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**Ukraine's experience and prospects of cross-border cooperation:
Legal and economic parameters in the light of sustainable development**

Abstract: *The article provides a general overview of the course of forming Ukraine's legal and policy basis for cross-border cooperation in connection with economic development. Specific attention is given to its cross-border cooperation with the neighbouring Eastern European countries in the frameworks of bilateral treaties, the Madrid Outline Convention and the EU-Ukraine Association Agreement. Their cooperation within four Euroregions, supported by the EU European Neighbourhood Instrument, is observed. The complex of cross-border cooperation advantages, shortcomings of their realisation and the current prospects for cross-border cooperation advancement in the light of sustainable development are characterised.*

Keywords: *cross-border cooperation, sustainable development, Madrid Outline Convention, EU-Ukraine Association Agreement*

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Introduction

Ukraine's favourable geographic position in the middle of the European continent and, thus on the cross-roads between Asia, the Middle East and Central Europe has always been a lucky chance and a tricky challenge. Historically, wealth and progress were brought to its territory as well as wars and destruction through numerous migration and trading routes.

At the end of the Soviet era, Ukraine was one of the richest Soviet Socialist Republics and shared borders with 5 member countries of the Council for Mutual Economic Assistance (CMEA) – Bulgaria, Czechoslovakia, Hungary, Poland, and Romania – and thus it gained considerable benefits while exploiting the extensive transport infrastructure (railway, highways, river and sea as well as aviation transport systems) that crossed its territory in all geographical directions. As known, the CMEA aimed to establish close economic relations between its members and coordinate their concerted actions in the foreign market (*Orlik* 2009). Those times are 30 years back; the new European political agenda and the EU factor have not changed the endeavour of the neighbouring Eastern European countries to cooperate beyond their borders.

Currently, cross-border cooperation between Ukraine and the above countries, based on the international and domestic law norms, is considered an instrument of the regional and even macro-level development, regarding sustainable development as a common goal. However, the potential of cross-border cooperation is not used appropriately; new prospects in Ukraine's legislative improvements and experience are deemed to be decisive for boosting cross-border cooperation.

Formation of Ukraine's legal basis for cross-border cooperation

Cross-border cooperation of modern Ukraine with its Eastern European next-door neighbours stems primarily from the international treaties on good neighbourly relations and cooperation, laid out in the early 1990s, soon after Ukraine gained its independence, and in the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities of 1980 (Madrid Outline Convention) (*CoE* 1980).

The Madrid Outline Convention is equally binding for 39 European states and it entered into force for Ukraine and Poland in 1993, for Hungary in 1994, for Bulgaria in 1999, for the Czech Republic and Slovak Republic in 2000 and for Romania in 2003. Ukraine and all these countries

made commitments to facilitate local and regional authorities in establishing cross-border cooperation, among other ways, by means of bilateral or multilateral agreements between them within the scope of their respective powers defined by domestic laws. Cross-border actors are encouraged to make agreements on matters of common regional, urban and rural development, environmental protection, improvement of public facilities and services and mutual assistance in emergencies, etc. To act more efficiently, they may choose to set up transfrontier associations or consortia. In parallel, the states are obliged to eliminate obstacles to cross-border cooperation and to grant the necessary facilities to the involved local and regional authorities. Though the granting of facilities shall be subject to the state's rules of control or supervision, this must by all means respect international relations and the national policy. No doubt, the Convention, even if it had not ratified yet by the Eastern European countries, was carefully considered when they concluded their bilateral framework treaties on good neighbourly relations and cooperation.

The list of such Ukraine's treaties is opened by one made with Hungary in 1991 (*Treaty* 1991). These are followed by treaties between Ukraine and Poland (*Treaty* 1992a), Ukraine and Bulgaria (*Treaty* 1992b), Ukraine and Slovakia (*Treaty* 1993) and Ukraine and Romania (*Treaty* 1997). All these treaties confirm the political will of their interested parties to build their relationships based on traditional friendly relations between the peoples of these states on the grounds of mutual respect and sovereign equality and with regard to political and economic transformation in the states themselves, in Europe and around the world. They affirm a common desire to transform Europe into a continent of peace, security and cooperation on the principles of freedom and democracy, human rights and fundamental freedoms. In the treaties the partners guarantee the faithfulness to their obligations arising from the norms and principles of generally accepted international law and, above all, the Statute of the United Nations, the Helsinki Final Act, and the Charter of Paris for a New Europe, and reinforce their aim to give a modern dimension to their relationship and cooperation.

