

II Regionalism

*Duško DIMITRIJEVIĆ*¹

THE PHENOMENON OF TRANSFRONTIER REGIONAL COOPERATION IN EUROPE

ABSTRACT

The variety and complexity of the cross-border problems are such that a variety of framework for transfrontier cooperation must be invented and personalized to fit the different regional contexts. Therefore, the transfrontier relationship between local and regional communities may be more or less formal or informal, more or less institutionalized. Under the domestic legal system, transfrontier communities are empowered to conduct relations directly and, if necessary, conclude legal transactions with transfrontier communities located on the territory of another State. In some regions the framework is connected with making an international agreement which introducing good-neighbourly relations at local level. In other regions framework is perceived and implemented as a tool for economic and social development in the wake of possible accession to the European Union. This gap has to be somewhat bridged through a wide assortment of flexible solutions, allowing local authorities to be accompanied through the various stages, from embarking on bilateral dialogue through implementing specific projects to the ambitious stages of setting up Euroregions or equivalent forms of working communities between fully-fledged territorial communities or authorities. The complexity of the regional transfrontier problem in Europe and the great diversity in the geographical, political, cultural and other factors of each transfrontier region obviously need such different solutions. By virtue of cross-border praxis, leading European organizations are endeavouring to develop new instruments for co-operation at international level. These instruments

¹ Dr Duško Dimitrijević, Professorial Fellow, Institute of International Politics and Economics, Belgrade. This paper was created within the project “Serbia in contemporary international relations: Strategic directions of development and firming the position of Serbia in international integrative processes – foreign affairs, international economic, legal and security aspects”, Ministry of Education and Science of the Republic of Serbia, number 179029, for the period 2011–2014.

designed to recognize a sphere of responsibility within which transfrontier communities or authorities can establish direct transfrontier relations, and instruments for cooperation between national governments in which transfrontier communities or authorities would play an appropriate factor for after-war period of conciliation.

Key words: regional cooperation, Europe, transfrontier, territorial communities, cross-border problems, SAA

Introduction

The contemporary political transformation of the international community occurring after the end of World War II necessarily affects the role and contents of international relations. The new system aroused from the new social structure has an important task to legitimate the new political *status quo* after the outstanding political changes have occurred.² The international law has become more dependent on the efficiency of the international community power whose functions of distribution and delegation of the State competences are applied constructively on the new situation and on the new realistic ground. The fundamental reason for that were a wide range of international actors from States to international organizations, and from transnational corporations to individual regional entities who articulate an emerging consensus relating to the new international principles and rules. Under the impact of the changes going on since World War II, the rules of coexistence were gradually superseded by the rules of cooperation. This was great achievement in the international relations because the shift of emphasis from coexistence or cooperation is at the same time a natural consequence of the new thinking about peace and war in terms of positive peace. In order to develop good relations between neighbouring European States and to minimize some specific structural disadvantages which are produced with artificial boundary barriers, some local entities have increasingly felt it necessary to play their part in the process of achieving effective regional cooperation. Contemporary doctrine of regional cooperation of the European States generally recognize that territorial sovereign rights were correlative and interdependent and were consequently subject to reciprocally operating limitations. This fundamental acknowledgement is at the

² After the World War II, leading politicians in Western Europe did not opt for a restoration of the pre-war situation but sought a radical reorientation. In some respects they could associate with such progressive ideas expressed in the 1920s and early 1930s as Count Coudenhove-Kalegri's "Pan-European Union" and Aristide Briand's "United States of Europe". See: Hendrik Brugmans, *L'idée européenne (1920-1970)*, De Tempel. Bruges, 1970.

root of the principle of good-neighbourliness which provides that a States must not use its territory or allow its territory to be used for acts contrary to the rights of other States, and that States sharing any natural resource must consult on their equitable utilizations. Therefore, the concept of effective regional cooperation reflects the necessity that any exercise of territorial sovereignty is *a priori*, subject to certain inherent limitations. This limitation implies partnership viewed as a process in which the parties realize their interests, which are entirely or partially identical. In reality, the transfrontier regional cooperation in Europe gains specific characteristics of the region itself.

