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The division of public administration powers concerning the cross-border cooperation in Ukraine

Cross-border cooperation is one of the important tools to stimulate the development of Ukraine, to promote economic and cultural development of border regions and enhance cooperation with neighbouring countries at the national, regional and local level. The Military conflict in the east of the country prevented cross-border cooperation projects with Russia, that is why this type of international cooperation is a priority, mainly in relation to the European Union.

The European trend of cross-border cooperation was updated by the adoption of the Association Agreement between Ukraine and the European Union, according to which both parties shall contribute to mutual understanding and bilateral cooperation in the field of regional policy concerning the methods of formation and implementation of regional policies with special emphasis on the development of backward areas and on territorial cooperation, thus creating communication channels and intensifying the exchange of information between national, regional and local authorities and the civil society. Article 447 of the Agreement stipulates that the parties shall support and strengthen the involvement of local and regional authorities in cross-border and regional cooperation and in related management structures, enhance cooperation through establishment of a legislative framework, sustain and develop capacity-building measures and promote the strengthening of cross-border and regional economic and business networks.¹

Accordingly, in the Ukrainian legal reality in this field there is a problem of establishing such legal regulation of cross-border cooperation that would ensure an optimal level of decentralisation and transfer powers from the state authorities to cross-border cooperation bodies as well as identifying the areas where these powers can be implemented effectively in accordance with a proper procedure.

¹ Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Ukraine, of the other part 27.06.2014, access: http://zakon2.rada.gov.ua/laws/show/984_011.

Tetyana Karabin, Dr., Assoc. Prof.

Ukraine has been a member of the European Outline Convention on Trans-frontier Co-operation between Territorial Communities or Authorities since 1993.² It is appropriate to note that the present Convention is not only open for signature by its member states via ratification, but adopted unanimously in a voting process the Committee of Ministers upon invitation. Any country that is not a member of the Council of Europe can become a member. Ukraine's accession to the analysed European Convention took place upon the invitation of the Committee of Ministers before its accession to the Council of Europe.

The Convention determined that transfrontier co-operation means any concerted actions designed to reinforce and foster neighbourly relations between territorial communities or authorities within the jurisdiction of two or more countries and the conclusion of any agreement and arrangement necessary for this purpose.³ Moreover, this Convention regulates that transfrontier co-operation may take place within the framework of powers of territorial communities or authorities as defined in the domestic law. The scope and nature of competences of authorities is not affected by the analysed agreement.

The Convention and its three additional Protocols actually form the conceptual apparatus on inter-territorial, interregional and cross-border cooperation. Although the provision of the Convention do not have the direct legal force, the indirect impact of the document on the development of cross-border and regional cooperation in Europe is difficult to overestimate (which could also be defined as political influence). It became the basis for regulatory determination of organisation and functioning of institutional structures that already existed in Europe at the time of its adoption, Euperio, Alps-Adria Council Lehmann, a number of European regions in Central Europe.⁴

Therefore, by ratifying the Convention, Ukraine has committed itself to adopt such legislation, which will ensure, on the one hand, an opportunity for local communities and local governments to effectively implement cross-border cooperation, and on the other hand, guarantee that the Ukrainian legislation complies with the legal standards of *acquis communautaire*. The above is confirmed also by the provisions of Article 4 contains an obligation to resolve any legal, administrative or technical difficulties that may delay the development and unimpeded cross-border cooperation.

² On the accession of Ukraine to the European Outline Convention on Transfrontier Cooperation between Territorial Communities or Authorities: Resolution of the Supreme Council of Ukraine, 14.07.1993, access: <http://zakon3.rada.gov.ua/laws/show/3384-12>.

³ European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities Madrid, 21.V.1980 <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/0900001680078b0c>.

⁴ N. Hrushinska. The main aspects of cross-border cooperation between Ukraine and Slovakia // Economic journal, № 2, 2002, Kiev: Institute of Society Transformation, s. 9-11.

The division of public administration powers concerning...

The preamble of the Convention, which should be realised „through agreements in the administrative area”, names the basic objects of cross-border cooperation. These are, of course, in the general common interest of neighbouring areas and local authorities – regional, urban and rural development, environmental protection, improvement of infrastructure and interaction in case of a disaster.