Specific provisions of these treaties establish the mutual commitments to maintain contact and promote the development of cooperation between the potential cross-border actors and participants – public authorities at various levels, administrative-territorial units, twin cities, public organisations, and legal entities as well as individual citizens.

For instance, Articles 8–10 of the Treaty on the Foundations of Good Neighbourliness and Cooperation between Ukraine and the Republic of Hungary of 1991 constitute the Parties' determination to promote contacts between public authorities and administrations, regional and local self-government bodies and their heads on a permanent, regular basis. The states make a commitment to contribute to the expansion of contact between their citizens on an individual basis and through the state and other organisations as well as to the development of mutually beneficial bilateral cooperation in the field of economy, providing favourable economic, financial and legal conditions for entrepreneurial and other economic activities. The encouragement of cross-border cooperation in all areas of relations is marked within this framework.

It is noteworthy that the Treaty on Good Neighbourly Relations and Cooperation between Ukraine and Romania of 1997 directly refers in Article 8 to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities and establishes the commitment to encourage and maintain direct contacts and mutually beneficial co-operation between their administrative-territorial units, in particular those of border areas. Particular attention is paid to the promotion and support of the Euroregions "Upper Prut" and "Lower Danube". Both states expressed their commitment to invite the administrative-territorial units of other interested states to join the Euroregions' activities and underlined their intention to work towards the inclusion of this cooperation in the framework of the corresponding activities of the European institutions. In fact, the properly regulated cross-border cooperation between Ukraine and Romania is of specific relevance – the state border, with a total length of 613.8 km (the longest one when compared to Ukraine's borders with Hungary, Poland and Slovakia) includes 292.2 km along the rivers and 33 km along the Black Sea. The latter characteristic – the maritime border, opens the strategic opportunity for Ukraine and its neighbours on the land borders to widen their

cooperation and also involve Bulgaria, Greece, Turkey and Georgia. For the purposes of management of the Ukraine-Romania cross-border relations, the Intergovernmental Working Group on Cross-Border and Interregional Cooperation was established.

To implement the other aforesaid interstate treaties in the part of cross-border cooperation establishment, the Government of Ukraine concluded three specific bilateral treaties on cross-border and interregional cooperation – with Poland in 1993 (*Agreement 1993*), with Hungary in 1999 (*Agreement 1999*), and with Slovakia in 2000 (*Agreement 2000*).

In particular, the Agreement between the Governments of Ukraine and Poland of 1993, sticking to the common aim of strengthening and developing friendly and good neighbourly relations, concentrates on enhancement of cooperation on the interregional level. It supports the establishment and strengthening of relations between the regional state administration and regional self-government bodies of both states (in Ukraine these are the rayon state administrations and the rayon radas)¹⁵. In order to promote the development of regions, cities and rural areas the two governments defined a number of fields of mutual interest: construction and spatial planning of the territories; transport; utilities; industry; trade; agriculture (enhancing agriculture, processing and marketing of agricultural products); nature protection (national and landscape parks, territories and recreation facilities); environmental protection (control of water, air and soil pollution); education and vocational training, in particular teaching in Ukrainian and Polish as second languages in schools, especially in the border areas; culture and art; health care; tourism and sports; mutual information assistance in case of catastrophes and environmental disasters (epidemics, floods, fire incidents, disasters and traffic accidents); etc. In fact, they cover all possible fields of interrelations, and this list is not exhaustive. The governments authorised the regional state administration and regional self-government bodies with the competence to enter into agreements on the matters specified above, in respect of international treaties and national legislation. This shall especially be applied to contracts for the supply of goods or services, as well as the establishment of joint ventures, societies, associations and foundations. To ensure cooperation efficiency the regional state administration and regional self-government bodies may establish joint coordinating bodies for interregional cooperation and also design their joint activities. The higher level body envisaged by the Agreement, namely the Joint Intergovernmental Coordinating Council for Interregional Cooperation, governed by the states, was established in 1995 and its main tasks are: development of interregional and cross-border cooperation between the countries; development of infrastructure of the Ukrainian-Polish section of the state border; and development (spatial planning) of border regions. The Coordinating Council guides the work of specific commissions for various tasks: on spatial planning of border regions; on checkpoints and border infrastructure; on cross-border cooperation; on prevention and counteraction to offenses when crossing the Ukrainian-Polish state border; on rescue and protection of the population in emergency situations.

