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Legal aspects of cooperation between local authorities of Ukraine and European municipalities

The article examines the legal aspects of the legal regulation of cooperation between local self-government bodies (territorial communities) of Ukraine and territorial communities of foreign countries — subjects of cross-border cooperation. Several aspects of the essence of cooperation of territorial communities with municipalities of European countries and among themselves are revealed. It has been established that local self-government bodies carry out their activities in accordance with and within the limits of current legislation, both national and international treaties. Basic international legal acts and legal acts of Ukraine regulating the process of functioning of local self-government bodies, in particular in the field of cooperation, define the list of functions and powers exercised by such bodies themselves and independently, determine the role and place of territorial communities in the development of cross-border cooperation. Mechanisms and forms of community cooperation were analyzed, as well as recommendations were given for improving legal regulation. The article is devoted to the analysis of current legislation in the field of community cooperation, as well as prospects for its improvement.

Keywords: community cooperation, forms of community cooperation, cross-border cooperation, Euroregions, projects.

Introduction

Nowadays, Ukraine is facing the impudent demand for a large-scale reform of the administrative-territorial structure and the reform of the municipal self governing. Without a doubt, the successful implementation of the reform of the local self governing will accept more effective implementation of the Ukrainian policy of European integration, the development of cross border cooperation with European municipalities and institutions, for us in front of the of Europe Council and the European Union. Collaboration of territorial communities is an actual and innovative form of activity of the most self-governing bodies. Particularly wide possibilities for the development of cross border collaboration may be the territorial community of the bordering territories.

By using statistic analysis of the legal framework, as a regulation of the activities of the organization of international self-governing in the field of cross border cooperation with European municipalities, as well as the development of trends in the field of networking of national communities with European municipalities.

Methods and materials

In the process of writing the article, comparative legal, logical, methods of scientific research were used, an analysis of empirical data was carried out.

The article uses the normative legal acts of Ukraine and international treaties that regulate the main issues of the activities of local governments, as well as the process of cooperation between self-government bodies of Ukraine and European municipalities. The theoretical basis was the works of Ukrainian and foreign authors and experts on local governments touching upon the issues of cooperation between territorial communities and European municipalities and cross-border cooperation. Problematic issues are based on the study of international treaties and legislation of Ukraine.

Results and Discussion

The implementation of local self-government reform began in 2014 with the adoption of Decree No. 333 of the Cabinet of Ministers of Ukraine dated April 1, 2014, which approved the Concept of

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Reforming Local Self-Government and Territorial Organization of Power in Ukraine. With the adoption of this document in Ukraine, the implementation of a large-scale reform of local self-government began, which, in particular, provides for the transfer of greater powers from the central government to local self-government bodies, expansion of their resource base, etc. The main goal of the Concept of Reforming Local Self-Government and territorial organization of authorities in Ukraine is to determine directions, mechanisms and deadlines for the formation of effective local self-government and territorial organization of authorities in order to create and maintain a full-fledged living environment for citizens, provide high-quality and accessible public services, establish institutions of direct people's power, satisfy interests of citizens in all areas of life in the relevant territory, coordination of the interests of the state and territorial communities.

Taking into account the mentioned concept, the Government of Ukraine prepared and the Verkhovna Rada of Ukraine adopted on June 17, 2014 the Law of Ukraine “On Cooperation of Territorial Communities”. In particular, the preamble of the Law states: “This Law defines the organizational and legal principles of cooperation of territorial communities, principles, forms, mechanisms of such cooperation, its stimulation, financing and control”. As we can see, this Law, in addition to the legal principles of cooperation, also defines the organizational principles of cooperation of territorial communities [1].

The Constitution of Ukraine enshrines a provision according to which territorial communities of villages, towns and cities can combine communally owned objects on contractual basis, as well as budget funds for the implementation of joint projects or for joint financing (maintenance) of communal enterprises, organizations and institutions, to create appropriate bodies and services for this (Part 3 of Article 142). After the entry into force of the Law of Ukraine “On Cooperation of Territorial Communities” dated 17.06.2014 No. 1508-VII, territorial communities received normative defined tools for pooling their resources to solve existing problems and / or save the budget through the creation of joint communal enterprises, bodies and services and implementation of joint projects [1].

