

EXTERNAL RELATIONS OF THE EUROPEAN UNION AT THE REGIONAL LEVEL

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Abstract in original language:

Regionalizmus, regionálne otázky a politiky získali v Európskej únii významné miesto a úlohu. Na vlnu rastu regionalizmu, popri spolupráci s regiónmi v rámci EÚ, vznikajú na regionálnej úrovni aj nové možnosti spolupráce so subjektmi mimo EÚ. Tento príspevok popisuje nielen možnosti jednotlivkej prezentácie regiónov z nečlenských krajín EÚ, ale taktiež sa zameriava na hlavné transregionálna organizácie, tak regionálne, ako aj celoeurópske. V neposlednom rade popisuje pomerne nový prostriedok spolupráce na regionálnej úrovni - Európske združenie územnej spolupráce, ako aj jeho možnosti využitia. Cieľom príspevku je zvýšiť povedomie o fakte, že vonkajšie vzťahy EÚ sa nie vždy vykonávajú len na úrovni členských štátov, ale že v súčasnosti existuje aj významný potenciál na regionálnej úrovni.

Key words in original language:

Regionálna spolupráca – Európske zoskupenie územnej spolupráce – Výbor regiónov EÚ – Vonkajšie vzťahy

Abstract:

Regionalism, regional issues and policies have gained a significant role and importance in the European Union. At the wave of the rise of regionalism in the EU, alongside with the cooperation of regions within the EU, new possibilities to cooperate with subjects outside the EU emerge in the regional level. This contribution describes not only possibilities for individual presentation of non-EU regions, but also focuses on the main transregional organizations, both regional and Europe-wide. Finally, it describes a recent tool for cooperation at the regional level - the European grouping of territorial cooperation, as well as its capabilities. The aim of contribution is to raise awareness of the fact, that external relations of the EU are not always carried out at the level of the member states, but there is nowadays also a considerable potential at the regional level.

Key words:

Regional cooperation – European Grouping of Territorial Cooperation – Committee of Regions of the EU – External Relations

1. INTRODUCTION

Regionalism, regional issues and policies have gained a significant role and importance in the European Union (EU). This development has not only been influenced¹ by variations in wealth among the regions in the EU, but also by the attempts of the European Commission (the Commission) to encourage participation of sub-national levels of governance in the

¹ See Nugent, N. *The Government and Politics of the European Union*. 5th ed. Basingstoke: Palgrave MacMillan, 2003, p. 228.

management of EU policies.² Gradually, with a view to gain greater political influence and not to be controlled wholly by the national governments, many regions have established direct communication lines with decision-makers in Brussels, usually in the form of regional representative offices. Alongside these individual initiatives, several transnational organizations, such as Association of European Border Regions or Assembly of European Regions have come into the existence.

As a response to this development, the Commission established in 1988 Consultative Council of Regional and Local Authorities. This body was transformed by 1992 Treaty on European Union to the present-day Committee of Regions. A new-formed institution has gained a right to be consulted by the Commission, the Council of Ministers and the European Parliament. It can also issue opinions of its own motion. Initially, this consultative power was restricted to a quite small number of policy fields,³ but the Amsterdam Treaty added among others⁴ the fields of EU enlargement and cross-border cooperation. The Lisbon treaty adds to the present-day two cohesion objectives – social and economic, a third one – territorial cohesion. Although not having a precise legal content, the Committee of regions has already stated, that „through cohesion policy and complementary instruments“⁵ shall be strengthened „territorial cooperation not only between EU regions, but also with regions in third countries.“⁶

As we can see from these developments, the regions have become quite a significant actors in the EU decision-making system. In this contribution, the particular attention is paid to the various opportunities for regions outside the EU to establish contacts and relations with the actors of Brussel's decision-making. Firstly, we examine opportunities available for these regions to present themselves individually in the Brussels. Then, various forms of cooperation in organizations of regions working with the EU will be described. These two parts will serve as an empirical evidence of the fact, that there is a growing political will both from the EU side and from the regions from the thirds countries to cooperate. In the last part, a new instrument of the European grouping of territorial cooperation will be described and its potential, as a new formal tool for such cooperation, will be analyzed.

The aim of contribution is to raise awareness of the fact, that external relations of the EU are not always carried out at the level of the member states, but there is nowadays also a considerable potential at the regional level.

