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“EUROPEAN SPATIAL PLANNING THROUGH  
CROSS-BORDER CO-OPERATION. AN  
APPROACH TO SPANISH CASE ”

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## EUROPEAN SPATIAL PLANNING TROUGH CROSS-BORDER CO-OPERATION. AN APPROCAH TO SPANISH CASE.

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### *Abstract*

Generally speaking, it should also be mentioned that within the context of the cross-border treaties various individual cross-border projects are being developed, e.g. the construction of a road or a "joint" hospital, joint water supply systems, etc. Such cross-border projects influence the field of spatial planning since it becomes clear from the relevant plans that they involve a new spatial and even planning perspective (first). All these projects have to be designed in the planning of the national or regional Administrations. Different question is whom this planning is approved by. The transnational cooperation does not means one European Administration, neither an independent Administration of the member States. Planning with transnational objectives must be approved by the national Administration with competences in Urban law. Second is about a European action, in the field of territorium, concerning the documents (soft law): ESDP, Guiding Principles... Third the European territorial competence is concerning the influence of sectorial competences in the territorial competence of the European countries and the regions or local colectivities. This is the spectrum of the European dimmension of territorium.

### **1. Introduction**

Although the discussion about the need of one competence of the EU in the framework of spatial development is not new, this cuestion has a renewed actuality in the context of the European Constitution. During the last year 2003 a commission of experts has met in Berlin to discuss this cuestion. The autor of this work was member of this expert-commission and also other professors of public law in Europe. The iniciative was of the german gouvernement <sup>1</sup>.

In the last session of 13-14th June, we have proposed the introduction of a EU competence in the EU-Constitution, not a concurrence competence but a complementary competence, in the article 15.2 of the EU-Constitution. This matter should also be

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<sup>1</sup> The member of this comision are Prof.Dr.Dr.h.c. Ulrich Battis, Prof.Dr. Werner Buchner und Prof.Dr. Hans-Jürgen Rabe, Prof.Dr. Martin Loughlin, Prof.Dr. Gérard Marcou, Prof. Dr. Hans Mattsson, Prof.Dr. Dimitris Melissas, Prof.Dr. Zygmunt K. Niewiadomski, Holger Schmitz and Prof.Dr.Dr. S. González-Varas Ibáñez.

This work is a traslation and resumee of the versión, that Prof.Gonzalez-Varas did for the German Gouvernement. See also J. KERSTEN, "Empfehlungen für die Ausgestaltung der Raumentwicklung im europäischen Verfassungsvertrag", *UPR* 6/2003.

recognised in article 3.2.2. as explicit objective because the EU has not only economic and social dimension but also territorial. Also it is necessary Part II of the EU-Constitution takes EU sectoral competences -for instance the environment or the transeuropean networks- should be exercised in a coherent way whit regard to territorial dimension.

But at the present time we can find many references that allow us to take about an european action in spatial planning. This subject is not something abstract but real right now, as we can see in the next pages.

## 2. Planning Law in Spain and Cross-Border Planning

There is no regulation at all of planning law in **national** law (Ruling 61/97 of of the Constitutional Court of 20th March). The autonomous regions alone have competence in the field of planning law. The case law of the Spanish Constitutional Court is particularly clear in the sense that the State may not establish provisions regarding planning law or spatial development, the reason being that the autonomous regions have full and exclusive competence<sup>2</sup>.

In this context, the provisions in the field of planning law, and specifically cross-border planning issues, can be ascertained mainly in two ways: a) in the planning legislation, e.g. construction law and, in particular, spatial planning law; b) in the context of the cross-border treaties between autonomous regions or communities in Spain and the competent authorities in other countries, namely France and Portugal.

