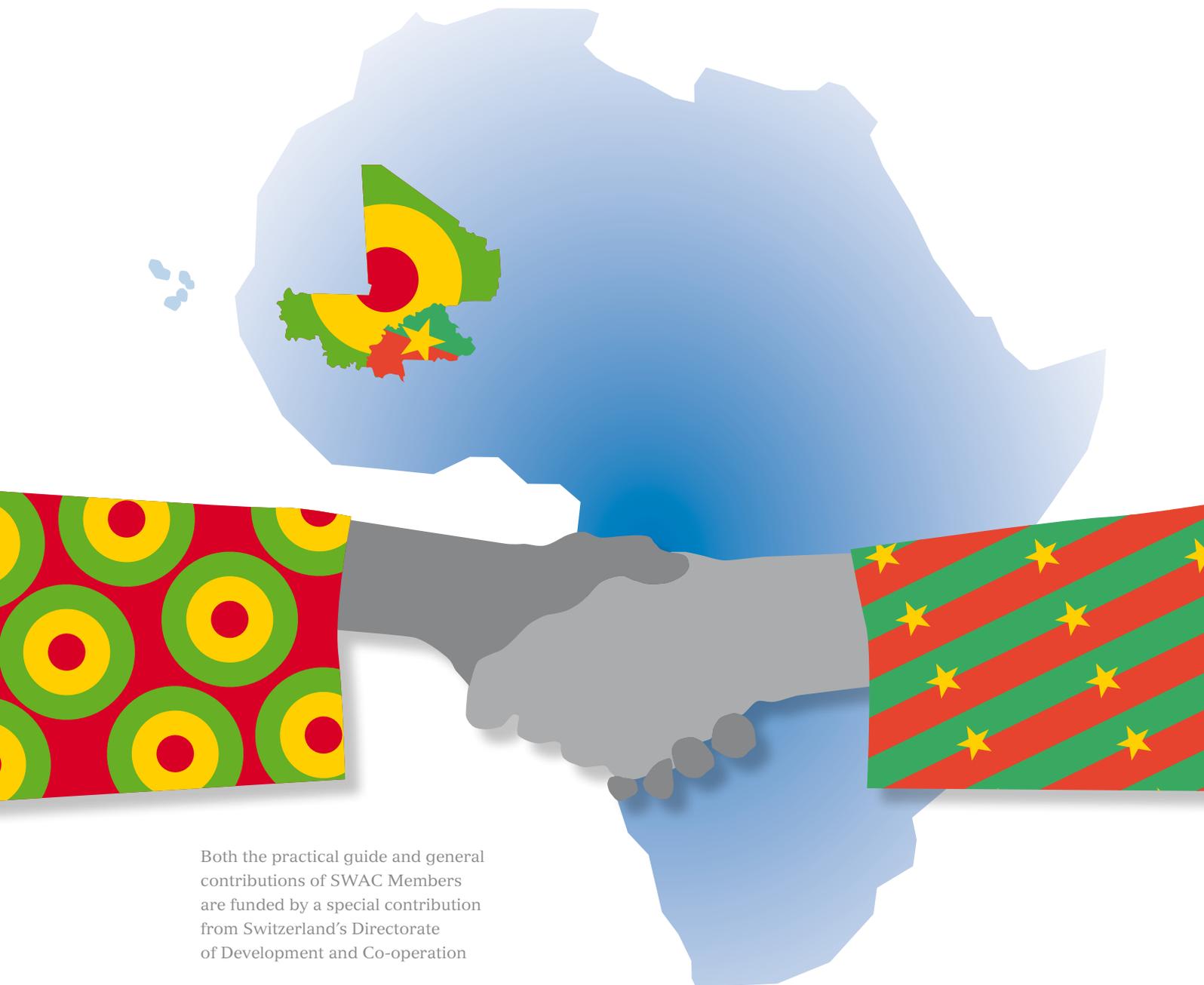


# Mali – Burkina Faso Cross-border Co-operation: Operational Framework Proposals and Policy Recommendations

A contribution of the « Mission opérationnelle transfrontalière »



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## Abbreviations and Definitions

**ECOWAS** Economic Community of West African States

**Cross-border co-operation** Any act or policy aimed at strengthening and developing good neighbourly relations between border communities, territorial administrations, bodies or authorities in two or more State Parties as well as the conclusion of agreements and arrangements pursuant thereto (definition taken from the African Union Convention on cross-border co-operation)

**SWAC** Sahel and West Africa Club

**DGCAF** Directorate-General of Administrative Districts and Borders

**DNF** National Borders Directorate, Mali

**GCM** Major Joint Commission in reference to the Mali/Burkina Faso joint commission

**MATCL** Ministry of Territorial Administration and Local Authorities, Mali

**MATD** Ministry of Territorial Administration and Decentralisation, Burkina Faso

**MOT** Cross-border Operational Mission

**PDM** Municipal Development Partnership

**SKBO** The Sikasso, Korhogo, Bobo-Dioulasso (Mali, Côte d'Ivoire, Burkina Faso) border area. The Ivorian crisis has prevented the involvement of Ivorian actors in this geographical area

**Sub-region** This is a conceptual unit which forms part of a major region or a continent and is customarily based on geographical location. In the context of this report, it refers to the West African sub-region.

**AU** African Union

**WAEMU** West African Economic and Monetary Union (we use the French acronym UEMOA)

The land area covered by the study:



## Description of the Diagnosis

### Aim of the Cross-border Operational Mission appraisal

The aim is to evaluate cross-border co-operation on those parts of the border between Mali and Burkina Faso where prospects for developing co-operation are among the most promising and experience already provides models for all African border regions. Relations with Côte d'Ivoire have not been covered by the study because of the difficult political context when the research was begun. A possible extension of activity was discussed at the May 2010 seminar in Ouagadougou.

1. Drawing on its experience in French and European border regions, the Cross-border Operational Mission (MOT) sets out proposals for workable mechanisms to achieve optimal community-based cross-border co-operation between authorities next to the Mali/Burkina Faso border. Twinning arrangements now constitute the common law mechanism for decentralised co-operation (co-operation between territorial authorities beyond national borders), which includes cross-border co-operation. For now, no recognised legal and operational framework has been adopted for the specific purpose of cross-border co-operation and with due regard for its special nature. The question facing the MOT was to determine whether existing operational mechanisms matched the needs of territorial authorities and their schemes. Participation by the population and civil society in cross-border co-operation does not fall directly within the scope of the present study. However, this aspect is inherent in co-operation along the Mali/Burkina Faso border and included in the report's recommendations.

2. So that the recommendations are as effective as possible given practical conditions and needs in the context of cross-border co-operation between Mali and Burkina Faso, the partners involved, namely the Sahel and West Africa Club (SWAC), the Ministry of Territorial Administration and Local Authorities (MATCL) and the Ministry of Territorial Administration and Decentralisation (MATD), have tested the proposals for mechanisms applicable to the mango sector in the Sikasso-Bobo Dioulasso-Banfora region (of Greater Kenedougou on the Mali/Burkina Faso border), with support from local economic and policy actors. This sector was chosen over others, such as cotton, because of its greater resistance to and independence from current international market fluctuations. The MOT included within its diagnosis the possibilities open to those involved in the mango sector, in terms of cross-border organisation and also legal structuring in order to improve this sector's competitiveness.

### Methodology

In liaison with the team, the MOT drew up an assessment of cross-border co-operation between Mali and Burkina Faso with special emphasis on the needs of local actors. This close collaboration to some extent made it possible to compensate for the lack of field missions which could not be provided for in the budget. It turned local experience to good account and uses this participatory approach in an effort to ensure appropriation of the work, and closer alignment with the needs of people living in border areas and economic actors.

The MOT conducted 35 telephone interviews with representatives of interests on each side of the border, including territorial authorities, geographically decentralised

authorities, Malian and Burkinabe ministries, regional economic communities (WAEMU and ECOWAS), the African Union, technical and financial partners and mango sector economic operators (trackers, producers, processors and exporters) (*see Section 6 listing the persons interviewed*).

Conducted using questionnaires, the interviews were a means of identifying the needs of those questioned, and the first options to be preferred as regards mechanisms for joint action.

These lines of enquiry were discussed with members of the team during a mid-term steering committee meeting (March 2010). Following this meeting, conclusions were presented and debated at the Ouagadougou feedback seminar on 27 June 2010. Those taking part were the representatives of bodies who were interviewed during the research, namely the mayors of communes, ministry representatives, and co-operative societies and professional associations in the mango sector (see part 3). This assessment refines the conclusions while incorporating the proposals of the actors concerned.

## Context

The issues surrounding cross-border co-operation in Africa are of special importance: such co-operation constitutes a force for peace and for ensuring stability in border areas, but also for economic and social development. It foreshadows eventually stronger African political and economic integration like what typified the construction of Europe a few decades ago.

Once they attained national sovereignty, the states of the West African sub-region embarked on joint policies to deal with the obstructive effects of the borders drawn during the colonial era. Their aim was to consolidate arrangements for joint action to achieve common development goals based on interstate solidarity: it was against this background that the African Union and regional economic communities were first established. Cross-border co-operation had an important part to play in this respect.

The concept of “cross-border regions” was first put forward by Mali in 2002 at the instigation of its former President, Alpha Oumar Konaré. It corresponds to a “geographical area that overlaps two or more neighbouring states, and whose populations are linked by socio-economic and cultural bonds.” This concept recognised the need for populations to be involved in managing national public life and a “bottom-up” integration policy.

As African integration inevitably called for stronger integration of territories, policies and border area economies, action had to be promoted at many different levels: this meant at local, national and West African levels, but also in the public and private domains and through public/private partnerships.

### Cross-border co-operation is arousing growing interest at all levels

In light of these necessities and opportunities, numerous actions to promote cross-border co-operation have been initiated in recent years: they include the adoption by Mali of a national borders strategy, the inception of the WABI network in 2004 (the Mali National Borders Directorate, ENDA-Diapol and SWAC), the pilot field experiments conducted by the Groupe de Recherches et de Réalisations pour le Développement rural (GRDR, or the Rural Development Research and Projects Group)<sup>1</sup>, the Municipal Development Partnership

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<sup>1</sup> The GRDR gave its support to the cross-border programme for development of the Karokoro basin on the Mauritania/Mali border.

(PDM)<sup>2</sup>, ENDA-Diapol<sup>3</sup>, traditional and enterprising activities run by populations, the introduction of actions for cross-border relations by the African Union and its border programme<sup>4</sup> (marking out of borders, and support for the Tominian area in Mali and the Kossi in Burkina Faso) and the 2005 ECOWAS Cross-Border Initiatives Programme (CIP). As for WAEMU, it is conducting a study on the prospects for cross-border co-operation among its member countries and includes border area issues on its agenda. Networks of territorial authorities are also taking a growing interest in such issues, and include the AIMF (International Association of Francophone Mayors), which is coordinating a capacity-building project for the territorial authorities of Burkina Faso and Côte d'Ivoire<sup>5</sup>.

### Burkina Faso and Mali - states strongly involved in promoting cross-border co-operation

Completion of work on marking out the Mali/Burkina Faso border in January 2010 and measures for ensuring the safety of border areas have paved the way for fresh bilateral commitments of possible relevance to other policies with a cross-border dimension (taxation, transport, co-operation between territorial authorities, etc).

In both Mali and Burkina Faso, the ministries responsible for territorial administration have been actively involved in monitoring cross-border issues for years and include departments specifically for this purpose. In Mali, this department is the National Borders Directorate within the Ministry of Territorial Administration and Local Authorities (MATCL) and, in Burkina Faso, the Directorate-General of Administrative Districts and Borders in the Ministry of Territorial Administration and Decentralisation (MATD). The appointment of contact persons on the cross-border issue makes for easier bilateral relations between the states (see Annex 2 showing the organisation of ministries involved in cross-border co-operation in Mali and Burkina Faso). In addition both countries have a body for bilateral co-operation, namely the Major Joint Commission (GCM) which meets once every two years and has the task of dealing with matters of common interest to them. There are institutional frameworks for cross-border meetings, under which ministers meet once a year, regional governors once every six months, and prefects and high commissioners once every three months. These meetings do not always occur with the stated regular frequency, for scheduling reasons on both sides but also because of the limited means available to the regional authorities in border areas.

### Territorial authorities - protagonists in community-based cross-border co-operation

Territorial authorities are authorised under their own domestic law to co-operate with foreign territorial authorities (decentralised co-operation).

The decentralisation process is an ongoing one which is subject to supervision on the part of support programmes with the backing of the technical and financial partners. The aim is that the territorial authorities should become more capable of exercising their responsibilities.

Authorities in border areas are faced with special challenges in meeting the needs of their populations: identifying a common vision for the development of a particular cross-border area; and the development of consistent and co-ordinated policies on both sides of the border (in fields such as culture, education, health, transport, economic development and land-use planning), as well as of services, infrastructure and cross-border public

<sup>2</sup> Since 2005, efforts to develop cross-border relations have been gathering pace in the SKBO (Sikasso, Korhogo and Bobo-Dioulasso) area. The PDM was involved in particular in establishing a cross-border network of community radios.

<sup>3</sup> ENDA Diapol is a non-profit voluntary international organisation. It has been active in the southern Senegambia area on the borders of Gambia, Senegal and Guinea-Bissau.

<sup>4</sup> The AU Border Programme.

<sup>5</sup> The 'decentralisation and local governance' programme. For further information, see: <http://www.aimf.asso.fr>

amenities (to avoid any duplication). In this respect, the cross-border issue has to be part and parcel of the decentralisation process.

### **An operational perspective: the mango sector – a cross-border sector with a strong impact on the economic and rural development of the region**

The mango sector offers highly significant opportunities for people in terms of income and of job creation, particularly among women. The diversification of activities (production, processing, etc.) and of products (dried mangoes, mango purée) and the development of “fair trade” and “organic” seals of approval hold interesting prospects for the populations concerned.

A major share of mango production is centred on the Greater Kenedougou located in the cross-border area of Sikasso in Mali, and Cascades and Hauts Bassins in Burkina Faso (the area studied). The sector has not yet undergone any cross-border organisation of its actors, although measures are well under way to improve its overall competitiveness (such as training in risks to health and plant health, the exchange of good practice and joint use of facilities). For some years, its economic operators have begun to consider the development of a mechanism for cross-border joint action. By implementing recommendations on cross-border co-operation between authorities in the mango sector, it was possible to examine the relevance of the proposals and refine them during surveys and at the feedback seminar.

This report provides suggestions of the type of co-ordination mechanisms needed to improve the basic conditions affecting action taken by the territorial authorities (part 1) and operators in the mango sector (part 2).

# 1 Proposals for workable mechanisms: from the regional context to the Mali/Burkina Faso border area

## 1.1 Co-operation between territorial authorities in Mali and Burkina Faso

### Long-standing cross-border relations

Cross-border relations between people are a long-standing tradition. With their bonds rooted in kinship, friendship, and economic and cultural relations, cross-border areas constitute active communities whose special features cannot be overlooked in public policies conducted at West African, national and local levels.

### Decentralisation and inter-communal co-operation: the challenges for community-based and efficient territorial management

Proper observance of borders and their concomitant rights and obligations derives from the authority of the states concerned which remain the guarantors of national interests. The process of decentralisation in Mali and Burkina Faso is leading to a transfer of responsibilities from central government to the territorial authorities which today play a major role at regional and local levels. They are now able to govern themselves freely and develop policies close to the needs of their populations. “Many observers emphasise that Mali and Burkina Faso are home to among the most advanced decentralisation processes in Western Africa. Both processes are the outcome of an almost identical development involving a twofold refocusing of the state on its tasks and sovereign commitments on the one hand, and incentives to create community entities completely free to administer local affairs on the other”<sup>6</sup> (see the overview in Annex 3 on territorial organisation in Mali and Burkina Faso).

The issue of inter-communal co-operation is relevant to both countries: it has become clear that certain services and public amenities would gain from being developed not just for people from one commune alone, but on a broader scale covering several communes. Besides resulting in economies of scale, such an approach avoids duplication of services and facilities while also taking into account the real nature of functional areas. It has become rapidly apparent that administrative limits and means of intervention could not take this factor sufficiently into consideration: but how was one to intervene efficiently over an area stretching beyond the normal administrative limits and co-ordinate the policies conducted by different public actors?

In both countries, mechanisms for inter-communal co-operation have been developed so that communes can come together and develop consistent policies, setting up a single form of joint governance for these huge areas which is capable of implementing territorial projects (see Annex 4 on legal instruments of cross-border co-operation in Mali and Burkina Faso). From a simple agreement to the setting up of a joint body with its own legal status, the communes may now organise activities among themselves and opt for the instrument best suited to their partnership.

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6 La coopération transfrontalière en Afrique de l’Ouest: l’exemple du Burkina Faso et du Mali, August 2009, SWAC/OECD.

## Cross-border co-operation: the counterpart to decentralisation in border areas

In carrying out their policies, territorial authorities next to borders have to take account of the reciprocal dependencies tying them to the lands around them (with which they are involved in functional relations), and especially those on the other side of the border concerned. From this angle, it may be said that co-operation between territorial authorities beyond national borders corresponds to a method of conducting inter-communal co-operation in order to develop policies geared to the needs of the population in the most efficient and cheapest way possible. As territorial organisation on opposite sides of a border differs, the development of cross-border co-ordination mechanisms and identification of the agencies that should be involved becomes a more complex matter.

### 1.2 How does one identify the most suitable mechanism for cross-border joint action?

For each co-ordination mechanism, the following will be identified:

- 1 the areas of interest of cross-border co-operation: what is its purpose?
- 2 the “value added” of a special cross-border co-ordination mechanism in comparison with existing initiatives;
- 3 the most appropriate organisational level: what geographical coverage and level of decision-making are required?
- 4 the partners concerned: institutional and socio-economic actors; whether the co-ordination mechanism is broad or restricted;
- 5 the duration of the partnership: is co-operation ad hoc, or sustainable and long-lasting?
- 6 the most appropriate legal instrument for institutionalising the preferred co-ordination mechanism;
- 7 Transcription of the partners’ expectations for legal purposes.

The question of the legal structuring (items 6 and 7 above) is considered once items 1-5 have been dealt with. The co-ordination mechanism may assume a variety of forms: thus in the case of either a convention or a long-term dedicated common body, the preferred legal arrangements depend on the purpose of co-operation, its duration and the parties involved.

Ill-conceived proliferation of co-ordination mechanisms is obviously not recommended. However, a single land area may incorporate several mechanisms for cross-border co-operation as long as the aim is different in each case. Co-ordination of these different forms of co-operation is vital to promote constructive interaction between initiatives, and avoid any competitive scenario which would be counter-productive.

### 1.3 Co-operation needs of the territorial authorities in the SKBO area

Several telephone conversations took place with the territorial authorities in the Sikasso, Korhogo and Bobo-Dioulasso (SKBO) area, including the communes (see the list of persons interviewed). As a result, various aspects of the daily life of people living in the border region of Sikasso-Bobo-Banfora were identified:

- These people are bound by a sense of traditional solidarity and kinship, as well as by a common language and culture. This situation led most communes to co-operate with their counterparts on the other side of the border as soon as they were established.

