

- Visegrad Fund

With cross-border cooperation  
for the Europeanisation of Ukrainian borders

## COMPARATIVE ANALYSIS

on the competencies  
of regional and local authorities  
in the field of CBC of the 5 countries

22 March 2021



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*The project is co-financed by the Governments of Czechia, Hungary, Poland and Slovakia through Visegrad Grants from International Visegrad Fund. The mission of the fund is to advance ideas for sustainable regional cooperation in Central Europe.*

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## Content

<b>1. Introduction.....</b>	<b>1</b>
1.1. Europeanisation, borders and cross-border cooperation .....	1
1.2. The role of borders and cross-border cooperation.....	2
1.3. A guide to the present document.....	3
1.4. Introduction of the cooperating partners.....	5
<b>2. Country profile: Czechia.....</b>	<b>8</b>
2.1. Brief overview of the territorial administrative system.....	8
2.2. Brief introduction of the legislation on local and regional actors.....	9
2.3. Rights and competences of local and regional actors on international and cross-border cooperation – based on domestic law .....	10
2.4. Examples of application of international (agreements) / EU law in cross-border territorial cooperation .....	15
<b>3. Country profile: Hungary.....</b>	<b>21</b>
3.1. Brief overview of the territorial administrative system of Hungary.....	21
3.2. Brief introduction of the legislations on local and regional authorities .....	22
3.3. Rights and competences of local and regional authorities on international and cross-border cooperation – based on domestic law .....	24
3.4. Examples of application of international (agreements) / EU law in cross-border territorial cooperation .....	31
<b>4. Country profile: Poland.....</b>	<b>36</b>
4.1. Brief overview of the territorial administrative system of the country.....	36
4.2. Brief introduction of the legislations on local and regional authorities .....	37
4.3. Rights and competences of local and regional actors on international and cross-border cooperation – based on domestic law .....	38
4.4. Examples of application of international (agreements) / EU law in cross-border territorial cooperation .....	43
<b>5. Country profile: Slovakia .....</b>	<b>47</b>
5.1. Brief overview of the territorial administrative system .....	47
5.2. Brief introduction of the legislation on local and regional actors.....	48
5.3. Rights and competences of local and regional actors on international and cross-border cooperation – based on domestic law .....	49

5.4. Examples of application of international (agreements) / EU law in cross-border territorial cooperation .....	54
<b>6. Country profile: Ukraine .....</b>	<b>58</b>
6.1. Brief overview of the territorial administrative system of the country.....	58
6.2. Brief introduction of the legislations on local and regional authorities .....	59
6.3. Rights and competences of local and regional authorities on international and cross-border cooperation – based on domestic law .....	60
6.4. Examples of application of international (agreements) / EU law in cross-border territorial cooperation .....	71
<b>7. Summary .....</b>	<b>77</b>
7.1. Brief overview of the territorial administrative systems of the countries.....	77
7.2. Brief summary of the legislations on local and regional authorities.....	78
7.3. Rights and competences of local and regional actors on international and cross-border cooperation – based on domestic law .....	82
<b>8. Bibliography .....</b>	<b>88</b>

# 1. INTRODUCTION

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The present study is an outcome of cooperation of 6 partners from 5 countries. The aim of the partners was to analyse the legal background of cross-border activities of local and regional authorities of the Visegrad Four countries (Poland, Czechia, Slovakia, Hungary) and Ukraine with a view to identifying those V4 solutions and models which can be adapted to Ukraine. These solutions and models have been developed in parallel with the EU integration process of the Visegrad countries. Therefore, they can be beneficial for Ukraine when developing the country's ties with the EU within the framework of the Association Agreement. At the same time, the models have national characteristics rooted in the history of the particular countries which limits the applicability thereof. Consequently, there is a need to analyse the frames of adaptability. This learning and adapting process that also Visegrad Four countries went through, is called in literature „Europeanisation“, a term which will be further discussed below along the other key concepts.

The study is built up by 7 chapters all together. After the introduction 5 country specific chapters follow each providing a brief overview of the territorial administrative system, the legislation on local and regional authorities, the rights and competencies of local and regional actors on international and cross-border cooperation as well as examples of application of international agreements of Czechia, Hungary, Poland and Slovakia respectively. The study finishes with a summarising Conclusion chapter.

## 1.1. Europeanisation, borders and cross-border cooperation

### On Europeanisation

The term 'Europeanisation' is a quite new one being in use since the 1990s when the biggest wave of EU enlargement begun. In 1993, the European Union defined a set of conditions for EU membership (the so-called 'Copenhagen criteria') targeting its future members. This conditionality can be considered as a litmus test of the maturity of the candidate countries (and, more recently its current members) and an instrumentalised geopolitical policy through which the EU exercises its normative power. (Grabbe, 2006; Scott and Liikanen, 2010; Moisiu et al., 2012) Gawrich et al. (2009, 5) differentiates between 'membership', 'enlargement' and 'neighbourhood' dimensions of Europeanisation. The first dimension refers to the inclusion of values, norms and rules of the EU in the domestic legal-administrative and political systems of the Member States. The second dimension targets those countries intending to join the Union. For them, Europeanisation means the application of the above-mentioned conditionality. Finally, the third option is available for those states whose EU accession is not expected at all – or it is not probable in the foreseeable future. In the latest case,

the adoption of EU-values used to be voluntary or based on imitation and rewarded by the EU with economic advantages.

The case of Ukraine falls under the third dimension. The post-Soviet country regained its independence in 1991 and, especially following the so-called 'Orange revolution' taken place in the turn of 2004 and 2005, always had a strong Euro-Atlantic orientation. The representatives of the country signed the Partnership and Cooperation Agreement in 1998, while the Association Agreement representing a strategic alliance with the EU entered into force in 2017. Today, not only the EU is the most important economic partner of Ukraine (with a total share of 42% of its total foreign trade) but, within the framework of the so-called Eastern Partnership (EaP) policy of the EU, diverse entities of the country take part in European development programmes. Through the tools of EaP and legal harmonisation (including the administrative reform being under implementation) Ukraine is an active player of neighbourhood Europeanisation with a declared intention of entering enlargement dimension thereof.

## 1.2. The role of borders and cross-border cooperation in Europeanisation

Regarding the enlargement and neighbourhood Europeanisation, borders and cross-border cooperation have a definitive role. As the cost of openness of internal borders, the EU's external borders must be guarded strictly. The free movement of the EU citizens is guaranteed in return of the limited movement of the non-EU citizens (Hooper, 2004): while the internal borders are "liquid", the external ones are "solid" (Lange and Pires 2018, 136). Consequently, the permeability, the openness of the border in parallel represents the 'Europeanness' thereof. (Decoville and Durand, 2017) It is the reason why enlargement and neighbourhood Europeanisation cannot be separated from the Europeanisation of the external borders of the Union. This phenomenon has a double character: on the one hand, the external border regime has to guarantee those restrictive filtering functions enabling free movement within the EU; on the other hand, approximation process necessitates the opening of the same borders to cross-border interactions.

European Neighbourhood Policy (ENP, since 2004) and, more precisely, the Eastern Partnership policy (since 2009) offer a set of tools to meet this double-faceted criterion. As Haukkala underlines it, the main reason of the two above initiatives was to prevent the emergence of a new Iron Curtain along the easternmost borders of the new EU members after the great enlargement. ENP is thus considered as an in-between solution, the "*alternative or substitute of enlargement*" (Haukkala 2011, 55) which can facilitate gradual Europeanisation without a new wave of enlargement.

Accordingly, as early as 2003, the EU highlighted the importance of cross-border cooperation (CBC) in its first Communication on ENP:

*“Proximity calls for further efforts to encourage cross-border and trans-national cooperation and development, both locally and regionally. This includes the strengthening of all forms of economic, legal and social cooperation across the borders, especially between regional and local authorities and within civil society.”*  
(EC 2003, 14)

CBC has a multi-layered mission along the external borders of the EU. First, it is a tool of trust building and exchanges between the neighbouring societies. Thanks to regular encounters, the sense of belonging, the respect of diversity and the feeling of cooperation can be boosted which remarkably contribute to the Europeanisation of the borderland. Second, CBC is a tool of transferring of experiences, best practices between the EU members and the neighbours. Sensitization and capacity building activities facilitate the spread of EU values, norms and rules outside the Union and improve the learning process laying the basis for a stronger relationship between the EU and the associated partner.

Third, with the help of the European funds, CBC can have an effect on the infrastructural and socio-economic development of the borderlands which very often are in a peripheral situation within the given country but which, in parallel, can serve as the gateways of the neighbouring countries to the Union.

### **1.3. A guide to the present document**

#### **Main objectives and activities of the study**

The present study has been elaborated within the framework of the project entitled „With cross-border cooperation for the Europeanisation of Ukrainian borders” supported by the International Visegrad Fund. The project was preceded by the publication of a study drafted by the experts of the V. Mamutov Institute of Economic and Legal Research of the National Academy of Sciences of Ukraine, the Faculty of Law of Uzhhorod National University and CESC I on the legal frameworks for the adaptation of the European Grouping of Territorial Cooperation (EGTC) tool in Ukraine. The study which was published by the Tisza EGTC in 2019 highlighted those contradictions and shortcomings of the Ukrainian provisions which hinder the development of CBC. In order to eliminate these obstacles, on 10<sup>th</sup> February, 2020 the three parties signed a Memorandum on strategic cooperation by which they intend to facilitate the intensification of CBC and the development of the legal background thereof between Ukraine and its western neighbours.

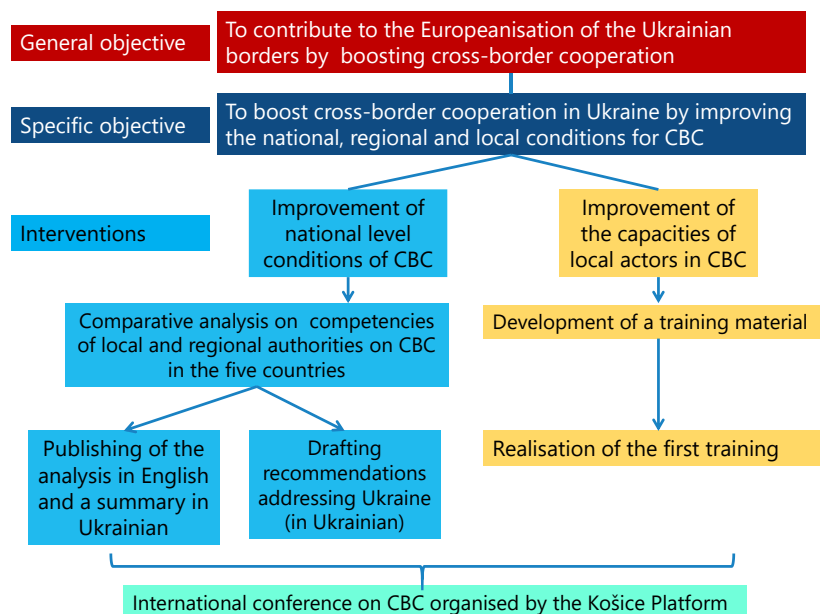
According to Art. 446–448 of the EU-Ukraine Association Agreement, the Parties undertake to facilitate cross-border cooperation and improve the relevant legal frames. In Ukraine, CBC is ruled



by the Constitutional provisions (1996), the laws on local self-government (1997), on local state administrations (1999) and on cross-border cooperation (2004, amended in 2018). This legal framework together with those provisions set during the decentralisation reform (started in 2014) facilitates the creation of beneficial environment for cross-border activities of local authorities and civil society actors. Yet, the legal norms shall be further developed, some gaps and contradictory provisions weaken the local actors' willingness to participate in CBC. This reluctance is partly due to the lack of information on the advantages and possibilities provided by CBC.

Besides, as the European practice shows, CBC can enhance the spread of deliberative techniques in local decision-making, adaptation of European values and policies, and improve the environment for mutual trust building through the so-called 'paradiplomacy of local actors'. It means that CBC has an indirect impact on the Europeanisation processes in borderlands.

Figure 1: The intervention logic of the project



When targeting the Europeanisation of the western Ukrainian borders, the project partners want to improve the framework conditions of CBC in two ways: by contributing to the improvement of the legal background (at national level) and developing the knowledge of the potential beneficiaries of the improved legal frames (at local/regional level).

For the sake of amending the Ukrainian provisions and thus improving the conditions of CBC, the partners plan to exploit those experiences, knowledge and lessons learnt that the Visegrad Four countries have accumulated since 1994 when applying for EU membership. In parallel with the formulation of recommendations addressing national authorities, the partners design and implement a training program as well addressing the local and regional actors operating along the western Ukrainian borders. Through these two parallel activities, the partners aim at creating favourable atmosphere for and intensified interest towards enhanced cross-border cooperation. By boosting



CBC, the project foresees an (even if modest) contribution to the Europeanisation of Ukraine's borders.

### The purpose and structure of the present study

As the first component of the project, the present study aims at unfolding the legal provision ruling cross-border and international activities of local and regional authorities (self-government bodies) of the four Visegrad countries and Ukraine. The purpose is to identify those components of the legislations which can be adapted to the Ukrainian circumstances. Accordingly, notwithstanding the introduction, the study consists of five analytical chapters drafted along a template developed jointly by the partners including the following components:

- Brief overview of the territorial administrative system of the country
- Brief introduction of the legislations on local and regional authorities
- The rights and competences of LRAs on international and cross-border cooperation – based on domestic law
- Examples of application of international (agreements) / EU law in cross-border territorial cooperation

The study is completed by a summarising Conclusion chapter elaborated by the Polish partner institution. The Conclusion chapter is to be translated to Ukrainian and used as ammunition for drafting the recommendations addressing the Ukrainian national authorities.

## 1.4. Introduction of the cooperating partners

Lead Partner: [Central European Service for Cross-Border Initiatives \(CESCI\)](#)



CESCI is a private law association based in Budapest, established in 2009 with a mission to facilitate cross-border cooperation around Hungary, in Central Europe and in the Danube basin. The organisation is active in cross-border research, spatial planning and programming, project and institutional development, knowledge sharing and assisting policy making on CBC at European and national level. CESCI was one of the founders of the Košice Platform inviting Central and Eastern European experts of EaP.

### Partner No. 1: V. Mamutov Institute of Economic and Legal Research of the National Academy of Sciences of Ukraine (IELR NASU)



IELR NASU is a leading academic institution with more than 50 qualified employees, dealing with the legal and economic background of the state programming, legislative activities and implementation practice in cooperation with the Parliament, the ministries, the Supreme Court and the Ombudsman of Ukraine. In 2018 IELR NASU was a CЕСSI’s partner in implementing a research project on the institutional and legal dimension of Ukraine’s participation in EGTCs. In 2019 CЕСSI, IELR NASU and the Faculty of Law of the UzhNU signed a Memorandum on strategic cooperation and on request of the Council of Europe jointly developed a Manual on CBC.



### Partner No. 2: State University «Uzhhorod National University» (Faculty of Law) (UZhNU)



UZhNU (est. 1945) as the major tertiary educational institute of Transcarpathian region has a long-standing experience in tertiary education and trainings addressing also civil servants and local authorities. The history of the Faculty of Law started in 1991 when Ukraine regained its independence and the Department of Law has been set up. The Department became a Faculty in 1993 where 160 scientific and pedagogical scholars teach the future lawyers of Ukraine. UZhNU was a partner of IELR NASU and CЕСSI during the elaboration of the EGTC study and the Manual of the Council of Europe.

### Partner No. 3: University of Presov, Faculty of Arts, Institute of Political Science (IPOL)



IPOL is the second oldest academic institute of political science in Slovakia. The institute provides accredited non-pedagogic study programmes within the framework of a three-degree study (Political Science studies in the 1st, 2nd and 3rd degree) and accredited two-degree pedagogic study programmes (Education Towards Citizenship as part of a double Majors study). IPOL team is qualified in border studies and has implemented several research and development projects on CBC, e.g. ERDF (Development of scientific-research cooperation in the Slovak – Polish borderlands), V4EaP Standard Grants Project (Public administration reform in Ukraine: lessons learned from Slovakia and Poland), Norway Grants (Sharing European integration know-how and CBC experience between Norway and Russia with Ukraine; Sharing know-how for better management of the Schengen Border between Slovakia / Ukraine and Norway / Russia), APVV (EU-Ukraine Association Agreement and the Slovak-Ukrainian cross-border cooperation: impacts and opportunities).

#### Partner No. 4: Stanisław Leszczycki Institute of Geography and Spatial Organization Polish Academy of Sciences (IGSO PAS)



IGSO PAS (established in 1953) has a long experience in research concerning cross-border cooperation. The Institute has been involved in numerous international projects on socio-economic issues in border regions. These include i.e. the role of borders in regional development, aspects of EU border regions, flows of people and goods across borders and other trans-border interactions. Furthermore, the institute has produced practice-oriented output bringing benefits to local and regional authorities and stakeholders. Moreover, majority of IGSO PAS research undertaken abroad has been conducted in the Visegrad countries and Eastern Europe. This resulted in joint research projects with i.a., Hungarian Academy of Sciences and Slovak Academy of Sciences. The Institute is one of the founders of the Košice Platform.

#### Partner No. 5: Technical University of Liberec (TUL)



TUL is a dynamic university of medium size that unites forms of technical and university education. Geography department (an 11-membered academic team) is a part of the faculty of education, sciences and humanities, focusing on education for students on geography. The research focus of the department covers issues related to the borders and cross-border cooperation, mainly in the trilateral Czech-Polish-German Euroregion Nisa-Nysa-Neisse.

## 2. COUNTRY PROFILE: CZECHIA

AUTHORS: HYNEK BÖHM AND EMIL DRÁPELA

### 2.1. Brief overview of the territorial administrative system

Reforms of public administration in Czechia started after the Velvet Revolution of November 1989. The very first phase of the reform towards changing territorial administrative system was an abolition of the Article 4 of Czechoslovak Constitution, which declared the “leading role” of the Communist Party in the society. This opened the way towards further changes: The Act no. 369/1990 Coll. on municipal establishment, first, abolished national committees that served as territorial authorities during the communist regime, and second, established local self-governing authorities within existing municipalities<sup>1</sup>. The local self-government has had a long tradition in the territory of the Czech Republic and its system has not changed significantly from its establishment in 1849 to 1938. Since the very beginning, the local self-government has performed specific functions of the state administration as a delegated competence. The new arrangement followed this system considerably<sup>2</sup>. The Constitution of the Czech Republic provides that the main units of territorial self-government are municipalities and higher territorial units (Chapter VII, Article 99).<sup>3</sup>

In 2000, the Act on Regions<sup>4</sup> introduced a territorial administrative system that divides country into 14 self-administrative regions, one of the being the capital Prague. Czechia (population 10,69 million) has a highly fragmented residential structure with its 6 253 municipalities, 608 of them having a statute of town/city. The capital of the Czech Republic – Prague has a special position in the Czech administrative system. Prague is divided into 57 districts, many of which previously used to be independent municipalities that were joined with Prague. At the same time, the Prague local government is a territorial government and governmental administration, as specified in the Act No. 131/2000 on Capital City Prague.

The second reform of the Czech public administration accompanied process of Czech endeavours to join the EU. The essence of the second phase of reform consisted in the termination of the activities of district authorities – centrally managed from the Ministry of Interior - and the transfer of their competences to other public administration bodies, in particular municipalities with extended competence. This step was achieved by the Act No. 314/2002 Coll, which introduced two basic categories of municipalities - municipalities with a basic scope of delegated competence and

<sup>1</sup> Duleba, A. (2021): Country profile Slovakia

<sup>2</sup> The new arrangement of the local self-government was implemented by the Act No. 367/1990 Coll., on Municipalities (the Municipal Arrangement).

<sup>3</sup> *Ústava České republiky*. [Constitution of the Czech Republic, <https://www.psp.cz/docs/laws/constitution.html> (accessed: January 29, 2021).

<sup>4</sup> Zákon č. 129/2000 o krajích, <https://www.psp.cz/sqw/sbirka.sqw?r=2000&cz=129> (accessed: January 19, 2021)

municipalities with an extended scope of delegated competence were created. The second category is divided into municipalities with an authorized municipal office and municipalities with extended powers. Three types of municipalities that differ in the extent of the scope of the delegated competence were thus created. Despite the termination of district offices, the districts were not abolished, they still exist as administrative-geographic units.

## 2.2. Brief introduction of the legislation on local and regional actors

Local and regional authorities (LRAs) have both independent and delegated competences. Independent competences are set by the Act on Regions (129/2000 Coll) and Act on Municipalities (128/2000 Coll), while delegated competencies are set by sectoral law. The government is obliged to provide funding for the conduct of delegated competencies. LRAs do not hold legislative powers, just the regions can propose legislative acts. They can issue generally binding regulation in the area of independent competences and ordinances in the area of delegated competences. There is no formal hierarchy between the (14) Regions and the Municipalities, however regional authorities serve as appeal bodies to the municipal authorities in administrative procedures (CoR).

LRAs have their own budgets, coming from different sources. Sub-national governments' revenues are derived from taxation (own-source), transfers and other sources, mainly fees resulting from the provision of services. In 2018 sub-national expenditure represented 11.7% of the GDP in comparison with the central government expenditure that represented 29.2% of the GDP. The Municipalities' revenue is composed of 67.60% of taxation, 20.14% of transfers and 12.26% of others. The Regions' revenue is composed of 33.51% of taxation, 63.68% of transfers and 2.81% of other sources (CoR 2021).

Table 1: Overview of competences of regional and local actors. Source: own elaboration based on CoR, Act on Regions (129/2000 Coll) and Act on Municipalities (128/2000 Coll)

Competences of regions	Competences of municipalities
<ul style="list-style-type: none"> <li>• Education (secondary education and funding);</li> <li>• Transport (road network, regional public transport);</li> <li>• Social services;</li> <li>• Environment (protection of fauna and flora);</li> <li>• Regional economic development;</li> <li>• Planning (approval of planning and zoning documents at the regional level);</li> <li>• Health care, including drug prevention;</li> <li>• Youth (funding);</li> <li>• Sport (funding);</li> <li>• Fire safety;</li> </ul>	<ul style="list-style-type: none"> <li>• Local development;</li> <li>• Environment (water management and treatment, urban heating, waste processing, environmental protection);</li> <li>• Health services;</li> <li>• Social welfare (social assistance and youth policy);</li> <li>• Transport (public transport, management of local roads);</li> <li>• Local planning (management and maintenance of open spaces, cemeteries);</li> <li>• Sport;</li> <li>• Culture;</li> </ul>

Competences of regions	Competences of municipalities
<ul style="list-style-type: none"> <li>• Cohesion (regional boards on cohesion);</li> <li>• Tourism (development plans in the field of tourism, implementation and monitoring of their performance);</li> <li>• Prevention of criminality;</li> <li>• Inter-regional and international cooperation with foreign territorial authorities;</li> <li>• Other matters of regional interest; and</li> <li>• Other matters delegated by the State.</li> </ul>	<ul style="list-style-type: none"> <li>• Fire-fighting and prevention;</li> <li>• Municipal police;</li> <li>• Primary education, and</li> <li>• Housing.</li> <li>•</li> </ul>

## 2.3. Rights and competences of local and regional actors on international and cross-border cooperation – based on domestic law

The legal competences of Czech LRAs for international and cross-border cooperation are derived from the national legislation and international/bilateral conventions adopted by Czech authorities.

### The legal competences of Czech LRAs stemming from the national legislation

Both Act on Municipalities (128/2000 Coll., section 55) and Act on Regions (129/2000 Coll, section 28) have almost identical wording in the sections describing the co-operation with municipalities/regions from other countries. The following part is taken from the Act on Municipalities, but it should serve as an illustration of a legal position of regions too, as both acts are very similar:

“(1) Municipalities may co-operate with municipalities from other countries and they may be members of international associations of local bodies.

(2) Municipalities may conclude co-operation agreements with their counterparts from other countries.

(3) Associations of municipalities may conclude co-operation agreements with associations of municipalities of other countries. The subject of co-operation may only be activities which are the subject of activities of the association of municipalities which concluded the co-operation agreement.

(4) The agreement under subsections (2) and (3) must be made in writing and must be approved in advance by the municipal council, otherwise the agreement shall be considered null and void. The agreement must include:

- a) the names and registered offices of the parties to the agreement;

- b) the subject of co-operation and the method used for the financing thereof;
- c) the bodies and the method for the establishment thereof;
- d) the period for which the agreement is concluded.

(5) A legal person may be established pursuant to a co-operation agreement under subsections (2) and (3) only if an international agreement approved by Parliament and binding for the Czech Republic permits.

(6) The approval of the Ministry of the Interior, after prior discussion with the Ministry of Foreign Affairs, shall be required for a co-operation agreement under subsections (2) and (3), pursuant to which a legal person is to be established or membership of an already existing legal person is to be established. The agreement cannot enter into effect unless it has been granted such approval. Such approval may be refused only if the agreement contradicts the law or an international agreement approved and promulgated by Parliament and binding for the Czech Republic.”

### The legal competences of Czech LRAs stemming from the ratification of international agreements

Both legal acts refer to the international conventions or bilateral agreements, which the Czech Republic has ratified or concluded and is currently bound by then. The European outline convention no. 106 on transfrontier co-operation between territorial communities or authorities of 21 May 1980, which became part of national legislation after its ratification by the Czech parliament in 1999<sup>5</sup>, should be mentioned here at a first place. The Madrid Outline Convention has been completed with three Additional protocols. However, the Czech Republic has not joined any of these protocols yet, despite the adoption of the first protocol failed just thanks to the administrative mistake in 2001, there was no political will to adopt it since this year.

European Charter of Local Self-Government is an international treaty adopted in the Council of Europe of 15 October 1985. Czech Republic signed the Charter on 28 May 1998 and in the Collection of Laws it was published under number 181/1999, with its coming into force on 1 September 1999. Unfortunately, the principles expressed by the charter are not self-executing; local self-government units cannot invoke these principles before national courts or before the European judicial authorities<sup>6</sup>.