Specific nature of transfrontier cooperation

In the past, transfrontier cooperation was a prerogative of central government. With contemporary political and economic trends, the idea of transfrontier cooperation dealing with matters of purely local or regional scope which is of particular concern to local or regional authorities. Influenced by a series of internal and external factors, most of the European States encountered the problem of structural disharmony which is affected common interests in their frontier zones. This produced the new concept of cooperation between the regions which together with macro-politics of States gives priority to small-scale bilateral and multilateral cooperation of small territorial and administrative units, i.e. cross-border zones, districts, provinces and towns. For these reasons a specific nature of transfrontier cooperation became an essential condition from which a decentralized system may be derived and from which all local or regional authorities can solve their problems jointly. The importance of the transfrontier cooperation as an instrument of building Europe's unity and promoting prosperous economic and social development has been growing since the 1950's. The beginnings of good economic, cultural and social cooperation of the local authorities in the Benelux zone (Belgium, Luxembourg and Netherlands) or first so called *Euroregio* around Gronau which was set up in 1958 along the German-Dutch border represents good examples for so-called twinning (*fr. jumelages, germ. Städtepartnerschaften*) i.e. partnerships between local communities and municipalities in different European States. The decentralized type of transfrontier cooperation, especially when operated by democratically legitimized bodies, is not only of great value for the development of economic, cultural and social exchanges in the frontier zones themselves, but is also an essential prerequisite of success in the endeavours

of neighbour States to achieve greater unity, which is one of the predominant aim of the European integration process. This is the reason why in the recent years this specific phenomenon of transfrontier cooperation has been dealt with very intensively by the most important European organizations — Council of Europe, European Communities and Organisation for Economic Cooperation and Development.³ Despite the differences which exist between international organization instruments of transfrontier cooperation, they serve to promote the balanced regional development and to reduce barriers resulting from the existence of the international borders.

The determination of the transfrontier cooperation

Generally speaking, local or regional cooperation presupposes a minimum of homogeneity in the political, economical, cultural and social systems of the neighbouring States. When these basic conditions of transfrontier co-operation are satisfied, various institutional and legal problems arise between various bodies and authorities in border areas. First problem is, that foreign relations are customary separated from the local affairs. In principle, these affairs are under the supervision of the central State government. There is a fundamental difficulty in that central government which traditionally has a monopoly in the field of foreign relations may in general be reluctant to allow their local or regional bodies to act in this domain. Second problem is the local and regional authorities lack legal capacity to enter into cooperation with other subjects of international law or the local or regional entities possessing restricted capacity to bind themselves in international relations. Even transfrontier cooperation may not have broader international meaning, because the activity of neighbouring regional or local authorities remains outside the realm of public international law, in principle, it strengthening them neighbourly relations. This mean that local or regional authorities may maintain those affairs of the transfrontier cooperation that by their nature can be considered as local affairs for the reason of interest for local population. For example, sustainable transfrontier cooperation may includes the regional planning, transport,

³ Council of Europe, “Treaties, Agreements, Arrangements and Bodies Relating to Transfrontier Cooperation in Europe”, Documents CPL, 1980, Appendix II; P.M. Dupuy, “Legal Aspects of Transfrontier Regional Co-operation”, *West European Politics*, 1982, vol. 5, pp. 50-63; J. M. Woehrling, “Legal Problems of Transfrontier Cooperation at Local or Regional Level”, OECD Doc. ENV/TFP/77; R. Seerden, “The Public International Law Character of Transfrontier Agreements between Decentralized Authorities”, *Leiden Journal of International Law*, 1992, vol. 5, pp. 187, etc.

traffic, communications, improvement of local infrastructure, forestry, agriculture, water-supply and energy economy, health service, economy and employment, trade, tourism, education and culture. Third problem is the power of every local or regional authority is restricted to its own territory. These territorial restrictions increase the practical difficulties for each local or regional authority seeking transfrontier cooperation.

In order to find common solutions for above mentioned problems the local and regional communities organize and define so called *transfrontier regions* as an territorial areas that is divide in two or more parts by the State borders. Although transfrontier region could not define as an international legal subject or as a real political entity, transfrontier region has an important impact particularly because it covered every concerted initiative or action between local or regional authorities aimed at strengthening neighbourly activities between neighbouring States by all available formal or informal, institutional or non-institutional, legally binding or non-binding means of cooperation which preserves good transfrontier relation between neighbouring States. Therefore, the territorial scope of cooperation may range from local inter-municipal cooperation, which is the crucible of transfrontier cooperation, to inter-regional cooperation through transfrontier regions (*Euroregions*), depending on the strategies formulated by those involved. Transfrontier cooperation *per se*, support common economical, cultural, political and ecological development and it can present a link necessary for development procedural mechanisms for better transfrontier cooperation. Accordingly, the cooperation of transfrontier regions in bordering areas as such represents specific micro integration beside the macro integration of whole States that are already members of the some regional organisation such as, for example, the European Union.⁴

