelle, Nord LB / Landesbank Niedersachsen). Through a programme-specific agreement concluded among the principal programme partners (“Interreg-agreement), the Euregio Ems Dollart has been entrusted with the tasks of the Managing Authority and the Joint Technical Secretariat. Since 1998, the Euregio is a joint public law-based local purpose association that was established on ground

[80] The Euregio Maas-Rhein is a private law based cross-border structure according to Dutch law (stichting).

[81] In the Interreg-Agreement concluded between the main programme partners, the State of the Netherlands, as main partner finally responsible for the technical and financial implementation of the programme, has delegated the functions of the Managing and Paying Authorities to the Euregio Maas Rhein. An additional agreement between the programme partners and the Euregio on the financial implementation of the programme has been concluded.

[82] British-Irish Agreement signed on 8 March 1999: This agreement was signed in 1999 as part of the process following the signing of the Belfast Agreement (commonly known as the “Good Friday Agreement”) on 10 April 1998 and provides for the creation of several cross-border cooperation bodies, under the auspices of a North-South Ministerial Council (NSMC).

of the Anholt inter-state agreement of 1991. Its new status has certainly contributed to further enlarge the scope of tasks allocated to the Euregio under INTERREG IIIA, compared to previous programming periods (INTERREG IA, IIA).

Along the border UK-Northern Ireland/Ireland, the "Special European Union Programmes Body" (SEUPB) with direct responsibility for the administration of EU cross-border programmes, including INTERREG IIIA and the EU Programme for Peace and Reconciliation (PEACE II) has been established.[83] SEUPB is the Managing Authority for the INTERREG IIIA Programme UK/IRL (and the PEACE II Programme), which is managed from the office in Monaghan / Republic of Ireland (PEACE II is managed from the office in Omagh, Northern Ireland). SEUPB also assumes the responsibilities of the Joint Technical Secretariat for the INTERREG IIIA Programme and has been delegated the function of Paying Authority (the latter located separately at the office in Belfast). Finally, SEUPB has explicitly been delegated all necessary powers for the exercise of its functions, which are vested in the person of the Chief Executive of the body, giving SEUPB practical authority over the running of these Programmes.

One-sided (joint) programme management structures

In this case, joint programme management structures (i.e. Managing Authority, Paying Authority, an existing Joint Technical Secretariat[84]) are all located on one side of the border. These structures are all governed by the respective national law of the host country and – where existing – by provisions of existing programme-specific agreements / conventions that have been concluded between the main programme partners. Under this solution, one can either find fully centralised or partly / entirely decentralised management structures.

Centralised management structures have been established for a number of INTERREG IIIA programmes covering external borders in the south-west and the south-east of the European Union, but also along several former external borders with new EU-Member States.

A fully centralised management structure with a lacking joint approach has been adopted for the programme "Spain/Morocco"[85] and the 5 Greek external border programmes with Albania, FYROM, Bulgaria, Turkey and Cyprus[86]. Along the external borders of Greece, no proper cross-border management, monitoring and implementation structures for the Community Initiative Programmes have been set up until now. This is partly related to the enormous bureaucracy and the very centralised administrative organisation within Greece, but partly also a consequence of a highly centralized counterpart on the other side of the external border[87]. With regard to project-level co-operation, the division of power in Greece between the central government, on the one hand, and its representatives in the regional government and the local government, on the other hand, also created insurmountable problems. It is indicative that, so far, the only projects supported by INTERREG IIIA are those involving heavy infrastructure (i.e. highways, airports and harbours in the border

[83] By virtue of Part 4 of Annex 2 of the British-Irish Agreement (1999). SEUPB is also involved in the cross-border elements of the other Community Initiatives such as Leader+, URBAN II and EQUAL.
[84] As some programmes did not establish a Joint Technical Secretariat, the single country principle does not apply for this specific function.
[85] Strategic management functions are located in Madrid, at the competent national ministries.
[86] Strategic management functions are located in Athens, at the competent national ministries.
[87] In all neighbouring non-EU Member States of Greece, the state organisation is rather centralised if to be compared with other countries in Western Europe. Although the basic structures are similar to those of Greece (i.e. existence of similar strata of legislative power exercising), the degree of decentralised local/regional autonomy of in all these countries varies considerably.

regions) and being strictly supervised, managed and implemented by the central government. Any other type of soft measure funding has not as yet been applied in border regions of Greece despite the severe criticism of the Commission and the fear of loosing funds due to the n+2 rule.

The 4 INTERREG IIIA programmes covering the former external EU-borders of Austria ("Austria/Czech Republic"; "Austria/Slovak Republic"; "Austria/Hungary"; "Austria/Slovenia") have – at least up to their conversion into internal border programmes – also adopted a relatively centralised joint management approach, however with a strong partnership element involving partners on the other side of the border. In all cases, the role of the Austrian Managing and Paying Authority was allocated to the Austrian Federal Chancellery (Department IV), whereas in the neighbouring PHARE-countries the competent national ministries were acting as the "programme implementing authority"[88]. The Austrian part of the Joint Technical Secretariat for all INTERREG IIIA programmes is ensured by the management services branch of the "Austrian Institute for Spatial Planning" (Österreichisches Institut für Raumplanung, Managementdienste GmbH), which closely co-operates with the JTS branches in the respective neighbouring countries[89]. The Austrian-sided operational implementation of the INTERREG IIIA programmes (i.e. at project level) has been delegated by the Managing Authority in all cases to "Co-ordinating Operative Assistance Authorities" (COAA)[90], which are nothing else than administrative departments responsible for funding attribution in the respective Austrian Länder involved in the programmes. The most important legal problems along these Austrian borders are resulting from the lacking legal framework for decentralised cross-border co-operation (i.e. interstate agreements) and from the highly different administrative organisation of the countries that meet along the borders (layers of government, competencies, decision making power etc.).

Partly and entirely decentralised, joint management systems on one side of a border have been established for a larger number of INTERREG IIIA programmes covering internal EU-borders, but also for programmes covering the former external EU-borders with the new EU-Member States and/or external EU-borders with other third countries such as Russia and Norway.

Along a number of internal maritime EU-borders of France, the United Kingdom, Ireland and Italy, INTERREG IIIA programmes have established mostly decentralised joint management structures. The "F/UK"[91] programme has allocated the role of the Managing and Paying Authorities on the French side,[92] but it has not established a Joint Technical Secretariat (see text box below). Other examples are the INTERREG IIIA programmes UK-Wales/Ireland (see text box below) and "Corse-Sardaigne-Toscane"[93] (F/I).

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88 Czech Republic: Ministry of Regional Development (MoRD) and the Centre for Regional Development (CRR). Slovak Republic: Ministry of Construction and Regional Development (MoCRD). Hungary: Prime minister's Office. Slovenia: Ministry of Economic Relations and Development, National Agency for Regional Development.

89 Czech Republic: Centre for Regional Development (CRR). Slovak Republic: Agency for Support for Regional Development in the Ministry of Construction and Regional Development (MoCRD). Hungary: National Agency for Regional Development (NARD), regional office in Sopron; Slovenia: National Agency for Regional Development (NARD), regional office in Maribor.

90 They are responsible for information & advice given to project applicants, project application, check of project applications in terms of eligibility criteria, contracting for the respective ERDF and national co-financing funds, reporting and invoicing.

91 Merger of the former INTERREG IIA programmes "Transmanche" (Kent, Medway and Nord-Pas de Calais) and "Rives-Manche" (E. Sussex, Brighton & Hove and Somme/Seine-Maritime) into one programme under Interreg IIIA.

92 Managing Authority allocated to the Region Haute Normandie; Paying Authority allocated to the Caisse des Dépôts et Consignations;

93 Managing Authority & Paying Authority allocated to the autonomous region Sardinia, the JTS is located in Cagliari (Sardinia). Auxiliary Managing Authorities have been established at the Provinces of Sassari and Livorno and at the Collectivité territoriale de Corse.

But also along a larger number of land borders in the middle of the European Union, fully decentralised and joint management systems with all functions located on one side of a border have been set up. Examples are the INTERREG IIIA programme ”Grensregio Vlaanderen/Nederland“ (B/NL, see text box below), the trilateral programmes “Belgium/Luxembourg/France”[94], “Germany/Luxembourg/Belgium”[95] and “Rhin Supérieur Centre-Sud”[96] (F/D/CH), but also the programmes “Germany/Austria”[97] and “Italy/Austria” (see text box below).

The Danish/German INTERREG IIIA programmes “Sønderjylland/Schleswig”, “Storstrøms/Ostholstein” and “Fyn/K.E.R.N” have all concluded programme specific agreements, which define joint strategic management and all programme-internal relations among the main partners. The 3 programmes located their respective management structures on the Danish side (Managing & Paying Authority).[98] Also the JTS is formally also located on the Danish side, but several programmes have established separated “antennas” on either side of the border. Although Danish Managing Authorities generally take over the formal responsibility for the programmes towards the Commission, they do not have a direct possibility on the German side for controlling project partners or for pursuing financial mismanagement. This problem has been resolved in the partner agreements, as each main programme partner guaranteed to fully co-operate and support the MA on “his side of the border. With regard to the joint Paying Authority, all programmes generally appreciate the operation experience and highlight the advantages regarding a quicker handling of project applications and a better co-ordination of accounting.

The 5 INTERREG IIIA programmes[99] covering the German (external) borders with Poland and the Czech Republic have all established decentralised management structures. The role of Managing and Paying Authorities is assumed by different administrative departments in the respective German Länder Bavaria[100], Saxony[101], Brandenburg[102] and Mecklenburg-

[94] Different administrative departments of the Walloon region are acting as Managing Authority (Direction des relations internationals, DRI) and Paying Authority (cellule comptable du DRI) of the programme. The role of the JTS was conferred to an inter-municipal co-operation body named IDELUX, which is located in the Belgium part of the eligible border area (in Arlon).
[95] The Ministry for economy, transport and agriculture of the Land Rheinland-Pfalz is acting as the Managing Authority and hosts the JTS, whereas the “Investment and Structural Bank” (ISB) of the Land Rheinland-Pfalz is entrusted with the task of the Payment Authority.
[96] Managing Authority allocated to the Conseil Régional d’Alsace; Paying Authority allocated to the Caisse des Dépôts et Consignations; Joint Technical Secretariat of the programme F/D/CH is also hosted by the Region Alsace.
[97] Managing Authority and Paying Authority allocated to the Austrian Land Oberösterreich and the Joint Technical Secretariat is located in Salzburg (A).
[98] Interreg IIIA programme Sønderjylland/Schleswig: Managing & Paying Authority assumed by Sønderjyllands Amt. Interreg IIIA programme Storstrøm/Ostholstein: Managing & Paying Authority assumed by Storstrøms Amt. Interreg IIIA programme Fyn/K.E.R.N: Managing & Paying Authority assumed by Fyns Amt.
[99] INTERREG III A - PHARE-CBC - Bavaria (D) / Czech Republic; INTERREG III A - PHARE-CBC - Saxony (D) / Czech Republic; INTERREG III A - PHARE-CBC - Saxony (D) / Lower Silesia (PL); INTERREG III A - PHARE-CBC - Brandenburg (D) / Woiwodschaft Lubuskie (PL); INTERREG III A - PHARE-CBC - Mecklenburg-Vorpommern/Brandenburg (D) / Woiwodschaft Zachodniopomorskie (PL).
[100] INTERREG III A Bavaria/CZ: The role of Managing & Paying Authority is assumed by the Bavarian State Ministry for Economy, Transport and Technology.
[101] INTERREG III A Saxony/CZ & INTERREG III A Saxony/PL: In both cases, the Managing Authority is assumed by the Saxony State Chancellery. The Paying Authority is assumed by the Saxony State Ministry for Economy and Labour. Programme secretariats have been established in the regional administrative district offices of the Land (Regierungspräsidien), which are close to the respective borders.
[102] INTERREG IIIA Brandenburg/PL: The Managing Authority is assumed by the Ministry of Finance of the Land Brandenburg (MdF). The programme secretariat is located in the Ministry for Justice and European Affairs of Brandenburg.

Vorpommern[103]. Under the INTERREG IIIA programme "Mecklenburg Vorpommern/Brandenburg/PL", the Euregio POMERANIA is acting as the programme secretariat and has full responsibility for the implementation of the Small-Project-Fund (i.e. issuing of grant letters to projects)

The States involved in the INTERREG IIIA programme „Skärgården" (SF/SK) and the multilateral INTERREG IIIA programme "North Calotte/Kolarctic" (SF/S/NOR/RUS) have agreed joint management structures.[104] These structures were also confirmed by specific "memoranda of understanding" that were concluded for each programme at a later stage. On ground of these programme-specific agreements, the Managing Authorities can issue a grant letter to a project lead partner in another country and pursue a project partner in another country in case of financial mismanagement. The available experience along the Finnish borders shows that the strategic management solutions generally operate well.

For the 3 bilateral programmes covering the external borders of Finland with Russia and Estonia, the management structures have been decided unilaterally by the Finnish authorities (without a programme-specific agreement concluded). In case of the programme "Karelia" (SF/RUS), the function of Managing and Paying Authorities was allocated to the Regional Council of Northern Ostrobothnia. For he programmes "South East Finland" (SF/RUS) and "Southern Finland Coastal Zone" (SF/EE), the role of the Managing and Paying Authorities has been allocated respectively to the Regional Council of South Karelia and the Regional Council of South-West Finland.

The partly or fully decentralized single country-solutions for strategic programme management seem in general to work without major legal problems. Although an execution of primary management functions is in all cases mostly the task of regional or local authorities, one can observe under certain INTERREG IIIA programmes some involvement of existing permanent cross-border structures (e.g. B/NL, D/A).

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[103] INTERREG IIIA Mecklenburg Vorpommern/Brandenburg/PL: The Managing and Paying Authority is assumed by the Ministry of Economy of Mecklenburg-Vorpommern, working in close accord with the competent authorities of the Land Government in Brandenburg. In both Länder, operational aspects of the programme implementation have been delegated to the public "Landesförderinstitut (Mecklenburg-Vorpommern) or to the Land Investment bank (Brandenburg).