- Co-operation and cross-border flows are hindered by bothersome customs formalities, which among other things reflect poor implementation of the ECOWAS protocols concerning the free movement of persons. These protocols date from between 1985 to 2000 and cover practical abolition of the entry visa within the ECOWAS area; recognition of the right of ECOWAS citizens to residence and settlement; and increasing use of the ECOWAS residence card, travel documents and passport. Notwithstanding the adoption of this legislation, several mayors regret the existence of petty customs regulations, if not ill-suited provisions resulting in red tape. It is also apparent that people crossing the border are not fully aware of their rights<sup>7</sup>.
- Elected representatives are very familiar with projects run under the SKBO initiative. Attention should be drawn to the extensive work of the communes in identifying needs, which has proved its worth after more than five years of thought and discussion (since the Sikasso action plan was initiated in 2005). For now, these projects are essentially cultural. This is a regular feature of inter-communal cross-border co-operation comprising activities clearly visible to citizens, in which they can easily be involved. Putting it into practice may require just informal mechanisms, or even no more than a twinning agreement.
- Action to co-ordinate policies or draw up joint proposals have also taken shape, such as the 2005 Sikasso action plan which has provided a comprehensive multi-sectoral approach to the development of the SKBO area, or the cross-border health action plan.
- The communes have identified several projects of a more structural nature for their territory, such as the development of a cross-border through route, the building of a cross-border bridge linking Fanidiamà to Mali and Baguéra to Burkina Faso, or the scheme to develop the Ouéléni-Nimbougou-Loulouni cross-border hydro-agricultural basin. The challenge for those involved is to move from the discussion phase to that of implementation.

With regard to the proposed outline development of a cross-border project (see Annex 4), the actors in the SKBO area, including the communes, have completed some of the stages:

- establishment of a mechanism for joint action to work out an overall strategy for the cross-border territory;
- description of a comprehensive proposal: 2005 Sikasso action plan updated at Banfora in November 2009;
- political consensus on this comprehensive plan;
- identification of workable projects and their operational method.

*The key questions that now arise are as follows: what legal framework and sources of funding are needed to organise and implement cross-border co-operation in practice, whether this means the governance of the Sikasso action plan, or the realisation of operational projects?*

Given the lack of a working mechanism and of any technical and financial support from the states and donors, the communes in the SKBO area cannot develop this kind of action. The cross-border health centre scheme involving the villages of Ouàroky (Burkina Faso)

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<sup>7</sup> A scheme for a cross-border community radio network, known as the Kurumba network, has been established in the SKBO area. One of its duties is to inform people about their rights when crossing the border. For further information, see the WABI website (borders and integration in West Africa): [www.afriquefrontieres.org/](http://www.afriquefrontieres.org/)

and Wanian (Mali), which is supported by the German co-operation organisation GTZ, clearly demonstrates the feasibility of this type of cross-border project when the skills, expertise and financial means are available.

Communities are ready to co-operate across borders in accordance with two identifiable motives:

- The wish to change legislation for the better and put an end to practices which hinder cross-border flows and hamper the daily life of those living next to borders;
- The desire to develop joint projects of common interest to populations on both sides of the border.

The MOT study reveals that, beyond the human, financial and technical resources that territorial authorities should be offered for them to develop policies with a positive impact on active cross-border communities, these same authorities should be organised better and to a greater extent among themselves.

Table 1 below sets out the barriers that should be overcome to make for easier cross-border co-operation, the actions required for this purpose, and the level at which they should be initiated. Table 2 shows the co-ordination mechanisms required with a view to carrying out these actions effectively.

**Table 1**

Needs expressed by the territorial authorities and the proposed approach at each level of intervention

<b>Barriers that should be overcome to facilitate cross-border co-operation</b>	<b>Cross-border actions required</b>	<b>Levels involved in overcoming the barrier indicated</b>
<b>Barriers to the daily life of cross-border populations</b>		
Bothersome customs formalities attributable to non-compliance with ECOWAS protocols on the free movement of persons	Improving the enforcement of existing legislation (ECOWAS protocols). Better training and remuneration for customs officials. Common border customs posts.	National
Administrative red tape when crossing the border because some provisions in the ECOWAS protocols are inappropriate	Changing existing legislation for the better; simplifying, adapting and clarifying the regulations and informing people about them.	National and sub-regional
Lack of access to border areas	Developing and constructing cross-border through routes, roads and bridges	Local (support from central government services and technical and financial partners)
Lack of services and basic facilities	Developing cross-border services and facilities (health centres, purification plants, markets, etc.)	Local (support from central government services and technical and financial partners)
<b>Barriers to the development of cross-border actions</b>		
Lack of consistency between policies on each side of the border, especially concerning land planning and development	Incorporating the cross-border dimension routinely in national policies and coordinating them on both sides of the border	National/bilateral
	Incorporating cross-border concerns in regional and local policies and coordinating them on both sides of the border, especially in planning documents.	Local (support from central government services and technical and financial partners)

Lack of engineering resources in territorial authorities for the successful completion of cross-border schemes	Strengthening* the support for territorial authorities in the development of cross-border projects: capacity building, technical support for cross-border joint action, financial and legal arrangements, involvement of local people, organisational and institutional framework of the neighbouring country, etc. Where appropriate, focusing the actions of technical and financial partners on these needs.	Local (support from central government services and technical and financial partners)
Lack of financial capacity	Establishing an appropriation specifically for cross-border co-operation within the national budget	National
	Inclusion of the cross-border dimension within the overall strategy to eradicate poverty and in the state/funding agency partnership agreements	National, technical and financial partners
	Authorising national programmes to intervene in the neighbouring country to support schemes of cross-border interest (with simpler procedures for cross-border intervention by funding agencies)	National, technical and financial partners
	Establishing a sub-regional common fund for cross-border co-operation	Sub-regional
Lack of a clear legal framework for cross-border projects	Adoption of a Mali/Burkina Faso bilateral convention on cross-border co-operation between territorial authorities, so as to clarify the law that applies and add the necessary legal amendments	Bilateral
	Adjusting the law of territorial authorities in Mali and Burkina Faso to the special features of cross-border co-operation	Bilateral
Lack of familiarity with good practice in cross-border schemes in Africa and Europe	Furthering exchanges of experience with other African and European border area territorial authorities (decentralised co-operation)	National: AMM (Association of Mali Municipalities), AMBF (Association of Burkina Faso Municipalities) and other local authority networks. Sub-regional: ECOWAS, WAEMU, PDM. Africa/EU: MAEE (French ministry of European and Foreign Affairs), MOT, AEBR (Association of European Border Regions), AIMF (International Association of Francophone Mayors), CUF (Cités Unies France).

\* Development of training initiatives, capacity-building and technical support for the benefit of territorial authorities: strengthening support for these authorities in the development of cross-border projects so that they can establish cross-border co-ordination mechanisms, sensitize populations to appropriate financial and legal arrangements and understand the organisational and institutional framework of the neighbouring country, etc. Actors likely to provide training or technical support are existing training centres, other more experienced border area territorial authorities (through the exchange of good practice under twinning agreements) and experts. Such actions could be funded by central governments and donor agencies, via national or sub-regional funds.

## 1.4 Proposed organisational approaches for territorial authorities

This part sets out possible approaches to organisational mechanisms for improving cross-border co-operation between territorial authorities, as well as life in border areas. The proposals are the outcome of discussions at the feedback meeting (Ouagadougou, May 2010).

In the case of each barrier indicated, Table 2 offers a course of action requiring adaptation to local circumstances. These possible approaches involve the local/regional, national, West African, pan-African or even international levels. They call for actors organised along appropriate lines, not to mention similarly consistent legal structuring.

**Table 2**

Proposals for cross-border mechanisms in joint action at all levels

	<b>Focus of the cross-border co-ordination mechanisms</b>	<b>Appropriate organisational mechanism</b>	<b>Activity prior to use of the mechanism advocated</b>	<b>Method of intervention</b>
<b>West African, pan-African and international levels</b>	Partnerships between border area territorial authorities to exchange experience and good practice (south/south and north/south exchanges)	A twinning agreement	Before deciding to engage in twinning, African border area territorial authorities have to identify clearly the issues involved.	Twinning between African and possibly European border area territorial authorities focusing on a given issue (e.g. establishment of a cross-border co-ordination mechanism with a cross-border strategic plan), with technical support from networks of cross-border actors
	A framework agreement between the regional economic communities (WAEMU, ECOWAS) and the African Union on cross-border co-operation to improve co-ordination of their activities	A framework agreement	Discussion workshop on current programmes and the work prospects of each entity.	Periodic meetings for appraisal and planning purposes

	<b>Focus of the cross-border co-ordination mechanisms</b>	<b>Appropriate organisational mechanism</b>	<b>Activity prior to use of the mechanism advocated</b>	<b>Method of intervention</b>
<b>Bilateral level</b> (inter-governmental)	The establishment of national bodies specifically for cross-border co-operation in Mali and Burkina Faso: technical assistance, networking among local actors in cross-border initiatives, providing a channel of communication between the grass-roots and the national and West African authorities.	Example of legal form: an association. The two national bodies would be bound by an agreement to ensure sound co-ordination of their respective activities and the development of joint actions.	Ensuring sustainable funding of the structure.	For each national body: funding by the ministries and technical and financial partners. A national level technical unit, possibly backed by regional units. The activities of these national bodies may be based on the Mali/Burkina Faso bilateral border strategy (see below). Their activities will have to be co-ordinated with those of the Major Joint Commission and the ministerial departments for cross-border initiatives in both Mali (the national borders directorate within the MATCL and the inter-ministerial National Borders Commission) and Burkina Faso (Directorate-General of Administrative Districts and Borders within the MATD)
	A working framework for adapting territorial authority law in Mali and Burkina Faso to the needs of cross-border co-operation	A working group consisting of representatives – and particularly lawyers and practitioners of cross-border co-operation – from the MATD (Burkina Faso), the MATCL (Mali), the Ministry of Foreign Affairs, the AU and ECOWAS	Co-ordination with the other border area states. Compliance with ongoing work within ECOWAS and the AU.	
	A working arrangement for adoption of a Mali/Burkina Faso bilateral convention on cross-border co-operation between territorial authorities			
	A working framework for development of a Mali/Burkina Faso bilateral border strategy	A task force including all ministries concerned with cross-border co-operation (land planning and development and territorial authorities, transport, rural development, health, etc.)	Ensuring that this task force will have the human and financial resources needed to carry out its duties	Establishing the link between this task force and the Mali/Burkina Faso Major Joint Commission

	<b>Focus of the cross-border co-ordination mechanisms</b>	<b>Appropriate organisational mechanism</b>	<b>Activity prior to use of the mechanism advocated</b>	<b>Method of intervention</b>
<b>Cross-border local level</b>	A flexible co-ordination mechanism: stimulating and sustaining the partnership, coordinating activities, carrying out studies, lobbying.	An agreement between territorial authorities and other funding agencies		Each partner provides some of the funding for carrying out activities; the partners remain bound by their own law for each investment. Contracting is the responsibility of the territorial authorities themselves.
		An association	Examining possible central government participation	The association takes action on behalf of its members. It has its own budget and staff. All partners or indeed external partners may make financial contributions to the budget. The association may not stand in for its members and supports them in carrying out their duties.
	A more structured co-ordination mechanism: development of facilities, infrastructure and public services	An agreement between territorial authorities and other funding agencies		Each partner provides some of the funding for carrying out activities; the partners remain bound by their own law for each investment. Contracting is the responsibility of the territorial authorities themselves.
		Inter-communal public law bodies: common law public interest groups in Burkinabe law and unions in Malian law	Restructuring Malian and Burkinabe law to allow the participation of foreign law entities in the bodies for inter-communal co-operation	Bodies of this kind act on behalf of the partners (with procedures for representation within decision-making bodies) and have their own budget and staff. Unlike associations, they are governed by public law, and offer legal safeguards. They may act as contracting authorities, and conclude and issue calls for tender on behalf of their members.

#### 1.4.1 Proposals for organising the actors at West African, pan-African and international levels

- Partnerships between border area territorial authorities to exchange experience and good practice;
- A framework agreement between the regional economic communities and the African Union on cross-border co-operation to improve co-ordination of their actions;
- A joint fund for cross-border co-operation in the West African sub-region.

##### 1.4.1.1 Partnerships between cross-border territorial authorities

One of the major barriers to the development of cross-border projects lies in the lack of technical expertise on the part of territorial authorities. Knowledge of systems, methods and experience derived from other regions may both increase familiarity with the issues and resources that have to be developed to launch a project successfully and create the impetus needed to develop innovative actions.

**Twinning** has existed for many years and led to the establishment of many north/south and some south/south partnerships between territorial authorities on matters of common interest. It would be useful to develop both these forms of co-operation with bodies that support decentralised co-operation and experts on cross-border co-operation. It would also be appropriate to turn to good account the experience of other cross-border locations in Africa or even Europe, in the course of local Mali and Burkina Faso cross-border projects.

Numerous bodies are well-placed to act as intermediaries between territorial authorities: they include not only networks of African territorial authorities such as the Mali Association of Municipalities (AMM), the Burkina Faso Association of Municipalities (AMBF) and the Municipal Development Partnership (PDM), but also European networks such as the International Association of Francophone Mayors (AIMF), Cités Unies, the Association of European Border Regions (AEBR) or the Cross-border Operational Mission (MOT).

##### 1.4.1.2 A framework agreement between the regional communities and the African Union

The sub-regional authorities WAEMU and ECOWAS, as well as the African Union, clearly share a common interest in community-based cross-border co-operation as a force for regional integration. However neither these entities' activities, nor the co-ordination between them, are especially visible. A framework agreement should be reached so that the initiatives undertaken complement each other more effectively.

##### 1.4.1.3 A joint fund for cross-border co-operation in the West African sub-region

The lack of funding and difficulty in establishing appropriate financial arrangements tend to inhibit the development of cross-border initiatives.

Some national programmes are unable to reach the other side of the border. Thus the United Nations Development Programme (UNDP), which covered the SKBO area on the Mali/Burkina Faso border, had to establish two "twin" schemes on each side, one run by UNDP Mali and the other by UNDP Burkina Faso. However, because their schedules were not synced, it was hard to co-ordinate the implementation of activities. The principle of setting up two twin projects should not be dismissed but does involve difficulties on the operational stage.

In other cases, a programme may support action in the neighbouring country with cross-border interests in mind: thus the GTZ in Mali is involved in the support programme for territorial authorities in Mali (PACT) in the regions of Tominian (Mali) and Kossi

(Burkina Faso), in a scheme for sharing and managing natural resources. The Council of the Circle of Tominian (a Malian territorial authority) acts as contracting authority for this programme but had no “formal” opposite number in Burkina Faso. The Burkinabe High Commission, which was coordinating activity, was finally strengthened with an adviser by the GTZ in Mali.

In addition, while sub-regional funding mechanisms exist, few of them take account of community-based cross-border co-operation: the Regional Indicative Programme for West Africa for example has referred to cross-border co-operation since the end of 2009.

Since 2007, the European Union has embarked on a thematic programme called “Non-State Actors and Local Authorities in Development” which involves capacity building for these “non-state actors” and “local authorities”, so that they can take part in the decision-making process more easily and provide more effective basic services in the developing countries.

The large number of funding agencies and procedures has led the institutional actors to consider how to simplify the entire system by moving over to a sub-regional common fund specifically for cross-border co-operation, to which all funding agencies and states would contribute. This idea is supported by the African Union and WAEMU, and the subject of preliminary work by ECOWAS<sup>8</sup>. The fund could be replenished by the various financial and technical partners as well as by the states, and would have the advantage of simplifying arrangements for the supporters of projects (with standardised procedures and as a single fund which centralised applications). This kind of arrangement has already been tested (as in the fund to tackle HIV/AIDS in Central Africa). The establishment of such a fund would mean the stakeholders signing a joint convention and would require a funding agreement on activities. It would have to avoid the bureaucracy and procedural red tape characteristic of multipartite arrangements, while offering adequate financial safeguards. The authority responsible for the fund would be an issue.

The states would also have to identify a budgetary appropriation to replenish this fund, quite possibly by establishing a heading specifically for cross-border co-operation.

#### 1.4.2 Proposals for organising the actors at (inter-governmental) bilateral level

The Malian and Burkinabe states play a major part in promoting trans-border co-operation. Many questions today are dealt with through the machinery of the Mali/Burkina Faso Major Joint Commission. It proposes arrangements and further courses of action specifically for the territorial authorities:

- a bilateral working framework for preparation of a bilateral framework convention on cross-border co-operation between territorial authorities in Mali and Burkina Faso;
- a bilateral working framework for preparation of a bilateral strategy on cross-border co-operation between Mali and Burkina Faso;
- sustainable national bodies and facilities for technical support, networking and the referral of cross-border local needs to higher levels;
- a bilateral working framework for adjusting the law of territorial authorities to the needs of cross-border co-operation between them.

##### 1.4.2.1 What framework is needed for a bilateral framework convention on cross-border co-operation between territorial authorities?

The question of the legal framework for cross-border co-operation and the level at which it should be determined has been raised for some years: as the development of such

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<sup>8</sup> Memorandum on the Cross-Border Initiatives Programme, presented at the Meeting of ECOWAS Foreign Affairs Ministers in Ouagadougou on 18-19 December 2006.

co-operation calls for a multi-country approach, devising a legal framework for co-operation at sub-regional or even (African) continental level has seemed entirely natural.

The African Union (AU) is in the process of completing its draft Convention on cross-border co-operation, which is due to appear in early 2011. Alongside this process, ECOWAS is also working on a draft directive dealing with the same issue. The principles expressed in both these texts in their currently available form are consistent.

The most recent version of the AU convention defines cross-border co-operation as “Any act or policy aimed at strengthening and developing good neighbourly relations between border communities, territorial administrations, bodies or authorities in two or more States Parties, as well as the conclusion of agreements and arrangements pursuant thereto.” Reference to “territorial communities and authorities” relates to the domestic laws of African states, as well as the areas or procedures of co-operation (applicable law, legal form of co-operation, etc.). The international statements seek to define the lowest common denominator, namely the principles, and rely on domestic laws in order to implement them.

In order to be put into practice in the field, these declarations will have to be signed and ratified by the member states<sup>9</sup> and then transposed into national laws in a consistent manner. For this purpose, the signature of bilateral conventions on a border-by-border basis should be encouraged as soon as possible following the entry into force of the AU Convention, so as to determine the practical procedures and framework applicable to cross-border co-operation. Where such conventions exist, it will be necessary to ensure that regional and national texts are consistent with each other. These bilateral conventions would provide for:

- the establishment, at the border level, of the legal framework for cross-border co-operation between territorial authorities (and possibly other public bodies);
- legal certainty and greater transparency in the rules applicable, and
- steps to ensure that laws on both sides of the border are consistent.

Compliance with the following principles will be required:

- the principles and concepts specified in the AU and ECOWAS texts;
- the constitutional principles and law of the territorial authorities on both sides of the border (for example, central government oversight of these authorities);
- the fact that cross-border co-operation is not an additional function but the cross-border conduct of responsibilities already assumed domestically.

Furthermore, it will be important to identify a binding law for the accomplishment of cross-border schemes. It is also recommended that a body should be identified to monitor implementation of the bilateral convention. This role could be assumed by the Major Joint Commission. Co-ordination with other border countries, especially Côte d’Ivoire, might be organised.

The operational method seemingly most appropriate for drafting the bilateral convention on cross-border co-operation between Mali and Burkina Faso:

- taking its cue from European experience and basing itself strictly on the content of the African Union draft Convention on cross-border co-operation, the essentials of a bilateral convention on cross-border co-operation are proposed by the MOT diagnosis (see template 2 for a bilateral convention on cross-border co-operation).

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<sup>9</sup> The Convention comes into force once the 15th instrument of ratification has been received by the Chairperson of the African Union Commission. Unanimity is not required.

- It is suggested that a bilateral working group should be established to draft the Mali/Burkina Faso bilateral convention. This working group could consist of ministries and departments responsible for cross-border co-operation (MATCL, MATD, Ministries of Foreign Affairs) and the law of territorial authorities, experts in cross-border co-operation, the AU and ECOWAS. The work would constitute experimental activity in this domain and a model for other border areas to follow. It has already begun since the feedback meeting in May 2010.