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<sup>5</sup> *European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities* no 106. Council of Europe, Madrid, 21 May 1980, <http://conventions.coe.int/Treaty/en/Treaties/Html/106.htm> (accessed: January 14, 2021); [https://www.fulsoft.cz/33/94-2000-sb-m-s-sdeleni-ministerstva-zahranicnich-veci-o-prijeti-evropske-ramcove-umluv-y-o-preshranicni-spolupraci-mezi-uzemnimi-spolecenstvimi-nebo-urady-uniqueidOhwOuzC33qe\\_hFd\\_-jrpTjXOeE1-2b7lBVh7q-Rs7q6wj0JoeGVFeQ/](https://www.fulsoft.cz/33/94-2000-sb-m-s-sdeleni-ministerstva-zahranicnich-veci-o-prijeti-evropske-ramcove-umluv-y-o-preshranicni-spolupraci-mezi-uzemnimi-spolecenstvimi-nebo-urady-uniqueidOhwOuzC33qe_hFd_-jrpTjXOeE1-2b7lBVh7q-Rs7q6wj0JoeGVFeQ/)

<sup>6</sup> Radvan, M. (2017): Article 9 of the European Charter of Local Self-Government in the Czech Republic. Available from <https://www.ejournals.eu/FLR/2017/Issue-4/art/12307>



## European Grouping of Territorial Cooperation – EGTC

The EGTC offers the option of establishing groupings of regional and local authorities from different EU Member states without requiring a prior international agreement to be signed and ratified by national parliaments. However, Member States must approve EGTC participation of territory members.

The European legal framework is governed by Regulation (EC) No. 1082/2006 of the EP and of the Council as amended by Regulation (EU) No. 1302/2013 of the EP and of the Council from 17 December, 2013 amending Regulation (EC) No. 1082/2006 on the EGTC according to the clarification, simplification and improvement of the establishment and functioning of such groupings.

Its goal is to establish a European legal framework for the creation and operation of the instrument for EU-level cooperation with a legal entity which may act on behalf of its members, especially regional and local authorities. The purpose of the EGTC is to facilitate and support cross-border, transnational and interregional cooperation among its members with the prior aim of strengthening economic and social cohesion. Such groupings may associate members located in at least two EU Member states and may include states, regional and local authorities and public entities.

Act No. 248/2000 on Support to Regional Development, Art.18a as amended, regulates the conditions for the functioning of the EGTC in the Czech Republic on a national level. The Act on Support to Regional Development entrusts EGTC registration and approval of the participation of members of such groupings to the Ministry of Regional Development. The Ministry shall evaluate registration requests in accordance with the legal system. The final text of the Convention and Statutes of particular groupings are published on the Ministry of Regional Development website once groupings are registered.

In October 2015, the Act on Support to Regional Development (under No. 298/2015 Coll.) specified a condition for participation in the EGTC. It states that the potential Czech members of EGTC must have adequate insurance or another form of liability during the entire operation, according to Article 12 of the EU Regulation.

However, according to the EGTC register administered by the Committee of Regions there are only four EGTCs with the participation of the Czech subjects<sup>7</sup>. None of these EGTCs has its registered seat in the Czech Republic. This absence has not asked for the need to deal with the practicalities of the day-to-day EGTC functioning, as it is the case in countries with the higher number of the EGTCs. The position of key CBC actors is still in the hands of euroregions, who refuse to change their statute and become an EGTC.

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<sup>7</sup> See <https://portal.cor.europa.eu/egtc/CoRAactivities/Documents/Official List of the EGTCs.pdf?Web=0> (accessed 5 February 2021).

## Existing bilateral international agreements related to cross-border and international activities of local and regional authorities

Czechia is a landlocked country, which is located inside of the Schengen space and has only “internal Schengen” border (except for the international airports). It has concluded general bilateral intergovernmental agreements on good neighbouring relations with all three out of four neighbouring countries (except for Austria). Cross-border cooperation has been coordinated at the level of state administration through intergovernmental working groups and commissions for cross-border cooperation (Czech-Saxon and Czech-Bavarian Intergovernmental Working Group and Czech-Polish and Czech-Slovak Intergovernmental Commission for Cross-Border Cooperation)<sup>8</sup>. Organizational provision of commissions and groups is provided by ministries of foreign affairs and regional development. The typology of main stakeholders in these commissions has remained unchanged since the moment of their creation in 1990s – they are composed from the representatives of central administrations and local administrations – the bodies still dominating cross-border co-operation conduct in Czechia.

Moreover, except for the „general” agreements on good neighborships the Czechia has also concluded bilateral framework agreements on the mutual co-operation in a specified sector of joint interest, such as co-operation in the field of an emergency healthcare in the border regions.

## Current shape of cross-border cooperation in Czechia

Since 1991, 13 Euroregions with the participation of Czech subjects have been created and keep on functioning until now. They cover the entire length of the Czech border with all four neighbours.

*Table 2: Overview of Czech Euroregions. Source: own elaboration*

<b>Euroregion</b>	<b>Founded</b>	<b>Partner countries</b>
Nisa/Nysa/Neisse	1991	Germany, Poland
Elbe/Labe	1992	Germany
Krušnohoří/Erzgebirge	1992	Germany
Egrensis	1993	Germany
Šumava	1993	Germany, Austria
Silva Nortica	2002	Austria
Pomoraví/Weinviertel/Záhorie	1999	Austria, Slovakia
Bílé Karpaty	2000	Slovakia
Beskydy	2000	Poland, Slovakia
Těšín/Cieszyn Silesia	1998	Poland

<sup>8</sup> See:

[https://www.mzv.cz/jnp/cz/zahranicni\\_vztahy/cr\\_v\\_evrope/regionalni\\_a\\_preshranicni\\_spoluprace/preshranicni\\_spoluprace\\_1/index\\$2548.html?action=setMonth&year=2020&month=11](https://www.mzv.cz/jnp/cz/zahranicni_vztahy/cr_v_evrope/regionalni_a_preshranicni_spoluprace/preshranicni_spoluprace_1/index$2548.html?action=setMonth&year=2020&month=11)

<b>Euroregion</b>	<b>Founded</b>	<b>Partner countries</b>
Silesia	1998	Poland
Praděd/Pradziad	1998	Poland
Glacensis	1996	Poland

These Euroregions were created in the 1990s by municipalities (as regions were not in place yet), and municipalities keep on being the principle actor controlling them and setting the CBC agenda. From the legal point of view, the Euroregions with Czech participation are based on the legal co-operation of two (or more) subjects from two (or three) parts of the mutual border. Most typically, the municipalities on the Czech side form the non-profit legal body, which act as the Czech partner of the Euroregion. The partner municipalities or other self-administration entities on the other side of the border does the same. None of the euroregions with the participation of Czech subjects decided to “upgrade” their legal statute and become an EGTC yet.

In the cases of many Czech Euroregions, they quickly obtained a chance to co-administer the EU funds supporting CBC (firstly pre-accession Phare, then INTERREG). They have been responsible for the management of the small-projects/microprojects Fund, which financially support subtle people-to-people projects. These microprojects have created up to 20% of the financial envelope of the INTERREG CZ-PL programme, which financially supports activities in the 6 euroregions. The cross-border co-operation, based on the use of microprojects scheme, is a decisive part of the paradiplomacy of small and medium-sized municipalities in the Czech-Polish borderland. The role of euroregions as administrators of these microprojects is essential.

There are also other actors of CBC in Czechia. The regions were created only in 2000. In the decade following their establishment they concluded partnership agreements with the regional administration from other countries. The partnership agreements with regions from neighbouring countries were concluded among the first ones, also thanks to the possibility to use the financial support from the INTERREG programme for their co-operation. Some regions were invited to become an active or observing member of Euroregions, but certain animosity and the upper hand of municipalities – who control Euroregions - prevented in applying this everywhere.

Some regions used the introduction of the EGTC into national legislations as a chance to create their own co-operation grouping and to make their co-operation with their partner regions from neighbouring countries more systematic. The Polish-Czech-Slovak EGTCs TRITIA (founded 2013) and Polish-Czech NOVUM (2015) have successfully implemented several (mainly INTERREG co-funded) projects, but their attempts to obtain a role of co-administrator of the part of the INTERREG programme – as it was the ambitions of the TRITIA – have failed so far.

Table 3: The overview of EGTCs with the participation of Czech subjects. Source: own elaboration based on CoR

EGTC	Founded and countries involved	Purpose and assessment
TRITIA	2013, PL, CZ, SK	Rather broad in cooperation areas, modes level of reach
Common Region	2013, SK-CZ	Rather broad cooperation areas, no activities at all
NOVUM	2015, PL-CZ	Rather broad cooperation focus, higher average level of reach
Eisenbahnneubaustrecke Dresden-Prag EVTZ	2016, D-CZ	Single-purpose EGTC, long-term project, no outcomes yet given the long-term horizon of operations aiming at constructing the high-velocity railway

In the Czech Republic, the CBC conduct could be to a major extend synonymized with the use of the EU-funded incentive programmes, mainly with the INTERREG. The INTERREG A strand programmes, have supported many CBC initiatives of (mainly) public actors (the dominance of public actors is the case mainly in the Czech-Polish programme).

## 2.4. Examples of application of international (agreements) / EU law in cross-border territorial cooperation

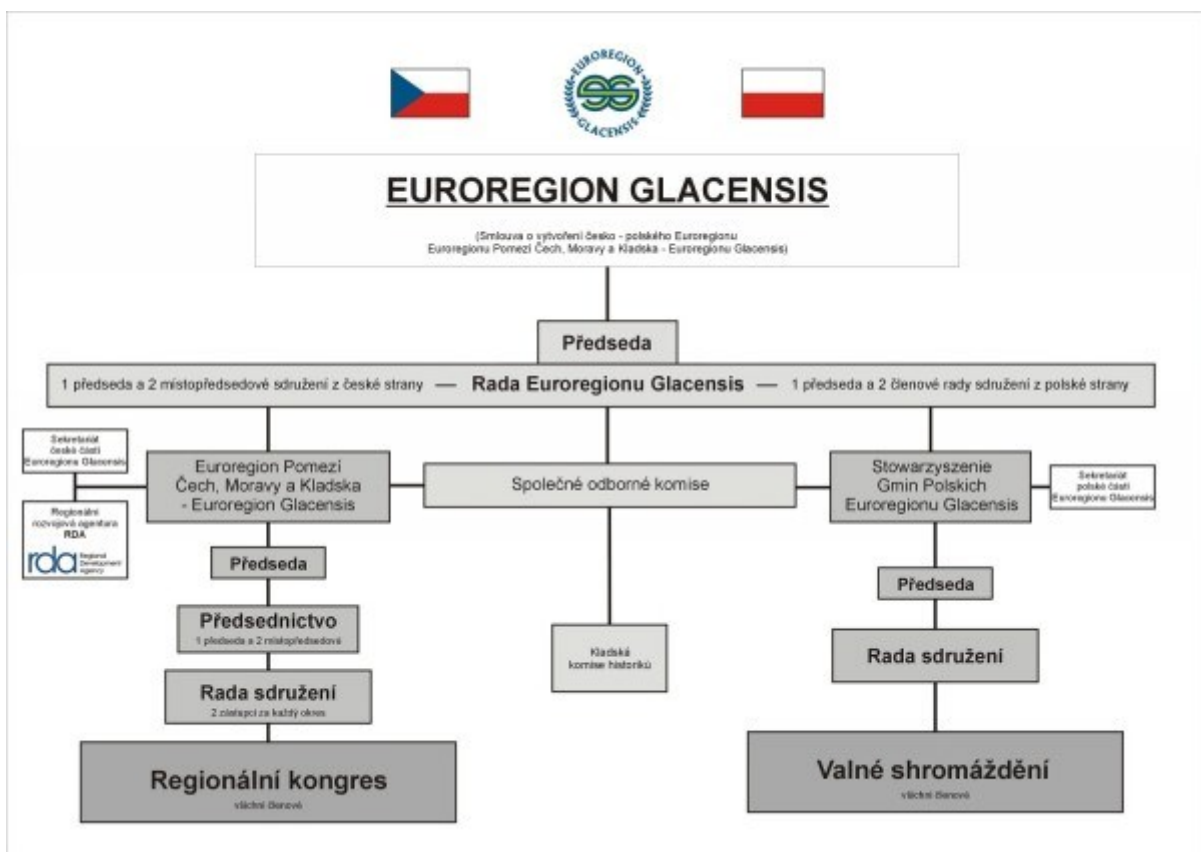
The Euroregion Glacensis was established as a first bilateral Czech-Polish Euroregion in 1996. Its members are municipalities from both sides of the borders, Polish districts (powiaty) and Czech regions. It fully covers territory of (Czech) Hradec Králové and Pardubice and northern part of Olomouc Regions and five southern districts of Lower Silesia Voivodship located in the historical land of Klodzko (Glacensis in Latin) – which was once Czech and the co-operation entity is called after it. The physical geography makes clear division between both countries, as the mountain ranges of Krkonoše and Orlické hory create the border. As it was the case for many border regions of Czechia and Poland the German speaking population used to live here since its expulsion in 1945 – 1946. Yet the population change was not as major as it was for example in the Euroregion Nisa. The Czechoslovakia and Poland belonged to the communist block, the borders were a barrier and could have been qualified as coexistent borders (Martinez 1994) until 1989. Such borders are primarily for the filtering of transborder flows, while the parties maintain contact and cooperate when required to solve common problems.

The territory of Euroregion is cca 5.249 km<sup>2</sup>. There are around 770 000 inhabitants living in 150 municipalities of the euroregion. The ratio of distribution of territory and inhabitants is 2:1 in favour of Polish side. It has polycentric urban organization with no dominant metropolis. Two languages are spoken in the Euroregion, which constitutes a certain language barrier.

Members of euroregion are mainly municipalities and regions of the Czech side and municipalities and districts of the Polish side. Euroregion is created by two independent entities, one from the Czech and other from the Polish side. Similarly as it is the case for most Czech-Polish euroregions, they are controlled by municipalities, which influence the way in which the CBC is conducted.

The work of the both parts of the Euroregion is managed by the joint mixed Czech-Polish board, meeting mostly on quarterly basis. Moreover, the experts from both sides jointly work in sectoral committees plus a permanent committee of historians focusing on the regional history. Other entities, which are involved in the euroregional activities, work on a national basis and are rather similar: the permanent secretariats employ permanent staff-members, who are principally responsible for the microprojects 'administration. There are 8 permanent staff-members on the Polish and 9 on the Czech side. These permanent secretariats fulfil the tasks formulated by the elected representatives of their members, which on the Czech side work on the following levels: regional congress (CZ)/general assembly (PL) as a kind of "national parliaments", board of the each national side, broader presidency (only on the Czech side) and the presidents of both national side.

Figure 2: Structure of the Euroregion. Source: Euroregion Glacensis



The most visible activity of the Euroregion is the implementation of small-scale projects, which mainly address the field of promotion tourism and "general" regional development. Both secretariats of Euroregion act as administrators of these people-to-people microprojects, which have their primary goal in removing to break many barriers. However, their reach is limited by the modest financial allocation for microprojects (until 20 000 EUR).

## The EGTC TRITIA

EGTC TRITIA is the first grouping of its kind at the area of Poland, Slovakia and the Czech Republic with regional governments as its members. Territory of the EGTC TRITIA includes Moravian – Silesian Region from Czech Republic, Silesian Voivodeship from Poland and Žilina Self – governing Region from Slovak Republic. It is an area where 3 West-Slavic languages are spoken, Czech and Slovak being thanks to the common history mutually understood and but more distant Polish – yet the language barrier is rather minor. There is almost no mental barrier between Czechia and Slovakia, due to common history and a friendly divorce and a culture of “economic/shopping” border crossing between all three countries. In communism the border between Czechoslovakia and Poland could have been crossed with some minor obstacles, however the border had a barrier function and it was guarded by authorities of both countries.

The decision to establish EGTC TRITIA was made by the leaders of the four regional governments of Moravian – Silesian Region (CZ), Opole Voivodeship (PL), Silesian Voivodeship (PL) and Žilina Self – governing Region (SK) in 2009, who subsequently made steps leading towards its establishment. The leaders’ decision was based on the positive experience of the regions in their mutual cross – border cooperation as well as the impacts of this cooperation on the improvement of wellbeing of the people in cross - border area. However, the Opole Voivodeship decided to leave the grouping in 2018.

EGTC TRITIA has an area of 24 566,09 km<sup>2</sup> and a population of 6,5 mln people. There are two cities with more than 300 thousand inhabitants - Katowice (PL) and Ostrava (CZ). These conurbations together with other important city of Žilina (SK) is tied by intensive socio - economic relations. A Baltic - Adriatic Transport Corridor leads across the TRITIA territory.

Most of the inhabitant of the EGTC live in (Polish) Silesian Voivodship and its metropolitan area around Katowice. When looking at the characteristics of the Silesian Voivodship it is clear that process of TRITIA creation can be explained also an opportunity to exploit the potential of the Polish Silesian Voivodship with its cca 5 000 000 inhabitants and economic potential. The Silesian Metropolis, formally Metropolitan Association of Upper Silesia is municipal association of composed of 14 adjacent cities lying in Silesian Voivodship. Wider Silesian metropolitan area is the centre of the largest urban area in Poland and one of largest in the European Union. The area flourished in the 19th and early 20th centuries, thanks to industry and natural resources.

There is a major concentration of heavy industry – coal mining and steel production – mainly in Silesian Voivodship and the Moravian-Silesian Region. All of the regions involved have been undergoing economic reconstruction, not yet complete. In all of the regions manufacturing industry, mainly automotive, has newly emerged. Seven public universities and numerous private tertiary education institutions reinforce regional innovation potential.

The regions constituting EGTC TRITIA miss major economic engine or metropolis in the EGTC TRITIA territory. This is why there is no substantial cross-border labour market or cross-border flow of commuters in the TRITIA regions. This leads to the absence of specialised structures to deal with the

cross-border labour market. Except for Ostrava, which is situated on Czech-Polish borders, all of the bigger cities are geographically at least one hour's journey by car from the borders.

The primary motivation for establishing the EGTC was the possibility that it might have a significant role in administration or at least use of EU funds. To explain the context, we should stress that first cross-border initiatives between Poland, Slovakia and the Czech Republic appeared in the second half of 1990s, mainly involving municipalities of middle and smaller size. These euroregional initiatives were offered the opportunity to co-operate on the administration of European funds with national ministries. This share of competences is still in place today. This was also the reason that formation of EGTC TRITIA with its flat structure (just NUTS 3 self-administrative regions) ignoring other vertical public administration levels as well as economic actors and civic society organisations, accompanied by unhidden ambition to have more control over the funds for cross-border co-operation, encountered a very hesitant welcome from national authorities and a direct refusal from the euroregions.

The process of the EGTC TRITIA establishment was as a sheer application of the top-down principle<sup>9</sup>. Despite the players at lower than regional levels declared their interest in joining the works towards EGTC TRITIA establishment, their voices have been ignored for a longer period. This jointly with very low level of communication with national levels created an environment, which was hostile to the new CBC actor. Therefore, the founding process itself was very slow, as the founders and working group members encountered many difficulties at a level of national administration in all three countries. The only exception seemed to be Slovak capital Bratislava, where due to the functional co-operation between southern Slovakia and Hungary there were some previous experience with this legal form, which was not the case for both Warsaw and Prague, for which it was the first EGTC.

During the EGTC preparatory phase partners decided, as it is described on another place in the text, to establish an EGTC according to the Polish legislation, as it looked as an only feasible option. To this end it seemed to be inevitable that the physical seat of the EGTC should also be located in Poland.

The secretariat of the Assembly was finally situated into Cieszyn, Poland. The choice of this town as a seat of the EGTC was done mainly due to the symbolic of the place: Cieszyn (in Czech Těšín) always was one town, which was after the end of World War I divided between Czechoslovakia and Poland, after a shorter armed conflict between both countries. The town is a seat of Cieszyn/Těšín Silesia region and since 1998 also Czech-Polish Euroregion bearing the same name (Euroregion Těšínské Slezsko /Ślask Cieszyński). Both towns (Czech) Český Těšín and (Polish) Cieszyn have been very active

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<sup>9</sup> Böhm, H., Jeřábek, M., Dokoupil, J. (2016): The EGTC TRITIA as a Tool Supporting Co-operation of Žilina Self-Governing Region and Moravian-Silesian Region. Balogh, P. (Ed.) Central European Service for Cross-Border Initiatives - European Institute of Cross-Border Studies, ISBN: 978-963-12-4756-5



in the cross-border co-operation conduct and developed jointly some remarkable projects and products<sup>10</sup>.

The Grouping has been established to facilitate and spread the cross – border, transnational, and interregional cooperation of its members with an objective to strengthen economic and social cohesion, particularly through implementation of territorial cooperation projects or programmes with the following objectives:

1. making the grouping's inhabitants everyday life easier,
2. creating cross-border cohesion in the framework of the whole grouping,
3. implementation of projects with the purpose of common strategic development.

This should have been achieved by identification, promotion and implementation of programmes, projects and joint actions in the framework of territorial cooperation in the four main areas, where regions have similar competences across different national legislative contexts:

1. transport,
2. economy,
3. tourism,
4. energy with a focus on renewable energy sources;

Except for those core areas the co-operation was possible in all other field on ad-hoc basis. Yet the main TRITIA's ambition was to act as a managing authority of the own trilateral INTERREG programme in 2014 – 2020 period, as it is the case for example for the Grand Region. Despite the Commission verbally supported the co-operation, national authorities of mainly Poland and the Czech Republic underpinned by Euroregions controlled by the municipalities did not allow this to happen.

Once it was clear that the EGTC will not have a major role in the administration of INTERREG programmes the founding regions lost much of their enthusiasm. They have continued in supporting EGTC financially – each region pays annual contribution of 22 000 EURO – which enables TRITIA to employ staff (currently 3 people) and implement projects, but the real impact of the EGTC is rather limited. It is successful in implementing cross-border projects, but their reach is not substantial and its potential remains unexploited<sup>11</sup>. Moreover, one of the founders, Opole region, left the EGTC. This may lead to the gradual dissolution of the co-operation entity.

EGTC Tritia established its governance structures according to the requirements of the EGTC Regulation. The highest body is the Assembly, consisting of top-representatives of each partner.

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<sup>10</sup> Ibid.

<sup>11</sup> Ibid.

Its competences include making decisions on the most important issues (approving amendments to the Convention and the Statutes, approving the budget, election of the director, etc.). The Assembly is based upon the principle of rotating presidency. The same principle is valid for the Supervisory Board, which controls the overall operation and financial management of the grouping and provides its opinions to the Assembly. The Director is the statutory representative of the grouping and she organizes everyday work of the grouping. She is supported by the Secretariat in her work. However, given there are only three full-time staff members, the capacity of the EGTC TRITIA to bring an actual change is very limited in comparison to the Euroregions.

### 3. COUNTRY PROFILE: HUNGARY

AUTHORS: MELINDA BENCZI, LÁSZLÓ DARÁNYI, DR. NORBERT JANKAI, GYULA OCSKAY

#### 3.1. Brief overview of the territorial administrative system of Hungary

Hungary's territorial-administrative system is organised on four main levels (region, county, district and settlement).

Under the country level, eight statistical regions have been defined being equivalent with NUTS II level. These regions consist of three counties except for Pest county and the capital city, Budapest.

The NUTS III level is represented by the counties. The system of the 19 counties is the basis of the Hungarian administration stemming from historic traditions<sup>12</sup>. On 1<sup>st</sup> January, 2013, 197 districts have been created within these counties from among which 23 are districts of the capital city<sup>13</sup>.

The fourth administrative level is represented by the settlements which, sometimes, are divided into further units. 3155 settlements have their own local self-government and autonomy which means 346 towns and 2809 municipalities. The latter ones are characterised with the ability to guarantee the fundamental living conditions and the direct accessibility of public services for their population (2681 municipalities). Those municipalities (128 in total) whose population exceeds 3000 persons (or their classification is inherited from the past) are classified as 'large-municipalities'. Besides local public services, towns (322) fulfil also sub-regional tasks while the public services provided for by the cities with county rights (23) cover larger parts of the county. At the top of the settlement hierarchy, the capital city stands where in each district a self-government is operating<sup>14</sup>. The above hierarchical system ensures the delivery of administrative functions.

The performance of public administration is based on the principle of the interests of the central authority operating decentralised bodies. These bodies are managed by the central government, i.e. it is the state which is responsible for their performance. The Government Agencies of the counties and the capital city bearing general territorial powers of state administration are designed to guarantee the realisation of the government objectives at the territorial levels and the monitoring of lawfulness over the activities of local municipalities. The Government Agencies led by the Government Commissioner are managed by the minister of Prime Minister's Office. The Government Agencies of the capital and the counties consist of units directly managed by the Government Commissioner and district level offices. The units are managed by the general director while the

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<sup>12</sup> KSH: Területi atlasz – Megyék. URL: [https://www.ksh.hu/teruletiatlasz\\_megyek](https://www.ksh.hu/teruletiatlasz_megyek) (Accessed: 08.01.2020)

<sup>13</sup> KSH: Területi atlasz – Járások. URL: [https://www.ksh.hu/teruletiatlasz\\_jarasok](https://www.ksh.hu/teruletiatlasz_jarasok) (Accessed: 08.01.2020)

<sup>14</sup> KSH: Területi atlasz – Települések. URL: [https://www.ksh.hu/teruletiatlasz\\_telepulesek](https://www.ksh.hu/teruletiatlasz_telepulesek) (Accessed: 2020.01.08.)

district level offices are directed by the heads who takes part in the performance of the Government Agency's duties under the direction of the Commissioner. Citizens can carry out their official businesses at the single service delivery window and at the government document office in the district level offices (Temesi 2018b). Similarly, to the county system, also the district system represents a traditional Hungarian administrative level originated from the 13<sup>th</sup> century and operating for several centuries. This system was ended in 1983 and re-installed in 2013.

Some decentralised bodies are separated from the directive competences of the Government Commissioner. These are the administrative bodies which do not form part of integration such as the tax authorities, the Directorate General of the Criminal Police, central police stations, the directorates of the State Treasury and the local educational authorities. The territoriality of other decentralised bodies is special like the water directorates or the regional authorities of the National Directorate-General for Aliens Policing (Temesi 2018b).

