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With cross-border cooperation
for the Europeanisation of Ukrainian borders

KEY PROPOSALS, RECOMMENDATIONS AND COMMENTARIES

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KEY PROPOSALS, RECOMMENDATIONS AND COMMENTARIES

on the Draft Law of Ukraine "On Transfrontier Co-operation" (new version)
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"With Cross-Border Cooperation for the Europeanisation of Ukrainian Borders" (2020-2022)

As regards some articles of Section I "General Provisions"

1 As regards Article 1 "Definitions of terms"

1.1 It is common practice for the Ukrainian legislative technique to give definitions of the key terms that are used in a legislative act at its beginning, usually, in Article 1 (for instance, in the Law of Ukraine "On Transfrontier Co-operation", the Law of Ukraine "On Local Self-government", etc.).

Accordingly, it is proposed that Article 1 of the draft Law should be amended to include the definitions of the terms that are currently included in different articles of this draft Law, including:

- "subjects (actors) of transfrontier co-operation of Ukraine" (Clause 1 of Article 5);
- "participants of transfrontier co-operation of Ukraine" (Clause 3 of Article 5);
- "interregional cooperation" (Clause 3 of Article 8);
- "interterritorial cooperation" (Clause 3 of Article 8).

This article also requires that the definitions of "*Euroregional Co-operation Groupings*", reference to which is made in Articles 8, 10 and 11, "*European Grouping of Territorial Cooperation*", reference to which is made in Articles 8, 10 and 12, and "*Euroregion*", reference to which is made in Articles 8 and 10 of the draft Law, and which are not currently provided in it, should be added.

1.2. The definition of the term "*interterritorial cooperation*", as suggested in the draft Law, does not comply with the regulatory provisions of Protocol No 2 to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (Madrid Convention) that was ratified by Ukraine. Accordingly, it should be brought in line with the regulatory provisions of Protocol No 2.

1.3. The draft Law contains the definition of the term "*frontier cooperation*" (Clause 3 of Article 8). However, in our opinion, the establishment of this term is not necessary since its meaning is fully encompassed by the term "transfrontier co-operation" that is enshrined in the Madrid Convention.

Paragraph 1 of Article 2 of the Madrid Convention and Paragraph 18 of the Explanatory Report of the Committee of Ministers of the Council of Europe to this Convention provide for the same aim of transfrontier co-operation, i.e. reinforcing and fostering neighbourly relations, both between territorial communities or authorities that are territorially adjacent and between territorial communities or authorities that are situated on a territorial strip extending to a distance from the national frontiers. The Madrid convention does not grant any additional powers or privileges to subjects of “frontier cooperation”.

1.4. We believe that the notion of a “*project of transfrontier co-operation*” should not be equated with a “*program of transfrontier co-operation*”, as suggested by the definition of the term “project (program) of transfrontier co-operation”, either in this Article or the other Articles. This is because the definition provided in this Article describes the project itself: “a project of transfrontier co-operation is a package of interrelated measures of subjects and participants of transfrontier co-operation between Ukraine and other countries that are designed to reach aims and fulfil tasks of the project, is shaped as a document in the form required by law and defines concerted actions of the project executors as well as resources that are necessary to complete the project in due time”. In addition, the term “program” is wider in its content and may be defined as a set of related projects that complement each other, are congruent through due succession and are managed in a coordinated way to obtain benefits that may be obtained only as a result of the synergy of several projects.

2 As regards Article 2 “Aim and Principles of Transfrontier Co-operation”

2.1. It is proposed that in Article 2 of the draft Law the provisions on the aim and principles of transfrontier co-operation should be divided as its separate structural elements.

2.2. It makes sense that the list of principles of transfrontier co-operation are updated to include the principle of “equality”, since subjects and participants of transfrontier co-operation on the part of Ukraine and other countries are equal in the corresponding relations. Moreover, it is reasonable to change the order of naming the principles (so as to begin with the most general) and edit their wording. We propose that this provision should be amended as follows:

“Transfrontier co-operation is carried out based on the following principles: legitimacy; respect for person’s rights and his/her fundamental freedoms; equality; openness; respect for national sovereignty, territorial integrity and inviolability of borders of states; respect for the internal affairs of a country; coordination of decisions and actions aimed at removing political, economic, legal, administrative and other obstacles to mutual cooperation; mutually profitable cooperation and partnership; and regard for powers of subjects and participants of transfrontier co-operation when making and signing agreements on transfrontier co-operation”.

3 As regards Article 4 “Aim and principles of the national policy with regard to transfrontier co-operation”

3.1. The provision of Clause 1 of Article 4 of the draft Law concerning the definition of the aim of the national policy with regard to transfrontier co-operation should be amended to include a statement on its role in “promoting the economic growth and social development of Ukraine”.

3.2. The use of the phrase “*regions and territories* of Ukraine” in Clause 1 of Article 4 of the draft Law is inappropriate. This is because Clause 7 of Article 1 of the Law of Ukraine “On the Fundamentals of the State Regional Policy” defines the term “*region*” as *territory* of the Autonomous Republic of Crimea, of an oblast (province) and of the cities of Kyiv and Sevastopol. Clauses 2 and 3 of this Article establish the definitions of the terms “macroregion” and “microregion” that are connected with parts of the territory of Ukraine.

