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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

DRAFT OPINION

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

On the basis of comments by

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Mr. Hubert HAENEL (Substitute Member, France)

**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.*

I. Introduction

1. On 17 July 2009, the Permanent Representation of the Republic of Moldova requested the Venice Commission's opinion on the Draft Law on the Status of Euroregions of Moldova (CDL(2009)...), hereinafter "the Draft Law".

2. Messrs Bartole and Haenel were appointed as rapporteurs. The rapporteurs were not provided with background information on this Law, and did not have a chance to visit Moldova in order to get acquainted with the situation concerning the need for a specific legal framework on cross-border cooperation in that country. Their comments were therefore only based on an abstract analysis of the submitted text.

3. The present opinion was prepared on the basis of the rapporteurs' contributions and was adopted by the Venice Commission at its Plenary Session (Venice,).

II. Legal context

4. The term "euroregions" refers mostly to administrative-territorial structures intended to promote cross-border cooperation between neighbouring local or regional authorities of different countries located along shared state borders. Over the time, such structures evolved from activities like everyday cross-border cooperation among people to organized institutional structures with their own financial resources and capacity to address a larger variety of cross-border topics like research and development, environmental protection, transport communication; education and training, and business cooperation.

5. Today, cross-border cooperation is seen as a prerequisite of broader European integration processes and better relations between neighbouring states. It is also a good vehicle for promoting minority rights at both sides of the border, and can work as a mechanism for reducing challenges and conflicts, and for harmonizing national policy priorities and considerations of international and regional security.

6. In terms of legal status, the euroregions vary very much. Some euroregions have cross border institutions or organs and an own budget (most often those with legal personality), some involve a European Economic Interest Grouping, while others function as a non-profit making association or a working community without a legal personality. In the last few decades, the number of Euroregions has exponentially grown to reach more than 90 today. This tendency towards the institutionalisation of cross-border cooperation has driven the efforts at the European level to provide a comprehensive legal framework for establishing, managing and making effective use of Euroregions.

7. The main European instrument for transfrontier cooperation is the 1980 European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (hereinafter: the Madrid Convention) and its two Protocols (of 1995 and 1998).

8. The Madrid Convention requires the Contracting parties to "facilitate and foster" transfrontier cooperation, and to grant to authorities engaging in international cooperation the facilities they would enjoy in a purely national context.

9. The 1995 Additional Protocol to the Madrid Convention established the right of territorial communities or authorities to conclude transfrontier cooperation agreements in equivalent fields of competence, in conformity with national law and the Contracting Party's international

agreements. Further, it also provided for the possibility of a transfrontier cooperation agreement to “set up a transfrontier co-operation body, which may or may not have legal personality”. In the latter case, the legal personality is linked to the law applicable in the headquarters state (article 4.1). This means that in practice, the nature and extent of the legal personality of the body in question may vary considerably depending on the law of the headquarters state.

10. The second Protocol to the Madrid Convention (1998) allowed for the principles of the Madrid Convention to also apply to cooperation between territories that are not contiguous in physical terms.

11. These three main legal instruments have been supplemented by a number of recommendations adopted by the Council of Europe Committee of Ministers, in particular Recommendation Rec(2005)2 on good practices in, and reducing obstacles to transfrontier and interterritorial cooperation between territorial communities or authorities.

12. At the level of the European union, the 2006 Regulation on a European Grouping of Territorial Cooperation (hereinafter: EC Regulation) was adopted with the aim to further enhancing regional cross-border cooperation especially within the new member states as well as to contribute to a harmonization of the heterogeneous forms of cross border cooperation that have emerged in recent decades. The Regulation grants substantial rights to local, regional and national authorities to set up specific joint structures for a more efficient collaboration.

13. In September 2009, the Council of Europe Committee of Ministers adopted the third protocol to the Madrid Convention on Euroregional Co-operation Groupings (ECG) providing for the extension of the European rules concerning GECT to all the member States of the Council of Europe. The protocol gives the clear rules on the establishment, membership, operations and responsibilities of the groupings. The Protocol has not been obviously ratified by Moldova yet; the authors of the draft worked in a transitional period and had to deal with an incomplete legal framework.

14. The Moldovan Constitution establishes the principle of local autonomy, that encompasses both *“the organization and functioning of the local public administration, as well as the management of the communities represented by that administration”* (article 109)

III. Analysis of the draft Law

15. Moldovan local authorities are already participating in several Euroregions; the adoption of a specific law regulating the status of Euroregions is thus to be welcomed.

A. General provisions

16. The Draft Law is an organic law. According to the Constitution of Moldova, this means that it will have to be adopted by the majority of all the deputies, with minimum two ballots (article 72). While the Constitution itself includes administrative organisation of the state among the topics which must be the object of an organic law, it may be questioned whether the status of Euroregions is to be included in this category. On the other hand, any topic for which the Parliament recommends to be regulated by an organic law can be the object of such a law. Thus, the choice to regulate the status of Euroregions by means of an organic law can be explained by the wish to strengthen the legal security attached to the text concerned.