Generally, at settlement level, local public affairs and a part of the state administration tasks are managed by independent and autonomous administrative bodies, i.e. the local self-governments. Elected members of the local council have no competences over the administrative tasks of the municipality coordinated by the notary but the Government Office of the capital city and the counties may perform the supervision of lawfulness over the local council. Local municipalities employ public servants while the duties of decentralised bodies are performed by government officers.

## 3.2. Brief introduction of the legislations on local and regional authorities

In Hungary local and regional autonomy and democracy prevail at local level which means settlement (municipality or town) and medium territorial (county) level<sup>15</sup>. Regional self-government with its administrative system in its original sense is missing. Instead, the county system bearing historic traditions has a decisive role whose institution operating competence has been weakening in the most recent times.

Basic rights of the self-governments are defined by the **Fundamental Law**<sup>16</sup> and the cardinal (to be amended by two thirds majority) Law No **CLXXXIX of 2011 on Hungary's local governments** (hereinafter: Möt.)<sup>17</sup>.

<sup>15</sup> Besides, the capital city, Budapest and its districts should be listed here as an independent level, but they are not discussed in this study.

<sup>16</sup> The Fundamental Law was adopted on 25 April, 2011. Its last amended-to-date version being in effect at the time of the drafting of the study was promulgated on 23 December, 2020.

<sup>17</sup> Cf Law No CLXXXIX of 2011 on Hungary's local governments. Let us mention that it is a cardinal law but not in its entirety: the Par 145 enumerates those provisions which are seen cardinal in compliance with the Fundamental Law.

Paragraph 31(1) of the Fundamental Law defines the operational goal of local governments as the management of local public affairs and the exercise of local power. Apart from this definition the principle of local autonomy (i.e. ruling and managing of principal public affairs in the interest of local citizens) is not explicitly mentioned, some guarantees of autonomy and competences are laid down in the Fundamental Law and in Möt. Paragraph 32(1) of the Fundamental Law lists the competences of local governments to manage local public affairs. These are the following:

- „a) makes regulations;
- b) takes decisions;
- c) administer autonomously;
- d) defines its organisational and operational order;
- e) exercises the ownership rights over the propriety of the local government;
- f) decides on its budget and manages it independently;
- g) is allowed for running its own businesses through its propriety and incomes without endangering the exercise of its duties;
- h) decides on the types and values of local taxes;
- i) has the competence to create local symbols and the establishment of local prizes and honorific titles;
- j) may request for information from the bodies bearing the given task and competence, initiate decisions, express opinion;
- k) may associate with other local governments, establish interest representation alliance, cooperate with local governments of other countries and join international municipality organisation;
- l) exercises further functions and competences defined by the law.”

Möt. does not contain an itemised list on the compulsory functions of the local governments because these are ruled by further provisions. Paragraph 13(1) of Möt. does not mention but the most important functions such as local development, municipality management, basic health services, waste management, housing and homeless care.

Local governments may undertake further (public) duties which do not belong to the jurisdiction of another body. The performance of the duties voluntarily undertaken must not endanger the exercise of the mandatory duties and functions prescribed by the law and they may not be financed but by own incomes or by resources dedicated specially to these functions.

Compared to local governments, the functions of the county councils are reduced: according to the relevant laws, they perform spatial development, rural development, spatial planning as well as coordinating tasks<sup>18</sup>, while they have lost their former institution maintaining competences, their propriety, former decision-making and financial competences. At the same time thanks to the competences of spatial development and territorial cooperation, county level is primordially appropriate for triggering and coordinating international and cross-border cooperation.

Due to the administrative reform of 2013, important basic functions (like primary schools from local governments or public health from the counties) were transferred to the state. To put it differently, these functions have been transferred from an elected body to the competence of an administrative authority. Official reasoning behind the change was to eliminate the financial problems accumulated during decades and to rationalise economic performance. Regarding financing, it is well-known that education and health service provision represented 80-90% of the total budget of the municipalities and if they became loss-making, the subsidy from the state budget almost automatically arrived. Currently, according to Möt. local governments may not design their budget with deficit, state subvention may not be used but only for the targeted themes, the consequences of the loss-making management of the local government must be undertaken by the local government itself, the state budget has no responsibility over them.

### **3.3. Rights and competences of local and regional authorities on international and cross-border cooperation – based on domestic law**

The right of association of the local and regional (in Hungary: county level) self-governments is a right laid down in the Fundamental Law (paragraph 32(1) point k). Accordingly, in the case of local affairs and within the confines of the law, every local self-government may

- associate with other local governments,
- establish interest representation alliance,
- cooperate with local governments of other countries and
- join international municipality organisation.

Legal frames of association are also guaranteed by the Fundamental Law in either Community or international law.

Accordingly, Hungary

*a) in the context of the European Union:*

- participates in the development of the European integration;
- based on international agreement, for the sake of participating in the EU as a member:

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<sup>18</sup> Paragraph 27(1) of Möt.

- to the extent of the exercise of rights ensured, and the meeting of obligations prescribed by the Treaties establishing the EU, it may exercise particular competences stemming from the Fundamental Law together with other Member States through the institutions of the European Union;
- accepts that Community Law – in certain conditions – may stipulate generally mandatory rule of conduct (Guiding principles, Art E (1)-(3));

*b) in international context:*

- in order to fulfil its international legal obligations, guarantees the harmony between international and domestic law, furthermore
- accepts the generally acknowledged rules of international law,
- promulgates international sources of law in the Hungarian legal system thus incorporating them therein (Guiding principles, Article Q (2)-(3)).

Some rules of participating in associations are further detailed by the Möt. According to points 5 and 6 of paragraph 42, the decision on the participation in the cooperation shall fall within the exclusive competence of the representative body of the local government, these rights are not transferable. According to the provisions, the representative body may decide on the following matters:

- establishment and termination of an association of local municipalities, secession from that, amendment of the association agreement, joining associations, interest representing organisations and secession therefrom;
- agreement on the cooperation with a foreign self-government, accession to an international municipality organisation and secession therefrom.

Among the framework-type obligations of cooperation structures one can find one which is not ruled by the law on local self-governments, but which fundamentally determines the international cooperation conditions thereof, i.e. the issue of the utilisation of the municipal assets.

The main rules of municipal asset management have been stipulated by the Fundamental Law (Article 38). According to it, municipal assets form part of the national assets whose management and protection is designed to deserve public interest, the satisfaction of common needs and the protection of natural resources, as well as the consideration of the needs of the next generations. National assets can exclusively be transferred based on objectives and with the exceptions defined by law, taking the obligation of value for money principle into consideration and exceptionally for such an organisation whose asset management is transparent. The above rigour applies also to the management organisations owned by local self-governments (including those international organisations partly owned thereby). It means that the obligations of autonomous and responsible management, lawfulness, expediency and efficiency have to be respected also by these organisations.

Paragraphs 7 to 10 of the Law Nr CXCVI<sup>19</sup> of 2011 on national assets contains principles of accountable management of national assets. In compliance with paragraph 9(2) entrepreneurial activities of the self-government shall not endanger the fulfilment of obligatory tasks. Furthermore,

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<sup>19</sup> Promulgated: 30. 12, 2011



local municipalities may participate in a management organisation whose responsibility does not exceed the extent of own contribution (limited liability).

Based on the above rules of Hungarian domestic law, the following regulations provide the legal frames for Hungarian local self-government to take part in international and EU level cooperation:

#### a) Legal frames of cooperation under international public law

##### **Madrid Outline Convention (European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities)<sup>20</sup>**

It is the most widely cited norm of cooperation models based on international public law which highlights the significance of cooperation of territorial communities and authorities, providing in parallel models for legal frames of cooperation. Contracting Parties referring to the Convention commit themselves to jointly resolve the legal and administrative difficulties of cross-border cooperation<sup>21</sup>, as well as to provide information to local and regional authorities and the Council of Europe<sup>22</sup>.

One of the major difficulties of the application of the Convention is that it is not mandatory even after its signature, it may not provide but alternative proposals for the establishment of institutionalized cross-border cooperation.

The Convention was signed on 6 April, 1992, ratified on 21 March, 1994, transposed to its legal order of Hungary on 22 June 1994. Besides, Hungary defined the Convention's national validity through the following authorities incorporated in a declaration document dated 21 March, 1994:

- a) the communal, urban, capital and its district and county self-governments;
- b) the Metropolitan Public Administration Office or the County Public Administration Office<sup>23</sup>.

The Madrid Outline Convention has been completed with three Additional protocols. Hungary has not joined any of these protocols which might be due to the lack of Hungarian local municipalities' and authorities' international legal personality<sup>24</sup>.

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<sup>20</sup> European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities adopted in Madrid, on 21 May, 1980 (The Council of Europe Treaty Series - CETS<sup>20</sup> No.: 106), entered into force on 22 December, 1981.

<sup>21</sup> Madrid Convention, Article 4

<sup>22</sup> Madrid Convention, Article 6

<sup>23</sup> This part of the declaration withdrawn by a Declaration from the Minister of Foreign Affairs of Hungary, dated 15 May 2015, registered at the Secretariat General on 10 July 2015.

<sup>24</sup> According to the report of the Monitoring Delegation visiting Hungary in 2013, the representatives of the Ministry of Public Administration and Justice informed the delegation on the intention of joining the Third Protocol. (cf. Helyi és regionális demokrácia Magyarországon, CG (25) Final, Monitoring Bizottság, 189. pont, 2013)

The establishment of cross-border institutionalised cooperation in Hungary are provided through joining the Madrid Outline Convention and other regional (European) platforms of international law primarily by offering model agreements whose proposed texting is applied at bilateral cooperation of Hungary, based on Basic Treaties signed with the neighbouring countries. The Treaties in question are the following ones:

- *Treaty of Understanding, Cooperation and Good Neighborliness between Romania and the Republic of Hungary, signed at Timisoara on 16 September 1996*
- *Treaty between the Republic of Hungary and the Slovak Republic on good neighborly relations and friendly cooperation, signed in Paris on 19 March 1995*
- *Convention on Friendship and Co-operation, signed by the Republic of Hungary and the Republic of Croatia on December 16, 1992 in Budapest*
- *Treaty on the Foundations of Good Neighbourhood and Cooperation between the Republic of Hungary and Ukraine, signed in Kiev on 6 December 1991*
- *Treaty between the Republic of Hungary and the Republic of Slovenia on friendship and cooperation, signed in Budapest on 1 December 1992*
- *In the context of Serbia, no Basic Treaty has been signed. Instead, several agreements on different themes have been completed (e.g. on the mutual acknowledgment of nationally approved certificates and diplomas as well as scientific certifications; on international road public and goods transport; on social security; on educational, scientific, cultural, sports and youth cooperation.*

Based on the above legal resources, since the beginning of the '90s several (regional and supplementary local) cross-border cooperation structures have been set up. These legal resources guarantee for the local self-governments to take part in sectoral cross-border cooperation (such as economy, industry, agriculture, ecology, transport, telecommunication, etc.) in a uniform way but without legal personality. Common characteristics of these legal resources are that even though they provide the rights of cross-border cooperation listing also the potential fields of cooperation, they lack the detailed provisions and, in practice, they limit themselves to traditional spatial development activities.

### **European Charter of Local Self-Government**

The Charter<sup>25</sup> compensated the missing European standards regarding the definition of the right of association for the local self-governments (authorities). It defined factors like the „ability“ of the local self-governments to exercise the legally guaranteed right of practising and ruling of certain public affairs, among „legally defined frames“, i.e. within the confines of the national regulations and their responsibility as their role could not be limited to operate in the commission of higher authorities.

According to Article 10 of the Charter, local authorities have gained the right to cooperate with each other at the international scene and, by respecting legal frames, to unite within alliances with other authorities for the implementation of duties that they are jointly interested in. Every state party

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<sup>25</sup> Adopted on 15 October, 1985, in Strasbourg.

acknowledged the local authorities' right to join alliances representing their interests and, in predefined conditions, to cooperate with similar organisations operating in other countries.

The Charter was signed on 6 April, 1992, ratified on 21 March, 1994 and transposed to the legal order of Hungary on 1 July, 1994.

Up until now, one Protocol of the Charter has been drafted detailing the right of participation in local public affairs. The parties are obliged to take measures for the effectuation of this right accordingly. The protocol was signed on 16 November, 2009, ratified on 7 June, 2010 and transposed into the legal order of Hungary on 1 July, 2012.

The most important shortage of both above mentioned treaties is that while they remarkably contributed to the establishment of bilateral and multilateral agreements between Hungary and the neighbouring countries, these agreements only provide general frameworks for cross-border cooperation. The participating parties have not gained international legal personality, neither they were enabled to set up thorough cooperation based on autonomy. To complete the framework agreements with content and to settle appropriate competences became the right of the contracted state parties political leadership. Furthermore, the agreements, conventions had to be transposed into the legal system of the given country – via predefined lengthy legal procedures.

## b) legal frames of cooperation in the context of the EU

### **European Grouping of Territorial Cooperation – EGTC**

The relevant legislation is the EC Regulation No 1082/2006 adopted on 5 July 2006 by the European Parliament and the Council, and amended by the Regulation EU 1302/2013 adopted by the European Parliament and the Council on 17 December, 2014 (hereinafter: the Regulation), outlining the main rules of the establishment, registration and operation of European Groupings of Territorial Cooperation (hereinafter: the EGTC). In the case of joining of third countries, the Regulation identifies an international law-based agreement, the above discussed Madrid outline Convention as orientating provision.

Taking into account that the rules of the EGTC have been established via a Regulation by the EU, these rules are to be directly adapted in EU Member States, including Hungary.

The EGTC has legal personality, the joining is voluntary. Member States, regional and local authorities, bodies governed by public law, public undertakings and the associations of the above organisations of the EU, as well as certain entities of 3rd countries may become members of an EGTC.

Members shall be from at least two EU Member States but in certain conditions an EGTC may also be established by the entities of an EU Member State and a 3rd country.

The objective of the EGTC is to promote and boost territorial cooperation between its members with a view to enhancing economic, social and territorial cohesion via the forms of cross-border, transnational and interregional cooperation.

The functions of the EGTC shall be determined in a way that they form part of every single member with the exception of the case when the relevant states approves the participation of its entity regardless of that it lacks competences in every function defined in the Convention. These functions may target the implementation of cooperation programmes or some parts thereof, furthermore the operations (projects) promoted by the European Regional Development Fund, the European Social Fund and/or the Cohesion Fund of the EU.

The basic documents of the EGTC are the Convention and the Statutes. The Convention and the Statutes and each of their amendments shall be registered or published in the Member State where the registered office of the EGTC's founding document is located (this must be located in a Member State). The provisions ruling the operation of the EGTC are the Regulation, the Convention, the Statutes and, as a general rule, the provisions of the Member State where the registered office of the EGTC is located.

Once established, the participation of the members in an EGTC is approved by the relevant national authorities while the EGTC is registered by the authority of the state where its registered office is located. The Member State may prevent the set-up of the EGTC through referring to national law, public interest or public order. At the same time, the denial of approval necessitates appropriate justification.

Hungarian rules in force on EGTC:

- Act LXXV. of 2014 on the European Grouping of Territorial Cooperation
- Government Decree No 485/2017 of 29 December 2017 on the detailed rules of the approval and registration procedures relating to the European grouping of territorial cooperation

Based on the two above legal documents, the following main content-wise findings can be made.

### **Status:**

EGTC is a not-for-profit (i.e. not to be established with primary economic purposes) management body which may perform business activities with a view to boosting competitiveness in the interest of the EGTC-territory (operational territory) provided this does not endanger its objectives.

The Act on EGTC allows for acquainting a public benefit status – provided that the operation of the EGTC is in compliance with the *Act CLXXV. of 2011 on Freedom of association, non-profit status and the operation and support of civil organisations*.

### **Liability:**

In harmony with the Hungarian rules on self-governments, the liability of Hungarian local self-governments, the association thereof and the budgetary organ of a local municipality within the EGTC may not exceed the value of their financial contribution (limited liability). It means that a Hungarian member may take part in an EGTC with limited liability only.

### **Establishment, denomination:**

Regarding the framework rules of the establishment the governing legislation is given by the Act on EGTC while its details are ruled by the Government Decree No 485/2017 of 29 December 2017 on the detailed rules of the approval and registration procedures relating to the European Grouping of Territorial Cooperation<sup>26</sup>.

The approval and the registration are performed in harmony with the Hungarian administrative procedure rules<sup>27</sup>. Due to the amendment of the act (in 2014) the competence of registration has been transferred from the Capital Court to the minister responsible for foreign affairs (hereinafter: the Authority). Thereby the different procedural levels of the executive and juridical powers have been unified, as the justification says, making the establishment and the monitoring of the EGTCs more simple and more effective.

### **Management:**

The reporting, book-keeping and accounting obligations of the EGTCs with Hungarian registered office are ruled by the Accounting Law and its executive rules. The annual report of the EGTC shall be published on the website of the EGTC 150 days after the balance sheet date; furthermore, the report and its public benefit annexes (if any) are to be sent to the Authority.

### **Supervision, control:**

The lawfulness of the operation of the EGTCs is monitored by the Authority which is responsible also for approvals and registration. The legislator's reason for this is that since the registration and the legal supervision fall under the competence of a minister, including the capacity to bring proceedings, the former legal supervision of the public prosecutor's office has become devoid of purpose.

The supervision over the lawfulness of the management of the EGTCs belongs to the Government Control Office<sup>28</sup>. In case of information on management activities infringe the provisions of the Convention and the Statutes, the supervisory body may call on the EGTC to eliminate the particular activity or omission, or it may prohibit the continuation thereof, or as an ultimate act, it may trigger a termination procedure towards the Authority<sup>29</sup>. Similarly, the right to trigger the termination process is also given to the Hungarian members' higher authority (i.e. the local council) based on which the Authority may terminate their membership in the EGTC via a decree.

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<sup>26</sup> The Government Decree entered into force on 1 January 2018. For former relevant provisions, please refer to Ministry of Foreign Affairs and Trade Decree No 2/2014. (XII. 30.).

<sup>27</sup> *cf.* Act CL of 2016 on the Code of General Administrative Procedure

<sup>28</sup> Earlier, this right was dedicated to the State Audit Office of Hungary.

<sup>29</sup> In similar cases, earlier the president of the State Audit Office of Hungary used to apply for termination proceedings at the prosecutor's office.

**Termination:**

The ways and cases of termination are stipulated in the Convention. Triggering the termination falls under the competences of the approving and registering Authority entitled by law or based on the above-mentioned initiatives.

Termination shall be implemented without legal succession. Liquidation, bankruptcy proceedings and winding-up is to be performed by the Capital Court because the Authority entitled to carry out the approval and registration procedures (i.e. the Ministry of Foreign Affairs and Trade) may proceed along the rules of the administration law but not the court proceedings. The procedure shall be carried out in compliance with the rules applicable to civil organisations<sup>30</sup>. The Authority is informed on the decision based on which it looks after the deletion of the EGTC from the register. The members' membership is terminated once the EGTC is deleted from the register about which every interested country (including the 3<sup>rd</sup> countries) shall be informed.

### **3.4. Examples of application of international (agreements) / EU law in cross-border territorial cooperation**

Cross-border cooperation and its forms in Hungary are defined by several factors, like the status of the borders (3 neighbours are members of both the EU and the Schengen zone, 2 neighbours are members of the EU but are outside the Schengen zone, one is a candidate country and Ukraine is an associate partner of the EU without clear perspectives of accession); the openness of the Hungarian economy and its strong ties with the states located around Hungary; the mutual interdependences of Hungary and its neighbours in terms of water management; the large Hungarian minorities living in the neighbouring countries or the traditional transport routes, etc.

Right after the system transformation at the beginning of the 90s, lively cooperation started after 40 years of communist closure of borders. The agents of the first intermunicipal cooperation initiatives were the ethnic minorities. Accordingly, many twinning agreements have been signed between Hungarian, Slovak, German, Serb, Croat and Romanian self-governments located on either side of the Hungarian borders. These twinings connecting local people, local institutions (schools, mayor's offices), cultural and sports civil organisations as well as local entrepreneurs have always been the major actors of paradiplomacy between the countries and engines of activities boosting mutual trust.

At the end of the 90s and at the turn of the Millennium, the euroregion model became extremely popular in Hungary. In 2004, their number reached eighteen covering all borderlands.

The first euroregion was established in 1993 with Poland and Ukraine. The Carpathian Euroregion whose founding documents and operation were based on the Madrid Outline Convention is rather

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<sup>30</sup> cf. Act CLXXXI. of 2011 on Court's register and the relevant executive rules of civil organisations.

a Working Community with members from 5 different countries, covering a large territory (more than 160 thousand km<sup>2</sup>). Accordingly, the euroregion is rather a political organisation with symbolic significance and modest tangible outputs.

The majority of the Hungarian euroregions were designed to unite the resources of the rather poor border settlements in order to trigger larger spatial development activities (e.g. the reconstruction of historic transport connections, especially across the border rivers; re-animation of rail connections; joint development of tourist attractions and thematic routes), to create a permanent framework for cultural exchanges and to ensure financial background for all these developments. Due to weak financial conditions and limited capacities and competences, these euroregions have gradually terminated their activities without reaching their ambitious development goals but providing appropriate atmosphere for people-to-people encounters.

At the beginning of 2021, 3 euroregions, the Carpathian euroregion, the Hungarian-Slovak Ipoly/Ipel and the Hungarian-Romanian-Serbian Danube-Kriş-Mureş-Tisza euroregions are operational, from among which the lastly mentioned is the most attractive bearing international acknowledgement.

The beginnings of the DKMT euroregion date back to 1992 when the representatives of the county councils of Csongrád (Hungary) and Timiş (Romania) signed the Regional Cooperation Protocol Danube-Mureş-Tisa aiming to harmonise their regional development activities. In 1997, further 3-3 counties from the two countries and the Autonomous Province of Vojvodina (Serbia) joined the group, establishing the euroregion. Currently, the euroregion has 3 Hungarian, 4 Romanian and 1 Serbian regional level members.

The cooperation is based on the Madrid Outline Convention and bilateral treaties. The euroregion itself has no own legal personality, the management body is a non-profit ltd. established according to Hungarian law by the euroregion's members in 2003, with a registered office in Szeged (HU).

The main decision-making body is the Assembly including the representatives of the member regions, the city of Subotica (Serbia), the Regional Chambers of Commerce and Industry of Timiş and Csongrád counties and Vojvodina region, the universities of Szeged (HU), Timișoara (RO) and Novi Sad (SR), as well as 1-1 representatives of the civil organisations, trade unions and youth organisations of the euroregion. The work of the euroregion is coordinated by the Secretariat while the professional decisions are based on the preparatory work of the working groups.



Figure 3: DKMT euroregion's territory



The number of permanent staff of the euroregion is oscillating between 2 and 5 persons whose work is assisted by two secretaries: one in Romania and another in Serbia. In addition, every member regional council appointed one civil servant who is (among others) a contact person of the DKMT. The euroregion has implemented more than 25 projects so far with a total grant of nearly EUR 22 million, organised nearly 400 events of diverse thematic scopes (e.g. international exhibitions, state aid workshops, study tours, thematic conferences, etc.), and released a colourful set of publications in the field of cross-border tourism, water management, culture and CB health. One of the flagship initiatives of the euroregion is the reconstruction of the railway transport lines between Timișoara, Szeged, Subotica and Baja. The euroregion managed several projects targeting the elaboration of the feasibility studies and technical plans preparing the reconstruction works.

The manager of the euroregional ltd. is a member of the Executive Committee of the Association of European Border Regions (AEBR) and the organisation itself is an acknowledged actor of CBC in Central Europe.

Thanks to the early adaptation of the EGTC Regulation (in 2007) Hungary became a champion of EGTCs. Since 2008, 25 groupings have been set-up including Hungarian members from among which 24 is still existing while one Slovak-Hungarian EGTC terminated its operation. It means that nearly one third of the EGTCs established so far in Europe have Hungarian members and Hungary provides registered office for the most groupings among the EU Member States. Furthermore, the first ever EGTC including 3rd country member was established with a seat in Hungary, i.e. the Tisza EGTC involving the council of Transcarpathia region from Ukraine.

