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**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**

Abstract of paper:

Cross-border regional policy of the European Union (EU) can be divided into two categories. The first one relates to the EU's internal action - cross-border regional policy with respect to the neighboring regions of EU's Member States. The second one refers to the EU's external action (action towards the non-EU countries) – cross-border regional policy with respect to the neighboring regions where at least one region is situated on the territory of non-EU country.

While cross-border regional policy within the EU's Member States is carried out within the Economic, Social and Territorial Cohesion policy of the EU (hereinafter also as “Cohesion Policy”), the cross-border regional policy relating to the cooperation among the regions situated so on the territory of EU's member states as on the territory of non-EU countries is carried out within the EU's policy of Economic, Financial and Technical Cooperation with Third Countries or/and the Development Cooperation policy. Since Ukraine is not yet a member of the EU, the transborder cooperation among the neighbouring regions of Hungary, Slovakia, Romania and Ukraine is carried out within the EU's cross-border regional policy of the second type.

According to the Article 212 of the Treaty on the Functioning of the European Union (hereinafter “TFEU”), EU carries out economic, financial and technical cooperation measures, including assistance, in particular financial assistance, with third countries. The assistance is planned and delivered by several EU's instruments. One of the general instruments providing EU's direct support of cross-border cooperation on the external borders of the EU is the European Neighbourhood and Partnership

Instrument (ENPI). The adoption of ENPI has considerably enhanced the scope for cross-border cooperation on the external borders of the EU. Current transborder cooperation of neighbouring regions of Hungary, Slovakia, Romania and Ukraine (relating to e.g. promoting of economic and social development, searching for the responses to common challenges in fields as the environment, public health or the prevention of and the fight against organized crime, promoting local “people-to-people” cooperation) is carried out within the ENPI. In spite of the fact, that ENPI draw on funds also from internal headings of the EU budget, as from e.g. the component “Cohesion for growth and employment” of the heading “Sustainable growth” where belongs inter-regional cooperation as well (INTERREG), and not only external headings, the cross-border cooperation on the external borders of the EU, and thus also the transborder cooperation of neighbouring regions of Hungary, Slovakia, Romania and Ukraine currently carried out within the ENPI, can be promoted by its close co-ordination or even integration with the programmes of cross-border regional cooperation as provided by the EU in the framework of the Cohesion Policy, under the territorial cooperation objective of e.g. the Structural Funds (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).

The paper aims to outline the perspectives on the transborder cooperation of neighbouring regions of Hungary, Slovakia, Romania and Ukraine within the cross-border regional policies of the EU, inter alia to outline how the cooperation can be facilitated and promoted by its higher institutionalisation.

First, the overview of current policies and instruments of EU relating to cross-border regional cooperation will be presented. Within the first part of the paper attention will be paid to the Cohesion Policy of the EU, the EU’s policy of Economic, Financial and Technical Cooperation with Third Countries and the Development Cooperation policy of the EU. The focus will be mainly put on the brief history of the policies, their instruments and the role of EU’s institutions, Member States’ bodies and local authorities within the cross-border regional policies of the EU. However, those policies have to be executed respecting the other policies of EU and so the other policies of EU has to be taken into account when some measures relating to

cross-border regional cooperation are to be adopted, as it will be outlined later on. The second part of the paper will focus on the description of how the current transborder cooperation of neighbouring regions of Hungary, Slovakia, Romania and Ukraine is carried out within the EU's policies (which EU's instruments are used within the cooperation). Finally, the conclusion will be done as to how the cooperation could be promoted.

Key words: cross-border regional cooperation; EU's Cohesion Policy; Economic, Financial and Technical Cooperation with Third Countries and the Development Cooperation Policies of the EU; principle of subsidiarity; "bottom-up" method of integration process; institutionalisation of the cross-border regional cooperation.

1. EU Cross-border regional policy within the EU's internal action (Cohesion Policy)

Cohesion Policy of EU represents an internal action of the EU aiming *inter alia* to promote the cross-border regional cooperation among the neighboring regions of the Member States. The legal base for the Cohesion Policy (Economic, Social and Territorial Cohesion) of the EU is currently provided by the Articles 174 -178 of the TFEU. Cohesion Policy involves successive phases of financial bargaining, institutional design, and the creation, negotiation, implementation, and monitoring of regional development plans.¹ In the lines which follow a brief overview of Cohesion Policy of EU will be presented as to its history, relation to the other policies of EU, role of the EU, Member States and local authorities within it and the instruments it uses.

1.1. Cohesion Policy of EU – its history and relation to the other policies of the EU

The support for economic, social and territorial cohesion belongs currently to the explicit basic aims of the EU (Article 3 paragraph 3 of the Treaty on European Union – hereinafter “TEU”). TFEU explicitly

¹ See, MARKS, G.: Exploring and Explaining Variation in EU Cohesion Policy. In: Hooghe, Liesbet (ed.), Cohesion Policy and European Integration: Building Multi-Level Governance. Oxford: Oxford University Press, 1996, p. 388.