17. Under the Preamble, the Draft Law shall be interpreted and applied in line with the relevant European instruments on the matter mentioned above.

18. While the Republic of Moldova is a contracting party to the Madrid Convention as well as to its two Protocols, it is not a member State of the European Union. The EC Regulation is used by the Moldovan legislator as a result of a free choice of the drafters. It is evidently used as model for the practical implementation of the Madrid Convention. In this regard, the Commission notes that while the EC Regulation only refers to EU member States, its Preamble clearly disposes that "*The adoption of a Community measure allowing the creation of an EGTC should not exclude the possibility of entities from third countries participating in an EGTC formed in accordance with this Regulation where the legislation of a third country /.../ so allow*". The adoption of an organic law on Euroregions clearly goes in this sense.

19. Introducing the provision requiring that the Draft Law is to be applied and interpreted in accordance with the relevant international and European legal instruments is to be welcomed.

1. Object of regulation and applicable law (Arts. 1 and 2)

20. Under Article 1, the Draft Law regulates Euroregions as associations among local public administration authorities from the Republic of Moldova and from abroad, with the aim of promoting and facilitating transborder cooperation in the economic, social, cultural and environmental field.

21. Both the Madrid Convention and its Protocols are conventional sources of law, whose implementation at the national level depends on the action of the member States. In other words, it is up to the national legislation to grant territorial communities or authorities the necessary powers, *inter alia*, to enter into transfrontier cooperation arrangements within clearly defined limits as well as adequate resources to engage in transfrontier cooperation activities. Further, it can also regulate the functioning of the Euroregion in so far as its activities take place within the Moldovan legal order and territory. On the other hand, it is up to the founding members of the Euroregion to adopt – jointly – its statute and other internal rules regulating its work and functioning. This distinction is not clear in the current text of the Draft Law.

22. The provisions on the applicable law provide for the general application of "*civil law relations with an extraneous element /.../ to the Euroregions registered in other states, of which local public administration authorities of the Republic of Moldova are part*" (Article 2 § 5). Yet, the national legislation of a given State may only govern the actions of the Euroregion which has its headquarters in that State. The activities of Euroregions registered in other States will have to comply with the legislation of the concerned States, and with the EC Regulation where applicable. 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.

23. In the light of the foregoing, the Commission strongly recommends to modify both article 1 and article 2 of the Draft Law specifying that it relates to Euroregions which have their headquarters in Moldova *only* as it is not up to the Moldavian law to establish the law applicable to Euroregions having its headquarters outside the Republic of Moldova. In this sense, it is the choice of the country where the Euroregion will register its office - made by the founding members of the Euroregion - that will determine also the law applicable to the agreement establishing the Euroregion, and to its actions.

24. Paragraphs 2 to 4 of Article 2 deal with the application of the relevant international law. In this regard, the Commission wishes to remind that the principle of supremacy of international norms over national law is not to be established through a provision of a domestic law. It has been proclaimed already by the Constitution of Moldova (Article 4 § 2). Moreover, the requirement to interpret and apply the Draft Law in line with the relevant international law instruments is included in the General Provisions. The Commission therefore recommends to modify this article by removing the reference to international norms.

25. As regards membership of Euroregions, under Article 1, only “*local public administration authorities*” can be members. In view of the Commission, also other bodies such as regional authorities, public or non-profit private law entities, profit-oriented entities entrusted with public interest goals or even member States themselves, should be included in a possible membership. Such a broader membership provision would be more in line with the EU Regulation as well as with the emerging standards in the Council of Europe (Protocol n° 3 to the Madrid Convention).

2. Basic principles

26. Article 4 provides for the general principles relating to the establishment and functioning of Euroregions. Again, it is not clear whether it applies only to Euroregions having their headquarters in Moldova or also to Euroregions with the headquarters in another country. Read in conjunction with Article 2, which requires an authorisation of the Minister of the local public administration as well as of the competent central authorities when a local authority wishes to adhere to an Euroregion having its headquarters abroad, this article may be interpreted as requiring the respect for the established principles as a condition for membership.

B. Establishment of Euroregions (Arts. 6 - 19)

27. Under article 6 § 1 of the Draft Law, Euroregions can be established upon the initiative of a group of founders, which may be the deliberative authorities of local public administration. While the Draft Law provides for the obligation of the prospective members to obtain the permission of the competent central authorities (Article 2 § 5), it does not contain any rules on the process of approval of the prospective member’s participation in a Euroregion: e.g. elaboration of the proposal, its examination by the competent authorities and its final deliberation.

28. Article 7 deals with the name and emblem of the Euroregion. It goes beyond the EC Regulation, most probably in the aim of preventing possible abuse and ensuring the conformity with articles 12 and 13 of the Moldovan Constitution on national emblems and national language. However, the requirement to register the emblem with the Ministry of Local Public Administration does not seem justified.

29. Article 8 § 2 on the revocability of the establishment and change of the Euroregion’s office is not clear and should be rewritten.

30. Article 9 regulates the issues to be covered by the bylaws of a Euroregion. It could be made more precise by adding also the question of working language(s), personnel management and recruitment procedures as well as designation of an independent financial control and external auditing body.