The Hungarian EGTCs can be classified by their membership as small, local groupings involving mainly local self-governments from the two or three sides of the borders (e.g. Ister-Granum at the

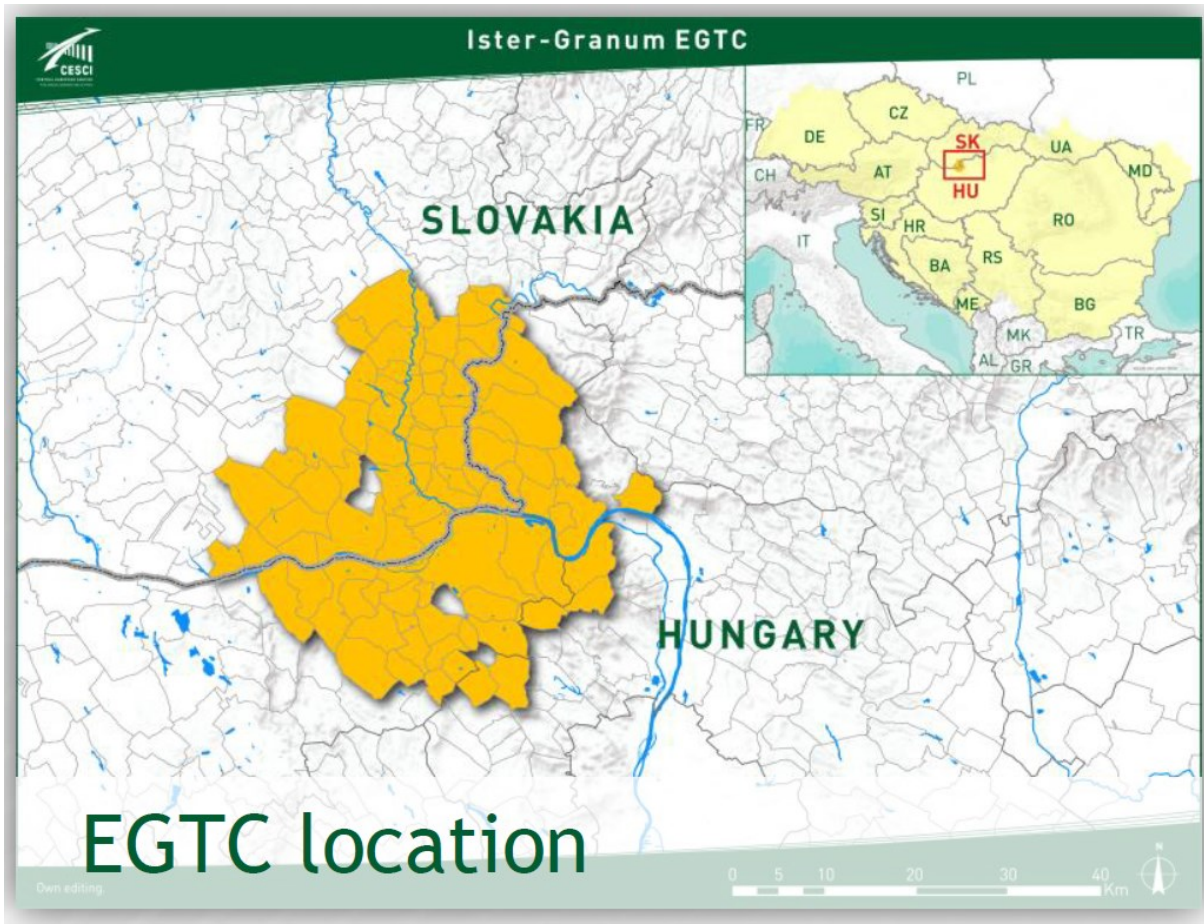
Hungarian-Slovak, MURABA at the Hungarian-Slovenian or Gate to Europe at the Hungarian-Romanian border), medium ones covering the territory of two border regions (e.g. Tisza at the Hungarian-Ukrainian or the Via Carpatia and the Pontibus at the Hungarian-Slovak border), and larger ones consisting of several regional units (e.g. the Rába-Danube-Vág at the Hungarian-Slovak and the Pannon at the Hungarian-Croatian-Slovenian borders). Besides, the groupings can be classified along by their (human, professional and financial) capacities. Accordingly, there are EGTCs which perform eminently implementing many projects, employing 5 to 15 staff, and managing a budget of more than EUR 100 000. Others have much more modest performance, rather focusing on bilateral people-to-people activities, similar to those realised by the former euroregions.

The first Hungarian EGTC was the Ister-Granum, registered in 2008 as the second grouping in the EU. The cooperation was based on the experiences of the previously existing euroregion (since 2003). 86 members of the euroregion (of 102 members) joined the EGTC in 2008 whose registered office is located in Esztergom (HU). Currently, the EGTC has 82 members equally distributed between the Hungarian and Slovak sides of the border.

The legal background of the cooperation is provided by the relevant EU Regulation and the Hungarian (and Slovak) Acts. The grouping is represented and managed by the Director, the main decision-making body is the General Assembly (GA) consisting of the representatives of the local self-governments. The GA holds its meeting once a year. During the periods in-between, the functions of coordination are performed by the Senate consisting of 4-4 mayors.

The General Assembly is chaired by the president and the co-president who are rotating in person every second year between the mayor of Esztergom and Štúrovo (SK), the „capital cities” of the EGTC.

Figure 4: Ister-Granum EGTC's territory



The grouping has a working organ of 6 employees who are responsible for the operation of the EGTC: the preparation, realisation and documenting of the meetings of the GA, the Senate and the Supervisory Board, delivery of daily administration and reporting tasks, the performance of internal and external communication of the organisation, preparation, implementation and reporting of projects, the development of external relations and international cooperation, etc.

Since its establishment, the EGTC has been implemented nearly 20 projects with a total amount of more than EUR 5 million. Currently, the grouping is implementing an investment project as the Slovak (!) beneficiary with a registered office in Hungary what is unique development. What is more, the EGTC will provide the transport services on the Slovak side of the planned cross-border ferry connection. The EGTC is one of the most frequently studied example of the tool in Europe and is very active in the fields of cross-border retail of local products, cross-border development of tourist attractions and services and cross-border integration of logistics services.

## 4. COUNTRY PROFILE: POLAND

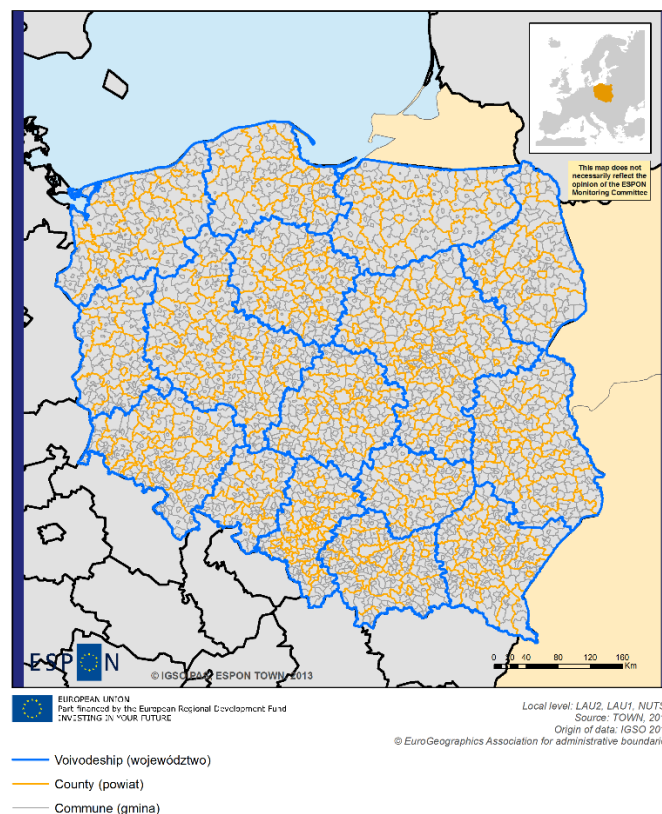
AUTHOR: JERZY BAŃSKI

### 4.1. Brief overview of the territorial administrative system of the country

The present territorial division of Poland was established in 1999. According to this administrative division, Poland is divided into 16 voivodships (*województwo*), 380 counties (*powiat*), of which 66 are urban and 314 are rural, and 2477 communes (*gmina*), of which 302 are urban, 642 urban-rural, and 1533 rural.

The voivodship (province - NUTS2) is a unit of administrative division of a higher level, and the essential territorial division for the governmental administration. Since 1999 it has also been a unit of territorial self-government.

Figure 5: Administrative division of Poland. Source: ESPON



The county (LAU1) is a unit of administrative division and a constituent part of the province. Each county encompasses between several and more than ten neighbouring communes. There are also separate urban units, which are treated as counties and called urban counties. Thus, an urban county is a town treated as a county itself. This status, after the new, three-level territorial breakdown of the



country was introduced in 1999, was assigned to: towns with more than 100,000 inhabitants, most of the former seats of provinces (before the administrative reform of 1999 there had been 49 voivodeships in Poland), some towns in large urban agglomerations.

The municipality (LAU2) constitutes the basic unit of territorial self-government, and municipalities are classified as rural, urban-rural or urban.

## 4.2. Brief introduction of the legislations on local and regional authorities

Administrative authority at the provincial level is shared between a government-appointed governor (*wojewoda*), an elected regional assembly (*sejmik wojewódzki*), and an executive (*zarząd województwa*) chosen by that assembly. Competences and powers at the provincial level are shared between the governor, the assembly and the executive. The governor is appointed by the Prime Minister and is the regional representative of the central government. The governor acts as the head of central government institutions at the regional level, manages the central government's property in the region, oversees the functioning of local government, coordinates actions in the field of public safety and environmental protection etc. The regional assembly passes laws, including the regional development strategies and budget. The executive, headed by the marshal (*marszałek województwa*), drafts the budget and development strategies, implements the resolutions of the regional assembly, manages property belonging to the province, and deals with regional policy, including management of European Union funding.

Competence at the county level is vested in an elected council (*rada powiatu*), while local executive power is vested in the *starosta*, an official elected by that council. However, in city counties these institutions do not exist separately – their powers and functions are exercised by the city council (*rada miasta*), the directly-elected mayor (*burmistrz* or *prezydent*), and the town hall (*urząd miasta*). The county authorities have decision-making powers and competences in certain areas such as: education at the high-school level, health care, public transport, land surveying, issuing work permits to foreigners, and vehicle registration.

The scope of a commune's jurisdiction includes all public matters of local significance. The respective tasks are classified into self-commissioned – resulting from the law and contracted – assigned by the state authorities. The municipalities dispose their own budget based on three main sources: their own revenues, general subsidies, and targeted allocations from the state budget (for the implementation of commissioned tasks from the national government and other tasks).

The legislative and controlling body of the commune is the elected municipal council (*rada gminy*), or in a town – the town assembly (*rada miasta*). Executive power is held by the mayor of the municipality (*wójt* in rural gminas, *burmistrz* in urban and urban-rural gminas, or *prezydent* in towns). A *gmina* may create auxiliary units (pl. *sołectwo*) consisting of one or more villages.

Among the main responsibilities of communes, the following issues should be listed: ensuring spatial harmony, real estate management, environmental protection and conservation of natural areas, water management, management of the sewage system, country roads, public streets, traffic systems, supply of electric and thermal energy and gas, public transport, health care, etc. Commissioned tasks cover the remaining public tasks resulting from the legitimate needs of the state, assigned by the central government to be performed by self-government units. The tasks are handed over on the basis of statutory bylaws, charters and regulations; or, by way of agreements between the self-government units and the central government.

*Table 4: Overview of competences of local government units in Poland*

	<b>Description</b>
Competences	The scope of competence of a commune includes all public matter of local significance. The respective tasks are classified into self-commissioned – resulting from law (real estate management, environmental protection and nature conservation of natural areas, water management, waste treatment and management of the sewage system, country roads, public streets, traffic systems, supply of electric and thermal energy and gas, public transport, health care, etc.), and contracted – assigned by the state authorities. Commissioned tasks cover the remaining public tasks resulting from legitimate needs of the state, commissioned by the central government to be performed by self-governing units. The tasks are handed over on the basis of statutory bylaws, charters and regulations, or by way of agreement between the self-government units and the central government.
Fiscal autonomy	The revenue of communes covers: <ul style="list-style-type: none"> <li>• own revenues (established by and collected under separate tax laws, mainly the tax on real estate, revenues from fees and commune surcharge over the income tax from individual persons and legal entities),</li> <li>• general subsidies (for educational purposes and subsidies for roads)</li> <li>• grants from the state budget (targeted allocations for commissioned tasks).</li> </ul> The revenue of communes may also come from foreign sources, making them non-refundable, as well as funds from the EU budget and other measures set out in separate regulations.

### **4.3. Rights and competences of local and regional actors on international and cross-border cooperation – based on domestic law**

#### **International cooperation - general issues**

International cooperation is based on neighbourly contacts at regional and local level. It can involve, among other things: the exchange of goods, information and promotional activities, consulting, research and development, the provision of services, cultural, educational and sport exchanges, the

development of cross-border infrastructure, tourism activities, environmental protection and spatial planning. International cooperation comprises five categories of activities:

- cooperation within the European Union;
- bilateral cooperation;
- multilateral cooperation;
- EU projects;
- cross-border cooperation.

International cooperation, including cross-border cooperation, is regulated by three main documents:

- European Outline Convention on Transfrontier Co-operation Between Territorial Communities of Authorities, ratified by Poland in 1993;
- European Charter of Local Self-Government, ratified by Poland in 1994;
- European Charter of Border and Transfrontier Regions adopted by Poland in 1995;

*Table 5: Institutions and legal regulations of international cooperation by the regions*

Institutions	Legal regulations
<ul style="list-style-type: none"> <li>• Ministry of Interior and Administration (State Border Management Team, Implementing Authority for European Programmes),               <ul style="list-style-type: none"> <li>○ Chancellery of the Prime Minister</li> <li>○ (Department of Foreign Affairs),</li> <li>○ Ministry of Foreign Affairs (Dep. Europe, Eastern Policy, Legal and Treaty Affairs)</li> </ul> </li> <li>• Departments in ministries responsible for the use of EU funds</li> <li>• Commissions and Councils for International and Regional Cooperation</li> <li>• Forum of Polish Border Regions</li> </ul>	<ul style="list-style-type: none"> <li>• The Law on Associations (1989)</li> <li>• The Act on voivodeship self-government (1998)</li> <li>• The Act on the Rules of Accession of the Self-Government Units to International Associations of Local and Regional Communities (2000)</li> <li>• Regional intergovernmental bilateral and multilateral agreements</li> <li>• Cross-border regional bilateral and multilateral agreements</li> <li>• Cross-border bi- and multilateral local agreements</li> </ul>

### International cooperation - competence of territorial entities

Municipalities, counties and voivodships acquired the right to take up cross-border cooperation activities after the political reforms in 1990. According to Article 172 (2) of the Constitution of the Republic of Poland: "A self-government unit shall have the right to join international associations of local and regional communities and to cooperate with local and regional communities of other states". In addition to the general competence standard contained in the Constitution of the Republic of Poland, appropriate regulations were placed in statutory acts.



## **The voivodeship**

The foreign cooperation of voivodships is regulated in the Act of 5th June 1998 on regional self-government (art. 75-77, art. 18 item 13 and 14 and art. 41 item 5). These provisions oblige voivodeships to conduct this co-operation in line with the internal law, the foreign policy of the state, its international commitments, and only within the tasks and competences of the voivodeship. The voivodeship both creates economic and spatial development on its territory and is the basic level for the absorption of funds from the EU, including the implementation of cross-border projects. Marshal's offices cooperate with foreign partners, create agreements with their self-governing authorities, initiate actions and delegate their implementation to non-governmental and economic organisations. They also supervise activities carried out on their own initiative by, among others, chambers of commerce and regional development agencies.

In accordance with the Act of 15 September 2000 on Accession of Local and Regional Self-Government Units to International Associations of Local and Regional Communities (Journal of Laws No 91 of 28 October 2000, item 1009 - as amended), the voivode gives his opinion and then forwards draft resolutions of local government units on accession to international associations of local and regional communities to the minister in charge of foreign affairs.

In line with the Act on the voivodeship self-government, in executing its tasks, connected, among others, with formulating the voivodeship development strategy and implementing the policy of its development, "it can also cooperate with international organisations and regions of other countries, especially neighbouring ones". In accordance with the act, the voivodeship assembly has the competences, in particular, to "pass resolutions on the voivodeship's foreign cooperation priorities", as well as to "adopt resolutions on participation in international regional associations and other forms of regional cooperation".

## **The county**

The Act on county government gives the county council powers to adopt resolutions on matters of "cooperation with local communities in other countries and joining international associations of local communities". Unlike municipalities, counties can only undertake cooperation at the local level, but have no competence to join regional forms of cooperation. The voivodeship also has wider competences in this respect than the county, because the law gives it the authority to participate in organisations with both a local and a regional range. When comparing the acts on commune and county self-governments, one should also note that cooperation with local communities in other countries is not listed among the county's own tasks.

## **The municipality**

The Act on Municipal Self-Government stipulates that a municipality's own task is cooperation with local and regional communities of other countries (Art. 1, Para. 7, item 20), while the exclusive competence of the municipal council includes passing resolutions on cooperation with local and

regional communities of other countries and joining international associations of local and regional communities (Art. 18, Para. 2, item 12a). The original version of the Act did not contain any norms regulating the issue of cross-border cooperation. Regulation in this area was only introduced by an amendment to the Act on Municipal Self-Government of 21 January 2000, which extended the powers of the municipal council to include activities concerning cooperation with local communities in other countries.

## Cross-border cooperation

Cross-border cooperation on the Polish side takes place at both local and central government level. Local authorities at all levels carry out cooperation projects with their cross-border partners. Cross-border cooperation is coordinated by intergovernmental councils and commissions. They are the basic forum for cross-border cooperation, acting as a link between the local and regional authorities and the government administration. The role of intergovernmental bodies is to stimulate this cooperation, create conditions for its development and ensure its consistency with the foreign policy of the Polish state. Thanks to the work of commissions and intergovernmental councils, it is possible to model interregional relations, including those between local government units and their counterparts abroad. The activities of the councils and commissions are implemented through the work of working groups/committees established within their frameworks.

Meetings of intergovernmental bodies end with the signing of a joint document, which summarises the achievements of the body and highlights jointly identified issues. This document is later taken into account in top-level intergovernmental consultations and signals the course of action to be taken by the relevant governmental and self-governmental institutions of both countries.

Cross-border cooperation is also regarded as an element of public and local government diplomacy. In this sense, cooperation across borders is intended as a tool for local development, which is particularly important for border and peripheral regions. It is then not only an instrument of local and regional authorities, but also an instrument of state foreign policy.

Cross-border cooperation between regions can take the form of:

- learning about each other and exchanging information;
- joint analysis of problematic issues;
- the development of common positions in negotiations and the presentation of opinions on possible solutions to problems;
- implementation of joint projects;
- institutionalisation of joint implementation of tasks in the field of development cooperation (Klimczuk 2013).

This cooperation leads to: development of civic and economic contacts, use of endogenous development resources, mitigation of negative effects of the existence of the border, flow of experience and information between regions, coordination of infrastructure development on both

sides of the border, promotion - inflow of investments, development of tourism, exchange of social, educational and scientific ideas, cultural creation activities.

Among the agreements adopted by local self-government units within the framework of cross-border cooperation there are: 1) public-legal; 2) private-legal; 3) on cross-border cooperation. Institutional forms of cross-border cooperation include:

- 1) European Grouping of Territorial Cooperation;
- 2) special purpose association;
- 3) association;
- 4) company under commercial law;
- 5) Euroregion.

### Cross-border cooperation with Ukraine

Cross-border cooperation between the Republic of Poland and Ukraine is based on several legal acts. The first one, which addressed the issue of cross-border cooperation between the two countries, was the Treaty on Good Neighbourhood, Friendly Relations and Cooperation. In Article 10 of the Treaty (1993)<sup>3</sup>, we read: "1. The parties shall encourage the establishment and development of direct contacts and cooperation between the regions, administrative-territorial units and cities of the Republic of Poland and Ukraine. Special attention shall be given to cooperation in border areas. The parties will cooperate in the field of forward planning of development of border regions. 2. An Intergovernmental Commission for Interregional Cooperation will be established to implement these arrangements."

Another important act for cross-border cooperation is the Agreement between the Government of the Republic of Poland and the Government of Ukraine on interregional cooperation prepared in Kiev on 24 May 1993. Article 6 of the Agreement states: "The Parties will establish a joint Intergovernmental Coordination Council for Interregional Cooperation.

The functioning of the Polish-Ukrainian Intergovernmental Coordination Council for Interregional Cooperation has been regulated by the Statute of 26 January 1996<sup>4</sup>.

Within the Council there are:

- Commission for cross-border cooperation;
- Commission for border crossings and infrastructure;
- Commission for Spatial Planning;
- Commission for Rescue and Civil Protection in Emergency Situations.

Euroregions definitely dominate among the cross-border forms of cooperation at the Polish borderland. Euroregions in Poland were established in a non-uniform manner, according to various principles. On the western and southern border regions, their establishment was triggered by

agreements adopted by self-governmental unions and associations, which resulted in an exponential increase in the number of municipalities belonging to the Euroregion.

The development of the Euroregions on the northern and eastern border regions was fostered by a regulatory act conferring considerable competencies on the voivods in the field of cross-border cooperation. A characteristic feature at the time was the creation of regions with a geographical scope significantly larger than in other parts of Poland. This was due to the fact that only the voivode could be a party to the agreement, which consequently led to a situation in which undertaking cross-border cooperation required the involvement of the entire voivodeship.

Cross-border cooperation in the form of Euroregions aims to undertake and harmonise various activities in the fields of science and culture as well as education and the economy. These activities should be of benefit to both sides and should deepen mutual relations between economic actors and inhabitants of local communities.

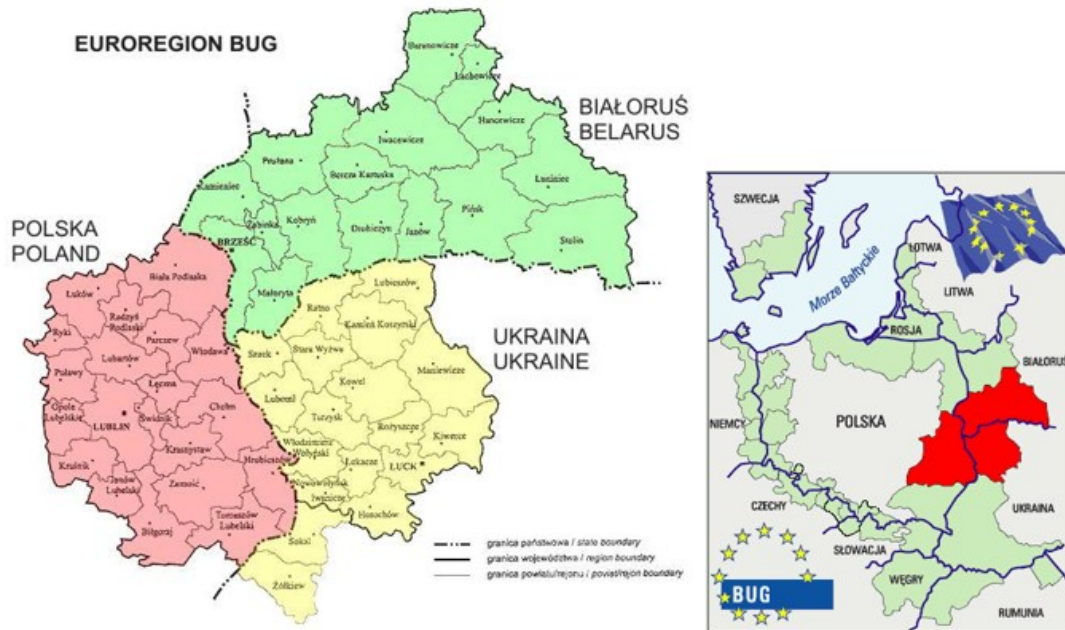
#### **4.4. Examples of application of international (agreements) / EU law in cross-border territorial cooperation**

##### **Euroregion BUG**

In 1991, an agreement on cross-border cooperation was signed between the former Chelm, Zamosc, Przemysl and Krosno voivodships (today this area includes parts of the Lublin and Podkarpacie voivodships) with the regions of Belarus (Brest oblast) and Ukraine (Lvov and Wolyn oblasts). The idea of creating the Euroregion emerged in May 1992, at a Polish-Ukrainian conference in Kazimierz Dolny, concerning economic cooperation of local governments and cooperation of towns and communes.

On 29 September 1995 in Luck, Ukraine, an agreement was signed between Poland and Ukraine on the creation of the Cross-Border Association Euroregion BUG. Two years later Belarus joined this initiative. Nowadays, the Euroregion consists of: Lublin Voivodship, Brest District in Belarus, Volyn District, Sokal and Zolkiew Provinces in Ukraine.

Figure 6: Territory of Euroregion BUG. Źródło: [www.google.pl/mapyeuroregionowwPolsce](http://www.google.pl/mapyeuroregionowwPolsce)



The Euroregion BUG covers the area of 64 thousand kilometres and is inhabited by approximately 47% of the Polish part, 31% of the Belarusian part and 22% of the Ukrainian part. The Euroregion BUG is characterised by a great diversity of ethnic groups as well as cultural and religious diversity. It is a transit area between Western and Eastern Europe. The creation of the Euroregion BUG was a starting point for building an agreement for the future and a chance for civilisation progress of three nations - in terms of contacts, economic cooperation and joint projects.

The Euroregion BUG has the character of an agreement on mutual cooperation without creating a separate organisation equipped with legal personality. Its organisational structure consists:

- Euroregion Council (consisting of 30 persons - 10 persons from each side). The Council's competencies include: discussing and approving joint cross-border cooperation projects carried out within the Union, ensuring their funding and implementation, amending the Statutes, accepting new members and revoking membership in the Union and granting honorary membership, deciding on the Union's budget, electing the Presidium of the Union's Council and the Audit Committee, appointing the Secretariat of the Union and determining its budget, appointing permanent and ad hoc Working Groups to implement specific tasks in selected areas of cross-border cooperation and adopting their work regulations.
- Presidium of the Euroregion Council (1 representative from each side). The Presidium performs coordination and representative functions on behalf of the Council between its meetings;
- Secretariats - comprising offices in Chelm (Poland), Brest (Belarus) and Lwów (Ukraine). The tasks of the secretariats are as follows: preparing and submitting to the Council draft resolutions and other studies on joint undertakings, preparing meetings of the Council,

servicing working groups, performing other functions related to the administration and financial tasks of the Union.

- The Audit Committee (consisting of 6 persons, 2 persons from each party). The competences of the Audit Committee include: controlling the correctness of the keeping of records and the use of the Union's financial resources.

According to the Statute the Euroregion BUG was created in order to develop co-operation of border areas in the following fields: spatial management; communication, transport and communication; education, health protection, culture, sport and tourism; protection and improvement of natural environment; elimination of threats and effects of natural disasters; development of contacts between inhabitants of borderland and institutional co-operation as well as co-operation of economic entities.

Growing difficulties connected with the functioning of the Cross-Border Association of the Euroregion BUG caused the idea of establishing the Association of Local Governments of the Euroregion BUG. In April 2000 the District Court in Lublin issued a decision on entering Association into the register of associations. The Association was created by local and regional self-governments of Lublin Voivodship. The Association finances activities of the Euroregion BUG on the Polish side. Funds for Association activities come from contributions of associated and supporting self-governments, whereas all pro-development cross-border projects undertaken in the area of the Euroregion are implemented with the help of European funds, including: Small Projects Fund under the PHARE National Programme - Polish Eastern Border and the Neighbourhood Programme Poland - Belarus - Ukraine INTERREG III/TACIS CBC.

