

Opinion of the European Committee of the Regions — Strengthening cross-border cooperation: the need for a better regulatory framework?

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I. GENERAL COMMENTS

THE EUROPEAN COMMITTEE OF THE REGIONS,

1. welcomes the fact that the Luxembourg government decided to make stronger cross-border cooperation one of the priorities of its EU Presidency and welcomes its efforts — by removing the barriers to such cooperation — to strengthen Europe's economic, social and territorial cohesion and develop the full potential of areas located on both sides of a border; prioritising such cross-border cooperation is all the more important in the current climate of calling into question free cross-border movement when this is one of the main achievements of European integration;
2. also welcomes the call for an improved regulatory framework for cross-border cooperation, for the specific legal provisions that already exist on different aspects of this cooperation to be implemented, and for the legal framework in place to be improved or expanded in order to make it easier to adopt sector-specific rules or rules covering certain geographical areas;
3. stresses the importance of cross-border cooperation for regional urban and rural development and notes that cooperation between Europe's local and regional authorities enables them to carry out their tasks more effectively and in particular helps border regions to progress and develop;
4. emphasises that border areas are unique test beds for the process of European integration — in other words, they are areas where the results of the completion of the single market and other European policies should be easier to see than anywhere else. Border areas, almost by definition, are uniquely multi-faceted crossroads where a diversity of perspectives and cultural and linguistic synergies are at their strongest;
5. points out that in the past 25 years cross-border cooperation has made great strides at EU level, through the Interreg programme, the Instrument for Pre-Accession Assistance (IPA) and the European Neighbourhood Instrument (ENI), which form part of it, and through the other forms of European territorial cooperation; the results obtained to date remain unsatisfactory, however, in terms of fully harnessing the potential of such cooperation. Therefore increased attention should be paid to further strengthening of cross-border cooperation and linking it to other existing instruments (cohesion policy, Horizon 2020, State aid, etc.) so disadvantaged border regions receive special treatment;
6. commends, in the light of the efforts made so far to expand cross-border cooperation, the role of the different kinds of regional cooperation, be they functional areas, macro-regions (the Baltic, Danube, Adriatic and Ionian and the Alpine region strategies) or local and regional authorities;

7. highlights the scope of the legal instruments that have been adopted to strengthen cross-border cooperation, including the Council of Europe's European Outline Convention on Transfrontier Cooperation between Territorial Communities or Authorities⁽¹⁾ under which Member States gave a commitment to facilitate and encourage cross-border cooperation between local and regional communities or authorities within their jurisdiction and those under the jurisdiction of the other contracting parties. There are also the Regulation on European Grouping for Territorial Cooperation (EGTC)⁽²⁾ and the European Economic Interest Grouping (EEIG), which are high-quality tools for ensuring that legal instruments are in place for cross-border cooperation to gain impetus;

8. highlights the role of the EGTC in supporting and promoting cross-border, transnational and interregional cooperation between Member States or local and regional authorities;

9. highlights the flexibility that the EGTC offers in terms of its membership, seeing as it constitutes a platform for multilevel governance through which bodies from different tiers of government and with differing powers can act together, adapting to each region's needs;

II. BARRIERS TO STRENGTHENING CROSS-BORDER COOPERATION

10. notes that progress on cross-border cooperation is hampered by a number of constraints and barriers to economic growth in border regions and to achieving Europe's objectives for economic, social and territorial cohesion; notes, furthermore, that this cross-border cooperation faces unforeseen obstacles, which are often the result of steps taken by Member States and regional and local stakeholders;

11. notes that the workshop organised by the Luxembourg Presidency and the survey it has carried out have highlighted substantial barriers to the further strengthening of cross-border cooperation, such as the fact that cross-border projects frequently stall due to differences in legislation — in the areas, for example, of transport, health, the environment and civil protection — or in Member States' institutional set-ups or ways of organising their regions, or due to the lack of legal certainty affecting cross-border bodies and shared services, or, again, due to inequality in the level of economic development across borders, which may be caused by different national arrangements regarding labour law, taxation and social security, to mention just a few examples;

