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**STEERING COMMITTEE ON LOCAL AND REGIONAL DEMOCRACY
(CDLR)**

**DRAFT REVISED HANDBOOK ON
TRANSFRONTIER CO-OPERATION**

Secretariat Memorandum
prepared by the
Directorate General I - Legal Affairs
Directorate of Co-operation for
Local and Regional Democracy

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Introduction

This document reproduces the Handbook of Transfrontier Co-operation as revised by its author, Professor Charles Ricq¹ and approved by the Committee of Experts on Transfrontier Co-operation (LR-CT) at its meeting of 7-8 March 2005, subject to further adjuncts and corrections that appear in italics in the text.

It is recalled that the revision of the Handbook was initiated in 2003 at the request of LR-CT.

As the CDLR will no doubt note, some statements, drafted between February and April 2005 will have to be reviewed, having regard to the Third Summit of Heads of State and Government, the Action Plan they adopted and other recent developments such as the drafting (still in progress) of the draft Convention containing Uniform Law replacing the draft Third Protocol to the Madrid Outline Convention.

Action required

The CDLR is invited to examine this document, make any remarks it will deem appropriate and decide as to its publication.

¹ With the assistance of Daphné Romy-Masliah, Jean-Denis Burnand, Eliane Greter and Geneviève Leresche.

TABLE OF CONTENTS

	Pages
Table of contents.....	3
Foreword.....	8
Introduction: 7 starting points for a study of transfrontier co-operation.....	11
PART 1: DEFINING A TRANSFRONTIER REGION	16
1.1 Definition based on the existence of a state/national limit.....	17
1.1.1 The frontier as a physical boundary and limit of a national territory.....	17
1.1.2 The frontier as a limit of political systems	17
1.2. Definition based on the concept of space	18
1.2.1 Frontier zones	18
1.2.2 Frontier poles of attraction and conurbations.....	20
1.2.3 Political and administrative units that result from a state's territorial organisation.....	21
1.2.4 Transfrontier inter-municipal co-operation and transfrontier districts.....	22
1.2.5 European and transfrontier territorial authorities.....	23
1.2.6 Towns separated by borders.....	23
1.2.7 Euroregions	24
1.2.8 Eurodistricts or European districts	25
1.3 Definition according to common problems.....	26
1.4 Definition of a transfrontier region based on the daily problems facing the local populations.....	27
1.4.1 Everyday economic problems of frontier populations	28
1.4.2 Everyday problems of frontier populations in respect of.....	29
1.4.3 Everyday problems of frontier populations in respect of infrastructure and regional planning.....	30
1.4.4 Everyday problems of frontier populations in the demographic and health fields	30
1.4.5 Everyday problems of frontier populations in the administrative and taxation fields	31
1.4.6 Everyday problems of frontier populations in the socio-cultural field	32
1.5. Typology of territorial co-operation in Europe.....	33
1.5.1 Definition of transfrontier co-operation for the Council of Europe.....	33
1.5.2 Definitions of the different forms of interterritorial co-operation for the European Union.....	34
1.5.3 "Decentralised co-operation"	35
1.5.4 "Transfrontier governance"	36
CONCLUSION TO PART 1.....	37

PART 2: ENCOURAGING THE EMERGENCE OF TRANSFRONTIER INSTITUTIONS VIA INTERNATIONAL PUBLIC LAW THROUGH THE CREATION OF APPROPRIATE LEGAL INSTRUMENTS	38
2.1 Conceptual approaches to transfrontier institutions	38
2.1.1 Empirical definition.....	38
2.1.1.1 The example of France.....	38
2.1.1.2 The example of Switzerland.....	39
2.1.2 Legal definition	39
2.2 International agreements, international law and transfrontier relations	40
2.2.1 Background to some international agreements	40
2.2.2 The Council of Europe's European Outline Convention on transfrontier co- operation.....	41
2.2.2.1 The European Outline Convention on transfrontier co-operation.....	41
2.2.2.2 The protocols.....	42
2.2.2.3 Towards a possible 3rd protocol	43
2.2.2.4 The transfrontier articles of the Charter of Local Self-Government and the draft "text" on regional self-government.....	44
2.2.3 Major Council of Europe Conferences and political from 2000 to 2005.....	45
2.2.3.1 The Helsinki Declaration	45
2.2.3.2 The Cracow Conference of 2-4 October 2003	45
2.2.3.3 The future 3rd Summit of heads of State and Governments, in Warsaw, on 14 and 15 May 2005.....	47
2.2.4 The European Union and transfrontier co-operation.....	48
2.2.4.1 Le 3rd Report on economic, social and territorial cohesion and transfrontier co-operation	49
2.2.4.2 The new Constitutional Treaty and transfrontier co-operation	54
2.2.4.3 The new Community legal instrument on cross-border co-operation.....	56
2.2.4.4 The Bolkestein directive on freedom to provide services.....	58
2.2.4.5 Co-operation with the candidates for membership and third countries beyond 2006	59
2.2.5 The European Union's "new neighbourhood instrument" and external transfrontier co-operation	59
2.3 Transfrontier institutions at bilateral or multilateral intergovernmental level	61
2.3.1 Bilateral treaties or agreements promoting transfrontier co-operation	61
2.3.1.1 Examples of bilateral agreements or treaties in western Europe	61
2.3.1.2 Experiences of bilateral and/or multilateral agreements in the Baltic and Adriatic Seas	64
2.3.2 Multilateral treaties or agreements promoting cross-border co-operation	65
2.3.2.1 The Nordic Agreement of 1976	65
2.3.2.2 The Benelux Convention of 1986	66
2.3.2.3 The Karlsruhe Agreement of 1996.....	66

2.3.3	The Chisinau Political Declaration of 6 November 2003	67
2.3.3.1	Main articles of the Chisinau Political Declaration	68
2.3.3.2	Principal goals of transfrontier co-operation in Europe	69
2.3.4	Sectoral international agreements	70
2.4	Interregional agreements under the states' authority	72
2.4.1	At the transfrontier level in the strict sense	72
2.4.1.1	Some examples of designations	72
2.4.1.2	Statutes and organisation	73
2.4.1.3	Types of interregional or intermunicipal agreements	73
2.4.1.4	The coordination of transfrontier relations within states	74
2.4.1.5	Practical coordination between transfrontier regions of Europe and the AEBR	74
2.4.2	At the interregional level in the broad, and no longer merely transfrontier, sense	74
CONCLUSION TO PART 2		75
PART 3: IN WHAT FIELDS AND BY WHAT STAGES CAN TRANSFRONTIER CO-OPERATION BE PROMOTED?		77
3.1.	Transfrontier co-operation's areas or fields of activity	77
3.1.1	Open-ended summary of the main spheres of transfrontier co-operation	78
3.1.1.1	Sphere of the environment and spatial planning	78
3.1.1.2	Transport, security and communications	82
3.1.1.3	The economy and employment	83
3.1.1.4	Frontier populations: health and welfare services, housing	86
3.1.1.5	Education, research and culture	87
3.1.2.	Declarations or schemes relating to the main spheres of transfrontier co-operation	89
3.1.2.1	The Chisinau Declaration of 5 November 2003	89
3.1.2.2	The 6 Euro-regions operated by Lithuania with its neighbours, set up between 1998 and 2003	90
3.1.2.3	Spheres focused on by Euro-districts, particularly that of Strasbourg – Kehl	91
3.1.2.4	The main fields in the Stability Pact	92
3.2	Stages in transfrontier relations	93
3.2.1	Total lack of relations	93
3.2.2	The information-exchange stage	93
3.2.3	The consultation stage	94
3.2.4	The co-operation stage	94
3.2.5	The harmonisation stage	94
3.2.6	The integration stage	95
CONCLUSION TO PART 3		96

PART 4: TRANSFRONTIER CO-OPERATION: INCENTIVES AND DISINCENTIVES	97
4.1. Incentives to transfrontier co-operation	97
4.1.1 The legal parameters	97
4.1.2 Financial resources	98
4.1.3 Political will	98
4.1.4 A fabric of preferential, continuing relations between protagonists	98
4.1.5 Establishing administrative "crossover points" (bridges?).....	100
4.2. Transfrontier co-operation: limits, constraints and obstacles.....	101
4.2.1 economic imbalance	102
4.2.2 cultural and linguistic distances	103
4.2.3 institutional incompatibilities.....	103
4.2.4 historical distinctions.....	103
4.2.5 shortcomings of financial, budgetary and fiscal resources	104
4.3. Overcoming impediments to transfrontier co-operation	105
4.3.1 In the legal sphere	105
4.3.2 In the sphere of culture and language.....	108
4.3.3 In the socio-economic and the spatial planning spheres	111
4.3.4 In the budgetary, financial and fiscal sphere.....	113
4.3.5 In the sphere of "transfrontier governance" hence participation of civil society inter alia	116
CONCLUSION TO PART 4.....	117
PART 5: WHAT ARE THE NEW PROSPECTS AND THE ANTICIPATED SCENARIOS FOR TRANSFRONTIER CO-OPERATION?	118
5.1. General prospects for transfrontier co-operation	119
5.1.1 The geo-political function, via the irreversible spread of transfrontier co-operation throughout Europe and the stability of frontiers	119
5.1.2 The subsidiarity function.....	119
5.1.3 The integrative function	120
5.1.3.1 From European macro-integration to transfrontier micro-integration ..	120
5.1.3.2 Transfrontier practices concerning integration	121
5.1.3.3 Frontier populations' day-to-day experience of integration	122
5.2. "Instrumental forward planning" of transfrontier co-operation	123
5.2.1 A dual system of instrumental forward planning to meet transfrontier objectives, ventures and issues	124
5.2.1.1 Specialised forward planning working groups.....	124
5.2.1.2 A regional forward planning and development fund	124
5.2.2 Forward planning scenarios	124
5.2.3 Areas of forward planning.....	125
5.3. Strategic forward planning, or "critical prospects", of transfrontier co-operation.....	126
5.3.1 Institutional aspects of transfrontier co-operation.....	126

5.3.2	Sectoral aspects of transfrontier co-operation as analysed by “strategic forward planning”	127
5.3.2.1	promoting greater awareness, hence a new communications policy	127
5.3.2.2	concerted development, presupposing a new employment and investment policy.....	128
5.3.2.3	a well-equipped area, presupposing a new policy for the environment, spatial planning and sustainable development	129
5.3.2.4	a cultural synthesis, presupposing a coherent new cultural policy on training, the media and voluntary sector exchanges	129
5.4	Forward planning applied to transfrontier regional micro-integration will mainly concern the fields already examined in Part 3	131
	CONCLUSION TO PART 5: the 4 scenarios applied to transfrontier co-operation.....	131
	GENERAL CONCLUSIONS TO THE HANDBOOK AS A WHOLE.....	136

Foreword

The Transfrontier Co-operation Handbook initiated by the *Committee of Experts on Transfrontier Co-operation* (LR-CT) in 1995 and since translated into 12 languages was in need of a thorough revision, because of the need, on the one hand, for all the national and European authorities concerned to develop and intensify cross-border relations, and because of new awareness amongst local and regional authorities separated by borders *that* these must henceforth be “a join and not a break”, as I wrote in 1975 in my thesis on “border workers and border regions in Europe”.

Since 1995, when the first version of this handbook was produced, a lot has happened in transfrontier co-operation in Europe, many analyses been made and experiments conducted. These transfrontier and interregional experiences are all part of a horizontal Europe complementary to the vertical Europe, above all, part of the deepening and the enlargement of two European institutions: the Council of Europe (since 1949) and *the Common Market* (since 1958). This revised version of the handbook takes this into account as far as possible. And if the LR-CT wanted this update, according to all the states represented in it, it was to reaffirm, energise and strengthen the essential and irreversible role of transfrontier co-operation in European construction based on all the practical problems of neighbourly relations encountered by all the border populations of Europe. Addressing all these problems and sketching solutions, not only for the *European institutions*, governments and local and regional authorities but for all the public and private players, means taking the facts, weighing them up seriously and proposing practical, realistic solutions bearing in mind the extreme variety and complexity of the transfrontier phenomenon in Europe.

The variety, the complexity and the wealth of the many transfrontier experiences that have sprung up all over Europe – in the 46 member states of the Council of Europe - and will continue to do so, show how difficult it is to produce a common handbook that covers all such experiences: “like squaring the circle”, as one member of the LR-CT put it. That is why the main task of this handbook is not to propose a “transfrontier co-operation model”, or “good transfrontier co-operation practices”, not usually lending themselves to export to other border areas, but rather to establish, in keeping with the aims of the Madrid Outline Convention (namely to foster transfrontier co-operation all over Europe), a set of appropriate legal instruments coupled with an analysis of all the obstacles to and, above all, the incentives for transfrontier co-operation and, finally, the prospects offered by this weaving of transfrontier ties that together will form the immense fabric of a European space built on human rights, democracy – including at the local and regional levels – peace and security. In this vast transfrontier field, as in that of European construction, we must be reasonable and advance step by step, taking our time, *bearing in mind the history of Europe and of all its states*.

Among *the main* sources of information used for the updating of this Transfrontier Co-operation Handbook have been:

- The Council of Europe in Strasbourg and the European Union in Brussels and their respective *organs* and secretariats;
- The member states of the European institutions and their Interior and/or Foreign Ministries;

- *European* interregional organisations, such as the *Assembly of European Regions* (AER), *Association of European Border Regions* (AEBR), *the Council of European Municipalities and Regions* (CEMR), *the Conference of Peripheral Maritime Regions of Europe* (CPMR);
- NGOs such as the *Local Democracy Agencies* (LDAs), NALAS, *etc*;
- Numerous transfrontier institutions in the North, South, East and West of Europe;
- Research centres, institutes, universities engaged in transfrontier research;
- Numerous interviews of members of the CDLR and the LR-CT, the Committee of the Regions, the *Congress of Local and Regional Authorities* (CLRAE) *and its two Chambers*.

Drawing up a transfrontier co-operation handbook *which cuts across several disciplines*, is based on serious political, legal, *historical, geographical, social, economic and cultural* analysis, and is also suitable for use by all those living near the scars left by Europe's dividing lines, poses a number of problems, some of them insuperable. How can such a complex, difficult subject be presented in an immediately operational way without sight being lost of philosophical principles and new European geopolitical scenarios? First of all, the border concept must be clearly defined². What are borders :

- *breaks or joins?*
- openings, filters or closures?
- links or dividing lines?
- creators of synergy or entropy?

In this context, an approach based on a wide range of scientific disciplines *becomes* indispensable. Every branch of science, from biogenetics to systems science, has discovered that frontiers and limits both separate and bring together, mark differences and open up perspectives. The strongest testimony comes from biology, where a living system (individual or collective) only remains in being if it is open and gradually becomes more complex by means of autonomy in its interdependence. *The political and legal sciences are no exception to these constant features of all human societies.*

To say that frontiers are a complex and distinctive phenomenon is tantamount to saying that it is difficult to draw up a "handbook of transfrontier co-operation" that will be useful to and usable by all communities and persons who experience the frontier problem as part of their daily lives, whatever the strength, nature and extent of their relations with their neighbours. The purpose of this handbook is to attempt, on the basis of the Council of Europe *and European Union's* principles of political philosophy, to answer one by one the following simple but extremely sensitive questions:

² Geneva symposium of 28 October 1988 on the Single European Act: The 16 Swiss cantons in border areas and European integration, Prof Charles Ricq.

1. How can a transfrontier region be defined?
2. How can transfrontier institutions be set up?
3. In what fields and by what stages can transfrontier co-operation be developed?
4. What are the factors that encourage or discourage transfrontier relations?
5. What are the prospects for making transfrontier areas the definitive *strong* points of European construction? What scenarios should be invented for this purpose?

Transfrontier co-operation is already on the march *throughout* Europe, and an *analysis of all the experience gained may provide points of comparison* and offer examples or guidelines for others. A list of documents and agreements on transfrontier co-operation is in Appendix I to this handbook, together with the text of the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities *and its two protocols*, and the model agreements. Further information on these examples, transfrontier agreements and model agreements may be obtained from the Council of Europe³.

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Introduction

Transfrontier co-operation is one of the irreversible features of the European construction process, with ramifications in public international law, European reunification, subsidiarity and partnership, regionalisation and decentralisation and so on. Transfrontier, transnational and interregional co-operation has gradually become a part of European construction; more in practice than in law, it is true; and this trend is irreversible. While the Council of Europe has endeavoured, with success, to define a clearer set of standards for transfrontier co-operation, allowing considerable flexibility and stressing the importance of each country's domestic law in the political and administrative organisation of its territory, the European Union, whose ultimate aim is political integration, has invested massively in transfrontier co-operation in its INTERREG programme, with real success. However, while INTERREG has contributed to the development of transfrontier relations in many fields, all over Europe, increasingly with a view to stronger territorial cohesion in Europe as a whole, in the legal reality enshrined in the Treaties of Rome, Amsterdam, Maastricht and Nice, the lack of a community legal instrument on transfrontier co-operation, to compensate for the operational insufficiency of the Council of Europe's Madrid Outline Convention, weakens the Union's efforts to develop European integration in all border areas, which are increasingly considered as "seams" or "joins" rather than "tears" or "breaks". In view of the recent emergence of a flurry of Euro-regions in the countries of central, eastern and south-east Europe, *valid* legal foundations are badly needed for all the transfrontier co-operation experiments in progress in the European Union and in the wider Europe.

As each country's territorial organisation is governed by its domestic law (as Brussels and Strasbourg *regularly* say), it is only natural that transfrontier co-operation, which affects the territorial organisation of the countries concerned in the highest degree, and consequently the notion of "national territory" and everything it implies, should be limited by the dual effects of the slow progress in the building of a political European Union and the constant need to refer to domestic law as it affects territorial organisation and, in particular, national borders. In other words, is transfrontier co-operation to be the result, in legal terms, of the comparison or harmonisation of the domestic legislation of the two or three states concerned in each case, or could it, in the medium or long term, be based, for example, on a new community legal instrument drawn up as part of the territorial cohesion policy (Articles 151 and 158 of the Treaty)? And would this mean a new transfer of powers, *another* "enlargement" of EU powers *stemming from* the new constitutional Treaty of the European Union? *The future will reveal this. At this stage, the handbook will still have to look at possible scenarios in this respect.*

Should we just give up and wait for Europe's political integration to be complete before we lay down the political and legal foundations of transfrontier co-operation? No. Several courses or scenarios are open, without jumping the gun, knowing as we do that actions often precede laws. That is one of the aims of this handbook, which takes into account the enlargement of the European Union, an event that reconciles European history and geography, in line with what the Council of Europe already represents geographically. However, before concluding this handbook with 4 scenarios that *will make it possible* to answer the essential question of the legal basis for transfrontier co-operation in Europe, we must develop the 7 starting points of the transfrontier phenomenon throughout Europe.

7 starting points of the transfrontier phenomenon in Europe now and in the future

Sifting through *all the official published CDLR* and LR-CT documents from 1995 to 2005, and *the stances* adopted by the Congress of Local and Regional Authorities and the Committee of the Regions, brings to light 7 starting points *for all transfrontier co-operation experience* in Europe, factors which are essential in determining the definitions, institutions, stages and fields, hindrances, driving forces and perspectives central to *the five parts* of this transfrontier co-operation handbook.

- Starting point No. 1: four main political systems – *all of them democratic, it has to be said* - mark the countries of Europe, namely the centralised systems where central government operates through purely administrative regional entities; decentralised systems, where regional authorities have regulatory powers and often their own legal status; regionalised systems, where regional authorities are empowered to pass laws in those areas defined in the Constitution; and federal systems, where the parliaments and governments of each of the federal entities have their own exclusive powers.
- Starting point No. 2: territorial sovereignty still means a lot to the 46 member states (*as at 5 October 2004*) of the Council of Europe, including the 25 member states (*as at 1 May 2004*) of the European Union, which means that any form of transfrontier co-operation remains an “affair of state”, *especially* under the first 3 political systems mentioned above, and even federal governments tend to keep a very watchful eye on the transfrontier relations of their federal entities. To move beyond this idea of “national sovereignty” – now that Europe’s internal borders have largely disappeared for good – certain political scientists have put forward the hypothesis of “depoliticisation of the notion of territory” for Europe’s border regions, or, more realistically, “better sharing of sovereignty” between states in their border regions, which would result, in practice, only in the “defunctionalisation” of borders rather than in their outright disappearance. It was out of respect for national sovereignty and once again for the international nature of cross-border relations that the Council of Europe finalised the Outline Convention on Transfrontier Co-operation in Madrid, on 15 May 1980, to which a first protocol was added in 1995 and a second in 1997, and a third protocol on “Euro-regional transfrontier co-operation” is in the pipeline *for 2005/2007*; all these protocols stress the need to refer to a country’s domestic law when organising the shape and content *of its territorial organisation, and therefore of its* transfrontier relations, in the best way possible.
- Starting point No. 3: transfrontier Europe already has a long history. This handbook, which is intended for all the border regions of the Council of Europe’s 46 member states (trying to produce a single handbook encompassing all transfrontier experience in Greater Europe is a bit like trying to “*square the circle*”), *is part of this history and, in its own way*, highlights the wealth, the complexity, the vast variety of transfrontier experiences with which Europe’s history and geography are dotted; even in the very peripheral areas so characteristic of certain border regions. The transfrontier dynamic that explains this wealth and complexity of transfrontier relations all over Europe is of course based on the political will of the local and regional authorities in border areas to work together to solve some of the problems they have in common, but also on decentralisation, which is becoming increasingly visible and motivating in most European states. All these devolution laws are increasing local and regional authorities’ responsibilities in the field of transfrontier co-operation, even if governments, whatever the political system, generally and rightly like to keep their transfrontier activities under close control. Is it necessary, then, to “formalise”

transfrontier co-operation to such an extent that it is reduced to a single, homogeneous model? That is not the purpose of this handbook. Indeed, should we hope for a “standard model” for transfrontier co-operation in Europe to emerge one day, the type of standard model so dear to pure theorists? This handbook will show otherwise, while at the same time asserting the need in Europe for exchanges of successful transfrontier experiences even if they are not necessarily exportable. Certain basic principles and guidelines are evidently essential *for all genuine transfrontier relations*.

- Starting point No. 4: that each transfrontier region, taken individually or collectively, has its own specificity is a well-known fact. This individual or group specificity – a typology of transfrontier regions remains indispensable – is linked to their history, their geographical situation, but also the “transversal” or “multidimensional” character of all transfrontier relations. They fall within all the fields governed by community law, or by the domestic law or territorial organisation of the states involved, or by the powers devolved to local and regional authorities by central government. This “transversal” or “multidimensional” character of transfrontier relations makes the complex reality of transfrontier co-operation all the more specific, be it in the field of employment, company (re)location, the environment, spatial planning, transport, telecommunications, health or training facilities, the media and so on, not to mention taxation and social protection. What Council of Europe or European Union legal instrument is needed, then, to cater for this “transversal” or “multidimensional” characteristic *of transfrontier co-operation*? Uniformity and the single model scarcely seem appropriate, *or even desirable*.
- Starting point No. 5: the variety and complexity of the problems experienced by all border regions in Europe, be they central or peripheral, combined with the political will of all governments to keep sufficient control over the cross-border relations of their local and regional authorities, have led in the last four or five decades in Europe to a host of bilateral or multilateral agreements between states. These agreements, be they prior or subsequent to the Outline Convention on transfrontier co-operation concluded by the Council of Europe in Madrid on 15 May 1980, have all helped to foster transfrontier relations. There are degrees in the contents of these bilateral or multilateral agreements; one of the most recent, signed in Karlsruhe in 1996, between Germany, France, Luxembourg and Switzerland, grants legal status and financial autonomy, *under state supervision*, to the border authorities covered by the agreement. This is a new step forward and one that could be extended to all Europe’s border areas, perhaps paving the way for a “community framework agreement” or a “3rd protocol” on transfrontier co-operation; indeed, *ever fewer* are the borders in the European Union or in Europe in general which are not *yet* included in a bilateral or multilateral agreement.

- Starting point No. 6: community law, which occupies a special place in public international law, has seen its scope grow with each new treaty in the history of the European Union: Rome, Maastricht, Amsterdam and Nice, not to mention the *future* Constitutional Treaty, which the 25 member states have yet to ratify. This latest treaty provides not only for the principle of unanimous decision making to evolve towards decisions by a qualified majority in certain areas, but also for the possibility of new Community competences: in regional policy, for example, in so far as all the member states are convinced of the absolute need, in the interests of European integration, to provide unfailing support for social, economic and territorial cohesion throughout the Community. *Were transfrontier regions the first to move into these new fields of “shared sovereignty”?* While Community law takes precedence over domestic law in the 25 member states, at least in the fields of competence granted to the Union by the member states in the name of the principle of “upwards” or “bottom-up” subsidiarity, this does not *yet* apply to the fields of competence which remain the exclusive preserve of the governments *and are therefore subject to the unanimity principle for any further transfers*. What matters as far as the future is concerned is whether new delegated or shared competences are in the offing *within the* European Union.
- Starting point No. 7: community regional policy, which has become increasingly important since it was formally launched back in 1975, when the ERDF was set up, has certain specific characteristics which limit its scope. Its initial status as an addition to the regional policies of the individual states no doubt cramped its possibilities and continues to do so; but with a view to the harmonious development of the whole area of Europe, and to strengthening territorial cohesion⁴, the border regions, which mark and catalyse all the effects of European integration, perhaps better than other regions, highlight the need to broaden the fields of competence of the European Union’s regional policy, in particular at the Community law level. The size of Community funds for territorial cohesion in the *enlarged* 25-member European Union for the period 2007-2013 – 336.1 billion euros – further confirms this need; the European Commission, Parliament and Council will set the final sum in 2005, at the same time earmarking substantial community funding for the Union’s external border regions in the name of the “*new neighbourhood policy*” towards non-member states.

Throughout the five parts of this handbook these seven starting points will help to answer the five main questions that arise in any reflection, action, experience or project concerning transfrontier co-operation. The handbook is not exhaustive, but it tries, in its own way and with the Council of Europe’s approval:

- *to provide better definitions of the various aspects of transfrontier co-operation;*
- *to identify the relevant legal instruments;*

⁴ See European Commission, Brussels, COM (2004) 207.

- to identify the fields of action and the essential stages involved;
- *to* identify the various factors that hinder or stimulate transfrontier co-operation;
- and to predict what the combined determination of all the European, national, regional and local authorities is likely to produce and achieve in terms of transfrontier co-operation *in the* future.

Part 1: Defining a transfrontier region

Every transfrontier region consists of an area of land and a number of human communities, together with the network constituted by all the relationships interlinking them, and is disturbed or even disrupted by the frontier. Whatever the political systems of which they form part, frontier regions, many of them outlying, are thus confronted with specific spatial, socio-economic, socio-cultural, political, *legal* and institutional problems.

Systems analysis reveals that a frontier is primarily a systems limit between nation-states rather than a "physical boundary". An original approach must thus be adopted to describe the characteristics of transfrontier regions, enumerate their problems, give these problems an order of priority in the context of regional, national and European policy, coordinated if possible, and attempt to suggest specific short, medium and long-term solutions to them. This interdisciplinary and international - frontier-based - approach is important for the identification of the different types of economic, cultural and political relations that emerge or develop in these frontier and outlying regions. Definitions according to rigid theoretical criteria are inappropriate for these regions; they should be seen as "multi-dimensional" and approached in a flexible way depending on which of their functions are being studied. European construction, and by extension European integration, has a profound need for these transfrontier areas in order to demonstrate *its clarity*, soundness, authenticity and legitimacy, with these regions acting in a sense as the ideal proving-ground of European construction.

The basic principle of transfrontier co-operation is to create links and contractual relations in frontier areas so that joint solutions may be found to similar problems. State entities themselves are not unaware of the special and distinct nature of the neighbourhood problems their peripheral communities face. Regional identities must be sustained and the construction of Europe enriched by the dynamism and special qualities of local and regional communities situated on each side of a frontier, as they jointly try to develop a living partnership, true synergy and full solidarity reflecting what a Europe united in diversity should be. There are today rather more than 140 transfrontier regions among the 362 regions registered by the Council of Europe and its 46 member states, clearly indicating that Europe is a mosaic. What must be done is to identify the underlying *design* that endows this mosaic with its full meaning and beauty.

Frontiers are hard to define because they conjure up the idea of a break in the continuity of systems, functions and space. Let us nevertheless attempt a definition based on the notions of limit *and space, as well as on general or everyday problems experienced by border authorities and populations.*

1.1 Definition based on the existence of a state/national limit

It is no accident that increasing attention is being paid to the problem of frontiers and frontier areas within Europe, particularly in the European Union. This interest is related to the gradual weakening of lines of political demarcation and the scheduled disappearance of socio-economic barriers. Above all it crystallises and concentrates in its own way all the difficulties, limitations and constraints that must be overcome in order to achieve European integration. In this sense transfrontier regions are indeed the touchstone and catalyst of the progress of European construction.

The extent of a transfrontier region is defined by two observed facts: the frontier as a physical limit, and the transfrontier region as a territory for new contractual links.

1.1.1 *The frontier as physical boundary and limit of a national territory*

A frontier is first and foremost a physical limit that is often indicated by markers which define the territory of a nation-state. It thus implicitly indicates the sphere in which national sovereignty is exercised, thereby constituting a key element in the national territory and in any "national system", as well as in its components and sub-systems.

1.1.2 *The frontier as a limit of political systems*

Frontiers reveal an essential function of nation-states: to establish an identical territorial basis for the operation of all the systems and sub-systems that are theoretically encompassed by national sovereignty; those, for example, concerning *national territory*, the national education system, the national economy, the national currency, national defence, police, justice and so on. Clearly, rigorous matching of the limits of all the systems and sub-systems of a nation-state with a single area is bound to generate confrontations, imbalances or even conflicts in regions crossed by a frontier: often their systems will contradict or ignore each other, because there are not enough bridges or contractual procedures between them, at least as things stand.

The territory of transfrontier regions in this systemic perspective⁵ should also be analysed in terms of density of relationships and socio-economic, political, cultural and other forces, which will vary from one sphere to another: e.g., the spheres of cultural, social, economic, fiscal and educational relations. In frontier areas it is therefore very important to open "bridges", "passageways" and contractual links between the various operators in the main spheres of transfrontier co-operation.

In order to alleviate the frontier effects, the functions of a frontier must be neutralised, so to speak, which presupposes that frontiers are defined in terms of their different functions or their effects of separation and/or linkage. Functions entering into such a definition are:

- Politico-military strategy, as the essential object of a national territorial issue;

⁵ La région transfrontalière, espace institutionnel et espace d'identité ; prof. Charles Ricq, in Revue « L'homme et la société », Paris, octobre 1985

- Disruption and lack of equivalence in the economic, cultural and social spheres;
- Filtering and selection, e.g. with regard to immigration;
- Creating and building up production of goods, services and jobs;
- Modes of behaviour, *cultures and languages* that intermingle or isolate.

In short, in Europe today, the three most important negative effects of a frontier on the areas concerned arise from:

- economic and social imbalances
- cultural distances
- the lack of administrative bridges.

1.2 Definition based on the concept of space

The term "frontier or transfrontier region" has three obvious facets: one is area (more or less clearly defined), another is communities and groups, and the third is the relations that grow up between them and may be disrupted or blocked by the existence of a frontier. Transfrontier regions can be defined in terms of space by means of three classic approaches:

- by zones;
- by poles;
- by administrative or political units.

1.2.1 Frontier zones

Having established what a transfrontier region represents in a functional and/or political context, one must hasten to add that the expression "frontier region" is not the only term used to denote a transfrontier area; in some studies the term "frontier zone" is used. It is sometimes difficult to distinguish between these two terms which are in some cases virtually interchangeable.

A text concerned with analysis of Community law gives the following definition of a frontier zone:

"The expression 'frontier zone' as defined by article 5, paragraph 5 of Directive 69-69, modified, etc, which delimits the region whose residents are likely to benefit only to a lesser degree from tax exemptions on turnover and excise duties levied on imports, should be interpreted as referring to a circular zone with a radius of 15 km and whose centre is the customs post"⁶.

⁶ Proceedings of the Geneva symposium already mentioned; lecture by Mr Christophe Bail, Permanent Delegation of the Commission of the European Communities in Geneva.

Thus, in contrast to the all-encompassing definition of a transfrontier region we have the more limited definition of a frontier zone as a restricted area which is defined a posteriori by selected criteria which do not cover all the aspects of a region but are more concerned with a given sector of socio-economic and cultural affairs for the sake of operational feasibility, effectiveness and even facility in analysing "small-scale frontier traffic", for example. The size of the radius may vary, however, as can be seen in the definitions of frontier workers adopted by various states and by the various Community authorities⁷. Taken as the basic unit, the frontier worker is a person who, whilst having his or her residence or domicile in a frontier zone 10, 20 or even 50 km wide depending on the state and returning to this domicile at least once a week, has a regular job in a neighbouring state within a zone of equivalent size. *Another body*, the WEU (Western European Union), *has adopted* a radius of 10 km in its definition.

The European Union, up to 1988, thought in terms of a 20 km radius, though 50 km had originally been mooted, and indeed the Council Directive of June 1972 *defined* a frontier zone as "a zone which, as the crow flies, does not extend more than 15 kilometres from the frontier of a Member State. Each Member State must however include within its frontier zone the local administrative districts part of the territory of which lies within the zone". *This idea of limited zones mainly applied within the six Common Market founder members, and was never used in Spain, Greece or the Scandinavian states, for instance.*

The Council of Europe's definition⁸ is a relatively broad one since it considers a frontier worker to be "an employed person who is employed in the territory of one Contracting Party and resides in the territory of another Contracting Party where he returns in principle every day or at least once a week". However, with regard to relations between France and Contracting Parties bordering France, the following rider was added: "a zone which does not, in principle, extend more than 20 kilometres on either side of the common frontier".

In short, the distance of the outer limit of these zones from the frontier varies between 10 and 50 km, according to the state or institution considered. At present, however, the "zonal" approach to frontiers is being seriously challenged by a more political and administrative approach (section 1.2.3) based on the aggregate territory of the local entities which have a frontier as their common boundary.

Where frontier zones are concerned, another consideration is the exercise of national sovereignty through the three conventional types of functions recognised, for instance, by the European Union in all its texts:

Physical frontiers: in the case of movements between neighbouring areas, barriers and controls at intra-Community frontiers exemplify the difficulties of European integration - *as sometimes illustrated* by restrictions applied to the Schengen Agreement *by certain states when they consider their security, in the broad sense, to be jeopardised.*

⁷ Charles Ricq in "Les travailleurs frontaliers en Europe, essai de politique sociale et régionale", preface by Denis de Rougemont, ed Anthropos, Paris, 1982, p. 25.

⁸ European Convention on Social Security, 1963, Supplementary Agreement of 10 March 1972, which came into force on 1 March 1977.

Technical frontiers: what is involved here is the dismantling of the so-called "technical" barriers that apply, for example, to the "free movement" of workers and members of the independent professions, and to services, public markets, movements of capital and goods in general.

Fiscal frontiers:

The special nature of the tax situation of frontier workers, *for example*, can be seen in the bilateral contractual provisions and the bilateral frontier agreements devoted to them. No Community directive on the subject has been issued so far, as certain states still have reservations or objections which are too strong for there to be *a single rule* in all 25 member states governing the taxation of frontier workers; the state of residence, however, *would take precedence over the place of employment*.

In the writer's opinion, the idea that should emerge is that of transfrontier fiscal equalisation rather than the place of taxation (whether at source or at the place of residence), *at least where workers are mobile*. This would make it possible to consolidate transfrontier co-operation financially in all the areas where it has developed or is destined to develop.

1.2.2 Frontier poles of attraction and conurbations

Each transfrontier region has its own specific characteristics depending on whether it has one or more urban poles of attraction or whether it is characterised by low-density urbanisation. Where industrial activities are concerned, although a comparison needs to be made between what is happening on each side of the frontier - types of products, the size and organisation of businesses and the dependent relationships between them - little thinking has been done so far in most transfrontier regions about how systems of interlocking urban frameworks could be organised and coherent, or complementary cross-frontier inter-urban networks built up.

It was the economists who first pointed to the importance of "poles of growth" and "axes of development" for the understanding of regions, including transfrontier regions. "A polarised region is a heterogeneous area whose various parts are complementary and maintain between themselves and with the dominant poles more exchanges than with the neighbouring region"⁹. In many cases the frontier disrupts or distorts the normal functioning of the polarisation(s) of these urban frameworks, and this gives rise to the "diseconomies of scale" recorded by economists in all transfrontier areas.

A polarised region is defined in terms of density, with the pole acting as a focal point for the exchange of goods or services whose internal density in comparison with the attracted or dominated area is always superior at every point in this area to that of other attractions. This concept of density can be extrapolated to other fields than that of the economy - for example, culture, via education, the media, health, administrative services etc. These socio-economic or socio-cultural functions all constitute sectors of attraction in a centre or metropolis, but their zones of attraction need not be of an equivalent spatial dimension. A multifunctional polarised region can become - in a transfrontier context - an area of synergy, partnership, complementarity and what economists call economies of scale.

