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N° 5

European Outline Convention on Transfrontier
Co-operation between Territorial Communities or
Authorities

Done at Madrid on 21 May 1980

Signed on behalf of Ireland on 21 May 1980

Ireland's Instrument of Ratification deposited with the
Secretary General of the Council of Europe
on 3 November 1982

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on 4 February 1983

Presented to Dáil Éireann by the Minister for Foreign Affairs

EUROPEAN OUTLINE CONVENTION ON TRANSFRONTIER CO-OPERATION BETWEEN TERRITORIAL COMMUNITIES OR AUTHORITIES

Preamble

The member States of the Council of Europe, signatories to this Convention,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members and to promote co-operation between them;

Considering that, as defined in Article 1 of the Council of Europe Statute, this aim will be pursued in particular by agreements in the administrative field;

Considering that the Council of Europe shall ensure the participation of the territorial communities or authorities of Europe in the achievement of its aim;

Considering the potential importance, for the pursuit of this objective, of co-operation between territorial communities or authorities at frontiers in such fields as regional, urban and rural development, environmental protection, the improvement of public facilities and services and mutual assistance in emergencies;

Having regard to past experience which shows that co-operation between local and regional authorities in Europe makes it easier for them to carry out their tasks effectively and contributes in particular to the improvement and development of frontier regions;

Being resolved to promote such co-operation as far as possible and to contribute in this way to the economic and social progress of frontier regions and to the spirit of fellowship which unites the peoples of Europe,

HAVE AGREED as follows:

Article 1

Each Contracting Party undertakes to facilitate and foster transfrontier co-operation between territorial communities or authorities within its jurisdiction and territorial communities or authorities within the jurisdiction of other Contracting Parties. It shall endeavour to promote the conclusion of any agreements and arrangements that may prove necessary for this purpose with due regard to the different constitutional provisions of each Party.

Article 2

1. For the purpose of this Convention, transfrontier co-operation shall mean 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. Transfrontier co-operation shall take place in the framework of territorial communities' or authorities' powers as defined in domestic law. The scope and nature of such powers shall not be altered by this Convention.

2. For the purpose of this Convention, the expression "territorial communities or authorities" shall mean communities, authorities or bodies exercising local and regional functions and regarded as such under the domestic law of each State. However, each Contracting Party may, at the time of signing this Convention or by subsequent notification to the Secretary General of the Council of Europe, name the communities, authorities or bodies, subjects and forms to which it intends to confine the scope of the Convention or which it intends to exclude from its scope.

Article 3

1. For the purpose of this Convention the Contracting Parties shall, subject to the provisions of Article 2, paragraph 2, encourage any initiative by territorial communities and authorities inspired by the outline arrangements between territorial communities and authorities drawn up in the Council of Europe. If they judge necessary they may take into consideration the bilateral or multilateral inter-state model agreements drawn up in the Council of Europe and designed to facilitate co-operation between territorial communities and authorities.

2. The arrangements and agreements concluded may be based on the model and outline agreements, statutes and contracts appended to this Convention, numbered 1.1 to 1.5 and 2.1 to 2.6 with whatever changes are required by the particular situation of each Contracting Party. These model and outline agreements, statutes and contracts are intended for guidance only and have no treaty value.

3. If the Contracting Parties deem it necessary to conclude inter-state agreements, these may inter alia establish the context, forms and limits within which territorial communities and authorities concerned with transfrontier co-operation may act. Each agreement may also stipulate the authorities or bodies to which it applies.

4. The above provisions shall not prevent the Contracting Parties from having recourse, by common consent, to other forms of transfrontier co-operation. Similarly, the provisions of this Convention should not be interpreted as invalidating existing agreements on co-operation.

Agreements and arrangements shall be concluded with due regard to the jurisdiction provided for by the internal law of each Contracting Party in respect of international relations and general policy and to any rules of control or supervision to which territorial communities or authorities may be subject.

5. To that end, any Contracting Party may, when signing the present Convention or in a later communication to the Secretary General of the Council of Europe, specify the authorities competent under its domestic law to exercise control or supervision with regard to the territorial communities and authorities concerned.

Article 4

Each Contracting Party shall endeavour to resolve any legal, administrative or technical difficulties liable to hamper the development and smooth running of transfrontier co-operation and shall consult with the other Contracting Party or Parties concerned to the extent required.

Article 5

The Contracting Parties shall consider the advisability of granting to territorial communities or authorities engaging in transfrontier co-operation in accordance with the provisions of this Convention the same facilities as if they were co-operating at national level.

Article 6

Each Contracting Party shall supply to the fullest possible extent any information requested by another Contracting Party in order to facilitate the performance by the latter of its obligations under this Convention.

Article 7

Each Contracting Party shall see to it that the territorial communities or authorities concerned are informed of the means of action open to them under this Convention.

Article 8

1. The Contracting Parties shall forward to the Secretary General of the Council of Europe all relevant information concerning the agreements and arrangements provided for in Article 3.

2. Any proposal made by one or more Contracting Parties with a view to adding to or extending this Convention or the model agreements and arrangements shall be communicated to the Secretary General of the

Council of Europe. The Secretary General shall then submit it to the Committee of Ministers of the Council of Europe which shall decide on the action to be taken.

Article 9

1. This Convention shall be open to signature by the member States of the Council of Europe. It shall be subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.
2. The Convention shall enter into force three months after the date of the deposit of the fourth instrument of ratification, acceptance or approval, provided that at least two of the States having carried out this formality possess a common frontier.
3. In respect of a signatory State ratifying, accepting or approving subsequently, the Convention shall come into force three months after the date of the deposit of its instrument of ratification, acceptance or approval.