12. also acknowledges that border regions' healthcare systems are not compatible, and this includes the regulation of healthcare provided by emergency services — which, in the case of workers in areas covered by different legal jurisdictions, raises the question of which one they are covered by. There are problems of mismatching between healthcare providers and public authorities on the two sides of the border: prior authorisation is required in order to obtain reimbursement of costs, for example, which means that the local population finds it difficult to access health services quickly and in close proximity;

13. considers, furthermore, that the barriers to cross-border cooperation that the Luxembourg Presidency has identified in its survey are only typical examples and that a more systematic and comprehensive review of all such barriers should be carried out;

14. welcomes the European Commission's stated aim of carrying out, by the end of 2016, an analysis of the barriers to cross-border cooperation that will look at solutions and examples of good practices; also calls on the Commission to actively involve the European Committee of the Regions to participate in conducting this analysis and in a joint assessment of the results;

⁽¹⁾ European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities, Madrid, 1980, Council of Europe, European Treaty Series No 106. See also: M. Perkmann (2003): Cross-Border Regions in Europe: Significance and Drivers of Regional Cross-Border Cooperation. European Urban and Regional Studies, Vol. 10, No 2, pp. 153-171.

⁽²⁾ Regulation (EC) No 1082/2006, based on Article 175 of the Treaty on the Functioning of the European Union (TFEU) and Regulation (EU) No 1302/2013 of the European Parliament and of the Council of 17 December 2013 amending Regulation (EC) No 1082/2006 on a European grouping of territorial cooperation (EGTC) as regards the clarification, simplification and improvement of the establishment and functioning of such groupings.

15. emphasises that in order to carry out a high-quality assessment of the barriers to cross-border cooperation and to find appropriate solutions to remove them, the concept of 'border region' must be clearly defined, and relevant data on such cooperation must be available; is disappointed that there is no useful statistical evidence from every border region and that Member States differ in how they compile statistics;

16. calls on the Commission to make use of the studies of cross-border barriers that have already been carried out at the initiative of border regions and as part of cross-border programmes;

III. POLICY RECOMMENDATIONS

17. underlines the fact that cross-border cooperation needs to be promoted and facilitated, with a view to ensuring the balanced development of all regions throughout the Union and with the aim of reducing disparities between their levels of development, in accordance with Article 174 of the Treaty on the Functioning of the European Union; notes, furthermore, that in terms of boosting their economic development, some border regions are at a particular disadvantage, especially when there are considerable differences in economic prosperity compared with other border areas that benefit from their location. This is also true of areas bordering third countries and in Europe's outermost regions; calls, specifically because of the disadvantages faced by certain regions, for the provisions on territorial cohesion that are set out in Article 174 of the Treaty on the Functioning of the European Union to be more rigorously observed;

18. underlines the considerable importance of continuing efforts to eliminate barriers to cross-border cooperation — a constant challenge — while at the same time deepening the process of European integration. It therefore welcomes initiatives of legislative nature and also suggests that the importance of cross-border cooperation would be adequately reflected in the financial allocation for the further development of this cooperation;

The existing legal framework and the Luxembourg EU Presidency's new proposal

19. stresses that, in the quest for a solution that would remove the barriers to cross-border cooperation that have been identified and in view of the results of the action programme aimed at reducing administrative burdens in the European Union (REFIT)⁽³⁾, the starting point should be the provisions currently governing such cooperation, with a view to ensuring that they are fully implemented;

20. points out that, under Article 4 of the Council of Europe's European Outline Convention on Transfrontier Cooperation between Territorial Communities or Authorities, signatory countries made a commitment to work on resolving the legal, administrative and technical difficulties likely to hinder progress and the smooth working of cross-border cooperation and to consult one another in order to resolve these difficulties;

21. welcomes the latest initiative of the Luxembourg Presidency to present a first suggestion of a new legal tool, with the objective of allowing Member States affected by a specific cross-border project to agree on a legal framework created from the existing laws of these Member States and applicable only to this specific cross-border project. This would contribute to cohesion in cross-border areas. Although this instrument is related to actions that do not necessarily involve EU funding, it provides a valuable input into the upcoming discussion on the future of cross-border cooperation and the objectives of the economic, social and territorial cohesion of the EU as a whole;