⁹ Jean Boudeville, "Les espaces économiques", ed PUF, coll. "Que sais-je?", No. 950, Paris, 1971.

In this context of polarisation, from a pluridisciplinary viewpoint transfrontier regions may be seen in terms of:

- totality: does the transfrontier region form a whole? If so, in what fields and to what extent? With what actors and on the basis of what strategies?
- centrality: which are the centres or poles that form its urban framework? Where do they stand hierarchically? What are their reciprocal functions and their ties of dependence and interdependence?
- fields of force: how do the interests and strategies of the relevant groups, socio-economic forces, cultural agencies, *political parties*, *ecological associations*, etc, appear and develop?

Another basic approach to frontier regions involves drawing a distinction between organic or contractual relations and conflictual relations. This distinction is important in the case of transfrontier regions since they, more than others, are places where the interaction between functional, contractual relations on the one hand and/or conflictual ones on the other is very important: it is always theoretically possible for the partners concerned to find joint solutions when they face similar problems concerning the environment, employment, investment, social welfare, training or communications. But because of the systems into which they are perforce interwoven, transfrontier relations are also stamped with the mark of conflict. This is why in many frontier areas people wonder whether it is possible or desirable for a "transfrontier awareness" or a "transfrontier culture", based on true partnership rather than on a "mutual right to interfere", to emerge.

1.2.3 The political and administrative units that result from a state's territorial organisation

Transfrontier links and contractual relations - as is revealed by all aspects of transfrontier life in Europe - can be based not only on a multipolar or zonal notion of the frontier area, but also on the division into political and administrative territorial units that each state has adopted in the course of its history. These political and administrative divisions, established under federal systems, for example, are often very old and result from geographical differences, from forms of interdependence or hiatus between town and country, from the country's ethnic history, or simply from the reasoned choice of the central government.

Both the Council of Europe and the European Union regard a frontier region in the strict sense as a public territorial entity situated immediately below state level and having a common land frontier with one or several entities of the same type situated in a neighbouring state. These administrative and political divisions, at regional and/or sub-regional level, define the area of application of the national sovereignty of the states concerned and thus of transfrontier co-operation. *Transfrontier institutions are quite often instruments of public international law* based primarily on the political and/or administrative divisions of the states concerned.

It is interesting to note the decision by the Commission of the European Communities on 15 June 1994 to renew a Community initiative concerning cross-border co-operation (INTERREG II / 1994-1999)¹⁰; co-operation would henceforth take into account as "eligible areas" under this Community programme the "Territorial Statistical Units" (NUTS III) corresponding to départements for France, provinces for Italy, Kreise for Germany, etc, although this does not rule out the regional dimension as such for the same countries. This was followed by INTERREG III (2000-2006), which will be followed by INTERREG IV, *or to be more precise, the structural funds for the territorial co-operation objective (2007-2013)*.

A state's territorial organisation depends, of course, on its political system, which, as we saw earlier, may be centralised, decentralised, regionalised or federal. The political system determines the units into which the national territory is divided, based on criteria which may be purely administrative, or historical and geographical, linguistic and cultural, institutional and legal, etc. Or it may be based on a mixture of these criteria, varying from one country to another and according to the particular transfrontier situation. In spatial planning, for example, various techniques or instruments are possible – in particular in transfrontier co-operation – ranging from simple spatial divisions of a more or less specific nature following a national spatial development plan to a "contract" between state and region or between state and local authority, to direct consultation or co-operation between regions, conurbations and municipalities, or even exclusive or shared powers held by one type of region or another, depending on its political reference system.

Territorial organisation in the countries of Europe is now also affected by the broad principles of European spatial planning, in the form of the European Spatial Development Perspective (ESDP) for the 25 member states of the European Union or the "Guiding principles for sustainable spatial development of the European Continent" (12th Session of the CEMAT in Hanover in June 2000 and Recommendation (2002) 1 of the Committee of Ministers), following the 1st European Regional Planning Charter, adopted by the 6th session of the CEMAT in Torremolinos in 1983); this Recommendation, a "policy guideline document" has now been endorsed by all 46 Council of Europe member states. All transfrontier co-operation must now take into account these regional, national and European spatial planning strategies.

1.2.4. Transfrontier inter-municipal co-operation and transfrontier districts

The first transfrontier institutions, at least along the Rhine valley, were the fruit of municipal and inter-municipal initiatives. A case in point is the Euroregio set up in 1971 by 100 German and Dutch municipalities. On this inter-municipal scale, it became easier to define and solve the problems directly affecting the local area concerned, in spite of all the obstacles linked to the frontier effect, which will be analysed in Part 4.

Transfrontier inter-municipal co-operation is now leading to the notion and the new reality of the "transfrontier district". The *law of 13 August 2004 adopted by the French parliament empowers* local (mainly municipal and inter-municipal) authorities to form "transfrontier districts"¹¹: subject to France's international obligations, "in the context of transfrontier co-operation, local and regional authorities and groupings thereof may, with local and regional authorities and groupings thereof in neighbouring countries, form local co-operation bodies called European districts, which shall enjoy legal personality and financial autonomy. The purpose of the European district is to carry out missions of interest to each of

¹⁰ OJ No. C 180/60 of 1 July 1994 on the INTERREG II Community initiative programme, paragraph II.8.

¹¹ See CGCT (*Code général des collectivités territoriales*), Article 1115-41.

the public bodies involved and to set up and manage public services and the related facilities. It shall have legal personality under public law from the date of effect of the decision to establish it. Its creation shall be authorised by decision of the central government's representative in the region where the European district has its headquarters.”

1.2.5 European and transfrontier territorial authorities

This new *terminology* is used in the European Union's 3rd report on economic, social and territorial cohesion (14 July 2004). The exact meaning and substance of *these terms* will no doubt require subsequent clarification.

1.2.6 Towns separated by borders

In 2002 the Council of Europe rightly spotlighted the *specific case of towns and cities* divided by history¹². This is certainly a category of transfrontier situation that merits special attention because of the specific nature of the problems encountered. *Towns or cities through which a border runs, a typical example being Gorizia, spanning the border between Slovenia and Italy, have to be distinguished from those which have been juxtaposed, each with its own history, and even language, which have become neighbours after borders were shifted, for instance.*

The aforementioned LR-CT document indicates some examples of separated towns: Haparanda/Tornio (Sweden/Finland), Baarle-Hertog/Baarle-Nassau (Belgium/Netherlands), the trinational conurbation of Basel (France/Germany/Switzerland) and the Consortium Bidassoa/Txingudi (Spain/France). These might serve as examples to divided towns in states which are not members of the European Union, where the legal framework for transfrontier co-operation remains weak, and where joint planning and public services are therefore not yet properly established.

The success of transfrontier co-operation between such "divided towns" very much depends on there being a long-established legal framework, and, even more so, on transfrontier co-operation agreements between the municipalities concerned. The agreement between Baarle-Hertog and Baarle-Nassau covers virtually all activities related to economic, social and legal co-operation. There is a joint administrative body under the Benelux Agreement. Tornio and Harapanda have also signed a co-operation agreement on matters of organisation, economic issues and employment. The towns of Saint-Louis (France), Weil-am-Rhein (Germany) and Basel (Switzerland) have signed almost 20 such agreements on various fields of co-operation, including water management. Taking advantage of the opportunities which exist under the Bayonne Treaty between France and Spain, the towns of Irun and Hondarribia (Spain) and Hendaye (France) have set up a co-operation body (Consortium Bidassoa-Txingudi) registered under Spanish law and based in Irun (Spain) to cover all the fields in which the member municipalities have powers.

¹² See document LR-CT (2005) 2.

1.2.7. Euroregions

While the first “Euregio” was set up in 1958, the same year as the Common Market, and involved 100 German and Dutch municipalities, the truly new term “Euroregion” came into its own in the early 1990s, especially in the Council of Europe and the countries of central and eastern Europe, clearly placing the border areas concerned squarely in Europe once and for all and expressing the will to introduce there the genuine local and regional democracy which is the yardstick for all European states which are members of the Council of Europe and European Union.

Some Council of Europe texts¹³ define the Euroregion, rather strictly and therefore reductively, as “an organisation for transfrontier or interterritorial co-operation between territorial communities or authorities of two or more contracting Parties (...) with general responsibility for promoting, supporting and developing neighbourly relations between its members in their common areas of responsibility insofar as this is in keeping with the contracting Parties’ international commitments”. According to this restricted definition, therefore, a Euroregion brings together, *mainly for financial reasons, public-law partners such as local or regional authorities* from neighbouring states (or their groupings) in a common entity. This geographically and politically restrictive definition disregards one of the first Euroregions to come into being in south-east Europe, namely the Carpathian Euroregion, in which five states were involved from the outset. It is important, therefore, to have a broader, more general definition of the Euroregion, *although the term is regarded in some circles as covering many possibilities, without genuine political scope. The AEBR, acting on instructions given under the LACE programme by the European Commission, with a view to better management of the Community's INTERREG funds, came up with the following criteria for the identification of a "Euroregion"¹⁴, firstly in terms of organisation:*

- “- Amalgamation of regional and local authorities from both sides of the national border, sometimes with a parliamentary assembly;*
 - according to private law based on national associations or foundations from both sides of the border according to the respective public law;*
 - according to public law based on international treaties which also regulate the membership of regional authorities.*
- cross-border organisations with a permanent secretariat and experts and administrative staff.*

and then in terms of method of working:

- “development and strategic-oriented co-operation, no measures based on individual cases; always cross-border-oriented, not as national border region; no new administrative level;*
- hub for cross-border relations; citizens, politicians, institutions, economy, social partners, organisers of cultural events etc.;*
- balancing between different structures and powers on both sides of the border and with regard to psychological issues;*

¹³ See LR-CT (2004) 15 p.10.

¹⁴ See European Charter of Border and Cross-Border Regions, new version, AEBR, Gronau, 7 October 2004; also see Action Programme for Implementation of the Charter.

- *partnership cooperation, vertically (European, governmental, regional, local) as well as horizontally beyond the border;*
- *implementation of cross-border decisions at national level and according to procedures applicable on both sides of the border (avoidance of competence and structural power conflicts);*
- *cross-border participation of citizens, institutions and social partners in programmes, projects and decision-making processes;*
- *direct initiatives and the use of own resources as preconditions for help and support of third parties”.*

Combining these two approaches, the narrow and the general, one might say that a Euroregion is a transfrontier institution involving public and private participants, which establishes transfrontier relations of a promotional nature between local, regional or national authorities, always with the approval, or under the auspices, of central government.

A number of states, especially in western Europe, still hesitate to use the term Euroregion because of the underlying connotations, for example of a direct partnership of European regions-institutions or even a possible geopolitical opening towards genuine transfrontier political regions, which would bring about a redefinition of Europe’s borders, contrary, of course, to the principles of stability and peace on which all our European institutions are based.

Let us conclude this brief conceptual introduction to *the Euroregion* by these words from another LR-CT document of July 2004, *one which was intended to provide solid support for the legal approach to a possible 3rd protocol to the Madrid Outline Convention*: Euroregions are an increasingly popular model for the management of transfrontier co-operation. It is difficult to define a model Euroregion, however, because of the substantial differences in the size, organisation and composition of the entities concerned in Europe’s various border regions.

It is essential *as well* that Euroregions exist and operate within a well-defined legal framework, in terms of both domestic and international law, in a spirit of complementarity with the activities launched by the European Commission under its “new neighbourhood instrument” and the adaptation of its structural funds to the post-2006 situation through a new community instrument for transfrontier co-operation.

Were the Council of Europe to adopt an internationally acknowledged definition of the “*Euroregion*”, it might *perhaps* make the EU’s adoption of its own legal instruments and new structural fund management standards easier, even if it is difficult to define a model Euroregion because of the substantial differences in the size, organisation, composition and powers of the entities concerned in Europe’s various border regions.

1.2.8 Eurodistricts

Thus these Eurodistricts to some extent correspond to public-law Euroregions. It has to be said straight away that Eurodistricts are different in nature from European districts. They have as yet no legal framework, whereas European districts fall into a category of co-operation body recently created by the French law of 13 August 2004 (cf section 1.2.4 above). Rather than define the term Eurodistrict, let us examine the case – highly symbolic for European history – of the Strasbourg-Kehl Eurodistrict.

Because of the proximity of the Council of Europe, the new Strasbourg-Kehl Eurodistrict merits special attention as it symbolises, in a very well delimited space, what two territorial authorities can achieve in transfrontier co-operation in spite of the vicissitudes of their shared history. By a bilateral decision announced in a joint declaration in January 2003, the French and German governments decided to promote a new concept, the Eurodistrict, in the sphere of decentralised transfrontier co-operation:

“We thus call for (...) the development of inter-municipal transfrontier co-operation. With a view to learning more about new forms of co-operation and hosting European institutions, we support the creation of a Strasbourg-Kehl Eurodistrict with good transport links, and call for the creation of further Eurodistricts” (joint declaration of 22 January 2003).

This Strasbourg-Kehl Eurodistrict, being a pilot project, should serve as a prototype for other transfrontier regions and permit the acceleration of projects concerning Strasbourg. Its continuation was confirmed by the *Conseil interministériel de l'aménagement du territoire (CIADT)* in December 2003.

Clearly, the purpose of the Eurodistrict is “to learn more about new forms of co-operation and host European institutions” within the perimeter formed by the Urban Community of Strasbourg and the Ortenaukreis (850,000 inhabitants). The Eurodistrict can only be based on the strong determination of the local authorities concerned to attain new heights in transfrontier co-operation. The Eurodistrict is intended to facilitate and give renewed impetus to the existing activities of the local authorities concerned, which in turn will need to develop and implement their shared visions. The Eurodistrict must have its own decision-making body: the starting point of the co-operation will be a local transfrontier co-operation grouping based on the model of the Karlsruhe Agreement signed on 23 January 1996. A number of responsibilities should make up the hard core of the Eurodistrict in the initial phase, but it should gradually grow to take on wider responsibilities.

Other Eurodistrict projects have since flourished in the regions around the Rhine, such as:

- The “Freiburg Region/central and southern Alsace” *Eurodistrict's* aim is to turn the area it covers into a transfrontier region with a shared regional identity;
- *Saarbrücken/East Moselle*: the elected representatives of Saarbrücken, Sarreguemines, Freyming-Merlebach and Forbach sent a letter to the Ministers concerned in September 2003 proposing to form a Eurodistrict;
- The Regio Pamina local transfrontier co-operation grouping also issued a declaration in February 2004 with a view to creating a Pamina Eurodistrict, and the list goes on.

1.3 Definition according to *common problems encountered by transfrontier regions*

This first part, on how to define a transfrontier region, has illustrated the importance of the geographical approach (border regions), the economic approach (*growth or development centres*) and the political approach (territorial authorities). Another possibility is a variable geometry approach, according to the type and importance of the problems they face.

Denis de Rougemont wrote in 1978¹⁵ that a transfrontier region was defined first and foremost by the range of common problems faced. These related, *in his view*, to space, and to all sectors of economic, social and cultural activity, *with each problem requiring a different approach*.

Environmental and spatial planning problems are those which primarily characterise transfrontier areas and influence the contractual solutions outlined by the territorial communities located on each side of the frontier. At a deeper level, the special nature and originality of the problems of frontier areas are shaped by the imprint of history. Once the "*Marches*" of states, in the course of time these areas have been assigned increasingly sectoral functions and have lost their military role. The legal and educational structures of frontier regions that the see-saw of historical events tipped into this or that national territory nevertheless retain distinctive features that stem from the instability of the border line and distinguish them from those of regions in the heartland of the nation. This history and these distinctive structures *have shaped new attitudes* towards the frontier and frontier areas in most of the old and new frontier regions of central and eastern as well as western Europe. All this accounts for the complexity and uniqueness of the frontier problem in all parts of Europe. Every frontier region has its problems, and this is why it is so difficult to produce one handbook for all the frontier regions of *46 European states*.

Certain peripheral areas which for religious, economic or political reasons have always been frontier areas, embody for their inhabitants the idea of "difference" rather than the idea of "resemblance". And this makes defining frontier areas according to their common problems, be they general or sectoral, even more difficult.

1.4 Definition of a transfrontier region based on the daily problems facing the local populations

At the request of a large number of representatives of the Council of Europe's 46 member *states* within the CDLR and LR-CT, this revised handbook now provides a non-exhaustive list of the main practical problems facing the inhabitants of Europe's frontier regions in their daily lives. While these problems are very varied and complex, especially since the enlargement of the Council of Europe and the European Union, a certain typology is identifiable, making it possible to break down the problems into six broad categories: economic, social, demographic, spatial planning, administrative and tax-related, cultural. *As all these problems occur in frontier areas of varying sizes, some writers have defined transfrontier regions as "variable-geometry" areas of everyday life*¹⁶.

¹⁵ Denis de Rougemont, *L'avenir est notre affaire*, éd Seuil, Paris, 1978, p. 107.

¹⁶ One of them is Denis de Rougemont, *op cit*.

1.4.1. *Everyday economic problems of frontier populations*

These may vary from one frontier area to another, but generally include the following:

- For small and medium-sized businesses (SMEs) engaged in crafts, commercial activities or services, the possibility of exercising their activities on both sides of the border are limited in time or space;
- Administrative, fiscal, social and banking obstacles to their relocation across the border;
- The opening – or lack of it! – of public contracts to suppliers on both sides of the border;
- The sometimes fierce competition over certain local or imported products, or because of differences in taxation, wages and welfare conditions between neighbouring states;
- The working conditions of professional and self-employed people, which may be subject to different degrees of administrative supervision or hampered by sometimes legal corporatist strategies;
- The distortion of competition by the public authorities, through various aids and incentives, ranging from the loan of premises, to tax incentives, reduced social contributions, etc..., hindering balanced cross-border economic relations for both SMEs and larger firms.
- In the transport field, the range of action of taxis, coaches or company vehicles is often limited;
- In agriculture, forestry, fruit growing and viticulture, the difficulties are linked not only to the number of border crossing points but also to the “technical characteristics” of the products of this primary sector of the economy (including chemical treatments and breed, as well as restrictions on GMOs);
- *In telecommunications, public and private telephone companies' "international" tariffs apply the moment a call crosses a border, even if only by a few hundred metres;*
- *Post offices distribute "local" mail via capital cities or major centres, rather than sorting and distributing locally, etc.*

These are some of the everyday economic problems encountered in frontier regions, in the north, south, east and west of Europe.

1.4.2 Everyday problems of frontier populations in respect of employment and social protection

These problems mainly concern border workers, local “migration” and the related welfare benefits and contributions.

At present more than 520,000 border workers, at least a third of whom work in Switzerland, cross one of Europe’s borders every day to go to work, in permanent or seasonal jobs, on the other side of the border. A number of variables, weighted differently according to the regions concerned, explain these daily movements of border workers: economic inequalities, labour market insufficiencies or segmentation, ease of access to the cross-border labour market, currency exchange rates, real estate speculation, business investment patterns and vocational training, shared languages, etc. In most cases border workers are not regarded as migrants in the general sense of the word. At the European level –European Union and/or Council of Europe – there is no such thing as “frontier worker status”.

Transfrontier mobility depends on a number of factors: freedom to choose one’s place of residence and of work; leisure and cultural facilities; training centres and health care; shopping centres and the price of goods and services; transfrontier associations; knowledge of the neighbouring country’s language; cross-border marriages; ethnic origins, etc. The frontier effect is felt to the full in the economic and social fields, depending on the absence or presence of economic and social “bridges” or “passageways” between the political and social systems concerned.

The differences in social systems from one country to another often give rise to specific problems of adaptation or non-adaptation in border areas. The differences in social protection and social security systems can result in considerable adaptation difficulties for people exposed to them on a daily basis. Even inside the European Union, the principle of accumulation of years of social contributions made in different places of residence and of work is not always applied because of the great diversity and complexity of the administrative systems involved. Similarly, even though a majority of the Council of Europe’s member states have ratified both the 1961 Social Charter and the 1963 Social Security Code, many difficulties subsist in border areas because of the lack of “convergence” and harmonisation of social systems. The definitions of unemployment, invalidity, industrial accident, retirement age, supplementary benefits, family allowances, survivor benefits, etc have yet to be harmonised.

In addition to all these economic and social problems there is the matter of acknowledgment of equivalent diplomas and qualifications, mutual information about labour markets and welfare or taxation systems, formalities required at border crossings and so on. *The small numbers of frontier workers, currently some 520,000, also bear witness to the low level of European integration, even at local level, in a Europe that contains thousands of kilometres of borders.*

1.4.3 Everyday problems of frontier populations in respect of infrastructure and regional planning

The sorry truth about regional planning in Europe today is that administrative charts stop at the border, even though the Council of Europe and its member states drew up guidelines on regional planning in the 1970s; the European Union *did not achieve much more* with its 1999 European Spatial Development Perspective, *and states still do not envisage any "Community competence" where regional planning is concerned.*

Some progress is being made, visible mainly in Europe's major transport networks (cf. the 10 main community corridors of 1997), although transfrontier micro-areas and local cross-border transport are perhaps being neglected.

In many transfrontier regions, therefore, goods still have to be unloaded and reloaded at borders, not to mention the different modes and times of public transport. And at border crossings customs offices may only open at certain times or have no special lanes for frontier workers.

Many distortions also exist in the cross-border delimitation of special zones: industrial and leisure zones, nature reserves and building and housing areas, etc, and even in respect of the width of the frontier zones where special rules apply to local border traffic.

Major infrastructure facilities are sometimes built on one side of a border, such as sewage treatment facilities, slaughterhouses, refineries, or on a larger scale, high-voltage electric power plants, oil or gas pipelines, regional or national airports, etc, without any consultation, while cultural, social or health-care facilities, for example, exist on the other side.

1.4.4. Everyday problems of frontier populations in the demographic and health fields

Population science is mainly concerned with age pyramids and the problems variations in age balance cause in specific regions, not to mention birth rates, death rates and fertility, the size of the active population, unemployment and so on. It rarely, if ever, makes allowance for transfrontier population basins. One of the principal reasons is the fact that there is little if any transfrontier demographic *movement* or, more specifically, mobility linked to employment, training, health care, leisure activities, tourism, cultural associations, religious practices, cemeteries, or *quite simply* the lack of real transfrontier regional statistics.

In the health field in particular it is difficult to think and act in "transfrontier" terms. Consider the territorial limitations of national health systems for frontier populations, for example in respect of admission to hospitals or medical and social establishments, the payment of hospital fees, variations in medical fees, the opening of individual or group surgeries, or vocational training for doctors.

Then there are the problems facing *certain* minorities living on *both* sides of a border. One could write a whole book about them, starting with a chapter on definitions, including international definitions which, at present, still consider *minorities'* rights on an individual, rarely on a collective level. The Council of Europe could usefully produce a handbook on the vast and complex subject of minorities, particularly in frontier regions, taking inspiration from its Convention on Human Rights and from the social and cultural rights *that entails*.

1.4.5 *Everyday problems of frontier populations in the administrative and taxation fields*

There is no denying the frequent lack of bridges, all over Europe, between administrative authorities with similar responsibilities in specific fields or at least comparable problems to solve. The reason is simply that over the years each political system has forged a network of administrative services *at national and regional levels*, with their own hierarchies and functioning according to the rules, laws and procedures specific to each system. Little exists in the security field, for example, in terms of police jurisdiction, cross-border chases, exchanges of information between police, customs or judicial officials, be it in connection with small-scale local trafficking, drugs, money laundering, fraud, organised crime, etc. Civil protection in the event of natural or technical disasters is another area where there is little sharing of information, which does not facilitate transfrontier co-operation in such matters. And so it goes on.

Other administrative problems include residence and work permits; driving licences; road traffic regulations; vehicle registration and taxation; company cars; driving schools; customs authorisations for equipment or objects for exhibitions, concerts, cultural events, plays, television and radio productions; visas for school outings and family visits (“day passports”); vaccination of animals; “technical” regulations for agricultural, industrial and craft products, etc.

If there is one field where national sovereignty is the rule, it is taxation. Even if bilateral (rarely multilateral) agreements exist in many cases to avoid “double taxation” (at the place of residence and/or the place of origin of the income from work or capital), in many frontier areas problems still arise for the local populations: types of direct or indirect tax, VAT rate, tax deductions, tax assessment basis (gross or net income), fines, etc. Exchanges of tax information are always the preserve of the national tax authorities, even in the European Union, where the subject of tax harmonisation is still a highly controversial issue, if not actually taboo. As for the emergence of “transfrontier taxation”, states continue to dig in their heels, except in certain cases – like Luxembourg and Switzerland – even if they all acknowledge that, in frontier regions at least, a genuinely balanced system should take into account the respective cost of the infrastructure needed for employment (workplace) and housing (place of residence). Harmonisation of European income and wealth tax criteria will not come to pass in the foreseeable future; transfrontier regions will have to be patient, especially where transfrontier tax equalisation is concerned.

1.4.6 *Everyday problems of frontier populations in the socio-cultural field*

The socio-cultural field is a vast field for transfrontier relations; it has often been said that in all of Europe's border areas, mental and cultural borders continue to exist long after the other functions of borders have disappeared. The socio-cultural dimension of transfrontier relations is becoming increasingly important, both for the Council of Europe and for the European Union.

Let us look at some of the everyday transfrontier socio-cultural practices that can be sources of problems, starting with the media, which could help to forge transfrontier cultures or identities. Generally speaking, local and/or regional media (newspapers, radio stations and television channels) rarely cross borders, even when the same language is spoken on both sides. And where tests have been carried out, they have often failed dismally, for commercial reasons (reserved advertising; readership or audience ratings; transmitter power; ban on locating relay stations near borders, etc) and also, of course, for cultural reasons (types of articles or programmes; events covered; opinion-shaping media or plain news media; interests of readers and viewers, etc).

Two facts about the media in border areas are often highlighted: first of all, local, regional and national radio and television relay stations are almost never built on the other side of a border, and sometimes interference from overly powerful transmitters can interfere with programmes in these areas; then there are the fears in certain border regions that international or national news, radio or television networks will take over the local and regional advertising markets, news and subject matter: Europe's "unity and diversity" scarcely seem to count for much according to various regional printed and audiovisual media professionals we interviewed.

Still in the cultural field, certain transfrontier working communities or Euroregions have introduced a "cultural passport" *facilitating access to* museums, theatres and other cultural venues on both sides of the border. Other sources of daily difficulties are the cultural status of *certain* minorities and the rights and obligations of political refugees resident in transfrontier regions or conurbations, *pending the provision of definitive solutions by states (cases such as airports in border areas)*.

Training is another vast sector where daily hindrances are observed: "credits" and recognition of initial or in-service training; validity of training periods and/or apprenticeships; status of students, apprentices and trainees. Students' social cover is sometimes a problem when the place of study or training is different from the place of residence. And the transfrontier learning and use of regional *or* national languages still leaves a lot to be desired in spite of the efforts of local, regional, national and European authorities (see, for example, the Council of Europe's Charter for Regional or Minority Languages)¹⁷.

¹⁷ The Charter was based on a text proposed by the Standing Conference of Local and Regional Authorities, adopted with the status of a Convention by the Committee of Ministers on 25 June 1992, and opened for signature on 5 November 1992; it came into force on 1 March 1998.

Another aspect of social life that causes transfrontier authorities and their populations considerable problems is housing. National or regional social housing policies rarely concur on two sides of a border: while low-cost housing estates may be built on one side of the border for reasons of employment, financial gain, exchange rates, etc, the other side of the border may be a green belt or wasteland. Housing aids and benefits are also rarely comparable on both sides of the border, especially where the authorities try to curb cross-border speculation. Not to mention the fact that certain local and regional authorities “lure” labour trained on the other side of the border with higher salaries, job security or advantageous exchange rates, without ever having contributed to their training.

1.5 Typology of territorial co-operation in Europe

The term “territorial” covers either the whole of Europe – see the 3rd European Union report, dated 14 July 2004, on “economic and social cohesion in Europe” – or the local and regional authorities of Europe.

It would be a good idea to harmonise the terminology used by the Council of Europe, the European Commission, the *Congress of Local and Regional Authorities and the Committee of the Regions* in the field of trans-European co-operation by local and regional authorities, especially the terms “transnational”, “transfrontier (cross-border)”, “inter-territorial” and “interregional” co-operation.

1.5.1 Definition of transfrontier co-operation for the Council of Europe

For the Council of Europe¹⁸ transfrontier co-operation is co-operation between territorial communities or authorities in a geographical area that spans a border between two countries. It concerns frontier zones. Inter-territorial relations, on the other hand, are relations between non-contiguous territorial communities or authorities located in different countries. It should be added that the European Outline Convention and its protocols reserve the expressions “transfrontier co-operation” and “inter-territorial co-operation” to external relations of local and regional authorities that do not fall within the scope, and are not directly subject to the rules, of international law (agreements between states can be very flexible with regard to arrangements for transfrontier co-operation between their local and regional authorities; the Outline Convention even provides models for these arrangements). Thus agreements between territorial authorities are not directly subject to international public law. Where intergovernmental agreements exist, they lay down the conditions and modalities of this co-operation, without automatically elevating it to the rank of international public law.

¹⁸ See the Council of Europe’s Madrid Outline Convention on transfrontier cooperation, 15 May 1980.

1.5.2 Definitions of the different forms of inter-territorial co-operation for the European Union

The terminology of the Committee of the Regions is, in principle, the same as that of the Council of Europe. *In its March 2002 opinion* on “Strategies for promoting cross-border and inter-regional co-operation in an enlarged EU – a basic document setting out guidelines for the future”¹⁹, the Committee proposes the following definitions:

- a. “cross-border co-operation” implies bi-, tri- or multilateral co-operation between local and regional authorities (semi-public and private players may also be involved in this context) operating in geographically contiguous areas. This applies also in the case of areas separated by sea;
- b. “inter-territorial *or inter-regional* co-operation” implies bi-, tri- or multilateral co-operation between local and regional authorities (semi-public and private players may also be involved in this context), operating in areas which are not contiguous, *but have contractual relations for cultural, technological, commercial or other reasons*;

It is worth noting that the Committee of the Regions frequently uses the expression “interregional co-operation” in place of the *Council of Europe's preferred term* of “inter-territorial co-operation”. *The European Union and all its organs now seem to want to use the term "territorial co-operation", encompassing transfrontier co-operation in the strict sense, interregional co-operation and transnational co-operation.*

The Committee also distinguishes a third form of trans-European co-operation – transnational co-operation – which differs from the latter only insofar as national (central government) authorities are involved in the inter-territorial relations:

- c. “transnational co-operation” implies co-operation between national, regional and local authorities in respect of programmes or projects. This form of co-operation covers *larger areas* and involves players from at least two EU Member States and/or non-EU states.

This triptych is partly inspired by the European Commission’s 28 April 2000 guidelines for the community initiative INTERREG III (2001-2006), which is currently in progress and is made up of three strands, pending the arrival of INTERREG IV, *or to be more precise, the future structural funds for the territorial co-operation objective (2007-2013)*:

- a. cross-border co-operation between neighbouring authorities, intended to promote integrated regional development between border regions, including external borders and certain maritime borders (strand A);
- b. transnational co-operation involving national, regional and local authorities, which aims to promote better integration within the Union through the formation of large groups of European regions (strand B);

¹⁹ Opinion 181/2000, of 13 March 2002, Committee of the Regions, Brussels.

- c. interregional co-operation, which aims to improve the effectiveness of regional development and cohesion policies and instruments through large-scale information exchange and sharing of experience (strand C).

1.5.3 “Decentralised co-operation” - a term initially used only by the French authorities

Decentralised co-operation enables all territorial authorities, as well as the various forms of inter-territorial co-operation mentioned above, to participate, under the auspices of their central governments, in the different transfrontier initiatives that take place in most frontier regions, or in an expansion of their external relations. The draft outlook report on cross-border co-operation also uses the term “decentralised co-operation” (paragraphs 1.6, 1.9 and 2.3) in reference to the various forms of trans-European co-operation between territorial authorities in different states.

According to the Congress of Local and Regional Authorities of the Council of Europe, “this term should be avoided in this context as it refers only to the activities of “decentralised” authorities, ie public authorities with no legislative power.

It is important always to bear in mind the typology, and therefore the history, of Europe’s four main political systems, which contribute so much to its wealth and diversity, as we saw earlier. In the eyes of the French Government, for example, decentralised co-operation is a “freedom conquered by the local authorities, ... now recognised by law ... which has become an institutional and political reality ... a sound value in France’s external relations”²⁰.

Decentralised co-operation is based on binding agreements between the French authority and a clearly identified partner. It encompasses all the international co-operation between one or more local or regional authorities (regions, departments, municipalities and groupings thereof) and one or more foreign local authorities in their mutual interest. Transfrontier co-operation is a particular form of decentralised co-operation.

Decentralised co-operation must also be distinguished from “external activities of territorial authorities”, a broader notion covering all activities conducted by regions, departments, municipalities and groupings thereof abroad. These activities – officially acknowledged in a circular of the French Prime Minister dated 26 May 1983 – include not only decentralised co-operation, but also humanitarian and emergency aid, economic and cultural promotion, loans, etc. They do not necessarily take the form of conventions or agreements with foreign local authorities.

As interesting as they may be, this handbook, intended for all Europe’s transfrontier regions, is not the place to analyse the legal framework (including compliance with the law), the practices, the partners, the legal and financial tools and the numerous concrete examples co-ordinated by the Ministerial Delegate for the external activities of France’s territorial authorities.

²⁰ Statement by Mr Charles Josselin, Minister responsible for Co-operation, *Guide de la co-opération décentralisée, La Documentation française*, Paris, November 2000.

1.5.4 “Transfrontier governance”

In the last two decades the term “governance”, without any exact legal definition as yet, has gradually permeated all forms of redistribution of public or private powers and authority, be it in the European institutions, national governments, local and regional entities, multinational corporations or SMEs.

In 2000 the European Union published its “White Paper on European Governance”²¹ as a “political priority” of the Commission, presenting it as a means of “enhancing democracy in Europe and increasing the legitimacy of the institutions” and consolidating the “community method”. Certain articles of the new Constitutional Treaty of the European Union reproduce passages from the White Paper which highlight the close links between governance and:

- economic, social and territorial cohesion
 - local and regional self-government
 - Community ‘acquis’
 - participatory democracy
 - administrative co-operation
 - the principles of subsidiarity and proportionality, etc.
- (see Articles I-3 ; I-5; I-49; I-193)

In an opinion dated 2 July 2003, the *Committee of the Regions*, an advisory body of the European Union, also stressed the importance of local, regional, interregional, national and European governance, emphasising the notions of dialogue, consultation, participation, partnership, contractual policy and, above all, the irreversible local and regional dimension of the European Union.

The “transfrontier” dimension is increasingly present in this approach to governance. Transfrontier governance” will no doubt have to go through the different stages and overcome the various obstacles analysed in this handbook. More than other forms, however, this “transfrontier governance” embodies all the classic features of governance, including the redistribution of power between the public authorities, civil society, public and private players, associations, etc, together, for example, with increased efforts to develop transfrontier decision making, transfrontier responsibility, transfrontier participatory democracy and methods and tools for taking transfrontier problems and solutions into account.

Good local and regional governance, in the eyes of the chairmen of the legislative federal state parliaments of Europe (the CALRE conference), for example, has repercussions on:

- relations between the people and local and regional authorities;
- relations between the people and central government;

²¹ White Paper on European Governance, European Commission, Brussels, June 2000 – see Articles I.3; I.5; I.49; I.193.

- relations between local and regional authorities and central government;
- relations between local and regional authorities themselves.

The *CALRE* chairmen hope that when the Heads of State and Government of the Council of Europe's member states meet in Warsaw on 15-16 May 2005 for their Third Summit, they will include good local and regional governance in the strengthening of democracy for all the people of Europe. I might add: *whichever of the democratic* political systems is in force in the countries of this Europe of ours.

Conclusion to part one

Without attempting to be exhaustive, the aim of *the first part* of this handbook was to review the various notions involved in defining a transfrontier region, with everything it entails in terms of space, policies and legal and institutional arrangements. It is up to each region and each state to see where it fits in and use the ideas contained in this handbook that seem best suited to its history and democracy and to the fundamental aims of European construction.

Whatever the form and content of their neighbourhood relations, transfrontier regions or authorities will continue to be functional and contractual spaces capable of responding to shared problems in similar ways, so *they are not political regions in the strict sense of the term*. It is not a question, *therefore*, of forging actual "transfrontier region-states", a wish voiced – rarely, fortunately – by certain movements or organisations, which would merely distort what is in fact a new European geo-political concept, questioning Europe's present borders or once again making them objects of "conflict".

