



# Easing legal and administrative obstacles in EU border regions

Case Study No. 12

## **Spatial planning**

Obstacles to cross-border public consultations

(France – Belgium)



**EUROPEAN COMMISSION**

Directorate-General for Regional and Urban Policy

Directorate D: European Territorial Co-operation, Macro-regions, Interreg and Programme Implementation I

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Annex  
to the Final Report for the European Commission

Service Request Nr 2015CE160AT013  
Competitive Multiple Framework Service Contracts for the provision of Studies related to  
the future development of Cohesion Policy and the ESI Funds (Lot 3)

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Luxembourg: Publications Office of the European Union, 2017

ISBN: 978-92-79-70487-1

doi: 10.2776/30744

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## Abstract

### **Cross-border public consultation procedures**

In this case study, local spatial planning decisions are used to shed light on the obstacles to cross-border public consultation procedures. The complex features of cross-border entities, sometimes overlapping each other's competences, increase the difficulty to assess the cause, scale and consequences of the obstacles identified. This case study provides evidence that spatial planning is particularly important for cross-border cooperation, since it can provide a way of managing and steering development in a cooperative way, thereby creating a more stable climate for investment and fostering a better quality of life. More specifically, the installation of wind turbines in the municipality of Wervik in Flanders, located at the border of Belgium and France is used as an example to illustrate the complex aspects of cross-border public consultation procedures.

An inventory of more than 200 cross-border obstacles between Belgium and France (BE-FR) was published in 2007. Within this long list of obstacles, 14 of them relate to spatial planning issues. The inventory process was steered by a cross-border Task Force made up of 12 members of the two national Parliaments (6 from each country). This initiative led to the creation of a spatial planning coordination platform hosted by the Eurometropolis Lille-Kortrijk-Tournai, which was formed in 2008 as a European Grouping for Territorial Cooperation (EGTC). Despite this major step forward in the spatial planning governance of the BE-FR cross-border area, difficulties have yet to be overcome and many problems remain unresolved, especially with regard to consultation procedures on the installation of wind turbines.

While the inventory of cross-border obstacles was updated in 2014, taking into the progress made in different fields including spatial planning, the issues related to wind turbine installations remain.

Several solutions to obstacles provide learnings on spatial planning methods while others refer to good governance. These include:

- Adopting an end-user approach to cross border obstacles;
- Including 'information-sharing' as the first item on the agenda of each EGTC's meeting;
- Referencing spatial planning obstacles into a common matrix;
- Implementing concerted management;
- Designing an EU compendium of spatial planning tools and practices;
- Steering the spatial planning process;
- (Re) establishing good neighbourly relations;
- Establishing a network of planners as contact points across relevant borders;
- Coordinating vertical cooperation in spatial planning decisions;
- Setting common provisions for the implementation of cross border cooperation in the EU.

## **1 Outline of the obstacle (legal and administrative) and the policy context**

Before delving into details of the case study and emerging legal and administrative obstacles, it is important to bear in mind some distinct features of spatial planning and recent policy developments in this area.

### **1.1 Understanding spatial planning**

The term 'spatial planning' is meant to encapsulate a number of points, summarized as follows<sup>1</sup>:

Spatial planning is a system for establishing long-term, sustainable frameworks for social, territorial and economic development both within and between countries. Its primary role is to enhance the integration between sectors such as housing, transport, energy and industry, and to improve national, regional and local systems of urban and rural development, taking into account environmental considerations.

Spatial planning is a public sector activity at all levels, requiring a clear division of responsibilities between different levels of government. Local-level spatial planning takes into account policies elaborated at both the national and regional levels. Local plans are particularly important because they involve and affect citizens as end-users. Local authorities prepare regulatory planning instruments, establish priorities for action, facilitate the preparation of local spatial plans, coordinate planning with neighbourhood authorities, engage with the community using participatory planning techniques, take proactive measures to encourage development, and monitor the implementation of policies and proposals, e.g. by enforcing adherence to specific planning legislation.

Many countries have recently made fundamental reforms to planning law to enable changes in the elaboration and operation of planning systems (for example in Finland, Ireland, Denmark and the Netherlands). Where planning reform has taken place, it has generally tried to shift the focus from physical land-use regulation to an integrated spatial planning approach<sup>2</sup>.

Although there is no single ideal model of spatial planning, some general and fundamental principles underpin spatial planning law and policy. Six such key principles are<sup>3</sup>: the democratic principle, the subsidiarity principle, the participation principle, the integration principle, the proportionality principle and the precautionary principle.

Nowadays, spatial planning is combining 'territorial engineering' activities with planning skills. Planning professionals – also known as 'planners' – play a key role supporting decision-makers in the development and design of territory and infrastructure planning. Planning expertise can be found in urban development agencies, regional nature parks, economic development agencies (particularly in Belgium), metropolitan areas and regional authorities. Beyond their traditional field of intervention (economic development, housing, industry and transport), planning expertise is increasingly required in the context of environmental management, climate action and metropolitan development. Planning teams often work hand-in-hand with legal counselling services specialized in public law.

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<sup>1</sup> This approach is largely inspired by the 2008 United Nations report on Spatial Planning: Key Instrument for Development and Effective Governance, with Special Reference to Countries in Transition.

<sup>2</sup> The 'integrated' approach aims at increasing policy coherence between different fields of intervention (i.e. environment v. economic development). It is sometimes referred to as 'systemic' approach' in urban planning. Tardin, 2014.

<sup>3</sup> UNECE (2008), Spatial Planning, Key Instrument for Development and Effective Governance, 2008, [https://www.unece.org/fileadmin/DAM/hlm/documents/Publications/spatial\\_planning.e.pdf](https://www.unece.org/fileadmin/DAM/hlm/documents/Publications/spatial_planning.e.pdf) (accessed in October 2016)



In terms of the wider European context, it is worth noting that in 1999, the EU member state ministers responsible for regional planning signed the European Spatial Development Perspective (ESDP). Although the ESDP has no binding status and the EU has no formal authority for spatial planning, the ESDP has influenced spatial planning policy in European regions and member states, and placed the coordination of EU sectoral policies on the political agenda<sup>4</sup>.

At European level, the term 'territorial cohesion' became more widely used in the 1990s with the rise of regional powers on one hand and the willingness of European institutions to contribute to a balanced distribution of economic and social resources among the European regions: it is mentioned in the Treaty on European Union<sup>5</sup> as a shared competency of the EU and it was also included in the 2007 Treaty of Lisbon. The term was defined in a 'scoping document' in late 2004 and has been further elaborated using empirical data from the European Observation Network, Territorial Development and Cohesion (ESPON) programme in a document entitled 'The Territorial State and Perspectives of the European Union'. EU ministers also agreed on a 'Territorial Agenda of the European Union 2020 – towards an inclusive, smart and sustainable Europe of diverse regions', known as TA2020<sup>6</sup>, in May 2011. The territorial dimension is fully endorsed by the Pact of Amsterdam establishing the EU urban agenda, adopted in May 2016.