The Ukraine-Hungary and Ukraine-Slovakia treaties on cross-border cooperation are equipped with similar provisions, and the room for manoeuvre of the cross-border cooperation actors is wider as it is not limited by local administration and self-government bodies of a definite level. The bilateral Ukrainian-Hungarian Intergovernmental Joint Commission on Cross-Border and Border Cooperation and the Ukrainian-Slovak Intergovernmental Commission on Cross-Border Cooperation contribute considerably to the multilevel decision-making process aimed at consolidating the parties' efforts and relevant resources.

In addition, the intergovernmental agreements on cooperation in various fields of joint activities – economy, trade, transport, cross-border mobility, security, emergency, nature protection, science and technology, etc. – also contribute greatly to the development of cross-border cooperation. As proof, the Agreement between the Government of Ukraine and the

¹⁵ Ukraine's rayon state administrations and the rayon radas work in 119 rayons as established by the Government Order "On reorganization and formation of the rayon state administrations" of 16.12.2020 No. 1635-p (*Government Order 2020*).

Government of the Republic of Hungary on Economic Cooperation of 2007 (*Agreement 2007*) aims at developing and intensifying economic, industrial, technical and technological cooperation on a mutually beneficial basis as well as strengthening the cross-border cooperation between oblasts or regions. It foresees the participation of regional and local authorities alongside with the executive power bodies responsible for economic policy, government agencies, professional organisations, business associations and chambers in the realisation of bilateral economic interests and in the promotion of interregional and cross-border cooperation at the international level. The Joint Intergovernmental Ukrainian-Hungarian Commission on Economic Cooperation meets to coordinate the decision-making process when implementing this Agreement. In 2020, its areas of discussion included joint border development projects, credit lines for infrastructure projects and the coordination of pandemic response efforts (*Kelly 2020*).

Euroregions' experience: brief overview

The Madrid Outline Convention, the bilateral treaties and the subsequent interstate structures became the basis for the creation of cross-border associations of local and regional authorities in the form of Euroregions. Ukraine's cross-border actors take part in four Euroregions, which in different combinations unite all the Eastern European countries. The first one – the Carpathian Euroregion, was founded in 1993 in Hungary by the bordering local and regional authorities of Poland, Romania, Slovakia, Hungary and Ukraine. The cross-border Association “Euroregion Bug”, established in Ukraine in 1995, includes the local and regional authorities of Poland, the Republic of Belarus and Ukraine. The “Lower Danube” Euroregion was set up in Romania in 1998 by the local and regional authorities of Moldova, Romania and Ukraine. The “Upper Prut” Euroregion was instituted in 2000 in Romania to unite a group of other bordering local and regional authorities of Moldova, Romania and Ukraine. All these Euroregions operate on the basis of particular agreements between their members and have the legal status of non-governmental organisations. They cooperate within the frames of their strategies and plans, which shall meet the population needs and comply with the national development policies and strategies in various fields and with the EU Social Cohesion Policy, European Neighbourhood Policy, and Eastern Partnership Policy. The EU European Neighbourhood Instrument (ENI) provides them with the significant assistance and support via the programmes “Hungary-Slovakia-Romania-Ukraine”, “Poland-Belarus-Ukraine”, “Romania-Ukraine”, and “Black Sea Basin”. For instance, in relation with the COVID-19 pandemic, the 2014-2020 “Hungary-Slovakia-Romania-Ukraine” ENI Programme 2014-2020 helped the local cross-border actors realise the project entitled “Infectious diseases have no borders” with EU funding of EUR 998,798.74 to improve the material and technical base of infectious disease departments of the Szabolcs-Szatmár-Bereg County Hospital and University Teaching Hospital (Nyíregyháza) in Hungary, Regional Children's Hospital (Mukachevo) and Regional Clinical Infectious Hospital (Uzhhorod) in Ukraine (*HUSKROUA 2019*). Currently, all the above ENI programmes are being updated in the course of rounds of consultation with the programmes' representatives; the Interreg NEXT (Neighbourhood External) instrument is planned to be applied in the coming years.