provides the economic, social and territorial cohesion with the purposes it should serve and the instruments by which the purposes should be reached. The policy of economic, social and territorial cohesion has its evolution. Before, the coherence policy was incorporated only in the Preamble of the Treaty establishing European Economic Community² (1952), where was stated that the disparities between the regions should diminish. The Single European Act (1987) has integrated economic and social cohesion among the aims of the European Community. The Maastricht Treaty has provided for the first time concrete measures aiming to reach the aims of cohesion policy. The measures were incorporated within the Articles 158-162 of the Treaty establishing European Community. The Lisbon treaty has enshrined the legal base for Cohesion Policy within the Articles 174 – 178 of the TFEU. The Lisbon Treaty has incorporated to the Treaty provisions for the first time the notion of “territorial coherence” (before there was only economic and social cohesion mentioned in the Treaty). Such incorporation was based on the actual practice of cohesion policy, which supported except the economically and socially disadvantaged regions also the regions permanently disadvantaged by its territorial location.³ Lisbon Treaty points certain specific regions to which particular attention should be paid, such as northernmost regions with very low residential density, islandish, cross-border or mountain regions (those regions are permanently disadvantaged by their natural or demographical conditions). Special attention should be also paid to rural regions and regions affected by industrial transition. The EU aims to support especially those regions in order to help them overcome their problems. Rural regions and regions with severe and permanent natural or demographic handicaps are supported as well by the programme for the rural development connected with the **common agricultural policy** (Article 39 of the TFEU *et seq.*). The EU finances the programmes on rural development by the by European agricultural fund for rural development (EAFRD).

² European Economic Community is the legal predecessor of the current European Union. By the Maastricht Treaty signed in 1992 its title was changed to the European Community. By the Lisbon Treaty the European Union has replaced and succeeded the European Community (Article 1 of the TEU).

³ SYLLOVÁ, J. – PÍTROVÁ, L. – PALDUSOVÁ, H. a kol.: Lisabonská smlouva. Komentář. 1. Vydání. Praha: C.H.Beck, 2010, p. 655.

The Cohesion Policy is based on the distribution of the finances of the EU among the Member States for the reason of economic growth and sustainable development of stagnant (undeveloped) regions. Cohesion Policy enables to outline the priorities for the development and, in the context, supplement the EU's policy on **internal market** (Article 26 *et seq.* of the TFEU) and **economic and monetary Union** (Article 119 *et seq.* of the TFEU).⁴

The economic support of undeveloped regions has to take into account the protection of environment as stated within the Article 191 *et seq.* of the TFEU. Thus, the **Union policy on environment** has also to be respected when certain initiatives relating to regional cooperation are to be taken place. It means that such variants of cross-border regional cooperation should chose, which promote regional competitiveness (for example) but at the same time help to improve the environment.

1.2. Role of the EU, Member States and local authorities within the Cohesion Policy of the EU

The Cohesion Policy belongs to the share competences of EU (Article 4 paragraph 2 letter c) of the TFEU). It means that the use of the Union competence in Coherence Policy is governed not only by the principle of proportionality⁵ but by the principle of subsidiarity as well. Under the principle of subsidiarity, *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* (Article 5 paragraph 3 of the TEU).⁶ It means that the aims of coherence policy as stated within

⁴ *Ibid*, p.655.

⁵ Under the principle of proportionality, the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties (Article 5 Paragraph 4 of the TEU). The principle shall apply to all categories and areas of Union competencies (so to the exclusive Union competencies as to the share competencies). For the details of the principle, see e.g.: CRAIG. P. –de BÚRCA, G.: *EU Law. Text, Cases, and Materials*. Fourth Edition. Oxford: Oxford University Press, 2008, pp. 155-157, 544-551.

⁶ For the details of the principle, see e.g.: *Ibid*, pp. 100-105, 155-157.

the Article 174 of the TFEU shall be achieved primarily by the policies of Member States either at central or regional or local level. **Member States** shall conduct their economic policies and shall coordinate them in such a way as to attain the objectives set out in the Article 174 of the TEU. **The role of the Union** within the Coherence Policy is restricted mostly to financial support. Cohesion Policy of the EU relates to decisions concerning financial redistribution among the Member States. Therefore, the Cohesion Policy, in comparison with other policies, can be characterized as follows: “*While many policy areas can be described as a set of institutions looking for the funding, cohesion policy is funding looking for a set of institutions.*”⁷ Union fulfil the task of financial support by the Structural Funds (European Agricultural Guidance and Guarantee Fund, Guidance Section; European Social Fund; European Regional Development Fund), the European Investment Bank as well as by some other existing Financial Instruments. The Union shall support and contribute to the achievement of objectives set out in Article 174 of the TFEU also by the formulation and implementation of its other policies and actions as well as by the implementation of the internal market.⁸ Article 175 paragraph 3 of the TFEU provides the Union with the competences to adopt specific actions in order to promote the economic, social or territorial cohesion, if such actions prove necessary outside the Funds and without prejudice to the measures decided upon within the framework of the other Union policies. Such actions may be adopted by the Council acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee and the Committee of the Regions. Thus, in spite of the fact that the financial support is the most used and most important EU’s instrument of Cohesion Policy, it is not the only one the EU can use.

The principle of subsidiarity which govern the use of the Union competencies in the Cohesion Policy relates to the distribution of powers between the Union and the Member States. It relates to the **local authorities** only as parts of the Member States. The role of the local

⁷ MARKS, G.: Exploring and Explaining Variation in EU Cohesion Policy. In: Hooghe, Liesbet (ed.), Cohesion Policy and European Integration: Building Multi-Level Governance. Oxford: Oxford University Press, p. 389.

⁸ See, the relation of the Cohesion Policy with the other policies of the EU as stated within the text of the paper above.

authorities within the Cohesion Policy and within the functioning of cross-border cooperation is thus in the hands of the Member States. The Member State defines the kind and the character of local authorities within its territory (e.g. of what kind of autonomy they dispose), as well as the scope of their competencies (with respect to cross-border cooperation, e.g. whether they have a power to cooperate with the territorial and administrative units or offices of other states executing regional functions; if they do, in which areas they may cooperate; or if they dispose of the competence to become a member of the international associations of territorial units or territorial bodies). The different allocation of powers to the local authorities by the different states may cause the difficulties in the cross-border cooperation among the neighbouring regions of the different states.