## 1.2 Elements of spatial planning policy-making

By its very nature, spatial planning needs to take into account the territorial division of countries into different administrative units as well as territorial continuity that can be traced back to historical trading routes and commercial relations in Europe. The concept of territorial continuity, applied in a spatial planning context, means borders can be effectively ignored when it comes to projects about watercourses, aerial installations (wind turbines, communication relays, etc.). At the same time, the planning system does not ignore borders as the legal framework is conceived at the upper administrative units located on each side of the border.

To illustrate how planning works in practice as well as the related legal and administrative gaps, it is worth looking into the remit and functions of two planning documents: the Scheme for Coherent Territorial Development in France and the District Plan (Plan de Secteur / Structuurplan) in Belgium.

### Scheme for Coherent Territorial Development (SCoT)

In France, the SCoT is the blueprint for a sub-regional territorial development strategy with a 10 or 15-year time horizon, which became law in 2000<sup>7</sup> as a component of the sustainable development master plan (PADD)<sup>8</sup>. The SCoT provides a framework for vertical and horizontal integration:

- Vertical integration, as it ensures coherence between municipality and inter-municipality plans (e.g. housing, roads, etc.), as well as the spatial planning and strategies of other levels of government;

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<sup>4</sup> Dühr, S. et al.(2010), European Spatial Planning and Territorial Cooperation, Raumforschung und Raumordnung, February 2011, Volume 69, Issue 1, pp 63–64

<sup>5</sup> Treaty of European Union – consolidated version (2016), <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12016M/TXT&from=EN> (accessed in October 2016)

<sup>6</sup> Informal Ministerial Meeting of Ministers responsible for Spatial Planning and Territorial Development (2011), Territorial Agenda of the European Union 2020, 19 May 2011, [http://ec.europa.eu/regional\\_policy/sources/policy/what/territorial-cohesion/territorial\\_agenda\\_2020.pdf](http://ec.europa.eu/regional_policy/sources/policy/what/territorial-cohesion/territorial_agenda_2020.pdf) (accessed in October 2016)

<sup>7</sup> Loi n° 2000-1208 du 13 décembre 2000 relative à la solidarité et au renouvellement urbains (2000) <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=LEGITEXT000005630252> (accessed in October 2016)

<sup>8</sup> Région Nord-Pas-de-Calais – Picardie (2015), Atlas de la nouvelle région – Tome 2 Aménagement du territoire, June 2015, [https://www.nordpasdecals.fr/upload/docs/application/pdf/2015-07/atlas\\_npdcp\\_tome\\_2\\_aménagement\\_du\\_territoire\\_02\\_07\\_2015.pdf](https://www.nordpasdecals.fr/upload/docs/application/pdf/2015-07/atlas_npdcp_tome_2_aménagement_du_territoire_02_07_2015.pdf) (accessed in October 2016)

- Horizontal integration, as it influences how sectoral policies use space (e.g. transport, environment, urban policy, economic development, etc.).

The SCoT has to comply with the principles of sustainable development, including urban renewal, controlled urban development, social diversity, landscape and biodiversity preservation.

The SCoT is coordinated and managed by inter-municipality entities (EPCI). In August 2015, an important territorial reform was adopted<sup>9</sup>, requiring that inter-municipalities have a minimum of 20,000 (urban) / 14,000 (rural) inhabitants. For the Hauts de France region, this means that 70 inter-municipality entities have to get re-organized into bigger entities as of January 1st, 2017. The map of the administrative organisation of the new French region is available in Annex 2.

### **District Plan (Plan de Secteur / Structuurplan) in Belgium**

There is not a single Belgian planning system; instead there are three independent planning systems<sup>10</sup>. Each of the three Belgian regions has authority over the areas that affect the occupation of the 'land' in the broad sense of the term<sup>11</sup>. We focus here on the two Belgian regions involved in the cross-border European metropolitan area of Lille-Kortrijk-Tournai.

#### Flanders

A Regional Spatial Development Plan (RSV) and Regional Spatial Implementation Plans (RUP) set out the desired future development of the Flemish region. They aim at creating coherence between all planning initiatives in the region.

The Spatial Implementation Plans are set up to implement the Spatial Development Plans at district (Province) and local (Municipality) levels. These Implementation Plans are legally binding.

In Provinces, the District Plan (PRS) sets out the desired future development of each of the Provinces, in compliance with planning policies at higher governance levels. The PRS aims at creating coherence between all spatial initiatives in the specific Province. Provincial Implementation Plans (PRUP), the operational translation of the PRS, are legally binding.

At local level, Municipal District Plans (In Flemish: Gemeentelijk Structuurplan) are implemented through Municipal Implementation Plans (GRUP), which are legally binding and must be in line with planning policies of higher governance levels. Typically, a Municipal District Plan includes 3 sections: (i) information and analysis; (ii) strategic vision on a 5 years' horizon; (iii) operational plan (binding).

#### Wallonia

The Walloon spatial development plan displays the general vision and development strategy for the Walloon Region. It needs to comply with regional spatial planning law (CWATUP).

Underneath this strategic level, 23 District Plans essentially allocate land-use along functional zones, with the aim to: avoid urban sprawl, preserve rural areas for the maintenance of cost-effective agriculture and livestock breeding, preserve forests, woodland and natural areas, anticipate brownfield redevelopment, anticipate the development of areas for economic activities and meet leisure and tourism needs.

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<sup>9</sup> LOI n° 2015-991 du 7 août 2015 portant nouvelle organisation territoriale de la République (2015), <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000030985460&categorieLien=id> (accessed in October 2016)

<sup>10</sup> One for each region (Flanders, Wallonia and Brussels).

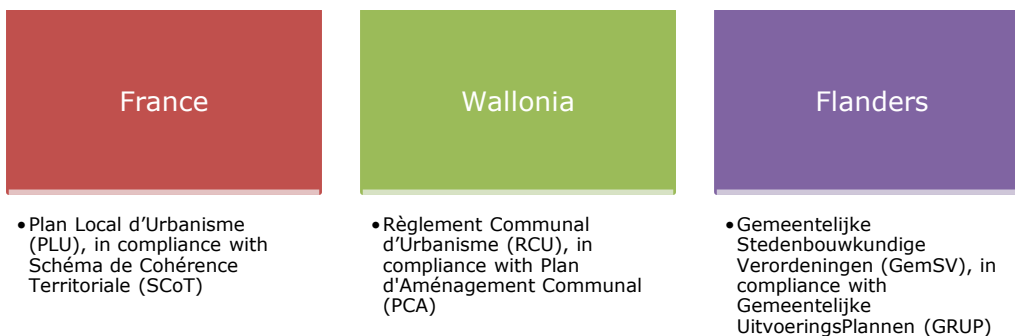
<sup>11</sup> European Commission (2000), EU compendium of spatial planning systems and policies – Belgium, Office for Official Publications of the European Communities, Luxembourg

At local level, the Municipal Structure Plan (SSC) provides the spatial planning strategy of the municipality. The Municipal Management Plan (PCA) is a land-use plan with prescriptive guidance about where and how to develop amenities or infrastructure.

Both the regions of Wallonia and Flanders have strong economic development agencies that operate as public sector companies at inter-municipality level. They also play an important role in spatial planning projects.