Article 10

1. After the entry into force of this Convention, the Committee of Ministers of the Council of Europe may decide unanimously to invite any European non-member State to accede thereto. This invitation must receive the express agreement of each of the States which have ratified the Convention.
2. Such accession shall be effected by depositing with the Secretary General of the Council of Europe an instrument of accession which shall take effect three months after the date of its deposit.

Article 11

1. Any Contracting Party may, in so far as it is concerned, denounce this Convention by means of notification addressed to the Secretary General of the Council of Europe.
2. Such denunciation shall take effect six months after the date of receipt by the Secretary General of such notification.

Article 12

The Secretary General of the Council of Europe shall notify the member States of the Council of Europe, and any State that has acceded to this Convention of:

- a. any signature;

- b. any deposit of an instrument of ratification, acceptance, approval or accession;
- c. any date of entry into force of this Convention in accordance with Article 9 thereof;
- d. any declaration received in pursuance of the provisions of paragraph 2 of Article 2 or of paragraph 5 of Article 3;
- e. any notification received in pursuance of the provisions of Article 11 and the date on which denunciation takes effect.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto, have signed this Convention.

DONE at Madrid, the 21st day of May 1980 in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe and to any State invited to accede to this Convention.

APPENDIX*

Model and Outline Agreements, Statutes and Contracts on Transfrontier Co-operation between Territorial Communities or Authorities

This graduated system of model agreements was devised by distinguishing between two main categories defined according to the level at which the agreement is concluded:

- **model inter-state agreements** on transfrontier co-operation at local and regional level;
- **outline agreements, contracts and statutes** capable of providing a basis for transfrontier co-operation between territorial authorities or communities.

As shown in the table hereafter, only the two model inter-state agreements for the promotion of transfrontier co-operation and regional transfrontier liaison fall exclusively within the jurisdiction of States. The other inter-state agreements merely establish a legal framework for the conclusion of agreements or contracts between territorial authorities or communities, the outlines of which have been placed in the second category.

1. Model inter-state agreements

General clauses for model agreements

- 1.1 Model inter-state agreement for the promotion of transfrontier co-operation
- 1.2 Model inter-state agreement on regional transfrontier consultation
- 1.3 Model inter-state agreement on local transfrontier consultation
- 1.4 Model inter-state agreement on contractual transfrontier co-operation between local authorities
- 1.5 Model inter-state agreement on organs of transfrontier co-operation between local authorities

2. Outline agreements, statutes and contracts between local authorities

- 2.1 Outline agreement on the setting up of a consultation group between local authorities
- 2.2 Outline agreement on co-ordination in the management of transfrontier local public affairs
- 2.3 Outline agreement on the setting up of private law transfrontier associations
- 2.4 Outline contract for the provision of supplies or services between local authorities in frontier areas (private-law type)
- 2.5 Outline contract for the provision of supplies or services between local authorities in frontier areas (public-law type)
- 2.6 Outline agreement on the setting up of organs of transfrontier co-operation between local authorities

*As stated in Article 3, first paragraph, second sub-paragraph, of the Convention, the model and outline agreements, statutes and contracts are intended for guidance only and have no treaty value.

1. Model inter-state agreements

Introductory note: The system of inter-state agreements aims above all to define precisely the context, forms and limits which States favour for territorial authority action, and to eliminate legal uncertainties likely to create problems (definition of the applicable law, judicial authorities, possible avenues of appeal, etc).

Further, the conclusion of inter-state agreements between the States concerned promoting transfrontier co-operation between local authorities would undoubtedly be advantageous in the following respects:

- official recognition of the legitimacy of such co-operation procedures and encouragement for local authorities to use them;
- purpose and conditions of intervention by supervisory or controlling authorities;
- exchange of information between States;
- links which may be established between such forms of co-operation and other procedures for concerted action in frontier areas;
- amendment of legal rules or interpretations thereof which hinder transfrontier co-operation etc.

The system of multiple choice model agreements enables governments to place frontier co-operation within whatever context is best suited to their needs by using the inter-state agreement for the promotion of transfrontier co-operation (1.1) as a foundation and supplementing it with any of the various options (model agreements 1.2 to 1.5). States could have recourse either to one option only or to more or even all of them, and they could do so either simultaneously or in stages. In the case of agreements between States which already have similar legal systems, such as the Scandinavian states, recourse to agreements of such a specific kind might prove unnecessary.

General clauses for model agreements 1.1 to 1.5

Article a

1. For the purposes of this agreement “local authorities” shall mean authorities, communities, or bodies exercising local functions under the domestic law of each State.

2. For the purposes of this agreement “regional authorities” shall mean authorities, communities or bodies exercising regional functions under the domestic law of each State.¹

Article b

This agreement shall not prejudice various existing forms of transfrontier co-operation between the States parties, particularly those based on an international agreement.

Article c

The Parties shall inform regional and local authorities of the scope for action afforded to them and shall help them to avail themselves thereof.

Article d

“Higher authorities” shall in the present agreement mean such authorities as shall be designated by each Party.

Article e

The extent and nature of local authorities' power as defined in the domestic law of the States parties shall in no way be modified by this agreement.

Article f

Each State may at any time specify the areas of its territory, the objectives and forms of co-operation which are excluded from the application of this agreement.

