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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**(VENICE COMMISSION)**

**COMMENTS**

**ON THE DRAFT LAW  
ON THE STATUS OF EUROREGIONS  
OF THE REPUBLIC OF MOLDOVA**

**By**

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*\*This document has been classified restricted on the date of issue. Unless the Venice Commission decides otherwise, it will be declassified a year after its issue according to the rules set up in Resolution CM/Res(2001)6 on access to Council of Europe documents.*

1. The Venice Commission has to deal with a draft law on the status of Euroregions prepared by the Government of Moldova.

2. Moldova is not a member State of the European Union, but – according to the General Provisions of the draft – the authors of the document based their work not only on the Constitution of the Republic of Moldova and on the European Framework Convention on Transborder Cooperation ratified by the Parliament of Moldova on 24.09.1999, but also on the Regulation of the European Parliament and of the Council n. 1082/2006 on a European Grouping for Territorial Cooperation (GECT ). Therefore the European Regulation is considered as in some way binding the Moldovan legislator.

3. This rapporteur has to analyze, in preparing this comment, the relevance of the European Regulation for the Republic of Moldova in view of understanding whether this act is considered as binding the Parliament of Moldova because of a specific provision of the Regulation itself, or because of an independent choice of the Republic of Moldova.

4. As a matter of fact, the text of the European Regulation makes explicit reference to the participation of member States in the establishment of a GECT only. Its art. 3 clearly provides a list of the possible members of this institution and clearly restricts it to members which are situated on the territory of at least two member States of the European Union. Therefore the reference made in the draft to the mentioned European Regulation is a result of a free choice of the drafters, the Parliament of Moldova will be bound on the basis of its own choice only and it will have to comply coherently with it. There is not a specific European legal obligation at stake. In the case of Moldova the European Regulation is evidently used as model for the practical implementation of the Madrid European Framework Convention on Transborder Cooperation. In any case it completes the design which can be elaborated on the basis of the Framework Convention and of its Additional Protocol adopted in Strasbourg on 9.11.1995. A second Protocol adopted on 5.5.1998 is not mentioned. Moreover we have to keep in mind that a third Protocol to the Framework Convention, providing for the extension of the European rules concerning GECT to all the member States of the Council of Europe, was adopted by the Committee of Ministers of the Council of Europe on 9.09.2009 only, and was not subscribed and ratified by Moldova until to day. The authors of the draft worked in a transitional period and had to deal with an incomplete legal framework.

5. Both the Framework Convention and the Additional Protocols are conventional sources of law which provide for the establishment of a transfrontier cooperation, whose implementation is depending on the internal activities of the States concerned. Therefore the internal legislation has the task of organizing the State's activities which are necessary for the creation of a GECT, and it is also competent to regulate the functioning of a GECT as far as its activities are relevant in the frame of the State's legal order and are affecting the Moldovan territory even if these activities have to comply with the rules of the mentioned European Regulations.

6. It follows that we have to distinguish the regulations jointly adopted by the members of a GECT in view of its working and functioning, on one side, and, on the other side, the national rules of the concerned States which regard the points of contact between the internal legal order and the activities of the GECT. Both art. 1 and art. 2 of the draft should be rewritten, limiting the internal rules dealing, on one side, with the creation of Euroregions to the acts and behaviours of the Republican bodies, which have a part in the procedure, and restricting, on the other side, the relevance of the Moldovan internal legislation concerning Euroregions to those acts and behaviours of the Euroregions which have a connection with the territory and the legal order of the Republic. If I read it correctly, art. 2.5 apparently conflicts with these conclusions as

far as it provides for the general application of “ civil law relations with an extraneous element .....to the Euroregions registered in other states, from ( of ? ) which local public administration authorities of the Republic of Moldova are part “. The reference to the civil law can be correct in view of the principles of the s.c. private international law, but we have to keep in mind that the activities of Euroregions registered in other States have to comply, firstly, with the conventional law and, secondly, with the legislation of these States as far as they are taking place outside the territory and the legal order of the Republic of Moldova.

7. The Moldovan civil law is relevant for the activities of the Euroregions only when they have a connection with the Moldovan legal order and territory. Moreover the reference made by art. 2.2 and 3 to the international applicable law has to be clarified explaining that this law has always to be applied to the Euroregions when they operate without any connection with the space of competence of the Moldovan law, even if the Moldovan law is not in conflict with the international law.

8. The compliance of activities affecting the legal order and the space of Moldova with the international law depends on the coordination between this law and the internal Moldovan law and on the rules adopted by the members of the Euroregions at the moment of its establishment. Euroregions are subjects of the conventional law and their existence depends on this legal order, only when there is a point of connection between them and the territory or the legal order of the Republic of Moldova the Moldovan legislation can be relevant in dealing with them.

9. We can start analyzing the draft by taking firstly in consideration the rules concerning the activities of the State's bodies of the Republic of Moldova aimed at concurring in the establishment of a GECT and in its functioning.