Also, the content of the notion “region” is implicitly identified in the State Regional Development Strategy for 2021-2027, approved by Decree No 695 of the Cabinet of Ministers of Ukraine as of 05 August 2020: “The realization of the State Regional Policy for the period until 2027 will be carried out based on the integrated territorial approach that provides for territory as an object within the framework of regional policy which is characterized by a specific set of social, spatial, ecological and economic features”. In addition, it is indicated that in Ukrainian laws and regulations on local self-government, territorial planning and forecasting, etc. the content of the notion “region” usually coincides with the notions of “oblast” and “district” as units of administrative-territorial division of our state. Accordingly, we propose that the phrase “*regions and territories*” should be removed from the text of Clause 1 of Article 4 of the draft Law and none of the administrative-territorial units should be singled out, since each of them has the right to carry out transfrontier co-operation.

3.3. It is proposed that the formulation of the principle of state policy with regard to transfrontier co-operation, i.e. “the provision of equal opportunities for regions, districts and territorial communities of Ukraine for collaboration within the framework of transfrontier co-operation taking into account the temporary occupation of some territories in Donetsk and Luhansk Regions, the Autonomous Republic of Crimea and the city of Sevastopol” should be edited by removing from this provision the inappropriate reference to regions, districts and territorial communities. This is because according to the Madrid Convention and the Law of Ukraine “On Transfrontier Co-operation” the subjects of transfrontier co-operation are local self-government bodies and local bodies of state executive power of Ukraine. It is these self-government bodies and state administration bodies that should have equal opportunities to carry out transfrontier co-operation irrespective of their location (taking into account the temporary occupation of some territories in Donetsk and Luhansk Regions, the Autonomous Republic of Crimea and the city of Sevastopol). We propose that this provision should be amended as follows: “the provision of equal opportunities *for cooperation for all subjects of transfrontier co-operation that function on the territory Ukraine* taking into account the temporary occupation of some territories in Donetsk and Luhansk Regions, the Autonomous Republic of Crimea and the city of Sevastopol”.

3.4. The formulation of the gender-based principle of the state policy with regard to transfrontier co-operation should be updated to change “the provision of equal rights and opportunities for women and men taking into account the absence of restrictions or privileges on grounds of gender identity” to the extended version: *“the prevention of discrimination of the representatives of subjects and participants of the relations of transfrontier co-operation including on grounds of gender identity”*.

As regards some articles of Section II “The Organization of Transfrontier Co-operation”

4 As regards Article 5 “Subjects and participants of transfrontier co-operation of Ukraine”

4.1. It seems reasonable in Clause 1 of Article 5 of the draft Law to enshrine territorial communities represented by local self-government bodies (village, town, city, regional and district councils) that perform the function of the representation of communities in making decisions at the corresponding local level as subjects of transfrontier co-operation, which is in line with the regulatory provisions of Article 140 of the Constitution of Ukraine and complies with the provision of Clause 2 of Article 2 of the Madrid Convention. In view of the aforesaid, it is proposed that the phrase “local self-government bodies” should be respectively changed to “territorial communities as represented by local self-government bodies” and the provision should be amended as follows: *“Subjects of transfrontier co-operation of Ukraine are territorial communities as represented by local self-government bodies and local bodies of state executive power of Ukraine that cooperate with the corresponding bodies of local self-government and executive power of other states within their competence under the current law of Ukraine and agreements concluded by them or arrangements on transfrontier co-operation”*.

4.2. We propose that the wording of the provision of Clause 2 of this Article concerning the powers of the subjects of transfrontier co-operation, i.e. “2. Subjects of transfrontier co-operation of Ukraine conclude agreements on transfrontier co-operation and ensure their implementation within their jurisdiction and according to the laws and regulations of Ukraine [...]” should be amended. The proposed text is as follows: *“2. Subjects of transfrontier co-operation of Ukraine carry out transfrontier co-operation on grounds of agreements and arrangements on transfrontier co-operation and ensure their implementation within their jurisdiction and according to the laws and regulations of Ukraine [...]”*. This is because the conclusion of agreements is not a goal in itself of transfrontier co-operation (which by its nature is any concerted action of the Parties (Article 1 of the Madrid Convention and the draft Law)) but a means of providing a legal basis for cooperation between the Parties.

4.3. Clause 2 of Article 5 of the draft Law concerning the powers of subjects of transfrontier co-operation to take “decisions on joining corresponding international associations and other groupings” should be updated to establish the powers of subjects of transfrontier co-operation to

take decisions on the establishment of corresponding international groupings. Accordingly, the proposed text is as follows: *"take decisions on the establishment of corresponding international associations and/or other groupings as well as on joining them"*. This amendment is stipulated by the need to bring this provision in line with the regulatory provision of Article 1 of Protocol No 3 to the Madrid Convention concerning the Euroregional Co-operation Groupings (ECGs) and with Article 7 of the draft Law in terms of either the approval or non-approval by central bodies of state executive power of participation of subjects of transfrontier co-operation in establishment of such groupings.

