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**LEGAL MECHANISM OF BASIC DIRECTIONS
FOR REGULATION IN CBC AT THE NEW EASTERN
EU BORDER**

The article deals with the conceptual mechanism of legal regulation of the main areas of cross-border relations at the new eastern border of the EU in relation to the legal standards of EU law –acquis communautaire EU. The author approves the priority of forming a legal mechanism for regulating cross-border cooperation by creating conceptually updated organizational, legal and institutional mechanisms adapted to the legal standards –acquiscommunautaire EU.

Keywords: international law, the mechanism of international law, the legal mechanism to regulate cross-border relations, cross-border cooperation, border cooperation

The evolutional development of international European cross-border relations in the second half of the XX century - Early XXI st. associated with macro - globalization and integration processes, the expansion of the European Union (hereinafter - EU), accompanied by corresponding transformations at the international European law and national law enforcement in sovereign states.

Scientific and practical research of key areas of these problems indicate the presence of a wide range of controversial legal, political, economic evaluations, as well as the fundamental doctrinal differences for the qualification status of international cross-border relations in the system of international relations and prognostic implications of possible outcomes and consequences of this phenomenon in the modern system of

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European order [1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20].

In this regard, a special practical and scientific interest for the analysis of legal issues of cross-border cooperation on the eastern border of the European Union is paid on cross-border relations in Europe, the research of the Director, Center for the Study of European Regions, consultant - an expert, Professor, University of Geneva Charles Ricks². The subject is of special interest of research is the issue of cross-border cooperation and the construction of Europe, the definition of the conceptual apparatus consider borders as limits of the national territory, the promotion of cross-border institutions through international public law means creating the appropriate legal instruments. Important place in the study is focused on consideration of the ways in which and through which stages of cross-border cooperation can develop as well as perspectives of cross-border cooperation [21].

However, the problem of the international legal framework for European cross-border relations did not constitute a special subject of legal research that forms the sphere of special interest for in-depth study of cross-border relations in terms of international law. The subject of our study is the question of forming a legal mechanism that involves the creation and development of the necessary institutional, organizational and legal framework for the effective management of the main directions of cross-border cooperation on the eastern border of the European Union.³

The problem of institutional, organizational and legal support cross-border cooperation on the eastern border of the European Union

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³Автор у попередніх публікаціях на основі загального положення про механізм міжнародно-правового регулювання (надалі: МПР) міжнародних відносин сформульованого професором І.І.Лукашук (Див.: І.І.Лукашук. Механізм міжнародно-правового регулювання. Київ. Изд-во при КГУ, изд. объединение «Вища школа», 1989. – с.4). пропонує дещо розширений підхід конкретно до поняття механізму міжнародно-правового регулювання стосовно міжнародних транскордонних відносин.

is characterized by significant differentia specific, which is determined by the status of Ukraine - the sovereign's cross-border relations in the East Union. Ukraine, being a member of the European Outline Convention on Transfrontier Cooperation between Territorial Communities or Authorities (ETS No106) - Madrid, May 21, 1980), unlike neighboring Eastern European countries, de-jure not a member of the European integration of education - the EU and relevant international legal .

In legal terms, this process involves not only the legal possibilities of forming an effective legal mechanism for cross-border cooperation in Border States, but also necessitates the adaptation of Ukraine's legal system standards of the EU –*acquiscommunautaire* EU.

In this context, the question arises about the legal framework based on the mechanism of cross-border (border) cooperation on the eastern border of the EU? Analysis of the legal framework of international cross-border relations (cooperation) methodologically necessitates research, institutional and organizational - legal mechanism for cross-border cooperation on two hierarchical levels - at the level of international law and national law which are independent subsystems and at the same time complement and harmonize the functioning of the subsystems mechanisms of regulation.

As general legal formulas Article 2 of the European Outline Convention on Transfrontier Cooperation between Territorial Communities or Authorities states that "Cross-border cooperation is carried out in the framework of territorial communities or authorities as defined in domestic legislation. The scope and nature of such powers of this Convention do not change. "Moreover, the sub 2.st.2 formulates international law that" For the purposes of this Convention, the term "territorial communities or authorities" means the communities, authorities or bodies exercising local or regional functions and recognized as such by the domestic law of each State. "[22].

Thus, in accordance with international agreements (conventions) legal conditions of implementation of cross-border relations are determined by domestic law and the Convention's subject domestic jurisdiction of the state - Member Relations CBC.