Part 2: Encouraging the emergence of transfrontier institutions via international public law through the creation of appropriate legal instruments

A transfrontier relationship between local and regional communities may be formal or informal, primary (i.e. spontaneous), or secondary (i.e. organised). Transfrontier institutions are intended to promote this type of organised relationship. If such institutions are to become more widespread, this does not mean that there is a single universally and literally applicable formula for them. The variety and complexity of the regional frontier phenomenon are such that a range of formulas for transfrontier co-operation must be invented and tailored to fit the different regional contexts, even if a "framework solution" may be suggested for the whole of Europe, with reference to Council of Europe and European Union studies.

2.1 Conceptual approaches to transfrontier institutions

Two definitions can be made of transfrontier institutions, one empirical, the other legal:

2.1.1 Empirical definition

The expression "frontier institution" in the broadest sense denotes any collective relationship across a frontier with at least publicly recognised, if not necessarily official, status. It may cover situations ranging from a relationship endorsed by an intergovernmental agreement to the close links established between associations on different sides of a frontier. All these relationships, institutionalised by agreements, protocols, statutes or lasting and regular contacts, must have four basic parameters which tie in with any definition of the transfrontier region:

- an area of varying size, delimited to a certain extent;
- communities or administrative units separated by a common frontier;
- local and regional functions, whether single, multiple or general, with corresponding powers;
- *similar problems to solve through concerted action in synergy.*

Two succinct examples, one drawn from French legislation and the other from a Swiss constitutional text, each in its own terms, corroborate this definition:

2.1.1.1 The French example: the Institutional Act on Decentralisation, of March 2004

The French decentralisation laws of February and March 1982 specified the new powers of French territorial authorities in respect of transfrontier relations. The concept of consultation was superseded by that of co-operation²².

²² Draft law on the rights and freedoms of communes, départements and regions, adopted at 3rd reading by the French Parliament in January 1982, Art. 65 (3).

"With the authorisation of the government, the Regional Council can decide to organise, with a view to concerted action and in the framework of transfrontier co-operation, regular contacts with decentralised foreign communities possessing a common frontier with the region".

Furthermore, although the concept of "decentralised co-operation" is in fact specifically French, it is not a mere synonym of what the Council of Europe refers to as "transfrontier co-operation": encompassing not only transfrontier co-operation, but also agreements with local authorities worldwide, subject to these agreements relating to those authorities' fields of competence and meeting France's international commitment.

2.1.1.2 The Swiss example: the new Federal Constitution, accepted in October 1999 by the majority of the Swiss people and the majority of the 26 cantons and demi-cantons

Article 56 reads:

"1. The Cantons may conclude treaties with foreign countries within the scope of their powers.

2. These treaties may not be contrary to the law nor to the interests of the Confederation nor to the laws of other Cantons. Before concluding a treaty, the Cantons must inform the Confederation.

3. The Cantons may deal directly with lower ranking foreign authorities; in other cases, the relations of the Cantons with foreign countries shall be conducted by the Confederation acting on their behalf".

2.1.2 *Legal definition*

In the strictest and most formal sense of the term, a transfrontier institution is an international instrument recognised by international law as an appropriate context for relations in frontier areas. This international instrument, in relation to its field of application, rests on the administrative subdivisions of the states concerned as mentioned earlier. Section 2.2 briefly analyses possible formulas for these transfrontier institutions derived either from international or from inter-regional agreements. However, it should be pointed out beforehand that these institutionalised relations are the embryonic forms of transfrontier institutions and clearly open up channels that are indispensable to any area separated by a frontier. If they become permanent, they may even form the basis of such institutions. One reason for the emergence of direct transfrontier relations between infra-state public communities which should be borne in mind is that states find it difficult to cope rapidly and satisfactorily, primarily in frontier zones, with all the tasks for which they are responsible, and that the "proximity relationship" (with its synergy effects) offers benefits to infra-state communities separated by a frontier.

The second reason for the emergence of institutionalised transfrontier relations is the transnational dimension assumed by any common problem in a transfrontier region. In future, one of the solutions envisaged for a while by the Council of Europe was to extend responsibilities under the domestic legal system to transfrontier communities, whatever the domestic responsibilities of the sub-state entities. The European institutions and state governments alike are now endeavouring to develop new instruments for co-operation at international level - instruments designed to recognise a sphere of responsibility within which "transfrontier working communities" can establish direct transfrontier relations between "sub-

national" authorities, although still under states' control, and instruments for co-operation between national governments in which transfrontier communities would play a suitable part.

2.2 International agreements, international law and transfrontier relations

2.2.1 Background to some international agreements

This approach implies the recognition by states that certain specific issues within clearly defined areas and limits of responsibility may, even though they appear to be "international", or at least transfrontier or transnational, not come under the state's exclusive authority to conduct international relations but may be the direct concern of infra-state public entities, at least where application is concerned. States accordingly undertake by an international agreement - i.e. between states - to recognise that, under their domestic legal system, their frontier communities are empowered to conduct relations directly, but always under their auspices, and conclude legal transactions, with their approval, with frontier communities located on the territory of another signatory state. The agreements in question thus seek to promote a redistribution of powers in public international relations between central government and transfrontier communities, rather than to develop new mechanisms for inter-state co-operation. This objective does not yet seem to have been achieved by existing agreements.

It is very much to the Council of Europe's *credit* that it was the first organisation, in May 1980, to produce an Outline Convention on transfrontier co-operation, based on a number of transfrontier experiences, the first of which *had involved* Scandinavian frontier regions, in the early 1960s, followed by others in the Rhine regions and finally in the Alpine arc and the Pyrenean and Jura regions.

Just a few of these pre-1980 experiences were, *not in chronological order*:

- *Oresund Council*
- *Sarlolux*
- *North-Calotte Council*
- *Euregio (based in Gronau, on the border between Germany and the Netherlands), which led to the birth, in July 1971, of the Association of European Border Regions*
- *Maas-Rhine Euregio*
- *Ems-Dollart Euregio*
- *Rhine-Waal Euregio*
- *Regio Basiliensis*
- *Comité régional franco-genevois*

- Arge-Alp (*central Alps*)
- Alpe-Adria (*eastern Alps*), etc.

2.2.2 *The European Outline Convention on Transfrontier Co-operation*

2.2.2.1. The European Outline Convention on transfrontier co-operation

The European Outline Convention has given rise to a number of later developments in transfrontier co-operation and is a kind of reference document for possible forms of transfrontier relations.²³

The European Outline Convention on Transfrontier Co-operation was signed in Madrid on May 21 1980. It was the outcome of years of reflection and effort within the Council of Europe. The Parliamentary Assembly intended it to be the keystone of the new edifice which the process of European construction was to privilege in its transfrontier areas.

"The principles stated in this text may afford a basis for a new doctrine of international law governing neighbourly relations across frontiers and the division of responsibilities among local authorities."²⁴

The Outline Convention in itself does not aim to cover all aspects of transfrontier co-operation, even expressly stating that its provisions "shall not prevent the Contracting Parties from having recourse, by common consent, to other forms of transfrontier co-operation"²⁵. This leaves a door open for subsequent developments ensuring the success of the Convention's application, that is its ratification by states and the use made of it by transfrontier communities. The instrument can thus be *evaluated*, and two protocols have already been added, with a third, on Euroregions, perhaps on its way soon.

The first important point is that the Outline Convention establishes a link between transfrontier co-operation and all neighbourly relations in general. Secondly, the provisions of the Outline Convention are not very restrictive. The structure of the Convention is unusual, consisting as it does of a relatively brief agreement, in line with usual practice in international treaty law, and a series of appendices in the form of "model and outline agreements, statutes and contracts" which are "intended for guidance only and have no treaty value"²⁶. The Convention *first and foremost urges all states to facilitate and promote* transfrontier co-operation between territorial authorities, this co-operation either being based *or not* on direct agreements between these communities, under the authority of the state governments.

By 30 April 2005, 33 of the 46 member states had ratified the Outline Convention.

The Convention distinguishes between two main forms of co-operation:

²³ Cf. appendix 1, European Outline Convention on Transfrontier Co-operation.

²⁴ Opinion No. 96 (1979), § 9.

²⁵ Article 3 § 3 of the Outline Convention.

²⁶ Article 3 § 1 para 2.

- a) concerted action and exchange of information
- b) the conclusion of agreements and arrangements involving the establishment of specific legal ties (art 2.§ 1)

The Convention is particularly interesting because it concerns the European states as a whole. It may thus be signed or even ratified by all new member states of the Council of Europe, and even by states having special guest status with the institutions of the Council of Europe.

The model agreements distinguish between two main categories defined according to the level at which the agreement is concluded.

Model inter-state agreements are intended to define precisely the context, forms and limits within which states wish territorial communities to act²⁷. Inter-state agreements also aim to eliminate legal uncertainties that may cause problems (definition of applicable law and competent judicial authorities). Thus they do in fact limit the freedom of local communities in their transfrontier relations. All these models of inter-state agreements are appended to this handbook.

2.2.2.2 The protocols

Since the signature of the Outline Convention, there has been some dissatisfaction concerning the legal personality of transfrontier institutions or the legal value of what they do, which explains the 2 or 3 protocols, which do not always seem to address the numerous practical problems encountered by frontier communities. The first two protocols and a rough draft of the third are appended to the handbook, as is the Outline Convention.

The additional Protocol to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (ETS No. 159) was opened for signature by the states Parties to the Outline Convention in Strasbourg on 9 November 1995. It entered into force on 1 December 1998. By 31 *March 2005* it had been ratified by 27 states and signed by 8 more. Its purpose is to strengthen the Outline Convention by expressly acknowledging, under certain conditions, the right of local and regional authorities to conclude transfrontier co-operation agreements, the value under domestic law of the action and decisions taken in the framework of a transfrontier co-operation agreement and the legal personality of the bodies set up by virtue of such agreements.

In the final Declaration adopted at the Council of Europe's Vienna Summit on 9 October 1993, the Heads of State and Government of the member states urged "the Organisation to pursue its work in this field (transfrontier co-operation) and to extend it to co-operation between non-adjacent regions". This invitation led to Protocol No. 2, which concerns inter-territorial co-operation in general.

²⁷ France, Italy and Spain have ratified the Convention, subjecting its application to the signature of prior inter-state agreements. The reason invoked was that it was important to provide a satisfactory legal basis, especially with regard to the foreign State concerned, for such actions as the communities might undertake. These countries have recently withdrawn this reservation, but, in practice, have set up bilateral agreements so as to build transfrontier relations more effectively for all their local authorities.

Protocol No. 2 to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (ETS No. 169) was opened for signature on 5 May 1998. By 31 March 2005 it had been ratified by 8 states and signed by 12 more. It entered into force on 1 December 2001, four ratifications being necessary for its entry into force.

The aim of this protocol is to provide a legal framework for relations between territorial communities or authorities in two or more contracting Parties, including co-operation agreements other than transfrontier co-operation between neighbouring authorities. These relations are what we call “inter-territorial co-operation”.

Under Protocol No. 2, territorial authorities or communities have the right to engage in inter-territorial activities and conclude inter-territorial agreements in fields of common competence, in keeping with the procedures laid down in their statutes and the law and international commitments of their respective countries.

2.2.2.3 Towards a possible 3rd protocol

Still on the drawing board, the possible 3rd protocol seems, at least for certain states, to correspond to the following aims and needs.

Considering the shortcomings in the first two protocols concerning the public law prerogatives of transfrontier co-operation bodies, the differences in the member states’ legal systems, the increasing number of Euro-regions, especially in the countries of central and eastern Europe, and the extreme diversity of transfrontier institutions all over Europe, *the secretariat of the CDLR* wished to harmonise the different forms and contents of the transfrontier co-operation bodies that are emerging all over Europe. This new protocol would establish Euroregional co-operation groupings (ECG) offering all Euroregions and local and regional authorities “the possibility of taking on a similar legal guise to provide a structure for their Euroregional co-operation”. Some governments are sceptical about the need for such a single status, *or about* the possible adverse effects of not having a uniform legal solution for the Euroregions, which are hard enough to define as it is. Document LR-CT (2004) 19 states, for example, that “the name Euroregion has no legal significance; it simply suggests a feeling of belonging to Europe and a will to take part in the European integration process”.

These ECGs between territorial communities or authorities in neighbouring states would have “general responsibility for promoting, supporting and developing neighbourly relations between their members in their common areas of responsibility insofar as this is in keeping with the contracting Parties’ international commitments”. The question *thus* arises of *whether* the direct application of the rules of this 3rd protocol *is legally possible* in each national legal system, especially where each state’s powers of public authority are concerned. *A putative 3rd protocol would create a special law applicable in the ratifying states, which would become the single, uniform national law applicable.*

Note also that the ECGs would have legal status to engage in transfrontier or inter-territorial programmes and manage the corresponding funds, regardless of whether the programmes were subsidised by the European Union. Every local or regional authority that decided or wanted to form or be a member of an ECG would have to abide by *the domestic legislation of its own state.*

2.2.2.4 The transfrontier articles of the Charter of Local Self-Government and *the statement on regional self-government*²⁸.

The European Charter of Local Self-Government was opened for signature on 15 October 1985 and entered into force on 9 September 1988, *since when more states have ratified it. The Charter, a version of which on a national scale is now under consideration at the UN, offers close support to one of the Council of Europe's fundamental objectives, the introduction and development of local and regional democracy throughout Europe. It is on the basis of such local and regional democracy that territorial authorities in border areas can, and will continue to be able to, establish true contractual spaces without infringing each state's territorial organisation. The main articles on which this local democracy is based, and which foster inter-municipal and inter-regional transfrontier relations, are:*

- “Local self-government denotes the right and the ability of local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population” (Article 3)
- “The principle of local self-government shall be recognised in domestic legislation, and where practicable in the constitution ” (Article 2)
- “Local authorities shall, within the limits of the law, have full discretion to exercise their initiative with regard to any matter which is not excluded from their competence nor assigned to any other authority” (Article 4).
- Article 9 lays down the principle that local authorities should have adequate financial resources of their own, commensurate with their responsibilities.
- “Local authorities shall be entitled, in exercising their powers, to co-operate (with one another and) ... under such conditions as may be provided for by the law, to co-operate with their counterparts in other States (Article 10).

Although this part of the handbook looks at the legal instruments underlying and developing transfrontier co-operation, it is interesting to note the growing political dimension within the Council of Europe of transfrontier co-operation. This further enhances the legal instrumentation produced by all European, national, regional and local authorities. In the next section, we shall focus on the major conferences and political declarations of the Council of Europe during the period 2000 to 2005.

²⁸ See Conference of European Ministers responsible for Local and Regional Government, Budapest, 24-25 February 2005, MCL-14 (2005) final.

2.2.3 *Major Council of Europe Conferences and political Declarations from 2000 to 2005.*

The Council of Europe's Committee of Ministers has taken strong positions since 2000, and intends to continue to do so, on the subject of the place and irreversible role of transfrontier co-operation in European construction. The Organisation's major Conferences and Declarations include:

2.2.3.1 The Helsinki Declaration of June 2002

The European Ministers responsible for local and regional authorities held their 13th Conference in Helsinki on 27 and 28 June 2002, and issued an important Declaration on regional self-government. Without going into the details of this Declaration, which envisaged three possible scenarios for regional self-government, namely a Charter-Convention, a Recommendation or a simple political Declaration, let us consider the parts that directly concern transfrontier co-operation between sub-state territorial authorities, namely paragraphs 3, 4, 5 and 9 of the Declaration and paragraphs 7.1 and 7.2 of the Appendix.

“3. the process of decentralisation and devolution reflects the shared conviction that economic growth, sustainable regeneration, quality public services and full democratic participation can be more effectively facilitated if governmental institutions are not overly centralised;

4. it is a matter for each state to decide whether or not to establish regional authorities and in fact not all states have them;

5. the Council of Europe has an important role to play in promoting and sustaining effective democracy among all its member States, at both national and sub-national level;”

“9. regional self-government, where it exists, is a part of democratic governance and thus such regional authorities as are established must meet minimum standards of democratic composition and be endowed with the legal competence and the ability, within the limits of the constitution and the law, to regulate and manage a share of public affairs under their own responsibility, in the interest of their population and in accordance with the principle of subsidiarity;”

“7.1. In so far as national and/or European law allows, regional authorities shall have the right to be involved in or to be represented through bodies established for this purpose in the activities of the European institutions.

7.2. Regional authorities may co-operate with territorial authorities of other countries within the framework of their competences and in accordance with the law, the international obligations and the foreign policy of the state.”

2.2.3.2 The Krakow Conference of 2-4 October 2003

The Conference on transfrontier and interregional co-operation organised by the Republic of Poland – in the framework of its presidency of the Central European Initiative (CEI) – and the Council of Europe, under the title “The enlargement of the European Union and its impact on transfrontier and interregional co-operation”, took place in Cracow (Poland) from 2 to 4 October 2003. Inter alia, the participants declared that “cross-border and interregional co-operation is an essential part of the European integration process as an effective tool for overcoming historical divisions, eliminating stereotypes in mutual

perception, strengthening good-neighbourly relations between nations and ensuring stability, peace and socio-economic development.”

“Cross-border and interregional co-operation can also provide a substantial contribution to overcoming possible negative consequences on the continent as a result of European Union enlargement and the introduction of the visa regime for the movement of persons between new European Union members and their non-EU neighbours.”

“Local and regional authorities cannot realise their great potential for developing effective transfrontier co-operation unless they are endowed, in the domestic framework, with adequate competences and resources.”

“Territorial communities and authorities should be helped to develop their co-operation across the borders. A sound legal basis for the establishment of institutional forms of co-operation between neighbouring communities and regions should be developed at domestic and international level, having regard to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities and in particular to its first Additional Protocol.”

The participants also stressed the usefulness of regional and sub-regional actors such as the Black Sea Economic Co-operation (BSEC), Council of Baltic States (CBSS) or Central European Initiative (CEI) in contributing to the development of cross-border, interregional and local democracy. The “Wider Europe” and “New Neighbourhood Instrument” concepts currently being drawn up by the European Union should play an essential role in cross-border and interregional co-operation between territorial authorities.

The Conference was thus an opportunity to consider the effects of EU enlargement on bilateral and multilateral relations with states which would not be joining the EU in 2004. It was also intended to increase awareness in the European Commission of the possibilities for co-operation and perhaps partnerships with other players, such as the Council of Europe, in the fields of transfrontier co-operation, local authority powers and regional development.

The respective roles of the Council of Europe and the European Union were underlined: the Council of Europe’s role is to support reforms to provide a sound legal basis for decentralisation, democracy and respect for human rights, while the European Union is, inter alia, the main source of funding, particularly through the structural funds, for transfrontier co-operation and regional development. Although responsibility for the success of the enlargement lies mainly with the EU, the Council of Europe’s Outline Convention still has an important part to play in the development of a legal framework for transfrontier co-operation between local authorities that can serve as a basis, with all the requisite guarantees, for numerous financial programmes and activities of the international community. The conclusions of the Conference are appended to this report (Appendix II).

The participants also stressed the new role the Council of Europe should play in preventing the emergence of new dividing lines on the European continent as a result of certain cultural, human and social consequences of enlargement.

The importance of this Third Summit of Heads of State and Government of the Council of Europe's 46 member states is undeniable. It should confirm the Council of Europe's fundamental commitment to democracy, human rights and the rule of law, as well as to social cohesion, education and culture as means of achieving and enhancing them.

The Summit *is expected* to call on the Council of Europe:

- to strengthen relations with the European Union to ensure that the Council of Europe's *acquis* and pan-European standard-setting role are duly taken into account in the EU's activities;
- to strengthen working relations with the EU in common fields of interest, by developing common assistance programmes and making the best possible use of the various Council of Europe bodies;
- to adopt a strategy for developing regional and transfrontier co-operation, as well as co-ordination with the organisations and mechanisms active in this field, with a view to fostering European integration, where transfrontier relations have an irreplaceable role to play.

Both the Council of Europe and the European Union have a fundamental responsibility to promote democratic values, protect fundamental human rights and foster democratic governance at every level. The fact that all the member states of the European Union are also members of the Council of Europe is another important factor in determining the Council of Europe's priority fields of action for the years to come.

This 3rd Summit of Heads of State and Government of the Council of Europe will be a good opportunity to redefine *the Organisation's fundamental objectives and its priorities in the field* of transfrontier co-operation, through the adoption of a political agenda setting out the broad guidelines required for intergovernmental action in this field *in the light of these objectives and priorities*.

Accordingly the possibility of the Council of Europe examining certain "humanitarian" issues in connection with the management of the EU's new external borders should be considered as a way of helping to make external borders places of contact, co-operation and economic development, without neglecting the need for security, law enforcement and customs controls. Transfrontier co-operation is a part of the process of "enfranchising" local self-government institutions insofar as it permits territorial communities and authorities located on international borders to forge co-operation bonds *directly* that help them provide better services, encourage economic and social development and fulfil the same potential for exchanges as there is *between* local and *regional authorities within one and the same country*.

All these major Council of Europe events should not eclipse the conferences that have brought together the frontier regions of Greater Europe every four years since 1972. The first two, held in Strasbourg in 1972 and Innsbruck in 1975, were called "European Symposium on Frontier Regions" in English but, interestingly, "Confrontation de régions frontalières" in French. The next and eighth conference, organised jointly by the Parliamentary Assembly and the Congress of Local and Regional Authorities, will take place in Loutsk, Ukraine, on the border between Ukraine and Poland, on 15 and 16 September 2005. The European Union's

new “neighbourhood policy” will be one of the main themes. *The Association of European Border Regions has played an active part in all eight conferences.*

2.2.4 *The European Union and transfrontier co-operation*

This subject alone could provide enough material for several books. Numerous CDLR and LR-CT delegates, however, expressed interest in a summary of the main strategies and actions of the European Union in the field of transfrontier co-operation, if only to identify the possible points of articulation between the European Union and the Council of Europe *in this sphere*²⁹. It is worth noting that in 2000 the Association of European Border Regions (AEBR) published a “Handbook on cross-border co-operation” containing an *outstanding* description of the various means of obtaining access to European structural funds, especially the “community initiative programmes” (CIP) and more specifically INTERREG I (1990-1993), INTERREG II (1994-1999), INTERREG III (2000-2006), *irrespective of the subjects concerned: infrastructure, trade, technological innovation, tourism, labour market, agriculture, culture, etc.*

Without going back as far as 1975, when the ERDF and the Committee on Regional Policy were established, with 5 to 10 % of ERDF funds already earmarked for cross-border activities in the European Union, one cannot ignore the importance of the Single European Act of 1986, which, under the impetus of then President of the European Commission Jacques Delors, provided for the substantial “defunctionalisation” of borders with the free movement of goods, services, capital and people.

Concerning the free movement of people, alongside the development of intergovernmental co-operation in the fields of law enforcement and measures to combat terrorism, drugs and arms trafficking, the Commission envisaged harmonising domestic legislation to introduce, inter alia, a common policy on visas, illegal immigration, extradition, political refugees and so on, the aim being, it is true, to strengthen the external borders of the Union. This was the purpose of the Schengen (1994) and Dublin (1997) agreements.

Turning to more recent events affecting transfrontier co-operation, we shall briefly examine:

- the transfrontier dimension of the European Union’s 3rd Report on economic, social and territorial cohesion (14 July 2004), with its three main priorities;
- the articles affecting transfrontier and interregional relations in the new Constitutional Treaty of the European Union, in particular the protocol on subsidiarity, which applies to transfrontier relations;
- the introduction of a new Community legal instrument for all the Union’s frontier zones;

²⁹ See CDLR action plan for 2005-2007.

- the “new neighbourhood” instrument the European Union is planning for its new external border regions following the enlargement to 25 member states on 1 May 2004;
- the Draft Bolkestein directive on freedom to provide services throughout the EU.

2.2.4.1. The 3rd Report on economic, social and territorial cohesion and transfrontier co-operation

On 14 July 2004, the European Commission adopted legislative proposals on cohesion policy reform. With a total allocation of 336.1 billion euros, about a third of the Community budget, this reform aims to make structural actions:

- more targeted on the Union’s strategic orientations (Lisbon and Gothenburg agendas for a sustainable and competitive “knowledge economy”, European employment strategy);
- more concentrated on the least favoured regions while anticipating change in the rest of the Union;
- more decentralised with a simpler, more transparent and more efficient implementation.

The proposals include:

- a general regulation laying down a common set of rules for the three sources of financing for structural actions during the 2007-2013 period;
- a regulation for each of these components, namely: the European Regional Development Fund (ERDF), the European Social Fund (ESF), the Cohesion Fund;
- and a proposal for a completely new regulation allowing the creation of a cross-border co-operation structure (*see Art. III-220*).

When presenting the 3rd Report on economic and social cohesion, Commissioner Michel Barnier summed up the essence of the Commission’s proposal:

“We must reduce disparities in order to accelerate growth. Growth and cohesion are two sides of the same coin (...). We are on the eve of a historic moment in the development of the European Union: the reunification of the continent. But this will widen the gap between rich and poor. The first objective of the next generation of European programmes will be to help the poorest regions. However, even if the poorest regions are situated in the new member states, we must continue to help the regions in the Fifteen which continue to lag behind as well as many other declining urban or industrial regions or regions facing permanent natural handicaps which are still grappling with serious economic and social problems.”

The three current priority objectives of the funds (2001-2006), namely objective No. 1: regions whose development is lagging behind; objective No. 2: economic and social conversion of areas in structural difficulties; objective No. 3: *human resource development*, will make way in 2007 for the following three, including transfrontier co-operation:

- the “Convergence” objective (ERDF, ESF, Cohesion Fund). Not unlike present objective No. 1, the purpose of this objective is to speed up economic convergence of the less developed regions by means of improving conditions for growth and

employment by investing in physical and human resources, innovation and knowledge society; encouraging adaptability to economic and social change; protecting the environment; improving administrative efficiency. The “Convergence” objective will play a particularly vital role in the new member states, whose accession confronts the Union with unprecedented development gaps, especially in their border regions;

- the “Regional competitiveness and employment” objective (ERDF, ESF). In the rest of the Union a twofold approach is proposed: on the one hand, the regional development programmes (ERDF) will strengthen regional competitiveness and attractiveness by anticipating economic and social change and supporting innovation, the knowledge society, entrepreneurship, protection of the environment and risk prevention. And on the other hand, programmes at the national or appropriate territorial level, financed by the ESF, will help workers and companies, on the basis of the European employment strategy, to adapt to change and encourage the development of job markets that give priority to social inclusion. The “Convergence” objective will play a key role in avoiding the emergence of new imbalances to the detriment of regions that would otherwise experience the negative effects of unfavourable socio-economic factors without sufficient public aid.
- The “European territorial co-operation” objective (ERDF). The purpose of this objective, inspired by the experience of the INTERREG Community initiative, is to strengthen co-operation at three levels: cross-border co-operation through joint programmes; co-operation between transnational zones; networks for co-operation and the exchange of experiences throughout the Union. In this way the co-operation objective will encourage balanced, harmonious and sustainable development throughout the European area.

Territorial cohesion should therefore be geared to territorial balance as an essential part of the cohesion process. This means spreading activities more evenly over the continent and fostering polycentric development.

Territorial cohesion involves a spatial dimension that has not hitherto been taken into consideration in the Union’s regional policies. The spatial dimension has nevertheless been the subject of informal co-operation between the Ministers responsible for spatial planning, leading in Potsdam in 1999, *at a conference organised by the Council of Europe*, to the European Spatial Development Perspective (ESDP), which defined the three main objectives of cohesion policies, including in border areas:

- polycentric urban development and a new relationship between urban and rural areas;
- equal access to infrastructure and know-how for all European regions;
- careful management of the natural and cultural heritage, transfrontier and interregional co-operation remaining one of the cornerstones of cohesion policy, especially as EU enlargement has given more importance to Europe’s transfrontier regions: some 40 % of the area of the enlarged Union is made up of frontier regions where approximately 32 % of the European population live.

In the first half of 2005 the European Council, during the Luxembourg Presidency, will make a decision on the financial perspectives for the 2007-2013 period and on the proposal presented by the Commission in February 2004; the Parliament and the Council will then be able to agree on the new regulations. Within the following three months, or *by the end of 2005*, the Council will *definitively* adopt the “Community strategic guidelines on cohesion”, on the basis of which the member states and the regions will draw up “national strategic reference frameworks”. It will then be possible to draw up the new generation of “operational programmes” during 2006. The aim is for action to start at the beginning of 2007 *for all 25 (27) European Union member states*.

Cohesion policy 2007-13 (EUR 336.1 billion)

Programmes and instruments	Eligibility	Priorities	Allocations
« Convergence » objective <i>including the special programme for the outermost regions</i>			78.5% (EUR 264 billion)
National and regional programmes	Regions with per capita GDP. < 75% EU-25	<ul style="list-style-type: none"> • Innovation • Environment/risk prevention • Accessibility • Infrastructures • Human resources • Administrative capacity 	67.34% = EUR 177.8 billion
ERDF ESF	Statistical Effect : Regions with per capita <75% of EU-15 et >75% of EU-25		8.38% = EUR 22.14 billion
Cohesion Fund	Member states with per capita GNI <90% of Community average		23.86% = EUR 62.99 billion
Regional competitiveness and employment objective			17.2% (EUR 57.9 billion)
National and Regional Programmes (ERDF, ESF)	The member states propose a list of regions (NUTS1 or NUTS2)	<ul style="list-style-type: none"> • Innovation • Environment/ risk prevention • Accessibility • European employment strategy 	83.44% = EUR 48.31 billion
	« Phasing-in » Regions covered by objective No. 1 between 2000 and 2006 and not covered by the convergence objective		16.56% = EUR 9.58 billion
European territorial co-operation objective			3.94% (EUR 13.2 billion)
Cross-border and transnational programmes and networks (ERDF)	Border regions and large transnational co-operation regions	<ul style="list-style-type: none"> • Innovation • Environment/risk • Accessibility • Culture, education 	35.61% cross-border co-operation 12.12% European neighbourhood and partnership instrument 47.73% transnational co-operation 4.54% networks

Cohesion 2007–13: the objectives and instruments proposed by the Commission

2005-2006		2007-2013	
Objectives	Financial instruments	Objectives	Financial Instruments
Cohesion Fund	Cohesion fund	« Convergence »	ERDF
Objective 1	ERDF ESF EAGGF –Guarantee and Guidance FIFG		ESF Cohesion Fund
Objective 2	ERDF ESF	Regional competitiveness and employment	ERDF ESF
Objective 3	ESF	- regional level - national level European employment strategy	
INTERREG	ERDF	European territorial co-operation	
URBAN	ERDF		
EQUAL	ESF		
Leader+	EAGGF – Guidance		
Rural development and restructuring of the fisheries sector outside Objective 1	EAGGF – Guarantee FIFG		
9 objectives	6 instruments	3 objectives	3 instruments

In respect of these two tables, it should be noted that the three objectives for the period 2001-2006, which make a kind of division into types of regions within the Community, do not correspond exactly to the three main priorities for the period 2007-2013, which are quite clearly political priorities for the whole geographical area of the Community.

The importance of these structural funds depends, of course, on the degree of “European solidarity”, as pointed out in the 3rd report on economic and social cohesion. In 2005 and 2006 the Community will have to decide on the size of these structural funds for the 2007-2013 period. There are four main “positions” at present: the 3rd report envisages an annual budget, from 2007, of 1.14 % of Europe’s gross domestic product; the new Commission of January 2005 put the figure at 1.05%; the 25 seem to be heading towards 1.00%; and the six main contributor states (Germany, the United Kingdom, France, Sweden, Austria, the Netherlands) are even looking at a budget of less than 0.9 % of Europe’s GDP.

2.2.4.2 The new Constitutional Treaty and transfrontier co-operation

The Constitutional Treaty is often called the Constitution for short, but what is it?

It replaces the treaties currently applicable in the European Union by a single text, subdivided into four parts:

- I. A constitutional part, describing the Union, its values, its objectives and the division of competences between the member states and the Union. It contains provisions on the functioning of the institutions, the instruments used by the Union, the financial framework and what membership of the Union involves.
- II. The Charter of fundamental rights: the civil, political, economic and social rights of Europe's citizens.
- III. Provisions concerning the European Union's policies: this part reiterates many of the provisions of the treaties currently in force.
- IV. Final provisions, including the procedures for adopting and revising the Treaty.

From the sharing of competences to the principles of subsidiarity and proportionality, all these texts, even summarised, highlight the importance of these two principles applied to the transfrontier dimension of European construction.

a) New Constitutional Treaty and territorial cohesion

The Constitution clarifies who does what by classifying and listing the competences of the various institutions. It lists the areas where the European Union can act alone (exclusive competences), those where it, but also the member states, can act (shared competences) and those areas where it can only act in a supporting capacity (supporting, co-ordinating and complementary actions). The Union also has the power to co-ordinate the member states' economic and employment policies, as well as competences in the common foreign policy and security fields, including – and this is new – the progressive framing of a common defence policy, which might lead to a common defence. “The Union shall act within the limits of the powers conferred on it in the Constitution.” The European Constitution consolidates Europe's regional policy, which is based on solidarity and close to the citizen. It promotes “economic, social and territorial cohesion, and solidarity among member states.” This is now a fundamental aim of the European Union. This means that, unlike previously, all the less privileged regions or regions in difficulty (including border and cross-border regions) might benefit from the solidarity of the member states and, in particular, from European aid.

b) Distribution of competences

The European Parliament had also warned against the risk of rigidity in the “Report on the division of competences between the European Union and the member states” prepared by Alain Lamassoure³⁰ *MEP*. His report breaks competences down as follows:

³⁰ See Mr Lamassoure's Report to the European Parliament; Strasbourg, January 2002.

- own or exclusive competences: the Union's exclusive competences lie in those fields for which it, rather than the states, has main responsibility, the member states being able to intervene only under the conditions and within the limits set by the Union (monetary policy, customs policy, external economic relations, plus financing the Union's budget and also common foreign policy).
- shared competences (shared between the EU and the member states): in these fields the Community sets the standards while the member states are responsible for transposing them into their domestic legislation. Where competences are shared, the Union must lay down general rules that fall into two categories:
 - those concerning the legal foundation of the internal market, including the "four freedoms", and which complement the single market policy: agriculture, fisheries, transport and trans-European networks, environment, research and technological development, regional policy and cohesion, social policy, association of overseas territories, development co-operation and energy; in this context, the Community's new "territorial co-operation" comes among the shared competences, including in border areas (cf new Article III-20);
 - those concerning defence and security, internal security and justice.
- supplementary competences – where the Union may only supplement the actions of the member states without superseding their competences (education, training, youth, civil protection, culture, sport and tourism, and also civil and commercial contracts).

c) The principles of subsidiarity and proportionality

“Under the principle of subsidiarity, in areas which do not fall within its exclusive competence the Union shall act only if and insofar as the objectives of the intended action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level.

“Under the principle of proportionality, the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Constitution.”

The principle of subsidiarity simply means taking decisions at the closest possible level to the citizen. This definition, in association with the regionalisation process under way in many member states, could enhance the role of local and regional authorities, who are sometimes in competition with national governments in frontier areas.

There is a solution to the serious problem of “multi-level governance”, ie the blatant contradiction between the fact that 70 to 80% of community policies concern the regional and local levels and the almost total lack of representation of the democratically elected organs at these levels in the Community law-making process.

Subsidiarity is thus an essential component of the future regional policy and it is important to clarify its meaning within the present European institutions. While the regions should have greater *responsibilities and resources* in certain fields, the EU and the member states are strategically better placed to deal *with others, sometimes exclusively*. A two-pronged approach to Community regional policy is possible here: *what Brussels calls* a bottom-up approach and a top-down approach:

- 1) Bottom-up approach: based on the principle that regional economic development depends on endogenous growth strategies, regional development authorities or agencies must involve other economic and social players in policy making and take regional conditions into account.

The EU can therefore facilitate institutional changes by laying down the principles to be followed when defining regional development policies. The EU has already established the partnership principle, requiring the participation of local and regional authorities and economic and social actors in the preparation and implementation of regional policies.

- 2) Top-down approach: the EU and its member states are better placed to evaluate and anticipate trends in structural changes on a larger scale and guide the regional and local levels accordingly. The top-down approach should therefore focus on politico-economic structural changes.

2.2.4.3 The new Community legal instrument on cross-border co-operation

When it approved the 3rd report on economic, social and territorial cohesion on 14 July 2004, the European Commission added a proposal for a new regulation, not a mere directive, on all forms and contents of transfrontier relations within the Community. Even if the primary objective of this new regulation was to facilitate the use and management of the structural funds earmarked for transfrontier co-operation, in addition to the national and regional funds, the Commission wanted to go further and cover every aspect of transfrontier relations in the EU, whether it subsidised them or not.

In practice the new legal instrument just extends the principles already present in bilateral or multilateral agreements to the whole Community, such as those found in the Karlsruhe agreement, which we shall examine later. While the Karlsruhe agreement, refers to local cross-border co-operation groups (LCCG), the Commission's new instrument is the European cross-border co-operation grouping (ECCG). What is it exactly?

Appropriate measures were needed at the Community level to remedy the major difficulties encountered by the member states and their local and regional authorities in setting up and managing transfrontier, transnational and interregional co-operation activities against a backdrop of differing national laws and procedures.