#### 1.4.2.2 What framework is needed for a bilateral strategy on cross-border co-operation between Mali and Burkina Faso?

In recent years, Mali has been noteworthy for its very strong policy to promote cross-border co-operation: in 2000, the National Borders Directorate within the MATCL was set up. It is charged with devising and implementing border area policy. In 2002 the concept of “cross-border regions” was initiated and forms the basis of Mali’s borders management policy: establishment of a National Borders Commission (an inter-ministerial body) responsible for supporting the MATCL in implementing national border area policy; and the setting up of bilateral commissions, most notably the Mali/Burkina Faso joint commission (but also commissions with Niger, Senegal, Côte d’Ivoire, Mauritania and Guinea)<sup>10</sup>. National border area policy is based on three main lines of action, namely determining and demarcating borders, strengthening the process of regional integration, and developing cross-border areas and providing them with an infrastructure. Mali’s keen interest in cross-border activities is leading to a commitment by development partners on these matters (for example, the GTZ which is working under PACT, the programme of support to territorial authorities, in the Tominian/Kossi region).

In Burkina Faso, the directorate-general of administrative districts and borders has been created within the MATD. The directorate of border area administrative co-operation deals more particularly with cross-border issues. At present, Burkina Faso has no national borders strategy.

The development of a bilateral strategy for the Mali/Burkina Faso border area would result in the establishment of a clear jointly agreed form of co-ordinated institutional organisation involving both countries. This might for example lead each to identify a department charged with inter-ministerial co-ordination of cross-border policies, and a resource person within each key ministry who would be responsible more specifically for oversight of cross-border issues.

This strategy would include priorities for collaboration between both states, based on an assessment of needs and available means. With a budgeted work programme, it would be possible to achieve field implementation of commitments made by the states, and guide intervention by the development partners, particularly on each side of a single cross-border community.

This work would in the first instance call for domestic inter-ministerial consultation and co-ordination in the two countries, followed by cross-border consideration and discussion. It would be important to try and ensure that this later activity was linked soundly to the work of the Mali/Burkina Faso joint commission.

Implementation of the bilateral strategy for cross-border co-operation could be undertaken by a task force. This body would be the guarantor of sound implementation of the main policy objectives and commitments and their updating as appropriate. However, budgetary provision is needed for this to occur.

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<sup>10</sup> The national borders strategy for Mali, presented by the national level Director for Borders at the West Africa regional workshop on the African Union border programme, in Ouagadougou on 23-24 April 2009.

### 1.4.2.3 Sustainable national bodies and facilities for technical support, networking and referral of cross-border local needs to higher levels

Local actors in cross-border areas and especially territorial authorities crucially require **technical support** to identify their needs (assessment of strengths and weaknesses, and of the potential for development of cross-border co-operation), to establish appropriate and sustainable co-ordination mechanisms (determining the precise scope of co-operation and how it should be organised, activating and driving the partnership and structuring co-operation as necessary), and to develop solid and purposeful cross-border schemes (feasibility studies and monitoring of projects, and legal and financial arrangements). Over and above technical support, **networking** between all territorial authorities next to a given border would enable good practices to be fully exploited and tested in other locations expressing an interest. Furthermore, a **centre for expertise on cross-border initiatives** could develop activity for capacity-building, and offer technical support to communities.

In order to promote a territorial approach to national public policies and take account of border area needs more effectively, it would be advisable to provide for a **referral of needs to higher levels**, for example in the spheres of territorial authority law, land-use planning and transport, etc. It would also be helpful for all these actors to be brought together within a single body at national level so that territorial authorities could exert greater influence in institutional discussions.

To meet the needs referred to above, it seems worth establishing national organisational arrangements to assist with cross-border developments both in Mali and Burkina Faso. These national bodies would maintain an overall view of cross-border initiatives, as well as of the legal framework, local needs and national policies with an impact on border territories. They would be responsible for technical support, networking and needs referral.

The idea would not be to turn these resources into “super-structures” serving as exclusive mechanisms for cross-border activities at the Mali/Burkina Faso border, but rather to use them as a means of helping territorial authorities with the support of a network of experts.

These bodies in the public interest could each be provided with financial support from the states, as well as technical and financial partners. The Malian association could include among its members representatives of the Malian National Borders Directorate (DNF) and other departments and ministries responsible for cross-border relations, as well as local communities and the other funding agencies active in Mali. The Burkinabe Directorate-General of Administrative Districts and Borders (DGCAF) might join it as an observer. A similar organisation might be set up in Burkina Faso with a structure involving the ministries concerned with cross-border affairs (including the DGCAF), the territorial authorities and other funding agencies, with the DNF as observer. **Both these bodies could be bound by a convention** with their activities linked to the Mali/Burkina Faso bilateral borders strategy.

Technical units could be identified at national level, possibly supported by joint regional level units for each border, starting with the Mali/Burkina Faso one.

Their activities would have to be co-ordinated with those of the Major Joint Commission and the ministerial departments charged with cross-border relations in Mali (the National Borders Directorate attached to the MATCL and the inter-ministerial National Borders Commission) and in Burkina Faso (the Directorate-General of Administrative Districts and Borders within the MATD).

This organisational system could be linked to meetings of the Mali/Burkina Faso Major Joint Commission and would maintain relations with WAEMU, ECOWAS and the AU.

Certain issues still have to be addressed: how would actors in civil society and the private sector be involved? How would this system be funded over the long term?

One possible reference model that could be adapted:

- the Cross-border Operational Mission (MOT) was established in France in 1997 at a meeting of the inter-ministerial committee for national and regional development, in order to satisfy a need among French territorial authorities for engineering expertise relevant to cross-border activities. After a year's testing in several pilot locations, the MOT took the form of an association. It was initially planned that it should be granted public interest group status, but, as the legal underpinning at the time was unsatisfactory, an association was finally preferred.
- Mali and Burkina Faso might use the MOT model, which has resulted from a locally expressed need, as a basis for establishing such a national system for cross-border co-operation.

#### 1.4.2.4 A bilateral working framework for adjusting the law of territorial authorities to the needs of cross-border co-operation between them

The Malian and Burkinabe territorial authorities currently have legal instruments - conventions or associations - at their disposal for structuring their co-operation. Whereas the former have already been used for cross-border purposes but on a fairly broad scale (Mopti/Ouahigouya and Titao/Bandiagara), associations have not yet been tested in this context.

There are limits to how far conventions and associations can underpin complex public investment schemes (see Annex 3 and sub-section 1.4.3): conventions offer a flexible legal framework without providing a single governance structure to oversee the joint project. The project partners remain the contractors and are bound by the law applicable to them in their activities. Associations have the advantage of possessing a structure with its own legal status, which is empowered to administer its own budget and technical staff and to make commitments on behalf of its members. However, as they are governed by private law, they do not offer adequate financial and legal safeguards for the management of a complex project (infrastructure and public services, etc.).

It would be well worth **authorising the creation of public law cross-border inter-communal bodies**. Like the inter-communal organisations existing in Malian and Burkinabe law – the common law unions in Mali or public interest groups in Burkina Faso – these bodies would be entrusted with transferred responsibilities and could act as the awarding authorities, enter into contracts, and manage budgets and their own staff on behalf of their members from each side of the border. They would remain subject to the public law restrictions linked to their binding law (in particular via state control and public law accountancy), thereby offering adequate safeguards for the management of large-scale public investment.

At present, it is not possible under Malian or Burkinabe law to transform legally recognised Malian unions or Burkinabe public interest groups into cross-border bodies, as the involvement of foreign law entities in them is not provided for. For this to occur, the law of the territorial authorities in Mali and Burkina Faso would have to be amended so that foreign actors were authorised to participate in these legal bodies.

With the aim of adopting a consistent approach in both countries, a bilateral co-ordination mechanism involving Malian and Burkinabe lawyers could be established

in an effort to adjust the laws of the territorial authorities as appropriate. These authorities would ideally be consulted where necessary so that the outcome matched their needs as far as possible. This experimentation with the law might be supplemented by practical testing in the field.

### 1.4.3 Proposals for organising those active at cross-border local level

What is the value of establishing a cross-border mechanism for joint action at local level?

Such a mechanism may be known by a variety of names such as “steering committee”, “cross-border local committee” or “working group”, etc. The goal remains that of activating and sustaining a partnership, as well as collective thought and discussion, which lead basically to an exchange of information, joint decision-making, policy co-ordination and indeed the development of cross-border joint initiatives. A cross-border co-ordination mechanism provides a means of organising co-operation between the parties involved and of institutionalising the partnership to a greater or lesser extent, in accordance with operational principles identified clearly by all the partners and with their mutual assent (who is to be involved? what is the purpose of co-operation? what should be the frequency of meetings? etc.).

A cross-border co-ordination mechanism may be informal or have a legal structure. It may evolve over time to remain appropriately geared to projects which are also changing. If so, the preferred legal instrument will depend on the very purpose of the cross-border co-operation and of the partnership. Where co-operation is institutionalised in legal form it can become permanent and visible and, in the case of a body with legal status, be allocated a budget and its own staff. However, the process must be kept in proportion to the project concerned. Moreover, it is recommended that the system should be as flexible as possible. Establishing any legal structure calls for prior consideration of the human and financial resources it will be granted in the long term to prevent it from becoming an “empty shell”.

Certain instruments in the domestic laws of Mali and Burkina Faso may be used to set a cross-border partnership between territorial authorities on formal footing: conventions or associations. Other instruments included in one of the two legal systems, which might prove to be vital in implementing more complex schemes, could be made available after adjusting national legislation, namely the Burkinabe law public interest group and the union recognised in Malian law.

#### 1.4.3.1 A flexible co-ordination mechanism: activating and sustaining the partnership, coordinating action, conducting studies, lobbying, etc.

Purpose of co-operation:

The territorial authorities and their partners (socio-professional actors, central government representatives, etc.) may decide to establish a mechanism for joint action to encourage the exchange of information, co-ordination of their activities (in particular, the preparation of planning documents consistent on both sides of the border), the production of studies and lobbying by stakeholders in co-operation to defend their interests.

As regards needs expressed by local actors during the interviews, lobbying seems likely to relate to the following matters in particular:

- promoting sound implementation and possible adaptation of the ECOWAS protocols on personal freedom of movement;
- encouraging identification of an allocation specifically for cross-border co-operation in national budgets;

- including the cross-border dimension in the strategic thrust of efforts to eradicate poverty and in partnership agreements reached between states and funding agencies;
- promoting consideration of cross-border issues in national and regional/local policies, and authorising national programmes to intervene in the neighbouring country to support projects of cross-border interest;
- urging development partners and the states to provide financial assistance and develop technical support and capacity-building for the benefit of border area territorial authorities (familiarity with the tools of cross-border co-operation, establishing, motivating and sustaining a cross-border mechanism for joint action, etc.).

#### Legal instruments:

The above actions do not require sophisticated legal structuring. They may occur within an informal partnership (as in the SKBO area) or be the subject of a convention. In the first case, co-operation is based on mutual trust and the quality of the interpersonal relations among elected representatives. With conventions, co-operation has a legal basis that requires special agreements for joint actions to be implemented.

Setting up an association could give greater substance, sustainability and visibility to co-operation by offering it a body which can represent the various stakeholders, with transparent negotiated decision-making regulations (described in the statutes), and also conclude contracts and issue calls for tender, while acting and providing funding on behalf of its members. In addition, associations can have their own budget and staff team. They have the advantage of existing in Malian and Burkinabe legislation and of functioning in accordance with the same regulations. Furthermore, they are open to the participation of foreign law entities. It remains to be seen whether the central government can be involved alongside the territorial authorities. Associations are subject to private law regulations and cannot therefore assume responsibilities transferred to them by the territorial authorities, in order to develop a utility or run a public service. They can only support a territorial authority in carrying out its duties (see template 1 for the statutes of a cross-border association).

Both the convention and association are instruments open to foreign law entities and enable public/private partnerships to be established.

Question: What is the position regarding the introduction of a cross-border mechanism by an administrative act on the part of the governors and not the officials of territorial authorities?

This was the option preferred at Banfora en 2009.

Is it realistic or relevant? Should one empower the authorities or hand the initiative to decentralised government departments?

The effect of decentralisation has been to achieve power-sharing between the central government and the territorial authorities. In this context, the MOT advocates empowerment of the territorial authorities, in their areas of responsibility, at the same time naturally recognising the need for them to be supervised by the central government and the technical and financial partners. These initiatives taken over by the territorial authorities are not incompatible with those of the states themselves, such as the one pursued since 2009 (the Banfora seminar). The approaches complement each other: everything depends on the area of action concerned.

### 1.4.3.2 A more structured mechanism for joint action: development of complex cross-border projects (facilities, public services and infrastructure)

Purpose of co-operation:

Communes and their partners may decide to jointly develop facilities (for example, a cross-border health centre), civil engineering works (bridges, roads and tracks) or cross-border public services. These **complex schemes** necessitate special legal and financial arrangements to organise the decision-making, funding and monitoring of the project over the medium or long term.

Legal instruments:

- This type of project may be carried out in accordance with a **convention**. Where this occurs, the partners agree on the precise content of the scheme and their respective obligations (length of time, financial contribution and share of the work incumbent upon each, monitoring of the project, responsibility and ownership rights where applicable). This instrument enables co-operation to be organised fairly flexibly over a fixed period. The partners remain subject to their own law whenever they take action. The difficulty lies in ensuring sound co-ordination of the activity on each side of the border over time (electoral schedules, domestic procedures, etc.).
- As a forward-looking approach, one might consider adapting domestic law in Mali or Burkina Faso to provide for the establishment of cross-border inter-communal co-operation mechanisms, such as the Malian law public interest group or Burkinabe law union. With this kind of body, the territorial authorities would have a common organisational entity which could act and provide funding on behalf of its members (the same benefits as those of an association). However, it would have the further advantage of operating in accordance with public law (and offering public law safeguards for heavy investment) and of being able to assume responsibilities transferred from the territorial authorities and thus to act as contracting authority for projects of a structural nature (see Annex 5 and sub-section 1.4.2.4).

It is worth recalling that the establishment of a legal instrument occurs after the project has been devised and the human and financial resources required have been evaluated.

## 1.5 Summary of recommendations from regional to local levels

Improving the life of people living in border regions means integrating these areas more fully and taking account more effectively of their special needs in all policies and schemes, whatever the level concerned.

In the context of decentralisation, the territorial authorities today play a key role in developing community-based territorial policies. The transfer of responsibilities and the concomitant resources from central government to the territorial authorities, as well as their own network which aims to achieve economies of scale and proper concern for functional areas, are at the heart of the debate on decentralisation. Cross-border co-operation is a natural complement to decentralisation and co-operation between authorities beyond borders.

The current challenge is to support border area territorial authorities in the development of operational cross-border projects by enabling them to act as contracting authorities. The increase in financial resources and technical capability but also the suitability of cross-

border co-ordination mechanisms are highlighted in this report as aspects that should be borne in mind when trying to facilitate cross-border co-operation between territorial authorities. It should be remembered that they now have at their disposal legal instruments for structuring co-operation with their counterparts on the other side of the border.

In line with its assessment, this report sets out a number of recommendations intended to improve the framework conditions of cross-border co-operation and, in particular, cross-border co-operation between Malian and Burkinabe territorial authorities.

Improvements in locally-based cross-border co-operation and life in border areas require appropriate action at all levels, whether international, pan-African or West African, or bilateral, national or local.

## Recommendations

### West African, pan-African and international levels:

- 1** Strengthen co-ordination between the regional economic communities (WAEMU and ECOWAS) and the African Union, as well as the visibility of their actions in cross-border affairs.
- 2** Develop exchanges of experience on cross-border issues through twinning between African border-area authorities and, where appropriate, European border-area authorities.
- 3** Simplify the financial mechanisms for supporting cross-border co-operation by establishing a West African fund for it.

### Bilateral (inter-governmental) level:

- 1** Set up a national body to deal specifically with cross-border co-operation in each of the two countries and act as an agency for technical assistance, networking and the referral of local needs to higher levels. Secure signature of a convention between the two bodies which would act in accordance with the bilateral borders strategy (see below).
- 2** Initiate inter-ministerial discussion and proposals to clarify and adapt the law governing cross-border co-operation between authorities:
  - in the short term, adjust national laws (to enable the establishment of public law cross-border inter-communal organisational arrangements) and
  - over the medium term, draw up a framework convention on cross-border co-operation between Mali and Burkina Faso (clarification of the law that applies and legal amendments where necessary).

*See template 2 for a bilateral convention on cross-border co-operation between territorial authorities.*

- 3** Devise a bilateral border strategy for Mali and Burkina Faso, so as to determine how bilateral cross-border co-operation will function, and to identify political and strategic priorities for both countries with a budgeted work programme.

### National level:

- 1** Identify focal points for cross-border relations, both within ministries and the geographically decentralised authorities.
- 2** Train officials in the ministries and decentralised government departments, in cross-border affairs.
- 3** Include cross-border issues in national policies, the overall strategy to eradicate poverty, and the framework agreements reached between the states and funding agencies.
- 4** Introduce an allocation specifically for cross-border affairs in the national budgets.

Local level:

- 1 Identify the most relevant level in cross-border co-operation and the one at which barriers have to be overcome.
- 2 Strengthen the capacity of territorial authorities and provide them with technical support so that they can develop cross-border schemes satisfying the needs of their populations and, where appropriate, act as contracting authorities.
- 3 Include the cross-border dimension in plans and designs for land-use management at regional and local levels, and ensure that these documents are fully consistent for the cross-border community area as a whole.
- 4 Co-ordinate the activities of programmes and funding agencies on both sides of the border in a cross-border community area.
- 5 Support the territorial authorities when they test mechanisms for cross-border co-operation in the field.

Sub-section on the local co-ordination mechanism:

- 6 Adapt the local cross-border co-ordination mechanism and its legal form to the purpose of co-operation, as well as to the partnership and what the partners hope to achieve.

*See Annex 3 on legal instruments of cross-border co-operation in Mali and Burkina Faso.*

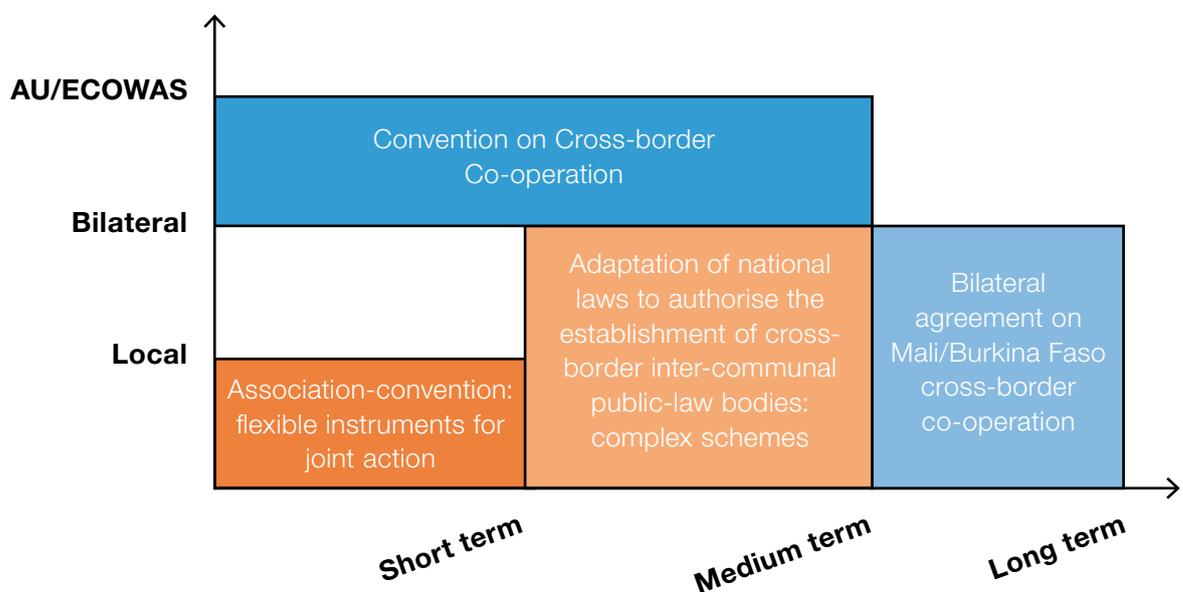
- 7 Involve civil society in institutional mechanisms for joint action.

