

Applying the Benelux Convention to cross borders
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EMBARGO UNTIL SPEECH IS GIVEN, ONLY SPOKEN TEXT IS VALID

A very good afternoon ladies and gentlemen,

I'm truly honoured to have been invited to this conference today. The Benelux Convention on Transfrontier Co-operation between territorial communities or authorities, the topic I'm going to talk about today, is back in the spotlight again as a major update of it is foreseen in the coming months. It is therefore very rewarding to be here and explain about what we already achieved with this Convention. I hope that after this presentation you will be able to agree with me that that is quite substantial. In short: today the main question is: why there still is a need for the Benelux Convention after the EGTC ?

Let me first shortly introduce the different topics that I'm going to touch in this short presentation. First, I would like to inform you about the general aspects of the Benelux co-operation, the co-operation between Belgium, the Netherlands and Luxemburg.

Then I would like to talk for a while about the different elements of the Benelux Convention on Transfrontier Co-operation, followed by a comparison between this legal instrument and the recent EGTC. Finally I want to draw some conclusions.

The Benelux; When I tell people that I'm the secretary general of the Benelux Economic Union, some of them ask me the question: "Does the Benelux still exists ?" Yes it does. In fact the Benelux is there already for 50 years contributing essentially to both co-operation between the 3 countries as well as to the European co-operation. Since June of last year a new Treaty is signed that announces a strengthened and more focused Benelux.

As you might know, the Benelux countries first joined for a deeper co-operation during the second world war, in 1944, where they established a customs union that was going to be the foundation for the future co-operation. In 1958 the co-operation was formalized in a Treaty and the Benelux Economic Union was born, mainly meant to deal with the post war economic problems and customs barriers as they existed in those days. The co-operation was entered for a period of 50 years, a period that would have ended next year. And it was in 2008 that the Ministers of the countries and regions involved, signed the new Benelux Treaty, this time not for 50 years but for an undefined period, with a minimum of 10 years. The old treaty was signed by three Governments, the new one is not only signed by the Netherlands, Luxemburg and the Belgian federal government but also by the Flemish, Brussels and Walloon region as well as the German Community, who all have responsibilities for designated fields of competence. For more information I would like to refer to our website: www.benelux.be

I guess for us, as we sit here, it's also interesting to look at the objectives of this new Benelux Treaty. Important is that article 2.1 of the New Benelux Treaty says that one of the objectives of the Benelux is to "enhance and improve the cross-border co-operation at all levels", giving it a primary importance within our organisation. The main fields of attention are: Internal market and economic union, Durability, Justice and Internal Affairs.

So far about the Benelux, let's turn to the cross border co-operation and more specific to the legal instruments that support that. Fact is, that these legal instruments give a strong foundation for a co-operation across the border. The history of the European legal framework is known I assume: the Madrid Convention in 1980, the Benelux Convention in 1986. Many followed and recently the EGTC regulation joined the club. Let's look a bit closer at the Benelux Convention or as it's called in full the "Benelux Convention on Transfrontier Co-operation between territorial communities or authorities". The definition is as indicated: A legal instrument that allows territorial public authorities to co-operate directly across the border. And basically that says it all.

Three different types of co-operation were created in the Convention. They were actually based on existing types of co-operation in the laws on intermunicipal co-operation in the three countries. They're listed in the slide: the Public Body, the Common Organ and the Administrative Agreement.

The most important and at the same time the most solid type of co-operation is the Cross Border Public Body. It has legal personality and has to have a General Assembly and an Executive Board. And .. because of its legal personality, it can also hire employees and manage its own finance. Finally, and very interesting: partners can delegate powers and competences to it.

Some examples of Public Bodies are listed here. I will look a bit closer to these, because these are truly the pioneers of cross border co-operation. There are not many examples in Europe where territorial authorities have created Cross border Public Bodies with a legal personality. Under the Benelux Convention five of these were established and that's really what makes us proud. Long before the EGTC, in the Benelux, some politicians indeed dared to create a cross border body.

The oldest one is Benego. 27 municipalities that have been working together since mid seventies on an informal base and they saw in the newly created Benelux Convention an excellent way to organize themselves. The efforts of those 27 municipalities to co-operate should not be underestimated since each of them contributes yearly to an amount of € 40.000 as budget for the organisation. For years this meant that a joined secretariat has been able to facilitate the municipalities.

