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EUROPEAN GROUPING OF TERRITORIAL COOPERATION AS A LEGAL TOOL TO PROMOTE THE EFFICIENCY OF CROSS-BORDER COOPERATION AMONG THE NEIGHBOURING REGIONS OF SLOVAKIA, UKRAINE, HUNGARY AND ROMANIA

Abstract: Presented paper basically tries to continue in developing ideas as presented during the former occasion.¹ It focuses on the analysis of the European Grouping of Territorial Cooperation – a legal instrument of the European Union which can promote the efficiency of cross-border cooperation among the neighbouring regions of Slovakia, Ukraine, Hungary and Romania.

Key words: *cross-border cooperation, instruments of EU Cohesion Policy, European Grouping of Territorial Cooperation, multi-level governance, principle of subsidiarity.*

The cross-border cooperation among the neighbouring regions of Slovakia, Ukraine, Hungary and Romania can be analysed from different perspectives. In the following lines we will try to outline few ideas on the cross-border cooperation from the legal point of view. During the history of science of law several doctrines trying to analyse or describe and systematized the world of law has emerged. One of them is the sociology of law (or legal sociology).

¹ See: BENKO, R.: Perspectives on the development of transborder cooperation among the neighbouring regions of Hungary, Slovakia, Romania and Ukraine within the cross-border regional policies of the European Union. In: Geopolitics of Ukraine: History and Modern Times. Special issue on Collection of scientific papers presented during the conference „Ways to improve efficiency for transborder cooperation on the new eastern border of EU held on the 18th – 19th of September 2012 in Stará Lesná. ISSN 2078-1431, No. 9 (2012), s. 250-273.

Sociology of law or legal sociology can be described not only as a branch of law, but as a branch of sociology in general as well.² We will not enter into the details of the characterisations of legal sociology of law or legal sociology. For the purposes of the paper it is enough to write that this branch of science of law aims to overcome “traditional” boundaries of looking at law by taking into consideration the role of society, its needs, its system of values and norms. Sociology of law has contributed positively to the critical analysis of specific legal issues of legal theory as well as of legal practice. We started to deal with the topic of the paper in such a broad context only to pointed out to the fact that in order to overcome the current problems of law governing the cross-border cooperation among the neighbouring regions of Slovakia, Ukraine, Hungary and Romania, the law in order the cooperation to be more effective has to reflect the societies of the regions, to take into account their needs, problems they faces which can be of a different kind – e.g. economic, environmental, cultural, criminal or religious. The cross-border cooperation functions within the framework of law. In order the cross-border cooperation to be effective (in the sense to reach the proclaimed aims) the law governing it has to be of a kind allowing the cooperation to be effective. In the lines which follow, we will pay attention to the European Union’s legal instrument designated as “European Grouping of Territorial Cooperation” (hereinafter also as “EGTC”) which has the potention to make the cross-border cooperation among the neighbouring regions of Slovakia, Ukraine, Hungary and Romania more effective.

In order to overcome the obstacles hindering territorial cooperation the Regulation on the European Grouping of Territorial Cooperation (hereinafter also only as “regulation”) was adopted by the European Parliament and the Council in 2006³. The regulation institutes a cooperation instrument at Community level (nowadays

² See, for example: CARBONNIER, J. *Sociologie juridique*. 2ième édition. Paris: Presses Universitaires de France. 1978, p. 13.

³ Regulation (EC) No. 1082/2006 of the European Parliament and of the Council of 5 July 2006 on a European grouping of territorial cooperation (EGTC). OJ L 210, 31.7.2006, p. 19–24.