### **Spatial planning at the lowest governance level**

In all cases, the lowest governance level where spatial planning considerations as developed is the municipality. The planning documents have different names but they serve the same purpose of identifying options for and prioritising land-use:



In general, stakeholders involved to provide input to the design of the Plan include local council representatives, planning teams, regulators in charge of planning decisions at higher governance levels, and citizens. The extent to which authorities inform inhabitants about changes in local planning policies varies from one Member State to another.

### **Participative planning techniques**

Semantics deserve clarification at this stage: 'Consultation' is when you seek for somebody else advice, whereas 'Concertation' – or concerted action - is when you are part of the decision making, like during participatory planning exercises. Planners often use both terms for distinct types of procedures.

As users of public space, citizens can bring their experience, understanding of the problems and observations about possible improvements thereby legitimizing the entire spatial planning process. Participative planning is therefore a tool to demonstrate the responsiveness, accountability and transparency of the municipality as a planning authority.

In planning decisions, each phase of a project calls for a specific form of participation to take into account the ideas of stakeholders and ensure the process is effective. For example, when a housing project begins, citizens and local stakeholders are invited to develop the project vision collectively. Urban planning professionals are responsible for developing design options based on the suggestions made during the citizen participation activities. Citizens are then informed about the proposed options and invited to assess them<sup>12</sup>.

Participatory planning should not be confused with regulatory transparency or a mandatory public enquiry led by an independent investigator assigned by the Administrative Court.

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<sup>12</sup> Experience can be found in the European project PATERRE: <http://www.parterre-project.eu/>

In a cross-border context, the complexity of participatory planning activities can be increased by the high number of municipalities located on the border. This is the case in France as illustrated in the map presented in Annex 3.

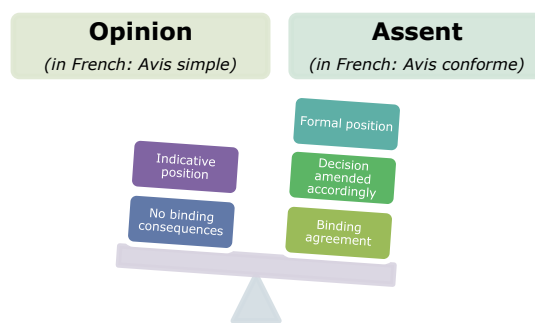
### Influencing spatial planning decisions

In public law, there is always a public authority in charge of approving a decision in fine. Following the consultation process, with or without participatory planning techniques, two types of procedures can influence a planning decision:

- An opinion provides a tentative position stemming from the disclosure, the public enquiry or the participatory planning process.
- Assent instead is a binding agreement, which requires that the decision is amended accordingly.

The following graph illustrates these differences.

Figure 1. Two distinct types of results from consultation procedures



Source: own elaboration

For example, the Walloon Environmental Council for sustainable Development (CWEDD) is a consultative body that helps local authorities make decisions on environmental and environment-related matters, within a sustainable development perspective. In recent years, it has delivered several unfavourable opinions over the installation of wind turbines near the French border, calling for a clearer strategy on renewable energies at regional and national level.

Last but not least, the availability of open geo-location data is very important for permits, spatial planning, etc. with data on land registers, maps, etc. The INSPIRE Directive<sup>13</sup> aims to create a European Union spatial data infrastructure for the purposes of EU environmental policies and policies or activities which may have an impact on the environment.

<sup>13</sup> <http://inspire.ec.europa.eu/about-inspire/563>

## 2 Case Study Context

A cross-border initiative was launched in 2005 by a group of 12 Members of Parliament, 6 from Belgium and 6 from France, forming a Task Force and leading to a 2-year detailed inventory of legal and administrative obstacles, which was published in 2007 in both languages (French and Flemish). The way responsibilities are allocated among public authorities - and related planning agencies - varies between the three regions of Nord-Pas-de-Calais<sup>14</sup> (FR), Flanders and Wallonia (BE), involving a large number of stakeholders. The idea was to collect the views of over a hundred stakeholders on difficulties with regard to cross-border day-to-day realities. The result of this 2-year coordination process led to an inventory of over 200 obstacles, in the following policy fields:

Table 1. *Obstacles per policy field*

Policy field	Number of identified obstacles
Initial training, education	19
Spatial planning	14
Health and welfare	41
Transport, mobility, telecommunications	33
Employment, vocational training, fiscal law, enterprise development	80
Water and environment	29
<b>TOTAL</b>	<b>217</b> <sup>15</sup>

Notorious outcomes of this process are evidenced, especially in the field of education and training, where most obstacles have been partially or entirely solved. In the field of spatial planning, the 14 obstacles were described as follows<sup>16</sup>:

Box 1. *Obstacle N171 – Cross-border public consultation procedures*

In the inventory of border obstacles between France and Belgium 14 were identified for spatial planning and urban development. These are:

1. Lack of knowledge about contact persons on each side of the border, difficulty to find whom to contact, poor knowledge about planning in general (procedures, documents, etc.)
2. Difficulty to access comparable datasets (maps, statistics, concepts)
3. Lack of ownership of planning and urban development documents in cross-border areas: poor appraisal of their impact, language-related misunderstandings
4. Poor consideration of territorial continuity with regard to land law and property rights in planning documents
5. Limits to consultation procedures (public enquiries, public availability of information) in institutional arrangements aiming at restricting land-use or allowing specific infrastructures having a cross-border impact
6. Specificity of information, concerted action and consultation procedures according to the region/country
7. Non-compliance between Belgian and French administrations in terms of structures and powers, plurality of initiatives, lack of coordination, no political decision with an overall vision of issues
8. Lack of adapted governance mechanisms at the level of the cross-border metropolitan area, including feasibility studies
9. Downgraded border posts; lack of concerted willingness to address border posts

<sup>14</sup> Now merged to Picardie and renamed 'Hauts de France' (see above).

<sup>15</sup> The 2014 update mentions a total of 239, as some have been added following written contributions.

<sup>16</sup> Own translation

10. Difficult organization of feasibility studies in the context of major projects
11. Difference in regulations for the signposting of walking routes
12. Persistence of the 'border effect' related to the Kortrijk Treaty of 1820
13. Lack of consideration of the cross-border dimension in national policies and programmes, incompatibility of procedures
14. Lack of legal status for the cross-border nature park

Some obstacles are very carefully described, using generic terms in order to avoid creating tensions between institutional stakeholders. For instance, obstacle 5 relates to the installation of wind turbines. This example is used to illustrate the complex aspects of the considered obstacle.

Back in 2007, several solutions were already identified (e.g. inventory of contact persons, inventory of planning documents, language training, etc.). This led to the creation of a spatial planning coordination platform between the regions, based upon a charter on mandatory cross-border consultation and concerted action for certain regional and local territorial planning documents (Local Urban Plan, Scheme for Coherent Territorial Development, Regional Scheme for Territorial Planning and Development). It is hosted by Eurometropolis Lille-Kortrijk-Tournai, within EGTC offices in Kortrijk, Belgium. The aim is to ensure coherence between the planning tools used by the 14 partners of the EGTC in the three regions covered by the metropolitan area, and to stimulate the long-term development of joint strategies.

