EUROPEAN PARLIAMENT

DIRECTORATE - GENERAL FOR RESEARCH

WORKING PAPERS

LEGAL ASPECTS OF TRANSFRONTIER COOPERATION BETWEEN PUBLIC EDUCATIONAL OR RESEARCH ESTABLISHMENTS

LEGAL AFFAIRS SERIES

W 1

EN - 2 - 1992

Publisher : Budgetary Affairs, Culture and Comparative Legislation Division
Directorate General for Research
European Parliament
L - 2929 LUXEMBOURG

December 1991

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Legal aspects of transfrontier cooperation

between public educational or research establishments

CONTENTS

Introduction

The origin of the present study is to be found in a question put by a European Parliamentarian to the General Directorate of Research, and which may be of interest to a wide public: what are the legal instruments available to two (or more) public educational or research establishments belonging to different Member States and desirous of establishing mutual transnational cooperation based on the existence of "common structures", and what are the limitations of these instruments?

More than being a description of the general scope for transfrontier cooperation in the fields of education and research, the question raises two specific problems:

- the public aspect of the establishments in question;
- the institutionalised aspect of the cooperation envisaged, which might even involve the creation of a new entity and therefore go beyond mere informal contact.

This study does not initiate an exhaustive review and a detailed survey of the various instruments which could be used within the framework indicated. Indeed, such an approach would require either the preliminary determination of the cases(s) of cooperation to be considered or else profound knowledge of the twelve systems of national law.

The much more modest aim of this account is to convey a general picture of some possible solutions as well as some of their limitations or their possible implications.

The study begins by analysing some of the instruments afforded by Community law, particular attention being focused on a relatively recent prescription: the European Economic Interest Grouping. Other instruments of Community law, in the specific field of regional policy, are also referred to in the last item (III,c).

In Section II, possible solutions in the context of national laws and non-Community international law are touched upon, as are the problems raised by these various solutions.

In view of the privileged framework of collaboration afforded by regional transfrontier cooperation, a separate chapter (Section III) has been reserved for this last area.

I. AT THE COMMUNITY LEVEL

a) The European Economic Interest Grouping

The legal instrument applicable to the case in point is the European Economic Interest Grouping (hereinafter called EEIG).

This instrument results from the adoption, on 25 July 1985 by the Council, of the (EEC) Regulation, No. 2137/85 (annexe 1).

The EEIG constitutes a new entity, the first legal person governed by Community law as regards company law, since the drafts for a European public company were, broadly speaking, put forward earlier, they have still not come to fruition[1].

The purpose of the EEIG, which is specifically designed for transnational cooperation, is "to facilitate or develop the economic activities of its members and to improve or increase the results of those activities; it is not to make profits for itself. Its activities shall be related to the economic activities of its members and must not be more than ancillary to those activities" (Article 3 of the Regulation No.2137/85).

In the light of the expression "economic activities", it might be thought that research and education are not activities falling within the scope of the Regulation and that they may not form the subject of the creation of a EEIG.

However, Preamble No. 5 of the Regulation provides that the notion of "economic activities" must be interpreted in the widest sense of the term. This expression therefore refers not only to activities of an economic nature but also to activities "with an economic aim".

One important aspect of the research activities is in fact contained in Section VI of the Single European Act and in the objective laid down in Article 130F of the EEC Treaty: that of strengthening the scientific and technological bases of European Industry and of promoting the development of its international

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1. The "joint enterprises" referred to in Article 130 O of the EEC Treaty (the formation of which requires a unanimous decision by the Council of the European Communities, in accordance with Article 130 Q, paragraph 1) only exist at present in the sphere of the EURATOM Treaty (Chapter 5).

competitiveness[2]. Paragraph 2 of Article 130F of the Single Act stipulates that the Community has a duty to support the cooperative efforts of enterprises, centres of research and of universities, with the particular aim of allowing them to fully exploit the potentialities of the internal market.

Secondly, the common policy of professional training (Article 128 of the EEC Treaty) and Community cooperation in the field of education (introduced progressively since 1974) have become priorities from the point of view of the large market and a Europe of citizens. The appreciation and the development of human resources and of their mobility are essential to ensuring and strengthening economic progress, the growth of employment and competitiveness and economic and social cohesion within the Community[3].

Nothing would appear therefore to prevent, a priori, EEIGs from being set up to carry out research or educational activities, since they are ancillary to the activities of their members.

As regards the legal nature of the bodies concerned (public establishments), Article 4.1.a) of the Regulation permits them to be members of an EEIG. Over and above natural persons, or even companies, performing certain types of activity, within the meaning of Article 58, paragraph 2 of the EEC Treaty, access to grouping form is in fact possible ("as widely available as possible" - Preamble No. 6 of the Regulation) for "other legal bodies governed by public or private law, which have been formed in accordance with the law of a Member State and which have their registered or statutory office or central administration in the Community". This provision in the Regulation is designed to avoid too restrictive an interpretation of Article 58, second paragraph of the Treaty of Rome[4] - it does not exclude, therefore, a number of public enterprises, of scientific organisations of a public or semi-public nature, and even of non-profit making bodies carrying out economic activities, such as associations.

The EEIG is a legal instrument that is situated half-way between purely contractual cooperation and cooperation in a corporate form.

Recourse to this instrument presents considerable advantages, particularly in the field of research, viz.:

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2. At the meeting of the European Council which took place at Maastricht on 9 and 10 December 1991, it was decided to amplify the wording of this objective to cover the promotion of all research activity deemed necessary under other chapters of the future Treaty of European Union and to clarify the general scope of the latter's provisions relating to research and to technological development.

3. At the recent Maastricht summit the Heads of Government of the countries of the Community decided to extend and redefine, in the future Treaty of European Union, a number of Community competencies in the field of educational and professional training, envisaging in particular a duty to encourage cooperation between educational establishments of the Member States.

4. This Article covers "civil or commercial law companies, including cooperative societies and other legal persons governed by public or private law, with the exception of companies that are non-profit making".

- a very large degree of legal flexibility, combined with scope for a structure of stable cooperation endowed, from its registration onwards, with full legal capacity. Indeed, extensive latitude is allowed to members in the organisation of their relations and in the choice of procedures for the internal operation of the EEIG, within which they retain their economic and legal independence; formalities involved in their establishment and constraining rules have been reduced to a minimum; from a financial point of view the non-requirement of compulsory capital is noteworthy; the outcome of Government activities is taxable only at the level of the members (fiscal transparency);

- a strengthened position in negotiations for international research contracts and the reinforcement of the cohesion between the members themselves; a structure which makes it possible to provide better support, representation and promotion of the interests of the group amongst the regional, national and Community authorities;

- the necessity for a single legal document (the grouping contract), whereas the formation of a consortium is generally based on the establishment of a network of bilateral and multilateral agreements between the members of the consortium.

The formation of an EEIG in the field of research can have in view, for example, the setting up of a structure for coordinating activities or managing equipment, a network of researchers or a data bank as well as the creation of a joint research centre. Furthermore, it can constitute an instrument for institutionalising the practice of interregional cooperation.

Indeed, interregional cooperation[5] affords the EEIG immense scope which has been insufficiently exploited up to now.

Amongst the most recent examples of recourse to this Community instrument by regions aiming to institutionalise their cooperation, one can point to the formation of the EEIG for the Advanced Technologies Route of Southern Europe (GEIE RHT EUROSUD)[6]. Eight regions of France, Italy and Spain, representing a population of around 37 million inhabitants, are taking part in this project: Paca, Languedoc-Roussillon, Midi-Pyrénées; Piedmont, Lombardy and Liguria; Catalonia and the Valencia Region. The aims of the network (whose implementation is scheduled for January 1992) concern the

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5. For instruments of regional and local transnational cooperation see also item III of this note.

6. Other examples: the "ERNACT" project, between Derry City Council, in Northern Ireland and the Donegal County Council, in Eire; the "EUROCORP EEIG", between the Flemish-Brabant GOM (regional authority for the development of Flemish Brabant) and companies in the United Kingdom and France, as well as public bodies in Spain and in the Netherlands; the EEIG "Menton-Ventimiglia Transfrontier Cooperation", between the town of Menton (France) and the municipalities of Ventimiglia (Italy), which was made possible thanks to a cooperation agreement between the Italian province of Imperia and the French department of Alpes Maritimes and was formed by two mixed-economy companies.

transfer of technologies, industrial cooperation and the formation of partnerships between small and medium-sized businesses and industries, joint participation in research and development programmes, in particular in Community programmes such as EUREKA, BRITE and ESPRIT, the establishment of a scientific and technical network and cooperation in the field of higher technological education. The construction of a Mediterranean Arc of "strong" regions, centred on sectors of research, higher education and technological and industrial cooperation is under consideration. But the EEIG also proposes to extend its activities "to the least favoured Mediterranean regions of the Community with a view to promoting the advantages and the industrial and scientific potential of the whole of Southern Europe". It is planned to promote this at the international level but mainly within the Community. Community co-financing is considered indispensable for the development of activities and actions undertaken by the eight regions in question and the bodies participating in that project[7].

The (EEC) Regulation No. 2137/85 of 25 July 1985 has only been applicable from 1 July 1989 in order to allow the Member States to introduce as a preliminary move the necessary machinery for registering groupings on their territory and for publishing the documents of the latter.

Until now only Greece has yet to take the legislative measures required by Regulation No. 2137/85. Bearing in mind, however, the direct applicability of the latter, the absence of national measures cannot stand in the way of a body of that State being a member of an EEIG or prevent an EEIG from being able to carry out part of its activities on the territory of that State.

The Regulation lays down the general rules applicable to the organisation and the operation of the EEIG after its formation. A number of these provisions are of an ancillary nature in cases where the grouping contract does not settle certain problems.

The members of the grouping have unlimited joint and several liability for the latter's debts of whatever kind, including those relating to tax and social security (Preamble No. 10 and Article 24 of the Regulation). This situation poses problems for certain categories of members, in particular for public institutions in certain Member States. However, Recital No. 10 of the Regulation provides that members have "the freedom to exclude or restrict, by means of a specific contract between the grouping and a third party, the liability of one or more of its members in respect of a particular debt".
When an uniform set of rules cannot be found at the Community level, the Regulation itself triggers the partial or general intervention of national law.

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7. Participants: **Spain** : Impiva - Instituto de la Mediana y Pequeña Industria de la Generalidad Valenciana; CIDEM - Centro d'Información I Desarollo Empresarial, Barcelona. **France** : AXISA S.A. : Société d'Aménagement, de Gestion et d'Innovation sur les Nouvelles Technologies de Communication, Toulouse. MTR LANGUEDOC-ROUSSILON - Multipôle Technologique Régional, Montpellier. Association Route des Hautes Technologies, Marseilles. **Italy** : DITEL-Centro Ligure per la Diffusione della Tecnologia, Genoa. C.E.C.C.P. - Centro Estero Camere di Commercio Piemontesi, Turin. CESTEC - Centro Lombardo per lo Sviluppo Tecnologico e Produttivo delle Piccole e Medie Imprese, Milan.

Article 2 paragraph 1 of the Regulation provides that the law applicable to the grouping contract and to the internal organisation of the grouping shall be, subject to the provisions of the Regulation itself, the internal law of the State where the grouping has its registered office. The EEIGs are also subject to the provisions of national laws governing insolvency and cessation of payments (Article 36).