[104] The role of the Managing Authority and other functions were allocated to regional actors on the Finnish side (SF/SK: Managing & Paying Authority is the Åland Regional Council. SF/S/NOR/RUS: Managing & Paying Authority is Regional Council of Lappland).

In case of the INTERREG IIIA programme UK/F, a "memorandum of understanding has been concluded between the main programme partners.[105] The French side assumes both the role of the Managing Authority (Région Haute Normandie) and of the Paying Authority (Caisse des Dépôts et Consignations). There is no truly Joint Technical Secretariat, as a network of "national correspondents" has been established for programme animation. Due to the fact that regional devolution in England still remains at a stage of proposals, the role of County Councils in the programme management is rather limited. In the UK, the national government retains discretionary powers over the practical programme administration[106] and the payment of project leaders based in Britain is administered via the bank account of the Office of the Deputy Prime Minister (ODPM).

Based upon a "memorandum of understanding" concluded for the INTERREG IIIA programme UK-Wales/Ireland[107], the Welsh European Funding Office (WEFO) is acting as Managing Authority and provides for the Joint Technical Secretariat. The Corporate Planning and Services Division of WEFO (functionally separate from the JTS) is also acting as the Paying Authority for the Programme and has established a joint bank account in the UK capable of paying both Irish and Welsh project partners (in Euro and Sterling respectively). Within the Irish Republic, management, and financial control roles, remains at the national level. Considerable functions regarding implementation of the programme at the project level have however been delegated to the relevant Irish regional assembly – that for Southern and Eastern Ireland – which acts as National Contact Point for the Programme.

The partners of the INTERREG IIIA programme „Grensregio Vlaanderen / Nederland (D/NL) have concluded a convention, which locates all management functions on the Belgium side. Within Belgium, the government of the Flemish Region has concluded additional conventions that de-facto delegate specific management tasks to the Belgium border provinces acting as Managing Authority (Province of Antwerpen) and Paying Authority (Province of Oost-Vlaanderen). Aspects related to the technical financial management of the programme have been transferred to a private bank in Belgium (DEXIA-bank). The Managing Authority is supported by a Joint Technical Secretariat (JTS) that is located in the province of Antwerpen (Turnhout). Although the Euregio Middengebied[108] formally acts as the JTS, it fulfils all tasks jointly with the other Euregio existing in the eligible programme area (Euregio Scheldemond).

The partners of the Interreg IIIA programme Italy/Austria have concluded a cooperation agreement in January 2002 by which the joint programme structures were formally established. The role of the Managing and Paying Authority is assumed by the Italian autonomous province of Bolzano / Alto Adige. The different procedures for presenting a project on either side of the border represent however an obstacle for cross-border cooperation. As only the Italian partners apply a public tender procedure for the selection of projects, it is sometimes very difficult to establish a cross-border project partnership between Italian and Austrian actors at the same time. It happened that an Austrian project could not be realised because there was no partner project presented on the Italian side or because the presented partner project was delayed due to complex tender procedures. In such cases the Austrian partner was not able to observe the n+2 rule. As the implementation of the Austrian project either failed or delayed, the project expenses could not be claimed or could not be claimed on time.

[105] Memorandum of Understanding – Interreg IIIA UK/F: This agreement was concluded on the UK side by the Government Office for the South East (GOSE) and the French side. In the ongoing absence of a regional body with devolved powers in the South East of England, this wing of central government retains the authority to conclude such agreements.

[106] UK central government's ongoing concerns regarding financial management and control are a significant factor in its reluctance to devolve or transfer responsibilities to the regional level.

[107] Memorandum of Understanding for the programme Interreg IIIA UK/IRL Ireland/Wales (not yet signed): This agreement was concluded at the Welsh national (i.e. sub-UK national) level on the UK side and at the national level on the Irish side (Department of Finance).

[108] The Euregio Middengebied is a public-law based cross-border purpose association, based upon the Benelux-Convention.

Bi-national joint programme management structures

In the case of bi-national joint programme management structures, the most important programme management structures (Managing Authority, Paying Authority, Joint Technical Secretariat) are located on two sides of a common border and are governed by the respective country-specific laws. Under this option, one can also find either fully centralised or partly / entirely decentralised solutions.

Specific conventions / agreements have been concluded between the main programme partners that regulate the overall management system and aspects regarding final liability etc. In several cases, additional conventions were concluded

- between the Managing and Paying Authorities for regulating the border crossing relations (if both bodies are located in different countries,
- between the programme partners and a public/private bank for regulating (if the latter acts as Paying Authority),
- between the programme partners for specifying task-delegation to a Joint Technical Secretariat.

A **fully centralised bi-national management system** has only been adopted by the INTERREG IIIA programme Spain/Portugal, where the role of the Managing and Paying Authorities are assumed respectively by the Spanish Ministry of Economics and the Portuguese Ministry of Finance.

A **partly or fully decentralised bi-national management system** has been established for a smaller number of INTERREG IIIA programmes along a number of French borders, but also in Scandinavia.

- The INTERREG IIIIA programme "Spain/France" has located the Managing Authority and the Joint Technical Secretariat in Bordeaux at the Region Aquitaine (F), whereas the role of the Paying Authority was attributed to the Spanish Ministry of Economy in Madrid. The programme provides for joint financial controls. They are carried out on either side of the border by the competent national authorities, who are accompanied by controllers from the respective neighbouring country with an observer status. Beyond a number of more general factors[109], the most important legal problems that complicate a joint management of cross-border co-operation projects are related to the asymmetric administrative structures on either side of the border as well as to different national legislations applied to specific matters of day-to-day relevance (e.g. taxation, regulation of the labour market, accounting rules etc.).

- Other more decentralized solutions can be found in case of the 2 Scandinavian INTERREG IIIA programmes „Kvarken–MittSkandia" (SF/SK/NOR, see text box)[110] and "Øresund Region" (DK/S, see text box), but also under the programmes covering the wider cross-border area around the Lake Constance (D/A/CH/LI)[111] or the French-Belgium border ("France-Wallonie-Flanders", see text box) and the Italian-French land border ("Espace ALCOTRA"[112])

[109] Lack of co-operation tradition, long and sparsely populated border (Spain/Portugal) or physical obstacles along borders (Pyrenees), language barriers etc.

[110] The Management- and Paying Authority are located at the Västerbotten County Government (SK), whereas the JTS is located at the Kvarken-Council (SF).

[111] Managing Authority & JTS located in Germany (Regierungspräsidium Tübingen). The role of the Paying Authority is allocated to the Austrian Land Vorarlberg, which uses for this function the support services of the ERP-Funds located in Vienna.

[112] Managing Authority & Paying Authority allocated to the Italian region Piedmont. The JTS is located in France (Menton) and has also territorial antennas.

In case of the <u>INTERREG IIIA programme "Øresund",</u> the "Greater Copenhagen Authority" is formally acting as the Managing Authority. The Council has however delegated most of its tasks to an existing permanent cross-border structure in the area (Øresund Committee), which is also acting as the JTS. Due to Danish national law, the Øresund Committee, as an interest organisation, can not take full responsibility as a managing authority. The Swedish Business Development Agency (NUTEK) is the Paying Authority and responsible for receiving funds from the EU and for paying the funds to the project lead partners. Common obstacles at programme level are that the 3 management organisations have different routines based on different national legislation and interpretation of EU legislation.

For the <u>Interreg IIIA programme "Kvarken-MittSkandia"</u>, a memorandum of understanding has been concluded between the main programme partners. The County administration of Västerbotten in Sweden is legally responsibility for the programme and acts as Managing and Paying Authority. The Finnish part of the Kvarken-Council, a private law based cross-border structure[113], acts as the Joint Technical Secretariat with its location in Vaasa (SF). On ground of the memorandum of understanding, the Managing Authority can issue a grant letter to a project lead partner in another country and pursue a project partner in another country in case of financial mismanagement.

A programme partner convention was concluded (2002) for the <u>INTERREG IIIA programme "France/Wallonie-Flandres"</u>, which establishes the different programme management structures (Managing Authority, Payment Authority). The convention also structures the obligations of the involved authorities during the programme implementation, especially regarding financial responsibility/liability, financial control, payment structures and jurisdiction. The Walloon Region assumes the role of the Managing Authority, whereas the Payment Authority was attributed to a French public bank (Caisse des Dépôts et Consignations, direction régionale Nord-Pas-de-Calais). The Payment Authority and the Managing Authority have also concluded a convention, which defines the practical modalities of a unique programme account. A specific Joint Technical Secretariat with the denomination was established on the Belgium side, which is organised as a non-profit making association according to Belgium law (ASBL, jurisdiction is in Namur). For an implementation of projects, the EDRF-programme convention has to be subscribed by all project partners and the Managing Authority. The Walloon Region developed an "informatic management system" that includes the whole controlling of the start, the current working process or the finance plan of every project. This system is also used by the Payment Authority and helps to mechanise the certification of the expenditure for the European Commission.

[113] The Council is 100% owned by public authorities. In Sweden it is a part of the Association of Local Authorities in Västerbotten, in Finland it is a private association.

2.2.2. Programmes implemented under INTERREG IIIB (transnational co-operation), INTERREG IIIC (inter-regional co-operation) and Article 53 of the INTERREG Guidelines

The different INTERREG III programmes implemented under Strand B (transnational co-operation), Strand C (inter-regional co-operation) and Article 53 (ESPON, INTERACT) cover larger zones of the European Union, which distinguish them considerably from cross-border co-operation with its approach of close geographical proximity.

Another common condition of departure for all these programmes is that no specific and directly applicable legal instrument exists at date (neither in national legislation nor in supra-national legislation), which would allow establishing joint “inter-regional” or “transnational” co-operation structures with an own legal personality. In practice, co-operation initiatives have therefore to use *de facto* legal instruments available under national or Community legislations (see section 2.1.5.) or need to conclude programme-specific agreements.

For the strategic management and implementation of these INTERREG III programmes, the main programme partners (i.e. Member States involved, regions) have normally chosen the option of concluding specific “agreements” or “memoranda of understanding”. They normally define the general framework for programme implementation and further specify the most important strategic management functions (Managing Authority, Paying Authority, Joint Technical Secretariat). In several cases, additional agreements were concluded between the participating EU-Member States and other authorities / organisations taking over specific management functions under the programme (Paying Authority, JTS).

On ground of these agreements, a variety of strategic management models have been established. They put different emphasis on the role played by the Member States’ central administration or by regional/local authorities in the context of Managing/Paying Authority and on the nature / location of Joint Technical Secretariats.

Considering all programmes implemented under Strands B, C and Article 53 of INTERREG III (see overview tables below), the following **main features of basic arrangements made for joint strategic management** can be observed in practice:

- In the large majority of INTERREG IIIB and IIIC programmes, a **fully decentralised strategic management structure has been established.** Practical examples are the INTERREG IIIB programmes “Alpine Space”, “Atlantic Area”, “Atlantic-Ultra Peripheral-Regions”, “Baltic Sea Region”, “French Ultra-Peripheral Regions Caribbean”, “North-West Europe”, “Northern Periphery” and the INTERREG IIIC programmes “West Zone”, “East Zone” and “North Zone”. In most cases, regional authorities assume the roles of Managing and Paying Authority and host the Joint Technical Secretariat. In several the programmes where all management functions are located in Germany and France, one can observe that public banks are acting as Paying Authority. A specific arrangement has been found for the INTERREG IIIB programme Baltic Sea Area and the INTERREG IIIC programme “North Zone”, as in both cases a public bank is acting as Managing and Paying Authority.

- **Partly decentralised strategic management structure,** with regional authorities assuming most of the functions and central-level administrations assuming either the role of Managing Authority or of the Paying Authority, can be observed under some INTERREG IIIB and IIIC programmes. Practical examples are the INTERREG IIIB programmes “South West Europe” and “North Sea Region” as well as the INTERREG IIIC programme “South Zone”, with the Spanish national ministry of economy acting as Paying Authority.

- **Centralised programme management structures** can only be observed in a limited number of programmes. Practical examples are the INTERREG IIIB programmes “Central Adriatic, Danubian and South-East European Space” (CADSES) and “Western Mediterranean” (MEDOCC), with the Managing and Paying Authority located in both cases at the central level in Italy. Only the Joint Technical Secretariat of the CADSES-programme is located in Germany, but it can not be identified whether this is due to actual decentralisation. Other examples are the INTERREG III Art. 53 programmes ESPON and INTERACT, for which central government administrations are acting as Managing and Paying Authority.

In no case, the Community legal instrument of a “European Economic Interest Grouping” was used for establishing the joint Managing and Paying Authority as structures with an own legal personality. Managing and Paying Authorities are always governed by national (public) law and by the agreements concluded between the principal programme partners (where existing). Only in one case, the Community legal instrument of a “European Economic Interest Grouping” was used for legally structuring the Joint Technical Secretariat (INTERREG IIIC West Zone). In all other cases, the JTS is hosted by regional/local authorities or by central level authorities, thus being governed by the respective country specific law.

Under most of the INTERREG III programmes implemented under Stands B &C or Article 53, strategic management seems to operate without major legal problems. This seems mostly to be the case where programme partners have previously agreed on the concrete division of work between the decision-making authority in day-to-day implementation matters and the Managing Authority, the Paying Authority or the Joint Technical Secretariat. In some cases, also the functions and limits of the host of the joint secretariat had to be considered. Only in case of a few programmes these operational relationships were not regulated, which resulted in conflicts, delayed the implementation and caused frustration of all parties concerned.

Also the project-based implementation process operates satisfactory, which is mostly due to the general application of the Lead Partner principle within the context of these programmes.

