European Union

INTERact

Study on organisational aspects of cross-border INTERREG programmes – Legal aspects and partnerships

A TOOL for better use of the
European Regional Development Fund

Summary

Did you know that in only 6% of the INTERREG IIIA programmes, the MA function is ensured by a joint cross-border structure (e.g. Euroregion)? And that most INTERREG IIIA programmes are managed by regional authorities? Did you know that in almost two-thirds of the INTERREG IIIA programmes, the repartition of tasks and responsibilities between the programme partners is fixed by the so-called “programme conventions or agreements”?

INTERREG programme partners, national authorities, regional councils, cross-border joint structures or the civil society, are now working on the **preparation of new programmes**, and many questions may arise in this process:

- Who should take the role of MA?
- What are the new requirements in terms of organisation and legal arrangements, contained in the new regulations?
- Should we create an EGTC to manage the programme?
- How can we fix the reciprocal responsibilities of the partners, especially the financial ones?
- Should we set up Intermediate Bodies to support the MA, CA and JTS?

This study aims at giving elements for reflection for the preparation of the new programming period 2007-2013 in terms of **partnership organisation and legal arrangements**. With a focus on the analysis of organisation models and legal arrangements of the INTERREG IIIA programmes, the study presents **statistical data** and **key information** for the understanding and the decision-making procedure relevant to the new programming period.

The main message conveyed by the study is the following: whatever the organisation of a programme is based on, whatever the number of authorities involved in its management and the level at which management takes place (national, regional, local), the importance is to coordinate well between partners and agree on the repartition of tasks, and especially that of responsibilities, through the signing of a **convention and/or memoranda of understanding**. In the cases where the partners have reached a high level of mutual trust and understanding, the **set-up of a joint management structure**, as experienced already in several programmes and now even more strongly encouraged by the European Commission with the new **EGTC instrument**, appears as an ultimate solution to implement the ‘joint management’ principle.

In all cases, what is needed is a strong spirit of partnership, trust and transparency.

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INTERACT hopes this tool will contribute to 'Sharing INTERREG experiences' and encourage other Community Initiative programmes to share their skills and knowledge with INTERREG stakeholders through INTERACT.

INTERACT Point Tool Box
October 2006

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How to read this document

At once both pragmatic and didactic, the aim of this document is to provide interested parties, like cross-border actors or those simply interested in the management of INTERREG, with grounds for reflection on the legal and partnership aspects of the implementation of the current INTERREG III programmes and the future INTERREG IV programmes. This guide, **which only addresses to programmes from strand A (cross-border cooperation)**, has been realised especially for current and future managers of the programmes who want to take into consideration the good practices implemented so far in different programmes, in terms of organisation.

In order to carry out the present study, VIAREGIO used the following methodology:

- A documentary study using Community texts as well as documents relating to the programmes analysed in the sample as a starting point.
- Completion of a survey through questionnaires addressed to the leaders of the programmes in the sample.
- Review of the drafts of the document by an expert proposed by INTERACT Point Tool Box, Maastricht, and INTERACT in-house review.

General objective of the study

The general objective of this study is to **summarise the organisational and legal environment of current INTERREG IIIA programmes**. More precisely, in the context of a benchmark-type approach, the different models of legal structuring and organisation of the programmes will be surveyed, which must contribute to an efficient and secure implementation of the Community principles of partnership and sound management.

The presentation of the different practices and solutions developed under INTERREG III will thus serve as a source of inspiration to the actors tasked with preparing the new generation of INTERREG IV programmes.

Operational objectives of the study

From an operational perspective, the study has two main objectives:

- **an objective of assistance in management and decision-making** for programme partners seeking practical advice for preparing the new programmes;

- **a legal objective** of comparative analysis of the advantages and drawbacks of the different existing models and a survey of good practices to encourage the exchange of experiences.

Consideration of cross-border cooperation in general and the approach of this study

It is important to specify at this stage that the study will not cover the organisation of cross-border cooperation in general. Rather, it will analyse in detail the different types of bodies, organisation and legal agreements that serve as a basis for cross-border cooperation in the framework of INTERREG IIIA programmes.

Nevertheless, the overall dimension of cross-border cooperation will not be absent from this study. On the contrary, the study will also highlight the different means of articulation between, on one hand cross-border cooperation in general, a phenomenon that began to develop long before the Community Initiative INTERREG appeared, and on the other hand the cross-border INTERREG programmes which are only one of several (financial) tools for supporting a type of cross-border cooperation, which must also be able to develop and endure outside INTERREG.

In the same manner, the existing 'cross-border cooperation structures' will not be the primary object of this study, but their potential involvement and participation in the management and implementation of INTERREG programmes will receive particular attention[1].

[1] 'Cross-border cooperation structure' is to be understood as the grouping, with or without legal personality, of different partners from two or more States concerned with the management of a cross-border area within a common structure or body whose attributes go from simple coordination of public policies to the concrete undertaking of cross-border projects. This structure can be based on a political agreement between partners without having legal personality or can have a legal basis in domestic or Community law.

The relation between cross-border cooperation structures and INTERREG programmes varies a lot from one cooperation territory to another, both on the level of the boundaries of the intervention (which do not always overlap) and on the level of the involvement of these structures in the implementation of the programmes (some bodies located in the territory of a programme are not involved in the implementation, others are partially – to carry out one or two specific missions, while others are even in charge of one or several of the management functions/bodies[2] (MA, PA, JTS)).

Content of the study

In order to respond to these multiple goals, the study will be organised around three main axes:

1. In Part 1, the core elements of the legal and organisational environment of INTERREG IIIA programmes will be looked at through a summarised presentation of the INTERREG Initiative, the main legal elements of cross-border cooperation and an analysis of the articulation between cross-border cooperation in general and INTERREG programmes.

2. In Parts 2 and 3 of this study, the solutions adopted by current INTERREG IIIA programmes and the legal and organisational structures of the programmes will be subject to detailed analysis. Two levels of analysis are proposed:

   - an analysis of the current 64 INTERREG IIIA programmes according to different typologies at the level of structures carrying out the main functions (MA, PA, JTS, etc.) and the legal relationship between them and other partners, in order to determine the organisational modalities of the programmes;
   - a more detailed analysis of a sample group of 25 programmes, in order to survey the good practices, develop tools and formulate recommendations for programme partners.

3. The final Part of the study will be dedicated to the formulation of recommendations and to the presentation of tools helping management and decision-making with regard to the new generation of INTERREG IV programmes; The starting point will be the good practices discovered in the current INTERREG IIIA programmes, while taking into account the main changes induced by the entry into force of the new Community regulations and the creation of the EGTC instrument.

For readers who so wish, the questionnaire addressed to programme leaders is included in the **Annex 4** as. In addition, more details about conventions, treaties or types of structures are given in **Annex 1**, **2** and **3** with a **bibliography**, which includes a **list of websites** relative to cross-border cooperation institutions, is included at the end of this document.

Finally, the details of all the 64 INTERREG IIIA programmes and programme conventions are available in the **CD-ROM** provided with this document (**Annex 5**).

Note: In this document, reference to a 'Programme' is to be understood as 'INTERREG IIIA Programme', unless otherwise stated (e.g. 'the Italy – Austria Programme' stands for the 'INTERREG IIIA Italy – Austria Programme').

[2] When dealing with the MA-PA-JTS, reference throughout this document will be made either to the three main 'administrative bodies' or 'administrative functions'

Introduction

Context of the study

Cross-border cooperation has given rise to diverse definitions. One of these, given by Article 2 of the European Outline Convention on Transfrontier Cooperation between Territorial Communities or Authorities (Madrid Convention), 21 May 1980, specifies under the term cross-border cooperation '*any concerted action designed to reinforce and foster neighbourly relations between territorial communities or authorities within the jurisdiction of two or more Contracting Parties and the conclusion of any agreement and arrangement necessary for this purpose*'.

Although for a long time this field of international action was reserved for State actors in an intergovernmental and diplomatic context, cross-border cooperation has greatly developed at regional and local level over the last 30 years, in the context of more or less formalised and institutionalised arrangements.

The Community Initiative INTERREG, first launched in 1990, is specifically intended to encourage transeuropean cooperation with a view to harmonious, balanced and sustainable development of the whole European Union and better territorial integration of candidate countries and other neighbouring countries[3]. It falls within the framework of regional policy of the European Union.

The third phase of the Community Initiative INTERREG (2000-06), which follows the previous INTERREG I (1990-1994) and INTERREG II (1994-1999) programmes, is nearing completion and a new generation of programmes is being prepared for 2007-13.

The current INTERREG Initiative has three strands (A, B and C), which concern, respectively, cross-border, transnational and interregional cooperation. The present study will concentrate on the INTERREG programmes of strand A, which are the oldest form of the INTERREG Initiative, appearing from the outset of the first generation of INTERREG I programmes, which more specifically have as their objective to support the implementation of cross-border cooperation programmes between contiguous land or sea territories.

Concretely, the implementation of an INTERREG IIIA programme refers to the co-financing by the European Union to a maximum of 75% (Objective 1 areas) of eligible expenditure of cross-border projects that fall within a specific eligible area covering the border zones of several neighbouring States, within the context of a common strategy contained in a Community Initiative Programme (CIP).

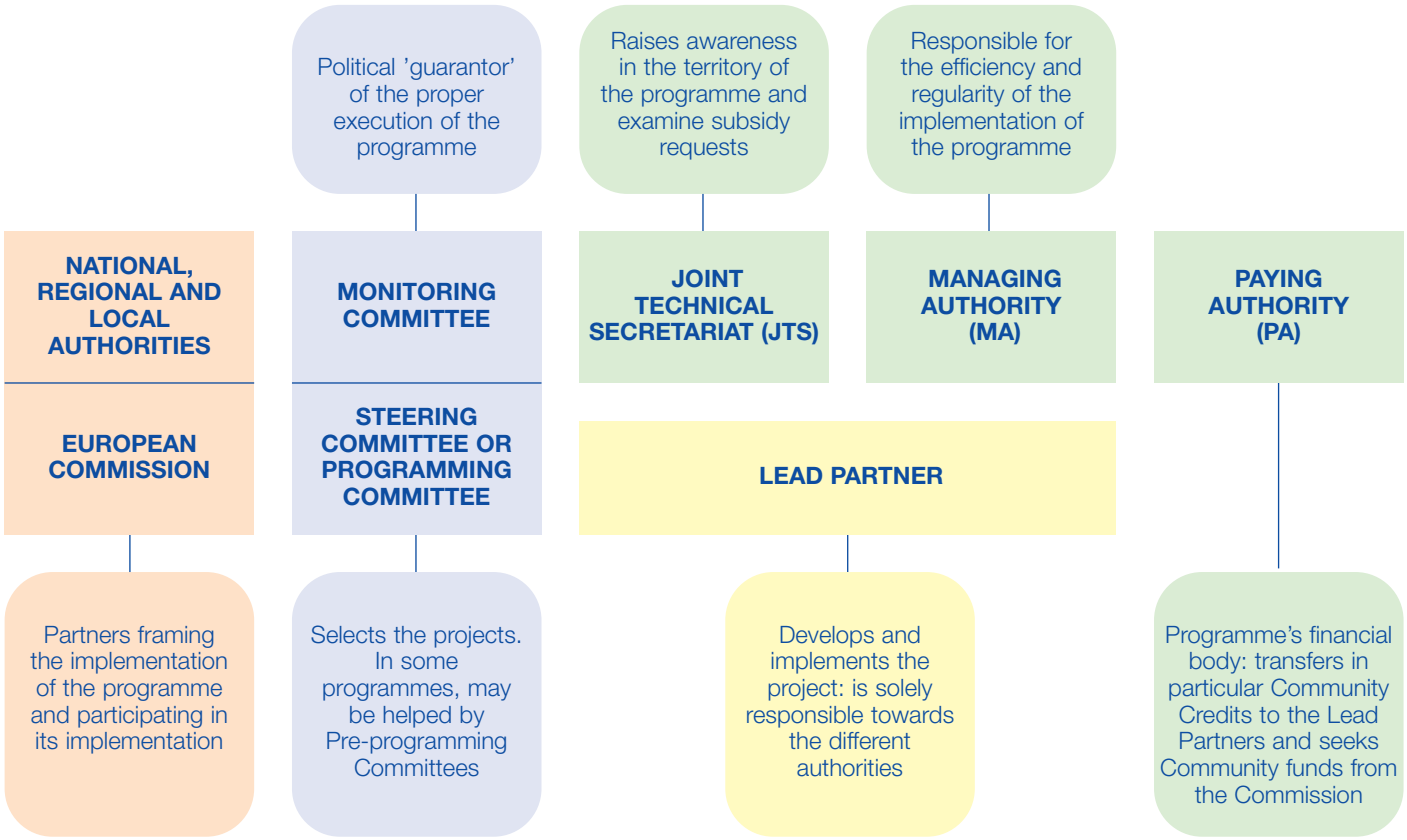
The principle of Community regional policy is to ask the national and regional partners concerned to organise themselves in the most efficient way possible to determine together what type of projects they would like to include in their INTERREG programme and to agree openly on the management of this programme, i.e. the administrative, financial and political conduct, with respect at all times for the legal organisation imposed by the General Regulation on Structural Funds (Council Regulation (EC) No 1260/1999 of 21 June 1999 laying down general provisions on Structural Funds).

The structure of INTERREG III programmes laid out by this General Regulation and which will be developed in Part 1 of this study makes provision, in particular, for the setting up of the following bodies:

- **administrative bodies** tasked with the management and implementation of programmes: a Managing Authority (MA), a Paying Authority (PA), a Joint Technical Secretariat (JTS);
- **specific decision-making bodies** tasked with ensuring the proper execution of programmes and bringing together all the institutional partners: the Monitoring Committee (MC) and the Programming Committee/Steering Committee (SC).

The programme's **institutional partners** manage these bodies: national, regional and local authorities, European Commission.

[3] Communication C(2000) 1101 from the European Commission to Member States 28 April 2000 laying down guidelines for a Community Initiative concerning trans-European cooperation intended to encouraging harmonious and balanced development of the European territory.



Summarised diagram of the actors and missions in an INTERREG IIIA programme[4]

On the other hand, although the above-mentioned General Regulation grants the same missions to each of these bodies no matter what INTERREG programme is concerned, the choice of method for governing the programme, (i.e. the sharing out of roles between partners and the method for monitoring the programme) is left up to the programme partners, provided there is efficient management.

For each new generation of INTERREG programmes, the objective of the main partners is to reinforce the results already obtained in previous phases, while ensuring that the actors involved coordinate their efforts and improve their cross-border cooperation in order to attain common objectives.

In parallel to this, and as new generations of programmes appeared, the demands with regards to the implementation structures for INTERREG have increased on three levels:

- demands from Community institutions, first of all regarding the correct implementation of the regional policy and in particular the good management of INTERREG programmes and guidance, the quality of programming, the efficiency of the controls or the relevance of evaluations;
- subsequent demands from Member States and the institutional partners of the programmes concerning the impact of programmes on their territories;
- finally, demands from Lead Partners and project partners regarding improving accessibility to Community co-financing.

In view of these demands, we can note that, after three generations of INTERREG programmes, accomplishment of the fixed objectives and the success of the programmes depends largely on the quality and organisation of the management of them and, more specifically, on the

[4] The content of this diagram will be specified in Part 1.1.2. of the study.

efficiency of the structures tasked with implementing them (this remark is also valid for cross-border projects). In order to be efficient, these structures must possess not only the **human and financial means**, but also **sufficient legal basis** to properly carry out their missions.

The organisational structure of the programme must therefore be well defined and respected by the partners. This demand is even stronger as the boundaries for the involvement of INTERREG programmes go beyond national frameworks, bringing together administrative and legal systems and practises from different countries, which complicates the development and set up of effective management mechanisms that sometimes still have to be invented.

2007-13 perspective

In parallel, the current context of transition towards a new generation of INTERREG programmes in the context of the new Objective of 'European Territorial Cooperation' (ETC)[5] raises ambitious challenges for programme partners:

- the importance of INTERREG IV programmes has been strengthened, they represent henceforth one of the three 'mainstream' Priority Objectives of the new Community regional policy;

- the combined effect of the limitations of the Community budget and the enlargement of the EU in the context of financial prospects for 2007-13 will impose an even more efficient, qualitative and exemplary management of national or European public funds;

- new obligations regarding the implementation of programmes must be taken into account: obligatory establishment of single Managing, Certifying and Audit Authorities as well as a Joint Technical Secretariat and also a single budget for the entire programme, new methods of application and involvement of the Lead Partner Principle. Another important change will be the restricted use of Intermediate Bodies for the 2007-13 programming period, in order to avoid any interference with the 'single management' principle. In any case, the European Commission requires that recourse to Intermediate Bodies will have to be duly justified and will have to be secured in a written agreement (article 12 of the Draft Commission Regulation setting out rules implementing the Council Regulation (EC) No 1083/2006).[6]

From now on, in the context of the preparatory work for future Operational Programmes underway in all the territories concerned, the partners not only have to work to define a programming strategy. They must also tackle the fundamental question of **what legal and organisational structure is best suited to the implementation of future programmes**, so as to be able to respond to all these challenges and to guarantee both efficient and secure management of the programmes.

These organisational issues are raised not only for programmes whose boundaries are being redefined but also for those that are not subject to territorial changes:

- **At the organisational level of the programme**: Defining the relations between different actors involved, including the sharing out among partners of the missions and responsibilities laid out in the Community regulations (MA and CA, JTS, Intermediate Bodies (IBs), etc.), defining the modalities of cooperation between the partners, setting up management rules for the programme etc.

- **At the level of the legal structuring of these relations**: Developing and using tools to ensure the legal security of these relations (different levels of conventions between programme partners, delegating to an existing body, creating a specific body for managing the programme, etc.).

[5] For greater clarity, in this presentation we will adopt the term 'INTERREG IV' when referring to the new Priority Objective 'European Territorial Cooperation', while noting nevertheless that it is no longer, like with INTERREG I to III, a Community Initiative, but in fact one of the three mainstream Objectives of Community regional policy.

[6] These obligations, contained in the new Community Regulations (Council Regulation (EC) No 1083/2006 of 11 July 2006, laying out general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1260/1999 ; Regulation (EC) No 1080/2006 of the European Parliament and of the Council of 5 July 2006 on the ERDF and repealing Regulation (EC) No 1783/1999), will be further developed in Part 4 of the present study.

To these two levels of questioning is added the important choice of the structure or structures that will be legally and financially responsible for the programme bodies and for programme implementation.

In this context of preparing for the new INTERREG IV programmes, **the new tool proposed by the European Commission, the European Grouping of Territorial Cooperation (EGTC), could help in the choice of the legal organisation and structuring of the programme**. By proposing a legal framework for territorial cooperation in general (cross-border, transnational and interregional), this instrument, which will be developed more specifically in Part 4 of this study, constitutes an alternative for managing INTERREG programmes.

The pragmatic solutions for legal organisation and structuring developed by certain programmes during the current INTERREG III period (or even before under INTERREG I and II or even outside INTERREG) should not be neglected, and will be subject to specific analysis in the context of this study.

Current management models for INTERREG IIIA programmes

The study will concentrate on programmes from strand A of the INTERREG III Initiative, that cover 64 of the 81 INTERREG III programmes and which therefore show the greatest richness and diversity in terms of the choice of management organisation and of good practices to be shared.

The current programmes are, for example, organised around an MA that is to a greater or lesser extent integrated from a cross-border point of view. This ranges from management by one of the State authorities (centralised or de-centralised) to management by a totally integrated cross-border body, covering intermediary solutions such as responsibility being taken by a regional authority or the sharing of responsibilities between partners.

This variety of different models proposed is conditioned by different factors including, in particular, the political and administrative differences between the cross-border zones covered by the CIP INTERREG or the history and intensity of cross-border cooperation in each area and also by the political desire of the partners to delegate all or a share of the MA missions to a common body.

The missions devolved to the MA by the Community regulations are in fact broad. It is the MA that assumes legal and financial responsibility for the programme for all the partners. The choice of structure to ensure this MA function is therefore a particularly important step in the organisation of a programme[7].

Taking this fact into account and depending on the answers they will give to the different organisational questions cited above, the programme partners will therefore evaluate whether one of them takes the legal responsibility of the MA by signing, where necessary, delegation agreements with other national or cross-border partners to the programme, or whether they choose to create an ad hoc cross-border legal structure, or even to confer the MA responsibility to a pre-existing cooperation structure, whichever proves most relevant.

Indeed, in numerous border regions, development of cross-border cooperation and the creation of common structures for consultation and action preceded or accompanied the setting up of the INTERREG Initiative, often, indeed, under the direction of States which defined in bi- or multi-lateral treaties the modalities of common cooperation of their regional communities. The prior existence, or not, of these cooperation structures naturally has an impact on the way in which the INTERREG programme that covers all or part of their territory will be organised.

[7] The importance of the role of the MA explains why this study will focus in particular on this function, without of course neglecting the share of the other programme functions (PA, JTS etc) between the different partners, from both a legal and governance point of view.

INTERREG, a tool at the service of cross-border cooperation

1. INTERREG, a tool at the service of cross-border cooperation

Objective and content of the chapter

The objective of this chapter is to establish a general, and in particular legal and organisational overview of the scope of intervention of INTERREG programmes. To do this, two main and complementary questions will be dealt with in this part.

This will mean restating the missions and obligations to be accomplished in an INTERREG programme as defined by the Community regulations and to show their impact on the organisational and legal structuring of the programmes.

In parallel to this, the multiple reciprocal links between the INTERREG Initiative and cross-border cooperation in general will be analysed, which go well beyond the simple financial aspect. To this end, we will proceed to a brief recap of the objectives, needs and fields of intervention of cross-border cooperation in general, as well as a presentation of the legal instruments and practices developed in this context, likely to influence the legal organisation and structuring of INTERREG programmes[8].

1.1 INTERREG programmes and cross-border cooperation: a multi-face relationship

Cross-border cooperation developed long before the implementation of the Community Initiative INTERREG. Today, there are a multitude of initiatives of cross-border cooperation, structured and developed to a greater or lesser extent, that were often born out of the initiative of local and regional actors who chose to combine their efforts to resolve common problems in their daily lives through concrete projects[9].

This cooperation functions under different names (Euroregions, Euregios, councils, working communities, associations, etc.) and according to different means of organisation, but their main objective is often the same: to lift the barriers and the numerous scars of history linked to the existence of a border[10]. This is done to bring people together as well as political, administrative and legal systems, in order to support the sustainable economic, social and territorial development of these regions through the development of joint strategies, and to pass from a remote situation at domestic level to an integrated and centralised situation on the larger European scale.

Following the terms of the Resolution of the European Parliament on the role of 'Euroregions' in the development of regional policy of 1 December 2005, '*cross-border cooperation is of fundamental importance to European cohesion and integration*'[11].

Historically, it was in the 1950s that groups of border regions, mainly on the German-Dutch and French-German-Swiss borders, then in Scandinavia, began to develop cross-border cooperation actions with as their primary objective the wish to ensure sustainable peace and improvement in the standard of living of populations, by struggling against unequal development and the damaging consequences caused by the presence of borders.

These first cross-border initiatives were often launched outside any legal framework, limiting their operational possibilities. The first interstate agreements regulating cross-border cooperation came about in the 1970s. The signing of the Madrid Convention of the Council of Europe on 21 May 1980 was the first step towards the creation, on a pan-European level, of a common legal framework for the development of cross-border cooperation actions on a public-law basis.

[8] It is worth pointing out that the objective of this study is not to present an exhaustive list of the ins and outs of the legal organisation of cross-border cooperation. Numerous studies have been carried out on this subject, some of which are referred to in the bibliography of this study.
[9] The websites of the Euroregions and other types of cross-border structures involved in INTERREG programmes are to be found in the Bibliography.
[10] Regarding the terminologies 'Euroregion' and 'Euregio', we will make use of the term 'Euroregion' in this study for general references to this type of structure.
[11] European Parliament resolution on the role of 'Euroregions' in the development of regional policy of 1 December 2005 (2004/2257(INI))

From this point onwards, cross-border cooperation initiatives have multiplied on all levels and in all thematic fields across Europe, notably in eastern Europe, and have become more and more operational, under the combined effect of the Council of Europe, of the movement towards democratisation of the central and eastern European countries from the beginning of the 1990s and also with the development of the European Union and the establishment of the Single European Market at the end of the 1980s and above all the launch of the first programmes financing cooperation projects.

With the appearance of the INTERREG Initiative in 1990, a new tool was made available to cross-border cooperation actors, the impact of which is unquestionable and multiple: beyond the important financial and supportive aspects for cooperation projects, the INTERREG programmes have also had a real influence on cross-border cooperation through their objectives, the conditions and modalities of their implementation and the resultant demands on partners.

1.1.1 The INTERREG Initiative, a financial tool in the service of cross-border cooperation

Besides the financial support granted by public authorities and possible private contributions (support by foundations, businesses, etc.), the Community Initiative INTERREG, launched in 1990, is an important additional financial source through which the European Regional Development Funds (ERDF) finances cooperation activities between actors with the goal of encouraging 'harmonious and balanced development of the European territory'[12].

While INTERREG I programmes (1990-1994) were only destined to finance cross-border cooperation, the INTERREG II (1994-1999) and INTERREG III (2000-06) Initiatives were extended to finance transnational and interregional activities (strands B and C of INTERREG II and III Initiatives). Having said that, the cross-border strand of the INTERREG Initiative (strand A) is the largest strand, both in terms of projects supported and financial importance, and it will remain so for the INTERREG IV generation, although the number of eligible borders is also growing as a result of EU enlargement. Over the years, the financial package granted to INTERREG has constantly increased from one generation of programmes to the next to reach a sum of EUR 7.7 billion for INTERREG IV.

Since the end of the 1990s, EU financial support has also been offered to cross-border cooperation actions in Europe outside the Union's borders through programmes such as Phare-CBC (for Central and Eastern European countries) and CARDS-CBC (for the Balkans) or Tacis-CBC (for States from the ex-USSR), have had a considerably encouraging effect on launching cross-border cooperation initiatives in these countries.

INTERREG IIIA cooperation zones 2000-06

This map is available on the Website of the European Commission's DG Regio, at the address: http://ec.europa.eu/regional_policy/interreg3/down/pdf/europe.pdf

[12] European Commission Communication of 28 April 2000 – C(2000) 1101, see also note 1.

In conformity with the terms of the European Commission Communication C(2000) 1101 of 28 April 2000 relating to INTERREG III programmes, the Initiative follows the same objective as general cross-border cooperation, i.e. that '*national borders should not be a barrier to the balanced development and integration of the European territory*'. More precisely, the objective of strand A programmes (cross-border strand) is to promote '*integrated regional development between neighbouring border regions, including external borders (neighbourhood programmes) and certain maritime borders*'[13].

Concretely, strand A of the INTERREG Initiative gives financial support to local cross-border cooperation projects that have a long term impact on the development of the zone, in areas as varied as development of SMEs, teaching and training, cultural exchanges, health problems, protection of the environment, transport and energy networks or even joint management systems or support for cross-border bodies.

Overall, although the impact of the European Union on the development of cross-border cooperation must not be over-estimated, the financial contributions of the INTERREG Initiative have, over the past fifteen-odd years, nevertheless encouraged and accelerated not only the growth in number of structured cross-border cooperation initiatives in Europe and the emergence of numerous more specific cooperation actions or projects, but they have also qualitatively reinforced longstanding cooperation, in particular with regards to their structuring and competences.

In addition to the financial means, the INTERREG programmes have also brought important levers to the cooperation structures by involving them in the management of programmes, by conferring certain responsibilities on them, by encouraging them to develop strategic approaches and by making them privileged interlocutors in matters of Community regional policy. This is further proved by the recent European Parliament Resolution on the role of Euroregions in the development of regional policy (December 2005), which restates their importance and calls for Member States not only '*to promote the use of Euroregions as one of the tools of cross-border cooperation*' (paragraph 2), but also calls for '*Euroregions and similar structures […] to be enabled to develop, implement and manage cross-border programmes in the EU*' (paragraph 13)[14].

1.1.2 Legal and organisational aspects of the management of INTERREG programmes

The implementation of an INTERREG programme implies respect for a certain number of rules and obligations, defined in Community regulations. The European Commission has defined a series of functions to be accomplished by specific management bodies in the context of implementation of an INTERREG programme.