Such a specification shall not, however, prejudice rights acquired in the context of existing co-operation.

Article g

The Parties shall keep the Secretary General of the Council of Europe informed of the activities of the commissions, committees and other bodies entrusted with a task under this agreement.

Article h

The Parties may make minor changes to this agreement in the light of experience, by simple exchange of notes.

¹ Paragraph 2 will not be included in draft agreements 1.3, 1.4 and 1.5.

Article i

1. Each Party shall notify the other of the completion of the procedures required under its domestic law for the implementation of this agreement, which shall take effect as from the date of the last notification.
2. This agreement is concluded for a period of five years from its entry into force. Unless six months' notice of termination be given prior to its expiry, it shall be tacitly renewed on the same terms for successive further periods of five years.
3. The Party giving notice of termination may signify that it applies only to specified articles, geographical regions or fields of activity. In such a case, the agreement shall remain in force for the remainder, unless terminated by the other Party or Parties within four months of receiving notice of partial termination.
4. The Parties may at any time suspend application of the present agreement for a specific period. They may similarly agree that the activity of a particular committee be suspended or discontinued.

1.1 Model inter-state agreement for the promotion of transfrontier co-operation

Introductory note: This is a model inter-state agreement containing general basic provisions which could be concluded either on its own or in conjunction with one or more of the model inter-state agreements appearing below.

The governments of

and

aware of the advantages of transfrontier co-operation as defined in the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities, have agreed as follows:

Article 1

The Parties shall undertake to seek and promote means for transfrontier co-operation at regional and local level.

By transfrontier co-operation they understand all concerted administrative, technical, economic, social or cultural measures to consolidate and enhance neighbourly co-operation between the areas situated on either side of the frontier, and the conclusion of appropriate

agreements for the purpose of resolving such problems as may arise in this field.

These measures should seek, *inter alia*, to improve the conditions for regional and urban development, the protection of natural resources, mutual aid in case of a disaster or calamity and the improvement of public services.

Article 2

The Parties shall endeavour, through mutual consultation, to secure to the regional authorities within their jurisdiction the resources needed to permit them to establish co-operation.

Article 3

They also undertake to encourage local authority action aimed at establishing and developing transfrontier co-operation.

Article 4

Local and regional authorities engaging in transfrontier co-operation in accordance with this agreement shall be entitled to the same facilities and protection as if they were co-operating at national level.

The competent authorities of each Party shall see to it that budget provision is made for the appropriations needed to cover the running expenditure of the bodies responsible for promoting the transfrontier co-operation covered by this agreement.

Article 5

Each Party shall instruct such body, commission or institution as it shall designate to study current national legislation and regulations with a view to suggesting changes in any provisions liable to hinder the development of local transfrontier co-operation. Such bodies shall give particular consideration to improving fiscal and customs regulations, foreign exchange and capital transfer rules and procedures governing intervention by higher authorities, particularly as regards supervision or control.

Before taking the steps referred to in the above sub-paragraph, the Parties shall consult with each other as necessary and exchange any relevant information.

Article 6

The Parties shall endeavour, by arbitration or other means, to resolve matters in dispute of local importance whose prior settlement would be necessary for the success of transfrontier co-operation projects.

1.2 Model inter-state agreement on transfrontier regional consultation

Introductory note: This agreement may be concluded either individually or in conjunction with one or more of the model inter-state agreements (Texts 1.1 to 1.5) .

Article 1

In order to promote transfrontier consultation between the regions defined in the appendix to this text, the Parties shall establish a joint commission (hereinafter referred to as “the Commission”), and if necessary one or more regional committees (hereinafter referred to as “Committees”) to deal with matters relating to transfrontier consultation.

Article 2

1. The Commission and Committees comprise delegations whose members are chosen by each of the Parties.
2. Delegations to the Commission shall comprise not more than 8 members, of whom at least 3 shall represent the regional authorities. The chairman of delegations to the Committees, or their representatives, shall take part, in an advisory capacity, in the proceedings of the Commission.²
3. The Committees shall be composed of ... delegations, each comprising ... members, and shall be formed at the instigation of the Commission in agreement with the regional and local authorities of the frontier areas covered by this agreement. Delegations to the Committees shall be composed of representatives of those authorities or of regional or local bodies. One delegate shall be appointed by the central authorities. He shall, where appropriate, be chosen from among the bodies representing the central authorities in the frontier areas for which the Committees are responsible.

² The figures given for the number of members of the Commission are intended for guidance only and should be adapted to individual situations, as indeed should all the provisions in this model agreement. By giving figures the authors of the model agreements intended to highlight the need for efficient commissions with relatively few members. They also wanted to give an indication of the *ratio* to be maintained between representatives of central authorities on the one hand and of regional authorities on the other.

4. The Commission shall meet at least once per year. The Committees shall meet as required, but at least twice per year.

5. The Commission and the Committees shall draw up their own rules of procedure.

Article 3

Each Party shall defray the expenditure of its own delegation to the Commission.

The expenditure of delegations to the Committees shall be defrayed by the authorities forming such delegations.

Article 4

For purposes of co-ordination and continuity in the work of the Commission and the Committees, the Parties shall if need be establish a Secretariat whose composition, headquarters, manner of operation and financing shall be laid down in an ad hoc arrangement between them, as proposed by the Commission. Failing agreement between the Parties, the Commission itself may establish such a Secretariat.