A brief insight view into **a number of practical examples from the different programme categories** might help illustrating some interesting solutions found in the context of strategic programme management:

For the INTERREG IIIB Programme “Alpine Space”, the participating EU Member States have signed a multilateral agreement with the Managing Authority of the Programme (Land Salzburg).[114] In addition to that, the non EU-Member States have sent a “Declaration of Consent” to the Managing Authority confirming their participation in the programme. The establishment of a single Managing Authority caused however some problems, as no legal basis for the co-operation existed and had to be negotiated between the partners. The finally established Managing Authority has the right to issue a grant letter to a project lead partner in another country, which is made possible on ground on the basis of national/regional law and the mutual agreements concluded. Despite the agreements concluded and the common structures established, project-based implementation is mostly governed by national law. On a first level, “Project Partnership Agreements” (PPA)[115] need to be concluded among the

[114] The agreement establishes mutual rights and responsibilities and regulates issues such as the payments to beneficiaries (on the basis of a subsidy contract between MA and Lead Partner of the approved projects), the management and control System (organisation of first and second level control), the responsibilities in case of irregularities or the management of the technical assistance budget.
[115] The PPA includes a series of minimum clauses (i.e. obligations of the project partners, duration of the contract, responsibilities of the partners towards the MA, changes in the partnership, audits, public relations work).

partners, which is – at a second level – the basis for the Lead Partner to obtain a subsidy contract from the Managing Authority.[116] In addition to the PPA, project partners are required to give details concerning the tasks of the Lead Partner and other project partners, the work organisation, the financial flows of ERDF-funds or the working language. A persisting problem for the Managing Authority is however that the applicable EU-regulations do not consider the transnational character of these programmes, especially with regard to an allocation and control of funds. The legal responsibility for any problems regarding financial (mis)management on the side of project partners is therefore, according to the mutual agreement, on the side of the partner states.

Major problems with regard to a rather centralised management and implementation structure are only notorious in case of the INTERREG IIIB programme CADSES, which covers a vast area spanning from the Baltic over Central Eastern Europe down to the Aegean. They are mainly a result of lacking competence in the central managing authority and the extremely wide geographic area covered by the CIP. All these problems are well known to the Commission and there are efforts to correct at least partially the management havoc by forcing the managing authority to take certain steps. The fact that a few more countries will become full EU Member States in a few months will augment the confusion and the problem of strategic management. All these new Member States will ask to take active part in the management of the programme, something that was not the case so far. Unless there is no serious effort to streamline the baroque and complicated system of management, monitoring and implementation of the CIP, the increasing number of actors will certainly create further confusion and problems in the management and implementation of an already difficult programme.

A programme partner agreement was concluded between the EU-Member States of the INTERREG IIIC programme "North Zone" and an additional agreement between the EU Member States and the publicly owned "Investitionsbank Schleswig-Holstein" (IB)[117], which was entrusted with the double function of Managing and Paying Authority. The IB had already gained previous experience with a management of transnational programme activities under INTERREG II and is also hosting the Joint Technical Secretariat of the programme. In addition to the strategic level agreement, a set of rules, including also "internal rules of operation", were developed over the years laying the foundation for smooth functioning of the chosen structures, without over-regulating all single steps taken. The IB, as the single Managing and Paying Authority, has the right to issue a grant letter to a project lead partner in another country. The financial management system of the programme is somehow special, since the Investitionsbank is an independent bank with extensive technical knowledge. Everything is working very smoothly and efficiently. In total there are only a few people involved (on IB side as well as on JTS side) and the responsibilities, rules and procedures are highly developed. The "North Zone" programme has made positive experience with this rather 'common' financial management system. For project level co-operation, a contract needs to be concluded between a project lead partner and the IB (subsidy contract). The IB is entitled to terminate the contract and demand repayment of subsidy in full or in part, e.g. if the subsidy has been obtained through false or incomplete statements, the lead partner has failed to submit required reports (activity report + audited financial report), the subsidy awarded has been partially or entirely misapplied for purposes other than those agreed upon, etc.[118] Beyond the formal arrangements, current operational experience shows that active support of Member States to the jointly agreed implementation

[116] Formally the Lead Partner of a project is responsible for the complete amount of ERDF funds granted to the project. The Lead Partner also signs the subsidy contract with the Managing Authority of the programme.
[117] The IB is an independent public institution ("Anstalt des öffentlichen Rechts" pursuant to German law), which was established on ground of the "Investitionsbankgesetz" (IBG, entered into force on 1 June 2003).
[118] The Agreement between the IB and the EU Member States contains also detailed provisions how to handle irregularities (§ 4).

structures and mutual confidence / trust among the actors and stakeholders involved are very important factors for successful strategic-level cooperation.

Based upon an overall partner agreement for the strategic management of the INTERREG IIIC programme "West Zone", the Region Nord-Pas-de-Calais (F) was designated as Managing Authority and the French public bank "Caisse des Dépôts et Consignations (CDC)" as Paying Authority. In October 2003, an EEIG has been set up for the purpose of legally structuring the Joint Technical Secretariat in Lille[119]. This EEIG involves the Region Nord-Pas-de-Calais (F), in its quality as Managing Authority of the INTERREG IIIC-programme, and the Walloon Region (B), in its quality as Managing Authority of the INTERREG IIIA programme "France-Wallonnie-Flandre. The objectives of the EEIG are to share experiences among the Managing Authorities concerned with regard to Community Initiative programmes and to assist the Managing Authorities in the current implementation of these programmes. The only problem that arose with this rather particular solution is related to French labour law. It does not allow to have terminated working contracts for the Secretariat staff members up to 2006 or 2008. On ground of this strategic programme arrangement, the Managing Authority of the programme can undertake a number of actions within its scope, like retaining of payments or requesting repayment of funds. If that does not lead to a solution the Managing Authority transfers the rights from the subsidy contract to the respective Member States who initiate the necessary legal actions. On ground of this arrangement, a Member State is also liable for funds lost due to irregularities on partners in their territory. Project-level co-operation under INTERREG IIIC is based on the Lead Partner principle. The Lead Partner of a project signs a subsidy contract with the Managing Authority and bears the full responsibility / liability against the Managing and Paying Authority. For the project-internal relations, many project partners also conclude specific partner agreement for the division of tasks and the definition of mutual responsibilities.

The 15 EU-Member States as main partners of the ESPON-programme[120] have concluded an overall agreement that regulates questions regarding joint administrative and financial management of the programme as well as the role of the Managing Authority. The Ministry of Interior in the Grand Duchy of Luxembourg assumes the roles of Managing and Paying Authority and manages the joint bank account of the programme. During the set-up phase, there have been some discussions on the question of liability and it was also very complicated to organize the "first level control" for the programme. The solution found is that certification is delegated to "first level control authorities" in the partner countries. In addition to the primary management structures, a co-ordination unit (Joint Technical Secretariat) was established for the ESPON-programme at the "CRP Henri Tudor", a public law based institution, in Esch-sur-Alzette (Luxembourg). Based upon this system, the Ministry, as Managing Authority, can issue grant letters to project lead partners in another country based on public rules of Luxembourg. It can also pursue a project partner in another country in case of financial mismanagement. This is mostly assured by a "contract"[121] concluded with the Lead Partners (it covers the liability with Project Partners), but also via administrative assistance provided by national Monitoring Committee members (as laid down in Agreement between the Member States and Luxembourg).

[119] "GEIE GECOTI-Groupement Européen pour la Coopération transnationale et Interrégionale" and in English "GEIE EGTIC European Group for Transnational and Interregional Coopération".
[120] "The ESPON 2006 Programme - Research on the Spatial Development of an Enlarging European Union".
[121] Within the programme, the "Lead partner principle" is applied. Contracts concluded with the Lead Partner include the terms of reference and the project proposal defining deliverables of the project. Contracts also include a clause on the possibility of sanctions for the event that the contractor does not comply with the provisions made.

Strategic Management of INTERREG IIIB Programmes			
Programme	**Managing Authority**	**Paying Authority**	**Joint Technical Secretariat**
Alpine Space	Land Salzburg-Abteilung „Regionalpolitik und EU-Regionalpolitik“ (Austria)	Land Salzburg-Abteilung Wirtschafts- und Technologieförderung (Austria)	Secretariat in Rosenheim (Germany)
Atlantic Area	Conseil Régional de Poitou-Charentes (France).	Caisse des Dépôts et Consignations, direction régionale Poitou-Charentes (France)	Secretariat at Conseil Régional Poitou-Charentes, Poitiers (France)
Atlantic-Ultra Peripheral-Regions	Gobierno de Canarias, Consejeria de Economia y Hacienda (Spain)	Región de Madeira, Instituto de Gestão de Fundos Comunitarios (Portugal)	Co-ordination unit : Las Palmas de Gran Canaria (Spain)
Archimed	At central level in Athens, Ministry of National Economy (Greece)	At central level in Athens, Ministry of National Economy (Greece)	At central level in Athens, Ministry of National Economy (Greece)
Baltic Sea Region	Investitionsbank Schleswig-Holstein, Rostock (Germany)	Investitionsbank Schleswig-Holstein, Rostock (Germany)	JTS in Rostock (Germany) and Karlskrona (Sweden)
Central Adriatic, Danubian and South-East European Space (CADSES)	At central level in Rome, Ministero dei Lavori Pubblici (Italy).	General Direction for Spatial Co-ordination (DiCoTer) – section PA Ministry of Infrastructures and Transports (Italy)	Secretariat at the Town Hall of Dresden (Germany)
French Ultra-Peripheral Regions Caribbean	Conseil Régional de la Guadeloupe (France)	?	Espace régional- Cité des Métiers, Abymes, Guadeloupe (France)
French Region of Réunion	Conseil Régional Région (France)	?	Cellule Europe Saint Denis, Réunion (France)
Western Mediterranean (MEDOCC)	At central level in Rome, Ministero Infrastruture e Trasporti (Italy).	At central level in Rome, Ministero Infrastruture e Trasporti (Italy)	Joint secretariat at Ministero Infrastruture e Trasporti in Rome (Italy)
North Sea Region	National Agency for Enterprise and Housing At the Ministry of Economic and Business Affairs, (Denmark)	County of Vyborg (Denmark)	Joint secretariat at Vyborg Amt (Denmark)
North-West Europe (NWE)	Conseil Régional Nord Pas de Calais (France)	Caisse des Dépôts et Consignations, direction régionale Nord Pas de Calais (France)	Joint secretariat in Lille (France)
Northern Periphery	Västerbotten County Administration (Sweden)	Västerbotten County Administration (Sweden)	Joint secretariat in Copenhagen (Denmark)
South West Europe (EUSO)	Gobierno de Cantabria, Consejería de Economía y Hacienda, Dirección de Economía y Comercio (Spain)	Central Ministry of Economy Dirección General de los Fondos Communitarios (Spain)	Joint secretariat in Santander (Spain)

Strategic Management of INTERREG IIIC Programmes			
Programme	**Managing Authority**	**Paying Authority**	**Joint Technical Secretariat**
INTERREG IIIC West Zone	Conseil Regional Nord-Pas de Calais (France)	"Caisse des Dépôts et Consignations", direction régionale Nord-Pas de Calais (France)	Joint Technical Secretariat in Lille (France)
INTERREG IIIC East Zone	City of Vienna Department for EU Funding (Austria)	City of Vienna Department for Finance and budget (Austria)	Joint Technical Secretariat at the City of Vienna (Austria)
INTERREG IIIC North Zone	Investitionsbank Schleswig-Holstein in Kiel (Germany)	Investitionsbank Schleswig-Holstein in Kiel (Germany)	Joint secretariat in Rostock (Germany)
INTERREG IIIC South Zone	Communitat Valenciana, Dirección General de Economia División de Economia y Fondos Comunitarios (Spain)	Central Ministry of Economy Dirección General de los Fondos Communitarios (Spain)	Joint secretariat at the Communitat Valenciana in Valencia (Spain)

Strategic Management of INTERREG III, Article 53 Programmes			
Programme	**Managing Authority**	**Paying Authority**	**Joint Technical Secretariat**
ESPON programme	Ministry of Interior (Luxembourg)	Ministry of Interior (Luxembourg)	Co-ordination Unit (Joint Technical Secretariat) located in Esch-sur-Alzette (Luxembourg)
INTERACT programme	Federal Chancellery, Co-ordination – Spatial Planning and Regional Policy Division IV/4 (Austria)	Federal Chancellery, Co-ordination – Spatial Planning and Regional Policy Division IV/4 (Austria)	Programme Secretariat located in Vienna (Austria)

2.3. Intermediate conclusions: Decentralised cross-border co-operation in general and Transeuropean Co-operation under INTERREG III

The overview on the current status of legal instruments applied in the context of cross-border co-operation and the specific legal solutions found for the management and implementation of INTERREG III programmes allows drawing a number of intermediary summary conclusions that will be presented in the present section.

The European-wide diversity of **domestic powers** allocated to territorial authorities in the field of decentralised cross-border co-operation will always continue to exist. It will not be possible to adapt or harmonise all Constitutions / national legislations in order to create an EU-wide homogenous legal standard for decentralised cross-border co-operation. The conclusion of inter-state agreements on cross-border co-operation shows that “bridges” can effectively be created, which help to manage the diversity of domestic powers along the European borders.

A large number of **inter-state agreements on cross-border co-operation** have been concluded at date. They are either focussing on one specific theme or on cross-border co-operation in general single (especially those applying the Madrid Outline Convention). Many agreements provide specific legal instruments for decentralised cross-border co-operation, but they mostly allow establishing decentralised cross-border co-operation on ground of private law and less frequently on ground of public-law.

- The provision of *“neutral”* public law based co-operation instruments (creation of *ex novo* structures) is still exceptional and limited to a few far-reaching inter-state agreements on general cross-border co-operation. The current application experience of the Benelux-Convention, the Anholt-Agreement and the Karlsruhe-Agreement shows however that public-law based instruments (including the creation of *ex novo* structures) are well accepted by actors in the border regions. Compared to this, the application experience of well developed and comparatively weak agreements is rather limited.