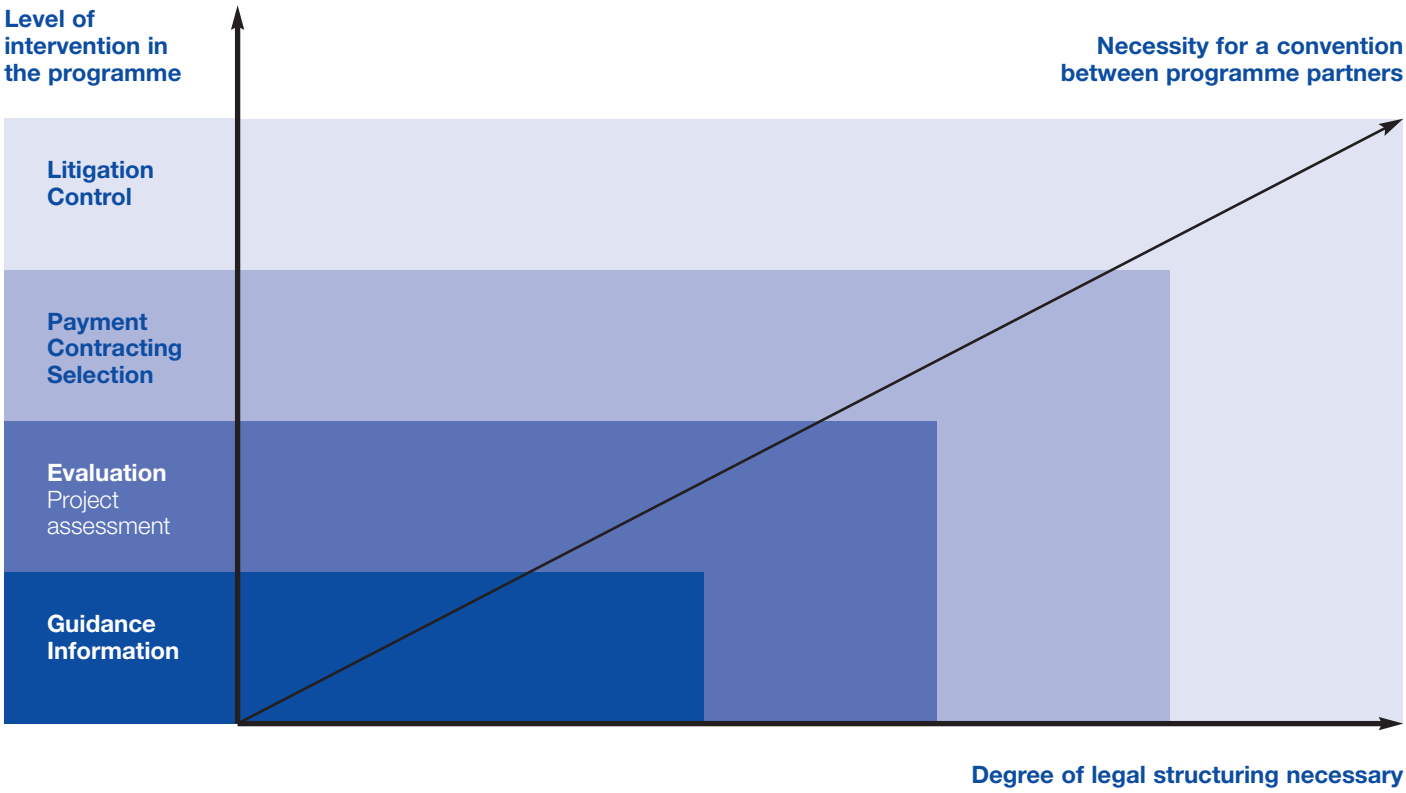
In order to respect the legal framework while ensuring the best possible management of the programme, the authorities concerned in the partner States must therefore find the organisation best suited to the implementation of the programme.

This organisation will **either be through concentration** of the majority of the bodies under one of the programme partners, perhaps even an existing common cooperation structure or one created specifically to this end, **or through the sharing out** of large portion of these organs and/or their missions between the different partners, which will manage their relations through cooperation conventions where necessary. The object of the analyses of Part 2 of the study will be to show precisely what organisation models were chosen by the current INTERREG programmes.

It is, however, important to underline at this juncture that the organisation of the sharing of tasks in the context of an INTERREG programme cannot be decided without **taking into account a certain number of criteria, and in particular that of the level of the competences and legal capacity necessary for the accomplishment of certain missions**: in order to reach the objectives defined in the regulations, the cooperation and implementation of certain fundamental missions of the programme must stem from stable legal bases.

[13] Cf. note 9.
[14] European Parliament report of May 2005 about the role of Euroregions in the development of regional policy (EP 360 073).

This degree of intensity and legal security can be represented by the following diagram according to the nature of the mission to be accomplished:



Degrees of intensity and legal security required to complete the fundamental missions of an INTERREG III programme

This diagram, which will be reproduced and developed below (1.1.3), shows that increasing the level of involvement in an INTERREG programme (contracting missions, payment, controls, etc.) implies that the body concerned takes on greater responsibility and that it therefore requires adequate legal means.

As a consequence, the greater the level of involvement in an INTERREG programme is raised, the more the degree of legal structuring of the body responsible must be raised: likewise, where MA missions have been delegated to third-party Intermediate Bodies, the more the level of delegated missions is raised, the higher the degree of legal security needed to frame the accomplishment of these missions (in the form of conventions, for example).

To properly understand the issues highlighted by this diagram, it is worth first of all recalling the content of missions to be accomplished in the context of an INTERREG programme and the nature of the bodies tasked with implementing them.

A) The bodies in INTERREG programmes and their role

Council Regulation (EC) No 1260/1999 of 21 June 1999 laying down general provisions on the Structural Funds makes provision for the establishment of different specific organs, among which three are management organs (MA, PA, JTS[15]) and two are decision-making organs (Monitoring Committee and Programming/Steering Committee)[16].

[15] Along the document, reference will either be made to the three management organs, bodies or functions, meaning in all cases MA, PA and JTS.
[16] It should be noted that the existence of the JTS is not expressly provided for in the General Regulation (EC) No 1260/1999, but it is mentioned in texts that concern specifically the implementation of INTERREG programmes (Commission Communication of 28 April 2000 cited above concerning the INTERREG III Initiative).

The functions of these different organs are ensured by '**institutional partners**' to the programme, i.e. national or regional authorities or any other public, or indeed private authority (e.g. private banks that are PA) involved in the implementation of the programme. Consequently, if the objective of the Monitoring Committee or Programming/Steering Committee is to associate all partners in the management of the programme, in return, responsibility for each of the three administrative bodies (MA, PA and JTS) must be ensured by a single programme partner, which must guarantee a consistent and effective undertaking of its respective functions.

The object of this part of the study is to restate the role of each of these bodies, in the context of the 2000-06 programming, in order to present how the missions are shared out in the Community texts. The changes that should come into effect for the 2007-13 period (briefly presented in the following 'boxes') are laid out here in an indicative manner and will be looked at in more detail in Part 4 of this study.

• Managing Authority (MA)

To facilitate decentralised management of the programmes and to guarantee implementation in conformity with national and Community rules, the Community texts stipulate that an MA responsible for the regularity and efficacy of the management and the implementation of the programme is designated for each programme[17]. Where a Member State designates an MA other than itself, it fixes all the modalities of its relations with this authority and the relations between the authority and the European Commission.

Here are some of the numerous obligations of the MA:

- guidance of the programme;
- setting up of a system to gather reliable financial and statistical information on implementation;
- establishing an annual implementation report for the Commission;
- organisation, in collaboration with the Commission and the Member State, of several evaluations to ensure the proper running of projects and their results;
- assessment and selection of the projects;
- ensuring the correctness of operations financed under the assistance;
- checking the compatibility of projects with Community policies.

As we will see in the analysis of the programmes, the responsibility of the MA can be entrusted to bodies with differing legal structures, for example the Piedmont Region for the **Italy – France (ALCOTRA)** Programme or the Polish Ministry of Economy for the **Poland – Slovakia** Programme. Nevertheless, the missions and responsibilities of the MA are the same, whether it is located in Italy or in Poland.

It should be noted that to carry out certain missions, in particular for monitoring and controlling project partners situated in different States from that of the MA, the MA can be supported by national correspondents, sometimes even external service providers, which have the technical capacity and legal competence to undertake these missions on their national territory. This ability of the MA to act in partnership will be dealt with more specifically in Parts 2 and 3 of this study. However, while the use of Intermediate Bodies was somehow acknowledged under the INTERREG programming period, the European Commission is willing to impose strict limitation of this use for the new programming period 2007-13. In any case, and as already stated in the introduction, recourse to Intermediate Bodies should be duly justified and subject to a written agreement.

Main changes linked to the implementation of INTERREG IV

Setting-up of a single MA, to be located in the same Member State as the single Audit Authority (AA).

Source: Article 14 of Regulation (EC) No 1080/2006 of the European Parliament and of the Council of 5 July 2006 on the ERDF and repealing Regulation (EC) No 1783/1999.

[17] Council Regulation (EC) No 1260/1999 of 21 June 1999 laying down general provisions on the Structural Funds, Articles 9(n) and 34.

• Paying authority (PA)

For each programme, the Member States designate a public or private, national, regional or local body tasked with the PA function. If the Member State so decides, the PA can be the same body that acts as MA for the assistance concerned, provided that there is strict separation of functions between the two organs[18].

The role of the PA consists of:

- controlling the completeness and conformity of the documents transmitted by the MA;
- submitting payment applications to the Commission;
- receiving and managing Community funds;
- certifying completed expenditure;
- transferring Community funds to final beneficiaries.

As with the MA function, whether the PA is a private bank, like the German *Investitionsbank Schleswig Holstein* for the **Estonia – Latvia – Russia** Programme, or a ministerial authority, like the Spanish Ministry of Finance for the **Spain – Portugal** Programme, the missions devolved to them remain the same.

Main changes linked to the implementation of INTERREG IV

Designation of a single PA which is now called Certifying Authority (CA).

Setting-up of a single Audit Authority and of a Group of Auditors.

Source: Article 14 of Regulation (EC) No 1080/2006 of the European Parliament and of the Council of 5 July 2006 on the ERDF and repealing Regulation (EC) No 1783/1999.

• Joint Technical Secretariat (JTS)

In contrast to the two previous administrative bodies, the JTS is only mentioned in the Community regulations framing the implementation of Structural Funds for INTERREG programmes 'in the implementation of its tasks, the Managing Authority is assisted by the Joint Technical Secretariat where it does not assume the secretariat function itself'[19].

The main tasks of the JTS are as follows:

- to carry out on behalf and under the responsibility of the MA tasks relating to the financial and administrative monitoring and management of a programme as well as checks on operations (in particular, first level control); the scope of these functions varies from one programme to another;
- to support the PA in undertaking some of its missions.

From the point of view of its organisation, the JTS can be a separate body with a well-defined legal status. However, in some programmes, the JTS is based within the MA, without its own legal status. In others still, the JTS is not a permanent structure, but it is constituted *de facto* by regular meetings between the different institutions tasked with JTS missions towards the project promoters (like in the **Euregio Meuse-Rhine** Programme, for example, in which the missions of the JTS are fulfilled in collaboration between the MA and the Intermediate Bodies located in the partner regions).

The JTS is generally made up of personnel coming from the different programme partners concerned, and grouped within a common structure, that can stem from an authority in one of the Member States (at local, regional or national level) or from a cross-border structure. The legal nature of the JTS can, depending on the situation, can be based on public or private law (or without legal personality if the JTS is based in the MA).

[18] Council Regulation (EC) No 1260/1999 of 21 June 1999 laying down general provisions on the Structural Funds, Articles 9(o) and 32.
[19] Points 25 and 30 from the Commission Communication of 28 April 2000 laying down guidelines for a Community Initiative concerning trans-European cooperation intended to encourage balanced and harmonious development of the European territory– C(2000) 1101.

Finally, sometimes the JTS is a body that, in practice completes the majority of the missions conferred on the MA. In this case, the MA only retains a role as supervisor and delegates its missions to the JTS on the basis of a convention between the two institutions, for example as is the case of the **Oresund Region** Programme, in which the MA - *HUR*, Copenhagen Agglomeration Community – has delegated a large share of its missions to the Øresund Committee, a cross-border cooperation structure, while retaining the legal and financial responsibility of the programme.

Main changes linked to the implementation of INTERREG IV

The new Community Regulation for 2007-13 establishes the existence of a JTS and, de facto, makes it mandatory. Under INTERREG III, the JTS did not appear in regulations (only in the Commission Communication laying down guidelines for INTERREG III of 2 September 2004).

Source: Article 14 of Regulation (EC) No 1080/2006 of the European Parliament and of the Council of 5 July 2006 on the ERDF and repealing Regulation (EC) No 1783/1999.

• The Monitoring Committee (MC) and Programming/Steering Committee (SC)

The Monitoring Committee is the 'political' guarantor of the proper execution of the programme. The MC is created by the Member States partners to the programme, in agreement with the MA and after consultation with all partners. It is made up of the main programme partners and is a privileged interlocutor for the European Commission, which may participate in MC meetings in an advisory capacity[20].

The main task of the MC is to ensure the efficiency and quality of the implementation of the programme. To this end:

- it confirms or adapts the Programme Complement, examines and approves the selection criteria for operations financed under each of the measures;
- it follows the progress of the selected projects and the finances and periodically evaluates progress made to attain the programme objectives;
- it is in charge of the organisation and monitoring of the evaluation works.

The Programming/Steering Committee is the body responsible for selecting projects. With the support of the MA assessing services, it draws up a list of projects to be supported, gives its opinion on these projects and takes financing decisions.

More specifically, the following tasks are conferred onto the SC:

- approval of requests relating to projects, taking into account recommendations from the responsible assessment service and national bodies;
- coordination of the progress reports and annual reports of the programme;
- coordination of implemented projects;
- formulating proposals of modifications deemed necessary. The last three functions, however, may also be entrusted to the Monitoring Committee, depending on the arrangements made in a programme.

Main changes linked to the implementation of INTERREG IV

Possibility to set up a single Monitoring Committee for several OPs.

The Programme Complement being removed, the Monitoring Committee is not in charge of this task anymore.

Source: Article 63 of Council Regulation (EC) No 1083/2006 of 11 July 2006 laying down general provisions on the ERDF, the ESF and the Cohesion Fund and repealing Regulation (EC) No 1260/1999.

[20] Council Regulation (EC) No 1260/1999 of 21 June 1999 laying down general provisions on the Structural Funds, Article 35.

• The Lead Partner and its partners

The Lead Partner is the project partner that is responsible for the project vis-à-vis the programme authorities. It receives the Community and national funds. Working with its partners, it implements the project and assumes responsibility for its proper running. To this end it must declare its expenses (including submission of invoices) to the MA, inform the MA on the progress of the activities, communicate performance indicators and adhere to controls and publicity obligations.

The notion of Lead Partner is envisaged differently depending on the particular INTERREG programme. In some, this notion is clearly specified; in others it is less clearly stated[21].

Main changes linked to the implementation of INTERREG IV

Introduction of the Lead Partner Principle ('lead beneficiary') in the Community regulations. This new obligation implies legal consequences: the grant letter is only signed between the MA and the Lead Partner.

Source: Articles 19 and 20 of Regulation (EC) No 1080/2006 of the European Parliament and of the Council of 5 July 2006 on the ERDF and repealing Regulation (EC) No 1783/1999.

• Other programme actors, 'Intermediate Bodies' (IBs)

As already stated earlier, Intermediate Bodies were accepted in the INTERREG III programming period, and for this reason, these structures will be presented hereafter, as well as in the case studies in parts 2 and 3. However, the European Commission recommends for the new programming period 2007-13 that the use of Intermediate Bodies should be avoided at any costs, in order to avoid any interference with the "single management" principle. In this regard, all elements in this study regarding this type of body should thus be considered carefully, as these refer to a current reality which is to be strongly restricted in the near future.

It is worth underlining that, besides these main actors or bodies responsible for implementing INTERREG IIIA programmes, whose existence stems directly from Community regulations, the programme partners have the freedom to set up Intermediate Bodies to which they may delegate certain technical missions (guidance, support to project applicants in setting up dossiers, technical opinions on the dossiers, etc.), sometimes even more significant missions (management of sub-programmes, participating in the decisions to grant funds, carrying out controls, etc.). As will be developed in the second part of the study, numerous programmes have thus designated 'national correspondents' or other relay bodies within partner organisations, or instituted Intermediate Bodies (that can be cross-border cooperation structures) between the MA and the Lead Partner. The nature and quantity of missions delegated to these structures, as well as their designation or legal form, are varied from one programme to another.

Consequently, for example the **Flanders – Netherlands** Programme is divided into two sub-programmes, the one managed by the Euregio Scheldemond[22] (cross-border cooperation body without legal personality) and the other by the Euregio Middengebied (public law cross-border cooperation body). Each Euroregion takes care of the management of a sub-programme and completes a large share of the traditional missions of the JTS and some MA missions in the respective intervention zone (guidance, project assessment, first level checks, etc.).

In the **France – Wallonia – Flanders** Programme relays were created within the main regional authority partners in the form of 'technical teams' tasked with guiding the programme and supporting operators in the establishment and monitoring of their project.

[21] Cf. INTERACT Tool 'Recommendations for the implementation of INTERREG III Subsidy Contracts', downloadable at the following address: http://www.interact-eu.net/download/application/pdf/900390.
[22] The websites of the Euroregions and other types of cross-border structures involved in INTERREG programmes are to be found in the Bibliography.

Nevertheless, even where there has been delegation to such Intermediate Bodies, the final responsibility for completing the missions within the norms remains in the hands of the bodies presented above, which are laid down in the Community regulations, in particular the MA.

This is why, **in the presence of multiple actors, a clear distribution of tasks and adequate legal framing of the delegation of missions is necessary**. Practices of the programmes are variable on this; some of them choose a written convention whereas, in other programmes the sharing out of missions falls solely on tacit agreements. The degree of necessity for a written convention will depend in particular on the level of responsibility involved in the devolved missions[23]. In any case, a written agreement will have to be signed with Intermediate Bodies in the 2007-13 programming period, as required by the Draft Commission Regulation setting out rules for the implementation of Council Regulation (EC) No 1083/2006 which states in its article 12: "Where one or more of the tasks of a Managing Authority or Certifying Authority are performed by an intermediate body, the relevant arrangements shall be formally recorded in writing".

B) The different missions to be accomplished in the context of an INTERREG III programme

The missions to be accomplished by the MA and the other bodies participating in the implementation of INTERREG IIIA programmes vary at different moments of the programming and depend on the state of progress of the programming. These missions are described in the Community regulations and involve various levels of responsibilit[24].

In light of the new programming period 2007-13, it is important for the structures that will participate in the new INTERREG programmes, whether as MA, PA/CA or JTS, or simply to accomplish certain specific missions to properly measure, at this stage, the scope of the responsibilities and tasks to be accomplished, in order to be able to appreciate precisely the necessary resources, especially financial, human, and legal[25].

• Development of the programme

At the beginning of an INTERREG programme, the presumed MA[26] must steer the preparation and adoption of

From a legal and organisational perspective…

The efficient accomplishment of this preparatory phase necessitates good consultation with all programme partners, respecting the partnership principle. The MA must therefore not only have a technical team able to guide this partnership, to offer choices during the preparation on the CIP and to carry out an accepted summary of the contributions, but it must also have the financial means to put the team together or for potential sub-contracting of certain parts of the CIP (ex ante evaluation at least).

The MA should also have the legal capacity to employ a technical team, or at least to conclude contracts with external experts tasked with drafting all or part of the CIP.

Main changes linked to the implementation of INTERREG IV

With the 2007-13 programming in mind, the MA must therefore ensure the quality of the preparatory documents (the SWOT analysis as well as the Strategic Environmental Assessment (SEA) and the ex ante evaluation), which will act as the backbone allowing the priorities for future programmes to be defined. The programming document will now be referred as Operational Programme.

[23] For further details, please refer to the developments in Part 2 of the study.
[24] Essentially: Council Regulation (EC) No 1260/1999 of 21 June 1999 laying down general provisions on Structural Funds; Commission Regulation (EC) No 438/2001 of 2 March 2001 laying down detailed rules for the implementation of Council Regulation (EC) No 1260/1999 as regards the management and control systems for assistance granted under the Structural Funds.
[25] Detailed analysis of the changes brought on by the new Community regulation is offered in Part 4 of this study. The missions presented here are those in force during the current programming period INTERREG III, a large majority of which will carry over into INTERREG IV. When necessary, the main changes to come will nevertheless be specified at this stage of the study.
[26] The choice of MA is only ratified by the national and Community authorities upon approval of the CIP.

the Community Initiative Programme (CIP) or Programme Document, an indispensable framework for the implementation of the programme. This mission is fundamental and political; in fact it is the OP that determines the programming strategy and the management organisation of the programme, and thus all its future direction.

• General coordination of the programme

Throughout the programme, the MA is responsible for ensuring compliance with the CIP and potential changes of it; it must ensure the proper coordination of the programme as well as the accomplishment of their missions by all programme actors. Concretely the MA is involved on two different levels:

– The first is legal and common to all MAs of INTERREG programmes, Community regulations indicate that the MA is legally and financially responsible for the proper execution of its missions as well as those carried out by other organs of the programme (PA and SC, for example).
– The second is political and more variable: the MA promotes the programme and is responsible for its governance. It must therefore ensure a clear sharing out of missions between partners and organs of the programme and fair play of all actors, as the relations between the actors and the MA vary between programmes according to the previous state of relations between the cross-border partners, the personalities involved (for example, relations between the MA and the chairperson of the MC or the SC are important), or the type of Lead Partners supported. The MA has thus both an important role in the direction of the programme and an important diplomatic role.

From a legal and organisational perspective…

The legitimacy of the MA must therefore be recognised by all programme partners (Lead Partners of projects included), but its work must also be exemplary so that the initial confidence in it is maintained throughout the course of the programme period.

This implies that the MA must have the legal personality and political authority necessary to unite the partners and to be able to mediate when there are differences of opinion over the direction of the programme. Having an MA as ad hoc structure common to all partners (e.g. a cross-border structure) and not personified by a single partner authority (e.g. Regional Council or Ministry) can therefore have an influence.

• Guidance of the programme, information and communication on the programme

Guidance is an essential task in the management of a programme, as it allows information on the programme to be diffused and to encourage the emergence of cross-border projects. It is based on diverse actions, more or less targeted depending on the state of progress of the programming, and ranges from the distribution of brochures to the organisation of information meetings or interviews, and covering the setting up and management of a website.

More generally, guidance is part of the programme's communication and information strategy that the MA must implement with the possible support of the JTS. In order to do this, the MA must designate someone responsible for the coordination and monitoring of communication actions, establish a communications action plan to be included in the Programme Complement (indicating the objectives, public targets, content and provisional budget of the actions to be carried out), implement the action plan and inform the European Commission about the progress of these activities, often during MC meetings.

This guidance and communication function is sometimes neglected in programmes, due to time and staff restraints, in favour of monitoring and control missions.

From a legal and organisational perspective…

To avoid the risk of insufficient qualitative and quantitative programming, the MA and/or the JTS must have specific qualities in the field of 'sales' and political marketing for public funds, as well as the human and financial means needed for efficient promotion.

That requires the allocation of one or several people to this function, who may be supported by other programme actors who know the territory well, the types of potential beneficiaries and the eligibility rules for projects. The MA must therefore also be able, if necessary, to delegate all or part of this function to Intermediate Bodies, such as cross-border cooperation structures (like the Euroregions Neisse or Elbe-Labe in the **Saxony – Czech Republic** Programme).

Furthermore, we can underline that for this promotion function, the delegation of missions to Intermediate Bodies appears easier as for other functions, in particular because it does not involve taking on any legal and financial responsibility and it does not pose problems with regards to the legitimacy and legal capacity of these actors to act in a territory that is not their own national territory.

Main changes linked to the implementation of INTERREG IV

For the 2007-13 programming period, the communications action plan will have to be submitted separately to the Commission, within four months of the adoption of the CIP.

• Assessment and selection of projects

The objective behind assessing an application is to verify its conformity and relevance with regard to Community regulations and the programming strategy (respect for conditions of format, provisions of the CIP and rules on eligibility of expenditure; opportunity, feasibility and long-term impact of the project; validity and correctness of the financial plan; ability of the Lead Partner to properly lead the operation) and to prepare the decisions of the SC.[27]

The MA is responsible for the proper functioning of this mission, but can delegate some or all of this undertaking to the JTS or to other Intermediate Bodies (again, this type or arrangement is accepted in the INTERREG III programme period but will have to be avoided in the 2007-13 programmes). Consequently, for example, it is not uncommon that in programmes that cover a large cross-border area, existing cross-border cooperation structures (such as Euroregions), in addition to guidance and information tasks, be tasked with assessing applications for projects falling under the sub-programme corresponding to their territory of intervention (as with the **EUREGIO – Euregio Rhine-Waal – EUREGIO rhine-meuse-north** Programme, for example).

Assessment can also be preceded by a pre-assessment phase, involving the JTS or other institutions and resulting in the establishment of an action or assessment sheets. It might also give rise to requests for technical opinions from different actors specialised in the thematic field or territory of the project concerned, in particular when the project is to take place outside the country of the MA.

The task of selecting projects is then assigned to the Steering Committee (SC). The SC selects projects during its meetings, organised at variable times according to the needs of the programme concerned, or through exchange of mail between its members, under the coordination of the MA. As soon as a project receives a favourable opinion, the MA is authorised by the SC to sign, with the final beneficiary, the legal act (Grant offer letter or Subsidy contract) sealing the Committee's decision (cf. following mission).

[27] For more details regarding this stage, we can refer to the INTERACT study regarding the eligibility of expenditure in INTERREG programmes - INTERACT Tool '*Good Practice INTERREG III: Comparative analysis of the eligibility of expenditure criteria*' - http://www.interact-eu.net/479156/479287/675536/0.

From a legal and organisational perspective…

A clear distribution of tasks between the MA and the JTS, as well as all the actors involved or consulted, is imperative at the assessment and decision-making stage. Proper functioning of the SC depends in particular on coordination between the MA and the JTS. A good coordination may help to limit possible disagreement between members of the SC concerning the added-value of projects with regards to the programming strategy. In addition, the MA must also ensure that the external assessment departments know the applicable regulations for eligibility of applications and the programming strategy.

Furthermore, the MA must ensure a strict functional separation of the advisory and assessment tasks, which must be taken care of by two different organs, two departments within the same organ or at least by two separate people.

Finally the nature of the MA (common ad hoc structure or MA personified by one of the programme partner authorities) can influence the guidance and decision-making stage: a common legal form tying all partners has the advantage of allowing centralised and coordinated assessment, which reduces the risk of favouritism towards an authority or one of the partner countries.

- **Project contracting**

From a legal point of view the contracting phase (based on a 'grant offer letter' or 'subsidy contract' depending on the programme concerned) is particularly important as it lays down the reciprocal rights and obligations of the Lead Partner and the programme authorities:

- On the one hand, the Lead Partner commits to undertake its project in the form described in its application and as approved by the SC, to inform the MA regularly of the physical and financial progress of implementation of the project, to respect the financial and qualitative monitoring obligations for its project (keeping invoices and supporting documents, monitoring performance indicator, etc.), to respect Community rules (such as publicity obligations) and to submit to all controls;
- On the other hand, the PA commits to transferring Community funds if the obligations listed in the grant offer letter/subsidy contract are respected.

From a legal and organisational perspective…

As the grant offer letter/subsidy contract is a legal act creating rights and obligations between the Lead Partner and the MA, the MA must have sufficient legal capacity to sign this contracting document and to enter into relations with the Lead Partner. This explains why a (cross-border cooperation) structure without legal personality cannot fulfil the role of MA in an INTERREG programme.

- **Administrative and technical management of the programme**

The MA is responsible for the monitoring and implementation of the programme from an administrative and technical point of view. To this end it must, in particular, ensure the transmission of all legal information to the national authorities of the partner States and Community institutions, set up and complete a financial and statistical database to know the precise state of progress of the programme and draft annual and final reports.

Here again, the MA can make use of external institutions such as cross-border cooperation structures present on the territory, for example for the transmission of data for the drafting of reports. It may even delegate some of its administrative management missions to such institutions. However, these missions must always be undertaken on the basis of a solid delegation convention under the control and responsibility of the MA, which alone is charged with transmitting, within the deadlines, to the appropriate authority, the documents relating to the state of progress of the programme.

From a legal and organisational perspective…

The MA must always ensure good coordination between the different actors involved in administrative and technical management, whether at programme or project level.

It should be noted that the MA is legally responsible for the content of information transmitted to national and Community authorities. Failure on this point (e.g. in case of fraud, detection of irregularities etc) can lead to a suspension of the Community payments, or indeed a reduction in the Community assistance to the programme or even repayment of funds by the MA itself.

• Financial management of the programme

Although the MA is responsible *in fine* for the financial management of a programme, Community regulations confer a large share of these missions to the PA (Certifying Authority (CA) under INTERREG IV), linked with the MA. In particular, the PA must check the completeness and conformity of all payment requests transmitted by the MA, establish a certificate of statement of expenditure and submit a payment claim to the European Commission, collect Community funds and transfer them to final beneficiaries.

From a legal and organisational perspective…

To carry out these missions, and in particular to be able to claim Community funds and to keep them in an account before transfer to final beneficiaries, the MA and PA must necessarily have sufficient legal capacities.

These capacities are necessary, in particular:

- to be able to open and manage a bank account;
- to be able to initiate legal proceedings against the European Commission in case of litigation regarding transferred sums;
- to be able to recover unduly paid amounts from final beneficiaries, through litigation if necessary;
- to be able to defend themselves when a national, Community or project partner brings proceedings against one of them.

• Evaluation

The evaluation of an INTERREG programme compares the undertakings of the programme with the initial fixed objectives in order to measure the impact and, if necessary, carry out rectifications, in the course of the programme, to the procedures or types of project selected.

The MA is tasked with organising the implementation of evaluation procedures in the context of an INTERREG programme, which arise at different moments of the programming (*ex ante*, mid-term and *ex post*, the latter being carried out by the European Commission) to ensure both the proper running of operations and the quality of the results.

