



***BRIEF INTRODUCTION TO THE
LEGAL BACKGROUND OF CBC IN UKRAINE***

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Our state, in accordance with the norms and principles of international law in Article 18 of the Basic Law - the Constitution, enshrines that Ukraine's foreign policy is aimed at ensuring its national interests and security by maintaining peaceful and mutually beneficial cooperation with members of the international community. Today Ukraine is a member of several global and regional - European organizations, and also actively cooperates *in international agreements with the European Union, the Council of Europe*, and others. The current policy of our state is marked by the European integration priority, the implementation of which is impossible outside the format of cooperation with such European international organizations.

▶ Today we can safely say that the relevant international legal framework for cross-border cooperation has already been created, exists and functions, and is developed by both the Council of Europe and the European Union. This, in turn, requires Ukraine to adapt its legislation to the requirements undertaken in accordance with the signed *international agreements with both the European Union and the Council of Europe*.

▶ The issues of cooperation between the member states of the *Council of Europe* in the field of cross-border cooperation are regulated by its four treaties. Ukraine, at the invitation of the Committee of Ministers of the Council of Europe, by Resolution of the Verkhovna Rada of Ukraine No. 3384-XII of July 14, 1993, acceded to the *European Outline Convention on Transfrontier Cooperation between Territorial Communities or Authorities*, the Verkhovna Rada of Ukraine, by Law of Ukraine No. 1879-IV of June 24, 2004, ratified the *Additional Protocol and Protocol No. 2 concerning interterritorial cooperation to the Convention*, and subsequently the Verkhovna Rada of Ukraine by Law No. 4704-VI of May 16, 2012, ratified *Protocol No. 3 to the Convention, which concerns Euroregional Co-operation Groupings (ECGs)*.

▶ Today, the *Law of Ukraine "On Cross-Border Cooperation"* N 1861-IV of October 11, 2018, *regulates most issues of this cooperation*. It defines the main terms and principles, the legal basis of cooperation, the purpose, and principles of public policy, the main organizational forms of such cooperation, which included activities within the established Euroregion, the conclusion of

agreements on cross-border cooperation in certain areas, creation a cross-border cooperation bodies, in particular, Euroregional Co-operation Groupings (ECGs) and European Grouping of Territorial Cooperation, establishment and development of mutually beneficial contacts between the subjects of cross-border cooperation, determines the powers of the subjects of cooperation, general requirements for concluding agreements and other issues of this cooperation. Besides the Law of Ukraine "On Cross-Border Cooperation", the *Laws of Ukraine "On Local Self-Government in Ukraine"* N 280/97-VR of July 23, 2020, and *"On Local State Administrations"* N 586-XIV of 16 October 2020, regulate the institutional and organizational and legal mechanism of cross-border cooperation.

However, today the legal regulation of this cooperation does not fully comply with international legal instruments developed by the Council of Europe, ratified by our country, in particular, the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities and its Additional Protocols.

▶ An illustrative example is that the provisions of Law of Ukraine "On Cross-Border Cooperation" only declares competence of *Euroregional Co-operation Groupings (ECGs)* should support and develop in the interests of the population not only cross-border cooperation (that is between border areas) but also **interterritorial cooperation** between the subjects and participants of such relations, instead, it does not define sufficient legal mechanisms for implementing such an approach. In particular, there is no legal basis for concluding agreements on interterritorial cooperation, relevant legal personality of public authorities etc. Evidently, in this case, it is a question of the need for legislative amendments for the full implementation of the provisions of Protocol 2 and the Convention on Interterritorial Cooperation into the norms of national legislation.

▶ Another problem is the fact that the provisions of the Law of Ukraine "On Cross-Border Cooperation" stipulate the establishment and operation of the ***Euroregional Co-operation Groupings (ECGs)*** exclusively in the legal form of a legal entity of private law. Whereas, according to the obligations of Ukraine set out in Protocol 3, these Groupings may also have the status of a legal entity under public law. This situation in national law significantly affects the activity of local public administrations to intensify the practice of applying this mechanism.