Development of the framework for transfrontier cooperation

In the beginning, transfrontier cooperation has been established in almost all Western European frontier zones on local level. Transfrontier cooperation has been

⁴ The European Parliament adopted in 1988 a resolution on Community regional policy and the role of the regions. The Community Charter for Regionalization appended to this document contains a chapter specifically devoted to transfrontier inter-regional cooperation. Article 23 urges States and their regions to pursue this cooperation by co-coordinating regional development programmes and action programmes in adjoining regions and establishing joint transfrontier programmes for frontier regions. See: Charles Ricq, *Handbook on Transfrontier Cooperation for Local and Regional Authorities in Europe*, Council of Europe, 2000, p. 19.

based on the coordination of activities by participants on either side of a border with a view to a joint transfrontier approach. Regional and local authorities often tried to concrete their policies in view of specific problems of the respective border area. The nature of such mechanisms vary: Some are merely informal; other institutionalized over a long period or even based on legally binding arrangements. Some are integral parts of broader inter-governmental transfrontier cooperation. Still others appear to be based on rather isolated initiatives between local authorities. The existing framework and forms of transfrontier cooperation, in terms of neighbourly relations between local communities and regional authorities on either side of national borders, stem from a number of pioneering initiatives. Important local or regional transfrontier mechanisms of information, consultation and coordination was *Nordkalotten* on the frontier zones of Nordic States Finland, Norway and Sweden until 1971 and *Öresund Council* which was established by Sweden and Denmark in 1964. For the German-Dutch frontier areas mention should be made of the inter-municipal working groups *Rodaland* and the *Grenzland Kreis Heinsberg-Limburg* which has existed until seventies of the 20th century. The analysis of the development of the framework for transfrontier cooperation also points to the effectiveness of the action pursued by the so-called *Euroregions* and the appropriateness of encouraging the creation of new ones. *Euroregions* are forms of structured cooperation established between local and regional authorities across the borders with the aim of jointly adopting common goals and pursuing them in a coordinated and sustained way. As it was mentioned before, the first *Euroregion* was set up in 1958, around Gronau along the German-Dutch border line.⁵ Similarly with this *Euroregion*, the *Rhine-Waal Region*, the *Rhine-Maas Euroregion*, the *Ems-Dollart-Region e.V.* and the *Grenzregion Rhein-Maas-Nord* were mixed consultative bodies composed of local authorities. Since 1978 democratically elected representatives have set up the *Euroregion Council*. For the *Saar-Lorraine-Luxembourg* region the *Saar-Lor-Lux Commissions* were set up in 1971 at government and regional level. In 1980, this specific mechanism of transfrontier cooperation has been legally confirmed by an exchange of notes between the governments of the FR of Germany, France and Luxembourg. For the area of the upper Rhine, three association have important role: the German-

⁵ The Euroregions do not represent special inter-State entity. They represent communautés de travail which working in the smaller groups and which may be established by the activity of interlocal initiatives or bigger regional entities. In this sense, Euro-regions are some kind of working groups, which should become the touching points and the catalyst of the progress of the European integration.

Swiss-French *Conference of Upper Rhine Regional Planner*, which since 1972, has worked on a very informal basis; the French-German *Communauté d'intérêts Moyenne Alsace-Breisgau and the Region Basiliensis* originally founded as a Swiss association, but in 1971 raised to transfrontier body which is called the *Conférence tripartite permanente de coordination régionale*. A mixed German-French-Swiss Commission tripartite was set up by treaty in 1975 and charged with the duty of fostering transfrontier cooperation in the Upper Rhine region.

The political changes of the early 1990s redrew the political map of Europe. Transfrontier cooperation has been somewhat delayed in the South East Europe, due to disintegration process that had blurred prospects for the whole region speedier accession to European integration. However, this delay has been partially compensated by a number of initiatives of cross-border cooperation. This refers to the Central European Initiative (CEI), the Central European Free Trade Area (CEFTA), the Black Sea Economic Cooperation (BSEC), the Process of Cooperation in the Southeast Europe (SEEC), the Royaumont Process on Good Neighbourliness and Stability in Southeast Europe (RP), the Southeast Europe Cooperation Initiative (SECI), the Stability Pact in Southeast Europe, the Adriatic-Ionian Initiative (AII), the Working Community of Danubian Regions, the Danube Cooperation Process, the Alpe-Adria Working Community, Sava River Basin Commission, etc.⁶ With Stabilization and Association process which is specific project dedicated to the Western Balkan States and through the admission of central and east European countries to the Council of Europe and to the European Union, *Euroregions* become the best instruments for promotion of decentralisation, development of the local democracy and regional stability. *Euroregions* develop into the zones of interregional transfrontier cooperation and area for establishment mutually fruitful relationship. The synchronized development of *Euroregions* becomes determinant element of the regional policy of all European States especially of the States in the South-East Europe.⁷