From a legal and organisational perspective…

These different evaluations must be undertaken by external programme actors to guarantee a neutral and objective view of the quality of programming. This implies for the MA the ability to organise a call for tenders and to follow it up by signing an agreement with the selected evaluator(s).

Furthermore, although the MA is obliged to ensure the proper running of these evaluations, monitoring of the undertaking and coordination of the evaluations is a task that can be delegated without any great difficulty to another body (cross-border cooperation structure, institutional partner or JTS, for example).

• Checks on operations

The involvement of the MA in the control procedures is important; as most controls must be carried out under its responsibility. Being responsible for the proper execution of the programme, the MA is in charge of controlling the regularity of expenditure through the implementation of a procedure of 'First level control':

covers the entire programme and is a pre-requisite to any transfer of Community funds. The MA, or the body to which the MA has delegated the exercise of this mission under its supervision, controls the reality, the effectiveness, the eligibility and the conformity to the provisional budget of expenditure carried out by the final beneficiaries on the basis of documents transmitted by the Lead Partners.

Note: Second level control – or 5% control[28]: This is a control of documents on site throughout the programme and covering a sample of projects (minimum of 5% of the total eligible expenditure). The objective of this is, above all, to verify the proper functioning of management and control systems put in place and respect for financial rules. Member States are responsible for this, but it is authorised to resort to an external service provider. In any case, the MA is not involved in such controls, as these must be performed by independent auditors.

From a legal and organisational perspective…

At this stage, the MA must have the necessary legal capacities to carry out on-site and documentary controls regarding projects carried out by public or private structures located in its own State and also in partner States. The MA can delegate this control function, but delegation to a (cross-border cooperation) structure with no legal personality is therefore not envisaged.

However, in many current programmes, the legal capacity of the MA is also insufficient, an MA based in the domestic legal system of one of the partner States is necessarily limited in its capacity to carry out controls on supporting documents coming from other partner States, and even more so when it comes to carrying out legally binding on-site controls.

To counter this difficulty, conventions are generally concluded between programme partners to share out the different levels of controls between partners and States (it is usually at this stage that national correspondents become involved). However, the bodies entrusted to carry out these tasks are expected to be listed in the main official programme documents, such as the CIP, the Memorandum of Understanding between programme partners or the Article 5 declaration.

[28] The second level control includes sample checks on operations, also called '5% control' (Article 10 of Regulation (EC) No 438/2001) as well as the control of all management procedures set up (in accordance with the description as it figures in the programme's Article 5 declaration).

Main changes linked to the implementation of INTERREG IV

It is useful to specify that the system of sharing out the controls between partner States, each State being responsible for the checks on its territory in accordance with national rules, will be generalised during the next INTERREG programming period, with the involvement of the Auditing Authority and the group of auditors. However, in the new system the MA remains responsible for administrative checks and on-the-spot checks of project partners in all countries involved.

Source: Article 14 of Regulation (EC) No 1080/2006 of the European Parliament and of the Council of 5 July 2006 on the ERDF and repealing Regulation (EC) No 1783/1999.

• Litigation

Often feared yet rarely happening the risk for the MA of facing litigation over its responsibility for the management of an INTERREG programme is still present: following controls, and depending on their results, the MA can face proceedings brought by the European Commission or one of the partner States, or even by a Lead Partner. The MA can also sue a programme partner or project Lead Partner if required.

The reasons that could cause the MA to face legal proceedings are diverse, ranging from protests by the MA against a rejected request for payment (may occur in case of bad management of the programme), to a protest by a Lead Partner against a binding decision of the MA regarding, for example, the reduction in ERDF transfers to the project following the incorrect or fraudulent use of Community funds.

From a legal and organisational perspective…

Taking into account the potential risks of litigation and their consequences (repayment of funds, prosecution, etc.), it is important for the MA to have sufficient legal personality to carry out these tasks.

This responsibility cannot be transferred by the MA to other entities, except in the case of a programme convention, for example, making responsibility for repayment of possible non-recoverable expenditure by a project partner fall on the national State of this partner.

The European Anti-Fraud Office (OLAF) is tasked with detecting and putting an end to irregular or fraudulent expenditure in the context of the Community budget.

Main changes linked to the implementation of INTERREG IV

The responsibility of Member States for European funds spent on their territory is going to become a rule under INTERREG IV: if funds unduly paid to a project partner cannot be reimbursed by this partner, the Member State where the expenditure took place will have to repay these amounts eventually.

Source: Article 17 of Regulation (EC) No 1080/2006 of the European Parliament and of the Council of 5 July 2006 on the ERDF and repealing Regulation (EC) No 1783/1999.

C) The distribution of tasks in an INTERREG programme

The rules and procedures set in the above-mentioned Community regulations apply to all INTERREG programme partners in the same way, whatever cooperation territory is concerned. Yet there is no unique model for the organisation and sharing of tasks, so that the choices vary a lot from one programme to another, according to the particular characteristics of the cooperation zone concerned.

The chart below summarises the main missions listed in the Community regulations and the corresponding responsible bodies (administrative and decision-making bodies). On this basis, these bodies are then entitled to delegate all or part of the accomplishment of certain missions to other entities – Intermediate Bodies. The diversity and implications of these choices will be the main focus of Parts 2 and 3 of this study.

Who is responsible for what in an INTERREG programme?

	MA	PA	JTS	MC	SC
Development of the programme	X			X	
General coordination of the programme	X			X	
Guidance, information and communication	X		X		
Project assessment	X		X		
Selection					X
Decision-making	X			X	
Contracting	X				
Administrative and technical management	X		X		
Financial management	X	X	X		
Evaluation	X			X	
Controls	X	X			
Litigation	X				

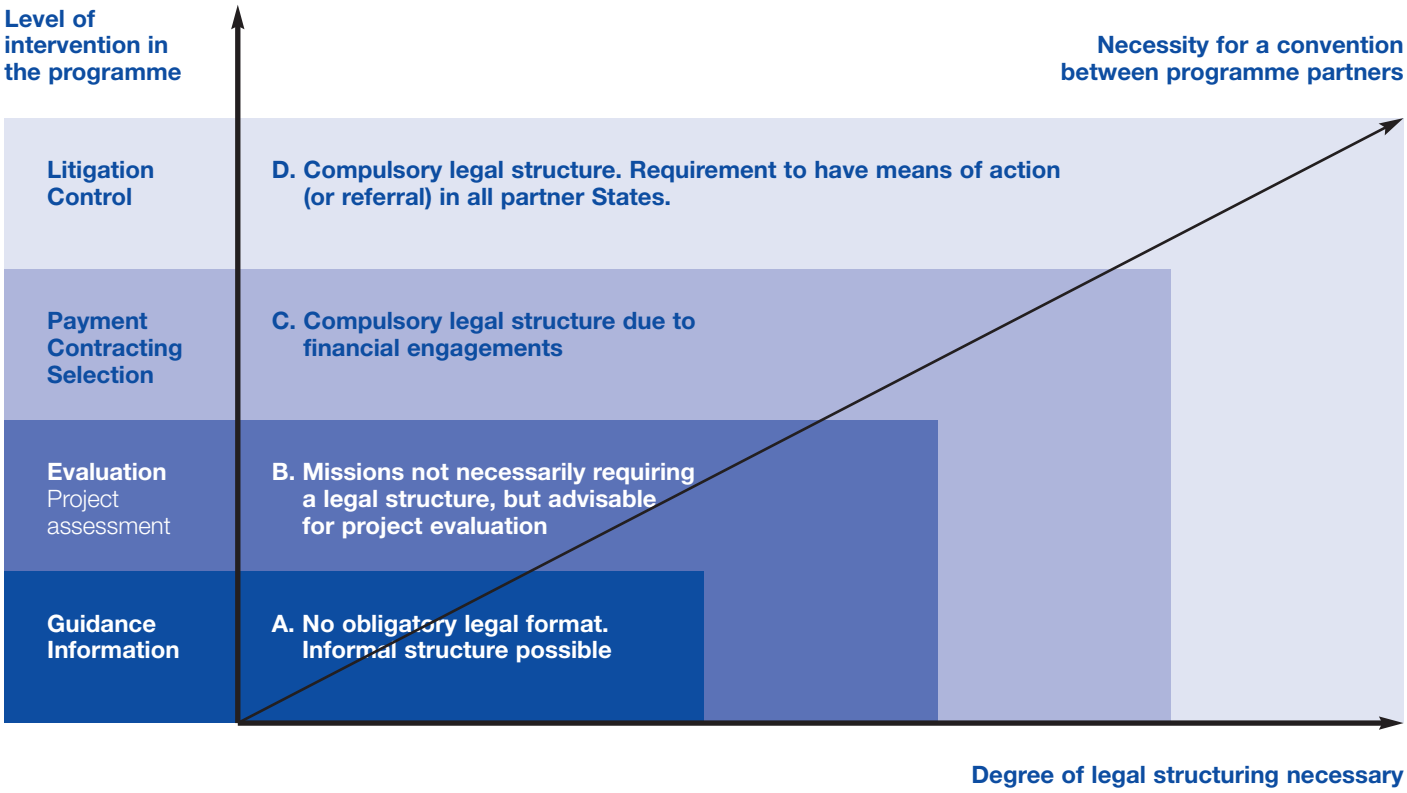
1.1.3 Need for a specific legal form for the management of an INTERREG programme

There are thus multiple missions to be accomplished in the context of an INTERREG programme and they can be undertaken by a fairly large number of actors. The demands of the Community regulations nevertheless involve varied levels of responsibility and legal capacity according to the missions concerned, as shown on page 15.

Due to this regulatory framework, the implementation of an INTERREG programme is to be seen as a particular form of cross-border cooperation, in which partners are forced to consider a specific partnership organisation and a sound legal structuring, for efficient management of the programme and achievement of the set objectives.

More precisely, the developments in the previous paragraphs seem to support the hypothesis that the more the level of involvement in an INTERREG programme involves increased mission and responsibility levels, the more important it is for the entities concerned to have strong legal ties and to base their cooperation with the other partners of the programme on a clear sharing out of tasks and solid legal bases.

Looking again at the diagram for the degrees of intensity and legal security necessary to accomplish the fundamental missions of an INTERREG programme, we can sum up the legal capacities necessary as follows, according to the scope of missions and responsibilities:



Degrees of intensity and security necessary to accomplish the fundamental missions of an INTERREG III programme

Following on from what was stated above, the undertaking of certain missions, from guidance to evaluation, does not necessarily require a specific or particularly developed legal personality. These missions can, where necessary, be conferred by the MA responsible for the entire programme to informal cross-border cooperation structures, such as working communities for example.

On the other hand, other levels of missions, ranging from the selection of projects to the management of litigation, imperatively require that the competent body has its own legal personality, sufficient legal capacity and extended competences. This is all the more true for the MA, particularly because it is responsible for the entire programme, for which it is liable to the Community institutions and the partner States of the programme, and also in its relations with Lead Partners and project partners. That is also true for the other programme (Intermediate Bodies) with which the MA shares undertaking for missions, where necessary.

In parallel to this, the requirement for a strict framing of the missions delegated by the MA to other bodies varies according to the nature of the missions delegated: **the more we go from the dark blue zone in the diagram towards the lighter blue zone, the more complex the missions are to fulfil, and thus the more the MA needs to be watchful in case of delegation, as it remains responsible, *in fine*, for the correct implementation of the programme**. The signing of a written convention can, in certain instances, prove safer and more recommendable than a simple tacit agreement, so as to limit the risks of litigation in unforeseen or difficult circumstances. In certain programmes, like **France – Italy (Islands)** for example, a signed agreement between partners specifies who pays in cases of reimbursement of unwarranted expenditure.

Finally, this diagram also raises the question of the advantages and drawbacks of a single, joint management structure. The creation, by partners, of an integrated cross-border cooperation structure, in which the partners are represented in an equal manner and which has sufficient legal capacity to carry out all or a share of the missions listed above in a centralised manner and throughout all of the cooperation territory, can prove to be an efficient solution, in particular for missions involving a high level of responsibility (subsidy contracts, controls, litigation, etc.). On the other hand, the long and often complicated setting-up of such a structure must also force the partners to contemplate, on the basis of this diagram, the real added-value that this approach will bring to the completion of the mission(s) concerned.

There is, thus, a twin purpose to this exercise. Not only does it put the focus on the different management missions and the legal and administrative consequences of performing these missions, but it also underlines another requirement to be considered in the reflection about future programmes: the further the delegation of missions goes into zones where a specific legal capacity is required, the more it will be advisable to be vigilant and take precautions in order to set out the competences and reciprocal responsibilities of the actors involved (through, for example the signing of conventions between programme partners), which will become compulsory in the new programming period (Article 12 of the draft Regulation implementing Regulation (EC) 1083/2006, which states: "Where one or more of the tasks of a Managing Authority or Certifying Authority are performed by an Intermediate Body, the relevant arrangements shall be formally recorded in writing").

This diagram, by setting out the content and by indicating the level of vigilance and the modalities to be followed if the MA transfers missions to other structures active in the cooperation zone, can serve as a basic tool for negotiation and decision-making for the partners when they are defining the organisation of the future programmes.

1.1.4 Different dimensions of the links between INTERREG and cross-border cooperation

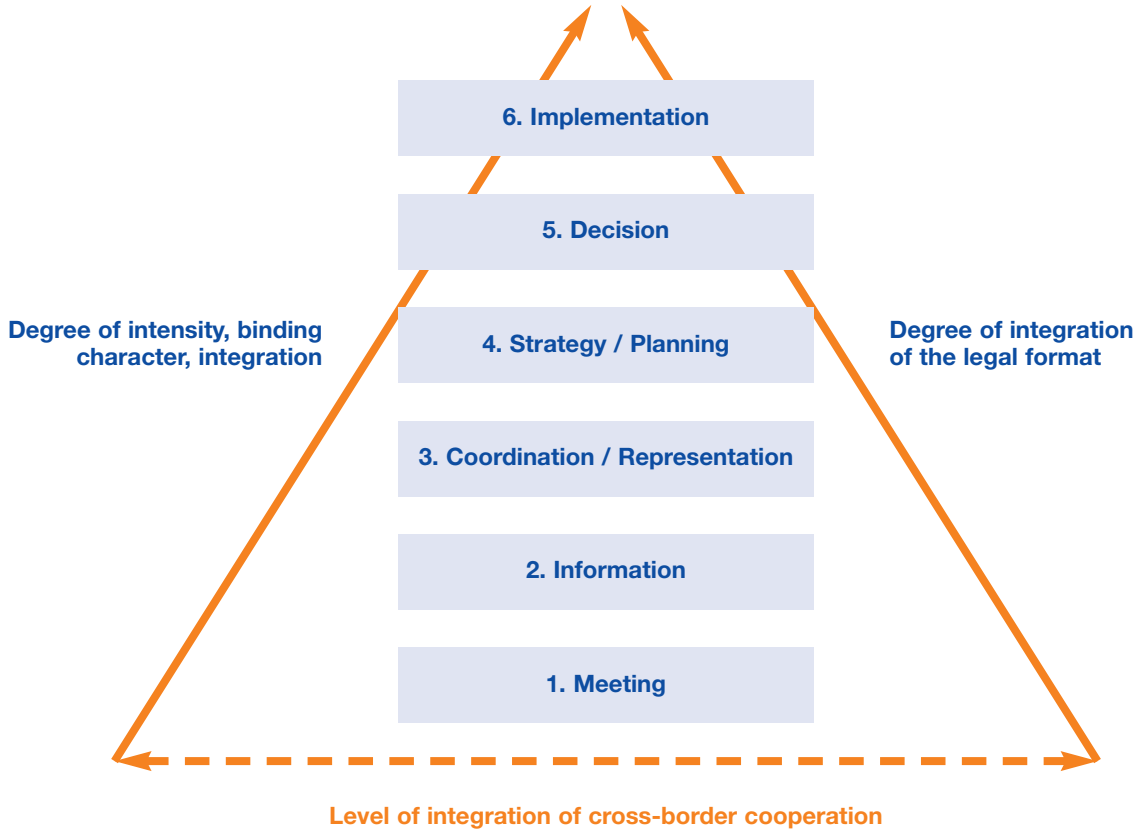
The implementation of an INTERREG programme includes a certain number of legal and organisational issues that require prior consideration by the partners on the legal organisation and structuring of their cooperation within the programme. However, as most INTERREG programmes cover a territory marked by the pre-existence of a more or less advanced type of cross-border cooperation, the reflections and decisions taken regarding the implementation of the programme can have a greater impact on cross-border cooperation in the particular territory.

Besides the financial aspect, there are many other reciprocal influences between the INTERREG instrument and general cross-border cooperation. The implementation of an INTERREG programme is nothing more than a particular form of cross-border cooperation, which requires different levels of mission, responsibility, legal capacity and competence in matters of cross-border cooperation. For a better understanding of the links between the two, one shall place INTERREG in the general context of cross-border cooperation, using the 'pyramid of functions' presented hereafter.

A) The scaling of the types of cross-border cooperation and the position held by INTERREG

The setting up of cross-border cooperation is a long-winded process, which goes through different phases before arriving, in some cases, at a well-structured cooperation allowing the concrete implementation and coordinated management of common cross-border programmes and projects, like the INTERREG programme, for example.

Because of this, both within and outside INTERREG, we can find a large variety, in content and form, of cooperation along the European borders, depending on the cross-border territory concerned and according to its physical, historical, cultural or socio-political characteristics. We can class these different levels of cross-border cooperation as follows:



The basic functions of cross-border governance[29]

This diagram illustrates the different stages of cross-border cooperation through which a cross-border region can pass: from a simple meeting between partners (political, administrative, civil society, etc.), for example in the context of an informal network or a discussion forum without specific legal personality, to the concerted implementation of common policies and projects that can even involve the creation of a common, autonomous and integrated legal structure, with its own status. Intermediate stages include the organisation of information exchanges or the coordination of actions and objectives, concerted representation of common interests before national or Community institutions, defining a strategy for concrete cooperation actions or even decision-making. All these functions can be implemented within common bodies that are integrated to a greater or lesser extent.

These different stages illustrate the degree of integration that cooperation within a given space can reach, within or outside INTERREG. However, these stages can also vary, for the same cooperation, according to the themes tackled: For example, the same border region can be situated at stage 3 ('Coordination') for regional planning, while it might already be at stage 6 ('Implementation') for environmental protection.

As a rule, the more the cooperation area crosses through these different stages of intensity and integrates public policy, the more the partners are tied by common decisions and the more pressing the need for an integrated legal form. In conjunction with this, as illustrated by the following diagram, each stage implies a certain level of involvement and primary needs to be satisfied by the actors of a cooperation relating to the phase reached. The involvement and the needs to be fulfilled evolve progressively as the cooperation intensifies and tend to become ever more technical.

[29] Diagram developed by Dr. Joachim BECK, Director of the Euroinstitut, Kehl (www.euroinstitut.org) in the course of a joint intervention of PROGNOS (www.prognos.com) and VIAREGIO (www.viaregio.com).

Competences to be developed for cross-border governance[30]

Some examples of main missions to be accomplished for harmonious development of the cooperation

	Function	Needs to be satisfied – Objectives to be attained
1	**Meeting**	Understanding of the cultural and structural practices of neighbouring administrations, linguistic competences of key actors, dealing with problems better, stronger civil and social participation
2	**Information**	Anticipation and structuring of information flows, professionalism of information exchanges in the structures
3	**Coordination/ Representation**	Management and procedures, obligatory nature of decision-making procedures, concerted initiatives vis-à-vis national authorities
4	**Strategy/ Planning**	Future-oriented strategies, quantifiable development objectives. Concrete implementation programme
5	**Decision**	Political will, binding procedures, integrated structures. Professional preparation and monitoring of the decision-making process
6	**Implementation**	Budget for the projects and the measures, legal structure allowing the promotion of projects and missions, efficient management process

It is important, when scaling the different steps, not to neglect to satisfy the primary needs of the previous stage, especially the first stage, which are the indispensable basis for harmonious and efficient cooperation.

Supposing we take an INTERREG programme as an example, this involves the implementation of a common programme and cross-border projects, it would be situated at level 6 (implementation) of the pyramid of functions. However, the efficacy of the programme requires more than simple implementation of cross-border cooperation: there must be a pre-defined programming strategy (level 4), based on the establishment of a territorial diagnosis and a common SWOT analysis. For this strategy to be truly efficient, the partners in the cooperation territory must have good mutual understanding of their respective administrative organisation and of the competences of the different actors who will be affected by the implementation of the programme and the undertaking of projects in each of the fields of cooperation tackled (level 1 and 2).

Inversely, if the demands of the 'Meeting' and Information' levels have not yet been fulfilled, defining a common strategy becomes difficult and is likely to lead to a less satisfactory result in terms of efficiency and capacity to bring about projects. Finally, the effective launch of the programme on solid bases will only be possible once all the partners have succeeded in having it accepted by their respective national authorities and by the Community authorities (level 3).

In many cross-border cooperation territories, the first levels were reached through cooperation initiatives carried out outside INTERREG programmes or before they appeared. In order to be efficient, the management structure of an INTERREG programme must therefore rely on existing cooperation structures: they can each exist independently of the other but it is better for them to be linked if they coexist on a territory.

However, cross-border cooperation must also be able to develop without the INTERREG tool. In other words, if the INTERREG Initiative stops, cooperation must be able to continue on the bases (financial, political structural, etc.) set by the INTERREG tool. This further cooperation will be easier and more solid if the implementation of the INTERREG programme has passed through all six basis functions of cross-border governance.

This applies, for example, to INTERREG programmes implemented in territories where cross-border cooperation is not long established: if in this case, the cooperation begins with the implementation of INTERREG projects

[30] Table developed by Dr. Joachim BECK, Director of Euroinstitut, Kehl (www.euroinstitut.org) in the course of a joint intervention of PROGNOS (www.prognos.com) and VIAREGIO (www.viaregio.com).

(level 6) without previous satisfaction of the demands of the other levels (levels 1 to 5), the risk is real because when the INTERREG programme stops, the cooperation may stop because it lacks common objectives and strategies ('why are we cooperating?'), the existence of real political will to cooperate and to invest funds to replace ERDF credits, etc. In order to avoid a situation of dependence of cross-border cooperation on the existence of the INTERREG tool and to ensure sustainability of cross-border cooperation after INTERREG, cooperation projects reaching level 6 must also be able to develop without ERDF co-financing – which is the case in a lot of cross-border zones.

From these different elements, can we now claim that the more cross-border cooperation is developed in a zone, the more the implementation and management of an INTERREG programme in this same zone will be efficient?

What is certain is that the need for partner authorities to manage an INTERREG programme and the acceleration of the cooperation that it brings about, mean that cross-border cooperation in general in the zone concerned is better organised and structured. This in turn will require the development and use of legal tools best adapted to these types of original partnerships.

B) Reciprocal influences between INTERREG programmes and cross-border cooperation

The implementation of an INTERREG programme and the development of cross-border cooperation outside INTERREG on the same territory are closely linked: **INTERREG influences the development of the cooperation and *vice-versa***.

Beyond the financial aspect, the impact of INTERREG on cross-border cooperation principally appears in two ways:

- To implement an INTERREG programme requires not only to efficiently prepare the organisation of the cooperation, but also to structure its contents.

  The different demands linked to defining a programming strategy for an INTERREG programme (SWOT analysis, needs analysis, ex ante evaluation, etc.) make deeper reflection on the content of the cooperation necessary, which will also be of benefit to all of the cooperation on a territory. For instance, in addition to the financial support brought to cooperation projects, the appearance of INTERREG on the borders of new Member States of the European Union constitutes an important factor in the structuring of cross-border cooperation in general in these regions, both in content and form.

- The INTERREG tool also brings greater visibility to existing cross-border cooperation structures and reinforces their impact in the area under consideration.

  The INTERREG programme can constitute a significant funding contribution for the implementation of projects, but above all, the potential involvement of these cross-border structures in the management of the programme can require them to raise their level of involvement, their ability to act and thus their legal capacity – even if participation in the management of an INTERREG programme does not necessarily involve completely integrated legal structuring from a cross-border perspective.

However, while the implementation of an INTERREG programme is an important element that leads to the development and structuring of cross-border cooperation on a territory, in return, the organisational and legal tools of existing cooperation outside INTERREG on the same territory can also help, influence, or even restrain partners from INTERREG programmes in the choices of organisation and repartition of programme missions:

- From an organisational point of view, regional actors in the cooperation area can play several roles in a programme: INTERREG project promoters, members of the programme committees, in charge of one or more programme missions or indeed responsible of the MA, PA or JTS of the programme.
- From a legal point of view, the management of the INTERREG programme and projects can rely on the same tools as those used for cross-border cooper-

ation in general (interstate agreements, cooperation conventions, cross-border cooperation structures with legal personality, etc.).

Before going on to a more detailed analysis of the choices of organisation and legal structuring of INTERREG IIIA programmes, it thus seems important to recall briefly some elements concerning the framing and the legal tools of cross-border cooperation as a whole.

1.2 Legal tools of cross-border cooperation

1.2.1 Reasons for employing cross-border legal tools

To develop cross-border cooperation actions, the partners need financial tools (such as INTERREG), but they also and above all need a legal framework to administer their cooperation actions on solid bases that take into account the specific administrative and legal difficulties encountered in this form of cooperation.

Cross-border cooperation in effect involves the meeting not only of different working practices, habits and quite often languages, but also constitutional, administrative and legal systems that are often barely compatible.

For example, the diverging levels of competence can often pose problems: while certain authorities at regional level are competent to sign cooperation agreements themselves, others, of the same territorial level but situated in another country, are not authorised to get involved in cooperation with foreign territorial authorities without prior legal authorisation from their central State. Likewise, cooperation between local or regional authorities being limited to their internal competences, the cooperation field can be significantly reduced when these competences do not overlap.

In order to counter these difficulties and propose practical legal solutions, the first initiative on a European scale framing cooperation was taken in 1980 with the signing of the **Madrid Convention** under the aegis of the Council of Europe[31]. This convention constitutes the first common legal tool adapted to the specificities of cross-border cooperation, but it only applies to States that have ratified it and its implementation is conditioned by the signing of interstate agreements.

A second tool appeared with the recent adoption, on 5 July 2006, of the Community Regulation relating to a **European Grouping of Territorial Cooperation** (EGTC), a new legal solution offering a single framework to all cross-border, transnational and interregional cooperation structures – the issues, as well as the limits of this new instrument will be examined more specifically in Part 4 of this study[32].

Nevertheless, the cross-border cooperation actors in Europe did not wait for the adoption of these tools and responded to the long absence, then to the limits of the proposed legal frameworks, by implementing diverse *ad hoc* solutions, conditioned by geographical, socio-economical, legal conditions and political willingness specific to each cooperation territory, which explains the broad diversity in the existing forms of cross-border cooperation in Europe.

The difficulty in setting up a common administrative body in an infra-national border zone explains in particular why, **in the majority of cases, the cooperation started on an informal basis**, without a specific legal framework. In central and eastern Europe, for example, the majority of cooperation actions are still, to date, carried out in an informal context, often within Euroregion-type structures that do not have legal personality (the Baltica Euroregion between Poland, Russia and Lithuania, for example, or the Silesia Euroregion between Poland and the Czech Republic).

This solution can prove to be quite efficient, as long as the existing or expected stage of cooperation does not require further legal integration (for example, the meeting, information and representation stages on the 'pyramid of functions' previously presented).

However, while the absence of a legal framework can favour the emergence of cooperation in the form of informal exchanges, with no legal restraints to be respected,

[31] Cf. the developments below.
[32] Regulation (EC) No 1082/2006 of the European Parliament and of the Council of 5 July 2006 on a European Grouping of Territorial Cooperation (EGTC).

the legal loophole can be quickly transformed into a barrier when the partners want to take the cooperation further, in particular to manage or participate in an INTERREG programme (for example, to complete more complex missions such as project assessment, controls, etc.).

Other solutions must therefore be found, this time involving legal structuring, on a public or private law basis, coming from the domestic law of partner States or based on tools made available by an interstate agreement or interregional cooperation convention covering the cooperation zone, and respecting domestic laws and in particular the scope of the competences devolved to participating authorities.

1.2.2 Proposed legal solutions

To accompany the development of cross-border cooperation in Europe, different legal instruments have been developed over roughly half a century, on different scales and as and when new needs arose.

Before the recent appearance of the EGTC, two types of legal framework conditioned, together, the organisation of cooperation between territorial authorities of different States: the domestic law of the States and interstate cooperation agreements or conventions.

These legal frameworks constitute the legal basis necessary to exercise cross-border competences by the territorial authorities. In fact, they determine their capacity to participate in cooperation actions and in particular the possibility for these actors to conclude cooperation conventions at infra-state, regional or local level and/or to create cross-border cooperation structures to implement their cooperation (for example, for the management of an INTERREG programme).

It is therefore the diversity of national laws and cooperation agreements that explains the variety of legal solutions adopted by each cross-border territory to organise its cooperation. But this diversity also helps to explain the variety in the choices of legal organisation and structuring envisaged for cross-border cooperation in the particular context of the management of an INTERREG programme, which closely depends on the legal solutions envisaged for cross-border cooperation in general on a given border.