² This was a case of management of the European Regional Development Fund, especially since 1988 reform of the management of the structural funds.

³ Consultation on education, training and youth, economic and social cohesion, trans-European network, public health and culture.

⁴ Other new policy areas to be consulted in were in particular transport policy, combating social exclusion and environment.

⁵ Committee of Regions. Regions and Cities for Europe. Report from the European Summit of Regions and Cities. 1st ed. Brussels: Committee of Regions, 2009, p. 16.

⁶ Ibid.

2. INDIVIDUAL PRESENTATION OF REGIONS OUTSIDE THE EU

2.1 REPRESENTATION OFFICES IN BRUSSELS

One of the main opportunities for a region outside the EU to present itself in the Brussels arena, is to set up a representational office there, alongside with logic of setting-up such offices by the regions of EU member states thoroughly described above.

Nowadays, there are about 300 representations⁷ of regional and local authorities based in Brussels. To describe their functions in short, we can make a comparison to the nation's embassies, but without any official status. The first regional office was set up by Birmingham City Council in 1984, followed by other British authorities and German Länder.⁸ In the time of submission of this contribution, regions from virtually all of the EU member states were represented in this way in Brussels, with exemption of highly centralized countries of Ireland, Greece and Portugal.

The functions of such a representation are quite variable; usually they concentrate on representation, involvement in the EU decision-making in the form of consultations and obtaining subsidies from structural funds.⁹ The practical outcomes depend in considerable way on budget available and the quality and size of staff of a respective office.

Also, offices of non-member countries can be found in Brussels. To the date of submission of this contribution, there were offices from 5 non-member countries:¹⁰

- Norway – 8 offices (Mid-Norway European Office, Mission of Norway to the E.U., Norwegian Association of Local & Regional Authorities, Oslo Region European Office, Representation Office of North Norway in Brussels, South Norway European Office, Stavanger-Regionens Europakontor, West Norway Office)
- Switzerland – 1 office (Chargé d'information des cantons suisses)
- Croatia - 6 offices (Croatian Chamber of Economy, Croatian County Association, Croatian Regions Office, Regional Development Agency of Slavonia and Baranja, Representation of the Region of Istria, Representation Office Croatian Panonija)

⁷ See Brussels-Europe Liaison Office. Available at [online] http://www.blbe.be/default.asp?V_DOC_ID=1867, cit. 15. 5. 2009.

⁸ The latter can be considered as the most influential regional actors in Brussels in these days.

⁹ Usually, policies of social cohesion, regional development, R&D, agriculture, environment, energy and transport are considered to be most important for a great part of these offices. For details see Brussels-Europe Liaison Office. Local and regional representations: a recent development. Available at [online] http://www.blbe.be/default.asp?V_DOC_ID=1867, cit. 15. 5. 2009.

¹⁰ See Brussels-Europe Liaison Office. Available at [online] http://www.blbe.be/default.asp?V_DOC_ID=1867, cit. 15. 5. 2009.

- Bosnia and Herzegovina – 2 offices (Representation Office of the Republic of Srpska, Canton Sarajevo - Regional Representation Office in Brussels)
- Ukraine – 1 office (Yuzhnoye European Representative Office in Brussels).

We can see that Switzerland has a common regional representation for all of its regions. Virtually all of the Croatian and Norwegian regions are represented. From the Bosnia, representation of Federation of Bosnia and Herzegovina is missing). Representation from the Ukraine can be considered only in the symbolic terms.

No other candidate of bordering countries have set up their office in Brussels. This cannot be only explained in terms of lack of interest in Brussels affairs, or giving a low profile to them. Other factors, such as financial needs, and more important, the administrative division of a respective country, with the extent of competencies awarded to the regions have to be taken in account. Nevertheless, taking in account previous developments, an increase in number of regional offices from non-EU member states can be predicted, especially from the candidate countries shortly before the entry to the EU and having passed administrative reforms giving more competencies to the local and regional authorities.

2.2 PRESENTATION AT THE REGIONAL EVENTS IN BRUSSELS

Another possibility to present itself in Brussels is to take part in various social events. Alongside with the events organized by the region itself, two main opportunities emerge – presentations at the Day of Open Doors in the Committee of Regions and taking part in the event Open Days.