*See Annex 5: outline of cross-border local organisation among authorities.*

- 8 Implement cross-border co-operation between territorial authorities in accordance with a cross-border strategic document.
- 9 Provide cross-border initiatives with adequate human and financial resources.

**Figure 1**

Timetable for the various stages involved in improving the legal framework for cross-border co-operation between authorities



## 2 Revitalising the mango sector in the Sikasso–Banfora–Bobo Dioulasso area

### 2.1 Background to cross-border co-operation

#### Mangoes – an agricultural sector with strong development potential<sup>11</sup>

For both Mali and Burkina Faso, the agricultural sector represents a windfall with considerable developmental impetus: it amounts to almost 40% of GDP. Its main sectors are cotton, livestock farming, and fruit and vegetables (mangoes, bananas and cashew nuts). Mangoes are the foremost production sector in the fruit and vegetables category. The main markets are the domestic one, Europe and the Maghreb. Output from Mali or Burkina Faso alone cannot cover all market requirements.

The sector offers excellent prospects for broadening agricultural activity and represents a major source of additional income for small-scale farmers (family-based holdings). A growth in the organic mango sector (the ECOCERT label) has been noted in comparison with conventional mango farming. Development of the “fair trade” seal of approval has also meant especially good pay and living conditions for those concerned.

#### Greater Kenedougou – a cross-border region for mango production

The mango production of Mali and Burkina Faso is centred in Greater Kenedougou (comprising the regions of Sikasso in Mali, and Cascades and Hauts-Bassins in Burkina Faso). This whole area of production stretches to Côte d’Ivoire, Guinea and Ghana. Côte d’Ivoire, the main partner of the Malian and Burkinabe interests in the sector, is not covered by the present study because of the prevailing political situation at the time of the field mission. From production to harvesting, not to mention processing and export, cross-border relations are apparent in each activity in the sector. Burkinabe exporters harvest mangoes in Mali, Côte d’Ivoire and sometimes Guinea.

Sikasso-Banfora-Bobo forms an especially fertile region, with high rainfall, areas crossed by Burkina Faso’s main river (the Mouhoun) and relatively rich land. Despite scant statistical evidence, there is little doubt that mangoes are the region’s main export.

#### The mango sector – a production sector supported by the technical and financial partners

Mango traders at the Mali/Burkina Faso border today have to confront increasingly demanding export market requirements. Because of the landlocked territory of Mali and Burkina Faso, the delivery in good conditions of high quality products to export markets is a major concern.

For several years, technical and financial partners have supported the agricultural and economic sectors. Though certainly strongly involved in the cotton and livestock sectors, their contribution to the mango sector is no less noteworthy. A very wide variety of supporting activities cover irrigation, quality certification (most notably the ECOCERT label), structuring of the sector, professionalization of its actors (in terms of the institutional environment, compliance with health requirements and improving sectoral performance), the development of methodological tools to simplify product traceability, and financial support for the creation of infrastructures, etc.

<sup>11</sup> For further details on the current position of the mango sector, see Diagnostic des filières mangue, anacarde et bétail/viande dans la zone de Bobo-Dioulasso, Banfora (Burkina Faso) et Sikasso (Mali), SWAC, by Saidou SANOU and Brahim Zie OUARTARA, October 2009.

For example, the World Bank and Malian and Burkinabe governments introduced the PAFASP (the Support Programme for the Agriculture, Forestry & Livestock Industries) in Burkina Faso and the PCDA (Programme for Competitiveness and Agricultural Development) in Mali. The programmes have jointly produced a self-supervision guide on health risks and plant health risks, for use by those actively involved in the sector on both sides of the border. Similar examples are the Integrated Framework (IF) initiative<sup>12</sup>, which in particular has supported the development of drying facilities and encouraged GLOBALG.A.P. certification, or again the COLEACP, Europe-Africa-Caribbean-Pacific Liaison Committee (COLEACP/EU) with its Pesticides Initiatives Programme (PIP) which aims to enable African, Caribbean and Pacific (ACP) firms to comply with European requirements in the areas of health-related quality and traceability (preparation of sectoral self-supervision guides) and to consolidate the position of small-scale producers in the ACP horticultural export trade. The American development agency USAID has also developed the Trade Mali programme which promotes marketing and sales strategies and stronger links between producers and dealers.

### Issues involved in structuring the mango sector

The challenge in structuring a sector is the co-ordination of the different activities throughout the process from production of the commodity to its export so that it can satisfy optimal quality criteria. This involves a better understanding of market opportunities and better management of their requirements.

A movement to structure sectors has been under way in Mali and Burkina Faso for some years. Associations, cooperatives and consortia have been set up to strengthen the position of market operators unable to secure a hearing on their own, so that they have higher expectations and can negotiate (especially with exporters), share their knowledge and resources (achieving economies of scale) and spread risk. The organisation of operators in the mango sector occurs at several levels: first, at mainly local level (for example, the Wouol Association in Burkina Faso, or Mali Yiriden in Mali) but also at national level (unions or federations). These groups may concern operators in a particular occupational sector or represent cross-sectoral interests in their entirety.

Structuring of the mango sector in Mali and Burkina Faso is currently under way. Market operators in Burkina Faso have come together in APROMA-B, an inter-professional association. In Mali, Sikasso mango producers are all members of the Sikasso regional producers union. The PCDA is at present engaged in inter-professional structuring of the mango sector at national and regional levels (see the overview, in Annex 6, of structuring in the sector in Mali and Burkina Faso). APROMA-B has been established to achieve the following:

- to ensure that its members are externally represented in Burkina Faso and abroad;
- to seek information and training opportunities on issues affecting the mango sector and make them available to its members;
- to promote the mango sector in all its activities (production, harvesting, transport, packaging, compliance with quality standards, processing, export and obtaining quality certification in line with market requirements).

The association represents 90% of those involved in the mango sector at national level. Ongoing activities include administration of several mango quality management resources (production self-supervision guide, guide to the mango dryer, and guide to fresh mango

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<sup>12</sup> The Integrated Framework Initiative is a programme launched by six international organisations for the Least-Developed Countries to boost their trade.

exporting). They are governed by a Scheme to Revitalise the Mango Sector, which has been drawn up jointly with actors in the sector, and by an annual operational plan.

### The importance of cross-border structuring of the mango sector

The cross-border nature of the mango industrial market has not yet been formally taken into account in this process of organising its actors. Today, cross-border partnerships outside the frameworks described above are essentially informal. Differences in level and in progress with structuring those concerned on each side of the border complicate cross-border organisation. Yet it seems clear that improving competitiveness, quality, and the conditions under which products are delivered to export markets means improved cross-border organisation of the operators. This constitutes a prior condition needed to overcome barriers faced at the border by all of them, which create extra costs with an impact on the final price and on sustainable development in the local economy. Thus in the case of mangoes produced in Mali for Burkina Faso, bothersome customs formalities at the border result in an extra cost of 30 CFA Francs (5 eurocents) and 25 CFA Francs (4 eurocents) when the destination is Côte d'Ivoire.

The border now constitutes a barrier which impacts strongly on the competitiveness and diversification prospects of the mango sector in Greater Kenedougou compared to other non-border production areas in Asia or Latin America--which also have greater productivity per hectare. As a matter of urgency, the border should no longer be synonymous with barriers but with opportunities and constructive interaction, an area that enables actors in the sector to achieve economies of scale, and to gain from comparative benefits and good practice on each side of the border.

The mechanisms of cross-border co-operation may be very varied: from finalising written agreements on delivery to the establishment of a common structure, the degree and the level of organisation (that of the production area, or national or sub-regional levels) have to be geared to the needs of the actors.

As a result of the extensive work already completed by the economic operators and the interviews conducted by the MOT, one can clearly identify what the mango sector needs in order to improve its competitiveness (Part 2.2). On this basis and following discussion at the feedback meeting in May 2010, the MOT considered proposals regarding the cross-border co-ordination mechanisms to be put in place (subheading 2.3).

## 2.2 Identification of the difficulties faced by actors in the sector

Those active in the mango sector suffer as a whole from a lack of technical expertise in their respective fields and of familiarity with the requirements dictated by market fluctuations. The difficulty of dealing with fruit parasites and accessing certain processes, materials, and techniques for irrigation, conversion and packaging, as well as the lack of flexibility in the logistics chain, have an impact on the quantity and quality of the mangoes produced. The difficulties faced by the same actors in mobilising financial support, especially for the advance funding of activities, should also be emphasised. Customs bureaucracy at the borders, as well as the existence of restrictive laws (for example on VAT for packaging), also have a negative impact on smooth trade and force up the cost of mangoes on the market. The fact that actors in the sector are not strong enough to defend their interests and negotiate stops them unfortunately from pitching their expectations any higher and really influencing institutional discussions.

Inter-professional organisation in the mango sector has progressed further in Burkina Faso than in Mali. However, the Burkinabe inter-professional association APROMA-B faces several restrictions as follows:

- lack of a development fund for the mango sector;
- lack of funding to carry out activities on behalf of its members;
- weak support from the executive secretariat in supervising and coordinating inter-professional activities.

Table 3 below provides an overall picture of the market barriers facing mango sector operators at the Mali/Burkina Faso border, which affect the competitiveness of the sector as a whole<sup>13</sup>.

**Table 3**

Market barriers for actors in the mango sector in the Sikasso-Banfora-Bobo Dioulasso area



Farmers



Exporters



Suppliers



Processors

Market barriers	Occupational sector concerned
<b>Geographical and climatic restrictions</b>	
Climatic variations (short harmattan season, long hot season) Inadequate rainwater for the water needs of mango trees Decay of orchards, fruit parasites (fruit flies, anthracnose, bacteriosis, mango mealy bugs, etc.)	Farmers
<p>The illustration shows a mango tree on the right with several green mangoes. A large yellow sun is shining brightly on the tree, with rays extending across the scene. To the left of the sun is a grey rain cloud with a single blue raindrop falling. In the center-left, there is a cluster of green mangoes. Below this cluster is a single mango fruit that is heavily infested with small, dark, worm-like pests. To the right of this infested fruit is a branch of a mango tree with several leaves, each covered with small black dots representing pests. Arrows point upwards from the bottom cluster of mangoes to the infested fruit, and from the infested fruit to the cluster of mangoes above it, indicating the progression of decay and pest damage. A green circle with a white letter 'F' is in the top left corner of the illustration area.</p>	

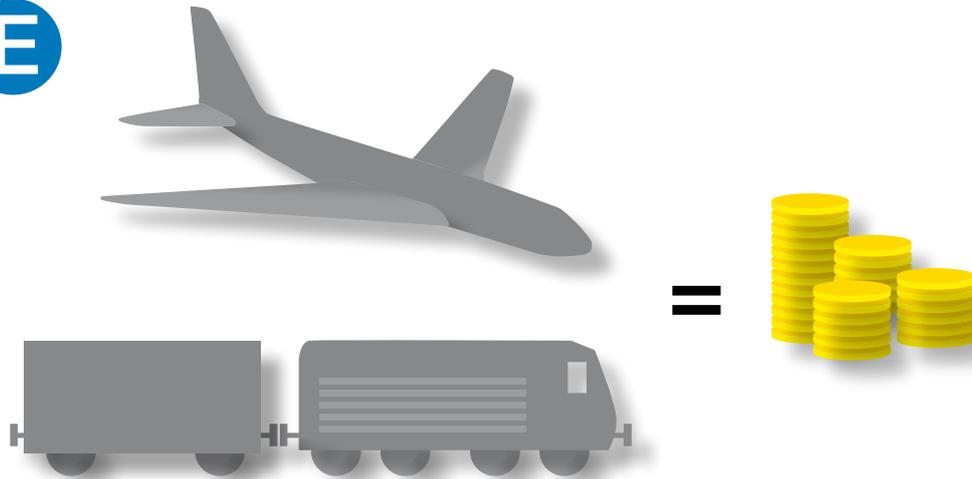
<sup>13</sup> See the Powerpoint presentations given by the URPM (the Regional Union of Mango Producers) and APROMA-B at the feedback meeting organised in Ouagadougou on 27 June 2010.



**Strong international competition**

High costs of air and rail transport	Exporters
Lack of orders from European buyers since 2008 Closure of several processing plants because of very few orders	Processors
Export market requirements	The entire sector

**E**



**P**



**Lack of quality infrastructure**

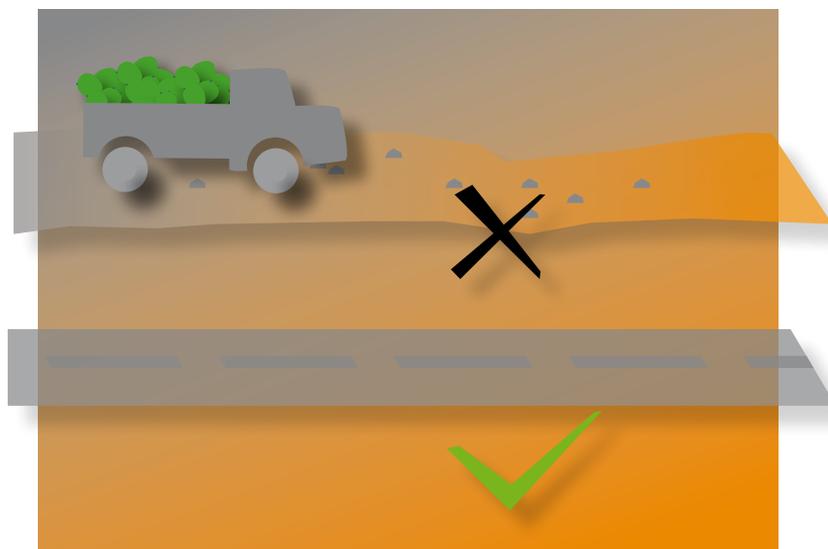
Problem of production area accessibility: not enough suitable through routes/ tracks in existence for use by heavy vehicles

Suppliers

Lack of marketing infrastructure and malfunctioning of existing packaging plant facilities

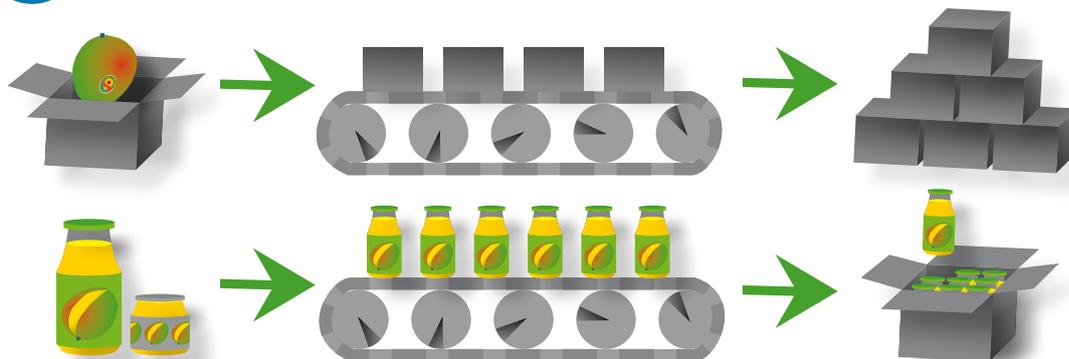
Exporters

**S**



**E**

**PACKAGING**



**MARKETING**



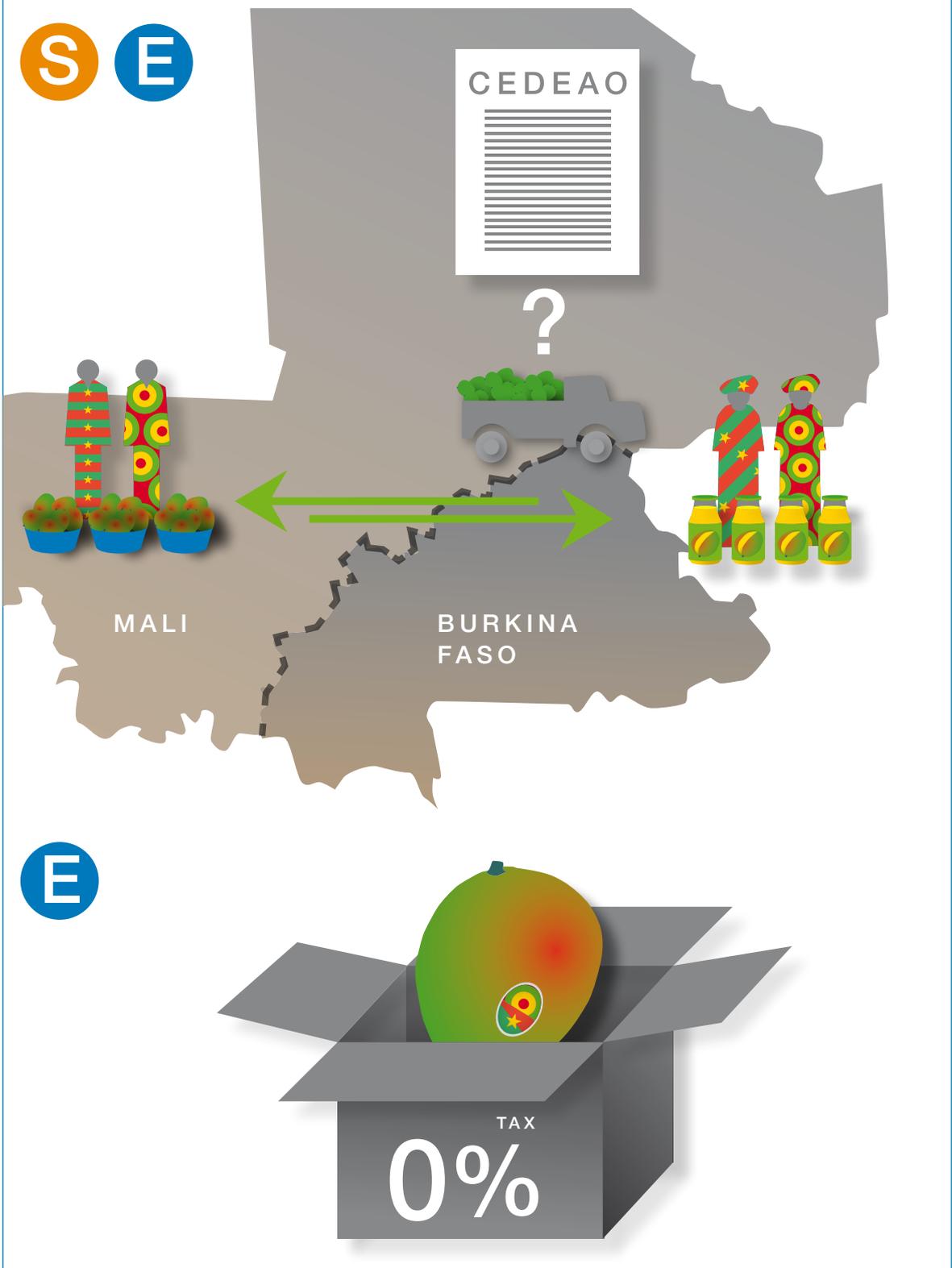
**No real free movement of goods**

Poor implementation of the regulations on free movement of persons and goods

Suppliers and exporters

Non-enforcement of laws on the abolition of VAT on packaging and the provision of services.

