

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

Recommendation Rec(2005)2 of the Committee of Ministers to member states on good practices in and reducing obstacles to transfrontier and interterritorial cooperation between territorial communities or authorities

*(Adopted by the Committee of Ministers on 19 January 2005
at the 912th meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Having regard to the European Framework Convention on Transfrontier Cooperation between Territorial Communities or Authorities, signed in Madrid on 21 May 1980 ("the Madrid Convention"), its Additional Protocol of 9 November 1995 and its Protocol No. 2 of 5 May 1998 concerning interterritorial cooperation;

Bearing in mind the Declaration of the Committee of Ministers on Transfrontier Cooperation in Europe, adopted on 6 October 1989 on the occasion of the 40th anniversary of the Council of Europe, which encouraged gradual action to remove administrative, legal, political and psychological barriers that might curb the development of transfrontier projects;

Bearing in mind the Vilnius Declaration on regional cooperation and the consolidation of democratic stability in Greater Europe, adopted by the Committee of Ministers on 3 May 2002;

Bearing in mind the Chişinău Political Declaration on transfrontier and interterritorial cooperation between states in South-Eastern Europe, adopted by the Committee of Ministers on 6 November 2003;

Recalling that cooperation between the local and regional authorities of Europe, particularly as developed under the Madrid Convention, is an essential component of good neighbourliness between member states and can help to strengthen democracy and democratic stability in Europe;

Having learnt, particularly from the annual reports of the Committee of Advisers for the Development of Transfrontier Cooperation in Central and Eastern Europe, of numerous examples of good practices in transfrontier cooperation between member states and their territorial communities or authorities;

In the light of the efforts of the Committee of Experts on Transfrontier Cooperation to identify a number of obstacles of a legal, administrative, economic or practical nature affecting transfrontier cooperation between territorial communities or authorities;

Convinced that the generalisation of good practices and the removal of obstacles could facilitate ratification of the Madrid Convention and its protocols by states that have not yet done so and enable existing parties to give full effect to their provisions;

Believing that the removal of obstacles to transfrontier and interterritorial cooperation could also eventually facilitate the preparation of new legal instruments or inter-state agreements to take account of developments in such cooperation,

Recommends that the governments of member states:

1. establish an appropriate legal framework for transfrontier and/or interterritorial cooperation activities of territorial communities or authorities, complying with the principles of the Madrid Convention and its Protocols;
2. consider the possibility of becoming party to the Convention and its Protocols;

3. take the measures proposed in the appendix to this recommendation, adapting them where necessary to particular situations, in order to improve transfrontier and interterritorial cooperation and reduce the obstacles encountered by their territorial communities or authorities in their transfrontier and/or interterritorial cooperation activities;
4. involve territorial communities or authorities with the relevant powers under domestic law in preparing and implementing the measures proposed in the Appendix to this Recommendation;
5. continue the process of dialogue and cooperation within the Steering Committee on Local and Regional Democracy (CDLR) and the Committee of Experts on Transfrontier Cooperation (LR-CT) aimed at strengthening the legal framework and practical arrangements for transfrontier and/or interterritorial cooperation.

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These measures or "good practices" are addressed to central authorities, where the latter are responsible for defining the legal framework for and supervising the activities of territorial communities or authorities. In some federal states these prerogatives lie with the federated entities, in which case the measures are addressed to them. The central authorities are invited to bring the measures to their attention.

A. Measures concerning the legal framework for transfrontier and interterritorial co-operation

1. Establish an appropriate legal framework for transfrontier and interterritorial cooperation activities of territorial communities or authorities, through:
 - legislation compatible with the Madrid Convention granting territorial communities or authorities the necessary powers, *inter alia* to enter into transfrontier cooperation arrangements within limits clearly defined by law, as well as adequate resources, particularly financial, to engage in transfrontier cooperation activities;
 - bilateral and/or multilateral inter-state agreements establishing general powers to engage in transfrontier and interterritorial activities or sectoral powers, for example with regard to health or civil protection.
2. Establish the necessary legal foundation for ratification and full implementation of the Madrid Convention and its Protocols.
3. Consult territorial communities or authorities and inform them of progress towards ratification of the Madrid Convention and its Protocols.
4. Publish, preferably with the ratification law or decree, the full text of the Madrid Convention, including its appendices.
5. Negotiate and conclude without delay bilateral and/or multilateral agreements if the Madrid Convention's implementation is subject to such agreements.
6. Periodically review the reservations and declarations made when ratifying the Madrid Convention to determine whether the underlying grounds still apply, *inter alia* through regular exchanges of views within the Council of Europe, and then adopt legislative and other measures so that the reservations and declarations may be withdrawn.
7. Provide for legal scrutiny, preferably retrospectively, of transfrontier cooperation arrangements entered into by territorial communities or authorities.
8. In so far as it is permitted by the national constitution, recognise decisions taken under a transfrontier cooperation arrangement as having the same legal value and the same effects as the acts of territorial communities or authorities under domestic legislation.

9. Make it possible or, where applicable, easier for institutionalised forms of transfrontier and interterritorial cooperation to acquire legal personality so that they may take binding decisions and receive and manage financing.

10. Examine whether the legislation has an impact on frontier regions and initiate, where necessary, the appropriate consultations.

B. Measures concerning information, training and institutional dialogue

1. Organise regular and/or institutionalised consultations with the competent authorities of neighbouring states on matters of common interest, to jointly determine solutions, identify legal and practical obstacles to transfrontier and interterritorial cooperation and take appropriate remedial action.

2. Ensure or improve, as appropriate, the supply of information for territorial communities or authorities on the state's actions and policies of interest to them, and on opportunities that may arise for them.

3. Without prejudice to existing procedures and fora for institutionalised dialogue and consultation with frontier territorial communities or authorities, establish or maintain regular consultation between the different levels of administration, in order to identify matters of common interest and their respective responsibilities for and means of dealing with them, in the interests of the local community.

4. Create a structure for coordination between the central authorities and those involved locally in transfrontier cooperation, in order to determine their needs and inform them of new developments at national and European or international level, in the sphere of transfrontier cooperation.

5. Encourage, and if necessary, offer support for, the establishment of transfrontier and interterritorial cooperation structures at the level of territorial communities or authorities for exchanging information, planning and implementing joint measures and ensuring that issues raised by one side are not left unanswered by the other.

6. Develop all kinds of training, including language training, for those involved locally in transfrontier and interterritorial cooperation, particularly the staff of territorial communities or authorities, in cooperation, where appropriate, with territorial authorities' associations.

C. Measures concerning transfrontier development

1. Establish procedures and bodies for assisting territorial communities or authorities to plan, draw up and implement projects, and also to submit them to relevant national and international sources of finance.

2. Within their budgetary policies and in the light of the relevant provisions of the European Charter of Local Self-government, adapt the financial capacity of territorial communities or authorities to their needs in order to optimise their transfrontier activities.

3. Provide central financial support to transfrontier and interterritorial cooperation programmes and projects.

4. Establish and adopt a frontier crossing policy that does not hinder transfrontier and interterritorial cooperation, for example by setting up special border posts for frontier workers or supplying them with free or very low-cost multiple-entry visas, in accordance with relevant national and international provisions.