Cooperation within Euroregions should be recognised as an ambitious endeavour. Although all the abovementioned Euroregions have sustainable socio-economic and environmental development, parameters of which are defined by the UN, EU and Ukraine's strategic agendas as a major aim to achieve, they also have some individual peculiarities and special objectives. They have to consider the complexity of specific regional characteristics, opportunities and challenges and meet the particular needs of the local population. The comprehensive analysis of their practice demonstrates that they have different results and not always definite perspectives, mostly because of the inconsistency and insufficient quality of their management as well as the lack of financial resources – especially in terms of their own co-financing – needed for their efficient work. Nowadays, their success mostly depends on the EU expertise and financial support, which indeed

should not be the only decisive factor; also their own resources and the capacities of cross-border actors are essential to establish and maintain sustainable cross-border cooperation.

Cross-border cooperation advantages

On the whole, almost 30 years of Ukraine's cross-border cooperation experience allows the regional and local cross-border actors as well as the central state power bodies to summarise the wide range of its advantages and the responsibility which it can entail. Successful cross-border cooperation can result in the synergy of social, economic and environmental advantages. And this unbreakable "social, economic and environmental triad" is in the core of the UN Sustainable Development Goals (*UN* 2015), the EU response to the 2030 Agenda for Sustainable Development (*EU* 2017) and the Sustainable Development Goals of Ukraine for the period till 2030 (*Decree* 2019). Cross-border cooperation can provide positive impacts on the competitiveness of the regional and local economy and through this, on the local population's quality of life.

The very general list of the benefits of cross-border cooperation may include, among others: the minimisation of effects of administrative and institutional, legal, physical and cultural barriers between the cooperating territories, actors and population of different countries; joint tackling of their common problems; and harnessing of their untapped potential to overcome possible disparities and ensure sustainable development (*ECA* 2019). More specific characteristics of advantages can start with the improved cross-border transport accessibility of cooperating territories, which provides an increase in freight transport and the flow of goods, which is important, for the functioning of the EU-Ukraine Free Trade Area Agreement and the consistent growth of trade and capital turnover, among other benefits. It allows for the accessibility of services, the increase in overall human mobility and, in particular, passenger traffic volumes, including foreign tourists whose regular visits can become an additional source of revenue for both local citizens and the state budgets. Transport accessibility of the territories, cooperating across borders, can be a decisive factor also for domestic and foreign investments. The latter can stimulate and support the development of different objects of economic activities of all types of actors that are important for the regional and local economy in the areas of industrial production, agriculture, tourism, recreation and other kinds of economic activities; small and medium-sized business development; nature protection (including forests); basic and innovation infrastructure development – roads, including highways and roads constructed for pedestrians and cyclists, as well as those connecting remote settlements and public service establishments; IT communication; water and energy (oil, gas, electricity) supply systems, etc. The social advantages of well-developed cross-border cooperation can be identified in a number of dimensions: increased opportunities for employment of the local population, improved professional capacities of employees and higher competitive salaries; the reduced emigration of population when searching for jobs; the increased quantity of modernised services for local population and guests from abroad, including health care, insurance, banking, education, etc.; intensified human mobility, know-how and cultural exchange to find new solutions to existing common problems; protection of the natural environment; population growth; the trust building within the domestic territories, participating in cross-border cooperation, and in the cooperating territories of different states, etc. Moreover, efficient cross-border cooperation may cause a perspective synergy effect in the result of deepening of the international division of labour in cooperating neighbour regions and mutual interconnection of national processes of production and reproduction; this can have a considerable macroeconomic effect on the whole territory of Ukraine and Europe. On the whole, inherent cross-border cooperation potential can help simultaneously meet many challenges facing territories of different countries, with which territories of different countries are not able to cope separately, and exploit the various advantages of each cooperating territory and country, successfully multiplying them.