The Day of Open Doors in the Committee of Regions is a traditional part of annual celebrations of the Europe's Day on May, 9th. The event is quite informal and can be used mainly for raising awareness about a region in the greater, mainly Belgian, public. Sometimes, it can be used for promotion of tourism, as it did for example the Croatian regions in 2009.

A more formal event, with more opportunities for presentation, establishment of formal contacts and higher profile is the event Open Days. This is a quite recent initiative, stretching up to the recent six years. The purpose of the event is multiple¹¹ – to bring together political representatives, decision makers, experts and practitioners of regional policy, as well as stakeholders from banking, business, civil society, academia, EU institutions and the media to discuss common challenges. The event shall also provide a platform for capacity building to those involved in implementing EU cohesion policy and in managing its financial instruments. Facilitation of cooperation and networking among regions and cities on good practice in regional development, as well as offering the opportunity to debate the European cohesion policy of tomorrow in a wider context involving recent research and views from third countries and international organizations are also its aims.

¹¹ See For details see Committee of Regions. Open Days 2009 - European Week of Regions and Cities. Available at [online] http://ec.europa.eu/regional_policy/conferences/od2008/doc/od2009_information_pack.pdf, cit. 17.5. 2009.

As we can see, the event is a particular opportunity to raise awareness and to establish formal contacts with other regional representatives as well as the European institutions. Indeed, a growing number of non-EU participants support this assumption. The first non-EU participants took part in Open Days 2005,¹² namely Romanian City Councils, Croatian region of Istria and four participants from Norway. In 2007,¹³ participants from Turkey and Bosnia and Herzegovina, capitals of Sarajevo and Istanbul joined and in 2008¹⁴ also three regions from Iceland took part. The 2009 edition,¹⁵ planned for October, will see not only participants from the EU, but also from Bosnia and Herzegovina (Republika Srpska and Sarajevo), Morocco (City of Fés, as additional partner), Croatia (Croatian regions, Croatian Pannonia), Serbia (Vojvodina), Norway (West, North, South Norway regions, cities of Oslo and Stavanger), Turkey (cities of Istanbul and Yalova) and from Iceland (West, North-west and Westfjords regions).

2.3 OTHER POSSIBILITIES

Among these possibilities of presentation and establishment of formal contacts, there are formal conferences organized by the Committee of regions (CoR) of the EU. For example, a conference on Eastern partnership is planned for the mid-2009, with aim to strengthen cooperation with the neighboring countries in the East.

The aim is to build the Eastern partnership in the CoR as a „project for dialogue between citizens and a platform for co-operation between the EU and its neighbors, bringing together local and regional authorities in a form of practical approach based on solidarity and on the citizens' needs.“¹⁶ It shall become a forum for sharing experience in two central themes - territorial cohesion and economic development, as well as capacity building and good governance.

The outcomes of this forum are yet to be provided, however, we can assume, that there is a potential for it to be able to become a tool for establishing a deeper cooperation at the regional level with regions of non-EU member countries.

12 See Committee of Regions. European Week of Regions and Cities Brussels, 10 - 13 October 2005. Available at [online] http://ec.europa.eu/regional_policy/opendays/index.cfm, cit. 17. 5. 2009.

13 See Committee of Regions. European Week of Regions and Cities Brussels, 8 - 11 October 2007. Available at [online] http://ec.europa.eu/regional_policy/conferences/od2007/index.cfm, cit. 17. 5. 2009.

14 See Committee of Regions. European Week of Regions and Cities Brussels, 6 - 9 October 2008. Available at [online] http://ec.europa.eu/regional_policy/conferences/od2008/index.cfm, cit. 17. 5. 2009.

15 See Committee of Regions. European Week of Regions and Cities Brussels, 5 - 8 October 2009. http://ec.europa.eu/regional_policy/conferences/od2009/index.cfm, cit. 17. 5. 2009.

16 See Committee of Regions. Forum on Eastern Partnership. Available at [online] <http://cor.europa.eu/pages/EventTemplate.aspx?view=folder&id=ca333b77-da83-4633-8916-8bbc3b9fa901&sm=ca333b77-da83-4633-8916-8bbc3b9fa901>, cit. 17. 5. 2009.

3. MEMBERSHIP IN THE TRANSNATIONAL ORGANIZATIONS OF REGIONS

There is quite a number of organizations, in which can be relations with the regions from the non-EU countries established. In this brief overview, we focus our attention to the organizations with the member regions both from the EU and outsider the EU, both Europe-wide and regional.