⁶ Duško Lopandić, *Regionalne inicijative u Jugoistočnoj Evropi*, Institut za međunarodnu politiku i Evropski pokret, Beograd, 2001, str. 252; Miloš Šolaja, "Institutionalization of Regional Co-operation in South East Europe – Strategies and Obstacles", *European Perspectives*, 2009, vol. 1, n°1, pp. 124. etc.

⁷ The Carpathian Euroregion from 1993 was the first Euroregion in South-East Europe. See: Edita Stojić-Karanović, *Regionalna i susedska saradnja za održivi razvoj Srbije u prvoj dekadi 21. veka*, Institut za međunarodnu politiku i privredu, Beograd, 2008, str. 231. etc.

Legal framework for transfrontier cooperation

Framework for transfrontier cooperation is a complex legal matter. For the rules governing local communities and authorities and the powers and prerogatives assigned to them, particularly in respect of transfrontier cooperation, legal framework for transfrontier cooperation vary from one State to another, depending on the system of local and regional government adopted nationally. Nevertheless, it is possible to conclude that transfrontier cooperation is nowadays regulated by different international legal acts, as well by the regulation of national law on local level. Throughout the Europe, many countries have made numerous bilateral treaties that enabled the respective local authorities to enter into a large number of legally binding transfrontier agreements which entail immediate substantive obligations to the main local councils, intercommunity units and counties. The agreements refer to a variety of substantive objects, most frequently, to waste water treatment, water and energy supplies, transport and communications, waste disposal, mutual aid in the event of disasters and the social and cultural facilities. Even transfrontier activities remains outside the realm of international law, transfrontier legal instruments make an important role for development of regional or local transfrontier cooperation. Firstly, legal instruments may foster and encourage all initiatives to be taken in the future by the respective local or regional authorities in this field and secondly, such an instrument may legitimize local transfrontier cooperation within the internal legal order to every State party. Three examples may be mentioned here: The Boundary Treaty between the Netherlands and the FR of Germany of 8 April 1960 which provides the competent local authorities of both side may conclude agreements concerning the maintenance of frontier water courses, the Treaty between Swiss Canton Schaffhausen and the German Land Baden-Württemberg of August 17, 1976 on treatment of waste water originating for the Bibertal and the Hegau and the Treaty between Luxembourg and the German Land Rhineland-Pfalz of October 17, 1974 of the joint discharge of water management functions by local councils and other corporate bodies. The last mentioned Treaty provides that the relevant local authorities may establish inter-community units, enter into legally binding agreement governed by public law and form inter-municipal working groups.

In order to promote and to facilitate the cooperation in Europe on the local level, the Consultative Assembly of the Council of Europe adopted Recommendation no. 470 from 1966 on European cooperation between local authorities, and this represented one of the first impulses for the creation of the future Convention on transfrontier cooperation. Within all those efforts for the

strong support of the transfrontier cooperation, Council of Europe has adopted the European Outline Convention on Transfrontier Cooperation between Territorial Communities or Authorities which build good-neighbourly relations and verify the idea of “transfrontier cooperation”. The Convention is of vital importance as it has laid foundations for further development of transfrontier cooperation in Europe, and constitutes the basis of legislation of transfrontier cooperation in Europe. The European Outline Convention was opened for signature on May 21, 1980 and entered into force on December 22, 1981.⁸ After this date, the Outline Convention opens up the adaption possibilities for the offered regulation by the constitutional limits in certain countries.⁹

Transfrontier cooperation compliant with domestic law

As it is mentioned above, local communities and authorities play a central role in transfrontier cooperation instruments. The combined effects of their domestic law and, subsidiary, international agreements on transfrontier cooperation concluded by the States to which they belong will determine their possibilities in respect of transfrontier cooperation. On the inter-State level, the European Outline Convention creates some legally binding obligations for the signatory States. In the Article 1 of the European Outline Convention each contracting party undertakes to facilitate and foster transfrontier cooperation. In the Article 2 states that, “transfrontier cooperation shall take place in the framework of territorial communities or authorities powers as defined in domestic law”. There is no provision in the European Outline Convention which could be interpreted as a clause enabling local authorities to carry out transfrontier cooperation. Hence, a local community or authority cannot exceed its powers and prerogatives under domestic law. It must comply with domestic law in signing cooperation agreements and implementing transfrontier projects (as regards public procurement contracts, management of public services etc.). Enforcement and regulatory powers are

⁸ “The European Outline Convention on Transfrontier Cooperation between Territorial Communities or Authorities “European”, *Treaty Series*, n° 106.