At the level of international law, the legal bases of cross-border relations form multilateral and bilateral international agreements (conventions, protocols). First of all - the above mentioned active European Outline Convention on Transfrontier Cooperation between Territorial Communities or Authorities; (acting) Additional Protocol to the European Outline Convention on Transfrontier Cooperation between Territorial Communities or Authorities (Strasbourg, November 9, 1995) The second protocol to the European Outline Convention on Transfrontier Cooperation between Territorial Communities or Authorities (May 5, 1998), N Protocol 3 to the European Outline Convention on Transfrontier Cooperation between Territorial Communities or Authorities concerning Euro-regional cooperation (ECG) has not entered into force.

The benefits of these international agreements into practice lies in the fact that they are the basis of international legal mechanism for regulating international relations on bilateral and multilateral levels, aimed at ensuring the legal regulation of cross-border and interregional cooperation, the participants, who are both legal and natural persons. Cross-border cooperation based on such agreements may be made between non-governmental organizations at various levels (eg states and regions, regions and provinces, regions and municipalities, local, authorities and international organizations), which may relate to various areas of cooperation, including political, economic, trade and culture, and science.

In this context, the question arises regarding the regulation of the political and legal status of borders on a bilateral level, on the eastern border of the European Union. What is the status of international agreements on the legal regime of the borders?

On May 1, 2012 intergovernmental agreements on borders between Ukraine and the Republic of Poland, the Slovak Republic, Hungary, Romania (Scheme 1) have been signed.

Layout 1

| № | State | Presence of agreement on the legal regime of the state border | The presence of other agreements, protocols, regulations | Presence of international court decisions regarding the legal regime of the state border |
|---|-----------------|---|---|--|
| 1 | Poland | <p>Agreement between Ukraine and the Republic of Poland on the legal regime of the Ukrainian-Polish border, cooperation and mutual assistance on border issues (signed 12.01., 1993). (Entry in to force 27.10.1993.)</p> <p>Agreement between the governments of Ukraine and Poland on interregional cooperation (Date of signature: 05/24/1993 Entry into force: 27/10/1993).</p> | <p>Protocol on meeting "Kremenets" which is set at the junction of state borders of Ukraine, Poland and the Slovak Republic (signed 14.04., 2005).</p> | n/a |
| 2 | Slovak Republic | <p>Agreement between Ukraine and the Slovak Republic on the Ukrainian-Slovak border, cooperation and mutual assistance on border issues (signed 14/10/1993)</p> | <p>Protocol about meeting "Kremenets" which is set at the junction of state borders of Ukraine, Poland and the Slovak Republic (signed 14.04., 2005).</p> | n/a |

| | | | | |
|---|---------|--|--|--|
| 3 | Hungary | Agreement between Ukraine and Hungary on the Ukrainian-Hungarian border, cooperation and mutual assistance on border issues (signed 15.05.1995). | | n/a |
| 4 | Romania | Agreement between Ukraine and Romania on the Ukrainian-Romanian border, cooperation and mutual assistance on border issues (signed 17.06.2003). | | The decision of the International Court of Justice on the delimitation of the continental shelf and the exclusive economic zones of Romania and Ukraine in the Black Sea (February 3, 2009). |

The agreements on borders between Ukraine and the Russian Federation, the Republic of Belarus and the Republic Moldoviya have been signed.

The issues of delimitation and demarcation of the border with Russia, the Republic Moldova (part / segment Transnistria) (Scheme 2) are still in process of unregulated.

Layout 2

| № | State | Presence of agreement on the legal regime of the state border | The presence of other agreements, protocols, regulations | Presence of international court decisions regarding the legal regime of the state border |
|----------|--------------------|---|---|---|
| 5 | Russian Federation | Agreement between Russian Federation and Ukraine on the Ukrainian - Russian border (signed 28.01., 2003). | | n/a |

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|---|---------------------------|---|--|-----|
| 6 | Belarus | Agreement between Ukraine and the Republic of Belarus on border (Signed 12.05.1997.). | | n/a |
| 7 | Moldova and Transnistria) | Agreement between Ukraine and the Republic of Moldova on border (Signed 18/08/1999). | Agreement between the governments of Ukraine and Moldova on cooperation on border issues became the basis for beginning the process of delimitation of the Ukrainian-Moldovan border (11. 1994). | n/a |

Since the date of Independence of Ukraine concerning international relations with neighboring countries the issue of regulating the political and legal status of national borders in the form of international agreements is one of the central places in the coordinate system of international relations between Ukraine and neighboring countries.