The Convention on Transfrontier Cooperation between Territorial Communities or Authorities not only indicates the basic legal norms regarding the implementation of cross-border cooperation, but it also has a set of standard agreements and other documents signed by the regional authorities of the border regions of neighbouring states or by the states themselves. Relevant agreements and charters as well as agreements on basic principles of cooperation are intended only as a reference in these activities because they are not binding. However, these documents, among other things, have typological, standardised features and establish possible, desirable, acceptable, incentive and internationally accepted ways and legal forms of international cooperation of local authorities.

The Convention refers to typical international agreements that include a range of issues: the development of cross-border cooperation; cross-border links; cross-border (local) bonds; cross-border cooperation under a contract between local authorities; authorities of cross-border cooperation among local authorities.

The main issues of cooperation between local authorities developed by the Council of Europe, which can enter into intergovernmental agreements and contracts and make appropriate provision in the charters, include: creation of groups of communication between local authorities; coordination of management of border public affairs at the local level; establishment of border associations dealing with the nature of private law; supply of goods or services between neighbouring local communities (taking into account both sets of private law); supply of goods or services between neighbouring local communities (under public law); establishment of cross-border cooperation between local communities.

The Additional Protocol to the Convention of 1995 was approved by the Council of Europe member states to regulate the rights of local communities to enter into agreements on cross-border cooperation, the definition of legal capacity of any entity that is established under such an agreement. The Second Protocol to the Convention, concerning inter-territorial cooperation, was signed in 1998 and established the legal form of cooperation of local authorities which do not share a common border, i.e. interregional (inter-territorial) cooperation. In November 2009, the Third Protocol to the Madrid Convention concerning Euroregion associations of cooperation was also opened for signature.

Regarding the national Ukrainian legislation, the institutional, organisational and legal mechanisms of cross-border cooperation is regulated by the Act on cross-border cooperation, the Act on Local Self-Government, the Act on local

state administration in Ukraine, the state program of cross-border cooperation for 2016-2020.

A faithful opinion is expressed in scientific journals that the Act on cross-border cooperation sets high goals of cross-border cooperation, empowering local authorities in cross-border cooperation and legislative regulation of financial support for cross-border cooperation. And despite the fact that its provisions meet the requirements of EU legislation and the rules and principles of GATT/WTO, from a practical point it requires the creation of pragmatic organisational, legal and institutional mechanisms of legal regulation of border relations at the institutional level. Nevertheless, substantive rules do not create a legal basis for the formation of an organisational, legal and institutional mechanism.⁵

At present, cross-border cooperation institutions act rather as a platform than the actual administrative institutions, allowing for a pragmatic search for common solutions to local problems in such areas as transport, environment, risk prevention, cooperation in health, but not for defining and implementing global strategic ambitions.

The organisational forms of cross-border cooperation under the provisions of law are international cooperation within the European region and the conclusion of agreements on cross-border cooperation in specific areas. Article 5 of the Act on cross-border cooperation also provides the opportunity to establish and develop mutually beneficial contacts between actors of cross-border cooperation.⁶ However, from a legal point of view, these are not a separate organisational form of international cooperation. Nevertheless, further provisions of this Act allows Ukrainian subjects of cross-border cooperation to choose other forms of cross-border cooperation in compliance with the law.

As of now, the most widespread and influential institutional form of cross-border cooperation is the European region. The legal definition of this form of cooperation is reduced to a form of cooperation of administrative units of European countries, conducted under bilateral or multilateral agreements on cross-border cooperation. However, in practice, the organisation of cooperation under the European regions involves local communities or local authorities of border regions of countries that share a border.

Currently, there are about eighty bilateral and multilateral European regions in Europe. Ukraine, in particular, participates in six European regions, four of which are on the joint border of Ukraine and the EU.

⁵ *Models and mechanisms of regulation Euroregional Cooperation in Ukraine: Monograph.* I.V.Artomov, O.M.Vaschuk, O.M.Rudenko, Uzhgorod: MPP „Grazhda“, 2013, 612 p., s. 94.

⁶ On cross-border cooperation: the Law of Ukraine, 24.06.2004, № 1861-IV, Access: <http://zakon4.rada.gov.ua/laws/show/1861-15>.

The division of public administration powers concerning...