The basic aim of the Association is to inspire, support and coordinate transboundary cooperation of self-governments, local communities and administrative authorities from border regions located along the border on the Bug River. In particular, the aims of the Association are: to integrate Polish local governments in the Cross-border Association of the Euroregion BUG; to support and promote trans-border forms of cooperation; to popularise the cultural heritage and traditions of border communities; to support local initiatives for improving infrastructure of border areas, especially in the sphere of gas and water supply and building roads and telecommunications networks; to act for the benefit of environmental protection in the area of the Euroregion BUG; to support the activities of regional authorities aiming to create special economic zones in border areas and a system of local and supra-local border crossings; to support various forms of cooperation in the field of education, sport, tourism and health care. Local governments from the Lublin Voivodeship may become members of the Association. The condition to join the association is to present a resolution by the local government council on joining the Association and accepting the Statute of the Association of Local Governments of the Euroregion BUG.

## Cross-border cooperation strategy of Lublin voivodeship, Lviv oblast, Volyn oblast and Brest oblast

The "Cross-border Cooperation Strategy of the Lublin Voivodeship, Lviv Oblast, Volyn Oblast and Brest Oblast for 2014-2020" was adopted in 2014. It is a document that defines the objectives and directions of development of cross-border cooperation. The Strategy is the first document of this kind in the European Union, developed for a cross-border area located along the external EU border. The document was accepted by the authorities of the partners from Volyn and Lviv Oblasts in Ukraine and Brest Oblast in Belarus.

The Strategy is the result of work carried out jointly with partners from Volyn Oblast Council, Lviv Oblast Council, Lviv State Administration and Volyn Oblast State Administration and Brest Oblast Executive Committee, and at the same time constitutes an important fulfilment of the agreements on interregional cooperation signed between Lublin Voivodeship and the neighbouring regions. This initiative has also received assistance and financial support from the Ministry of Foreign Affairs of the Republic of Poland in the competition project "Support for the civic and self-governmental dimension of Polish foreign policy 2013", within which the project entitled "Building partnership for the development of interregional cooperation" was implemented. "Building partnerships for the development of the Strategy 2014-2020".

The general objective of the Strategy is to increase the socio-economic competitiveness of the cross-border area in the European, national, regional and local dimension, through effective use of endogenous potentials and mitigation of limitations resulting from the functioning of the external EU border. The objectives worked out and included in the Strategy are adequate to the jointly identified and confirmed in the process of social consultations most important problems and challenges of development. They are oriented towards an effective use of endogenous potentials in the field of economic cooperation, tourism and scientific potential, as well as mitigating the limitations resulting from the functioning of the external EU border, by improving external and internal transport accessibility.

The sources of financing of the Cross-border Cooperation Strategy of Lublin Voivodeship, Volyn Oblast, Lviv Oblast and Brest Oblast for 2014-2020 include all available financial resources that can be engaged to implement development activities, i.e. national public funds, foreign public funds and private funds.



## 5. COUNTRY PROFILE: SLOVAKIA

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### 5.1. Brief overview of the territorial administrative system

Reforms of public administration in Slovakia started after the Velvet Revolution of November 1989. The Act no. 369/1990 Coll. on municipal establishment, first, abolished national committees that served as territorial authorities during the communist regime, and second, established local self-governing authorities within existing municipalities. The Constitution of Slovakia of 1992 provides that the main units of territorial self-government are municipality and higher territorial unit (Chapter IV).

Public administration in Slovakia is organized in three levels: state - region - municipality.

Since 1996 Slovakia has a territorial administrative system that divides country into 8 regions and 79 districts. Slovakia has rather a fragmented residential structure because officially it has over 2.900 municipalities (with population of 5.5 million). More than 135 municipalities have the status of a city or town. The capital Bratislava and the cities with a population exceeding 200.000 have a special status that includes additional administrative competencies and responsibilities than other municipalities.

Fundamental reform of public administration in Slovakia took place in 1998-2005. A second (regional) level of self-government was established by Act no. 302/2001 Coll. on self-government of higher territorial units of July 2001. Over 400 competences were conferred on the self-governing regions (*samosprávny kraj; vyšší územný celok*) and municipalities from central state authorities along with respective property and public finances. The competences defined by Act no. 416/2001 Coll. are divided into original competences of self-governing authorities and the competences execution of which is transferred from the state authorities.

In addition to the creation of full-fledged local and regional self-governing authorities, since 2012 state administration also has been undergoing a reform process. The so-called ESO reform of state administration stands for efficient, reliable and open state authorities. Following the Act no. 345/2012 Coll. specialized regional and county state offices were closed down and since October 2013 their competences have been transferred to the newly-established integrated territorial authorities of state administration at local level – district state offices.

## 5.2. Brief introduction of the legislation on local and regional actors

The above-mentioned Act no. 369/1990 Coll. on municipal establishment is until today the key law arranging the status and competences of LAs. Municipalities obtained self-governing independent status, legal subjectivity, including a determined package of competences together with legal responsibilities. In this regard adoptions of Act no. 427/1990 Coll. on the transfer of state ownership to other legal entities or persons, including Act no. 138/1991 Coll. on property of municipalities, are also important. The formation of municipal property was carried out on the territorial principle, that is, the property was allotted to municipalities on whose territories it was located. Another dimension of reform of public administration concerns territorial administrative structure of Slovakia. Act no. 221/1996 Coll. on territorial administrative organization together with the Act no. 222/1996 on organization of local state administration established 79 district state offices with the status of a basic level of territorial state administration along with 8 regional state offices with status of the second level of state administration.

In political terms, more favourable conditions for the continuation of public administration reform were created after the parliamentary elections in 1998. Until 2001 administrative subsystem of local administration in Slovakia was represented only by municipal self-governments. Self-government on the regional level was constituted on the basis of amendment of the Constitution in 2001, which established the legal status of the second level of self-government, that is, the higher territorial units (and/or self-governing regions). The 8 self-governing regions were established by Act no. 302/2001 Coll. of July 2001. Additional important move in the reform was the transfer of competences from state to self-government authorities, decentralization of financial flows and the settlement of property issues. In September 2001 the Slovak parliament passed the Act no. 416/2001 Coll. on the transfer of some competences from state authorities to municipalities and higher territorial units, the so-called Competences Act, which enabled the shift of competences to municipalities and self-governing regions in 2002-2003. In 2005, the following laws came into force which ensured the financial decentralization of public administration as follows: Act no. 582/2004 Coll. on local taxes and local fees for municipal waste and small construction waste, Act no. 564/2004 Coll. on the budgetary determination of the income tax revenue of a local government, Government Regulation no. 668/2004 Coll. on the distribution of income tax revenue to local governments, and Act no. 583/2004 Coll. on budgetary rules of territorial self-government.

Self-governing bodies are autonomous political and administrative institutions formed on the basis of elections. Citizens elect Chairmen (or Presidents) of self-governing regions and Members of regional councils in direct election. Presidents convene and chair regional council meetings and are responsible for external representation of the regions. They act as a statutory body of the self-government, including in matters related to property management, staff employment and relations with third parties. They decide in the matters that are conferred on self-governing regions under the current legislation. The council of the self-governing region may approve generally binding

regulations and impose fines on natural or legal persons in case of their violation. Regional authorities are responsible for management of secondary schools, hospitals, retirement homes, theatres, galleries, museums or libraries located in the region. They ensure operation of tourist, culture and sports facilities, public transport, and social services. They prepare and coordinate implementation of regional development plans in cooperation with municipalities, business and non-governmental entities based in the region. They are partners for the central government in issues related to regional and local development, including in the management of public investments as well as the EU funds.

At the level of local self-governance, mayors and municipal councils are also directly elected bodies. Mayors are highest executive representatives of a village, town or city. Mayors convene and chair municipal council meetings and policy advisory committees and sign their resolutions. They are responsible for municipal management, represent their municipalities in relations with state authorities, businesses and third entities, and decide concerning all matters of municipal management that are not reserved to municipal councils under the current legislation or municipal statute. Municipalities may mutually cooperate according to agreements and may form associations. They can merge into one municipality or vice-versa may also split into two or more municipalities.

The self-government of municipality represented by mayor and council executes tasks related to proper management of assets of the municipality, draw up and approve municipal budget, including a final financial account. Further, it decides in matters of local taxes and local charges. It may adopt generally binding regulations and impose fines on natural or legal persons in case of their violation. Local authorities are responsible for building and maintaining local roads, operating public and/or municipal facilities, providing public services, maintaining cleanliness, public greenery, public lighting, water supply, waste disposal, and local public transport. They procure and approve land-use planning documentation for residential areas and zones, housing development programmes, investment and business activities of municipality with the aim to satisfy needs of the local population. They establish, dissolve and monitor activities of municipal organizations, hold local referenda on pressing issues of municipal life and municipal development and are responsible for ensuring public order.

### **5.3. Rights and competences of local and regional actors on international and cross-border cooperation – based on domestic law**

The legal competences of Slovak LRAs for international and cross-border cooperation are derived from the European outline convention no. 106 on transfrontier co-operation between territorial communities or authorities of 21 May 1980, which became part of national legislation after its ratification by the Slovak parliament in May 2000. Despite the fact that Slovakia acceded to the Council of Europe yet in June 1993, the above Convention was ratified up to 7 years after its

accession. The main reason was a political attitude of the governments led by Prime Minister Vladimír Mečiar (1992-1998), who was convinced that the right to establish relations with foreign partners belongs exclusively to central state authorities. As mentioned above, the approach of the Slovak government changed fundamentally under governments led by Prime Minister Mikuláš Dzurinda (1998-2006) that carried out principal political and economic reforms, including in the field of public administration, which created full-fledged self-governing authorities at local and regional level. A necessary part of the reform was the ratification of the above mentioned European outline convention no. 106, including its additional protocols, in the course of 2000 and 2001, and subsequent adoption of national laws that specified rights and competences of LRAs, including in the field of international and cross-border cooperation.

Despite the fact that local self-government on municipal level in Slovakia was established yet in 1990 by Act no. 369/1990 Coll., municipalities acquired the right for international cooperation only in 2001 by the adoption of Act no. 453/2001 Coll. of 2 October 2001, which amended Act no. 369/1990 Coll. Thanks to this amendment LAs gained the right to co-operate, within the scope of their competences, with territorial and administrative units or authorities of other states performing local governance functions, including the right to become a member of international association of territorial units or bodies (§21). The law sets the only restriction on international cooperation of LAs, namely that their agreements with foreign partners or membership in international associations may not be in conflict with the Constitution of the Slovak Republic, constitutional laws, laws and international treaties by which the Slovak Republic is bound, or in conflict with the public interest.

Nevertheless, the state authorities retained some indirect control over international cooperation of LAs through the provision of the law which imposes an obligation on LAs to submit texts of concluded agreements with foreign partners as well as protocols of membership in international associations to state district offices with seat in the capital of respective region, which are obliged to keep their records. In addition, district state offices, if they find a case that LA's cooperation with a foreign actor and/or its membership in international association is inconsistent with the provisions of the law, may bring an action before a court to review the complaint and, where appropriate, impose an obligation on LA to terminate international cooperation or membership in international association. It should be noted that this provision of the law has not been applied in practice since its adoption in 2001. Taking into account the fact that state authorities can impose obligations on LAs only on the basis of law, since the entry into force of the amended Act no. 369/1990 Coll. on 1 January 2002, Slovak cities and municipalities have gained enormous opportunities for the development of their paradiplomatic activities, which they can perform independently and freely on the basis of their own will and decisions.

More specific and in a sense slightly stricter is the legislative regulation concerning competences of Slovak RAs in the field of paradiplomatic activities. The key law that establishes the competences of self-governing regions of Slovakia, including in the field of international and cross-border cooperation, is the Act No. 302/2001 Coll. on the self-government of Higher Territorial Units (self-governing regions) of 4 July 2001. According to this Act, a self-governing region may, within the

scope of its administrative competences, cooperate with territorial and administrative units of other states or with authorities of other states performing functions of regional governance. It has the right to become a member of an international association of territorial or regional units. However, international cooperation may take place only on the basis of a written cooperation agreement, which must include names and registered offices of the parties to the agreement, the subject of the agreement, including its duration. If it is necessary the region may establish or co-establish a special institution for the purpose of international cooperation, which must be specified in the agreement, as well as the means of its establishment. This can only be an institution governed by a private law. The cooperation agreement must be concluded in written and must be approved in advance by an absolute majority of all deputies of the regional council (parliament) (§4 and §5). Besides the agreements on international cooperation, the regional parliament approves by an absolute majority also the association of the region's resources and activities with foreign partners, as well as the region's membership in domestic and international associations (§11). In relations with external partners, both partners based in the Slovak Republic and abroad, the self-governing region is represented by the Chairman (and/or President) of the self-governing region. The Chairman may entrust the representation of the region in relations with other partners to the organizational unit of the self-governing region office. In such a case, this unit must be determined in the organizational rules of the region office (§16).

Act no. 302/2001 Coll. stipulates also the obligation of state authorities to support the cooperation of the self-governing region with territorial and administrative units of other states or with the foreign authorities performing regional functions, and ensure that the self-governing regions are well informed about the possibilities of such cooperation (§7). At the same time, the law stipulates the supervisory and control role of state administration bodies over the activities of regional authorities in the field. Specifically, the region's agreement on cooperation with a foreign partner or the region's membership in an international association must not be in conflict with the Constitution of the Slovak Republic, constitutional laws, laws and international treaties by which the Slovak Republic is bound, and must not be in conflict with the public interest (§5). In addition, Act no. 302/2001 Coll. imposes the obligation on the self-governing region to send a copy of the concluded agreement on cooperation with a foreign partner or a document on membership in an international association to the district state office with a seat in the given region. The district state office keeps records of concluded agreements on cooperation, and records of membership of the self-governing region in international associations. It may file a request to the court to determine the region's obligation to terminate the cooperation agreement or membership in an international association due to non-compliance with the conditions established by law. Before filing a request to the court, the district state office shall request the opinion of the relevant regional state administration body (§5). As in the case of LAs as well as in the case of RAs this provision of the law has never been applied yet in practice. In addition to the above-mentioned and legally specified competences of the national state authorities to initiate proceedings before a court to terminate an international agreement, obligations and restrictions in matters of territorial self-government, including international

cooperation, may be imposed to a self-governing region only by law and/or on the basis of an international agreement (§5).

In 2008 National Council of the Slovak Republic adopted the Act no. 90/2008 Coll. on the European Grouping of Territorial Cooperation (EGTC), which strengthened paradiplomatic competencies of Slovak LRAs and opened up new legal possibilities for their cooperation with partners within the EU. By this law Slovakia incorporated into its national legislation the Regulation of the European Parliament and of the Council no. 1082/2006 on EGTC. The aim of the Regulation has been to eliminate obstacles for cooperation of LRAs in the EU Member States, which stem from different legislative regulations of their competencies at national level. EGTC is a legal entity established by members from at least two Member States, which has the right to own property, employ staff and enter into contractual relations with other legal entities. EGTC is a "communitarian" legal form of territorial cooperation enabling regional and local authorities to cooperate with their partners within the EU, which is valid in all Member States that had to transpose it into their national legislations.

In 2008 another law was passed by the Slovak parliament, which expanded and more precisely defined the competences of self-governing regions and municipalities, in particular in the field of European policies, including their participation in cross-border cooperation co-funded from the EU funds: Act no. 528/2008 Coll. on aid and support from European Community Funds. It reflected the experience of Slovakia's membership in the EU and the growing need, also under pressure from the European Commission on national authorities, to involve LRAs in the management of European structural funds in the field of regional development and cross-border cooperation. Act no. 528/2008 Coll. defined self-governing regions and municipalities, together with ministries and other bodies of the central state authorities, as "intermediary bodies" in the administration of operational programmes for drawing financial resources from EU funds (§8). LRAs have been given the power to administer operational programs for drawing resources from the EU funds on the proviso they have respective capacities and are empowered with this by the government and the "managing authority" of the operational program, which shall be a central state authority determined by the government (§7). Despite the fact that the "intermediary body" is, in accordance with this law, subordinate to the "managing authority" of the operational program, i.e. the body of the central state administration, Act no. 528/2008 Coll. was especially important for regional governments, because it opened their access to the management of EU funds allocated for Slovakia, which represent an important source of investments into their regional development. Thanks to this law, Slovak regions and municipalities can participate in the administration of operational programs financed from the EU structural funds, including INTERREG programs, which serve to support cross-border cooperation on intra- and extra-EU borders. At the same time, this law opened the door to "European policy" especially for Slovak regions and raised their need to intensify cooperation with the Slovak government and the European Commission in preparing a Partnership Agreement for the European Structural and Investment Funds (ESIF) in the relevant programming and budget periods of the EU. These funds represent an important source of investments in regional development and fulfilment of self-governing functions of regional authorities within the scope of their administrative competences.



Another law approved by the National Council of the Slovak Republic in the same year, Act no. 539/2008 Coll. on the support of regional development, also has been having a significant impact on the legislative regulation of paradiplomatic activities of both Slovak regions and municipalities. In order to unify the system of regional and local development planning in the Slovak Republic, the law imposed an obligation on LRAs to introduce strategic planning for the needs of their local and regional development and set rules for providing respective financial support from the state (§7), including for co-funding participation of LRAs in cross-border and/or territorial cooperation projects as well as supporting regional development agencies established by regional authorities at the regional level. The law defined cross-border cooperation of regions and municipalities, i.e. their international cooperation as a tool for obtaining additional resources for regional and/or local development. Among other things, the law in more detail defined the competence of self-governing regions and municipalities in the field of cross-border cooperation. Slovak self-governing regions and municipalities have been empowered to create "Slovak parts of the Euroregions" and to carry out the following activities in the field of cross-border cooperation with neighbouring regions and/or local partners: prepare development projects to increase the level of economic and social development of the region and/or municipality and cooperate on their implementation, support development activities within the Euroregion related to the regional development support's focus, to participate in the elaboration of joint strategic and program documents of cross-border cooperation, to organize presentation events and professional seminars focused on the development of the Euroregion, to support the public interest in geographical, historical, natural and cultural heritage of individual territories within the Euroregion, to provide consultancy services in the field of cross-border cooperation, to cooperate with socio-economic partners in the field of regional and local development and to establish partnerships at European, national, regional and local level (§13).

Competences of Slovak RAs in the field of international cooperation are also affected by Act no. 91/2010 Coll. on support of tourism. As part of determining the competences of self-governing regions in the development of tourism, among others, the law stipulates their competence to support the development of cross-border, interregional and transnational cooperation in tourism, and to participate in creating a mechanism for a unified presentation of the Slovak Republic abroad (§5). At the same time, the law regulates the establishment of regional tourism organizations. Those can be established only with the involvement of the authorities of self-governing regions and regional tourism organizations, established on the territory of the region (§8 and §9). The Act also stipulates conditions for state funding of the activities of regional organizations on support of tourism (§28 and §29).

The above-mentioned laws define rights and competencies of Slovak LRAs in the field of international and cross-border cooperation, including the rules and conditions for institutional cooperation in the field with central state authorities. It might be concluded that the current Slovak legislation is sufficient for LRAs to be able to decide, freely and independently of state authorities, on establishing contacts and cooperating with foreign partners, as well as on their membership in international associations. Moreover, in some specific sectorial areas, namely cross-border cooperation and



tourism, Slovak legislation obliges central state authorities to support LRAs in their efforts, including by providing financial support for their respective activities.

However, it can be stated that existing Slovak legislation does not cover all areas that are relevant for international cooperation of LRAs. In particular, it does not regulate economic paradiplomacy and activities of LRAs aimed at attracting foreign investment and supporting foreign trade of business entities based on their territory. It is also not clear from the existing legislation whether Slovak LRAs can enter into contractual relations with foreign private companies and organizations, because they are not exactly listed in national legislation as partners for the development of international cooperation of LRAs. On the other hand, the existing Slovak legislation does not contain a provision that would prohibit or exclude the cooperation of LRAs with private foreign entities that are not bodies of local or regional authorities and/or do not perform their functions. Based on the analysis of institutional practice and experiences of Slovak LRAs when it comes to support of central state authorities for their paradiplomatic activities, it can be concluded that the following rule applies: what is not prohibited by law is allowed and happens, but at the same time, what is not regulated by law does not work perfectly.

#### **5.4. Examples of application of international (agreements) / EU law in cross-border territorial cooperation**

Slovakia has concluded bilateral intergovernmental agreements on cross-border cooperation with all neighbouring countries. The first, in chronological order, was the agreement with Poland signed yet in 1994. This was followed by bilateral agreements with the Czech Republic and Ukraine (2000), Hungary (2001) and the framework treaty on cross-border cooperation with Austria (2003). The difference between the framework treaty with Austria and the agreements with other neighbouring countries lies particularly in the fact that it does not establish any role for governments in further development of the cross-border cooperation. The treaty expresses a political support of the governments of Austria and Slovakia for cooperation between regional and local actors at common border as well as provides for a basic legal framework for it, but it does not envisage any institutional involvement of governments in its further development. All other agreements with neighbouring countries, including the agreement with Ukraine, have set up bilateral intergovernmental Commissions for cross-border cooperation, which in most cases meet regularly and serve to plan and coordinate the development of cross-border cooperation. Together with representatives of state authorities that organize meetings of Commissions, representatives of LRAs also participate in their activities.

The bilateral Slovak-Ukrainian agreement on cross-border cooperation was signed on 5 December 2000 and entered into force on 29 January 2001. The agreement (Art. 1) offers a common understanding of cross-border cooperation as follows: "(cross-border cooperation means...) all administrative, technical, economic, social and cultural activities aimed at consolidating and

developing relations between the parties as well as municipalities, cities and regions and their bodies on both sides of the common state border, as well as the conclusion of appropriate agreements to address common problems". According to the agreement, its provisions apply on three regions or *oblast'* of Ukraine (Transcarpathian Region, Lviv Region and Ivano-Frankivsk Region) and two self-governing regions or *kraje* of Slovakia (Prešov and Košice).

Following the agreement the governments of Slovakia and Ukraine committed themselves to consult each other on any legal, administrative or technical problems that could hinder the development and smooth running of cross-border cooperation, support activities of local and regional authorities to initiate and develop cross-border cooperation, and provide financial resources to local and regional authorities, within the limits of their capabilities, for initiating and developing cross-border cooperation (Art. 4). The agreement includes an exact list of sectorial areas, in which regional and local actors are authorised to establish and develop cross-border cooperation as follows: (a) regional development and spatial planning; (b) transport and communications (passenger transport, roads and motorways, airports, waterways, etc.); (c) cross-border trade; d) energy, e) nature protection (protected areas, recreation centres, parks, etc.); f) protection and rational use of water resources (elimination of pollution, construction of waste water management plants); g) protection of the environment (air pollution, noise reduction, etc.); (h) education, training, research and science; (i) health care (use of healthcare facilities by residents of the neighbouring territory); (j) culture, leisure, sport (theatres, music festivals, sport centres, youth centres, etc.); (k) mutual assistance in case of natural disasters and other disasters (fires, floods, epidemics, earthquakes, etc.); (l) tourism (tourism support projects); (m) problem of workers in the border regions (transport, housing, social insurance, taxation, employment, etc.); (n) economic cooperation (joint ventures); o) other cooperation projects (waste management, communal economy); p) agricultural development, and q) social care (Art. 9).

With the aim of promoting and coordinating cross-border cooperation, the agreement (Art. 7) established the Slovak-Ukrainian Intergovernmental Commission on Cross-Border Cooperation, with the right to set up working groups to address specific issues. The Statute of the Commission that specified the scope of its activities, organisational structure, budget and procedures was adopted at the first meeting of the Commission on 6 May 2004 in Zemplínska Šírava (Slovakia). The Commission is co-chaired by the Deputy Interior Minister of the Slovak Republic and the Deputy Minister of Ukraine on Regional Development, Construction, Housing and Communal Services. Since its establishment in 2004, the Commission has met 14 times, with the last meeting held in November 2018 in Uzhhorod (Ukraine).<sup>31</sup> The Commission has become the main institutional intergovernmental platform for the coordination and development of cross-border cooperation on the Slovak-Ukrainian

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<sup>31</sup> See "Protokoly zo zasadnutí Slovensko-ukrajinskej medzivládnej komisie pre cezhraničnú spoluprácu" [Minutes of the meetings of the Slovak-Ukrainian intergovernmental commission for cross-border cooperation]. Ministerstvo vnútra SR, <https://www.minv.sk/?protokoly-zo-zasadnuti-slovensko-ukrajinskej-medzivladnej-komisie> (accessed: January 11, 2021).

border.<sup>32</sup> It might be concluded that by 2004, Slovakia and Ukraine had established a full-fledged bilateral legal and institutional framework for the development of cross-border cooperation on their common border by regional and local actors.

The existence of the legal and institutional mechanisms for cross-border cooperation on the intergovernmental level generates opportunities for regional and local actors; however, it does not ensure the effectiveness of cross-border cooperation on the regional and local level. The practice of Slovak-Ukrainian cross-border cooperation on the regional and local level shows that mechanisms on this level are much less effective than mechanisms established on the national level. The main obstacles for bilateral cross-border cooperation, including trade on regional and local level, could be identified as follows: insufficient cross-border governance, scarce financial resources, historical inheritances of the Slovak-Ukrainian borderland, including the complex structure of its identities, insufficient legislation dealing with legal protection of business, inadequate institutional setup (different competencies of regional and local authorities, inefficiency of custom offices that paralyze small businesses, practices at the local public administration offices, police and courts), insufficient infrastructure (number of border crossings, transport), corruption (at the local level it is often a more hampering obstacle for trade cooperation than on the national one), undercapitalisation of enterprises in the region, a lack of coordination in the use of the EU funds, etc.<sup>33</sup>

Bilateral agreements on cross-border cooperation with neighbouring countries provide a legal framework for cooperation between regional and local actors; however, the funding of specific projects depends to a crucial extent on the EU's INTERREG program. Each Slovak region (there are 8 of them in total) shares the state borders of Slovakia with neighbouring countries, while half of them share concurrently borders with two neighbouring countries (Bratislava, Košice, Prešov, Trnava, and Žilina). A unique case represents the Trnava Region, which is the only Slovak region that shares state border of Slovakia with three neighbouring countries (Austria, Czech Republic and Hungary). Each internal inter-state border within the EU is covered by the specific program INTERREG A, which is used to finance bilateral cross-border cooperation projects. In the last EU financial period (2014-2020), entities based in the respective Slovak regions, in cooperation with their partners from the regions of neighbouring countries, could apply for financial support for common projects from the INTERREG A programs as follows: Slovak Republic - Czech Republic (eligible regions: Bratislava, Trenčín, Trnava, and Žilina; total allocation for programming period: 71.2 mil. EUR), Slovak Republic – Austria (Bratislava, and Trnava; 60.9 mil. EUR), Slovak Republic – Hungary (eligible regions: Bratislava, Banská Bystrica, Košice, Nitra, and Trnava; 128 mil. EUR), and Poland – Slovakia (Prešov, and Žilina; 145.7 mil. EUR). In the same programming period, entities based in the Prešov and Košice regions could apply for support for bilateral or multilateral cooperation projects with Ukrainian

<sup>32</sup> For analysis of strengths and weaknesses of the Commission's activities, see Marchešský, O. (2019) "The Slovak-Ukrainian Intergovernmental Commission on Cross-Border Cooperation: institutional framework, activities, and outcomes". In: Duleba, A. (ed) *Cross-border cooperation between Slovakia and Ukraine. Vol. II: Impact of intergovernmental relations*. Prešov: Vydavateľstvo Prešovskej univerzity, 129-143.