⁹ Having realized the importance of transfrontier cooperation for the process of European integration, the Vienna Declaration made by the heads of State and government of the Council of Europe’s member states in October 1993, has emphasized the importance of the transfrontier co-operation among the local and regional authorities for the creation of the tolerant and prosperous Europe.

excluded from the scope of transfrontier cooperation. Local communities and authorities may, however, agree to coordinate their policies and strategies in these areas in accordance with the domestic law applicable to each cooperation partner. The Convention prescribed that local communities and authorities enter into cooperation solely within their common areas of competence by consulting one another and signing transfrontier cooperation agreements. The fact that the scope of these competences is not the subject of the Convention is of special importance. It is upon each legislative body of each State to make its own regulation on transfrontier cooperation, with which it would determine by its own will what the transfrontier cooperation could comprise. By this, the political will of a single State that its local authorities have the transfrontier cooperation with corresponding foreign local authorities just in those fields that it would consider useful. The Convention obviously fully respects the sovereignty of individual States and the competences of the bodies determined by the domestic law of each contracting party.¹⁰ Beside this fact, the Convention is accompanied with the practical models of outline agreements, statutes and contracts on the inter-State level as well as the inter-local level.¹¹

During the last 20 years, there was a remarkable further development of decentralized transfrontier cooperation in Europe. On March 17, 1993, the Congress of Local and Regional Authorities of Europe adopted Resolution 248 featuring a Preliminary Draft Convention on Interterritorial Cooperation between Territorial Communities or Authorities. The Draft was designed to complement the European Outline Convention which cover translational cooperation between neighbouring local and regional authorities. It should fill this lacuna by enabling

¹⁰ Mario Jelušić, “Transfrontier Co-operation for Units of Local Government in Europe and Croatian Law”, *Politička misao*, 1999, vol. 36, n° 5, pp. 109–116.

¹¹ On the basis of the European Outline Convention, the Benelux States concluded the Agreement on Transfrontier Cooperation on September 12, 1986. On May 23, 1991, the Kingdom of Netherlands, the FR of Germany and Länder of Lower Saxony and North Rhine Westphalia made the Agreement on Transfrontier Cooperation between territorial communities (so-called Isselburg Agreement). On March 8 1996 the German Länder North Rhine Westphalia and Rhineland Palatinate and the Region of Wallonia and the German linguistic community of Belgium concluded the Agreement on Transfrontier Cooperation between territorial authorities and other public entities. On January 23 1996, Germany, France, Luxembourg and Switzerland acting in the name of the Swiss Cantons Solothurn, Basel-Stadt, Basel-Land, Aargau and Jura made the Agreement on Transfrontier Cooperation. Some other member States have negotiated and signed international agreements laying down, in accordance with the provisions of the Convention (for example, Valencia Agreement of October 2003 between Spain and Portugal).

non-neighbouring local and regional authorities which lack the power to conclude international treaties to enter into cooperation which might take different forms. The development of transfrontier cooperation has therefore become priorities of the Council of Europe. However, when became clear that there will be no separate convention on interterritorial cooperation, as an alternative the Council adopted the First and Second Protocol to the European Outline Convention. The First Protocol which adopted in 1995 entered into force in 1998.¹² It aims at supplementing the Convention with a view to strengthening decentralized transfrontier cooperation. The parties to the Protocol respect the right to territorial authorities to conclude transfrontier cooperation agreements in conformity with the domestic law. Where the domestic law allows it, these local communities and authorities formalized their cooperation arrangements by setting up cooperation bodies such as associations, foundations or, in the European Union – European economic interest groupings (EEIGs), including some private-law ones enjoying or not legal personality.¹³ Under to this legal framework transfrontier cooperation took the form of projects of common local interest in which local communities and authorities on an increasing scale, dwell to engage in cooperation in accordance with the international undertakings entered into by the State to which they belong, In many legal systems, such body can be made up of local communities or authorities.¹⁴ Also, many local communities or authorities are allowed to belong to such cooperation body by their statutes and domestic law.¹⁵

¹² “Additional Protocol to the European Outline Convention on Transfrontier Cooperation between Territorial Communities or Authorities”, *Treaty Series*, n° 59.