Exporters



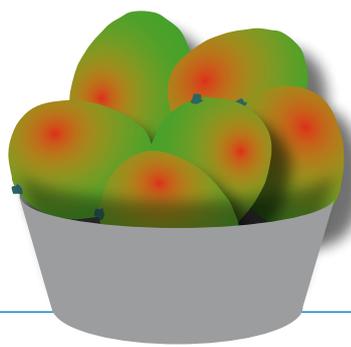
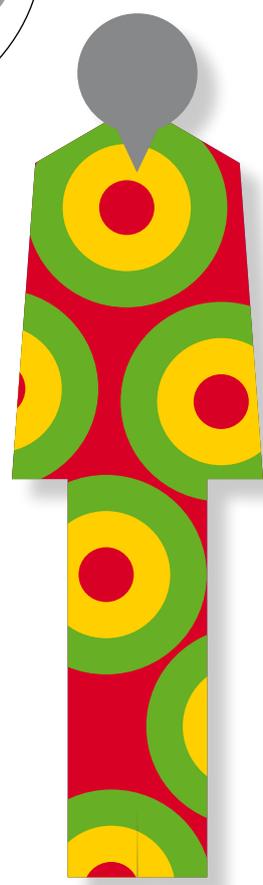
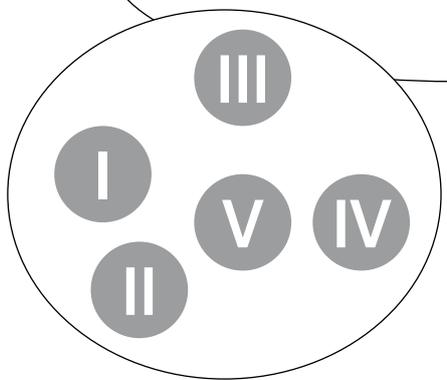
**Lack of expertise and professionalization among actors in the sector as regards:**

- I Knowledge and adequate consideration of restrictions in the sector: specifications, logistics, etc.
- II Familiarity with export market requirements: products/processes (felling, packaging), SPS regulations (need for certification)
- III Knowledge of international market opportunities
- IV Understanding of administrative requirements concerning cooperatives and associations.
- V Technical expertise: techniques involved in processing, the manufacture of processing equipment, and the use of processes

To be developed in accordance with the occupational sector concerned

**F E S P**

**EXPERTISE  
+  
PROFESSIONALIZATION**



**Lack of joint efforts among actors in the sector as regards:**

Sharing and circulating knowledge and information  
 Fixing a common floor price  
 Joint sales promotion  
 A common strategy for importing inputs (forms of biological treatment) and on access to new technology  
 Action to eliminate fruit parasites  
 Enhanced performance of logistics chains  
 Preparation of common specifications  
 Joint lobbying

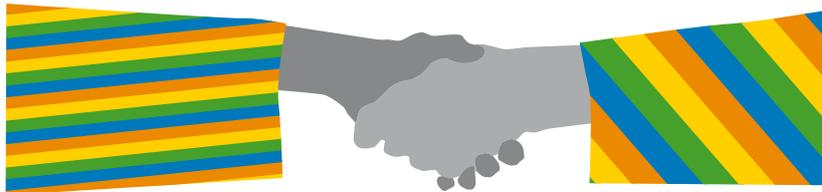
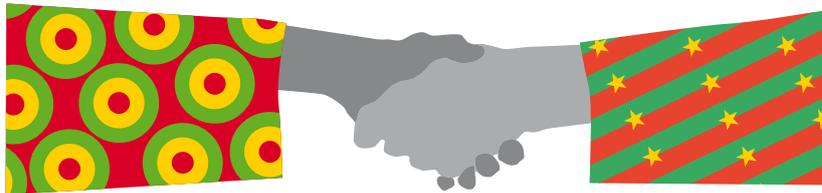
To be developed in accordance with the occupational sector concerned

A concerted joint export strategy

Exporters

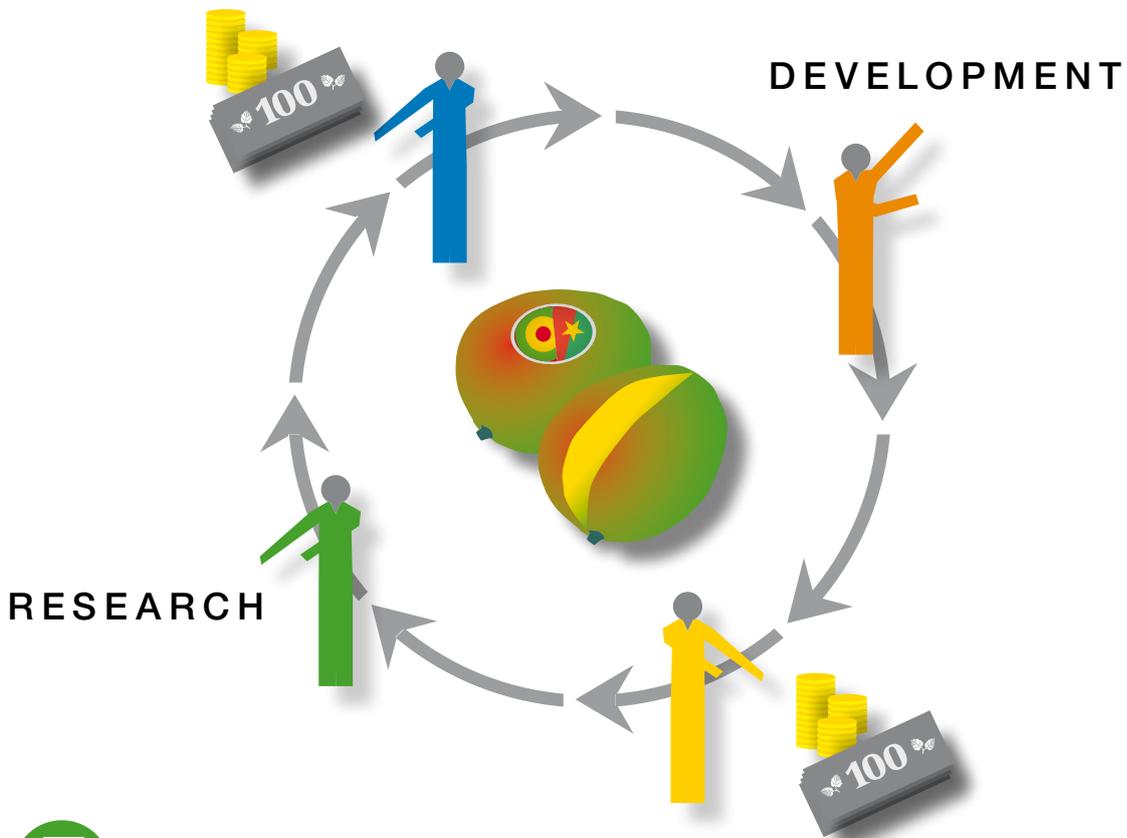
Joint use of facilities

Processors, exporters

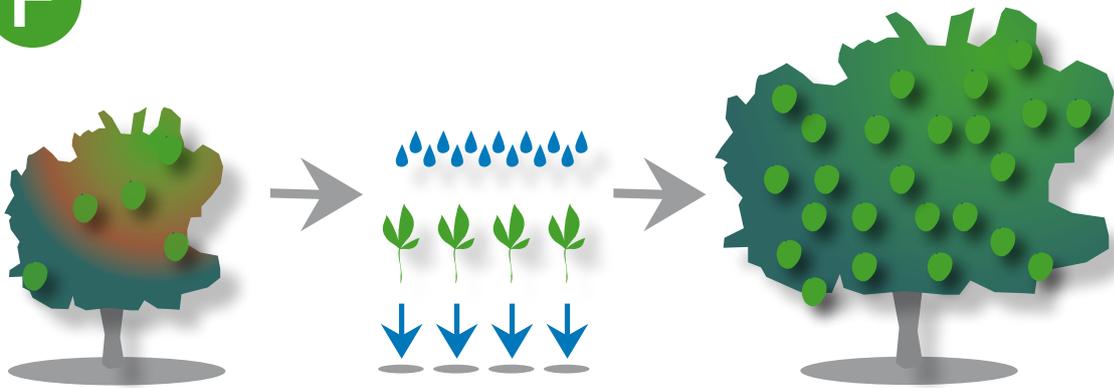


<b>Lack of funding and financial facilities to achieve the investment needed for:</b>	
Advance funding of activities	All occupational sectors
Renewing orchards	Farmers
Development of research and development activities	To be developed in accordance with the occupational sector concerned
Gaining access to inputs, facilities and professional services (labour, size)	To be developed in accordance with the occupational sector concerned

**F E S P**



**F**



## 2.3 Proposals on how to improve cross-border organisation of the mango sector

A number of the barriers already identified may be removed as a result of more effective cross-border organisation of the actors in the sector. Thus the inhibiting factors at borders (taxation, customs red tape), the sharing of resources (provision of training, input purchasing), co-ordination of the various participants in the sector (for the joint use of facilities and co-ordinated marketing) call for a concerted approach and collaborative initiatives by operators on both sides of the border. It will be seen that placing these relations on a legal footing does not today impede cross-border organisation of mango sector operators.

The present diagnosis is not intended to offer mechanisms for joint action in the case of each of the goals identified below, but to provide economic operators in the mango sector and their partners with tools for analysis so that they can identify by themselves those means of joint action best suited to their needs.

Here the methodological proposal for assessing a mechanism for cross-border joint action is briefly reviewed once more:

In selecting the most suitable arrangement, it is possible to employ the following methodology and identify:

- 1 the areas of interest in cross-border co-operation: by occupational sector and level of inter-professional association (what is the purpose of such co-operation?);
- 2 the “value added” of a cross-border co-ordination mechanism compared to existing initiatives;
- 3 the most appropriate organisational level: is this the production area or the sub-regional level (what is the geographical coverage?);
- 4 the partners concerned: economic operators, institutional actors, civil society, a broad or restricted mechanism for joint action (what partnership?);
- 5 the duration of the partnership: (is co-operation ad hoc, or sustainable and long-lasting?);
- 6 the most appropriate legal instrument for institutionalising the preferred co-ordination mechanism: heads of agreement, or a common structure with legal status (analysis of comparative benefits);
- 7 The legal transcription of the partners’ expectations.

The issue of the legal structuring (item 6) is considered once items 1-5 have been wholly dealt with. Thus the co-ordination mechanism may assume a variety of forms ranging from a written agreement to a long-term dedicated joint organisational arrangement. The preferred legal device will depend on the purpose of co-operation, its duration and the parties involved. The institutionalisation of cross-border initiatives at the Mali/Burkina Faso border now has the required legal bedrock. **The greatest difficulty lies in the appropriate method of organisation rather than the legal structuring.**

While ill-conceived provision of many different co-ordination mechanisms is obviously not advisable, a single land area may display several patterns of organisation among those active in a given sector as long as their purposes differ. Co-ordination of these different forms of co-operation is vital to promote constructive interaction between the initiatives, and avoid any competitive scenario which would be counter-productive.

### 2.3.1 Areas of interest in cross-border co-operation among economic operators

The establishment of a cross-border inter-professional body cannot come to fruition without analysing the needs expressed by the operators. Thus the economic actors must share a clearly identified economic interest in cooperating.

Tables 4.1 and 4.2 below reveal the fields of cross-border co-operation highlighted by the operators interviewed during this study (see annex 2, list of persons interviewed) and by the downstream assessment of the mango sector. These documents reveal that all economic operators should gain from cooperating with their counterparts on the other side of the border. However, they may not necessarily share precisely the same interests from one occupational sector to the next.

This table is a working document in which actors in the mango sector have given preliminary consideration to its possible cross-border structuring.

#### Tables 4

Areas of cross-border co-operation, organisational levels and cross-border initiatives for joint development by actors in the mango sector

#### Table 4.1

By occupational sector

Areas of interest in cross-border co-operation	Occupational sectors				Desirable cross-border initiatives
	Suppliers	Producers	Processors	Exporters	
Access to inputs, facilities and innovative techniques	×	×	×	×	Concerted/co-ordinated action, introduction of research programmes, technical support, fund-raising
Efforts to eradicate mango tree parasites		×	×	×	Coordinating orchard treatment periods, training in forms of orchard treatment, purchase of pesticides.
Devising joint management resources (specifications, sectoral self-supervision guides, etc.)	×	×	×	×	Technical support
Professionalization of each occupational sector: knowledge of market requirements, health and plant health risk management, logistics, drawing up specifications, management of an association/co-operative, use of treatments, etc.	×	×	×	×	Fund-raising and the search for training opportunities, training provision, organised exchanges of good practice, study visits

**Table 4.2**

For the inter-professional community as a whole

<b>Areas of interest in cross-border co-operation</b>	<b>Desirable cross-border initiatives</b>
Enforcing legislation on the free movement of persons and goods, promoting an amendment to the laws for VAT on packaging and standardising certain regulations (such as those concerned with health)	Lobbying: concerted joint action vis-à-vis the governments, parliamentary representatives and funding agencies concerned with the area in question
Obtaining funding facilities from banks, especially for advance funding of activities	Lobbying: concerted joint action vis-à-vis the governments, parliamentary representatives and funding agencies concerned with the area in question
Obtaining funding earmarked specifically for cross-border structuring of the sector	Lobbying: concerted joint action vis-à-vis the governments, parliamentary representatives and funding agencies concerned with the area in question
Joint action to fix a minimum price	Concerted/co-ordinated action
Improving the logistics chain (common specifications, etc.)	Concerted/co-ordinated action
Joint organisation of marketing	Concerted/co-ordinated action
Organised exchanges of good practice	Sharing and circulating information
Improved knowledge of the export market situation	Sharing and circulating information
Professionalization of the sector: familiarity with market requirements, health and plant health risk management, including efforts to eradicate parasites, drawing up specifications, management of an association/co-operative, use of treatments.	Fund-raising and the search for training opportunities, technical support
Support with certification and awarding seals of approval	Technical support
Development of a market strategy	Technical support

### 2.3.2 Selecting the mechanism for cross-border joint action

The MOT has sought to apply the methodology outlined under subheading 2.3.1 to the concerns of mango sector operators in the Greater Kenedougou region while laying emphasis on an overall study of the situation:

#### What is the purpose of cross-border co-operation? What cross-border activities should it involve?

The partners clearly identified the purpose of cross-border co-operation, namely to overcome the inhibiting factors at borders which result in extra costs, with an impact on the international competitiveness of the mango sector and thus on sustainable rural development in the Greater Kenedougou region.

Tables 4.1 and 4.2 under subheading 2.3.1 both set out the cross-border actions that should be developed, distinguishing between the various levels of (occupational sector or inter-professional) interest.

#### What is to be gained by developing new mechanisms for cross-border joint action in comparison with already existing initiatives?

Operators in Mali and Burkina Faso have developed cross-border but essentially informal patterns of co-operation. Meetings and discussions have occurred and reach a high point in the mango crop season, yet with no legal underpinning to safeguard the continuity, transparency and visibility of co-operation. Is the aim now to develop new forms of cross-border co-operation?

In this respect, it would be helpful, in line with each particular case, to promote the following cross-border organisational arrangements:

- The establishment of sustainable platforms for discussion, exchanges of information and good practice, etc. for individual occupational sectors but also the inter-professional community in its entirety;
- Where necessary, the introduction of a more workable instrument able to perform activities on behalf of its members. At present no mechanism for this purpose involving actors on both sides has been developed;
- The finalisation of written agreements to safeguard some forms of collaboration (exchanges of products and facilities, advance funding of activities).

#### What is the most appropriate level for introducing the mechanism for cross-border joint action: is it the production area itself or the West African level?

The level of structuring varies depending on the purpose of co-operation. While mango tree pest control or the preparation of legal advocacy requires action mainly at West African level, other activities will be more suited to a local approach (measures related to certification, sharing of facilities, etc.). It is for operators to identify clearly the precise level appropriate to each activity.

#### Which actors should be involved in the cross-border partnership?

Economic operators are expected to contribute substantially to developing the mango sector. While some purely economic cross-border partnerships (especially those for exchanging products) will bring together solely actors in that sector, other more strategic partnerships (platforms for concerted planning) could involve a broader network of players, intervening throughout the Greater Kenedougou region with roots on either side of the border (contributing to the sustainable rural development of the region, possessing technical expertise and representing the interests of certain parts of the population): umbrella bodies, geographically decentralised authorities, territorial authorities and civil society organisations (especially those representing women).

#### Is the partnership long-term or ad hoc?

In the case of an ad hoc partnership, the aim will generally be to introduce flexible co-ordination mechanisms as exemplified by “memorandums of understanding”.

#### What is the most appropriate legal instrument for institutionalising the preferred co-ordination mechanism?

The legal framework will depend on the purpose of the co-operation and the partnership. The machinery of cross-border consultation and co-ordination can be institutionalised in various ways: over and above informal co-operation, written agreements may be encouraged along with the establishment of a dedicated common body (association and consortium) where appropriate. Creating a body with legal status has to be justified in terms of greater visibility and continuity in co-operation, and its ability to manage its own budget and staff. Establishment of any new body must also involve consideration of those already active in the same field (by examining whether they are not themselves capable of achieving these goals) and of the human and financial resources that body will inevitably require (see Annex 3 on the legal instruments of cross-border co-operation).

Active participants in the mango sector possess several mechanisms that meet their needs in terms of structuring cross-border co-operation. The major challenge lies not in the process of legal institutionalisation but, above all, in the ability of the various parties to reach agreement on a consistent method of organisation (see the diagram in Annex 6 on the cross-border organisation of mango sector operators).