22. notes that one tool for improving cross-border cooperation at EU level already exists in Regulation (EC) No 1082/2006 of the European Parliament and of the Council of 5 July 2006 on a European grouping of territorial cooperation (EGTC), as amended by Regulation (EU) No 1302/2013, with a view to implementing and managing cross-border cooperation projects under differing national rules and legal procedures; notes the different legal nature of the two tools: whilst the EGTC legal regime applies only to its members, the Luxembourg proposal would create a legal regime that would be applicable to a specific cross-border project with a precisely-determined geographical scope;

⁽³⁾ Final report of the action programme for reducing administrative burdens in the European Union, http://ec.europa.eu/smart-regulation/refit/admin_burden/docs/com2012_746_swd_ap_en.pdf For further information on the REFIT programme, see: http://ec.europa.eu/smart-regulation/refit/index_en.htm

23. welcomes all of the simplifications made in the amended EGTC Regulation which took effect on 22 June 2014, some of which were proposed by the CoR, but is disappointed to note that some Member States have been relatively slow to adopt this amended EGTC Regulation; therefore, calls on the Member States to redouble their efforts to implement it and facilitate the creation of EGTCs in their country, bearing in mind that it makes it possible to be more flexible when setting up and registering EGTCs and to establish their tasks more clearly; nevertheless, considers that there has not yet been sufficient time since its entry into force to evaluate its scope fully or to assess its impact on the ground;

24. considers that, given the existence of the EGTC Regulation and the full potential it has for bolstering cross-border cooperation when transposed into the legal systems of all the Member States, the proportionality principle should be respected when contemplating creating additional legal measures; also considers that there are cases where a legal instrument of a different nature to the EGTC could have proved useful in overcoming specific obstacles to a particular cross-border cooperation project;

25. welcomes the proposal's approach, which consists of continuing to improve the quality of the toolbox of cross-border cooperation by providing a tool of a general character that does not create a new entity with legal personality, and therefore carrying forward the objective of using pre-defined rules to implement joint initiatives in two or more Member States, which could be seen as confirming the success of the EGTC concept;

26. points out that, at this stage, the proposal for a new tool raises a number of questions which need to be properly scrutinised in the upcoming debate:

- the establishment of a special regime of derogations to the applicable law in order to facilitate cross-border cooperation might affect the Single Market and fall beyond the scope of Article 175(3) of the TFEU, so the legal basis of this legal instrument needs an in-depth analysis,
- the CoR asks for the policy areas in which the new regulation should be applicable to be more clearly defined, in accordance with the distinction between the competencies of the Union those of the Member States and shared competencies. In this respect, a reference to the provisions on economic, social and territorial cohesion (Articles 174 to 178 of TFEU) does not seem to be sufficient,
- the suggested legal tool might touch upon the issue of constitutionality, since it invites Member States to apply the laws of other Member States within their territories. This regime of exceptions and derogations would be limited to border regions and needs to be scrutinised more in-depth — a thorough legal analysis of the new regulation should thus be undertaken once the gap analysis to be conducted by the EC confirms the need for such a new legal instrument;

27. points out that, while the mission and the tasks set out by an EGTC convention are circumscribed to the group itself and to its members, and while it is not permitted to adopt, implement or enforce legislation — which means that it cannot be used as a basis for doing this at cross-border level — it may, however, manage public infrastructure, provide a public service, provide services of general economic interest and harness and manage public resources in order to achieve public interest objectives or activities that reflect the fundamental principles of the Treaty and the general interests of the Member States; considers that the current EGTC Regulation provides a good legal framework for this type of action, even if consideration could be given to examining the alternatives, which might facilitate general cross-border cooperation in a given region;

The need to raise awareness and provide information for stakeholders regarding the opportunities for developing cross-border cooperation offered by the existing legal framework, in particular by the EGTC Regulation