4.4. Moreover, Clause 2 of Article 5 of the draft Law should also be amended to specify and add the powers of subjects of transfrontier co-operation to establish such *a transfrontier co-operation body as a Euroregional cooperation grouping (ECG) as well as to establish such a cross-border cooperation entity (organisational structure) as a European Grouping of Territorial Cooperation (EGTC) and /or a Euroregion.*

5 As regards Article 7 "Functions of central bodies of state executive power of Ukraine with regard to state support for transfrontier co-operation"

5.1. It is recommended that Clause 1 of Article 7 – in regard to the functions of central bodies of state executive power to grant approval for participation of subjects of transfrontier co-operation in the establishment of transfrontier bodies and entities according to the procedure established by the Cabinet of Ministers of Ukraine or to withhold such approval – should establish the regulatory provision providing for the grounds for a reasoned refusal concerning the participation of subjects of transfrontier co-operation in these activities.

5.2. Clause 1 of Article 7 should be amended to extend the list of subjects, with which the central bodies of state executive power may cooperate performing their functions in regard to state support for transfrontier cooperation. More specifically, central bodies of state executive power should be able to perform this cooperation not only with international organisations, as it is provided for by the provision of the draft Law, but also with central authorities of other states. This is because of a considerable number of international bilateral sectoral agreements, between the profile ministries in particular, which may concern the issues relating to transfrontier co-operation.

6 As regards Article 8 “Spheres, types and organizational forms of transfrontier co-operation”

6.1. We propose that Clause 2 of Article 8 of the draft Law should be amended to distinguish the notions of “a transfrontier cooperation body”, which is a ECG, “a transfrontier cooperation entity with legal personality”, which is a EGTC and a Euroregion as an entity (organisational structure) for cooperation. The proposed text is as follows:

“2. Transfrontier co-operation shall be realized:

through the activities of transfrontier cooperation bodies, which are Euroregional Cooperation Groupings, and entities (organisational structures), which are European Groupings of Territorial Cooperation (with legal personality), as well as Euroregions; [...].”

6.2. In view of the aforesaid, it would make sense to move Clause 3 from Article 8 of the draft Law to Article 1 of the draft Law since it contains the definitions of a few terms, in particular: “*interregional cooperation*”, “*interterritorial cooperation*” and “*frontier cooperation*”. In addition, it is important that these definitions should be formulated appropriately, with regard to the Ukraine’s international obligations before the Council of Europe under four agreements (Madrid Convention and three Protocols to it), as they are derivatives of the term “transfrontier cooperation” and should be in line with it.

6.3. We deem it necessary that the term “*interregional cooperation*” should be defined appropriately due to the fact that international treaties of the Council of Europe ratified by Ukraine do not provide the definition of this term.

This term is used in the European Union. The glossary of the EU terms describes interregional cooperation as cooperation “aimed at enhancing EU regional development through transfers of know-how and exchanges of experiences between regions”.¹ In the EU, “interregional cooperation” (referred to as Interreg C “Interreg C – Interregional cooperation”) is regarded as cooperation that is carried out on a pan-European level to involve all the 27EU member states as well as neighbouring countries (for instance, Norway, Switzerland, Island, Lichtenstein, etc.). It promotes networking in order to develop good practices and to strengthen the exchange of experiences from economically stronger regions to those that are weaker aiming at regional development.²

In order to bring the definition of “*interregional cooperation*” contained in the draft Law in line with the Law of Ukraine “On Local Self-Government”, we propose to formulate it as follows: “*interregional cooperation shall be conducted between subjects of transfrontier co-operation that represent common interests of territorial communities of villages, towns and cities of Ukraine and/or exercise executive power on the territory of oblasts, districts or entire regions and the corresponding subjects of such*

¹ https://ec.europa.eu/regional_policy/en/policy/what/glossary/i/interregional-cooperation

² https://www.interreg.de/INTERREG2014/EN/INTERREG/AboutInterreg/InterregC/InterregC_en.html

relations of other states in the framework of their powers as defined in domestic law and related agreements or arrangements on transfrontier (interregional) co-operation;”.

6.4. Special attention should be called to the definition of the term “*interterritorial cooperation*” offered by this draft Law, which reads: “conducted between *village, town, and city councils in Ukraine and the corresponding subjects of such relations of other countries* in the framework of their powers as defined in domestic law and related agreements on cooperation”. As such the definition creates grounds for the violation of Ukraine’s international commitments before the Council of Europe and 23 states - Contracting Parties of Protocol No 2 to the Madrid Convention concerning interterritorial cooperation, which was ratified by Ukraine.

The definition of the term “interterritorial cooperation” should fully reflect the essence of the corresponding relations as provided for by the regulatory provisions of this Protocol. Paragraph 11 of the Explanatory Report of the Committee of Ministers of the Council of Europe to this Protocol explains that the main feature of interterritorial cooperation is the lack of territorial contiguity between communities or groups of communities. Accordingly, this international agreement does not distinguish subjects of transfrontier co-operation in respect to any “level”. The subject of its regulation is relations of cooperation between subjects of transfrontier co-operation that are not territorially contiguous. According to Article 9 of the Constitution of Ukraine, the regulatory provisions of Protocol 2 to the Madrid Convention have already become part of the national legislation due to the ratification despite the fact that they have not been included into the Law of Ukraine “On Transfrontier Co-operation” (by principle of the primacy of international law over national).

In this regard, we propose that “interterritorial cooperation” is defined as cooperation that “is conducted between subjects and participants of such relations from Ukraine and other countries, that have common interests but do not territorially border on each other, in the framework of their powers as defined in domestic law, agreements or arrangements on cooperation”.