Part 1 of Article 10 of the European Charter of Local Self-Government, which has been ratified by Ukraine, contains the following provision: “Local authorities have the right, in the exercise of their powers, to cooperate and, within the limits of the law, to create consortia with other local authorities to carry out tasks of common interest”. The Law of Ukraine “On Cooperation of Territorial Communities” regulates the procedures of joint activity of local self-government bodies in the interests of their communities, defines the principles of cooperation, but does not define organizational forms. Article 2 specifies the principles on which such cooperation is based — legality, voluntariness, mutual benefit, transparency and openness, equality of participants, mutual responsibility of cooperation subjects for its results [1, 2]

T. Tatarchuk notes in his research that the essence of cooperation is that territorial communities combine their efforts and resources on a contractual basis to solve existing problems of their own development. The ultimate goal of cooperation should be to improve the quality of life of community members. Cooperation is characteristic of a decentralized territorial administrative system, the essence of which is as follows: the higher the degree of autonomy of communities, the greater opportunities they have for cooperation with other interested territorial communities [3].

Article 4 of the Law “On Cooperation of Territorial Communities” defines the following forms of cooperation: delegation of one or more tasks to one of the subjects of cooperation by other subjects of cooperation with the transfer of relevant resources to him; the implementation of joint projects, which involves the coordination of the activities of cooperation subjects and their accumulation of resources for a certain period in order to jointly implement relevant measures (the most popular); joint financing (maintenance) by the subjects of cooperation of enterprises, institutions and organizations of the communal form of ownership — infrastructure objects; formation by subjects of cooperation of joint utility companies, institutions and organizations, joint infrastructure facilities; the formation by the subjects of cooperation of a joint management body for the joint performance of powers defined by law [1].

The basis for the organization of cooperation is the legally established expression of will of interested territorial communities, as defined by the relevant norms of the Law of Ukraine “On Cooperation of Territorial Communities”. In other words, the basis for the organization of cooperation is the consent of local self-government bodies of both the community-initiator of cooperation and other communities-potential subjects of cooperation. The granting of consent to the organization of cooperation is formalized in the form of a decision, which is adopted at a meeting of the relevant village, settlement, city council through an open discussion by voting [4]. As of May 2023, on the portal of the Ministry of Development of Territorial Communities and Infrastructure of Ukraine, there are more than 900 contracts in the register of agreements on cooperation of territorial communities.

In their research, scientists note that inter-municipal cooperation or cooperation of territorial communities, as a new (innovative) form of local and regional development policy, has recently become more and more widespread in European countries, in particular in Ukraine. Its appearance is connected with the fact that local self-government in many European countries (including Ukraine) today is dealing with problems, the possible solutions of which are offered by inter-municipal cooperation. It has great potential, which can be very useful for ensuring the sustainable development of all communities (large and small) without exception [5].

In accordance with Part 2 of Art. 19 of the Constitution of Ukraine, state authorities and local self-government bodies, their officials are obliged to act only on the basis of, within the limits of authority and in the manner provided for by the Constitution and laws of Ukraine. Art. 140 of the Constitution of Ukraine grants territorial communities the right to independently resolve issues of local importance within the limits of the Constitution and laws of Ukraine. The content of forms of community cooperation is contained in Part 3 of Art. 142 of the Constitution of Ukraine. A somewhat broader meaning of the concept of local self-government is contained in Part 1 of Art. 2 of the Law of Ukraine "On Local Self-Government", which, however, does not include powers in the field of international cooperation and foreign economic activity [6]. Instead, Part 1 and 2 of Art. 15 and Part 21 of Art. 26 of the same Law enable local self-government bodies to make decisions on joining associations, other forms of voluntary associations of local self-government bodies, and on leaving them; to approve agreements on the unification of Euroregional cooperation and to make decisions on its formation, approval of the statute, on joining it or on leaving it; to make decisions on joining the European Union of Territorial Cooperation and on leaving such a union [7].

The legal grounds for establishing cooperation between local self-government bodies and subjects of international relations are laid down in Art. 18 of the Constitution of Ukraine, which states that Ukraine's foreign policy activities are aimed at ensuring its national interests and security by maintaining peaceful and mutually beneficial cooperation with members of the international community according to generally recognized principles and norms of international law. Yes, Mr. Gurchumelia U.I. notes that, thus, the territorial community, being the basic level of population organization, the basic concept of which was approved by the UN back in 1948, is the brick that lays the foundations of international cooperation, starting with interpersonal contacts and ending with the conclusion of contractual documents of an international nature [8].