Activities of the European regions on cross-border cooperation are based on treaties and agreements concluded at the inter-state level as well as on agreements and decisions on cooperation between local governments and local authorities of the administrative-territorial units of countries belonging to the European regions. Over the last fifteen years, the basis of contractual relations between Ukraine and neighbouring countries in the field of cross-border and inter-territorial cooperation was formed. An example is the Agreement between the Government of Ukraine and the Government of the Republic of Poland on interregional cooperation, under which local administrations and local authorities have the power to conclude, in compliance with the domestic law of both countries, agreements on the construction and arrangement of the territory, transport, utilities, trade, agriculture, conservation, environment, education and training, culture and art, health, tourism and sport, as well as other issues of mutual interest.⁷ This applies mainly to agreements for the supply of goods or services as well as joint ventures, partnerships, associations and foundations.

Under the provisions of the Additional Protocol to the European Outline Convention on Transfrontier Cooperation, any agreement on cross-border cooperation, concluded by territorial communities or authorities, may establish a cross-border cooperation body, include an establishment of a cross-border cooperation body with or without a legal personality.⁸ In accordance with the national legislation, all Euroregions created with Ukraine are not legal entities, whereas their activities are regulated by cross-border agreements and relevant intergovernmental bilateral agreements between Ukraine and neighbouring states.

Here, it is necessary focus on the division of public administration powers in respect of cross-border cooperation. In this issue, like in other areas, the principle of subsidiarity should be provided. Regarding cross-border cooperation, the contents of the principle of subsidiarity applies to horizontal integrative relations of cross-border cooperation actors and is interpreted as follows: the current distribution of powers must be changed if the member states and their sub-national structures provide specific executive powers in the field of cross-border cooperation, as indeed they should administer only if lesser cross-border institutions cannot properly implement the tasks they were assigned.⁹

⁷ Agreement between the Government of Ukraine and the Government of the Republic of Poland on interregional cooperation, 24.05.1993, access: http://zakon5.rada.gov.ua/laws/show/616_171.

⁸ Additional Protocol to the European Outline Convention on Transfrontier Cooperation between Territorial Communities or Authorities, 11.09.1995, Access: http://zakon0.rada.gov.ua/laws/show/994_099.

⁹ Explanatory memorandum. Prospects for effective transfrontier co-operation in Europe // Congress of Local and Regional Authorities, access: <https://wcd.coe.int/ViewDoc.jsp?p=&id>

Tetyana Karabin, Dr., Assoc. Prof.

It is obvious that this principle of horizontal subsidiarity cannot mean that the subjects of public administration at higher organizational levels assign some national sovereignty to subjects of public administration in border regions, which will, actually, then be converted into independent border public education. Also the aspirations for autonomy of minorities or other separatist movements on the borders must not be strengthened by the principle of horizontal subsidiarity. So, in fact, it is said that is required to recognise the need for separation of powers between border areas and national bodies, which would help border areas more effectively carry out the task of cross-border cooperation.

Furthermore, as observed in research documents of the Council of Europe, the main task which on the agenda is not to develop new legal instruments and forms for cross-border cooperation (which are, of course, necessary, as well), but rather to develop adequate a sectoral and administrative law framework that would ensure normal implementation of the principle of horizontal subsidiarity in their respective functional areas, while not denying state competences.

The process of coordinating drafting, structuring and organising international treaties of Ukraine on cross-border cooperation is carried out by the Ministry of Foreign Affairs of Ukraine. Preferably, the competences of local authorities and regional government comprise of supporting contracts and projects on its territory. Although the experience of foreign countries shows that the division of powers for the implementation of cross-border transactions is based on the principle of subsidiarity and the considerable part of powers is held at the local level because the implementation of such agreements is related primarily to citizens residing on the territory where it is implemented¹⁰.

In accordance with the Act on cross-border cooperation, overall coordination and monitoring of cross-border cooperation on these issues is carried out by a central executive body, which also forms regional public policy with the Ministry of Foreign Affairs of Ukraine. At present, the central executive body, which ensures the formation of a state regional policy, in accordance with the provisions on its activities, is the Ministry of Regional Development, Construction and Communal Services of Ukraine, namely, its department of interregional and cross-border cooperation.¹¹

=2106575&Site=COE&BackColorInternet=C3C3C3&BackColorIntranet=CACC9A&BackColorLogged=EFEA9C&direct=true#P97_6561.