To overcome the obstacles to transfrontier co-operation an instrument was needed at Community level making it possible to establish co-operation groupings endowed with legal personality, ie European cross-border co-operation groupings (ECCG). Use of this instrument should be optional. The ECCG is empowered to act in the name and on behalf of its members, who are generally local and regional authorities. The tasks and responsibilities of the ECCG must be defined by its members in a European cross-border co-operation agreement. The role of the ECCG is to implement transfrontier co-operation programmes cofinanced by the

Community, particularly through the structural funds, as well as transnational and interregional co-operation programmes, or to carry out transfrontier co-operation activities at the sole initiative of the member states and their local and regional authorities, without any financial assistance from the Community.

The ECCG has legal personality. Its purpose is to facilitate and promote transfrontier co-operation between the member states and their local and regional authorities in order to strengthen economic, social and territorial cohesion. With the same aim in mind it can also facilitate and promote transnational and interregional co-operation. The ECCG may be composed of member states and local and regional authorities or other local bodies, who we shall call its members. Within the limits of the tasks delegated to it, the ECCG acts in the name and on behalf of its members. For this purpose it has the legal capacity granted to legal entities under each country's domestic law.

Pending the official positions of the 25 member states of the European Union, let us take a look at the initial "evaluations" of this new instrument made by the Committee of the Regions in Brussels and the Congress of Local and Regional Authorities in Strasbourg. National legislations alone govern the ability of local and regional authorities to conclude contracts and define their competences in the field of transfrontier co-operation. It is not for Community law to confer any additional power or capacity on sub-state public authorities; its role is simply to supply them with new co-operation methods.

As regards the flexibility of the proposed structure, the draft report rightly stresses the flexibility of the Community's interterritorial co-operation instrument, in terms of both its modus operandi and its adaptability in time. The Congress shares this point of view, considering that the constitution of trans-European co-operation bodies, with or without legal personality, is in itself a very flexible solution to the problems encountered.

Concerning the public-law character of the structure, we have already mentioned the marked tendency towards the harmonisation of the respective legal orders governing public and private law entities. The proposal made in the draft report presented to the COTER no doubt contributes to this trend, as the trans-European co-operation structure would appear to be based on public law, but without any unilateral power of command (to impose obligations on third parties), either by regulatory means or by individual administrative decision.

The law applicable to the trans-European co-operation structure having legal personality could be based, by analogy, on the relevant provisions of regulations (EC) No. 2157/2001 of 8 October 2001 and No. 1435/2003 of 2 July 2003, respectively on the statute for a European company and the statute for a European co-operative society.

There is also the "Community Charter for Regionalisation", adopted on 18 November 1988 by a *large* majority in the European Parliament. In Articles 23 and 24 the Charter encourages states and their regions to develop this co-operation, which will lead to the

coordination of regional development programmes and *border* regions' action programmes³¹, as well as the joint drawing up of transfrontier programmes for the areas closest to borders.

Chapter V, Art. 23.2

“In researching, programming and financing such action, states and regions shall make extensive use of the possibilities offered by the Community's structural funds.”

Chapter V, Art. 23.3

“The Member States, within the context of the internal distribution of areas of authority, shall undertake to permit and encourage transfrontier co-operation between the regional authorities of different Member States in areas which fall within the jurisdiction of those authorities. Such co-operation shall be regarded as internal, not external relations.”

Chapter VI, Art. 24.1 and 2

“1. The body of common policies of the European Community cannot be classified as 'external relations', as defined in traditional international law, and should therefore not come under the exclusive authority of the Member States.

2. The regions shall have the right to play an appropriate part in the fulfilment of the state's tasks, especially those which are pursued in their territory.”

Summing up briefly where the first version of the new Community legal instrument is concerned, which is still being discussed by the 25 governments, this body would act in the name and on behalf of its members to promote and facilitate transfrontier, transnational and interregional co-operation:

- by managing programmes co-financed by the European Union through its structural funds,
- or by directly organising transfrontier co-operation activities.

The ECCG, in *the version presented in July 2004 and discussed by the European Parliament in April 2005*³², is both flexible, an instrument whose *modus operandi* is defined in statutes, and versatile, covering the whole spectrum of trans-European co-operation, from the local to the interregional, from the management of programmes to the execution of projects.

2.2.4.4 The Bolkestein directive on freedom to provide services

Because of the significant consequences this directive will have on border areas within the European Union, a number of transfrontier regions, transfrontier bodies and regional authorities wanted this subject to be dealt with, even if only briefly, in this transfrontier co-operation handbook.

³¹ See Chapters V and VI, Articles 23 and 24.

³² See the presentation to the European Parliament's Committee on Regional Policy of the report by Polish MEP Jan Olbrycht, chair of the working group on the new instrument.

Although the directive (still at the draft stage³³) not only ties in fully with economic, social and territorial cohesion, but also with the Single European Act of 1985 and its freedom of movement for four categories: persons, goods, capital and services, it seemed more sensible to look at it in part 3 of this handbook (see 3.2.6) on the stages of European construction, and hence of transfrontier co-operation, with reference to the harmonisation and integration stages.

2.2.4.5 Co-operation with the candidates for membership and third countries beyond 2006

In November 2004 the European Commission adopted two new proposals for regulations concerning regional and transfrontier co-operation with countries which were already candidates for membership, potential candidates and third countries around the southern and eastern external borders of the European Union.

Starting in 2007 the new “pre-accession instrument” (PAI) will cover the candidates for membership (Turkey, Croatia) and the potential candidates (Albania, Bosnia and Herzegovina, Serbia and Montenegro, Former Yugoslav Republic of Macedonia), with a proposed budget of 14.653 billion euros for the period 2007-2013. The components of regional policy will include transfrontier co-operation and, for the candidate countries, preparation to work with the structural funds. The PAI will replace the existing instruments (Phare, ISPA, Sapard and Cards).

It should be noted that, as in the case of the Charter of Regional Self-Government, the fundamental issue in respect of transfrontier co-operation, and thus of the future Community regulation, is that of which authorities will have the control and management role: central government and/or local and regional authorities. The solution under common consideration (also reading between the lines of the new Community regulation) seems to be that of making regional authorities responsible for stimulating, controlling and managing transfrontier co-operation, with central government playing an active role, depending on the political system.

The European Neighbourhood and Partnership Instrument (ENPI) will cover third countries participating in the European neighbourhood policy, the countries in the south-eastern Mediterranean basin, Ukraine, Moldova and Belarus, and the Caucasian countries, replacing Meda and part of Tacis, The ENPI will also support the Community’s strategic partnership with Russia. ENPI’s proposed budget for the period 2007-2013 amounts to 14.332 billion euros.

Some 1.6 billion euros of the budgets allocated to the ENPI and PAI will come from the new “European territorial co-operation objective” (and therefore from the European regional development fund). This sum will cover the “transfrontier co-operation” component of the ENPI and PAI, which concerns the external borders of the European Union between the member states and those covered by the ENPI and PAI.

³³ The European Parliament should, in the name of the co-decision principle, draft new content during its September 2005 session.

2.2.5 *The European Union's "new neighbourhood instrument" and external transfrontier co-operation*³⁴

This "new neighbourhood right" established by the European Commission can be described as a "circle of friends" or "friendly neighbourhood" applying to the new transfrontier regions lying on the European Union's external borders.

Following enlargement of the European Union taking in 10 new member states, the Union's external borders to the east now extend over more than 5,000 km from the Barents Sea in the north to the Black Sea in the south, with eight of the new member countries neighbouring on the "New Independent States" which were formerly part of the Soviet Union prior to 1989. In the south-east, five Balkan states border onto six European Union members. In the south, over an area of more than 5,500 km, eight EU countries are neighbours – the only border being an exclusively maritime one – to ten non-member states.

The main objectives of this "new neighbourhood instrument" relating to the border regions with non-member states are primarily:

- to promote sustainable economic and social development;
- to work together, with the support of Community funds, to take practical action in fields such as the environment, public health, infrastructure modernisation, the cross-border employment market and the prevention of organised crime;
- to help border populations cross frontiers lawfully, while ensuring secure borders;
- to develop local and regional "people-to-people" action across these external borders.

In an initial phase, until 2006, Community instruments such as INTERREG, PHARE, TACIS, CARDS and MEDA can be used to finance practical operational projects. With effect from 2007, the "new neighbourhood instrument" will form an integral part of the European Union's objectives of "economic, social and territorial cohesion", and therefore "European territorial co-operation". The "INTERREG standard rules" will also apply to these regions on the periphery of the Community, on both sides of the border, in accordance with agreements with all the countries concerned.

It should be noted that, as a result of this dual – legal and political - approach to transfrontier co-operation as envisaged by the Council of Europe and the European Union, the two bodies representing local and regional authorities in both organisations, the Congress of Local and Regional Authorities (the Congress) in Strasbourg (with its two Chambers, representing local and regional authorities) and the Committee of the Regions (CoR) in Brussels, decided in Prague on 21 September 2004 to step up their consultation and co-operation in fields such as transfrontier co-operation:

- the principle of subsidiarity and its application to all local and regional authorities;

³⁴ COM/ 2003/393, 1 July 2003.

- the promotion of “local and regional democracy” in all their member states;
- transfrontier and inter-regional co-operation, essential for the process of European integration;
- and last but by no means least, establishing “greater synergy” between the Council of Europe and the European Union; with both these consultative bodies, the Congress and the CoR, acting as a preliminary stage in this synergy.

2.3 Transfrontier institutions at bilateral or multilateral intergovernmental level

The need for states to find appropriate institutional machinery has mainly been apparent in the field of neighbourhood issues. Thus, as from the 1960s the new aims of transfrontier co-operation and European integration requiring state intervention have induced national States to move away from ad hoc forms of co-operation to more institutionalised and global co-operation, e.g. by creating intergovernmental commissions to deal with questions of regional or transfrontier co-operation. Sub-national territorial communities followed suit as from the 1970s and especially the 1980s by setting up under state supervision, virtually all over Western Europe, "transfrontier working communities".

Revealingly, most of them are found in northern Europe, firstly because the frontiers there run through more densely populated areas than those in southern Europe, and secondly because these regions are more industrialised than those of southern Europe, so that the problems of administering frontier regions and the needs of populations coincide. Equally revealing is the fact that several of these commissions do more than settle spatial planning problems in frontier regions, tending to cover the whole range of problems resulting from the fact of human communities living side by side under different politico-legal systems but facing the same problems.

It should be made clear that all these central government-led intergovernmental or inter-regional agreements appeared in a variety of legal forms, ranging from a treaty in the strict sense to a simple exchange of “diplomatic memoranda”. We shall now look briefly at a number of bilateral or multilateral intergovernmental agreements, in no particular chronological order.

2.3.1 Bilateral treaties or agreements promoting transfrontier co-operation

The idea of bilateral treaties and agreements was suggested in the Madrid Convention, and a number of states *have taken action*, where their constitutions and legislation allow. Over the last three decades (between 1975 and 2005) many bilateral treaties and agreements have been signed.

Examples in western Europe are the bilateral agreements between France, Italy and Germany and their respective neighbours; in central Europe, the agreements between Lithuania and its neighbours.

2.3.1.1 Examples of bilateral agreements or treaties in western Europe

- the Isselburg-Anholt Agreement, signed between Germany and the Netherlands in May 1991, entering into force in January 1993;
- *the outline agreement on transfrontier co-operation between Italy and Switzerland, signed in Bern on 24 February 1993;*
- the Rome Agreement, signed between France and Italy in November 1993, entering into force in January 1994;
- the Vienna Agreement, signed between Italy and Austria in January 1993, entering into force in January 1995;
- the Bayonne Agreement, signed between France and Spain in March 1995, entering into force in February 1997;
- the Mainz Agreement, signed between Germany and Belgium in June 1996, entering into force in January 1998;
- the Brussels agreement, signed between France and Belgium in September 2002, which will enter into force once it has been *ratified* by both French chambers and *Belgium's three parliaments*;
- the Valencia agreement, signed between Spain and Portugal in October 2003, which came into force in January 2004.

In order to illustrate states' desire to maintain control of the transfrontier relations of their local and regional authorities and the long and complex process of developing ever more sophisticated legal frameworks, we shall look in a little more depth at the Franco-Spanish agreements of March 1995 and the Franco-Belgian agreement of October 2002 which, taking the lead from the multilateral Karlsruhe Agreement of January 1996, opened the door to a series of bilateral or multilateral agreements which would ultimately cover the whole of Europe. *A logical follow-up* could be, *drawing on* the main points in these agreements, an EGCC for the European Union and an ECG for the Council of Europe – ideally with some cross-over between the two. The European Union, it should be pointed out, has a legal advantage in that Community law takes precedence over national legislation, whereas some countries are unsure of how to apply national law to the Council of Europe's ECGs. Achieving harmony, rather than uniformity between all these bilateral or multilateral cross-border co-operation agreements remains *vital to transfrontier relations in Europe*. Clearly, it will be necessary first of all to identify more "areas of *convergence*" in all these agreements, along the lines of the "convergence" of social and tax systems *still being sought* within the European Union itself: this must be done, as popular wisdom would have it, "step by step".

What are the main points of these bilateral agreements between France and Spain and *France* and Belgium, the latter replicating fairly closely the multilateral Karlsruhe Agreement?

On 10 March 1995, France and Spain, in signing the Bayonne Treaty, allowed their local and regional authorities to co-operate through agreements, and to set up the necessary institutional instruments for cross-border co-operation. Article 3 of the Bayonne Treaty therefore allows these local and regional authorities to exercise, beyond national frontiers, the

powers granted to them under domestic law; and to this end, to set up and run any cross-border co-operation body, without legal personality. Article 4 contains the essential provision stipulating the national (or, for Spain, regional) law on which such agreements shall be based, generally the state in which the cross-border institution shall be registered, irrespective of whether it is a public interest grouping (GIP) or local semi-public consortium (SEML) for France or a “consorcio” for Spain that is responsible for the joint exploitation of public services. Article 12 *relates only to Spanish authorities. When Spanish local or regional authorities draft agreements, these are in practice submitted for central government approval. This system does not exist in France, where such agreements are subject to subsequent verification by prefects, in terms of ordinary law, as applied to all local and regional authorities' documents. It is possible for French and Spanish local and regional authorities to set up the European districts provided for in the law of 13 August 2004. The Treaty between France and Spain is open to further development, for Article 5.3 provides that the Treaty is applicable to co-operation bodies not mentioned in paragraph 1 (SEMLs, GIPs, consorcios) open to foreign local and regional authorities, under French or Spanish law, subsequent to the entry into force of the Treaty.*

Article 11 of the Treaty provides that the “Franco-Spanish Commission on Cross-Border Co-operation between Local and Regional Authorities” set up, further to an exchange of letters, in Foix on 21 October 2004 is responsible for monitoring the Bayonne Treaty. Lastly, the Principality of Andorra and its “Comuns” or local valley authorities are not covered by the Treaty. The Bayonne Treaty therefore allows local and regional authorities to conclude agreements to set up and run, in areas of common interest, public amenities or services and to co-ordinate their decisions. Spanish authorities can hold a stake in French local semi-public corporations and public interest groupings. French local and regional authorities can hold a stake in Spanish “Consorcios” and may also set up such bodies together with Spanish local and regional authorities. Participation is subject to the domestic law of each state.

With regard to “contracts of association” under private law, the two types of private law legal instruments enabling fairly flexible forms of cross-border co-operation are the association under French law (law of 1901) and the European Economic Interest Grouping (EEIG), provided for in Community legislation. Nonetheless, the private nature of both legal instruments could be incompatible with the public aspects of French and Spanish local and regional authorities.

The Bayonne Treaty does not set up any specific cross-border co-operation body, but merely sets out the conditions under which the local and regional authorities of one state may participate in existing bodies or bodies which they wish to set up under the domestic law of the signatory states, such as:

- GIPs and SEMLS, to run public services; it should be noted that since the enactment of the French law of 2 January 2002, foreign local and regional authorities can hold an equal stake in the capital of SEMLS;
- the consorcio, a non-profit making body established under Spanish law, which requires a decree issued by the Council of State for participation by French local and regional authorities. Members of a consorcio can be either any type of French or Spanish local or regional authority, or public administrative authorities or indeed private organisations.

- *Finally, it should be pointed out that Article 137 of the law of 13 August 2004 did away with authorisation through decree of the Conseil d'Etat of French local and regional authorities' membership of bodies governed by foreign law. Since 1 January 2005, such authorisation has been by order of the Prefect of the region concerned.*

The agreement with Belgium was signed in Brussels on 16 September 2002 by the French Prime Minister, Jean-Pierre Raffarin, the Belgian Prime Minister, Guy Verhofstadt, and the 3 Minister-Presidents of the Flemish and Walloon Regions and the French Community of Belgium. Like the previous bilateral treaties it sets out the arrangements for cross-border co-operation between French, Flemish and Walloon local and regional authorities and public bodies; for example, use of the “local cross-border co-operation grouping” (Karlsruhe Agreement of 1996). It enables all tiers of responsibility, beginning with the signatory parties, to collaborate directly in the implementation of cross-border projects and to handle, in a decentralised way, cross-border co-operation matters. Under this agreement, the Lille conglomeration is able to address directly and effectively its border problems with both its Flemish (Kortrijk) and Walloon (Tournai) neighbours, jointly setting up and running local public amenities and services. Nonetheless a number of budget and tax problems related to these cross-border activities remain, bearing in mind the tax disparities and different budgetary competences between the countries and Belgian regions.

All these agreements show that cross-border relations remain for the majority of centralised, decentralised or regionalised states, an international relationship falling under the issue of national *sovereignty*; it is therefore logical that bilateral or *multilateral* agreements between countries separated by a frontier will long remain the vital *legal basis* for the management by any local or regional authority of its relations with its immediate neighbours.

2.3.1.2 Experiences of bilateral and/or multilateral agreements in the Baltic and Adriatic Seas

What is interesting about these new agreements is that they involve central government, local and regional authorities and the European institutions directly in the setting up of new Euro-regions.

- In the Baltic, Lithuania has concluded a number of bilateral agreements with the neighbouring states of Poland, Russia, Belarus, Estonia *and Latvia*, creating in chronological order: in 1997 the NEMAN Euro-region (Kaliningrad region), in 1998 the BALTIC and COUNTRY of LAKES Euro-region, in 1999 the SAULE Euro-region, in 2000 the BATUVIA Euro-region and in 2003 the SESUPE Euro-region. Over 40 municipalities out of Lithuania's 60 are involved in these 6 new Euro-regions.
- In the Adriatic, the multilateral protocol on the setting up of the Adriatic/Ionian Euro-region was signed on 9 November 2004 in Termoli by representatives of all the regions concerned bordering on the Adriatic Sea. The signature was attended by ministerial authorities from Italy, Slovenia, Croatia, Serbia and Montenegro, and Albania, and by representatives from the Parliamentary Assembly, national parliaments, the Committee of the Regions and the Congress of Local and Regional Authorities. *The protocol will be finally approved at another plenary conference of all the authorities concerned – European, national, regional and local – in Pula on 22 April 2005.*

Apart from discussing problems specific to the Adriatic, the Termoli conference was also an opportunity to exchange experiences with other localities and regions in the same position as those in the Adriatic (a semi-enclosed sea), such as the Baltic and the Black Sea. The Euro-region was described as a means of enabling local and regional authorities to address the challenges currently facing the Adriatic region, by preparing for the future of the population living there through activities common to both shores of the Basin. The “Termoli Agreement” was also seen as a means of promoting stability and prosperity in the Adriatic region and of developing co-operation between the countries in the Basin. The Adriatic Euro-region will also help prepare local and regional authorities in central and eastern Europe – particularly in the south-east – for European Union enlargement. The regions, provinces, towns and cities of the Adriatic were regarded as major resources which can help develop relations between countries through bilateral and multilateral initiatives – especially in the fields of environmental protection, tourism and culture, agriculture, fishing and transport infrastructure. Lastly, the setting up of this newest Euro-region was preceded by the Pula (Croatia) Final Declaration, on 28 June 2004 on “Inter-regional co-operation in the Adriatic Basin”.

2.3.2 *Multilateral treaties or agreements promoting cross-border co-operation*

The shift from bilateral to multilateral treaties is indicative of a level of harmonisation in Europe of the legal instruments essential for transfrontier co-operation. Examples, given in chronological order, are

- the Nordic Agreement concluded on 26 May 1976 between Denmark, Finland, Norway and Sweden, on cross-border co-operation at local authority level;
- the Benelux Convention signed by Belgium, Luxembourg and the Netherlands in October 1985, entering into force in January 1991;
- the Karlsruhe Agreement, signed by Germany, *France*, Luxembourg and Switzerland in January 1996, entering into force in January 1997;
- The Chişinău Declaration for the Balkan States and south-east Europe in general, of 5 November 2003
- The Termoli Declaration for the Adriatic states and regions, of 9 November 2004.

2.3.2.1 The Nordic Agreement of 1976

This agreement, concluded three years before the Madrid Convention, is noteworthy because in several respects it was a precursor of later developments. First of all, it recognises that local authorities have a right of co-operation, provided that this does not infringe national powers. Such recognition implies that local authorities are entirely free to instigate such transfrontier co-operation initiatives as they think fit, except where matters covered by national jurisdiction are concerned. This freedom derives from their right to instigate transfrontier co-operation and amounts to granting subsidiary jurisdiction to local communities in the field of transfrontier co-operation. Transfrontier co-operation is open to all local communities, whether or not they adjoin a national frontier and whether co-operation is envisaged with a direct neighbour or with another signatory country. A third point of interest in this agreement is its provision concerning the division of responsibilities which

stipulates that: “the local community concerned should itself be answerable for the commitments it makes vis-à-vis the local community of another Nordic country”.

This empowers sub-state authorities to make binding commitments without adversely affecting the state’s international responsibility.

2.3.2.2 The Benelux Convention of 1986

The Benelux Convention empowers the transfrontier authorities in each country to undertake specific cross-border co-operation initiatives. Although it draws widely on the Outline Convention of the Council of Europe, it nevertheless differs sharply from the Convention in at least three respects. Firstly, it does not in any way seek to regulate forms of co-operation between transfrontier communities covered by private law, recognising that they exist independently of all inter-state agreements. Secondly, it does not specify any territorial dimension of neighbourhood in the relations it is intended to cover. The issues considered are what establish the spatial scope of the transfrontier relations to be institutionalised.

Thirdly, the Benelux Convention confers on transfrontier communities designated by each country real powers to engage in transfrontier relations. "The authorities mentioned in Article 1 may, to put co-operation into effect, conclude administrative agreements and set up joint bodies or public corporations."

2.3.2.3 The Karlsruhe Agreement of 1996

This is clearly an important agreement, as, if extended to all the states of Europe, it could offer a legal basis for transfrontier co-operation that would be acceptable by all states whatever their system of government - centralised, decentralised, regionalised or federal. Let us attempt to identify its key features, since it could also serve as a foundation for any EU regulation or any additional protocol at the Council of Europe. Not for nothing is the Karlsruhe GLCT the *source of inspiration* for the European Union's future legal instrument - the EGCC.

The characteristics of this agreement, signed on 23 January 1996 between France, Germany, Luxembourg and Switzerland, are as follows:

- it does not necessarily apply to the same levels of territorial authorities within the signatory states,
- in France, public bodies attached to territorial authorities may be involved in the co-operation activities but without taking a direct role in them,
- it establishes a unique co-operation body enjoying legal personality and financial independence - the local transfrontier co-operation grouping (GLCT).

The GLCT provided for under the Karlsruhe Agreement is a public-law entity, enjoying legal personality and financial autonomy, which can be set up by French and foreign territorial authorities. It is subject to the domestic law governing public intermunicipal co-operation bodies in the country where it has its headquarters.

The other original feature of the Karlsruhe Agreement lies in the possibility of involving local public bodies in the decentralised transfrontier co-operation activities implemented by the territorial authorities. In France's case, those bodies include municipal welfare centres, secondary schools, hospitals, tourism agencies, etc.

Under the Karlsruhe Agreement the four signatory states, whatever their system of government, retain control over and continue to co-ordinate their territorial authorities' transfrontier relations. The agreement enables French, German, Luxembourg and Swiss territorial authorities and their groupings to establish co-operation bodies with legal personality, in particular GLCTs. The latter are governed by the terms of the agreement itself and, subject thereto, by the law of the country where they have their headquarters (in France this is the law on "syndicats mixtes" (joint consortiums)). As we have seen, the Franco-Belgian agreement on transfrontier co-operation of 16 September 2002 contains similar provisions.

The principal articles of the Karlsruhe Agreement cover:

- its purpose; Article 1 reads "the purpose of this agreement is to facilitate and promote transfrontier co-operation between territorial authorities and local public bodies coming under the parties' national law, in their fields of competence and in accordance with domestic law and their international commitments."
- the areas in which it applies
- co-operation agreements between territorial authorities or local public bodies, and the rules applicable thereto
- tasks, delegations of authority and concessions of public services
- public procurement procedures
- the responsibilities of the Contracting Parties
- transfrontier co-operation bodies with or without legal personality
- GLCTs and their objectives, applicable law, statutes, organs and funding.

It should finally be noted that the Karlsruhe Agreement was extended to more Swiss cantons in 2003 and 2004, and that another two states, Belgium and Italy, have expressed an interest.

2.3.3 *The Chisinau Political Declaration of 6 November 2003*

This political declaration, which mainly concerns transfrontier co-operation, is clearly also an important instrument, firstly, because it reaffirms, for the whole of Europe, the key role of transfrontier co-operation in European integration and, secondly, because it was signed in Chisinau, the capital of Moldova, and, if transfrontier relations were to be established throughout South-East Europe, that would guarantee greater stability, peace and local and

regional democracy in that part of Europe, so seriously hit by tragic historical events. The Committee of Ministers adopted the Chisinau Political Declaration on Transfrontier and Inter-territorial Co-operation between States in South-Eastern Europe at its 113th session, held in Chisinau on 6 November 2003.

With this declaration the Committee of Ministers recognised transfrontier co-operation's role as a key component of democratic stability and social and economic development in the region. The Committee of Ministers is aware of the differences that subsist between the South-East European countries' domestic policies regarding transfrontier co-operation between territorial authorities and communities and of the fact that not all of those countries have as yet ratified the Madrid Outline Convention. However, the Chisinau Political Declaration constitutes a common basis for both continuing to work towards the goal of ratification of the Madrid Convention by all the countries in the region and exploring the possibility of adopting new international treaties. The Committee of Ministers is, in principle, in favour of a reference to the Outline Convention, among the regions' interested neighbouring states. It noted that the appendix to the Chisinau Political Declaration sets out a number of major principles on which such agreements should be based and lists areas of particular importance to the region's stabilisation and the successful implementation of national strategies for accession to the European Union.

The following two paragraphs sum up the main points made in the 3rd report of the six-member Committee of Advisers for the Development of Transfrontier Co-operation in Central and Eastern Europe.

"The approach to cross-border co-operation for the Council of Europe should take account of a number of *factors*: the enlargement of the European Union and the establishment of its external borders right across the continent; the need for the Council of Europe to preserve the unity of the continent in terms of common legal standards, respect for fundamental rights and balanced economic development; the specific nature of the action of the Council of Europe, which does not command financial resources but has political leverage and can act as a *facilitator and a guarantor* of solutions in tune with *international standards*."

"The Council of Europe should work *with* the European Commission on overcoming *the problems and enhancing the potential opportunities*."

2.3.3.1 Main articles of the Chisinau Political Declaration

"... Recognising that transfrontier and interterritorial co-operation involves not only states, but also territorial communities or authorities, as public-law legal entities responsible for managing a substantial proportion of public affairs in the interest of their populations, and as closely as possible in line with their concerns and demands, as stipulated in particular by the European Charter of Local Self-Government; ..."

- d. Pointing out that the 1980 European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (ETS No. 106), and the Protocols thereto of 1995 (ETS No. 159 on the legal personality of transfrontier co-operation bodies established by territorial authorities and the legal value of decisions adopted under transfrontier co-operation agreements) and 1998 (ETS No. 169 on interterritorial co-operation), offer a basis for the

development of transfrontier and interterritorial co-operation between territorial communities or authorities;

- e. Stressing that borders should not hinder contact, exchange and dialogue between nations and civilisations;
- f. Aware of the imminent enlargement of the European Union and of the need to preserve and to develop cross-border co-operation between all European countries, their territorial authorities or communities and their populations whether or not they are members of the European Union;
- g. Noting the various forms of co-operation in which member states are already engaged, particularly within processes of general character such as the Stability Pact for South-Eastern Europe and the Stabilisation and Association Process of the European Union, as well as within regional initiatives and processes such as the Central European Initiative, the South-East European Co-operation Process (SEECp), the South-East European Co-operation Initiative (SECI) and the Adriatic-Ionian Initiative[, which, in November 2004, resulted in the creation of a new Adriatic Euroregion]; ..."

2.3.3.2 Principal goals of transfrontier co-operation in Europe

The Chisinau Political Declaration on transfrontier co-operation *draws attention* to the following principal goals:

- transfrontier and interterritorial co-operation helps to re-establish contacts between peoples and territories separated by international borders, and to create new contacts;
- transfrontier and interterritorial co-operation is an instrument for the development of territorial communities' or authorities' sectoral policies;
- transfrontier co-operation fosters the social cohesion of, and understanding between, border populations;
- transfrontier and interterritorial co-operation is the work of states and of their territorial communities or authorities, at local and regional level, within the bounds of their respective responsibilities and the principle of subsidiarity;
- territorial communities or authorities should normally have the capacity to establish contacts, conclude agreements and conduct transfrontier or interterritorial co-operation activities with the partner(s) of their choice, as far as possible in a similar way to that applicable under domestic law in respect of agreements with another territorial community or authority in the same country;
- any new measures and policies on transfrontier co-operation should complement the European Union's Stabilisation and Association Process (SAP).

The Council of Europe accordingly wishes to encourage and support initiatives that contribute to the attainment of the above goals:

- a. by reaffirming the importance of the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities and of its two protocols for the development of cross-border and inter territorial co-operation between communities, and inviting those states, which have not done so, to adopt appropriate national legislation following the principles of the Convention and its protocols and to examine the possibility of becoming Parties to the Convention and its protocols,
- b. by encouraging the member states concerned to pay due attention to the legal and material conditions in which their territorial communities or authorities may establish and develop effective and sustained transfrontier co-operation, with a view to adopting such measures as may appear necessary.

A final point about the "humanitarian" objective that the Council of Europe would henceforth like to assign to transfrontier co-operation is made in the aforementioned report of the Committee of Advisers, which states:

"The possibility of the Council of Europe addressing 'humanitarian' issues in respect of the management of the new external borders of the enlarged EU should therefore not be seen as a challenge to Schengen or as an interference in EU internal affairs *but as a contribution towards making external borders* places of contact and co-operation while fully respecting the requirements of security, combating crime and customs clearance."

The Chisinau Political Declaration was *followed* by numerous bilateral or multilateral agreements all over South-East Europe. For its part, the CLRAE *would have* liked to have seen a vast multilateral agreement adopted covering the entire region; however, experience of transfrontier co-operation and, above all, the positions adopted by the countries of this huge region have frequently shown that the "step by step" approach (*bilateral agreements*) continues to be a valid option in transfrontier relations, in view of the complexity and the specific nature of many transfrontier areas in South-East Europe.

These general remarks round off this section on comprehensive international agreements, and clearly show that the Chisinau Declaration is part of a long historical process of development and affirmation of transfrontier co-operation throughout Europe, particularly since 1996.

2.3.4 Sectoral international agreements

It can be noted that these inter-state agreements aimed at developing transfrontier co-operation may take different forms, of which there are basically five, as listed earlier.

The bilateral and multilateral transfrontier co-operation agreements discussed above are all general in scope, whereas others may take on a sector-specific dimension.

As already stated, with a view to determining the context, form and limits of transfrontier co-operation, many Contracting Parties make the conclusion of *general and/or sectoral inter-state agreements* a prerequisite for applying the Convention (Article 3, paragraph 2, of the Outline Convention). The overall effect of inter-state agreements is to stimulate the development of transfrontier co-operation, in general, at the local and regional levels. A number of the inter-state agreements concluded reinforced the legal foundations of co-operation and thereby facilitated the preparation of the first protocol. For example, the treaty between France and Italy, signed in Rome on 26 November 1993, and the treaty between France and Spain, signed in Bayonne on 10 March 1995, already acknowledged that

territorial communities or authorities were entitled to conclude agreements and arrangements, although those treaties predated the opening for signature of the protocol, which contains similar provisions. The Benelux Convention signed in Brussels on 12 September 1986 is a further illustration of the importance of co-operation and, in particular, an example of application of Article 2 of that Convention, which allows the establishment of public-law bodies empowered to take binding decisions, prefiguring Article 5 of the protocol. *Since the nineties, central and eastern Europe has followed the path of bilateral or multilateral treaties. According to the CDLR in 2002/7.*

“First, there are the agreements of good-neighbourly relations. Some examples are treaties of understanding, co-operation, friendship and neighbourliness signed between Hungary and Romania on 16 September 1996; Hungary and Slovak Republic on 19 March 1995; Hungary and Slovenia on 1 December 1992, Hungary and Ukraine on 6 December 1991.

Secondly, there are agreements concerning a specific field of transfrontier co-operation. Some examples include agreements for the prevention and mutual assistance in disasters and serious accidents (Slovenia-Austria, 1996), water management (Slovenia-Croatia, 1996), employment in transfrontier area (Austria-Hungary, 1997); public health care (Norway-Sweden, 1993), tourism (Austria-Hungary, 1980), and nuclear plants and nuclear events (Finland-Sweden, 1987)”.

I have looked particularly at a third form of inter-state agreements intended to establish transfrontier commissions with the general aim of exchanging viewpoints and seeking solutions to neighbourhood problems. There are many such bodies. An example is the Franco-Swiss joint advisory commission on neighbourhood problems set up in July 1973 between the canton of Geneva and the départements of Ain and Haute-Savoie.

In fourth place there are intergovernmental commissions *more* specifically responsible for “*transfrontier*” *regional planning*. Since the 1960s a number of intergovernmental agreements on spatial planning have been signed in western Europe, paving the way for the creation of joint commissions. Spatial planning commissions have been set up in the Benelux region (1969) and between Belgium and Germany (1971), Switzerland and Germany (1973), Austria and Germany (1974) and the Netherlands and Germany (1976). Other intergovernmental commissions deal with spatial planning among other matters; this applies to the commissions set up between France and Geneva (Switzerland) (1973), France, Germany and Switzerland (1975), France, Germany and Luxembourg (1980), France and Italy (1981), Italy and Switzerland (1975), France, Germany and Spain (1994) and, most recently, between Germany, France and Switzerland concerning the Upper Rhine region (1996).

In central and eastern Europe a number of spatial planning commissions were established from the mid-1980s to the mid-1990s between Austria and Hungary (1985), Germany and Poland (1992), the Slovak Republic, Poland and the Czech Republic (1992), Poland and Lithuania (1994), the Slovak Republic and Poland (1994), the Slovak Republic and Hungary (1995) and the Czech Republic and Poland (1995).

The fifth and last category includes *sectoral agreements* or memorandums of agreement between neighbouring states concluded in order to implement a bilateral or multilateral transfrontier strategy qualifying for EU financing. Declarations of intent were, for instance, signed between Slovenia and Austria and between Slovenia and Italy in connection with the PHARE INTERREG II programme for the period 1995-1999, *as well as with INTERREG III for the period 2001-2006.* Other examples include the European Commission's decision concerning the Kent/Nord-Pas-de-Calais INTERREG II programme. These decisions

or agreements generally provide for the establishment of a monitoring committee or joint steering committee responsible for implementing the operational programme. It must be noted that these technical committees do not pursue the same aims as the intergovernmental commissions of a general or specific nature mentioned above. Their role is narrower, in that they confine themselves to supervising the preparation, selection and implementation of transfrontier projects in accordance with the criteria set by the European *Union*, although the *EU* is not *yet* strictly speaking competent for such matters, which are still within the member states' jurisdiction.

2.4 Interregional agreements under the states' authority

2.4.1 At the transfrontier level in the strict sense

An extraordinary number of transfrontier interregional agreements have been concluded, all over Europe, whatever the political systems of the parties thereto. As a general rule, interregional agreements establishing transfrontier bodies contain little in the way of a preamble or statements of principle and focus on describing the members, structures and functioning of the bodies concerned. All of the working communities established moreover have similar structures and characteristics, which are either defined in the founding instrument itself or decided by the members in the light of practical considerations.