A) The influence of the domestic law of States on the cross-border cooperation of territorial authorities[33]

Cross-border cooperation has been the subject of debate regarding its legal foundations, the main question raised being to know if actions undertaken for this purpose are based on international law or if it is just a matter of applying domestic law in a cross-border context. Since the end of the 1980s, it is commonly accepted that cross-border cooperation, although it can be based on international law, also relies heavily on the domestic law of States: the actors who participate in it do so within the limits imposed on them by domestic law (a principle enshrined by the Madrid Convention and its Additional Protocols).

This determining influence of domestic law on the capacity of territorial authorities to undertake cooperation actions is expressed mainly on two levels:

- At the level of the possibility for infra-state authorities to participate in cross-border cooperation actions and/or to become members of cross-border cooperation structures:

Some States grant extensive powers to their territorial entities in matters of cooperation (power to sign cooperation conventions, to create or be members of public or private law cross-border cooperation structures), which facilitates the legal development of the cooperation. In this category of States, the most advanced are federal States like Germany, Belgium or Austria, in which regional level entities are not only competent to sign cooperation conventions with their regional or local neighbours, but they can also sign international agreements with foreign States, which sets them apart from numerous other regional authorities in Europe.

[33] The elements of information given in this part are largely based on the Council of Europe's 'Report on the current state of the administrative and legal framework of cross-border cooperation in Europe' from 2002 as well as the summary report developed by the Association of European Border Regions (AEBR) in March 2004 'Towards a new community legal instrument facilitating public law based transeuropean cooperation among territorial authorities in the European Union' (cf. Bibliography at the end of this document).

Other States, on the other hand, maintain greater control, by subjecting all cross-border cooperation actions of their territorial authorities either to the prior signing of an agreement at interstate level defining the modalities of this cooperation (like the Benelux Convention of 1986 between the Netherlands, Belgium and Luxembourg), or to a specific authorisation (*a priori* or *a posteriori* control of the legality of the cooperation), or to both. This situation is often found in unitary States like France, Poland or the United Kingdom (UK), but also in certain regionalised States like Italy or Spain[34].

The cross-border cooperation competence of territorial authorities can also vary according to the nature of cooperation concerned or according to the thematic and geographical scope of cooperation. It also depends on the diversity of conditions to be fulfilled so that a cooperation convention between territorial authorities can acquire a legal value (requirement of *a priori* or *a posteriori* central governmental consent, control of the undertaking by the central government, etc.).

- At the level of the quality and efficiency of the legal tools made available through domestic law for the development of cooperation actions:

Many domestic laws propose, in effect, sometimes on the basis of a prior interstate agreement, legal statutes that are more or less expressly dedicated to the creation of cross-border cooperation structures: For example, the private law association, or the specific formula of the 'Public Interest Grouping' (PIG) in French law or *Zweckverband* in German law, the cross-border use of which is laid out in the Mainz and Anholt treaties[35]. The territorial authorities can also refer back to their domestic law to set up cross-border cooperation structures, in particular in the absence of an interstate cooperation agreement making specific tools available.

In all, we come across a large diversity in the nature and organisation of cross-border cooperation in the constitutions and domestic laws of States. Nevertheless, most domestic laws lay down a common general principle, according to which, by virtue of the sovereignty of the central States the infra-state authorities can only cooperate between themselves within the limits of their competences, respecting their internal legal order and respecting the conditions and modalities laid down by the domestic laws of their respective States.

In conjunction with this, in order to guarantee reciprocity in the use of legal tools laid down by domestic laws, the Member States concerned have generally concluded agreements between themselves to define the legal framework of cross-border cooperation in which their territorial authorities can operate.

B) The international legal environment of cross-border cooperation

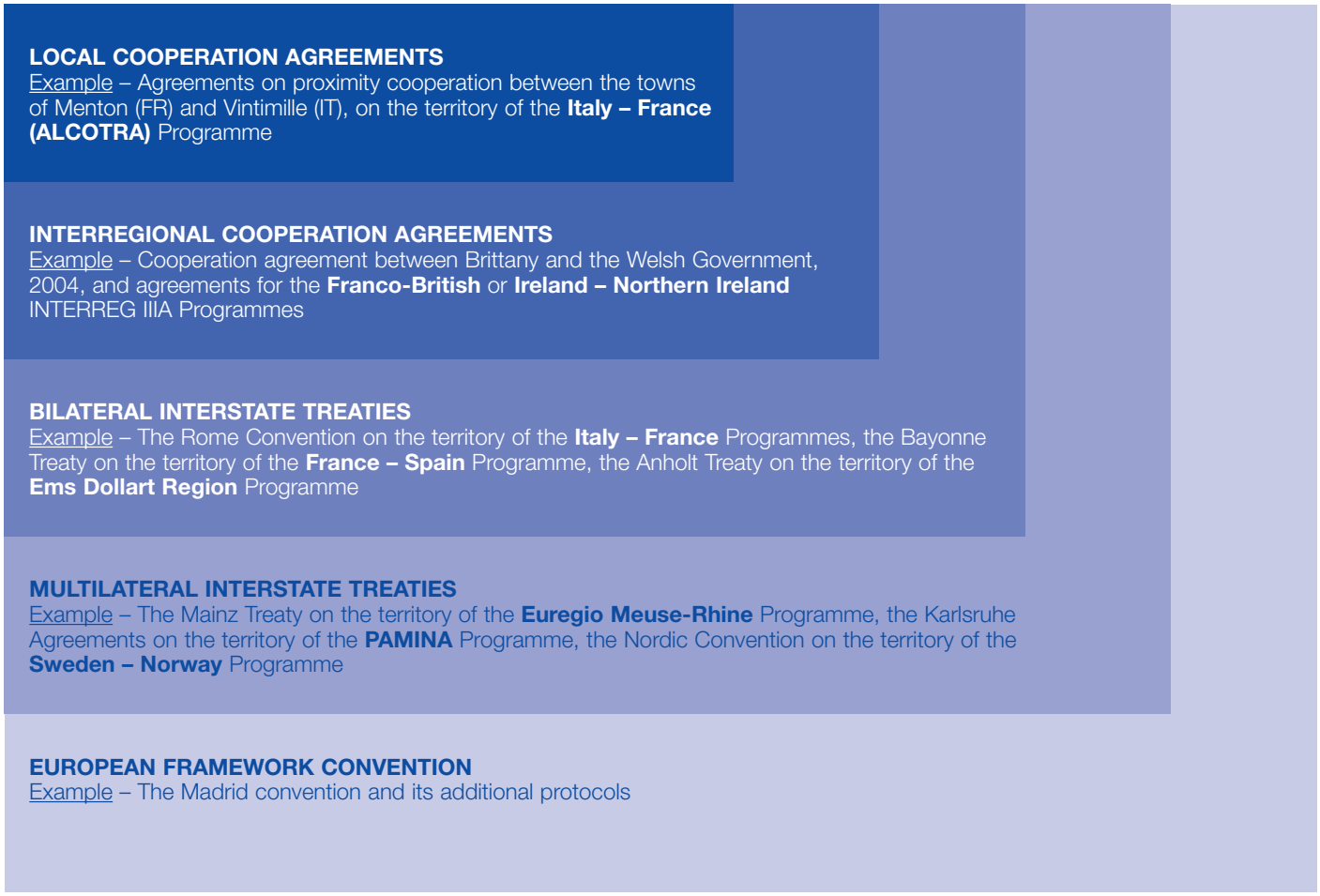
As described above, cross-border cooperation can be limited to simple consultation, which does not establish any legal link between the partners, yet offers an informal framework to organise meetings, exchange of information and discussion.

However, cross-border cooperation can also extend much further in content and to do this it requires agreements to be concluded creating a legal link between partners, either at State level or equivalent (cf. Länder in Germany), or at infra-state level (cooperation agreements between regional or local authorities).

The following diagram illustrates this international environment of cross-border cooperation, in which different levels of agreements and treaties fit together and in which certain INTERREG programme are shown: bi- or multi-lateral treaties to define the legal conditions for infra-state authorities to exercise cooperation actions are often based on wider international framework agreements (such as the Madrid Convention), at the same time the signing of inter-regional conventions or the conclusion of local agreements allow the principles defined in the interstate treaties to be applied.

[34] In certain cases, the power of territorial authorities to participate in cross-border cooperation actions is explicitly granted to the authorities (France, Italy, Poland) in domestic law and/or by interstate agreements. In other cases, this competence implicitly comes from constitutional jurisprudence or from interstate agreements (for instance between Spain and France in 1995 and between Spain and Portugal in 2003) or simply from practice, and in particular the de facto use of private law to participate in actions (Netherlands, Finland, UK).

[35] Cf. Annex 1.



The legal and international environment of cross-border cooperation

In this table, we can distinguish:

- Bilateral, multilateral interstate agreements and the Madrid Convention (shaded blue), legal acts arising from international law, which fall into the legal order of signatory States and define the legal framework for cross-border cooperation for all the infra-state authorities in the States concerned.
- Local and regional cross-border cooperation agreements (shaded pink), legal acts which do not arise from international law but from the domestic law of the authorities that concluded them. The agreement can then be based on the coexistence of several national laws, but the contracting parties may also decide to be subject to the domestic law of one of the States. The objective of such agreement is to define the mutual commitments in undertaking a cross-border action; it only applies to the signatories.

More precisely, it is worth recalling here the realities to which these different levels of agreement refer, since they form the legal environment for cross-border cooperation, and by extension, the environment applicable to the implementation of INTERREG programmes.

1) Interstate cooperation agreements

At interstate level, several types of agreements or conventions exist in Europe covering different territories and offering a legal framework to the development of cross-border cooperation:

A European framework agreement: European Outline Convention on Transfrontier Cooperation between Territorial Communities or Authorities (1980), commonly called the 'Madrid Convention', and its additional protocols

The Madrid Convention is an interstate agreement elaborated under the auspices of the Council of Europe, which was opened for signature on 21 May 1980 in Madrid and entered into force on 22 December 1981.

Its elaboration offered a first response on a European scale to the increasing needs that accompany the development of cooperation actions on European borders: the signatory States commit to '*facilitate and promote cross-border cooperation*' by defining a European framework for the cooperation actions of their regional authorities, and in particular interstate model agreements that should allow the development of a public law cooperation between regional authorities (this was a first step towards the implementation of cross-border cooperation structures based on public law).

With application of the Madrid Convention having posed a certain number of legal difficulties in the signatory States, an 'Additional Protocol' was signed on 9 November 1995 in Strasbourg, which expressly lays down, under certain conditions, the right of territorial authorities to conclude cross-border cooperation agreements and to resort to a cooperation body to organise their cooperation, the modalities of defining the legal personality of such an organism and the recognition, by the parties, of the legal value in domestic law of the decisions taken in the context of a cross-border cooperation agreement.

However, neither the Madrid Convention nor its additional protocols are legally binding: their concrete implementation must be ensured by the prior conclusion of interstate agreements. Furthermore, these texts only apply to the States that have ratified them (to date, 33 States have ratified the Convention out of 37 signatories, and only 18 have ratified the first additional protocol out of 25 signatories). Finally, the two texts do not offer an operational and unique legal solution to the implementation of cross-border cooperation actions.

However, the importance of this agreement is based on the fact that it allows, in the States having ratified it, proper recognition of the right and interest of cross-border cooperation between territorial authorities. Furthermore, it is interesting to note that a certain pressure is exercised on new Member States of the Council of Europe to ratify the Convention, as the Council progressively opens out towards the Balkans and the Caucasus, and as cross-border practice now develops in States that had a strong tradition of centralisation.

Bilateral or multilateral interstate framework agreements covering the implementation of cross-border cooperation[36]

The conclusion of such an interstate framework agreement is often the legal means essential for cooperation at infra-state level. Most of the Member States of the Council of Europe have indeed set up such agreements for the application of the Madrid Convention.

Before the Madrid Convention already, the first two agreements of this type were signed in 1962 (Treaty of Helsingfors between Denmark, Finland, Norway Sweden) and in 1977 (Nordic Agreement between these same States), instituting a legal basis for cooperation between the Nordic States and granting to infra-state authorities the ability to undertake cooperation activities with foreign partners.

Following adoption of the Madrid Convention in 1980, the number of these interstate agreements has significantly increased, as well as the countries covered by such conventions, with the progressive inclusion of countries of central and eastern Europe, in the Balkans and the Nordic periphery.

[36] Cf. Annex 1, for a more detailed description of these agreements.

The object of these agreements is formally to allow cooperation between territorial authorities (in particular for the implementation of decentralised cross-border cooperation actions on the basis of public law) and to define the scope for manoeuvre given to these authorities to develop their cooperation. However, the greater the differences between the legal and administrative systems of the States concerned are, the longer it takes and the more difficult it is to complete an agreement on the scope of transferred competences or the nature of the tools available[37].

Although the content of these agreements and their scope is varied from one territory or one field to another, a certain number of elements are to be found in the majority of them: the definition and the nature of the signatory parties, the territory and fields of cooperation covered by the agreement, the objectives, the duration, the applicable law and thus the jurisdiction concerned in case of litigation, the nature and the scope of the competences transferred to the territorial authorities in the context of the agreement (capacity to conclude cooperation agreements, to participate in common cooperation structures, etc.), the authorities tasked with supervising and controlling the cooperation, etc.

Certain agreements go as far as allowing the creation of a specific cross-border cooperation structure in the territorial authorities covered, for which they define the statute, modalities of implementation and applicable law. This is the case, for example for the Anholt Treaty of 1991, quoted above, authorising the creation of an associative public law cross-border structure, the *Zweckverband*, or the Karlsruhe Agreement of 1996 between France, Germany, Luxembourg and Switzerland, which instituted the Local Cross-border Cooperation Grouping (LCCG), an integrated public law cross-border cooperation structure.

By defining the obligations of the parties and the rules for cooperation, by making legal cooperation tools available to counter legal uncertainties and by protecting the interests of the parties in case of litigation, these agreements reinforce the legal foundations of the cooperation and allow it to develop on better defined and more solid bases.

However, it must be pointed out that there are still cross-border regions in Europe for which such agreements have not yet been signed (in particular on the borders between Germany and Austria or Denmark, or between the UK and France or Ireland, at the Greek borders, etc.). In these regions, cooperation still continues to develop, but only on the basis on domestic law, or indeed on an informal basis. Recourse to private law legal structures for cross-border cooperation is in fact more frequent on these borders.

2) Inter regional or local cooperation conventions

Often subject to the rules of the Madrid Convention and interstate agreements governing cross-border cooperation, numerous cooperation conventions have also been signed at an infra-state level, with the main purpose being to fix the objectives as well as the rules and modalities for implementation of the cooperation.

As with interstate agreements, the content, scope and objectives of these conventions are variable: they can be concerned with a particular field (environment, public services, etc.) or they can have a broader scope, fixing the general rules framing the cooperation or laying down the precise conditions for the establishment of a cross-border cooperation structure. Last but not least, they can be informal or have legal personality.

The existence of these conventions as well as their legal value directly depends on the domestic law of the Member States to which the particular territorial authorities belong: do these authorities have the necessary competence to sign these cross-border conventions, as with the regions/*Länder* in federal States, for example? If so, what

[37] It is worth noting that the content and scope of these interstate cooperation agreements is very variable. Those of most interest to us in this study are those that organise cooperation between infra-state authorities on a territory in an overall and precise manner. But other agreements with a less general scope also exist, like, for example simple good neighbourhood agreements or friendship agreements between two or more States (these are frequent in central and eastern European countries), cooperation agreements covering precise areas of daily life (mutual assistance in case of natural disasters, cooperation in the field of public health, etc.), agreements establishing informal cooperation structures to encourage exchanges and for defining common strategies (intergovernmental committees, working communities etc.), or even agreements or protocol agreements concluded between neighbouring countries or regional partners to organise the implementation and distribution of tasks and to create the bodies necessary for the management of Community financed programmes (here is where we find, in particular, conventions between programme partners concerning the implementation of INTERREG programmes).

is the extent of this competence? Can it be exercised without conditions or is there a need for the prior signing of an interstate agreement?

However, in addition to the ability to strike up cross-border relations, the scope and the content of the inter-regional or local cooperation conventions are also necessarily conditioned by the domestic law of States: by virtue of the principle of parallel competences, the content of a cooperation agreement signed by a regional authority cannot overstep the limits of the competences granted to it under domestic law. Consequently, according to the differences in nature and level of their competences in domestic law, two regional or local partner authorities can have more or less difficulty in concluding a cooperation agreement. This justifies the need to have a previous good knowledge of the politico-administrative system of the partner country, fundamental condition for the development of efficient and concrete cooperation actions.

Finally, it is important to note at this stage that, contrary to bi-lateral interstate agreements whose stipulations are integrated into the legal order of each signatory State or region, these cooperation conventions do not have any normative value and are only binding on the signatories.

Interregional or local cooperation agreements, even more so than interstate conventions, are particularly numerous and varied because of their close reliance on the domestic laws of States and/or the existence of an interstate agreement. It is not possible to draw up an exhaustive list of them here. On the other hand, in line with the object of the present study, it is important to underline their existence as, just as for interstate agreements, the legal organisation of the implementation of INTERREG programmes and the existence of such agreements between regional and local authorities are often closely linked (see point 1.2.3. below).

C) The different types of cross-border cooperation structures put in place to organise the cooperation[38]

Within the legal framework set out by domestic law and the cooperation agreements or conventions, the cross-border partners can set up cross-border cooperation agreements and structures.

Cross-border structures are not intended to become a new type of administration at cross-border level; indeed their activity is necessarily limited to the competences of their constituent cross-border authorities. More often than not, such initiatives stem from the desire of cooperation partners to externalise the management of their common projects by conferring it on a new structure under their control, for greater efficacy, and indeed legal stability and security.

The objective of such a structure exceeds the simple creation of a framework for meeting and debating among partners, it also aims at giving a framework for decision-making and implementation of joint cooperation programmes or projects, with the ultimate goal of resolving problems of a cross-border nature.

1) Classification typologies and the diversity of cross-border cooperation initiatives: methodological note

Nowadays, we can count a multitude of cross-border cooperation initiatives along European borders with diverse designations: apart from the 'Euroregion' (or 'Euregio') designation that we often find when looking at the management of INTERREG programmes, we also often come across the terms 'Working Community', 'Association', 'Cross-border Committee', 'Commission' or, quite simply, 'Regio'[39].

These different designations refer to particularly varied realities and, quite often, a single designation, used on different borders, can also cover quite different types of cooperation. This is particularly the case with the label 'Euroregion', which at once refers to, when talking of the Euregio Rhine-

[38] The elements of information given in this part are inspired, in the main, by the Council of Europe's 'Report on the current state of the legal and administrative framework of cross-border cooperation in Europe' from 2002 as well as the summary report developed by AEBR in March 2004 'Towards a new community legal instrument facilitating public law based transeuropean cooperation among territorial authorities in the European Union' (cf. Bibliography at the end of this document).

[39] Cf. developments on Euroregions in Annex 2.

Waal (DE/NL), a public law structure (*Zweckverband*), which has legal capacity to take binding decisions for its members and which was designated JTS of the **INTERREG IIIA Programme EUREGIO – Euregio Rhine-Waal – euregio rhine-meuse-north**, and, when talking of the Euregio West/Nyugat Pannonia (AT/HU), a structure without legal personality whose objective is simply to intensify contacts between the citizens of the territory covered.

The characteristic of cross-border cooperation initiatives in Europe is in effect their broad diversity: they are more or less integrated, structured and developed and they vary a lot in terms of legal organisation (with or without legal personality, for example), geographic scope, extent of their competences, internal organisation or even their designation.

This is why these initiatives can be classed according to numerous types of criteria, more or less relevant depending on the desired approach and analysis.

Consequently we can distinguish the initiatives according to: the size of the cooperation territory (large or restricted), the number of countries or partners concerned, the nature of the authorities participating in the cooperation (national, regional or local authorities; public or private structures, etc.), the scope of cooperation field(s) (cooperation affecting all domains or cooperation on a particular theme), the more or less formal character of the structuring, which conditions their competences and decision-making power (initiatives with or without legal personality, ad hoc structuring initiatives relying on existing legal resources, etc.), etc.

The internal organisation of cross-border cooperation structures also varies: presence or not of an assembly, an executive office, a permanent secretariat, human and financial resources available (presence or not of permanent personnel and a budget of its own).

In conclusion, although attempts at classification and enumeration of cross-border cooperation structures exist, their characteristics are so diverse, conditioned by legal, socio-economic, historical and local political realities, that it is difficult, perhaps impossible, to propose an exhaustive and fixed classification.

In the context of this study, the diversity of existing cross-border cooperation structures, and also local and regional particularities that condition them, makes systematic consideration of the characteristics of each of them impossible.

All the same, the obvious limits of the exercise of translation must also be highlighted, as it is not always possible to render the exact meaning of a concept, particularly from a legal point of view: while the label 'Euroregion' relates to differing realities as explained before, the same problem also applies to the term 'association', whose legal characteristics vary, sometimes in a subtle manner, from one domestic legal system to another[40].

It will thus be necessary to keep in mind throughout this study this statement of diversity when looking at cross-border cooperation structures involved in the management of INTERREG programmes. As it is not possible to offer exhaustive consideration of all these particularities, this study will make reference to them when necessary and, for the clarity of the presentation, it will adopt a classification according to criteria dictated by the end goal: the legal nature of these structures. The reason for this choice is that the legal status of a cross-border cooperation structure can have a determining influence on the degree of involvement and the type of missions that can be conferred on it in the implementation of an INTERREG programme.

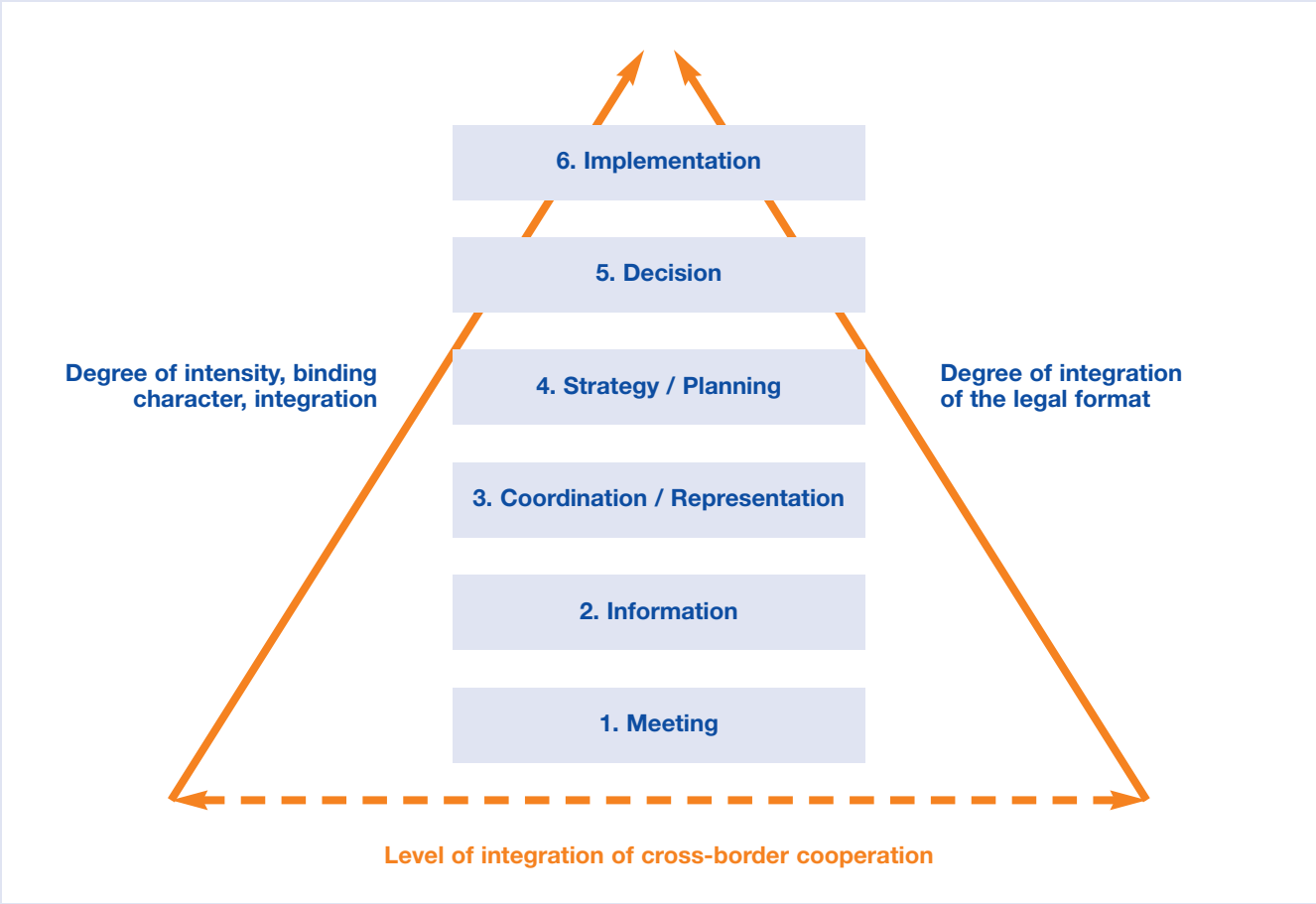
2) The different legal forms of cross-border cooperation structures

Regarding the legal aspects relating to cross-border cooperation structures, the same statement applies as that concerning their designation, their territory of intervention or their internal organisation: **there is no uniform legal form for these structures**.

[40] Another example can be given at this stage, illustrating this difficulty of designation and translation: the term Stichting in Dutch law (which is the statute of the Euregio Meuse-Rhine, MA of an INTERREG IIIA programme), is generally translated as 'foundation' in other languages, but its particularities are more those of an association than a foundation.

In effect, the articulation between the two legal frameworks that condition the choice of a legal form – domestic law and cooperation agreements and conventions – can vary a lot from one cooperation territory to another, the legal possibilities offered and the solutions effectively retained by the actors in terms of structures are often different.

Likewise, if the choice of legal form is not made compulsory by a given text, it is left open to interpretation by the partners and will also be determined by the goals of the structure, the scope of the responsibilities transferred to it and the degree of intensity of the cooperation[41].



The basic functions of cross-border governance

Consequently, establishing a structure with no legal status may be sufficient for initial encounters and information and coordination missions. However, the more the level of cooperation is developed and integrated (common decision making, management of common projects, common implementation etc.), the more the partners will be driven to direct their choice towards a more developed legal format.

If the chosen structure does not have legal status, the partners are free to organise their encounters as they want. Nevertheless, in this case, the missions to be undertaken in the context of the cooperation (secretariat, guidance, works management, payments, etc.) should be undertaken by the different signatories following a distribution of tasks between them.

[41] Cf. Part 3 of this study.

On the other hand, the creation of a structure with legal personality allows them to transfer practically all of the missions to the structure, which will carry them out in place of and on behalf of its members. In this case, the partners must fall back on the existing, public or private, legal resources either in the domestic law of participating States or in the pre-existing agreements or conventions authorising the creation of a common structure.

Three main types of structure can be distinguished, from the point of view of their legal nature, which each combines a greater or lesser variety of different realities: structures with no legal status, structures with a private law legal status and structures with a public law legal status[42].

The structures with no legal status[43]

This first group brings together numerous and varied cross-border cooperation initiatives. The diversity, in particular in terms of designations is particularly evident, bearing in mind moreover that certain designations given to these structures with no legal status are found in the two other categories of structures that have legal personality (working communities, interest communities, regional councils or committees, informal associations of local authorities, etc.). Hence the requirements, once again, to properly take into account the diverse realities these designations hide.

Although it is not possible to give a single definition, most of these structures with no legal status have the following main characteristics:

- they are often set up in an informal manner or on the basis of a cooperation agreement that, although not binding for third parties or other levels of authorities, it is binding on the participants;
- they do not have their own financial resources, although common resources can be made available by the partners – the lack of legal status signifies, in effect, that these structures cannot own real estate, employ personnel, receive subsidies, sign agreements or take binding decisions;
- they are often organised around a council comprised of the main political leaders of the partner regions and technical commissions or working groups; decisions are taken unanimously and they only have consultative powers.

As the 'pyramid of functions' above restates, although they do not have legal status, these structures can nevertheless play an important role in the consultation process that precedes the setting-up of any type of cross-border cooperation, including an INTERREG programme. They are often an indispensable conciliation tool preceding the signing of a convention between programme partners or the subsequent creation of a more integrated legal structure.

The interest in having this type of structure in the management of an INTERREG programme is to have a *minima* a common structure that can gather together future programme actors, or indeed be enlarged to other cooperation actors, ensuring the partnership principle requested by EU regulations for Structural Funds programmes. This gathering can constitute then the first step towards a more successful cross-border cooperation structuring and perhaps to prefigure the MC and SC of the programme.

[42] This nomenclature was kept, in particular in the report by the Council of Europe previously quoted in this study, on the basis of Article 3 of the Additional Protocol of the Madrid Convention: 'A cross-border cooperation agreement concluded by territorial communities or authorities may set up a cross-border cooperation 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 belon'".

[43] The examples quoted here are expanded upon in Part 3 of the study.