Article 5

The frontier areas covered by this agreement shall be specified in an Annex thereto, the content of which may be amended simply by an exchange of notes.

Article 6

1. The matters dealt with under transfrontier consultations shall be those arising in the following fields³:

- urban and regional development;
- transport and communications (public transport, roads and motorways, joint airports, waterways, seaports, etc);
- energy (power stations, gas, electricity and water supplies);
- nature conservation (places requiring protection, recreation areas, natural parks, etc);
- water conservation (pollution control, treatment plants, etc);

³ This list is given merely for guidance and should be adapted to each co-operation project. It is not to be interpreted as modifying the powers vested in territorial authorities by domestic law. Both central and regional authorities are, after all, represented on the Commission.

- protection of the atmosphere (air pollution, noise abatement, noise-free zones, etc);
 - education, training and research;
 - public health (eg use of medical facilities in one of the areas by the inhabitants of another);
 - culture, leisure and sport (theatres, orchestras, sports centres, holiday homes and camps, youth centres, etc);
 - mutual assistance in disaster relief (fire, flood, epidemics, air crashes, earthquakes, mountain accidents, etc);
 - tourism (joint projects for the promotion of tourism);
 - problems relating to frontier workers (transport facilities, housing, social security, taxation, employment, unemployment, etc);
 - economic projects (new industry, etc.);
 - miscellaneous projects (refuse disposal plant, sewerage, etc);
 - improvement of the agrarian system;
 - social facilities.
2. The Parties may agree to amend this list by simply exchanging notes.

Article 7

1. Unless otherwise provided, the Commission shall be responsible for dealing with general matters and matters of principle, such as drawing up programmes for the Committees, co-ordination and contact with the central administrations concerned and with joint Commissions established before the entry into force of this agreement.
2. The Commission shall in particular be responsible for referring to the respective governments, as appropriate, its own and the Committees' recommendations and any projects for the conclusion of international agreements.
3. The Commission may avail itself of the services of experts for the investigation of particular questions.

Article 8

1. The primary function of the Committees shall be to investigate problems arising in the fields specified in Article 6 and to make proposals and recommendations accordingly. Such problems may be referred to them by the Commission, by the Parties' central, regional or local authorities and by institutions, associations or other public or private bodies. They may also take up matters on their own initiative.

2. The Committees may, for the purpose of studying these matters, set up working parties. They may also avail themselves of the services of experts, and request legal opinions or technical reports. The Committees shall, through the fullest possible consultation, seek to obtain results in keeping with the interests of the population concerned.

Article 9

1. The Committees shall inform the Commission of matters referred to them and of the conclusions which they have reached.

2. Where their conclusions require decisions by the Commission or by the respective governments, the Committees shall make recommendations to the Commission.

Article 10

1. Both the Commission and the Committees shall be empowered to settle matters of common interest which are referred to them with the members' agreement, provided that their members hold powers in respect thereof according to the legislation of the Parties.

2. The Commission and the Committees shall exchange information on the decisions reached in this respect.

Article 11

1. The delegations to the Commission or the Committees shall exchange information on the action taken by the competent authorities on recommendations made or agreements drafted in accordance with Article 7.2 and Article 9.2.

2. The Commission and the Committees shall consider the action required on the measures taken by the competent authorities referred to in paragraph 1.

1.3 Model inter-state agreement on local transfrontier consultation

Introductory note: This agreement may be concluded either individually or in conjunction with one or more of the model inter-state agreements (Texts 1.1 to 1.5).

Article 1

With a view to ensuring a fuller exchange of information and developing consultation between local authorities on either side of frontiers, the Parties call on such authorities to make a joint study of problems of common interest through consultation committees.

Article 2

The rules of procedure of such committees shall be agreed by their members. Higher authorities shall be associated with their proceedings or kept informed of them.

The consultation committees shall be associated with the work of regional transfrontier consultation commissions on terms to be decided by the latter, should such commissions have been set up in the regions in question. Similarly, these commissions shall give their assistance to the work of the consultation committees.

They may also act as advisory bodies in connection with the implementation of special inter-state agreements concluded in the context of transfrontier co-operation.

Article 3

The function of the consultation committees shall be to organise exchanges of information and consultations on both sides as well as to study matters of common interest and determine common aims.

Their activities shall be governed by respect for the responsibilities of their members and no transfer of powers shall be involved.

The members of these committees may, however, within the framework of co-operation agreements, decide together what measures or restrictions are to guide their respective activities or what preliminary consultation procedures they wish to see followed.

Article 4 (alternative)

To assist these consultation committees in their work, the local authorities concerned may, within the limits of the powers conferred on them under

domestic law, form associations to provide a legal framework for their co-operation.

Such associations shall be set up under the civil law or commercial law applicable to associations in one of the States concerned. For the application of the legal system chosen, should the occasion arise, the conditions, formalities and particular authorisations concerning the nationality of members of the associations should be disregarded.

The information provided to the higher authorities, conforming to Article 2, will include all information on the activities of the associations mentioned in the present Article.

1.4 Model inter-state agreement on contractual transfrontier co-operation between local authorities

Introductory note: This agreement may be concluded either individually or in conjunction with one or more of the draft inter-state agreements (Texts 1.1 to 1.5).

Article 1

Transfrontier co-operation between local authorities shall be conducted inter alia by means of administrative, economic or technical contracts.

Article 2

Transfrontier co-operation contracts shall be concluded by local authorities within the limits of their powers under domestic law.