- All inter-state agreements limit the possibilities of territorial authorities to engage in decentralised cross-border co-operation to the scope of their nationally available powers. This only allows establishing co-operation on ground of the smallest common denominator (minimum standard co-operation instead of generalised co-operation). Realistically, it will not be possible to adapt all existing inter-state agreements in a way that a common European-wide legal standard for decentralised cross-border co-operation is created.

There are also a number of ***de facto*** **legal instruments** that are used in the context of decentralized cross-border co-operation. The most frequent options are **private-law based (e.g. associative law) and Community law based (European Economic Interest Groupings, EEIGs).**

- Civil-law based instruments such as associations might be sufficient at a start-up phase or for different types of informal cross-border co-operation activities, especially if they have the aim to improve mutual information or consultation on certain matters of local policy. But when the exercise of public competencies is involved, the situation gets by far more complex. For long-term oriented cross-border co-operation or a joint management of programmes as well as for a joint building and connection of infrastructures or a joint adoption of binding plans, private law and informal co-operation is not sufficient.

- The EEIG-instrument in its current form is not very suitable for cross-border co-operation among public territorial authorities. The main obstacles of this option can briefly be summarised as follows: EEIGs are mainly designed for economic co-operation among private companies. According to its nature and legal character, EEIGs can only act according to private law and not take over legal functions of public regional/local territorial authorities. The proper implementation / execution of economic development activities can not be delegated to an EEIG by a public territorial entity. The specific legal relationship between EEIGs, third parties and public-law-based bodies creates difficulties with regard to control by its members (necessity of a specific national law).

The **unbalanced development of the overall legal framework for decentralised cross-border co-operation** shows also that there are still considerable potentials for further increasing the intensity and quality of public-law based cross-border co-operation along many borders throughout the European Union (e.g. F/S, F/I, I/A, A/D, F/UK, D/DK, Scandinavian borders, Accession Country borders). The multitude of existing legal instruments available for decentralised cross-border co-operation in Europe also explains why permanent cross-border co-operation structures (Euregios and similar structures, Working Communities etc.) still develop in a variety of forms and with considerably different degrees of legal capacity.

For **strategic co-operation at the level of INTERREG III programmes,** the main partners involved have frequently concluded specific “Interreg-agreements”, “partner conventions” or “memoranda of understanding” that specify particular tasks and responsibilities of the joint management structures (e.g. Managing Authority, Payment Authority, Joint Technical Secretariat). In no case, the Community legal instrument of a “European Economic Interest Grouping” was used for establishing the joint Managing and Paying Authority as structures with an own legal personality.[122] All programme level management arrangements are governed by the national law of the parties involved and – where existing – by the specific agreements concluded between the main programme partners.

- The **large majority of INTERREG IIIA programmes have established partly or entirely decentralised management structures,** which are located either on one side of a common border or on both sides of a border. Regional authorities normally assume the role of the Managing and Paying Authorities and host the JTS. Sometimes, also publicly owned banks are acting as Paying Authorities for the programme. Only in exceptional cases, existing permanent cross-border co-operation structures[123] were substantially involved in or directly responsible for a management and implementation of INTERREG IIIA programmes. Such an involvement in strategic level co-operation can mostly be found along borders covered by far-reaching inter-state agreements applying the Madrid Outline Convention provide, which provide for public-law based instruments that allow legally structuring decentralised cross-border co-operation on “equal footing” (D/F-PAMINA, D/NL, D/NL/B).[124] A specific case is the

[122] Only under the INTERREG IIIC programme “West Zone”, an attempt was made for legally structuring the JTS through a use of an EEIG.
[123] Euroregions and similar Euroregion-type co-operation structures, other permanent cross-border structures.
[124] In a few cases, where private law-based cross-border co-operation structures had clarified the question of final liability, they were also entitled to manage an INTERREG IIIA programme.

Ireland/UK-Northern Ireland border, where specific treaties have created particularly favourable conditions in this respect.[125]

- **A certain number of INTERREG IIIA programmes have adopted centralised management structures,** which are located either on one side of a common border or on both sides of a border. Under this option, central state authorities assume the role of the Managing and Paying Authorities and frequently also host the JTS. This solution can mostly be found under INTERREG IIIA programmes covering external borders in the south-west and the south-east of the European Union (E/Morocco, Greece external borders) or along the former Austrian external borders with the Czech Republic, the Slovak Republic, Hungary and Slovenia, but also in case of one internal EU-border (E/P). These centralised management arrangements are normally governed by the national law of the parties involved and – where existing – by specific agreements concluded between the programme partners.

- In the large majority of **INTERREG IIIB and IIIC programmes** have established **fully or partly decentralised, joint management structure. Also in this case,** regional authorities assume the role of the Managing and Paying Authorities and host the JTS. In several cases, the role of the Paying Authority was attributed to a publicly owned bank. These solutions seem to operate without major legal problems, especially if programme agreements have clearly regulated the operational aspects of programme-level decision-making, management and implementation. Only a few **INTERREG IIIB programmes (CADSES, MEDOCC)** and the **INTERREG III Art. 53 programmes ESPON and INTERACT** have **entrusted central level administrations with the functions of Managing and Paying Authority.**

Very few **projects under INTERREG IIIA** establish legal structures for their initiatives. If a legal entity is established for a project, it is mostly based upon the national law of one partner country and only in very exceptional cases on the Community regulation on "European Economic Interest Groupings" (EEIGs). These provisional findings also confirm the continuing validity of results from the ex-post evaluation of INTERREG IIA (1994-1999). The assessment has revealed that the quality and intensity of project-level co-operation was in general <u>not</u> influenced by an absence of appropriate legal framework conditions. Only a minority of the more than 10.000 realised INTERREG IIA projects have established specific legal structures for jointly managing their cross-border initiatives.[126] Obstacles hindering practical cross-border co-operation at project-level under INTERREG IIIA are frequently related to different legal provisions on either side of the border that regulate specific topics of particular interest for cross-border co-operation (i.e. social security, labour market, security and cross-border assistance in the field of emergency / natural disasters). An additional aspect that often tends to hinder project-level co-operation are different administrative / organisational settings on either side of the border or different provisions applied for presenting / submitting projects (e.g. open submission on one side; regular calls for proposal on the other side).

Project-level co-operation under **INTERREG IIIB and IIIC programmes** as well as under the **2 programmes implemented in the framework of Article 53 of the INTERREG Guidelines** was not significantly influenced by a lack of appropriate legal framework instruments. All projects seem to operate without major legal problems. An important reason

[125] The "Good Friday Agreement" of 1998 has led to the creation of several cross-border co-operation bodies, including a Special European Union Programmes Body (SEUPB). This border specific permanent body has direct responsibility for the relevant EU-cross-border programmes.

[126] Reasons explaining this are: limited time horizons of the projects, the nature of the project did not require formalization, other flexible solutions have been found (informal joint arrangements, lead partner principle, ad-hoc consortia, joint management boards etc.)

explaining this is the fact that under all these programmes the “Lead Partner Principle” is generally applied at a first level. On ground of the subsidy contract concluded with the respective programme Managing Authorities, the Lead Partner of a project agrees to take over the full responsibility / liability for the project in the name of all other participating partners. For further securing the project-internal responsibilities and regulating the task-division, several INTERREG III programmes also recommend the conclusion of project-partnership agreements. In case of the INTERREG IIIB programme North-West Europe, for example, the conclusion of a project partnership agreement is even mandatory.

Based upon the above-made remarks for strategic and project level co-operation, **the following overall conclusion can be established:** Progress regarding more stable legal frameworks conditions for decentralised Transeuropean co-operation supported by future Community programmes should mostly concentrate on strategic-level co-operation, i.e. legal instruments that allow a joint management and implementation of EU-support programmes. Any improvement in this direction will however require a provision of adequate public-law based solutions / instruments for decentralised co-operation, as private law-based solutions will not allow managing Community support programmes.

3. THE PRACTICABILITY OF DIFFERENT OPTIONS THAT CAN POTENTIALLY HELP IMPROVING LEGAL FRAMEWORK CONDITIONS FOR TRANSEUROPEAN CO-OPERATION

The third chapter of the synthesis report will discuss the practicability of different options[127] that could potentially inspire the design of a future Community legal instrument for decentralised Transeuropean co-operation. These options are the following:

- Promoting the Community's adhesion to the Madrid Outline Convention of the Council of Europe (section 3.1).
- Building on the initiative "European Co-operation Areas" (section 3.2).
- Making use of alternative Community-law based instruments (section 3.3).
- Elaborating a specific implementation regulation only for INTERREG-type Structural Funds programmes (section 3.4).

Based upon the discussion of these options, a number of intermediary conclusions highlighting basic policy strategies that can be pursued at Community level will be elaborated at the end of this chapter (section 3.5.).

3.1. Promoting the Community's adhesion to the Madrid Outline Convention of the Council of Europe

The initial "Terms of Reference" for the study and the "Inception Report" have suggested examining a specific solution that could be promoted at Community level, the EU's accession to the Madrid Outline Convention of the Council of Europe. This potential solution encounters however several basic problems:

The EU lacks of a statute that is comparable to a sovereign nation state. Due to that, it must be questioned whether the European Union could in principle be entitled to join the Convention of the Council of Europe. The European Union also lacks of similar state-like powers with regard to territorial authorities. This raises the question whether Article 1 of the Madrid Outline Convention[128] could be practically applied by Community institutions.

An adhesion is also restricted by the fact that several of the current EU-Member States and of the new EU-Member States have not yet ratified the Madrid Outline Convention or its two additional protocols (see overview table below). This would make it impossible for the European Union to adhere the Outline Convention or its Additional Protocols on ground of a joint mandate that is backed by all EU-Member States.

Assuming that all the above-mentioned problems could be resolved, an additional problem would further complicate an adoption of this potential solution. Even if the EU could adhere to the Madrid Outline Convention and its Additional Protocols, an adoption of secondary Community law would still be necessary in order to overcome the lacking direct applicability

[127] The specific options that should be analysed were mostly prescribed in the initial Terms of Reference for the study, but also in the Inception Report that was elaborated at a later stage.

[128] Council of Europe, Madrid Outline Convention, Article 1: Each Contracting Party undertakes to facilitate and foster cross-border co-operation between territorial communities or authorities within its jurisdiction and territorial communities or authorities within the jurisdiction of other Contracting Parties. It shall endeavour to promote the conclusion of any agreements and arrangements that may prove necessary for this purpose with due regard to the different constitutional provisions of each Party.

of provisions in the Convention and the Protocols. Only a specific EC-Regulation (or EC-Directive) could create solid legal foundations for decentralised co-operation in general and/or for a truly joint operational management of EU-programmes (especially for INTERREG) as well as for a sound handling of European funding under a single responsibility.

Due to the range of problems associated with a potential adherence of the European Union to the Madrid Outline Convention and its Additional Protocols and the lacking direct applicability of provisions, it is therefore highly recommended to exclude this option from the scope of practical solutions that could help improving legal framework conditions for decentralised Transeuropean co-operation in the European Union.

The Madrid Outline Convention and its two Additional Protocols: Status of signature (SIG), ratification (RAT) and entry into force (EIF) for EU-Member States (Spring 2004)									
	Madrid Outline Convention of 1980			**1st Additional Protocol of 1995**			**2nd Additional Protocol of 1998**		
Member State	**SIG**	**RAT**	**EIF**	**SIG**	**RAT**	**EIF**	**SIG**	**RAT**	**EIF**
Austria	X	X	X	X	X	X			
Belgium	X	X	X	X			X		
Cyprus									
Czech Republic	X	X	X						
Denmark	X	X	X						
Estonia									
Finland	X	X	X						
France	X	X	X	X	X	X	X		
Germany	X	X	X	X	X	X	X	X	X
Greece									
Hungary	X	X	X						
Ireland	X	X	X						
Italy	X	X	X	X					
Latvia	X	X	X	X	X	X			
Lithuania	X	X	X	X	X	X	X	X	X
Luxembourg	X	X	X	X	X	X	X	X	X
Malta	X								
Netherlands	X	X	X	X	X	X	X	X	X
Poland	X	X	X						
Portugal	X	X	X	X			X		
Slovakia	X	X	X	X	X	X	X	X	X
Slovenia	X	X	X	X	X	X	X	X	X
Spain	X	X	X						
Sweden	X	X	X	X	X	X	X	X	X
United Kingdom									

3.2. Building on the initiative "European Co-operation Areas" (ECA)

A study commissioned by the Committee of the Regions[129] has recommended the creation of "European Co-operation Areas" (ECA). The ECA-initiative is yet only a proposal and has not been tested in practice. Nor the Committee of the Regions neither the Commission have further pursued the proposal.

The wording "European Co-operation Area" tends however to create some confusion. It is mostly understood as a geographical concept and not in the sense of a legal instrument that is directly applicable for decentralised Transeuropean co-operation. In order to clarify the **ECA-concept,** it is useful to briefly summarise some of **its basic principles** that are elaborated more in detail in the study of the Committee of the Regions:

The ECA is intended to be a Community legal instrument that can be directly applicable throughout the European Union for voluntary bilateral and multilateral strategic/programmatic co-operation among regional/local authorities (including nation governments or regions with own law-making powers and capability to conclude international treaties).

Under Community law, it was recommended to choose the instrument of an EC-Regulation for implementing the ECA-legal instrument. An EC-regulation has precedence over national law and would be directly applicable in all EU-Member States[130]. It obliges in principle the Member States to directly apply the legal provisions and helps avoiding lengthy transformation processes into national law.

An ECA-Regulation would establish a flexible set of standard rules for the setting up of specific structures for strategic-level cross-border, transnational and inter-territorial co-operation that are based on public law. For each sub-type, two specific co-operation options would be available for legally structuring decentralised co-operation: The "European Working Community" and the "European Joint Authority" (see overview table below).

Each of these public-law based co-operation structures would be governed by own "statutes". National authorities would only have to „check" whether these statutes comply with the basic set of standard rules as defined in the ECA-Regulation. Each ECA-co-operation body would have an own legal personality under Community law (ex novo structure), but it would not create a new administrative layer of government.