Thus, on May 1, 2012 concluded intergovernmental agreements on borders Status between Ukraine and Poland, the Slovak Republic, Hungary, Romania, witness a certain level of stabilization and resolution of political and legal components of international relations states that share borders and provides the legal basis for international relations and cross-border cooperation.

However, delimitation of the continental shelf and the exclusive economic zones of Romania and Ukraine in the Black Sea have not been completed.

November 19, 2004 Romanian party filed a petition to the International Court of Justice concerning the delimitation of the continental shelf and the exclusive economic zones of Romania and Ukraine in the Black Sea.

February 3, 2009 International Court of Justice approved the decision on the case of delimitation of the continental shelf and exclusive economic zones of Romania and Ukraine in the Black Sea. According to him, Serpents' Island was considered an island of the

territorial sea to 12 nautical miles. The dividing line between the exclusive economic zones of Romania and Ukraine, which was a compromise between the Romanian and Ukrainian positions was also defined in that decision.

The political and legal status of the borders between Ukraine and the Russian Federation, Belarus and the Republic Moldoviya and Transnistria is characterized by its own peculiarities.

In regard to state borders with the Russian Federation: a) incomplete delimitation and demarcation of state land border with Russia, and b) the negotiation process is holding delimitatsiy them and demarcation works in the Sea of Azov and the Kerch Strait.

On May 12, 1997 the Treaty between Ukraine and the Republic of Belarus on the border was signed. This treaty ratified by July 18, 1997 (the Law of Ukraine on July 18, 1997 № 491/97-vr). National Assembly of the Republic of Belarus has not ratified the Treaty so far.

Because of the demarcation of the border areas (demarcation) is impossible to carry out.

International legal basis for bilateral settlement of the political and legal status of Ukraine's borders with Russia, Belarus and the Republic Moldoviya the following international agreements:

A). Minsk multilateral agreement on the establishment of the Commonwealth of Independent States (CIS) contains provisions on mutual recognition and respect for the territorial integrity of the Commonwealth, the inviolability of their borders. The statement of the Supreme Rada of Ukraine 20 December 1991 concerning the Agreement on the Commonwealth of Independent States stated: "The border between Ukraine - on the one hand and Russia and Belarus - the other is the state border of Ukraine, which is intact. Line its passage defined by the Treaty between Ukraine and Russia in 1990 p., remains unchanged regardless of whether Ukraine is a party to the agreement or not" [23].

B). Memorandum on cooperation in the protection of the state borders of the Republic of Belarus, the Russian Federation and Ukraine, signed by heads of state in Moscow on April 15, 1994 Joint Statement reaffirmed the readiness to proceed with legal registration of their state borders.

The political and legal status of border between Ukraine and Moldova is determined primarily by the presence of the Transdnistrian conflict (Rumanian Conflictul din Transnistria) - the conflict that arose in the early 1990s between the central government of Moldova and the breakaway republics of Transdnistria.

The legal framework of international relations between Ukraine and the Republic of Moldova was formed by the Treaty of neighborliness, Friendship and Cooperation, signed in Chisinau on October 23, 1992 and the Agreement on the Cooperation for the period 1998-2007 of 23 October 1998

Concluded in November 1994, the agreement between the governments of Ukraine and Moldova on cooperation on border issues became the basis for beginning the process of delimitation of the Ukrainian-Moldovan border.

Thus, in general, the question of the Ukrainian-Moldovan border agreements reached. Delimitation of the state border between Ukraine and Moldova completed, signed Agreement between Ukraine and the Republic of Moldova on the state border treaty ratified by Law N 1633-III (1633-14) of 06.04.2000.

Today, the question remains inconsistent demarcation of the central plot Ukraine-Moldova border (Transdnistrian segment).

Particular attention is paid to the problem of national legislation on the regulation of cross-border cooperation. Ukraine adopted: a) Law of Ukraine "On the cross-border cooperation" from 24.06.2004, the [24], b) concept from 15.09.2010 № 1838-r On approval of the concept of state cross border development program for 2011-2015 [25]; c) Law of Ukraine "On Local Self-Government" (of 21.05.1997, the) [26], e) Law of Ukraine "Local Administrations" (dated 09.04.1999) [27]. Analysis of the Law indicates that virtually Act declares lofty goals of cross-border cooperation, empowerment of local authorities, local authorities in cross-border cooperation and legislative regulation of the financial support of cross-border cooperation. Law meets regulatory legislation of the European Union or the rules and principles of the GATT / WTO. However, from a practical point of view the law requires the creation of pragmatic organizational - legal and institutional mechanisms for regulation of border relations at the institutional level. The material provisions of the Law are purely declarative and do not create a legal

basis for the formation of organizational - legal and institutional mechanism.