¹⁰ G.O. Pautov. Regulatory mechanism for financing cross-border cooperation projects in Ukraine. *Models and Euro-regional cooperation mechanisms of regulation in Ukraine: Monograph*. Ed. I.V. Artomov, O.M. Vaschuk, O.M. Rudenko. - Uzhgorod „Grazhda“, 2013, p. 98-124.

¹¹ Regulations of the Ministry of Regional Development, Construction and Housing of Ukraine: Cabinet of Ministers of Ukraine, 30 April 2014, Access: <http://zakon5.rada.gov.ua/laws/show/197-2014-%D0%BF>.

The division of public administration powers concerning...

This body is one of the entities which also provide legal, informational, methodological and organisational support to the Ukrainian participants of cross-border cooperation, develop the procedure of preparing projects (programmes) of cross-border cooperation and state programmes for the development of transfrontier co-operation, develop the provisions for conducting tender procedures for cross-border cooperation projects (programmes), which are said to be included in state programmes for the development of transfrontier co-operation, supervise state cross-border cooperation development programmes; consider proposals of Ukrainian subjects of cross-border cooperation regarding the inclusion of cross-border cooperation projects (programmes) in state cross-border cooperation development programmes; coordinate and mutually harmonises state sectoral, regional programmes and state programmes of cross-border cooperation development during the drafting of the State Budget of Ukraine for the relevant year.¹²

In the administrative-territorial units, the implementation of the state European integration policy, promotion of the development of international and cross-border cooperation are ensured by local executive authorities. Local state administrations form structural units with corresponding powers in order to exercise their authority to promote the development of international cooperation in various fields of social life and to facilitate foreign economic relations of enterprises, institutions and organisations located on its territory.

Regarding the conclusion of cross-border agreements, the basic rule is defined in Article 7. It is stated that the subjects of cross-border cooperation conclude agreements on cross-border cooperation and ensure their implementation within its powers and in accordance with the laws of Ukraine. They also are to fulfil Ukraine's obligations under its international treaties on cross-border cooperation, participate in the development and implementation of joint projects (programmes), make decisions on joining relevant international associations and other associations, make proposals for the introduction of a special procedure for crossing the state border, if necessary, make proposals for amending the legislation on transfrontier co-operation legislation in the required order. In accordance with the norms of the analysed act, the subjects of cross-border cooperation are both territorial communities and their representative bodies as well as local executive authorities that interact with territorial communities and authorities of other states within their competences.

Taking into account the above, it would be expedient to distribute powers of subjects of cross-border cooperation in the Act on cross-border cooperation, which are, in accordance with the provisions of this act, territorial communities, local self-government bodies and local executive state bodies. Despite the fact that

¹² On cross-border cooperation: the Law of Ukraine, 24.06.2004, № 1861-IV, Access: <http://zakon4.rada.gov.ua/laws/show/1861-15>.

among the principles of cross-border cooperation the principle of clear distribution of tasks, powers and responsibilities between subjects of cross-border cooperation of Ukraine is defined, their powers are set out in a joint list in Article 7.

In this regard, it should be noted that the European Framework Convention on Transfrontier Co-operation regulates issues of cross-border cooperation precisely between local communities and their authorities, and not between local authorities of a given state, i.e. state executive authorities. For this purpose, the convention defines that „territorial communities or authorities” are communities, authorities or bodies that carry out local or regional functions and are recognised as such by the domestic laws of the state. In Ukraine, local and regional functions are carried out by local self-government bodies. In addition, they also carry out state functions, exercising delegated powers.

Therefore, in a situation when status acts and sectoral acts do not define public administration powers or define them as subjects of cross-border cooperation in a manner that is not clear enough, it should be implemented in the Act on Transboundary Cooperation. It should also be noted that this division of powers must take into account the requirements of Article 4 of the European Charter of Local Self-Government, which says that powers of local authorities should be, as a rule, complete and exclusive.

Thus, the powers to conclude agreements on transfrontier co-operation and ensure their implementation, to participate in the development and implementation of joint projects and programmes, to make decision on joining international associations and other associations, to make proposals for amending the legislation on cross-border cooperation issues should be included in the competences of local self-government bodies and, in particular, their representative bodies.