	"European Working Community" (EWC)	**"European Joint Authority" (EJA).**
European Areas for Cross-border Co-operation (EA-CBC)	European Working Community for Cross-border Co-operation	European Joint Authority for Cross-border Co-operation
European Areas for Transnational Co-operation (EA-TNC)	European Working Community for Transnational Co-operation	European Joint Authority for Transnational Co-operation
European Areas for Inter-territorial*) Co-operation (EA-ITC)	European Working Community for Inter-territorial Co-operation	European Joint Authority for Inter-territorial Co-operation
*) In order to follow the established EU-jargon, "inter-territorial co-operation" can also be replaced by inter-regional co-operation. Source: Committee of the Regions (2001)		

[129] Transeuropean Cooperation between territorial authorities – new challenges and future steps necessary to improve cooperation", October 2001.
[130] See Article 189(2) of the EC Treaty: "A regulation shall have general application. It shall be binding in its entirety and directly applicable in all Member States".

As such, the ECA-initiative of the Committee of the Regions is a first step in the right direction that can inspire to some extent the elaboration of a new Community legal instrument for decentralised Transeuropean co-operation:

- The initiative enumerates a set of standard rules for the formation and operation of ECAs, which are sufficiently flexible and applicable to all types of decentralised Transeuropean co-operation. By such an approach, the ECA-initiative allows “bridging” the legal and administrative systems differences between EU-Member States and contributes to improve the overall legal stability of decentralised Transeuropean co-operation in general.

- In the field of decentralised cross-border co-operation, the ECA-initiative closely orientates the design of its public law-based co-operation instruments alongside the basic prescriptions that are already contained in existing (inter-state) agreements on cross-border co-operation. This increases the adaptability of ECA-solutions for cross-border co-operation especially along borders that are covered by far-reaching (inter-state) agreements (i.e. B/L, B/NL, B/D, L/F, D/NL, D/L, D/F).[131] Along these borders, the instruments provided for in the ECA-approach are quite close to the public law-based “ex-novo structures” contained in the agreements (e.g. cross-border local purpose associations, administrative agreements/public law agreements etc.). Along all other EU-borders the ECA-approach would significantly improve the potentials for decentralised cross-border co-operation, as it significantly enlarges the possibility for public-law based co-operation on an “equal footing” (i.e. through an introduction of neutral *ex-novo* structures).

- The broad application of the ECA-initiative in the field of Transeuropean co-operation helps to fill an important gap that exists in the context of inter-regional and transnational co-operation throughout the EU. It would create, for the first time, adequate and directly applicable legal instruments for these types of decentralised co-operation that also allow to manage specific EU-support programmes (e.g. INTERREG IIIB and IIIC programmes).

3.3. Making use of alternative Community-law based instruments

A potential option could also be to apply other Community-wide legal instrument aspects in the field of decentralised Transeuropean co-operation that are based upon recently adopted EC-legislation (Council Regulation 1435/2003/EC on the Statute for a “European Cooperative Society”, SCE) or EC-legislation that is expected to be adopted in the near future (draft Council regulation on a Statute for a “European Association”, EA).

The EC-Regulation on a “European Co-operative Society”

The Council Regulation 1435/2003/EC on the Statute for a European Cooperative Society (SCE) provides cooperatives with adequate legal instruments capable of facilitating the development of their cross-border activities. This new European legal form for cooperatives, based on common principles, but taking account of their specific features, enables them to operate outside their own national borders in all or part of the territory of the Community.

[131] Anholt Agreement, Benelux-Convention, Karlsruhe-Agreement, Mainz-Agreement, French-Belgium Agreement.

The EC-Regulation 1435/2003 is broadly based on the EC-Regulation 2157/2001 relating to the European Company, with the changes required by the specific characteristics of European Cooperative Societies. The Regulation defines cooperatives primarily as groups of persons or legal entities with particular operating principles that are different from those of other economic agents. These include the principles of democratic structure and control and the distribution of the net profit for the financial year on an equitable basis. The particular principles include notably the principle of the primacy of the individual which is reflected in the specific rules on membership, resignation and expulsion, where the "one man, one vote" rule is laid down and the right to vote is vested in the individual, with the implication that members cannot exercise any rights over the assets of the cooperative.

The Regulation enables the establishment of an SCE by physical persons resident in different Member States or legal entities governed by public or private law and established under the laws of different Member States. It will also make possible the establishment of an SCE by merger of two existing cooperatives, or by conversion of a national cooperative into the new form without first being wound up, where that cooperative has its registered office and head office within one Member State and an establishment or subsidiary in another Member State.

A European Cooperative Society has as its principal objective the satisfaction of its members' needs and/or the development of their economic and/or social activities, in compliance with the following principles:

- its activities should be conducted for the mutual benefit of the members so that each member benefits from the activities of the SCE in accordance with his/her participation,
- members of the SCE should also be customers, employees or suppliers or should be otherwise involved in the activities of the SCE,
- control should be vested equally in members, although weighted voting may be allowed, in order to reflect each member's contribution to the SCE,
- there should be limited interest on loan and share capital,
- profits should be distributed according to business done with the SCE or retained to meet the needs of members,
- there should be no artificial restrictions on membership,
- net assets and reserves should be distributed on winding-up according to the principle of disinterested distribution, that is to say to another cooperative body pursuing similar aims or general interest purposes.

The European Cooperative Society is an independent structure under Community law, which exists in parallel to national forms of association. Article 8 of the Regulation makes however clear that the regulation does not govern the SCE-structure by itself, but does so in conjunction with the statutes of the cooperative society in question and the company law of the Member State in which the cooperative society has its registered office. The Regulation is therefore concerned with harmonisation, especially approximation of laws, thus reducing legal obstacles to the operation of the internal market.

The SCE-Regulation helps to abolish the current legal and administrative difficulties hampering cooperatives in their cross-border operation and therefore provides a suitable instrument for their co-operation. But these SCE-provisions are only applicable by a restricted group of actors that have their own tradition (i.e. cooperative societies, Genossenschaften).

Whether public territorial authorities might consider the SEC-Regulation as a suitable instrument for legally structuring decentralised co-operation initiatives needs however to be tested in the future by an application of this new instrument. There are however some reasons for scepticism.

- Considering the different structures under which territorial administrations in the EU normally operate and the broad range of public tasks they need to fulfil, it is not very likely that everywhere public authorities can get involved in cooperatives according to the same rules. But even if this should be the case, it is clear that not all public activities might be managed through such cooperatives or through the establishment of a European Cooperative Society.

- Especially in the context of Transeuropean co-operation among territorial authorities, both at programme and at project level, it must be doubted whether the SCE-instrument is suitable for legally structuring the relevant co-operation initiatives.

- Considering the specific context of decentralised cross-border co-operation, the SEC-instrument would have to "compete" with various existing and well-designed legal instruments for public-law based co-operation provided for in far-reaching and well developed inter-state agreements. This does not create very attractive conditions of departure for a wide application of the SCE-instrument along many EU-borders.

Draft Council regulation on a Statute for a "European Association"

The draft Council Regulation on a Statute for a "European Association" has not yet been adopted, but it is expected to finally pass the Community decision-making process in the period 2004/05.

The objective of the Regulation is to enable associations and foundations to operate throughout the Community, by providing a legal form to be known as the "European Association (EA). According to the draft provisions, an EA

- will have a legal personality from the day of its registration and is a body whose members pool their knowledge or their activities either for a purpose in the general interest or for promoting - directly or indirectly – the interests of particular professions or groups;

- may be set up directly either by two or more legal entities formed under the law of a Member State, provided at least two of them have their registered offices and central administrations in different Member States, or at least by 21 natural persons. But also an association, which has been formed in accordance with the law of a Member State, may set up an EU by "converting" into an EU-form. This association must however be able to show that it is carrying on a genuine cross-border activity.

With the final adoption of the proposal for a Council regulation on a Statute for a "European Association", an interesting Community-wide progress could be made in the wider context of associative private law. An EA can certainly facilitate border-crossing co-operation among a wide range of national-law based associations for a common purpose.

This progress can also be of benefit to existing national associations established for the purpose of decentralised cross-border or inter-regional co-operation. But the new legal co-operation instrument will still remain attached to the associative formula, which per definition excludes a public-law based status that is more and more needed for establishing more substantial decentralised Transeuropean co-operation.

3.4. Elaborating a specific "implementation regulation" only for INTERREG-type Structural Funds programmes

A final solution that has been suggested in the initial "Terms of Reference" for the study and considered in the "Inception Report" was to explore advantages and disadvantages of an implementation regulation only for INTERREG-type EU-support programmes, compared to already existing legal instruments such as bilateral agreements for cross-border co-operation.

Considering the current Structural Funds regulations that also apply to the Community Initiative INTERREG III, it is commonly acknowledged that a joint management of Community Initiative Programmes and ERDF-Funds normally requires a solid public-law based foundation.

The chapter assessing strengths and weaknesses of legal instruments / solutions applied in the context of decentralised Transeuropean co-operation (chapter 2) has however shown that considerable progress in this respect has only be achieved in the field of cross-border co-operation. But still, public law based cross-border co-operation on an equal footing is only possible along a certain number of borders where a "common denominator" has been created by far-reaching inter-state agreements. An only here, one can find truly joint approaches that directly involve existing or newly created cross-border structures based on public law in the management of INTERREG IIIA programmes. In the field of inter-regional and transnational co-operation, there are even greater legal gaps and obstacles that prevent regional and local authorities from establishing public-law based structures for directly managing and implementing EU-support programmes (like INTERREG IIIB and IIIC).

This overall situation shows that a much more far-reaching approach is needed to further enhance the development of more widespread public law-based Transeuropean co-operation among territorial authorities in general. There are also a number of other practical reasons that underpin the argument that an improvement of legal framework conditions should not exclusively focus on the sole implementation of INTERREG-type EU-support programmes:

- If the rules for EU-Structural Funds programmes such as INTERREG should be modified (restricted territorial eligibility etc.), the new Community legal instrument would not be generally applicable any more. This would again lead to a trend that differentiated co-operation standards emerge along different EU-borders.

- A solution only for INTERREG-type programmes does not provide sufficient guarantees that related co-operation structures are *sui generis* decentralised structures. Other actors such as central state administrations or Community-level administrations are normally involved in programme level management and would therefore be members of such a co-operation structure. In addition, this bears the risk that EU-programme management could still be dominated by central state actors.

- There are also other Community support programmes that need adequate legal solutions for programme-level and/or project-level co-operation among territorial authorities.

3.5. Intermediate conclusions: Basic policy strategies that can be pursued at Community level

As a result from the practicability-assessment of different options that can potentially help improving legal framework conditions for Transeuropean co-operation, one recommend two basic policy strategies (solutions) that can be promoted at Community level:

- **An "incremental solution",** which consists of a step-by-step improvement of existing private-law based options for Transeuropean co-operation.

- **A "strategic/political solution",** which consists of elaborating a new Community legal instrument for general Transeuropean co-operation based upon public law.

The incremental solution:

The incremental solution could take as a point of departure existing private law-based co-operation instruments that are defined by Community law. These instruments would need to be changed in a way that also territorial authorities could be able to fully use them in the context of cross-border, inter-regional and transnational co-operation. This would allow further improving and enlarging the scope of those private-law based co-operation solutions that are currently provided for in national laws or most inter-state agreements.

- A change of the currently existing EC-regulation on European Economic Interest Groupings (EEIGs) of 1985 can follow two basic options: The first option consists of preserving the essence of the current EEIG-approach and of clarifying specific provisions that are still a source of problems for public-law based actors.[132] The second more radical option would consist of reforming more fundamentally the existing EEIG-regulation, especially through introducing specific types of groupings that can be set up for economic co-operation[133].

- A change of the EC-regulation on the Statute for a "European Cooperative Society" (SCE)[134] adopted in July 2003 and the modification of a proposal for a Council Regulation on a Statute for a "European Association" (EA), not yet adopted. Changes in both texts should – at least – explicitly foresee that territorial authorities and existing cross-border structures are actors entitled to establish an these structures.

A wider scope of available private-law based solutions for cross-border, inter-regional and transnational co-operation at EU-level could have a positive impact on project-level co-operation realised in the context of EU-programmes. But it will certainly not resolve problems that are related to a strategic-level management of Community support programmes (especially under INTERREG), as the "purpose" of the revised Community legal instruments still remains too narrow or specific and because of the lacking public-law based nature of these co-operation entities.

So even if all of the above-mentioned steps could be realised, they would only result in a partial improvement of the current legal framework conditions for co-operation. In addition,

[132] Inclusion of local/regional authorities as potential actors that can participate in EEIGs and reduction of the State's possibility to prohibit or restrict participation in EEIGs on the ground of public interest (Article 4). Review of article 23 (1), specifying the liability of EEIG members.
[133] Groupings for private-to-private co-operation (current EEIG); groupings for public-to-public co-operation; groupings for public-private partnership co-operations (PPPs).
[134] Council regulation EC no 1435/2003, 22 July 2003.

one has also to take into consideration the lengthy and complicated revision process of all these regulation. This could endanger a timely application of the entire set of reforms at the beginning of the new programming period after 2006.

The political / strategic solution:

The political / strategic solution would create a new Community-law based instrument that establishes a homogenous and EU-wide directly applicable legal basis for generalised Transeuropean co-operation among territorial authorities Its main goal should be to “bridge” the highly diversified legal framework conditions for Transeuropean co-operation among the EU-Member States in an enlarged European Union and to support a further expansion of legally for stable / solid cross-border, inter-regional and transnational co-operation.

The new Community law-based instrument should therefore lay down the basic principles for public law-based cross-border, inter-regional and transnational co-operation. These basic principles need also to provide for generalised democratic control and publicity of public law based co-operation. In operational terms, the new legal framework instrument should allow flexibility on all aspects in order to adapt itself to the specific requirements and different needs in the field of decentralised Transeuropean co-operation. It should therefore provide for a range of co-operation instruments that allow territorial authorities to establish specific co-operation structures.