7 As regards Article 9 “Agreements on transfrontier co-operation”

7.1. The regulatory provision of Clause 2 Article 9 of the draft Law should be updated in terms of the jurisdiction of subjects of transfrontier co-operation and their accountability with the aim of bringing it in line with regulatory provisions of Article 1 of the Additional Protocol to the Madrid Convention, ratified by Ukraine in 2004. We propose that the provision should be amended as follows:

“2. Agreements on transfrontier co-operation regulate legal, organizational, economic and other aspects of this co-operation between its subjects, refer to their equivalent fields of responsibility and impose commitments only for subjects of transfrontier co-operation who concluded them”.

7.2. Paragraph 2 of Clause 3 of Article 9 concerning the regulatory review of the agreement draft on transfrontier co-operation with respect to its conformity with the laws and regulations of Ukraine should be amended to extend the list of statutory acts it has to comply with. Accordingly, apart from the conformity with the Constitution of Ukraine, international commitments of Ukraine with regard to transfrontier co-operation, the Law of Ukraine “On Transfrontier Co-operation”, the State Regional Development Strategy, and the State Program for the Development of Transfrontier Co-operation, the agreement draft should also comply with “other corresponding statutory acts”. This is due to the fact that transfrontier co-operation may happen in different spheres of social relations that are regulated by different legal acts and bylaws of Ukraine.

8 As regards Article 10 “Bodies of transfrontier co-operation”

8.1. We propose that the title of Article 10 should be extended as follows: “*Bodies and entities of transfrontier co-operation*” due to the fact that according to Protocol No 2 to the Madrid Convention the status of a body of transfrontier co-operation is vested in the Euroregional Co-operation Grouping. Moreover, a European Grouping of Territorial Cooperation is an entity with legal personality that is established and functions in accordance with the legal norms of the European Union and the national law of its members.

Neither agreements of the Council of Europe nor legal acts of the European Union contain international and legal norms of this kind with regard to Euroregions. However, in international experts’ opinions, including those who participate in the work of the Council of Europe bodies and the European Commission “For Democracy through Law” (the Venice Commission), Euroregions are “entities (organisational structures)” of transfrontier co-operation.

Accordingly, in this article and, consequently, in the draft Law as a whole, bodies of transfrontier co-operation should be distinguished from entities or forms of transfrontier co-operation.

8.2. It is recommended that Article 10 of the draft Law should introduce the name of “an agreement on the establishment” of bodies and entities of transfrontier co-operation and to use “*establishment*” instead of “*creation*” throughout, particularly with regard to the title of Article 4 “Establishment of the ECG” of Protocol No3 to the Madrid Convention.

8.3. We also recommend that Paragraph 2 of Clause 2 of Article 10 of the draft Law should not refer to the feature of “*location*” of a *transfrontier co-operation body*. We consider it necessary to eliminate the system error that is found in the text of the current Law of Ukraine “On Transfrontier Co-operation” and this version of the draft Law, when, for instance, it is stated that a transfrontier co-operation body shall be located (shall be domiciled) on the territory of some one state. A transfrontier co-operation body, which may be a Euroregional co-operation grouping in accordance with Clause 3 of Article 10 of this draft Law, may not be located on the territory of one state due to the fact that it unites subjects and participants of transfrontier co-operation of two or more states. International commitments of Ukraine under Protocol No 3 to the Madrid Convention concern *the domicile of the*

headquarters of a Euroregional co-operation grouping in one of the Council of Europe member states, Ukraine inclusive.

Similarly, for instance, Paragraph 5 of Article 1 of the Regulation (EC) No 1082/2006 of the European Parliament and of the Council of 5 July 2006 on a European grouping of territorial cooperation (EGTC) (amended by the Regulation (EU) No 1302/2013) lays down the law on the EU member state *in which the registered office of an EGTC shall be located*; Paragraph 1(c) of Article 2 lays down the law on the application of the national law of the member state *where the EGTC has its registered office* with regard to the acts of the EGTC.

8.4. Paragraph 2 of Clause 4 of Article 10 of the draft Law contains the definition of a “Euroregional Co-operation Grouping” (ECG). We propose that the definition of an ECG should be moved to Article 1 of this draft Law. Also, we recommend that the definition should be amended as follows: “A Euroregional Co-operation Grouping *is a transfrontier co-operation body that has a legal person status with the most extensive legal capacity and is established by uniting subjects and participants of transfrontier co-operation between Ukraine and other Council of Europe member states under the international law and under the national law of the Council of Europe member state on the territory of which its headquarters is located.*

We deem it necessary to note that the provision concerning the legal capacity, legal capability and active legal capacity of an ECG as well as the applicable law concerning its work are stipulated by Article 2 of Protocol No 3 to the Madrid Convention.