1.3. EU Cohesion Policy's instruments

The occupancy of structural funds of EU is focus on three types of activities, which represents three preferred structural objectives of the Union as stated in the *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*. The three aims are: 1) seeking the convergence of the Member States and the regions, 2) regional competitiveness and employment and 3) European territorial cooperation, which focus on promoting the cross-border cooperation through common local and regional initiatives.

According to the Article 177 of the TFEU, the tasks, priority objectives and the organisation of the Structural Funds, which may involve grouping the Funds, shall be defined by the European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure and consulting the Economic and Social Committee and the Committee of the Regions. By the same procedure shall also be defined the general rules applicable to them and the provisions necessary to ensure their effectiveness and the coordination of the Funds with one another and with the other existing Financial Instruments. Cohesion Fund, set out in accordance with the same procedure, shall provide a financial contribution to projects in the

fields of environment and trans-European networks in the area of transport infrastructure.⁹ Following the Article 177 of the TFEU the *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 or the Council Regulation (EC) No 1084/2006 of 11 July 2006 establishing a Cohesion Fund and repealing Regulation (EC) No 1164/94* have been adopted.

According to the Article 176 of the TFEU, the European Regional Development Fund is intended to help to redress the main regional imbalances in the Union through participation in the development and structural adjustment of regions whose development is lagging behind and in the conversion of declining industrial regions. Article 178 of the TFEU states that implementing regulations relating to the European Regional Development Fund shall be taken by the European Parliament and the Council, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee and the Committee of the Regions. Following the Article 178 of the TFEU the following regulations have been adopted: *Council Regulation (EC) No 1290/2005 of 21 June 2005 on the financing of the common agricultural policy; Council Regulation (EC) No 1698/2005 of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD); Council Decision No 2006/493/EC of 19 June 2006 laying down the amount of Community support for rural development for the period from 1 January 2007 to 31 December 2013, its annual breakdown and the minimum amount to be concentrated in regions eligible under the Convergence Objective; Regulation (EC) No 1080/2006 of the European Parliament and of the Council of 5 July 2006 on the European Regional Development Fund and repealing Regulation (EC) No 1783/1999; or Regulation (EC) No 1081/2006 of the European Parliament and of the Council of 5 July 2006 on the European Social Fund and repealing*

⁹ According to the Protocol No. 28 on Economic, Social and Territorial Cohesion, Cohesion Fund can provide Union financial contributions to projects in the fields of environment and trans-European networks in Member States with a per capita GNP of less than 90 % of the Union average which have a programme leading to the fulfilment of the conditions of economic convergence as set out in Article 126 of the TFEU.

Regulation (EC) No 1784/1999. In the lines which follow some of the EU Cohesion Policy regulations will be described.

Regulation No 1080/2006 on the European Regional Development Fund establishes the tasks of the European Regional Development Fund (ERDF), the scope of its assistance with regard to the Convergence, Regional competitiveness and employment and European territorial cooperation objectives as defined in Article 3(2) of Regulation (EC) No 1083/2006, and the rules on eligibility for assistance. ERDF shall contribute to the financing of assistance which aims to reinforce economic and social cohesion by redressing the main regional imbalances through support for the development and structural adjustment of regional economies, including the conversion of declining industrial regions and regions lagging behind, and support for cross-border, transnational and interregional cooperation.

The *Regulation (EC) No 1083/2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund* lays down the general rules governing the ERDF, the European Social Fund (ESF) and the Cohesion Fund (CF), without prejudice of the specific provisions laid down in Regulations (EC) No 1080/2006, (EC) No 1081/2006 and (EC) No 1084/2006. The regulation defines the objectives to which the ERDF, ESF and CF are to contribute, the criteria for Member States and regions to be eligible under those Funds, the financial resources available and the criteria for their allocation. It defines the context for Cohesion Policy, including the method for establishing the EU strategic guidelines on cohesion, the national strategic reference framework and the process for examination at EU level. Alike, it lays down the principles and rules on partnership, programming, evaluation, management, including financial management, monitoring and control on the basis of responsibilities shared between the Member States and the Commission.

The *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)* states that A European grouping of territorial cooperation ('EGTC') may be established on EU territory under the conditions and subject to the arrangements provided for by this Regulation. The objective of an EGTC is to facilitate and promote cross-border, transnational and/or interregional cooperation between its

members, with the exclusive aim of strengthening economic and social cohesion. An EGTC shall have legal personality. It shall have in each Member State the most extensive legal capacity accorded to legal persons under that Member State's national law. It may, in particular, acquire or dispose of movable and immovable property and employ staff and may be a party to legal proceedings.

2. EU cross-border regional policy within the EU's external action (Development Cooperation and Economic, Financial and Technical Cooperation with Third Countries)

There was no explicit legal basis in the Treaty establishing European Economic Community (TEEC) relating to Economic, Financial and Technical Cooperation with Third Countries and Development Policy, as the EU external policies relating to cooperation with Third Countries, until the Maastricht Treaty was adopted in 1992 (entering into force in 1993). However, the Cooperation Policy with Third Countries and Development Policy were developed before the Maastricht Treaty on the basis of other external policies including commercial policy and association, as well by using the residual powers provision in Article 235 of the TEEC.¹⁰ The Maastricht Treaty subsequently inserted an independent EC Treaty basis for Development Policy and the later Nice Treaty provided a legal basis for Economic, Financial and Technical Cooperation with Third Countries. The EU policy on Economic, Financial and Technical Cooperation with Third Countries is currently regulated by the Articles 212 – 213 of the TFEU and the EU policy on Development Cooperation by the Articles 208 – 211 of the TFEU. In both of the EU external policies, the EU is required to contribute to the general objective of developing and consolidating democracy and the rule of law, and to that of respecting the human rights and fundamental freedoms.