¹³ Article 4 provides for the setting up of a body whose legal personality and action are determined by the law of the headquarters country. Article 5 provides for the establishment of a public-law entity whose measures have the same legal force and effects, in each state, as if they had been taken by the member communities and authorities. Before ratifying the protocol, each country must decide whether to apply just one or both articles.

¹⁴ In 1991, the Meuse-Rhine Euregio (*Euroregion*) adopted the legal structure of a foundation under Dutch law, bringing together the Dutch province of Limburg, the Belgian provinces of Liège and Limburg, the German-speaking Community of Belgium and Regio Aachen e.V. (Germany). Its headquarters are in the Netherlands. It possesses organs of its own: a steering committee, which oversees a bureau and committees, and a Euregional council – an advisory body responsible for transfrontier policy choices – which is made up of delegates from the political, economic and industry authorities within the various partner regions. See: “Practical Guide to Transfrontier Cooperation”, Mission Opérationnelle Transfrontalière, Council of Europe, 2006, p. 18.

¹⁵ In 1992, Article 24 of the German Basic law was amended by section 1 a, according to which the German Länder may with the consent of Federal Government transfer sovereign powers to transfrontier institutions in neighbouring regions where they have the right to exercise governmental powers. The French Loi Joxe/Marchand which regulated territorial

Such structures were not originally designed as tools for transfrontier cooperation, but have been used as such by border local communities and authorities in the absence of a legal solution satisfying their requirements.¹⁶ They may therefore be described as “de facto” tools for transfrontier cooperation. In the Second Protocol of the European Outline Convention which adopted on May 5, 1998, the parties applied *mutatis mutandis*, the provisions of the Convention and the First Protocol respectively, to transfrontier cooperation.¹⁷ The Protocol took effect on 1 December 2001. Other Council of Europe legal sources for transfrontier cooperation are the European Charter of Local Self-Government and the political declarations and recommendations adopted by the Committee of Ministers.¹⁸ The European Charter of Local Self-Government is more than political declaration since it is a genuine international treaty signed on October 15, 1985, and which entered into force on 1 September 1988. It aims to promote the principles of local self-government, strengthen local communities, power to establish cooperation with partners from other States and implement cross-border initiatives under the domestic law of each State. The Charter set common standards for safeguarding the rights of local authorities.¹⁹

For the European Union, transfrontier cooperation is an important tool of ensuring balanced development and integration of the European countries. The main feature of European Union instrument is that they focus on financial support of initiatives or programmes implemented within the frame of cross-border

administration of February 6, 1992, widens the possibilities of the French regions, départements and communes to enter into transfrontier cooperation. See: Ulrich Beyerlin, “Transfrontier Cooperation between Local or Regional Authorities”, in: R. Bernhardt (ed.), *Encyclopedia of Public International Law*, 2000, vol. IV, p. 912.

¹⁶ Parties are free to choose the location of its headquarters on either side of the border. This type of body has different names depending on the arrangement. For example: “Public body” in the 1986 Benelux Convention, “inter-municipal syndicate” in the 1991 Issemburg-Anholt Agreement, “Intercommunale” in the Mainz Agreement and “local transfrontier co-operation grouping” in the 1996 Karlsruhe Agreement and 2002 Brussels Agreement

¹⁷ “Second Protocol to the European Outline Convention on Transfrontier Cooperation between Territorial Communities or Authorities”, *Treaty Series*, n° 169.

¹⁸ For example see: “Vienna Declaration”, Council of Europe, 9 October 1993; “Helsinki Declaration on Regional Self-Government”, 27–28 June 2002; “Vilnius Declaration on Regional Cooperation and Consolidation of Democratic Stability in Greater Europe”, 3 May 2003; “Chisinau Political Declaration on Transfrontier and Interterritorial Cooperation between States in South Eastern Europe”, 6 November 2003.

¹⁹ “European Charter of Local Self-Government”, Strasbourg, 15 October 1985. Internet: <http://conventions.coe.int/treaty/en/treaties/html/122.htm>

cooperation.²⁰ The basis for European Union actions within the framework of cross-border cooperation is constituted on the cohesion policy, neighbourhood policy and pre-accession policy.