At the end of April 2012, each partner designated a supervising technician, thus creating a permanent spatial planning network facilitated by the Eurometropolis team. This network allows the sharing of information on current and future spatial planning activities and enables local authorities as well as all concerned parties to anticipate consultation or concerted action procedures they are interested in, including mandatory public enquiries when they have to be organized at the same time in different regions.

The coordination platform is a technical committee. It is currently in a 'standby' position, due to internal reasons as "There is a need to reformulate a coherent and joint vision among the new elected representatives; this process should be accelerated with the recruitment of a new general manager as of May 2016"<sup>17</sup>.

Indeed, the platform seems to be showing its limits. It is based upon voluntary participation of planning staff from the 3 regions in order to improve information exchange on cross-border issues and projects. If an elected representative does not want to publicize an investment project, the planning team and in particular the practitioner who participates to the cross-border platform will not reference this project. Several problems were identified, notably in the field of wind energy.

The Menen-Wervik industrial estate is located in Western Flanders (BE), on the Lys river border with France, just opposite of the municipality of Halluin (FR). Since 2008, both municipalities belong to the Eurometropolis of Lille-Kortrijk-Tournai. In 2011, the Flemish Environment Minister<sup>18</sup> gave her approval to the construction of 2 wind turbines, with the aim to provide 2,000 households with renewable energy by the end of 2012. At that time, the Environmental Impact Assessment Directive was not yet published<sup>19</sup>; the approval could be given by Flanders' environment minister with or without the agreement of the cross-border Parliamentary delegation mentioned above,

<sup>17</sup> Interview with staff from the Eurometropolis agency, 29 March 2016.

<sup>18</sup> In 2011, the Flemish environment Minister was Joke Schauvliege.

<sup>19</sup> Directive 2011/92/EU of the European Parliament and the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment (2012), Official Journal of the European Union, January 2012, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:026:0001:0021:En:PDF> (accessed in October 2016)

as its opinion was not binding. Since then, Article 7, paragraph 4 of the EIA Directive stipulates that 'The Member States concerned shall enter into consultations regarding, inter alia, the potential transboundary effects of the project and the measures envisaged to reduce or eliminate such effects and shall agree on a reasonable time-frame for the duration of the consultation period'.

In 2013, a group of residents living on the French side of the border gathered 700 signatures in a petition for both a lack of official involvement, in the consultation phase of the French population living just across the border from the turbines and a lack of Environmental Impact Assessment (EIA). The claim was submitted to the European Parliament (Petitions Committee) and notified as admissible in December 2015<sup>20</sup>. The same month, the municipality of Halluin was informed that a public enquiry was going to be conducted in Menen with regard to the project of a third wind turbine to be added in the same industrial estate. In other words, conflicting positions between local communities remained unresolved for several years, reflecting poor communication and how cross-border administrations turned a deaf ear to the issues.

The problem seems almost insurmountable, as legal provisions for the minimum distance between a house and a wind energy pillar vary from one country to another. Besides, mandatory public enquiries on one side of the border were not publicized beyond regional and national borders and several projects successfully came through against the will of the local community on the other side of the border.

To better illustrate the nature of the cross-border consultation process obstacles in the case of the Wervik, located on the BE- FR border, it is important to note that decisions on spatial planning involve several tiers of government and decision-making bodies in and around the European Metropolitan Area of Lille-Kortrijk-Tournai. These are listed in Annex 1.

In recent years, the Prefecture of the French region received several enquiries from cross-border municipalities<sup>21</sup> which are concerned about the lack of a shared vision on cross-border planning strategies in relation to major infrastructure projects that could impact their quality of life<sup>22</sup>. Furthermore, continuous changes in legal provisions for spatial planning and the rotation of staff in the relevant authorities hamper proper monitoring of spatial planning activities.

This difficulty is yet to be overcome. Beyond consultation procedures that can differ according to the border region, there are no rules and obligations, even within the cross-border platform. One respondent said: "Sometimes, the planning team from a cross border municipality will directly inform the staff from the metropolitan area on a specific project; sometimes this information appears through our own information and documentation services (in French: veille documentaire). There is no systematic exchange of information in the field of cross border spatial planning. It all relies upon informal bonds and ties between the municipalities and the metropolitan area, the regional authorities and any other level of government responsible in this field".

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<sup>20</sup> <https://petiport.secure.europarl.europa.eu/petitions/en/petition/content/2812%252F2013/html/Petition-2812%252F2013-by-Valerie-Losfeld-%2528French%2529-on-wind-generators-installed-in-Belgium%252C-close-to-the-border-with-France>

Notice of admissibility: <http://www.europarl.europa.eu/sides/getDoc.do?type=COMPART&reference=PE-551.852&format=PDF&language=EN&secondRef=01>

<sup>21</sup> See for instance the December 2015 article on the construction of a third wind turbine near Lille.

<sup>22</sup> In December 2015, a legal recourse was disallowed by the Belgian court, allowing for the installation of 6 wind turbines in one municipality of the European metropolitan area of Lille-Kortrijk-Tourcoing. The final report of the environmental assessment is available online: [http://ventderaison.eu/estaimpuis/estaimpuis\\_eie\\_windvision\\_2012/Rapport\\_final\\_ESTAIMPUIS.pdf](http://ventderaison.eu/estaimpuis/estaimpuis_eie_windvision_2012/Rapport_final_ESTAIMPUIS.pdf) (accessed in October 2016)



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According to the French regional Prefecture, similar infringements to 'good governance' of cross-border projects are numerous in other economic sectors such as telecommunications or even agriculture<sup>23</sup>.

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<sup>23</sup> There is plentiful jurisprudence on the growing manure by-product market, when the land is on one side of the border and the farmer on the other.



### 3 Impact analysis

The key role of spatial planning is to promote a more rational arrangement of activities and to reconcile competing policy goals. It goes beyond simple land-use regulation, as it addresses the tensions and contradictions among sectoral policies, for example in conflicts between economic development, environmental and social cohesion policies.

In the case of wind turbines, the positive impact for some of the households receiving renewable energy is measurable: 2,850 dwellings are connected to a renewable energy network in Flanders<sup>24</sup>. Conversely, there is a negative impact on at least 700 persons who signed the petition against the wind turbine, mostly on the French side of the border. The impact mainly concerns visual and acoustic disturbance. As one of the respondents observed, cross-border continuity (territorial continuity) was ignored or not properly taken into consideration by the authorities in charge; economic operators work around the legal obstacle by submitting their planning project and negotiating their administrative agreement in the region / country where the legal framework is less constraining.

Such resentment within parts of the local community and unsuccessful institutional cooperation in economic development need to be overcome particularly as the case of the wind turbines took place while an intense programming of cross-border cooperation projects by Eurometropolis and other surrounding local entities was taking place. During the same period (2012-2015), both municipalities joined forces to apply for several INTERREG projects. There was an urgent need to clarify and solve these obstacles in order to justify other cross-border expenditure and the dynamics it creates at local level.

One way to do so was to go back to the inventory of cross-border obstacles (cf. Section 2), and to methodically review the progress made. The list of obstacles identified in 2007 was updated in 2014 through a process including surveys, interviews and focus groups. It was an initiative of the French government<sup>25</sup> which invited representatives of EGTC entities to participate to the steering committee.

