

Additional Protocol to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities

Strasbourg, 9.XI.1995

The Council of Europe member States signatory to this Protocol to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (hereinafter referred to as "the Outline Convention"),

Affirming the importance of transfrontier co-operation between territorial communities or authorities in border areas;

Being resolved to take further measures to secure transfrontier co-operation between territorial communities or authorities;

Wishing to facilitate and develop transfrontier co-operation between territorial communities or authorities situated in border areas;

Acknowledging the need to adapt the Outline Convention to the actual situation in Europe;

Considering that it would be appropriate to supplement the Outline Convention with a view to reinforcing transfrontier co-operation between territorial communities or authorities;

Having regard to the European Charter of Local Self-Government;

Bearing in mind the Declaration on transfrontier co-operation in Europe which the Committee of Ministers made on the occasion of the 40th anniversary of the Council of Europe and which, among other things, called for continued action in order to gradually remove barriers of any kind – administrative, legal, political or psychological – to curb the development of transfrontier projects,

Have agreed the following additional provisions:

Article 1

1 Each Contracting Party shall recognise and respect the right of territorial communities or authorities under its jurisdiction and referred to in Articles 1 and 2 of the Outline Convention to conclude transfrontier co-operation agreements with territorial communities or authorities of other States in equivalent fields of responsibility, in accordance with the procedures laid down in their statutes, in conformity with national law and in so far as such agreements are in keeping with the Party's international commitments.

2 A transfrontier co-operation agreement shall entail only the responsibilities of the territorial communities or authorities which have concluded it.

Article 2

Decisions taken jointly under a transfrontier co-operation agreement shall be implemented by territorial communities or authorities within their national legal system, in conformity with their national law. Decisions thus implemented shall be regarded as having the same legal force and effects as measures taken by those communities or authorities under their national legal system.

Article 3

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

Article 4

- 1Where the transfrontier co-operation body has legal personality, such personality shall be as defined in the law of the Contracting Party in which its headquarters are located. The legal personality of the body is recognised by the other Contracting Parties which have territorial communities or authorities party to the transfrontier agreement in conformity with their own national law.
- 2The transfrontier co-operation body shall perform the responsibilities assigned to it by the territorial communities or authorities in accordance with its purpose and in the manner provided for in the national law by which it is governed. Thus:
 - aaction by the transfrontier co-operation body shall be governed by its statute and by the law of the headquarters' State;
 - bthe transfrontier co-operation body shall not, however, be empowered to take measures which apply generally or which might affect the rights and freedoms of individuals;
 - cthe transfrontier co-operation body shall be financed from the budgets of the territorial communities or authorities. It shall not be empowered to impose levies of a fiscal nature. It may, where appropriate, receive revenue in respect of services provided by it to territorial communities or authorities, users or third parties;
 - dthe transfrontier co-operation body shall have an annual estimated budget and shall draw up a balance-account which shall be approved by auditors independent of the territorial communities or authorities party to the agreement.

Article 5

- 1The Contracting Parties may, if their national law allows it, decide that the transfrontier co-operation body is to be a public law entity and that, for the purposes of each Contracting Party's legal system, any measures which it takes are to have the same legal force and effects as if they had been taken by the territorial communities or authorities which concluded the agreement.
- 2However, the agreement may stipulate that it is for the territorial communities or authorities which concluded the agreement to execute such measures, especially where the measures may affect the rights, freedoms and interests of individuals. Moreover, each Contracting Party may provide that general responsibilities cannot be attributed to the transfrontier co-operation body and that such a body shall not be empowered to take measures which apply generally.

Article 6

- 1Measures taken by territorial communities or authorities under a transfrontier co-operation agreement shall be subject to the same supervision as the law of each Contracting Party prescribes in respect of any measure taken by the territorial communities or authorities concluding the agreement.
- 2Measures taken by a transfrontier co-operation body set up under an agreement shall be subject to the supervision provided for in the law of the State in which the body's headquarters are located, keeping in mind, in addition, the interests of territorial communities or authorities of other States. The transfrontier co-operation body shall comply with information requests made by the authorities of the States to which the territorial communities or authorities belong. The supervisory authorities of the Contracting Parties shall endeavour to establish means of appropriate co-ordination and information.
- 3Measures taken by a body as referred to in paragraph 1 of Article 5 shall be subject to the same supervision as the law of each Contracting Party prescribes in respect of any measure taken by the territorial communities or authorities concluding the agreement.

Article 7

- Any disputes arising from a transfrontier co-operation body's activities shall be referred to the courts which are competent under internal law or under an international agreement.

Article 8

1Each Contracting Party shall declare, when signing this Protocol, or when depositing the instrument of ratification, acceptance or approval, whether it will apply the provisions of Articles 4 and 5 or of one of those articles only.

2Such a declaration can be modified at any subsequent time.

Article 9

No reservations to the provisions of this Protocol shall be allowed.

Article 10

1This Protocol shall be open for signature by the States which have signed the Outline Convention, which may express their consent to be bound by either:

a signature without reservation as to ratification, acceptance or approval; or

b signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval.

2A member State of the Council of Europe may not sign this Protocol without reservation as to ratification, acceptance or approval, or deposit an instrument of ratification, acceptance or approval, unless it has already deposited or simultaneously deposits an instrument of ratification, acceptance or approval of the Outline Convention.

3The instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

Article 11

1This Protocol shall come into force three months after the date on which four member States of the Council of Europe have expressed their consent to be bound by the Protocol, in accordance with the provisions of Article 10.

2In respect of any member State which subsequently expresses its consent to be bound by it, the Protocol shall come into force three months after the date of its signature or deposit of instrument of its ratification, acceptance or approval.

Article 12

1After the entry into force of this Protocol, any State which has acceded to the Outline Convention may also accede to the Protocol.

2Accession shall be effected by the deposit with the Secretary General of the Council of Europe of an instrument of accession which shall take effect three months after the date of its deposit.

Article 13

1Any Contracting Party may, at any time, denounce this Protocol by means of notification addressed to the Secretary General of the Council of Europe.

2Such denunciation shall become effective six months after the date of receipt of the notification by the Secretary General.

Article 14

The Secretary General of the Council of Europe shall notify the member States of the Council of Europe and any State which has acceded to this Protocol of:

any declarations submitted by the Contracting Parties in conformity with Article 8;

any signature;

the deposit of any instrument of ratification, acceptance, approval or accession;

any date of entry into force of this Protocol, in accordance with Articles 11 and 12;

any other measure, notification or communication relating to this Protocol.

In witness whereof, the undersigned, being duly authorised thereto, have signed this Protocol.

Done at Strasbourg, this 9th day of November 1995, in English and French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe and to any State invited to accede to this Protocol.

Source : Treaty Office on <http://conventions.coe.int/>