



SOCIÁLNE VEDY Z PERSPEKTÍVY MLADÝCH VEDECKÝCH PRACOVNÍKOV III.

**MONIKA PRÁZNOVSKÁ – MATÚŠ JANKOLA
(eds.)**

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LEGAL ACCESSIBILITY AND CROSS-BORDER COOPERATION IN THE VISEGRAD GROUP COUNTRIES¹

Edit SOÓS

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Abstract

The European integration is becoming differentiated not only by multilevel decision-making and implementation of public policies but also by various regional groups of the Member States. In the Visegrad Group countries the opening of the borders in the 1990s made the chance for cooperation available. The paper examines the implementation of the multilevel governance approach in the field of cross-border cooperation and of the partnership principle, paying special attention to relations and interactions between the different levels of government: European, national, regional and local. Nowadays the most appropriate models for institutional cross-border cooperation could be provided by European Grouping of Territorial Cooperation (EGTC). The aim of this study is to comprehensively present how the EGTC, as an acknowledged legal entity, can support new approaches to cross-border governance and promote the cross-border institutionalisation, that is the development of a multilevel government in the border areas. The paper reviews the relations between EGTCs and multilevel governance through the evaluation of the establishment and operation of EGTC's structures in the Visegrad Group countries and seeks to draw an overview whether the European Union provided a stable, institutional framework for the application of a new, non-national state space concept.

Key words: *V4 countries, Europeanization, territorial cooperation, EGTC, Hungarian-Slovakian borderline.*

INTRODUCTION

The strengthening of cross-border cooperation all over Europe is a result of Europeanization and decentralization processes. The importance of cooperation systems evolving along the internal and external borders of the European Union has been increasing since the last enlargement (in 2004 and 2007, 2013). The borders are not only the symbols of nation-state sovereignty but they also have an impact on the relations between

¹ This research was supported by the project nr. EFOP-3.6.2-16-2017-00007, titled *Aspects on the development of intelligent, sustainable and inclusive society: social, technological, innovation networks in employment and digital economy*. The project has been supported by the European Union, co-financed by the European Social Fund and the budget of Hungary.

subnational levels. Regarding their functions, the borders do not only separate state and territorial structures, but in certain cases they also make connections between them.

According to the Charter for Border and Cross-border Regions the border areas are the building blocks and bridges in the process of European unification, ensuring coexistence of European populations, including minorities. 'At least, some 32% of the population in more than 40% of the territory comprising the enlarged EU live in border regions. European policies make allowance for this fact through including border areas in the Lisbon Treaty and acknowledging and funding all border regions at the internal and external borders as a European priority.' (AEBR, 2011, p. 3)

The development and strengthening of the competencies of the local and regional authorities, especially in external relations, started only recently with the process of European integration and the evolution of the regions. The traditional functions of the state have been changed in the 21st century, and the subnational levels in public administration have received new competencies and powers to establish cooperation across the borders within the EU. Through the permeability of the Union's internal borders they also create new spatial structures and new forms of governance across the existing administrative borders in accordance with subsidiarity and multilevel governance policies.

The European Union created an opportunity for its Member States to establish the European Grouping of Territorial Cooperation (EGTC), bodies with legal personality, in 2006 by Regulation (EC) No 1082/2006.

The study looks at whether the European Union provided a stable, institutional framework for the application of a new, non-national state space concept. It also examines the relations between EGTCs and multilevel governance (MLG) through the evaluation of the establishment and operation of EGTC's structures in the Visegrad Group countries. May EGTCs facilitate new approach to cross-border governance, and structure the European political space in the border areas?

The 1st section examines how the Council of Europe (CoE) and European Union (EU) can support establishing preconditions with differentiating approach to cross-border governance. The 2nd section analyses Regulation 1082/2006 (revised in 2013) on European grouping of territorial cooperation (EGTC), which has become a response to the lack of legal and institutional instruments of cross-border cooperation. The last section summarizes how to respond to the new alternative forms of governance in order to increase efficiency, legitimacy and transparency of cross-border territorial cooperation in the internal border areas of the Visegrad Group countries.