Since 2004, the European Union and the Council of Europe have been discussing the introduction of a joint “trans-European” cooperation instrument, covering all forms of cooperation between European Union and Council of Europe local communities and authorities. In individual situation, this cooperation structure would be introduced through a Community regulation as part of the Community’s new regional policy. It would be known as a “European Grouping of Cross-Border Cooperation” (EGCC). With or without legal personality, this grouping would be subject to the law of the State in which its headquarters are located. In July 2004, the aim was to adopt this regulation so that it entered into force throughout the European Union on 1 January 2007. At the same time, the Council of Europe drew up a draft Third Additional Protocol to the European Outline Convention, which became a preliminary draft “European Convention containing Uniform Law on Transfrontier Groupings of Territorial Cooperation (TGTC)”. The purpose of this Convention is to facilitate the establishment of cooperation bodies between all member States.²¹

Implications of the framework for transfrontier cooperation

Decentralized cooperation across international borders is now well established in European practice. It also appears to be based on solid legal ground, although there are still some lacunae left. The framework for transfrontier cooperation, particularly the Council of Europe conventions and bilateral agreements on transfrontier cooperation, does not establish supra-national law or a right to opt for the law of one of the partner communities or authorities. It lays down procedures for cooperation, in accordance with each State’s domestic law. Only States (unitary or composite) and regional entities enjoying autonomous legislative powers to have a comprehensive view of the legal

²⁰ The most important structural fond of the EU for this purposes are Interreg, Phare, Tacis and Cards. The distinction between this instruments applying to areas within EU borders and to areas outside the EU borders. On the other side, the European Neighbourhood and Partnership Instrument (ENPI) designed to encourage the partnership within EU and a pre-accession Instrument for Pre-accession Assistance (IPA). All mentioned instruments are managed by the institutions of the EU in specific way.

²¹ Internet: www.coe.int 12/01/2009.

framework applicable to cross-border relations between local or regional entities and, more generally, of the various policies affected by transfrontier agreements which cover for example, spatial planning, transport, health, economic development and so on. Accordingly, at the very least, it is recommended that they in consultation with the relevant departments and, if possible, border communities review the legal and institutional framework governing transfrontier relations between local or regional communities and identify sticking points, inconsistencies and obstacles to transfrontier cooperation, and arrive at appropriate legal solutions. For implementing these measures, States or territorial entities could usefully refer to Recommendation (2005)2 of the Committee of Ministers of the Council of Europe to the member States, of 19 January 2005, on good practices in and reducing obstacles to transfrontier cooperation between territorial communities or authorities.²²

Transfrontier cooperation as the condition for Serbia's integration to the EU

Following the tendencies in Central and Eastern Europe of 1990's the former Yugoslav Republics, including Serbia, began to accept that its local and regional communities may be allowed to enter into transfrontier cooperation on its own behalf. This tendency is clearly reflect in Serbia position in the Council of Europe where it has been a member since 2003. Over this period, Serbia has been steadily implementing the obligations and commitments entered into at the moment of its accession.²³ Actual Constitution of the Republic of Serbia attaches great importance to regional development as well to development of underdeveloped areas in the Republic.²⁴ In the part that treats economic system and public finances it is said: „The Republic of Serbia shall take care of balanced and sustainable regional development, in accordance with the Law” (Article 94 of the Constitution – Balancing development). It is also said that within its competences the Republic of Serbia should organise and provide for “development of the Republic of Serbia, policy and measures for spurring balanced development of particular areas of the Republic of Serbia, including the development of underdeveloped areas;

²² “Practical Guide to Transfrontier Cooperation”, op. cit., p. 16.

²³ Serbia has signed and ratified 59 Council of Europe Conventions.

²⁴ “Official Gazette of the Republic of Serbia”, n° 83/2006.

organisation and utilisation of space; scientific and technological development” (Article 97, item 12 of the Constitution).

The first step in implementation of the competences provided by the Constitution of the Republic of Serbia in resolving the problems of regional development was taken by adopting the Strategy of Regional Development in Serbia.²⁵ By the adoption of the Strategy by the Government in January 2007, the basic development priorities of regional development of the Republic of Serbia and the ways they should be attained were for the first time defined in a comprehensive and consistent way. The Strategy mentions the following most important objectives and strategic directions of regional development of the Republic of Serbia: sustainable development; increase of regional competitiveness; reduction of regional imbalances and poverty; stopping of the negative demographic trends; continuation of the decentralisation process and economic integration of the Serbian community in the Autonomous Province of Kosovo and Metohija. The primary objectives and action directions the Strategy provides for is the adoption of a law and a number of sub laws in this field in the following period, which should regulate regional development. The Strategy provides for the following three key activities in pursuing the regional development policy in the forthcoming period: 1) determination of the level of development – categorisation and typology of areas as well their statistical regionalisation (*Nomenclature des unites territoriales statistiques* – NUTS II and NUTS III); 2) defining of development policies that should serve to spur regional development of the Republic of Serbia; 3) establishment of institutions responsible for carrying out the Strategy.²⁶