## Tables 5

Legal instruments available in the Mali/Burkina Faso border area for structuring the mango sector throughout the Greater Kenedougou

### Table 5.1

Joint bodies that can be used in cross-border activity by economic operators in the mango sector in Mali and Burkina Faso

	<b>Association</b>	<b>Consortium</b>
<b>Legal basis</b>	Law on associations (Law 04-038 of 2004 in Mali, Law No. 10/92/ADP in Burkina Faso)	Uniform Act, 17/04/1997
<b>Partnership</b>	Any natural person or legal entity	Any natural person or legal entity
<b>Legislation applicable</b>	Law applicable to associations, depending on the location of the head office	Company law
<b>Purpose/action</b>	Non-profit goals, achievement of common aims	Economic activity

### Table 5.2

Legal instruments that can be used by economic operators in the mango sector depending on the cross-border initiative concerned

<b>Type of instrument</b>	<b>Type of initiative recommended</b>	<b>Cross-border testing</b>	<b>Recommendations for the Greater Kenedougou region</b>
<b>Informal</b>	Information exchange, consultation and co-ordination, ad hoc partnerships	Yes	
<b>Memorandums of understanding / convention</b>	Ad hoc economic partnerships (exchanging products, sharing facilities)	Yes (example: between the Wouol Association and Mali Yiriden)	To be encouraged
	Flexible co-ordination mechanisms with no dedicated structure to activate them	No	Signature of a convention between umbrella organisations in Mali and Burkina Faso, which are active in the Greater Kenedougou – co-ordination in accordance with a cross-border action plan which will have been jointly prepared by all parties contributing to rural development in the region.
<b>Association</b>	Support for members in their activities (motivating and sustaining the partnership, lobbying, negotiation, information exchange, observation of international markets, etc.)	No (instrument used domestically)	Creation of a body specifically responsible for motivating and sustaining the partnership and pursuing activities on behalf of its members (management of its own budget and staff) co-ordination in accordance with a cross-border action plan which will have been jointly prepared by all parties contributing to rural development in the region.
<b>Consortium</b>	Activities of an economic nature (merchandising, marketing, etc.)	No (instrument used domestically)	<i>See Annex 6: diagram of the cross-border organisation of mango sector operators</i>

## 2.4 Summary of recommendations for improving the cross-border organisation of actors in the mango sector

- 1 Consolidate the professionalization and organisation of the mango sector** in Mali and Burkina Faso
- 2 Promote cross-border relations between the various umbrella organisations regularly active in the Greater Kenedougou region:** signature of a written memorandum of understanding between APROMA-B (the inter-professional association in the mango sector in Burkina Faso) and the Malian umbrella organisations. When the Malian inter-professional body is finally established (the process is in hand), the convention may be between APROMA-B and this entity (subject to sound representativeness of the actors in the sector). It would be implemented in line with a cross-border action plan which would have been jointly prepared by all parties contributing to rural development in the region.
- 3 In Greater Kenedougou, establish a technical unit responsible specifically for implementing activities of cross-border interest, possibly in the form of an association or consortium:** its tasks would involve motivating and sustaining the partnership, lobbying, exchanging information, observing international markets, fund-raising and seeking out training opportunities. The activities of this technical unit would be co-ordinated in line with a cross-border action plan which would have been jointly prepared by all parties contributing to rural development in the region.
- 4** As structuring of the economic operators in the mango sector is not at the same stage in Mali as in Burkina Faso, the inter-professional organisations cannot at present undertake cross-border action to promote the sector: on the Malian side, the inter-professional body has just been set up; as to APROMA-B in Burkina Faso, any further activity would first require an increase in its financial and technical resources.
- 5 Involve the protagonists in sustainable rural development in local cross-border mechanisms for joint action:** women's associations, NGOs, territorial authorities and geographically decentralised authorities.
- 6 Draw on the experience of cross-border structuring in the cotton sector and persuade the technical and financial partners to support those actively involved in the mango sector.** A programme of assistance to the cotton sector was developed by SNV (the Netherlands Development Organisation) in the area formed by the provinces of Banwa and Kenedougou in Burkina Faso and the Kadiolo, Yorosso, Koutiala and Sikasso circles in Mali. A scheme of this kind could be developed for actors in the mango sector of the Greater Kenedougou.
- 7** Strengthen the **mechanisms for sub-regional efforts by** Mali, Côte d'Ivoire and Burkina Faso **to overcome mango pests**, in partnership with the economic operators.
- 8 Heighten awareness among actors** in the mango sector of the potential for cross-border structuring of the sector.

### 3 Conclusion: short- and long-term recommendations

The SKBO area is a territory that is particularly active in cross-border co-operation in West Africa. This co-operation demonstrates that the management of border areas calls for action at many different levels with public/private involvement.

The strong commitment of both Mali and Burkina Faso to promoting cross-border co-operation has already led to the emergence of partnerships, and should mean that less time is lost in adapting arrangements for action and the legal and financial instruments needed to embark on stronger more ambitious co-operation.

The existence of the border means the existence of barriers, which result in extra costs and complicate the relations between those involved on both sides (a wide variety of administrative and institutional organisations, laws, and policies, etc.). The “inhibiting effects” of the border impact strongly on the quality of public policies and the ability of territorial authorities to develop really visible effective schemes that meet the needs of their populations as clients, as well as on the economic flows driving the development of these landlocked areas. In this context, cross-border co-operation constitutes the least expensive means of achieving the socio-economic development of a cross-border territory. It also corresponds to a method of collaborating and taking action which transcends national administrative boundaries. These partnerships should not be limited to their institutional aspects, but draw on a network of actors from the private and voluntary sectors and provide the gateway to a dialogue at numerous different levels (territorial authorities and governments).

Whether one is concerned with cross-border co-operation between territorial authorities or between those active in the mango sector, the difficulties are many and varied and call for approaches at a variety of levels. Some problems may be partly overcome by improving the cross-border organisation of the actors. The current challenge is to develop functional methods of co-operation. Institutionalising these mechanisms occurs only after that.

#### [Achieving cross-border co-operation between territorial authorities](#)

In the short term and for projects that are not too complex (such as service management or the development of infrastructure), the existing legal instruments - conventions and associations - are adequate and may be used across borders. The problem lies above all in organisational challenges and failure to appreciate the possibilities offered by the present legal frameworks. Poor implementation of the regulations regarding free movement of persons and goods, and the lack of technical and financial capability also constitute major obstacles.

In the medium and long term and for more complex and permanent cross-border schemes (such as cross-border building and management of a hospital), laws could and should be continually adjusted. Encouragement should be given to adapting the mechanisms for inter-communal relations in the countries concerned for use across their borders and to ensuring that laws on each side of a border are fully consistent, by concluding a bilateral interstate convention to facilitate cross-border co-operation between territorial authorities. Such a convention would serve to define the legal framework for co-operation between these authorities along the entire border, and provide for greater legal certainty and transparency in the regulations governing their partnerships.

The wide variety of funding agencies and forms of funding, as well as lack of clarity in the legal mechanisms applicable to cross-border activity, call for simplification of these

arrangements, with bilateral and interstate conventions and a West African sub-regional fund for cross-border co-operation.

If all policies are to address cross-border issues more effectively, lateral and vertical contacts will also be needed at all levels, through signature of a framework agreement between the regional economic communities and the African Union to improve co-ordination of their activities, development of a national system for technical assistance, networking and the referral of cross-border needs, or the development of south/south or north/south twinning concerned with cross-border issues.

#### [Achieving cross-border co-operation between actors in the mango sector](#)

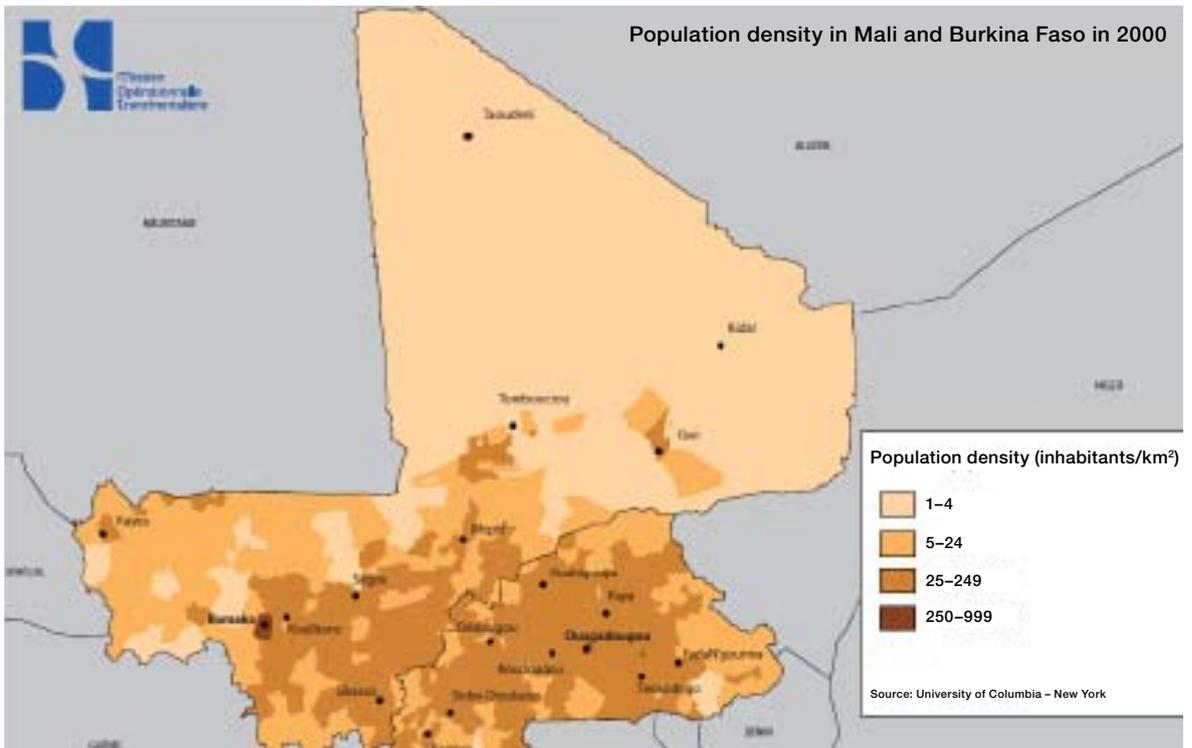
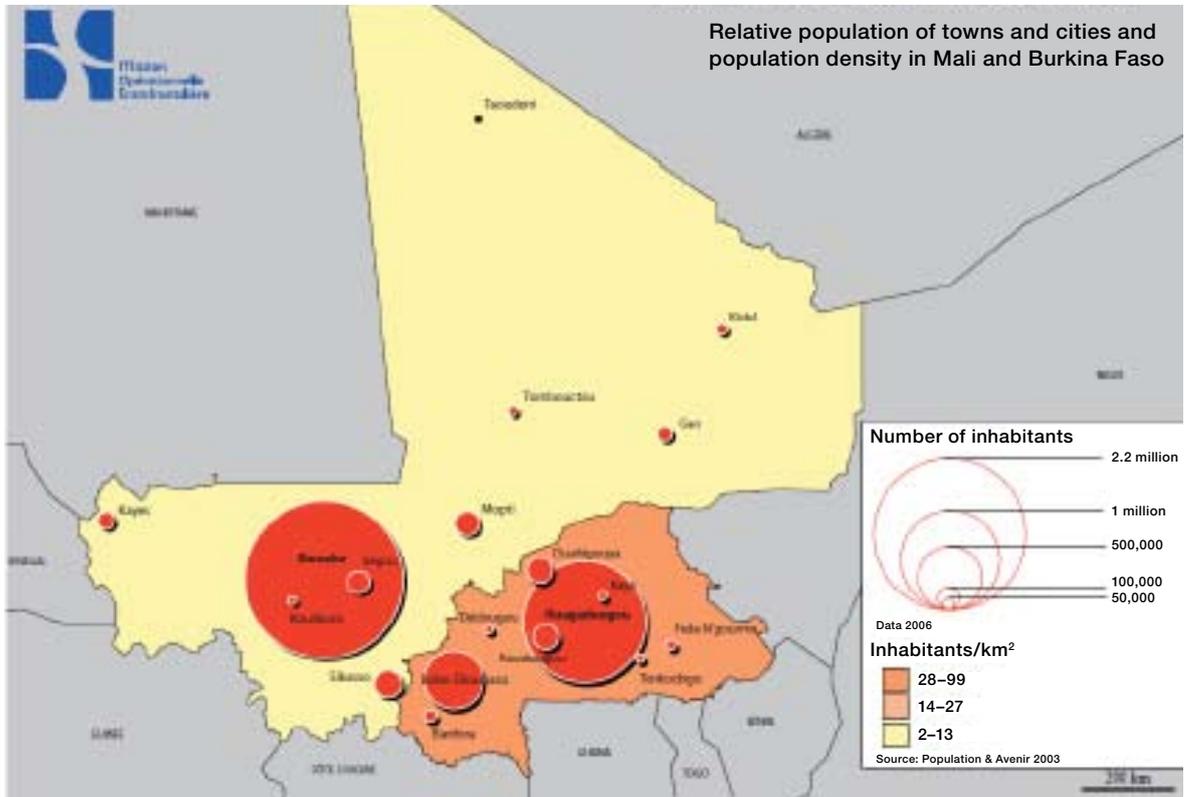
As regards co-operation in the mango sector, obstacles to co-operation are also very varied and include a lack of technical and financial capability among operators, lax enforcement of the legislation on free movement, and disparate regulations, most notably concerning health. The question of cross-border organisation of the actors is also a central concern: how is one to link up and co-ordinate operators in the same cross-border sector? Legal instruments are available and include memorandums of understanding, associations and consortia, with the choice of a particular legal mechanism depending on the purpose of co-operation. The problem is not so much legal as organisational. Indeed, actors on both sides of the border should clearly define the purpose of co-operation, the level at which it should be undertaken (whether that of the sub-region or production area), the partnership involved, etc.

At the present time, all conditions required to promote and strengthen co-operation are satisfied.

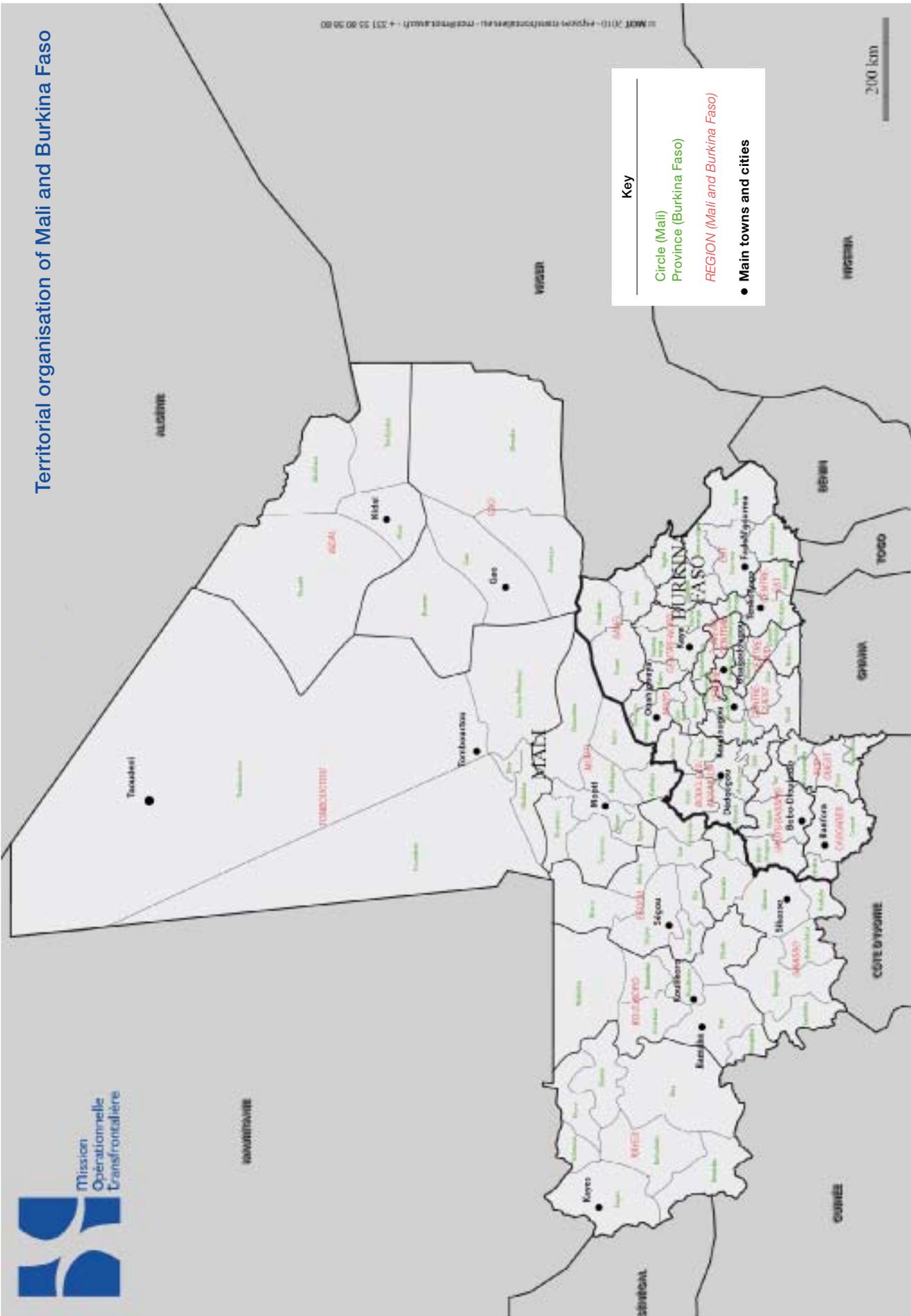
## 4 Annexes

### Annex 1: Ministries of Burkina Faso and Mali and territorial organisation

#### Maps

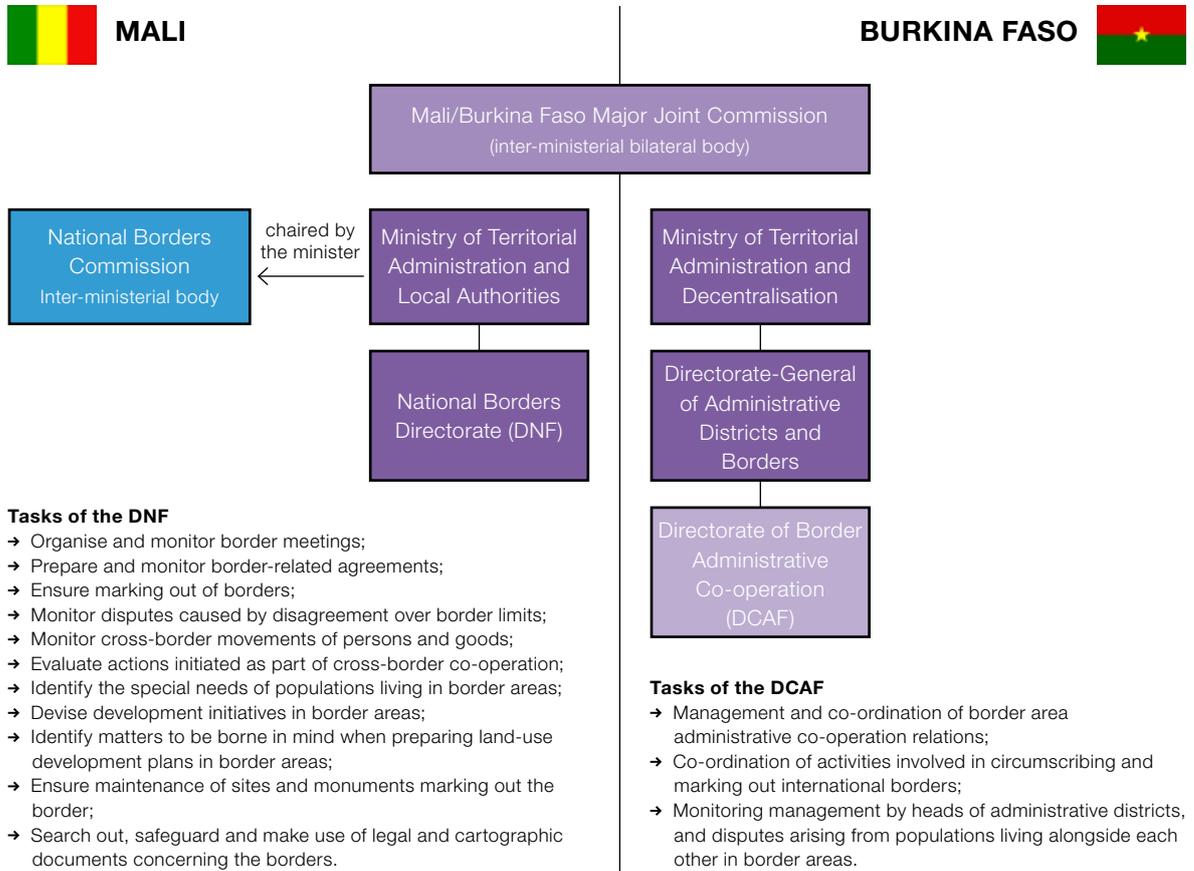


# Territorial organisation of Mali and Burkina Faso



## Annex 2: Organisation chart of ministries involved in cross-border co-operation in Mali and Burkina Faso

### Organisation of Ministries involved in Mali/Burkina Faso cross-border co-operation



### Make-up of the National Borders Commission in Mali



**Table on territorial organisation in Mali and Burkina Faso**

	<b>Mali</b>		<b>Burkina Faso</b>	
	<b>Levels</b>	<b>Decision-making bodies</b>	<b>Levels</b>	<b>Decision-making bodies</b>
Geographically decentralised authorities	Regions (8)	Governorship Governor	Regions (13)	Governorship Governor
	Circles (49)	Prefecture Prefect	Provinces (45)	High Commission High Commissioner
	Communes (703)	Sub-prefecture Sub-prefect	Departments (351)	Prefecture Prefect
Territorial authorities	Regions (8)	Regional Council President of the Regional Council	Regions (13)	Regional Council President of the Regional Council
	Circles (49)	Circle Council Chairperson of the Circle Council		
	Rural and urban communes (703)	Communal Council Mayor	Rural and urban communes (351)	Communal Council Mayor

## Annex 3: Legal Instruments of Cross-border Co-operation in Mali and Burkina Faso

### Instruments that can be used in cross-border activity:

At present, public and private actors alike have at their disposal legal instruments providing them with a legal framework for their cross-border projects. The convention, the association and the consortium exist in both Malian and Burkinabe law. The choice of a particular instrument will depend on the purpose of cross-border co-operation, the partnership and what the partners hope to achieve. As of now, the convention is the only instrument which has been tested in a cross-border setting (with a twinning convention between territorial authorities).