3.1 EUROPE-WIDE ORGANIZATIONS

3.1.1 CONFERENCE OF PERIPHERAL MARITIME REGIONS OF EUROPE

One of the oldest Europe wide organizations, with ties to the EU, is Conference of Peripheral Maritime Regions of Europe (CPMR). Established in 1973, this organization brings together the total number of 159 regions, located in 28 countries.¹⁷ From non-EU member states, we can find in the CPMR regions from Croatia, Turkey, Norway, Georgia, Lebanon, Morocco, Tunisia and Ukraine.

Its aim¹⁸ is to promote common interests of the regions, via targeting on EU policies with strong territorial impact, such as regional policy, sustainable development, employment, transport, agriculture or fisheries. It focuses not only on traditional policies, but also on new policy areas, such as energy, climate change, immigration and tourism.

3.1.2 ASSOCIATION OF EUROPEAN BORDER REGIONS

Another organization is Association of European Border Regions (AER), founded in 1971. Around 200 border and cross-border regions¹⁹ cooperate within its framework to make their particular problems and opportunities intelligible, to support exchange and know-how and to solve their common problems. Specifically, they prepare and implement common campaigns within the networks, support Centre for European border and cross-border regions, as well as implement projects and programmes.

At the EU side, the AEBR cooperates not only with the CoR, but also with the Commission, the Council of ministers and the European Parliament. From non-EU countries, it entails regions from Norway, Iceland, Liechtenstein, Andorra, Monaco, Switzerland, Russia, Belarus, Ukraine, Moldova, Croatia, Morocco, Turkey, Albania, FYROM, Serbia and Bosnia and Herzegovina.

3.1.3 EUROCIITIES

An organization of Eurocities brings together 135 European cities,²⁰ that cooperate since 1986. The aim of the organization is to ensure that urban issues are on the political agenda of

¹⁷ See Conference of Peripheral Regions in Europe. Available at [online] <http://www.crpm.org/index.php>, cit. 16. 5. 2009.

¹⁸ Ibid.

¹⁹ See Arbeitsgemeinschaft Europäischen Grenzregionen. Available at [online] <http://www.aebr.net/>, cit. 16. 5. 2009.

²⁰ See Eurocities. Available at [online] <http://www.eurocities.eu/main.php>, cit. 16. 5. 2009.

the European union, to promote transnational cooperation and exchange of experience. More specifically, the cities cooperate in areas of culture, economic development, knowledge society, environment, mobility and social affairs.

Also, in this organization, some non-EU cities can be found, in various forms of membership. Those are Norwegian cities of Bergen and Oslo, Icelandic city of Reykjavik, Croatian cities of Rijeka and Zagreb, Bosnian cities of Sarajevo and Banja Luka, as well as Serbian cities of Niš and Novi Sad, Macedonian city of Skopje, Ukrainian cities of Kyiv, Lviv and Odessa and 10 cities from Turkey.

3.1.4 ASSEMBLY OF EUROPEAN REGIONS

Established in 1985, Assembly of European Regions (AER), brings together 270 regions from 33 European countries.²¹ It encourages political dialogue and exchange of experience, helps the regions to join forces to influence national, European and international policies, supports interregional and cross-border cooperation projects, developing excellence, promoting regional democracy and subsidiarity, as well as regional diversity.

The AER groups together regions from great variety of countries from Balkan (Bosnia and Herzegovina, Croatia, Moldova, Serbia, Albania), Eastern Europe (Ukraine, Russia,²² Georgia), Turkey and Norway.

3.1.5 COUNCIL OF EUROPEAN MUNICIPALITIES AND REGIONS

Founded as Council of European Municipalities in 1951 and transformed in 1984 to its current form, the Council of European Municipalities and Regions (CEMR) joins together 51 major national associations of local and regional authorities from 37 states.²³ From non-EU countries, Iceland, Norway, Israel, Ukraine, Croatia, Bosnia and Herzegovina, Albania, FYROM, Kosovo and Montenegro are represented.

The goals of the CEMR are to secure, strengthen and protect the autonomy of local and regional authorities, to develop the European spirit in local and regional authorities, to encourage dialogue, exchange of experience and cooperation between members and to influence the European legislative process.