Various options to ease the gaps in territorial continuity of planning documents, strategic documents and land planning projects were debated during technical workshops hosted by the regional Prefecture in Lille. Written contributions were also submitted by some of the cross-border entities. This documentation was aggregated in a draft final report<sup>26</sup>; interesting points are summarized below. Three categories of obstacles are identified, according to their level of resolution at the time of the update, seven years later. The three categories are (on the basis of MOT<sup>27</sup> description):

Unsolved obstacle: a problem for which no solution was found, even if hypotheses were formulated without being translated into effective actions.

Partially solved obstacle: a problem for which a solution was translated into an action that has not yet been fulfilled and did not yet prove its efficiency.

Solved obstacle: a problem for which a solution was translated into an action that was fulfilled and proved efficient.

Out of the 200 obstacles identified 7% (17) found solutions and 40% (93) were partially solved. Under the 'spatial planning' heading, for instance, one of the obstacles identified in 2007 was the 'lack of knowledge about planning tools and no organized cross border governance for urban planning'. With the creation of the

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<sup>24</sup> Bogaert, B. (2013) L'implantation d'éoliennes à Menin, 14 January 2013, <http://nordeurope.org/tag/electrawinds/> (accessed in October 2016)

<sup>25</sup> The Regional Prefecture 'Hauts de France' and its General Secretariat for Regional Affairs (SGAR).

<sup>26</sup> Still to be approved by all parties (April 2016). Original title (French): *Processus d'actualisation des travaux du groupe de travail parlementaire franco-belge et suites à donner*.

<sup>27</sup> Mission Opérationnelle Transfrontalière,

European Metropolitan Area of Lille-Kortrijk-Tournai in 2008, this impediment is considered as solved.

Another obstacle considered as partially solved is the possibility of planning joint projects, notably in the field of tourist signage systems<sup>28</sup>. Further research on the legal feasibility of converging cross border spatial planning documents is also under way with the support of the France-Wallonia-Flanders INTERREG programme.

Under the 'spatial planning' heading, only one 'unsolved' obstacle was set-aside during the 2014 update ('distinct consultation procedures exist in each region'), as it was not considered a priority. The main points put forward by the cross-border planners for the 2014 inventory update are summarized in the table below.

*Table 2. Solutions and good practice to spatial planning obstacles*

<b>Obstacle</b>	<b>Solution</b>	<b>Good practice</b>
Regional or local authorities on both sides of the border still have a weak understanding of equivalent 'foreign' planning documents and also show a rather weak commitment to participatory planning techniques	Update the 2007 Charter (including the list of planning documents to be submitted for cross border concertation, geographical boundaries and glossary of terms); Create a list of contact points in each entity with responsibilities in cross border spatial planning; Determine modalities for facilitating the implantation of the Charter; Decide upon acceptable time frames for cross border concertation (including public enquiries).	Guidance on cross border concertation procedures in Upper Rhine (2010); Memorandum of Understanding on mutual information in the field of spatial planning in Upper Rhine (2013).
Incoherence in the legislation of the two countries hampers investments in the field of renewable energies (i.e. wind)	Call upon technical expertise of the Commission on sustainable development of the French Government <sup>29</sup> (in French: CGEDD) in order identify regulatory divergence and propose improvements for cross border situations.	

Source: draft final report 'Update and proceedings of the Belgian-French Parliamentary Task Force on cross border cooperation' (2014)

The above table shows that the wind turbine issue remains unsolved. The call for technical expertise was still in progress at the time of writing this case study.

Besides this formal process of identifying potential solutions to identified obstacles, other types of informal and dynamic partnerships can overcome spatial planning difficulties and non-converging administrative rules. A few examples are documented in the field of environment with the joint design of a cross-border green and blue belt<sup>30</sup>.

<sup>28</sup> INTERREG, Inno Rando Pour Tous, <http://www.interreg4-fwvl.eu/admin/upload/project/pdf/82-fr.pdf> (accessed in October 2016)

<sup>29</sup> A Department of the Ministry of Ecology

<sup>30</sup> Parcs naturels régionaux de France, Le trame écologique de parc naturel transfrontalier du Hainaut, <http://www.parcs-naturels-regionaux.fr/centre-de-ressources/experience/la-trame-ecologique-du-parc-naturel-transfrontalier-du-hainaut> (accessed in October 2016)

## 4 Solutions and good practice

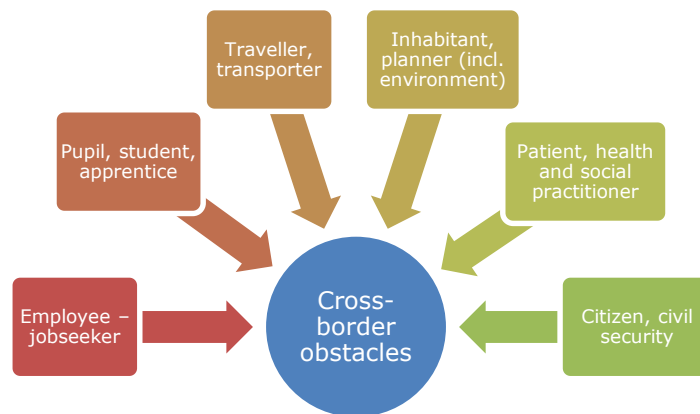
Drawing from the previous sections, and despite the fact that some of the solutions found are momentarily on hold, several interesting components can be highlighted. These components stem from interviewees or from the documentation collected for the purpose of drafting this case study. They provide learnings on the method adopted for cross-border spatial planning projects while others refer to good governance.

### 4.1 Methods for better cross-border spatial planning

#### Method: adopting an end-user approach to cross border obstacles

A pragmatic approach in the survey process of legal and administrative obstacles is to cluster them according to the end-user's point of view<sup>31</sup>. The various situations that any citizen (the end-user) can experience helps to clarify the field of intervention and its subsequent levels of responsibility. The list of obstacles can be allocated as follows in Figure 2.

Figure 2. The end-user approach to cross border obstacles



Source: own elaboration

We focused here on the end-user's position as inhabitant and planner, drawing special attention to planning tools and consultation procedures. Concerning inhabitants, the above example relating to the installation of wind turbines provides clear evidence of the need for transparency and accountability from local authorities when they engage in planning procedures.

#### Method: including 'information-sharing' as the first item on the agenda of each EGTC's meeting

During each formal meeting of EGTC partners, sharing information on current and future planning activities and projects should be discussed openly, in order to build trust and create a dynamic climate for joint cross-border development strategies. This exchange of information should be prepared in a coordinated manner by relevant planning teams of either side of the border.

#### Method: referencing spatial planning obstacles into a common matrix

Concerning planners, a matrix is proposed as a referencing system for legal and administrative obstacles in the field of spatial planning in Table 3:

<sup>31</sup> This clustering method is directly inspired by the work of Mission Opérationnelle Transfrontalière (MOT).