The study is based on the review and analysis of academic research, documents of the European Union, extracting and linking key findings from existing research and practice.

1. CHALLENGES OF MULTILEVEL GOVERNANCE IN THE BORDER AREAS

In the past decades political sciences have increasingly been focusing on the issue of statehood, the changing role of nation-states in the process of European integration and globalisation. Governance is generally seen as an alternative to the monolithic and hierarchic concept of government and it is rather orientated towards building vertical partnerships and horizontal networks. The development of the construction of the EU has introduced new concepts, among them is a concept of multilevel governance. (Rhodes, 1997; Hooghe–Marks; 2001; Bache–Flinders, 2004). The *multilevel governance* approach considers the European Union as a sui generis legal and political system, the authority of which is dispersed across multiple actors, furthermore, decision-making competencies are shared by actors at different governmental levels rather than monopolized by national governments. (Hooghe–Marks, 2001, pp. 2-3)

The CoR's White Paper (2009) underlines that the vertical dimension of multilevel governance presupposes better coordination and cooperation between the different tiers of government, while its horizontal dimension imposes a coherent implementation of sectoral policies in order to ensure sustainable development and synergy with other relevant policies of the European Union. (CoR, 2009. p. 23)

Multilevel governance is one of a number of modes of network governance which focuses on the relations between the tiers of the EU from the supranational to nation states and to subnational levels whether regions or municipalities. The principle of subsidiarity¹ plays a specific role – due to the decentralisation of central assignments – in the division of power of states at local and regional levels. (Fejes, 2013, p. 25)

In 2006 the European Union established a new legal instrument. Regulation (EC) No 1082/2006 of the European Parliament and of the Council on a European Grouping of Territorial Cooperation (EGTC) provided a stable, institutionalised framework for the application of the non-traditional, non-representative type of new 'governance' in the cross-border areas.

¹ The principle of subsidiarity is defined in Article 3b (now Article 5 (3)) of the Treaty on European Union. *In areas which do not fall within its exclusive competence, 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.*

The analytical framework of the study is the concept of Europeanization. How the European Union should be governed and how the basic institutions of governance should be organized. From the point of view of the study, which is cross-border cooperation, amongst the above aspects the study focuses on the Europeanization that implies adapting subnational systems of governance to a European political centre and European-wide norms. (Benz–Eberlein, 1999; Featherstone–Radaelli, 2009;)

Understanding Europeanization is merely a top-down process, a question of translating European or national objectives into local or regional actions, but it must also be understood as a 'bottom-up' process for integrating the objectives of local and regional authorities into the strategies of the European Union. The bottom-up approach to Europeanization describes how member states 'upload' or 'shape' policies, politics and institutions of the European Union. (Nguyen Thi Thuy Hang, 2011, p. 141)

2. LEGAL FRAMEWORK OF THE INSTITUTIONALISATION PROCESSES OF CROSS-BORDER COOPERATION

The creation and development of cross-border cooperation systems started with the process of European integration. The border areas of the countries of Western Europe took the first steps towards organised cooperation as early as the 1950s, when the state borders did not correspond to those of natural, linguistic, ethnic, cultural or economic communities. At first it was done spontaneously, lacking any formality. The cooperation gradually evolved into appropriate institutional structures (Euroregion, working group etc.).

In order to enable the EU Member States' border areas to become 'building blocks' of the 'Regions of Europe' and participate in cross-border cooperations, two conditions need to be met: the internal condition is the democratic development of the neighbouring countries taking part in the cooperation while the external one is compliance with the standards and legal frameworks established under the auspices of the Council of Europe and the European Union.

The Council of Europe (CoE) has always recognized the crucial importance of democracy at local and regional levels. The CoE has taken part a significant role in dismantling barriers to territorial and international cooperation as well as strengthening cooperation across borders, with the aim of decentralisation. Numerous documents aiming to establish the legal framework for cross-border cooperation have been produced, including the Madrid Convention (1980) and the Additional Protocols (1995; 1998; 2009), the European Charter of Local Self-government and its Additional Protocols (1985; 2009), as well as the Council of Europe Reference Framework for Regional Democracy (2009).