The EU policy on Economic, Financial and Technical Cooperation with Third Countries supplements the EU policy on Development Cooperation. The need to set in within the framework of the Treaty the EU's policy on Economic, Financial and Technical Cooperation with Third Countries and thus to supplement the existing

¹⁰ For the details see, CRAIG, P. –de BÚRCA, G.: *EU Law. Text, Cases, and Materials*. Fourth Edition. Oxford: Oxford University Press, 2008, p. 186-187

policy on Development Cooperation relates *inter alia* with the decision of the Court of Justice in a case *Portuguese v. Council* (C-268/94). The case related to the scope (*ratione materiae*) of the Cooperation Agreement between the European Community and the Republic of India.¹¹ The agreement contained not only the provisions related to the development cooperation as regulated by the respective provisions of the EC Treaty, but it also contained the provisions relating to cooperation in the fields of energy, tourism, culture, drug abuse control and protection of intellectual property. The question raised before the Court of Justice was whether the European Community did not exceed the scope of its competences when concluded such agreement.

Economic, Financial and Technical Cooperation with Third Countries is perceived as a specific area of competences of EU. EU performs the cooperation in accordance with the policy of Development Cooperation as well as in accordance with the principles and aims of the EU's external actions as provided by the Article 21 of the TEU.¹²

Also in that area of EU competence (like in the area of Cohesion Policy), the Member States and EU complement each other activities. Whether the respective activity of EU belongs to the exclusive or share or supplementing competences of EU depend on the area of the cooperation with the respective third country. If the cooperation relates for example the conservation of marine biological resources, it belongs to exclusive competences of EU (Article 3 paragraph 1 of the TFEU). If it relates to transport, or energetics, it belongs to the shared competences (Article 4 paragraph 2 of the TFEU). If it belongs to the area of research it belongs to the competences to carry out actions to support, coordinate or supplement the actions of the Member States (Article 6 of the TFEU). The fact whether the cooperation with Third Country in a concrete case

¹¹ See, Council Decision 94/578/EC of 18 July 1994 concerning the conclusion of the Cooperation Agreement between the European Community and the Republic of India on Partnership and Development (OJ 1994 L 223, p. 23).

¹² According to the Article 21 of the TEU, The Union's action on the international scene shall be guided by the principles of democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law.

belongs to exclusive or share competencies of EU or to the competences to carry out actions to support, coordinate or supplement the actions of the Member States has the influence on the use of the EU power. Different areas of Union competencies are governed by the different principles guiding their use.

Article 212 paragraph 3 of the TFEU relates to the possibility to conclude international agreements between the EU and the Third Countries relating to the mutual cooperation between them. EU by the Lisbon Treaty gained the legal subjectivity (Article 47 of the TEU). The possibility of EU to conclude international agreements should be without prejudice to the Member States' competence to negotiate in international bodies and to conclude international agreements. Thus, also the Member States can conclude international agreements with the Third Countries in order to promote Development Cooperation and Economic, Financial, Technical Cooperation with them. There were concluded several international agreements between the EU and Ukraine or between the Slovak republic and Ukraine which aims to facilitate transition of persons or goods across the borders¹³ or to recognize certain rights of the Ukrainian individuals within the Member States of

¹³ The examples of the agreements concluded at the level of the EU/EC: *Partnership and Cooperation Agreement between the European Communities and their Member States, and Ukraine*, signed on the 14th of June, 1994 in Luxembourg, entry into force the 1st of March, 1998, published at *Official Journal L 049, 19/02/1998 P. 0003 – 0046*. *Agreement between the European Community and Ukraine on the facilitation of the issuance of visas*, signed on the 18th of June, 2007 in Luxembourg, entered into force 1st of January, 2008. Published at the Official Journal of the European Union *OJ L 332, 18.12.2007, pp. 68–76*.

The examples of bilateral intergovernmental agreements concluded between the Slovak republic and Ukraine: *Agreement between the government of the Slovak republic and the Cabinet of Ministers of Ukraine on the abolition of visa requirement for the holders of diplomatic and ministrative passports*, signed on the 28th of April, 2000, entered into force on the 28th of June, 2000. The announcement on concluding the agreement is published at the Collection of Laws of the Slovak republic under the number 360/2001 Z. z. *Agreement between the Slovak Republic and Ukraine on the Local Border Traffic*, signed on the 30th of May, 2008 in Bratislava, entered into force on the 27th of September, 2008, published at the Collection of Laws of the Slovak republic under the number 441/2008 Z. z. *Agreement between the Slovak republic and Ukraine on good-neighborliness, friendly relations a cooperation*, signed on the 29th of June, 1993 in Kiev (entered into force on the 16th of June 1994), published in the Collections of Laws of the Slovak republic under the number 177/1994.

EU/Slovakia.¹⁴ As to the agreements concluded at the level of the EU, the agreements were concluded on the legal basis not only of the Economic, Financial and Technical Cooperation with Third Countries and/or Development Cooperation but also of other areas of Union competencies (e.g. Area of Freedom, Security and Justice).

