

The cross-border cooperation agreement

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Abstract

This study aims to achieve a short analysis of cross-border cooperation agreements between territorial-administrative units in the border areas of Romania and similar structures in neighboring states. The article investigates the form they take these agreements – contract or treaty –, the role of multinational enterprises and the law applicable to transnational contracts, the cross-border cooperation agreement governed by Law no. 215/2001 on local public administration and its legal nature. The end of the article is discussed cross-border cooperation in international documents signed by Romania with its neighbors.

Keywords: *cross-border cooperation agreement, public contract, international treaty, territorial-administrative units, transnational contracts, multinational companies*

1. Introductory considerations

The role of regional cross-border cooperation is to foster mutual learning and traditional cultural elements and contribute to increased economic performance and social cohesion². Implementation of such cooperation depends on the degree of homogeneity of economic, political and institutional conditions, in the administrative structures adjacent border areas³.

Romania, through its geographical location and its cultural and economic position, located at the intersection of different political systems and having borders with countries that are significant differences in development, cannot

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² Stephen Roper, *Cross-border and local co-operation on the island of Ireland: An economic perspective*, "Political Geography", vol. 26, Issue 5, June 2007, p. 554.

³ For an analysis of factors to promote the cross-border cooperation among the countries of South-Eastern and Central Europe, see: Ioan Alexandru (coord.), *Drept administrativ (Administrative Law)*, "Omnia" Publishing House, Braşov, 1999, p. 733-736 (section 16.3.6. Unele aspecte privind promovarea cooperării transfrontaliere în România /Some aspects on promoting of cross-border cooperation in Romania); Dan Stan, *La règlementations juridique de la coopération transfrontalière, dans les documents internationales de la Roumanie signes avec ses voisins* (I) and (II), "International Law Notebooks" no. 2/2008 and no. 3/2008; Izet Ibreljic, Salih Kulenovic, "Economic regional and cross-border cooperation in the South-East Europe for the purpose of its faster integration in the European Union", 44th Congress of the European Regional Science Association Porto, Portugal 25-29 August, 2004. Paper provided by European Regional Science Association in its series ERSA conference papers, <http://ideas.repec.org/p/wiw/wiwr/ersa04p224.html>; Mitko Dimitrov, Maria Tsiapa, George Petrakos, *Cross-Border Cooperation in Southeastern Europe*, "Eastern European Economics", vol. 41, no. 6/November-December 2003, p. 5-25; Alina Larion, Marilena-Oana Nedelea, Liliana Elmazi, *The Process of EU integration, regional development and crossborder cooperation*, "The Annals of the "Stefan cel Mare" University of Suceava. Fascicle of The Faculty of Economics and Public Administration", vol. 8, issue 1, June 2008, p. 44-49.

ignore the need for good cross-border cooperation and neighborliness. Border country of the European Union, Romania has the obligation to implement the EU neighborhood policy towards neighboring countries are not EU (Ukraine, Republic of Moldova, Serbia). On the other hand, Romania is obliged to cooperate with neighboring states that are members of the European Union (Bulgaria, Hungary) to implement policies to create a single market.

Under the influence of EU policies that provide a single economic market by abolishing internal borders and other barriers to trade, economic and social disparities between the border regions of Member States tend to diminish.

Cross-border cooperation is no longer strictly an attribute of states, seen as their traditional, as the sole actors on the stage of international law. An important role is played today in cross-border policies by the administrative structures adjacent border areas, endowed with legal personality, by development associations created by them, and not least by transnational enterprises⁴.

2. The form of cross-border cooperation agreements

In legal doctrine has raised the question whether agreements between states always take the form of international treaty or agreement between states may exist with the contractual nature? In legal doctrine were expressed several opinions⁵. Thus, in an opinion has held that agreements between member states always take the form of treaties regardless of their purpose and content.

In another opinion, it is assessed that a decisive role signatories will have to decide if the law applicable to the agreement is international law or not, unless the agreement concerns sovereignty⁶. If the parties agree that the agreement should be subject to national law, then it was a contract. Where the agreement concerns the sovereignty it is necessarily a treaty⁷.

In a third opinion was considered that the difference is the subject of international agreement. Thus, when the agreement refers to the national law it is a contract.