They shall inter alia relate to the provision of supplies or services, the taking of joint action, the creation of associations established on the basis of civil or commercial law of one of the States parties or the membership of such an association.⁴

Article 3

The Parties to such a contract shall specify the law applicable thereto by reference to the law of contracts (both public and private) of one of the States parties to this agreement.

They shall also specify, as far as is necessary, those derogations that may be made from such provisions of that law as are not binding.

⁴ The coherence of this agreement remains the same whether or not this paragraph is included.

Failing any relevant stipulation in the contract, the law applicable shall be that of the State of whichever local authority is responsible thereunder for providing the principal service, or failing this, the local authority with the most important financial involvement.

Under all circumstances the persons subject to the local authorities parties to the contract shall retain any right to take action against or seek remedy from the said authorities which they would have enjoyed with regard to the authorities if the latter had retained their duty to provide the said persons with the supplies or services in question. The local authorities against which such action is taken or from which remedies are sought shall be entitled to institute proceedings against those local authorities which have assumed responsibility for providing the supplies or services.

Article 4

Proposals for the conclusion or amendment of contracts shall be simultaneously subject in each State to the ordinary rules governing intervention by higher authorities. However, no approval shall be required from authorities parties to the contract. Any decision taken by a higher authority which may prevent the conclusion or application, or which may provoke the cancellation, of a transfrontier co-operation contract, should imply previous consultations with the corresponding higher authorities of the other States concerned.

Article 5

In the event of a dispute, the competent judicial authority shall be determined by the applicable law. However, transfrontier co-operation contracts may include arbitration clauses. Notwithstanding any such clauses users and third parties shall retain any existing legal remedies against the local authorities of the State to which they belong, it lying with those authorities to seek redress against the defaulting co-contractor.

Higher authorities shall take all measures in their power to secure prompt execution of judicial decisions, whatever the nationality of the court from which they emanated.

Article 6

Contracts concluded under this agreement shall remain in effect after its denunciation. However, the contracts will include a clause authorising the parties to terminate such contracts, subject to five years' notice, in the event of the denunciation of the present agreement. The States parties will have the power to bring about the application of this clause.

1.5 Model inter-state agreement on organs of transfrontier co-operation between local authorities

Introductory note: This agreement may be concluded either individually or in conjunction with one or more of the model inter-state agreements (Texts 1.1 to 1.5).

Article 1

For the purposes which they are permitted under domestic law to pursue through an association or consortium, local authorities and other public-law bodies may take part in associations or consortia of local authorities formed in the territory of another Party in accordance with the latter's domestic law.

Article 2

Within the limits of their members' powers, the associations or consortia referred to in Article 1 shall be entitled to pursue their activities arising out of their statutory purpose in the territory of each of the Parties concerned. In so doing, they shall be subject to the rules laid down by that State, unless exceptions are allowed by that State.

Article 3

1. The instrument of establishment of the association or consortium, the articles of association and any alterations thereto shall be subject to approval by the higher authorities of all the local authorities participating. The same shall apply to admission to an already existing association or consortium.
2. The population concerned shall be notified of such instruments and the approval thereof, in accordance with each country's normal publicity arrangements. The same shall apply to any change in official headquarters and to any decisions regarding the persons authorised to act on behalf of the association or consortium and the limits of their powers.
3. The above instruments shall be drawn up in the official languages in use in each of the States where they are to have effect. Each such version of the text shall be authentic.

Article 4

1. The articles of association shall specify rules governing the association's or consortium's relations in law. They shall include the subjects required by the relevant legislation, in accordance with Article 1. In every case, they shall designate its members, its name and its headquarters. They shall determine the purpose of the association or

consortium and, where appropriate, the functions of its installations and the location thereof. They shall determine the manner of appointment of the managerial and administrative bodies, the extent of the members' obligations and their contribution to joint expenditure. The management bodies shall include at least one representative of the member local authorities of each country. The articles of association shall determine the composition and the mode of deliberation of the General Assembly, the form of minutes of sittings, the mode of dissolution or liquidation and the rules governing budgets and accounts.

2. The articles shall also include a provision whereby members may withdraw from the association on giving a period of notice which will be fixed by the articles, after settlement of any debts to the association and on payment to the association of compensation, as assessed by experts, in respect of investment effected or expenditure incurred by the association for or on behalf of the members concerned. They shall also specify rules governing members' dismissal or exclusion for failure to honour their undertakings.

Article 5

The Parties undertake to give the authorisation necessary to the accomplishment within their territory by the association or consortium of its task, subject to the requirements of public policy and public safety.

Article 6

Where, pursuant to domestic law, the association or consortium may not, on the territory of a State, exercise certain powers, rights or advantages necessary to the accomplishment of its task for the benefit of that State's member local authorities, the latter shall have the right and the duty to act for and on behalf of the association or consortium for the purpose of exercising or securing these powers, rights or advantages.

Article 7

1. Powers of supervision or control over the association or consortium shall be exercised, in accordance with domestic law, by the responsible authorities of the State in which its headquarters are located. Such authorities shall also ensure that the interests of local authorities of other States are safeguarded.

2. The responsible authorities of the other States shall have a right to information on the activities and decisions of the association or consortium and on action taken in the exercise of supervision or control. They shall, in particular, be supplied on request with the adopted texts and minutes of meetings of the bodies of the association or consortium, the annual accounts and the draft budget, if any, insofar as domestic law requires

that these be communicated to the authorities responsible for supervision or control. They may communicate directly with the bodies of the association or consortium and with the supervisory or controlling authorities, submit observations to them or ask to be directly consulted in specific instances and on specific matters.