10. For instance, art. 6 of the draft is outside the competence of the Moldovan legislator if it pretends to regulate the establishment of Euroregions and not the activities of the Moldovan authorities in concurring to this act. It should be open by a statement identifying the authorities which are allowed to propose the establishment of an Euroregion and allowing them to adopt the necessary measures. The law should identify the fields of activity which can be entrusted to the competence of the Euroregion but also the final decision on this point has to be adopted by the joint deliberation of the States and authorities concerned which is aimed at establishing the organism through the implementation of the conventional law.

11. Same conclusions have to be elaborated with regard to artt. 7, 8, 9 and 10. For example, it is not clear the justification of the rule which requires the registration of the emblem of the Euroregion with the Ministry of Local Public Administration. § 2 of art. 9 forbids the bylaws of the Euroregion to contravene the legislation of the Republic of Moldova, but it should be revised taking in consideration the possibility that the Euroregions could adopt measures and interventions which are not explicitly provided by the Moldovan legislation. A possible conflict between the Euroregion's bylaws and the relevant Moldovan law could be settled by giving the prevalence to the Moldovan law only when Moldovan constitutional principles are at stake or the contacts between the Euroregion and the Moldovan legal order justifies it. The mentioned rule can be accepted if it regards only the compliance by the Euroregion with the general Moldovan rules concerning the activity of this public organism in the legal order and in the territory of the Republic of Moldova. Moreover art. 7 and 8 deal with matters which should be regulated by the internal normative acts of the Euroregions: the Moldovan legislation is not allowed, for instance, to provide for the deliberations of the General Assembly of the organism.

12. The problem of the liability of the Euroregions and of its members has to be dealt - as far as it regards the internal relations between the members of the Euroregions - by the internal regulations of the Euroregions, while the Moldovan legislation is relevant only with regard to acts and activities of the organism in Moldova and when they interest subjects of the Moldovan

community. To art. 12 we can apply the comment made about art. 7. Which is the meaning of the State registration of the Euroregion? Does it regard the legal existence of the Euroregion as such or does it imply consequences in the internal legal order only? The answer to this questions has necessarily reflexes on the construction of artt. 13, 14, 15 and 16. In his opinion Mr. Haenel correctly quotes the European rules concerning the recognition of the Euroregion by the member States, which deal in a positive way with the matter and avoid to entrust the member States themselves with general powers of control.

13. But the law does not deal with the regulation of the internal procedure aimed at the adhesion of a local government body: it does not say anything about the elaboration of the relevant proposal, its examination by the competent authorities of the central State and its final deliberation. These are the elements which fall in the competence of the Moldovan legislator: he is allowed to take in consideration them without interfering with items which are outside its competence.

14. Art. 17 of the draft should be rewritten forbidding the authorities of the Republic of Moldova and the relevant local administration entities to enter in the establishment of Euroregions which have the prohibited characters.

15. Art. 18 cannot be accepted when allows the Ministry of Local Public Administration to prohibit or to suspend – without any previous agreement with the other ( foreign ) members of the Euroregion - the operation of the organism in Moldova; to request to a Moldovan judge the dissolution of the Euroregion; to exercise control or audit functions affecting the operation of the Euroregion.

16. The rules concerning the relations between the State and the Euroregions and the support granted by the State to them require some concern as far as they apparently imply that the Republic of Moldova is allowed to interfere “ in the activity of the Euroregions “ and to decide about the tax policy concerning them without any previous agreement with the other States concerned. Moreover, it is difficult understanding the justification of the provisions according to which “ the economic-financial activity of the Euroregions is under State control “, while “ the fiscal legislation of the Republic of Moldova is ruling the activity of the Euroregions “. The internal functioning of the Euroregions should be regulated by the autonomous regulations of the organism, the State’s “ interferences “ should regard only its possible external activity in the frame of the Moldovan legal order ( art. 19 – 20 of the draft ).

17. Moreover the property rights of the Euroregions should comply with the Moldovan national legislation only if they are exercised in the territory of the Republic of Moldova ( art. 21 – 22 ). With regard to the dissolution of Euroregions Moldovan courts could be allowed to take a decision on the merit only if their competence is recognized on the basis of the agreement which establishes the organism. The draft does not take into consideration the fact that Euroregions are situated on a transborder basis, and their legal situation depends on the concurrence and the coordination of the legal orders of all the States concerned.

18. We can close the comment with some final remarks. The draft deserves to be appreciated as an example of the good will of the Republic of Moldova to enter in territorial transborder cooperation with the neighbouring countries through the activities of its local government authorities. But the Moldovan legislator has to keep in mind that he is bound to comply not only with the internal guarantees of the autonomy of the local government entities but also with the international rules which clearly differentiate and separate from the member States the Euroregions which are subject to the their founding agreement whose implementation depends on the cooperation of the States and local government authorities concerned.