The Regulation authorises the Member States to exclude or restrict, on grounds of public interest, participation in any grouping by certain classes of natural persons, companies or other legal bodies (Article 4.4). The legislation of Member States governing the pursuit of specific activities may also provide "further prohibitions or restrictions or otherwise control or supervise participation in a grouping..." (Preamble No. 8).

Regulation No. 2137/85 thus allows Member States not only the choice of certain procedures for giving effect thereto but also the option of supplementing the basic rules.

In the areas not covered by the Regulation the EEIG is subject to the provisions of national law and Community law applicable to the case in point: this concerns particularly tax law, social law, labour law, competition law and intellectual property law (Preamble No. 15).

Such a wide-ranging recourse, with the subsidiary intervention of national laws that is also the counterpart of the extensive flexibility of the Community's regulations, can, however, cause various problems, particularly because of the disparities existing between the régimes laid down by national legislation and possible distortions likely to result from the implementation of the Regulation.

The legislative, regulatory or administrative measures taken or applied by the Member States[8] ought not, however, to conflict with the scope and objectives of the Regulation (Preamble 17) and could, as a last resort, be the subject of scrutiny by the Court of Justice of the European Communities.

So far as transnational cooperation between public bodies (public institutions or regional or local authorities) is concerned, allowance must also be made for the fact that the specific requirements of national public laws are not brushed aside when an EEIG is formed and commences its activities. In other words, recourse to this Community instrument does not resolve the difficulties arising, in respect of this type of entity, from its specific status (governed by public law). This involves, for example: the obligation to comply with the rules for defining competencies between the Government and the regional and local authorities as well as the rules relating to administrative supervision; the inability of the EEIG to act within a context or on a basis governed by public law (endowed, for example, with the prerogatives of public power conferred on legal persons governed by public law).

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8. Annexe 2 contains a fairly complete list of the national measures implementing Regulation No. 2137/85.

The combination of recourse to the EEIG with the use of other instruments, such as intergovernmental or interregional cooperation agreements or the formation of legal bodies based on national laws, would probably make it possible to overcome some of these impediments.

In view of Article 3 of Regulation No. 2137/85 and the fact that it is a question of legal persons governed by public or private law, the EEIG must not take the place of its members. Consequently, it would seem doubtful, for example, that the latter can legitimately delegate to the EEIG the direct management of a specific economic activity. In certain cases, particularly when the partners envisage the creation of a legal team capable of implementing a long-term project of wide-ranging transnational cooperation involving a multitude of fields, this could constitute a far from insignificant limitation. This "ancillary" aspect of the EEIG's activity (which must not be understood in too strict a sense) will, however, often be sufficient as a support or catalyst for many acts of transfrontier cooperation. In effect, it is an instrument of cooperation and not of integration.

b) Cooperation in the implementation of Community programmes

Apart from the formation of an EEIG, cooperation between public institutions can obviously be achieved within the framework of many Community programmes or programmes with a Community initiative operating either in the fields of professional training and education or in the field of research (ERASMUS, COMETT, EUROTECNET, DELTA, PETRA, ESPRIT, RACE, BRITE, EURAM ...).

The Community aids are often designed to encourage, within the framework of these initiatives, the implementation of joint projects proposed by institutions of two or more Member States. The "interuniversity cooperation programmes - PIC", funded within ERASMUS, have made it possible, for example, to multiply and diversify the innovatory partnerships between various institutions, and a growing number of establishments is engaged in setting up permanent structures adapted to the requirements of such cooperation[9].

The programmes are normally accompanied by the creation of bodies for coordination or cooperation (for example: national coordinators, ad hoc technical committees), which might possibly be included in the fairly broad and vague notion of "joint structures".

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9. Various European associations containing university administrators have emerged since the adoption of ERASMUS and under the impetus of that programme: in particular EUPRIO (European Association of Officials responsible for Public Relations and Information at the Universities), FEDORA (containing academic careers advisers) and EAIEA (officials responsible for international relations) may be mentioned.

Community actions occur in compliance with the principle of subsidiarity, in close cooperation with the responsible authorities in the Member States and taking full account of the spheres of competence of such authorities, particularly insofar as the rules of administrative supervision are concerned.

Article 130 O of the EEC Treaty provides that the Community may create joint undertakings or any other structure necessary for the smooth implementation of programmes of research, technological development and Community demonstration. The application of this provision requires a unanimous decision by the Council (Article 130 Q).

II. RECOURSE TO INSTRUMENTS OF NATIONAL AND INTERNATIONAL LAW

National laws offer some possibilities of cooperation which are already widely used, in particular:

- the drawing up of "cooperation agreements"
- recourse to instruments of the British "partnership" type, the French "economic interest grouping (GIE)" (an institution which has greatly inspired the Community Regulation), the French "public interest grouping (GIP)", or other corporate forms within the framework of "joint ventures"
- the creation of a foundation or an international association, which would be governed by national law, as a rule that of the State where it has its registered office.

All these solutions in fact fit within a specific national law and imply either certain rigidities (recourse to a company form; in certain cases, the existence of strict supervisory procedures) or the absence of an adequate legal framework (conclusion of a contract without the formation of a proper body).

When a new institution is formed it is confronted, outside the territory of the State where it has its registered office, with problems regarding its existence and its recognition, as well as its legal regime and, in particular, the enjoyment and exercise of its rights. These problems are regulated by the private international law of each State, the solutions found being consequently complex and variable.

The Convention of the Council of Europe on recognition of the legal personality of non-Governmental international organisations, signed in April 1986 and brought into force on 1 January 1991, constitutes an important step towards an international treatment of the problems involved. Under the terms of this Convention the signatory States will automatically recognise associations, foundations and other private non-profit making institutions which are properly set up in the State where they have their registered offices, on condition:

- that they exercise effective activities in at least two States
- that they have their actual registered office and their statutory registered office on the territory of the contracting States.

This Convention does not, however, resolve all the problems, especially those dealing with the activities and the organisation of international associations[10].

When it is a question of public institutions, and despite the administrative, patrimonial and/or financial autonomy which this type of body is generally known to possess, the fact must be taken into account that they are normally subject to a control, exercised by the central or regional authority, which complies with the general principles of administrative supervision.

This supervision is organised according to different rules in each Member State and in respect of different categories of public institutions: in the case of France alone, for example, considerable differences in regime can be noted according to whether it is a question of, in particular, public institutions of an administrative nature or of an industrial and commercial nature or even institutions of a scientific nature. Even within each type of public institution there are specific features often contained in the respective statutes.

The public institutions therefore possess only a small element of autonomy, the degree of which varies according to the legal systems, the field in question, the specific conditions regulating their constitution and their relations with the supervisory authorities.

However that may be, internal everyday management theoretically constitutes the terrain for choosing the administrative autonomy of the public institutions. The creation of plurinational joint structures between public institutions of different Member States apparently goes beyond the scope of such management, particularly when such structures involve the creation of a new entity - it would seem therefore to entail, in theory, prior authorisation by the legal persons undertaking the supervision and even integration within a more general framework of inter-Government agreements or treaties of cooperation.

The international agreement or treaty between the States concerned is an instrument which has already been used on several occasions to resolve political, legal and institutional questions raised by transfrontier cooperation (see item III in this note).

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10. The European Parliament has repeatedly argued for the establishment of a "statute of associations" devised upon an European basis for the use of associations whose field of activity extends to more than one Member State. Reference can be made, for example, to the FONTAINE report on non-profit making associations within the European Communities (A2-196/86) and the GERLACH report (doc. 355/76 of 25 October 1976), which proposes, within the framework of transfrontier regional cooperation, the creation of "Euro-associations".

A detailed study of the obstacles which national public laws can place in the way of the constitution, the independence and the management autonomy of such plurinational structures therefore implies a knowledge of each case in point. All the more so as the dichotomy of public and private law does not have the same features and the same implications in all the Member States of the Community. The actions of this possible "joint structure" also pose other difficulties: the legal value of its decisions or its acts/deeds, the law that is applicable, the settlement of any disputes, etc...

III. INTERREGIONAL TRANSFRONTIER COOPERATION

Transnational cooperation between regional and local authorities raises two key questions in relation to the concept of a State: the powers of the State within the framework of international relations and of international legal order and the distribution of such powers within the internal constitutional framework.

Interregional cooperation is limited, generally speaking, for logical reasons connected with the ways in which power is organised. Indeed, on the international level, the State has the competence and capacity to establish international relations. Any actions by regional entities inferior to the State are subordinate both to the consent of the latter in the international context and to the existence of provisions in the internal law which authorise such actions. If, moreover, one takes the view that it is a question of cooperation between entities belonging to separate States and constitutional systems, the differences affecting the level or degree of autonomy of each of the regional and local authorities can also influence the very existence of such cooperation and, possibly, the way in which it functions.

We are witnessing, however, the gradual establishment of a form of international cooperation which recognises regional entities which are separate from the State and lower in status as having a role to play, whilst questioning the standard methods of inter-Government cooperation. Such a context offers a privileged framework for the development of methods of transnational partnership between public (and private) bodies.

The special problems of the border regions has encouraged in particular the existence of specific machinery of cooperation, which has already been regarded as integrating a true "border law".

a) The Council of Europe's framework agreement on the transfrontier cooperation of local and regional authorities

Local and regional transfrontier cooperation has been the subject of many resolutions or international agreements (particularly in the field of the environment). The framework agreement of the Council of Europe on the transfrontier cooperation of local or regional authorities, signed on 21 May 1980[11], constitutes a relatively important step in this field and deserves special attention.

Under Article 4 of this Agreement, the Governments (contracting parties) will attempt to resolve legal, administrative or technical difficulties which are likely to hinder developments in and the smooth functioning of transfrontier cooperation. Article 5 contains an "equivalence clause" under which Governments "will consider the advantages of according to the local or regional authorities participating in transfrontier cooperation the same facilities as are afforded for cooperation in an internal context"[12].

The Agreement proposes five models of inter-Government agreements and six schemes for agreements on statutes and contracts to be concluded between local authorities within the framework of transfrontier cooperation or concerted action. A large part of this last type of scheme is dependent on the adoption of preliminary inter-Government agreements which make it possible to render them effective and define their scope and the conditions under which they would be utilised. These models have only an indicative and exemplary value, since the contracting parties have the option of resorting by joint agreement to other forms of transfrontier cooperation.

However, the scope of this instrument is reduced by the absence of restricting rules and by the accumulation of legal and practical limits and uncertainties.

Under the framework agreement, cooperation is carried out within the spheres of competence of the local or regional authorities, as this is defined by internal law, since the extent and nature of these spheres of competence are not affected by the agreement itself (Article 2); the agreements and arrangements will be concluded in compliance with the competencies laid down in the internal law of each contracting party regarding international relations and general political orientation and in compliance with the rules of control or supervision to which the local or regional authorities are subject (Article 3.4.).

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11. This agreement has been ratified by all the Member States of the European Community, with the exception of Greece and the United Kingdom, who have yet to sign it.

12. The expression "local or regional authorities" includes communities, authorities or bodies performing local and regional functions which are treated as such in the internal law of each State.

Furthermore, each contracting party can, at the time of signing the Agreement or by sending a further communication to the Secretary General of the Council of Europe, designate the communities, authorities or bodies, subjects and forms to which the scope of the Agreement is to be restricted or which the contracting party proposes to exclude from the scope of the Agreement (Article 2.2.)[13]

The Agreement, which is the fruit of a compromise arrived at with some difficulty between States endowed with very varied legal structures and political philosophies, has, however, an evolutionary character; provision has been made for bringing it up to date, especially by adding new agreements inspired by the actual experiences of cooperation (Article 8).