8.5. Paragraph 3 of Clause 4 of Article 10 of the Draft Law contains the definition of a “European Grouping of Territorial Cooperation” (EGTC). We propose that the definition of an EGTC should be moved to Article 1 of this draft Law. Also, we recommend that the definition should be amended as follows: “A European Grouping of Territorial Cooperation *is an entity that has a legal person status with the most extensive legal capacity and is established by subjects and participants of cross-border cooperation in accordance with the corresponding regulations, the European Union law, and an agreement on the establishment concluded between its members as well as under the national law of the European Union member state where the EGTC has its registered office.*”

This is stipulated by the regulatory provisions of the Regulation (EC) No 1082/2006 of the European Parliament and the European Commission of 5 July 2006 on a European grouping of territorial cooperation (EGTC), which establishes the status of the EGTC as a legal person with the most extensive legal capacity (paragraphs 3-4 of Article 1); its composition that may include not only subjects of cross-border cooperation but also its participants (Article 3); the applicable law that governs the acts of the EGTC which includes the EU Regulation, the convention on the establishment, applicable European Union law and national law (Article 2). In regard to the reference in this provision to the “location” of the EGTC, we recommend following the afore-mentioned commentary to Paragraph 2 of Clause 2 of this Article since Clause 5 of Article 1 of the above-mentioned Regulation (EC) No 1082/2006 (amended by the Regulation (EU) No 1302/2013) lays down the law on the EU member state in which *the registered office of an EGTC shall be located*; Paragraph 1(c) of Article 2 lays down the law on the application of the national law of the member state *where the EGTC has its*

registered office with regard to the acts of the EGTC. In accordance with these Regulations the EGTC may be made up of subjects and participants of cross-border cooperation from different European Union member states, under certain conditions from third countries neighbouring it, and even from overseas countries and territories (OCTs). Accordingly, the EGTC may not be located on the territory of only one state.

8.6. Paragraph 4 of Clause 4 of Article 10 of the draft Law contains the definition of a “Euroregion”. We propose that the definition of the EGTC should be moved to Article 1 of this draft Law. Also, we recommend that the definition should be amended as follows: “A Euroregion is an organisational structure for co-operation between regional and/or local authorities or a grouping of such authorities that are located in bordering regions of two or more states, which share a common border and which is aimed at the coordination of common efforts as well as performance of concerted actions in different areas of life under the national law and legal norms of international law in order to settle common issues taking into consideration rights of people who inhabit this territory on both sides of the border”.

Studies conducted by the Council of Europe, concerning Euroregions in particular, which are based on the analysis of practices, show that when their activities are limited to studying important issues, which are common for their partners, and suggest the adoption of co-ordinated measures, they are simply general consultation bodies, sometimes lacking legal personality. However, when, on the other hand, they are able to contribute to regional development operationally, they are practising transfrontier co-operation, have their own legal personality and are then required to devise, manage and implement integrated development programmes under the supervision of the States and, possibly, with financial support from the European Union Structural Funds³.

9 As regards Article 11 “Euroregional Cooperation Groupings”

9.1. We should recommend introducing changes to Clause 1 of Article 11 of the draft Law following the logic and succession of Articles of Protocol No 3 to the Madrid Convention concerning Euroregional Cooperation Groupings (ECG), ratified by Ukraine. Accordingly, we should deem it necessary to precisely apply the provisions of this Protocol taken as whole and Articles 4 and 5 concerning the written agreement and statutes, in particular. We recommend that a new provision should be added in the following language: “The written agreement on the establishment of a

³ European Commission for Democracy Through Law (Venice Commission) Report «Euroregion as a Mechanism for Strengthening Transfrontier and Interregional Co-operation: Opportunities and Challenges» by Mr Oriano Otočan, 2010. P. 4.

URL: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-UDT\(2010\)008-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-UDT(2010)008-e);

Secretariat Memorandum prepared by the Directorate General of Democracy and Political Affairs Comparative Study of the Treaty Provisions on the Euroregional Co-Operation Groupings (ECGS) and Regulatory Provisions on a European Grouping of Territorial Co-operation (EGTC). Strasbourg, 10 May 2011

LR-IC(2011). Footnote 6. URL: https://rm.coe.int/1680748053#_ftn6.

Euroregional Cooperation Grouping and its statute shall specify the legal status, membership procedure and administrative organs, aim and tasks, organizational issues, budgets and financing, liability, accountability and transparency issues, kinds of activity and other conditions of functioning of such a grouping”.

9.2. We recommend that the wording of Clause 1 of Article 11 of the draft Law concerning the participants of the ECG should be edited and extended. We recommend stating that “Members of the Euroregional co-operation grouping shall be *subjects of transfrontier co-operation* between Ukraine and the Council of Europe member states, which have the required jurisdiction under the national law as well as legal persons that are not involved in production or commercial activities, *are financed mainly from the state or local budgets and are subject to the control of the State or local authorities, while half the members of their administrative, managerial or supervisory organ are appointed by a body of State or local power”.*

This would enable to avoid unnecessary details which are present in the version of the draft Law in the form of the list of possible members of the ECG: “territorial communities acting through their representative bodies and their groupings, local bodies of state executive power of Ukraine and territorial communities”. In addition, the added provisions concerning legal persons that may be members of the ECG go in line with the regulatory provisions of Clause 1 of Article 3 of Protocol No 3 to the Madrid Convention, which relates to the very Euroregional co-operation groupings.

9.3. Also, Clause 1 of Article 11 of the draft Law should be extended to include the following new provision: “Interested member states of the Council of Europe may join the Euroregional co-operation grouping if one or several of their subjects of transfrontier co-operation and their associations belong to the grouping”. International commitments of Ukraine under Clause 1 of Article 3 of Protocol No 3 to the Madrid Convention include the law on the right of interested member states of the Council of Europe to gain the status of members of the Euroregional co-operation grouping under the condition that is stated in the proposed text.