Cross-border cooperation is an important mechanism in terms of European integration of Ukraine. Ukraine has a border with seven states, 19 out of 27 administrative-territorial units are border. On the territory of such border regions as Vinnytsia, Volhynia, Zakarpattia, Ivano-Frankivsk, Lviv, Luhansk, Odesa, Sumy, Kharkiv, Chernivtsi, Chernihiv, Donetsk, nine Euroregions were created — Bug, Verkhniy Prut, Dniester, Dniipro, Carpathian, Lower Danube, Slobozhanshchyna, Donbas and Yaroslavl, five Euroregions were created with EU member states (Poland, Slovakia, Romania, Hungary). Within the framework of the Euroregions, cross-border cooperation has been carried out since 1993 [9].

Today, cross-border cooperation is carried out both at the interstate level and at the level of territorial communities, their representative bodies, and local executive bodies. Such cooperation contributes to the social and economic convergence of border regions and the creation of new opportunities for their development, including the development of economic, social, scientific and technical, environmental, cultural and other relations, exchange of experience. The main legal acts regulating cross-border cooperation of territorial communities are the Law of Ukraine dated 24.06.2004 No. 1861-IV "On Cross-Border Cooperation", Resolution of the Cabinet of Ministers of Ukraine dated April 14, 2021 No. 408 "On Approval of the State Program for the Development of Cross-Border Cooperation for 2021-2027", European Framework Convention on Transboundary Cooperation between Territorial Communities or Authorities dated 05/21/1980.

Resolution No. 408 of the Cabinet of Ministers of Ukraine dated April 14, 2021 approved the State Program for the Development of Cross-Border Cooperation for 2021-2027. The program outlines goals and priorities, contains specific ways and methods of solving problems, a plan of measures, sources of funding, and determines the responsible executors of these measures. Its implementation should continue to form a positive international image of Ukraine, solve the problems of disparity in the socio-economic development of the regions of Ukraine, increase the level of employment of the population of the regions of Ukraine, promote the growth of exports and imports of goods and services, improve the environment, promote the attraction of financing for the implementation of cross-border projects and the creation of new bodies of cross-border cooperation.

The document defines the priority directions for the development of cross-border cooperation for the period until 2027, including: implementation in Ukraine of the Strategy of the European Union for the Danube Region and the Danube Transnational Program; implementation of projects (programs) financed at the expense of international technical assistance, as well as cross-border cooperation programs within the framework of European territorial cooperation for 2021-2027 within the framework of the financial instrument “Neighborhood, Development and International Cooperation” (NDICI); development of the border infrastructure of the mountainous territories of the Carpathians; development of the institutional capacity of subjects and participants of cross-border cooperation (associations of local self-government bodies, public organizations, European associations of territorial cooperation and other forms of cross-border cooperation [10].

Cross-border cooperation means any joint actions aimed at strengthening and deepening good-neighborly relations between territorial communities or authorities under the jurisdiction of two or more contracting parties, and at concluding any necessary agreements or reaching agreements for this purpose. Cross-border cooperation is carried out within the competence of territorial communities or authorities, determined by domestic legislation [11].

According to Art. 5 of the Law of Ukraine “On Transboundary Cooperation”, territorial communities can implement it in the following directions: within the created Euroregion; by concluding agreements on cross-border cooperation in certain areas; by establishing and developing mutually beneficial contacts between them; choosing forms of cross-border cooperation in accordance with the legislation of Ukraine. Article 1 of the Law of Ukraine “On Cross-Border Cooperation” states that the Euroregion is an organizational form of cross-border cooperation, carried out in accordance with bilateral or multilateral agreements on TCS. According to Article 1 of the Law of Ukraine “On Cross-Border Cooperation”, the Euroregion is an organizational form of cross-border cooperation carried out in accordance with bilateral or multilateral agreements on cross-border cooperation [12].