### *a) The first route (the direct route): Legislation in the field of Planning Law and/or Legislation and Regulations on Spatial Planning and Construction*

The new spatial planning laws of the autonomous regions **expressly** do not contain direct provisions in order to ensure the compatibility of cross-border planning matters. However, provisions relating to the border regions with Portugal or France can be found in the so-called "Directrices"<sup>3</sup> for spatial development in the relevant autonomous regions, e.g. in the "Directrices" of the region Aragón<sup>4</sup>, where cross-border co-operation with the adjoining French territories is provided for with regard to infrastructures, as a spatial development strategy for that autonomous region.

According to the provisions, cross-border planning matters are covered by the general regulations (e.g. spatial planning laws of the autonomous regions<sup>5</sup>).

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<sup>2</sup> Exercise of government powers (e.g. enactment of framework legislation on environmental matters) must not result in "determination" of the powers of the autonomous regions in planning law or spatial planning. Alldies constitutes a novum in the long history of Spanish construction law, since prior to 1997 there were significant national laws in the area of planning law and spatial planning.

<sup>3</sup> "Directrices"= Regional spatial planning objectives. In the "Directrices" the global objectives of spatial planning policies are determined for each autonomous region with the result that they describe the general planning regulations of the relevant region.

<sup>4</sup> The "Directrices" were approved by Law 7/1998 of 16 July of the autonomous region of Aragón.

<sup>5</sup> Original: Leyes de Ordenación del Territorio.

Additional, more precise provisions can be expected in the spatial development laws of the autonomous regions in order to ensure the compatibility of cross-border planning matters, as a logical consequence of the intensification or strengthening of cross-border co-operation. Since the spatial development competence of the autonomous regions is a recent phenomenon, it will take a while before the legislation in this field is complete. Several facts underscore this expectation<sup>6</sup>.

*b) Second Route (the indirect route): Possible provisions on the basis of cross-border treaties.*

As a matter of principle, such treaties permit the autonomous regions or municipalities to enter into cross-border treaties with the relevant authorities in another country (i.e. France or Portugal). The first cross-border treaty to come to mind is the renowned framework treaty of 5 February 1980 on cross-border co-operation (Arenas Meza, 2002; Dupuy, 1977; Fonseca Murillo, 1987; Peralta Losilla, 1995a; Pérez González, 1989; Pérez González, 1993; Pérez González, 1997; Ramiro Brotons, 1983). However, since Spain, together with other European countries, considered this treaty to be insufficient to implement cross-border co-operation, it concluded the Bayonne Treaty with France.

The Bayonne Treaty of 10 March 1995, which entered into force in 1997, applies between France and Spain in Northern Spain (Pyrenees). The autonomous regions and the communities may enter into cross-border treaties subject to the condition<sup>7</sup> that they notify the central authority in Madrid of the planned treaty in advance. **The question whether such treaties can affect cross-border spatial development is undecided. However, approval of the plans is always an internal matter, as a matter of principle, in Spain the autonomous regions are competent in this respect** (see supra).

In western Spain the region of Andalusia (Spain) concluded two informal cross-border protocols with Portugal; Extremadura also concluded protocols with Portugal (Protocols of 17 January 1992 and 27 May 1994), as did Castilla y León (Protocols of 21 February 1995 and 3 March 1995), and Galicia with Northern Portugal (Protocol of 31 October 1991). None of these Protocols is of a binding nature since they are not normative. It remains to be seen whether a treaty similar to the Bayonne Treaty between France and Spain will be concluded between Portugal and Spain.

Southern Spain: It remains to be seen whether a similar treaty to the Bayonne Treaty between France and Spain will be signed between Spain and Portugal. At the moment the region of Andalusia (Spain) has signed two informal cross-border protocols with

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<sup>6</sup> First of all, the role of the autonomous regions in the area of spatial planning will gradually grow in significance. There is a clear tendency in this respect. Secondly, the autonomous regions have an interest in developing their own relations with foreign countries and in continuing to fill the role formerly played by the state. This is a logical consequence of the infinite (and in some cases inconsiderate) claims raised by the autonomous regions against the state.