Article 213 of the TFEU is a new article added to the TFEU by the Lisbon Treaty. It refers to the possibility of the EU to grant financial aid to the Third Country. It provides that when the situation in a Third Country requires urgent financial assistance from the Union, the Council

¹⁴ The examples of agreements adopted at the level of the European Union: *Partnership and Cooperation Agreement between the European Communities and their Member States, and Ukraine*, signed on the 14th of June 1994 in Luxembourg, entry into force the 1st of March 1998, published at Official Journal L 049, 19/02/1998 P. 0003 – 0046. Some of the provisions of the Agreement can evoke the direct effect when all of its conditions are met – the provision must be sufficiently clear and precisely stated; it must be unconditional and not dependent on any other legal provision; it must confer a specific right upon which a citizen can base a claim. The first judgment of the Court of Justice of the European Union on the effects of the partnership agreement was given in a case C-265/03 *Igor Simutenkov v. Ministerio de Educación y Cultura and Real Federación Española de Fútbol*. It relates to the equal working conditions for Russian Professional football player in national competitions within the Member states of EU. The Court of Justice has ruled that the principle of non-discrimination laid down in the EC–Russia Partnership Agreement can be relied on by individuals before the courts of a Member State.

The examples of intergovernmental agreements concluded at the level of the Slovak republic: *Agreement between the Slovak republic and Ukraine on good-neighbourliness, friendly relations a cooperation*, signed on the 29th of June, 1993 in Kiev (entered into force on the 16th of June, 1994), published in the Collections of Laws of the Slovak republic under the number 177/1994. *Agreement between the government of the Slovak republic and Ukraine on preclusion of double taxation and prevention of tax evasions as to the income tax and the tax of property*, signed in the 23rd of January 1996 in Štrbské Pleso (entered into force the 22nd of November, 1996), published in the Collection of Laws of the Slovak republic n. 173/1997. *Agreement between the Slovak Republic and Ukraine for the Promotion and Reciprocal Protection of Investments*, signed on the 26th of February, 2007 in Kiev (entered into force on the 20th of August, 2009), published in the Collection of Laws of the Slovak republic under the number 271/2009. *Agreement between the Slovak republic and Ukraine on social security*, signed on the 5th of December, 2000 in Bratislava (entered into force on the 1st of January 2002), published in the Collection of Laws of the Slovak republic n. 53/2002 Z. z. The Agreement was changed by the Agreement between the Slovak republic and Ukraine on the change of the Agreement between the Slovak republic and Ukraine on social security, signed on the 11th of October, 2007 in Bratislava, published in the Collection of Laws of the Slovak republic n. 211/2009 Z. z.

shall adopt the necessary decisions on a proposal from the Commission. Even before the Lisbon Treaty the EU did grant a financial aid to Third Country. In 1990 the EU granted financial aid to Hungary. It acted according to the Article 308 of the Treaty establishing European Community (so called flexible clause). Such an action of EU was argued to be supporting the development of internal market through the partnership market outside of the Community. Now the EU can grant financial aid without the reference to internal market. Such an aid is based on the principles and aims of external acting of EU and should be in accordance with the EU Development Policy. Such a help has to be urgent and proportional. If it is not urgent, article 212 of the TFEU will apply instead (Economic, Financial and Technical Cooperation with Third Countries). To grant the financial aid according to the Article 213 of the TFEU is also simpler now – no unanimity in the Council is required.¹⁵

How the EU external competencies on Economic, Financial and Technical Cooperation with Third Countries and Development Cooperation (as well as the EU external competencies based on other articles of the TEU or TFEU) relates to cross-border regional policy with respect to the neighboring regions where at least one region is situated on the territory of non-EU country, will be outlined on the example of cross-border regional cooperation among the neighbouring regions of Hungary, Slovakia, Romania and Ukraine, to which the attention will to be paid in the following lines.

3. Current transborder cooperation on the eastern border of the EU within the EU policies

3.1. EU policy towards the Ukraine in general

Relations between Ukraine and the EU, relating also to the cooperation of the local and regional authorities in Ukraine with the local and regional authorities of the Member States of EU (including Slovakia), are currently shaped via the **European Neighbourhood Policy** - a foreign policy instrument of the EU designed for the countries

¹⁵ For the details on EU external action, see e.g.: EECKHOUT, P.: External relations of the European Union. Legal and Constitutional foundations. Oxford: Oxford University Press, 2004.

it borders. The European Union is seeking an increasingly close relationship with Ukraine, going beyond cooperation, to gradual economic integration and deepening of political cooperation.

The European Council meeting of March 2009 welcomed the establishment of an **Eastern Partnership** in order to involve a deeper engagement with the eastern partners at both bilateral and multilateral levels. It aims to create the necessary conditions to accelerate political association and further economic integration by seeking to support political and socio-economic reforms of partner countries, facilitating approximation towards the EU. The reforms relate also to the Ukrainian local self-government bodies of local areas and state territorial authorities. The Joint Declaration of the Prague Eastern Partnership Summit of the 7th of May 2009 confirmed the desire of the EU Member States and eastern European partners to take their relationship to a new level by pursuing the above-mentioned goals.

Under the European Neighbourhood Policy, a set of priorities are defined together by the European Union and the partner countries, to be incorporated in a series of jointly agreed **Action Plans**, covering a number of key areas for specific action, including political dialogue and reform, trade and economic reform, equitable social and economic development, justice and home affairs, energy, transport, information society, environment, research and innovation, the development of civil society and people-to-people contacts. Progress towards meeting these priorities will contribute to realising the full potential of the **Partnership and Cooperation Agreements**¹⁶ and the **Association Agreements**.

Partnership and Cooperation Agreement between the European Communities and their Member States, and Ukraine, was signed on the 14th of June 1994 in Luxembourg.¹⁷ The agreement established the partnership between the Community (nowadays EU) and its Member States, on the one part, and Ukraine, on the other part. The objectives of the established partnership are, for example: to provide an appropriate

¹⁶ Partnership and Cooperation Agreements are a peculiar type of agreements. They can be situated between association agreements and traditional trade and co-operation agreements. They are essentially based on the Article 207 of the TFEU (former Article 133 of the TEC) and the Article 352 TFEU (former article 308 of the TEC) in combination with a wide range of TFEU.