As it was mentioned above, the way of creation of Euroregions was also chosen in Ukraine for cross-border cooperation. Exercising its rights within the framework of cross-border cooperation in 2004, Vinnytsia submitted proposals for the creation of a Euroregion to the Republic of Moldova. The Euroregion “Dniester” was created as a body of cross-border cooperation, as a union of local authorities of administrative and territorial units of Ukraine and the Republic of Moldova, it is not an alternative to local administrations, it was not created for the purpose of forming a new administration, it does not act against the interests of the national state, it does not act as legal entity. The main goal of the creation of the Dniester Euroregion is aimed at productively solving the environmental and energy problems of the residents of the border areas of Moldova and Ukraine, at developing the subsoil and developing national Ukrainian and Moldovan traditions in the places where Ukrainians and Moldovans live [13].

The main goal of the creation and operation of the Euroregion “Dniester” is the implementation of programs for the integrated and harmonized development of territories adjacent to the Dniester River, the implementation of cross-border projects of an ecological, investment, transport, communication and humanitarian nature. To achieve the goal, the Parties will cooperate, within their competence, in the implementation of the following tasks: organization, coordination and deepening of ties in the economy, trade, science, education, culture, tourism and sports; implementation of joint projects on environmental protection, ecological improvement of the Dniester river basin; implementation of joint cross-border investment projects; implementation of regional projects (programs) on reducing unemployment among the population of border regions through increasing economic potential; organization of contacts with relevant international organizations, foundations, institutes, agencies and other organizations. As of today, 22 agreements and protocols on scientific-technical, humanitarian and trade-economic cooperation with the regions of the Republic of Moldova have been concluded between the territorial-administrative units of Ukraine (Chernivtsi, Vinnytsia, Kherson, Odesa, Cherkasy regions, Kyiv).

In his research, Mr. Gurchumelia U.I points out that an important role in the implementation of agreements concluded by local self-government bodies with European municipalities is played by the implementation of the EU initiative created in 2003-2004 with the aim of ensuring stability and peace, as well as the development of cooperation with neighboring countries, under the name European Neighborhood Policy (ENP). Creation of a zone of prosperity and good neighborliness is one of the basic goals of the ENP. However, recently, one of the main tasks has become the strengthening of cooperation in security issues, participation in the development of partners' policies. Democracy, the rule of law and human rights are one

of the main directions of the European Union; economical development; security; migration and population mobility [8].

The European Neighborhood Policy (ENP) is a foreign policy framework aimed at bringing the EU and its eastern and southern neighbors together to their mutual benefit and interests. The European Neighborhood Policy (ENP) was developed in 2003 to develop closer relations between the EU and neighboring countries. In the south it covers: Algeria, Egypt, Israel, Jordan, Lebanon, Libya, Morocco, Palestine, Syria and Tunisia; to the east: Armenia, Azerbaijan, Georgia, Republic of Moldova and Ukraine [14]. This basis is extremely important and necessary for effective cooperation between interested parties.

Municipal partnership is a way to provide concrete measures of aid and support, show solidarity and together rebuild even better than it was. It is characteristic of inter-municipal cooperation that the cooperation is not fragmentary — it is calculated for a certain period, but is mostly determined by a permanent agreement without a specified expiration date; there is no permanent transfer of local tasks and competences, and municipalities retain indirect control over decisions and services resulting from cooperation. As part of the implementation of the principles of the European Charter of Local Self-Government (ETS No. 122) and the Additional Protocol on the right to participate in local government affairs (CETS No. 207), the “Bridges of Trust” project was launched. The project is implemented by the Congress of Local and Regional Authorities of the Council of Europe within the framework of the Action Plan of the Council of Europe for Ukraine.

In his report, Mr. Fabrizio Rossi, Secretary General of the Council of European Municipalities (CEMR), noted: “The Bridges of Trust initiative represents an innovative and targeted approach to international cooperation in modern Europe and is a strategic priority for CEMR” [15].

The “Bridges of Trust” project creates links between Ukrainian municipalities that need support, but do not have experience in international cooperation, with municipalities in the EU that are motivated and ready to help. 10 Ukrainian communities and 10 communities of EU countries participated in the initiative for more than a year. The project is implemented by the Council of European Municipalities and Regions with the support of “U-LEAD with Europe”. This project is very important in today's realities. Discussions about how to reorient the “Bridges of Trust” project to new realities began almost immediately after the start of a full-scale invasion. Unfortunately, two of the partner cities of the project — Kakhovka and Henichesk — are under temporary occupation [16]. In the first few weeks, European communities helped cover the humanitarian needs of Ukrainian partners: food, clothing, medicines, sleeping bags for territorial defense units. However, in the perspective of the future reconstruction of war-affected settlements, such cooperation has much greater potential.