Cross-border cooperation is often carried out through institutional Euroregions formation. Activities within the European regions are governed by statutes that have some differences between them. In accordance with the provisions of the Regulations of the Carpathian Euroregion, in the case of acts in the form of an interregional association the governing body is the Council, that makes decisions on the most important issues of organisation of cooperation.¹³ The Contracting Parties to the Euroregion delegate up to ten persons to the Council, thus forming a national delegation. Within the framework of the Carpathian Euroregion, the Working Committees are also responsible for the practical implementation of its strategic plans, in particular regional development, tourism, environmental protection, trade, natural disaster prevention, social infrastructure, audit committee.

In accordance with the statute, the Carpathian Euroregion aims to organise and coordinate activities that will promote economic, scientific, environmental,

¹³ <http://euroregionkarpaty.com.ua/karpaty/2010-03-20-22-56-53/2010-03-21-01-00-05.html>.

The division of public administration powers concerning...

cultural and educational cooperation among its members; to assist in the development of specific projects on cross-border cooperation; to promote the development of contacts among the population of the border areas and good-neighbourly relations between the members of the association; to mediate and enable the members of the Euroregion cooperation with international organisations and institutions. Since the establishment of the Carpathian Euroregion, more than 50 bilateral agreements on cooperation in the economic, cultural, scientific, and educational spheres have been concluded.¹⁴

But despite the high potential of such an organisational form of cross-border cooperation as the Euroregion, which aims to promote mutual information, co-ordination and direct interaction between members, it is not optimal. Its use is slowed down by unfavourable factors such as disproportions in administrative and territorial division models, unequal scope of competences of public authorities that are subjects of cross-border cooperation and represent territorial communities of different countries, and sometimes the lack of guaranteed national funding for activities, as well as the fact that the creation of a Euroregion does not always lead to a new entity with the status of a legal person being formed.

Aware of the need to overcome the shortcomings of cross-border cooperation, at the meeting in Budapest on 24-25 February 2005, the Ministers, responsible for local and regional governments of the member-states of the Council of Europe, acknowledged the need for „clear and effective legal framework to institutionalise cooperation between territorial communities or authorities (European regions)”. Furthermore, gathered in Warsaw on 16-17 May 2005, the heads of states and governments of the Council of Europe member states, decided „to develop cross-border cooperation, standards of democracy and good governance, including the proper functioning of the provision of services in the future”. At its next session in Valencia 2007, the Ministers reaffirmed the goal of creating a „clear and effective regulatory framework for institutional cooperation”.¹⁵

As a result of the relevant meetings, on November 16, 2009, Protocol No. 3, which came into force after ratification by its first four states in 2013, was adopted. Ukraine ratified this protocol in 2012, and it came into force in our country in 2013.¹⁶

¹⁴ E. Kish, M. Lengyel, S. Mytryayeva, Cross-border cooperation, access: <http://www.zakarpatia.com/?p=844>.

¹⁵ Explanatory Report to Protocol No. 3 to the European Outline Convention on Trans-frontier Cooperation between Territorial Communities or Authorities concerning Euroregional Co-operation Groupings (ECGs) Utrecht, access: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016800d38>.

¹⁶ On ratification of the Protocol number 3 to the European Outline Convention on Trans-frontier Cooperation between Territorial Communities or Authorities concerning Euroregional Cooperation (ECG) Law of Ukraine, 16.05.2012, № 4704.

This document provides for the creation of a new organisational form of cross-border cooperation, namely „Euroregional Co-operation Groupings”, and regulates unified standards for their activities by defining the core of strict rules for their creation, membership, activities, while at the same time, ensures compliance with the law of the resident state.

Under the provisions of the analysed Protocol, the Euroregional Co-operation Groupings are legal entities and with legal capacity that is provided to legal entities according to national legislation of a given state. The Euroregional Co-operation Groupings have the right to their own budget, are able to conclude contracts, hire staff, acquire movable and immovable property and to carry out proceedings.

The distribution of powers between national public administration and an ECG is regulated by Article 7 of Protocol No. 3, which states that the groupings execute tasks entrusted to them by its members. These tasks must comply with the competences of members under their national legislation and be specified in agreements and statutes.