This far-reaching Community-level solution offers the most significant added value for the European Union. Public-law based co-operation instruments have yet only be designed for cross-border co-operation along a very limited number of borders and are not at all available for inter-regional and transnational co-operation. If, in the context of cross-border co-operation, the new Community legal instrument will also “go beyond” the solutions currently available under far-reaching inter-state agreements, an additional value added can also be expected to emerge along these borders. By substantially expanding and improving the current legal framework conditions for public law-based Transeuropean co-operation, concrete steps towards a model for new European governance could be made.

4. TOWARDS A NEW COMMUNITY LEGAL INSTRUMENT FOR DECENTRALISED, PUBLIC LAW-BASED TRANSEUROPEAN CO-OPERATION

Based upon the most important findings resulting form the assessment made in previous chapters (i.e. intermediary conclusions, sections 2.3 and 3.5), the final part of the synthesis report will

- identify an appropriate legal base for the Community instrument in the Treaty and define the basic principles for a new Community legal instrument for generalised, public-law based Transeuropean co-operation (section 4.1),
- elaborate concrete suggestions for the most important provisions (Articles) that will design the *modus operandi* of the new Community legal instrument (section 4.2).

4.1. The legal base and the basic principles of a new Community legal instrument for Transeuropean Co-operation

Before elaborating the operational details of a future Community instrument promoting public-law based Transeuropean co-operation, a number of crucial issues need to be briefly addressed: (1) The legal base of the new Community instrument and the regulatory instrument used for implementing its provisions and (2) the basic principles that should govern the new Community instrument.

The legal base in the Treaty and the Community regulatory instrument

The **legal base** for the Community instrument should realistically refer to the revised EC-treaty provisions after the full entry into force of the Nice Treaty. In the consolidated version of the **Treaty on the European Community,** the following Articles could be used:

- **Article 159 (3) EC-Treaty**[135] in Title XVII "Economic and Social Cohesion", as amended by the Treaty of Nice. This option has the advantage that the co-decision procedure applies and that decision making within the Council is now made by qualified majority (Art. 251). A disadvantage is that the scope covered by the wording *"specific action"* is not fully clear and that doubts regarding the applicability of this legal base could be raised.
- **Article 308 EC-Treaty**[136]**,** which is the traditional means for launching new actions that are not covered by the current Treaty provisions. A clear disadvantage of this

[135] EC Treaty, Art. 159 (3): If specific conditions prove necessary outside the funds and without prejudice to the measures decided upon within the framework of the other Community policies, such actions may be adopted by the Council acting in accordance with the procedure referred to in Article 251 and after consulting the Economic and Social Committee and the Committee of the Regions.

[136] EC Treaty, Art. 308: If action by the Community should prove necessary to attain, in course of the operation of the common market, one of the objectives of the Community, and this Treaty has not provided the necessary powers, the Council shall, acting unanimously on a proposal of the Commission and after consulting the European Parliament, take the appropriate measures.

option is that the Council will decide unanimously, which can quickly create a "blockage situation" of a proposal for the legal instrument.

If the **Treaty establishing a European Constitution** should come into force so timely that its provisions could be applied to adopt the new Community legal framework instrument, the Article III-117 (3) of the policy on "Economic, Social and Territorial Cohesion" can be used.[137]

Once the most appropriate legal base has been chosen, **a regulatory instrument needs to be selected.**

- If the **legal base** is the **Treaty on the European Community** after Nice, the most appropriate regulatory instrument would be an **EC-Regulation**.
- If the **legal base** should be the **European Constitution,** the most appropriate regulatory instrument would be a **European Law**.

Both regulatory instruments have the advantage to be generally applicable and compulsory in all their parts and would come into effect immediately after their adoption without a lengthy transformation process.

Basic principles of an EC-Regulation establishing a new Community instrument

The "considerants" of a future EC-Regulation (European Law) should define a set of basic principles governing the new Community legal instrument. There are a number of important issues that should at least be mentioned.

The new Community law-based instrument established by this EC-Regulation (European Law) …

- aims at further strengthening the legal framework conditions for general and decentralised cross-border, inter-regional and transnational co-operation among territorial authorities in Europe (Transeuropean co-operation).
- will, by this, make an important contribution to realise the fundamental objectives and tasks of the European Union, as defined in the current Treaty[138] (or in the future European Constitution[139]).
- aims, in particular, at promoting and facilitating decentralised Transeuropean co-operation among territorial authorities of EU-Member States that is based upon public law and create Community-wide applicable rules for public law-based co-operation.

[137] EU-Constitution, Article III-117 (3): European laws or framework laws may establish any specific measure outside the Funds, without prejudice to measures adopted within the framework of the Union's other policies. They shall be adopted after consultation of the Committee of the Regions and the Economic and Social Committee.
[138] Consolidated version of the Treaty establishing the European Community: Article 2 in relation and the following Considerants ("Determined to lay the foundations of an ever closer union among the peoples of Europe." "Resolved to ensure the economic and social progress of their countries by common action to eliminate the barriers which divide Europe." "To strengthen the unity of their economies and to ensure their harmonious development by reducing the differences existing between the various regions and the backwardness of the less favoured regions.").
[139] European Constitution, Article 3 (The Union's objectives) and Article 4 (Fundamental freedoms and non-discrimination):

- aims, within its possibilities, at stimulating decentralised, public-law based cross-border, inter-regional and transnational co-operation between territorial authorities of EU-Member States and territorial authorities located in neighbouring Third Countries. In this wider context, especially the specific situation for cross-border co-operation along the actual and future external EU-borders shall be duly taken into account.

- shall respect and promote the principles of subsidiarity and partnership and follow a bottom-up approach, both in the context of decentralised Transeuropean co-operation within the EU and also in co-operation involving partners from Third Countries, and by this contribute to realise a new model for European governance.

- will, by this, help to simplify inter-administrative relations within the European Union.

- shall ensure that through public-law based Transeuropean co-operation, no new tier of territorial self-government will be created.

- shall avoid any harmful competition between co-operation options offered under this regulation and other public law based co-operation solutions defined on ground of national law or existing inter-state agreements.

- shall be flexible in order to respect the diversity of legal framework conditions for decentralised public-law based co-operation in different EU-Member States and in neighbouring Third Countries.

- shall define a number of “general provisions” that need to be respected throughout the EU by all forms of decentralised and public-law based Transeuropean co-operation.

- shall define a number of “specific provisions” that further specify the precise operational conditions and modalities governing an establishment of different solutions for public law-based Transeuropean co-operation, including the elaboration, management and implementation of EU-support programmes.

- will, by this, help to respect the different needs and potentials of territorial authorities in the field decentralised Transeuropean co-operation.

4.2. General and specific provisions of an EC-Regulation on a new Community legal instrument for Transeuropean Co-operation

The Regulation itself could be separated into "general provisions" that govern decentralised Transeuropean public law-based co-operation in general and "specific provisions", which specify the operational aspects related to the use of individual co-operation tools.

For each provision of the future EC-Regulation, a concrete suggestion for an Article-text is elaborated in a grey-shaded text box, which is followed a brief general explanation.

General provisions governing public law-based Transeuropean co-operation

The EC-Regulation on the new Community-law based instrument should contain a limited number of general provisions, which define the basic approach adopted with regard to decentralised Transeuropean co-operation based upon public law.

Article 1:

(1) The objective of the present Regulation is to create a new and Community-wide applicable legal instrument for decentralised Transeuropean co-operation.

(2) The Community instrument enables to establish public-law based cross-border, inter-regional or transnational co-operation among territorial authorities of EU-Member States.

A first article should clearly highlight the **wider objective of the EC-Regulation.** The objective is the creation of a new Community legal instrument that establishes a solid basis for decentralised and public law-based Transeuropean co-operation among territorial authorities of EU-Member States **(Article 1)**.

Article 2:

The specific purpose pursued by the Community legal instrument is to initiate and to further develop public-law based co-operation, which covers all matters that are of general relevance for decentralised cross-border, transnational and inter-regional co-operation, both at the strategic / programmatic level and at the level of individual projects.

In another introductory article, the EC-Regulation should **further specify the "purpose" of the new Community legal instrument** within the wider context of decentralised Transeuropean co-operation. The EC-Regulation will allow decentralised public law based co-operation on all matters that are related to general cross-border, inter-regional and transnational co-operation **(Article 2)**.

The future Community instrument should avoid a purpose-formulation that restricts public-law based co-operation to the sole range of legal competences that is available to regional or local authorities on ground of their respective national context. If this would happen, the

Community instrument would repeat a weakness of many inter-state agreements, which allow only establishing a minimum standard co-operation instead of generalised co-operation[140].

Article 3:

(1) In order to achieve the purpose as defined in Article 2, territorial authorities of EU-Member States may establish public law-based co-operation structures by using the following tools: "European Special Purpose Authorities" and "European Public-Law Agreements".

(2) These legal options for decentralised and public-law based co-operation provided for in this Regulation shall not prohibit territorial authorities of EU-Member States from using other existing legal instruments for public-law based co-operation.

Due to the diversity of constitutional framework conditions in EU-Member States, especially regarding the different national provisions for regional and local self-government, the Regulation should be flexible with regard to the "means" by which the specific purpose of the Community instrument can be put into practice.

An Article of the Regulation should therefore generally introduce the **specific tools** that are made available to territorial authorities of EU-Member States **for decentralised, public law-based Transeuropean co-operation (Article 3)**. It should at least define two basic options that enable territorial authorities to legally establish decentralised Transeuropean co-operation structures:

- A legal option that allows establishing a new structure at European level for far reaching public law-based co-operation that is governed by public law (i.e. the "European Special Purpose Authority" or ESPA)

- A legal option that allows – as a multi-functional tool – territorial authorities to establish various types of less far reaching legal solutions for public-law based co-operation structures (i.e. the "European Public Law Agreement" or EPLA).

The Article should also highlight that the legal tools of this Regulation will not prohibit regional / local authorities of EU-Member States to use other legal instruments for public law-based co-operation that already exist under different national legislations or have been established by virtue of formal inter-state agreements.

Article 4:

(1) A public law-based co-operation structure established on ground of this Regulation can not independently execute sovereignty rights on foreign territory.

(2) If sovereignty rights are transferred or delegated to a co-operation structure established on ground of this Regulation, they can be executed on foreign territory only by members that are directly involved in the co-operation.

[140] Co-operation only on ground of the smallest common denominator.

The general provisions should highlight that the Regulation will create a new legal instrument for public-law based Transeuropean co-operation and not a possibility for establishing a new tier of territorial self-governance.

Therefore, an Article should clearly **prohibit** that public-law-based co-operation on ground of this Regulation may provide for **an independent execution of sovereignty rights** of whatever kind on foreign territory **(Article 4)**.

This provision will not create an obstacle for an effective enforcement of decisions adopted in the context of public-law based co-operation. The EC-Regulation will allow that sovereignty rights can actually be delegated in the context of public-law based decentralised co-operation.

Two specific solutions will be offered for their effective execution in the context of the individual co-operation tools provided for by this Regulation:

- In the context of an ESPA, the members of the public law based co-operation structure (the territorial authorities) will be obliged to make use of their domestic powers and to take all other necessary initiatives on either side of the border that allow an effective execution of the structure's tasks and decisions (see "specific provisions" below).

- In the context of an EPLA, a territorial authority will be given the possibility to establish a delegated execution of own tasks by another territorial authority, however in the name of the delegating authority and according to its directives/instructions (see "specific provisions" below).

In addition, other actors such as the states may transfer / delegate certain tasks to decentralised public-law based co-operation structures set up on ground of this Regulation.

Article 5:

A co-operation structure with an own legal personality created on ground of this Regulation must have its registered seat and office in a Member State of the European Union. It may be transferred from one Member State to another subject to certain conditions.

Article 6:

The supervision of co-operation structures with an own legal personality created on ground of this Regulation will be carried out according to the legal provisions of the EU-Member State in which the structure has its registered seat and office.

Article 7:

(1) Each co-operation structure with an own legal personality based on public law that is created on ground this Regulation shall have the capacity to act as a legal employer.

(2) The Member States of the European Union will take all necessary measures to ensure that joint staff employed by a public-law based co-operation structure created on ground this Regulation is provided with stable and secure working conditions.

Several articles of the general section in the EC-Regulation should lay down basic provisions that define:

- where co-operation structures with an own legal personality will have their **registered seat and offices (Article 5)**,
- which is the **applicable legislation** for a supervision of a public-law based co-operation structures **(Article 6)**,
- which are the applicable rules in case a **co-operation structure** will be **acting as a legal employer (Article 7).**

It needs however to be highlighted that EU-Member States must create adequate framework conditions allowing a development of stable working conditions for joint staff that is employed by a co-operation structure set up under this Regulation. In this context, the most important provisions that need to be created / adapted in national laws are the possibility for an unlimited duration of staff delegation from one partner area to the area where the co-operation structure has its legal seat and specific rules / exemptions regarding fiscal and social security obligations.

Specific provision governing the legal options for public-law based co-operation

The EC-Regulation on the new Community-law based instrument should also contain a number of articles that lay down the conditions and operational modalities for an establishment of public law-based co-operation in the context of Transeuropean co-operation.

A first set of Articles contained in the section “specific provisions” should stipulate **the conditions and operational modalities** that allow territorial authorities of EU-Member States **to establish a public-law based “European Special Purpose Authority” (ESPA).**

Article 8:

(1) In the context of decentralised cross-border, inter-regional and transnational co-operation, territorial authorities of EU-Member States may establish a „European Special Purpose Authority” (hereinafter referred to as ESPA).

(2) An ESPA is to be a body with an own legal personality based upon public law, which can be established for strategic /programmatic co-operation and project-level co-operation.