¹⁷ It was published at *Official Journal of EU L 049, 19/02/1998 P. 0003 – 0046*.

framework for the political dialogue between the Parties allowing the development of close political relations, to promote trade and investment and harmonious economic relations between the Parties and so to foster their sustainable development, to provide a basis for mutually advantageous economic, social, financial, civil scientific technological and cultural cooperation. In order to attain these objectives the Agreement contains provisions relating to the free movement of goods, provisions affecting business and investments, provisions relating to establishment and operation of companies, provisions on cross-border supply of services between the Community (EU) and Ukraine, provisions relating to the payments and capital, as well as provisions on competition, intellectual, industrial and commercial property protection, economic cooperation in different areas like economy, science and technology, education and training, agriculture and the agro-industrial sector, energy, cooperation in the civil nuclear sector, environment, transport, space, postal services and telecommunications, financial services, regional development, social cooperation, tourism, small and medium-sized enterprises, consumer protection. A *Joint EU-Ukraine Action Plan* was endorsed by the European Council on the 21th of February 2005. It is based on the Partnership and Cooperation Agreement of 1994 and provides a comprehensive and ambitious framework for joint work with Ukraine in all key areas of reform. Ukraine and the European Union agreed to enter into intensified political, security, economic and cultural relations, including cross border co-operation and shared responsibility in conflict prevention and conflict resolution. The implementation of Action Plan helps to fulfill the provisions in the Partnership and Cooperation Agreement as a valid basis for EU-Ukraine cooperation, and encourages and supports Ukraine's objective of further integration into European economic and social structures. The Action Plan sets out priorities in areas within and beyond the scope of the Partnership and Cooperation Agreement. Although, the Action plan do not constitute any directly evocable right for the Ukrainian individuals in the EU Member States, it provides a very important framework for the activities leading to the conferral of certain concrete rights to the Ukrainian individuals (for example, freedom of establishment, freedom of movement of workers, or the right for equal treatment in other, mostly economic or to economy related, areas). Current negotiations between the EU and Ukraine relate to

conclusion of the *European Union Association Agreement*. Association Agreement will create a new framework for co-operation between the EU and Ukraine relating to the further development in the areas which are now regulated within the Partnership and Cooperation Agreement.

3.2. EU instruments of Economic, Financial and Technical Cooperation with Third Countries and Development Cooperation relating to cross-border regional cooperation on the eastern border of the EU

Following the Articles of the TFEU on Economic, Financial and Technical Cooperation with Third Countries and Development Cooperation, *regulation of the European Parliament and of the Council laying down general provisions establishing a European Neighbourhood and Partnership Instrument*¹⁸ (hereinafter also as “ENPI regulation”) was adopted. The regulation established a Neighbourhood and Partnership Instrument (ENPI) to provide the Community (nowadays EU) assistance for the development of an area of prosperity and good neighbourliness. The EU assistance may be used for the common benefit of Member States and partner countries and their regions, for the purpose of promoting cross-border and trans-regional¹⁹ cooperation as defined in Article 6 of the regulation. EU assistance under the Regulation shall be implemented through: (1) country, multi-country and cross-border strategy papers and multi-annual indicative programmes covering: (a) country or multi-country programmes, which deal with assistance to one partner country or address regional and sub-regional cooperation between two or more partner countries, in which Member States may participate; (b) cross-border cooperation programmes, which deal with cooperation between one or more Member States and one or more partner countries, taking place in regions adjacent to their shared part of the external border of the

¹⁸ Regulation (EC) No 1638/2006 of the European Parliament and of the Council of 24 October 2006 laying down general provisions establishing a European Neighbourhood and Partnership Instrument. *OJ L 310, 9.11.2006, p. 1–14.*

¹⁹ For the purposes of the Regulation, the trans-regional cooperation mean cooperation between Member States and partner countries, addressing common challenges, intended for their common benefit, and taking place anywhere in the territory of the Member States and of partner countries (Article 6 paragraph 2 of the ENPI regulation).

EU; or through (2) joint operational programmes for cross-border cooperation referred to in Article 9 of the regulation, annual action programmes referred to in Article 12 of the regulation and special measures referred to in Article 13 of the regulation. Implementing rules for cross-border and trans-regional cooperation programmes financed under the ENPI regulation were adopted by the European Commission on the 9th of August 2007.²⁰

3.3. Hungary-Slovakia-Romania-Ukraine ENPI Cross-border Cooperation Programme 2007-2013

The Hungary-Slovakia-Romania-Ukraine ENPI Cross-border Cooperation Programme is a joint operational programme for cross-border cooperation. It entered into force on the 23rd of September 2008, after the approval of the European Commission. The programme allocates 68.638.283 € of ENPI funding. It is to be implemented in the period of 2007-2013 on the external border of the participating EU Member States with Ukraine. The aim of the Programme is to promote activities with the support of the EU which will lead to a more intense and deeper social and economic cooperation between the regions of Ukraine and the regions of Member States sharing common border. The Programme offers a wide range of opportunities to the potential beneficiaries through the four priorities: (1) economic and social development, (2) Enhance environmental qualities, (3) increase border efficiency and (4) Support people to people cooperation.²¹

Conclusion – Perspectives on the transborder cooperation on the eastern border of the EU (within the policies of the EU)

Current transborder cooperation of neighbouring regions of Hungary, Slovakia, Romania and Ukraine is carried out under the European Neighbourhood Policy - a foreign EU policy instrument