2.4.1.1 Some examples of designations

The names given to transfrontier bodies generally refer to geographical features – waterways (Rhine-Waal, Meuse-Rhine, Neisse-Nysa-Nisa, Elbe-Labe, Bug, Niemen, Danube-Mures-Tisa), mountain ranges (the Pyrenees, the Alps, the Carpathians) or lakes (Lake Geneva, Lake Constance). *Many European geographers take the view that this is a case of geography taking its revenge on history.* Transfrontier co-operation bodies may take different forms: for instance, the Niemen Euroregion, the Lake Geneva Council, the Western Alps Working Community, *the Jura conference, etc.* A number of transfrontier bodies, particularly in northern Europe, are known as committees (the Central Northern Committee, the Islands Committee). Elsewhere, Latin is used as a lingua franca (Regio Raetia Nova, Regio Egreensis) or historical concepts are revamped (*the West Pannonia Euroregion is one example*).

Whatever their designation (conference, Euroregion, council, working community, etc.), transfrontier bodies in Europe fall into three main categories: those without legal personality and those which, having legal personality, are governed by either private law or public law. All three categories are covered by Article 3 of the *Additional Protocol* to the Outline Convention on Transfrontier Co-operation, which reads:

"A transfrontier co-operation agreement concluded by territorial communities or authorities may set up a transfrontier co-operation body, which may or may not have legal personality. The agreement shall specify whether the body, regard being had to the responsibilities assigned to it and to the provisions of national law, is to be considered a public or private law entity within the national legal systems to which the territorial communities or authorities concluding the agreement belong."

In some countries, transfrontier co-operation bodies cannot have legal personality and are established informally. In such cases, if a sufficient number of territorial authorities wish to establish transfrontier relations, they may set up a national association in order to enter into informal contacts with their *equivalent* authorities on the other side of the border, who generally also establish an association. Territorial communities or authorities can set up transfrontier bodies of a private law nature to the extent that their national law permits them to participate in associations or groupings governed by civil or commercial law. They may also set up public transfrontier bodies for the purpose of jointly discharging functions which may, under each contracting party's domestic law, be undertaken by public associations or groupings set up by territorial communities or authorities.

Whether they come under public or private law, these transfrontier bodies are governed by their statutes and by the national law of the country where they have their headquarters. It is argued that, compared with private-law transfrontier co-operation, public-law co-operation offers the advantage of guaranteeing a structured organisation, more efficient public services and stronger democratic control. If the rules applicable to these two types of transfrontier body are compared, it can be seen that the only differences concern the conditions for setting up the body, the participation of private-law legal entities in a public body and the conclusion of public contracts. It would accordingly be advisable to draw up a single outline inter-state agreement (bilateral or multilateral) concerning transfrontier co-operation groupings, covering both public-law and private-law aspects, *whether in the European Union or for the 46 member states of the Council of Europe. Some legal experts are also considering the production of a single outline text for all inter-regional or inter-municipal agreements on transfrontier co-operation, although still under state supervision. Just a few legal experts wish to do away with this state supervision, even within the Community.*

2.4.1.2 Statutes and organisation

Transfrontier co-operation bodies do not have a uniform legal status. They include joint-interest bodies without legal personality (the Neisse Euroregion and the Elbe-Labe Euroregion), European economic-interest groupings (the Transcanal Euroregion), non-profit associations (the Euroregio Sar-Lor-Lux Rhin established under Luxembourg private law), working communities without legal personality (the Euroregio Bayerischer Wald-Böhmerwald/Sumava) and also public bodies (the Euroregio Rhine-Waal, Neue Interhause Region, BENEGO, etc.).

Transfrontier co-operation bodies frequently have the following organs: a general assembly (comprising all the members), a board, one or more secretariats and a number of working groups in various fields (environmental protection, economic development, tourism, education, culture, sport and so on). The general assembly elects the Chair, who presides over meetings and represents the transfrontier body in dealings with third parties. The Chair may be rotating. More sophisticated transfrontier bodies sometimes have a joint budget and a joint, occasionally rotating, secretariat.

2.4.1.3 Types of interregional or intermunicipal agreements

Transfrontier co-operation activities do not always necessitate the conclusion of a bilateral or multilateral agreement, although such agreements are becoming widespread and will soon cover all of Europe. In central and eastern Europe, in particular, the majority of such activities are pursued primarily through Euroregions. However, in many fields an agreement cannot be dispensed with. Alongside the agreements setting up joint transfrontier bodies, there are agreements between local and regional authorities, which may be general in scope (co-operation agreement between the Lithuanian municipality of Jubarkas and the Polish voivodship of Konin, signed on 23 October 1997) or deal with a specific subject. Most specific agreements concern the environment (creation of joint parks) or public services (water supplies, sewerage, waste collection and treatment, transport, mutual assistance in the event of disasters, etc.).

Examples are: the heads of agreement signed on 7 October 1983 by the Nord-Pas-de-Calais region (France) and the Walloon region (Belgium) concerning the transfrontier Scarpe-Escaut natural park; the heads of agreement between the Palatinate park (Germany) and the Northern Vosges regional natural park (France) of 17 January 1985; the agreement of 15 January 1982 between the municipality of Selfkant (Germany) and the waste water treatment association of Limburg (Netherlands) concerning waste water collection and purification. Certain agreements concluded at local level generally necessitate the prior signature of an inter-state agreement.

A further example, in an interregional context, is the Arnhem platform. This is a platform of Euroregions on the Dutch-German and Belgian-Dutch borders, coming under the authority of the states concerned. The aim is to facilitate the exchange of information on projects aimed at fostering transfrontier co-operation.

2.4.1.4 *The coordination of transfrontier relations within states*

Let us cite two examples, one from a state with devolved government, France, and the other from a federal state, Switzerland. Switzerland has established a Federal Information Service which gathers information on transfrontier co-operation and provides technical assistance (legal advice) to territorial authorities, while enhancing co-ordination of the transfrontier policies of all sixteen border cantons (16 in a country totalling 26).

2.4.1.5 *Practical coordination between transfrontier regions of Europe and the AEBR*

Mention must be made here of the significant work done, since 1971, by the Association of European Border Regions (AEBR), which has its headquarters in Gronau, Germany. The association has 90 member organisations, covering over 200 border regions on Europe's internal and external frontiers. Its aims, *to name but a few*, are to:

- pool experience in order to define and co-ordinate joint interests based on the huge variety of cross-border problems;
- help to solve the specific problems of border and transfrontier regions and support their specific activities;
- prepare and implement common activities involving border and transfrontier regions;
- represent the joint interests of border and transfrontier regions vis-à-vis national and international authorities, bodies and institutions;

- *produce on a regular basis practical guides to transfrontier co-operation, focusing mainly on the Community structural funds.*

2.4.2 *At the interregional level in the broad, and no longer merely transfrontier, sense*

There are many bilateral arrangements, in particular between countries of eastern and western Europe (examples are Apriltsi (Bulgaria) and Zweizimen (Switzerland) and the province of Gelderland (the Netherlands) and the district of Lublin (Poland)). It is interesting to note that this last example of co-operation, between the Dutch province of Gelderland and the district of Lublin, has expanded to cover the whole region of Lublin, of which the city is the capital, following the major Polish reform of territorial organisation in 1998. There are now nine articles in this agreement, covering the period 2004-2007, relating to the institutions, objectives and fields of the co-operation between the regions.

Certain examples - such as ArgeAlp, AlpeAdria and the COTRAO (the Western Alps Working Community) for the Alpine Arc - include both transfrontier and inter-territorial aspects.

Others offer illustrations of multilateral inter-territorial co-operation in large European transfrontier regions:

- the Atlantic Arc (covering all the regions along the Atlantic coast);
- the Atlantic Axis (made up of Spanish and Portuguese municipalities);
- CORDIALE (the Conference of the European Continental Diagonal Regions: Aragón and Extremadura (Spain), Limousin and Midi-Pyrénées (France), Alentejo and Centro (Portugal));
- the "driving forces for Europe": Catalonia (Spain), Rhône-Alpes (France), Baden-Württemberg (Germany) and Lombardy (Italy);
- the "C-6" network of French and Spanish cities (Barcelona, Palma de Mallorca, Valencia, Zaragoza, Montpellier and Toulouse);
- the CPMR (Conference of Peripheral Maritime Regions of Europe);
- the North Sea Region (Denmark, Germany, the Netherlands, Sweden, the United Kingdom and Norway (not a member of the EU));
- the North West Metropolitan Area (NWMA) made up of regions in seven countries (the United Kingdom, the Republic of Ireland, France, Belgium, Luxembourg, Germany and the Netherlands) ;
- the Council of Heads of Border Regions in Belarus, Russia, Ukraine, etc.

Another inter-territorial dimension in Europe involves the pooling of regional planning experience among regions. Thus local and regional authorities also play a part in transnational co-operation, supplementing inter-state co-operation in more specific geographical areas. Many local and regional authorities, such as Finland's local authorities and Switzerland's cantons, play a part in the implementation in their geographical areas of

the European Spatial Development Perspective (ESDP) or of the Council of Europe's regional planning guidelines.

Conclusion to part 2

To conclude this second part of the Handbook devoted to the legal instruments - whether European, binational or multinational, inter-regional or multiregional, or possibly inter-municipal - the list below constitutes *a reminder of some of the forms* that public or private-law agreements on transfrontier co-operation may take in practice, *and have been given since the seventies by various local, regional, national and European authorities. A few examples are given below, not in chronological order, of legal forms created since the Seventies, all consistent with the Madrid Outline Convention and its two protocols, which, it has to be appreciated, are flexible, extensive and have as their main objective the promotion of transfrontier co-operation:* a transfrontier consortium, such as a SIVOM (Syndicat Intercommunal à Vocation Multiple - multi-purpose inter-municipal consortium) or SML (Syndicat Mixte Local - local joint consortium); a European co-operation consortium with a specific role; a European company (*under Community law*); a European Economic Interest Grouping (EEIG); a local transfrontier co-operation grouping (GLCT); a European transfrontier co-operation grouping (GECT)(*under Community law*); a Eurodistrict; *a working community* or conference; a transfrontier conurbation or metropolis; a transfrontier *arrangement* between municipalities *and/or transfrontier district*; a European or transfrontier territorial authority; a local semi-public company (SEML); a public interest grouping (GIP) and/or Consortium, and so on.

Having looked at legal aspects in this lengthy part, let us now attempt to identify more clearly the stages in, and the fields concerned by, the development of transfrontier relations, whereby transfrontier co-operation gradually acquires greater depth and best practices emerge, *without suggesting an actual model, since each transfrontier region has its own specific features.*

Part 3: In what fields and by what stages can transfrontier co-operation be promoted?

Part 1 proposed a definition of a (in some cases multidimensional) transfrontier territory which is appropriate to the whole nexus of transfrontier relations, whereas part 2 studied a large number of legal instruments essential to this transnational, interregional co-operation process. This third part will examine all the fields concerned by neighbourhood relations of this type and the stages that must be followed if transfrontier co-operation is to become one of the mainstays of European construction, *as I wrote back in 1992*³⁵.

As I said then, *transfrontier migration leads to a certain homogenisation of everyday patterns of behaviour on each side of the frontier, to a veritable cultural intermingling that makes the frontier zone a new place for socio-cultural interaction. Thus areas of separation are transformed into areas of union, resulting in ongoing interactive exchanges of information and experience among all in the public and private sectors who are involved in transfrontier co-operation.*

Using a conventional typology, transfrontier problems may be broken down into *seven* categories, to be addressed in five stages. However, it would be desirable, in a more specific handbook, to look at these basic categories from a far broader perspective. The content and sequence of the categories in this conventional typology characterising all forms of transfrontier co-operation are as follows:

Typology of fields (7)	Typology of stages (5)
• environment	• information
• spatial planning and sustainable development	• consultation
• transport and communications	• co-operation
• the economy, employment and tourism	• harmonisation
• education and culture	• integration
• frontier populations	
• <i>research and development</i>	

3.1 Transfrontier co-operation's areas or fields of activity

When discussing all these fields of transfrontier co-operation, a dual approach can be adopted. Firstly, an attempt can be made to give what amounts to an overview of current practices in all the transfrontier regions of Europe; secondly, a number of specific examples, drawn from the important Chisinau Declaration referred to above, can serve to identify the guiding principles of transfrontier co-operation in the countries of central and eastern Europe.

This overview derived from a study of the typology of numerous transfrontier institutions throughout Europe may be compared, as appropriate, to a slightly different breakdown of the problems experienced on a daily basis by frontier populations, problems analysed in part 1 (section 1.4). The author has endeavoured to basis the summary below on the work of the various committees or working groups of the many transfrontier institutions frequently consulted or visited by him.

³⁵ Third of a series of international colloquies about the problems of the transfrontier labour market, European Commission, DG V (Social Policy), San Remo (Italy), 23-26 October 1992.

3.1.1 *Open-ended summary of the main spheres of transfrontier co-operation.*

3.1.1.1 Sphere of the environment and spatial planning

These four fields of activity are a definite stumbling block for transfrontier co-operation; they give rise to a host of problems and are often thought to encroach on prerogatives linked to the national territory. In certain transfrontier areas of Europe, some associations prefer to speak of a "right of interference" necessary in environmental matters rather than developing a true partnership, for instance where energy is concerned

a) environment

Although the idea of a natural frontier has long been a basic tenet of geography and political science, the environmental impact of transfrontier co-operation is today unequivocally revealing the spatial continuity of frontier areas and hence the need for their joint management to cope with problems of pollution, soil degradation and optimal land use.

The following action is possible:

- preparing studies on pollution and/or waste disposal and establishing networks of waste disposal facilities;
- developing programmes for the protection and management of the natural environment (remote sensing to detect forest fires and natural disasters), harmonising working methods of environmental observation stations;
- raising awareness about environmental problems, taking joint action in specific fields such as the construction of high voltage power lines, providing information about risks or potential risks, eg from chemicals, along frontiers;
- drawing up mutual assistance plans to cope with natural disasters using heli-borne resources;
- compiling joint databases on the region's animal and plant life, groundwater mapping programmes;
- major inter-regional and transnational infrastructures;
- organising annual events for young people to raise environmental awareness;
- establishing transfrontier natural parks, taking joint initiatives on water quality and the quality of rivers and lakes.

It should be remembered here that, for all the international organisations (UN, WHO etc), the theme of water has become one of the absolute priorities for the coming decades, if not for the entire 21st century. Both the Council of Europe and the European Union have already done much in this field, particularly where all transfrontier areas are concerned. One example is the Helsinki Convention, signed on 18 March 1992 and approved by the European Council on 24 July 1995, on "transboundary watercourses and international lakes", *which, in fact, reiterates many Council of Europe recommendations, in the same way as the European Union has done a lot of work on spatial planning 25 years after the Council of Europe adopted its first recommendations on this subject.*

The aim of the Convention is to:

“Prevent, control and reduce pollution of transboundary watercourses and international lakes by developing international co-operation.”

The Convention defines the following terms:

- "Transboundary waters" means any surface or ground waters which mark, cross or are located on boundaries between two or more States; wherever transboundary waters flow directly into the sea, these transboundary waters end at a straight line across their respective mouths between points on the low-water line of their banks.
- "Transboundary impact" means any significant adverse effect on the environment resulting from a change in the conditions of transboundary waters caused by a human activity, the physical origin of which is situated wholly or in part within an area under the jurisdiction of a Party, within an area under the jurisdiction of another Party (such effects may take numerous forms, including effects on human health and safety, flora, fauna, soil, air, water, climate etc.)”

The Contracting Parties:

- The Parties to the Convention shall, in particular, take all appropriate measures to prevent, control and reduce any transboundary impact arising from water pollution.

They must therefore:

- ensure that transboundary water management is rational and environmentally sound;
- ensure that transboundary waters are used in a reasonable and equitable way;
- ensure conservation and, where necessary, restoration of ecosystems.

These commitments are guided by the following principles:

- the precautionary principle: action to avoid the release of hazardous substances may not be postponed, despite there being no fully proven causal link between those substances and potential transboundary impact;
- the polluter-pays principle, under which costs of pollution prevention, control and reduction measures are to be borne by the polluter;

- water resources are to be managed so that the needs of the present generation are met without compromising the ability of future generations to meet their own needs.

The Convention encourages co-operation between Riparian Parties through bilateral and multilateral agreements, aimed at developing harmonised policies, programmes and strategies to protect transboundary waters, involving:

- collecting and compiling data in order to identify pollution sources likely to cause transboundary impact;
- elaborating joint monitoring programmes;
- adopting emission limits for waste water;
- establishing warning and alarm procedures;
- preparing environmental impact assessments;
- assessing the effectiveness of programmes to combat this kind of pollution.

Particularly in view of the nuclear energy problem, the environment may become a taboo subject and be ignored in institutionalised transfrontier co-operation, as energy problems and most of all nuclear energy problems are *still all too often* entirely a matter for the sovereign national authorities. The only way to transcend this outlook is for transfrontier institutions to be backed by unrestricted operation of local associations and also by better co-ordination of national plans to block or supervise nuclear activity between States in frontier areas.

b) agriculture

Seldom listed as a transfrontier problem, agriculture nevertheless has a place in our typology because the first inklings of transfrontier co-operation are today starting to appear in what has hitherto seemed to be the exclusive preserve of national or European authorities. In addition to time-honoured initiatives such as the preparation of hunting and fishing guides (which are usually classified under the heading "environment") other forms of joint action are now starting to be taken, notably by arbitration committees dealing with transfrontier land-use questions (e.g. the waiving of the pre-emption rights that exist in some countries), joint action programmes concerning the proliferation of insect pests and vermin (such as voles in some mountain frontier zones), transit of living or slaughtered animals, the true origin of agricultural produce, gastronomic tourism etc.

Linked with both agriculture and the environment, the involvement of mountain populations in multiple transfrontier occupations (farming, crafts, winter sports, rural tourism, etc) is becoming one of the salient socio-economic features of frontier mountain areas³⁶.

³⁶ The protection of these populations is one of the important issues. Cf the European Charter on Mountain Regions approved by the CLRAE in Chamonix at a meeting held from 15 to 17 September 1994, but on which the recommendation of the Committee of Ministers is still at the draft stage.

c) spatial planning

The first problem here is to agree on a definition of this term. It may be understood in a narrow sense as simply denoting land use or in broader terms as referring to all human activities in a spatial context at economic, social and cultural levels.

Whichever definition is adopted, a number of activities should be pursued in this field:

- launching concerted policies relating to transfrontier land management and the harmonisation of land use plans on each side of the frontier;
- making overall studies on the socio-economic structure and urban framework of the transfrontier area together with sectoral studies forming part of projects such as the joint construction of bi-national industrial zones;
- creating dynamic mapping of interaction, including joint projects for major transfrontier infrastructures in the fields of transport, telecommunications, health and training.

It is well known that, within many transfrontier institutions, spatial planning encompasses other sectoral approaches as well.

d) sustainable development

This subject would really need *another* handbook of its own, covering first its definition or definitions and then the ever-increasing range of associated "practices", while not forgetting the individual and collective "conceptions" relating to it since, these days, everything is going sustainable: sustainable transport, sustainable tourism, sustainable public services etc.

There have been a whole host of political declarations stressing the importance of sustainable development for the present and future of all our societies, the most notable being, after Mrs Brundtland's 1st report to the UN as long ago as 1991, the Declarations of Rio de Janeiro in 1992 and Johannesburg in 1997.

Three main pillars constitute the very essence of sustainable development and all three can be taken on board by transfrontier co-operation, namely:

- human resources in all their aspects, demographics, training, know-how, etc
- physical resources with their advantages and drawbacks, their present and foreseeable state;
- solidarity between generations, bearing in mind that "the present world is on loan to present generations from their children".

The theme of "transfrontier sustainable development", with all it implies and entails, will give the CDLR and LR-CT an inexhaustible subject for the future.

A number of initiatives might relate to one or other of these three pillars. These might involve studies on regional climate for example or the drawing up of glossaries of technical terms used by environmental protection specialists (such as the exceedingly complex definition of the term "waste") and by planners in general; or perhaps a new ecological philosophy geared inter alia to "(re)introducing nature in towns".

3.1.1.2 Transport, security and communications

The function of these sectors undoubtedly puts them in one of the most important categories identified by transfrontier co-operation bodies. Problem-oriented measures that have been studied in this field are as follows:

a) transport

- studying respective and joint needs with regard to transport in general, and transport for frontier populations in particular;
- agreements for the systematic exchange of information at all levels of intermodal projects or intermodal policies on public transport;
- taking joint action on behalf of certain roads and railways and examining ways of optimising the running of railways and public transport without breaking bulk;
- defining the legal and financial form of a transfrontier public transport structure (pricing committees and operating committees);
- conducting studies on inter-regional air traffic (transport and communications); listing transport infrastructure construction projects that are under consideration or under way on one side of the frontier and of interest to the other side, if only to make economies of scale;
- opening or closing of frontier posts; introducing longer opening hours; creating "green corridors" for the frontier labour force with no customs formalities.

b) security of infrastructures and transport

- adopting recommendations and measures to ensure the security and smooth flow of transfrontier road and rail traffic;
- studying security-related subjects (high-risk undertakings, extension of civil defence plans, natural hazards, chemical pollution etc);
- drawing up transfrontier alert procedures that can bypass state capitals;
- arranging for the transfrontier use of emergency services (fire, civil defence organisations).

- two-way information on highway codes and differences between them etc.
- c) communications
 - negotiating and fixing preferential telephone charges and specific codes for the transfrontier regions as a whole;
 - transfrontier mail delivery bypassing the major national centres;
 - establishing a joint telephone exchange for regional enquiries;
 - developing transfrontier servers hooked up to national systems (eg minitel or videotex), Internet, website etc.

3.1.1.3 The economy and employment

In this important area of transfrontier co-operation, involving aspects of economic science and social economy, orthodox theory distinguishes between:

- economic aggregates (Keynesian theory) in a transfrontier perspective:
 - production and income
 - consumption, investment, savings
 - imports, exports
 - and the matrices that they yield at inter-regional level (if regional statistics are adequate)
- economic flows and freedom of movement in *four* categories (*commonly described as part of the *acquis communautaire**):
 - goods
 - services
 - capital
 - people
 as already established by the "Single Market".
- active elements in the public and private sectors of the economy, especially the nexus of small and medium-sized businesses which create jobs and provide training *appropriate* to them.

The following transfrontier actions concerning the economy and employment can be mentioned:

- a) in general
 - ensuring regular co-ordination and exchange of information relating to socio-economic statistics, or even compiling joint statistics;
 - monitoring transfrontier financial transfers between banks;
 - making joint economic diagnoses, taking joint action, and publishing catalogues indicating possibilities for technological sub-contracting or co-contracting;

- producing practical legal guides that describe opportunities for transfrontier co-operation;
 - creating a transfrontier market in investment and innovations and providing transfrontier funding for them;
 - co-operating in the field of energy (energy supply network);
 - producing transfrontier industrial directories listing all enterprises based in the region and indicating whether they complement one another, operate in parallel or in competition etc.
- b) employment, social protection and the transfrontier labour force
- continuity and complementarity of initial and in-service vocational training;
 - publication of guides for frontier workers setting forth all rights and obligations of this labour force in the country of residence and in the country of employment;
 - identification of instruments for closer harmonisation of training facilities and job opportunities on a transfrontier basis;
 - compilation of joint transfrontier unemployment registers or convergence of measures regarding, for instance, youth or long-term unemployment.
 - types of work permits, residence permits, authorisations to purchase real estate property;
 - transfrontier social protection in relation to the 9 sections of ILO *Convention 102* or to EU Council Regulation No 1612/68 on freedom of movement for workers within the Community, Commission Regulation No 1251/70 on the right of workers to remain in the territory of a Member State after having been employed in that state, Council Regulation No 1408/71 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, and Council Regulation No. 574/72 of 21 March 1972 laying down the procedure for implementing Council Regulation No. 1408/71.
- c) business and industry
- organising dialogue between employers' associations and businesses;
 - making transfrontier agreements between firms so as to attract investment;
 - promoting industry jointly with adjacent frontier regions;
 - establishing regular transfrontier links between firms, research centres and science and business parks, chambers of commerce, trade unions, chambers of agriculture and chambers of trade;
 - co-operating on a transfrontier and inter-regional basis in the field of industrial innovation etc.

- d) technology
- transfrontier involvement in science parks;
 - reducing inter-regional economic imbalances, through reciprocal investments in joint technological contracting or sub-contracting;
 - preparing for technology transfers, launching specific programmes for restructuring frontier towns (e.g. the Longwy transfrontier Euro-pole).
 - joint outsourcing.
- e) tourism (winter and summer)
- e1/ exploiting common tourism resources especially if they have similarities, such as cultural routes :
- joint production of tourist goods;
 - publishing tourist guides; jointly attending fairs and exhibitions;
 - upgrading common tourism resources;
 - co-operating in the field of tourism and joint promotion campaigns;
 - issuing calendars of exhibitions, fairs and shows; joint mapping for tourism etc.
- e2/ harmonising infrastructures (investment and training):
- drawing up and harmonising statistics regarding occupation of hotel beds or the various tour options;
 - developing transfrontier (water) sports facilities;
 - setting up a basic or high-level training programme for tourism in commercial law (and even transfrontier co-operation law) (cf 3.5.8. system in Bologna).
- e3/ co-ordinating entertainment policy, including a "transfrontier cultural passport":
- making transfrontier cultural investments;
 - setting up sales-points for tickets for entertainments on each side of the frontier;
 - exchange of theatrical or musical groups;
 - co-ordination of museum exhibitions.

3.1.1.4 Frontier populations: health and welfare services, housing

- a) social security for frontier populations in general
 - publishing guides to social services for people on each side of the frontier;
 - studying and providing help in collecting maintenance allowance, child-minding;
 - monitoring transmissible illnesses (*AIDS etc*) and epidemics;
 - providing mutual administrative assistance concerning drugs, trafficking channels and dealing points.
- b) frontier workers
 - improving social security cover for frontier workers (unemployment, sickness, accidents, death) or the principle of the territoriality of provisions combined with the principle of the accumulation of contributions depending on the countries of employment; simplifying border crossing formalities and speeding up procedures for frontier workers;
 - publishing handbooks for frontier workers;
 - establishing conventions between health insurance funds regarding costs of treating frontier workers in hospitals on each side of the frontier, going beyond the strict principle of territoriality that governs most national social security systems (except within the European Union³⁷;
- c) health infrastructures
 - setting up a mutual relief plan for disasters or epidemics;
 - making a combined organisation chart of emergency medical services;
 - publishing a map of hospital services, including a hierarchical network of hospital centres;
 - exchanging medical and/or paramedical staff or trainees.
- d) housing
 - control over all forms of land speculation
 - percentage of social housing
 - housing grants
 - areas to some extent occupied by a single community, *sometimes referred to as "ghettos", etc.*

³⁷ cf. E111 form for health treatments or medical provisions necessary in a EU or EFTA member state.

It is here that co-operation efforts are by far the most developed and form one of the indispensable points of anchorage for any in-depth transfrontier relations:

- a) education and training;
- joint textbooks for teaching history, geography etc³⁸;
 - exchanging staff in primary, secondary, advanced and vocational education, together with teaching materials;
 - organising presentations of training courses available on each side of the frontier, and "crossover" possibilities with comparable transfrontier opportunities in apprenticeships;
 - organising inter-university co-operation and the creation of bi- or tri-partite university institutes;
 - in-depth co-operation between universities on a wide range of fronts, at postgraduate level for instance;
 - aiding transfrontier training and theoretical or applied research projects, in fields such as biotechnology;
 - setting up beginners' and advanced courses in the language spoken by the neighbouring frontier population;
 - making general or sectoral arrangements for mutual recognition of diplomas; recognition of school years or semesters (system of "transfrontier credits") or integration into the "3.5.8." Bologna university system, entailing a degree in 3 years, masters or diploma in 2 years and doctorate in 3 years.
- b) socio-cultural infrastructures and events
- drawing up transfrontier organisation charts (indicating "crossovers") of the different education systems;
 - producing "information kits" for all training institutions with a cross-border presentation of political and/or administrative units involved in transfrontier co-operation;
 - publishing cultural guides listing bodies active in this field, libraries and cultural directories;
 - "exporting" cultural exhibitions and easing transit through frontiers;

³⁸ For example, the decision to write a book on history common to France and Germany, taken at the Standing Conference of Ministers of Education for German Länder (Berlin, 21 March 2005), in the presence of the French Minister for National Education, M François Fillon and Mr Peter Müller, the Minister for Sarre.

- organising cultural exchanges; jointly organising concerts and other forms of entertainment, inter-regional tours, bi- or tri-national musical groups, theatre troupes and film productions;
- and above all, transfrontier accord on higher levels of cultural investment.

c) cultures and region

- cultural demographics

Cultural intermingling is definitely encouraged when cross-border population flows develop, beginning with family reunion or concessions granted for marriages. On a more prosaic note:

- Everyday cultural *events*, such as:
 - awarding a prize to a person or an institution having contributed to the life of the transfrontier region;
 - conducting musicographical and ethnographical studies;
 - exhibitions and publications about problems of minorities in the regional transfrontier area. The subject of transfrontier expression *of the culture of minority populations* merits far more extensive development, *in view of the many cultural fields concerned (some writers refer to “transfrontier cultural pluralism”)*.
- Languages and regional cultures
 - developing bilingual cultural itineraries;
 - creating forums for encounters and dialogue between national or regional cultures;
 - providing support for bilingual associations and bilingualism;
 - grants for bilingual institutions etc.
- Cultural instruments for transcending frontiers
 - publishing books, guides and atlases that span frontiers;
 - developing "cultural passports" giving access to many different cultural institutions in regions or towns separated by a frontier;
 - promoting exchanges of art, theatre and music;
 - organising transfrontier relations between associations in each community on the occasion of local festivals;
- Religions

There has been little study to date of the transfrontier religious phenomenon, its scale, its transfrontier characteristics, its integration in public and private life and in major shared religious events and historic faiths, through transfrontier pilgrimages for example. This *should* be subjected to serious analysis.

d) telecommunications and the media in general

- establishing transfrontier training schools and institutes for the media professions;

- creating regional media networks (press, radio, television);
 - producing inter-regional radio programmes and joint audio-visual modules;
 - providing joint coverage of important transfrontier events for the three aforementioned media.
- e) sport and leisure
- organising and promoting regional sports events;
 - arranging sports exchanges;
 - publishing guides to sports exchanges;
 - using shared facilities: swimming pools, sports stadiums, golf courses etc.

The distances between cultures resulting from nationalist policies imposed by some countries in the past may gradually fade away and be replaced by cultural intermingling. This may lead in turn to the emergence of a specific transfrontier "profile" differentiating people who live in the frontier areas of a country from those in its heartland and positively foreshadowing authentic transfrontier cultures. Such cultures would then form a kind of bedrock in transfrontier areas as the process of regional micro-integration develops while continuing to respect the historical frontiers that have less and less of a role to play.

After this review of the main areas of traditional transfrontier co-operation pursued on the basis of exclusive, delegated, shared or additional powers, it is worth focusing on a few *recent* political documents of importance in these fields and certain schemes tried out in border areas in Europe. *All these declarations (the latest being the Chisinau Declaration) and this recent experience are clearly part of a long process, spanning several decades, whereby fields specific to transfrontier co-operation have been taken into account.*

3.1.2. *Declarations or schemes relating to the main spheres of transfrontier co-operation:*

- the Chişinău Declaration
- spheres covered by the 6 Euro-regions operated by Lithuania with neighbouring countries and regions
- spheres focused on by euro-districts, particularly that of Strasbourg.

3.1.2.1. The Chişinău Declaration of 5 November 2003

The Declaration, already studied in part 2 in terms of the political objectives of all forms of transfrontier co-operation, comes up again in part 3, because it provides an excellent summary of the main fields of such co-operation.

"Interstate agreements could cover the following areas:

- the simplification of formalities connected with the crossing of borders for individuals, the use of identity cards instead of passports and the lifting of visa requirements, taking into account their respective international obligations;

- the promotion of transfrontier and interterritorial co-operation between schools and universities, the conclusion of partnership agreements, the harmonisation of periods of study abroad and the mobility of students and teaching staff, cultural co-operation and the role of civil society;
- the conclusion of agreements between territorial communities or authorities, with a view to the setting up of public establishments to manage and deliver public services such as water, gas and heating supplies, waste management, public transport and the management of community facilities;
- the granting of legal personality to transfrontier and/or interterritorial co-operation bodies set up by territorial communities or authorities so that they may have a budget, receive public and private funds and carry out tasks of public interest, in accordance with the law;
- harmonisation of the legal framework for the setting up of businesses located in several states, their movements of capital and the tax treatment of such businesses;
- the creation of a mechanism for inter-state consultation so as to facilitate exchanges of information between central government departments, legal assistance and technical support for those territorial communities or authorities engaged in transfrontier and interterritorial co-operation..."

This important Declaration also calls *for certain action to be taken by public and private-sector agencies, in respect of the fields of co-operation:*

- “the establishment of mechanisms to actively facilitate the sustainable return of refugees and internally displaced persons, including measures on providing legal assistance, access to public services, transport and awareness raising initiatives for returnees, in accordance with such domestic legislation as may be applicable...
- measures aimed at tackling cross-border crime and trafficking in human beings, through joint policing across borders, efficient information exchange between law enforcement personnel...
- the promotion of harmonious relations between ethnic communities and reconciliation, by promoting links and co-operation between communities, particularly across borders, promoting reconciliation programmes and encouraging fair representation of ethnic minorities in local and regional authorities...”

3.1.2.2. The 6 Euro-regions operated by Lithuania with its neighbours, set up between 1998 and 2003

The spheres earmarked for "sustainable transfrontier development" in the "Bartuva Euro-region" are "industry; agriculture and forests; exchanges of "know-how"; environmental protection; culture; tourism; education; medicine and sport; social infrastructures; spatial planning ..."

All these spheres are grouped into 5 sectors for the Sesupe Euro-region: "environment; economic affairs; youth and sports; social security; tourism."

The "Soule Euro-region" adds:

"border-crossing infrastructures ... learning of neighbouring languages ... protection and maintenance of the common cultural heritage ... ecological disasters fires..."

3.1.2.3 Spheres focused on by Euro-districts, particularly that of Strasbourg – Kehl

Euro-districts may be far more accurately defined than Euro-regions in terms of size, powers, instruments and budgets, *as already seen in part 2 where it deals with transfrontier legal instruments. Now that we are considering fields of transfrontier co-operation, we can say that euro-districts are also more specific, because they are very likely to be more tightly circumscribed geographically.*

Generally speaking, Euro-districts may be set up to prepare the way for a transfrontier spatial planning scheme, form an organising authority for transfrontier transport, manage public facilities (sewerage works, household waste processing plant etc), create business estates (science parks or technology centres etc), or even to establish a governing structure for a joint territorial project etc.

The new Strasbourg–Kehl Euro-district provides for the following activities in more targeted and localised terms, giving this clearly geographically defined transfrontier institution an identity and specific meaning for all the frontier communities concerned:

- unifying long-distance transport networks (TGV-ICE) ;
- extending the existing short-distance transfrontier transport network;
- joint marketing to give the Euro-district a unified identity;
- shared Internet portal;
- developing the skills centre for transfrontier co-operation;
- stepping up co-operation in the area of public security/police co-operation;
- reinforcing sustainable environmental co-operation, particularly in the areas of noise abatement/preservation of the atmosphere and demarcation of nature reserves;
- developing co-operation between emergency and assistance services;
- improving accounting skills at the level of vocational training, particularly in the areas of self-employment and teacher-training;
- sharing of resources between placement agencies;
- twinning schools and exchanging pupils;
- generalised teaching of the other's language (French and German respectively) in all schools to achieve a degree of bilingualism providing a solid foundation for the Euro-district.

After this full description of the traditional fields of transfrontier co-operation, we can now go on to analyse the possible stages, ultimately leading to areas of regional transfrontier micro-integration, that can be seen as pilot projects for true European integration.

3.1.2.4 The main fields in the Stability Pact

While the Stability Pact should really be covered in detail, given all its achievements in terms of transfrontier relations, the important thing in this context is to draw attention to the main fields of its exemplary action, after first pointing to some key facts about the Stability Pact itself.

With its “working tables” on democratisation and human rights, economic reconstruction, and security issues, looking inter alia at local democracy and cross-border co-operation, the Stability Pact offers a political framework for coordination. It bases transfrontier co-operation on several given facts:

- *true economic, social and territorial cohesion;*
- *efficient local and regional governance fitting in with each state's territorial organisation and system of devolution in terms of taxation and other matters;*
- *close co-operation between the organs of the Council of Europe and those of the European Union, including on the subject of Schengen visas;*
- *joint action involving local players and international partners;*
- *synergy between civil society, local and regional authorities, and associations of local and regional authorities and their network (NALAS, the Network of Associations of Local Authorities of South-Eastern Europe);*
- *specific fields of transfrontier co-operation: energy, regional infrastructure, commerce, investment, employment, security and organised crime, migration;*
- *the need for greater local democracy for better transfrontier co-operation.*

A few examples are given below of practical action taken jointly by the Stability Pact and the Council of Europe and European Union.