The Agreement is not a text with a particularly rigid and restrictive legal content. But it does constitute, on the part of the Governments who have ratified it, recognition of the principle that the local and regional authorities are entitled to cooperate, within certain limits, beyond their borders. And it offers an additional legal support to the agreements which they might conclude.

Conscious of its importance, the European Parliament has on several occasions urgently invited those Member States which have still not ratified the European framework agreement to do so as soon as possible.

The recent second European Parliament Conference on Regions of the Community, held in Strasbourg in November 1991, supported the recommendation of the Permanent Conference of Local and Regional Authorities of the Council of Europe[14] in order that an additional protocol could be drafted strengthening the scope of the Agreement and recognising, in internal law, the legal personality of bodies for transfrontier cooperation and the legal value of the acts performed by such bodies.

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13. For example: when the Agreement was ratified, some governments decided to subordinate its implementation to the conclusion of preliminary inter-Government agreements (i.e. France, Spain and Italy).

14. Resolution 227 (1991) on the external relations of regional authorities, Permanent Conference of Local and Regional Authorities of Europe, 26th session (19-21 March 1991).

b) Inter-Government Agreements. Interregional cooperation:
some examples

Cooperation on behalf of the border zones is already the subject of some bilateral or multilateral agreements between Member States of the European Community. These agreements have sometimes resulted in the formation of inter-Government bodies for cooperation (for example: the German-Dutch and German-Belgian Development Commissions; the inter-Governmental Franco-German-Luxembourg Commission).

Prominent amongst the more recent inter-Government agreements is the Convention between the Benelux countries of 1986[15] and the German-Dutch Convention of 1991[16]; both are based on the European framework agreement, contain innovatory solutions in the field of transfrontier cooperation and aim to give the regional authorities and some public bodies the chance of cooperating on the basis of public law.

The first of these Conventions (Annexe III) expressly provides scope for the local and regional authorities concerned, within the limits of the competencies conferred on them by the internal law of their countries and without prejudice to the forms of cooperation deriving from private law, to conclude administrative agreements and to form joint bodies or public organisations, which can be endowed with legal personality and competencies for making regulations and administering (Articles 2 and 3).

The German-Dutch Convention (Annexe IV) provides that cooperation between the public entities involved (local or regional authorities and other public bodies, under Article 1) may be achieved by the setting up of associations governed by public law, the conclusion of agreements governed by public law (in particular, allowing a public body to take over the functions of another public body on behalf of and in accordance with the instructions of the latter) and the formation of communal working groups.

The two Conventions contain provisions relating to the forms of cooperation contemplated (statutes, powers vis-à-vis third parties, law and jurisdiction applicable, supervision, etc.).

In addition, at the regional and local levels, several organisations have been set up, often at the initiative of the regions themselves and sometimes with the aim of gaining access to Community funds.

These transfrontier nuclei constitute a kind of laboratory of ideas, an experimental stage preceding and reinforcing the work of legal codification. The practice of cooperation has gradually developed therein, in fields as different as area development, energy, the environment, public services, research,

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15. Annexe III

16. Annexe IV.

specialised training, the conditions of border workers... Such a practice is often of an informal kind but is also sometimes institutionalised by means of "contracts" or "agreements" between regional or local entities or by recourse to the formation of legal structures governed by private law (associations, foundations) based on national laws. None of these "nuclei" has yet achieved specific European status. And in almost all cases they remain devoid of their own powers of decision[17].

Although the majority of these instances of cooperation are based on a geographical situation of territorial continuity, there are also axes of cooperation based on an active choice of partnership between regions which do not maintain territorial continuity (for example: the "Four Driving Forces")[18].

Here are some examples of axes of interregional cooperation:

- interregional work communities (for example: ARGE-ALP, for the central Alps; ALP-ADRIA, for the Eastern Alps; COTRAO, for the Western Alps; the communities of the Pyrenees and of the Jura) - advisory by nature, these associations devoid of legal personality have been formed so as to allow their members to confer or to coordinate their policies. The competencies of those taking part, as provided for in internal law, remain unchanged.

- EUREGIO - a grouping composed of three communities of communes, in the Netherlands and the Federal Republic of Germany, possessing its own statute, working groups and secretariat, as well as a council, set up in 1978, which is considered to be the first transfrontier regional "Parliament".

- the "European Development Pole", centred on the transfrontier area of Athus-Aubange (Belgium), Longwy (France) and Rodange (Luxembourg), and affected by the crisis in the iron and steel industry. The project has formed the subject of a joint declaration by the three Governments concerned, dated 19 July 1985, and it is co-financed by the European Community. The action programme is arranged around four poles: the creation of an International Activities Park; the establishment of a regime specific to this Activities Park providing customs advantages and direct aids for investment by enterprises; the formation of a centre of common services (reception bureau, advisory service, data banks, telecommunications equipment); the establishment of an European College of Technology, set up by a tripartite agreement between three bodies federating the institutions of higher education and

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17. The precise aim of the "Euro-associations" proposed by the European Parliament in 1976 (see note 7) was to allow the regional authorities and other legal persons governed by public law to cooperate upon a basis of public law. At the recent Second European Parliament Conference on the Regions of the Community, held in Strasbourg in November 1991, it was considered "that it is in the interest of the Community to set up associations or organisations for cooperation between the regions, especially between the regions belonging to different Member States, with a view to carrying out joint projects".

18. Rhône-Alpes, Lombardy, Catalonia, Baden-Württemberg.

professional training of the three countries. A single cooperative structure has been established, based on a permanent coordination commission assisted by a political support committee and a technical team.

- The Atlantic Arc - composed of 22 coastal and Atlantic regions of the Community. Nine of these regions (of France, Spain and Portugal) have since April 1990 formed the Southern Atlantic Arc, which envisages cooperation in fields such as research, training and development: joint conferences have been held and it has been decided to set up a joint fund and a "Training Observatory".

- Saar-Lorraine-Luxembourg-Trier/Westphalia or Euro-district cooperation - institutionalised since 1970; the programme of cooperation between these regions mainly involves research, the transfer of technology and higher education.

- The "Four Driving Forces for Europe" (Rhône-Alpes, Lombardy, Catalonia, Baden-Württemberg), three regions and a Land which are amongst the most developed areas in Europe, signed a memorandum of multilateral cooperation on 9 September 1988, after a series of bilateral agreements concluded in the period 1986 - 1988. The aim of this memorandum, which is virtually a framework agreement, is to promote exchanges in the fields of infrastructure, research, technology and small and medium-sized business networks.

  It is not planned to set up joint institutional structures but simply to hold periodic meetings of the chairmen of the four regions. A prominent role has been assigned to the fields of research and technology. In November 1989 a new memorandum signed in Barcelona included the improvement of railway, road and air communications between their territories. This same memorandum retains the idea of pooling representatives' offices and the organisation of assignments outside the area.

  The Four Driving Forces have already had much experience of cooperation and the partnerships involve numerous public and private bodies such as institutes, universities, laboratories and enterprises. For example: the organisation of a joint exhibition at the International Fairs of the four regional capitals; research on measures to combat drugs-taking by sportsmen (Rhône-Alpes and Catalonia; research on optical fibres and optical waveguides (Rhône-Alpes and Baden-Württemberg; research in the fields of production engineering and mucoviscidosis; inter-university cooperation, especially with regard to exchanges of students and researchers and the awarding of scholarships.

- "Ouverture" (Opening) - this project was originally launched by three regions - Strathclyde (United Kingdom), Asturias (Spain) and Saarland (Germany) and is maintained by the Commission of the European Communities under Article 10 of the Regulation of the European Fund for Regional Development (ERDF). The general aim of "Ouverture" is the promotion of links and the formation of

networks between the Community regions and towns and those of Central and Eastern Europe. It is concentrated on areas such as the development of small and medium-sized businesses, the financing of local and regional authorities, the development of democratic local and regional structures, professional training ... The network is managed by a team appointed by the local and regional authorities taking part in "Ouverture". The participating authorities will be supported by a management committee which will meet once every six months and will be made up of the chairmen of the main participating authorities and representatives of the international associations, of the local and regional authorities and of the Commission of the European Communities.

c) Community Regional Policy. INTERREG.
Prospects of Development

Community regional policy is mainly based on Articles 130A and 130C of the EEC Treaty and on the regulations relating to the recent reform of Structural Funds. The ERDF is the major instrument of this policy.

Financial intervention by the Structural Funds is undertaken in the form of co-financing of operational programmes, of a national system of aid or suitable projects as well as in the form of a grant of global subsidies (generally speaking managed by an intermediary appointed by the Member State in agreement with the Commission) or of support for technical assistance and preparatory work on formulating programmes of action.

One of the ERDF's assignments consists in maintaining "pilot studies or experiments regarding regional development at the Community level, particularly when the border regions of the Member States are involved" and when they "encourage the exchange of experiences and cooperation with regard to development between Community regions as well as innovatory actions" (Article 3.1. of the EEC Regulation No. 2052/88 of 24 June, EEC Regulation No. 4254/88 of 19 December, Article 1 d) and Article 10).

The Community's structural interventions are regarded as complementary to corresponding national moves or as a contribution to the latter. The framework Regulation (No. 2052/88) provides in Article 4 for close concerted action between the Commission, the Member State concerned and the competent authorities appointed by the latter at national, regional, local or any other level. This concerted action (called "partnership") involves the preparation, financing, follow-up and assessment of the moves.

Whatever the ways and means chosen, the operations are always presented via the individual national authorities. On the other hand, any public or other authority, empowered as such by the Government,

may be the operator of a programme or a global subsidy by agreement with the Member State.

Within the framework of Community action designed to promote cooperation between border regions, one should mention the recent Community initiative on behalf of those regions (the INTERREG programme). This is a "community initiative" that is additional to the Community support frameworks agreed between the Commission and the Member States on a basis valid for a number of years. It was approved on 25 July 1990 under Article 11 of EEC Regulation No. 4253/88 and Article 3 paragraph 2 of EEC Regulation No. 4254/88.

INTERREG possesses fairly substantial financial resources. The contribution of the structural Funds totals 800 million ECU in the period 1990 - 1993, this sum being concentrated as a matter of priority on the less developed border regions. More limited financial resources are available for additional pilot projects in ineligible border areas. Furthermore, loans by the European Investment Bank (EIB) can be considered.

INTERREG has a peculiar political dimension: its budget is not allocated according to Government but according to frontier. This entails a single programme jointly drawn up by the Governments concerned but also extensive administrative cooperation between the competent regional and local authorities on both sides of the border. The complete application of the principles of partnership and subsidiarity (two key principles behind the reform of the structural Funds) is envisaged.

The objective of INTERREG is to prepare the border regions for the opening of the single market, with an eye to the Community's economic and social cohesion. In this connection, the intent of the INTERREG initiative is to encourage administrative collaboration and cooperative networks between private agents and public authorities on both sides of the internal borders and establish links between these networks and the wider Community networks.

The Commission is giving priority treatment to the proposals containing measures which promote relations between the public institutions, private associations and voluntary bodies of the border regions. The development of "shared institutional or organisational structures" for the purpose of strengthening transfrontier cooperation will be given preference.