Example of structures with no legal status

- **Euregio Steiermark/Styria – Slovenia** (AT/SI): Meeting forum with no legal status between two Austrian and Slovenian regional development associations tasked with the management of a Small Projects Fund in the context of the INTERREG IIIA Austria – Slovenia Programme.
- **Alpen Adria Working Community** (IT/AT/DE/SI/HU/HR): Exchange and cooperation forum with no legal status, that brings together 17 regional authorities of the eastern Alps and whose working group 'Relations with the EU' participates, among others, in the guidance and support of projects in the context of European financing programmes for cooperation projects.
- **Galicia-Northern Portugal Working Community** (ES/PT): This working community is one of the five working communities situated on the border between Spain and Portugal, which are consultation instruments between Spanish and Portuguese regions with no legal status, involved as JTSs in the guidance of the five sub-programmes of the INTERREG IIIA Spain – Portugal Programme.
- **Permanent cross-border cooperation conference West Vlaanderen/Flanders – Dunkirk – Opale Coast** (FR/BE): Cross-border exchange platform between local, regional and national actors, supporting the emergence of cross-border projects in the context of the INTERREG IIIA France-Wallonia-Flanders Programme.

Structures under private law[44]

The establishment of a private law cooperation structure does not necessarily require the prior existence of an inter-state agreement or a public law cooperation convention. Consequently, if on a given territory recourse to a private law structure is not set out in an agreement but appears to the partner authorities to be the most relevant solution, they can set up among themselves private law cooperation structures on two conditions:

- the domestic law of the State where the structure is based authorises the creation of such a structure, to which foreign partners will participate;
- and, in return, the domestic law of each of the partner States authorises its own territorial authorities to participate in a foreign law private structure.

This is why this solution is frequently used in territories that are not covered by a cooperation agreement or convention (for example, on the German-Danish border or the Anglo-Irish border). However, we also encounter this type of structure in areas that are largely covered by cooperation agreements (for example the cooperation territory between Germany, the Netherlands and Belgium, where there are bilateral agreements but no trilateral agreement, so that for the tri-zone covered by the Euregio Meuse-Rhine INTERREG IIIA Programme recourse to a private solution was necessary to create a structure)[45].

As for the private law legal forms that can be used for the creation of cross-border cooperation structures, these are numerous.

The most often encountered solution, in particular on the Belgian, Luxembourgian and French borders, and also on the borders between Germany, Austria and Italy, is the association with a cross-border goal, whose status arises from the domestic law of the State where the association is based (in this regard, the term 'association' often refers to different national realities, which could be solved if a common European status of the association was created).

Concretely, the cooperation partners have recourse to the associative private law of one of the partner States to establish a permanent cooperation structure and to give a legal framework to the management of common projects. Beyond the possible differences from one domestic legal

[44] The examples quoted here are expanded upon in Part 3 of the study.
[45] It is important to note that the conventions creating this type of private law structure cannot surpass the field of competences of the signatory authorities (parallelism of competences). Moreover, the private law applicable to the structure is that of the State in which the structure is based, and conflicts between partners will be settled, as a last resort, on the basis of private international law.

system to another, this solution offers numerous advantages: an association is easy to establish and generally allows both public and private entities to participate. Furthermore, it has a permanent and autonomous character in relation to its members; it often has its own organisation, resources and even personnel.

However other solutions exist: foundations, LMES (Local Mixed Economy Society) or even EEIG (European Economic Interest Grouping, private structure in Community law[46]), a peculiar legal form that was instituted by a Community regulation but is also governed by the domestic law of the Member State where it is based.

Example of structures with no legal status

- **Association:** The Kvarken Council (FI/SE), cross-border cooperation association between Sweden and Finland, is the JTS of the INTERREG IIIA Kvarken – Mittskandia Programme. The Øresund Committee, cross-border association, is the JTS of the INTERREG IIIA Oresund Region Programme (DK/SE); The Euroregion Spree-Neiße-Bober e.V. (DE/PL/CZ), German law association, is tasked with guidance and management of a Small Projects Fund in the context of the INTERREG IIIA Saxony – Czech Republic and Saxony – Poland Programmes.
- **Foundation** (or similar): The *Stichting Euregio Maas-Rijn* (DE/NL/BE), Dutch private law foundation, is MA and PA of the INTERREG IIIA Euregio Meuse-Rhine Programme – it is interesting to underline that the legal form *Stichting* is laid down, in Dutch law, for the management of financial property. The NGO *Co-operation Ireland* (IE/UK - registered charity) is a charity cooperation organisation between economic and university private actors, involved in the implementation of the INTERREG IIIA Ireland – Northern Ireland programme, in particular for the delegated management of a measure of the programme[47].
- **Local Mixed Economy Society (LMES) in French Law:** Company linking public and private shareholders in the context of a public law Plc (Private limited company), governed by French law, that can bring together (since 2000 and under conditions) foreign territorial authorities. Consequently, the Inter-municipal Economic Development of Tournai-Ath (Belgium) holds 3% of the shares of the LMES of the Haute-Borne scientific park, located in Villeneuve-d'Ascq (North), whose Innovation & Exchange Centre participates in the I-NET-I project (interregional network of incubators) in the context of the INTERREG IIIC Programme.
- **EEIG (European Economic Interest Grouping) in Community law:** While open to the participation of public authorities, this tool is meant for the management of (cross-border) projects of an economic and commercial character, *which a* priori limits its use in the context of INTERREG programmes. An EEIG was nevertheless created between the Walloon Region (BE) and the Regional Council for the Nord Pas de Calais (FR) to carry the personnel of the JTS of the INTERREG IIIB North West Europe Programme; the EEIG of the Basque Eurocity (FR-ES) is Lead Partner of projects supported by the INTERREG IIIA France – Spain Programme.

The interest, and possible difficulties (for example regarding financial responsibility) resulting from the choice of a private structure for an INTERREG programme will be examined in Parts 3 (analysis of a sample of programmes, including programmes managed by a private cross-border structure) and 4 (dedicated to successful management methods for future INTERREG IV programmes, where the solution to the private law structure will be mentioned) of this study.

Structures with public law legal status[48]

When authorised both by the domestic law of the States concerned and an interstate cooperation agreement or convention between these same States, the territorial authorities of a cross-border cooperation zone can create public law cross-border bodies to carry out common functions jointly.

[46] Council Regulation (EC) No 2137/85 of 25 July 1985 on the European Economic Interest Grouping (EEIG)
[47] The main difference between "association" and "foundation" is a matter of terminology. Both refer to public-law structures with quite similar characteristics; Yet each terminology may refer to a variety of realities, depending e.g. on the country and its domestic law.
[48] Examples presented here are developed in the Annex 3 of the study.

The particularity of a public law structure is that its members may transfer missions to the structure and that, if a transfer of competences is carried out, these structures are able to take decisions that not only apply to their members, but are applicable to the citizens of the territory covered[49].

In this system, the public law cross-border cooperation structures are entrusted with missions in relation to a cross-border project or action, while the public authorities that are members of the structure continue to exercise the corresponding competence on their territory, except if the constitutive convention stipulates that the common structure is delegated the exercise of all or part of this competence for the territory covered.

It is interesting to note that this type of structure is mostly encountered in the cooperation space between Germany, the Netherlands and Belgium, marked by a long tradition of cooperation and entirely covered by interstate cooperation agreements (Benelux Agreement of 1996, Anholt Treaty of 1991, Mainz Treaty of 1996)[50]. These three countries have even modified their respective national constitutions to allow their territorial authorities to participate in such structures.

However, other countries have started to develop this possibility for their local authorities to turn to a public law cooperation structure (for example in the context of the Karlsruhe Agreement of 1996 between France, Germany, Luxembourg and Switzerland, creating the 'Local Cross-border Cooperation Grouping')[51].

As with the two previous categories, it is useful to highlight that these existing public law structures have diverse characteristics concerning, for example, the object (precise or general) and the length of their existence (limited or unlimited), the participation rules for public or private partners, the legal value of decisions taken, the methods for functioning, financing, etc.

Nevertheless, although precise and fixed categorisation of these public law structures is not possible, for greater clarity, we can attempt to classify them according to their origin:

- **Legal forms arising from the domestic law of partner States**

These are public law instruments offered by the domestic law of a State to structure the cross-border cooperation of local and regional authorities.

Although they are possibly mentioned in certain interstate agreements or cooperation conventions, these pre-existing structures within domestic law and their use for cross-border purposes is not linked to an interstate agreement. In certain cases they are expressly dedicated by domestic law to cross-border use, in others the partners had recourse to a solution laid down in domestic law and extended its scope to cross-border cooperation as an ad hoc solution.

It is to be noted that, as with private law structures, a local authority from a Member State can only participate in a cooperation structure governed by the domestic public law of another partner State if this possibility is open to it within its own domestic law.

Examples of structures with a public law legal status arising from the domestic law of a State

- **The cross-border Public Interest Grouping (PIG) in French law:** Founded by a French law in 1992 and uniquely for use on French borders. A PIG currently manages the INTERREG IIIA Saarland – Mosel (Lorraine) – Western Palatinate Programme (as MA, PA and JTS).
- **The *Kommunale Arbeitsgemeinschaft* in German law:** The use of this legal tool from German public law for cross-border ends is laid down in the Anholt Treaty and the Mainz Treaty. Nevertheless, no example of effective implementation of this possibility in the context or on the territory of an INTERREG programme was found.

[49] This last possibility has never been implemented so far, but it exists, at least if the interstate agreement creating the possibility to use public law as a form of cross-border cooperation expressly makes provisions for it. For example, this is the case for the Anholt Treaty of the Benelux Convention for the following legal forms: 'Openbaare Lichaam' and 'Zweckverband'. Cf. Annex 1 and 3.
[50] Cf. Annex 1.
[51] Cf. Annex 1.

- **Structures laid down in International or Community Law**

These are public law instruments not proposed directly by the domestic law of a State, but rather structures whose existence is directly linked to international or European law. This category covers two types of structures:

– Structures laid down in interstate agreements:

These are public law tools established within the context of interstate or interregional cooperation agreements governed by public international law. Certainly these structures generally also exist in domestic law and their implementation is often governed by national law, but their use for cross-border cooperation actions was expressly set out by an agreement between States and was done by virtue of this agreement.

Examples of structures with a public law legal status arising from an interstate agreement

- The ***Consorcio*** in Spanish law: The Bayonne Treaty between France and Spain sets out the possibility of using this domestic law tool in a cross-border context. The Consorcio Bidasoa-Txingudi, which joins together the towns of Hendaye (FR), Irun and Fontarrabie (ES), benefited from INTERREG when it was created in 1997 and is project Lead Partner in the INTERREG IIIA France – Spain Programme.
- The ***Openbare lichaam*** in Dutch law: Its cross-border use, limited to the cooperation territory between Germany, Belgium, the Netherlands and Luxembourg, is set out by the Benelux Treaty, the Mainz Treaty and the Anholt Treaty. The Benelux Middengebied Euregio (BE/LU/NL), which has *Openbare lichaam* status, was created to manage one of the two sub-programmes of the INTERREG IIIA Flanders – Netherlands Programme.
- The ***Zweckverband*** in German law : Its cross-border use, limited to the cooperation territory between Germany, Belgium, the Netherlands and Luxembourg, is set out by the Mainz Treaty and the Anholt Treaty. The Euregio Rjin-Waal (DE/NL) and euregio rhein-maas-nord (DE/NL) have a *Zweckverband* status, they are both tasked with the management of a sub-programme in the context of the INTERREG IIIA EUREGIO – Euregio Rhine-Waal – euregio rhine-meuse-north Programme, the Euregio Rjin-Waal being in addition JTS of the programme.
- The **Local Cross-border Cooperation Grouping** (LCCG), subject to domestic law of the State where it has its registered office: The Karlsruhe agreement of 1996 makes provisions for this instrument applying to the cooperation territory between Germany, France, Luxemburg and Switzerland. This agreement has been extended for cooperation between France and Belgium through the Brussels Agreement (2002). The LCCG PAMINA (FR/DE) has been specifically created to carry out the missions of MA, PA and JTS for the INTERREG IIIA PAMINA Programme.

- Public law structures arising from Community law:

These are public law structures governed by international law.

Only one structure can be classified in this category to date[52]: the European Grouping of Territorial Cooperation (EGTC), a recent solution, no practical application of which has yet been made, as the regulation instituting it was only adopted on 5 July 2006 and Member States have a year to adapt their domestic law to this new regulation. Nevertheless, the EGTC will be examined in greater detail in Part 4 of this study dedicated to recommendations for the implementation the future generation of programmes in the context of INTERREG IV.

The cross-border cooperation structures can therefore take on different legal forms, in particular according to the legal resources available in the cooperation territory in which they are set up. These legal forms give them **varying capacities for action, decision-making and taking responsibility, which therefore makes them more or**

[52] The EEIG is also governed by Community law, though this is a private law legal format.

less able to accomplish all or part of the regulatory missions laid down for the implementation of an INTERREG programme.

We will see in Parts 2 and 3 of this study that a certain number of cross-border cooperation structures, with diverse legal statutes, are involved to a greater or lesser extent in the management of current INTERREG IIIA programmes, and we will analyse, with the help of examples the consequences of their legal status on the ability to fulfil INTERREG missions in an efficient and conform manner. However, before this it is worth drawing up a brief summary of the link between the legal tools of cross-border cooperation and INTERREG programmes.

1.2.3 Legal tools of cross-border cooperation in the management of INTERREG programmes

The link between the cross-border cooperation agreements or conventions and INTERREG programmes functioning on their territory of application can exist on several levels.

The INTERREG programme partners can, when choosing which bodies will assume the MA, PA and JTS functions for the programme and when choosing the different legal tools that will act as a support for the implementation of the programme and for sharing the missions to be accomplished, have recourse to these traditional cross-border cooperation bodies. To some extent, they will be able, if required, to delve into the 'toolbox' made available through potential interstate, interregional or even local agreements covering their cooperation territory, to set up the structures or tools for management of an INTERREG programme.

The most frequent example at this level is the choice of an integrated cross-border cooperation structure, the existence of which is laid down by an interstate cooperation agreement, for **taking charge of all or some of the programme missions**. This is the case for the LCCG 'Regio PAMINA', for example, tasked with the management of the INTERREG IIIA PAMINA Programme and created by virtue of the Karlsruhe Agreement.

However, we also find the link with the INTERREG programme at project level, with **INTERREG projects managed by cross-border cooperation structures laid down in a cooperation agreement**. For instance, the LCCG 'Hardt Centre – Upper Rhine', created in 1998, promoted then carried out the project management of the construction of a bridge between Germany and France. This project was co-financed by the INTERREG IIIA Upper Rhine Centre-South Programme.

Finally, the reverse also happens, whereby **cross-border cooperation legal instruments explicitly allude to the management of an INTERREG programme**. Consequently, for example, the statutes creating in 2002 the *Grensoverschrijdend Openbare Lichaam* Euregio Benelux Middengebied (public cross-border cooperation grouping) explicitly lay down that, among others, one of the objectives of the structure is the financial management of the INTERREG IIIA Flanders – Netherlands Programme, conferring on it the necessary competences and legal capacity (the Euregio Benelux Middengebied, without being MA or JTS, manages one of the sub-programmes of this programme). The existence of this cross-border cooperation structure is closely linked to that of INTERREG, as the statutes also envisage a mid-term evaluation of the structure to analyse its future in relation to that of the INTERREG programme.

In conclusion, the legal tools emanating from interstate cooperation agreements were above all concluded to facilitate the undertaking of cross-border cooperation projects or the establishment of cross-border cooperation structures. When these provisions allowed it, these two types of tool were used for setting up management structures for INTERREG programmes. But as we will see in the coming parts of this study, **management of an INTERREG programme by a cross-border structure, if it best corresponds to the philosophy and requirements of INTERREG (joint management, partnership) is only a solution among others, and does not represent a majority in the INTERREG community**.

The different models of organisation and legal arrangements developed in INTERREG IIIA programmes

2. The different models of organisation and legal arrangements developed in INTERREG IIIA programmes

Chapter objective and contents

After having described INTERREG programme bodies and their missions, as defined in the Community regulations, and having restated the cross-border legal context in which they are involved, this part will present the organisation and legal structuring models used by the 64 INTERREG IIIA programmes.

First of all, the **principal organisational and legal characteristics** of the programmes will be highlighted to measure the exact involvement of the different types of partners or structures in the management of INTERREG programmes.

After that, the programmes will be compared and classified in the context of a **positioning matrix** which will show the different types of organisation used by the programme partners, according to the level of '**concentration**' of missions exercised (are MA-PA-JTS missions carried out by a unique structure or shared between several programme partner authorities?) and of '**cross-border integration**' in their management.

The approach taken in this chapter is a type of 'benchmark' approach, which relies on a comparative analysis of 64 current INTERREG IIIA programmes, with the aim of producing a certain number of statistics concerning the programmes and their legal and partnership organisation.

The objective of this approach is not in any way designed to pass judgement on the merits of the models chosen by current INTERREG IIIA partners; it is more an attempt at offering an overall view of the choices made in legal organisation and structuring and to allow programme partners to place themselves, for these questions, in the community of INTERREG IIIA programmes.

Methodological remark:

The statistics produced come from data that was able to be drawn from a documentary database regarding the INTERREG IIIA programmes, essentially from the documents made available by INTERACT Point Tool Box[53] or available on the websites of the programmes (CIP, Programme Complement, information regarding the management of programme, etc.)[54].

We were not able to undertake systematic canvassing of the 64 INTERREG IIIA programmes to confirm and amend the available data in the context of this study. Because of this, the thoroughness of the data collected cannot be guaranteed and, for certain themes tackled, the necessary data could only be collected for 70-80% of the programmes.

The quantified information examined in this part must therefore be tackled taking into account the fact that our study was unable to distinguish the nuances and subtleties of the choices for legal organisation and structuring in the same way for all programmes. However, the security and scope of the data collected in the documentary database, as well as the additional information arising from questionnaires and interviews with the programmes in the sample group, have proven to be sufficient to establish a certain number of statistical data that is quite interesting regarding a whole range of INTERREG IIIA programmes that will be commented upon below.

2.1 Main organisational and legal characteristics of the programmes

2.1.1 Organisation models for carrying out the main programme functions (MA, PA and JTS)

The organisation of the implementation of the main management functions (MA, PA and JTS) and the sharing out of the missions to be completed among the administrative

[53] *'Information on cross-border structures and legal arrangements for programme implementation, taken from the analysis of 52 INTERREG IIIA programmes'*, working paper drafted by INTERACT Point Tool Box in 2004 and 2005.
[54] Cf. the Bibliography.

bodies and the programme partners are envisaged differently depending on the programme, as will be shown in the various examples presented in this section.

Nevertheless, if we take, as an example, the MA function, the authority responsible in fine for the implementation of the programme, different organisation models emerge from the comparative analysis, and they differ depending on the legal nature of the structure chosen to carry out the MA function – the nature of the MA being also tied to its location within an eligible area of the programme or not.

These models of Managing Authorities can be arranged into the following four categories, used again in the diagram on the next page:

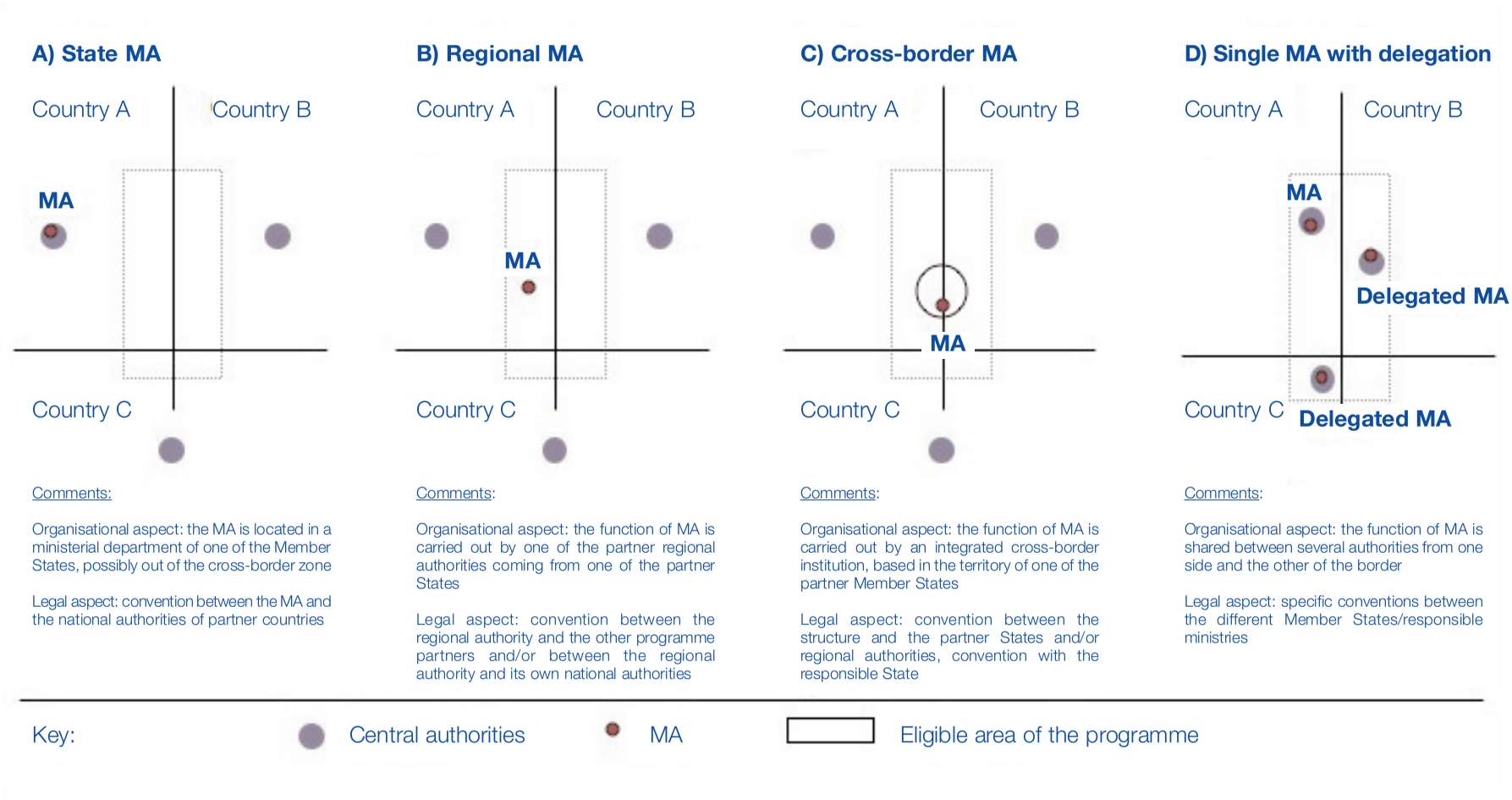
1. State MA (point A in the diagram): A **national authority** from one of the partner States, often (though not necessarily) situated outside the programming zone, takes on the function of MA for the programme (as with the Spanish Ministry of Economy and Finances in the Spain – Portugal Programme). A variation of this model can be the scenario in which **departments of national authorities**, which this time are based in the programming zone, take on the function of MA (as with the Franche-Comté Regional Prefecture in the France – Switzerland Programme).

2. Regional MA (point B in the diagram): A **regional authority** takes on the MA function for the programme (as with Storstroms Amt in the Storstrom – Ostholstein-Lubeck Programme (DE/DK), or the Piedmont Region for the Italy – France (ALCOTRA) Programme, or even the Chancellery of the Land of Saxony for the Saxony – Poland Programme (DE/PL)). A variation of this model can be the scenario in which a **local authority or city council** takes on the function of MA (like with the *HUR* (Copenhagen City Council) for the Oresund Region Programme (DK/SE)).

3. Cross-border MA (point C in the diagram): A **cross-border cooperation structure**, arising from the domestic law of one of the partner States and/or from an interstate agreement or an interregional cross-border cooperation convention, takes on the role of MA for the programme (as with the *Groupement d'Intérêt Public* (Public Interest Grouping) carrying out the functions of MA, PA and JTS for the Saarland – Mosel (Lorraine) – Western Palatinate Programme or the *Stichting Euregio Maas-Rijn* (Euregio Meuse-Rhine Foundation), taking on the functions of the MA and PA for the programme of the same name).

4. Single MA with delegation (point D in the diagram): In the current generation of programmes, variations of the first three categories appear sometimes with the presence of an authority from a partner State (at central or regional level) that takes on the MA (or PA) responsibility, but which **delegates a share of its missions to its counterparts in other partner States** (as is often the case for the programmes concerning new Member States, in which we find the MA in one country and a 'National Authority' and/or a 'sub-PA' or 'auxiliary authority' in the other partner States).

The diagram below illustrates these four main organisation models for exercising the MA function in current INTERREG IIIA programmes:



The four main organisation models for exercising the MA function in current INTERREG IIIA programmes

It is worth adding two remarks to these developments:

On the one hand, the suggested categories focus, for greater clarity, on one of the administrative bodies of the programmes, in this case the MA. **Due to the missions it must assume and its overall responsibility for the programme, the choice of the entity that is to become MA is actually a determining factor and influences the organisation of the whole of the programme**[55]. Nevertheless, these same categories can also apply to the other two administrative bodies, the PA and the JTS. Consequently, the comparative analysis there will also bring out models in which the PA or the JTS are of national or regional level, carried out by a cross-border structure or shared between several authorities. The organisational choices of the 64 programmes, presented hereafter, will thus cover all three functions.

On the other hand, the comparative analysis highlights another important variant regarding the choice of structures taking up the main responsibilities of a programme (MA, PA and JTS), namely the **public or private nature** of the chosen structure(s). This variant, which is not viewable spatially in the diagram above, will also be taken into consideration in the following developments.

2.1.2 The choices of the 64 INTERREG IIIA programmes

Each of the four organisation models presented above has its own particular characteristics and thus involves variations in the way in which to organise the partnership and legal management and implementation of a programme.

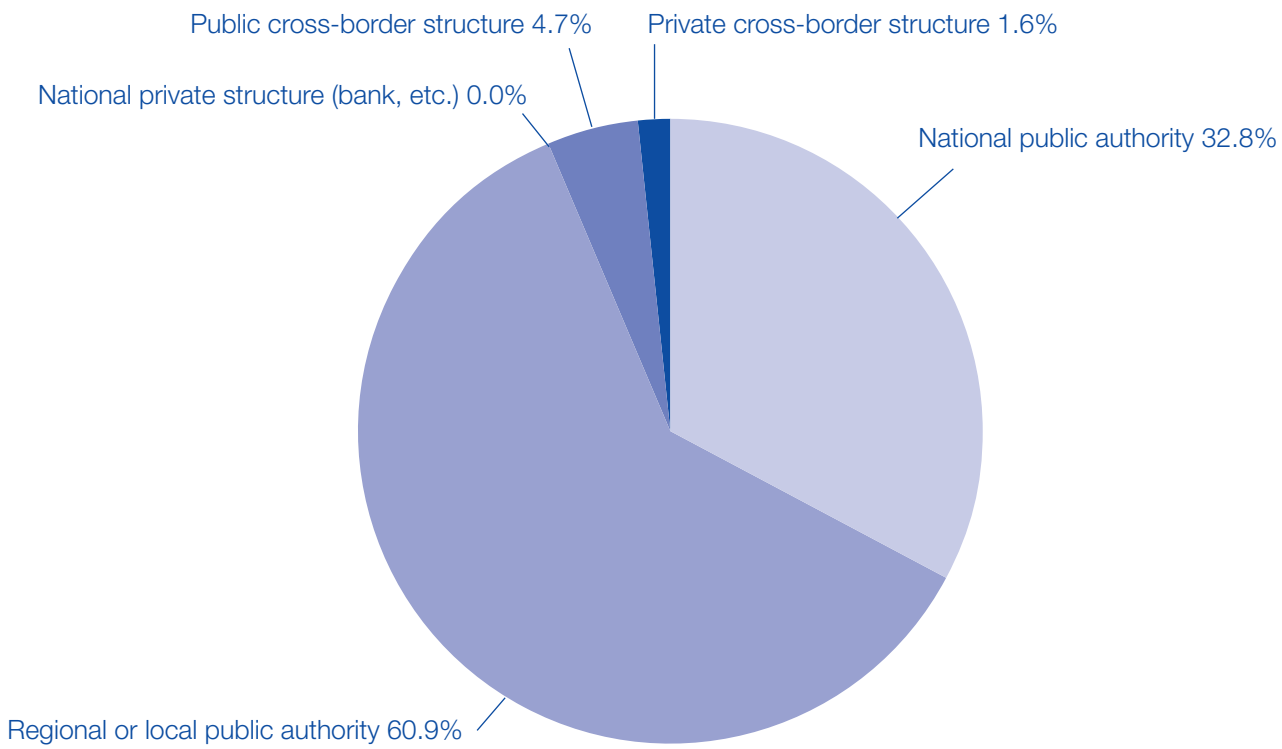
Furthermore, within the same model, its practical application by different programmes also includes variations in terms of the sharing of tasks, involvement of partners, and delegation of missions or legal structuring of relations between the actors involved.

Consequently, the different scenarios applied within the 64 INTERREG IIIA programmes are numerous. In order to take account of this diversity in a more detailed manner, different statistics were developed concerning the 64 INTERREG IIIA programmes tackling, successively, the following themes:

- types of structures taking on the MA function;
- types of structures taking on the PA function;
- types of structures taking on the JTS function;
- degree of separation/concentration of the administrative bodies (MA, PA and JTS) ;
- degree of separation/concentration of the functions of MA and PA;
- degree of separation/concentration of the functions of MA and JTS;
- participation of cross-border cooperation structures in the management of INTERREG programmes;
- externalisation of certain functions outside of the administrative bodies – to Intermediate Bodies;
- legal aspects for sharing out missions and responsibilities: different types of conventions between programme partners in the context of INTERREG programmes.