<sup>7</sup> The law of each side applies to the treaty. To supplement the Bayonne Treaty, Spain issued Regulation 1317/1997, of 1 August, regulating the obligation to present. On the side of Spain, the Basque region, Navarra, Aragón and Catalonia participate. On the side of France: Aquitaine, Midi-Pyrénées und Languedoc-Roussillon, as well as Andorra.

Portugal<sup>8</sup>. Neither of the protocols is binding, since they are not of a normative nature (Corral Suárez; Peláez Marón, 2002).

In this connection (and in connection with the Interreg programs) **several projects with a spatial planning objective have been developed**, e.g. the "Eurocity" (San Sebastián-Bayonne with joint spatial planning observation)<sup>9</sup>. There is a definite trend towards joint planning laws (López Trigal, 1996). As regards Portugal, such projects can be seen as a sign of the necessity of overcoming the historical separation from Spain (Fundação R. Afonso, 2000a and 2000b; Guichard, 2001; López Trigal, Lois González and Guichard, 1997; Cabero Diéguez, 2002) . However, problems do arise (see *infra*)<sup>10</sup>. One of the objectives of such institutionalised cross-border treaties is to be able profit from the financial schemes of the EU (FEDER, FEOGA, URBAN and, in particular, INTERREG)<sup>11</sup>. The core of the cross-border treaties is to be seen in the working groups which endeavour to achieve the common objectives. Other cross-border projects in Northern and Central Europe are known in Spain<sup>12</sup>.

*c) A Third Route should also be taken into account:* The possibility of regulating matters on the basis of public international law treaties, e.g. the construction of a bridge, a matter that also affects spatial development.

### 3. Cross-border projects in the field of spatial planning in Spain.

There do not appear to be any insurmountable problems on the side of Spain since where the cross-border projects are concerned (including spatial development) the autonomous regions now play the more important role, and it is those regions that seek cross-border co-operation, also as a way towards a more active political role in foreign policy. From the political perspective the wish for closer co-operation is very clear, especially between Northern Spain with France and Northern Portugal. The joint interest in obtaining financing helps to overcome potential problems at the preliminary stage. As regards problems and difficulties, however, it is important to distinguish between practical and external problems:

Important practical problems result from depopulation and the very significant distances between cities, from drought, and from a possible indifference regarding closer co-operation. As regards "co-operation" within the context of spatial development, one

<sup>8</sup> The first with the "Algarve committee" on 27 July 1995, and the second with the "Alentejo committee" on 25 January 2001. Both in Portugal.

<sup>9</sup> E.g. "Libro Blanco de la Eurociudad" (White Paper of the Eurocity). San Sebastián is the Eurocity in Spain, in France it is Bayonne, with common spatial planning observation (see [www.eurociudad.org](http://www.eurociudad.org), and [www.agglobab.fr/f\\_missions.htm](http://www.agglobab.fr/f_missions.htm) or in [www.guipuzkoa.net](http://www.guipuzkoa.net)). See also within the context of the Bayonne Treaty the so-called "Proyecto Cities" (Irún-Hondarribia-Hendaya): [www.bidasoa-txingudi.com](http://www.bidasoa-txingudi.com), or [www.irun.org](http://www.irun.org).

<sup>10</sup> A system similar to the latter system also exists in Eastern and Central Spain (Extremadura and Castilla y León) and between Galicia and Northern Portugal (PÉREZ TREMPs et al., 1998).

<sup>11</sup> Trans-European networks also concern Spain, e.g. the decision of the European Parliament and Council of 23 July 1996 (1692/96) establishing the train connection Madrid-Montpellier or the motorway Lisboa-Valladolid (further examples at [www.europarl.eu.int](http://www.europarl.eu.int)).

<sup>12</sup> E.g. Benelux Treaty of 12 September 1986, Treaties between the Netherlands, the Federal Republic of Germany and certain German *Länder* dated 23 May 1991....

cannot deny the differences among national legal systems. The necessity of harmonization in the field of mapping systems is a further interesting question, for the competent authorities in the various countries apply "different" criteria (Silva and Antequera, 2002) .