#### **Convention**

**Legal basis:** decree 06-436/P in Malian law, Burkinabe CGCT (twinning, formal understanding).

#### **Usable instrument in cross-border relations**

**Legislation that applies:** laws that apply to members in carrying out their activities.

**Purpose:** the convention is a means of institutionalising the respective commitments of its signatories and specifying the forms, methods and procedures of co-operation. These commitments may be of various kinds, including a simple declaration of intent, or a commitment to jointly fund an amenity or service.

**Types of action:** simple co-ordination and leadership of the partnership, or joint administration of constructive works or public institutions.

**Partnership:** all types of actor, public as well as private.

**Financial arrangement:** financial burdens can be shared among the various signatories. Those involved in a cross-border scheme remain subject to the financial regulations that apply to them domestically.

**Advantages:** flexibility and the signatories have substantial room for manoeuvre in shaping the convention (in compliance with the laws to which they are subject).

#### **Restrictions:**

Conventions are not a means of institutionalising bodies concerned with decision-making, budgetary and financial management and monitoring of a cross-border project.

Individual signatories remain subject to the legal regulations that apply to them when performing their activities (procurement contracts, financial and budgetary regulations).

## Association

**Legal basis:** Law 04-038 of 2004 (Mali), Law No. 10/92/ADP (Burkina Faso).

### **Usable instrument in cross-border relations (identical legislation in Mali and Burkina Faso)**

**Law that applies:** private law governing associations.

**Purpose:** bring together within a single body those actors with a common interest in cooperating.

**Types of action:** Non-profit activities. The association cannot assume responsibilities transferred to it by its territorial authority membership. It cannot take the place of its members but can support them in carrying out their tasks of coordinating and running the partnership.

**Partnership:** all types of actor, public as well as private.

**Functioning:** the association, which has autonomous legal status, can manage its own budget and staff. It is subject to the legal conditions applicable to associations, depending on the location of its head office. Signatories who are active in a cross-border project remain subject to the financial regulations that apply to them domestically.

**Advantages:** Establishment of an autonomous legal entity with legal status that can have its own budget and staff. Ability to carry out its own undertakings, enter into contracts and issue calls for tender on behalf of its members. It also allows for the introduction of a single form of consensual cross-border governance which operates transparently (with rules laid down in the statutes). An association provides for collaboration between public/private partners as long as they have a joint interest in cooperating and/or their respective purposes are similar to those of the association.

**Restrictions:** limited powers of intervention: private law management which does not offer adequate financial security for major public investment.

*See template 1 for the statutes of an association for cross-border activity*

## Consortium

**Legal basis:** A uniform Act concerning company law and consortia, an Act passed on 17 April 1997 and published in the OHADA OJ No. 2 of 1 October 1997.

### Usable instrument in cross-border relations

**Legislation that applies:** private law for legal entities, company law.

**Purpose:** The sole aim is to implement for a specified period all means capable of facilitating or developing the economic activity of its members, and to improve or expand the results of this activity. Its action must be geared primarily to the economic activity of its members and remain subordinate to it. The aim must be other than that of sharing profits.

**Types of action:** economic activities.

**Partnership:** two or several natural persons or legal entities.

**Functioning:** the consortium has its own budget and staff and is subject to the legal conditions determined by the location of its head office. Signatories who are active in a cross-border project remain subject to the financial regulations that apply to them domestically.

**Advantages:** Establishment of an autonomous legal entity with legal status that can have its own budget and staff. The consortium provides for collaboration between public and private partners.

**Restrictions:** private law management which does not offer adequate financial security for major public investment.

## Adapting the law to cross-border co-operation

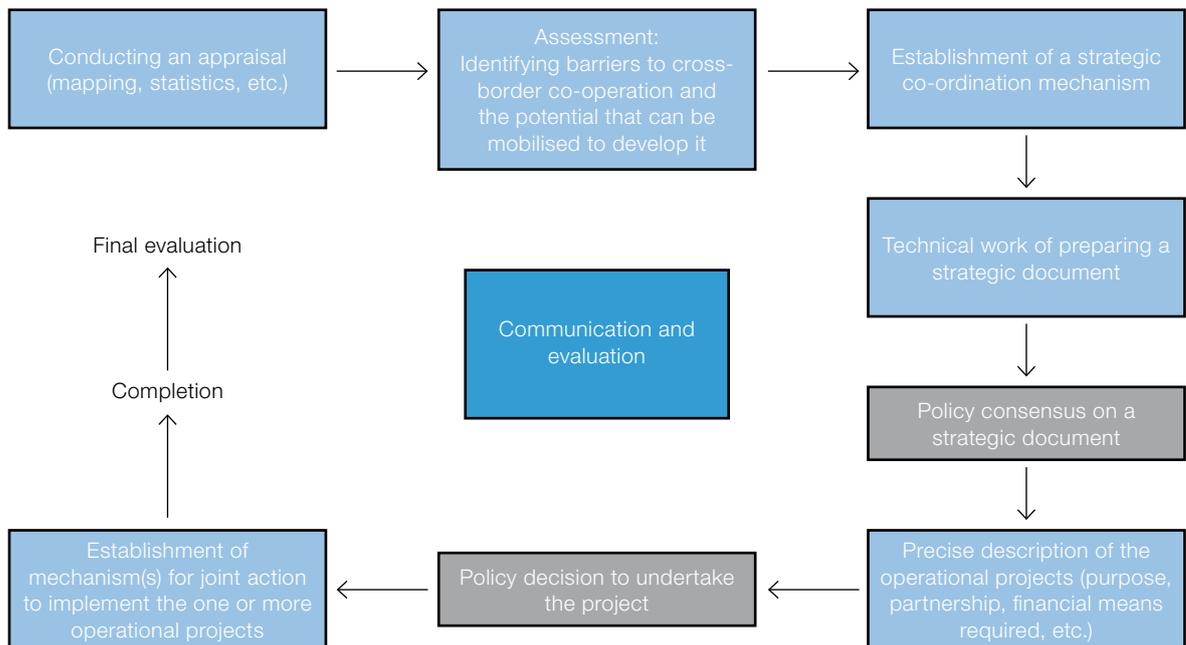
A complex cross-border scheme can be implemented when the stakeholders sign a simple convention (see above) but also by establishing a joint body with legal status, which ensures that such a project benefits from consolidated sustainable governance (see below). It has been pointed out that an association was set up to pursue non-profit activities and support its members in carrying out their tasks, and that it did not offer the financial and legal security needed to manage major public investment. Over and above a convention, one might consider establishing public law cross-border inter-communal bodies which could assume responsibilities transferred by their territorial authority members while being based on each side of the border.

At the present time, these arrangements cannot be used in a cross-border context as they are available solely to players bound by national law.

The following table summarises the implications of using the inter-communal mechanisms represented by the union in Mali and the public interest group in Burkina Faso in a cross-border setting:

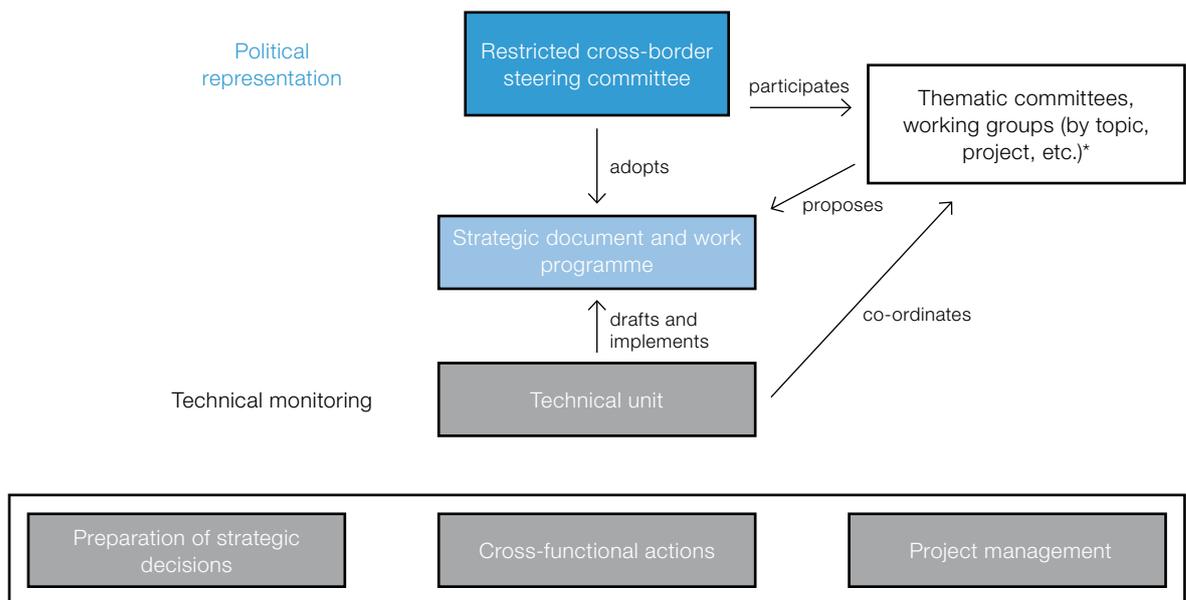
	<b>Public interest group (Burkinabe law)</b>	<b>Union (Malian law)</b>
<b>Legal basis</b>	Article 138 et seq. of the CGCT (General Code for Territorial Authorities)	Decree 06-436/P
<b>Law that applies</b>	Public law	Public law
<b>Precondition for cross-border use / Recommendation</b>	Authorising the participation of foreign law entities	Authorising the participation of foreign law entities
<b>Purpose</b>	Sharing of expertise and resources	Sharing of expertise and resources
<b>Types of action</b>	Completing an undertaking or providing a service of benefit to each of the parties: through direct control or participation in bodies under the same terms as the territorial authorities.	Completing an undertaking or providing a service of benefit to each of the parties: through direct control or participation in bodies under the same terms as the territorial authorities.
<b>Partnership</b>	Burkinabe territorial authorities, central government, public institutions, any other public or private law legal entity.	Inter-communal unions (between communes) or mixed (authorities at different levels).
<b>Advantages</b>	Establishment of an autonomous permanent legal body which runs the project for its members. May take on responsibilities transferred by its members and carry out public investment schemes. Able to have a budget and staff, receive funding, and enter into contracts under the common law terms applicable to bodies of the same kind existing in the state in which the cross-border body is headquartered	
<b>Restrictions</b>	Subject to the public law regulations applicable to bodies of the same kind existing in the state in which the cross-border body is headquartered: state oversight and procurement contracts.	

## Annex 4: Outline development of a cross-border project



## Annex 5: Outline of cross-border local organisation among authorities

This is the probable scenario whenever a common body with legal status, like an association, is established.



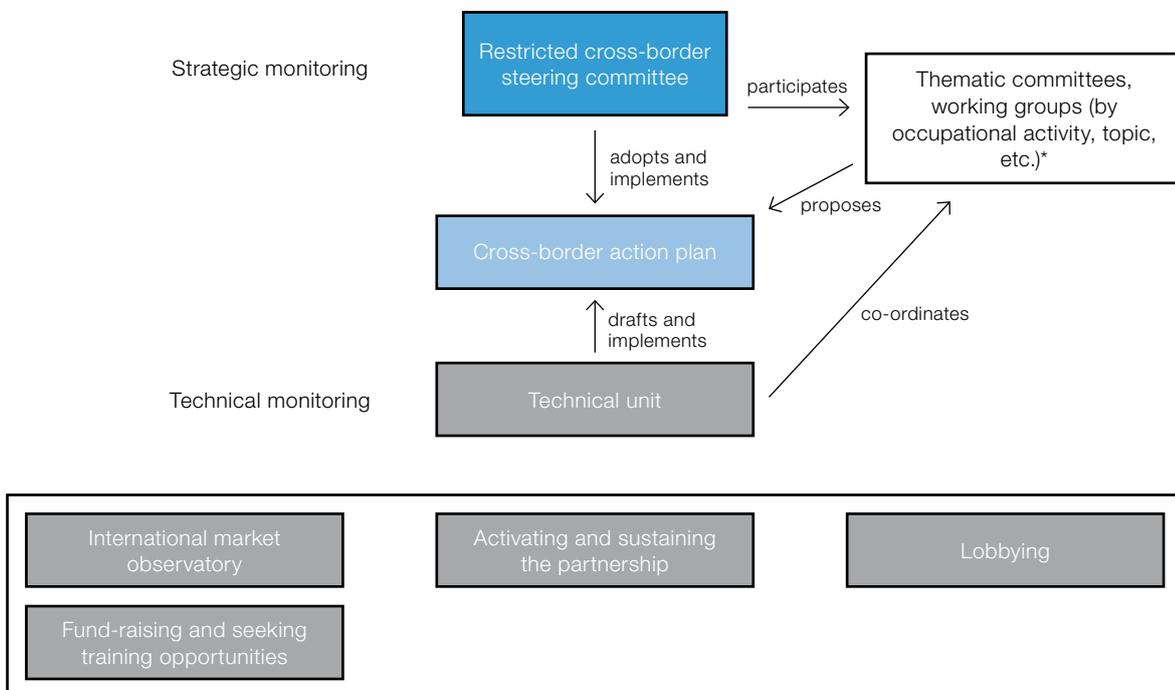
\* Thematic committees bring together technicians from the territorial authorities who are partners in cross-border co-operation and state technical departments, in accordance with their fields of expertise, along with actors from the economic domain but also from civil society on each side of the border.

## Annex 6: Mango sector in Mali and Burkina Faso

### Progress with structuring

Level of structuring	MALI	BURKINA FASO
<b>INTER-PROFESSIONAL</b>		
Regional	Ongoing inter-professional organisation	
National	Ongoing inter-professional organisation	APROMA-B
<b>PRODUCERS</b>		
Regional	Regional union of Sikasso mango farmers	
National		
<b>SUPPLIERS</b>		
Regional		
National	Association	Association (APFMB, the professional association of mango suppliers in Burkina Faso – ongoing application to join APROMA-B)
<b>PROCESSORS</b>		
Regional		
National	Consortium	PTRAMAB (mango processing professional body)

### Diagram of the cross-border organisation of operators



\* Thematic committees bring together all persons capable of contributing to the technical debate on strategy and on the cross-border activities that should be developed: they include economic operators in the mango sector, institutional actors (territorial authorities, states and funding agencies) and others in civil society.

## 5 Proposed templates

### 5.1 Template 1 Association that allows cross-border activities with headquarters in Mali and Burkina Faso

#### 5.1.1 General provisions

##### Name and headquarters

- (1) Hereby created is an association known as: *[indicate the name]*.
- (2) This association is formed in accordance with *[indicate the law that applies]*.
- (3) The association is headquartered at *[indicate the address]*.
- (4) The association is registered at *[for completion]*.

##### Purpose and tasks

- (1) The purpose of the association is: *[for completion]*.
- (2) The association performs the following tasks: *[indicate the tasks]*.

*NB: The association cannot assume transferred responsibilities and cannot take the place of its members in carrying out their duties. The remit of the association is restricted to acts corresponding to these activities.*

##### Languages

The official languages of the association are *[for completion]*.

##### Duration

The association is formed for *[two options: for limited period of [X] years or for an indefinite period]*.

#### 5.1.2 Functioning of the association

##### Resources of the association

- (1) The resources of the association consist of:
  - subscriptions *[generally annual]*;
  - public funding and subsidies;
  - donations and legacies;
  - all other forms of joint funding and contributions.
- (2) The amount of the subscription is fixed in accordance with the following procedure: *[for completion; possibility of establishing rules of geographical balance or balance between the categories of participants represented within the association]*.

##### Members

- (1) The association consists of:
  - a. Full members
  - b. *[Possibility of including other categories of member: honorary members, associate members, etc.]*
- (2) May also become members: *[indicate the criteria]*.
- (3) Membership status is acquired in accordance with the following procedure: *[indicate the procedure for becoming a member]*.  
*[If the rights and obligations associated with the status of full member, associate member or honorary member are not the same, specify the rights and obligations attaching to each category of member]*.

## Application for membership

Any application for membership is made in accordance with the following procedure:  
*[for completion].*

## Loss of membership status

- (1) The status of member is lost as a result of:
  - resignation;
  - removal from the membership register.
- (2) Resignation must be carried out by *[indicate the procedure for submitting the resignation to the decision-making bodies with notice].*
- (3) Removal is declared by the Assembly for the following reasons: *[for completion].*

## 5.1.3 Bodies and functioning

- (1) The association consists of the following bodies:
  - an Assembly;
  - a board*[Possibility of establishing any other body, particularly an advisory one]*
- (2) The association possesses its own rules and regulations.  
*NB: where appropriate, indicate the method for adopting the rules and regulations.*

## The Assembly

- (1) The Assembly comprises the representatives of all members.
- (2) Each member is represented by [X] delegate(s) *[or other option: delegates are distributed among the representatives as follows:]*
- (3) The delegates are nominated by individual members in accordance with their own rules.
- (4) Each delegate has [X] votes.
- (5) The Assembly takes the following decisions: *[for completion].*

*NB: where appropriate, provide for a geographical balance and/or a balanced representation of members by category, as well as an allocation of funds (depending in particular on the population)].*

## Ordinary sessions of the Assembly

- (1) The Assembly meets in ordinary session [X] times a year.
- (2) The procedure for convening the Assembly is as follows: *[for completion].*

## Extraordinary sessions of the Assembly

*[Where appropriate, indicate the procedures for convening extraordinary sessions of the Assembly.]*

## Assembly decision-making procedures

- (1) Decisions of the Assembly are taken in accordance with the following procedure:  
*[specify the majority and the requirements for a quorum].*
- (2) If the conditions for a quorum are not met, the Assembly is convened again in accordance with the following procedure: *[for completion].*
- (3) In the event of absence on the part of members' representatives: *[indicate the rules governing the representation of absent members; possibility of investing powers].*

- (4) The proceedings of the Assembly only relate legitimately to matters placed beforehand on the agenda.