[55] Cf. Point 1.1.2. of the study.

A) Types of structures taking on the MA function



Legal nature of MA in INTERREG IIIA programmes
Total number of programmes studied : 64

The diagram above shows the legal nature of the structures taking on the MA function in INTERREG IIIA programmes. The results show that this function is shared mainly between:

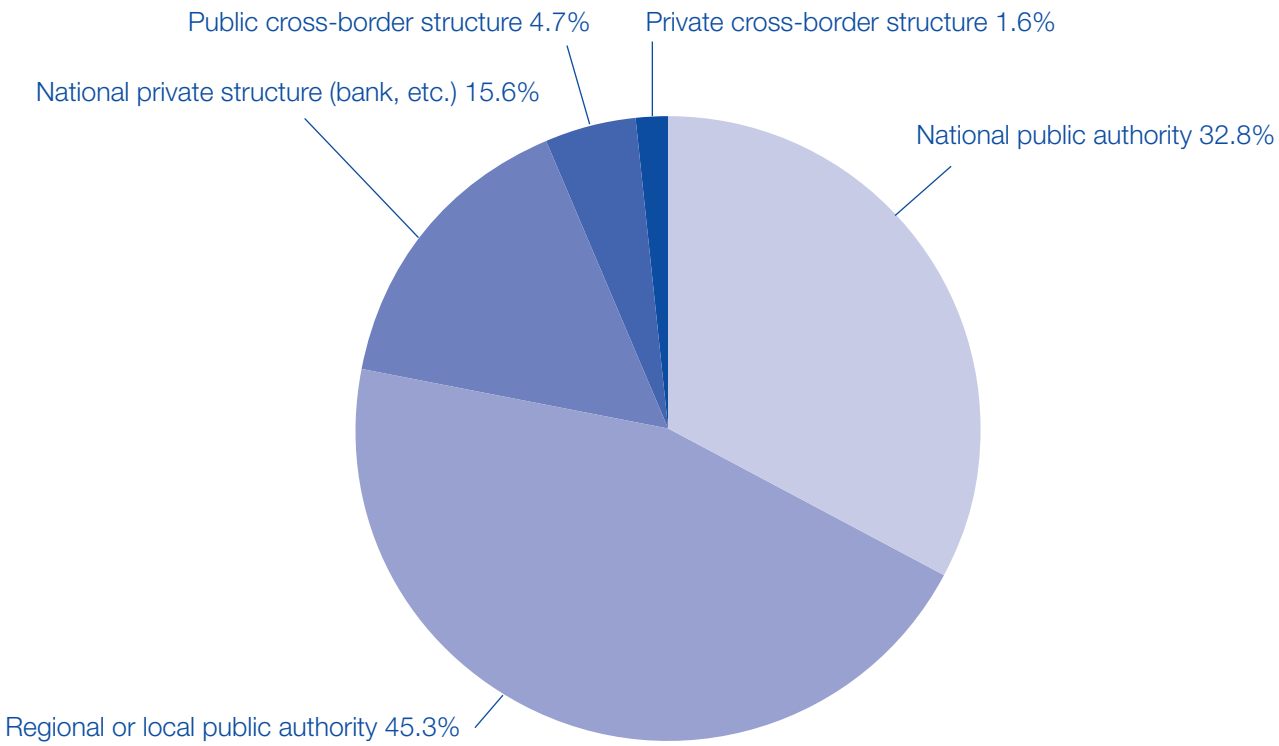
– Regional (or more rarely local) authorities, which represent more than 60% of the MAs of the programmes: This large proportion is interesting and show the **effective regionalisation of INTERREG programmes** – all the more so that, in the diagram above, the few programmes for which the MA function is carried out by a State department at regional level (like a regional Prefecture in France) were classified in the category 'national public authority.;

– State authorities, who represent roughly a third of the MAs of the programmes: This proportion reflects **a still significant control of the management of programmes at national level**, in certain States with a more centralised tradition (as is the case with Greece, for example). This proportion is **nevertheless balanced** by the classification in this heading of cases of nominal management of a programme by a national authority but with missions delegated to regional level. For instance the Federal Chancellery of Austria, MA for a majority of INTERREG programmes concerned, has decentralised the effective implementation of most of its missions to the regional level of the *Länder*.

Besides these two large types of MA, a certain number of programmes have also chosen to confer the MA function to **cross-border structures** (roughly 6.3% of the programmes studied, i.e. four programmes out of 64). The majority of these structures are based on public law: for instance the LCCG for the PAMINA Programme, the PIG for the Saarland – Mosel (Lorraine) – Western Palatinate Programme and the Special EU Programmes Body (SEUPB) for the Ireland – Northern Ireland Programme; in one case only the MA is a private-law structure, the Meuse-Rhine Foundation for the Euregio Meuse-Rhine Programme.

On the other hand, as regards the MA function, except in the specific case of one cross-border structure which is private, no 'national' structure based on private law (like a private bank, for example) can be noted.

B) Types of structures taking on the PA function



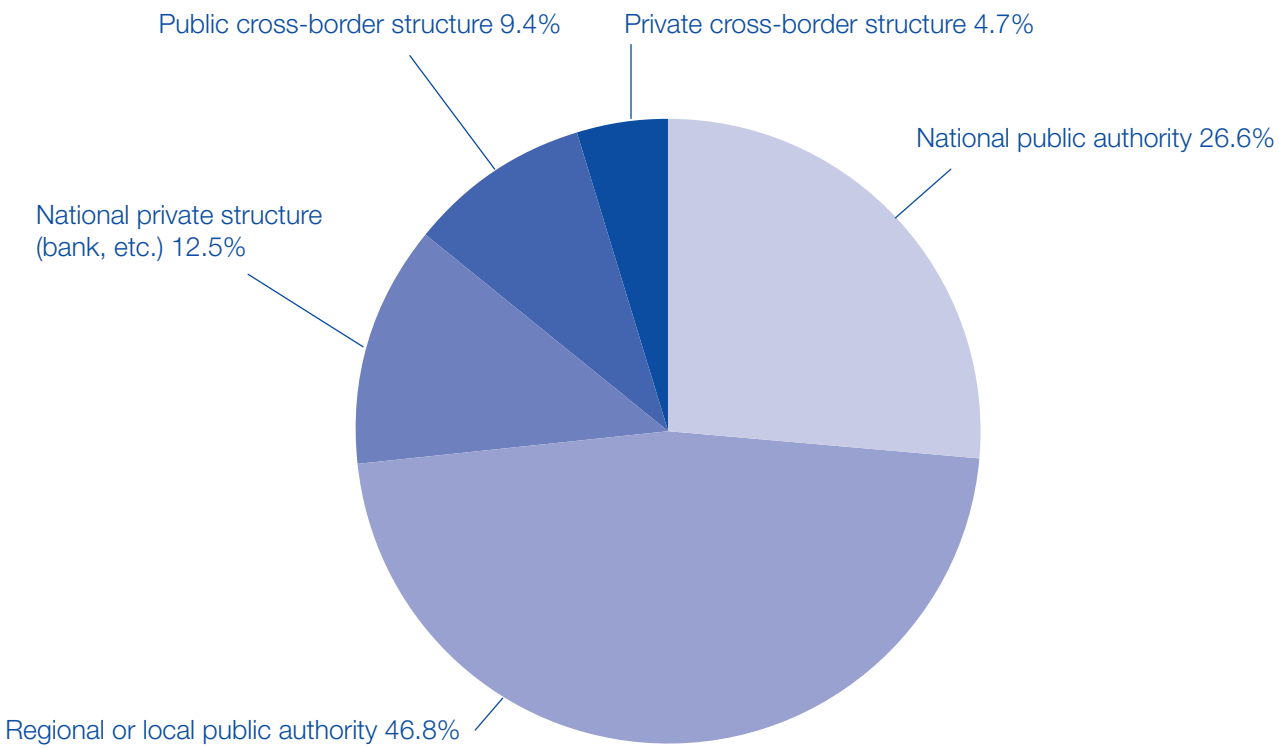
Legal nature of PA in INTERREG IIIA programmes
Total number of programmes studied : 64

The spread in the legal nature of structures taking on the role of PA is a little more open than for MAs. Indeed, the following can be noted regarding the exercise of the PA function:

- As with the MA, **regional or local public authorities predominate**, though at a more reduced rate (45%), which, moreover, does not take into account cases of externalisation, by the regional or local authority, of certain PA missions (for example, payments to final beneficiaries or holding the bank account for the programme) to public or private banking structures.
- The **share of State authorities** taking on the PA function (nearly one-third of cases) is roughly the same as for the MA – furthermore, in most State-model programmes (point A in diagram on p.52), the MA and PA functions are undertaken by the same State structure.[56]
- A **main particularity**, the appearance of **a significant number of private national structures** taking on the role of PA (more than 15% of the cases studied) and which is explained naturally by the banking technicality and specificity of PA missions (for example the *Investitionsbank Rheinland-Pfalz* for the Germany – Luxembourg – German Speaking Community of Belgium/Walloon Region Programme, the Swedish agency *NUTEK* for the Oresund Region Programme or the French *Caisse des Dépôts et Consignations* (CDC) in several programmes involving France[57]).
- The **share of cross-border structures** taking on the PA function is comparable to that of the MA (6.3%); this is explained by the fact that in programmes where management of an INTERREG programme has been conferred on a cross-border structure, the main functions of the programme are often concentrated within the same structure, and exercising the PA function goes along with that of the MA.

[56] NB: As with classification of the MA, decentralised State services at regional level carrying out the PA function were classified in the category 'national public authorities'.
[57] The CDC has a specific public status as it was created by a specific law but, as its activities in the field of the management of structural funds falls within a competitive sector, we have classified it with the other banking establishments that arise directly from private law.

C) Types of structures taking on the JTS function



Legal nature of JTS in INTERREG IIIA programmes
Total number of programmes studied : 64

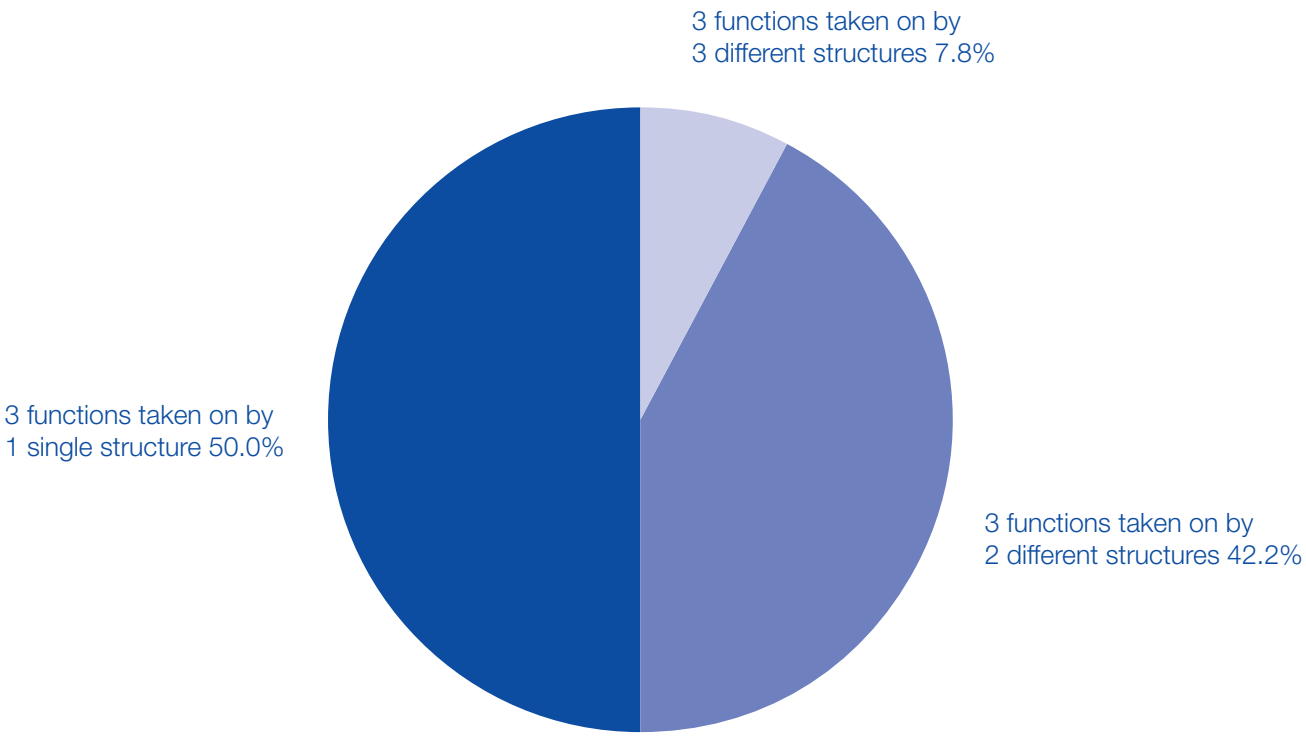
The legal nature of the types of structures taking on the role of JTS is also extremely variable:

- Here, too, we note that **regional or local public authorities predominate**, to be found in nearly 50% of cases; this figure might appear large considering the cross-border guidance role that the JTS must fulfil, however this is explained by the often strong institutional links between the MA and JTS (cf. point F below).
- Quite naturally the **share of national authorities taking on this function is quite reduced** (only little over 25% of the cases studied); this is explained by demand for proximity framing the choice of the structure taking on the JTS function, which must act on the ground, in the heart of the cross-border zone, and which makes the involvement of a distant State authority more difficult and less appropriate.
- In a significant way, the **share of the cross-border cooperation structures taking on the JTS function is greater** than in the case of the MA and PA functions: this amounts to a total of 14% of cases studied, two-third of the cross-border structures concerned arising from public law (for example, the Ems Dollart Region for the programme of the same name, or the Euregio Rhine-Waal for the EUREGIO – Euregio Rhine-Waal – euregio rhine-meuse-north Programme), the rest from private law (for example, the Øresund Committee or the Kvarken Council for the programmes of the same name). Because of the missions (in particular guidance and monitoring) conferred on the JTS, we might have

expected a larger involvement of cross-border structures; nevertheless, we must underline the fact that in a number of programmes, cross-border cooperation structures do implement certain specific JTS missions as Intermediate Bodies, even if the programme partners have not nominally conferred the JTS function on these structures. In particular the guidance and monitoring of projects (for example, where sub-programmes have been created, as in the case of the Flanders – Netherlands Programme, where the Euregios Scheldemond and Benelux Middengebied manage each a sub-programme) or the management of 'citizen projects' or Small Projects Funds, such as 'People-to-People'. More detail on the types of involvement of cross-border structures in INTERREG programmes outside the JTS function is given in point G below.

– The **share of national private structures** taking on the role of JTS is also significant (more than 12% of the cases) and can be explained by the fact that the JTS is 'service provider' to the MA; in particular in this category we find the *Österreichisches Institut für Raumplanung (ÖIR)*, an Austrian private firm that is JTS of the four INTERREG programmes involving Austria and new Member States, or also the *Sächsische Aufbaubank*, German private bank, JTS of the Saxony – Poland and Saxony – Czech Republic Programmes.

D) Degree of separation/concentration of administrative bodies (MA, PA and JTS)



Degree of concentration of administrative bodies (MA, PA and JTS) in INTERREG IIIA programmes

Total number of programmes studied : 64

The degree of '**delegation/separation**' or '**concentration**' of the MA, PA and JTS functions is linked to the notion of 'institutional separation', which means that the three functions are not necessarily carried out by a single structure within the same programme.

Delegation/separation: The programmes in which different institutions were designated MA, PA and/or JTS (for example, a regional authority is MA, a private bank is PA and a cross-border cooperation structure is JTS – as is the case in the Oresund Region Programme) have a large delegation of the main programme functions, these being shared between several programme structures.

Concentration: Inversely, the programmes qualified as 'concentrated' in our typology are those in which the three functions are carried out by:

- different ministries within the same State (for example, the Polish Ministries of Finance and Economy, respectively MA/JTS and PA of the Poland – Slovakia and Poland – Ukraine – Belarus Programmes, or the Ministries of Finance and Economy of the *Land Brandenburg,* MA/JTS and PA, respectively, for the Brandenburg – Lubuskie Programme);
- or by different departments or persons within the same institution (for example, the departments for Community affairs and Financial affairs in the Bolzano province, respectively MA/JTS and PA for the Italy – Austria Programme).

In these scenarios, there is a high degree of concentration of the functions of a programme within the same institution or within institutions on the same territorial scale.

Results of the analysis of programmes from this perspective show that:

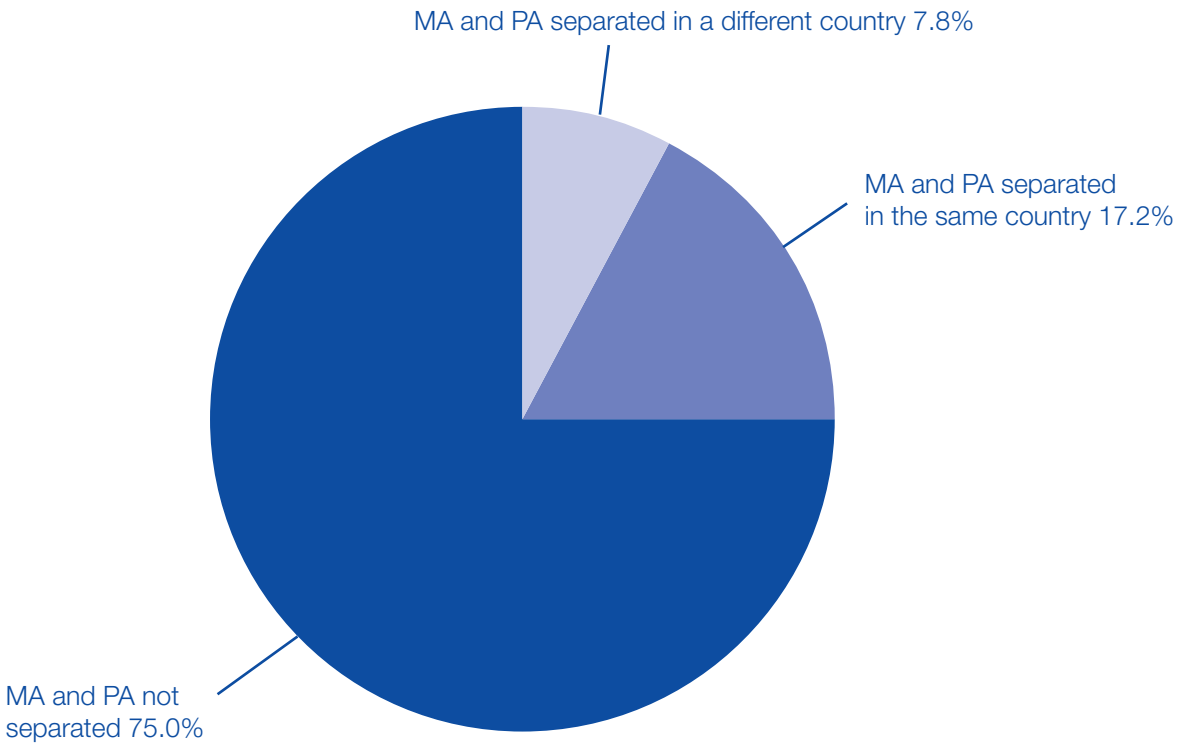
- In half of the cases, the three administrative functions are taken on by a single structure; this proves a **strong concentration of missions** in the programmes concerned, although that does not prevent certain specific missions within these programmes from being delegated, under the control of the responsible authority, either to other structures from the same State (for example, delegation from a central authority in a State to a regional authority in the same State, as is the case in Poland, for example, where the MA, PA and JTS at ministerial level delegate the operational management of projects to the regional level of the *Voidvoship*), or to cross-border structures or partner authorities from other Member States, or even to external service providers (like with control missions sometimes – these last two examples of externalisation of missions will be tackled more closely in point H below).
- In more than 42% of the programmes studied, two of the MA, PA and JTS functions are carried out by the same single structure, the third being taken on by another programme partner; it can be noted that in this configuration, **it is in general the structures that carry out the MA function which also carry out the JTS or PA function**.
- Finally, in only 7.8% of the cases, the **three functions are taken on by three different structures**, like, for example, in the Oresund Region, Czech Republic – Poland or Wallonia – Lorraine – Luxembourg Programmes. These scenarios demonstrate a large delegation of missions.

The last part of this study will present the advantages and drawbacks of concentration or, *a contrario*, delegation in the exercise of missions within a programme.

Nevertheless, we can note from this stage that **concentration of missions allows overly complex legal structuring of the programme to be avoided** (even though it does not replace the necessity for an agreement between partners on the sharing out of tasks) and it often facilitates management of the programme by shortening the procedural delays. Yet this is not necessarily the case if the MA function is carried out by one ministry, for example, and the PA by another and relations between the two are not good. Furthermore, concentration of missions can contribute to a **homogeneous interpretation of the main programming rules** between the actors involved (but this is not a *sine qua non* condition).

On the other hand, the risk of having too great a concentration of missions within the same structure is to **exclude other partners**, to create **misunderstandings** as well as an **over-rigid vision** of the programming and, sometimes, to lead to a **distancing** from the preoccupations on the ground. The independence of the control function may also be compromised, organisations ending up checking themselves.

E) Degree of separation/concentration of the MA/PA functions



Degree of separation of MA and PA in INTERREG IIIA programmes
Total number of programmes studied : 64

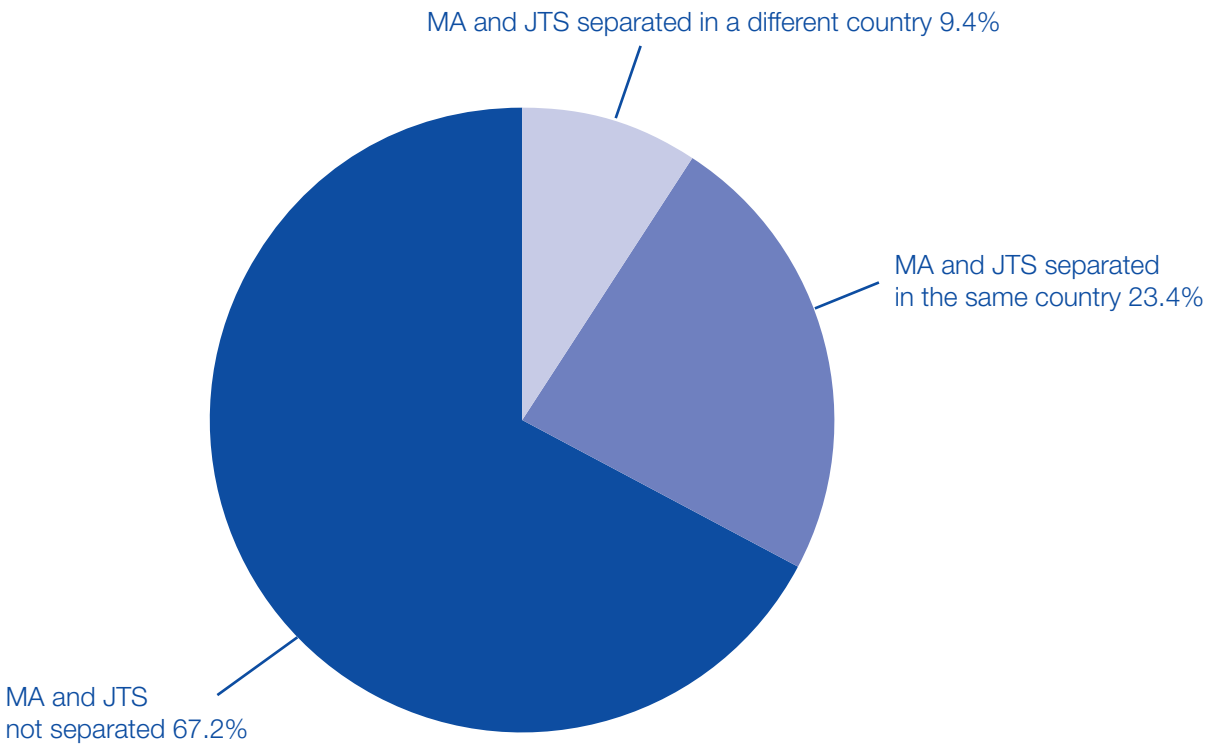
The separation of the MA and PA functions between two institutionally different structures only affects 25% of the programmes. Many programmes consider, in effect, **that these two functions go together naturally and should thus be conferred on the same single structure** (a choice made by 75% of programmes studied). Nevertheless, it should be highlighted that, where the MA and PA are combined in a single structure or on a single territorial scale (e.g. within two ministries), the two functions are normally carried out by different departments or ministries to respond to the Community regulation demands for functional separation (which moreover must be recorded in the Article 5 declaration of programmes).

As for the **quarter of programmes in which the MA and PA functions are separated**, it is interesting to note that in the vast majority of cases, the MA and PA are nevertheless situated in the same Member State.

These first two cases demonstrate required proximity between the structures carrying out these two functions and also the advantage that a programme can have, in its daily functioning, when the exercise of the MA and PA functions are based on identical banking systems and accountancy and financial rules. It also allows better communication or harmonisation of control procedures, for example, between the two bodies but it may lead to the risk of unbalancing the programme by giving preference to the financial and management rules of one of the States.

Conversely, in 7.8% of cases, **the MA and PA functions are carried out by different structures situated in different partner countries** (this situation can be found, for example, in the Alpenrhein-Bodensee-Hochrhein or Oresund Region Programmes). This scenario demonstrates an increased level of cross-border integration and falls into the setting up of a European market for banking services. Nevertheless, this system can also prove complex as it involves financial management rules and methods that often differ between the countries concerned, like recourse to two different monitoring systems, for example, which can lead to difficulties when it comes to summarising the accounts of a programme. The main advantage is the coverage of the whole programming zone (or at least of two States) by the main programme bodies, which allows all partners and beneficiaries to have a reference point in their country. Nevertheless, the risk of misunderstanding (intercultural, linguistic, technical, etc.) or different understanding of the eligibility rules or control procedures is increased in this case. The distance between actors can also make physical communication complex (as with the France – Spain Programme where the MA, in Bordeaux, and the PA, in Madrid, are situated in two different States, outside the programme area and separated by 700 km, which is not common under strand A).

F) Degree of separation/concentration of MA and JTS functions



Degree of separation of MA and JTS in INTERREG IIIA programmes
Total number of programmes studied : 64

Regarding the degree of separation of the MA and JTS functions in the programmes, tendencies comparable to the degree of separation between the MA and PA can be found. Consequently, in more than two-third of the programmes studied, the concentration of MA and JTS functions within the same structure can be noted. Here too, this can be explained by the **necessary proximity between the two functions, the role of the JTS being in fact to support the MA**, which has lead a lot of programmes to combine the two bodies (MA and JTS) within the same structure. This scenario can also be found, of course, in all programmes in which a single same structure takes on all three programme functions, and also in certain programmes in which the same structure takes on the MA and JTS functions while another fulfils the PA function for the programme (as is the case, for example, with the programmes Alpenrhein-Bodensee-Hochrhein (DE/AT/CH/LI), Upper Rhine Centre-South (FR/DE) or Spain – Portugal).

We can also note a relatively small number of MA and JTS separated and situated in two different countries (only 9.4% of programmes studied, like, for example, the Kvarken – Mittskandia Programme or the Italy France (ALCOTRA) Programme).

The geographic separation of the MA and JTS is sometimes explained by the fact that there is a desire for the JTS to be situated as close to the border as possible, while the MA function is carried out by a more distant regional or national authority (as is the case in the Italy – France (ALCOTRA) Programme where the JTS is located in France on the border at Menton, while the MA is based in Turin, at the headquarters of the Piedmont Region).