External problems: It is argued, probably wrongly, that the centralist systems in Portugal and France make the decision-making process slow and bureaucratic (López Trigal, 1995; Ahedo Gurrutxaga, 2002). For historical reasons, there are still apparently reservations against co-operation with Spain. Financing can also pose problems if France or Portugal set other priorities against the financing of a joint project (e.g. the Somports bridge in which the Spanish region of Aragón has a great interest). There are cross-border projects in the field of spatial planning such as "Terra Douro" or establishment of the natural reserve territory "Arribes del Duero"<sup>13</sup>. There is joint observation or even joint regulation of the cross-border areas. A different issue is the consent to or approval of the relevant spatial development plans. Such consent is definitely not part of the cross-border responsibilities regarding the joint projects. The individual country is competent, but in Spain (owing to our decentralised administration) it is the relevant autonomous regions, and in Portugal and France the central administration in Lisbon and Paris respectively. It is also evident that one of the express objectives of the above-mentioned working group, is "spatial development", in addition to energy, mountain agriculture, spas, etc. (Pyrenees Convention 1995) (Fernández Losá and Peralta Losilla, 1994; Peralta Losilla, 1995b ; Comunidad de Trabajo de los Pirineos, 2001).

Generally speaking, it should also be mentioned that within the context of these cross-border treaties various individual cross-border projects are being developed, e.g. the construction of a road or a "joint" hospital, joint water supply systems, etc. (Sosa Wagner, 2002) Such cross-border projects influence the field of spatial planning since it becomes clear from the relevant plans that they involve a new spatial and even planning perspective<sup>14</sup>.

#### **4. Participation in INTERREG Programs and Taking Account of ESDP**

Generally, the spatial planning laws of the autonomous regions cite the documents of the EU. For example, the European Charta for Spatial Development of Torremolinos of 1983 (e.g. in Law 11/1992 of Aragón, Law 10/1998 of Castilla y León, Law 10/1995 of Galicia, Law 14/2000 of Islas Baleares, Law 6/1989 of Valencia) (Bielza de Ory and De Miguel González, 1997). Also the PEOT of Noordwijk, 9 and 10 June 1997 (e.g. Law 1/2001 of 24 April, Murcia). ESDP document was incorporated into the "Estrategia Territorial de Navarra 2001-2025" by the regional government of Navarra and into the

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<sup>13</sup> See "*Balance y perspectivas de Ordenación del Territorio en la Región fluvial del Duero*" of the "*Asociación Ibérica de Municipios ribereños*". Management of the association rotates among the various local authorities. See also: [www.jcyl.es/cmaot/sg/sved/balance95-99/urbanismo.htm](http://www.jcyl.es/cmaot/sg/sved/balance95-99/urbanismo.htm). See also the articles in "La Opinión de Zamora", 22.10.1999: "Portugal propone a los Arribes zamoranos un plan conjunto para el desarrollo de la zona".

<sup>14</sup> [www.aquieuropa.com/libre/noticiasayudas/afondo/noticiasafon/afon97-10-20\\_2bcc.htm](http://www.aquieuropa.com/libre/noticiasayudas/afondo/noticiasafon/afon97-10-20_2bcc.htm).

"Directrices" for spatial development in Galicia (Marinero Peral, 2000, Gobierno Vasco, 1997; Silva and Antequera, 2002)<sup>15</sup>. The same applies to "Europa 2000" and "Europa 2000+" (European Commission, 1995; Hildenbrand, 1996)<sup>16</sup>.