European Union level)⁴ for the creation of cooperative groupings in Community (EU) territory, invested with legal personality, called „European groupings of territorial cooperation“. EGTC has the capacity to act on behalf of its members, notably the regional and local authorities of which it is composed. An EGTC should be able to act, either for the purpose of implementing territorial cooperation programmes or projects co-financed by the EU or for the purpose of carrying out actions of territorial cooperation which are at the sole initiative of the Member States and their regional and local authorities. The tasks and competencies of an EGTC are to be set out in a Convention. An EGTC is to establish its statutes and equip itself with its own organs, as well as rules for its budget and for the exercise of its financial responsibility. An EGTC shall carry out the tasks given to it by its members. The tasks given to an EGTC should be limited to the facilitation and promotion of territorial cooperation, to strengthen economic and social cohesion and be determined by its members on the basis that they all fall within the competence of every member under its national law. The tasks should be limited primarily to the implementation of territorial cooperation programmes or projects co-financed by the EU through the European Regional Development Fund, the European Social Fund and/or the Cohesion Fund⁵. An EGTC may carry out other specific actions of territorial cooperation between its members in pursuit of the objectives (to facilitate and promote cross-border cooperation, to strengthen economic and social cohesion) with or without a financial contribution from the EU.

The legal basis of the regulation on the European grouping of territorial cooperation was provided by the Article 159 of the

⁴ European Community is the legal predecessor of the current European Union. The European Union has been replaced and succeeded the European Community by the Lisbon Treaty which entered into force in 2009 (see, Article 1 of the current Treaty of the European Union).

⁵ See, e.g.: Council Regulation (EC) No 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1260/1999. Published at: Official Journal of the European Union, L 210, 31.7.2006, p. 25–78.

Treaty establishing the European Community (now, Article 175 of the Treaty on the Functioning of the European Union, hereinafter also as “TFEU”)⁶ falling within the scope of Economic, Social and Territorial Cohesion Policy of the EU (hereinafter also as “Cohesion Policy”). The third subparagraph of the Article enables to adopt by the respective EU bodies the specific actions, outside the Funds and without prejudice to the measures decided upon within the framework of the other Union policies, if their adoption is proved to be necessary in order to the aims of EU Cohesion Policy to be reached (e.g. to in order to facilitate and promote cross-border cooperation). The provision does not allow the inclusion of entities from third countries (non EU member states) in legislation based on that provision. EGTC should not, however, exclude the possibility of entities from third countries to participate in an EGTC formed in accordance with the regulation where the legislation of a third country or agreements between member states and third countries so allow.

According to Study of the Committee of Regions on EGTC⁷, the adoption of the regulation was both a major change in the legal framework for territorial cooperation and an understandable evolution thereof. It was a major change because it is the first EU instrument with regulatory scope in the field⁸. It was also a change because it brought this cooperation between authorities located in different European states. The regulation allowed the possible involvement of states, alongside local and regional authorities and territorial cooperation entities with their own legal personality, in the cross-border cooperation. From the point of view of law on cross-border cooperation, EGTC is an entirely new prospect. It should help

⁶ Consolidated version of the Treaty on the Functioning of the European Union. Published at the Official Journal of the EU, C 326, 26.10.2012, p. 47–390.

⁷ Study of the Committee of Regions on European Grouping of Territorial Cooperation. CdR 117/2007 (Study).

⁸ EU Cohesion Policy's instruments primary focus on the financial support.

to make possible the idea of multi-level governance⁹. Adoption of the regulation providing a legal framework for territorial cooperation was not self-evident, because the Treaty establishing the European Community (hereinafter also as “TEC”) did not provide an explicit legal basis for adoption of such an act. However, Article 159 TEC was used in the end. The EGTC regulation took inspirations from elements developed in previous legal frameworks. The Committee of Regions pointed out four distinct sources the EGTC regulation came out. Firstly, agreements between states aimed at resolving specific neighbourhood issues. Secondly, Council of Europe law, based on a 1980 framework convention¹⁰, to which additional protocols were added in 1995¹¹ and in 1998¹². Thirdly, bilateral framework agreements, which have facilitated a number of useful advances in

⁹ On the concept of multi-level governance, see, e.g.: HOOGHE, L. – MARKS, G. *Multi-level governance and European integration*. Lanham, MD: Rowman & Littlefield Publishers, 2001; HOOGHE, LIESBET (ed.) *Cohesion Policy and European Integration: Building Multi-level Governance*. Oxford: Oxford University Press, 1996; LEONARDI, R. *Cohesion Policy in the European Union: The Rebuilding of Europe*. Houndsmills, Hampshire: Palgrave, 2005; MARKS, G., - HOOGHE, L. – BLANK, K. *European integration from the 1980s: state-centric v. multi-level governance*. In: *Journal of Common Market Studies*, Vol. 34, No. 3, 1996, pp.341–78; BACHE, I. – FLINDERS, M. (eds.) *Multi-level Governance*. Oxford: Oxford University Press, 2004; PIATTONI, S. *Multi-level Governance: a Historical and Conceptual Analysis*. In: *European Integration*. Vol. 31, No. 2, 2009, pp. 163–180.