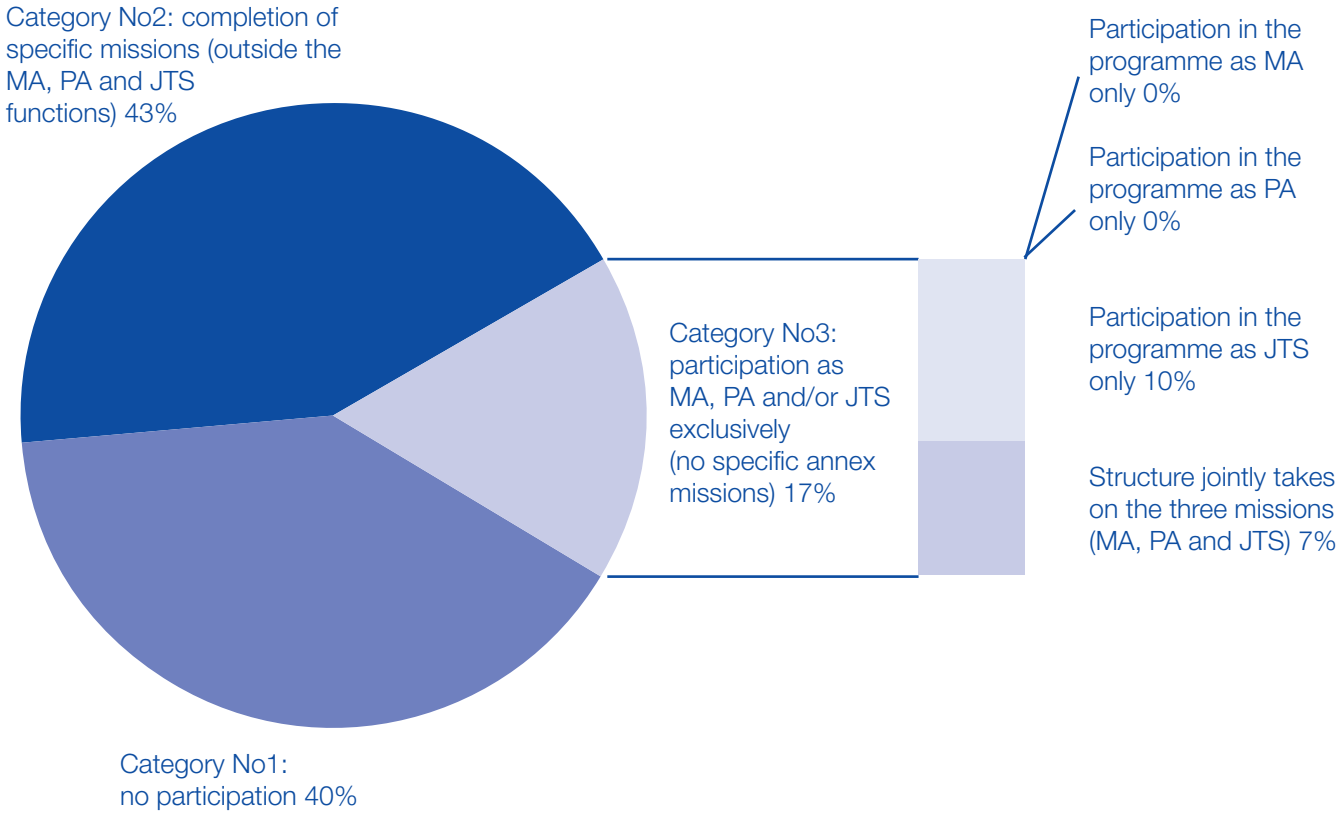
There is nevertheless a risk that this **distancing can harm good working relations and the complementary nature of the two bodies**. Likewise, if it is geographically too far away, the JTS can be 'out of sight' for the programme partners and no longer benefit from the political contacts and support that it would sometimes need in its relations with project promoters.

G) Participation of cross-border cooperation structures in the management of INTERREG programmes

Cross-border cooperation structures are present to variable degrees, depending on the programmes, in the management or participation in the completion of certain specific missions. By cross-border cooperation structure, we do not mean here the joint programme bodies that are the JTS, MC or SC, but instead structures pre-existing or created specifically for the management of the programme or any other cooperation purpose, whether they have a legal status or not.

As we will see in the course of the study, the interest in using cross-border cooperation structures is not negligible as they allow all partners to get involved on an equal footing in the programme and to give a horizontal and integrated vision of the cooperation, without mentioning the numerous practical advantages like the ease or recruiting personnel from all the Member States.

After analysis of the INTERREG IIIA programmes, we can classify the degree of involvement of one or more cross-border cooperation structures in the implementation of the programmes into three categories:



Participation of cross-border structures in INTERREG IIIA programmes

Total number of programmes studied: 60

More precisely, the following scenarios arise:

• Category No 1: no participation

Nearly 40% of programmes studied do not seem to bring in cross-border cooperation structures in an official and framed manner for their implementation – which does not prevent the informal participation of such a structure, if needed, in the implementation of a programme.

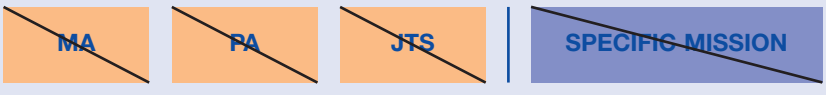
This means that on the other hand, **the majority of the programmes studied (60%) bring in cross-border cooperation structures to variable degrees in their implementation**.

• Category No 2: completion of specific missions (outside the MA, PA and JTS functions)

In 43% of programmes studied, one or more cross-border cooperation structures, that are not responsible for taking on one of the programme administrative functions (MA, PA or JTS), have nevertheless been delegated a certain number of specific missions, in the role of **Intermediate Bodies**.

Category No 1:

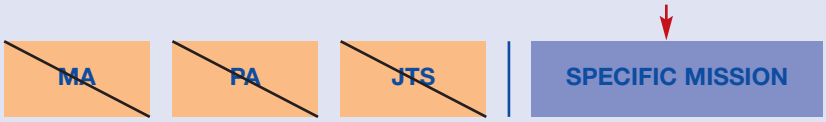
No cooperation structure participates in the programme.



24 programmes out of 60, i.e. 41.7%

Category No 2:

One or more cross-border cooperation structures are involved in the programme for the completion of certain missions (guidance, assessment of projects, monitoring etc.), but no cooperation structure fulfils the role of MA, PA or JTS for the programme.



26 programmes out of 60, i.e. 43%

The list of tasks possibly conferred to these structures is vast and varies from programme to programme:

- guidance, information or local contact point for project promoters;
- support for project generation;
- coordination of the relations between project and/or programme partners;
- support in completing the dossiers/application forms;
- participation in the assessment of dossiers or opinion in the selection process;
- participation in the monitoring of projects during their implementation (help in preparing balance sheets and in the submission of financial claims, support for the technical monitoring of projects, etc.);
- management of an umbrella-project 'People-to-People' or a 'Small Projects Fund'.

Consequently, it is important to underline that, within this second category, we find variable scenarios:

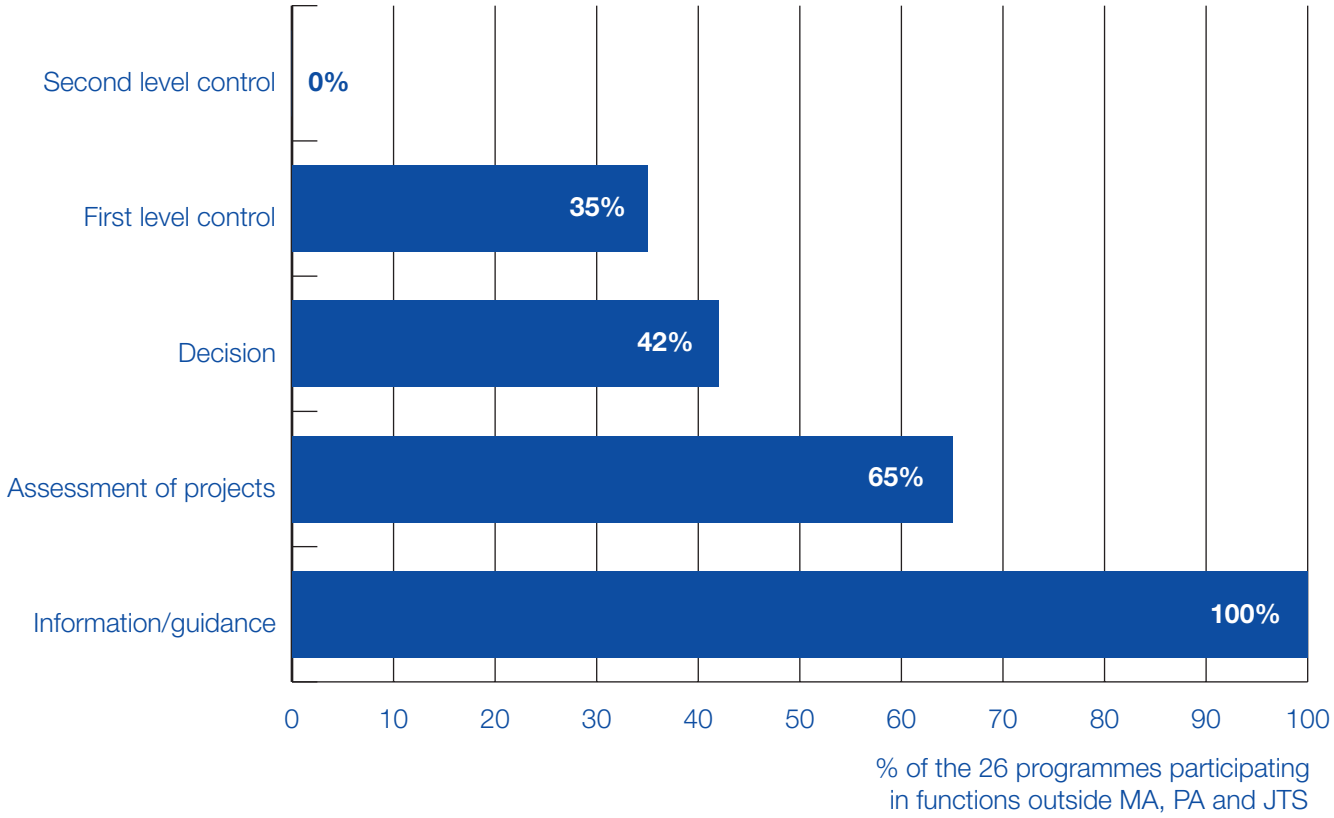
- Programmes that call upon cross-border cooperation structures essentially, perhaps exclusively, to participate in **project generation and support in project development** – as is the case, for example, of the *Conseil du Léman* and the *Conférence Transjurassienne* in the France – Switzerland Programme, the *Euregio Saar-Lor-Lux* and the *Grande Région* in the Germany – Luxembourg – German Speaking Community of Belgium/Walloon Region Programme or the five working communities present on the territory of the Spain – Portugal Programme.

- Other programmes in which the cross-border cooperation structures are tasked with management of a **Small Projects Fund** (like People-to-People), which can involve the completion of missions for guidance, help to structure the micro-projects, assessment of projects, monitoring and even sometimes decision-making and first level controls, in the context of the mechanism concerned – this scenario is frequently encountered for the Euroregions in the programmes involving the new Member States from eastern and central Europe (Brandenburg – Lubuskie, Bavaria – Czech Republic, Poland – Slovakia, etc.) in which the Euroregions tasked with managing the Small Projects Funds are also often involved in project evaluation for all of the programme. This is an additional positive feature as it contributes to development of a cross-border civil society and the coming together of local authorities.

- Other, less numerous, programmes finally are divided into sub-programmes covering the territories of several contiguous Euroregions. In these programmes the cross-border cooperation structures play an important role, being directly responsible for **management of a sub-programme**. This management involves, at sub-programme level, undertaking guidance, assessment of projects and monitoring missions, sometimes even participating in the selection of projects or indeed first level control operations. In this category we can find for instance the Euregio Scheldemond and Euregio Benelux Middengebied from the Flanders – Netherlands Programme, the three Euroregions from the EUREGIO – Euregio Rhine-Waal – euregio rhine-meuse-north Programme or even the Euroregion Pomerania, which plays an important role in the Mecklenburg –

Vorpommern/Brandenburg – Western Pomerania Programme. The involvement of the cooperation structures concerned can even sometimes go as far as sharing responsibility with the MA regarding recovery of sums unduly paid, as is the case in the Flanders – Netherlands Programme.

Statistically, we can sum up the nature of the missions accomplished by cross-border cooperation structures of this second category in the following manner:



Category No 2: types of missions fulfilled by the 26 cross-border structures involved in certain specific functions (outside MA, PA and JTS) linked to the implementation of INTERREG IIIA programmes

We notice, from reading this graph that when specific missions (outside the MA, PA and JTS) are conferred on cross-border cooperation structures, all programmes **systematically entrust them guidance missions**. This appears logical given the strong local and cross-border involvement of these structures, which often already existed before the appearance of the INTERREG programme and thus benefit from more longstanding experience and knowledge of cross-border cooperation in the territory concerned, which in return is beneficial for the programme.

In two thirds of the cases, the cooperation structures **will also participate in project assessment**. They therefore often have an opinion to give to the Steering Committee of the programme, either for projects dealing with specific themes that affect them, or for projects spreading across the geographical area covered by their statutes (as is the case, for example of the 'Archipelago Cooperation' structure in the Skargarden Programme or the Euroregion Nestos Mesta in the Greece – Bulgaria Programme).

In 42% of the programmes, these cooperation structures even **participate in the decision-making process of INTERREG projects**. This is particularly the case where the cooperation structures are in charge of managing a Small Projects Fund, for which they take part in the deci-

sion to adopt micro-projects. In some cases they are also invited to participate, with a deliberative voice and as a legal entity, in the Steering Committees (SC) at sub-programme or even at programme level. In this category we find the Euroregions of programmes situated on the borders between Germany, Belgium and the Netherlands, and also those in the Saxony – Poland and Saxony – Czech Republic Programmes for example, or also the Euroregion Pomerania in the Mecklenburg-Vorpommern/Brandenburg – Western Pomerania Programme.

Logically, when they are tasked with assessment of the projects, decision-making and monitoring mission for projects, the cooperation structures **can also be asked to participate in the first level control** (35% of cases). This is again the case for certain Euroregions tasked with management of a Small Projects Fund, and also the Euroregions tasked with management of a sub-programme (cf. examples of programmes already cited). It is however worth underlining that first level control here generally consists in a pre-verification of expenditure carried out, the formal validation of the control on work rendered falling to the MA.

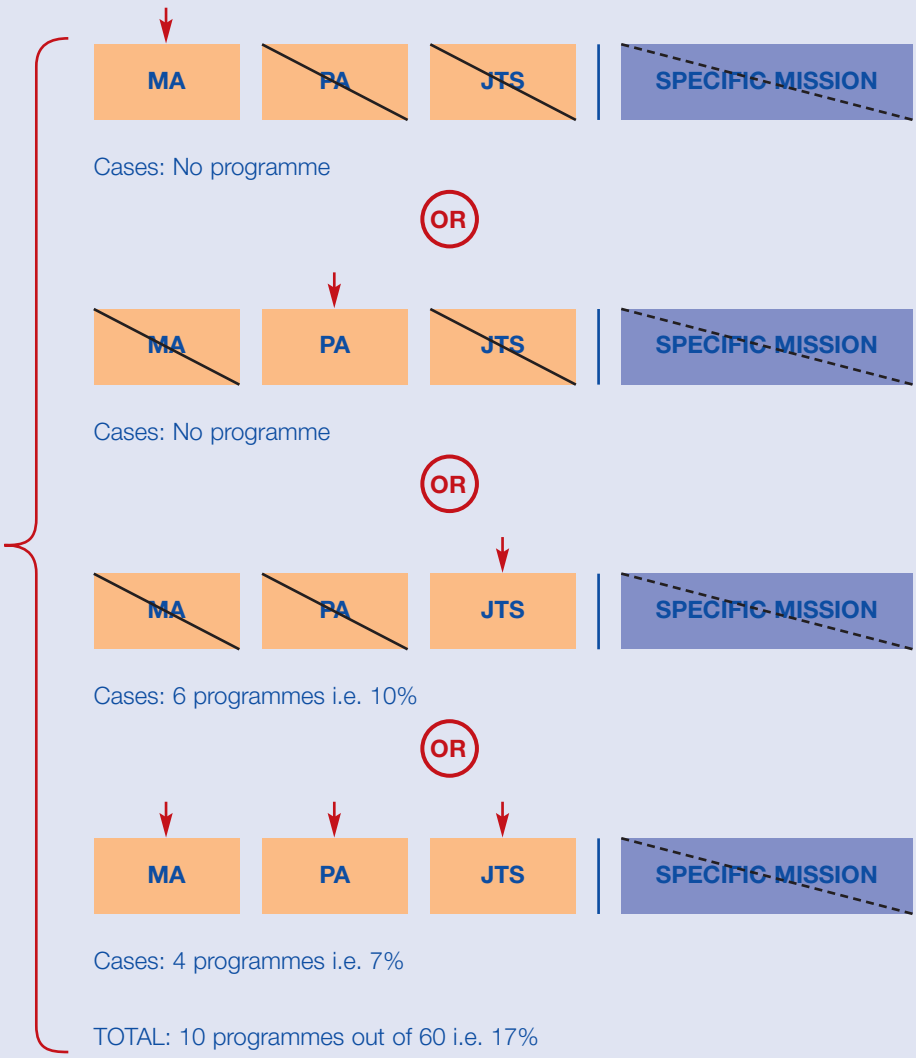
On the other hand, no effective participation of the cross-border cooperation structures in the second level controls is found in this second category of programmes.

• Category No 3: participation as MA, PA and/or JTS

In 17% of the programmes studied, a cross-border cooperation structure carries out at least one of the three main management functions of a programme (MA, PA and/or JTS), according to the following scenarios:

Category No 3:

An already existing cooperation structure, or one created specifically for this end, gets involved in the programme as MA, PA or JTS or jointly takes on the three missions. Note that in roughly half of the programmes affected by this scenario, one or more cooperation structures distinct from the first one get involved in other missions as Intermediate Bodies.



The different scenarios are quite clear: either the cross-border cooperation structure is in charge of all three missions (in 7% of cases: Saarland – Mosel (Lorraine) – Western Palatinate, PAMINA, Ireland – Northern Ireland and Euroregion Meuse-Rhine Programmes[58]), or it only performs the JTS mission (in 10% of cases: Kvarken – Mittskandia, Oresund Region, Ems Dollart Region, EUREGIO – Euregio Rhine-Waal – euregio rhine-meuse-north, etc.).

On the other hand, no programme chose to confer only the MA or PA function to such a structure.

The choice to confer the JTS to a cooperation structure is guided by several factors such as its good knowledge of the reality on the ground, its contacts with potential beneficiaries, already proven cooperation, teams experienced in structuring projects and monitoring policies in an intercultural and/or multilingual climate, possibility for better monitoring of selected projects, etc.

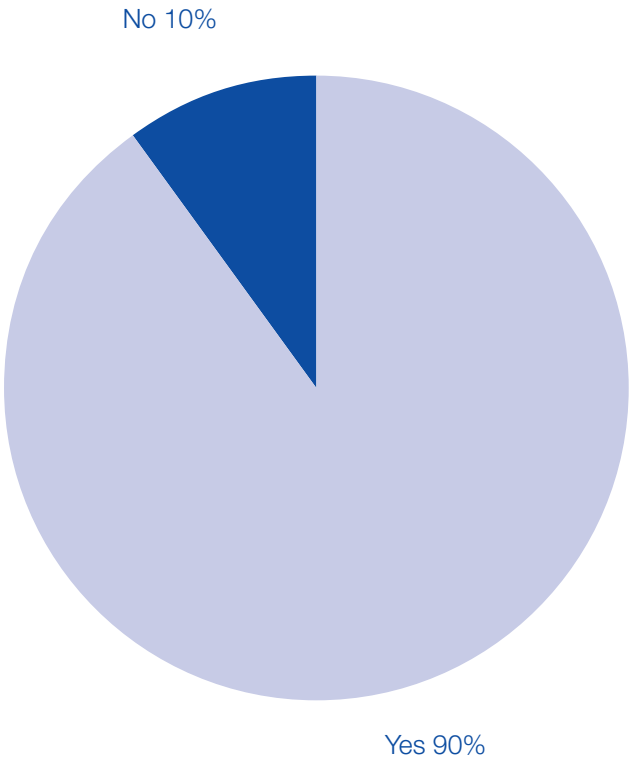
Moreover, it is interesting to underline that in two of the programmes that chose to confer the JTS function to a cross-border cooperation structure, the structure actually completes a large proportion of the missions that are traditionally within the remit of the MA, through delegation of missions. Consequently, in the Oresund Region Programme, the City Council of Copenhagen (*HUR*), MA of the programme, has delegated a large share of its missions to the Øresund Committee, JTS of the programme, in the context of a specific agreement. The situation is the same in the Ems Dollart Region Programme in which the Land Niedersachsen (Lower Saxony), MA of the programme, delegated through a convention a large share of its missions to the Ems Dollart Region[59] cross-border cooperation structure.

This involvement of cooperation structures in the management of programmes with, for example, the monitoring and control of selected projects or possibly the financial responsibility for their proper running, therefore involves the requirement, for the structures concerned, to have a sufficient degree of legal structuring and security, as was examined in the first part of the study[60].

H) Externalisation of certain functions outside the administrative bodies: recourse to Intermediate Bodies and external service providers

The administrative bodies of the programmes thus share the exercise of some of their missions with cross-border cooperation structures. However, they often call upon other Intermediate Bodies to intervene in the implementation of the programme.

[58] It is useful to specify that in the case of the Euregio Meuse-Rhine Programme, the Foundation of the same name (EMR) is MA and PA of the programme. This programme has not designated a specific structure as JTS: it is the regular meetings of the five 'regional project managers' from the five partner regions, together with the project manager of the EMR team that act as JTS. Nevertheless, for the clarity of the presentation, the EMR Foundation was considered to exercise the three main functions (MA, PA and JTS) in this programme.
[59] The Ems Dollart Region, despite its designation as 'Region', is actually a Euroregion-type structure involving partners from Germany and the Netherlands.
[60] Cf. point 1.1.3 of the study.



Externalisation of certain functions outside the administrative bodies (MA, PA or JTS) of the programme

Total number of programmes studied: 62

Consequently, in 9 cases out of 10, the INTERREG programmes confer some missions to structures outside the MA, PA and JTS, which reveals a rather high level of externalisation.

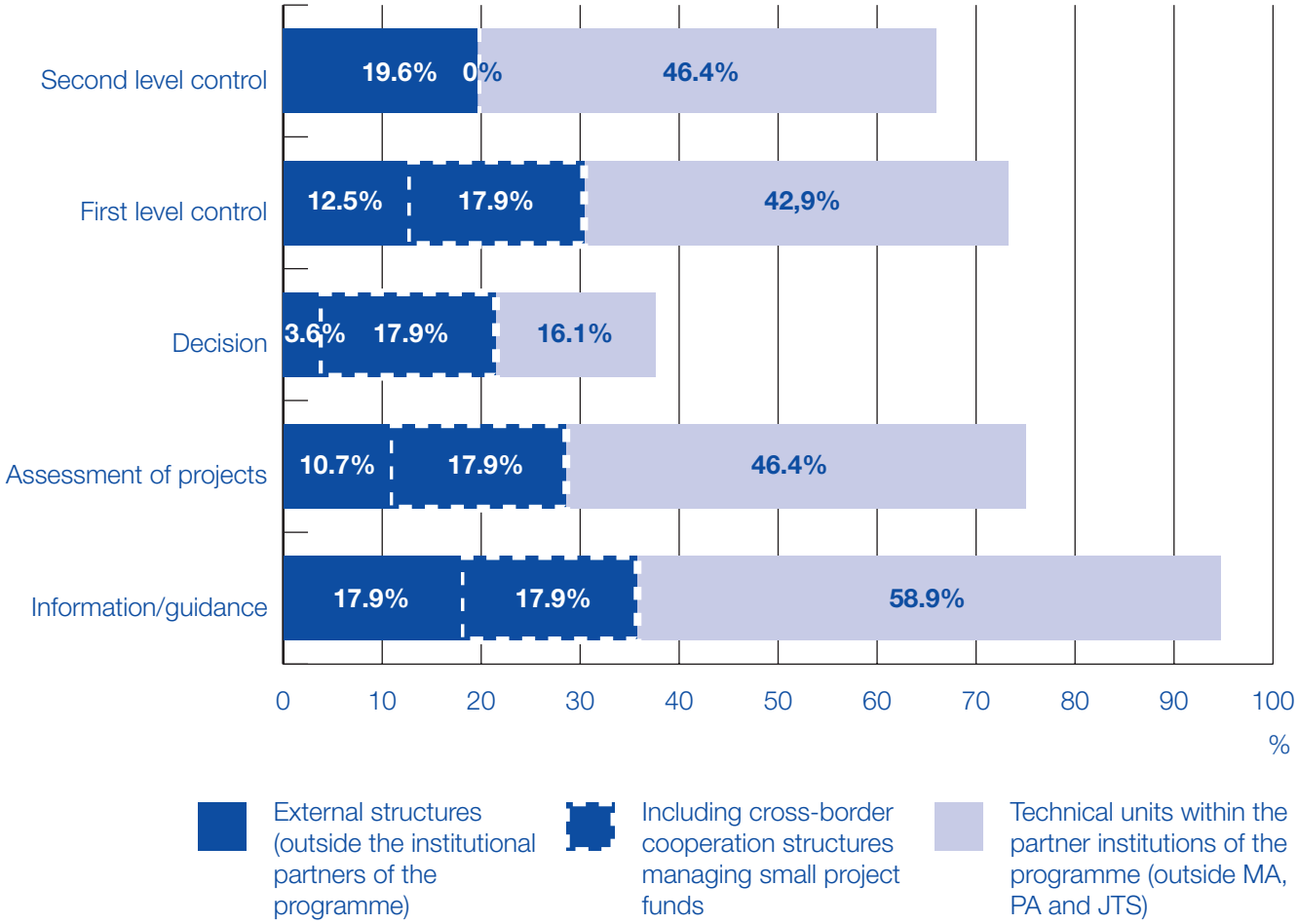
A priori, this large proportion can appear surprising, given the wording of the Community regulations that seek a concentration of missions and a clear definition of the responsibilities with the programmes implementing Structural Funds.

This situation can be easily explained, however, by the cross-border particularity of INTERREG programmes. In effect, the juxtaposition of different and sometimes heterogeneous public finance rules of the different partner States of the programmes often prevents the administrative bodies of the programmes from carrying out directly a certain part of their functions on the whole of the territory of the programme (in particular in the area of financial management and control).

But also, the importance of the notion of partnership implementation and of proximity to the project promoters is even greater in INTERREG programmes, because of their cross-border character, which leads to a greater sharing of tasks and greater involvement of the actors in different partner States in the implementation of the programme (at the level of guidance, project assessment, decision-making and monitoring of projects in particular).

Furthermore, it is important to underline once again at this stage that even in cases of delegation of missions to Intermediate Bodies, the final responsibility for the proper exercise of the missions concerned remains in the hands of the three administrative bodies (the MA, PA and JTS) vis-à-vis the Commission and the Member States.

The graph below illustrates more precisely the nature of the missions externalised in INTERREG IIIA programmes:



Among the 56 programmes that have chosen to externalise certain functions to bodies outside MA, PA or JTS, which functions have been externalised?

Total number of programmes studied: 56

Reading this graph, the following interesting points can be noted:

– In conjunction with what has just been presented, **in more than 70% of the programmes that externalise certain missions, the MA shares the exercise of first level control with other bodies**: in 42.9% of cases, it delegates a share of this mission to technical units installed within other programme partner institutions (thus, for example, the *Land Baden-Württemberg* takes part in first level and second level ('5% control') controls on behalf of the *Région Alsace*, French MA of the Upper Rhine Centre-South Programme); however in more than 30% of cases, the MA also delegates a share of this mission to a structure external to the programme institutional partners; this last scenario covers not only delegation of the control procedures for the Small Projects Fund (18%), but also in the case of externalisation of all or part of the first level controls concerning all projects to external structures like private auditors, for example (12.5% of cases), which can be a surprise to programmes with a strong tradition of control by public bodies. Consequently, for example, the German-Danish programmes Sonderjylland – Schleswig and Storstrom – Ostholstein-Lubeck chose to externalise a share of the first level controls to private independent auditors.

– The same remark is also valid for **second level controls, where implementation is shared**, via the establishment of groups of auditors, in nearly 65% of the programmes studied, with, at this level

of control an even greater share of delegation of this function to independent (and often private) external auditors (nearly 20% of programmes covered, like the German-Danish Programmes cited above, and also the France – Spain Programme, in which the MA partially call upon private control firms to implement the second level control, or also the Euregio Meuse-Rhine Programme, which also confers first and second level controls and the final certification to private auditors).

– Another function that is often delegated is **assessment of projects** (in nearly 75% of cases); this scenario is explained by the fact that many programmes chose not to endow the MA, responsible for assessment of projects, with specialists in all possible themes covered by the projects supported, but rather with generalists in cross-border cooperation and project structuring; in many programmes, the JTS participates in the assessment of projects regarding their conformity with European/INTERREG eligibility criteria; but, as the graph above shows, in numerous cases, the MA also calls upon teams of instructors mobilised by the institutional partners to study the content of submitted projects (46.4% of cases) or to external structures in charge of specific themes. These are most often cross-border cooperation structures, responsible either with assessment of micro-projects in the context of the Small Projects Funds, or to give an opinion on projects falling within the sub-programme corresponding to their intervention territory, perhaps even to a whole programme (cf. point G above). It is also interesting to note that the Intermediate Bodies upon which they call during the guidance phase are also often mobilised thereafter, **to participate in support to project owners** after project approval; an interesting example of this is that of the France-Wallonia-Flanders Programme in which the technical teams mobilised with each of the regional partner regions take part in the assessment of projects but also assist the project owners in structuring and monitoring their activities, in the framework of cross-border accompanying committees specifically created for this (cf. detail in Part 3 of this study).