Table 3. Matrix as a referencing tool for planners

Reference	Answer
Type of document	
Purpose of the document	
Territorial scale	
Operator (in French: maîtrise d'ouvrage)	
Legal basis	
Concertation procedure(s)	
Time frame of the concertation process	
Potential options for cross border concertation (imposed or concerted decision, following simple opinion or formal assent)	
Legal entity in charge (including contact details)	

This tool was initially elaborated by the cross-border parliamentary Task Force<sup>32</sup> (see Section 2 above). It could be further elaborated and fed into the EDEN database with an additional heading<sup>33</sup>.

### Method: implementing concerted management

Concerted management is often used in environmental projects. For instance, the Hainaut Cross-border Nature Park uses this management model for monitoring its watercourses: 'It actively participates to planning processes implemented within the framework of the European Guideline on Water<sup>34</sup> with the aim to prevent and reduce pollution, promote water's sustainable use, preserve environment, improve aquatic ecosystems' conditions and mitigate the impact of floods or droughts'. A common master plan (SAGE) for the Scarpe Aval in France and the river contract for Escaut-Lys in Belgium gather all cross border stakeholders working on common issues<sup>35</sup>.

This approach is closely linked to integrated and systemic planning principles<sup>36</sup>.

### Method: designing a EU compendium of spatial planning tools and practices

Current EU documentation is not up-to-date<sup>37</sup> and deserves to be revisited within the context of recent spatial planning developments and the existence of legal tools such as the EGTC. A 21st century EU compendium on cross-border spatial planning would ideally include the following items:

- A glossary of terms and standardized translations in all EU languages;
- An explanation of the various planning documents on either side of the border;
- An analysis of their legislative differences (i.e. binding or not binding);
- Contextual information (e.g. on public policy, history, etc.);
- A mapping of the documents of neighbouring countries (with the dates on the entry into force and scheduled reviews); digital tools for information and data exchange can certainly support this exercise<sup>38</sup>.

<sup>32</sup> Source: interview with SGAR, Lille, 14 April 2016.

<sup>33</sup> Currently, the only field where spatial planning obstacles and solutions can be referenced is found under the heading O\_8.1 'Other > Institutional cooperation'.

<sup>34</sup> Directive 2000/60/EC of the European Parliament and of the Council establishing a framework for the Community action in the field of water policy (2000), Official Journal of the European Union, December 2000, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32000L0060> (accessed in October 2016)

<sup>35</sup> Source: cahier d'actions communes – October 2012. [http://www.pnr-scarpe-escaut.fr/sites/default/files/documents/cahier\\_mode\\_emploi\\_pnth-light.pdf](http://www.pnr-scarpe-escaut.fr/sites/default/files/documents/cahier_mode_emploi_pnth-light.pdf) (accessed in November 2016)

<sup>36</sup> See for instance the toolbox for the integrated planning and management of road traffic noise to the use of urban local authorities (Conference paper, 2000), <http://www.conforg.fr/internoise2000/cdrom/data/articles/000032.pdf> (accessed in November 2016)

<sup>37</sup> The EU compendium was published in 1997.

<sup>38</sup> The EU eGovernment Action Plan 2016-2020 supports this approach. See <https://ec.europa.eu/digital-single-market/en/news/communication-eu-egovernment-action-plan-2016-2020-accelerating-digital-transformation>

With regard to the terminology of spatial planning, while it may be highly desirable to have a consistent and well-defined set of terms for spatial planning, such terms are often very difficult to define, particularly in an international, multidisciplinary and multilingual context. Richard H. Williams, a leading authority on European spatial planning, contended that 'while various glossaries of planning terminology do exist, defining a universal and agreed-upon set of terms is an exercise fraught with difficulties'<sup>39</sup>. The 1997 EU Compendium of Spatial Planning Systems and Policies recognizes that even some of the most basic terms can have quite different connotations in different countries and regions<sup>40</sup>.

## **4.2 Good cross-border spatial planning governance**

### **Governance: steering the spatial planning process**

Successful cooperation requires a few key players to steer the process. In many instances, these stakeholders are usually local authorities represented by dedicated politicians. The large survey led by MOT in 2011-2012 reveals that 'mutual information-sharing between local authorities and other governance structures is often imperfect and working contacts are often felt as insufficient. The horizontal partitioning is doubled by a vertical partitioning, between levels of local authorities or State bodies and between cooperation structures, sometimes combined with rivalry between levels'<sup>41</sup>. Local authorities often have the strongest strategic concerns in cross-border cooperation, whilst such concerns are considered as marginal for institutions in charge at regional or central levels.

### **Governance: (re) establishing good neighbourly relations**

From the planner's point of view, the essential problem in cross-border spatial planning is the asymmetry of the various levels of responsibilities. One of the respondents told: "After 25 years of euphoria generated through the plethora of INTERREG projects, cross border cooperation is entering a new phase, governed by more complex spatial planning systems. The intensification of flows and the nature of the risks to engage into cross border cooperation must be appraised from a radically different contemporary perspective, notably in the light of civil security and the fight against terrorism".

This novel perspective should consider the proven efficiency of participatory planning techniques (cf. Section 1), as they still seem to be under-used in the policy area explored in this case study.

### **Governance: establishing a network of planners as contact points**

With different levels of decision-making on each side of the border, and given the increasing number of staff involved in metropolitan development, a basic element of good governance would be to foster human relations and professional exchanges among planning staff from cross-border areas but also from upper levels of the spatial planning systems. Technical workshops on spatial planning issues help to overcome the language problem and improve shared knowledge in the various fields where contemporary spatial planning is intersecting with other areas such as environmental assessment, climate action, positive energy buildings, smart grids and the circular economy.

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<sup>39</sup> UNECE (2008), Spatial Planning, Key Instrument for Development and Effective Governance, p.5

<sup>40</sup> European Commission (1997), Compendium of European planning systems, Office for Official Publications of the European Communities, Luxembourg

<sup>41</sup> MOT: Methodological guidebook to cross-border cooperation, [http://www.espaces-transfrontaliers.org/fileadmin/user\\_upload/documents/Documents\\_MOT/Europe/Guide\\_methodologique.pdf](http://www.espaces-transfrontaliers.org/fileadmin/user_upload/documents/Documents_MOT/Europe/Guide_methodologique.pdf)

### **Governance: coordinating vertical cooperation in spatial planning decisions**

This model is directly inspired from the Flemish protocol known as VICORO<sup>42</sup>. Since 2009, the regional authority of Flanders, the Provinces of West Flanders, the two economic development agencies acting on behalf of their stakeholder municipalities (West-Vlaamse Intercommunale – WVI for Veurne and Ijper and LEIEDAL for Kortrijk), signed a cooperation protocol. VICORO is a technical committee formed by experts and civil servants from the concerned entities, coordinated by the Governor of Western Flanders. The aim of the VICORO committee is to assess the incidence of French spatial planning activities and projects on Flemish cross-border municipalities in a coordinated manner.

### **Governance: establishing common provisions for the implementation of cross-border cooperation in the EU**

Some believe that a top-down approach – for instance through EU Regulation - is the only way to accelerate the convergence of spatial planning systems across border areas. This relies on the fact that since the publication of the Water Framework Directive, 5 wastewater treatment facilities have been built along the border of the metropolitan area, creating effective economies of scale and optimizing cross-border land-use.