**As regards the Guiding Principles** for Sustainable Spatial Development of the European Continent, the following should be distinguished:

- Regarding substance, the Principles can be found in the spatial development legislation of the autonomous regions: terms such as "sustainable spatial development", "cohesion", "environmental impact on spatial development", inter alia, were incorporated<sup>17</sup>. (González-Varas, 2001).
- Regarding formal aspects, the Guiding Principles are not cited expressly. Generally, the European documents have been studied with care, but the material is new. A broadly held view is that, contrary to ESDP (with a growing consensus), the Guiding Principles are oriented definitely towards Eastern Europe, which does not affect Spain. ESDP strengthens the practical application of principles such as "spatial balance", which have also been incorporated into the legislation of the autonomous regions. The crucial document "Spanish Spatial Development Concept, on the route towards a specially balanced and lasting development in Spain" (Ministry for Construction and the Environment, Madrid, 2002), shows that Spain is in full compliance with the ESDP principles. Through the application of ESDP the state (and/or the autonomous region) can avoid legal problems from the outset since the governmental powers thus comply with EU law at the same time. In this sense the ESDP also plays a preventive role.

If we ask us for the role that could play ESDP, firstly, the principle of spatial balance deserves more attention. However, ESDP does not simply mean a path to a spatially balanced and lasting development within the European Union, but also encompasses an open dimension with the aim of removing unjustified imbalances among the regions (so-called *spatial development concept*). Correspondingly: If the *spatial development concept* is not just local or regional, but possibly even European, this should mean for Spain that a certain competence for spatial development is also to be accorded to the state.

ESDP is viewed in this context as being an indication that the traditional cohesion policies are to be supplemented, taking territorial aspects into account. However, this tendency still lacks further depth. The ordinary cross-border co-operation on the basis of isolated projects without detailed consideration of the territorial dimensions, should be abandoned. In principle, regulation at the European level is required in order to ensure a spatially balanced and lasting development of the European Union and to shape a

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<sup>15</sup> See also M.A. DELGADO GONZALO, "El territorio, la ciudad y la vivienda", in: [www.euskonews.com](http://www.euskonews.com)

<sup>16</sup> See also the resolutions of the European Parliament A3-245/90 and A3-0253/92.

<sup>17</sup> Explicitly Law 5/1999 of Castilla y León, Law 2/1998 of Castilla-La Mancha, Law 15/2001 of Extremadura, Law 6/1989 of Valencia, and previously State Law 1/1992 (Art. 6)

European spatial development concept. The connection between INTERREG programs and ESDP should be strengthened. Interreg III offers good opportunities for making effective use of ESDP.

There are various documents containing precise information about the participation of Spain in the INTERREG programs. The information can be accessed at [www.europe.eu.int/comm](http://www.europe.eu.int/comm), in Spanish, German and English.<sup>18</sup>

Real legal problems cannot arise in view of the lack of legal criteria for allocation of the Interreg financing. That is the problem. The regulation in the national field (aside from regulations and goals of the Commission) appears to be insufficient. It would also be advisable to establish a list of priorities in advance as well as regulations or criteria for co-ordinating matters among authorities in one and the same autonomous region.

A further problem lies in the disparity of the legal systems. Co-ordination with foreign countries appears to be very bureaucratic at times, probably due to the centralised administrations in France and Portugal. A specific problem can arise from the lack of legal co-ordination between competition (e.g. subsidies) and cohesion: to what extent can cohesion be permitted or even furthered when subsidies are refused in the same region on the basis of application of the EC Treaty? It would be important to develop common territorial criteria in order to align both policies (González Varas, 2002) .

Despite the above-mentioned problems, the point of departure has to be kept in mind: all participants have a common interest in Interreg (or in the financing). This amounts to a path towards solving the major problems, in order to avoid the risk of losing financing. Some conflicts are also avoided because a national central office (the Ministry of Finance in Madrid) co-ordinates all autonomous regions regarding a certain matter.

As regards the "external problems" referred to above, there is a positive tendency in that Interreg II will be given a permanent base (e.g. in Poitiers in conjunction with the Atlantic Program of Interreg). Regarding the possibly insufficient co-ordination between competition and cohesion, it should be emphasised that the Commission is currently developing an area map for co-ordinated implementation of both policies, in order to establish the necessary connection between cohesion and subsidies.

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<sup>18</sup> See also "Balance de la cooperación e integración transfronteriza". (Search Google using the same terms).



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