Other recent Community initiatives can be used to achieve regional cooperation between research or educational establishments. For example, there are STRIDE (which is specifically designed to increase the resources of the regions in the fields of science, technology and innovation (RTD), and EUROFORM (which is designed to add a Community dimension to professional training by the promotion of partnership beyond the internal frontiers between professionals in this field).

Studies are now in progress within the Commission of the European Communities with a view to securing a new institutional framework adapted to interregional cooperation and/or to exploiting fully, in this field, the possibilities afforded by the legal instruments already in existence.

These studies will also form part of a more general process of reflection deriving from the need to support the progress made in completing the internal market with measures designed to strengthen the Community's economic and social cohesion. In particular, these involve the enhancement of the inter-regional dimension over vast transnational areas, the coherent definition of multiregional strategies, in compliance with the principle of subsidiarity, the strengthening of regional autonomy and the participation of the regions in the development of the Community's construction.

These are genuine challenges which the public authorities too (Governments, regional authorities, public institutions) will have to endeavour to take up.

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V. APPENDICES

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2. "Measures to implement Regulation No. 2137/85 of the Council dated 25.7.1985 within the Member States", CEC, XV/B/3, September 1991.

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(Acts whose publication is obligatory)

COUNCIL REGULATION (EEC) No 2137/85
of 25 July 1985
on the European Economic Interest Grouping (EEIG)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 235 thereof,

Having regard to the proposal from the Commission (1),

Having regard to the opinion of the European Parliament (2),

Having regard to the opinion of the Economic and Social Committee (3),

Whereas a harmonious development of economic activities and a continuous and balanced expansion throughout the Community depend on the establishmend and smooth functioning of a common market offering conditions analogous to those of a national market; whereas to bring about this single market and to increase its unity a legal framework which facilitates the adaptation of their activities to the economic conditions of the Community should be created for natural persons, companies, firms and other legal bodies in particular; whereas to that end it is necessary that those natural persons, companies, firms and other legal bodies should be able to cooperate effectively across frontiers;

Whereas cooperation of this nature can encounter legal, fiscal or psychological difficulties; whereas the creation of an appropriate Community legal instrument in the form of a European Economic Interest Grouping would contribute to the achievement of the abovementioned objectives and therefore proves necessary;

Whereas the Treaty does not provide the necessary powers for the creation of such a legal instrument,

Whereas a grouping's ability to adapt to economic conditions must be guaranteed by the considerable freedom for its members in their contractual relations and the internal organization of the grouping;

Whereas a grouping differs from a firm or company principally in its purpose, which is only to facilitate or develop the economic activities of its members to enable them to improve their own results; whereas, by reason of that ancillary nature, a grouping's activities must be related to the economic activities of its members but not replace them so that, to that extent, for example, a grouping may not itself, with regard to third parties, practise a profession, the concept of economic activities being interpreted in the widest sense;

Whereas access to grouping form must be made as widely available as possible to natural persons, companies, firms and other legal bodies, in keeping with the aims of this Regulation; whereas this Regulation shall not, however, prejudice the application at national level of legal rules and/or ethical codes concerning the conditions for the pursuit of business and professional activities;

Whereas this Regulation does not itself confer on any person the right to participate in a grouping, even where the conditions it lays down are fulfilled;

Whereas the power provided by this Regulation to prohibit or restrict participation in grouping on grounds of public interest is without prejudice to the laws of Member States which govern the pursuit of activities and which may provide further prohibitions or restrictions or otherwise control or supervise participation in a grouping by any natural person, company, firm or other legal body or any class of them,

) OJ No C 14, 15. 2. 1974, p. 30 and OJ No C 103, 28 4 1978, p. 4.
) OJ No C 163, 11 7. 1977, p. 17.
) OJ No C 108, 15 5 1975, p. 46.

Whereas, to enable a grouping to achieve its purpose, it should be endowed with legal capacity and provision should be made for it to be represented *vis-à-vis* third parties by an organ legally separate from its membership;

Whereas the protection of third parties requires widespread publicity; whereas the members of a grouping have unlimited joint and several liability for the grouping's debts and other liabilities, including those relating to tax or social security, without, however, that principle's affecting the freedom to exclude or restrict the liability of one or more of its members in respect of a particular debt or other liability by means of a specific contract between the grouping and a third party;

Whereas matters relating to the status or capacity of natural persons and to the capacity of legal persons are governed by national law;

Whereas the grounds for winding up which are peculiar to the grouping should be specific while referring to national law for its liquidation and the conclusion thereof;

Whereas groupings are subject to national laws relating to insolvency and cessation of payments; whereas such laws may provide other grounds for the winding up of groupings;

Whereas this Regulation provides that the profits or losses resulting from the activities of a grouping shall be taxable only in the hands of its members; whereas it is understood that otherwise national tax laws apply, particularly as regards the apportionment of profits, tax procedures and any obligations imposed by national tax law;

Whereas in matters not covered by this Regulation the laws of the Member States and Community law are applicable, for example with regard to:

— social and labour laws,

— competition law,

— intellectual property law;

Whereas the activities of groupings are subject to the provisions of Member States' laws on the pursuit and supervision of activities; whereas in the event of abuse or circumvention of the laws of a Member State by a grouping or its members that Member State may impose appropriate sanctions;

Whereas the Member States are free to apply or to adopt any laws, regulations or administrative measures which do not conflict with the scope or objectives of this Regulation;

Whereas this Regulation must enter into force immediately in its entirety; whereas the implementation of some provisions must nevertheless be deferred in order to allow the Member States first to set up the necessary machinery for the registration of groupings in their territories and the disclosure of certain matters relating to groupings; whereas, with effect from the date of implementation of this Regulation, groupings set up may operate without territorial restrictions,

HAS ADOPTED THIS REGULATION:

Article 1

1. European Economic Interest Groupings shall be formed upon the terms, in the manner and with the effects laid down in this Regulation.

Accordingly, parties intending to form a grouping must conclude a contract and have the registration provided for in Article 6 carried out.

2. A grouping so formed shall, from the date of its registration as provided for in Article 6, have the capacity, in its own name, to have rights and obligations of all kinds, to make contracts or accomplish other legal acts, and to sue and be sued.

3. The Member States shall determine whether or not groupings registered at their registries, pursuant to Article 6, have legal personality.

Article 2

1. Subject to the provisions of this Regulation, the law applicable, on the one hand, to the contract for the formation of a grouping, except as regards matters relating to the status or capacity of natural persons and to the capacity of legal persons and, on the other hand, to the internal organization of a grouping shall be the internal law of the State in which the official address is situated, as laid down in the contract for the formation of the grouping.

2. Where a State comprises several territorial units, each of which has its own rules of law applicable to the matters referred to in paragraph 1, each territorial unit shall be considered as a State for the purposes of identifying the law applicable under this Article.

Article 3

1. The purpose of a grouping shall be to facilitate or develop the economic activities of its members and to improve or increase the results of those activities; its purpose is not to make profits for itself.

Its activity shall be related to the economic activities of its members and must not be more than ancillary to those activities.

2. Consequently, a grouping may not:

(a) exercise, directly or indirectly, a power of management or supervision over its members' own activities or over the activities of another undertaking, in particular in the fields of personnel, finance and investment;

(b) directly or indirectly, on any basis whatsoever, hold shares of any kind in a member undertaking; the holding of shares in another undertaking shall be possible only in so far as it is necessary for the achievement of the grouping's objects and if it is done on its members' behalf;

(c) employ more than 500 persons;

(d) be used by a company to make a loan to a director of a company, or any person connected with him, when the making of such loans is restricted or controlled under the Member States' laws governing companies. Nor must a grouping be used for the transfer of any property between a company and a director, or any person connected with him, except to the extent allowed by the Member States' laws governing companies. For the purposes of this provision the making of a loan includes entering into any transaction or arrangement of similar effect, and property includes moveable and immoveable property;

(e) be a member of another European Economic Interest Grouping.

Article 4

1. Only the following may be members of a grouping:

(a) companies or firms within the meaning of the second paragraph of Article 58 of the Treaty and other legal bodies governed by public or private law, which have been formed in accordance with the law of a Member State and which have their registered or statutory office and central adminsitration in the Community; where, under the law of a Member State, a company, firm or other legal body is not obliged to have a registered or statutory office, it shall be sufficient for such a company, firm or other legal body to have its central administration in the Community;

(b) natural persons who carry on any industrial, commercial, craft or agricultural activity or who provide professional or other services in the Community.

2. A grouping must comprise at least:

(a) two companies, firms or other legal bodies, within the meaning of paragraph 1, which have their central administrations in different Member States, or

(b) two natural persons, within the meaning of paragraph 1, who carry on their principal activities in different Member States, or

(c) a company, firm or other legal body within the meaning of paragraph 1 and a natural person, of which the first has its central administration in one Member State and the second carries on his principal activity in another Member State.

3. A Member State may provide that groupings registered at its registries in accordance with Article 6 may have no more than 20 members. For this purpose, that Member State may provide that, in accordance with its laws, each member of a legal body formed under its laws, other than a registered company, shall be treated as a separate member of a grouping.

4. Any Member State may, on grounds of that State's public interest, prohibit or restrict participation in groupings by certain classes of natural persons, companies, firms, or other legal bodies.

Article 5

A contract for the formation of a grouping shall include at least:

(a) the name of the grouping preceded or followed either by the words 'European Economic Interest Grouping' or by the initials 'EEIG', unless those words or initials already form part of the name;

(b) the official address of the grouping;

(c) the objects for which the grouping is formed;

(d) the name, business name, legal form, permanent address or registered office, and the number and place of registration, if any, of each member of the grouping;

(e) the duration of the grouping, except where this is indefinite.

Article 6

A grouping shall be registered in the State in which it has its official address, at the registry designated pursuant to Article 39 (1).

Article 7

A contract for the formation of a grouping shall be filed at the registry referred to in Article 6.

The following documents and particulars must also be filed at that registry:

(a) any amendment to the contract for the formation of a grouping, including any change in the composition of a grouping;

(b) notice of the setting up or closure of any establishment of the grouping;

(c) any judicial decision establishing or declaring the nullity of a grouping, in accordance with Article 15;

(d) notice of the appointment of the manager or managers of a grouping, their names and any other identification particulars required by the law of the Member State in which the register is kept, notification that they may act alone or must act jointly, and the termination of any manager's appointment;

(e) notice of a member's assignment of his participation in a grouping or a proportion thereof, in accordance with Article 22 (1);

(f) any decision by members ordering or establishing the winding up of a grouping, in accordance with Article 31, or any judicial decision ordering such winding up, in accordance with Articles 31 or 32;

(g) notice of the appointment of the liquidator or liquidators of a grouping, as referred to in Article 35, their names and any other identification particulars required by the law of the Member State in which the register is kept, and the termination of any liquidator's appointment;

(h) notice of the conclusion of a grouping's liquidation, as referred to in Article 35 (2);

(i) any proposal to transfer the official address, as referred to in Article 14 (1);

(j) any clause exempting a new member from the payment of debts and other liabilities which originated prior to his admission, in accordance with Article 26 (2).

Article 8

The following must be published, as laid down in Article 39, in the gazette referred to in paragraph 1 of that Article:

(a) the particulars which must be included in the contract for the formation of a grouping, pursuant to Article 5, and any amendments thereto;

(b) the number, date and place of registration as well as notice of the termination of that registration;

(c) the documents and particulars referred to in Article 7 (b) to (j).

The particulars referred to in (a) and (b) must be published in full. The documents and particulars referred to in (c) may be published either in full or in extract form or by means of a reference to their filing at the registry, in accordance with the national legislation applicable.