In the perspective of the further implementation of the project, there is the restoration of settlements affected by the war, and such cooperation has a much greater potential. One of the main challenges is the really big short- and long-term needs of Ukrainian municipalities. They go beyond the capabilities of any individual organization or EU member state. That is why Ukraine's partners should coordinate their knowledge and resources. Cooperation for the exchange of experience will continue in the future with a special focus on rebuilding communities [17].

On February 15, the Council of European Municipalities and Regions (CEMR) together with the Association of Cities of Ukraine and with the support of “U-LEAD with Europe” presented a new stage of the “Bridges of Trust” initiative. It will last until September 2023, and 10 associations of local and regional authorities from EU member states as part of CEMR will contribute to the creation of 30 new municipal partnerships for the reconstruction of Ukraine.

Ukraine, as a country that has chosen its path to the European Union, has taken on the responsibilities of improving national legislation, in particular in matters of development of cooperation between territorial communities of Ukraine and European municipalities and in matters of decentralization and reform of local self-government in Ukraine. It was for this purpose that the project “Strengthening democracy and trust at the local level in Ukraine” was created. Its main purpose is to improve the quality of democracy at the local level in Ukraine by strengthening institutional structures and supporting local self-government bodies and their national associations in activities aimed at introducing ethical principles into the decision-making process, as well as supporting a more inclusive, transparent, accountable and oriented on local government citizens. The project started in March 2021.

The Association Agreement between Ukraine and the EU, signed by Ukraine, provides for close cooperation between Ukraine and the EU in the field of cross-border cooperation. The norms of the EU law determine the TCS, including, at two levels: 1) at the level of internal borders — between neighboring

regions of EU member states that cooperate in the economic and other spheres and are participants in the Association Agreement; 2) at the level of external borders — between the EU and its neighboring countries, in particular, Ukraine. Both levels of TCS provide the framework and the ability to implement the Association Agreement. Fulfilling the obligations of the Association Agreement, Ukraine is guided by the experience of the EU, in particular in the field of organizational, legal and financial support for the development of the TCS, it is necessary to clearly analyze which tools and mechanisms can be successfully applied in Ukraine in the context of the implementation of its European integration intentions as a whole and the Association Agreement, in particular. The Association Agreement between Ukraine and the EU and its member states is the basis for the systematic development of their international political, economic and socio-cultural relations.

The association agreement brought awareness of the basic rules, principles of regional policy as a development policy that encourages productive economic and investment activity, innovation, etc.

The issue of inter-municipal (cross-border) cooperation is of particular importance for the effective implementation of the state regional policy and the preparation of a large-scale reform of local self-government, which, in particular, should provide for the optimization of the system of administrative and territorial organization, the improvement of communal services provided to citizens. Inter-municipal cooperation is a relatively new direction of development of local self-government in Ukraine, and therefore requires a wide coverage of positive practices and benefits from voluntary limitation of autonomy by territorial communities in order to improve the quality of life of citizens in the respective territory. Cooperation should be based on clear goals and the desire to achieve the desired result through increased solidarity and partnership.

Among the shortcomings of the Law of Ukraine “On Cross-Border Cooperation”, it can be noted that there is a need to improve the relevant national legislation, which has not yet defined (unlike the unification of Euroregional cooperation) the purpose, tasks, directions of activity of the Euroregion, the procedure for its creation and the legal status. In particular, it is not determined whether the Euroregion can have the status of a legal entity and the corresponding amount of legal capacity in accordance with national legislation, whether the Euroregion has the right to its own budget, the right to enter into contracts, hire personnel, purchase movable and immovable property, carry out procedural actions, etc. The absence of the aforementioned information in the Law of Ukraine “On Transboundary Cooperation” conditions the creation of Euroregions as public associations, that is, legal entities that are created and function as public organizations. These include the Public Organization “Euroregion “Dniester”, the Public Organization “Carpathian Euroregion-Zakarpattia”, etc [18].