²⁰ Commission regulation (EC) No 951/2007 of 9 August 2007 laying down implementing rules for cross-border cooperation programmes financed under Regulation (EC) No 1638/2006 of the European Parliament and of the Council laying down general provisions establishing a European neighbourhood and Partnership Instrument. *OJ L 210, 10.8.2007, p. 10–25.*

²¹ For the details on the Programme see, e.g., its official website: <http://www.huskroua-cbc.net/>

designed for the countries it borders. EU financial assistance to the programmes carried out under the European Neighbourhood Policy is carried out within the EU's external actions of Economic, Financial and Technical Cooperation with Third Countries and Development Cooperation. The instrument providing EU's direct financial support for cross-border cooperation of neighbouring regions of Hungary, Slovakia, Romania and Ukraine is the European Neighbourhood and Partnership Instrument (ENPI). The Hungary-Slovakia-Romania-Ukraine ENPI Cross-border Cooperation Programme has considerably enhanced the scope of cross-border cooperation, both qualitatively and quantitatively. From the text of the paper flows that the cross-border cooperation of neighbouring regions of Hungary, Slovakia, Romania and Ukraine can be realized even within the EU internal policies like the Cohesion Policy. As provided by the Regulation No 1638/2006 laying down general provisions establishing a European Neighbourhood and Partnership Instrument, such a combination of external policy objectives with environmentally sustainable economic and social cohesion could the best achieve the aim of integration and sustainable regional development of neighbouring border regions along the external borders of the EU. It could contribute to harmonious territorial integration across the EU and with neighbouring countries.

The use of Cohesion Policy instruments could promote and facilitate the cross-border cooperation of neighbouring regions of Hungary, Slovakia, Romania and Ukraine. The amelioration of the cooperation could be done for example by the enhancement of its degree of institutionalisation. To reach this aim, the neighbouring regions of Hungary, Slovakia, Romania and Ukraine could establish a European grouping of territorial cooperation (EGTC) according to the Regulation No 1082/2006 on a European grouping of territorial cooperation. The EGTC could have a legal personality. Within the EGTC the *sui generis* supra-regional institutions empowered to adopt legal acts binding the local authorities of the neighbouring regions and individuals within their jurisdiction, to execute effectively adopted legal acts and to secure their effective enforceability, could be established. Thus, the special law-making, law-executing and law-controlling (of judicious character) institutions could be establish. The local authorities of the respective regions would be subordinated to those institutions. Of course that it

could be done only by the legal acts adopted by the states since the states, and not the local authorities, have the power to transfer the power in certain fields from the local authorities to supra-regional authorities. Local authorities of the states thus would have to surrender the exercise of some of their currently (exclusive) powers. This could cause the resistance of some of the local authorities to create such supra-regional organisation with the special supra-regional institutions. Such supra-regional entity with supra-regional institutions could be established only also through the international agreement(s) concluded among the states. The establishment of such an entity would thus depend on the will of the states, too. If both, states and the local authorities from all the participating states would agree, the entity could be established on indefinite period. The entity could have established its own system of financing and thus its agenda would not depend on the time limited financial support given by some other authority (state or EU). The entity could secure economic, social and territorial cohesion of the regions participating in it. It could better reach the aims of current programmes of cross-border regional cooperation. It would be based on the fully respect for the principle of subsidiarity (the principle mentioned in the text above), which in principle means that the decision making process should be as close to individuals as possible. The entity would work for the integration of Europe and its people by the way “bottom-up” and not the way “top-down” as it is often done.

Of course, the establishment of such a supra-regional entity highly institutionalized is a very ambitious plan. Even if all actors (local authorities, states, EU) would agree to take a step towards its creation, it would last few years till it will start to work. The process of its establishment would have to be divided into few stages. And there are even some issues which will have to be taken into account and discussed before. The process of integration of the respective regions situated on the territory of different states could for example clash with the variety of values and cultures of people inhabiting the regions. Current Schengen *acquis* applied on the borders of EU with the Third Countries would make the establishment of the supra-regional entity very problematic. And it is questionable if the EU instrument of EGTC could be used for the establishment and functioning of such an entity. The legislative changes of bigger extent would probably have to be done at

the EU level as well. Therefore to end the paper with more realistic conclusion (in the sense that the conclusion could bring sooner some results for the improvement of current cross-border cooperation of neighbouring regions of Hungary, Slovakia, Romania and Ukraine) it can be written that in order to increase the effectiveness of cross-border cooperation on the Eastern border of EU the use of current EU instruments of Cohesion Policy in bigger extent, and not only the instruments of EU external policies, is needed. In order the use of the EU Cohesion Policy instruments to be possible and effective, the programmes of cross-border cooperation of neighbouring regions of Hungary, Slovakia, Romania and Ukraine have to stem from and respect all the other EU policies (e.g. on the internal market or the protection of environment) as mentioned within the text of the paper.

BIBLIOGRAPHY:

Monographs:

1. CRAIG P. – de BÚRCA G.: EU Law. Text, Cases, and Materials. Fourth Edition. Oxford: Oxford University Press, 2008
2. EECKHOUT P. External relations of the European Union. Legal and Constitutional foundations. Oxford: Oxford University Press, 2004.
3. MARKS G. Exploring and Explaining Variation in EU Cohesion Policy. In: Hooghe, Liesbet (ed.), Cohesion Policy and European Integration: Building Multi-Level Governance. Oxford: Oxford University Press, 1996.
4. SYLLOVÁ J. – PÍTROVÁ L. – PALDUSOVÁ H. a kol.: Lisabonská smlouva. Komentář. 1. Vydání. Praha: C.H.Beck, 2010.