¹⁰ European Framework Convention for Cross-border co-operation of territorial communities or authorities (ETS No106) signed in Madrid on the 21st of May, 1980. It is the basic document adopted at the European level, within the Council of Europe, relating to the regional cooperation and supporting decentralization of the decision-making process within the power structures of the region.

¹¹ The first Protocol, adopted on the 9th of November, 1995, relates the legal effects of acts adopted within the cross-border cooperation and the legal status of the bodies performing the cross-border cooperation. The Protocol entered into force for the Slovak republic on the 2nd of May, 2000.

¹² The second Protocol, signed on the 5th of May, 1998, relates the legal framework for the cooperation between the non-adjacent territorial units or bodies. It entered into force on the 1st of February, 2001. Both Protocols has supported the regions to have more competence in foreign economic and political matters in order to facilitate both, international activation of the regions as well as positive discrimination of the provincial border territories.

legislation. And finally, EU law developing incentive and funding mechanisms for cross-border cooperation (INTERREG). However, the regulation on EGTC does not seek to standardise how territorial cooperation should be carried out in practice. Instead, it makes it possible to maintain the diversity of situations and achievements arising out of past experience as outlined above. The regulation enables public bodies in countries with a liberal approach to have more opportunities for establishing and providing the cross-border cooperation, while those in countries with a restrictive approach in this area can be expected to gain few if any additional rights from this regulation.

In March 2012 the European Commission has proposed to amend the regulation No 1082/2006 on a European grouping of territorial cooperation as regards the clarification, simplification and improvement of the establishment and implementation of such groupings¹³. The philosophy behind the suggested changes can be expressed in three keywords: continuity, clarity and flexibility. Continuity in the sense that the basic nature of an EGTC will not be changed and no existing EGTC should need to change its statutes or their ways of operating. Clarity because the regulation is suggested to be modified in order to take account of the Lisbon Treaty, to simplify and clarify certain aspects that have been shown to cause confusion and in order to ensure more visibility and communication on the formation and operation of EGTC. And flexibility because of opening up EGTCs to any aspect of territorial cooperation (and not ‘primarily’ the managing of ERDF-funded programmes and projects) and because of providing the legal bases for the participation of authorities and regions from third countries to participate as members. The proposed changes concern the membership, the content of the Convention and Statutes of an EGTC, its purpose, the process of approval by national authorities, applicable law for employment and for procurement, approach for EGTCs whose members have

¹³ Proposal for a Regulation of the European Parliament and the Council amending 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) as regards the clarification, simplification and improvement of the establishment and implementation of such groupings. COM(2011) 610 final/2.

different liability for their actions and more transparent procedures for communication. As to the membership, proposed changes aim to permit regions and bodies from non-member states to become the members of an EGTC, under the condition that the other members are from one or many member states. The eligibility of membership of bodies under private law is also clarified. The Convention and Statutes of an EGTC are re-defined and the distinction in approval procedure underlined. The criteria for approval or rejection by national authorities are specified, and a limited time for examination proposed (this is the single most frequently heard complaint from existing and planned EGTCs). The proposal of the Commission suggests solutions, in line with the *acquis* of the Union, for tax and social security regimes for employees of an EGTC, who may be employed in any of the Member States whose territories comprise the EGTC. A similar approach is proposed for procurement rules. The liability of local or regional bodies is proposed to be regulated as well. Finally, member states are to be required to inform the Commission of any provisions adopted to implement the EGTC regulation, as amended, and each newly established EGTC should inform the Commission of its purpose and membership in order the information to be published in the Official Journal of the European Union.