3.2 REGIONAL ORGANIZATIONS

Alongside the Europe-wide organizations, there are some regional organizations, that bring together EU and non-EU regions, but do not stretch over the territory of the whole Europe.

²¹ See Assembly of European Regions. Available at [online] <http://www.aer.eu/home.html>, cit. 16. 5 .2009.

²² Regions of Inguschetia, Samara, Karelia and Tatarstan.

²³ See Council of European Municipalities and Regions. Available at [online] <http://www.ccre.org/>, cit. 16. 5. 2009.

As examples can be mentioned:²⁴

- Assembly of European Wine Regions, with membership from 13 EU countries and from Croatia, Ukraine and Georgia,
- Baltic Sea States Subregional Cooperation, bringing together EU member states bordering to the Baltic Sea and Russia and Norway,
- European Network of Cities and Regions for the Social Economy, with membership from 12 EU member states, Morocco and Russia,
- Working Community of the Danube States – grouping the states through which the river Danube flows, from non-EU member states - Croatia, Moldova, Ukraine, Serbia.

4. EUROPEAN GROUPING OF TERRITORIAL COOPERATION

Adoption of Regulation on European Grouping of Territorial Cooperation (EGTC) 1082/2006/EC²⁵ is an important change in the legal framework of territorial cooperation in the EU. This is not only for regulation's being the first Community legal instrument providing a legally binding regulation in this field, but also because it has enabled grouping of a very broad variety of entities. It has also meant a change of approach to the issue of territorial cooperation in the Community level, having left a traditional approach of grouping local and regional entities in the programmes of structural funds in favor of support to their direct cooperation. This instrument can be used not only for the territorial cooperation within the EU, but also for cooperation with non-member regions and countries.

4.1 LEGAL REGULATION

Although the EGTC can be perceived as a break-through instrument, its legal regulation finds a source of inspiration in some earlier legal regulations,²⁶ in particular in some instruments of Council of Europe²⁷ and Community regulation of financing of territorial cooperation. Other inspirational sources are various bilateral and multilateral treaties among the member states of the EU, concerning the issues of cross-border cooperation.²⁸

²⁴ For details, see Committee of Regions. Factsheets on the Activities, Representatives and Work Schedules of European Organizations Representing Local and Regional Authorities, Updated for the first half of 2009. Available at [online] http://www.cor.europa.eu/cor_cms/ui/viewdocument.aspx?siteid=default&contentid=bac07f91-c90a-4527-b8da-3f4e1ad80858, cit. 16. 5. 2009.

²⁵ OJ L 210, July, 31st, 2006.

²⁶ See Levrat, N., et. al.: The European Grouping of Territorial Cooperation –EGTC-. Committee of Regions, 2007, 227pp., p. 15.

²⁷ See in particular European Framework Agreement on Cross-border Cooperation among Territorial Entities, signed in Madrid, 1980 and two adding protocols from 1995 and 1998. For the relation of this agreement to the EGTC see Levrat, N., et. al., p. 27.

²⁸ See Levrat, N., et. al., p. 40.

Let us allow to make some other remarks to the legal regulation of territorial cooperation at the Community level. In particular, legal regulation of INTERREG programmes is concerned, since nowadays is the issue of cross-border cooperation mentioned in the primary law only marginally in the art. 265 TEC (after the revision by the Treaty of Nice).²⁹ This is why no complex legal framework was adopted on this issue prior the Regulation 1082/2006/EC. As a certain kind of exceptional case can be mentioned provisions on European economic interest grouping,³⁰ which nevertheless has only marginal importance in the field of territorial cooperation. This is also confirmed by the wording of Regulation 1082/2006/EC, which explicitly states that „The existing instruments, such as the European economic interest grouping, have proven ill-adapted to organizing structured cooperation under the INTERREG initiative during the 2000-2006 programming period.“³¹ Thus, the EGTC can be considered as a real break-through.

The current legal framework of the EGTC is quite complicated. It entails:

- Provisions of Regulation 1082/2006/EC;
- Provisions of national legal regulations;
- Provisions of the Convention and the Statutes of each EGTC.³²

Thus, in the spite of the fact that the foundations of legal regulation are laid down by directly applicable EU regulation,³³ the final legal regulations will certainly not be uniform throughout the whole territory of the EU.