The basic problem with different forms of collaboration in the past was that the cooperating organizations had to establish their proper contacts in a particularly heterogeneous administrative environment.

The different legal and administrative systems of the connected countries comprised the root causes of many difficulties. Cross-border cooperation – local, regional and international – however, can fulfil its real role only on condition that there exists a constitutional and administrative environment capable of harmonizing the different legal structures and competencies. Measures were necessary to reduce the significant difficulties encountered by Member States and, especially by local and regional authorities in implementing and managing actions of territorial cooperation within the framework of differing national laws and procedures. (Maier, 2008, pp. 37-40) It was essential for the development of institutions' operative relations that all participants had the same jurisdiction and legitimacy.

More than 25 years after adopting the Madrid Convention by the Council of Europe, the EGTC instrument was proposed to overcome the obstacles hindering cross-border cooperation in the European Union. Regulation (EC) 1082/2006 is a response to the lack of legal instrument, and ensures cooperation facilities for the local and regional authorities and Member States under EU law.

The new legal instrument (EGTC regulation 1082/2008) offers a homogeneous legal basis that could be applied directly in all EU Member States on the basis of public (EU) law for all forms of cooperation, cross-border, interregional and transnational cooperation. The EGTC is the first European cooperation structure with a legal personality defined by European Law. As a new legal tool EGTC was introduced to bring both uniformity and legal stability into cooperation.

The EGTC is a new alternative to increase the efficiency, legitimacy and transparency of the activities of territorial cooperation. In each Member State it has the most extensive legal capacity accorded to legal persons under that particular Member State's national law. The name of the EGTC and its registered office shall be located in a Member State under whose laws at least one of the members is registered. (EGTC Regulation 1082/2006, Article 1. Subsection (4)-(5))

Cross-border cooperation is a major tool to achieve territorial cohesion, not only in the form of coordinating planning, but also by coordinating development in various public policy sectors. Stimulating endogenous development and inner potential for cooperation and integration EGTCs also represent opportunities and may become building blocks of a wider European space.

3. A NEW TERRITORIAL COOPERATION SCALE EMERGING THROUGH EGTCs

Multilevel governance is characterized by a proliferation of multi-purpose governments with variable and flexible spatial scales in complex institutional settings and cross-border cooperation complementing the territorial state by a multiplicity of spaces of place. (Spinaci-Vara-Arribas, 2009, p. 8) For the application of a new, non-national state space concept the European Union provided a stable, institutional framework. (CESCI, 2010, p. 13) An EGTC, as an acknowledged legal entity, can promote the cross-border institutionalisation, thus development of a multilevel governance in the border areas.

The basic feature of the institutionalisation of cooperation systems, which is applicable in every case, is framed by an EGTC regulation. The EGTC regulation is completed by national provisions adopted by each Member State of the EU. EGTCs shall be made up of members within the limits of their competences under national law. According to Article 3 of the EGTC regulation, members of EGTCs must be Member States, regional or local authorities or other bodies, governed by public law. EGTCs shall be made up of members located on the territory of at least two Member States.

An EGTC shall be governed by a convention concluded unanimously by its members. Each EGTC has a specific structure with an assembly, which is made up of the representatives of its members, headed by a director who represents the EGTC and acts on its behalf. The EGTC convention may provide for additional organs with clearly defined powers, e.g. the senate is the managing body of the general assembly, permanent secretariat and administrative staff, commissions and thematic working groups and experts. One of the major milestones in the development of groupings is hiring staff.

