



Transnational cooperation in Europe

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Overview

- Intro: importance
- Basic frameworks
- Recent steps in facilitating CBC
 - Rules in public procurement directives
- Concluding remarks



Intro

- The past decades growing importance of/ and need for cross cooperation at local level. Espec. border regions/communities



- Examples: need on CBC on matters such as regional, urban and rural development, environmental protection, safety and shared infrastructures
 - COVID-19 crisis has shown importance of close cooperation in border regions
 - CBC can take various forms: contractual cooperation, joint entity, joint public procurement
- But CBC involves many obstacles to overcome administrative and legal perspective



Intro

- Important obstacle = legal regime and the applicability of administrative law
 - CBC are mostly cooperations of local/territorial Local bodies
 - Decentralised entities/local governments: regulated by administrative law (law regulates relation government entities/local/territorial bodies and citizens and the regulation of those entities)
 - CBC: one would expect regulation by administrative law
 - But administrative law: historical national focus, territorial/ not aimed regulating transfrontier relationships / + which administrative law?



Basic frameworks

- To facilitate and regulate to some extent CBC important instruments were created. Inter alia
 - Council of Europe: European Framework Agreement on cross-border cooperation between regions and territorial authorities, aka Madrid Treaty, 21 May 1980
 - EU: Regulation (EC) no. 1082/2006, of the European parliament and of the council of 5 July 2006, European Grouping for Territorial Cooperation (EGTC)



Basic frameworks

- Both instruments were analysed in our study
 - What is their aim
 - What do they regulate
 - What law will be applicable to CBC
- Both very important instruments: clear political engagement and creation of basic rules, modified/
- additional elements /improvements added overtime
 - For example Madrid Treaty: several protocols (but low(er) ratification
 - Regulation EGTC modified / improved in 2013



Basic frameworks

- BUT both cases observation of several shortcomings
 - Very important role of member states in implementing CBCs
 - Applicable law refers to “national law rules” for example in EGTC: law of the seat (oftentimes rather general reference). But in practice legal uncertainty and conflicts especially in relation to the use of national administrative law rules

=> Further action = required



Recent steps

- Sector specific example: 2014 Public procurement directives:
 - Joint awarding of public contracts by contracting authorities from different Member States currently encounters specific legal difficulties concerning conflicts of national laws. Hindrance internal market
 - New specific rules on cross-border joint procurement established in order to facilitate cooperation between contracting authorities and enhancing the benefits of the internal market by creating cross-border business opportunities for suppliers and service providers.
 - Rules designate/provide guidance on deciding on/ the applicable public procurement legislation, including the applicable legislation on remedies, in cases of cross-border joint procedures/use of joint entities.



Recent steps

- Warning in directive: contracting authorities should not circumvent mandatory public law rules. Such rules include administrative law: for example rules provisions on transparency and access to documents or use of languages.
 - When deciding on applicable law and setting up tender deal with it.
 - So legislator was aware of potential conflicts and tried to anticipate/avoid such conflicts by addressing this concern in directive



Recent steps

- More recently a proposal was drafted by EC to create a general instrument
 - Also related to concerns on creation of internal market/hindrance
 - Ex: EGTC facing problems that need to be solved by new instrument that can supplement this and other forms of CBC
 - Basic idea= to set up a mechanism to resolve and determine ex ante applicable law and anticipate on conflicts of law
 - Important role of member states in implementation
 - Many challenges/issues
 - Mechanism : lot of criticism by member states
 - Instrument could be a step forward but will not solve all issues



Concluding remarks

- Basic instruments: flaws
- Further steps needed/legal uncertainty
- ECBM: complicated mechanism/ will probably not make it.



Concluding remarks

- Way forward? 4 comments can be made:
 - **1.** Trend of harmonisation of administrative law (according to some harmonisation = the solution).
 - In our opinion it will reduce legal uncertainty and conflicts (but even this will not solve all issues). Example public procurement: heavily harmonised but still intervention needed to specify applicable law and anticipate on issues related to mandatory public law rules
 - **2.** Addressing which specific rules are applicable on CBC = very important (= pro-active) but requires regional or central expertise and therefore investments and commitments of member states



- **3.** Conflicts are hard to avoid (impossible to anticipate on everything). A reactive mechanism is needed to solve conflicts, not just a pro-active

- **4.** Major step forward would be to create a common “transnational” administrative legal regime/material law for CBCs
 - History/current discussions at EU level on CBC make clear = still long way to go



Thank you for you attention