Besides, speaking of Protocol No. 3 to the Convention, devoted to the Euroregional Co-operation Groupings (ECGs), we are forced to state that in Ukraine after the adoption of the necessary amendments to the Law of Ukraine "On Cross-Border Cooperation" ***no Euroregional Co-operation Groupings (ECGs) is registered***. Although the attractiveness of this mechanism is due to the ability of the subjects of cross-border cooperation of Ukraine to initiate their creation.

This state of affairs can be explained by the novelty of legal norms and the need for their further implementation through the necessary bylaws. Although, in our opinion, an important reason that hinders the activity of the subjects of cross-border cooperation of Ukraine in the application of this mechanism is the fact ***that the member states of the Council of Europe located directly on the western border of Ukraine have not yet ratified Protocol No 3 to the Convention***. When the Council of Europe member states adjacent to Ukraine ratify Protocol No. 3 to the Convention, possibly the subjects of cross-border cooperation of Ukraine will be able to participate in the establishment and operation of Euroregional Co-operation Groupings (ECGs) with headquarters in these states.

The next, probably, in terms of available material resources in the development of cross-border cooperation, are the instruments of the **European Union**. By implementing the course towards European integration, Ukraine has been developing cooperation with the European Union since 1994. Currently, the **Association Agreement is the key international legal document between Ukraine, on the one hand, and the European Union**, which was signed and ratified in 2014, on the other. As a result of the signing and ratification of the Association Agreement, our state has committed itself to the implementation of European Union standards in all spheres of society. Moreover, according to Ukrainian scholars, as well as the practice of application (including judicial practice) inviolately shows that the Association Agreement is part of the national legislation of Ukraine, and its provisions are mandatory and binding throughout the territory of Ukraine.

The Association Agreement plays a significant role in cross-border and interregional cooperation. In particular, the provisions of the preamble to this Agreement state that the **Parties undertake to support cross-border and interregional cooperation**. In addition, Article 447 states that

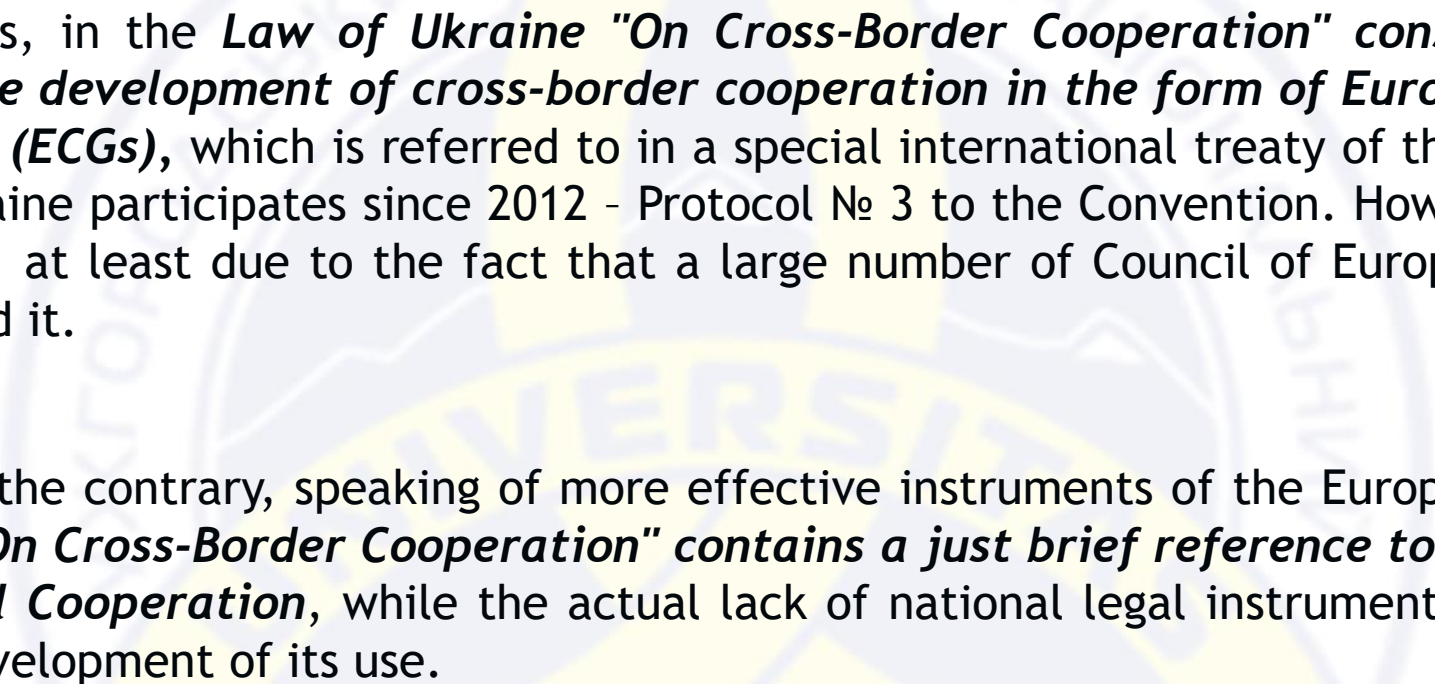
"The Parties undertake to support and strengthen the involvement of local and regional authorities in such cooperation *by developing an appropriate legal framework...*". Therefore, the Ukrainian authorities are obliged to apply the legal acts of the European Union in the field of cross-border cooperation. In view of this, we consider it appropriate to briefly mention those that we believe are most relevant at this stage: 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) and Regulation (EU) No 1302/2013 of the European Parliament and of the Council of 17 December 2013 amending Regulation (EC) No 1082/2006 on a European grouping of territorial cooperation (EGTC) as regards the clarification, simplification, and improvement of the establishment and functioning of such groupings.