The Euroregional Co-operation Groupings approve decisions and ensure their implementation in relation to interest of individuals and entities under the jurisdiction of the state to which its members belong. But the task they are assigned with must not be related to exercise of regulatory powers. Therefore, they are not authorised to take measures that may affect the rights and freedoms of natural persons or impose fiscal levies.

In addition, the authors of the Protocol have separately emphasised that an ECG does not have the right to exercise powers that appoint territorial communities or authorities as agents of the state to which they belong. They can exercise the powers provided by the member states of Euroregional Cooperation. This means that if local governments can carry out delegated powers along with their own ones, it is prohibited to delegate state powers (except for the state) to avoid sub-delegation without the consent of the original authority.

Thus, despite the fact that ECGs act in accordance with the national law, the sample protocol harmonised the existing rules.

The development of different organisational forms of cross-border cooperation and its regulation has been carried out not only in the Council of Europe but also in the European Union. Some steps have been made towards the institutionalisation of cross-border cooperation within the EU. However, in the beginning the issue was not considered by the European Community under the same perspective as in the Council of Europe – i.e. the founding perspective. This activity was rather aimed at the implementation of EU financial instruments – INTERREG programmes.

For such a country as Ukraine, it is an important fact that the European Union recognises cross-border cooperation as a key element of the EU policy related to

its neighbours. It is believed that this type of cooperation supports sustainable development along the EU's external borders, helping to reduce differences in living standards and addressing common problems across borders.¹⁷ For the first time, it was established in the regulation of the European Neighbourhood and Partnership Instrument for 2007-2013.¹⁸ This was confirmed for 2014-2020 with the ENPI, adopted in March 2014.¹⁹ The European Neighbourhood and Partnership Instrument is an initiative of the European Commission, which aims to develop cooperation between the EU and partner countries to ensure integrated and sustainable regional development.

At present, Ukraine has access to three cross-border cooperation programmes (2007-2013, 2014-2020) within the institutions of the European Neighbourhood and Partnership Instrument (ENPI): „Hungary-Slovakia-Romania-Ukraine”, „Ukraine-Poland-Belarus” and „Ukraine-Romania-Moldova”. This is an initiative of the European Commission, which aims to develop cooperation between the EU and partner countries, to ensure integrated and sustainable regional development. The objectives of the programme are carried out through non-commercial projects within the following priorities and measures: 1) increasing the competitiveness of the border area; 2) improving the quality of life; 3) institutional cooperation and supporting local community initiatives.

Indicative of this is the third priority, which is focused on actions promoting and supporting only cross-border cooperation within institutional capacity and local initiatives to support people-to-people cooperation. Activities that can be financed by EU are aimed at improving cross-border cooperation at local and regional levels to strengthen institutional cooperation, exchange of information, experience and institutional cooperation, including internet projects. Undoubtedly, the general aim is social, scientific, educational and cultural integration of the border territories because EU programmes support cross-border contacts and social initiatives in the fields of science and education, providing support for cultural and sporting activities focused on the development of social initiatives to promote and nurture shared traditions of the border area, preserve cultural diversity and develop civil society and local communities in the broadest sense.

In addition to traditional international legal instruments, in 2006 the ability to create legal entities of public law, which are called European grouping of

¹⁷ Cross Border Cooperation, http://ec.europa.eu/enlargement/neighbourhood/cross-border-cooperation/index_en.htm.

¹⁸ General provisions establishing a European Neighbourhood and Partnership Instrument: Regulation (EC) No 1638/2006 of 24 October, 2006 // Official Journal of the European Union, 9.11.2006.

¹⁹ Regulation (Eu) No 232/2014 Of The European Parliament And Of The Council of 11 March 2014 establishing a European Neighbourhood Instrument // Official Journal of the European Union 15.3.2014.

territorial cooperation (EGTC), was introduced. Their formation and activities were carried out in accordance with Regulation 1082 (2006).²⁰ Within these organisational forms, it is possible to carry out not only cross-border cooperation but also cooperation on transnational and interregional levels since Article 3 provides a broad partnership that could include local, regional as well as state authorities.