<sup>33</sup> For analysis see Lačný, M. and Polačková A. (2019) *Cross-border cooperation between Slovakia and Ukraine. Vol. IV: Perceptions of local and regional actors*. Prešov: Vydavateľstvo Prešovskej univerzity.

partners within the ENI Cross-border Cooperation Program Hungary-Slovakia-Romania-Ukraine 2014-2020, which was financed from the European Neighbourhood Instrument (68,4 mil. EUR). It should be noted that the amount of financial support from the above EU programs for an individual project does not exceed 85% of the total cost of the project budget. In addition to the above-mentioned INTERREG A program, in the recent EU programming period, Slovak LRAs could apply for support for cross-border cooperation projects within the following EU programs: INTERREG Europe, Program URBACT, INTERREG Central Europe, and INTERREG Danube Transnational Program.

The EU plays not only a key role in financing cross-border cooperation but also in developing a legal framework strengthening capacities and capabilities of LRAs for its development as it is considered one of the main tools for achieving cohesion within the EU. Legislation adopted at EU level puts pressure on Member States to strengthen the competences of LRAs in the field of international and cross-border cooperation. Legal format for territorial cooperation established by members (LRAs) from at least two Member States called *European grouping of territorial cooperation* (EGTC) had been introduced as part of *acquis communautaire* mandatory in terms of its transposition into legislation for all Member States. As already mentioned above, the objective of an EGTC is to facilitate and promote cross-border, transnational and/or interregional territorial cooperation between its members with the aim of strengthening economic and social cohesion. Slovakia transposed EGTC format into its national legislation in 2008.

Currently, Slovak LRAs are members of 13 EGTCs. As an example, we introduce a brief info about EGTC *Via Carpathia* established by the Košice Self-governing Region (Slovakia) and the Borsod-Abaúj-Zemplén Region (Hungary) in legal form of limited liability co. in 2013. The *Via Carpathia* EGTC facilitates cooperation of the two neighbouring regions that share common historical and cultural heritage. More than 1.5 million people live on their territories with a common area of 14,000 km<sup>2</sup>. The aims and activities of the EGTC include providing consultancy to LAs and other entities based on territories of member regions in the field of regional development, namely in elaboration of joint development strategies and implementation of respective cross-border cooperation projects; improving coordination and management of cross-border cooperation program funded from the EU funds; supporting integration in the areas such as healthcare, cross-border infrastructure and logistics, including passenger and road transport, bicycle routes, management of municipal waste, environmental and flood protection, development of the Tokaj wine area, tourist facilities, industrial zones, regional and local energy supply, crisis management, attracting foreign investments, and not in the last place, the development of intermodal *Via Carpathia* Transit Route as part of the EU's TEN-T network (corenetwork). Another goal of the EGTC is to provide support for small and medium-sized enterprises in order to integrate EGTC area through active cross-border cooperation of entities based on its territory. Finally, EGTC aims at supporting and protecting common natural, cultural and historical heritage of both member regions.<sup>34</sup>

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<sup>34</sup> For more information see the website of the *Via Carpathia* EGTC: <http://www.viacarpatia.eu/basic-information> (approached on 14.1.2021).

## 6. COUNTRY PROFILE: UKRAINE

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### 6.1. Brief overview of the territorial administrative system of the country

The administrative-territorial structure of Ukraine is determined by the *Constitution of Ukraine* (Chapter IX)<sup>35</sup> and specific laws.

Ukraine is a unitary State. The territory within the existing border is integral and inviolable (Article 2). Besides, according to Article 132, the territorial structure of Ukraine is based on the principles of unity and integrity of the State territory, a combination of centralisation and decentralisation in the exercise of the State power, balance, and socio-economic development of regions taking into account their historical, economic, ecological, geographical and demographic characteristics, ethnic and cultural traditions.

According to Article 133, the system of administrative-territorial organisation of Ukraine consists of the Autonomous Republic of Crimea, oblasts, districts, cities, districts in cities and villages.

Ukraine includes the Autonomous Republic of Crimea, 24 oblasts (Vinnytsia, Volyn, Dnipropetrovsk, Donetsk, Zhytomyr, Zakarpatska, Zaporizhska, Ivano-Frankivsk, Kyiv, Kirovohrad, Luhansk, Lviv, Mykolaiv, Odesa, Poltava, Rivne, Sumy, Ternopil, Kharkiv, Kherson, Khmelnytsky, Cherkasy, Chernivtsi, Chernihiv oblasts).

An oblast includes districts, cities, towns, and villages. There were 490 districts in Ukraine by 2020. By the Resolution of the Verkhovna Rada of Ukraine of July 17, 2020, they were united, and 136 new districts were created.<sup>36</sup> In large cities, there may be a division into city districts. The cities of Kyiv and Sevastopol have a special status (for example, the status of Kyiv is regulated by the Law of Ukraine "On the Capital of Ukraine – the Hero-city of Kyiv").<sup>37</sup>

Since 2015, the decentralisation reform has been implemented in Ukraine. According to the adopted *Law of Ukraine "On Voluntary Association of Territorial Communities"* (of 2015, last amended on 16.04.2020), adjacent territorial communities of villages, settlements, and cities may unite. Pursuant

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<sup>35</sup> Constitution of Ukraine, Basic Law of 28.06.1996 p. № 254к/96-BP. URL: <https://rm.coe.int/constitution-of-ukraine/168071f58b>

<sup>36</sup> Resolution of the Verkhovna Rada of Ukraine «About Formation and Liquidation of Districts» of 17.07.2020 No 807-IX. URL: <https://zakon.rada.gov.ua/laws/show/807-20#Text>

<sup>37</sup> Law of Ukraine «About the Capital of Ukraine – a Hero-city of Kyiv» of 15.01.1999 No 401-XIV. URL: <https://zakon.rada.gov.ua/laws/show/401-14#Text>

to the official data of the Ministry for Communities and Territories Development of Ukraine, 982 united territorial communities have been created.<sup>38</sup> Accordingly, when the administrative center of an united territorial community is a city, it is an urban territorial community, when it is a settlement – a settlement territorial community, when a village – a rural territorial community (Article 3).<sup>39</sup>

## 6.2. Brief introduction of the legislations on local and regional authorities

*The Constitution of Ukraine*, the laws of Ukraine “*On Local Self-government in Ukraine*”, “*On Local State Administrations*” and “*On Cross-border Cooperation*” determine the legal status, the procedure for creation and competence of local and regional authorities (LRAs) in Ukraine.

Article 1 of the Law of Ukraine “*On Cross-border Cooperation*” (of 2004), establishes that the subjects of cross-border cooperation (CBC) are territorial communities, their representative bodies, and their associations (local self-government bodies), and local executive power bodies of Ukraine.<sup>40</sup>

The Constitution of Ukraine (of 1996, last amended on 03.09.2019) stipulates in Article 118 that executive power in local state administrations (LSAs), the cities of Kyiv and Sevastopol is exercised by local state administrations. Heads of local state administrations are appointed and dismissed by the President of Ukraine on the proposal of the Cabinet of Ministers of Ukraine. The composition of local state administrations is formed by the heads of local state administrations. The powers of LSAs within the respective territory are defined in Article 119.<sup>41</sup>

Also the Law of Ukraine “*On Local State Administrations*” (of 1999) determines the LSAs’ powers (Chapter III). This Law distinguishes between general (Chapter 1) and sectoral powers (Chapter 2) of LSAs. Among their sectoral powers Article 26 defines the powers in the field of international and foreign economic relations.

Chapter XI of the Constitution of Ukraine and the Law of Ukraine “*On Local Self-government in Ukraine*” (of 1997) define the system of local self-government bodies (LSBs) in Ukraine.<sup>42</sup>

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<sup>38</sup> United territorial communities / The Ministry for Communities and Territories Development of Ukraine. URL: <https://atu.gki.com.ua/ua/united-communities>

<sup>39</sup> Law of Ukraine «*On Voluntary Association of Territorial Communities*» of 05.02.2015 No 157-VIII. URL: <https://zakon.rada.gov.ua/laws/show/157-19#Text>

<sup>40</sup> Law of Ukraine “*On Cross-border Cooperation*” of 24.06.2004 № 1861-IV. URL: <https://zakon.rada.gov.ua/laws/show/1861-15>

<sup>41</sup> Constitution of Ukraine, Basic Law of 28.06.1996 p. № 254к/96-BP. URL: <https://rm.coe.int/constitution-of-ukraine/168071f58b>

<sup>42</sup> Law of Ukraine “*On Local Self-government in Ukraine*” of 21.05.1997 No 280/97-BP. URL: <https://zakon.rada.gov.ua/laws/show/280/97-%D0%B2%D1%80#Text>



Under Article 140 of the Constitution of Ukraine and Article 5 of the Law of Ukraine “On Local Self-government in Ukraine” it includes a territorial community; a village, settlement, city council; a village, settlement, city mayor; executive bodies of village, settlement, city councils; a mayor; district and oblast councils representing the common interests of territorial communities of villages, settlements, cities; bodies of self-organisation of the population.

According to Article 141 of the Constitution of Ukraine, a village, settlement, city, district, oblast council consists of deputies elected by residents of a village, settlement, city, district, oblast based on universal, equal, direct suffrage by secret ballot. The term of office of a village, settlement, city, district, oblast council is five years. Territorial communities elect by secret ballot a village (settlement/city) chairman, who heads the council's executive body and chairs its meetings. The term of office of a village, town, or city chairman is five years. A chairman of a district and a chairman of an oblast council are elected by the relevant council; they head the council's executive staff.

Article 143 of the Constitution of Ukraine defines the powers of LSBs. Law of Ukraine “On Local Self-government in Ukraine” carefully details the competence of LSBs. In particular, it clearly regulates the powers of village (settlement/city) councils (Chapter 1, Articles 25 and 26); executive bodies of village (settlement/city) councils (Chapter 2, Articles 27-41); district councils in cities and their executive bodies (Chapter 2, Article 41); a village (settlement/city) head (Chapter 3, Article 42); starosta (Chapter 5, Article 54-1); district and oblast councils (Chapter 4, Articles 43 and 44).

The authority to establish Euroregional cooperation groupings and approve agreements on Euroregional cooperation groupings is attached to the exclusive competence of village, settlement, and city councils, as foreseen by the Law of Ukraine “On Local Self-government in Ukraine” amended in September 2018.<sup>43</sup>

### **6.3. Rights and competences of local and regional authorities on international and cross-border cooperation – based on domestic law**

Considering the cross-border cooperation (CBC) context and the rights and competences of local and regional authorities (LRAs) in this area of international relations, it is worth to refer to the basic international law provisions on international cooperation. The states as the international law actors should seek its development and provide for the right and ability of governments, institutions, organisations of different legal status, and individuals to play their relevant and positive role in

<sup>43</sup> Law of Ukraine «On Amendments to Some Laws of Ukraine on Cross-border Cooperation» of 04.09.2018 No 2515-VIII. URL: <https://zakon.rada.gov.ua/laws/show/2515-19#n119>



contributing cooperation between states<sup>44</sup> regardless of their political, economic and socio-cultural systems or levels of their development.

According to the international law, the Constitution of Ukraine enshrines in Article 18 that the foreign political activity of Ukraine is aimed at ensuring its national interests and security by maintaining peaceful and mutually beneficial cooperation with members of the international community<sup>45</sup>. The constitutional norms are transferred into the national policy, legislation and practice. Currently, the European integration is the definite priority of the Ukraine's national policy. International cooperation is one of the key areas of activity of the State, central, regional and local authorities, institutions, and civil society organisations. It meets the Ukrainian citizens' interests and needs in sustainable development.

CBC provides for the biggest advantages for joint activities of public and private law entities of central, regional and local levels held in cooperating countries. CBC in the Eurointegration perspective seeks to reinforce cooperation between the European states, between the EU member states and states along the external EU borders, in particular. CBC between Ukraine and other European states meets their needs, challenges and provides opportunities due to reams of political, economic and legislative factors.

Ukraine's legislation on CBC includes a number of international agreements (both multilateral and bilateral of interstate and intergovernmental levels), laws and bylaws, reflecting the spirit of the CoE and EU *acquis*. The Law "On Cross-border Cooperation"<sup>46</sup> is the dominant one in regulating the CBC and implements the norms of the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (Madrid Convention)<sup>47</sup> of 1980 and three Protocols<sup>48</sup> to it of 1995, 1998, and 2009, as well as the relevant provisions of the EU-Ukraine Association

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<sup>44</sup> Helsinki Final Act of 1 August 1975, Organisation for Security and Co-operation in Europe. URL: <https://www.osce.org/helsinki-final-act>

<sup>45</sup> Constitution of Ukraine, Basic Law of 28.06.1996 p. № 254к/96-BP. URL: <https://rm.coe.int/constitution-of-ukraine/168071f58b>

<sup>46</sup> Law of Ukraine "On Cross-border Cooperation" of 24.06.2004 № 1861-IV. URL: <https://zakon.rada.gov.ua/laws/show/1861-15>

<sup>47</sup> European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (ETS No.106), Madrid, 21.05.1980. URL: <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/0900001680078b0c>

<sup>48</sup> Additional Protocol to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (ETS No. 159), Strasbourg, 09.11.1995. URL: <https://www.coe.int/en/web/conventions/fulllist/-/conventions/treaty/159>; Protocol No. 2 to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities concerning interterritorial co-operation (ETS No. 169), Strasbourg, 05.05.1998. URL: <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/169>; Protocol No. 3 to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities concerning Euroregional Co-operation Groupings (ECGs) (CETS No. 206), Utrecht, 16.11.2009. URL: <https://www.coe.int/en/web/conventions/fulllist/-/conventions/treaty/206>

Agreement<sup>49</sup>, which are ratified by Ukraine. The named Law and the laws “On Local Self-government in Ukraine”, “On Local State Administrations” stipulate the rights and competencies of LRAs as subjects of CBC.

The Law “*On Cross-border Cooperation*”<sup>50</sup> (of 2004 with amendments of 2018) outlines a number of relevant norms. The overview of these norms article by article demonstrates their development and interconnection.

In particular, Article 4 (Chapter I. General provisions) defines: 1) a clear division of tasks, powers and responsibilities between the Ukrainian subjects of CBC, and 2) the delineation of responsibilities and powers between central and local executive power bodies in order to most effectively solve problems and tasks in the field of CBC as the principles of the National policy on CBC development.

Chapter II of the Law on organisation of CBC provides for special provisions in Articles 7, 8 and 9 (9-1, 9-2, 9-4).

Article 7 specifically prescribes *a set of LRAs’ rights and competences* in the area. They are of administrative, operational, socio-economic and legal character. In the wording of the Law, the subjects of CBC (in fact, LRAs’) within their powers and in accordance with the domestic legislation shall:

- 1) conclude agreements on CBC and ensure their implementation;
- 2) ensure the fulfilment of Ukraine’s obligations under Ukraine’s international agreements on CBC;
- 3) participate in the development and implementation of joint initiatives, activities, projects, programs and strategies;
- 4) form cross-border cooperation bodies;
- 5) decide on joining the relevant international associations and other associations;
- 6) make proposals on organisation of cross-border trade, creation of cross-border associations;
- 7) exercise other powers in the field of CBC in accordance with the legislation and international treaties of Ukraine, the binding nature of which has been approved by the Verkhovna Rada (Parliament) of Ukraine;
- 8) make proposals concerning the special procedure for crossing the State Border of Ukraine;
- 9) make, if necessary, proposals for amendments to the legislation on CBC.

Provisions of Article 8 foresee *the competence* of the subjects of CBC (LRAs) *to conclude agreements on CBC* within the limits of their powers and in accordance with the domestic legislation. Thus, LRAs are given the right to lay relevant agreements to regulate legal, organisational, economic and other aspects of CBC. When laying an agreement on CBC, LRAs are required to use the standard form of

<sup>49</sup> Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part (fully in force as of September 1, 2017) URL:

<https://www.kmu.gov.ua/storage/app/media/uploaded-files/ASSOCIATION%20AGREEMENT.pdf>

<sup>50</sup> Law of Ukraine “On Cross-border Cooperation” of 24.06.2004 № 1861-IV. URL:

<https://zakon.rada.gov.ua/laws/show/1861-15>

such an agreement, which is approved by the central executive power body that is authorized to form and implement the National regional policy. Nowadays it is the Ministry of Communities and Territories Development of Ukraine. There is another requirement towards the Ukrainian LRAs - to register agreements on CBC and report on their implementation. To register a laid CBC agreement, its Ukrainian Party shall send an official notification about the fact to the authorised central executive power body. Further, at the request of central executive power bodies responsible for CBC (not exclusively the Ministry of Communities and Territories Development) the Ukraine's LRAs are expected to inform them about the implementation of agreements on CBC, as well as about the results.

Article 9, while regulating *the issue of the CBC bodies*, defines that in some cases the relevant executive bodies of local self-government and structural subdivisions of local executive power bodies may be entrusted to perform the functions of CBC bodies, which are located on the territory of Ukraine. Also it is foreseen that territorial communities, their representative bodies, local executive power bodies have the competence to assign the tasks to a CBC body, which shall perform them in accordance with its powers and in the manner prescribed by the legislation of Ukraine.

In addition, Article 9-1 stipulates *the right of territorial communities* represented by their representative bodies (councils) and their associations, local executive power bodies of Ukraine *to be the founders and / or members of Euroregional Co-operation Groupings (ECGs)* established both in Ukraine or on the territory of a Council of Europe member state.

Article 9-2 obliges LRAs to *use a standard Agreement on the establishment of an ECG and a standard Statute of an ECG* that are approved by the Cabinet of Ministers (Government) of Ukraine. The next requirements towards LRAs concern the procedures of approval and enactment of the named documents. When they are drafted, an authorised representative of a relevant LRA, which plan to form an ECG, shall send them for approval to the central executive power body authorised to implement the National regional policy. Upon approval, LRAs shall stick to specific procedure of enactment of CBC Agreements on the establishment of ECGs. In particular, an Agreement shall be signed in accordance with the prescribed procedure and approved at the next plenary session of the local council, during which the local council shall adopt the decision about the establishment of an ECG and approve its Statute.

As for *the issues of material and financial support for the activities of ECGs*, in accordance with Article 9-4, LRAs in their status of founders and members of ECGs have the right to make one-time or periodic contributions.

It is worth mentioning, that in the Law there are no similar provisions on LRAs' rights and competence concerning the European Groupings of Territorial Cooperation (EGTCs). The legislative gap is evident and the acting legislation needs improvement.

LRAs have *the right to count - to some extent - on the State support in the process of CBC* as foreseen by Articles 10, 11 and 13 (Chapter III. State support for the cross-border cooperation development).

At the start of the process and further they have the right to refer to the relevant state power bodies for the necessary legal, organisational, methodological, informational assistance and support. LRAs have the right to participate in elaboration and fulfilment of the State programs for the CBC development in order to promote and realise their interests.

The Law determines the *functions of LRAs (as the CBC subjects) in the field of the State support* for the CBC development: 1) organise and coordinate the work on preparation and realisation of projects (programs) of CBC; 2) participate in the development of joint projects (programs) of CBC and coordinate their realisation; 3) develop regional programs of CBC; 4) develop or participate in the development of the State programs of CBC; 5) provide, within their competence, the allocation from the local budgets for the CBC development in the manner prescribed by the legislation (Article 13).

Yet, another provision envisages *the competence of LRAs on financial support of CBC*. Article 14 (Chapter IV. Financial support of CBC) prescribes that LRAs as subjects of CBC shall form their budgets for the respective year (oblast, rayon(district) budgets and local self-government budgets (budgets of territorial communities of villages, their associations, settlements, cities, including districts in cities, budgets of united territorial communities)) with regard to the needs for expenditures for realisation of projects (programs) of CBC, as well as for fulfilment of all necessary tasks related to CBC, including the need for functioning of CBC bodies. Also, as foreseen, such expenditures are covered at the expense of the State Budget of Ukraine as well as other sources not prohibited by law. When it comes to joint financing of projects (programs) of CBC realised in cooperation by Ukrainian and foreign LRAs, international technical assistance, credit resources of international financial organisations, European Union funds may be used in accordance with Ukrainian legislation.

Alongside, *the laws "On Local Self-government in Ukraine"* and *"On Local State Administrations"* detailise the above listed provisions depending on the LRAs' legal status. Further on the general overview of the relevant legislative provisions is provided.

Thus, the Law *"On Local Self-government in Ukraine"*<sup>51</sup> (of 1997, last amendment of 02.12.2020) in its Article 16 (Chapter I. General provisions) determines the organisational, legal, material and financial foundations of local self-government and defines the status of local self-government bodies (LSBs) as legal entities that are endowed by this and other laws with their own powers, within which they act independently and are responsible for their activities in accordance with the law. The material and financial basis of local self-government, that can be used by them also in the course of CBC, is the movable and immovable property, local budget revenues, other funds, land, natural resources being in the communal property of territorial communities of villages, settlements, cities, districts in cities, as well as objects of their common property, managed by district and oblast councils. Local budgets are independent; they are not included in the State Budget of Ukraine and other local budgets.

<sup>51</sup> Law of Ukraine "On Local Self-government in Ukraine" of 21.05.1997 No 280/97-BP. URL: <https://zakon.rada.gov.ua/laws/show/280/97-%D0%B2%D1%80#Text>

Article 15 establishes *the right* of LSBs and their associations *to be members of international associations of LSBs* in order to more effectively exercise their powers, protect the rights and interests of territorial communities. At the same time the Law underlines that LSBs keep their powers/authorities, the latter may not be transferred to associations of LSBs or other voluntary alliances of LSBs.

*The exclusive competence of LSBs of the village, settlement, city level* in connection with CBC and international cooperation is established by Article 26 (Chapter II. Organisational and legal basis of local self-government). These LSBs are authorized to make decisions only at their plenary sessions about: 1) approval of Agreements on an ECG, formation of an ECG, joining to or leaving such an ECG, approval of a Statute of an ECG and amendments thereto (par. 21-1); 2) joining an EGTC and/or leaving such a Grouping (par. 21-2); 3) establishment by communal enterprises of joint ventures, including those with foreign investments (par. 33); 4) approval of agreements concluded by village, settlement, city mayors on behalf of the councils on issues referred to the exclusive competence of these LSBs (par. 43).

Referring to the last mentioned competence, it is good to mention *the competence of a village, settlement, city mayor* to represent the interests of a territorial community, a council and its executive body also in international relations and lawfully conclude agreements on behalf of them as provided by Article 42. When such agreements concern the issues that are in the exclusive competence of LSBs, a mayor is obliged to submit agreements to LSBs for their approval.

The Law defines also *the competence of executive bodies of LSBs* of the village, settlement, city levels, among which there are those related to the foreign economic activity (Article 35). Classically, executive bodies of LSBs are given their own (self-governing) general powers and delegated powers in this area.

*Their own general powers* include, in particular: 1) concluding and ensuring the fulfilment of agreements with foreign partners for the purchase and sale of products, works and services provided in the manner prescribed by law; 2) promotion of foreign economic relations of enterprises, institutions and organisations located in the relevant territory, regardless of their ownership; 3) assistance in the establishment of joint ventures with foreign partners of industrial and social infrastructure and other facilities; attracting foreign investment to create jobs to be provided on the basis of the Ukrainian legislation.

When performing *their delegated powers*, LSBs' executive bodies are authorized to organise and control the transfrontier and coasting trade; establish conditions for the proper functioning of customs authorities, assist to their activities; ensure, within the given powers, the fulfilment of Ukraine's international obligations on the relevant territory.

Having in mind the transfrontier movement in the course of CBC, it is necessary to mention also the delegated powers of executive bodies of LSBs of the village, settlement, city levels concerning their

activities on establishing appropriate conditions for functioning of checkpoints across the State Border of Ukraine (Article 36).

In addition, *LSBs of the district and oblast levels* are also authorised to perform their powers concerning CBC realised in the forms of ECGs and EGTCs. This competence is established by Article 43, which prescribes that LSBs of these levels exclusively at their plenary sessions shall decide on concluding and approving agreements on the ECGs, making decisions on the establishment of an ECG, on joining or leaving such a Grouping, approving the statute of an ECG and making changes to its statute (par. 15-1); joining an EGTC or leaving such a Grouping (par. 15-2).

Together with LSBs, local bodies of the state executive power - local state administrations in Ukraine - are defined the subjects of CBC as established by the Law "On Cross-border Cooperation" (Article 1). Local state administrations (LSAs) exercise on the relevant territory their powers granted by the State or the powers delegated to them by relevant LSBs.

The Law of Ukraine "On Local State Administrations"<sup>52</sup> (of 1999, last amended on 17.11.2020) in its special part prescribes competences of LSAs (Chapter III.). The particular list of their authorities is established by Article 13. They concern different kinds of activities in all areas. Within the limits and forms determined by the Constitution and laws of Ukraine, *LSAs are responsible for* resolving the issues, which are important also for CBC: 1) ensuring the rule of law, protection of the rights, fundamental freedoms and legitimate interests of citizens; 2) socio-economic development of the respective territories; 3) budget, finance and accounting; 4) property management, privatisation, promotion of entrepreneurship and implementation of the State regulatory policy; 5) industry, agriculture, construction, transport and communications; 6) science, education, culture, health, physical culture and sports, family, women, youth and children; 7) use of land, natural resources, environmental protection; 8) foreign economic activity; 9) social protection, employment, labor and wages, etc.