These regulations introduced the European Grouping of Territorial Cooperation as a new and probably the most effective pan-European public law instrument for cross-border, transnational and interregional cooperation. This is evidenced by the fact that since the adoption of regulations in the European Union, a significant number of such associations have been established, as of April 2020, there are 69 European Grouping of Territorial Cooperation, and cross-border cooperation has intensified.

▶ It is important to note that, the above-mentioned legal acts regulate the activities of European Grouping of Territorial Cooperation, *in which the subjects of cross-border cooperation of Ukraine may also participate*. This once again leads to the thesis that these Regulations are of particular importance for the possibility of developing cross-border cooperation at the level of external borders - between the European Union and third countries, that is including Ukraine (paragraph 9 of Regulation № 1302/2013).

▶ Unfortunately, today the Law of Ukraine "On Cross-Border Cooperation" defines only the very concept of the *European Grouping of Territorial Cooperation*, which means that it is an association of subjects of cross-border cooperation of Ukraine and relevant entities of neighboring EU member states with the status legal entity in accordance with the national law of the Member State of the European Union on which territory it is located. *It does not* address the issues of who is authorized to approve agreements, make decisions on the formation, approval of the statute and amendments to it, on the European Grouping of Territorial Cooperation with the participation of cross-border cooperation entities of Ukraine - territorial communities, their representative bodies and units, local executive bodies of Ukraine.

▶ Also, the legal basis for the activities of the European Grouping of Territorial Cooperation, the procedure for its creating have not been determined. It is not determined whether the European Grouping of Territorial Cooperation has the right for its own budget, the right to conclude contracts, hire staff, acquire movable and immovable property, carry out procedural actions and etc.

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- ▶ Thus, in the *Law of Ukraine "On Cross-Border Cooperation"* considerable attention is paid to the development of cross-border cooperation in the form of **Euroregional Co-operation Groupings (ECGs)**, which is referred to in a special international treaty of the Council of Europe, in which Ukraine participates since 2012 - Protocol № 3 to the Convention. However, this instrument is not active, at least due to the fact that a large number of Council of Europe member states have not ratified it.
 - ▶ On the contrary, speaking of more effective instruments of the European Union, *the Law of Ukraine "On Cross-Border Cooperation"* contains a just brief reference to **European Grouping of Territorial Cooperation**, while the actual lack of national legal instruments in Ukraine blocks the further development of its use.



Thank you for your attention!