EGTC has a legal personality and may, in particular, acquire property, employ staff and be a party to legal proceedings. An additional advantage of an EGTC is the fact that as for determination of its legal status, matters of control over the implementation of decisions and determination of jurisdiction the regulatory act refers to national legislation on procedures and participation of parties in the formation of an EGTC. Regarding the participation of Ukraine, the preamble of Regulation 1082/2006 is of significant importance. It specified that an EGTC must consist of at least two partners from the EU, but entities from countries outside the EU may join in and serve as partners, as “the creation of an EGTC should not, however, exclude the possibility of entities from third countries participating in an EGTC formed in accordance with this Regulation where the legislation of a third country or agreements between Member States and third countries so allow”.

By the end of 2015, 60 EGTCs have been founded. They include more than 800 national, local and regional authorities from 20 different Member States.²¹ For the first time, Ukraine joined an EGTC in October 2016, namely “Tisa EGTC”. This is the first experience of forming associations between EU Member States and third countries. However, shortcomings of domestic legislation on the issue of empowerment of local public authorities became the obstacle for acquisition of experience in cooperation in a new format for the implementation of joint investment, cultural and educational projects.

And in spite of the above, local public authorities must gain experience in formation above EGTC, where such an opportunity is available. In other cases, they can use more accessible legal mechanisms of formation of an ECG pursuant to Protocol No. 3 to the Madrid Outline Convention. But at the same time, the analysed organisational, financial, institutional, international legal mechanisms can be used in full only when national legislation is brought in line with international legal norms. This will enable Ukrainian participants of cross-border cooperation to expand opportunities for projects and programmes aimed at implementation of cross-border cooperation, increase of access to cross-border cooperation in Ukraine and thus at increase in the use of EU external assistance. For this purpose, the first step is to adjust the Ukrainian legislation to the requirements of the Proto-

²⁰ Regulation (EC) № 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, 31.07.2006. P. 19–24.

²¹ EGTC Monitoring Report 2015 Implementing the new territorial cooperation programmes, <http://cor.europa.eu/en/documentation/studies/Documents/EGTC-MR-2015.pdf>.

col No. 3 of the Convention on Transfrontier Cooperation ratified by our country, which requires the implementation of certain provisions.

Obviously, the features of the national legal system determine that it is not sufficient to acquire legal personality by an ECG by simply establishing in an international document (Protocol No. 3) that cross-border cooperation bodies are created in the form of a legal entity. The Ukrainian legislation does not contain norms regulating the legal status, information, activities, suspension and taxation of associations. However, Protocol No. 3 ratification by Ukraine requires to a number of new provisions relating to the organisation and functioning Euroregional Co-operation Groupings in the national legislation.

As noted above, the Act on cross-border cooperation along with such forms of cooperation as the creation of Euroregions and establishing contacts between actors of cross-border cooperation do not involve the organisation of Euroregional Co-operation Groupings. However, Article 5 of the analysed act regulates that Ukrainian subjects of cross-border cooperation may choose other forms of cross-border cooperation according to the legislation. Therefore, it is reasonable to assume that this includes the organisation of an ECG.

However, the constitutional requirement of special legal regulation of public administration, which obliges public authorities, local governments and their officials to act only on the basis, within the powers and in the manner stipulated by the Constitution and laws of Ukraine, makes it necessary to amend legislation concerning the introduction of new forms of cooperation (ECG).

First of all, the national legislation should provide the conceptual characteristics and determine the formation, order of registration and activities of an ECG as a legal entity. Therefore, it is necessary to amend the Ukrainian Act on cross-border cooperation, namely, to include provisions on the powers of subjects of cross-border cooperation to create appropriate associations, and the Ukrainian Act on local government in Ukraine in terms of giving appropriate advice to decide on establishment of cross-border cooperation.

It is necessary to amend the Ukrainian Act on cross-border cooperation, namely, to include provisions on the powers of subjects of cross-border cooperation to create appropriate groupings and also to the Ukrainian Act on local government in Ukraine in terms of providing relevant authority with advice to decide on creation of an ECG creation.

The establishment of legal entities of cross-border cooperation will not only change their legal status and expand legal personality but also increase their credibility. In addition, existing organisational forms of cross-border cooperation (institutional or not) can continue to operate within the legal field. They should not be transformed into new forms of transfrontier cooperation. At the same time, the analysed international document does not create new areas of competences. The

Tetyana Karabin, Dr., Assoc. Prof.

competences of local entities of public administration continue to be determined by the national law. The Protocol does not place any additional powers to local or regional community.