An **ESPA** is a new public-law based **co-operation structure with an own legal personality (*ex novo* structure).** An ESPA can be established among territorial authorities for very advanced and substantial cross-border, transnational and inter-regional co-operation. Territorial authorities can make use of this structure in the context of a strategic / programmatic level co-operation, but also in the context of advanced project level co-operation **(Article 8).**

As such, the ESPA would enjoy a status – at European level - that is comparable to

- public law-based co-operation entities that can currently be established between territorial authorities of one EU Member State (e.g. inter-municipal co-operation structures),

- public law-based cross-border co-operation structures that can be established between territorial authorities of different EU-Member States on ground of existing inter-state agreements (e.g. *ex novo* cross-border co-operation structures).

Article 9:

(1) An ESPA can be attributed extensive executive capacity in order to carry out jointly among its members essential public tasks related to cross-border, inter-regional and transnational co-operation.

(2) An ESPA can take own decisions that are binding for its members.

(3) The members of an ESPA are obliged towards the Authority to make full use of their domestic powers and to take all other necessary initiatives that allow an effective execution of the ESPA's tasks and decisions.

(4) An ESPA may not issue legally binding rules (laws) or administrative directives of a general applicable nature that create obligations for Third Parties.

The **ESPA can be delegated substantial tasks and take compulsory decisions** that affect the members of the structure and citizens living in the area covered by the structure. In order to provide for an effective enforcement of tasks allocated to / decisions taken by an ESPA, its members (the territorial authorities) will be obliged to make use of their domestic powers in order to take all necessary measures. The provisions should however prohibit that an ESPA is able to issue laws or administrative regulations of a general nature that create binding effects or obligations for Third parties **(Article 9).**

Article 10:

An ESPA can, among all other tasks, be generally entitled to elaborate, manage and implement EU-programmes supporting cross-border, transnational and inter-regional co-operation.

An **ESPA** is the **preferred actor** that can be directly **entrusted with** the overall **elaboration, management and implementation of an EU-support programme** for its area **(Article 10).** An ESPA is entitled to take over all the functions and tasks related to the management and implementation of EU-programmes, i.e. it can act as Managing Authority and as Paying Authority, it can run the joint programme secretariat with own staff and ensure ongoing programme monitoring tasks. An ESPA shall also

- be responsible for the elaboration of a cross-border EU-programme for a larger border area, of which its own area of operation forms part,

- participate in the elaboration of EU-support programmes covering larger transnational areas, especially if its own area of operation is directly concerned by the programme.

Territorial authorities of EU-Member States that wish to co-operate jointly in the context of an ESPA will have to elaborate statutes (rules) that define more in detail the organisational set-up and all other technical issues of this structure. These statutes need to be registered and approved by the competent administrative authorities of the EU-Member State in which the ESPA will have its seat.

Article 11:

(1) An ESPA shall draw up statutes (rules), which need to be registered and approved by the competent administrative authorities of the EU-Member State in which the ESPA will have its seat.

(2) The statutes need to regulate a number of compulsory issues, which are listed in a technical annex to this Regulation (Annex I).

The EC-Regulation should enumerate the **compulsory issues that need to be regulated by future ESPA-statutes (Article 11).** The provisions in the list should be precise regarding the general requirements but not make detailed prescriptions in order to create a sufficient level of “flexibility” and “liberty for contractual agreement”. The list of provisions can either be part of the Article itself or included in the Regulation as a Technical Annex (for this case see the box below: **ANNEX I**).

ANNEX I:
List of compulsory issues to be regulated by statutes for and ESPA

A „European Special Purpose Authority" (ESPA) can be established for strategic /programmatic and project-level cross-border, inter-regional and transnational co-operation among territorial authorities of EU-Member States. The ESPA is a body with an own legal personality based upon public law. Its statutes need to define at least the following aspects:

- ***Legal personality of an ESPA, which needs to be registered in the EU.***
- ***The members of an ESPA.***
- ***The responsibilities and tasks of an ESPA, including the management of EU-co-operation programmes.***
- ***The name and the seat of an ESPA.***
- ***The responsibilities of the different decision-making bodies of an ESPA and the number of representatives composing them.***
- ***The number of members necessary for decision making (quorum) and the decision making procedures.***
- ***Legal obligation and legal liability of the members of an ESPA.***
- ***The applicable law of enforcement in case of claims on the other side of a border.***
- ***The language(s) used for proceedings and publicity of an ESPA.***
- ***Provisions that guarantee the democratic legitimacy of an ESPA (publicity of the meetings, provision of information, responsibility vis à vis the citizens, wider legal liability).***
- ***The procedures for budget management / accounting, financial control and financial liability.***
- ***The modalities for determination of the financial resources for an ESPA.***
- ***Procedures for an accession of new members or a withdrawal of actual members from an ESPA.***
- ***The place of jurisdiction in case of legal dispute (recommended: country of the registered seat).***
- ***Provisions for the dissolution of an ESPA.***
- ***Provisions for winding-up an ESPA after its dissolution.***
- ***In addition, statutes for an ESPA may foresee any other necessary provisions as appropriate (e.g. national authorities delegating tasks to an ESPA).***

A second set of Articles should stipulate the **conditions and operational modalities that allow** territorial authorities in the EU **to conclude** among them **"European Public Law Agreements" (EPLA).** An EPLA will generally allow establish less extensive forms of co-operation, as not all cross-border, transnational or inter-regional co-operation initiatives might feel the need to set up a far-reaching ESPA.[141]

Article 12:

(1) In the context of decentralised cross-border, inter-regional and transnational co-operation, territorial authorities of EU-Member States, but also existing public-law based co-operation structures of EU-Member States, may conclude a „European Public-Law Agreement" (hereinafter referred to as EPLA).

(2) An EPLA needs to adopt a written form and provides three different solutions for legally structuring decentralised co-operation at a strategic / programmatic level and at project-level.

An EPLA can generally be concluded between territorial authorities of EU-Member States, but also between already existing public law based co-operation structures[142] and co-operation structures set up on ground of this regulation.[143] An EPLA needs to adopt the written form and will offer – as a multi-functional tool - **three basic options that allow structuring and backing decentralised cross-border, transnational and inter-regional co-operation,** both at strategic level and at the level of individual projects **(Article 12).**

Article 13:

(1) An EPLA can regulate a delegation of public tasks among territorial authorities of EU-Member States.

(2) A territorial authority from one EU-Member States can delegate the execution of public tasks to a territorial authority of another EU-Member States only, if these tasks are executed in the name and under the direction of the delegating territorial authority and if the country-specific-law of the delegating authority is observed.

(3) An EPLA regulating a delegation of public tasks will have to consider a number of specific aspects in order to increase legal security for the territorial authorities concerned (see ANNEX II).

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[141] The rather extensive solution of a public law-based special purpose authority (ESPA) might not always make sense for legally structuring cross-border co-operation initiatives at a start-up-phase or along borders that still lack of substantial experience in cross-border co-operation (also for management of Interreg-type EU-support programmes). But especially if it comes to the joint management/implementation of EU-support programmes for inter-regional and transnational co-operation or the management/implementation of individual co-operation projects (also projects implementing specific EU-programmes), an EPLA might be used for regulating all necessary details among the respective partners involved. Finally, an EPLA is also considered a good solution for setting up joint secretariats for EU-programmes supporting cross-border, inter-regional and transnational co-operation.

[142] Public law-based cross-border co-operation structures provided for in existing inter-state agreements.

[143] European Special Purpose Authorities (ESPA) or specific co-operation organisations of a common public interest that are based upon an EPLA, which are established for decentralised cross-border, inter-regional and transnational co-operation.

ANNEX II:
EPLA concluded for a delegation of public tasks among territorial authorities of different EU-Member States"

An EPLA can be concluded for regulating a delegated execution of public tasks that takes place among territorial authorities from different EU-Member States. These tasks are executed by another territorial authority in the name and under the direction of the delegating territorial authority and if the country-specific-law of the delegating authority is observed.

An EPLA concluded for this purpose needs at least to

- ***enumerate the participating territorial authorities and define who will be the delegating territorial authority and who will be the executing territorial authority ,***
- ***enumerate the legal provisions of the internal law of the delegating territorial authority that need to be respected by the executing territorial authority,***
- ***define the organisational and procedural provisions necessary for a delegated execution of public tasks and other related aspects,***
- ***define – if necessary - the budgetary provisions for a delegated execution of public tasks as well as the rules for accounting, financial control and financial liability.***
- ***define the extent to which an exemption of final liability against third parties is agreed among the participating entities,***
- ***The place of jurisdiction in case of legal dispute (recommended: county of the delegating authority).***
- ***stipulate the rules that define the conditions when the co-operation on a delegation of tasks can be ended.***
- ***In addition, the EPLA may foresee any other necessary provisions as appropriate.***

Option 1: An EPLA can regulate **a delegation of public tasks among territorial authorities of different EU-Member States (Article 13).**

- An EPLA can be chosen for regulating a delegation of general or specific tasks among two and more territorial authorities of EU-Member States. This delegation of tasks can be agreed for decentralised cross-border, transnational and inter-regional co-operation, both in the framework of strategic level co-operation and in the context of individual projects.
- Through an EPLA, a territorial authority from one EU-Member State can delegate the execution of public tasks to a territorial authority of another EU-Member State only, if these tasks are executed in the name and under the direction of the delegating territorial authority and if the country-specific-law of the delegating authority is observed. It will not be possible to conclude an EPLA that provides for a delegation of tasks from one territorial authority to another, if the latter executes the delegated tasks in its own name.

- In order to increase legal security for a delegation of public tasks, an EPLA concluded for this purpose must respect a limited number of basic prescriptions that can be listed in a specific annex that is added to this Regulation (see **ANNEX II**).

Article 14:

(1) An EPLA can provide for the establishment of a "European Public Interest Grouping" (EPIG).

(2) The Grouping's objective is to initiate, facilitate or further develop activities of a common public interest among territorial authorities of EU-Member States and to improve or increase the results of those activities.

(3) An EPLA needs to provide as an - integral part of the Agreement – the statutes (rules) for a European Public Interest Grouping, which need to be registered and approved by the competent administrative authorities of the EU-Member State in which the EPIG will have its seat.

(4) The statutes of an EPIG need to be drawn up in a manner that they respect and regulate a number of compulsory aspects, which are listed in a technical annex to this Regulation (see ANNEX III).

(5) A European Public Interest Grouping can not take own decisions that are binding for its members or for Third Parties.

ANNEX III:
EPLA concluded for the establishment of a "European Public Interest Grouping"

A European Public Interest Grouping (EPIG) can be established for decentralised cross-border, transnational and inter-regional co-operation in all fields of common public interest, both for strategic level co-operation and for co-operation in the context of individual projects. The general objective of an EPIG is to initiate, facilitate or further develop activities of a common public interest among territorial authorities of EU-Member States and to improve or increase the results of those activities.[144] Activities of an EPIG shall always be related to the activities of its members.

A European Public Interest Grouping must contain, as an integral part of the Agreement, the statutes (rules) of the Grouping. These statutes (rules) shall regulate at least:

- ***The name of the Grouping preceded or followed by the words "European Public Interest Grouping" or the initials "EPIG", unless these words form already part of the name.***
- ***The precise objectives for which the grouping is formed.***
- ***The name, legal form, permanent address or registered office and the number and place of registration, if any, of each member of the grouping.***
- ***The organs of the grouping, which are at least (1) the organ that allows members to act collectively for the purpose of achieving the objectives and (2) the manager (or the managers). Additional organs can be created by the members as appropriate.***

[144] E.g. support for a joint purchase or a joint provision of general services; establishment of joint support structures needed for the implementation of EU co-operation programmes and individual EU-projects (joint programme secretariat with joint staff employed; establishment of a joint project management office).

- ***The duration of the grouping, except when it is indefinite.***
- ***Procedures for an accession of new members or a withdrawal of actual members.***
- ***The place of jurisdiction in case of legal dispute (recommended: country of the registered seat).***
- ***Provisions for the dissolution of an EPIG and for winding-up an EPIG after its dissolution.***
- ***Statutes for an EPIG may foresee other necessary provisions as appropriate.***

A "European Public Interest Grouping" (EPIG) that is established on ground of an EPLA <u>may not</u>

- ***exercise, directly or indirectly, a power of management or supervision over its members own activities or over the activities of other territorial authorities, in particular in the fields of personnel, finance and investment;***
- ***employ more than 50 persons;***
- ***be used to make loans or the transfer of any property;***
- ***be statutory member of another EPIG or of an ESPA established on ground of this Regulation.***

<u>Option 2:</u> An EPLA can provide for the **establishment of European Public Interest Groupings (EPIG),** for which some specific provisions are defined in the EC-Regulation **(Article 14).**

- An EPIG is a specific public law based structure that allows to legally structuring decentralised co-operation in all fields of common public interest. An EPIG can be established for decentralised cross-border, transnational and inter-regional co-operation, both in the framework of strategic level co-operation and in the context of individual projects.
- The EPIG's specific objective is to initiate, facilitate or further develop activities of a common public interest among territorial authorities of EU-Member States and to improve or increase the results of those activities (e.g. support for a joint purchase or a joint provision of general services; establishment of joint support structures needed for the implementation of EU co-operation programmes and individual EU-projects[145]). Activities of an EPIG shall always be related to the activities of its members.
- An EPIG can not take own decisions that are binding for its members or for Third Parties.
- An EPIG will have to draw up statutes that need to be registered and approved by the competent administrative authorities of the EU-Member State in which the EPIG will have its future seat. The statutes of the EPIG need to be drawn up in a manner that they respect several fundamental principles (basic objectives, what can an EPIG do,

[145] Establishment of a joint programme secretariat with joint staff employed; establishment of a joint project management office.

what can an EPIG not do) and regulate a certain number of compulsory aspects. All these issues can be listed in a technical annex that will be a part of the future EC-Regulation (see **ANNEX III**).

Article 15:

(1) An EPLA can be used by territorial authorities of EU-Member States, but also by an ESPA set up on ground of this Regulation, to regulate co-operation over all issues related to an elaboration, management and implementation of EU-support programmes with concerned Third Parties.

(2) This EPLA will have to consider a number of specific aspects that need to be respected according to the related Community legislation (see ANNEX IV).