#### The Board and Executive Committee

- (1) The Board is responsible for managing the association.
- (2) The Board is formed from: *[indicate the number of persons and, where appropriate, a geographical balance and/or the balance of members by category]*.
- (3) The Board members are elected by the Assembly: *[indicate the procedure for nominating Board members]*.
- (4) Board members are elected for a period of *[for completion]*.
- (5) In the event of death, resignation, or loss of his or her tenure, a member of the Board is replaced in accordance with the following regulations: *[for completion]*.
- (6) The Board elects *[specify the voting procedure]* from among its members the Executive Committee consisting of:
  - a Chairperson,
  - one or several Deputy Chairpersons,
  - a Secretary,
  - a Treasurer.

*[Where appropriate, indicate the rules for balanced national representation among members of the Executive Committee and for a rotating presidency]*

#### Meetings of the Board

- (1) The Board meets: *[specify where appropriate the schedule of meetings]*.
- (2) The decisions of the Board are taken in accordance with the following procedure: *[specify the majority and the requirements for a quorum]*.
- (3) The Board takes all decisions required for the management and daily running of the Association *[indicate, where appropriate, how responsibilities are shared between the Board and the Chairperson]*.

#### Chairperson

The Chairperson performs the following tasks: *[in particular, legal representation of the Association, chairing of the Assembly and the Board]*.

*NB: Where appropriate, indicate the provisions concerning the administrative body responsible for technical monitoring of the activities of the Association, or any other body.*

#### 5.1.4 Amendments to the statutes

Amendments to the statutes of the Association may be decided by *[indicate the body responsible]* in accordance with the following procedure: *[indicate the rules regarding a majority and quorum]*.

#### 5.1.5 Dissolution and receivership of the Association

- (1) Dissolution of the Association is declared by the Assembly convened specially for this purpose in extraordinary session.
- (2) To be valid, the decision to dissolve the Association requires the agreement of *[specify the rule on a majority]*.
- (3) In the event of dissolution, the extraordinary assembly nominates one or several commissioners responsible for liquidating the association's assets.

Observation

Identify the provisions which are governed by the internal rules and regulations.

## 5.2 Template 2

### Bilateral convention on cross-border co-operation between territorial authorities proposed examples Mali – Burkina Faso borders

*[Note: This template is proposed only as a guide. Clearly changes to its content may occur in the light of circumstances and national laws.]*

The governments of ...

And of ...

Have agreed the following provisions:

#### **Preamble:**

*[Paragraph of political significance]*

#### Article 1: Definitions

Cross-border co-operation: Any act or policy aimed at strengthening and developing good neighbourly relations between border communities, territorial administrations, bodies or authorities in two or more State Parties as well as the conclusion of agreements and arrangements pursuant thereto.

[see definition taken from the African Union Convention on cross-border co-operation, March 2010 version].

Territorial communities or authorities: activities concerning cross-border co-operation are undertaken by local territorial communities or authorities as defined in the national legislation of the States Parties.

Parties: States signatory to the present Agreement.

#### Article 2: Purpose of the present Agreement

- (1) Facilitate co-operation between local authorities and communities to achieve more effective regional integration by establishing a legal framework specifically for cross-border co-operation between territorial authorities or communities.
- (2) The legal framework should enable the actors concerned to co-ordinate their decision-making, and to deliver and manage together amenities or public services of common local interest for the harmonious development of cross-border territories.
- (3) In the case of co-operation undertaken in line with the present agreement, the territorial authorities and communities involved will be offered the same facilities and protection as in the case of domestic co-operation initiatives.
- (4) Cross-border co-operation is authorised in compliance with the domestic law and international commitments of each of the contracting Parties and, in particular, with the acknowledged powers of the local authorities and communities in domestic law.

### Article 3: Scope

- (1) This convention is concerned with the following local authorities and communities:  
...
- (2) It also concerns the following public law bodies: ... . *[where appropriate]*

*[Specify the actors concerned and the geographical coverage.*

*Proposal for paragraph 1): for Mali: regions next to the border with Burkina Faso as well as the circles and communes located on their territory; for Burkina Faso: regions next to the border with Mali, as well as the provinces and communes located on their territory.*

*For paragraph 2: where appropriate, give the list of the bodies concerned; health care centres for example.]*

- (3) By exchanging diplomatic notes, the contracting Parties may extend the scope of the present Agreement to other actors where their participation is authorised under domestic law and provided that the participation of territorial authorities in the various forms of cross-border co-operation is maintained.
- (4) Cross-border co-operation as defined in the present agreement is officially expressed in the form of conventions (article 4) that may lead to the establishment of a body for co-operation without legal status (article 7) or of a body with legal status (article 8), or to participation in such bodies.

### Article 4: Convention for cross-border co-operation

- (1) The territorial authorities *[and the local public bodies]* referred to in article 3 may conclude co-operation conventions among themselves in the joint areas of responsibility that they share under the domestic law applicable to them. These conventions are concluded in writing. A copy is drafted in the language of each of the Parties concerned, with each copy authentic.
- (2) The purpose of the co-operation conventions is to enable the partners to co-ordinate their decision-making, and to deliver and manage together amenities or public services of common local interest. To this end, such conventions may provide for the establishment of bodies for co-operation, with or without legal status, or participation in bodies existing in the domestic law of the Party concerned.

### Article 5: Rules applicable to the convention

- (1) The co-operation convention identifies the law governing its obligations, which is the law of one of the Parties to the present Agreement. In the event of a dispute over compliance with these obligations, the competent jurisdiction is that of the Party whose law has been chosen.
- (2) Before making its commitment, each territorial authority *[and local public body]* which concludes a co-operation convention has to comply with the procedures and verification specified in the domestic law applicable to it. Similarly, the acts used by each territorial authority *[and local public body]* to implement the co-operation convention are subject to the procedures and verification specified in the domestic law applicable to it.
- (3) Powers of regulation and the police cannot be the subject of cross-border co-operation conventions.
- (4) The convention results in the stakeholders having reciprocal rights and obligations vis-à-vis themselves and third parties. It cannot result in amendments to the status or powers of the territorial authorities *[or local public bodies]* that are party to it.

- (5) The convention contains a provision which establishes the procedures and methods for determining the responsibility of each of the territorial authorities [*and local public bodies*] vis-à-vis third parties.
- (6) The convention specifies how long it will remain in force. It contains a provision concerning the conditions that must be met for co-operation to end.

#### Article 6: Establishment of a body for cross-border co-operation or participation in it

- (1) Cross-border conventions may provide for the establishment of bodies without legal status (art. 7), or the establishment of bodies with legal status or participation in these bodies (art. 8), in such a way as to enable the effective implementation of cross-border co-operation.
- (2) When a territorial authority [*or a local public body*] considers setting up a body for cross-border co-operation, or participating in such a body outside its own state, the establishment of the body or participation in it require prior authorisation under the terms of the domestic law of the Party to which the authority belongs.
- (3) The authority responsible for verification informs the competent authorities in the Parties, of the measures it is considering and of the outcome of its verification, in so far as this information may influence the co-operation of the territorial authorities [*or local public bodies involved in this co-operation*].
- (4) The statutes of the body for cross-border co-operation and its proceedings are drafted in the language of each of the Parties.

#### Article 7: Bodies without legal status

- (1) The territorial authorities [*or local public bodies*] may create joint bodies or mechanisms with neither legal status nor budgetary autonomy, such as conferences, working groups, and steering committees to consider matters of common interest, make proposals for co-operation, exchange information, co-ordinate activities or encourage the actors concerned to adopt measures needed to implement the specified aims.
- (2) A body without legal status cannot approve decisions binding on its members or third parties.
- (3) The co-operation convention which plans to create bodies without legal status contains provisions on:
  - a) the fields on which the activities of the body should focus,
  - b) the establishment of the body and its working procedures,
  - c) the period of time for which it is formed.
- (4) The body without legal status is subject to the law specified in the co-operation convention.

#### Article 8: Bodies with legal status

- (1) The territorial authorities [*or local public bodies*] may participate in existing bodies with legal status or jointly set up such bodies, if the latter belong to a category of bodies authorised under the domestic law of the Party in which they are headquartered, to include foreign territorial authorities.
- (2) The categories of bodies referred to in paragraph 1 above are as follows:

In Mali:

  - associations governed by law 04-038 of 2004,
  - unions governed by decree 06-436/P.

In Burkina Faso:

- associations governed by law No. 10/92/ADP,
- public interest groups governed by articles 138 et seq. of the General Code for Territorial Authorities.

- (3) The present Agreement applies to co-operation bodies not covered by paragraph 2 above, which have been opened to foreign territorial authorities under Malian or Burkinabe law subsequent to the Agreement coming into force. This provision takes effect as soon as the contracting Party concerned has reported via diplomatic channels the amendment made to its domestic law.

#### Article 9: Responsibility and Disputes

- (1) Co-operation conventions are binding solely on the signatory territorial authorities *[and local public bodies]*.
- (2) The Parties are in no way bound by the consequences of contractual obligations contained in co-operation conventions agreed by the territorial authorities *[and local public bodies]* or by the implementation of those conventions.
- (3) If a co-operation convention is declared null and void by one of the Parties concerned in compliance with its domestic law, the other Parties concerned are informed about this at once.

#### Article 10: Procurement Contracts

- (1) Where procurement contracts can be concluded under a cross-border co-operation convention, the procedure is subject to the law of the Party which applies to the territorial authority or community, or to the bodies for co-operation referred to under article 8, which assumes responsibility for it.
- (2) If territorial authorities *[and local public bodies]* belonging to the other Parties are directly or indirectly involved in the funding of this procurement contract, the convention specifies the obligations incumbent on each authority *[or local public body]* for such a transaction, bearing in mind its nature and its cost, as regards publicity procedures, competitive bidding and the choice of firms.
- (3) The territorial authorities *[or local public bodies]* take all appropriate measures for each of them to comply with its obligations under domestic law without undermining the law that applies to these procurement contracts.

#### Article 11: Transitional Provisions

- (1) The present Agreement also applies to conventions on cross-border co-operation between territorial authorities *[or local public bodies]* which were signed before it took effect. These conventions will be brought into line with the provisions of the Agreement as far as reasonably possible within a period of [X] years following its entry into force.
- (2) The responsibilities and powers of existing intergovernmental cross-border bodies for co-operation are not undermined.

## Article 12: Final provisions

The Parties undertake to draw up the appropriate provisions for ensuring real implementation of this Agreement in their domestic law.

## Article 13: Body for monitoring implementation of the Agreement

The Mali/Burkina Faso Major Joint Commission set up by the Agreement on establishment of the major joint commission for co-operation (between Mali and Burkina Faso), signed on 24 October 1983, is responsible for monitoring the present Agreement.

*[Indicate the operational methods and procedures of the Major Joint Commission as regards monitoring of the present Agreement.]*

## Article 14: Entry into Force

The present Agreement will come into force *[specify a deadline]* from the date on which the final Party has informed the other Party that the domestic conditions needed for the Agreement to take effect have been met.

## Article 15: Duration and Termination

- (1) The present Agreement is concluded for an indefinite period.
- (2) Each Party may terminate the present Agreement by *[indicate a procedure]*.
- (3) If the present Agreement is terminated, this will not affect the co-operation measures which took effect before its expiry or the provisions applying directly to the various forms of co-operation.

Done in ... , on ... , in two copies, each in the languages of ... , with both texts authentic.

A further necessary provision:

*The co-operation convention may state that a Party to it can perform tasks incumbent on the other Party, on behalf of the latter and in accordance with its instructions, and while complying with the domestic law of the Party empowered to instruct. In this specific case, specify the mechanisms existing in domestic legislation (example: delegation of public services).*

## Annexes

### Constituents of a convention

- the purpose and actions under consideration,
- the territory concerned,
- the duration,
- identification of the signatories,
- their obligations in carrying out the project and the procedures governing their action,
- the procedures for distributing votes on decisions to be taken subsequent to signing the convention,
- the breakdown of funding,
- the law applying to implementation of the convention,
- the conditions that may govern its renewal,

- the policy bodies,
- the regulations for averting disputes.

#### Items in the statutes of a body for cross-border co-operation

- the list of its members;
- its name;
- its purpose;
- its tasks;
- its duration;
- the location of its headquarters which affects the law governing it;
- a note confirming the legal system governing it if several systems might apply on the basis of its chosen headquarters;
- the one or more working languages;
- the geographical area concerned;
- the list of decision-making bodies, their responsibilities and how each is appointed: two structures are possible;
- the tasks of the one or more management bodies and, where necessary, of the technical staff team;
- the methods and procedures for representing members, including the number of each member's representatives in bodies, the methods used to appoint and renew them and to deputise for them when they are unavailable;
- the procedure for convening members' representatives, including quorums;
- the rules for majorities, depending on the content of decisions;
- the formalities for associating external actors in the body's partnership (participation without the right to vote, establishment of technical groups or committees)(where applicable);
- personnel management, recruitment procedures, the nature of staff contracts;
- relations with members, especially as regards responsibility for actions conducted on their behalf;
- the criteria governing member contributions to the budget (breakdown of funding, date of payment);
- the budgetary and accountancy regulations that apply;
- the budgetary and accountancy documents that members should receive;
- the type of resources available to the body and the method used to fund its activities;
- authorisation to raise loans or a ban on doing so;
- regulations concerning the conclusion of procurement contracts;
- the terms governing amendments to the statutes, especially as regards the registration or withdrawal of members;
- regulations in the event of disputes;
- the terms of its dissolution;
- the terms governing its receivership following dissolution.

## 6 Sources/bibliography

### List of persons interviewed

#### Regional economic communities and African Union

- 1 Prosper KEDAGNI, WAEMU
- 2 Aguibou DIARRAH, African Union, Director of the Border Programme
- 3 Kinza JAWARA-NJAI, ECOWAS, Head of Division, Cross-border Co-operation Programme

#### Burkina Faso

##### Ministries

- 4 Ernest Dramane DIARRA, DGCAF, MATD
- 5 Mrs SAKANDE/BENAO K. Reine Bertille, Director of Decentralised Co-operation (DCOD)/MATD in the Republic of Burkina Faso
- 6 Léonard GUIRA, DGCT, MATD
- 7 Roger NAMA, DGAT, Ministry of the Economy and the Budget

##### Geographically decentralised authorities

- 8 François d'Assise DEMBELE, Regional Director responsible for the Economy and the Plan (DREP), Region of Hauts-Bassins
- 9 Télého LOYARA, Regional Director responsible for the Economy and the Plan, Region of Cascades
- 10 Joachim SOMDA, Secretary General of the Hauts-Bassins Region

##### Mayors of communes

- 11 Salou TRAORE, Mayor of Koloko (province of Kénédougou/Hauts-Bassins)
- 12 Télé Antoine COULIBALY, Mayor of ORODARA (province of Kénédougou/Hauts-Bassins)
- 13 Diango SAMATE, Mayor of Sindo (province of Léraba/Cascades)

##### Technical and financial partners

- 14 Mamadou DIARRASSOUBA, GTZ, Addis Abeba
- 15 Elisabeth PITTELOUD ALANSAR, Deputy Resident Director, Federal Department of Foreign Affairs, Directorate of Development and Co-operation, Swiss Co-operation Office in Burkina Faso
- 16 Yawovi BATCHASSI, Delegation of the European Commission ñ Regional Integration and Private Sector Programme, Delegation of the European Union to Burkina Faso
- 17 Alizatta TAMBOULA, Assistant Resident Representative of the UNDP in Burkina Faso
- 18 Mamadou CAMARA, PCDA - Sikasso Regional Co-ordination

### **Economic Operators in the Mango Sector**

- 19** Joachim KONÉ, President of the Burkina Faso Mango Inter-Professional Association (APROMA-B)
- 20** Antoine SOMBIE, President of the WOUOL Association/President of the Cascades Chamber of Agriculture
- 21** Zongo ADAMA, Vice President of APROMA-B, Fruiteq
- 22** Ahmed MILLOGO, President of the Association of Mango Suppliers in Burkina Faso
- 23** Claude BOVEY, Burkinature

### Mali

#### **Ministries**

- 24** Ladji SOGOBA, MATCL, National Borders Directorate
- 25** Boubacar Gouro DIALL, Adviser to the Minister of Foreign Affairs
- 26** Chirfi Moulaye HAIDARA, Director of Area Planning ñ MATCL

#### **Mayors of Communes**

- 27** Adama DEMBÉLÉ, Mayor of Nimbougou (Sikasso/Kadiolo)
- 28** Bréhima BENGALY, Mayor of the Rural Commune of Kaboïla (Sikasso/Sikasso)
- 29** Sinaly TRAORE, Mayor of the Rural Commune of Finkolo (Sikasso/Sikasso)
- 30** Dramane DANIOKO, Mayor of the Rural Commune of Danderesso (Sikasso/Sikasso)

#### **Technical and Financial Partners**

- 31** Jérôme DAKOUO, Regional PACT Administrator, Head of Ségou Office
- 32** Dialo YACOUBA, PAFASP

### **Economic Operators in the Mango Sector**

- 33** Drissa OUATTARA, Administrator/Accountant, Mali Yiriden
- 34** K. Cheick BERTÉ, President of the Regional Union of Mango Farmers, Sikasso
- 35** Youssouf COULIBALY, Director of Kene Yiriden

### Others

- 36** Edmond SOUGUE, Official Representative, Support for Territorial Development Policies and Strategies, Partnership for Municipal Development (PDM)

## Description of the MOT

The Mission Opérationnelle Transfrontalière (MOT) brings together territorial authorities, states, and economic and social operators and institutions, mainly from around French border areas and also throughout Europe, which wish to work in networks, exchange good practice and experience, and make available their expertise.

In order to meet a need for engineering capability among those who support cross-border projects as a way of making the most of EU INTERREG funding, the DATAR (the inter-ministerial delegation for area planning and regional enhancement) established the MOT in 1997 with the support of the Deposit and Consignment Office and the Ministry of Infrastructure. Run by an inter-ministerial committee, the MOT strives first to provide sound practical advice to five pilot locations available for testing. In 1998, it became an association responsible for developing networking among supporters of cross-border projects. Over the last few years, the MOT has deliberately europeanised all its activities so as to accumulate its expertise, and transfer its know-how to other border areas in support of the European integration process. For example, the MOT has led the way in a European scheme for networking among cross-border conurbations on questions of cross-border governance.

MOT activities include operational assistance to those who support projects, networking among cross-border actors, and help with identifying strategies intended to facilitate cross-border co-operation. The MOT team has the task of adjusting its expertise to all requests from its network, regardless of the topics and territories concerned.

The distinctive way in which the MOT is organised both as an inter-ministerial committee and a network of actors is conducive to an ongoing dialogue between the national and EU authorities and local project sponsors, so that it is an actor whose proposals carry weight.

The multinational and multidisciplinary MOT staff team consists of professional workers in cross-border co-operation, who offer approaches combining the different laws, know-how and cultural persuasions of each country, which are geared to the real circumstances of the territory concerned.

In 2005, the MOT intervened at the request of the Municipal Development Partnership (PDM) during a workshop in Sikasso on the initiation of the pilot operation covering the SKBO area for the towns of Sikasso (Mali), Khorogo (Côte d'Ivoire) and Bobo Dioulasso (Burkina Faso). With its experience of over 10 years of activity in Europe, the MOT now wishes to accumulate good practice, methodology and expertise in the interests of border areas just embarking on this process of territorial integration.

MOT website: <http://www.espaces-transfrontaliers.eu>

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### **(List not fully inclusive)**

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WABI Network: <http://www.afriquefrontieres.org/index.php?lang=en>

Commission nationale de la coopération décentralisée (CONACOD): <http://www.conacod.gov.bf/>

Ministère de l'administration territoriale et de la décentralisation: <http://www.matd.gov.bf>

Ministère de l'aménagement du territoire et des collectivités locales (MATCL): [www.matcl.gov.ml](http://www.matcl.gov.ml)

"Initiatives Mali Gateway", website on the promotion of local development initiatives in Mali: <http://initiatives-mali.info/>



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