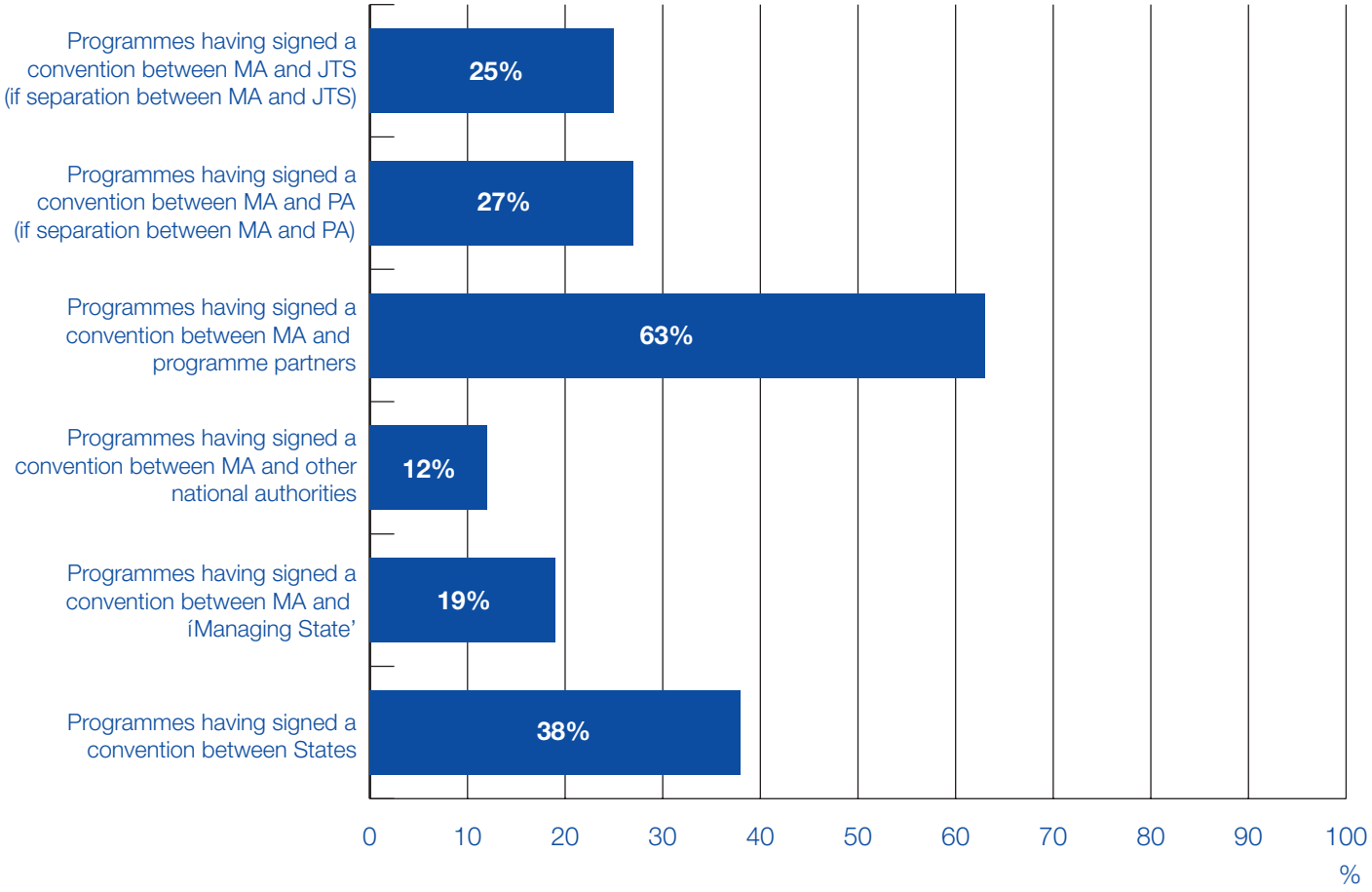
– Finally, the domains in which the MAs of INTERREG programmes most often delegate are **guidance, information and assistance in project development** (95% of programmes go for externalisation); this strong externalisation does not signify that the MA and JTS are no longer preoccupied by these missions, but they are seconded by other programme partners (in nearly 60% of cases), or by external structures (35%), including cross-border cooperation structures present on the territory but not acting as MA, PA or JTS, or sometimes private firms.

Delegation of missions to Intermediate Bodies, whatever they may be, happens quite frequently in INTERREG IIIA programmes. However, as final responsibility for efficient and conform implementation of the programmes still falls to the programme's administrative bodies, in particular the MA, it is important, as was seen in the first part of this study, that these same administrative bodies are covered by all the legal guarantees required for a secure implementation of the programme, especially through a written convention with these Intermediate Bodies.

The legal methods for sharing these missions and the responsibilities of the different programme partners are, here too, variable from one programme to another and depend on the level of delegation and sharing of missions within the programme.

I) Legal methods for sharing missions and responsibilities: the different types of conventions within the framework of INTERREG programmes

The analysis of the INTERREG IIIA programmes for which specific information regarding the legal bases of the programme were available has allowed the following graph to be drawn up, which shows that the MA and also the other partners or structures concerned by the proper running of the programme have gone through a whole series of conventions:



Types of convention between partners of the INTERREG IIIA programmes

Total number of programmes studied: 52

Analysis of this graph allows us to highlight the following facts:

– A large majority of MAs for which we have been able to identify the signing of conventions have contracted their missions and responsibilities with other institutional partners to the programme through **specific protocol agreements concerning the general implementation of the programme** (63% of cases); these documents are the central reference point of programme partners and bodies regarding the implementing rules, in particular specifying the role of each actor involved; these documents are all the more important in the programmes that foresee a shared and decentralised implementation of the missions, like for example in the programmes involving Austria and its different neighbouring countries or in the programmes involving the Euroregions on the borders between Germany, Belgium and the Netherlands.

- In nearly 20% of the programmes, **the MAs have also signed an agreement with their State of origin**, which keeps, from a Community law perspective, the final responsibility for the intervention of Structural Funds on its territory ('managing State'); this scenario is obviously only seen in cases where the MA function is not ensured by a national or delegated State authority; consequently, we can find such a delegation agreement between the Danish State and its Counties (*Amt*) which are MAs of the programmes Fyn – K.E.R.N. or Sonderjylland – Schleswig, or also between the Dutch State and the Euregio Meuse-Rhine Foundation, MA of the programme of the same name, or between the Government of the Flemish Community and the Province of Antwerp, MA of the Flanders – Netherlands Programme. It is also interesting to highlight at this stage **the existence of another type of convention in certain programmes**,

which concerns delegation by a 'national MA' of the operational management of INTERREG programmes to the regional authorities concerned; this is a scenario to be found in particular in Austria, where the Federal Chancellery, MA of the Austrian programmes with new Member States (Slovenia, Hungary, Slovakia and Czech Republic), delegated a share of its missions to Austrian Länder.

– The MAs have also **concluded contracts with State administrations in the other partner States of the programme in 12% of cases** (in particular specific conventions on the methods of control or recovery of sums unduly paid); this scenario is essentially found in programmes involving an 'old' and a new Member State, in which the MA is ensured by a partner in the old Member State, with the parallel designation of a counterpart or 'National Authority' in the new Member State; for example, a cooperation agreement was signed between the *Land* of Saxony, on the one hand (German MA for the Saxony – Poland and Saxony – Czech Republic programmes), and the national authorities at ministerial level on the Czech and Polish sides, on the other hand.

– We can also list 25% of cases in which a **convention was signed between MA and PA**, this scenario obviously only occurs when these two bodies are institutionally separate (25% of all INTERREG programmes, cf. point E above); logically, with regard to the responsibilities at stake, all MAs and PAs concerned by this scenario should have signed this type of convention, all the more so when the two bodies are situated in two different countries (as is the case in the Alpenrhein-Hochrhein-Bodensee and Oresund Region Programmes for example, in which such conventions between the MA and PA have effectively been signed).

– Roughly 25% of MAs have signed **a convention for sharing missions with their JTS**, when the two bodies are institutionally separate; this scenario can be found in particular in programmes where the JTS mission was conferred by the institutional partners to a cross-border cooperation structure (thus, for example, a convention was signed between the *Land* of Lower Saxony, German MA of the Ems Dollart Region Programme, and the Ems Dollart Region, JTS of the same programme, or between the *HUR*, Danish MA of the Oresund Region Programme, and the Øresund Committee, JTS of the same programme).

– Finally, in 38% of programmes looked at, **the central State partners concerned signed an interstate convention** dealing with the organisation and sharing of responsibility within the context of the programme, without this same central level having necessarily been designated MA, PA or JTS of the programme; this scenario can be found, for example, in the Skargarden Programme, framed by a Protocol agreement between the Finnish and Swedish States and conferring the MA function to the Executive Council of the Finnish Aaland Region, or also between the French and Italian States regarding the Italy – France (ALCOTRA) Programme, conferring the MA and PA functions to the Italian Region of Piedmont.

2.2 Organisational positioning of the programmes

The different points tackled above show proof of a significant diversity in the organisation of partnership and legal structuring in INTERREG IIIA programmes.

In order to take account of this diversity in a summarised manner, we came up with a classification typology for the 64 INTERREG IIIA programmes, according to a whole series of criteria and using a weighting system for each criteria used. Determination of this typology is based on all the themes tackled above from a statistical point of view (nature of the three administrative bodies of the programme, degree of separation/concentration of the missions, participation of cross-border cooperation structures, externalisation and delegation of missions to Intermediate Bodies, signing of conventions) and the criteria used therefore cover the three administrative bodies (MA, PA and JTS) and all the missions that they have to complete.

The objective of this typology is to be able to compare the INTERREG IIIA programmes according to two main analysis and classification axes:

- The degree of **institutional concentration/separation** in the exercise of missions which were conferred on them by Community texts and by programme partners: are the administrative bodies of the programme and their missions carried out by the same partner (whether it is a cross-border structure or one from one of the partner countries at national or regional level) or, on the contrary, are they shared between several institutions? Consequently, the greater the number of partners and Intermediate Bodies involved in undertaking management missions in the programme, the more a programme will be considered 'de-concentrated' i.e. 'delegated'.

- The degree of **cross-border integration** of these same missions: Are the administrative bodies of the programme and their missions carried out within the framework of a joint cross-border structure, created specifically or not for the management of the programme or at least for certain missions (like guidance or assessment of projects, for example)? Consequently, the greater the number of missions carried out by such joint structures, the more the programme will be considered as 'integrated' from a cross-border point of view.

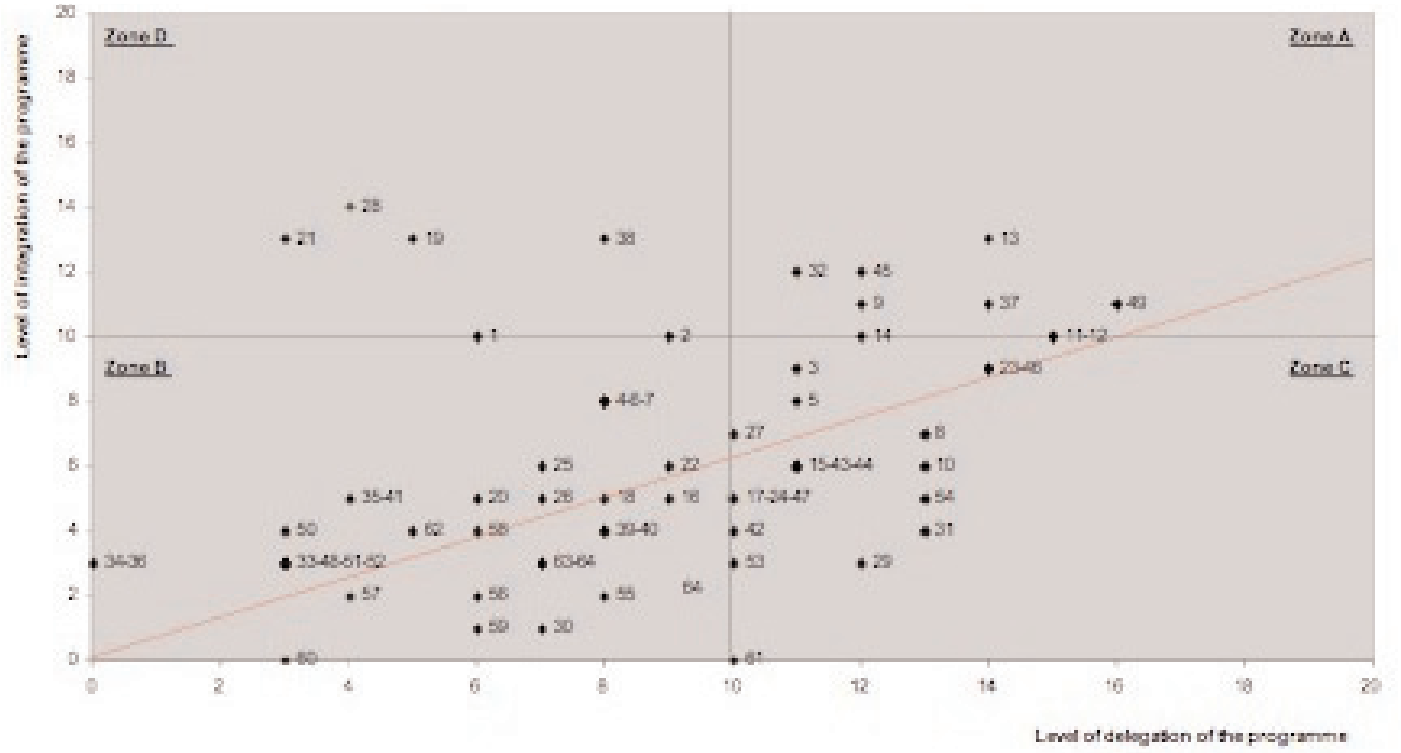
The interest of this typology in terms of **concentration** and **integration** is that it allows us to look into the types of organisation and distribution of tasks chosen by the programmes, and that it integrates at the same time legal criteria such as the legal status of partners taking on the responsibility for certain administrative bodies or the number and type of agreements signed in the context of the management of the programmes.

Nevertheless, as is the case for many typologies, this must be used with precaution. Consequently, the classification of the programmes according to the criteria and weighting used has no qualitative value and does not seek to define an ideal type of programme organisation and legal structuring[61].

Furthermore, and above all else, the classification of programmes does not allow us to judge the quality of cross-border cooperation in a given programme area as such. Consequently, one programme might have chosen a more concentrated implementation of missions than another, while at the same time guaranteeing more efficient management of the programme. The same remark holds for programmes that will be judged less integrated than others. Although in this last case, we estimate that the real cross-border management of a programme has a certain advantage.

Nevertheless, the use of this typology supports the clarity and efficacy of the analysis and allows for a summarised representation of all 64 INTERREG IIIA programmes in the **positioning matrix** below:

[61] A systematic qualitative analysis of the 64 INTERREG IIIA programmes was impossible in the framework of this survey. However, in Part 3 of the study related to a sample of 25 programmes, a more qualitative approach was adopted.



The level of delegation and integration of the 64 INTERREG IIIA programmes

Num.	Name	Deleg.	Integr.
1	Skargarden	6	10
2	Kvarken – Mittskandia	9	10
3	Austria – Germany/Bavaria	11	9
4	Austria – Czech Republic	8	8
5	Austria – Slovenia	11	8
6	Austria – Hungary	8	8
7	Austria – Slovakia	8	8
8	Sweden – Norway	13	7
9	Ems Dollart Region	12	11
10	Alpenrhein-Bodensee-Hochrhein	13	6
11	Saxony – Lower Silesia	15	10
12	Saxony – Czech Republic	15	10
13	EUREGIO – Euregio Rhine-Waal – euregio rhine-meuse-north	14	13
14	Brandenburg – Lubuskie	12	10
15	Italy – Austria	11	6
16	Italy – France (ALCOTRA)	9	5
17	Italy – France (Islands)	10	5
18	Italy – Slovenia	8	5
19	Ireland – Northern Ireland	5	13

Num.	Name	Deleg.	Integr.
20	Ireland – Wales	6	5
21	PAMINA	3	13
22	Upper Rhine Centre-South	9	6
23	Bavaria – Czech Republic	14	9
24	Fyn – K.E.R.N.	10	5
25	Sonderjylland – Schleswig	7	6
26	Storstrom – Ostholstein-Lubeck	7	5
27	Germany – Luxembourg – German Speaking Community of Belgium/Walloon Region	10	7
28	Saarland – Mosel (Lorraine) – Western Palatinate	4	14
29	Spain – Portugal	12	3
30	Spain – Morocco	7	1
31	Italy – Switzerland	13	4
32	Oresund Region	11	12
33	Greece – Albania	3	3
34	Greece – Former Yugoslav Republic of Macedonia	0	3
35	Greece – Bulgaria	4	5
36	Greece – Cyprus	0	3
37	Mecklenburg-Vorpommern/Brandenburg – Western Pomerania	14	11
38	Euregio Meuse-Rhine	8	13
39	Euregio Karelia	8	4
40	South-East Finland – Russia	8	4
41	France – Switzerland	4	5
42	France – Spain	10	4
43	North	11	6
44	Southern Finland – Estonia	11	6
45	Flanders – Netherlands	12	12
46	Wallonia – Lorraine – Luxembourg	14	9
47	Franco-British Programme	10	5
48	Gibraltar – Morocco	3	3
49	France-Wallonia-Flanders	16	11
50	Italy – Albania	3	4
51	Greece – Italy	3	3
52	Greece – Turkey	3	3
53	Adriatic New Neighbourhood Programme (EC Decision C(2004)5554)	10	3
54	Czech Republic – Poland	13	5
55	Poland – Slovakia	8	2
56	Slovakia – Czech Republic	6	2
57	Poland – Belarus – Ukraine	4	2
58	Lithuania – Poland – Kaliningrad	6	4

Num.	Name	Deleg.	Integr.
59	**Hungary – Slovakia – Ukraine**	6	1
60	**Hungary – Romania – Serbia and Montenegro (EC Decision C(2004)4155)**	3	0
61	**Slovenia – Hungary – Croatia**	10	0
62	**Italy – Malta**	5	4
63	**Estonia – Latvia – Russia**	7	3
64	**Latvia – Lithuania – Belarus**	7	3

This positioning matrix illustrates well the heterogeneity of the positioning of the 64 INTERREG IIIA programmes according to the degree of delegation and integration in the exercise of missions conferred on them. Nevertheless, four relatively homogeneous zones emerge from this matrix:

- **Zone A:** The programme partners that are situated in this zone have the common characteristic of having set up a **large and open sharing of tasks** (strong delegation in the exercise of missions), while having an **integrated management of their programme at cross-border level**, which means that the programme partners did not choose a single cross-border structure to implement programme missions, but that the distribution of tasks within the programme involves the participation of diverse cross-border cooperation structures – the EUREGIO– Euregio Rhine-Waal – euregio rhine-meuse-north Programme (No 13 on the matrix) can be found here, for example.

- **Zone B:** Conversely, other programmes have **little delegation and integration** in the completion of missions; this is particularly the case for programmes in which the administrative bodies (MA, PA and JTS) are taken on by a single State authority situated on one side of the border, like in the Spain – Morocco or Greece – Cyprus Programmes (Numbers 30 and 36 on the matrix). It means that these programmes have chosen to confer the maximum number of missions to the same structure, often at national level, to guarantee the efficacy of the management.

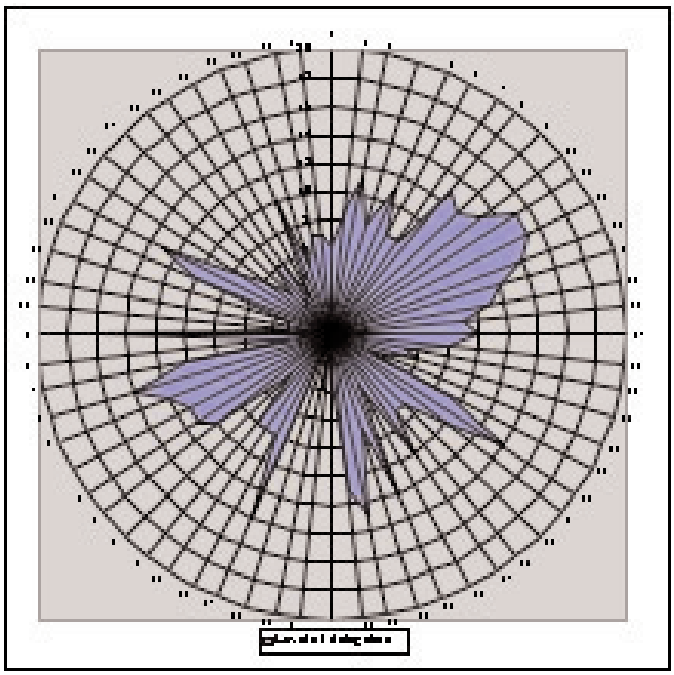
- **Zone C:** A first intermediary zone consists of programmes in which we can remark upon a high level of delegation in the exercise of missions, with a share of tasks bringing different actors, administrative bodies and other external institutional partners or structures, but conversely with a **weaker level of cross-border integration**; these are notably programmes in which the management is largely shared out between different institutional partners to the programme from each side of the border, but it does not involve the participation of one or more cross-border cooperation structures as such.

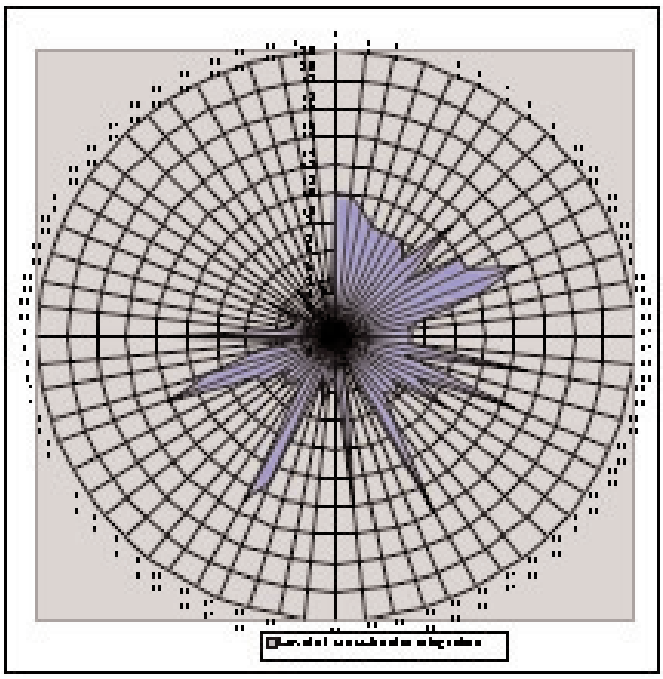
- **Zone D:** The second intermediary zone consists of programmes in which the programme missions are implemented in a manner that is both **integrated from a cross-border perspective, but also concentrated from the perspective of distribution of tasks**; in this category we can find, in particular, the programmes that have conferred the exercise of the three main management functions (MA, PA, JTS) to a single cross-border cooperation structure, which carries out most of its missions without delegating or externalising, like the Programmes PAMINA (No 21 on the matrix) or Euregio Meuse-Rhine (No 38 on the matrix).

Finally, the red line in the middle of the positioning matrix represents the median of the programmes. We can remark from a central point of view that many programmes are quite homogeneous and balanced, with an average degree of cross-border delegation and integration in the exercise of their missions and management, an example of which could be the Oresund Region Programme (No 32 on the matrix).

Once again, it is important to recall that the positioning of a programme in these different zones has no judgmental value: Consequently **a programme that has a lower level of delegation and cross-border integration does not in any systematic way imply a lesser quality of cooperation or management**. On the other hand, this matrix allows each programme to place itself in relation to the others as regards its degree of delegation and cross-border integration.

For the details of the positioning of each programme according to their degree of delegation and cross-border integration, we can refer to the following two diagrams:





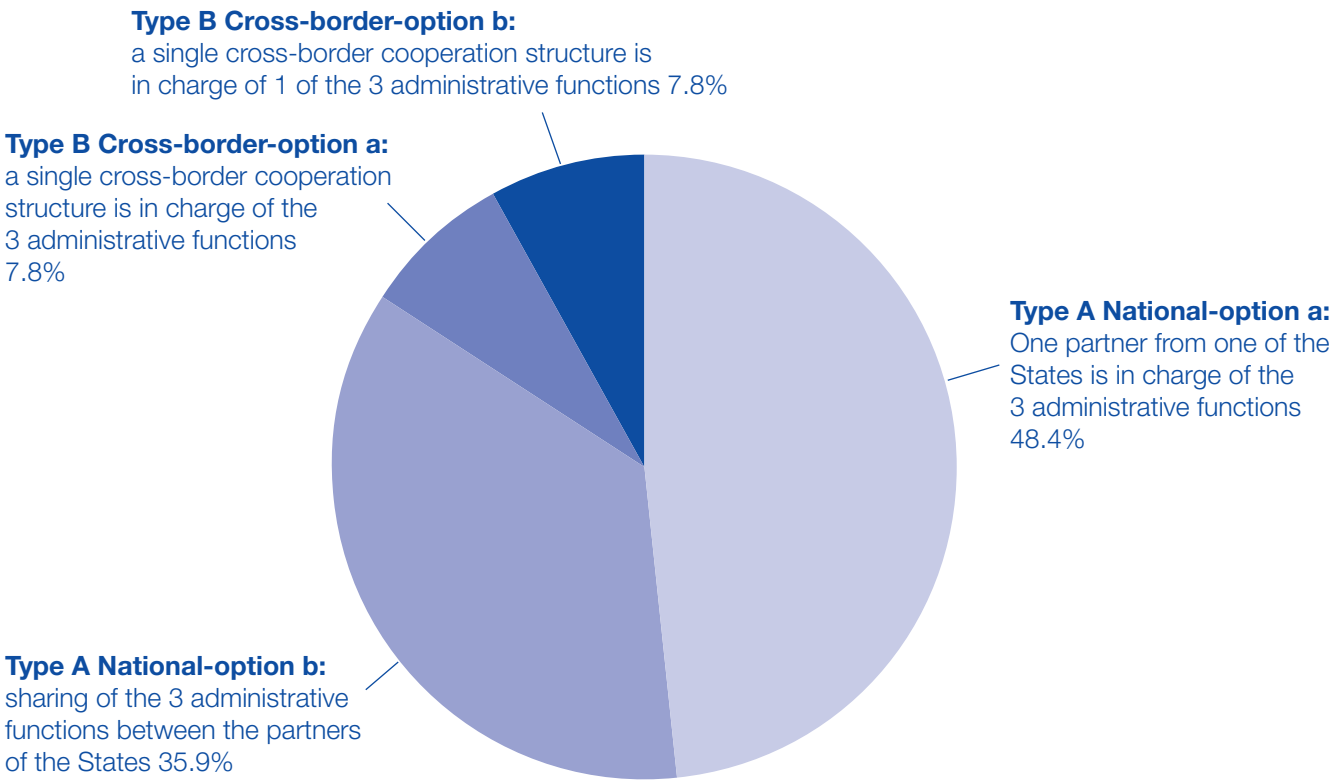
2.3 Conclusion

The different developments in the comparative analysis of the 64 INTERREG IIIA programmes allowed, through different viewpoints, to highlight the great diversity in the organisation of the legal structuring of the programmes although, as was explained in the first part of the study, there is a single Community regulation framework outlining the implementation of programmes. It shows, on the one hand the relative flexibility of the Community regulations and on the other hand, the specificity of each cross-border area.

Each INTERREG programme takes place in effect in a larger context, marked not only by the length of the past cooperation and the degree of structuring of the cross-border cooperation as a whole on the given territory, but also by the geographic, demographic and socio-economic characteristics specific to each territory, as well as by the differences in legal, political and administrative systems of the States and partner regions. Consequently, application by the programme partners of the single Community regulation framework will necessarily be influenced by this specific context and will give rise to variable organisation methods.

But, the analysis of these programmes has also shown that some large tendencies or typologies emerge in the organisation methods of the programmes, depending on, at times, similar contexts in different programmes. These tendencies allow in particular **classification of the programmes according to a type of programme management that is more national, regional or cross-border**, each type involving different practices that are interesting to compare.

The diagram below summarises the different categorisations proposed in this section, by re-employing the criteria for levels of delegation and sharing out of missions on one hand, and the level of cross-border integration of the management of the programmes on the other hand, at the level of the exercise of the three administrative functions of the programmes (MA, PA and JTS):



Classification of INTERREG IIIA programmes

Total number of programmes studied: 64

In total, we can thus group the 64 INTERREG programmes into four categories:

- **Type Aa – National – Concentrated:** Nearly half of INTERREG IIIA programmes (48.4%) are based on a system in which one of the partners from one of the States, whether public or private and centralised or de-centralised in nature, is in charge of the three administrative functions (MA, PA and JTS);

- **Type Ab – National – Not concentrated:** In a little over a third of the programmes (35.9%), the administrative functions are shared between several partners or territorial rungs but within the same single partner State of the programme;

- **Type Ba – Cross-border – Concentrated:** A little less than 8% of programmes chose to confer responsibility for the three administrative functions of the programme to the same single cross-border cooperation structure;

- **Type Bb – Cross-border – Not concentrated:** A little less than 8% of programmes also decided to confer the exercise of at least one of the three main functions of the programme (MA, PA or JTS) to a cross-border cooperation structure, the other functions being carried out by one or more national or regional structures.

In the following part of this study, the advantages and drawbacks of these different types of management of the programmes will be presented in greater detail in the context of an analysis of the functioning methods of a representative sample group of 25 programmes, which should allow for recommendations to future managers of programmes to be proposed in order to optimise their organisation and management choices.