9.4. In order to ensure the proper implementation of Clause 2 of Article 3 of Protocol No 3 to the Madrid Convention it would make sense to amend Clause 1 of Article 11 of this draft Law so as to add two new provisions in the following language:

“Subjects of transfrontier co-operation of Ukraine can establish the ECG in conjunction with subjects of transfrontier co-operation of other member states of the Council of Europe with the headquarters located in Ukraine. The acts of such a grouping are regulated by the legislation of Ukraine”.

“Subjects of transfrontier co-operation of the state that shares the common border with Ukraine may take part in the establishment of the ECG or join it in accordance with the corresponding inter-state agreements without prejudice to the provisions of Protocol No 3 to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities. The headquarters of this ECG may be located on the territory of this state”.

10 As regards Article 12 “European grouping of territorial cooperation”

10.1. Article 12 of this draft Law should be considerably amended in order to clearly define the objective of its activity, regulate the participation of subjects of cross-border cooperation of Ukraine in the establishment and functioning of a European grouping of territorial cooperation (EGTC).

First of all, we propose to include the following provision:

"The main objective of the EOTC is to promote territorial cooperation between its members, which includes one or more of the strands of cross-border, transnational and interregional ones, in order to strengthen joint socio-economic development."

10.2. We propose to amend the Clause 1 of Article 12 of the draft Law with the provisions concerning the procedures and grounds for the participation of subjects of cross-border cooperation, from Ukraine including, in the establishment of an EGTC. Article 4 “Establishment of an EGTC” of the Regulation (EC) No 1082/2006 of the European Parliament and of the European Commission of 5 July 2006 on a European grouping of territorial cooperation (EGTC) (amended by the Regulation (EU) No 1302/2013 of 17 December 2013) provides for the participation of states that are not members of the European Union in the establishment and work of the EGTC.

We recommend adding the following provisions:

«The EGTC shall be established by a written convention between its founding members and acts in accordance with its statute.

The EGTC may include, apart from its founding members, other members that have joined it under the procedure established by law, a written convention on its establishment and the statute of this grouping. The founding members and other members shall be participants of the EGTC.

Participants of an European grouping of territorial cooperation may be subjects of cross-border cooperation of Ukraine and the member states of the European Union that have the required powers in accordance with national law as well as legal persons that are not involved in production or commercial activities. Individuals may not be participants of an EGTC».

10.3. We recommend amending Article 12 of the draft Law so that it adds the provisions concerning the kinds, ways, forms and sources of financing the work of the EGTC in accordance with the regulatory provisions of the afore-mentioned Regulation (EC) No 1082/2006 of the European Parliament and of the European Commission of 5 July 2006 on a European grouping of territorial cooperation (EGTC) (amended by the Regulation (EU) No 1302/2013 of 17 December 2013).

Particularly, the following provisions are proposed to be added:

«The main kinds the EGTC's activity shall be the development and implementation of common initiatives, events, projects, programs and strategies for territorial (cross-border, transnational, interregional) cooperation.

The EGTC shall not aim to receive profit with the aim of its further distribution among the members of the governing bodies and other related persons, as well as employees (other than their remuneration, accrual and payment of taxes and mandatory payments).»

The EGTC shall perform its activities based on its annual budget that shall be adopted for each following year by the respective administrative body of the European grouping of territorial cooperation.

Sources of financing the EGTC may be:

- *the EGTC members' one-off or recurring contributions and transfers;*
- *funds and other property, which is found in accordance with programs for international technical aid and charitable assistance;*
- *funds accumulated by performing the primary activities of the EGTC;*
- *passive incomes;*
- *other incomes that are not prohibited by law.*

Taxes shall be levied on the EGTC under national law of the member state of the European Union where it has its registered office (headquarters).

In the event of the dissolution of the EGTC, after satisfying creditors' claims, its assets and other funds shall be transferred to one or more groupings of the respective kind or shall be delivered to the budget under the procedure established by its statute”.

10.4. it seems expedient to amend the Clause 2 of Article 12 of the draft Law to extend the provision concerning the draft convention on the establishment of the EGTC and its statute by stating that they are developed *taking into account the respective Regulations and EU law.*

Also, we should again recommend changing the inappropriate wording “the territory on which this grouping is situated” to “*the territory on which the office (headquarters) of this grouping is registered*” due to the fact that the grouping functions on the territory of several subjects of cross-border cooperation, which are its members and participants. In addition, the new wording would be in line with Paragraph 1 (c) of Article 2, paragraph 5 of Article 1, etc. of the Regulation (EC) No 1082/2006 of the European Parliament and of the European Commission of 5 July 2006 on a European grouping of territorial cooperation (EGTC) (amended by the Regulation (EU) No 1302/2013 of 17 December 2013).

Regulatory provisions concerning the convention on the establishment of the European grouping of territorial cooperation and its statute are stipulated by Articles 8 and 9 of the aforementioned Regulation.

10.5. This Article of the draft Law should also be amended by analogy with Article 11 to add the provision concerning the structure of the convention on the establishment of the EGTC and its statute. Accordingly, in particular, the proposed text is as follows:

«The activities of the European Grouping of Territorial Cooperation are governed by a written convention on its establishment, concluded unanimously by its members.