The EGTC establishes an annual budget which shall be adopted by the assembly, containing, especially a component on running costs and, if necessary, an operational component. (EGTC Regulation 1082/2006, Article 11)

The success for an operative structure is measured through the availability of funding: the operation of these institutions can be financed by membership fees, common tender incomes and direct subventions of state. EGTCs that implement European projects or programmes can contribute to Europe 2020 objectives. EGTCs also benefit from European Structural and Investment Funds (ESIF), Horizon 2020, Connecting Europe Facility (CEF), Erasmus and Europe for Citizens.¹

¹ Since 1990 the European Union has provided financial support for cross-border cooperation through a number of initiatives, programmes and projects. The first of these instruments was the Community Initiative INTERREG which was launched in 1990 and concerns border

However, EGTCs may not be established with the primary aim of pursuing business activities and may not perform public authority activities. According to limited liability, within the EGTC, the liability of the association of the local governments and the budgetary organisation of the local government may not exceed the extent of its financial contribution. In case the liability of any of the members of the EGTC is limited, the name of the EGTC should include the wording 'EGTC with limited liability'.

Table 1: *The legal framework of EGTC setups*

| | |
|---------------------|---|
| EU Law | Regulation (EC) 1082/2006 of the EP and of the Council |
| National Law | <p>National legal provision</p> <ul style="list-style-type: none"> • Convention (adopted by EGTC members) • Statute (adopted by EGTC members) |

Source: Compiled by the author

There are four key features distinguishing EGTCs from other types of cooperation:

- they have the most extensive legal capacity accorded to legal persons under that Member State national law where EGTC has its registered office;
- they have the competence for decision-making;
- they entail the coordination and handling of several cross-border projects and initiatives;
- they have the specific structures necessary for supranational programs.

By the end of 2018, according to the Committee of the Regions, 68 EGTC setups were registered along the European Union's borders and 23 EGTCs were in the foundation phase. EGTCs are genuine laboratories of multilevel governance. EGTCs are established in order to bring together regions, communities or municipalities, often from different administrative levels, to empower each of them by acting together as one in regional, national and international settings and by creating a legal framework in which relevant stakeholders can work and take decisions on the same level. In the framework of the EGTCs local governments have more opportunities to apply for EU funding and to participate in decision-making processes than in the past.

The EGTC institutions in the cross-border space have been building new forms of cooperation. The most dominant type of partnerships is a cooperation of local authorities with small to medium-scale cooperation

regions of the EU. The Phare CBC (Cross-Border Cooperation) programme followed in 1994.

structures of 2 to 20 municipalities, representing the most frequently encountered form. The second largest group covers the EGTCs of regional authorities, with the number of partners ranging between two and six members. (CoR, 2017, p. 108)

EGTC means cooperation in all spheres of life, at all times, and with the inclusion of all actors in direct proximity to the border. The EGTCs built on the local level tend to work step-by-step from shared strategy development towards actions in regional and local development which focus on tangible issues such as cultural and natural heritage, tourism development and infrastructure development. The approach to infrastructure focuses on transport as one of the paramount priorities for groupings which cover less favoured areas in more peripheral parts of the EU. In particular, the EGTCs where the partnership consists of a majority of rural municipalities the problems of out-migration and unemployment are evident concerns of the local stakeholders. These approaches are characteristic for the EGTCs covering contiguous border areas in Hungary, Slovakia, Romania, Czech Republic and Poland.

4. CROSS-BORDER COOPERATION IN THE VISEGRAD GROUP COUNTRIES (V4 COUNTRIES)

The European integration is becoming differentiated not only by multilevel decision-making and implementation of public policies but also by various regional groups of the Member States. (Panke, 2010, p. 2)

The Visegrad Group was formed on 15th February 1991. It is considered the Central European regional cooperation scheme for political, economic and cultural cooperation.¹ In V4 countries the opening of the borders in the 1990s made the chance for cooperation available. Initiatives for sub-regional cooperation were thus welcomed as complementary to the overall aim of broader regional integration. (Gebhard, 2013, p. 29)

According to the Bratislava Declaration (2011) the V4 countries have become constructive partners in Europe in implementing EU key priorities and programmes and through their input to contribute towards political and economic integration, and as part of it, to promote cross-border cooperation.