Article 9

1. The documents and particulars which must be published pursuant to this Regulation may be relied on by a grouping as against third parties under the conditions laid down by the national law applicable pursuant to Article 3 (5) and (7) of Council Directive 68/151/EEC of 9 March 1968 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, with a view to making such safeguards equivalent throughout the Community (1).

2. If activities have been carried on on behalf of a grouping before its registration in accordance with Article 6 and if the grouping does not, after its registration, assume the obligations arising out of such activities, the natural persons, companies, firms or other legal bodies which carried on those activities shall bear unlimited joint and several liability for them.

Article 10

Any grouping establishment situated in a Member State other than that in which the official address is situated shall be registered in that State. For the purpose of such registration, a grouping shall file, at the appropriate registry in that Member State, copies of the documents which must be filed at the registry of the Member State in which the official address is situated, together, if necessary, with a translation which conforms with the practice of the registry where the establishment is registered.

Article 11

Notice that a grouping has been formed or that the liquidation of a grouping has been concluded stating the number, date and place of registration and the date, place and title of publication, shall be given in the *Official Journal of the European Communities* after it has been published in the gazette referred to in Article 39 (1).

Article 12

The official address referred to in the contract for the formation of a grouping must be situated in the Community.

The official address must be fixed either:

(a) where the grouping has its central administration, or

(b) where one of the members of the grouping has its central administration or, in the case of a natural person, his principal activity, provided that the grouping carries on an activity there.

(1) OJ No L 65, 14. 3. 1968, p. 8

Article 13

The official address of a grouping may be transferred within the Community.

When such a transfer does not result in a change in the law applicable pursuant to Article 2, the decision to transfer shall be taken in accordance with the conditions laid down in the contract for the formation of the grouping.

Article 14

1. When the transfer of the official address results in a change in the law applicable pursuant to Article 2, a transfer proposal must be drawn up, filed and published in accordance with the conditions laid down in Articles 7 and 8.

No decision to transfer may be taken for two months after publication of the proposal. Any such decision must be taken by the members of the grouping unanimously. The transfer shall take effect on the date on which the grouping is registered, in accordance with Article 6, at the registry for the new official address. That registration may not be effected until evidence has been produced that the proposal to transfer the official address has been published.

2. The termination of a grouping's registration at the registry for its old official address may not be effected until evidence has been produced that the grouping has been registered at the registry for its new official address.

3. Upon publication of a grouping's new registration the new official address may be relied on as against third parties in accordance with the conditions referred to in Article 9 (1); however, as long as the termination of the grouping's registration at the registry for the old official address has not been published, third parties may continue to rely on the old official address unless the grouping proves that such third parties were aware of the new official address.

4. The laws of a Member State may provide that, as regards groupings registered under Article 6 in that Member State, the transfer of an official address which would result in a change of the law applicable shall not take effect if, within the two-month period referred to in paragraph 1, a competent authority in that Member State opposes it. Such opposition may be based only on grounds of public interest. Review by a judicial authority must be possible.

Article 15

1 Where the law applicable to a grouping by virtue of Article 2 provides for the nullity of that grouping, such nullity must be established or declared by judicial decision. However, the court to which the matter is referred must, where it is possible for the affairs of the grouping to be put in order, allow time to permit that to be done.

2. The nullity of a grouping shall entail its liquidation in accordance with the conditions laid down in Article 35.

3. A decision establishing or declaring the nullity of a grouping may be relied on as against third parties in accordance with the conditions laid down in Article 9 (1).

Such a decision shall not of itself affect the validity of liabilities, owed by or to a grouping, which originated before it could be relied on as against third parties in accordance with the conditions laid down in the previous subparagraph.

Article 16

1. The organs of a grouping shall be the members acting collectively and the manager or managers.

A contract for the formation of a grouping may provide for other organs; if it does it shall determine their powers.

2. The members of a grouping, acting as a body, may take any decision for the purpose of achieving the objects of the grouping.

Article 17

1. Each member shall have one vote. The contract for the formation of a grouping may, however, give more than one vote to certain members, provided that no one member holds a majority of the votes.

2. A unanimous decision by the members shall be required to:

(a) alter the objects of a grouping;

(b) alter the number of votes allotted to each member,

(c) alter the conditions for the taking of decisions;

(d) extend the duration of a grouping beyond any period fixed in the contract for the formation of the grouping;

(e) alter the contribution by every member or by some members to the grouping's financing;

(f) alter any other obligation of a member, unless otherwise provided by the contract for the formation of the grouping;

(g) make any alteration to the contract for the formation of the grouping not covered by this paragraph, unless otherwise provided by that contract.

3. Except where this Regulation provides that decisions must be taken unanimously, the contract for the formation of a grouping may prescribe the conditions

for a quorum and for a majority, in accordance with which the decisions, or some of them, shall be taken. Unless otherwise provided for by the contract, decisions shall be taken unanimously.

4. On the initiative of a manager or at the request of a member, the manager or managers must arrange for the members to be consulted so that the latter can take a decision.

Article 18

Each member shall be entitled to obtain information from the manager or managers concerning the grouping's business and to inspect the grouping's books and business records.

Article 19

1. A grouping shall be managed by one or more natural persons appointed in the contract for the formation of the grouping or by decision of the members.

No person may be a manager of a grouping if:

— by virtue of the law applicable to him, or

— by virtue of the internal law of the State in which the grouping has its official address, or

— following a judicial or administrative decision made or recognized in a Member State

he may not belong to the administrative or management body of a company, may not manage an undertaking or may not act as manager of a European Economic Interest Grouping.

2. A Member State may, in the case of groupings registered at their registries pursuant to Article 6, provide that legal persons may be managers on condition that such legal persons designate one or more natural persons, whose particulars shall be the subject of the filing provisions of Article 7 (d) to represent them.

If a Member State exercises this option, it must provide that the representative or representatives shall be liable as if they were themselves managers of the groupings concerned.

The restrictions imposed in paragraph 1 shall also apply to those representatives.

3. The contract for the formation of a grouping or, failing that, a unanimous decision by the members shall determine the conditions for the appointment and removal of the manager or managers and shall lay down their powers.

Article 20

1. Only the manager or, where there are two or more, each of the managers shall represent a grouping in respect of dealings with third parties.

Each of the managers shall bind the grouping as regards third parties when he acts on behalf of the grouping, even where his acts do not fall within the objects of the grouping, unless the grouping proves that the third party knew or could not, under the circumstances, have been unaware that the act fell outside the objects of the grouping; publication of the particulars referred to in Article 5 (c) shall not of itself be proof thereof.

No limitation on the powers of the manager or managers, whether deriving from the contract for the formation of the grouping or from a decision by the members, may be relied on as against third parties even if it is published.

2. The contract for the formation of the grouping may provide that the grouping shall be validly bound only by two or more managers acting jointly. Such a clause may be relied on as against third parties in accordance with the conditions referred to in Article 9 (1) only if it is published in accordance with Article 8.

Article 21

1. The profits resulting from a grouping's activities shall be deemed to be the profits of the members and shall be apportioned among them in the proportions laid down in the contract for the formation of the grouping or, in the absence of any such provision, in equal shares.

2. The members of a grouping shall contribute to the payment of the amount by which expenditure exceeds income in the proportions laid down in the contract for the formation of the grouping or, in the absence of any such provision, in equal shares.

Article 22

1. Any member of a grouping may assign his participation in the grouping, or a proportion thereof, either to another member or to a third party; the assignment shall not take effect without the unanimous authorization of the other members.

2. A member of a grouping may use his participation in the grouping as security only after the other members have given their unanimous authorization, unless otherwise laid down in the contract for the formation of the grouping. The holder of the security may not at any time become a member of the grouping by virtue of that security.

Article 23

No grouping may invite investment by the public.

Article 24

1. The members of a grouping shall have unlimited joint and several liability for its debts and other liabilities of whatever nature. National law shall determine the consequences of such liablity.

2. Creditors may not proceed against a member for payment in respect of debts and other liabilities, in accordance with the conditions laid down in paragraph 1, before the liquidation of a grouping is concluded, unless they have first requested the grouping to pay and payment has not been made within an appropriate period.

Article 25

Letters, order forms and similar documents must indicate legibly :

(a) the name of the grouping preceded or followed either by the words 'European Economic Interest Grouping' or by the initials 'EEIG', unless those words or initials already occur in the name ;

(b) the location of the registry referred to in Article 6, in which the grouping is registered, together with the number of the grouping's entry at the registry ;

(c) the grouping's official address ;

(d) where applicable, that the managers must act jointly ;

(e) where applicable, that the grouping is in liquidation, pursuant to Articles 15, 31, 32 or 36.

Every establishment of a grouping, when registered in accordance with Article 10, must give the above particulars, together with those relating to its own registration, on the documents referred to in the first paragraph of this Article uttered by it.

Article 26

1. A decision to admit new members shall be taken unanimously by the members of the grouping.

2. Every new member shall be liable, in accordance with the conditions laid down in Article 24, for the grouping's debts and other liabilities, including those arising out of the grouping's activities before his admission.

He may, however, be exempted by a clause in the contract for the formation of the grouping or in the instrument of admission from the payment of debts and other liabilities which originated before his admission. Such a clause may be relied on as against third parties, under the conditions referred to in Article 9 (1), only if it is published in accordance with Article 8.

Article 27

1. A member of a grouping may withdraw in accordance with the conditions laid down in the contract for the formation of a grouping or, in the absence of such conditions, with the unanimous agreement of the other members.

Any member of a grouping may, in addition, withdraw on just and proper grounds.

2. Any member of a grouping may be expelled for the reasons listed in the contract for the formation of the grouping and, in any case, if he seriously fails in his obligations or if he causes or threatens to cause serious disruption in the operation of the grouping.

Such expulsion may occur only by the decision of a court to which joint application has been made by a majority of the other members, unless otherwise provided by the contract for the formation of a grouping.

Article 28

1. A member of a grouping shall cease to belong to it on death or when he no longer complies with the conditions laid down in Article 4 (1).

In addition, a Member State may provide, for the purposes of its liquidation, winding up, insolvency or cessation of payments laws, that a member shall cease to be a member of any grouping at the moment determined by those laws.

2. In the event of the death of a natural person who is a member of a grouping, no person may become a member in his place except under the conditions laid down in the contract for the formation of the grouping or, failing that, with the unanimous agreement of the remaining members.

Article 29

As soon as a member ceases to belong to a grouping, the manager or managers must inform the other members of that fact ; they must also take the steps required as listed in Articles 7 and 8. In addition, any person concerned may take those steps.

Article 30

Except where the contract for the formation of a grouping provides otherwise and without prejudice to the rights acquired by a person under Articles 22 (1) or 28 (2), a grouping shall continue to exist for the remaining members after a member has ceased to belong to it, in accordance with the conditions laid down in the contract for the formation of the grouping or determined by unanimous decision of the members in question.

Article 31

1. A grouping may be wound up by a decision of its members ordering its winding up. Such a decision shall be taken unanimously, unless otherwise laid down in the contract for the formation of the grouping.

2. A grouping must be wound up by a decision of its members:

(a) noting the expiry of the period fixed in the contract for the formation of the grouping or the existence of any other cause for winding up provided for in the contract, or

(b) noting the accomplishment of the grouping's purpose or the impossibility of pursuing it further.

Where, three months after one of the situation referred to in the first subparagraph has occurred, a members' decision establishing the winding up of the grouping has not been taken, any member may petition the court to order winding up.