*The sectoral powers of LSAs on international and foreign economic relations* are among the main ones and are prescribed by Article 26: 1) to ensure the fulfillment of obligations under international agreements of Ukraine on the relevant territory; 2) to promote the development of international cooperation in the field of economy, protection of human rights, fight against terrorism, environmental security, health, science, education, culture, tourism, physical culture and sports; 3) to conclude agreements with foreign partners on cooperation within the competence defined by the legislation; 4) to promote foreign economic relations of enterprises, institutions and organisations located on its territory, regardless of their ownership, promote the development of the export base and increase production for export; 5) to organise transfrontier and coasting trade; 6) to assist the activities of customs authorities and border services, establish the necessary conditions for their

<sup>52</sup> Law of Ukraine "On Local State Administrations" of 09.04.1999 No 586-XIV. URL: <https://zakon.rada.gov.ua/laws/show/586-14/print>



proper functioning; 7) to make proposals to the relevant bodies aimed to attract foreign investment for the development of economic potential of the territory in the manner prescribed by the law.

Also, LSAs are authorized to take actions in order to create appropriate conditions for the functioning of checkpoints across the State Border of Ukraine (Article 27, par. 5).

Evidently, LSBs and LSAs are granted a number of similar competencies concerning the international cooperation. As the subjects of CBC they have common powers ensured by Article 7 of the Law "On Cross-border Cooperation". The laws "On Local Self-government in Ukraine" and "On Local State Administrations" have provisions on interrelation and interaction between LSBs and LSAs, on their delegated authorities. They work to meet the interests and needs of local communities also by means of implementing national and regional development programs in different sectors, the Ukraine's international commitments and obligations (including those of bilateral international treaties and agreements on CBC and other cooperation).

We'd underline that the Ukraine's legislation on the LRAs' rights and competencies on CBC was considerably improved in 2018. The Law "On Amendments to Some Laws of Ukraine on Cross-border Cooperation"<sup>53</sup> introduced the expansion of powers and enhancement of mechanisms of cooperation between LSBs and LSAs in the field of CBC. These legislative measures were conditioned by Ukraine's ratification of Protocol № 3 to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities concerning Euroregional Co-operation Groupings (ECGs)<sup>54</sup>, as well as the intention to – at least basically – implement the relevant EU law norms (also with regard to the EU-Ukraine Association Agreement) – Regulation (EC) No 1082/2006 of the European Parliament and of the Council of 5 July 2006 on a European grouping of territorial cooperation (EGTC) and Regulation (EU) No 1302/2013 of the European Parliament and of the Council of 17 December 2013 amending Regulation (EC) No 1082/2006 on a European grouping of territorial cooperation (EGTC) as regards the clarification, simplification and improvement of the establishment and functioning of such groupings.

However, there are undesirable shortcomings in the domestic legislation that shall be eliminated without unreasonable delay. For instance, the Law "On Cross-border Cooperation" does not clearly define the purpose, tasks, procedure of euroregions and EGTCs' formation with Ukraine's LRAs in the status of founders, co-founders and members. There are no norms on methods and mechanisms of euroregions' and EGTCs' functioning, etc. Obviously, such evident legislative discrepancies and gaps cause substantial incomprehension and barriers to the Ukraine's LRAs' participation in EGTCs', their effective cooperation within euroregions with the LRAs of the neighboring EU member states. Ipso

<sup>53</sup> Law of Ukraine "On Amendments to Some Laws of Ukraine on Cross-border Cooperation" of 04.09.2018 No 2515-VIII/ URL: <https://zakon.rada.gov.ua/laws/show/2515-19#Text>

<sup>54</sup> Law of Ukraine "On Ratification of Protocol № 3 to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities concerning Euroregional Co-operation Groupings (ECGs)" of 16.05.2012 № 4704-VI. URL: <https://zakon.rada.gov.ua/laws/show/4704-17#Text>



facto, it is expedient, in our opinion, to introduce a special law on forms and bodies of CBC and the relevant regulatory acts to ensure its implementation.

As well, probably, it can be useful to amend the *bilateral cooperation treaties* of the interstate level *on good neighborly relations and cooperation*, CBC including, between Ukraine and other European countries to promote the use of ECGs and EGTCs. Ukraine has concluded such treaties with all European neighboring countries – Bulgaria (1992), Hungary (of 1991), Poland (of 1992), Romania (of 1997), and Slovak Republic (of 1993). Their norms provide for the CBC development between LRAs also.

Namely, Article 8 of the *Treaty on the Fundamentals of Good Neighborliness and Cooperation between Ukraine and the Republic of Hungary* states that “The Contracting Parties shall make every effort to promote contacts between bodies of state power and administration, as well as regional and local governments and their heads on a permanent, regular basis. The Parties will also encourage cross-border cooperation in all areas.”<sup>55</sup> As foreseen by Article 10 (par. 1) of the *Treaty between Ukraine and the Republic of Poland on Good Neighborliness, Friendly Relations and Cooperation*, “The Parties shall promote the establishment and development of direct relations and cooperation between regions, administrative-territorial units and cities of Ukraine and the Republic Poland. Particular attention will be paid to cross-border cooperation. The Parties will cooperate in the field of long-term planning of development of border regions”<sup>56</sup>. Article 8 of the *Treaty on Good Neighborliness, Friendly Relations and Cooperation between Ukraine and the Slovak Republic* envisages that “The Contracting Parties shall make every effort to promote permanent and direct contacts between the central bodies of state power and administration, as well as between local self-government bodies and their representatives”<sup>57</sup>. According to Article 10 (par. 1) of the *Treaty on Good Neighborliness and Cooperation between Ukraine and Romania*, “In order to ensure the development and deepening of bilateral relations and the mutual exchange of views on international issues, the Contracting Parties shall facilitate regular contacts between their central and local institutions”<sup>58</sup>. The *Treaty on Friendly Relations and Cooperation between Ukraine and the Republic of Bulgaria* in its Article 7 establishes that “The Contracting Parties shall maintain contacts and hold meetings between representatives of bodies of state power and administration at various levels.” Article 8 provides that “The Contracting

<sup>55</sup> Treaty on the Fundamentals of Good Neighborliness and Cooperation between Ukraine and the Republic of Hungary of 06.12.1991, ratified by Ukraine on 01.07.1992. URL: [https://zakon.rada.gov.ua/laws/show/348\\_004#Text](https://zakon.rada.gov.ua/laws/show/348_004#Text)

<sup>56</sup> Treaty between Ukraine and the Republic of Poland on Good Neighborliness, Friendly Relations and Cooperation of 18.05.1992, in force since 30.12.1992. URL: [https://zakon.rada.gov.ua/laws/show/616\\_172#Text](https://zakon.rada.gov.ua/laws/show/616_172#Text)

<sup>57</sup> Treaty on Good Neighborliness, Friendly Relations and Cooperation between Ukraine and the Slovak Republic of 29.06.1993, in force since 16.06.1994. URL: [https://zakon.rada.gov.ua/laws/show/703\\_150#Text](https://zakon.rada.gov.ua/laws/show/703_150#Text)

<sup>58</sup> Treaty of Good Neighborliness and Cooperation between Ukraine and Romania of 02.06.1997, ratified by Ukraine on 17.07.1997. URL: [https://zakon.rada.gov.ua/laws/show/642\\_003#Text](https://zakon.rada.gov.ua/laws/show/642_003#Text)

Parties shall [...] develop relations and cooperation between twin cities and other administrative-territorial units.”<sup>59</sup>

In addition, Ukraine has concluded lots of *international agreements on bilateral cooperation of the intergovernmental level*. Typically, such agreements refer to the relevant bilateral international treaties on good neighborly relations and cooperation and establish rules to promote CBC in specific areas of mutual interest – transportation of passengers and cargo, trade, industrial cooperation, agriculture, environmental protection, education, culture, health care, information exchange, disaster relief, etc.

There is only one special intergovernmental agreement on cooperation between regions of Ukraine and regions of an EU member state – *the Agreement between the Government of Ukraine and the Government of the Republic of Poland on Interregional Cooperation*<sup>60</sup> (of 1993). It underlines the importance of cooperation between regional bodies of state administration and LSBs of both the countries, their readiness to support it and promote economic and social progress of the regions, especially those along the borders, cities and rural areas. Article 5 of the Agreement establishes the rights of regional bodies of state administration and LSBs of both the countries to lay – within their competence and in accordance with the domestic law of both the countries – agreements on the matters of mutual interest. This will apply, in particular, to contracts for the supply of goods or services, as well as the establishment of joint ventures, societies, associations and foundations. Also, it is agreed that interregional cooperation in all defined areas between regional bodies of state administration and LSBs is planned, programmed and implemented at their levels. To ensure the cooperation efficiency, the Parties shall establish a Joint Intergovernmental Coordinating Council for Interregional Cooperation (Article 6) and regional bodies of state administration and LSBs may establish joint coordinating bodies on interregional cooperation (Article 7).

The complete lists of international agreements on bilateral cooperation of the interstate and intergovernmental level between Ukraine and the neighboring European states are provided on the official web-sites of the Embassies of Ukraine in these countries.<sup>61</sup>

<sup>59</sup> Treaty on Friendly Relations and Cooperation between Ukraine and the Republic of Bulgaria of 05.10.1992, in force since 02.03.1994. URL: [https://zakon.rada.gov.ua/laws/show/100\\_003#Text](https://zakon.rada.gov.ua/laws/show/100_003#Text)

<sup>60</sup> Agreement between the Government of Ukraine and the Government of the Republic of Poland on interregional cooperation of 24.05.1993, in force since 27.10.1993. URL: [https://zakon.rada.gov.ua/laws/show/616\\_171#Text](https://zakon.rada.gov.ua/laws/show/616_171#Text)

<sup>61</sup> Legal framework between Ukraine and Bulgaria. URL: <https://bulgaria.mfa.gov.ua/spivrobotnictvo/95-dogovirno-pravova-baza-mizh-ukrajinoju-ta-bolgarijeju>; Legal framework between Ukraine and Hungary. URL: <https://hungary.mfa.gov.ua/spivrobotnictvo/382-dogovirno-pravova-baza-mizh-ukrajinoju-ta-ugorshhinoju>; Legal framework between Ukraine and Poland. URL: <https://poland.mfa.gov.ua/spivrobotnictvo/233-dogovirno-pravova-baza-mizh-ukrajinoju-ta-polyshheju>; Legal framework of relations between Ukraine and Romania. URL: <https://romania.mfa.gov.ua/spivrobotnictvo/180-dogovirno-pravova-baza-mizh-ukrajinoju-ta-rumunijeju>; Legal framework of the Ukrainian - Slovak bilateral cooperation. URL: <http://slovakia.old.mfa.gov.ua/ua/ukraine-sk/legal-acts>

In the course of CBC, *LRAs Ukraine and other European countries* actively lay *bilateral cooperation agreements* based on the international cooperation treaties and agreements.

Quite a convincing example of such process is the activity of different LRAs (village, settlement, city, oblast councils and city, oblast state administrations) of the Ukraine's Volyn oblast, which border with Poland. During the previous decade (2010-2020) they have laid not less than 45 bilateral cooperation agreements, declarations, and memoranda on European integration, democratic traditions, good administration, civil society development, transport infrastructure, processes of change of forms of ownership of enterprises, industry, agriculture, transport and trade, science, technology, protection of cultural heritage, education, health care, sports, tourism, ecology and rational use of natural resources, etc.<sup>62</sup> Some of these agreements are realised with the EU financial support provided through different projects and Neighbourhood Programs.

Following the acting legislative norms and their common decisions, LRAs of Ukraine and other European countries may form *euoregions, ECGs and EGTCs*. The definitions of an euoregion, an ECG and an EGTC were introduced into the Law of Ukraine "On Cross-border Cooperation" only in 2018.

A *euoregion* is defined as an organisational form of CBC, which is carried out in accordance with bilateral or multilateral agreements on CBC. In fact, it fixed the phenomena, practiced by LRAs since the adoption of the CoE Madrid Convention and Protocols to it as well as signing of the interstate international bilateral treaties on good neighborly relations and cooperation. The euoregions have the legal status of non-governmental organisations.

There are a number of euoregions established along the EU external borders, in which Ukraine's LRAs take part: the Interregional Association "Carpathian Euroregion" (1993), the Cross-border Association Euroregion "Bug" (1995), the Euroregion "Lower Danube" (1998), the Euroregion "Upper Prut" (2000). They function on the basis of the LRAs' agreements.

No ECGs with participation of the Ukraine's LRAs, and only one Tisza EGTC have been created since the amendment of the Law of Ukraine "On Cross-border Cooperation" with specific provisions in 2018. The Tisza EGTC is formed by the Hungarian and Ukrainian LRAs and functions on the basis of the Agreement and the Statute adopted and enacted in 2015.

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<sup>62</sup> List of concluded agreements on cross-border cooperation until 2020. The Volyn Oblast State Administration. URL: <https://voladm.gov.ua/article/ukladenih-ugod-pro-transkordonne-spivrobotnictvo-do-2020-roku/>

## 6.4. Examples of application of international (agreements) / EU law in cross-border territorial cooperation

As a state located in the center of Europe, Ukraine strives to become a real participant in the European integration process. Besides being a state with the longest external border among the European countries, and with most oblast having external borders, Ukraine is deeply interested in the comprehensive development of CBC, which provides for many potential opportunities.<sup>63</sup>

In the early 1990s, the Ukrainian authorities started to use the potential of regional opportunities. One of the results was the establishment of direct contacts with neighboring countries.<sup>64</sup> The CBC development started in the Western Ukraine. As a rule, local authorities of the Western Ukraine, seeking additional resources, are the initiators and founders of cross-border structures managed by non-governmental institutions.<sup>65</sup>

In 1993, Ukraine took part in creation of the Carpathian Euroregion. The Carpathian Euroregion Interregional Association was established on February 14, 1993. The Ministers of Foreign Affairs of Hungary, Poland, and Ukraine signed a Declaration on Cooperation between the Population Living in the Border oblasts.<sup>66</sup> The Declaration stated that the governments of these countries support the new cross-border initiative. The founding documents of the named Association emphasised that the Carpathian Euroregion was created «As a general advisory and coordinating body to promote cross-border cooperation between border regions - members of the Association». Its creation complies with the principles of the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities.<sup>67</sup>

The Carpathian Euroregion includes the bordering administrative-territorial units of Ukraine (Zakarpatska, Ivano-Frankivsk, Lviv and Chernivtsi oblasts); Poland (Podkarpackie Voivodeship); Slovakia (Košice and Prešov regions); Hungary (Borsod-Abaúj-Zemplén, Heves, Jász-Nagykunszolnok, Szabolcs-Szatmár-Bereg, Hajdú-Bihar and cities with regional status Debrecen, Eger, Miskolc, Nyíregyháza); and Romania (Bigor, Botosani, Maramures, Suceava, Satu Mare, Zilag and

<sup>63</sup> Belevtseva V.V. Legal aspects of cross-border cooperation at the regional level: dis. ... Candidate of Legal Sciences. Kyiv, 2008. 193 p. P. 34

<sup>64</sup> Romanyuk S.A. Regional development policy in Ukraine: current status and new opportunities. Regional research: Monograph. - K.: UAP, 2001. – 109 p.

<sup>65</sup> Belevtseva V.V. Legal aspects of cross-border cooperation at the regional level: dis. ... Candidate of Legal Sciences. Kyiv, 2008. 193 p. P. 34

<sup>66</sup> Skyba I.I. The Carpathian Euroregion (1993 - 2013). URL: <https://dspace.uzhnu.edu.ua/jspui/bitstream/lib/1063/1/%D0%9A%D0%90%D0%A0%D0%9F%D0%90%D0%A2%D0%A1%D0%AC%D0%9A%D0%98%D0%99%20%D0%84%D0%92%D0%A0%D0%9E%D0%A0%D0%95%D0%93%D0%86%D0%9E%D0%9D%20%281993%20%E2%80%93%202013%20%D1%80%D1%80.%29.pdf> P. 64

<sup>67</sup> Belevtseva V.V. Legal aspects of cross-border cooperation at the regional level: dis. ... Candidate of Legal Sciences. Kyiv, 2008. 193 p. P. 34

Harghita counties).<sup>68</sup> The Carpathian Euroregion territory is 143,885 km<sup>2</sup>, of which Poland accounts for 11.5%, Slovakia - 6.4%, Romania - 27.2%, Hungary - 18.4%, and Ukraine - 36.4% of the total area.<sup>69</sup>

Figure 7: Territory of the Carpathian Euroregion



The Statute regulates the activities of the Euroregion. Following the provisions of the Statute, the Carpathian Euroregion operates in the format of an interregional association (it does not have the status of a legal entity). The Carpathian Euroregion aims to organize and coordinate activities that will promote economic, scientific, environmental, cultural and educational cooperation between its members; to provide assistance in the development of specific projects on CBC; to promote the development of contacts among the population of border areas and good neighbourly relations between its members; to act as a mediator and to ensure cooperation of the Euroregion's members with international organisations and institutions.<sup>70</sup> The Carpathian Euroregion's organisational structure is the Council of the Euroregion, the Chairman of the Council of the Euroregion, the Presidium of the Council of the Euroregion, the International Secretariat of the Euroregion, the National Representations of the Euroregion, the Euroregion working committees.

<sup>68</sup> Kukalets O. "The Carpathian Euroregion" as a form of cross-border cooperation of Ukraine with the European Union. URL: [https://eprints.oa.edu.ua/2346/1/Kukalets\\_NZ\\_stud\\_Vyp-3\\_turyzm.pdf](https://eprints.oa.edu.ua/2346/1/Kukalets_NZ_stud_Vyp-3_turyzm.pdf) p. 179-180

<sup>69</sup> Mikula N. Euroregions: experience and prospects. URL: <http://znc.com.ua/ukr/publ/book/book-mikula-2003/book-mikula-2003.pdf> p. 116-117

<sup>70</sup> Kish Ye, Lendiel M., Mitryaeva S. Cross-border cooperation. URL: <http://www.zakarpattia.com/?p=844>



The Carpathian Euroregion has a drawback - it is the largest in Europe. It includes four oblasts from Ukraine only - Zakarpatska, Ivano-Frankivsk, Lviv, and Chernivtsi. This fact creates the management problems. It is not so easy to coordinate the Ukrainian state administrations' activities within a single organisational structure. From the scientists' point of view, the huge territory is a negative factor. Participants of CBC have different levels of competence and interest in the development of local initiatives. For example, the Lviv Oblast is deeply interested in developing bilateral initiatives with Poland, while the Zakarpatska Oblast, having closer relations with Hungary, Slovakia, and Romania – favors other goals.<sup>71</sup>

As already mentioned, the Carpathian Euroregion's National Representations are established in each its member country. According to the Unified State Register of Legal Entities, Individual Entrepreneurs, and Public Associations of Ukraine dated January 20, 2021, the Association of Local Self-government Bodies "Euroregion Carpathians-Ukraine" (ALSGB "Euroregion Carpathians-Ukraine") was registered in Ukraine on October 2, 2007.<sup>72</sup> In November 2008, the Interregional Association "Carpathian Euroregion" recognized the ALSGB "Euroregion Carpathians-Ukraine" as the National Representation of Ukraine in the Carpathian Euroregion (until 2007, the functions of the National Representation of Ukraine in the Carpathian Euroregion were entrusted to the relevant executive bodies of local self-government and structural units local executive power bodies).<sup>73</sup>

The ALSGB "Euroregion Carpathians-Ukraine" was established to contribute to the development of the Lviv, Zakarpatska, Ivano-Frankivsk, and Chernivtsi oblasts, which are the part of the Carpathian Euroregion, to coordinate and systematise activities of the local communities in CBC. It particularly relates to CBC, tourism, the environmental sphere, energy-saving, alternative energy sources, development of transport and border infrastructure, and interpersonal cooperation.<sup>74</sup>

The activity directions of the ALSGB "Euroregion Carpathians – Ukraine" are the facilitation of the development of CBC and interregional cooperation; formation and approval of new approaches to local and regional development within the Carpathian Euroregion; formation of the network connections and interaction procedures within the Carpathian Euroregion; popularisation of cultural, historical, tourist and natural potential of the Ukrainian part of the Carpathian Euroregion.

The organisational and legal form of the legal entity of the ALSGB "Euroregion Carpathians-Ukraine" is a public organisation (its location: Ukraine, 79008, Lviv Oblast, Lviv, Vynnychenko Street, 18). The founders (participants) of this legal entity are the Sambir District Council, Skoliv District Council, Starosambir District Council, Turkiv District Council, Drohobych District Council (Lviv Oblast), and

<sup>71</sup> Belevtseva V.V. Legal aspects of cross-border cooperation at the regional level: dis. ... Candidate of Legal Sciences. Kyiv, 2008. 193 p. P. 38

<sup>72</sup> Extract from the United State Register of Legal Entities, Individual Entrepreneurs and Public Organizations of Ukraine of 20.01.2021 No 280880815050. P. 1-8.

<sup>73</sup> Association of Self-government Bodies "Euroregion Carpathians-Ukraine". About us. URL:

<https://ekarpaty.com/pro-nas/>

1. <sup>74</sup> EUROREGION CARPATHIANS -UKRAINE.URL:

[HTTPS://WWW.PROSTIR.UA/?ORGANIZATION=EVROREHION-KARPATY-UKRAJINA](https://www.prostir.ua/?ORGANIZATION=EVROREHION-KARPATY-UKRAJINA)

Rakhiv District Council, Perechyn District Council, Velykyi Bereznyi District Council, Volovets District Council (Zakarpatska Oblast).

The founding documents of the ALSGB "Euroregion Carpathians-Ukraine", particularly the Protocol of the Constituent Assembly and the Statute, are missing on the official website of the Association<sup>75</sup> and in the Unified State Register of Legal Entities, Individual Entrepreneurs and Public Associations of Ukraine.<sup>76</sup> But it provides the complete information about the ALSGB "Euroregion Carpathians-Ukraine", in particular: its purpose and objectives; conditions and procedure for admission of its members; rights and responsibilities of the members; its governing bodies, their composition, competence, procedure; sources of income, use of its funds and other property, its control and reporting; the procedure for amending its Statute; the grounds and procedure for its terminating, etc.

At the same time, it should be noted that the European Grouping of Territorial Cooperation TISZA (Tisza EGTC)<sup>77</sup> operates in the Transcarpathia. The Tisza EGTC is the first grouping in Ukraine created between a European Union member state and a third country. The Tisza EGTC was established in 2015 between the Zakarpatska Oblast Council (Ukraine), the Municipal County of Szabolcs-Szatmár-Bereg County (Hungary), and the municipality of Kisvárda (Hungary).

The legal basis for the establishment of the Tisza EGTC were the obligations of Ukraine and Hungary under the international treaties of the Council of Europe – Madrid Convention and its 3 Protocols, as well as the Agreement on the Fundamentals of Good Neighborliness and Cooperation between Ukraine and the Republic of Hungary (of 1991)<sup>78</sup>, Agreement on Cross-border Cooperation between the Cabinet of Ministers of Ukraine and the Government of the Republic of Hungary (of 1999)<sup>79</sup>, Regulations of the European Parliament and the Council of the European Union No. 1082/2006 and No. 1302/2013, provisions of the laws of Ukraine "On Cross-Border Cooperation" and "On Local Self-government in Ukraine" adopted by the Verkhovna Rada of Ukraine and the Law LXXV 2014 "On the European grouping of territorial cooperation"<sup>80</sup>, approved by the National Assembly of Hungary.

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<sup>75</sup> Association of Self-government Bodies "Euroregion Carpathians-Ukraine". Documents. URL: <https://ekarpaty.com/pro-nas/yevroregion-karpati-ukrayina/#1598952550687-4acb43af-9b7c>

<sup>76</sup> Extract from United State Register of Legal Entities, Individual Entrepreneurs and Public Organizations of Ukraine of 20.01.2021 No 280880815050 P. 1-8.

<sup>77</sup> Tisza EGTC. URL: <https://portal.cor.europa.eu/egtc/CoRAactivities/Pages/tisza-egtc.aspx>

<sup>78</sup> Treaty on the Fundamentals of Good Neighborliness and Cooperation between Ukraine and the Republic of Hungary of 06.12.1991, ratified by Ukraine on 01.07.1992. URL: [https://zakon.rada.gov.ua/laws/show/348\\_004#Text](https://zakon.rada.gov.ua/laws/show/348_004#Text)

<sup>79</sup> Treaty and legal basis between Ukraine and Hungary. Official website of the Embassy of Ukraine in Hungary. URL: <https://hungary.mfa.gov.ua/spivrobotnictvo/382-dogovirno-pravovabaza-mizh-ukrajinojuta-ugorshhinoju>.

<sup>80</sup> Act LXXV of 2014 on the European grouping of territorial cooperation, effective from 01.01.2018. URL: <https://portal.cor.europa.eu/egtc/about/National%20Provisions%20Docs/HU-Act-Nr-LXXV-of-2014-EN.pdf>



The activity of the Tisza EGTC is regulated by the Statute. Following its provisions the Tisza EGTC operates in the format of the European Grouping of Territorial Cooperation, which is an independent business, non-profit organisation with legal personality (has the status of a legal entity). The purpose of its activity is to promote CBC between its members to strengthen economic, social, and territorial cohesion in the areas of development outlined in the bilateral intergovernmental Agreement on CBC: transport and communication infrastructure and logistics; energy, agriculture and health; support for small and medium-sized businesses, protection of the environment and nature protection, in particular, protection and development of the Tysa River and its tributaries; culture, education, training and research; tourism, sports; solving the problems of residents of border areas.

The main task of the Tisza EGTC is to implement cooperation programs or their parts, projects, and CBC programs, including specific investment projects, cultural and educational events, informational and educational work on European integration of Ukraine, etc. through the involvement of the European Union international technical assistance funds and financial support from the Member States.