### **Conclusions**

The example of the wind energy project in the Eurometropolis of Lille-Kortrijk-Tournai illustrates how scattered powers and uncoordinated action in the field of spatial planning can harm cross-border dynamics among local communities.

It is particularly important that all parties involved feel ownership towards the planning tools, rather than endure them as an external imposition. This means that they need to be prepared in an open and collaborative way with linguistic training and technical briefs at local level. Several 'hands on' methods are identified and proposed, which could ease the resolution of obstacles in the field of spatial planning. The key message is 'good cross-border governance'.

But the means must be proportionate to the ends. Spatial planning should unleash potential initiatives rather than simply adhere to prescriptive, and possibly ineffective, measures. It is a creative process. Spatial planning should also give priority to the issues that need most urgent attention. In some cases, however, like for the protection of quality of life, the use of rigid and non-negotiable directives is required. Ultimately, the quest for solutions to cross-border spatial planning obstacles is a question of addressing the needs, challenges and potential offered by spatial information in a cross-border context. Better cross-border spatial planning will facilitate a transparent and achievable change that will improve the cross-border economic potential and quality of life on one hand, and serve wider communities at regional level and upper levels of government on the other.

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<sup>42</sup> VICORO: Vlaams Interbestuurlijk Coördinerend Overleg Ruimtelijke Ordening

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**List of consultees**

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## **Annex**

### **Annex 1**

#### **Key players in spatial planning across Belgian and French borders**

There are currently 4 cross border entities, shortly presented here by order of anteriority (date of creation):

- The Hainaut natural cross border park (Parc Naturel Transfrontalier du Hainaut<sup>43</sup>), created in 1996 through a memorandum of understanding: 255,000 inhabitants, merging the activities of the 'Scarpe-Escaut' Regional Nature Park on the French side and the 'Plaines de l'Escaut' Nature Park on the Belgian side.
- The Lille Metropolitan Area Association (in French: Association Aire Métropolitaine de Lille): the grouping is formalized in 2007, with French legal personality, managed by Lille's urban development agency<sup>44</sup>. The LMAA extends to three regions (Nord-Pas de Calais, Flanders, Wallonia), two French departments (Nord and Pas-de-Calais) and two Belgian provinces (West Flanders and Hainaut). On the French side, the cross-border area is formed by the Lille Metropolitan Area and a Southern arc of towns rooted in the mining history of the region, stretching from Valenciennes to Béthune, and Arras, Cambrai and Val de Sambre. On the Belgian side, it comprises the economic development agencies IDETA (Tournai, Ath), IEG (Mouscron), Leiedal (Kortrijk), and a part of WVI (Ieper, Roeselare and Tielt). With 3.8 million inhabitants, it is one of the most important urban areas in Europe.
- The Lille-Kortrijk-Tournai Eurometropolis: this is the first European Grouping for Territorial Cooperation (EGTC) in Europe created in 2008, but initiated in 1991 via the COPIT (Standing Cross-border Inter-municipal Conference) between the Lille Metropolitan Urban Community and the neighbouring Belgian economic development agencies. The French side is smaller than the European Metropolis of Lille: it includes 2.1 millions inhabitants; its borderline (84 km) is the same.
- The West-Vlaanderen / Flandre – Dunkerque – Côte d'Opale EGTC: created in 2009 as a result of a partnership involving the West Flanders Province in Belgium and, in France, the Dunkerque urban agglomeration, Calais and surroundings, with around 2 millions inhabitants.

In reality, two different cooperation systems have been rolled out in the Lille area and overlap, as shown in the map below. On the French side, the larger cooperation area that started to take shape in 2005 was motivated by a government call for projects on metropolitan cooperation back in 2004.

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<sup>43</sup> <http://www.pnr-scarpe-escaut.fr/contenu-standard/un-parc-naturel-transfrontalier-et-europeen>

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Case study 12

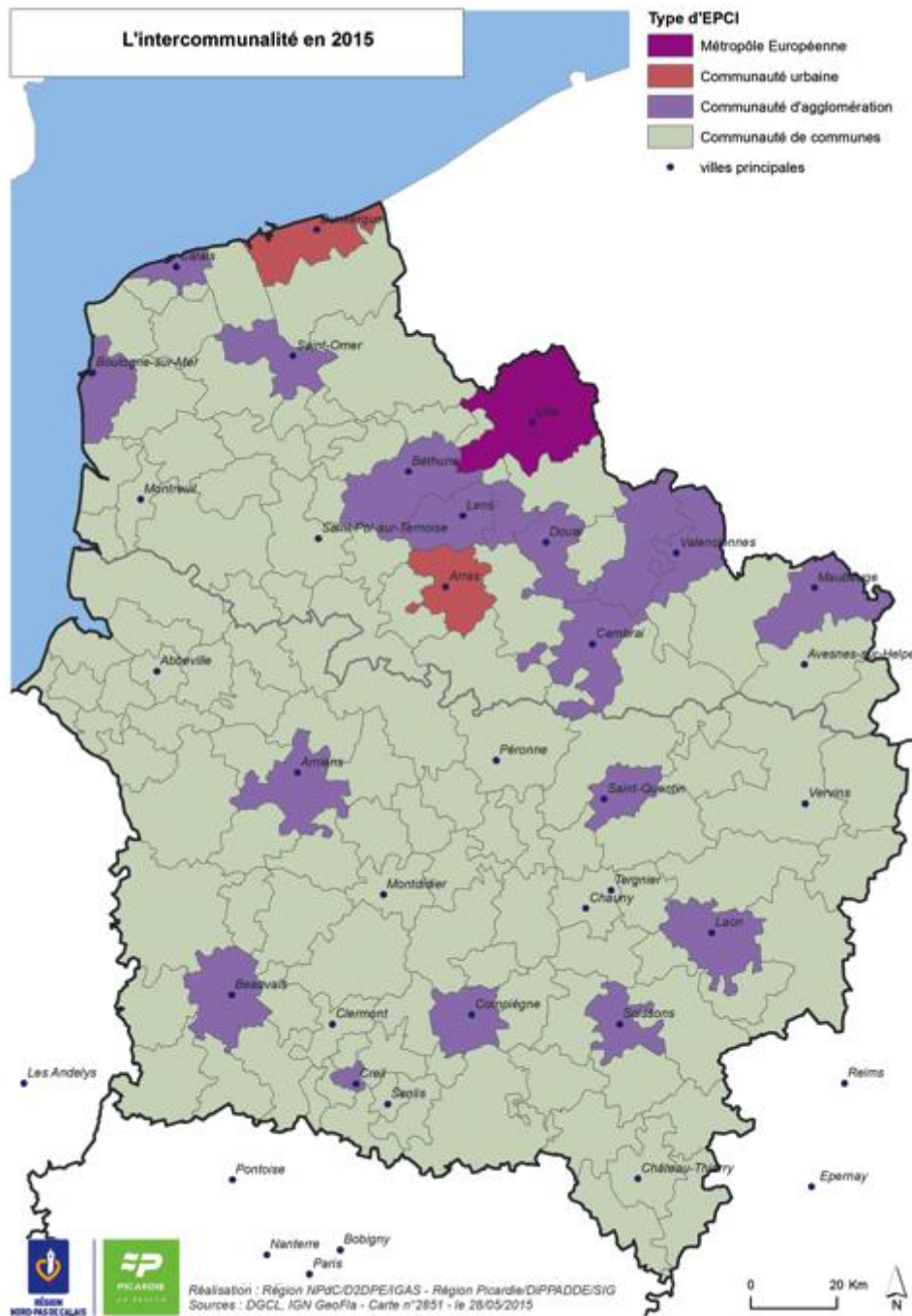
Figure 3. The territory of the Lille metropolitan area (green line), the European Metropolis Lille-Kortrijk-Tournai and the Lille urban community