Article 7 of Protocol No. 3 regulates that associations carry out tasks that correspond to the competences of Member States under the national law and are listed in agreements and statutes. Therefore, it is also required to provide local governments and local authorities with the competences to transfer their powers to legal persons in national regulations.

Despite the fact that in recent years many European border areas have developed institutional frameworks to coordinate and promote cross-border cooperation, the issue of determination and transferring of real functional powers to cross-border bodies and institutions is debatable and controversial not only in our country but also among other European countries. However, an analysis of the legal status of these institutional structures makes it possible to identify a small amount of powers of these institutions. Even the entities with a legal status (e.g. an EGCT) and its own budget do not have the authority to implement a policy of a cross-border character. As of now, actual sectoral and functional responsibilities are carried out mostly by national actors and the competences of cross-border authorities are limited by informing or coordinating participants.²² Nevertheless, it is clear that the application of legal instruments of cross-border cooperation will make sense only if necessary competences will be given to bodies of cross-border cooperation. Otherwise, they will become mere symbols of cooperation instead of legal parties and will remain so.

In Europe, where the border issue is not as crucial as in our country, theoretical approaches of determining the competences of cross-border authorities connect with the identification of policy areas in which the border approach leads to better results compared to coordination carried out by national entities. Such areas, where key powers can be transferred to bodies of cross-border cooperation, are spatial planning, cross-border labour market issues, tourism, cross-border public transport, health care infrastructure planning, etc. In this regard, the principle of horizontal subsidiarity regarding domestic subjects and the principle of vertical subsidiarity on functional complementarity of different levels of cooperation within the border area seem significantly important to be considered.

Regarding Ukraine, because of the great significance of borders between our country and the European Union, not all the issues related to the competences of cross-border cooperation of neighbouring countries can be adopted in our country. It seems that the Ukrainian Act on cross-border cooperation should define the

²² Explanatory memorandum. Prospects for effective transfrontier co-operation in Europe // Congress of Local and Regional Authorities, access: https://wcd.coe.int/ViewDoc.jsp?p=&id=2106575&Site=COE&BackColorInternet=C3C3C3&BackColorIntranet=CACC9A&BackColorLogged=EFEA9C&direct=true#P97_6561.

The division of public administration powers concerning...

major tasks of transfrontier cooperation. These may include general territorial cooperation in all fields, legal assistance, education, social services and other actors and participants in cross-border cooperation, addressing specific issues such as disaster management, implementation of cooperation programmes financed by the European Union and so on.

Certain provisions of the Act on cross-border cooperation should regulate the powers of local governments on the establishment of Euroregional cooperation procedure for the establishment Euroregional cooperation, content of constituent documents, rules of membership regarding acquisition of the status of legal entity, material and financial support of the association Euro-regional cooperation.

Thus, the areas in which the powers should be transferred to the bodies of cross-border cooperation are general territorial cooperation in all fields of competence, legal assistance, educational, social and other services, addressing specific issues such as disaster management and implementation programs co-financed by the European Union. It is also reasonable to classify local communities and local authorities as subjects of cross-border cooperation in the national legislation. In addition, organisational, financial, institutional and legal mechanisms of international cross-border cooperation can be used in full only if national legislation will be brought in line with international law, including the Framework Convention and its Protocols ratified by Ukraine.

Abstract: The article deals with the issue of cross-border cooperation – one of the important tools to promote economic and cultural development of border regions in Ukraine. It established that Ukraine participates in six European regions, four of which are located on the common border with the European Union. It is proved that the distribution of powers of public administration concerning cross-border cooperation should ensure compliance with the principle of subsidiarity. The article describes cross-border cooperation between the Ministry of Foreign Affairs of Ukraine, the Ministry of Regional Development, Construction and Housing and Communal Services of Ukraine and the local government. It is stressed that the newly-established organisational form of cross-border cooperation (Euroregional Co-operation Groupings) can be fully used in the case of acquiring legal personality for an ECG pursuant to national legislation.

Keywords. Cross-border cooperation, public administration distribution of powers, Euroregional Co-operation Groupings, Euroregion.