28. emphasises that, in terms of using EGTCs as a mechanism for cross-border cooperation, the main problems concern insufficient awareness and information, a lack of confidence and the absence of the necessary political will and that, in order to strengthen cross-border cooperation, there is a need to raise awareness and provide stakeholders with more information about the opportunities for developing this cooperation offered by the existing legal framework, and in particular by the EGTC Regulation;

29. calls on the European Commission and the Member States to make further efforts, in cooperation with the European Committee of the Regions, to clarify and publicise the role that the EGTC can play as a tool for more effectively meeting local needs in cross-border regions;

Promoting simplicity in the legal framework and how it is implemented

30. calls for the legislative framework to be as simple as possible, meaning that any new piece of regulation or any amendment to those in force should simplify procedures for running cross-border projects, whether financed by the EU budget or not, and considers, in relation to this, that the proposal by the Luxembourg EU Presidency constitutes a useful contribution to the debate that will soon be held on the legislative package for the next programming period;

31. welcomes the leading role that the proposal of the Luxembourg Presidency gives to local and regional authorities in the light of the principles of subsidiarity and local democracy, according to which the border regions and cities would take the initiative to adopt these European cross-border conventions, identify the legal provisions that need to be adapted, draw the draft convention and address it to the competent Member State authorities for final approval;

32. proposes that a simplified approval procedure be applied to EGTCs in cases where an established entity — such as a Euroregion or a working community — already exists under the European Outline Convention of the Council of Europe on Transfrontier Cooperation between Territorial Communities or Authorities and its 1980 protocols and subsequent bilateral agreements;

33. would point out, regarding the idea of drafting a new legal instrument to encourage cooperation in border regions, that the Treaty on European Union provides that the Union must respect Member States' essential State functions, including ensuring the territorial integrity of the State (Article 4);

Adapting how resources from EU funds are used

34. highlights the different procedures that apply to the implementation and monitoring of cross-border cooperation projects involving some partners from Member States and some that are not and the difficulty in running the programmes and initiatives concerned because of the different participants; therefore calls for procedures for planning and managing EU-funded cross-border programmes and projects to be further simplified, particularly for small, one-off cross-border projects, and for procedures to be applied to all stakeholders in a uniform manner; would, furthermore, like to see a simple and quick solution to how such projects are to be implemented from the administrative and legal point of view;

35. calls on the Member States to make it easier to involve private operators in supporting actions to promote growth and permanent jobs and to secure project outcomes in a forward-looking and effective manner;

36. calls on the Member States to include existing and potential EGTCs in their future operational programmes;

37. notes that the procedures for drawing up and adopting territorial cooperation programmes for the 2014-2020 financial programming period are lagging so far behind that they will have an impact on the successful implementation of those programmes and calls on the European Commission to step up its commitment to — and assistance for — stakeholder countries when they draw up and adopt the programmes;

38. calls on the EU to pay special attention to the use of its funds for frontier regions bordering third countries and Europe's outermost regions in order to improve implementation of cross-border projects financed from its funds;

39. urges the European Commission to continue simplifying procedures in order to make the implementation of cross-border projects easier, to start the process of adapting funds implemented at national level and in this matter to consider the possible automatic coupling of EU funds with cross-border projects;

40. calls on the European Commission to draw on its analysis of the barriers to cross-border cooperation and examples of good practice in working with the European Committee of the Regions to craft a long-term strategy for pushing ahead with cross-border cooperation and a related action plan that would both extend over several future presidencies of the European Union and thus ensure that even once Luxembourg's Presidency has ended, its work will continue;
41. suggests that discussions on this new regulation form part of the comprehensive discussion on the future of Cohesion Policy. The called-for full and effective implementation of the EGTC Regulation in Member States could be a medium-term goal along with awareness-raising in relation to its application and/or possible amendments arising from its shortcomings; calls on the Commission to consider the Luxembourg proposal and further elaborate it in the light of the results of the cross-border review currently carried out by the Commission;
42. finally, emphasises the importance of respecting the principle of subsidiarity and the need for trust, confidence and cooperation between the central level and the local and regional authorities, which are needed to achieve genuine and fully functional cross-border cooperation.

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of the European Committee of the Regions*

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