Assistance has been given with the design and implementation of large-scale territorial reform in Albania, Bulgaria, Serbia and Montenegro (Kosovo) and "the former Yugoslav Republic of Macedonia"; with the promotion and devolution of powers and with budgetary devolution (Bulgaria, Bosnia and Herzegovina, Moldova, Serbia and Montenegro, "the former Yugoslav Republic of Macedonia"); and with the modernisation of the national administrative authorities and the strengthening of their role in support of devolution (Bulgaria).

Action has also been taken to improve capacities, such as the drawing up of national training strategies for elected local representatives and their staff, and the introduction of best practice and peer evaluation programmes (especially in Albania, Bulgaria, Croatia and Slovenia) and of pilot projects in Bulgaria and Romania, two in each country) to develop democratic participation and management capacities.

3.2 Stages in transfrontier relations

The most that transfrontier institutions can attempt to do is to provide linkage between systems and sub-systems on a more or less functional basis, without reference to a real transfrontier authority, independent of States but solely for the purpose of transfrontier consultation, co-operation and perhaps even harmonisation between the communities directly concerned. Seen in this light, transfrontier institutions are only instruments; all that matters is the fabric of transfrontier relations between all those concerned. This fabric is the only valid basis for the emergence of true transfrontier regions. It is imperative to "democratise" transfrontier co-operation, achieve effective transfrontier "reflexes" and establish true transfrontier subsidiarity, a genuine transfrontier culture and why not even transfrontier identities.

Examination of the dynamics of transfrontier relations shows that the latter have developed in ways that recall the development of relations between States during the 19th and 20th centuries. This similarity is worth looking at, noting firstly that the mechanics of relations between public entities governed by different legal systems may be broken down into six stages:

3.2.1 *Total lack of relations*

The different units or populations do not know each other: they live in a state of self-sufficiency or identify exclusively with their national community. Consequently the frontier is regarded solely as a border, a dividing-line, a source of security. Almost all European States seem to have moved beyond this stage. Infra-state public authorities have only relatively recently become aware of their direct frontiers with other, similar units which form part of different national political systems. Only during the last three decades have most European countries begun to work systematically towards decentralisation and devolution of power and to transcend the frontier in functional terms. This trend is particularly marked in states with a non-federalist tradition - it already existed in federalist States - and can be explained to a large extent by the heavier administrative work-load that state governments have to shoulder and by the increasingly widely-felt need for political and administrative structures to be closer to people's everyday lives or indeed in a better position to take the cost of transfrontier relations into account.

This means more decentralisation, and thus more scrupulous application of subsidiarity, including transfrontier subsidiarity.

3.2.2 *The information-exchange (and assessment) stage*

This is the stage during which the first contacts are made. It is extremely important for local authorities, even if the approach is less uniformly structured than for relations between state governments: informal meetings are held between governments and political and/or administrative authorities; written information is exchanged. In order to co-operate, more knowledge of the neighbour's political, economic, social and cultural structures is needed. What, for example, is the difference between a Swiss and a French "State Councillor"? What is the difference between a mayor, a president, a syndic and a burgomaster as heads of local communities in different countries?

Better knowledge of the neighbour is also needed to assess their qualities and establish an increasingly positive dialogue and a real partnership.

3.2.3 *The consultation stage*

It is increasingly accepted that before any decision is taken, the foreign partners and neighbours are informed and consulted in so far as the measures under consideration may affect them. Yet consultation of this kind still often takes place on an informal basis and whatever the outcome, more often than not its conclusions are in no way binding. Most frontier communities in western Europe and, now in central and eastern Europe too, have reached this stage, notably in the field of spatial planning and environmental protection. Much remains to be done however. Many territorial maps still stop at frontiers, including those in school textbooks! The problems they encounter in everyday life are what bring frontier communities closer together and encourage them to consult each other and even to co-operate.

3.2.4 *The co-operation stage*

In some fields a local policy cannot be effective without reaching this stage of transfrontier co-operation. At present, most existing transfrontier institutions are working on both the co-operation and consultation aspects. Transfrontier experience at this level universally highlights the fact that joint solutions are the only effective response when communities and populations on each side of a frontier are facing similar problems. Where the distinction between consultation and co-operation is concerned, all the "Working Communities", "Councils" and "Conferences" set up in the 1970s and 1980s are more bodies for consultation rather than true co-operation as of yet. Yet despite being consultative bodies the approach of their members, who usually comply with their unanimously adopted decisions, gives their mode of operation affinities with that of conventional intergovernmental organisations specifically designed for co-operation. This being so, it is perhaps not beyond the bounds of possibility that in the near future transfrontier co-operation will transcend consultation and match the Latin etymology of the word co-operation: "working with". This is a matter of the greatest concern to all working partners situated along the internal and external frontiers of the European Union - the "European Home" envisaged by the Council of Europe - throughout the continent, North, South, East and West especially after the latest enlargement of the European Union to 25 Member States.

There are two final stages of transfrontier relations between entities governed by different legal systems which, in our opinion, intra-state communities have not yet reached - neither among the 46 member States of the Council of Europe nor among 25 Member States of the European Union:

3.2.5 *The harmonisation stage*

Within frontier areas and in national or regional systems of laws and regulations, at Community level and in many fields, including social policy, the term "harmonisation" is replaced by "alignment". In DG V (the Directorate-General for Social Policy) in Brussels, the expression "alignments of social security systems" *still* tends to be used rather than harmonisation of social policies. *Similar caution is exercised by the Directorate-General for Taxation, which prefers the term "alignment" to "harmonisation"*. In view of the advances and delays accumulated by the twenty-five in *the fields* of social protection and taxation, an optimum balance does not yet seem to have been struck in these areas; it is a matter of time. *The recent (April 2005) European Parliament debate on the Bolkestein directive provides further evidence.*

What is true of social policy is equally true of regional policies, especially transfrontier regional policies.

It is certain that the aim insistently reiterated by the European Commission of "economic, social and territorial cohesion" for the entire Community area (see its 3rd Report of 14 July 2004) for the years 2007-2013 will facilitate a greater degree of harmonisation, for frontier regions among others. The stricter application of the *general* socio-economic principle of "non-discrimination" throughout the Community (see judgments of the Court of Justice) *will also have as a consequence* the speeding up of the harmonisation stage in the Community's border areas.

This is why the optimum level of transfrontier relations implicit in the word harmonisation has barely been reached yet in *frontier areas*, not even within the European Union. A whole fabric of mutual understanding has yet to be woven - even simply crossover points established - before a real nexus of contractual relations can emerge on a basis of harmonisation and, a fortiori, of integration.

3.2.6 *The integration stage*

The integrated regional development programmes that constitute the ultimate stage of transfrontier socio-economic co-operation cannot be drawn up, let alone be implemented, until the final goal of the European Union - integration - has been fully achieved. This justifies the use that is starting to be made of the terms transfrontier labour market areas, transfrontier economic development areas, transfrontier technological innovation areas and transfrontier training areas as well as areas of life in the context of integration, although such areas do not yet constitute exact frames of reference for the political authorities or socio-economic or cultural agencies as a whole. The degree of micro-integration of transfrontier areas continues to *provide an indicator and catalyst* of European integration *in general*.

Several states of the European Union have told the author of their wish for the Bolkestein directive to be mentioned, even briefly, with comments on the integration aspect, in view of its importance to the Community's border areas. The directive specifies what freedom to provide services within the Community means, and the results it should bring, if the directive were to be accepted as it stands, the consequences of which are clear for the border areas of concern to us. Which rules would be applied to such areas in respect of the main fields of services? Which social legislation would apply, that of the country of residence or the country of employment? What rates of pay would be applied? Which collective agreements would have to be complied with? Hitherto, at least, it has been the host country's social legislation, social protection system, employment and pay conditions, and collective agreements that have applied to firms and their employees in border regions. If the free movement of services, as of persons, is strictly applied within the European Union, this clearly presupposes true convergence, a veritable harmonisation of social security systems, so that the territory of the Community is fully integrated on the basis of the fiscal objectives of "economic, social and territorial cohesion".

The Bolkestein directive is basically intended to fulfil an objective first stated in the Treaty of Rome, on 21 March 1957, and reiterated in Jacques Delors' Single European Act of 1986: to set up a large single market within Europe based on freedom of movement for persons, capital, goods and services. In this section on micro-integration in Europe's border areas, and therefore of integration in general in the European Union, however, is it possible to think at this early stage of racing ahead on the road to European construction, doing without the stages of aligning and harmonising economic, social and fiscal systems? The

Constitutional Treaty, of course, emphasises not only fundamental freedoms and non-discrimination (Article I-4), but also freedom to choose an occupation and the right to engage in work (Article II-15) and the "liberalisation of a specific service" (Article III-147).

The Single European Act of 1986 already stipulated in respect of services that restrictions would gradually be removed over a long transitional phase. Almost another 20 years went by before the recent enlargement of 1 May 2004. As the tertiary sector now generates at least 70% of the gross product of the Community, accounting for the corresponding jobs, the Lisbon Strategy introduced in 2000 by the 15 member states was calculated to develop competitiveness and employment in the European Union over the long term. It seems likely that not enough account was taken of the variety of definitions and typologies of services, particularly those of general economic interest, or of the specific geographical features of local and regional authorities, all of which want equal access to all public services, depending on the economic, social and fiscal conditions applying to them. All the European Union's transfrontier areas, internal and external, have a huge interest in what happens to the Bolkestein directive, over the content of which the European Parliament, thanks to the Constitutional Treaty, will have the power of co-decision. And transfrontier areas and the Bolkestein directive will inevitably be an important subject in the future work of the CDLR, Congress and Committee of the Regions.

Conclusion to part 3

There is still some way to go before reaching this final stage of transfrontier co-operation and of the European Union itself: integration. The priority goal of cohesion and the community acquis hinging on the four freedoms of movement of persons, goods, services and capital, points the way forward. There are a whole host of obstacles to be overcome before achieving complete interplay between all the systems and sub-systems present in frontier areas. European institutions (European Union and Council of Europe) and transfrontier institutions will have to engage in what is in effect dual-level dialectics, based on the subsidiarity principle, to arrive at areas of global and controlled micro-integration in transfrontier regions, signalling the soundness and irreversible reality of European construction, particularly in all transfrontier areas.

Part 4: Transfrontier co-operation: incentives and disincentives

In the three previous sections we looked successively at:

- the territory where transfrontier co-operation takes place and where contractual relations are formed over one or more national frontiers;
- the types of institution that provide the necessary foundations for the network of relations between all those concerned;
- the key (and therefore priority) areas, and the classic stages in the emergence of frontier areas which gradually begin to interact.

In part 4 we shall look at the essential processes involved in the development of transfrontier co-operation and, consequently, at the factors that hinder and are at variance with the emergence of true transfrontier regions, analysing in turn the incentives and disincentives to transfrontier relations.

4.1 Incentives to transfrontier co-operation

Of the dynamic processes that are generated by all transfrontier institutions, and which are more important to analyse than hindrances and obstacles to transfrontier co-operation alone, three stand out in particular:

- encouraging an entire new system of relations across frontiers between those concerned with such varied fields as education, culture, health, the economy and the environment;
- following up and strengthening the informal relations that existed before transfrontier institutions were set up, in all European frontier areas;
- creating properly constructed patterns of relations as institutions emerge and developing them within all transfrontier areas, Working Communities, Councils, Conferences, Euro-regions, Euro-districts etc.

While institutional analysis can be usefully applied to transfrontier co-operation, "action theory" is an equally effective tool for identifying the essentials of transfrontier relations, namely the full range of "transfrontier practices". Analysis of "political will" is an indispensable corollary to this theory if we are to understand how viable transfrontier regions can emerge. *What then are these principal incentives to transfrontier relations?*

4.1.1. The legal parameters

Provision of suitable legal instruments and procedures for assisting and furthering transfrontier co-operation throughout Europe; these are backed by greater awareness of the principles of subsidiarity and partnership, as discussed in part 2 of this Handbook. *Thus there is no point in discussing this sphere again, although its importance has to be emphasised. Political science, however, has attempted to define in algebraical terms the "institutional dynamics" concerned: legal institutions and instruments (in the field of concern to us, transfrontier co-operation) may have an incentive effect (the algebraical plus factor), but may also sometimes "freeze" certain forms of transfrontier relations, as may happen with all institutions (this is the algebraical "minus" factor).*

4.1.2. *Financial instruments*

Resources and instruments of a budgetary and financial nature, whether of local, regional, national or European origin, where the public sector is concerned, *provide a vital basis for true, ongoing transfrontier co-operation*; the private sector is also relied upon to aid transfrontier co-operation with specific types of financial support. With regard to the public sector, the Community structural funds, INTERREG among others, have significantly facilitated many a cross-border transaction, even though considerable "administrative strategy" is needed to use and manage them, to the regret of many frontier regions. *In the spring of 2005, during the Luxembourg Presidency, the European Commission is going to produce, in respect of the future sums in the structural funds considered in part 2 (336 billion euros for the period 2007-2013), texts increasing the "decentralisation" or "subsidiarity" of the management of these funds.*

4.1.3 *Political will*

This pursues the development of better-integrated transfrontier areas in terms of spatial planning, transport and basic infrastructures (education, health, leisure and so on). First and foremost, this political resolve would allow co-operation to be carried out across borders with the approval of the State authorities, *overriding* certain fears of national governments, which *sometimes talk* of "disruption" of their territorial and political unity; next, it could enhance the "transfrontier reflex", through, *for instance*, fuller awareness of the transfrontier dimension, *thanks to* contacts pursued *within* political parties, unions and transfrontier associations. Efforts to continually promote opportunities in transfrontier areas for dialogue and regular consultation between elected representatives and all those active in political life - perhaps even going so far as the establishment of "transfrontier parliaments" - *equate to* an ongoing affirmation and reaffirmation of transfrontier political will. Similarly, it is only possible to create a sense of belonging to a transfrontier area on a day-to-day basis, *in such places as the media or in schools*, if there is political determination to do so. For this reason, at regional level, making politicians receptive to frontier-related problems is and will remain an ongoing task. No opportunity should be missed to remind politicians of the *long-term positive* effects of transfrontier activities for all frontier communities, even if, electorally speaking, *they* do not pay immediate dividends. Of course, all these transfrontier relations in the *political sphere* are aided by a greater or lesser degree of "geographical proximity".

4.1.4 *A fabric of preferential, continuing relations between protagonists*

"Transfrontier governance" (e-governance included) fittingly brings into the picture the role and position *in relations between neighbours* of all the public and private agencies and of civil society as a whole.

a) Public and private socio-economic protagonists:

The kinds of action that can be taken to promote the transfrontier idea by those involved in social and economic life include:

- working to promote transfrontier economic and social cohesion generally;
- initiating policies to correct regional disparities;
- identifying common socio-economic interests;
- opening up transfrontier opportunities in economic, or even socio-economic, life (training and jobs) and establishing their cross-border consistency;
- setting up transfrontier economic and social councils or transfrontier consortia of chambers of commerce, chambers of agriculture, chambers of trade, trade unions and groups of frontier people;
- adopting framework conditions for regional economic promotion in a transfrontier context;
- controlling property speculation, etc.
- setting up "transfrontier business marts" that bring together the banking communities, investors, corporate directors, centres of innovation and sub-contracting;
- use of "transfrontier outsourcing", a form of subcontracting which for SMEs located either side of a frontier involves assigning the whole or part of a function (data processing management, logistics, in-house training, etc.) to a specialised service provider;

Through the adoption of the INTERREG initiative on behalf of frontier regions, the European Union has succeeded in giving a certain impetus to these transfrontier agreements between socio-economic protagonists along its intra-community and external frontiers and even in intensifying their "transfrontier reflexes".

b) public and private cultural protagonists:

Cultural protagonists attached to institutions, authorities or associations also help activate the transfrontier mentality or even transfrontier reflexes and cultures. This is moreover one field where progress is becoming discernible although "mental frontiers" are the most enduring. Many actions or measures of a cultural nature strengthen people's sense of attachment to or identification with the one transfrontier unit. There should also be more specific emphasis on the following transfrontier cultural co-operation measures for more effective general activation of frontier relations:

- working through cultural events to foster the emergence of transfrontier regional outlooks and transfrontier reflexes;
- facilitating all kinds of educational exchanges and recognition of diplomas;
- making programmes to teach the language of the neighbouring frontier population at beginners' and advanced levels generally applicable;
- circulating transfrontier regional information (e.g. by means of transfrontier servers, Internet or websites);

- assisting all forms of transfrontier creation, dissemination and reception of cultural works (music, the visual arts, literature, folklore, theatre, etc.) whatever the medium used or the branch of culture targeted.
- c) administrative protagonists are assigned the functions of overcoming reservations and obstructions in state authorities, increasing the management capability and resources available for transfrontier co-operation, and planning exchanges or transfrontier training courses for civil servants. The building of effective crossovers in respect of official responsibilities is becoming indispensable in order to address all the administrative problems affecting the populations of frontier areas.
- d) institutional and political protagonists have the function of promoting regionalism and decentralisation, infusing them with a certain dosage of transfrontier relations, of responsibility with regard to transfrontier relations. To do this, they will need to set up for frontier communities joint structures that have legal authenticity, define models and areas of dialogue involving all public and private protagonists and above all establish stable, contractual crossover points between territorial frontier communities.
- e) voluntary sector protagonists in all areas affected by transfrontier co-operation. The whole of civil society is involved via these voluntary associations. This interweaves the voluntary sector fabric with transfrontier relations; whether the aims of the associations concern the social, economic, health, cultural, ecological or educational issues of significance to a given population category, they all testify that "transfrontier governance" is properly applied and soundly developed.

4.1.5 *Establishing administrative "crossover points"*

Among the most urgently needed institutional measures, especially where bilateral or multilateral inter-State agreements exist, is the creation of crossover points, *especially in the administrative sphere*, between frontier entities below central government level in states *with different political systems*. These crossover points, *administrative or other*, may take many different forms (associations in private law, consultative committees of *chambers of commerce*, mixed-investment companies and so on), so this process has the advantage of being pragmatic and flexible *in both the public and the private sectors*.

In terms of institutional make-up, however, it is necessary to ask how *difficult it is to establish* crossover points between different political systems, *even if* only at local and regional level. In answer to this question of crossover points, they could conceivably be based on a lowest common denominator, *so as to facilitate their establishment and utilisation*, or on a (transfrontier) *extrapolation* of the powers already held by Länder, regions, cantons, départements, provinces, districts or communes - over their own territory. This means the extension, as yet at the theoretical stage, of powers governed by domestic law into the ambit of the transfrontier neighbourhood relationship.

Generally speaking, straightforward exchanges of "administrative personnel" for periods to be determined *should be* the starting point: *these would* already constitute an early stage of the creation of "crossover points".

These "administrative" crossovers *in the public sector might*, for example, in the field of security, extend to "joint police patrols" along the roads close to the border on either side

for surveillance purposes, or close liaison for a better grasp of the petty crime situation in the transfrontier context.

To sum up this brief analysis of transfrontier dynamics, the salient features may be reiterated:

- adequate institutions within and increasingly assertive system of local and regional democracy;
- an unwavering political determination regenerated from day to day, geared to the necessity and synergy of transfrontier co-operation;
- crossover points of all kinds between the agencies concerned, both public and private;
- an increasingly tightly-woven fabric of transfrontier relations in all fields of daily life.

All these regional factors (which some analysts would describe as endogenous) should not make us forget the indispensable and unstinting support of states and European institutions. In terms of dynamics, true transfrontier subsidiarity operates in every direction, upwards and downwards and of course across frontiers.

This "transfrontier subsidiarity" with which "Euro-regional subsidiarity" should be associated, is additionally and often very successfully founded on the standing arrangements for exchange of information, experience, know-how and tentative approaches between the various transfrontier institutions dotting the whole European area (Working Communities, Councils, Conferences, Euro-Regions, etc.). The role of the inter-regional organisations, in particular the Assembly of European Regions *set up* in June 1985, and the Association of European Border Regions, is a very effective and irreplaceable aid to this type of "transfrontier and Euro-regional subsidiarity".

This insistence on the role and position of local and regional protagonists in transfrontier co-operation is not intended to dismiss the role and position of nations and of the European institutions, far from it; osmosis between all regional, national and European forces remains vital to the emergence of genuine transfrontier regions.

4.2 Transfrontier co-operation: limits, constraints and obstacles

Impediments to transfrontier co-operation may have various sources. For instance, the new institutions may stand in juxtaposition with already existing unofficial relations or impede, stall or possibly even crystallise the process of transfrontier consultation in reverse. They may also either weaken contacts, limit relations - even functional ones - or impose restrictions on a given type of contact or consultation.

Disparities in powers at an institutional level, and hence in resources and objectives, are a definite obstacle to the development of normal transfrontier relations. A number of "crossover points" in public or private law could compensate these transfrontier administrative and institutional imbalances. The new legal instruments examined in the 2nd part of this handbook will no doubt assist in creating these crossovers.

Apart from these institutional constraints and handicaps, the real checks on transfrontier co-operation stem from three major factors: economic imbalances; cultural distances and institutional incompatibilities. The effects of these checks are further aggravated by the lack either of political will or local and regional powers, or suitable legal avenues, or a neighbour-conscious administration, or language skills, etc.

4.2.1 *Economic imbalances*

In frontier regions these imbalances are in a sense “contextualised” by being expressed in spatial terms and in the sectors of investment, infrastructure and housing for example. They not only affect a specific area but also reflect developments confined within politico-economic systems fashioned by the frontier for a long period, and hence differences of pace. Economists have not neglected to emphasise the disruptive effects of frontiers, to their positive but principally negative "side effects" leading to economic inequalities between communities located in the same transfrontier area.

Few transfrontier regions are really homogeneous economically, even within the European Union. Most form part of regional areas polarised around one or several centres backed up by other centres of varying importance. Problems regarding the comparative economic structures of frontier regions can be analysed in the light of the suppositions that these structures may duplicate, complement or supplement each other. The socio-economic structures relate either to employment, production or trade, or again to the budgetary, financial, fiscal and monetary structures and powers of the communities concerned. Many economic flows - "spatio-temporal flows" to geographers - are the result of variable exchange-rate parities between currencies, for instance.

Employment-related structural problems arise from various factors, whether transfrontier segmentation of the labour market, "welfare or wage dumping", wage rates, cost of labour, price level, breakdown into social and occupational categories, and the fact that a variety of specialised economic activities exist but may be duplicated on each side of the frontier, or that there are contrasting rates of development leading to conspicuous lack of symmetry if not actual imbalances. The frontier labour force may hinder or encourage the integration of transfrontier economies. On the other hand, comparative analysis of sectors and branches, and of the adjustment or maladjustment of qualifications to the labour market firstly reveals any differences in economic development and the conflicts which may result, and secondly the variations and variety of supply and demand on the respective labour markets. It is plain that better integration of "transfrontier practices" in the Council of Europe "Guiding Principles for Sustainable Spatial Development of the European Continent" and also in the "European Spatial Development Perspective" will result in readjustments of economic balance in Europe's transfrontier regions. Will the political priority given by the European Union to economic, social and territorial cohesion *throughout its territory consolidate this integration, and therefore all the readjustments of socio-economic balance? It has to be hoped that it will.*

It should be mentioned here, *for information*, that local and regional authorities, including those in border areas, are very hesitant about the General Agreement on Trade in Services (GATS) *recently drawn up by the World Trade Organisation (WTO)*. Their fears and hesitations have led some of them to declare themselves outside the GATS zone, so as to

maintain all their public services on their territory, or, at least, to call for a "moratorium" on the GATS negotiations relating to such matters as *the complete liberalisation of the public services market, extending even to some environmental standards*.

4.2.2 *Cultural and linguistic distances*

The new regions brought into being by *the abolition* of barriers at intra-Community borders do not have political and administrative boundaries which follow the same lines as linguistic and cultural frontiers, a fact which makes their residents' viewpoint all the more interesting. An example worth considering in this connection is the specific case, somewhat out of the ordinary for Western Europe, of the Saarland-Lorraine border area. The border here has indeed been moved several times in less than a century - in 1871, 1919, 1935, 1940, 1945 and 1957 - so much as to be regarded as an archetype of border changes. Moreover, the present national boundary is not the same as the linguistic and cultural frontier but, with the gradual demise of the local German dialect, helped on by centralised television and radio, the national boundary is apparently subsuming the functions of a linguistic and cultural frontier.

The idea of transfrontier regions and transfrontier awareness also seems to clash with the sense that regional communities and populations have of attachment to and/or identification with national communities. Contrary to what one might expect and despite the movement to and fro of demarcation lines and territories, the Lorraine and Saarland populations have not intermingled. On the contrary, people on each side of the frontier display a profound attachment to their birthplace, as well as a much more direct commitment to Europe than to the frontier area proper or to the new Saar-Lor-Lux region in which they live.

Cultural distances between communities separated by a frontier are not confined to differences of language. People's minds tend to be filled with a whole range of collective imagery and stereotypes that are sometimes simplistic and, in frontier areas, still often generate rejection or "them and us" feelings that are totally negative. Many practical everyday problems are blamed on neighbours who are then labelled "foreigners" in the worst sense. A host of examples of this could be given, drawn from transfrontier surveys in numerous contiguous regions in Northern and Southern or Eastern and Western Europe alike.

4.2.3 *Institutional incompatibilities*

The most telling impediments, which accumulate at the institutional level, *were examined in part 2* of this Handbook. It seems likely that they have by no means disappeared even in the Community context, *despite* all the Community action in favour of cohesion and *notwithstanding* the Single European Act. In the present context, *relations* between states and regions *are sometimes sensitive* in respect of the INTERREG Community initiative, *because*, in *most states*, the Community funding has to be endorsed and managed by the national capitals. "Transfrontier power", particularly within the European Union, is still the subject of extensive bargaining between state and regional authorities. These hindrances and obstacles to transfrontier co-operation are in practice *most evident* in the mismatch *between* the powers of government departments and those of *local and regional authorities either side of a border*.

4.2.4 *Historical distinctions*

The whole history of frontiers has deeply marked the national territories and the territorial communities with which they are associated. It would negate this entire aspect of European history simply to proclaim "transfrontier regions" as proof of "geography vanquishing history". The reality of our human societies is too complex to disregard everything but the geographical dimension of transfrontier areas.

Another serious institutional obstacle appearing in European frontier areas lies in unduly pronounced divergences between the systems of apportionment of responsibilities on each side. These systems could be harmonised more flexibly through the creation of what we have called multi-dimensional transfrontier crossover points. In addition, most frontier regions today feel that institutional structures are inadequate and sometimes still regret the absence of administrative departments with specific responsibilities for transfrontier co-operation. In some cases this deficiency leads to pointless frustrations and even conflict.

4.2.5 *Shortcomings of financial, budgetary and fiscal resources*

Many local and regional authorities expect national or European grants or subsidies to bear the brunt of furthering their transfrontier co-operation and financing all their cross-border relations; their failure to live by the proverb "Heaven helps those who help themselves" accounts for the insignificance and weakness of these relations in some transfrontier areas. Many of these authorities in border areas do not even have a budgetary item for transfrontier co-operation.

The inconsistencies, *or rather differences*, between taxation systems are also a definite impediment to transfrontier relations. This mismatching is made even more obvious by the fact that a country can now apply the "flow-tax" or single taxation rate throughout its territory, border areas too, while the neighbouring state employs graduated income tax with the rebates that can be attached; even more so where there is "fiscal sovereignty" in the case of federal states.

Rounding off this section looking at the main obstacles to transfrontier co-operation, it is interesting to note that 17 member states had replied, in autumn 2004, to the Council of Europe Secretariat's questions about those same obstacles. The nine most frequently mentioned by the states and their administrative sub-divisions which replied to the LR-CT's questionnaire were, listed in the order in which they were first mentioned in the replies received:

- Need for territorial communities or authorities to obtain prior central government approval in order to conclude agreements and arrangements concerning transfrontier and inter-territorial co-operation, but is this a real obstacle?
- Absence of an express power vested in all or some territorial communities or authorities to conduct transfrontier and territorial co-operation activities;
- Varying conditions of conferment of legal personality on institutionalised forms of transfrontier and inter-territorial co-operation, and absence of legal personality for these forms of co-operation in certain member states;
- Non-empowerment of territorial communities or authorities to pursue activities or policies linked with local or regional development, or the powers of authorities either

side of the frontier being out of step owing to differences in the relevant national legislation;

- Inadequate dialogue between central government and territorial communities or authorities;
- Lack of funds to carry out transfrontier and inter-territorial projects;
- Local protagonists of transfrontier and inter-territorial co-operation being untrained;
- Restrictions on free movement of persons;
- Delegation of official responsibilities held by territorial communities or authorities to their foreign counterparts because it is impossible for them to engage in transfrontier and inter-territorial co-operation activities.

That is why the Committee of Ministers of the Council of Europe in the spring of 2005 *adopted* a new recommendation calling upon the 46 member states' governments to:

1. establish an appropriate legal framework for transfrontier and/or inter-territorial co-operation activities of territorial communities or authorities, complying with the principles of the Madrid Convention and its protocols;
2. consider the possibility of becoming party to the convention and its protocols;
3. take the measures proposed in the appendix to this recommendation, adapting them where necessary to particular situations, in order to improve transfrontier and inter-territorial co-operation and reduce the obstacles encountered by their territorial communities or authorities in their transfrontier and/or inter-territorial co-operation activities;
4. involve territorial communities or authorities with the relevant powers under domestic law in preparing and implementing the measures proposed in the appendix to this recommendation.

Such being the case, how is this conflicting influence of energy and inertia on all forms of transfrontier co-operation to be overcome? Only by clear-sighted analysis of the legal, economic, social and cultural spheres in which transfrontier relations are carried on.

4.3 Overcoming impediments to transfrontier co-operation

4.3.1 In the legal sphere

The framing of legislation does not suffice in itself to remove all obstacles, for experience proves that in countries where there are no legal or administrative barriers, co-operation can still be hampered by paucity of capabilities, resolve and resources. It should therefore be pointed out that while provision of a suitable legal framework is a prerequisite for harmonious transfrontier co-operations, this is not the sole issue that states will need to settle if they are to strengthen such co-operation.

The Council of Europe, with the recommendation just mentioned above, took the important step of emphasising all the standard-setting texts applicable to transfrontier co-operation. This text, Recommendation (2005) 2, was supplemented inter alia by

Recommendation (2005) 3, on teaching neighbouring languages in border regions, such languages being a very important element in all cultural relations across borders.

Table of institutional obstacles and constraints and ways of dealing with them

<ul style="list-style-type: none"> • State (and/or administrative) centralisation • External actions and relations viewed as the exclusive responsibility of the state (without sharing or delegation) • External relations and actions viewed as a sphere strictly supervised by national authorities with the result that regions have but little room for manoeuvre even in neighbourhood matters 	<ul style="list-style-type: none"> • Make progress with regionalisation and decentralisation
<ul style="list-style-type: none"> • Lack of appropriate structures for handling transfrontier co-operation 	<ul style="list-style-type: none"> • Create specific structures shared by frontier communities • Specify models or areas for dialogue incorporating public & private protagonists
<ul style="list-style-type: none"> • Breakdown, use or even definition of powers differing from one side of the frontier to the other Establish crossover points between frontier territorial communities 	<ul style="list-style-type: none"> • Establish crossover points between frontier territorial communities

Source: White Paper of the Assembly of European Regions, Prof. Charles Ricq, pp. 61 & 78.

In the great majority of bilateral or multilateral transfrontier co-operation agreements it is indeed not always possible to infer from the terms used, still less from the context in which the agreements have been concluded, *persuading some writers to go so far as to say that the Parties have thereby made an authentic legal agreement sanctioning, under fully decentralised arrangements, all forms of transfrontier experience or just plain experimentation*³⁹.

Another subtle legal distinction which impedes transfrontier co-operation: the "Outline agreement on co-ordination in the management of transfrontier local public affairs" appended to the European Outline Convention includes a procedure for "conciliation" by the creation of a "Controlling Body" composed of experts appointed by each party. An arrangement *of this type* does not constitute an indication that this is a legal agreement proper. This clause does not specify the law applicable and makes no reference to a judicial authority or to an arbitration body⁴⁰.

Transfrontier communities are in fact probably only too well aware of the possible legal implications, particularly in their own national legal systems, and sometimes maintain a discreet silence about which law is applicable to the agreement they are concluding. *Parties* to

³⁹ Ulrich Beyerlin, Transfrontier co-operation between local or regional authorities, in Encyclopaedia of Public International Law, 1998, p. 468.

⁴⁰ Nicolas Levrat, public international law thesis on the law applicable to transfrontier co-operation agreements between sub-national public authorities, defended at the Faculty of Law, University of Geneva, in 1994, p. 273.

transfrontier co-operation seem to show no lack of willingness to enter into legal relations, but matters extraneous to the agreement make it difficult for them to indicate, or often even to determine, the law applicable to their agreement. In addition, some agreements deal with areas in which commitments do not yet entail an absolutely clear and binding legal obligation.

Recapitulation of general and sectoral obstacles and limitations in a legal context, and ways of overcoming them

<ul style="list-style-type: none"> • Rules of law that restrict transfrontier relations considered invariably and persistently as international relations 	<ul style="list-style-type: none"> • Adapt and harmonise legal standards at all levels: international - especially Community - national and regional (through constitutional legislative or regulatory stipulations).
<ul style="list-style-type: none"> • Transfrontier co-operation bodies not endowed with legal personality and financial autonomy 	<ul style="list-style-type: none"> • Endow transfrontier co-operation bodies with legal personality and financial autonomy
<ul style="list-style-type: none"> • Acts of transfrontier institutions without legal authenticity • Purely consultative status of transfrontier institutions • Rules of unanimity between contracting parties in transfrontier co-operation bodies 	<ul style="list-style-type: none"> • Recognise the legal authenticity of acts of transfrontier institutions • Apply the majority rule in certain areas, if appropriate
<ul style="list-style-type: none"> • Lack of legal instruments (international treaties and others) making it possible to work together directly as public authorities 	<ul style="list-style-type: none"> • Web of bilateral and multilateral agreements extending to the whole of Europe

Source: *White Paper of the Assembly of European Regions, Prof. Charles Ricq, pp. 60 & 77.*

Certain gaps are seen still to exist in law at inter-state, national and regional level which are considerable handicaps to transfrontier co-operation. These gaps affecting transfrontier co-operation may be of a constitutional, legislative and/or regulatory nature. As a result, the working of *a number of* inter-regional transfrontier co-operation *bodies* is severely handicapped by the fact that they do not yet have legal personality, with the consequence that the acts of these bodies have no legal authenticity either. The first two protocols to the Council of Europe Outline Convention *have partially dealt* with the “legal gulf” in transfrontier or inter-regional relations between territorial communities.

Moreover, on some European borders, regional frontier communities still have no adequate legal cover, such as a bilateral or multilateral international treaty authorising them to take valid action - if necessary by delegation - at transfrontier level. Consequently a number of bilateral agreements are currently blossoming, some even in the form of an exchange of diplomatic notes, to permit all forms of transfrontier co-operation, private and public, between neighbouring communities, associations and organisations; if these bilateral and multilateral agreements were woven into a universal web, it would provide this apt legal cover for all transfrontier institutions and proceedings in Europe.

4.3.2 *In the sphere of culture and language*

Substantial cultural and psychological obstacles and limits stand in the way of transfrontier co-operation. Cultural distances, discernible in all strata of the frontier population, seem in many cases to be even stronger than economic imbalances and will in any case last far longer. They are probably at least partly responsible for the sometimes tarnished image of transfrontier co-operation bodies, not to mention the set of stereotypes entertained by frontier populations concerning their immediate neighbours. Interestingly, most transfrontier institutions possess adequate resources for developing "communications strategies" to make these populations generally aware that transfrontier co-operation is useful and irreversibly European in spirit.

The whole machinery of relations in transfrontier regions is disrupted by this "distancing" in cultural terms. Internalisation of differing national models and symbols in fact makes people living in the same frontier area build up stereotypes of hostility, fear, rancour, superiority and so on, and the very sense of attachment to the one environment is often overshadowed, perhaps rightly so, by that of belonging to a national community which minimises any identification with a regional community. The most striking evidence of this socio-cultural distancing is when groups living in the same area speak in terms of "them and us", sometimes even "the foreigners next door", fully reflecting the difficulty, even refusal, of communication. This is why school textbooks, maps, newspapers and periodicals that are truly "transfrontier" in spirit are just beginning to appear in some transfrontier areas, albeit tentatively.

As to instruction in the neighbour's national or regional languages, one need not dwell on it to demonstrate the transfrontier authoritarianism it breeds. The Council of Europe has again held the pioneering role, for instance with its Charter of Regional or Minority Languages, but the European Union in turn has set itself the priority of teaching the neighbour's language together with co-operation in education and teaching methodology in frontier regions. It has evolved programmes, theoretically supportive to the measures already specified in the Recommendations of the Council of Europe, such as Lingua (promotion of languages), Comenius (co-operation between teaching establishments), Erasmus (co-operation between universities and teacher and student mobility), and Grudwig (projects for adults in the vocational training context). These programmes allow positive projects to be implemented ; the INTERREG programme adds joint funding for all these training and education projects in frontier regions.