3 The responsible authorities of the other States shall also have the right to notify the association or consortium that they object to those authorities falling under their jurisdiction continuing to take part in the association or consortium. Such notification, duly justified, shall be deemed to be grounds for exclusion and shall be specified as such in the association's articles. The authorities referred to in paragraphs 1 and 2 of this article shall also be entitled to be represented by a delegate to the management bodies of the association or consortium; such delegate shall be entitled to attend all the bodies' meetings and to receive their agendas and minutes.

Article 8

The supplies or services with which the association or consortium is to be entrusted, in accordance with its articles, in the territory of its members shall be provided on its responsibility, thereby completely releasing its members from their obligations in respect thereof. The association or consortium shall also be responsible vis-a-vis users and third parties. The latter shall, however, retain, with regard to the local authorities for and on whose behalf the supplies or services are provided, all such rights of action and legal remedy as they would enjoy if the authorities themselves had retained the obligation to provide them with the supplies and services concerned. The authorities against whom such action or recourse is directed may themselves take action against the association.

Article 9

1. Failing conciliation, disputes between the association and its members, or between several members, regarding its operation shall be referred to the administrative and judicial authorities of the State in which the headquarters of the association or consortium are located.

2. All disputes other than those referred to in paragraph 1 may be referred to the administrative and judicial authorities according to the ordinary rules applying in the territory of the State parties, unless those interested decide to refer such disputes to a tribunal which they may designate.

3. The State parties will take the necessary measures in order to ensure the execution on their territory of decisions and judgments, relating to the above provisions.

Article 10

The associations or consortia created according to this agreement shall remain in effect after the denunciation of this agreement, though without prejudice to the provisions of Article 7, paragraph 3.

2. Outline agreements, statutes and contracts between local authorities

Introductory note:

Outline agreements, contracts and statutes intended for local authorities

Like States, local authorities could be offered a choice of agreements and contracts. In fact, such a choice already exists in a number of countries, as is shown by the appreciable volume of documentation on agreements concluded that has already been assembled.

The proposed system comprises six outline agreements, contracts and statutes corresponding to different degrees and formulae of local transfrontier co-operation. According to the scope and state of national legislation, these outlines may either be put to immediate use or may be subordinated to the adoption of an inter-state agreement governing their use.

In general, the conclusion of inter-state agreements, even when it does not seem absolutely essential, could help to clarify the conditions on which these agreements may be used by the local authorities. In any event, the conclusion of an inter-state agreement would seem to be a prerequisite for recourse to the agreement numbered 2.6 (transfrontier co-operation organs).

This system of outline agreements intended for local authorities corresponds to the model inter-state agreements. Reference is made to the inter-state agreements in the introductory note to each outline.

It is then possible to integrate the agreements and organs set up at local level, into the structures of transfrontier consultation to be set up at regional or national level. For example, the local liaison committees (outline 2.1) could be integrated into the structure of the Commissions, Committees and working parties stipulated in the model inter-state agreement on regional transfrontier consultation (1.2).

Also, these models have been designed on a schematic basis, as it was not possible to take a global view of all the problems that could arise in each particular case. The outlines are a valuable guide, but may be amended according to the needs encountered by the local authorities using them.

Likewise, local authorities must determine means of encouraging citizen participation in transfrontier consultation in the socio-cultural sphere. Such participation would certainly overcome the psychological obstacles sometimes seriously impeding transfrontier co-operation. Consultation, supported by public interest, would also benefit from a solid foundation. One way of encouraging public participation would be to have recourse to

an association. Thus, one of the outlines (2.3) concerns the setting up of a private law association.

2.1 Outline agreement on the setting up of a consultation group between local authorities

Introductory note: Normally, the creation of such a group is possible without the need for inter-state agreements. There are numerous examples of such a possibility. However, if legal or other uncertainties exist, an inter-state agreement would provide the conditions under which such consultation could be used (see model agreement 1.3).

Purpose of the group and headquarters Article 1

The local authorities Parties to this Agreement undertake to co-ordinate their efforts in the following fields within their powers (specify the field(s) of responsibility or refer to local problems"). this purpose, they hereby establish a Consultation Group, hereinafter referred to as "the Group", with headquarters at

The Group's function shall be to ensure the exchange of information, co-ordination and consultation between its members in the fields specified in the preceding sub-paragraph. The member authorities undertake to supply it with all information necessary for the discharge of its function and to consult each other, via the Group, prior to the adoption of decisions or measures affecting the fields specified above.

Membership Article 2

Each participating local authority shall be represented in the Group by a delegation of ... members appointed by it. Each delegation may, with the Group's agreement, be accompanied by representatives of private socio-economic bodies and by experts (this alternative excludes entities other than local authorities from membership, which distinguishes this arrangement from the private law association dealt with under 2.3).

Possible variant: The number of members in each delegation may vary. Membership shall be open to local and regional authorities, socio-economic groups and private persons subscribing to this agreement. The Group shall decide on the admission of new members. Each delegation may, with the Group's agreement, be accompanied by representatives of private bodies and by experts.

Terms of reference
Article 3

The Group may deliberate on all matters specified in Article 1. All questions on which a consensus is reached, and recommendations which the Group decides to make to the relevant authorities or groups, shall be recorded in the minutes.

The Group shall be authorised to commission studies and investigations on matters within its competence.

