Tool29: Guide to deciding which legal form to take

Cross-border collaboration develops in stages from rather loose collaborative networks to contractual agreements. However, it does not necessarily reach the stage where the implementation of joint management bodies or the establishment of joint infrastructure are necessary [1]. Often a partnership agreement or memorandum is sufficient for cross-border collaboration projects. However, if the collaboration is sufficiently mature, a legal framework is important to ensure the validity of activities undertaken in the scope of the cross-border project. Usually, collaboration develop over time and this development goes beyond the project life cycle depicted in the *Cross-border.Care Manual and Tools*. Nevertheless, Tool 29 is included to give users an idea of what CBHC collaboration may look like.

Cross-border collaboration arrangements can be summarised in [2]:

**Informal arrangement for cross-border collaboration:** a lot of cross-border collaboration projects between healthcare providers and local authorities are of an informal nature, as they do not involve any binding legal decision. Such informal arrangements can have a direct impact on the provision of care to the target population.

**Cross-border collaboration agreements (bilateral, multilateral):** informal cross-border collaboration arrangements may evolve into cross-border cooperation agreements. This is the simplest and least formal instrument for cross-border collaboration projects. Usually such an agreement is based on specific issues the collaborating parties are facing or a framework agreement might be concluded stating the parties’ willingness to cooperate with one another. Collaboration agreements may be drawn up under national law or international inter-State agreements. However, the provisions of the agreement are implemented under the sole responsibility of the signatories.

As the number of cross-border collaboration activities increases, necessitating extensions of the agreements, cross-border partners may seek more formal arrangements. That often entails establishment of a legal cross-border collaboration body.

**Cross-border collaboration bodies governed by public law:** local healthcare providers and local authorities may establish legal cross-border collaboration bodies if bilateral or multilateral agreements between the Member States they belong to allow for it. The law of the country where they are officially headquartered governs such bodies. Tasks they may perform usually include cross-border governance, cross-border healthcare provision and cross-border management of public facilities such as hospitals.

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| [Regulation (EC) No 1082/2006](http://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX:32006R1082) of the European Parliament and Council (5/07/2006) on the establishment of a European Grouping of Territorial Cooperation (EGTC) offers local communities and EU authorities a legal instrument that forms the legal basis for the establishment of a cross-border collaboration entity with legal personality [3].  The EGTC tool is a standard of reference, because it may be used in the entire European Union as well as on its external borders, which gives it high visibility in Europe. Established by an EU regulation in 2006, which was amended in 2013, the EGTC is a legal entity that has the ability to manage cross-border projects on behalf of its members. Using the EGTC requires choosing the national law that will govern it (the law of the country where the registered office is located). It can manage intangible (including cross-border governance) or tangible (equipment, infrastructures or joint services) cooperation projects in its members’ common areas of competence. It can also take on the role of managing authority for European territorial cooperation programmes or be the vehicle for tools for integrated territorial development (2014-2020 period) [4].  (See hospital Cerdanya in the related report section 6.5.2.3.) |

**Cross-border collaboration bodies governed by private law:** these are often not-for-profit structures governed by the (private) law of the Member State where the headquarters of the body are located. Such cross-border collaboration bodies may take the form of an association (or foundation) that acts as an ‘operator’ or ‘project manager’ on behalf of healthcare providers and local authorities. Such bodies are easy to set up, but their remit is often limited to promotion, lobbying and management of cross-border projects.

The decision on which legal form to take is a strategic one. It not only reflects the development of the cross-border collaboration, but also the political compromise that allowed the collaborating partners to develop the collaboration process. Before project partners decide to establish a legal body for cross-border collaboration, it is advisable to take sufficient time to study all the relevant legal aspects extensively. An in-depth legal impact assessment might be useful at this stage. Furthermore, it is advisable (unless required by law) not to decide too early on the exact legal form of the cross-border collaboration. Instead it should be the logical consequence of many other elements.

Reference

[1] Glinos IA, Palm W, Figueras J. Encouraging cross-border health care collaboration in border regions: scope and options. Working paper based on brainstorming meeting. n.d.

[2] Council of Europe, Del Bianco D, Jackson J. Cross-border Cooperation Toolkit. Strasbourgh, 2012.

[3] Regulation (EC) No 1082/2006 of the European Parliament and of the Council of 5 July 2006 on a European grouping of territorial cooperation (EGTC), (2006).

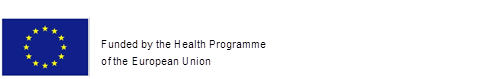
[4] Mission Opérationnelle Transfrontalière. Cross-border territories. Europe’s laboratory. Paris: Mission Opérationnelle Transfrontalière, 2017.

[1] Programme IDT. Partnership Agreement. 2017 Available from: https://www.google.at/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&cad=rja&uact=8&ved=0ahUKEwiRoL2W9-LWAhVhLsAKHfnYCUsQFggtMAE&url=http%3A%2F%2Fwww.interreg-danube.eu%2Fuploads%2Fmedia%2Fdefault%2F0001%2F01%2F5e06ca5f642f37cbfcfb547c23c73df1fc31b031.docx&usg=AOvVaw0MpisluyhAqPdXd9P4DFXo, accessed 13.09.2017.

[1] INTERact. Project management handbook. n.d.

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