Concerning language learning and linguistic diversity, the converging efforts of the Council of Europe and the European Union should be noted. The former proposes a number of measures to promote instruction in the language(s) of the neighbouring country or countries at all levels of school education and initial or ongoing training and the adoption by the 46 member states of a Recommendation⁴¹ on teaching neighbouring languages in border regions. *In this text, Recommendation (2005) 3, the Committee of Ministers suggests that member states' governments:*

⁴¹ Committee of Ministers Recommendation Rec(2005) 3.

- a. *when developing their language-education policies, apply the principles of plurilingual education, in particular by establishing conditions that enable teaching institutions in border regions at all levels to safeguard or, if need be, introduce the teaching and use of the languages of their neighbouring countries, together with the teaching of these countries' cultures, which are closely bound up with language teaching;*
- b. *encourage different transfrontier cooperation players – such as local and regional authorities, transfrontier cooperation groups between local and regional authorities, chambers of commerce, trade unions, employers and other organisations and individuals concerned – to involve the educational and linguistic sectors in the transfrontier cooperation projects they are organising or preparing;*
- c. *seek to establish language reciprocity in their cooperation with a neighbouring country, or countries, concerning the teaching of neighbouring languages in border regions, allowing room for their own national language and also, where applicable, other languages used in the border areas concerned, be they less widely spoken languages, regional or minority languages;*
- d. *take all possible steps to apply the measures described in the Appendix to this Recommendation;*
- e. *seek cooperation in this field with the relevant bodies of the European Union, in order to achieve maximum synergy.*

As for the European Union, its first action plan running from 2004 to 2006 via the Socrates and Leonardo da Vinci programmes commits 30 billion euro per year to joint language projects, study grants and assistantships, language training partnerships, educational tools for language learning, alerting the teaching profession, business world and public opinion, school syllabi and so on, plainly demonstrating the European Union's growing commitment to a "multicultural" and "multilingual" European society. The first European Union plan and the efforts *that it entails* bear witness to this.

- ensuring that each citizen can speak the mother tongue plus two languages ;
- improving the quality of foreign language teaching from nursery school to adult education ;
- creating a more hospitable environment for language learning in a Europe that takes full advantage of its linguistic wealth.

Ultimately, this European Union linguistic strategy *is also linked, in the European Commission's view, with the Lisbon strategy on competition within the Community in the economic, social and cultural spheres, one of the aims of which is a knowledge-based society.*

Table of cultural obstacles and constraints and ways of dealing with them

<ul style="list-style-type: none"> • Non-existent or very weak transfrontier reflexes • Existence of negative national and/or regional stereotypes • Nationalism in school textbooks, the media, etc. 	<ul style="list-style-type: none"> • Work to promote the emergence of regional transfrontier awareness • Facilitate all forms of school exchanges (in a broad sense) • Recognise diplomas • Encourage the circulation of transfrontier regional information (e.g. creating transfrontier servers) • Facilitate all forms of cultural co-operation (in a restricted sense): transfrontier production, dissemination and reception of works of music, visual art, literature, folk culture, theatre, etc.
<ul style="list-style-type: none"> • Insufficient credibility or legibility of inter-regional transfrontier co-operative bodies • Aspirations too often frustrated by populations 	
<ul style="list-style-type: none"> • Language barriers 	<ul style="list-style-type: none"> • Establish widespread beginners' and advanced courses in the language of the neighbouring frontier population (for civil servants business leaders, associations, etc.)

Source: *White Paper of the Assembly of European Regions, Prof. Charles Ricq, pp. 67 & 85.*

The media indubitably bear special responsibility for keeping these cultural distances alive in the sense that they often help to prevent, usually unconsciously and for economic and commercial reasons, the emergence of a sense of belonging to a transfrontier community or even of thinking in terms of a single area, a single culture and a single identity. However, sporadic signs of transfrontier co-operation in the media are beginning to appear, portending more positive developments in the future.

In other words, even the "green corridors" for frontier workers at Customs posts do not suffice to hide the fact that other frontier realities exist and persist, starting with the "mental frontiers" that stifle any transfrontier reflex or transfrontier awareness. The national or regional attitudes of frontier workers to the media are symptomatic; very few read, listen to or watch their neighbours' media. In conclusion, the following can be generally said about the "transfrontier reflex" and transfrontier awareness" in relation to "transfrontier cultural practices": a. the transfrontier reflex: health, education and leisure infrastructures in particular, like all public amenities, are not designed to fit together, and consequently there are substantial external diseconomies. As for trade structures, the idea of the transfrontier area as an integrated area in which goods and services can be exchanged in a balanced way is still no more than an ideal. At best, there are discernible tendencies towards an increase in flows of goods and people in some transfrontier regions. All analyses of relations in these peripheral regions stress the deficiencies but also the potential represented by economic, social, cultural and other exchanges in these peripheral regions.

Transfrontier awareness: less visible than customs barriers, mental barriers reflect the existence of different worlds and sometimes of diverging interests which may lead to misunderstandings or even cause tensions, particularly when there are differences in standards of living. Economic adjustment and cultural rapprochement therefore combine to inject dynamism into transfrontier relations, transcending all the constraints analysed above. All these points are even more emphatically relevant to the emergence of “transfrontier identities” is concerned.

To sum up, in the cultural sphere which has been discussed, objective factors like spatial proximity i.e. cohabiting in the same space become negative once contextualised by the national culture and the stereotypes which it conveys. This conclusively proves, if proof were needed, that frontiers are a phenomenon of civilisation and culture⁴² besides a political one, and that only true transfrontier subsidiarity will allow a new cultural phenomenon to arise in the early 21st century with the emergence of transfrontier mentalities.

Besides the importance of identifying the creator and the conveyor of regional culture or the features of regionalism, the content of this regional culture must also be analysed. Thus, in the same way as for the economic sphere, the cultural relations within a transfrontier region would only intensify if systems were more interconnected and gave the cultural protagonists a free hand to step up their exchanges - their cultural osmosis – doing so with the greatest respect for the internal cultural differences of the transfrontier areas.

4.3.3 *In the socio-economic and the spatial planning spheres*

Differences in level and pace of economic development undoubtedly have quite a range of deterrent effects on transfrontier co-operation.

Though there has long been an awareness of these differences which exist virtually everywhere along the frontiers of Europe, they have emerged or re-emerged into the open through the experiences undergone in East/West (trans-)frontier areas subsequent to the upheavals caused by the destruction of the Berlin Wall and the starting-up of all the Euro-Regions in Central and Eastern Europe.

Attempting to correct regional disparities is imperative for frontier areas, and for the European area as a whole. The European Union, together with all the national bodies, is working towards this end both through its regional policy, which began to have an impact notably since the first and subsequent reports on the economic, social and territorial cohesion of the Community area, and through INTERREG I, II and III and the Community funds made available by these initiatives.

In addition, the obstacles due to fiscal and customs systems and the problems caused in particular by transfrontier property speculation are showing frontier regions that a number of framework conditions for successful micro-integration schemes are still lacking. In the long run, the various harmonisation processes now under way will doubtless overcome these negative factors.

⁴² A. Mirogljo ; *le sens et la valeur des frontières*; in *Revue de psychologie du peuple*, no. 9, 25th year, 1975, p.276.

Table of socio-economic obstacles and limits and ways of dealing with them

<ul style="list-style-type: none"> • Unequal levels or rates of economic development 	<ul style="list-style-type: none"> • Pursue the goal of transfrontier economic and social cohesion
<ul style="list-style-type: none"> • Obstructions caused by fierce competition 	<ul style="list-style-type: none"> • Identify joint economic interests
<ul style="list-style-type: none"> • Lack of transfrontier links between socio-economic partners • Cartelisation of markets or corporatism in the professions • Labour market protection 	<ul style="list-style-type: none"> • Open up transfrontier economic or even socio-economic life • Create transfrontier economic councils • Adapt framework conditions for regional economic promotion
<ul style="list-style-type: none"> • Fiscal and customs problems 	
<ul style="list-style-type: none"> • Export of property speculation 	<ul style="list-style-type: none"> • Control property speculation

Source: *White Paper of the Assembly of European Regions*, Prof. Charles Ricq, pp. 66 & 83.

At a more general level, the socio-economic sector depends on the various conceptions of spatial planning shared between neighbours – among them those which now relate to sustainable development with undeniable effects on transfrontier economies, for example the “integrated programmes” of transport systems, housing zones, industrial estates for manufacturing and services, leisure facilities, etc.

Here it is noteworthy that within the European Union or the countries with which the Union has concluded bilateral agreements, the principles of non-discrimination as to nationality and free movement of goods, services, capital and persons, have greatly aided transfrontier mobility, subject of course to “transitional stages”.

Free movement of persons is one of the fundamental freedoms guaranteed by Community law and embodies the right to live and work in another Member State. This right to free movement within the Union applies not only to workers but also to other population categories such as students, pensioners and the citizens of the European Union generally. It is perhaps chief among the rights granted to individuals under Community legislation, an essential component of the internal market and of European citizenship. During the first two years after the accession of the new Member States, entry to the labour markets of the present Member States will be governed by their national policy and law and by such bilateral agreement as they may have concluded with the newcomers. The transitional arrangements should normally end five years after accession. By then, bilateral agreements between the European Union and the states concerned should also have settled all the problems over “transfrontier movement” at the external boundaries of the European Union. One of the most striking examples of this is the Kaliningrad Oblast, a Russian territory squeezed between Poland and Lithuania. Here it is worthwhile to take into account *one of the CLRAE’s analyses of the economic, social and territorial cohesion of the Kaliningrad transfrontier region, the situation of this region being so complex and sensitive that it would merit a section of its own in this handbook, in view of the specific nature of all its historical, geographical, economic, social, cultural, political and legal problems.*

4.3.4 *In the budgetary, financial and fiscal sphere:*

Here the entire debate over the resources held by territorial communities in their own right is posed in even more critical terms, considering that the resources will be partly allocated to transfrontier operations, *where the local and regional authorities concerned are separated by a border.*

Let us summarise a few standard definitions of the various resources which territorial communities could put towards transfrontier co-operation, *without including all the information gathered directly from numerous transfrontier institutions Europe-wide.*

Without wishing to broach all the detailed discussions currently proceeding in many states and the European institutions, it can be mentioned that the Council of Europe, through *Committee of Ministers' Recommendation (2005)1* on the financial resources of local and regional authorities, makes the following proposals as to definitions of the resources in question:

“Within the meaning of *this Recommendation*:

- a. From the point of view of the authority's capacity to alter their level, resources may be classified as either own or transferred resources. An authority's “own resources” are resources of which it can vary the level, possibly within a predetermined range. These resources may, for example, be fiscal or non-fiscal, exclusive or shared, etc. An authority's “transferred resources” are resources whose level the authority may not vary. They may be, for example, fiscal or non-fiscal, exclusive or additional, proportional or non-proportional (grants), etc.
- b. From the point of view of the authority's capacity to use their proceeds freely, resources may be classified as either earmarked or non-earmarked. A local authority's “earmarked resources” are resources which must be used for a purpose (goods, property, a service, a programme) decided on by an authority other than the authority in question. “Non-earmarked resources” are resources which may be used freely, with due regard for the legislation concerning the use of public funds, by the local authority.
- c. An authority's “exclusive resources” are the resources whose proceeds, as a whole, constitute the revenue of the authority in question. They may, for example, be financial or non-financial, own resources or financial transfers, etc. An authority's “shared resources” are resources that are raised by the authority in addition to resources raised by another authority on the same basis.
- d. Other definitions
 - “Additional resources” are shared own resources.
 - “Surcharges” are fiscal additional resources.
 - “General grants” are non-earmarked, non-proportional financial transfers.
 - “Specific grants” are earmarked non-proportional financial transfers.

- The “financial capacity” is the maximum revenue an authority can raise in standard conditions which are set at the national level. As a rule, financial capacity largely depends on the tax (fiscal) capacity. There are, however, authorities that can raise very substantial non-fiscal resources (revenue from property, in particular land and buildings, economic activities or financial investments); their financial capacity takes account of this.
- An authority's “tax (fiscal) capacity” is its ability to raise taxes in standard conditions which are set at the national level. Tax capacity is therefore proportional to the tax base, and differences in tax base lead to differences in tax capacity.

All the above definitions which will be of service, *mutatis mutandis*, to all of Europe’s frontier territorial communities rely partly on general principles and partly on guidelines. Notable among the general principles are:

- to secure revenue for each tier of government according to the assignment of their responsibilities and standard financial needs (vertical fiscal balance);
- to achieve an equitable distribution among local authorities (horizontal fiscal balance);
- to enhance the efficiency of the public sector.
- to ensure that local and regional authorities are entitled to their own resources, which should be adequate, and of which they may freely dispose, in the exercise of their powers and responsibilities, within the limits of the law (financial autonomy).

The guidelines prescribed by the Recommendation are focused mainly on “fiscal decentralisation”, viz. financial autonomy of local authorities implies that a sufficient level of own resources to fund a significant proportion of the costs incurred in the discharge of their responsibilities, as defined in the Constitution or by law. *For its part, the AEBR emphasises the benefits of "joint bank accounts", which would obviously make it easier for local and regional authorities in border areas to make reciprocal use of certain resources of their own, and would particularly facilitate the management of Community structural funds.*

The following parameters may be used to determine this degree of “fiscal decentralisation”:

- the ratio of local authorities' tax revenues to total state tax revenues;
- the ratio of local tax revenues to total local resources;
- the ratio of tax revenues to the grants from the state and other public authorities;
- the ratio of local authorities' own tax revenues to the country's gross domestic product;
- the ratio of the maximum resources to the minimum resources that the authorities can raise by varying local taxation rates within the statutorily permitted range.

In addition to this “fiscal decentralisation” guideline there is that of “financial equalisation”, just as valid, and sometimes already applied, where transfrontier regions are concerned.

The purpose of financial equalisation⁴³ should be to allow local authorities to provide their citizens, if they so wish, with services of generally similar levels for similar taxation levels.

When designing their equalisation systems, central or federal authorities should take account of the fact that the differences in the tax burden that authorities have to impose on their residents to achieve the same level of services are generally the result of differences in their financial capacity, their spending needs or their managerial efficiency.

The equalisation system should compensate, at least in part, for differences in authorities' financial capacity (so as to provide more resources to financial weaker authorities) and spending needs (so as to provide more resources for authorities that either have additional responsibilities or, by virtue of their geographical location, demographic situation or other factors, are obliged to spend more in order to discharge their responsibilities).

Where revenue is concerned, it is worth mentioning some experiences of “transfrontier financial equalisation”, admittedly with all their limitations, as exemplified by the Franco-Swiss, Italian-Swiss and Belgian-Luxembourg agreements. These relate purely to taxes levied either side of the border on frontiers workers' income, according to a coefficient of apportionment taking account of “residence cost” and “workplace cost”. The agreement of 29 January 1973 between France and Geneva Canton provides for a tax payback – to be more exact, financial compensation in view of the French national fiscal principle that tax revenue is not allocated – of the taxes levied in Geneva on the income of frontier workers. In 2004 this compensation amounted to 90 million euro for 43 000 frontier workers, an amount actually corresponding to the tax payable to the municipality of residence or 35% of Geneva's local and cantonal tax. Likewise, reacting to the cross-border commuting phenomenon in some frontier areas, Belgium and Luxembourg have also introduced a system to balance out Belgian municipalities' revenue losses due to the presence of frontier workers, involving a financial payment by the Luxembourg Government to the Belgian municipalities where workers live who hold a job, and are thus taxable, in Luxembourg. The loss of revenue for the Belgian municipalities is easy to determine in so far as they are paid part of their residents' income tax. Now, Belgian frontier workers resident in these municipalities and working in Luxembourg are taxed in Luxembourg. They do not pay income tax in the municipality where they are resident.

The agreement between the two countries, signed in the framework of the Belgium-Luxembourg Economic Union, dates from 14 September 2001. Its first application in 2004 involved a lump sum of 15 million euro paid to the Belgian state authorities and reallocated to the 150 Belgian municipalities in proportion to the occupational income declared in Luxembourg by the Belgian frontier workers from each municipality.

⁴³ See CDLR (1993) 3, the « report on tranfrontier fiscal equalisation », written by Professor Charles Ricq.

This *whole* section on ways of overcoming all the checks imposed by frontiers can be fittingly concluded by recalling the Helsinki guiding principles for regional self-government, and hence for “autonomy of assets”:

- regional authorities shall have at their disposal foreseeable resources commensurate with their competences and responsibilities allowing them to implement these competences effectively;
- regional authorities shall be able to dispose freely of their resources, for the implementation of their competences;
- in the implementation of their own competences, regional authorities shall be able to rely in particular on resources of their own of which they shall be able to dispose freely. These resources may include regional taxes, other revenues decided by regional authorities, fixed shares of state taxes, non-earmarked funding from the state and constituent territorial authorities, in accordance with the law.
- the protection of financially weaker regional authorities shall be ensured through financial equalisation procedures or equivalent measures which are designed to correct the effects of the unequal distribution of potential sources of finance and of the financial burden they must support;
- for the purpose of borrowing for capital investment, regional authorities shall have access to the capital market within the limits of the law.

On the basis of all the above experience and practice in the sphere of transfrontier taxation arrangements, and with reference to all the cited definitions and recommendations on fiscal decentralisation and equalisation, it will be necessary in the near future to make a thorough analysis of “transfrontier fiscal practice”, its forms and possible content, definitions, limitations and constraints.

4.3.5 *In the sphere of “transfrontier governance” hence participation of civil society inter alia*

The recent example of the LDAs, Local Democracy Agencies (*there are as yet no Regional Democracy Agencies!*), says a great deal about what governance can do to overcome impediments to transfrontier relations. The network, or Association, of LDAs now comprises 10 agencies in 4 countries of South-East Europe, with an 11th to be set up in Mostar in the summer of 2005. *More are planned in the countries of the Caucasus.*

The Local Democracy Agencies were set up to meet the demands of the representatives of local and regional authorities wishing to come to the assistance of the war-torn regions of the former Yugoslavia. The LDAs also play a major part in the Stability Pact for South-Eastern Europe. Despite their diversity, the LDAs have in common a methodology emphasising decentralised multilateral co-operation and relying on the representatives of civil society. Twinning between towns in Northern or Western Europe and their Balkan counterparts is one of the most effective measures used under this approach. *But it is in the Balkans, criss-crossed by so many borders, that the LDAs have their most clear-cut role. Hence the emphasis in this handbook on their inter-municipal transfrontier role in particular, for the work of the LDAs is fully in line with the Council of Europe's main mission in terms of local and regional democracy.*

The project on capacity building for local authorities and civil society in South-Eastern Europe is aimed at supporting the democratisation process in the region. The programme provides for consolidation of institutions and organisations through training for instructors and for local authorities and NGOs in the Balkans.

Conclusion to part 4

To conclude part 4, *an important chapter on* all the factors that power or impede transfrontier relations, it can be noted that all players in this context, whatever their sphere, competence or private or public capacity, are now faced with this duality of energy and inertia. Nonetheless a joint action inspired by a proper understanding of the subsidiarity principle is the right way for transfrontier regions, state authorities and European institutions to unite in creating real transfrontier regions of a functional kind. This will achieve in the frontier what the founders of the Council of Europe and the European Union alike envisaged for Europe as a whole: an area of freedom, peace, security and democracy. The populations and communities concerned have high *hopes* of transfrontier co-operation, and while these must of course not be dashed, nor must they be shelved or placed on the back burner as it were for the sake of other, no doubt legitimate, European priorities – especially considering that the transfrontier regions in their own way reveal and bring to a head all the problems and hopes of European unification. *The added value of transfrontier co-operation is indeed undeniable:*

- at the political level (cohesion, subsidiarity, partnership ...);
- at the institutional level (decentralisation, governance ...);
- at the socio-economic level (development, adjustment of balance ...);
- and at the socio-cultural level (culture, identity ...).

Even though every transfrontier region is distinctive in its history, geography, spatial planning, economic development and demography, common parameters of stimulus and impedance to transfrontier co-operation crop up everywhere. It is clear that tangible solutions at the European level, starting with the formulation of suitable legal instruments, will make it possible to overcome all the obstacles which still considerably inhibit the emergence of genuinely transfrontier regions at present.

The medium and long term outlook glimpsed through transfrontier co-operation is indeed the emergence in Europe of areas of subsidiarity, financial, budgetary and possibly fiscal partnership, and of local and regional democracy. The 5th part of the Handbook will now make a more detailed analysis of these prospects.

Part 5: What are the new prospects and the anticipated scenarios for transfrontier co-operation?

The development over the last ten years of forecasting, an eminently multi-disciplinary science, can be very constructively utilised in respect of transfrontier co-operation. The various sectors of this predictive science – which some prefer to call a science of prospects - can be instantly harnessed to transfrontier forward planning in the medium and long term for all the European transfrontier regions, viz.:

- territorial forward planning
- instrumental forward planning
- strategic forward planning
- applied forward planning

All these types of forward planning encompass fields as varied as the spatial, socio-economic, demographic, cultural and institutional approaches which have buttressed the 4 preceding parts of this Handbook.

Territorial forward planning affords not only a definition of the perimeters researched but also a better grasp of “social representations” for utilisation and management of border lands, as well as itemising the key variables and principal indicators of transfrontier quality for these contiguous areas; the end result of it all is a “territorial diagnosis” whose scope includes the demographic variables (population forecasts, ageing of the population, etc.).

Instrumental forward planning is confined to all the institutional legal arrangements that are indispensable for underpinning the strategies and operations that will proceed from transfrontier co-operation.

Strategic forward planning relies primarily on building scenarios – the 4 specified below – from elements including assets and disabilities, and projects stimulating to transfrontier co-operation. Strategic forward planning makes special reference to the multi-criterion analysis familiar to economics.

Applied forward planning focuses on the practical actions of spatial planning, sustainable development and economic alert for enterprises, while also registering the interplay or isolated operation of the agencies carrying out these transfrontier actions.

This entire future-oriented science with its territorial, instrumental, strategic and applied aspects quite naturally poses questions relating to the future of transfrontier co-operation:

- What general prospects, first of all spatial, are to be contemplated for transfrontier relations?
- What “crucial prospects” should be assigned to it?

- What “instrumental prospects”?
- What “action prospects” should be proposed for it in terms of cohesion and integration?

5.1 General prospects for transfrontier co-operation:

Goal-specific, committed participation in the process of European integration with its political, institutional, economic, monetary, social, cultural, environmental and other facets is the crux of these general prospects for transfrontier relations.

5.1.1 The geo-political function, via the irreversible spread of transfrontier co-operation throughout Europe and the stability of frontiers

Two observations must be made about transfrontier co-operation: it is spreading throughout Europe and it is irreversible. The corollary of the spread of transfrontier co-operation should be the appearance of fully-fledged multidimensional transfrontier regions and the gradual “defunctionalisation” of international frontiers, which will in future knit areas together instead of separating them. In other words, frontier areas everywhere in Europe will become contractual rather than conflictual. The irreversibility of the transfrontier co-operation initiatives that have been launched along almost all European frontiers to date also seems to be lastingly guaranteed by the systematic development of institutions of different types and purposes giving muscle to transfrontier co-operation, and by the evident interest taken in transfrontier regions by states and by the European institutions in Strasbourg and Brussels as signs and symbols of European integration, obviously based on the paradigm of stability of frontiers, and is constantly increasing.

5.1.2 The subsidiarity function

All the frontier regions have a role to play in the two-way dialogue taking place in Europe as a result of the principle of subsidiarity which is already enshrined in the Treaty of Maastricht and operates both downwards and upwards. In their case, use of the term "transfrontier subsidiarity" is also justified; here it operates horizontally⁴⁴.

Analysis of European integration from above indicates that critical space in frontier zones is redefined and has its balance readjusted according to whether European integration is moving forward, marking time or regressing. Regarding frontier areas for example, politicians and researchers are working on a number of scenarios to ensure that the frontier areas (or buffer zones) which are sometimes left on the sidelines of economic development are given greater prominence as areas of linkage and hence of economic synergy. In this respect, the European gamble on interpenetration between frontier areas is geared to priorities in which the stakes are primarily regional, a regionalisation process providing for the emergence of regions that are political as well as administrative, with devolution of authority and resources.

⁴⁴ International Colloquy for Prefect Authorities in Europe, Rome, 7-9 July 2001, « A horizontal Europe and transfrontier subsidiarity » Professor Charles Ricq.

The new Committee of the Regions officially instituted on 9 March 1994 in Brussels, like the Congress⁴⁵ and its two Chambers set up on 30 May 2004 in Strasbourg, have undoubtedly, each in its own way, and to varying extents, encouraged regionalisation and decentralisation in countries where they have scarcely been applied hitherto. Economic readjustment, fuller integration into European institutions, the strengthening of regional identity and authority are among the results of the synergy to which thoroughgoing "transfrontier subsidiarity" can lead. In this way, the regionalisation process redefines territory all over Europe in terms of controlled, complementary polarisations and makes it possible to overcome the difficulties of managing areas that are purely administrative in nature and lack adequate investment and infrastructures, above all in certain peripheral areas of Europe.

5.1.3 *The integrative function*

The prospects for the development of transfrontier co-operation in the context of European integration are systematically described as "favourable", "globally positive" or "excellent". This development of transfrontier relations fits in with the general ongoing course of European integration, the various processes of transfrontier micro-integration tending towards the emergence of a Europe of regions - or, more precisely, of a Europe with regions - a Europe gradually being built on foundations which include its transfrontier regions. From the standpoint of integration, the changes now taking shape are being and will be greatly stimulated by the establishment of true European Union as already defined in the Single Act of 1986, with the launching of a European Economic Area and above all by real economic, social and territorial cohesion throughout Europe, now a priority objective of the European Union.

The phenomenon of growing interest in frontier regions is linked to some extent with the gradual weakening of political demarcation lines and phasing-out of economic, technical and fiscal barriers especially within the European Union, signifying active integration.

Let us now make a more detailed perusal of these "integrative perspectives" linked with transfrontier co-operation.

5.1.3.1 From European macro-integration to transfrontier micro-integration

The outlook for frontier communities is that they will move from a situation in which there were no relations between them to one marked by varying degrees of interpenetration, perhaps even to an increasingly marked cohesion within the territorial cohesion of Europe generally.

Analysis of the integration process sparked off by transfrontier co-operation reveals a phenomenon that is in some ways similar to the development of inter-state relations in the 19th and 20th centuries. This resemblance is worth looking at, revealing first of all that the growth of relations between public authorities subject to different legal systems may centre on the five main thrusts listed in Part 3: information, consultation, co-operation, harmonisation and integration.

⁴⁵ See all documents published between 1994 and 2005 by the Committee of Regions on systems and the process of decentralisation, and by the CLRAE and its two chambers on monitoring local and regional democracy in the 46 member states of the Council of Europe.

The integration phase is the most sensitive and complex in view of the cultural and democratic pluralism which is the basis of European construction - what Denis de Rougemont called "unity in diversity" in the title of a prophetic book - and calls for an in-depth analysis. The prospect of political, economic, monetary and even military integration which will underlie all the activities of the European Union in the coming years deserves special consideration in European frontier areas. In some circles these areas are described as "areas for micro-integration" and so it is important to give a precise definition of the fields in which this process can take place. The first of these fields would doubtless be that of infrastructures. A number of "tariff communities" and "transfrontier management and operation communities" constitute examples of this form of "micro-integration" in the field of transport. However, examples of complete "micro-integration" are still rare, even in transfrontier areas within the European Union. The mental barriers are still too strong. Nowhere yet, for example, are there transfrontier files of job-seekers such as to indicate that the more or less outmoded concept of a "national labour market" had been superseded and imply acceptance of the idea of "transfrontier labour catchments"⁴⁶ and even transfrontier co-ordination of employment and training.

The two phases during which relations between units of infra-state communities coming under different legal systems are harmonised and integrated are the most difficult to organise since this is often governed by the powers of national institutions and by cultural patterns arising from "national identities". However, it seems reasonable to suppose that in the fairly near future transfrontier relations will increasingly be strengthened and cease to be exclusively consultative, even in the case of frontier regions outside the European Union.

5.1.3.2 Transfrontier practices concerning integration

Let us mention by way of an example the particularly interesting case of INTERREG, a Community-sponsored programme set up in 1990 to intensify participation by frontier areas in the completion of the internal market, which provides for the disappearance of frontiers and seeks to create a homogeneous European economic area and to integrate its social, economic and cultural components. This initiative made provision for a wide range of action to promote transfrontier co-operation: encouraging local and regional authorities to do their utmost, in close collaboration with national authorities, to involve frontier populations in the work of creating a real fabric of transfrontier social, economic and cultural relations.

The programme's three main aims⁴⁷ are plainly consistent with transfrontier forward planning, especially having regard to INTERREG IV (or, to be more precise, the structural funds for the territorial co-operation objective) scheduled for the years 2007-2013:

- helping frontier zones to overcome problems resulting from their relative isolation in some instances, with the support of local, regional and national authorities and in the light of various parameters: environment, transport, spatial planning, investment, jobs, training, culture and health;

⁴⁶ see DGV (social policy), Brussels, September 2004, Cross-border EURES: « *les bassins d'emploi transfrontaliers : des creusets pour la construction européenne* ».

⁴⁷ To some extent, points already made in part 2 are reiterated here.

- promoting "micro-integration", newly introduced or further developed as the case may be, between frontier regions within the Community in the context of the single market and especially more and more tangible economic, social and territorial cohesion;
- helping external frontier regions to assume their new role as external frontiers of the European Union within the framework of their economic and cultural development, which is really the future-oriented goal of the European Union's "New Neighbourhood Policy";

In pursuit of these goals, the Commission has drawn up a sizeable list of eligible measures from which Member States will have to choose a coherent set of measures, the main requirement being for the Community's transfrontier entities to draw up "integrated regional development programmes" or "common development concepts" helped by "Community support structures", to echo the Brussels terminology.

5.1.3.3 Frontier populations' day-to-day experience of integration

This presupposes the emergence, on a day-to-day basis, of a transfrontier reflex operating in every aspect of the daily life of transfrontier populations; public services to be preserved and small and medium-sized enterprises not to be unduly relocated are thus concerned by this everyday experience of integration.

Among the public services concerned in achieving this day-to-day "micro-integration", let us mention:

- collaborative provision of water, gas and electricity supplies and telecommunications facilities;
- integrated planning of multi-modal public transport services;
- hooking up telephone and postal zones;
- interlinkage of initial and in-service training centres;
- full transport coverage;
- essential medical facilities coupled with each other;
- administrative officials, in order to find adequate "crossover points" in all their spheres of activity and responsibility (even if these differ);
- socio-economic agents, in order to devise scenarios for making industrial, business and craft activity on each side of the frontier complementary in terms of investment, product ranges, mutually supportive in selling to foreign markets and sharing opportunities for sub-contracting, etc.; in order to make wise use of development and siting aid to small and medium-sized businesses, notably in technological research and co-operation; and in order to develop tourism and rural tourism, etc.;

- political decision-makers, so that their neighbours are associated with legislative and/or executive projects on a day-to-day basis, in a context of genuine partnership and non-interference, realising that these everyday projects will be concerned with training, frontier crossing, health, jobs, social benefits, quality of life, transport, leisure, etc. as experienced from day to day by frontier populations.

Let us then conclude by stressing that where change of attitudes is concerned, frontier populations form a unique example of integration in that by drawing on all the human resources of transfrontier areas they build a new level of transfrontier awareness, culture and identity which blend with but obviously do not efface the other types of regional, national or even European identity to confirm the complexity and above all the pluralism essential to European unification.

5.2 “Instrumental forward planning” of transfrontier co-operation

Transfrontier forward planning thus amounts to:

- finding ways and means of devising and carrying out these future-oriented studies, and:
- continually examining the consistency between forecasts and their implementation.

It is thus important to:

- define the main issues facing transfrontier regions over the medium and long term in the context of their inter-regional, national and European environment;
- initiate the analytical studies necessary for a better appreciation of these issues and the resources that need to be mobilised to address the issues and accept the odds;
- propose medium-term development schemes and alternative scenarios that may shed light on the socio-economic and socio-cultural options that face member entities and will shape the future of the entire transfrontier region;
- identify the most immediate targets or avenues for intervention which could be the object of a contractual policy for the transfrontier region as a whole.

“Instrumental forward planning” also makes for more effective use of certain instruments already examined in the 2nd part of this Handbook which include, non-exhaustively, *and as already mentioned*:

- European economic interest groupings (GEIE)(*under Community law*)
- Semi-public companies, locale or otherwise (SEM(L))
- Public interest groupings (GIP)
- “Consortia”
- GLCT or GECT – local or European - transfrontier co-operation Groupings, etc.,

all forms of instrument used in Working Communities, Councils, Conferences, Euro-Regions, Euro-districts and so on.

This planning presupposes

- human, financial and infrastructural resources
- proper use of the scenario method
- exact demarcation of the areas of prospective analysis.

5.2.1 *A dual system of instrumental forward planning to meet transfrontier objectives, ventures and issues:*

5.2.1.1 Specialised forward planning working groups

A regional forward planning group consisting of personalities in the political, socio-economic and academic spheres who are specialists in the social sciences, sociology and economics and have a particular interest in regional affairs, and working on such topics as town and country planning, urban problems, local development, employment, culture and communication, the industrial fabric and rural areas.

These forward planning groups⁴⁸ would serve two purposes:

- defining the most important issues at stake for the transfrontier region in the medium term;
- outlining the most plausible development scenarios for the years ahead on the basis of regular consultations with all partners or agents concerned, for the sake of judicious “transfrontier governance”. Among these agents of transfrontier governance, let us not forget to mention the increasing role of NGOs such as the LDAs and NALAS, referred to above, in South-East European transfrontier matters.

5.2.1.2 A regional forward planning and development fund

This regional fund will be set up with help from all members of transfrontier institutions, supported by national and European institutions, and will allow the completion of a number of specific short and medium term projects to address all issues and challenges of transfrontier relations.

5.2.2 *Forward planning scenarios*

Forward planning is a response to an overall need that is apparent today in all the European regions. It attempts to provide them with more or less immediate solutions; there was good reason for Mr Jacques Delors to set up in 1988 under the authority of the President of the European Commission a forward planning unit whose working documents are very informative about Europe’s future in the medium and long term.

All the forward analyses make it possible to deal with:

- growing uncertainties about the future of a given transfrontier region at inter-regional and European level;

⁴⁸ See, for example, « *Scénarios communautaires pour l’Europe 2000 plus* » / DG XII/ 1998.

- difficulties in organising, in some circumstances, genuine transfrontier partnership and in resolving the evident contradictions between people's wish to stay in their own locality and the economic imperatives of mobility and globalisation;
- the need to renew instruments for interpreting the social, cultural, economic and political realities of transfrontier regions often in the throes of change;
- finally, the indispensable economic and social cohesion within transfrontier territories apprehended and experienced as a coherent whole.

The approach followed in 4 conceivable medium term scenarios for all European frontier regions will be discussed at the end of this 5th part on transfrontier forward planning in the wider Europe.

5.2.3 *Areas of forward planning*

In view of the prospects that are increasingly making themselves felt in the territorial communities of Europe, especially frontier communities, it is clear that all inter-municipal and inter-regional transfrontier institutions in public or private law must, in forecasting parlance:

- first of all, unequivocally state their attitudes to the Treaties of Maastricht, Amsterdam and Nice and the future Constitutional Treaty and anticipate the developments in transfrontier relations that will occur as a result of the changes increasingly wrought by these treaties as regards freedom of movement of persons and its impact on the adaptation of training facilities, on social security benefits, on the labour and housing markets, on technological research, research centres and so on;
- encourage professional exchanges and recognition of educational qualifications;
- adapt vocational training to the new circumstances of the regional, national and European labour market;
- draft a transfrontier spatial planning concept and programme;
- promote recognition at European level of projects eg to develop tourism and related training in the region;
- strengthen contacts with all those who play a leading part in socio-economic and cultural life in the region;
- boost technological exchanges and joint technological contracting;
- envisage new sustainable development concepts for the region;
- promote a sense of awareness of the transfrontier unit in the field of culture; design communications facilities shared by frontier territorial communities e.g. a transfrontier server and a website, not forgetting the future of the regional media.

In the case of Europe being shaped from above - the downward thrust of the subsidiarity principle - it is time for transfrontier institutions to grasp the opportunity to outline an integrated regional policy that will take account of Europe's unity and diversity, acknowledge the specific characteristics of each entity and attempt to rectify regional imbalances by promoting endogenous assets whilst keeping in mind the overall priorities ordained by the various national and European authorities.

5.3 Strategic forward planning, or “critical prospects”, of transfrontier co-operation

Frontier regions all over Europe show - each in its own way and according to its specific characteristics - that there is a need to use the critical space and the geographical and neighbourly relations with all the synergy these relations generate, in several registers and in a global, integrated fashion:

- economically, by readjusting flows and exchanges;
- administratively, by way of devolution and transfrontier administrative crossover points even where powers are differently apportioned on each side of the border;
- politically, through decentralisation, regionalism, even autonomy at least in the administrative sense;
- culturally, by encouraging regional identities and transfrontier collective representations;
- environmentally, through land use planning jointly controlled in a perspective of sustainable development.