3. A grouping must also be wound up by a decision of its members or of the remaining member when the conditions laid down in Article 4 (2) are no longer fulfilled.

4. After a grouping has been wound up by decision of its members, the manager or managers must take the steps required as listed in Articles 7 and 8. In addition, any person concerned may take those steps.

Article 32

1. On application by any person concerned or by a competent authority, in the event of the infringement of Articles 3, 12 or 31 (3), the court must order a grouping to be wound up, unless its affairs can be and are put in order before the court has delivered a substantive ruling.

2. On applications by a member, the court may order a grouping to be wound up on just and proper grounds.

3. A Member State may provide that the court may, on application by a competent authority, order the winding up of a grouping which has its official address in the State to which that authority belongs, wherever the grouping acts in contravention of that State's public interest, if the law of that State provides for such a possibility in respect of registered companies or other legal bodies subject to it.

Article 33

When a member ceases to belong to a grouping for any reason other than the assignment of his rights in accordance with the conditions laid down in Article 22 (1), the value of his rights and obligations shall be determined taking into account the assets and liabilities of the grouping as they stand when he ceases to belong to it.

The value of the rights and obligations of a departing member may not be fixed in advance

Article 34

Without prejudice to Article 37 (1), any member who ceases to belong to a grouping shall remain answerable, in accordance with the conditions laid down in Article 24, for the debts and other liabilities arising out of the grouping's activities before he ceased to be a member.

Article 35

1. The winding up of a grouping shall entail its liquidation.

2. The liquidation of a grouping and the conclusion of its liquidation shall be governed by national law.

3. A grouping shall retain its capacity, within the meaning of Article 1 (2), until its liquidation is concluded.

4. The liquidator or liquidators shall take the steps required as listed in Articles 7 and 8.

Article 36

Groupings shall be subject to national laws governing insolvency and cessation of payments. The commencement of proceedings against a grouping on grounds of its insolvency or cessation of payments shall not by itself cause the commencement of such proceedings against its members.

Article 37

1. A period of limitation of five years after the publication, pursuant to Article 8, of notice of a member's ceasing to belong to a grouping shall be substituted for any longer period which may be laid down by the relevant national law for actions against that member in connection with debts and other liabilities arising out of the grouping's activities before he ceased to be a member.

2. A period of limitation of five years after the publication, pursuant to Article 8, of notice of the conclusion of the liquidation of a grouping shall be substituted for any longer period which may be laid down by the relevant national law for actions against a member of the grouping in connection with debts and other liabilities arising out of the grouping's activities.

Article 38

Where a grouping carries on any activity in a Member State in contravention of that State's public interest, a competent authority of that State may prohibit that activity. Review of that competent authority's decision by a judicial authority shall be possible.

Article 39

1. The Member States shall designate the registry or registries responsible for effecting the registration referred to in Articles 6 and 10 and shall lay down the rules governing registration. They shall prescribe the conditions under which the documents referred to in Articles 7 and 10 shall be filed. They shall ensure that the documents and particulars referred to in Article 8 are published in the appropriate official gazette of the Member State in which the grouping has its official address, and may prescribe the manner of publication of the documents and particulars referred to in Article 8 (c).

The Member States shall also ensure that anyone may, at the appropriate registry pursuant to Article 6 or, where appropriate, Article 10, inspect the documents referred to in Article 7 and obtain, even by post, full or partial copies thereof.

The Member States may provide for the payment of fees in connection with the operations referred to in the preceding subparagraphs; those fees may not, however, exceed the administrative cost thereof.

2. The Member States shall ensure that the information to be published in the *Official Journal of the European Communities* pursuant to Article 11 is forwarded to the Office for Official Publications of the European Communities within one month of its publication in the official gazette referred to in paragraph 1.

3. The Member States shall provide for appropriate penalties in the event of failure to comply with the provisions of Articles 7, 8 and 10 on disclosure and in the event of failure to comply with Article 25.

Article 40

The profits or losses resulting from the activities of a grouping shall be taxable only in the hands of its members.

Article 41

1. The Member States shall take the measures required by virtue of Article 39 before 1 July 1989. They shall immediately communicate them to the Commission.

2. For information purposes, the Member States shall inform the Commission of the classes of natural persons, companies, firms and other legal bodies which they prohibit from participating in groupings pursuant to Article 4 (4). The Commission shall inform the other Member States.

Article 42

1. Upon the adoption of this Regulation, a Contact Committee shall be set up under the auspices of the Commission. Its function shall be:

(a) to facilitate, without prejudice to Articles 169 and 170 of the Treaty, application of this Regulation through regular consultation dealing in particular with practical problems arising in connection with its application;

(b) to advise the Commission, if necessary, on additions or amendments to this Regulation.

2. The Contact Committee shall be composed of representatives of the Member States and representatives of the Commission. The chairman shall be a representative of the Commission. The Commission shall provide the secretariat.

3. The Contact Committee shall be convened by its chairman either on his own initiative or at the request of one of its members.

Article 43

This Regulation shall enter into force on the third day following its publication in the *Official Journal of the European Communities.*

It shall apply from 1 July 1989, with the exception of Articles 39, 41 and 42 which shall apply as from the entry into force of the Regulation.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 25 July 1985.

For the Council

The President

J. POOS

ANNEXE 2

Brussels, September 1991

COMMISSION OF THE EUROPEAN COMMUNITIES
General Directorate
Financial Institutions and
Company Law
XV/B/3.

THE EUROPEAN ECONOMIC INTEREST GROUPING (EEIG)

Measures to implement Regulation No. 2137/85 of the Council dated 25.07.1985 [1] within the Member States

1. Company Law and Commercial Register:

A. The following have legislated:

1. BELGIUM:

- Law of 12.07.1989 on various measures to implement (EEC) Regulation No. 2137/85 of the Council dated 25.7.1985 relating to the setting up of an E.E.I.G.
(Belgian Monitor - 22.8.1989 - p. 14385 et seq.)
- Law of 17.7.1989, law on economic interest groupings
(Belgian Monitor - 22.8.1989 - p. 14391 et seq.)
- Royal Decree of 27.7.1989, relating to full disclosure of deeds and documents of companies and enterprises (B.M. - 22.8.1989 - p. 14400 et seq.)

2. DENMARK:

- Law No. 217 of 5.4.1989 relating to the setting up of E.E.I.G.
(Law Gazette A, Law No. 217, Vol. No. 52, 11.4.1989)
- Administrative implementing regulations Nos. 534 and 535 of 7.8.1989 (Law Gazette A, Vol. No. 80, 15.8.1989).

3. GERMANY:

- EEIG - Implementing Law - 14.4.88
(Federal Law Gazette 1988, I, No. 16, p. 514 et seq.)
- Eighth Ordinance for amending the Commercial Register Decree, 19.6.1989.
(Federal Law Gazette I, No. 28, p. 1113 et seq.)

4. FRANCE:

- Law relating to the E.E.I.G., No. 89-377 of 13.6.1989
(Official Gazette, 15.6.1989, p. 7440 et seq.)
- Decree of 20.6.1989, relating to the registration of the E.E.I.G.
(Official Gazette, 30.6.1989, p. 8101 et seq.)

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1. OJEC No. L 199 of 31.7.1985, p. 1.

5. EIRE:

- European Economy Interest Grouping - Regulation, 1989
Statutory Instruments No. 191 of 1989.

6. NETHERLANDS:

- Law of 28.6.1989 providing for implementation of Regulation No. 2137/85 of the E.C. Council relating to the setting up of European Economic Interest Groupings (OJEC L 199/1) (Government Gazette 1989, page 245 ...)

7. PORTUGAL:

- Decree-Law No. 148/90, State Gazette, I series, No. 106 - 9.5.1990, pp. 2154-2155.
- Decree-Law No. 191, State Gazette, I series, No. 4 - 5.1.91, pp. 74-76.

8. UNITED KINGDOM:

- The European Economic Interest Grouping Regulations
Statutory Instruments 1989 No. 638.

9. LUXEMBOURG:

- Law of 25 March 1991 on various measures for implementing EEC Regulation No. 2137/85; Memorandum 30 of 11 April 1991 p. 459.

10. SPAIN:

- Law 12/1991 of 29 April 1991 on the Economic Interest Grouping, on various measures for implementing EEC Regulation No. 2137/85; State Official Gazette (SOG) No. 103, 30 April 1991, p. 13638.

- Royal Decree No. 1597/1989 of 29.12.1989 approving the regulation relating to the Commercial Register previously permitted (sic) the registration of EEIG in Spain.

11. ITALY:

Decree-Law No. 240 of 23 July 1991, Official Gazette of the Republic of Italy - General Series, 132nd Year - No. 182 - 5.8.91, p. 6.

B. In course of preparation

GREECE:

- A draft presidential decree has just been drawn up.

II. Tax provisions:

This list has been prepared on the basis of information of which the Commission has been apprised but whose accuracy it cannot guarantee.

1. Belgium:

- Law of 22.7.1989, Art. 14, transposing into Belgian law EEC Regulation 2137/85 of 25.7.85.

- Circular No. 8/1989 of 31.8.89 regarding the tax provisions for VAT and Capital Contribution tax applicable to the EEIG.

- Capital Contribution tax: exemption of the EEIG.

2. Denmark:

- The EEIGs are treated in Denmark from the tax point of view as general partnerships (interessentselskab); cf. Circular of the Tax Ministry SKM 589-3721-2.
- Capital contribution tax: exemption of the EEIG.

3. Germany:

- The EEIGs are treated in Germany as general partnerships (offene Handelsgesellschaft).
- The principle of transparency is regulated by Article 15 of the Income Tax Law in respect of all partnerships.

- Other tax provisions regarding the EEIGs:
Arts. 19, 97 Para. 1 No. 5 Valuation Law;
Arts. 179, Para. 2 Clause 2, 180 Para. 1 No. 1 A O
respectively Art. 180 Para 1 No. 3 A O (non-profit making);
Art. 5 Para. 1 Trade Tax Law
- The EEIG as a partnership is not subject to the Capital Contribution Tax (Gesellschaftssteuer). In any case the tax will be abolished on 1.1.92.

4. Spain:

- Royal Decree 1597/1989 of 29.12.89 regarding the registration of the EEIGs (Chapter 6, Articles 37, 38).
- Law 12/1991 of 29.4.91, Art. 30 (the EEIG tax regime).
- Capital Contribution tax: 0.1%.

5. France:

- Direct taxes: Art. 239 C of the General Tax Code
- Capital Contribution tax of 1% as in the case of EIGs under French Law
(Art. 809-1 1° of the General Tax Code).

6. Greece:

- Capital Contribution tax: 1% if the EEIG is profit-making or stamp tax of 3% in other cases.

7. Eire:

- Chapter III, section 24, para. 2 of the 1990 Finance Act introduces the principle of transparency with reference to the EEIG Regulation.
- By virtue of section 2 para. 1 of the Capital Gains Tax Act 1975 the EEIG is not subject to this tax.

- Other provisions applicable to the EEIG:
Section 1(5) of the Corporation Tax Act, 1976.
Chapter III, Part IV of the Income Tax Act 1967 (with the exception of section 72 para. 8) and of section 4 para. 5 and para. 3 of Schedule 4 of the Capital Gains Tax Act 1975 apply subject to the provisions of Chapter III section 24 para. 5 of the 1990 Finance Act.