Article 4

The members of the Group may agree to entrust the Group with the execution of certain well-defined practical duties. The Group may also carry out any tasks entrusted to it by other agencies.

Operation
Article 5

The Group shall draw up its own rules of procedure.

Article 6

The Group shall, as a general rule, be convened twice a year, or at the request of one-third of its members proposing the entry of an item on its agenda.

Notice of the meeting must be given and the agenda circulated at least 15 days in advance, in order that the deliberations may be prepared by each of the institutions represented.

Article 7

The Group shall appoint from among its members a permanent Bureau whose membership and powers it shall determine.

The Chair shall be taken in accordance with the rules of procedure or, where they do not apply, by the oldest member present.

Relations with outside persons and higher authorities

Article 8

In relations with outside persons, the Group shall be represented by its Chairman, except as otherwise provided for in the rules of procedure. Higher authorities, to which members of the Group belong, may obtain

from the Group such information as they may request on the Group's work and shall be authorised to send an observer to its meetings.

Secretariat and finance
Article 9

Secretarial services shall be provided by one of the member institutions (with or without a system of annual replacement).

Each authority shall be required to contribute to the cost of secretarial services as specified hereunder: ...

Information and documentation shall normally be circulated in the language of the State from which it originates.

Accession and withdrawal
Article 10

Membership of the Group shall be open to such additional local and regional authorities as may subscribe to this agreement. The Group shall decide on the admission of new members.

Article 11

Any member may withdraw from the Group by notifying the Chairman to that effect. The withdrawal of a member from the Group shall not affect its operation unless otherwise decided upon by the Group.

Article 12

The Parties shall inform the Secretary General of the Council of Europe of the conclusion of this agreement and supply him with the text.

**2.2 Outline agreement on co-ordination in the management of
transfrontier local public affairs**

Introductory note: In several States this type of transfrontier co-operation agreement is already possible. Where this is not the case, the conditions under which such an agreement could be used should be defined within the framework of an inter-state agreement (see model agreement 1.3).

Purpose of the agreement
Article 1

Article 1 specifies the purpose of the agreement (eg harmonious development of frontier regions) and the fields concerned.

Territory covered by the agreement
Article 2

Article 2 should specify the territories covered by the agreement on either side (or on all three sides) of the frontier.

Undertakings
Article 3

Article 3 should define the means of achieving the aims of the agreement (Article 1). According to the material purpose of the agreement, the following undertakings may be specified:

- the Parties undertake to comply with a prior consultation procedure before reaching decisions on a number of measures they have to take within the limits of their powers and of the territory administered by them;
- the Parties undertake, within their territory and within the limits of their powers, to take the measures necessary to the achievement of the agreement's objectives;
- the Parties undertake to do nothing detrimental to the objectives of this agreement.

Co-ordination
Article 4

Article 4 should specify, in accordance with the particular circumstances and requirements of each agreement, the arrangements for co-ordination:

- either by designating for co-ordination purposes the general purpose group referred to in Outline Agreement 2.1;
- or by providing for the establishment of a specific consultation group for the purpose of this agreement;
- or simply by means of direct bilateral contracts between the authorities concerned.

Conciliation
Article 5

Each member of the Group (each Party, if there is no Group) may raise with the Group (the other Party, if there is no Group) any case in which it considers that the agreement has not been observed in that:

- either there has been no prior consultation;

- or the measures taken are not in keeping with the agreement;
- or the measures necessary to the achievement of the aims of the agreement have not been taken.

If the Parties fail to reach agreement, the dispute may be referred to a Conciliation Board entrusted with ensuring compliance with the undertakings entered into.

Controlling Body Article 6

The Parties may agree to set up a specific Controlling Body to ensure compliance with the undertakings entered into, composed of an equal number of experts appointed by each Party and a neutral expert whose appointment or the mode of such appointment shall be provided for in advance.

The Controlling Body shall give an opinion, which it shall have the authority to make public, as to whether the agreement has been observed.

Article 7

The Parties shall inform the Secretary General of the conclusion of this agreement and supply him with the text.

2.3 Outline agreement on the setting up of private law transfrontier associations

Introductory note: It is assumed that the local authority of one State may belong to a private law association of another State in accordance with the same rules and conditions as apply to that local authority's membership of a private law association in its own State. If such is not the case at present, the possibility should be expressly provided for by means of an inter-state agreement between the States concerned (see inter-state model agreements 1.3 and 1.4).

Private associations are normally required to comply with rules laid down in the law of the country where they have their headquarters. The following list shows the provisions which should be included in their articles, where this is not specified by law. The provisions governing consultation groups (see outline agreement 2.1) may also apply, mutatis mutandis, to associations of this type.

The association's Articles should specify:

- 1 its founder members and the conditions for the admission of new members;
- 2 its name, headquarters and legal form (with reference to the relevant national legislation);
- 3 its object, the manner of achieving this object and the resources at the association's disposal;
- 4 its bodies and in particular the functions and mode of operation of its General Assembly (representation and voting);
- 5 appointment of administrators or executive officers and their powers;
- 6 the extent of members' liabilities vis-a-vis third parties;
- 7 conditions for modification of the articles and for winding-up the association;
- 8 an undertaking by the Parties to inform the Secretary General of the Council of Europe of the formation of a transfrontier association and to supply him with its articles.

2.4 Outline contract for the provision of supplies or services between local authorities in frontier areas ("private law" type)

Introductory note: It is assumed that local authorities have the right to conclude such a contract with local authorities of other countries. Where this is not the case, this possibility should be expressly provided for within the framework of an inter-state agreement (see model agreement 1.4).