The convention on the establishment of the European grouping of territorial cooperation shall specify:

- *the name of the EGTC and its registered office;*
- *the extent of the territory in which the EGTC may execute its tasks;*
- *the objective and the tasks of the EGTC;*
- *the duration of the EGTC and the conditions for its dissolution;*
- *the list of the EGTC's members;*
- *the list of the EGTC's organs and their respective competences;*
- *the applicable European Union law and national law of the Member State where the EGTC has its registered office for the purposes of the interpretation and enforcement of the convention;*
- *the applicable European Union law and national law of the Member State where the EGTC's organs act;*
- *the arrangements for the involvement of members from third countries or from OCTs if appropriate including the identification of applicable law where the EGTC carries out tasks in third countries or in OCTs;*
- *the applicable European Union and national law directly relevant to the EGTC's activities carried out under the tasks specified in the convention;*
- *the rules applicable to the EGTC's staff, as well as the principles governing the arrangements concerning personnel management and recruitment procedures;*
- *the arrangements for liability of the EGTC and its members;*
- *the appropriate arrangements for mutual recognition, including for financial control of the management of public funds; and*
- *the procedures for adoption of the statutes and amendment of the convention”.*

The Statute of the EGTC shall specify, as a minimum, the following:

- *the operating provisions of its organs and those organs' competences, as well as the number of representatives of the members in the relevant organs;*
- *its decision-making procedures;*
- *its working language or languages;*
- *the arrangements for its functioning;*
- *its procedures concerning personnel management and recruitment;*
- *the arrangements for its members' financial contributions;*

- *the applicable accounting and budgetary rules for its members;*
- *the designation of the independent external auditor of its accounts; and*
- *the procedures for amending its statutes.*

10.6. By analogy with the provisions concerning ECG, specified in Clause 1 of Article 11, we recommend approving by the Cabinet of Ministers of Ukraine the draft Convention on the establishment of the EGTC and draft Statutes of this grouping developed in accordance with the regulatory provisions of the respective EU Regulations.

10.7. Clause 3 of Article 11 of the draft Law is proposed to be amended as follows: “An authorised representative of subjects and/or participants of cross-border cooperation of Ukraine that intend to take part in the establishment of the EGTC shall send an draft convention on the establishment of this grouping and its draft statutes *on approval* to the central body of the executive power that provides the general coordination of cross-border cooperation and exerts control over the compliance with law concerning the issues of cross-border cooperation, *which within a month of the day of the receipt of the drafts of the convention on the establishment of the EGTC and its statutes shall review them for statutory compliance with the Constitution of Ukraine, international commitments of Ukraine concerning cross-border cooperation, this Law and other legal acts of Ukraine*”.

It is also recommended to identify the reasons, on the ground of which the central executive body, which ensures the overall coordination of cross-border cooperation and control over compliance with the legislation on cross-border cooperation, can refuse the permission to participate in the establishment of an EGTC. In order to prevent arbitrary refusals and guarantee the rights of subjects and / or participants of cross-border cooperation of Ukraine and stakeholders to legal protection, the central executive body, which ensures general coordination of cross-border cooperation and control over compliance with legislation on cross-border cooperation, must justify reasons for refusal and open the way to legal protection. The refusal may contain both justifications and recommendations for the necessary changes to comply with national and international law.

It is recommended to amend Article 11 of the draft Law with the following provisions:

“The central executive body that provides general coordination of cross-border cooperation and control over compliance with legislation on cross-border cooperation has the right to refuse permission to subjects and / or participants of cross-border cooperation of Ukraine, which plan to participate in the establishment of an EGTC, if:

such participation and / or agreement / statutes does not comply with the provisions of Regulation № 1302/2013 of the European Parliament and of the Council of 17 December 2013 and other European Union legislation on the EGTC as well as the national legislation concerning the powers and competences of the future member of the EGTC;

such participation is not justified in the interests of society or the state;

the statutes of an EGTC does not comply with the convention on its establishment.

In case of disapproval of participation of subjects and / or participants of cross-border cooperation of Ukraine, which plan to participate in the establishment of an EGTC, the central executive body, which ensures general coordination of cross-border cooperation and control over compliance with legislation on cross-border cooperation, indicates the reasons for refusal and, if necessary, proposes that the necessary amendments be made to the convention on establishing an EGTC and / or its statutes.

Subjects and / or participants of cross-border cooperation between Ukraine and other states, which plan to participate in the establishment of an EGTC, but were deprived from the approval for their participation in the establishment of an EGTC, convention and / or statutes of an EGTC, within one month of receiving information on the reasons for refusal shall make the necessary changes to them.

If the subjects and / or participants of cross-border cooperation of Ukraine want to join an EGTC, or amend the convention on establishing an EGTC, such a decision is made exclusively at the plenary sessions of the village, town, city, district and regional council."

10.8. Accordingly, Clause 4 of Article 11 of this draft Law should be updated so as to specify the following: «*Approved convention on the establishment of the EGTC shall be signed as required by law and approved at the first following plenary session of the local self-government body, where the decision shall be made concerning the participation in the establishment of the EGTC and the statutes of this grouping is approved.*

10.9. The EGTC shall be registered at the location of its office (headquarters) in accordance with the procedure laid down by the legislation of the European Union and the EU Member State applicable to the activities of that EGTC."