Source: ADU Lille Metropole 2011

**Annex 2**

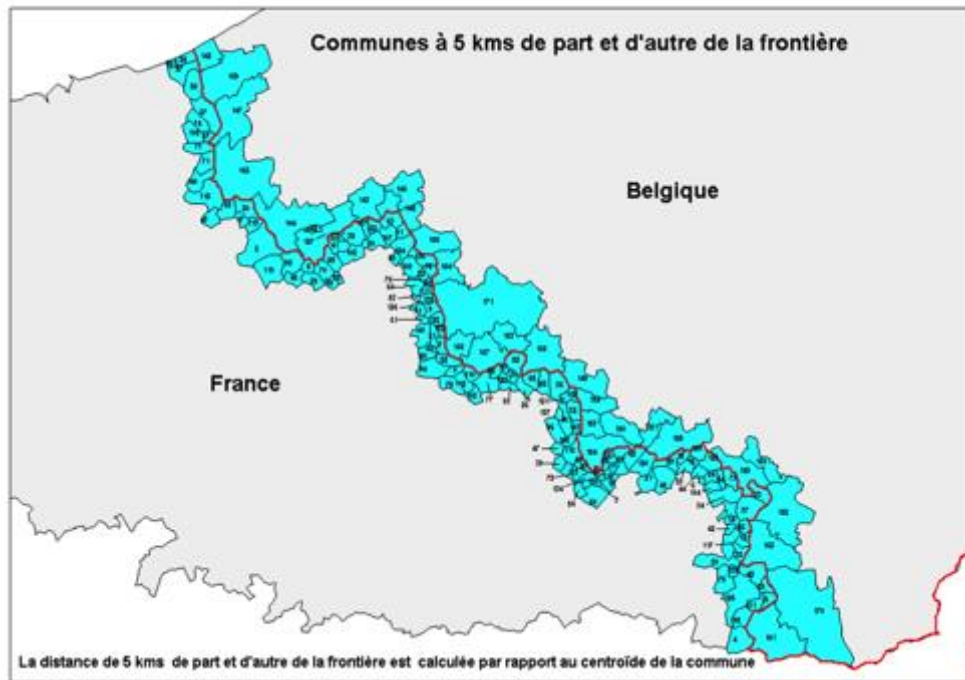
Figure 4. Regional administrative organisation of the new Hauts de France region (France)



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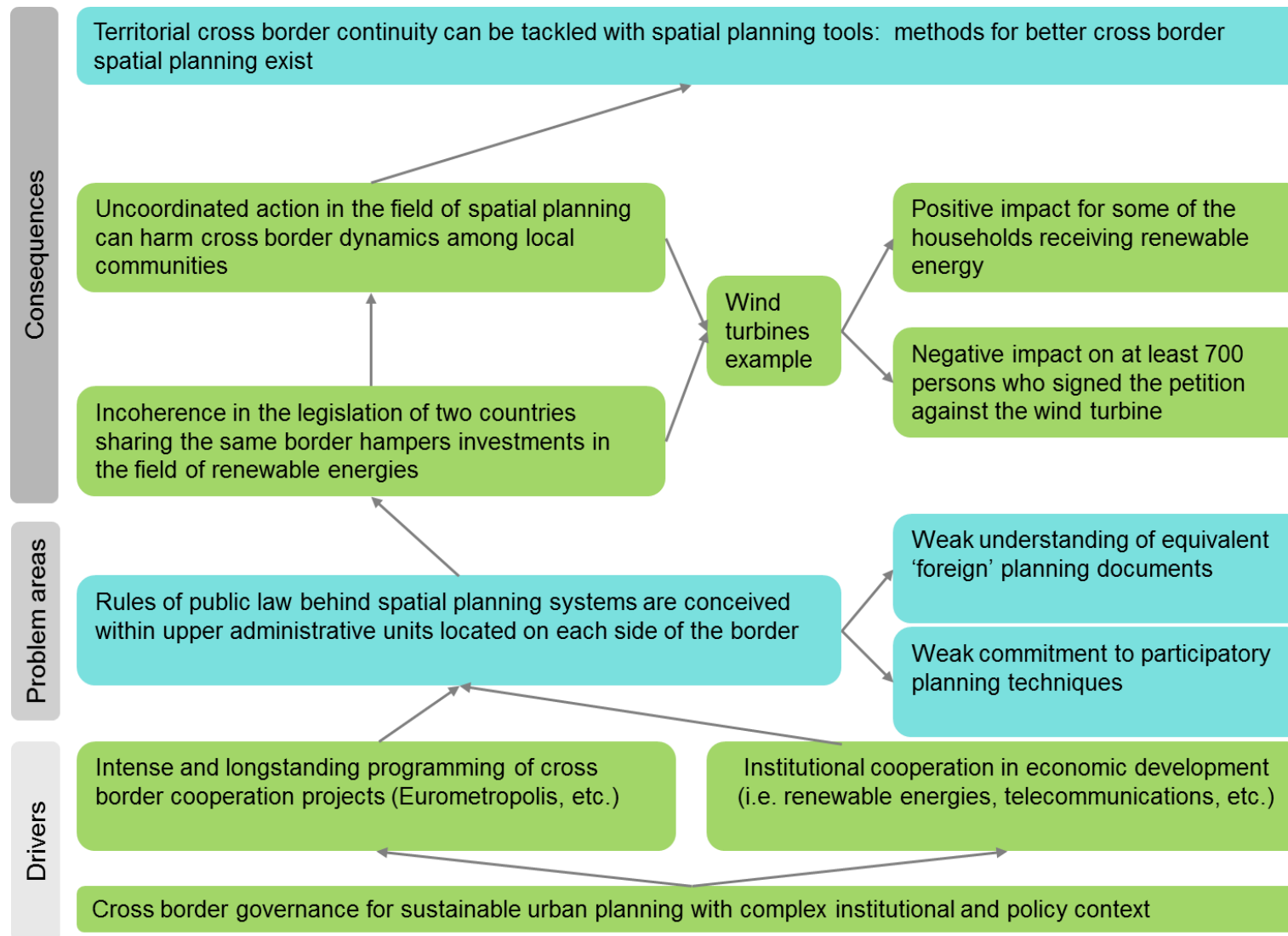
### Annex 3

Figure 5. Cross border municipalities between France and Belgium



© French regional Prefecture (SGAR) 2007.

Figure 6. Problem tree



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