Also, a complexity of legal regulation will have considerable implications in the field of interpretation and the law applicable to the interpretation and enforcement of the convention and statutes, as well as the respective activities developed in the framework of an EGTC. A quite complicated legal regime can be envisaged to emerge, in which the respective activities might be undertaken under different national legal frameworks,³⁴ which will, with a

²⁹ Art. 265 TEC (after the revision by the Treaty of Nice) provides that the „Committee of Regions will be consulted by the Council or the Commission in the cases when this Treaty provides for, and in all of the other instances, especially those related to the *cross-border cooperation*...“.

³⁰ See also Council Regulation 2137/85/EEC, on European Economic Interest Grouping, OJ L 199, July, 31st, 1985.

³¹ See point n. 4 of justifications of Regulation 1082/2006/EC.

³² The content of the convention and the statutes are laid down by the provisions of Art.. 8 (2) and Art. 9 (2) Regulation 1082/2006/EC.

³³ In the context of a complicated method of legal regulation, the question whether the Regulation 1082/2006/EC has a quality of direct effect arises in the literature. For instance, Levrat comes to the conclusion that this is indeed the case, since and EGTC can be established in the framework laid down by the Regulation. See Levrat, N., et. al., p. 113. For more detailed definition of direct effect see eg.. Turk,A. H.: *The Concept of Legislation in European Community Law. A Comparative Perspective*. Kluwer Law International, 2006, 259 pp., p. 82.

³⁴ The questions of entry of respective members to an EGTC will be governed by the provisions of national legal orders of states of origin of these members. The question of establishment of an EGTC itself and also financial

reasonable degree of certainty, not be a factor of motivation to establish an EGTC. On the other hand, the outcome of existence such a complicated legal framework can be a certain pressure for harmonization of provisions of respective national laws and for clarification of regulation.³⁵ Another outcome, being positive to a lesser extent, will be the fact that in the case of states with liberal legal regulation of EGTC, a rise in cross-border cooperation can be expected, whereas in the states with a conservative regulation the trend might probably be the opposite one.³⁶

4.2 LEGAL CHARACTERISTICS OF THE EGTC

Although the Regulation 1082/2006/EC is not intended to create a single EU-wide legal framework for the functioning of the EGTC, in the spite of the presumable differences among national legal orders, some characteristics can be identified to make up a definition of this grouping. In the spite of the fact that respective members, functions and applicable law will be the varying factors, the following characteristics will be common for all of the EGTCs:

- Voluntary use of the EGTC, when the subjects can, but are not obliged to choose a form of the ECTC for their cooperation;³⁷
- Cross-border character of the grouping, which shall entail members from at least two different EU member states;³⁸
- Legal personality in the Community law and legal personality in the national legal order;³⁹
- Limited legal personality of the EGTC. Although the EGTC shall have, according to the Art. 1, § 4 of the Regulation 1082/2006/EC „the most extensive legal capacity accorded to

and other control of its activities will be governed by the law of the state, in which an EGTC has its seat. Finally, the questions related to the functioning of an EGTC and the relation of an EGTC to the third parties will be governed by the applicable law, determined by the member of an EGTC in the Convention and the Statutes. Also, the questions of internal organization of an EGTC cannot be forgotten; these will be governed by the Convention and the Statutes of the EGTC.

³⁵ The EGTC can also become an indirect tool for harmonization of laws. See further below.

³⁶ See Levrat, N., et. al., p. 113.

³⁷ See para 8 in fine of justifications of Regulation 1082/2006/EC.

³⁸ See Art. 3 (2) Regulation 1082/2006/EC.

³⁹ See Art. 1 (3) and (4) Regulation 1082/2006/EC. An EGTC can be at the date of registration or at the date of publication of relevant data in the Official Journal of the EU, according the Art. 5 Regulation 1082/2006/EC gain in the framework of national legal order a legal personality in public or private law. The respective provisions are laid down by each state autonomously; as prevailing seem to be awarding of legal personality in the public law. In the contrary, see relevant Romanian legal framework. See Romanian Government Ordinances. Emergency Ordinance regarding the European Grouping of Territorial Cooperation. Available at [online] http://www.cor.europa.eu/COR_cms/ui/ViewDocument.aspx?siteid=default&content_ID=4f2e2eff-49c4-4eca-8c00-2019185b67aa, cit. 15. 5. 2009.

legal persons under that Member State's national law“, in practical terms, its legal personality will be limited by the tasks entrusted with it by the members;⁴⁰

- All of the EGTCs must be regulated by the Convention and the Statutes;⁴¹
- Provision of the sole registered seat;⁴²
- Every EGTC shall have a framework of its own organs, entailing at least a director and an assembly of members;⁴³
- Every EGTC shall have its annual budget.⁴⁴

We can thus see that in the spite of the fact that legal regime of the EGTC is somewhat complicated; a considerable number of common characteristics of all future groupings can be identified.