31. On the other hand, its paragraph 2 which allows the bylaws of a Euroregion to also include other provisions provided they do not contravene the legislation of the Republic of Moldova and the international treaties to which Moldova is a part, should be revised. This is because a Euroregion could adopt measures and interventions which are not explicitly regulated by the Moldovan legislation. In the Commission’s opinion, a possible conflict between the Euroregion’s bylaws and the relevant Moldovan law could be settled by giving the precedence to the Moldovan law when Moldovan constitutional principles are at stake or the contacts between the Euroregion and the Moldovan legal order justifies it. Alternatively, it should be clearly stated in the Draft Law that the mentioned rule will apply only to activities of a Euroregion taking place within the legal order and on the territory of Moldova.

32. The liability of a Euroregion and its members is to be dealt by its statute. As previously stated, the Moldovan legislation is only relevant with regard to acts and activities of a Euroregions having its headquarters in Moldova (see above, §§ 22-23).

33. Articles 12 to 19 establish the procedure for state registration of Euroregions. A number of modifications should be added in order for the Draft Law to be in line with the European standards on the matter notably, a specific time-limit for taking the decision on registration (e.g. three months, as required by the EC Regulation for deciding on the prospective member's participation in an EGTC), and the publication in the Official Journal announcing the establishment of the Euroregion, with details of its name, objectives, members and registered office. In article 15 on the refusal of the registration of the Euroregion, the concept of "false information" in § 1.d should be clarified.

34. Article 17 provides for the restrictions on the establishment and operation of Euroregions: for example, because they use violence in an attempt to change the constitutional regime, or to make propaganda for war, violence and cruelty; or those which pursue political or military purposes. While this provision is welcomed, it should be explicitly linked to Article 15 on grounds for refusal of the registration, Article 14 on the postponement of the registration as well as to Article 18 on the rights of the State authority in charge of the registration. Furthermore, it would be useful to also specifically mention the prohibition for the prospective members to participate in the Euroregion which pursue the listed purposes and activities.

35. As regards the right of the State authority in charge of the registration (i.e. the Ministry of Local Public Administration) to prohibit or suspend the operation of a Euroregion with the office registered in Moldova (Article 18), the Venice Commission considers that such a decision should not be taken without previously informing and consulting other, foreign members of the Euroregion in question (and their respective States).

36. Furthermore, the control and audit functions should normally be exercised by an independent body specifically designated by a Euroregion itself (see above, § 31). According to the EC Regulation however, control of an EGTC's management of *public funds* is to be organised by the competent authorities of the State where the Euroregion has its registered office.

C. Relations between the State and the Euroregions (arts. 19-20)

37. The rules concerning the relations between the State and the Euroregions and the support granted by the State raise some concern as they seem to allow the State interference in the activities and functioning of a Euroregion. For example, article 19 § 2 stating that the defence of a Euroregion's lawful rights and interests is guaranteed by the State could be interpreted as allowing the State to represent a Euroregion during proceedings or to provide financial guarantee. Moreover, submitting the economic-financial activity of the Euroregions under the State control does not seem appropriate.

D. Euroregion patrimony

38. Articles 21 and 22 deal with the property rights of the Euroregion. As mentioned earlier, the national legislation of Moldova can only regulate the Euroregions having their headquarters in the Republic of Moldova. This should be clearly stated in the Draft Law also with regard to the property rights of Euroregions, as well as with regard to their dissolution regulated by Article 23.

IV. Conclusion

39. The Draft Law is an expression of the good will of the Republic of Moldova to enter and promote territorial transborder cooperation with the neighbouring countries through the activities of its local government authorities. As such it is to be welcomed.

40. The Draft Law however, presents a number of shortcomings: First, according to the European standards on the matter, the law applicable to the establishment agreement of the Euroregion and its actions is the law of the country where the Euroregion has its registered office. The Draft Law cannot determine the law applicable to legal entities having their headquarters outside the Republic of Moldova (see above, §§22-23).

41. Second, it should be kept in mind that not all Euroregions to which local authorities from Moldova may be members will have their offices registered in the Republic of Moldova. The question of the membership of Moldovan local authorities in the Euroregions having their headquarters abroad will certainly arise. The Draft Law, which is relatively detailed on the issue of the registration of the Euroregions on the territory of Moldova, should also include rules on the conditions and procedures regarding the participation of Moldovan local authorities to the Euroregions abroad.

42. Third, the relevant European instruments on the matter clearly distinguish between issues to be regulated by the national legislation of Moldova, and by the statutes of the Euroregions. While the national legislation of the country where the Euroregion has its headquarters is, as a general rule, applicable to its establishment agreement and its actions, the internal structure, operations and functioning of the Euroregion (including e.g. their tasks, staffing, budgets and financing, accountability and transparency) are determined by its statute, which is to be adopted jointly by the founding members and whose implementation depends on the cooperation of its members and their respective States. This distinction is not always respected by the Draft Law.

43. In conclusion, the Draft Law is to be welcomed but should be amended in several respects. The Venice Commission stands ready to assist the Moldovan authorities in this further work.