Currently, cross-border cooperation potential is not used by Ukraine in the proper way. Accordingly, a number of national-level strategic and programming documents take this issue into consideration and define the relevant priorities, objectives and tasks.

Recent developments and prospective steps

Ukraine's National Economic Strategy for the period up to 2030 (*CMU 2021a*), on the grounds of a comprehensive audit of the national economy, has the objective to ensure effective regional development also by means of the advancement of cross-border cooperation and defines the task to increase the level of capacity and activity of its actors to develop and boost mutually beneficial interaction with its European partners, which can help overcome the effects of economic crisis. The State Strategy of Regional Development for 2021–2027 (*CMU 2020*) determines the general vector of sustainable development of Ukraine's regions. Cross-border cooperation is considered by the Strategy as an instrument of regional development, strengthening the regions' competitiveness and Europeanisation of all relevant processes. Ukraine's participation in the EU's cross-border cooperation programmes for 2021–2027 and ensuring its interaction with the EU in the course of preparation and realisation of new Eastern Partnership Territorial Cooperation Support Programmes are defined as important components.

To implement the objectives and tasks of the two above-mentioned strategic documents and Ukraine's international commitments, the State Programme for the Advancement of Cross-border Cooperation for 2021–2027 (*CMU 2021b*) was recently adopted by the government. It is aimed at consolidating the efforts and concentrating the resources of actors and participants of cross-border cooperation in order to promote the balanced socio-economic development of Ukraine's regions and increase their competitiveness. The State Programme's priority areas of activities are: 1) implementation of the EU Strategy for the Danube Region and the Danube Transnational Programme in Ukraine; 2) realisation of cross-border cooperation projects and programmes, including those of the European Territorial Cooperation (Interreg) for 2021–2027, supported through the "Neighbourhood, Development and International Cooperation Instrument"(NDICI); 3) ensuring the development of border infrastructure in the mountainous areas of the Carpathians; 4) ensuring the development of institutional capacity of actors and participants of cross-border cooperation (including associations of local self-governments, regional development agencies, civil society organisations, European Groupings of Territorial Cooperation and other forms of cross-border cooperation). Based on that, the State Programme delineates fine main tasks, realisation of which will be provided in the frames of the approved Action Plan, and it is amended with the list of Indicators of monitoring of its implementation. In particular, it is foreseen to reduce the unemployment rate in border regions of Ukraine to 6% in 2022 with a further downward trend of 0.2% annually; exports and imports of goods and services in border regions of Ukraine are expected to increase by 5% annually; about 600 new enterprises are supposed to be created in 2022 and a further upward trend is awaited; Ukraine taking a place in the top 50 world ranking for the World Bank Logistics Efficiency Index is forecast; the length of constructed and reconstructed roads shall be about 1,531 kilometres by 2022 with a further upward trend; at least three Euroregional Cooperation Groupings are planned to be established by 2022 and a further upward trend is expected; etc. Indeed, the indicators established by the State are not perfect; they can become reality when the development of cross-border cooperation is well-managed, sufficiently financed and properly regulated.

Cross-border cooperation actors as well as the research institutions (including the V. Mamutov Institute of Economic and Legal Research of the National Academy of Sciences of Ukraine) and civil society organisations were involved by the Ministry for Communities and Territories Development of Ukraine in the elaboration of the State Strategy of Regional Development for 2021–2027 and the State Programme for the Advancement of Cross-border Cooperation for 2021–2027. The Ministry's and the participants' analysis of the status of

Ukraine's cross-border cooperation, provided as the basis for further decision-making, revealed the necessity of improving the legal frames of cross-border cooperation, especially regarding the importance of applying the provisions of the EU-Ukraine Association Agreement that include Chapter 27 "Cross-border and Regional Cooperation" in Title V "Economic and Sector Cooperation" (AA 2017). Ukraine's commitments under Protocol No. 2 to the Madrid Outline Convention concerning interterritorial co-operation (CoE 1998) and Protocol No. 3 to the Madrid Outline Convention concerning Euroregional Co-operation Groupings (ECGs) (CoE 2009) are not realised properly either, since their ratifications which took place in 2005 and 2013 were neither at regulatory nor at practical levels.