The European grouping of territorial cooperation is an instrument that allows public entities from several member states (and also from the non EU member states as proposed by the Commission, in order to clarify the possibility of their participation in an EGTC) come together and create a structure which has legal personality under EU law. It is an important tool of “cross-border cooperation” which is part of the current Cohesion Policy of the EU. Since 2006, 26 EGTC have been created. If the new proposal of the Commission would be adopted by the EU legislators – European Parliament and the Council, the possibility of the regions and bodies from non-EU member states to become the members of an EGTC would be possible without any doubts. The discussion on the Commission’s proposal to set up a new framework for the EGTC instrument by the European Parliament and the Council is currently carried out within the negotiations for the new programming period 2014-2020. The Committee of the Regions (hereinafter also only as

“Committee”)¹⁴ published its latest opinion on the issue on February 2012. The Committee of the Regions, which is also responsible for keeping the register of EGTCs and running the EGTC Platform, welcomes the proposal from the Commission. Nevertheless, the Committee calls for more clarity regarding the criteria for approval of EGTCs. It also defends the speeding up of the inclusion of undertakings dealing with operations of services of general economic interest. Moreover, the Committee points to the fact that the idea of listing the national, regional and local laws that will apply to EGTC on a fixed Convention would be counter-productive. It also demands the application of the new provisions to existing EGTCs and not only to those created after the implementation of the revised regulation. The Committee called for rapid adoption of the text without awaiting the finalisation of discussions on the legislative package, since it has no real implications for the EU budget or the multi-annual financial framework. According to the Committee, the rapid adoption of the text would foster the creation of EGTCs which are waiting for the new legislation¹⁵.

The cross-border cooperation among the neighbouring regions of Slovakia, Ukraine, Hungary and Romania if carried out by using the instrument of European Grouping of Territorial Cooperation can promote the efficiency of the cooperation. The creation of cooperative grouping with legal personality and the capacity to act on behalf of its members - the regional and local authorities of which it is composed, could be able to deal with the cross-borders problems of societies living on the neighbouring regions of Slovakia, Ukraine, Hungary and Romania in more effective way. The Convention of European Grouping of Territorial Cooperation among Slovakia, Ukraine, Hungary and Romania could establish the own organs of the cooperation unit with legislative, executive and controlling powers. Law-making body of the supra-regional cooperation unit should represent the will of citizens of the neighbouring regions, to seek cross-

¹⁴ According to the Article 175 Paragraph 3 of TFEU, serving as the legal basis for the adoption of rules on EGTC, the consultations with Committee of the Regions are obligatory within the legislative process.

¹⁵ For the details on the future of the European Grouping of Territorial Cooperation, see for example: <http://libraryeuroparl.wordpress.com/2012/06/06/future-of-the-european-grouping-of-territorial-cooperation/>

border solutions for cross-border problems in order to improve living conditions in the cooperating regions and to reduce disparities between the levels of development of the various regions. EGTC among Slovakia, Ukraine, Hungary and Romania could acquire or dispose of movable and immovable property and employ staff and could be a party to legal proceedings. It could facilitate the removal of obstacles and foster the elimination of divisive factors. It could reduce the importance of borders between Slovakia, Hungary and Romania as members of the EU, on the one side, and Ukraine, on the other side, to mere “administrative” boundaries. Of course that the reasons for which the high level protection of the eastern border of EU was established (e.g., fight against the organized criminality) has to be sustained. Realizing the cross-border cooperation among the neighbouring regions of Slovakia, Ukraine, Hungary and Romania by the EGTC instrument would be fully in conformity with one of the basic principle governing the functioning of the EU – the principle of subsidiarity¹⁶, which requires the decision making process to bring as close to the citizens as possible. The European Grouping of Territorial Cooperation represents a legal instrument which could serve in a more appropriate way to reach the aims of cross-border cooperation among the neighbouring regions of Slovakia, Ukraine, Hungary and Romania, as for example, to improve transport links, ecology, education, cross-border labour market (adequate knowledge of cross-border market possibilities, export opportunities), research and development programme, or tourism.

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¹⁶ According to the Article 5 Paragraph 3 of the Treaty on European Union, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level.

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