4.3 MEMBERSHIP IN THE EGTC

The Regulation 1082/2006/EC provides in the Art. 3, that the EGTC shall be made by the following categories of subjects, having its origin in at least two member states of the EU:

- Member States;
- Regional and local authorities;
- Bodies governed by public law within the meaning of the second subparagraph of Article 1(9) of Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts;
- Associations consisting of aforementioned bodies;
- Subjects from the third countries.

Member states can occur, in the relation to the EGTC, in a quite complicated legal position, in which they can perform multiple roles. Firstly, a member state can be as one entity a member

⁴⁰ See Art. 7(1) Regulation 1082/2006/EC.

⁴¹ See Art. 2(1) Regulation 1082/2006/EC.

⁴² See Art. 8(2) and 9(2) Regulation 1082/2006/EC.

⁴³ See Art. 10(1) Regulation 1082/2006/EC.

⁴⁴ See Art. 11(1) Regulation 1082/2006/EC.

of an EGTC.⁴⁵ Secondly, it will perform as a national lawmaker for legal regulation of the functioning of the EGTC. Thirdly, not least, it will perform control functions over the EGTCs having their seat within the territory of the state. Some difficulties and legal uncertainties can be envisaged in the case that a state will in reality enter all of these roles.

Regional and local authorities can become members of the EGTC after fulfilling some preconditions. Not only must their participation be approved by the member state of its origin, after sending a copy of prospected statutes and convention of an EGTC. A member state then decides, usually within three months,⁴⁶ on approval or disapproval⁴⁷ of membership in the EGTC.

As for the other subjects that can become a member of an EGTC, the aforementioned provision of Directive 18/2004/EC has to be analyzed.⁴⁸ The subjects in question are (a) established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character, (b) having legal personality and (c) financed, for the most part, by the State, regional or local authorities, or other bodies governed by public law; or subject to management supervision by those bodies; or having an administrative, managerial or supervisory board, more than half of whose members are appointed by the State, regional or local authorities, or by other bodies governed by public law. In the case that these definition characteristics are met and the respective organ of member state of their origin approves their membership in an EGTC, their participation is possible.

Subjects from the third countries, i. e. the countries outsider the EU, can also take part in the cooperation within the EGTC.⁴⁹ However, there is a precondition that this membership is not precluded by the legal regulation of the state, in which an EGTC has its seat or by the accords by member states and the third countries.

It is necessary to explicitly state that a subject from the third country is not counted into the minimal number of countries needed for establishment of an EGTC. It is therefore essential for them to find partners from at least two member states of the EU, if they desire to join an EGTC.

⁴⁵ It is a question of political will if this situation ever arises in the conditions of eg. the Czech Republic. In the case of small member states, such as Malta or Luxembourg, it is quite likely come about.

⁴⁶ The time slot provided in Art. 4(3) Regulation 1082/2006/EC is quite ambiguous and it is up to the member states to clarify this provision. See e.g. § 8(1) of Slovak Act n. 90/2008 Coll. on European Grouping of Territorial Cooperation for a positive solution.

⁴⁷ For the reasons of disapproval of membership, see Art. 4(3) Regulation 1082/2006/EC. The two reasons are that a member states considers that such participation is not in conformity with the Regulation 1082/2006/EC or national law, including the prospective member's powers and duties, or that such participation is not justified for reasons of public interest or of public policy of that Member State

⁴⁸ Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts. OJ L 134, April, 30th, 2004.

⁴⁹ See point 16 of justifications of Regulation 1082/2006/EC.

The provision on participation of the subject from the third countries is perceived to be to some extent problematic. Not only the need for finding of at least two partners, instead of one, is by some seen as a form of discrimination, but also in practical terms, this provision makes bi-lateral cooperation with subjects from a non-EU state impossible. This is a problem for instance alongside a long norwegian-swedish border.