Firstly, the Law of Ukraine "On Cross-border Cooperation" of 2004 (amended in 2018) (*Law No. 1861-IV*, 2004) will undergo thorough improvements. This work is foreseen by the State Programme for the Advancement of Cross-border Cooperation for 2021–2027; and a first draft of amendments to this Law is being elaborated and discussed by the national authorities, research institutions and interested stakeholders. Apart from the Law "On Cross-border Cooperation", for the solid background of the cross-border cooperation and with regard to the Association Agreements' Title V "Economic and Sector Cooperation", it is necessary to revise also the acting legislation on foreign economic activity, on border control, custom services and taxation, on employment, on public-private partnership, on scientific and technical activities, on innovative activities, on state regulation in the field of technology transfer, on science parks, etc. Most of them were adopted before the enactment of the Association Agreement and are not up-to-date to be used for the mutual benefit of Ukraine and its European partners, for supporting the joint efforts on sustainable development.

Sound legislative improvements, eliminating the current gaps and shortcomings, as well as better administration of cross-border cooperation should diminish the obstacles to the appropriate application of the Association Agreement and of the bilateral treaties on cross-border economic activities between Ukraine and the Eastern European states. The renewed and well-applicable legislation will open the way to the development of Euroregions, Euroregional Co-operation Groupings and European Groupings of Territorial Cooperation. Up to now no Euroregional Co-operation Groupings have been established upon the initiative of or with the participation of Ukraine. And of the European Groupings of Territorial Cooperation with limited liability, TISZA¹⁶ (established in 2015) is the only EGTC uniting efforts of the Ukrainian and Hungarian regional authorities. It is worth multiplying its experiences on the territory of Ukraine.

We consider that the realisation of this perspective can be tangibly boosted by the planned Ukraine's presidency of the EU Strategy for the Danube Region¹⁷ between November 2021 and November 2022. As an EU initiative, endorsed in 2011, uniting fourteen countries – nine EU Member States (Austria, Bulgaria, Croatia, Czech Republic, Hungary, Germany, Romania, Slovenia) and five states outside the EU (Bosnia-Herzegovina, Moldova, Montenegro, Serbia, Ukraine), it is a powerful macro-regional strategy aimed at enhancing cooperation between the involved countries or territories by mobilising their local and regional actors to align policies and funding and to identify common issues, solutions and actions. Its four pillars – connecting the Region, protecting its environment, building prosperity, and strengthening the Region, – and the key priority areas concern the complexity of interrelated matters reflecting the Region's peculiarities and interests. The list of the key priorities cover: 1) mobility (movement of people and goods, corridors across Europe); 2) energy (secure sources, diversification, especially renewables, reduction in emission, efficiency); 3) water quality (pollution, ecosystems) and quantity (navigation, risk prevention and management); 4) biodiversity (precious natural heritage as a source of wellbeing and prosperity); 5) socio-economic development (decent jobs, growing

¹⁶ see TISZA European Grouping of Territorial Cooperation with limited liability. URL: <https://tiszactt.hu/en/home/>.

¹⁷ see EU Strategy for the Danube Region. URL: https://ec.europa.eu/regional_policy/en/policy/cooperation/macro-regional-strategies/danube/

welfare, appropriate framework for creativity and investments, increasing IT potential); 6) education and capacity (active modernisation of education in schools and universities, of training and administration with inclusion of all citizens); 7) preserved and developed culture and identity (rich cultural heritage, tourism potential); 8) strengthened security (personal security and protection, fight against organised crime and corruption); etc.

Regarding this profound framework, the scope of Ukraine's responsibility with a view of the forthcoming presidency of the Strategy is overwhelming. Therefore, its implementation constitutes a stunning challenge for Ukraine as the first non-EU country to preside over the Strategy. At the same time, it offers a unique chance for our country and for Ukrainian and Eastern European cross-border cooperation actors to realise a remarkable breakthrough in cross-border cooperation and economic advancement. As is said: the only difference between where you are and where you want to be is the steps you haven't taken yet. The goals of sustainable development of the European continent with Ukraine in its heart are worth common efforts.

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