The intensity of the cooperation beyond borders in Central Europe is lower than in Western Europe, because the nationalizing of the States, and the homogenization processes, which constitute obstacles to the developing of the border regions. (Hardi, 2000. pp. 595-596) In the V4 countries not only the settlements became fragmented after constitutional and self-

¹ Regional cooperation within the EU is essential to ensuring that the interests of smaller states are represented. The larger existing regional alliances: the Benelux Group and the Nordic Council.

government reforms but usually their interest representation system has also become poor, asymmetrical and fragmented. Due to the historically centralized nation states, the sub-national levels lacked important competencies and political power. There was a consensus about the need to fill the gap between the central government and subnational level, as ‘the missing middle’ together with institutional weaknesses, through creation a strong regional mezzo-level, which could counterbalance the strong central administrative, political and economic power. (Pálné Kovács, 2008)

In the process of subnational level integration cross-border cooperation forms gained greater importance in the cohesion policy of the European Union as well as in the formation of the neighbourhood policy of the V4 countries.

By now the borders and border areas of the Hungarian-Slovakian borderline enjoy a nearly full coverage of cooperation. There were 18 EGTCs at the end of 2017. Hungary and Slovakia seem to be at the forefront of setting up new EGTCs. 77% of the groupings are located along the Hungarian-Slovakian border, and 4 EGTCs out of 18 groupings operate on the borders of Slovakia, Czech Republic and Poland.

Table 2: *Cross-border areas involving Hungary and Slovakia*

| EGTC | Grouping seat | Members | Date of constitution |
|---|-----------------|------------------------------|----------------------|
| Ister-Granum EGTC | Esztergom, HU | Esztergom (HU), Štúrovo (SK) | 12/11/2008 |
| Ung-Tisza-Túr-Sajó (Hernád-Bódva-Szinva) Limited Liability EGTC | Miskolc, HU | Hungary, Romania, Slovakia | 15/1/2009 |
| ABAÚJ - ABAÚJBAN EGTC Lt | Miskolc, HU | | 11/6/2010 |
| Pons Danubii EGTC | Komarno, SK | | 16/12/2010 |
| Arrabona EGTC Ltd. | Győr, HU | | 7/6/2011 |
| Rába-Duna-Vág EGTC | Tatabánya, HU | | 10/12/2011 |
| BODROGKÖZI EGTC | Miskolc, HU | | 11/4/2012 |
| Novohrad-Nógrád EGTC | Salgótarján, HU | | 21/12/2011 |
| Sajó-Rima / Slaná-Rimava EGTC | Putnok, HU | | 3/4/2013 |
| Via Carpatia Limited | Košice SK | | 31/5/2013 |

| | | | |
|-------------------|----------------------|--|------------|
| Torysa EGTC | Sárazsadány, HU | | 9/10/2013 |
| Svinka EGTC | Tolcsva, HU | | 9/10/2013 |
| PONTIBUS EGTC | Budapest, HU | | 08/01/2016 |
| Ipoly-völgye EGTC | Ludányhalászi/ HU | | 31/01/2017 |

Source: Table is based on the EGTC Monitoring Report 2017

All EGTCs aim at working with geographic neighbours to build an institutional framework for cooperation on projects of common interest that transcend legally defined national borders. EGTCs are established in order to bring together regions, communities or municipalities, often from different administrative levels, to empower each of them by acting together in regional, national and international settings and by creating a legal framework in which relevant stakeholders can work and take decisions on the same level. Obstacles to overcome consisted of either the long waits for authorisation of statutes and conventions by national authorities, or incompatibilities between national laws or between national laws and EU Regulations, pre-financing of projects, and also the varying wage and tax levels, national differences in labour law etc.

The tasks and competences are to be set out in the EGTC convention. The tasks given to the EGTC by its members are not concern the exercise of powers conferred by public law or of duties whose object is to safeguard the general interests of the State or of other public authorities, such as police and regulatory powers, justice and foreign policy. (EGTC Regulation 1082/2006, Article 7)

The EGTCs' target in the V4 countries is to promote cooperation beyond borders, reinforcing economic and social cohesion. This should be achieved through decreasing unemployment with comprehensive plans that focus on sustainable development. The socio-economic situation in the region covered by an EGTCs predetermines to some extent its main goals and overarching strategy for project development. The EGTC takes care of short-term tasks for infrastructure and business development. The projects focus on entrepreneurship and tourism development paired with the protection of the environment and natural heritage. An interesting case is the Novohrad Nógrád EGTC, whose aim is to carry out activities that are strongly interlinked with a Geopark and a UNESCO site. For EGTCs whose partnerships consist mainly of rural municipalities, local stakeholders generally indicate out-migration and unemployment as growing problems. This is also mirrored in the EGTCs' activities in education and training of young people.