Analysis of the legal status of the CBC Eastern European countries that share borders testifies to the priority of creating conceptually revised effective organizational, legal and institutional mechanisms including Euroregions for cross-border cooperation as part of regional policy in Ukraine.

In our view, the problem of the formation of organizational, legal and institutional mechanisms for effective cross-border cooperation in legal terms associated with the reform of local government and redistribution of volume authority on cross-border cooperation between central authorities in favor of territorial communities or local authorities.

In this regard, the practical importance for the regulation of cross-border legal relations with the possible use of model agreements developed under the auspices of the Council of Europe for the needs of regional and local authorities and forth in Additional Protocol (ETS No 159, Strasbourg, November, 1995) to the European Framework Convention on Transfrontier Cooperation between Territorial Communities or Authorities. There are five standard models of international agreements and six standard models of transactions advisory nature, in which a different degree of centralization and differences in administrative structures of member countries CBC are adapted to the needs of regional and local authorities. The first group concerns model of international agreements regarding: a) the promotion of cross-border cooperation, b) regional transboundary consultations in) local transboundary consultations d) contractual cross-border cooperation between local authorities and e) of cross-border cooperation between local authorities

The second group of agreements relating to: a) agreements, charters and contracts between local authorities: b) an agreement on the establishment of consultative group between local authorities, c) agreement on cross-border coordination in managing local public affairs d) agreement on the establishment of private cross-border associations, and e) Agreement Establishing the administrative authorities for cross-border cooperation between local authorities [28].

But the problem is that the administrative - territorial units at the level of regions, territories, counties on the eastern borders of the EU -

Hungary, Romania, Slovakia, Poland, Ukraine, Moldova under national law are not endowed with legislative powers to conclude international agreements or quasi - international agreements on CBC (such powers in relation to certain international treaties endowed cantons of Switzerland and of Germany).

In practice, there are de-facto conclusion of numerous treaties, agreements on cooperation in border areas (administrative units). For example, the Framework Agreement on interregional cooperation between Transcarpathian region of Ukraine and Košice edge of the Slovak Republic (1999), Agreement between the Government Pryashiv, Slovakia and Transcarpathian Regional State Administration (2000), Agreement on INTERREGIO - about trilateralne cooperation Transcarpathia (Ukraine), Satu - Marskoho County (Romania) and the region of Szabolcs-Satmar-Bereg (Hungary) (2000), Agreement between the Transcarpathian Regional State Administration (Ukraine) and the Subcarpathian Voivodeship (Poland) (2002), an Agreement between Uzhgorod City Council (Ukraine) and local authorities of cities Mihaylovtse, Kosice(Slovakia), Nyíregyháza, Beykeshchaba (Hungary), Jaroslaw (Poland), Czech Lipa (Czech Republic) and others.

In legal terms of the above agreement does not create a de-jure international legal obligations. The reason for this is lex opinion regulations of the European Outline Convention on Transfrontier Cooperation between Territorial Communities or Authorities in accordance with national legislation states that share borders. This means that there is no - what legal obligations and rights in this area, respectively, holistic legal mechanism institutional, organizational and legal support of the Euro-regional cooperation.

The following scenario can be demonstrated: the natural process of Ukraine's state formation is in its evolution development; respectively the formation of Ukraine's status in modern system of European interstate relations with relevant internal structures and institutional reforms and transformations in political, economic and social sphere is taking place. This is aimed at achieving compliance Ukraine's legal system to legal standards of the EU acquis communautaire.

The current practice of the CBC suggests new challenges and threats at the new eastern border of the EU: illegal migration, human

trafficking, smuggling, drug trafficking and weapons. In this regard, effective cross-border cooperation requires a coordinated policy on the challenges and threats of global and regional nature and predictable enough practical action programs with the states - members of the EU, which have common borders.

In the context of the formulated statements, in our view, the hierarchical level of component integration of Ukraine and the European Union is defining systematic by a precondition of creating real institutional and organizational - legal support for cross-border cooperation between Ukraine and Eastern European neighbors.

Thus, the analysis of the legal aspects of theory and practice of international cross-border cooperation at the eastern border of the European Union indicates the priority of forming legal regulation mechanism for the effective management of the main directions of cross-border cooperation by creating conceptually updated pragmatic organizational, legal and institutional mechanisms adapted to the legal standards of EU law – *acquis communautaire* EU.

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