The other somewhat problematic issue is the practical existence of any agreements between member states and third countries which would enable cross-border cooperation.⁵⁰

Last, but not least, a current situation cannot be perceived as an ideal one, when the participation of entities from third countries, usually bordering countries outside the EU territory, is neither mentioned nor explicitly excluded in the overall majority of national provisions.

4.4 TASKS AND POTENTIAL OF THE EGTC

Although having in substance an unlimited legal personality, the EGTC will usually have a specialized personality, at one or more of the following fields of activities:⁵¹

- Implementation of territorial cooperation programmes or projects co-financed by the structural funds;
- Strategic cooperation of members;
- Implementation of a particular cooperation project(s).

An EGTC can also carry other specific activities. Their extent is however limited in several ways. Firstly, they have to be tasks, the carrying of which the members entrusted with the EGTC and which are limited to the facilitation and promotion of territorial cooperation to strengthen economic and social cohesion. Moreover, these entrusted tasks must fall within the ambit of competences of all of the members of the EGTC. Also, these tasks shall not fall within the negative determination, laid down by each member state, which, according to the Art. 7(3) of Regulation 1082/2006/EC can limit the tasks which an EGTC can carry without the financial contribution of the EC. The last limitation is the total preclusion of exercise of 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.⁵²

We can see that tasks of the EGTC are a subject of considerable limitations and it can be perceived that a potential of this instrument is somewhat limited. However, the contrary is true. An EGTC can, after fulfilling aforementioned conditions, fulfill any tasks of cross-

50 See Levrat, N., et. al., p. 43.

51 See Art. 7(3) Regulation 1082/2006/EC.

52 See Art. 7(4) Regulation 1082/2006/EC.

border, supranational or trans-regional cooperation without financial contribution of the EC.⁵³ It can also be used a powerful political instrument of governance in the European area, and thus it can help substantially to the reform of the European governance.⁵⁴ After fulfilling certain conditions, such as a high number of members in the certain geographical region, a possibility for an EGTC to become as an indirect source of harmonization of law in the member states, cannot be ruled out.⁵⁵

5. CONCLUSIONS

We have seen in the introduction of this contribution that the importance of regions in the EU is nowadays growing. We have also seen that regional representatives grouped in the Committee of Regions are prepared nowadays to establish cooperation not only among them, but there is a political will to establish ties with the regions from the third countries, outside the EU. Not only part of Final Declaration of the Prague Summit, but also a prepared conference on the Eastern Partnership in the CoR can be mentioned as examples of such a development.

There is also a growing political will at the side of regions from non-member EU states to cooperate at this level. Examples have shown, that regions from Bosnia and Herzegovina, Croatia, and Norway and also to a little lesser account from Turkey, Switzerland, Ukraine, Morocco and Iceland actively participate in the Brussels. However, as the membership in various trans-regional cooperation organization of regions show, there is still a potential to be used. For example, regions from other countries of Western Balkan and Eastern Europe can take part more actively in the establishing of the contacts at the EU level. The stage of accession process, as well as administrative reforms in these states will be two crucial factors for such a development.

Alongside with these possibilities, the recent instrument of the European Grouping of Territorial Cooperation provides ample opportunity to cooperate in the framework of grouping with a legal personality and quite considerable potential. Although there are some drawbacks, concerning the cooperation with the subjects from the third states within the framework of the EGTC, this instrument can become one of the main vehicles of territorial cooperation at the regional level between EU and non-EU regions.

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53 See the examples mentioned in the study *The European Grouping of Territorial Cooperation*. Committee of the Regions, 2009, 233pp. ISBN 978-92-895-9461-4.

54 See aims of the first EGTC, *Eurometropole Lille-Kortrijk-Tournai*. See *Convention de coopération en vue de la création du Groupement européen de coopération territoriale Eurométropole Lille-Kortrijk-Tournai*. Available at [online] http://www.cor.europa.eu/COR_cms/ui/ViewDocument.aspx?siteid=default&contentID=649eec16-8149-4c82-b966-ae4ffd827b74, cit. 15. 5. 2009.

55 A situation when members of an EGTC lobby for harmonization or approximation of labour law provisions can be envisaged. Compare Opinion of the Committee of the Regions on *European Grouping of Territorial Cooperation: New impetus for territorial cooperation in Europe*. COTER-IV-014. CdR 308/2007fin.

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