11 Article 11 should be followed by a new Article concerning "Euroregion" as a specific entity (organisational structure) of transfrontier co-operation.

11.1 The structure of this Article should be similar to the structure of the Articles that regulate the issues of the legal status, the establishment and functioning of a ECG and a EGTC.

As regards some articles of Section III “State Support for the Development of Transfrontier Co-operation”.

12 As regards Article 13 “The essence of the state support for the development of transfrontier co-operation”

12.1. It is recommended that Article 13 of this draft Law should be amended by moving some part of Clause 2 of Article 17 so as to add Clause 2 to Article 13 based on it. A new formulation can be established as follows:

“2. Particularly, the state support for the development of transfrontier cooperation include:

- *The conclusion of inter-state and intergovernmental agreements concerning transfrontier cooperation including the simplified border crossing procedure;*
- *The development and implementation of the state program for the development of transfrontier co-operation:*
- *Providing legal, organizational, methodological, and informational assistance for subjects and participants of transfrontier co-operation of Ukraine; and other respective activities”.*

13 As regards Article 15 “Regional Programs for the Development of Transfrontier Co-operation”

13.1. In Clause 1 of Article 15 of the draft Law we recommend changing the inappropriate wording “*local budgets of Ukraine*”. In accordance with the provisions of Article 1 of the Budget Code of Ukraine it would make sense to use the term “*local budgets*” (local budgets including the budget of the Autonomous Republic of Crimea, regional, district budgets and budgets of local self-government).

13.2. Clause 4 of Article 15 of the draft Law is proposed to be updated to specify that regional programs for the transfrontier co-operation development may include apart from projects *and programs* of transfrontier co-operation also “*other transfrontier initiatives*”. Since transfrontier co-operation can be exercised not only within the framework of projects and /or programs, initiatives of transfrontier co-operation may have other forms according to the arrangements between subjects of transfrontier co-operation between Ukraine and other states.

As regards some articles of Section IV "Financial support of transfrontier cooperation".

14 As regards Article 17 "Principles and forms of state financial support for the development of transfrontier co-operation"

14.1. Considering the aforementioned proposal to move some provisions from Clause 2 of Article 17 to Article 13 of the draft Law, Clause 2 should contain the following provision:

"2. The State financial support for the transfrontier co-operation development shall be provided in the key priority areas of the development of transfrontier co-operation and shall involve:

- *Providing the financing of the projects and programs of transfrontier co-operation;*
- *The establishment and exercise of favourable customs, currency-financial, taxation and other terms of economic activities for the participants of transfrontier co-operation;*
- *Competitive selection of projects and programs for transfrontier co-operation that require the state financial support".*

Alongside it is recommended to introduce amendments in the Law of Ukraine "On Local Self-government in Ukraine" - part 21² of its Article 26 on the EGTC (by analogy with its provisions on the ECG of part 21¹ of Article 26) can be worded as follows: "21²) approval of conventions on European groupings of territorial cooperation, adoption of decision on the establishment of European groupings of territorial cooperation, on joining such groupings or on getting out of them, approval of the statutes of European groupings of territorial cooperation and making changes to them."

Part 15² of its Article 43 on the EGTC (by analogy with the provisions on the ECG of part 15¹ of Article 43) can be worded as follows: "15²) conclusion and approval of conventions on European groupings of territorial cooperation, adoption of decisions on the establishment of a European grouping of territorial cooperation, on joining such groupings or on getting out of them, approval of the statutes of the European grouping of territorial cooperation and making changes to them."

Regarding amendments to related legislation

By analogy with the provisions of the draft law on ECGs, it is recommended in the Law of Ukraine "On Local Self-Government in Ukraine", set out in part 21-1 of Article 26, to formulate part 21-2 of Article 26 on EGTCs as follows:

"21-2) approval of conventions on EGTCs, making decisions on the establishment of EGTCs, on joining or leaving such groupings, approving statutes of EGTCs and making changes to it".

Also, by analogy with the provisions on the ECGs set out in part 15-1 of Article 43, to formulate part 15-2 of Article 43 on the EGTCs as follows:

"15-2) concluding and approving conventions on establishment of EGTCs, making decisions on the establishment of EGTCs, on joining or leaving such groupings, approving statutes of EGTCs and making changes to it.

The agreed convention on the establishment of an EGTC shall be duly approved at the next plenary session of the local council, at which the council shall adopt decision on the establishment of an EGTC and validate the statutes of such a grouping."

In addition, given that EGTCs are recognized by EU territorial cooperation programs (cross-border, interregional, transnational), in which the subjects and / or participants of cross-border cooperation of Ukraine may participate, as entities capable of implementing (even large infrastructure) projects on both sides of the state border in their own competence (as sole beneficiaries), it is recommended to amend the Procedure for involvement, using and monitoring international technical assistance, approved by the Cabinet of Ministers of Ukraine of 15 February 2002 № 153. The following amendments are proposed:

"This Procedure does not apply to the EGTCs, members of which are subjects and / or participants of cross-border cooperation of Ukraine, which implement the EU projects (programs) of territorial cooperation on different sides of the border."

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