- Capital Contribution tax: 1%.

8. Italy:

- Articles 11 and 12 of the Decree-Law No. 240 of 23 July 1991.

- Capital Contribution tax: 1%. (Art. 12 Para. 1)

9. Luxembourg:

- Law of 25 March 1991, Memorandum of 11 April 1991, p. 460.

- Capital Contribution tax: exception of the EEIG. (forecast)

10. Netherlands:

- Decree of the Secretary of State for Finances of 1.3.90 No. WDB 90/63.

- Capital Contribution tax: exemption of the EEIG.

11. Portugal:

- Art. 5 Code of the tax on income of legal persons IRC.

- Capital Contribution tax: exemption of the EEIG.

12. United Kingdom:

- Section 510 A of the Taxes Act 1988. (O.J. No. L 199/1)
- Section 12A and 98B of the Taxes Management Act 1970. (O.J. No. L 199/1)

- No Capital Contribution Tax.

BENELUX CONVENTION REGARDING TRANSFRONTIER COOPERATION BETWEEN LOCAL OR REGIONAL AUTHORITIES

The Government of the Kingdom of Belgium

The Government of the Grand Duchy of Luxembourg,

The Government of the Kingdom of the Netherlands,

Being aware of the advantages attached to transfrontier cooperation as they are described in the European Framework Agreement on the transfrontier cooperation of the local or regional authorities concluded in Madrid on 21 May 1980,

Noting with satisfaction that the local or regional authorities have already been frequently collaborating on both sides of the intra-Benelux borders on a private law basis,

Desirous of giving them scope for cooperating on a public law basis also,

Whereas such cooperation meets the objectives of the Treaty setting up the Benelux Economic Union signed at The Hague on 3 February 1958,

Whereas the Heads of Governments and the Ministers of Foreign Affairs of the Benelux countries meeting at The Hague on 10 November 1982 decided to examine the possibility of drawing up at the Benelux level a Framework Agreement relating to cooperation between the local or regional authorities on both sides of the borders,

Having regard to the advice given by the Benelux Consultative Interparliamentary Council on 7 June 1986,

Have decided to conclude a Convention and are agreed as follows:

Article 1

1. This Convention shall apply to the local or regional authorities cited below:

   - in Belgium : provinces, communes, associations of communes, public centres for social assistance, polders and draining syndicates;
   - in Luxembourg : communes and syndicates of communes and public institutions under the supervision of communes;
   - in the Netherlands : provinces, communes, draining syndicates and public authorities referred to in the Law regarding Community regulations (Gov. Gaz. 1984, 669), insofar as the aforesaid regulation declares them competent in that respect in accordance with the abovementioned law.

2. Each Contracting Party may, after consulting with its partner countries and in accordance with the rules of the internal law that pertains to it, appoint new local or regional authorities to which this Convention shall apply.

Article 2

1. Notwithstanding the scope for cooperation arising from private law, the local or regional authorities of the Contracting Parties, referred to in Article 1, may, within the limits of the competencies conferred on them by the internal law of their own country, cooperate on the basis of this Convention in order to defend common interests. The main provisions of the internal law of each Contracting Party having validity in this respect are contained in the Appendix to this Convention.

2. The local or regional authorities referred in Article 1 may, for the purposes of rendering cooperation more effective, conclude administrative agreements and establish joint organs or public bodies.

3. The rules of control and supervision to which the local or regional authorities are subject by virtue of the internal law of the Contracting Parties shall apply to the decisions taken by the local or regional authorities referred to in Article 1 with a view to their collaborating on the basis of this Convention, as well as to decisions regarding accession and withdrawal.

Article 3

1. If the local or regional authorities referred to in Article 1 decide to establish a public body, they may confer on it competencies for making rules and carrying out administration.

2. The public body shall have legal personality. It shall be regarded as having the legal capacity conferred on national legal persons on the territory of each Contracting Party only to the extent necessary for performing its function and achieving its aims.

3. The legal relations between the public body and the natural and legal persons which come under its jurisdiction shall be governed by the law which would have been applicable if the local or regional authorities referred to in Article 1 had themselves exercised the competencies for making rules and carrying out administration conferred on the public body.

4. Except as provided for in the statutes of the public body, the law of the place where the registered office of this body is established shall be applicable as regards the status of its staff.

5. The statutes of the public body may not conflict with the internal law of the countries concerned and shall in any case prescribe rules covering the following aspects:

   - the name, registered office and company object;
   - the tasks, competencies and type of operation;
   - the mode of designation of members of boards of management and administration and of the chairman of the latter;
   - the range of obligations towards the public body;
   - the arrangements for organising meetings and taking decisions;
   - the public nature of its discussions;
   - the rules applicable in budgetary and accounting matters;
   - the ways in which activities are financed;
   - the arrangements for the entry into force, the modification and the expiry of the agreement;
   - the arrangements by which new members join and members retire.

Article 4

1. The rules for control and supervision laid down in the internal law of the Contracting Parties shall apply analogously to the decisions taken by the public bodies in the light of Article 3, Paragraph 4.

2. Each Contracting Party may, without prejudice to the provisions of Paragraph 1, designate the post of one or more special commissioners for transfrontier cooperation, whose function shall be to safeguard the rights of the countries under whose jurisdiction he comes/they come fall and to oppose any decision taken by the management(s) of the public bodies referred to in Article 3 which he/they deem(s) likely to interfere with those rights or which, in his/their opinion, conflicts with the legal or regulatory provisions. His/their opposition will result in the implementation of the decision taken being suspended.

3. A suspension based on the first and second paragraphs shall be decreed only after consultation with the commissioner(s) concerned of the other country or at least after he/they has/have been notified.

4. The suspended decision shall be presented by the commissioner to the competent authorities of his country who shall put forward a solution or submit the problem to the special Commission referred to in Article 6.

Article 5

1. The Contracting Parties and the provinces shall have the right to appoint separately or jointly an official for border contacts.

2. Any problems arising within the framework of transfrontier cooperation may be submitted to the aforesaid official.

3. This official shall be entitled to propose solutions to these problems or submit them to the public bodies, local or regional authorities and commissioners concerned or to the Commission referred to in Article 6.

4. This official shall also be competent to collect the information necessary for performing his assignment.

Article 6

1. For the purpose of implementing this Convention a special Commission shall be established pursuant to Article 31 of the Treaty of Union.

2. The function of this Commission shall be:-

   a) to stimulate and coordinate the activities regarding transfrontier cooperation and to inform the interested parties about the legal and other aspects of the projects relating to cooperation;

   b) to seek solutions to the problems submitted to it which involve transfrontier cooperation between local or regional authorities, the subject of this Convention;

   c) to examine disagreements and law disputes arising within the framework of transfrontier cooperation based on this Convention, with a view to resolving them by conciliation or by submitting them to the Committee of Ministers;

   d) to report annually to the Committee of Ministers on the state of cooperation achieved on the basis of this Convention;

   e) to perform any other task that shall be entrusted to it by the Committee of Ministers within the framework of this Convention.

Article 7

The Committee of Ministers shall rule on the matters referred to in Article 6, Paragraph 2, item c) which are submitted to it by the Special Commission.

Article 8

The Committee of Ministers may, by decision taken pursuant to Article 19 item a) of the Treaty of Union, draw up additional rules for methods of implementing this Convention.

Article 9

1. Each Contracting Party shall notify the Secretary General of the Benelux Economic Union of any changes in the provisions of internal law referred to in the Appendix. The Secretary General shall immediately inform the other Contracting Parties of such changes.

2. The local or regional authorities referred to in Article 1 shall notify the Secretary General of the Benelux Economic Union of all the forms of cooperation concluded on the basis of this Convention. These shall be mentioned in the Benelux Bulletin.

Article 10

In implementation of Article 1, Paragraph 2 of the Treaty relating to the Establishment and the Statutes of a Benelux Court of Justice, the provisions of this Convention, and the decisions of the Committee of Ministers taken to implement it, shall be designated as joint legal rules in respect of the application of Chapters III and IV of the aforesaid Treaty.

Article 11

So far as the Kingdom of the Netherlands is concerned, this Convention shall only apply to the territory situated in Europe.

Article 12

1. This Convention shall come into force on the first day of the second month following the date on which the three Contracting Parties inform the Secretary General of the Benelux Economic Union that constitutional requirements have been satisfied.

2. It shall remain in force as long as the Treaty establishing the Benelux Economic Union.

Article 13

1. Each Contracting Party may denounce this Convention, after consulting the other Contracting Parties, by means of a notification sent for this purpose to the Secretary General of the Benelux Economic Union. The Secretary General shall inform the other Contracting Parties of this notification immediately.

2. The denunciation shall take effect six months after the date of receipt by the Secretary General of the notification referred to in Paragraph 1.

3. This denunciation shall not interfere with the forms of cooperation already achieved on the basis of this Convention nor with the effect of the provisions of this Convention which are directly applicable to those forms of cooperation, unless the Contracting Parties agree otherwise. In such an event they shall determine the legal consequences of ceasing such cooperation.

IN WITNESS WHEREOF the undersigned, duly mandated for this purpose, have signed this Convention.

Done in Brussels, on 12.9.1986 in triplicate, in the Dutch and French languages, the two texts being authentic.

For the Government of the Kingdom of Belgium, L. TINDEMANS

For the Government of the Grand Duchy of Luxembourg, R. GOEBBELS

For the Government of the Kingdom of the Netherlands, W.D. van den BERG

CITATION OF THE INTERNAL LAW OF THE 3 COUNTRIES REFERRED TO IN ARTICLE 2 OF THE CONVENTION

Luxembourg

- Constitution of the Grand Duchy of Luxembourg dated 17 October 1868
- Decrees of 14 December 1789 relating to the constitution of the municipalities
- Decree of 16-24 August 1790 on the judicial organisation
- Law of 16 Vendémiaire YEAR V (7 October 1796) preserving the rights of the hospices to enjoy their property and regulating the manner of their administration
- Grand-Ducal Decree of 11 December 1846 concerning the reorganisation and the regulation of offices of charity
- Law of 26 July 1986 a) creating the right to a guaranteed minimum wage; b) creating a national service for social action; c) amending the law of 30 July 1960 regarding the creation of a national fund of solidarity
- Communal Law of 13 December 1988
- Law of 14 February 1900 regarding the creating of syndicates of communes.

Belgium

- Belgian Constitution of 7 February 1831
- Provincial Law of 30 April 1836
- Law of 5 July 1956 relating to the draining syndicates
- Law of 3 June 1957 relating to the polders
- Organic Law of 8 July 1976 regarding the public centres for social assistance
- Special Law of 8 August 1980 regarding institutional reforms
- Law of 31 December 1983 regarding institutional reforms for the German-speaking community
- Law of 22 December 1986 relating to the intercommunal organisations
- Decree of the Flemish Council of 1 July 1987 relating to the operation of the intercommunal organisations, their supervision and the determination of their jurisdiction
- Decree of the Walloon Regional Council of 5 November 1987 relating to the intercommunal organisations whose jurisdiction does not exceed the limits of the Walloon Region
- New Communal Law of 24 June 1988, ratified by the Law of 26 May 1989
- Decree of the Flemish Council of 7 June 1989 laying down, for the Flemish Region, rules relating to the organisation and the exercise of the administrative supervision of the communes
- Decree of the Walloon Regional Council of 20 July 1989 organising supervision over the communes, the provinces and the intercommunal organisations of the Walloon Region.