Conclusions

The cooperation of territorial communities, in particular, cross-border cooperation and other projects have a positive effect on the development of both countries as a whole and their separate territorial entities, and therefore it is a powerful factor in Ukraine's progress on the way to European integration. World experience proves that the practical implementation of measures of such cooperation significantly strengthens the potential of its parties and participants, reduces regional disparities, and contributes to the effective resolution of complex problems inherent in neighboring countries. The idea of cross-border cooperation fully corresponds to European and national regional policies aimed at supporting socio-economic development, strengthening infrastructure, establishing competitiveness of regions, increasing the level of human capital and the quality of life of the population, etc. Cross-border cooperation in Ukraine today is considered on two levels — as a tool for the development of border areas and as a factor in the realization of its European integration aspirations.

Thus, by definition, cross-border cooperation contains additional resource potential for stimulating the socio-economic development of regions, giving it features of sustainability and orientation towards improving the quality of life of the population. The National Institute of Strategic Studies in an analytical note denotes that the regions that carry out cross-border cooperation, as a rule, develop regional programs for the development of cross-border cooperation and action plans for their implementation. Unlike the state program, they contain provisions on the development of specific objects, actions and performers [19].

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Е.Н. Ключева

Украинаның жергілікті өзін-өзі басқару органдарының еуропалық муниципалитеттермен ынтымақтастығының құқықтық аспектілері

Мақалада Украинаның жергілікті өзін-өзі басқару органдарының (аумақтық қауымдастықтардың) шет мемлекеттердің аумақтық қауымдастықтарымен — трансшекаралық ынтымақтастық субъектілерімен ынтымақтастығын құқықтық реттеудің құқықтық аспектілері қарастырылған. Аумақтық қауымдастықтардың Еуропа елдерінің муниципалитеттерімен және бір-бірімен ынтымақтастығының кейбір аспектілері ашылған. Жергілікті өзін-өзі басқару органдары өз қызметін Украинаның қолданыстағы заңнамасына да, халықаралық шарттарға да сәйкес жүзеге асыратыны анықталды. Жергілікті өзін-өзі басқару органдарының, атап айтқанда, ынтымақтастық саласындағы жұмыс істеу процесін реттейтін

Українаның базалық халықаралық-құқықтық актілері мен нормативтік құқықтық актілері талданды, мұндай органдар басқалардан тәуелсіз және дербес іске асыратын функциялар мен өкілеттіктердің тізбесін айқындайды және трансшекаралық ынтымақтастықты дамытудағы аумақтық қауымдастықтардың рөлі мен орнын анықтайды. Қауымдастықтар ынтымақтастығының тетіктері мен нысандары талданды, сондай-ақ құқықтық реттеуді жетілдіру бойынша ұсыныстар берілген. Мақала аумақтық қауымдастықтардың ынтымақтастығы саласындағы қолданыстағы заңнаманы талдауға, сондай-ақ оны жетілдіру келешегіне арналған.

Кілт сөздер: қауымдастықтар ынтымақтастығы, қауымдастықтар ынтымақтастығының нысандары, трансшекаралық ынтымақтастық, еуроаймақтар, жобалар.

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Правовые аспекты сотрудничества органов местного самоуправления Украины с европейскими муниципалитетами

В статье рассмотрены правовые аспекты правового регулирования сотрудничества органов местного самоуправления (территориальных общин) Украины с территориальными общинами иностранных государств — субъектами трансграничного сотрудничества. Раскрыты некоторые аспекты в сфере сотрудничества территориальных общин с муниципалитетами европейских стран и между собой. Установлено, что свою деятельность органы местного самоуправления осуществляют в соответствии как с действующим законодательством Украины, так и международных договоров. Проанализированы базовые международно-правовые акты и нормативно-правовые акты Украины, регулирующие процесс функционирования органов местного самоуправления, в частности в сфере сотрудничества, которые определяют перечень функций и полномочий, реализуемые такими органами независимо от других и самостоятельно, определяют роль и место территориальных общин в развитии трансграничного сотрудничества. Проанализированы механизмы и формы сотрудничества общин, а также даны рекомендации по усовершенствованию правового регулирования.

Ключевые слова: сотрудничество общин, формы сотрудничества общин, трансграничное сотрудничество, еврорегионы, проекты.

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