European Union Law:

1. Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union. *Official Journal C 83 of 30.3.2010.*
2. Protocol No. 28 on Economic, Social and Territorial Cohesion, Cohesion Fund, annexed to the Final Act of the Intergovernmental Conference which adopted the Treaty of Lisbon.
3. Council Decision 94/578/EC of 18 July 1994 concerning the conclusion of the Cooperation Agreement between the European

Community and the Republic of India on Partnership and Development. OJ 1994 L 223, p. 23.

4. Council Decision 94/578/EC of 18 July 1994 concerning the conclusion of the Cooperation Agreement between the European Community and the Republic of India on Partnership and Development. OJ 1994 L 223, p. 23.

5. Council Regulation (EC) No 1290/2005 of 21 June 2005 on the financing of the common agricultural policy. *OJ L 209, 11.8.2005, p. 1–25.*

6. Council Regulation (EC) No 1698/2005 of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD). *OJ L 277, 21.10.2005, p. 1–40.*

7. Council Decision No 2006/493/EC of 19 June 2006 laying down the amount of Community support for rural development for the period from 1 January 2007 to 31 December 2013, its annual breakdown and the minimum amount to be concentrated in regions eligible under the Convergence Objective. *OJ L 195, 15.7.2006, p. 22–23.*

8. Regulation (EC) No 1080/2006 of the European Parliament and of the Council of 5 July 2006 on the European Regional Development Fund and repealing Regulation (EC) No 1783/1999. *OJ L 210, 31.7.2006.*

9. Regulation (EC) No 1081/2006 of the European Parliament and of the Council of 5 July 2006 on the European Social Fund and repealing Regulation (EC) No 1784/1999. *OJ L 210, 31.7.2006.*

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

11. 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. *OJ L 210, 31.7.2006, p. 25–78.*

12. Council Regulation (EC) No 1084/2006 of 11 July 2006 establishing a Cohesion Fund and repealing Regulation (EC) No 1164/94. *OJ L 210, 31.7.2006, p. 79–81.*

13. Regulation (EC) No 1638/2006 of the European Parliament and of the Council of 24 October 2006 laying down general provisions

establishing a European Neighbourhood and Partnership Instrument. *OJ L 310, 9.11.2006, p. 1–14.*

14. Commission regulation (EC) No 951/2007 of 9 August 2007 laying down implementing rules for cross-border cooperation programmes financed under Regulation (EC) No 1638/2006 of the European Parliament and of the Council laying down general provisions establishing a European neighbourhood and Partnership Instrument. *OJ L 210, 10.8.2007, p. 10–25.*

15. A Joint EU–Ukraine Action Plan endorsed by the European Council on the 21th of February 2005

Decisions of the Court of Justice of European Union:

1. Judgment of the Court of 3 December 1996 in a case C-268/94 Portuguese Republic v Council of the European Union. 1996 I-06177.

2. Judgment of the Court of 12 April 2005 in a case C-265/03 Igor Simutenkov v Ministerio de Educación y Cultura and Real Federación Española de Fútbol. 2005 I-02579.

International Agreements:

1. Agreement between the European Community and Ukraine on the facilitation of the issuance of visas, signed on the 18th of June, 2007 in Luxembourg, entered into force 1st of January, 2008. Published at the Official Journal of the European Union *OJ L 332, 18.12.2007, pp. 68–76.*

2. Agreement between the government of the Slovak republic and the Cabinet of Ministers of Ukraine on the abolition of visa requirement for the holders of diplomatic and ministrative passports, signed on the 28th of April, 2000, entered into force on the 28th of June, 2000. The announcement on concluding the agreement is published at the Collection of Laws of the Slovak republic under the number 360/2001 Z. z.

3. Agreement between the Slovak Republic and Ukraine on the Local Border Traffic, signed on the 30th of May, 2008 in Bratislava, entered into force on the 27th of September, 2008, published at the Collection of Laws of the Slovak republic under the number 441/2008 Z. z..

4. Agreement between the Slovak republic and Ukraine on good-neighborliness, friendly relations a cooperation, signed on the 29th of June, 1993 in Kiev. Published in the Collections of Laws of the Slovak republic under the number 177/1994 Z. z.

5. Agreement between the Slovak republic and Ukraine on good-neighborliness, friendly relations a cooperation, signed on the 29th of June, 1993 in Kiev. Published in the Collections of Laws of the Slovak republic under the number 177/1994.

6. Agreement between the government of the Slovak republic and Ukraine on preclusion of double taxation and prevention of tax evasions as to the income tax and the tax of property, signed in the 23rd of January 1996 in Štrbské Pleso. Published in the Collection of Laws of the Slovak republic n. 173/1997.

7. Agreement between the Slovak republic and Ukraine on social security, signed on the 5th of December, 2000 in Bratislava. Published in the Collection of Laws of the Slovak republic n. 53/2002 Z. z.

8. Agreement between the Slovak Republic and Ukraine for the Promotion and Reciprocal Protection of Investments, signed on the 26th of February, 2007 in Kiev. Published in the Collection of Laws of the Slovak republic under the number 271/2009.

9. Agreement between the Slovak republic and Ukraine on the change of the Agreement between the Slovak republic and Ukraine on social security, signed on the 11th of October, 2007 in Bratislava, published in the Collection of Laws of the Slovak Republic n. 211/2009 Z. z.

10. Partnership and Cooperation Agreement between the European Communities and their Member States, and Ukraine, signed on the 14th of June, 1994 in Luxembourg. Published at *Official Journal L 049, 19/02/1998 P. 0003 – 0046*.

Internet sources:

1. <http://www.huskroua-cbc.net/>