Netherlands

- Constitution (Stb. 1983, 15-51)
- Law on joint regulations (Stb. 1984, 669)
- Law regarding the administrative jurisdiction of the decisions of the public authorities (Stb. 1975, 284)
- Electoral Law (Stb. 1951, 290)
- Communal Law (Stb. 1851, 85)
- Law on full disclosure at the level of administration (Stb. 1978, 581)
- Law on the Council of State (Stb. 1962, 88)
- Provincial Law (Stb. 1962, 17)
- Law on the Waterstaat 1900 (Stb. 1900, 176)

Convention

between the Federal Republic of Germany, the Land of Lower Saxony, the Land of North Rhine-Westphalia and the Kingdom of the Netherlands regarding transfrontier cooperation between territorial authorities and other public bodies

The Federal Republic of Germany, the Land of Lower Saxony, the Land of North Rhine-Westphalia and the Kingdom of the Netherlands -

aware of the advantages accruing from transfrontier cooperation as set forth in the European Framework Agreement on transfrontier cooperation between territorial authorities concluded in Madrid on 21 May 1980,

desirous of giving such authorities and other public bodies the opportunity to cooperate on a public law basis -

have agreed on the following:

Article 1
Scope

(1) This Convention shall be applied:

1. in the Kingdom of the Netherlands to "provinces" and "municipalities",

2. in the Land of Lower Saxony to municipalities, combined municipalities and rural districts,

3. in the Land of North Rhine-Westphalia to municipalities, districts, Landschaft associations and the communal association of the Ruhr region.

(2) "Public bodies" within the meaning of Article 8 of the "Law on Communal Regulations" of 20 December 1984, last amended by the law of 13 December 1990, and special-purpose associations may participate in transfrontier cooperation if their national organisational statutes so permit.

(3) In agreement with the other Contracting States each Contracting Party may designate other communal bodies to which the regulations of this Convention may additionally apply.

(4) Paragraph 3 shall also apply to other legal persons governed by public law if their participation is permitted by national law and if national communal bodies also take part in the forms of transfrontier cooperation. Under these conditions the participation of persons governed by private law shall with the exception of cooperation under Article 6 be permitted.

(5) This Convention shall not apply to forms of cooperation in which only German or only Dutch public bodies participate.

(6) Public bodies for the purposes of this Convention shall be those specified in Paragraphs 1, 2 and 3 and those persons included in Paragraph 4.

Article 2
Aim and Forms of Cooperation

(1) Public bodies may cooperate on the basis of this Convention within the framework of the competences vested in them under national law in order to promote the economic and effective performance of their tasks in terms of transfrontier cooperation.

(2) Without prejudice to the opportunities afforded by civil law, cooperation may be achieved by:

1. the formation of special-purpose associations;

2. the conclusion of public law agreements;

3. the formation of communal working groups.

Article 3
Special-purpose association

(1) Public bodies may form special-purpose associations for the joint performance of tasks that may be exercised by a public law association in accordance with the national law prevailing.

(2) The special-purpose association shall be a public law body. It shall possess legal capacity.

(3) In so far as this Convention contains no other regulations, the legal provisions of the Contracting State in which the special-purpose association has its registered office shall apply to the special-purpose association.

Article 4
Statutes and internal structure of the
special-purpose association

(1) In order to form a special-purpose association the public bodies taking part shall agree on statutes for the association.

(2) The association meeting and Board shall be organs of the special-purpose association. The statutes of the association may provide for other organs subject to the national law to be applied at the time.

(3) The statutes of the association must contain provisions affecting the following:

1. the members of the association;
2. the duties and competencies of the special-purpose association;
3. the name and the registered office of the especial-purpose association
4. the powers of the organs of the special-purpose association and the number of representatives of public bodies in the organs;
5. the invitation procedures;
6. the majorities required for the passing of resolutions;
7. the access to the meetings;
8. the language and form in which the minutes of the meetings are expressed;
9. the way in which representatives of the public bodies in the association meeting disseminate information to the organs of the public bodies that sent them;
10. the way in which a representative of the public body in the association meeting can be called to account by the public body that has sent him for his activity in the meeting;
11. the way in which the association meeting disseminates information to the public bodies that have agreed on the statutes of the association;
12. the way in which the accounts are kept;
13. the fixing of the contributions of the association members;
14. accession and retirement of association members;
15. dissolution of the special-purpose association; and
16. the winding-up of the special-purpose association after its dissolution.

They may lay down further provisions.

(4) Changes to the statutes of the association shall require at least a two-thirds majority of the statutory number of representatives of the public bodies in the association meeting. The statutes of the association may lay down additional conditions.

(5) The sending of representatives of the public bodies to the association meeting shall be governed by the national law of the State concerned. The same shall apply to the rights and obligations of such representatives in relation to the bodies that sent them provided that this Convention does not stipulate otherwise.

Article 5
Competences of the special-purpose association
vis-à-vis third parties

(1) The special-purpose association shall not be entitled to impose obligations on third parties by legal norm or act of administration.

(2) The members of the special-purpose association shall be under an obligation thereto to take measures within their national competencies that are necessary for the performance of their duties.

Article 6
Public law Agreement

(1) Public bodies may conclude a public law agreement with one another, provided that the concluding of such an agreement is permitted by the national law of the public bodies taking part. The agreement shall need to be in writing.

(2) As a result of the public law agreement it may be especially arranged for a public body to exercise the functions of another public body under the latter's name and under its direction subject to the national law of the public body empowered to give the direction. No agreement may be concluded whereby a public body exercises under its own name the functions of another public body.

(3) The public law agreement must contain a regulation that lays down whether and to what extent exemption from liability to third parties may be obtained in the relationship between the public bodies taking part.

(4) The public law agreement must contain a regulation regarding the conditions for terminating cooperation.

(5) Provided that no further regulation is made in this Convention, the law of the Contracting State on whose territory the relevant obligation arising from the agreement must be met shall be applicable.

Article 7
Communal Working Association

(1) Public bodies may form communal working associations by written agreement. A communal working association, under the terms of the agreement, shall discuss matters that affect its members jointly.

(2) A communal working association may not pass resolutions binding the members or third parties.

(3) The agreement must contain provisions regarding the following:

1. the areas in which the communal working association is to be active;

2. the performance of the working association;

3. the registered office of the working association.

(4) Provided that no further regulation is made in this Convention, the law of the Contracting State in which the communal working association has its registered office shall apply to the working association.

Article 8
Conditions of effectiveness for measures of transfrontier cooperation

(1) The forms of cooperation provided for in Article 2 Paragraph 2 may be agreed and amended in legally binding terms only if the following provisions of the national law of the public bodies taking part

have been complied with:

1. competence of and passing of resolutions by the organs of the public bodies;

2. requirements of formality;

3. consents; and

4. announcements.

(2) Public bodies within the meaning of Artic red to refer public bodies situated in other territories of the Contracting States to the requirements of Paragraph 1.

Article 9
Supervision

(1) If the national law so provides, the public bodies taking part shall advise their supervisory authorities of the establishment, alteration and termination of forms of cooperation in which they are participating under the terms of Article 2 Paragraph 2.

(2) The supervisory powers of the competent authorities of the Contracting States over public bodies subject to their supervision shall remain unaffected.

(3) Pursuant to national law the supervisory authorities of the Contracting State in which the special-purpose associations and communal working associations formed on the basis of this Convention have their registered offices shall be responsible for their supervision. The supervisory authorities shall provide for the protection of the interests of all public bodies of the other Contracting States which currently belong to the special-purpose association or the communal work association.

(4) The competent supervisory authorities under Paragraph 3 and the supervisory authorities of the other Contracting States responsible for the supervision of the public bodies taking part shall make available any information on request and shall keep one another acquainted with the essential measures and results of their supervisory activity, in so far as this may have an effect on cooperation. Supervisory measures affecting the special-purpose associations or communal work associations may only be taken in agreement with the competent supervisory authorities of the other Contracting States unless these measures cannot be delayed.

(5) Before a supervisory authority of a Contracting State takes measures relating to cooperation under Article 6, it shall inform the competent supervisory authority of the other Contracting State with the object of achieving coordination unless the measure cannot be delayed.

Article 10
Legal Proceedings and Claims of Third Parties

(1) Third parties shall maintain vis-à-vis a public body in whose favour or in whose name a special-purpose association or another public body exercises duties all claims to which they would be entitled if those duties had not been performed in terms of transfrontier cooperation. Legal proceedings shall be governed by the law of the Contracting State of the public body whose duty has been performed.

(2) In addition to the public body upon which an obligation is placed by virtue of Paragraph 1, the special-purpose association or the public body that exercise functions shall also be held liable. Claims against them shall be governed by the law of the Contracting State in which have their registered offices.

(3) If a claim under the terms of Paragraph 1 is made against a public body for which a special-purpose association has acted, the special-purpose association shall be obliged vis-à-vis the public body to exempt the latter from its liability to third parties.

Should the claim be made against a public body that has acted on the basis of an agreement under Article

6, the regulation contained in the agreement under Article 6 Paragraph 3 shall apply to the liability in the relationship between both such public bodies.

Article 11
Legal proceedings in the event of disputes between public bodies

(1) In public law disputes between public bodies, special-purpose associations or communal work associations arising out of transfrontier cooperation, legal proceedings shall ensue in accordance with the provisions of the Contracting State in whose territory the defendant has his registered office.

(2) The public bodies taking part may go to arbitration.

Article 12
Jurisdiction Clause

With regard to the Kingdom of the Netherlands this Convention shall apply only to the sovereign territories situated in Europe.

Article 13
Coming into force

The Convention shall come into force on the first day of the second month following the day on which the last Signatory State informs the other Signatory States that the necessary national conditions for the coming into force of the Convention have been met.

Article 14
Period of Validity and Notice of Termination

(1) This Convention shall be concluded for an indeterminate period.

(2) Each Contracting State may give written notice of the termination of this Convention to the other Contracting States at the end of a calendar year and with a period of notice of two years.

(3) If the Land of Lower Saxony or the Land of North Rhine-Westphalia gives notice of termination, the Convention shall remain in effect between the other Contracting States. In the event of notice of termination being given by one of these Länder the other Land concerned may declare within three months of the receipt of notice that it associates itself with the action.

(4) If notice of termination of the Convention is given, the measures of cooperation implemented before the termination of the Convention and the provisions of the Convention that relate directly to the forms of cooperation shall be unaffected. In witness whereof the competent plenipotentiaries have signed this Convention.

Done at Isselburg-Anholt on 23 May 1991
in four original texts, each in the German and Dutch languages, the wording of which shall be equally binding.

For the Federal Republic of Germany

For the Land of Lower Saxony

For the Land of North Rhine-Westphalia

For the Kingdom of the Netherlands

Protocol

In signing the Convention between the Federal Republic of Germany, the Land of Lower Saxony, the Land of North Rhine-Westphalia and the Kingdom of the Netherlands on transfrontier cooperation between territorial authorities and other public bodies on 23 May 1991 in Isselburg the Contracting Parties entered into the following agreements which shall be regarded as integral parts of the Convention:

The Contracting Parties shall strive for a uniform interpretation of this Convention in its scope. This aim is already served by the explanatory memorandum to the Convention drawn up in common by the Contracting Parties, which they will annex to the Convention in the respective national ratification processes. Should a Contracting Party consider consultations about the interpretation or the application of the Convention to be necessary, the Contracting Parties shall meet for that purpose at the level of the responsible Ministries.

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