During the last ten years one can clearly see a shift in the nature of the co-operation across the borders. The first cross border co-operations had a general character, like eg. the Euregions. Most recently, the new cross-border Body's have a more specific nature with a well defined goal or objective. The Public Body of the Joint Senior Care in Assenede and Terneuzen is a good example of this. The senior care in both villages has a long tradition of cross border co-operation. For a long time the work was done through a twin structure with on one side a Dutch association and on the other side a Belgian corporation based on private law. Both organisations had the same objective: they both jointly took care of the senior citizens in the villages. And this is now done by the cross border Public Body: meals are distributed, information and advice on aging is available for seniors and a lot of other activities are carried out without being hindered by the border.

Another interesting co-operation is the cross border music-academy: some years ago the Flemish government decided to make all music schools independent. This implied that the municipalities that became responsible for them, had to create intermunicipal co-operations in order to be able to maintain the school. There was one problem though with the school in Baarle. It did not only serve 5 Flemish municipalities, but it also served the Dutch municipality of Baarle-Nassau. This problem was eventually solved by creating a cross border Public Body, in which all municipalities, including the Dutch, were formally able to have a seat.

I want to turn now to a very special case on the Belgian-Dutch border: the village of Baarle. In fact there are two villages, one Dutch and one Belgian. The Belgian village is in reality an enclave, completely inside Dutch territory. As you can understand, cross border co-operation in Baarle is not only something fancy, it's a bare necessity.

The sewage systems of the two municipalities have to be connected, if not there will be huge problems. It's even worse: The border runs in some cases literally through the houses, dividing them physically into a Belgian and Dutch part. The position of the front door determines legally in which country the house is located. That's the rule there. As you might guess our Benelux Convention was very welcome in Baarle and it is applied multiple times precisely in Baarle. Just look at these images and you know what I'm speaking about.

So much for the practice of the cross border co-operation. As you all well know, at this moment, the EGTC is "hot". Apparently this legal instrument, according to many, is going to solve all the problems that exist related to cross-border issues. But .. is this really the case ?

Just like many agreements did before 2006, the EGTC provides for a cross-border instrument with legal personality as well. The good thing about it, and this is really innovative, is that Member States can participate in a cross-border co-operation with legal personality. This is interesting for example for countries like Luxemburg or the Flemish or Walloon Region. And it's true indeed: if you are going to create an EGTC right now, you can still claim to be one of the first in whole Europe. The Lille-Kortrijk co-operation was the first. In comparison to the existing instruments I guess that the EGTC at this moment is simply the most appealing one.

The EGTC regulation was the result of long negotiations within the European Union. This means of course: compromise ! Some elements of the EGTC appear therefore to be a step backwards in comparison with the existing instruments like eg in our Benelux Convention. Before one can start an

EGTC, formal approval is needed from the national level of the Member State. It looks to me that this might add to the administrative burden during the process of starting the co-operation. In the Benelux we are proud to have an instrument that doesn't require this approval.

Another issue was not solved by the EGTC either. Working as an employee for a cross border organisation is not very simple, especially when you look at the differences in social security systems. Somebody working in the head office in one country, living in the other country and working in the entire area that is covered by the organisation, has problems of knowing where and how to pay taxes and social security premiums. The EGTC is based on the principle that all those issues are determined by law of the seat of the head office and this leaves the cross border organisations with the same problems they were faced with before. Since all arrangements are based on the law of the seat of the organisation, the same problems arise when it comes to liability. Some consider that the EU missed a chance here to facilitate the real cross border co-operation with a useful instrument.

Probably you would ask: what does the Benelux Convention have to offer that makes it so much better. In a way one could say that our Convention with the legal personality of the Public Body, is all in all more flexible and easier to use than the EGTC. It offers the possibility to delegate powers and the approval of the Member State is not required. In Benelux we also had a Special Committee established to solve problems that arise with regards to the application of the Convention. Important too, was the continuous support by our secretariat-general for those organisations that needed help with the establishment of a cross-border co-operation.

But there are also improvements possible that came up with the use of the Convention. Mainly for reasons of adequate supervision of the cross-border co-operation, the Benelux Convention was limited to territorial public and semi-public authorities. The participation of Member States or Regions was excluded because it was felt improper that the supervising authority would participate in the organisation that would be supervised by itself.