The Stabilisation and Association Agreement and the Law Approving the Stabilisation and Association Agreement between the European Community and its member States of the one part and the Republic of Serbia of the other point out the significance of the regional development policy and the measures for its implementation for the process of European integration. According to the Agreement, regional and local development is one of the priority areas in the field of co-operation between the European Union and the Republic of Serbia. “The Parties shall seek to strengthen regional and local development cooperation, with the objective of contributing to economic development and reducing

²⁵ “Official Gazette of the Republic of Serbia”, n° 21/2007.

²⁶ Ognjen Mirić, *Regionalna politika Evropske unije kao motor ekonomskog razvoja*, Evropski pokret u Srbiji, 2009, str. 44.

regional imbalances. Specific attention shall be given to cross-border, trans-national and interregional cooperation.²⁷ Cooperation shall take due account of the priority areas related to the *Community acquis* in the field of regional development” (Article 113, title VIII – Cooperation policies).

According to the National Programme for European Integrations, the short-term priorities are adoption of the Law on Regional Development and introduction of decentralised system of the European Union funds management through establishment of appropriate legislative framework, preparation structures, implementation and control of the programmes and projects funded by the European Union and prompt and continuous capacity building.

The Law on Regional Development determines the names of regions regulating the ways of defining the areas that make a region and the ways of determining the units of local self-government that make an area, indicators of the level of development and units of local self-government, classification of regions and units of local self-government according to the level of their development, development documents, factors of regional development, measures and impulses as well as sources of funding intended for implementation of measures aimed at achieving regional development.²⁸ Apart from this, regional development as a broader horizontal priority has been recognised in a number of other strategic documents adopted by the Government of the Republic of Serbia. Hence, as one of the strategic directions the Strategy for Poverty Reduction points out giving incentives to development of regional policies through inter-communal cooperation. According to Serbia’s National Strategy for Accession to the European Union one of the priorities on its path to the European Union is adoption of the law on balanced regional development, defining of criteria for determination of the level of development, establishment of institutions that deal with regional development, defining of systemic solutions for financing of regional development and other supports to more rapid development of underdeveloped areas. One of the strategic aims of the Strategy for encouragement and development of foreign investment is the creation of conditions for achieving balanced regional development of the country, or actually promotion and then continuous development of every individual region. In addition, it should be mentioned that in accordance with the Law on Territorial Organisation of Serbia the Republic of Serbia is composed of 150 communes (the lowest number of inhabitants is 10,000), 23 towns (the lowest number of inhabitants is 100,000) and the city of Belgrade

²⁷ „Official Gazette of the Republic of Serbia, n° 83/2008.

²⁸ „Official Gazette of the Republic of Serbia, n° 51/2009.

as territorial units as well as two autonomous provinces (Vojvodina and Kosovo and Metohija) as a form of territorial autonomy.²⁹

Final remarks

The variety and complexity of the cross-border problems are such that a variety of framework for transfrontier cooperation must be invented and personalized to fit the different regional contexts. Therefore, the transfrontier relationship between local and regional communities may be more or less formal or informal, more or less institutionalized. Under the domestic legal system, transfrontier communities are empowered to conduct relations directly and, if necessary, conclude legal transactions with transfrontier communities located on the territory of another State. In some regions the framework is connected with making an international agreement which introducing good-neighbourly relations at local level. In other regions framework is perceived and implemented as a tool for economic and social development in the wake of possible accession to the European Union. This gap has to be somewhat bridged through a wide assortment of flexible solutions, allowing local authorities to be accompanied through the various stages, from embarking on bilateral dialogue through implementing specific projects to the ambitious stages of setting up *Euroregions* or equivalent forms of working communities between fully-fledged territorial communities or authorities. The complexity of the regional transfrontier problem in Europe and the great diversity in the geographical, political, cultural and other factors of each transfrontier region obviously need such different solutions. By virtue of cross-border praxis, leading European organizations are endeavouring to develop new instruments for cooperation at international level. These instruments designed to recognize a sphere of responsibility within which transfrontier communities or authorities can establish direct transfrontier relations, and instruments for cooperation between national governments in which transfrontier communities or authorities would play an appropriate factor.

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²⁹ Official Gazette of the Republic of Serbia, n° 129/2007.

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