This is a type of contract which may be used by local authorities for sales, leases, works contracts, the supply of goods or services, the granting of operating concessions, etc. Local authorities' use of "private law" contracts is permitted to varying degrees in national legislation and practice and it is difficult to draw the line between "public-law" and "private-law" contracts. Nevertheless it may be assumed that this type of contract may be used wherever, according to the prevailing interpretation in each particular country, the agreement concerns an operation of a commercial or economic type for which a private person or corporate body could also have contracted. In the case of operations which involve action by local authorities in the exercise of functions reserved to public authority, the supplementary rules specified in the "public-law" outline contract (see 2.5) must be borne in mind, in addition to the provisions set out below.

Parties

Article 1 specifies the Parties (and whether the agreement is open to other local authorities).

Article 2 specifies the problems connected with general contractual powers and, in particular, beneficiaries and terms and conditions. It may also, where appropriate, specify the necessary reservations regarding authorisation by higher authorities, where this affects the applicability of the contract.

Object of the contract

Article 3 specifies the object of the contract by reference to:

- specific matters;
- geographical areas;
- corporate bodies (municipalities, national bodies with local powers, etc.);
- specific legal forms.

Article 4 specifies the duration of the contract, the conditions for renewal and any completion dates.

Legal regime and financial provisions

Article 5 indicates the place of signature and performance of the contract and specifies the legal regime by which it is governed (private international law) and the law which applies.

Article 6 deals, where appropriate, with financial questions (currency in which payment is to be made and the mode of price adjustment in the case of long-term services) and insurance.

Arbitration

Article 7 provides, if necessary, for a conciliation procedure and provides for an arbitration procedure.

In the event of arbitration, the arbitration board shall be made up as follows:

- each Party with opposing interests (Variant: the presidents of the administrative courts with jurisdiction over each of the parties) shall designate a member of the arbitration board and the Parties

shall jointly appoint one or two independent members so that there may be an odd number of members;

– where there is an even number of members of the arbitration board and the votes are tied, the independent member shall have a casting vote.

Alteration and termination of the contract

Article 8 specifies the rules to apply in the event of alteration or termination of the contract.

Article 9. The Parties shall inform the Secretary General of the Council of Europe of the conclusion of this agreement and supply him with the text.

2.5 Outline contract for the provision of supplies or services between local authorities in frontier areas ("public-law" type)

Introductory note: This type of contract is similar to that dealt with under 2.4 ("private-law" contracts) in that it relates to specific purposes. This type is more particularly concerned with concessions or contracts for public services or public works (or services or works which are regarded as "public" by one of the countries concerned), or the provision of contributory finance¹, from one authority to another on the other side of the frontier. Such public concessions entail special risks and responsibilities related to the public services provided which require the inclusion in the contract of other provisions in addition to those specified in the model "private-law" contract.

"Transfrontier" contracts of this type are not necessarily permitted in all countries. Consequently, the possibility of such arrangements and the conditions for their use would often first have to be provided for in an inter-state agreement (see model agreement 1.4).

The use of such a contract, which is simple enough to devise and implement, could in some cases obviate the need for a joint agency of the "Transfrontier Syndicate of Local Authorities" type (see 2.6), which raises other legal problems.

Contractual provisions

Where the contract involves the establishment or administration of public property, a public service or facility belonging to a local authority in at least one of the countries, contractual guarantees must be specified in accordance with the rules which apply in the country or countries concerned.

The contract will also, where necessary, make reference to the following specific conditions:

1 the regulations governing the establishment or operation of the facility or service concerned (eg timetable, charges, conditions of use, etc);

2 special conditions governing the setting up of the facility or service (eg permits required, procedure, etc);

3 the conditions of contract for the facility or service;

4 the procedure for adjusting the contract for reasons of public interest and resulting financial compensation;

5 ensuing relations between users of the facility or service and the operator (eg conditions of access, charges, etc);

6 withdrawal from, surrender or termination of the contract.

In addition to these special requirements, the provisions specified in the specimen “private-law” contract 2.4 will also apply.

2.6 Outline agreement on the setting up of organs of transfrontier co-operation between local authorities

Introductory note: It is assumed that several local authorities may get together and form a legally based organisation with a view to providing and operating some public utility, service or facility body.

The creation and functioning of such an association or syndicate will mainly depend on the applicable legislation and the provisions of any previous inter-state agreement authorising this form of co-operation (see model agreement 1.5).

There follows a list of the provisions that the articles of association should include, insofar as they are not embodied in the applicable legislation.

The articles of association should specify inter alia:

1 the names of the founding members of the association and the conditions on which new members may join;

2 the name, headquarters, duration and legal status of the association (with references to the law conferring legal status upon it);

3 the object of the association, the way in which it is to be pursued and the resources at the association's disposal;

- 4 the way in which the registered capital is constituted;
- 5 the scope and limits of members' liabilities;
- 6 the procedure for appointing and dismissing administrators or managers of the association, as well as their powers;
- 7 the associations' relations with its members, third parties and higher authorities, especially as regards the communication of budgets, balance sheets and accounts;
- 8 the people with responsibility for financial and technical control over the activity of the association and the reports arising out of such control;
- 9 the conditions for altering the articles of association and for the dissolution of the association;
- 10 the rules applying to personnel;
- 11 the rules applying to languages.