Unfortunately, for applications under the Benelux Convention also the law of the country of the head-office was applicable. Moreover, actions and decisions taken by the body also should not be contradicting to the law of the other Member States.

And finally it turned out that there was one area in the Benelux that was not covered by our Convention and that was the area of the Euregio Meuse-Rhine, where not only public bodies of the Benelux countries would want to participate in the co-operation but also German authorities. And since the Benelux Convention was only applicable in Belgium and the Netherlands, it was not possible to create a Benelux cross-border Public Body in that area. For this area, the EGTC indeed is useful.

And so, after the introduction of the European Instrument, the Benelux countries evaluated the Benelux Convention. After some reflection, it turned out that the EGTC was not entirely without problems. In some ways the EGTC did not offer the possibilities that the old Benelux Convention already offered. In other ways the EGTC did not provide the solutions for practical problems that cross-border organisations faced so far. Enough reasons for the Benelux partners to decide to start working on an updated Convention. This with the objective to create an instrument that would really help municipalities and others to come to a cross-border co-operation that could work well. We started in 2008 with this process. At this moment we're in the phase of making a first draft and start the negotiations with the Benelux partners. And we are hoping to have a first approved draft available by the end of this year.

This time were going to try to accommodate also the German-Dutch-Belgian border area by leaving an option open for both Germany and France to take part in our Convention. And the most prominent change will be the creation of a new instrument with legal personality: the Benelux Grouping of Territorial Co-operation or BGTC.

The Benelux partners share the opinion that the EGTC in its current form is not the perfect instrument for organisations in our countries to co-operate across the borders. It's a useful instrument indeed and has the advantage of being very popular at this moment. But what will happen in two or three years ? The Benelux countries want to move forward with the cross border co-operation and create an instrument that will really be easy to use. This means: no approval from the national level of Member States. This means: solutions for problems with social security, tax and liability issues. And this means: clear legal responsibilities divided over the whole area of the co-operation. How to achieve this ? Well ... so far, and I must admit this remains to be discussed within the various Ministries, the partners are considering to allow the BGTC to work with an Operational Seat next to the Seat of the Head Office for those issues that can be localized clearly. The idea is this: a person working in a

Dutch-Belgian co-operation with its main Seat in Belgium but living in the Netherlands, should be able pay for his social security and taxes in the Netherlands because he is working in the Operational Seat in the Netherlands. This would also resolve the liability issues for specific issues. This idea sounds revolutionary indeed and would probably solve many problems that the cross border organisations face now.

And this brings me to the conclusions of this presentation. I think the recent EGTC is not the instrument that provides much extra as compared to the old Benelux Convention. This Benelux Convention has for a long time been one of the most far-reaching legal frameworks for inter-territorial co-operation in Europe. It surely is not perfect. But over the years it has proved that it can function as a useful tool for territorial authorities. The bigger number of applications are proof of that.

But ... the EGTC inspires. It gives a boost to the structural co-operation over the borders everywhere in Europe and even in our Benelux countries. It shows the need for a good legal instrument. And so in Benelux now we're trying to go that extra one step further. This next step is a legal instrument that can be used easily also to hire people from both sides of the border without all this hassle when it comes tax and social security. We are determined to create an instrument that can be used by organisations and that solves most of the present legal and practical obstacles. And I think in our new BGTC we have found such an instrument.

This, I guess, also answers the question that I asked in the beginning: why there still is a need for the Benelux Convention after the EGTC ? To me that looks obvious, although there is a lot to be done still. Part of that will be in the hands of Mr. Van Gelder, the new cross-border manager of the Netherlands. And the secretariat-general of the Benelux is ready to assist him with that. Especially when it comes to the co-operation between the Netherlands, Belgium and Luxemburg and to a certain extend also of that with bordering German and French regions, the secretariat-general of the Benelux has a long history and profound expertise already and an excellent network of specialists and politicians. I'm also convinced that the new Benelux Convention will be a next step forward for the European legal framework for territorial co-operation. I hope you have found some inspiration through this presentation. I wish you all a very fruitful conference and wish u all good luck with the cross border activities that you are involved in.

I thank you very much for your attention.