The members of the Tisza EGTC are the founding members - the above-mentioned local governments, and the members that can join it - legal entities, provided they have adopted the Tisza EGTC's Agreement and the Statute and elected as members of the General Meeting of this Grouping. The bodies of the Tisza EGTC include the General Meeting, Director, Secretariat, Supervisory Commission consisting of 3 persons; officials - Chairman, Co-Chairman, Chairman of the Supervisory Commission (senior officials), members of the Supervisory Commission. According to the Statute, the Chairman of the Tisza EGTC is the current Chairman of the General Assembly of the Sabolch-Satmar-Bereg Oblast. The Co-chairman is the current Chairman of the Zakarpatska Oblast Council. The Director is appointed by the Hungarian party to the Agreement, the Deputy Director - by the Ukrainian one. The General Secretariat is located in Hungary, the country of the Tisza EGTC's registration, but some of its representatives from Ukraine provide Ukrainian members' work.

In general, the Tisza EGTC is funded by its founders' annual membership fees, which are approved annually by the General Meeting, as well as by international technical assistance, including that, provided by the European Union through the European Regional Development Fund, the European Social Fund or the Cohesion Fund, and the use of all other available EU financial instruments.<sup>81</sup>

The Tisza EGTC is a young and, at the same time, unique and promising project. Its activities are increasingly bringing visible and tangible results, and the horizons of CBC are only expanding. The activities of the Tisza EGTC undoubtedly correspond to the priorities of the State policy of Ukraine in the field of CBC in general, and one of the priorities of the Zakarpatska Oblast is the sustainable development of CBC with its partners from the neighboring Hungary in the form of an EGTC. Using the Tisza EGTC's experience, the Ukrainian and Hungarian subjects of CBC and the European Union

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<sup>81</sup> Statute of the European Grouping of Territorial Cooperation TISZA. URL: <https://tizzaett.hu/uk/dokumentaciya/dokumenty/94ots-tisa/>

will be able to demonstrate the real results in realisation of people's aspirations to live happily in Europe without borders.<sup>82</sup>

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<sup>82</sup> Cross-border Cooperation: Legal Bases and Successful Practices: Manual / Jevcsák J.B., Zardi A., Lazur Y.V., Ocskay G., Sanchenko A.Ye., Soshnykov A.O., Ustymenko V.A., Fetko Yu.I. / edited by. V.A. Ustimenko; Editors-compilers Guk A.K, Sanchenko A.Ye - K., 2020. - 152 p.

## 7. SUMMARY

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### 7.1. Brief overview of the territorial administrative systems of the countries

#### Czechia

The Constitution of the Czech Republic provides that the main units of territorial self-government are municipalities and higher territorial units. In 2000, the Act on Regions introduced a territorial administrative system that divides country into 14 self-administrative regions. The Act No. 314/2002 Coll introduced two basic categories of municipalities – 1) municipalities with a basic scope of delegated competence and 2) municipalities with an extended scope of delegated competence were created. The second category is divided into 1) municipalities with an authorized municipal office and 2) municipalities with extended powers.

#### Hungary

Hungary's territorial-administrative system is organised on four levels: region, county, district and settlement. Under the country level, eight statistical regions have been defined (NUTS 2), which consist of three counties (except for Pest and Budapest). The system of the 19 counties (NUTS 3) is the basis of the Hungarian administration. On 1st January, 2013, 197 districts have been created within these counties from among which 23 are districts of the capital city. The fourth administrative level is represented by the settlements; 3155 units have own local self-government and autonomy (346 towns and 2809 municipalities). The latter ones are characterised with the ability to guarantee the fundamental living conditions and the direct accessibility of public services for their inhabitants.

#### Poland

Administrative system of Poland is divided into 16 voivodeships, 380 counties, of which 66 are urban and 314 are rural, and 2477 communes of which 302 are urban, 642 urban-rural, and 1533 rural. The voivodeship (NUTS2) is a unit of administrative division of a higher level, and the essential territorial division for the governmental administration. The county (LAU1) is a unit of administrative division and a constituent part of the province (voivodeship). Each county encompasses between several and more than ten neighbouring communes. There are also separate urban units, which are treated as counties and called urban counties. The municipality (LAU2) constitutes the basic unit of territorial self-government, and municipalities are classified as rural, urban-rural or urban.

## Slovakia

Since 1996 Slovakia has a territorial administrative system that divides the country into 8 regions, 79 districts, and over 2.900 municipalities. 135 municipalities have the status of a city or town. Over 400 competences were conferred on the self-governing regions and municipalities from central state authorities along with respective property and public finances.

## Ukraine

The system of administrative-territorial organisation of Ukraine consists of the Autonomous Republic of Crimea, 24 oblasts, Kyiv and Sevastopol cities<sup>83</sup>. An oblast includes districts, cities, towns, settlements<sup>84</sup> and villages. There were 490 districts in Ukraine by 2020. By the Resolution of the Verkhovna Rada of Ukraine of July 17, 2020, their number was reduced to 136. 1469 united territorial communities are created up to 2020. Since 2015, the decentralisation reform is being implemented.

Table 6: Number of statistical regions in V4 countries

Country	NUTS 1	NUTS 2	NUTS 3 (regions)	LAU 1 (districts)	LAU 2 (municipalities)
Czechia	1	8	14	77	6254
Hungary	3	8	20	174	3152
Poland	7	17	73	379	2478
Slovakia	1	4	8	79	2928

## 7.2. Brief summary of the legislations on local and regional authorities

### Czechia

Local (Act on Municipalities 128/2000 Coll) and regional (Act on Regions 129/2000 Coll) authorities have both independent and delegated competences (set by sectoral law). Local and regional authorities do not hold legislative powers. Regions can propose legislative acts. They can issue generally binding regulation in the area of independent competences and ordinances in the area of delegated competences. There is no formal hierarchy between the regions and the municipalities, however regional authorities serve as appeal bodies to the municipal authorities in administrative procedures. Local and regional authorities have their own budgets. Sub-national governments' revenues are derived from taxation, transfers and other sources, mainly fees resulting from the

<sup>83</sup> Art.133 of the Constitution of Ukraine

<sup>84</sup> Art.133 of the Constitution of Ukraine

provision of services. In 2018 sub-national expenditure represented 11.7% of the GDP in comparison with the central government expenditure that represented 29.2% of the GDP.

*Table 7: Overview of competences of regional and local actors*

Competences of regions	Competences of municipalities
Education (secondary education); Transport (road network, regional public transport); Social services; Environment; Regional economic development; Planning (approval of planning and zoning documents); Health care, including drug prevention; Youth (funding); Sport (funding); Fire safety; Cohesion (regional boards on cohesion); Tourism; Prevention of criminality; Inter-regional and international cooperation with foreign territorial authorities; Other matters of regional interest; Other matters delegated by the State.	Local development; Environment (water management and treatment, urban heating, waste processing, environmental protection); Health services; Social welfare (social assistance and youth policy); Transport (public transport, management of local roads); Local planning (management and maintenance of open spaces, cemeteries); Sport; Culture; Fire-fighting and prevention; Municipal police; Primary education, and Housing.

## Hungary

In Hungary local and regional autonomy and democracy prevail at local level which means settlement (municipality or town) and medium territorial (county) level. The county system bearing historic traditions has a decisive role whose institution operating competence has been weakening in the most recent times. Basic rights of the self-governments are defined by the Fundamental Law and the cardinal (Law No CLXXXIX of 2011 on Hungary's local governments). Paragraph 31(1) of the Fundamental Law defines the operational goal of local governments as the management of local public affairs and the exercise of local power. The competences of local governments to manage local public affairs are the following:

a) makes regulations; b) takes decisions; c) administer autonomously; d) defines its organisational and operational order; e) exercises the ownership rights over the propriety of the local government; f) decides on its budget and manages it independently; g) is allowed for running its own businesses through its propriety and incomes without endangering the exercise of its duties; h) decides on the types and values of local taxes; i) has the competence to create local symbols and the establishment of local prizes and honorific titles; j) may request for information from the bodies bearing the given task and competence, initiate decisions, express opinion; k) may associate with other local governments, establish interest representation alliance, cooperate with local governments of other countries and join international municipality organisation; l) exercises further functions and competences defined by the law.

Due to the administrative reform of 2013, important basic functions (like primary schools from local governments or public health from the counties) were transferred to the state. Local governments may undertake further duties which do not belong to the jurisdiction of another body, but the performance of the duties voluntarily undertaken must not endanger the exercise of the mandatory duties and functions prescribed by the law and they may not be financed but by own incomes or by

resources dedicated specially to these functions. Functions of the county are: according to the relevant laws, they perform spatial development, rural development, spatial planning as well as coordinating tasks, while they have lost their former institution maintaining competences, their propriety, former decision-making and financial competences. County level is primordially appropriate for triggering and coordinating international and cross-border cooperation.

## Poland

Administrative authority at the provincial level is shared between a government-appointed governor, an elected regional assembly, and an executive chosen by that assembly. The governor is the regional representative of the central government. The governor acts as the head of central government institutions at the regional level, manages the central government's property in the region, oversees the functioning of local government, coordinates actions in the field of public safety and environmental protection, etc. The regional assembly passes laws, including the regional development strategies and budget. The executive, headed by the marshal, drafts the budget and development strategies, implements the resolutions of the regional assembly, manages property belonging to the province, and deals with regional policy, including management of EU funding.

Competence at the county level is vested in an elected council, while local executive power is vested in the *starosta*, an official elected by that council. The county authorities have decision-making powers and competences in certain areas (education at the high-school level, health care, public transport, land surveying, issuing work permits to foreigners, and vehicle registration).

The scope of a commune's jurisdiction includes all public matters of local significance. The municipalities dispose their own budget based on three main sources: their own revenues, general subsidies, and targeted allocations from the state budget. The legislative and controlling body of the commune is the elected municipal council, or in a town – the town assembly. Executive power is held by the mayor of the municipality. Among the main responsibilities of communes, the following issues should be listed: ensuring spatial harmony, real estate management, environmental protection and conservation of natural areas, water management, management of the sewage system, country roads, public streets, traffic systems, supply of electric and thermal energy and gas, public transport, health care, etc. Commissioned tasks cover the remaining public tasks resulting from the legitimate needs of the state, assigned by the central government to be performed by self-government units. The tasks are handed over on the basis of statutory bylaws, charters and regulations; or, by way of agreements between the self-government units and the central government.

## Slovakia

Due to Act no. 369/1990 Coll. on municipal establishment, municipalities obtained self-governing independent status, legal subjectivity, including a determined package of competences together with legal responsibilities. Act no. 221/1996 Coll. on territorial administrative organization together with the Act no. 222/1996 on organization of local state administration established 79 district state offices

with the status of a basic level of territorial state administration along with 8 regional state offices with status of the second level of state administration. Until 2001 administrative subsystem of local administration in Slovakia was represented only by municipal self-governments. Self-government on the regional level was constituted on the basis of amendment of the Constitution in 2001, which established the legal status of the second level of self-government, that is, the higher territorial units. The 8 self-governing regions were established by Act no. 302/2001 Coll. of July 2001.

Self-governing bodies are autonomous political and administrative institutions formed on the basis of elections. Citizens elect Chairmen (or Presidents) of self-governing regions and Members of regional councils in direct election. Presidents convene and chair regional council meetings and are responsible for external representation of the regions. They act as a statutory body of the self-government, including in matters related to property management, staff employment and relations with third parties. They decide in the matters that are conferred on self-governing regions under the current legislation. The council of the self-governing region may approve generally binding regulations and impose fines on natural or legal persons in case of their violation. Regional authorities are responsible for management of secondary schools, hospitals, retirement homes, theatres, galleries, museums or libraries located in the region. They ensure operation of tourist, culture and sports facilities, public transport, and social services. They prepare and coordinate implementation of regional development plans in cooperation with municipalities, business and non-governmental entities based in the region. They are partners for the central government in issues related to regional and local development, including in the management of public investments as well as the EU funds.

The self-government of municipality represented by mayor and council executes tasks related to proper management of assets of the municipality, draw up and approve municipal budget, including a final financial account. Further, it decides in matters of local taxes and local charges. It may adopt generally binding regulations and impose fines on natural or legal persons in case of their violation. Local authorities are responsible for building and maintaining local roads, operating public and/or municipal facilities, providing public services, maintaining cleanliness, public greenery, public lighting, water supply, waste disposal, and local public transport. They procure and approve land-use planning documentation for residential areas and zones, housing development programmes, investment and business activities of municipality with the aim to satisfy needs of the local population. They establish, dissolve and monitor activities of municipal organizations, hold local referenda on pressing issues of municipal life and municipal development and are responsible for ensuring public order.

## Ukraine

The Constitution of Ukraine, the laws of Ukraine "On Local Self-government in Ukraine", "On Local State Administrations" and "On Cross-border Cooperation" determine the legal status, the procedure for creation and competence of local and regional authorities in Ukraine. Heads of local state administrations are appointed and dismissed by the President of Ukraine on the proposal of the



Cabinet of Ministers of Ukraine. The composition of local state administrations is formed by the heads of local state administrations.

Under Articles 140 - 141 of the Constitution of Ukraine and Article 5 of the Law of Ukraine "On Local Self-government in Ukraine" it includes a territorial community; a village, settlement, city council; a village, settlement, city mayor; executive bodies of village, settlement, city councils; a starosta mayor; district and oblast councils representing the common interests of territorial communities of villages, settlements, cities; bodies of self-organization of the population. A village, settlement, city, district, oblast council consists of deputies elected by residents of a village, settlement, city, district, oblast based on universal, equal, direct suffrage by secret ballot. The term of office of a village, settlement, city, district, oblast council is five years. Territorial communities elect by secret ballot a village (settlement/city) chairman, who heads the council's executive body and chairs its meetings. The term of office of a village, town, or city chairman is five years. A chairman of a district and a chairman of an oblast council are elected by the relevant council; they head the council's executive staff.

### **7.3. Rights and competences of local and regional actors on international and cross-border cooperation – based on domestic law**

#### General

International cooperation is based on international treaties and neighbourly contacts at regional and local level. It can involve, among other things: the exchange of goods, information and promotional activities, consulting, research and development, the provision of services, cultural, educational and sport exchanges, the development of cross-border infrastructure, tourism activities, environmental protection and spatial planning. International cooperation comprises five categories of activities:

- cooperation within the European Union;
- bilateral cooperation;
- multilateral cooperation;
- EU projects;
- cross-border cooperation.

International cooperation, including cross-border cooperation, is regulated by three main documents:

- European Outline Convention on Transfrontier Co-operation Between Territorial Communities or Authorities and three Protocols to it;
- European Charter of Local Self-Government;
- European Charter of Border and Transfrontier Regions.

## European Grouping of Territorial Cooperation – EGTC

The EGTC offers the option of establishing groupings of regional and local authorities from different EU Member States without requiring a prior international agreement to be signed and ratified by national parliaments. However, Member States must approve EGTC participation of territory members. The European legal framework is governed by Regulation (EC) No. 1082/2006 of the EP and of the Council as amended by Regulation (EU) No. 1302/2013 of the EP and of the Council from 17 December, 2013 amending Regulation (EC) No. 1082/2006 on the EGTC according to the clarification, simplification and improvement of the establishment and functioning of such groupings.

Its goal is to establish a European legal framework for the creation and operation of the instrument for EU-level cooperation with a legal entity which may act on behalf of its members, especially regional and local authorities. The purpose of the EGTC is to facilitate and support cross-border, transnational and interregional cooperation among its members with the prior aim of strengthening economic and social cohesion. Such groupings may associate members located in at least two EU Member States and may include states, regional and local authorities and public entities. Also the participation of members from third countries neighbouring an EU Member State, including its outermost regions, in EGTCs established between at least two Member States should be explicitly provided for. This is possible where the legislation of a third country, or agreements between at least one participating Member State and a third country, so allows<sup>85</sup>.

### Czechia

Act on Municipalities (128/2000 Coll., section 55) and Act on Regions (129/2000 Coll, section 28) have almost identic wording in the sections describing the co-operation with municipalities/regions from other countries. The legal competences of Czech LRAs for international and cross-border cooperation are derived from the national legislation and international/bilateral conventions adopted by Czech authorities. According to Act on Municipalities: „1) Municipalities may co-operate with municipalities from other countries and they may be members of international associations of local bodies; 2) Municipalities may conclude co-operation agreements with their counterparts from other countries; 3) Associations of municipalities may conclude co-operation agreements with associations of municipalities of other countries. The subject of co-operation may only be activities which are the subject of activities of the association of municipalities which concluded the co-operation agreement....”

Czechia has concluded general bilateral intergovernmental agreements on good neighbouring relations with all three out of four neighbouring countries (except for Austria). Cross-border cooperation has been coordinated at the level of state administration through intergovernmental working groups and commissions for cross-border cooperation (Czech-Saxon and Czech-Bavarian Intergovernmental Working Group and Czech-Polish and Czech-Slovak Intergovernmental

<sup>85</sup> Regulation (EU) No 1302/2013 p. (9)

Commission for Cross-Border Cooperation). Organizational provision of commissions and groups is provided by ministries of foreign affairs and regional development.

Moreover, except for the „general“ agreements on good neighbourhood the Czechia has also concluded bilateral framework agreements on the mutual co-operation in a specified sector of joint interest, such as co-operation in the field of an emergency healthcare in the border regions. Since 1991, 13 Euroregions with the participation of Czech subjects have been created and keep on functioning until now. They cover the entire length of the Czech border with all four neighbours.

## Hungary

The right of association of the local and regional (in Hungary: county level) self-governments is a right laid down in the Fundamental Law (paragraph 32(1) point k). Accordingly, in the case of local affairs and within the confines of the law, every local self-government may:

- associate with other local governments,
- establish interest representation alliance,
- cooperate with local governments of other countries and
- join international municipality organisation.

Legal frames of association are also guaranteed by the Fundamental Law in either Community or international law. Some rules of participating in associations are further detailed by the Möt. (Act No CLXXXIX of 2011 on local self-governments of Hungary). According to points 5 and 6 of paragraph 42, the decision on the participation in the cooperation shall fall within the exclusive competence of the representative body of the local government, these rights are not transferable. According to the provisions, the representative body may decide on the following matters:

- establishment and termination of an association of local municipalities, secession from that, amendment of the association agreement, joining associations, interest representing organisations and secession therefrom;
- agreement on the cooperation with a foreign self-government, accession to an international municipality organisation and secession therefrom.

Based on the above rules of Hungarian domestic law, the following regulations provide the legal frames for Hungarian local self-government to take part in international and EU level cooperation:

- a) Legal frames of cooperation under international public law (Madrid Outline Convention, Treaty of Understanding, Cooperation and Good Neighbourliness between Romania and the Republic of Hungary, Treaty between the Republic of Hungary and the Slovak Republic on good neighbourly relations and friendly cooperation, Convention on Friendship and Co-operation, signed by the Republic of Hungary and the Republic of Croatia, Treaty on the Foundations of Good Neighbourhood and Cooperation between the Republic of Hungary and Ukraine, Treaty between the Republic of Hungary and the Republic of Slovenia on friendship and cooperation);

- b) legal frames of cooperation in the context of the EU (European Grouping of Territorial Cooperation – EGTC)

## Poland

Municipalities, counties and voivodeships acquired the right to take up cross-border cooperation activities after the political reforms in 1990. According to Article 172 (2) of the Constitution of the Republic of Poland: "A self-government unit shall have the right to join international associations of local and regional communities and to cooperate with local and regional communities of other states". In addition to the general competence standard contained in the Constitution of the Republic of Poland, appropriate regulations were placed in statutory acts.

The foreign cooperation of voivodeships is regulated in the Act of 5th June 1998 on regional self-government. These provisions oblige voivodeships to conduct this co-operation in line with the internal law, the foreign policy of the state, its international commitments, and only within the tasks and competences of the voivodeship. The voivodeship both creates economic and spatial development on its territory and is the basic level for the absorption of funds from the EU, including the implementation of cross-border projects. The Act on county government gives the county council powers to adopt resolutions on matters of "cooperation with local communities in other countries and joining international associations of local communities". Unlike municipalities, counties can only undertake cooperation at the local level, but have no competence to join regional forms of cooperation. The Act on Municipal Self-Government stipulates that a municipality's own task is cooperation with local and regional communities of other countries, while the exclusive competence of the municipal council includes passing resolutions on cooperation with local and regional communities of other countries and joining international associations of local and regional communities.

Cross-border cooperation on the Polish side takes place at both local and central government level. Local authorities at all levels carry out cooperation projects with their cross-border partners. Cross-border cooperation is coordinated by intergovernmental councils and commissions. They are the basic forum for cross-border cooperation, acting as a link between the local and regional authorities and the government administration. The role of intergovernmental bodies is to stimulate this cooperation, create conditions for its development and ensure its consistency with the foreign policy of the Polish state. Thanks to the work of commissions and intergovernmental councils, it is possible to model interregional relations, including those between local government units and their counterparts abroad. The activities of the councils and commissions are implemented through the work of working groups/committees established within their frameworks.

Meetings of intergovernmental bodies end with the signing of a joint document, which summarises the achievements of the body and highlights jointly identified issues. This document is later taken into account in top-level intergovernmental consultations and signals the course of action to be taken by the relevant governmental and self-governmental institutions of both countries.

Cross-border cooperation is also regarded as an element of public and local government diplomacy. In this sense, cooperation across borders is intended as a tool for local development, which is particularly important for border and peripheral regions. It is then not only an instrument of local and regional authorities, but also an instrument of state foreign policy.

## Slovakia

The legal competences of Slovak LRAs for international and cross-border cooperation are derived from the European outline convention no. 106 on transfrontier co-operation between territorial communities or authorities of 21 May 1980 (Madrid Convention), which became part of national legislation after its ratification by the Slovak parliament in May 2000. Municipalities acquired the right for international cooperation only in 2001 by the adoption of Act no. 453/2001 Coll. of 2 October 2001. Thanks to this amendment LAs gained the right to co-operate, within the scope of their competences, with territorial and administrative units or authorities of other states performing local governance functions, including the right to become a member of international association of territorial units or bodies.

The key law that establishes the competences of self-governing regions of Slovakia, including in the field of international and cross-border cooperation, is the Act No. 302/2001 Coll. on the self-government of Higher Territorial Units (self-governing regions) of 4 July 2001. According to this Act, a self-governing region may, within the scope of its administrative competences, cooperate with territorial and administrative units of other states or with authorities of other states performing functions of regional governance. It has the right to become a member of an international association of territorial or regional units. However, international cooperation may take place only on the basis of a written cooperation agreement, which must include names and registered offices of the parties to the agreement, the subject of the agreement, including its duration.

In 2008 National Council of the Slovak Republic adopted the Act no. 90/2008 Coll. on the European Grouping of Territorial Cooperation (EGTC), which strengthened paradiplomatic competencies of Slovak LRAs and opened up new legal possibilities for their cooperation with partners within the EU. By this law Slovakia incorporated into its national legislation the Regulation of the European Parliament and of the Council no. 1082/2006 on EGTC. In 2008 another law was passed by the Slovak parliament, which expanded and more precisely defined the competences of self-governing regions and municipalities, in particular in the field of European policies, including their participation in cross-border cooperation co-funded from the EU funds: Act no. 528/2008 Coll. on aid and support from European Community Funds. It reflected the experience of Slovakia's membership in the EU and the growing need, also under pressure from the European Commission on national authorities, to involve LRAs in the management of European structural funds in the field of regional development and cross-border cooperation.

## Ukraine

Ukraine's legislation on CBC includes international agreements (multilateral and bilateral), laws and bylaws, reflecting the spirit of the Council of Europe and EU *acquis*. Ukraine concluded international cooperation treaties with all European neighbouring countries – Bulgaria (1992), Hungary (1991), Poland (1992), Romania (1997), and Slovak Republic (1993). Their norms provide for the CBC development between LRAs also. In addition, there is the Agreement between the Governments of Ukraine and the Republic of Poland on Interregional Cooperation (1993).

The Law "On Cross-border Cooperation" (of 2004 with amendments of 2018) is the dominant one in regulating CBC and implements the norms of the ratified by Ukraine European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (Madrid Convention), as well as the relevant provisions of the EU-Ukraine Association Agreement. The named Law and the laws "On Local Self-government in Ukraine", "On Local State Administrations" stipulate the rights and competencies of LRAs as subjects of CBC. The Law "On Cross-border Cooperation" outlines the norms on LRAs tasks, powers and responsibilities; organisation of CBC; State and financial support for the CBC development.

In the course of CBC, LRAs of Ukraine and other European countries lay bilateral cooperation agreements based on the international cooperation treaties and agreements. Quite a convincing example of such process is the activity of different LRAs (village, settlement, city, oblast councils and city, oblast state administrations) of the Ukraine's Volyn Oblast which border with Poland. During the previous decade (2010-2020) they have laid not less than 45 bilateral cooperation agreements, declarations, and memoranda on European integration, democratic traditions, good administration, civil society development, transport infrastructure, processes of change of forms of ownership of enterprises, industry, agriculture, transport and trade, science, technology, protection of cultural heritage, education, health care, sports, tourism, ecology and rational use of natural resources, etc. Some of these agreements are realised with the EU financial support provided through various projects and Neighbourhood Programs.

Following the legislative norms and their common decisions, LRAs of Ukraine and other European countries may form Euroregions, ECGs and EGTCs. The definitions of a Euroregion, an ECG and an EGTC were introduced in the Law "On Cross-border Cooperation" only in 2018. Four Euroregions are established along the EU external borders, in which Ukraine's LRAs take part: the Interregional Association "Carpathian Euroregion" (1993), the Cross-border Association Euroregion "Bug" (1995), the Euroregion "Lower Danube" (1998), the Euroregion "Upper Prut" (2000). They function on the basis of the LRAs' agreements and have the SCOs status. No ECGs on the initiative or with participation of Ukraine's LRAs are established. Only one EGTC - EGTC TISZA is formed by the Hungarian and Ukrainian LRAs which functions on the basis of the relevant Agreement and the Statute adopted and enacted in 2015; the Hungarian law is being applicable.

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