ANNEX IV:
EPLA concluded for the elaboration, management and implementation of EU-support programmes

An EPLA concluded for the elaboration, management and implementation of Community support programmes shall ensure that co-operation takes place in the most decentralised manner possible, under a single responsibility, with a clear final liability and with one single control, through binding majority decision among the programme partners and with a democratic control through a joint structure.

In case the eligible programme area covers one or more ESPAs that have been established for strategic level cross-border, transnational or inter-regional co-operation, these public-law based Authorities will need to be main contracting parties of an EPLA. In order to ensure a truly joint and decentralised approach, ESPAs should be allocated a leading role in all operational tasks related to the elaboration, management and implementation of Community support programmes.

The EPLA concluded for this purpose shall be presented at the same time when the programme draft is submitted to the Commission for approval. [146] ***It will have to regulate the following issues:***

- ***clarify all legal and co-operative relations between all programme partners involved (i.e. the public law based co-operation structures, state administrations, the EU-Commission, the European Investment Bank or other public actors).***
- ***define who will present the EU-programme draft to the European Commission and who will be responsible for negotiating the programme draft with the Commission;***
- ***specify who takes over the basic responsibility and final liability for the management and implementation of the programme;***
- ***specify who ensures basic programme management tasks (i.e. single and joint Managing Authority, single and joint Paying Authority, single and joint Programme Secretariat);***
- ***describe the mechanisms and procedures for joint financial management and control of the programme (common bank account, control, certification of expenditure, external***

[146] In the current Structural Funds programming period, good practice regarding this proceedings already exist both at the level of programmes (INTERREG IIIA programmes along the F/D and NL/B/D borders) and at the level of projects (INTERREG IIIB programme “North-West Europe”: a partner agreement needs to be submitted with the project-proposal).

audit, claim back procedures in case of fraud etc.);

- ***describe the procedures and responsibilities governing the implementation process of the programme (i.e. joint project selection, single contracting, joint monitoring, public procurement rules);***

- ***jointly define all aspects regarding common eligibility (basic eligibility rules, eligible actions eligible expenditure or "cost items").***

- ***The place of jurisdiction in case of legal dispute (recommended: place of the partner finally responsible / liable for the programme).***

This list may be changed or extended at a later stage in order to take into consideration new provisions of the related Community law.

Option 3: An EPLA can also be concluded for the purpose of **regulating the necessary framework conditions for a joint elaboration, management and implementation of EU-programmes supporting cross-border, transnational and inter-regional co-operation (Article 15).**

- Similar to the currently existing "Interreg Agreements", an EPLA could be used by territorial authorities to regulate their mutual co-operation on all issues related to an elaboration, management and implementation of EU-support programmes (definition of tasks, obligations, legal relationship among programme partners, liabilities including final liability, administrative and financial management procedures etc.).

- The Agreement can also be used by an ESPA that is entrusted with the elaboration, management and implementation of an EU-programme. By such an agreement, the ESPA should clarify – among other issues - its relationship and its co-operation with other non-statutory public Third Parties that might be involved in the EU-programme management and implementation process (e.g. other public-law based co-operation structures in the programme area, central state authorities; the European Commission, the European Investment Bank etc.).

- If an EPLA relating to an elaboration, management and implementation of EU-support programmes is concluded, it will have to regulate a number of specific aspects that need to be respected according to the related Community law. These aspects can be listed in a specific annex that is added to this Regulation (see **ANNEX IV**).

5. SELECTED BIBLIOGRAPHY

Académie de la Coopération Transfrontalière (Ed.): L'accord franco-belge sur la coopération transfrontalière entre collectivités territoriales et organismes publics locaux. In : La Revue de la Coopération Transfrontalière, no. 38/ Décembere 2003.

Committee of the Regions: Transeuropean co-operation between territorial authorities. New challenges and future steps necessary to improve co-operation. Brussels, October 2001.

Council of Europe:

- European Outline Convention on Transfrontier co-operation between territorial communities (Madrid Outline Convention). European Treaties Series /106, Strasbourg 1999.
- Protocol additionnel à la convention-cadre européenne sur la coopération transfrontalière des collectivités ou autorités territoriales. Rapport Explicatif.
- Protocol No 2 to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities concerning inter-territorial co-operation with explanatory report.
- Report on the progress in implementation of the European Outline convention on Transfrontier Cooperation between Territorial Communities or Authorities. Strasbourg, October 2002. Transfront(2002)6.
- Transfrontier co-operation in civil protection and mutual assistance in the event of natural and technological disasters occurring in frontier areas. Council of Europe-Report of 11.9.2002, Transfront(2002)5.
- Documents and Agreements concerning Transfrontier co-operation in Europe. November 2000.

Fernandez de Casadevante Romani, Carlos: Le traité de Bayonne du 10 Mars 1995 rélatif à la coopération transfrontalière entre collectivités territoriales : un cadre juridique complet. In : Révue Générale de Droit International Public, no. 2 Avril/Juin 1998.

Hertoghs, M.W.J.A : Cross-border co-operation between local authorities: a legal point of view. Institute METRO, University of Maastricht (written document of a speech).

Inter-state Agreements on cross-border co-operation (original text):

- Accord entre le gouvernement de la République Francaise et le Gouvernement de la République Italienne concernant la coopération transfrontalière entre collectivités territoriales.
- Abkommen zwischen dem Land Nordrhein-Westfalen, dem Land Niedersachsen, der Bundesrepublik Deutschland und dem Königreich der Niederlande über grenzüberschreitende Zusammeanrbeit zwischen Gebietskörperschaften und anderen öffentlichen Stellen vom 23.Mai 1991 (Source: Landtag Nordrhein-Westfalen: Drucksache 11/1970, 26.06.1991).
- Abkommen zwischen dem Land Nordrhein-Westfalen, dem Land Rheinland-Pfalz, der Wallonischen Region und der Deutschsprachigen Gemeinschaft Belgiens über grenzüberschreitende Zusammeanrbeit zwischen Gebietskörperschaften und anderen öffentlichen Stellen (Source: Ministère de l'Aménagement du Territoire, Luxembourg / Commission Régionale Sarre-Lor-Lux-Trèves / Palatinat Occidental, 1997).

- (1) Convention Benelux concernant la coopération transfrontalière entre collectivités ou autorités territoriales. (2) Protocol complétant la convention Benelux concernant la coopération transfrontalière entre collectivités ou autorités territoriales avec exposé de motifs commun, signée à Bruxelles le 12 septembre 1986. (Source: www.benelux.be/FR/sg_dossier2_overeenkomst.htm).
- Projet de loi autorisant l'approbation de l'accord entre le Gouvernement de la République francaise, d'une part, et le Gouvernement du Royaume de Belgique, le Gouvernement de la Communauté francaise, le Gouvernement de la Région wallonne et le Gouvernement flamand, d'autre part, sur la coopération transfrontalière entre les collectivités territoriales et organismes publics locaux (Source : Sénat de la République Francaise: www.senat.fr/leg/pjl02-220.html).
- Rahmenabkommen zwischen der Republik Österreich und der Italienischen Republik über die grenzüberschreitende Zusammenarbeit von Gebietskörperschaften (Source: http://ris.bka.gv.at/taweb-cgi/taweb).
- Triaté entre la république francaise et le Royaume d'Espagne relatif à la coopération transfrontalière entre collectivités territoriales (Source : Mission Opérationelle Transfrontalière).
- Tratado entre el Reino de Espana y la República Portugesa sobre cooperación transfronteriza entre entidades e instancias territoriales, hecho en Valencia el 3 de octubre de 2002.
- Übereinkommen zwischen der Regierung der Bundesrepublik Deutschland, der Regierung der Französischen Republik, der Regierung des Großherzogtums Luxembourg und dem Schweizer Bundesrat, handelnd im Namen der Kantone Solothurn, Basel Stadt, Basel-Landschaft aargau und Jura, über die genrzüberschreitende Zusammenarbeit zwischen Gebietskörperschaften und örtlichen öffentlichen Stellen (Source: www.oberrheinkonferenz.org/archiv/karlsruher_abkommen.htm).

Ministère de l'Aménagement du Territoire, Luxembourg / Commission Régionale Sarre-Lor-Lux-Trèves / Palatinat Occidental: Des nouvelles possibilités de co-opération aux frontères : Les Accords de Karlsruhe et de Mayence. 4ième congrès transfrontalier, actes du colloque. Luxembourg 1997.

Mission Opérationelle Transfrontalière:
- Les outils du développment économique transfrontalier. In : Les cahiers de la MOT no. 1, 2002.
- Droit et pratique de la co-opération transfrontalière. In : Les cahiers de la MOT no. 2, 2002.
- Coopération transfrontalière à la frontière Franco-Espagnole (MOT/SCET Mars 2002).
- Coopération transfrontalière à la frontière Franco-Allemande (MOT/SCET Mars 2002).
- Coopération transfrontalière à la frontière Franco-Italienne (MOT/SCET Mars 2002).
- Coopération transfrontalière à la frontière Franco-Luxembourgeoise(MOT/SCET Mars 2002).

Staatskanzlei Rheinland-Pfalz :
- Karlsruher und Mainzer Vertragswerke. Anwendungsbeispiele aus Rheinland-Pfalz. Schriftenreihe zur grenzüberschreitenden Zusammenarbeit, Band 20 (Mainz, September 2002).
- Bilanz der Zusammenarbeit von Rheinland-Pfalz mit Frankreich, Luxembourg und Belgien sowie der Schweiz 2002/2003. Schriftenreihe zur grenzüberschreitenden Zusammenarbeit, Band 25 (Mainz, April 2004).

6. ANNEXES

ANNEX I Overview Table on Research Tasks defined in the "Terms of Reference"			
Question 1: Providing a legal base for joint programme management structures for INTERREG		**Question 2:** Providing a legal instrument for cross-border co-operation between regions and regional actors on project level	
Task	**Content**	**Task**	**Content**
1.1.	Analyse problems that have emerged under INTERREG III with regard to management and implementation.	2.1.	Analyse the extent to which regional/local actors are authorised according to their national legislation to engage in co-operation projects with regions/local authorities of other countries.
1.2.	Take account in the problem analysis of emerging results from the Interreg II ex-post evaluation	2.2.	Assess to what extent regional-co-operation is promoted through appropriate legal instruments existing at the level of international law (Madrid Outline Convention) or under Community law itself (EEIG-regulation).
1.3.	Analyse alternatives for creating joint cross-border structures under Community law (and how to equip them with legal capacity and certain decision making powers in programme management). Consider the question of legal capacity of such structures (i.e. by reference to other EU-policy areas).	2.3.	Explore other approaches/initiatives made in this context: ▪ Committee of the Regions: European Co-operation Areas (ECA). ▪ Accession of the EU to the Madrid Outline Convention. ▪ Draft statues for a European Cooperative Society (SCE) and the European Association (EA).
1.4.	Explore possibilities of establishing the necessary legal basis for an implementation regulation for INTERREG and joint management structures in a future Structural Funds regulation.	2.4.	Reflect on the idea of a Community regulation providing for a legal instrument for co-operation, with reference to the Madrid Outline Convention and the EEIG-Regulation and by considering issues such as EC-Treaty competencies, subsidiarity and proportionality.
1.5.	Elaborate elements of an implementation regulation for INTERREG. Explore advantages / disadvantages of such an implementing regulation, compared to existing bilateral agreements.	2.5.	Elaborate contents of a potential Community Regulation for a legal instrument for co-operation, with reference to the Madrid Convention and the EEIG-Regulation. A potential new Regulation has to set rules for legal capacity of the joint structure, its organs, liability and competencies.
Horizontal task for both questions: Recommend appropriate, realistic and feasible legal solutions, applicable in the whole European Union as well as in the future Member States			

ANNEX II Members of the Central Team and the Advisory Panel	
Central Team	• **Jens Gabbe, Secretary General of AEBR** • **Dr. Thomas Stumm** • **Dr. Dörte Fouquet**
Advisory Panel	• **Jacques Robert** • **Dr. Viktor Frhr. von Malchus** • **Alkis Papadimetriou**
Field Research Teams responsible for the elaboration of “Technical Reports” and county reports	
Technical Report on Scandinavia (Sweden, Finland, Denmark, Norway)	• **Dr. Viktor Frhr. von Malchus** (Lead Expert: elaboration of technical report & country-specific reports). • **Marja Sutela** and **Petri Virtanen** (elaboration of country-specific / border specific contributions).
Technical Report on the United Kingdom and Ireland	• **Haris Martinos** (Lead Expert: elaboration of technical report & country-specific reports).
Technical Report on Germany and Austria	• **Dr. Viktor Frhr. von Malchus** (Lead Expert: elaboration of technical report & country-specific reports). • **Prof. Dr. Erich Röper** (elaboration of country-specific contribution)
Technical Report on France and Italy	• **Prof. Dr. Charles Ricq** (Lead Expert: elaboration of technical report & country-specific reports). • **Dr. Rainer** (elaboration of country-specific / border specific contributions).
Technical Report on the Benelux-Area (Belgium, Netherlands, Luxembourg)	• **Dr. Dörte Fouquet** (Lead Expert: elaboration of technical report & country-specific reports). • **Jens Gabbe** (elaboration of country-specific report). • **Dr. Thomas Stumm** (elaboration of country-specific / border specific contributions).
Technical Report on the Iberian Peninsula (Spain, Portugal)	• **Elena Casas** (Lead Expert: elaboration of technical report & country-specific reports).
Technical Report on South-East Europe (Greece, Bulgaria)	• **Alkis Papademetriou,** (Lead Expert: elaboration of technical report & country-specific reports). • **Frau Papachristu** (elaboration of country-specific reports).
Technical Report on Selected Accession Countries (Poland, Slovak Republic, Hungary)	• **Dr. Viktor Frhr. von Malchus** (Lead Expert: elaboration of technical report). • **Bartłomiej Sochański** (elaboration of country-report). • **Juraj Muravsky** (elaboration of country-report).