All these aspects of frontier regions' spatial, economic, political and socio-cultural interests conveyed by a strong and tightly-woven fabric of flows and exchanges highlight the inadequacy of a purely legal and institutional approach to the question of frontier territories and the failure of such an approach to redress the imbalance and asymmetry that are characteristic of most transfrontier regions. Transfrontier life is indeed based on a tightly woven fabric of relations between all those involved in transfrontier co-operation; this fabric must be constantly vitalised to attain an admittedly shifting socio-economic balance.

5.3.1 Institutional aspects of transfrontier co-operation

As we come to the end of this handbook, there is no need to dwell further on the institutional outlook for transfrontier co-operation. Transfrontier institutions, whatever their outward form, are an indispensable tool for promoting the development and permanence of the fabric of transfrontier relations. By giving more legal weight to transfrontier institutions through an Additional Protocol to its Outline Convention approved in Madrid in May 1980, the Council of Europe simply underlines the importance it attaches to the "rights" of *local and regional authorities* in border areas to develop neighbourly relations. The "rights and obligations" of such *local and regional authorities* form part of the long pedigree of rights whereby the Council of Europe has built a pluralist and democratic Europe. The Bordeaux Declaration⁴⁹ of January 1978, the first declaration of its kind to deal with regionalisation in Europe, already stated that "every European's right to 'his region' is part of his right to be

⁴⁹ See CLRAE, Doc.A2-170/86 § 6.

different". The transfrontier regions could take inspiration from the Bordeaux Declaration with due respect of course for the great variety of political systems in Europe.

Although transfrontier co-operation has been studied mainly by the Council of Europe, the authorities of the European Union are more and more aware of its importance and its role. Thus when the European Parliament asked the Commission to encourage this type of co-operation, it noted as early as 1988 that the strengthening of transfrontier collaboration was a veritable touchstone of the political will of member states to build a truly united Europe. The European Parliament recognised the importance for the development of the single market of concerted action between local communities in like or different countries. The logic of this process seemed self-evident, for it is plainly impossible to abolish frontiers as long as there remain areas around them facing specific problems that put them on a different footing from the rest of Europe. The European Parliament felt that to abolish political frontiers alone would not solve all the problems inherent in this particular situation. The Parliamentary resolution went on to request the Commission to draw up proposals for directives that would oblige member states to take measures necessary for the exchange of information and to see that mutual consultation took place in frontier areas concerning national measures that had direct or indirect effects on the frontier regions of neighbouring countries.

We cannot fail to draw attention again – all the new Euroregions in the countries of central and eastern Europe having a great interest in the subject – to the importance which the Commission of the European Union attaches to the development of transfrontier co-operation, particularly as reflected in the size of the funds made available to all Community frontier regions within the framework of the Community initiative programme known as INTERREG I, which for the three years 1991-1993⁵⁰ amounted to approximately 930 million ecus. The INTERREG II (1994-1999) funds tripled, totalling 2.9 billion ecus. INTERREG III (2000-2005) rose to 4.6 thousand million euro. And the structural funds for the territorial co-operation objective will be around 336 billion euros for the period 2007-2013.

5.3.2 Sectoral aspects of transfrontier co-operation as analysed by “strategic forward planning”

The development and strengthening of transfrontier institutions and relations must be based on the preferential or priority areas singled out by this type of forward planning. There are four such areas:

5.3.2.1 Promoting greater awareness, hence a new communications policy

Efforts to promote European integration call for an entirely new fundamental concept of integrated transfrontier regional policy with, in some cases, a restructuring and redeployment of transfrontier institutions.

A number of assessments of transfrontier institutions have shown that they still lack the kind of real political commitment that would add weight to their various bodies' decisions. Transfrontier institutions must make their presence felt more strongly at regional level. Steps must be taken to strengthen their political foundations, so that they have the political will to create an integrated socio-economic area that enshrines respect for differences and is based on true partnership, synergy and day-to-day solidarity. Deficiencies in their working systems have also been widely noted at the level of the consensus or even compromise solutions that should bind the various contracting parties to transfrontier agreements. The process of European integration in which transfrontier institutions are

⁵⁰ See OJ doc. C 180/60, Brussels, 1 July 1994.

playing a part requires a new vitality in their members' political commitment. The first task facing these institutions is thus to revive their own spirit of unity and cohesion in order to improve their credibility, comprehensibility and legitimacy. Questions of internal management, the essential basis for short and medium-term projects, must therefore be clarified. All these institutions have real potential for becoming first-rate movers of initiatives within their respective transfrontier areas, but they must first provide themselves with political capabilities to match their ambitions and take care of their image. By promoting their relations with the media, for example, transfrontier institutions will not only help to strengthen their credibility, but also encourage the emergence of transfrontier awareness among the public in a uniting Europe. Each transfrontier institution is faced with the choice of developing a genuine partnership - even one based on competition and competitiveness - and thereby strengthening its foundations, or doing nothing and running the risk of breaking up or becoming dormant, fragmenting the transfrontier region once again, depriving it of its operational unity, and reinstating the frontier in its divisive role.

Transfrontier institutions, their contracting parties *and all their members (sub-national authorities)* must assert themselves ever more forcefully as an influential go-between at transfrontier level *among the European bodies*, in accordance with the domestic law of each state. If no clear guidelines for action and communication priorities have been established for the whole region by all partners, transfrontier institutions will be unable to make a valid contribution to the advancement of their territory. A transfrontier institution is a co-ordinating body, and one that even puts forward *proposals, gives impetus and takes decisions*, and it must use its resources to complement all its member units. By doing so, it will help to establish a genuine partnership and will achieve one of the aims of transfrontier co-operation institutions - the development of synergies; that is, acting together achieves more in the economic, social, cultural and institutional spheres.

5.3.2.2 Concerted development, presupposing a new employment and investment policy

During this fast-moving phase of European integration, transfrontier institutions will need to decide on a course of action and will take the specific qualities of each region as a basis for strengthening their unifying role. As bodies concerned with regional micro-integration, they will each be able to help establish an approach to be used in framing, for example, a new policy for investment and management of the labour market. By suggesting priority areas for development they will give a new impetus to the region by helping to:

- identify the problems common to the region;
- support joint and/or convergent development projects;
- strengthen consensus and the transfrontier reflex in the context of globalisation too, for instance as regards all the relocation processes.

By enlisting the participation of political, economic and cultural leaders at every level, transfrontier institutions and their members will encourage the growth of a regular process of consultation. Once the region's strategic and functional priorities have been established they will be able to concentrate on co-ordinating selected projects. The keywords for transfrontier efficiency are: awareness, exchange and joint management. It further emerges from dissection of the debates and discussions within some transfrontier institutions that although everyone is in favour of collective action by all parties, problems are still viewed in an excessively local and short-term fashion. By promoting greater openness and applying real transfrontier forward planning, transfrontier institutions will help to decompartmentalise their region, readjust economic potential on each side of the frontier and activate the weakest structures. In this way they will help to work out a new investment and development policy coordinated with those of the state and European institutions. The fact that people live in two different countries does not prevent them from sharing the same area with all its constraints and challenges and the same concerns. Each transfrontier institution should impress on all its partners and protagonists the idea of an overall transfrontier policy and the will to pursue it.

5.3.2.3 A well-equipped area, presupposing a new policy for the environment, spatial planning and sustainable development

At regional level, transfrontier institutions will help other partners to find solutions for such local problems as waste disposal, provision and use of training and health facilities, transport systems and so on. It is therefore crucial that they should assert themselves in the role of formulating ideas, launching initiatives and achieving practical results. In so doing they must adopt a coherent attitude to the problems of each of their members and contribute to the adoption of an approach that coordinates spatial planning policies which provide for a balanced use of the transfrontier area, on a concerted basis, between building land, farmland, natural and industrial zones, residential areas and enterprise areas. Safeguarding the natural and cultural heritage will occupy an important place in the frontier area's development plan. The plan will also take a firm line on transport systems, preservation of water resources, purification of springs, air pollution and joint management and disposal of all kinds of waste. Even if a transfrontier region is already equipped with basic infrastructures, its frontier communities should propose road and rail development plans that meet their populations' needs and of course slot into the major European communication infrastructures. The development of communication routes and the establishment of a more efficient telecommunications system are also important ways of preventing the region from being marginalised and improving its competitiveness and position on the European scene. Items 5.3.2.2 and 5.3.2.3 on the new prospects for environmental action, spatial planning, investment and innovative employment are as it were encapsulated in the action theme of sustainable development. It is vital that civil society, NGOs – the NALAS for instance with its 2005-2007 strategic plan - should participate in this theme for the sake of judicious “transfrontier governance”.

5.3.2.4 A cultural synthesis, presupposing a coherent new cultural policy on training, the media and voluntary sector exchanges

Since all European regions are going through a process of rapid change, transfrontier areas can only become more dynamic and more competitive if they adapt their training institutions to the demands of the labour market and develop certain occupational sectors concerned with advanced technology or high-grade services. In some cases it would be worthwhile to evaluate the development and adaptation possibilities of frontier-based SMEs and their “transfrontier fabric”, to encourage the revival of high-quality tourism and to promote joint contracting, technological exchanges and possibly rural tourism.

The entire voluntary sector network in each transfrontier area and all the media that mirror its preoccupations should be given special attention. Transfrontier institutions must give all necessary encouragement to research centres and centres of excellence.

Each transfrontier region must define its own overall area priorities and weld together socio-cultural development efforts in such a way as to prevent action from being duplicated in the same sectors and energy from being wasted in a difficult period. Each region must also see that the development of one sector does not encroach on and disturb the balance of another and does not cause permanent ill-effects.

Having defined these four main areas of strategic forward planning for transfrontier institutions, we shall now suggest some ways to ensure optimum management of this exploratory task, so crucial for the future of each European transfrontier area.

A final example of *institutional planning* is provided by some South-East European states which, on the basis of bilateral and/or multilateral agreements, *intend* to carry out specific operations in the sphere of transfrontier co-operation, in both an overall and a sectoral context. Some inter-state transfrontier projects now being negotiated by Bulgaria, Greece, Hungary and “the former Yugoslav Republic of Macedonia” with their neighbours⁵¹, *very logically following on from the Chisinau Declaration, are:*

- Bulgaria :
 - education : all states in the region (multilateral) ;
 - free trade : all states in the region (multilateral) ;
 - tourism : all states in the region (multilateral).

- “the former Yugoslav Republic of Macedonia”:
 - exchange of information and liaison officers in the South-East Europe region : all states in the region (multilateral) ;
 - facilitation of border crossing, with gradual abolition of visas : Albania ;
 - environmental protection : Hungary, Slovenia.

- Greece :
 - cultural exchanges : with Bulgaria and possibly the other states in the region ;
 - transport : extension of the bilateral agreement with Bulgaria to the other states in the region ;
 - exploitation of water resources : Bulgaria ;
 - study grants : Bulgaria.

⁵¹ See document LR-CT (2004) 18.

- Hungary :
 - education and culture : Bosnia and Herzegovina, Serbia and Montenegro, and “the former Yugoslav Republic of Macedonia” (in progress where these three states are concerned) ;
 - co-operation among local authorities : Romania, Serbia and Montenegro (in progress), Slovenia ;
 - statistics : Romania
 - environment and tourism : Croatia.

5.4 Forward planning applied to transfrontier regional micro-integration will mainly concern the fields already examined in Part 3:

- environment and spatial planning;
- transport and communication;
- economy and labour;
- training;
- cultural exchanges;
- population movements;
- health and social protection.

In all these fields it is of prime importance to establish comprehensive programmes on integrated regional development. Use of forward planning techniques will advance the following goals as part of an integrated transfrontier regional policy:

- awareness: through a new communications policy;
- co-ordinated development: through a new policy on investment and employment;
- well-designed space: through a new environmental and spatial planning policy reconciling human concerns with physical space;
- cultural symbiosis: through a new cultural policy, co-ordinated as regards training, media and voluntary sector exchanges.

Conclusion to part 5

This 5th part on “transfrontier forward planning” can be concluded by applying one field thereof - “strategic forecasting” – to the 4 main scenarios that can be predicted for the future of transfrontier co-operation in Europe.

- The first scenario corresponds to the status quo, how things stand at present. Most transfrontier bodies invoked the principles of subsidiarity, partnership and devolution in all our interviews to demand a stronger legal foundation for developing more permanent, well-established networks of transfrontier relations in their respective regions. Still, it must be acknowledged that although the current legal situation *is not yet perfect*, for the Council of Europe and the European Commission as well as other

entities, a whole array of operational instruments discussed in the second part of this Handbook must evolve still further to begin with. Consequently, the first scenario would correspond to a legal status quo founded partly in public international law with the Madrid Outline Convention and its 2 protocols, and partly on bilateral or multilateral inter-state agreements underpinned by the significance of each state's domestic law. This status quo is admittedly unsatisfactory but has the advantage of really existing and of having enabled INTERREG to carry out numerous highly positive transfrontier schemes. The European Union's signature of the Madrid Outline Convention in its own right would not contribute much, as the Convention only provides a framework and is not an operative instrument as such.

- The second scenario would involve taking account of the strides made in operational instruments for transfrontier co-operation by way of bilateral or multilateral inter-state agreements, the most advanced specimen of which is the local grouping for transfrontier co-operation prescribed in the Karlsruhe agreement as early as 1996; both the agreement and the instrument could be extended, with state approval, to most European Union and Council of Europe members. This second scenario would have the advantage of leaving individual states still in control of their transfrontier relations, since to date *all 25 EU member states and all the other members of the 46-strong Council of Europe continue to regard* the transfrontier relationship as international. There is the added fact that the “territorial sovereignty” of states has hitherto remained a crucial reality in public international law. Apart from the groupings, this second scenario would surely benefit from the furtherance of devolutionary policies or from opportunities for the “transfrontier experiments” lately approved by the French Government, for example to bring into being a transfrontier conurbation amalgamating Lille, Tournai and Kortrijk, as it were the emergence of transfrontier inter-municipal affairs with due regard for the variety of differences that determine each state's territorial organisation. This scenario predicting the general spread throughout Europe of bilateral or multilateral agreements with fairly similar subject-matter (eg the local grouping), would no doubt be a further step towards adopting a Community legal instrument in respect of transfrontier co-operation. It would preserve with some stringency the sovereign authority of states over their foreign and transfrontier relations while making it legally permissible throughout Europe for their territorial communities to engage in direct co-operation, *under central government's supervision*, lawfully and with complete legitimacy and effectiveness. The future European transfrontier co-operation grouping of the European Commission would take on its full significance in this perspective.
- The third scenario would be predicated on a long-term outlook for the political integration of Europe conceived as attainment of a “still virtual federation” that would presuppose fresh transfers of powers, hence sovereignty, to a vaguely outlined European federal government or, as Jacques DELORS put it, to “European federal structures”⁵². The substance of this scenario would therefore be to make the sphere of regional policy a new Community power shared with the Member States, *although this* new Community legal instrument would be flexible enough to preserve the diversity, complexity and human value inherent in every transfrontier regional reality in Europe, and would embody the essence of the legal advances achieved by a large number of bilateral or multilateral agreements – especially in relation to the local co-operation groupings i.e. the legal personality and financial independence of these new (Community) transfrontier entities. If such were the case, before setting up a

⁵² Jacques Delors, *Mémoires*, ed. Plon, Paris, September 2004, pp. 565 et seq.

transfrontier co-operation agency governed by Community law it would nonetheless be expedient to draw a prior distinction between straight transfer and mere delegation of powers. As to the programmes, their design, management and (shared?) financing, the staff, and oversight of spending of structural funds, some questions *still* arise. Would the general rules of the structural funds be sufficient in the ambit of Community law? What would be the nature and substance of this Community transfrontier agency's acts? What position and role would be held vis-à-vis the agency by the states and all the territorial communities concerned? Lastly, is it possible to contemplate new "shared sovereignties" for the 25 Member States for the advancement of an overriding Community interest, namely increasingly fulfilled territorial cohesion?

The reservations of some Member States over certain articles of the future European Constitutional Treaty, *already adopted, but awaiting ratification by the 25 member states*, unfortunately compel us - to the consternation of a few frontier regions - to leave this 3rd scenario aside for the time being, as least for ordinary human purposes and in a context of Community pragmatism *more* attached to the "step by step" *approach to European construction, through "co-operation and territorial cohesion"*.

- The fourth scenario, to be founded on the idea of a "European territorial community" straddling a frontier and governed by Community law alone, depends still more than the previous one on Europe's completed political integration. Are transfrontier elected representatives, transfrontier administrations, transfrontier budgets and the like, or quite simply the obvious exceptions to national law for the frontier territorial communities belonging to a given state, imaginable at the present stage? The Commission is not in fact empowered to settle Member States' territorial organisation, and they are still largely responsible for managing the structural funds. Short of far-reaching legislative and constitutional changes for the 25 states, this 4th scenario seems even less feasible.

Time should be allowed to take care of transfrontier co-operation, even though glaring legal deficiencies were made apparent in all 5 parts of this Handbook, especially where the spending and management of INTERREG resources are concerned. It is still allowable to dream of "transfrontier regions on a human scale", reaching beyond national confines, with strictly functional independent powers of a very advanced kind, conducive to the territorial cohesion of transfrontier areas and thus to reconstruction of genuine transfrontier territories "de-politicised" in functional terms for the greater benefit of all the frontier populations concerned.

The blossoming of a host of Euro-Regions principally in the CEECs, and the support lent by INTERREG to transfrontier responsibility and solidarity, indubitably point to a more calm and peaceful Europe of borders despite serious problems over minorities that beset some frontier territories. Furthermore, if enlargement, according to all the figures quoted above, is a challenge for the Europe of borders, Euro-Regions and Community programmes will further consolidate a stable, lastingly peaceful Europe by evolving true "transfrontier democracy". Successful linkage, using legal instruments which exist or in some cases have yet to be invented, of grassroots Europe, with its Euro-Regions, and upper-tier Europe, *thanks to a possible 3rd ("euro-regional") Council of Europe protocol and the EU's INTERREG funds*, will further transform the "Europe of frontier divisions" into the "Europe of frontier bonds": European governance, national governances, regional governances and transfrontier governances will operate in synergy and partnership to achieve this European unity desired by all population groups, particularly frontier ones. It is quite plain that INTERREG funds

have greatly assisted not only in the economic and social development of frontier regions but also in this overall partnership. What is more, by furthering transfrontier institutions, transfrontier awareness, transfrontier culture and transfrontier identity, the whole standard-setting work of the Council of Europe as from 1980 together with the European Union's INTERREG funds as from 1991 have brought to light real transfrontier protagonists, both public and private. Although the figures given above suggest the inevitable partial transfer of these funds from the regions of Western Europe to the regions of the CEECs, the "transfrontier mobilisation" raised by INTERREG I, II, and III in most of Western Europe's transfrontier regions is bound to develop further and better still, thanks partly to the *new "territorial co-operation" objective (2007-2013)* and chiefly to the political will demanded by the Council of Europe of all states and all frontier territorial communities.

The Europe formed by the Council of Europe countries, by virtue of this first European institution's goals, adopted as early as 1949 a perspective of intergovernmental co-operation whereas the Europe of the 25 European Union states ultimately seeks political integration. These two great European institutions with their successive enlargements, even their highly desirable interlocking with each other, are each trying in their own way to unite the extended European family deeply injured by fratricidal wars that have chiefly affected the frontier regions. How can the identity of the future Europe, the emergence of a European awareness, be envisaged with diversity preserved? How can hurtful and often contradictory national recollections be made to co-exist harmoniously, particularly in frontier areas and, within those areas, most of all where minority territorial claims are re-emerging? The frontier regions that span thousands of kilometres across Europe, especially the wider Europe, act in their own way and even more markedly as the indicators and the catalysts of this will for a shared existence. Both the Council of Europe in a standard-setting perspective and the European Union with its more practical INTERREG I, II and III programmes has clearly understood that the transfrontier regions characteristically overcome certain "nationalist myths" and thus urge all states to make more of their *shared sovereignty* in a deeper and ever more readily accepted spirit of interdependence. Transfrontier co-operation will henceforth be the business not only of states but also of the European institutions and the regions; it will at last generate "new functional territorial entities" enabling the populations concerned to regain possession of their vital space which is their real reservoir of economic, social and cultural cohesion.

The body of Community law which the INTERREG funds have brought into fuller practical operation in the Community's frontier regions can form the basis not only for solutions to many frontier problems but also for framing a real Community legal instrument on transfrontier co-operation. The Community legal background in combination with this new instrument – taking the form of flexible, discretionary "regulations" so as to allow for the variety of transfrontier situations – will further consolidate the "transfrontier bonds" vital to the attainment of a European area of peace, democracy, progress and well-being. "The stamp of Europe" on frontier areas will foster these hard and fast bonds and so give a further pledge that the Council of Europe and the European Union are valid and have a future. All the transfrontier regions too, according to their varied characteristics and specific potential, will achieve the tangible goal sought by all the European institutions, European Union and Council of Europe alike, which is application on the ground of:

- (transfrontier) partnership
- (transfrontier) subsidiarity
- (transfrontier) citizenship
- (transfrontier) proximity
- (transfrontier) cohesion
- (transfrontier) synergy
- (transfrontier) solidarity,

namely the 7 fundamental principles of the European constitution.

General conclusions to the handbook as a whole

This "Handbook" of transfrontier co-operation has set out to demonstrate that what must be grasped before all else is the whole conception of a frontier, whether it divides or welds together, while never losing sight of the essential goal of the Council of Europe and the European Union which is to build a united, diversified, democratic Europe, an area of peace, law and security. A "Handbook" suggests a guide to analysis, reflection, experiment and practice.

That is why the difficulty of compiling a serviceable "transfrontier co-operation handbook" which any community or individual might use soon became a hard fact due to the diversity of the territories and experiences encompassed by the transfrontier reality as it affects the 46 Council of Europe member states. Let us summarise the five parts that made up the bulk of the handbook.

The first of the five questions posed, that of defining a transfrontier region, was answered initially by suggesting that every transfrontier region consists of an area of land whose socio-economic, socio-cultural, political and institutional characteristics activate a specific web of relations which interconnect the communities situated in the area and are disturbed or even brought into conflict by the frontier. Why is this so? Because the frontier, more than being a "physical boundary marker", primarily demarcates different systems between nation states, and because the basic principle of transfrontier co-operation is to create frontier areas, these being interlinked, contractual and functional spaces for finding common solutions to like problems. In that sense, transfrontier regions are indeed the touchstone and the catalyst of progress with European unification. In the name of properly interpreted transfrontier subsidiarity, governance and partnership, they prompt the discovery of "crossovers", contractual links and specific institutions joining together the various agents in the principal transfrontier co-operation fields, while bearing the importance of the European dimension firmly in mind.

What really matters for a full grasp of the true reality of transfrontier regions is to realise quite clearly that transfrontier links may be founded not only on a zonal or multipolar conception of frontier areas but also on the political and administrative divisions which each state has acquired through its history. These in fact still define as of old the scope of the territorial sovereignty exercised by states, and thus the scope of transfrontier co-operation too. Actually the problems often arise from the frequent overlapping of responsibilities at different levels and from their being exclusive, delegated or shared as the case may be, while it is not always readily discernible which institution takes charge of which type of responsibility and, where applicable, which other body it shares this authority with.

In reply to the second question, how to bring transfrontier institutions into being through public international law, an effort was made to demonstrate that the use of a standard formula is made the difficult at present by the variety and complexity of the regional and frontier phenomenon.

Scrutiny of the empirical and legal definitions of transfrontier relations was followed by a survey of the arrangements made at international level under bilateral and multilateral agreements taking account of the limits to the powers of infra-state public authorities, exemplified by the Nordic Council agreements, the Council of Europe Outline Convention and its 2 (eventually 3) protocols, the Benelux Convention, the Karlsruhe Agreement, and finally the future Community legal instrument. At the inter-regional level, it was observed that the main aim of the transfrontier working communities or the Euro-Regions was to enable

their constituent transfrontier communities to come together and discuss common practical problems in an effort to provide a joint solution, always state-supervised, whether through a comprehensive or a purely sectoral type of transfrontier co-operation. Thus it may be regretted in some quarters that the Council of Europe, the European Union and the state governments have not yet hit upon *exactly the right ways* of giving direct agreements between infra-state territorial communities the required legal backing without contravening public international law. Consequently, according to some legal experts, a “law of frontier relations” as an independent branch of public international law remains to be invented.

The third part on fields and developmental phases of transfrontier co-operation quite involved an examination of the six fields corresponding to a conventional sextuple typology, while allowing their scope to be amplified and augmented so as to reflect current and future transfrontier co-operation experience more fully. As to the 5 stages in transfrontier relations, these presuppose as always a lengthy progression which, in the light of all the transfrontier track records analysed, corresponds to the slow and complex process of European unification where convergence, harmonisation and integration are eternal hot issues, particularly in welfare and taxation matters.

The fourth question about the energising or inhibiting factors of transfrontier co-operation calls for prior reference to the theory of institutional dynamics (*more a matter of political science than of law*) emphasising that any institution, being a mere instrument meant to last, can become at once the engine or the brake of the global societies in which these institutional instruments have their place and which may be European, national, regional, local or transfrontier entities. The political will that should attend every means of overcoming the multiple impediments examined in detail is indispensable at the regional, national and European levels alike. The INTERREG initiative, for example, has indubitably been one of the most decisive factors in harnessing this political will to as to bring to the fore the transfrontier endeavours of all the socio-economic, cultural, institutional and administrative players. Likewise essential were the crossovers between infra-state frontier entities lying in different states, irrespective of their political system, to place transfrontier relations on a more favourable footing. However, constraints will persist and distort the dynamics of transfrontier relations: socio-economic imbalances, cultural distancing and institutional inadequacies. The whole craft and intent of the Council of Europe and the European Union is to address these problems, each in its own way.

Finally, what advantages are expected to accrue from the new perspectives in which transfrontier co-operation should be placed? First of all there is the very position of the frontier regions which, being at the core of the European integration process, are an ideal proving-ground for its progress or stagnation. The emergence of fully-fledged and ever more cohesive transfrontier regions, and the gradual “defunctionalisation” of the boundaries between the Member States which will be transformed from screening frontiers into contact and linkage frontiers, will consolidate this progress, *which is bound* to be reflected in an accentuation of “transfrontier subsidiarity”, “transfrontier partnership”, “transfrontier solidarity” and “*transfrontier governance*” processes. The very place of transfrontier co-operation remains one of the irreplaceable present and future keys to the European debate, and the odds are that webs of privileged transfrontier relations will be woven more and more within the European Union and Council of Europe alike, for the greater good of Europe as a whole.

It must finally be acknowledged that the growing interest of the *two* major European institutions in frontier regions is a phenomenon due largely to the phasing out of economic, social, technological and fiscal barriers, *at least within the European Union*. It can also be appreciated that where change of attitudes in Europe is concerned, frontier populations form a unique example of integration broadly construed in that they are building a further level of regional awareness, culture and identity which in combination with the other types of identity bear witness to Europe's unity and diversity, in this instance at the transfrontier level. The prime objective of the entire "transfrontier forward planning" process is to ensure that transfrontier co-operation is still more firmly embedded in European construction for the future.

To conclude this Handbook, let us again recall the irreversibility of transfrontier co-operation throughout Europe; it is also fitting to recognise the importance of the "transfrontier relationship", far more crucial than the mere instrumentality of transfrontier institutions and all their possible legal forms. While attaching all due importance to the legal forms of transfrontier co-operation, it is therefore necessary to develop the goals, prospects, content, consistency and even the limitations and constraints of all these transfrontier relations and of the solid fabric that they constitute. This transfrontier fabric, underpinned by frontier that binds and no longer divides, will be the foundation and the determinant of areas that are more and more directly contract-based, the future form of all Europe's frontier regions. These contractual transfrontier regions or areas will utilise or generate, backed and supervised by the various national and/or regional authorities:

- "framework regulations", or "agencies" for integrated transfrontier development, or
- transfrontier co-operation observatories, all aiding the emergence of genuine integrated transfrontier regional policies,
- or pools and catchments of spatial planning, employment and human life, synergically controlled and used as laboratories researching the transfrontier dimension.

This warrants any arrangement resulting in areas of economic, social, cultural or political integration at a micro-level, pledging and testifying to the success of European integration generally; such areas of micro-integration comprise for instance transfrontier job pools, transfrontier investment markets, technological co-contracting, transfrontier media, cross-border basic and in-service training, transfrontier spatial planning concepts, integrated multimodal transports networks, etc.

The salient message sent out by frontier regions whether directly or backed by state governments and European institutions is to consolidate European unification by stepping up their own co-operation, ie by giving prominence to the principles of regions' subsidiarity and partnership vis-à-vis state authorities and European institutions. Also to be taken into account are the synergic effects produced by transfrontier co-operation via the concept of solidarity and neighbourliness applied in day-to-day life, inclusion in the main inter-regional bodies such as the AER and the AEBR, and the firm transfrontier bonding brought about especially by the oft-mentioned Interreg initiative. These elements go together to consolidate all the fabrics of transfrontier relations which are crucial to European unification however varied and complex they may be. That is why real comprehensive, integrated transfrontier policies emerging in all European frontier areas quite naturally point to a new brand of European

geopolitics not tampering with frontiers and proving that these areas assist the process of European unification in their own particular way.

But if transfrontier institutions are destined to become universal, it ought not to be inferred that they would run to a standard formula. Regionalism, more still when it has a frontier dimension, is so varied and complex that varied transfrontier co-operation formulae must be discovered or created to suit different contexts for each region. These different formulae must take into account not only the extreme variety of the geographical, socio-economic, political, cultural and other parameters, but also the varied conditions under which power is exercised at local, regional and national level. Their variety gives rise to transfrontier solutions which are, as the case may be, of a more consultative than deliberative type, more sectoral than general in scope, and more in the local than the truly regional dimension. Such is the complexity and variety of transfrontier regionalism in Europe that sweeping solutions or simplistic models would not meet the expectations of states, or of the territorial communities concerned.

Since this Handbook is moreover intended primarily for the 46 Council of Europe member states, it should be further pointed out that according to all our experience and study⁵³ the Council of Europe's approach to transfrontier co-operation must accommodate a number of current and future realities such as the enlargement of the European Union and the extension of its external boundaries to embrace the entire democratically governed continent, and the need for the Council of Europe⁵⁴ to preserve the continent's unity in terms of common standards, upholding fundamental rights, sustainable economic development. Indeed the specific nature of the Council's action does not rest upon access to large financial resources but, by wielding a characteristic political influence, the Council on its own account can facilitate and guarantee the application of solutions in keeping with international standards for purposes including transfrontier co-operation among its 46 member states.

The Council of Europe cannot disregard all the *obstacles to* transfrontier co-operation, associated with socio-economic imbalances between countries and regions in Europe as well as with border-crossing problems. Hence the importance of tackling the economic and social problems of the zones in question so as to foster the development of a more "coherent" and also "cohesive" Europe. In that sense, the European Union's priority goal of cohesion is fundamental. Nor should the possibility of better handling by the Council of Europe of the "humanitarian" issues connected with the management of the enlarged EU's new external frontiers be construed as challenging the rules laid down in Schengen, or as interference in the home affairs of states, but rather as a contribution to the development of external frontiers that are also points of contact and co-operation in full compliance with the demands of security and action against crime and its proceeds.

The relationship between local democracy and transfrontier co-operation is to be conceived as complementary. Progress with one equates to progress with the other. Effective transfrontier co-operation needs strong local self-government; besides, transfrontier co-operation is also a means of strengthening and furthering local democracy. This approach is rightly advocated by the Council of Europe which deems legal certainty necessary for local and regional authorities to be able to embark on profitable, equitable co-operation with their

⁵³ In particular, the white paper on transfrontier regions, and experience and study taken from LR-CT and CDLR documents.

⁵⁴ See the CDLR Plan of Action for 2005-2007.

neighbours. This democratic basis conclusively proves that transfrontier co-operation is part of the process of “empowering” local and regional authorities next to an international boundary by inducing them to forge co-operative links of use in securing, for instance, delivery of better-quality public services, sustainable promotion of economic and social development, etc.

It is just as essential that local authorities have the necessary resources to really enter into transfrontier co-operation. In this respect, successful reform of local and regional finances, transfrontier co-operation and empowerment of elected representatives and administrations are closely interconnected.

The European or intergovernmental level legal frameworks that both the Council of Europe and the European Union want to define must nevertheless always be supported by national measures that will assist transfrontier co-operation. An aspect which perhaps does not receive enough attention is the relative extent of decentralisation in all countries of Europe. Given that transfrontier co-operation is the application of domestic law in a transfrontier context, the results achieved in this context are directly linked with the internal jurisdiction of the territorial communities or authorities. What is more, disparities in the level of regionalisation attained by the partners (centralised/decentralised/regionalised/federal states) may be unfavourable to transfrontier co-operation. It can be noted, however, that the current state of transfrontier co-operation in Europe is encouraging on the whole. Financial support from the Community under Interreg, and from state governments, certainly consolidates it in making it more operational than would be possible under the Madrid Outline Convention alone.

Still we should recognise the groundbreaking role of the Council of Europe in this field, based true enough on extensive transfrontier experience as for example in the Rhineland, Alpine and Nordic regions, not forgetting the role of the Association of *European* Border Regions formed in 1971 in Gronau around a nucleus of a few Rhineland regions, and with a current membership of over 100 entities spread throughout Europe. The Council of Europe, the European Union and all the major inter-regional organisations concur that *a crucial issue to be speedily settled is the position, to be enhanced, of transfrontier co-operation in public international law and specifically in Community law.* The 3rd protocol and the new Community legal instrument – if dovetailed as beneficially as possible for the respective 46 and 25 member countries – are no doubt landmarks. But this whole legal apparatus, for all its usefulness, should not occlude the fact that transfrontier regions are among the surest guarantors of European unification because they are at once:

- “custodians” of (transfrontier) subsidiarity or better still “bearers” of the subsidiarity culture;
- indicators of (transfrontier) economic, social and territorial cohesion;
- vectors of (transfrontier) intercultural dialogue
- fabrics of relations carried on in (transfrontier) synergy;
- key protagonists of (transfrontier) democratic governance;
- catalysts of genuine devolution and/or regionalisation and consequently of (transfrontier) partnership;

- real-life settings of (transfrontier) solidarity.

The Council of Europe, through its role as a pioneer in formulating the Outline Convention back in 1980, had already apprehended the “added value” of all forms and objects of transfrontier co-operation. The European Union in turn is making transfrontier co-operation one of the keys to the attainment of its priority aim - economic, social and territorial cohesion. May this Handbook, updated and fully redrafted, *the content of which is its author’s responsibility alone*, serve as a benchmark for all public and private sector agents of transfrontier co-operation. May it also demonstrate the highly desirable, even indispensable, synergy in transfrontier co-operation between the major European institutions *and highlight the multiple webs of transfrontier relations that are an indubitable asset to Europe as a whole, “reinventing genuine governance everywhere in Europe”, as Jacques Delors said in a recent statement on television in support of the European Constitution. His thinking follows the same lines as that of Council of Europe Secretary General Terry Davies, who said on 27 January 2005, in the Parliamentary Assembly, “real democracy is a spirit, a culture. ... The task of the Council of Europe is to spread this culture throughout our continent. ... The same applies to human rights and the rule of law”, and to all the policies affecting social cohesion, education and culture: legal, economic, social, cultural and ecological challenges facing all the local and regional authorities in border areas to which this handbook refers.*

Returning to one of the points made in the action plan put before the 3rd Council of Europe Summit (Warsaw, 16 and 17 May 2005), the President of the Congress⁵⁵ concurred with the thoughts expressed by Jacques Delors and Terry Davis when he urged the Heads of State of Government to endorse the following statement:

“In view of its importance for the development of pluralist democracy in Europe, we stand ready to support and reinforce the role of the Congress of Local and Regional Authorities of the Council of Europe, representing the growing importance of decentralisation, local and regional democracy in our member states. The reinforcement of the Congress structures and resources will in particular aim at:

- *Improving its mechanisms to ensure compliance with the European Charter on Local Self-Government and other Council of Europe texts related to local and regional democracy;*
- *Cross-border cooperation and decentralised cooperation including the reinforcement of local authority associations and decentralised cooperation;*
- *The networking of local and regional authorities, especially in areas in transition, as well as efforts for peace and confidence building;*
- *The common discussion and exchange of best practices in areas of concern for local and regional government ranging from culture, education, youth and sports to social cohesion and migration as well as sustainable development.”*

Local and regional democracy, governance, transfrontier solidarity and partnership: what finer objectives could there be for all of Europe’s transfrontier regions?

⁵⁵ circular letter from President Di Stasi addressed to member delegations of the CLRAE, dated 16 March 2005.