Table 3: *Cross-border area involving Slovakia, Poland and Czech Republic*

| EGTC | Member States | Grouping seat | Date of constitution |
|----------------------|----------------------------------|------------------|----------------------|
| Tritia EGTC | Poland, Czech Republic, Slovakia | Cieszyn, PL | 25/2/2013 |
| Tarty EGTC | Poland, Slovakia | Nowy Targ, PL | 20/9/2013 |
| Spoločný región EGTC | Slovakia, Czech Republic | Senica, SK | 22/5/2013 |
| Novum EGTC | Poland, Czech Republic | Jelenia Góra, PL | 16/12/2015 |

Source: Table is based on the EGTC Monitoring Report 2017

The status of internal borders becomes the key factor of the future of the Visegrad Group countries.

1. In order to safeguard the achievements of a quasi-borderless Europe there is a need for new impetus supporting the tendencies strengthening the cohesion in the distinct but interconnected dimension of the cross-border space.
2. The territorial networks at local and regional levels can make an important contribution to tolerance and building mutual trust via socio-cultural cooperation. Cross-border cooperation therefore will remain an indispensable factor to facilitate partnerships between neighbouring countries.
3. Partnerships of this kind can build new multilevel good neighbourly relations on the borders. The sub-national diplomacy evolving in the border regions is responsible for broadening the dialogue and strengthening the role of cultural cooperations. The broadening of good neighbourly relations and the strengthening of social dialogue and local relations should include cooperation with nationalities on both sides of the border.

CONCLUSIONS

The European Union created an opportunity for its Member States to establish the European Grouping of Territorial Cooperation (EGTC), bodies with legal personality, in 2006 by Regulation (EC) 1082/2006. An EGTC as an acknowledged legal entity can support new approaches to cross-border governance, while the legal framework of an EGTC can promote the cross-border institutionalisation, thus development of a multilevel government in the border areas. The EGTC is an instrument of multilevel governance which contributes to the quality improvement of cross-border cooperation.

The development of the network of EGTCs requires a new type of governance. The coordination of public policies and administrations is vital to improve governance in the cross-border areas. The European administrative convergence of the Member States is a key factor in achieving 'good governance' in the border areas. The administrative cooperation and improved administrative capacity through business-friendly administration could lead to the reform of the provision of public services and fulfil the expectations of citizens in the field of management of public policies.

The currently observed dynamic changes in the functioning of a state do not only intensify the discussion but also provoke to ask new questions, especially when taking into account the role and the functions of state institutions. The role of multilevel governance, which determines the scale and the dynamics of development at central, regional and local levels, is increasing. The modern state, which forms a flexible structure, more and more often defines its goals in different way. (Kaiser, 2014)

The evolving EGTC network constitutes the complementing added value. EGTCs are genuine 'laboratories' for multi-level governance (European Commission, 2011, p. 3), exercising public authority in cross-border space. This process in itself posed no threat to the operating system of central state administration since the aim of cross-border cooperation is not to create a new, independent level of administration, but to connect already existing levels of administration for cooperation. (AEBR, 1997: B1, p. 7)

Local and regional authorities are involved in almost every level of policy-making. The cooperation of decentralised partnerships requires strong local and regional governments, which grants special rights to local and regional public law institutions through decentralised partnerships and promote the development of structures for shared governance. However, the regions of strongly regionalised or federalised states already possess these powers and are generally involved in regional development prior to the implementation of the EU structural policy. (Marks, 1993, p. 392) Assessing its future effects, the divergence among the subnational levels could easily present an obstacle to the continuation of Europeanization. It is essential for local and regional authorities to have the necessary power to play their role in promoting and managing the challenges of competitiveness and innovation in public policies.

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