⁴ See on global reconsideration of the role of the states under the influence of construction of the European Union: Ioan Alexandru, *Tratat de administrație publică (Treatise of public administration)*, "Universul Juridic" Publishing House, Bucharest, 2008, p. 901-912; Dana Apostol Tofan, *Instituțiile administrative europene (European administrative institutions)*, "C. H. Beck" Publishing House, Bucharest, 2006, p. 114-128; Ioan Alexandru, Cătălin-Silviu Săraru, Ilie Gorjan, Ivan Vasile Ivanoff, Cezar Corneliu Manda, Alina-Livia Nicu, *Drept administrativ European (European Administrative Law)*, "Lumina Lex" Publishing House, Bucharest, 2005, p. 95-146 (C-S Săraru: Chapter 2 – Spațiul administrativ european/European Administrative Space).

⁵ Laurent Richer, *Droits des contrats administratifs*, 3^e édition, Librairie générale de droit et de jurisprudence (L.G.D.J.), Paris, 2002, p. 12-15; Ion Dogaru coord., *Drept civil. Contractele speciale (Civil Law. Special Contracts)*, "All Beck" Publishing House, Bucharest, 2004, p. 982; Pierre-Marie Dupuy, *La coopération régionale transfrontalière et le droit international*, „Annuaire Français de Droit International” (A.F.D.I.), 1977, p. 837.

⁶ Laurent Richer, *work cited*, p. 12.

⁷ Joe Verhoeven, *Traités ou contrats entre États? Sur les conflits de lois en droit des gens*, Clunet, 1984, p. 21; Joe Verhoeven, *Droit international public*, Larcier, Bruxelles, 2000, p. 373-378.

In another opinion was considered that the positioning of an agreement in the field of contracts or within the Treaties must be examined in the analysis the effects of the agreement⁸.

Beyond these controversies, it is considered generally the agreements concluded by the administrative authorities or public bodies in different countries or agreements concluded between a private person and a State are not treated, in principle, as international treaties⁹, thus having a contractual structure, public or private.

Often, under a treaty concluded between two neighboring countries, including provisions of principle in all areas of interest to them is concluded agreements and contracts that subsequently develop collaboration in a given field. Thus, the cross-border cooperation between Romania and Ukraine are regulated by the Treaty on good neighborly relations and cooperation between the two countries signed at Constanta on 2 June 1997, ratified by Romania by Law no. 129/1997¹⁰. On the basis of good neighborly Treaty were signed cooperation agreements in various fields with an impact on cross-border cooperation, such as the Agreement between the Governments of Romania and Ukraine on cooperation in border water management, signed on September 30, Galati 1997, ratified by Romania by Law no. 16/1999¹¹. The agreement provides that contracts may be concluded between the two governments concerning the conditions of realization of projects on the work of the border waters and water management measures of mutual interest (art. 8 and 9).

Another issue discussed in public international law doctrine is that of multinational companies and the law applicable to contracts "transnational"¹².

The Multinational enterprises, acting in many states, acquire a true "international personality"¹³. Often, they enter into contracts with states for the exploitation of natural resources. These contracts are sometimes true meaning of "agreement" to establish conditions for achieving certain economic exchanges (so are "petroleum agreements" in the early 1970s between oil companies cartel and exporting countries, and the steel voluntary restraint agreements between representatives of associations of European and Japanese steel producers and the U.S. Government)¹⁴.

⁸ Laurent Richer, *work cited*, p. 12.

⁹ Denis Alland, *Droit international public*, Presses Universitaires de France, Paris, 2000, p. 220.

¹⁰ Published in the Official Gazette no. 157 of July 16, 1997.

¹¹ Published in Official Gazette no. 13 of 19 January 1999.

¹² Dominique Carreau, *Droit international*, 7^e édition, Les Editions Pedone, 2001, Paris, p. 31-57, 181, 182, 452; Georges R. Delaume, *Law and Practice of Transnational Contracts*, Oceana Publications, New York, 1988.

¹³ About how "international personality" of transnational companies influences the reconfiguration functions of modern states, see Ioan Alexandru, *work cited*, (*Tratat de administrație publică/Treatise of public administration*), p. 902, 903; Jean Brudville, *Les espaces économiques*, Presses universitaires de France (P.U.F.), Collection Que sais-je? Paris, 1961.

¹⁴ Dominique Carreau, *work cited*, p. 31.

Multinational firms have become key actors in contemporary international society, as true "subjects" of international law. Classical international law – which still predominate – does not recognize these companies because it recognizes only public or nonprivate subjects. However, these traditional legal categories are obviously poorly suited to take into account the role of "multinationals" because they take into account only the author of the act, not taking into account its content¹⁵. Legal doctrine¹⁶ shows that it is clear that "multinationals" not conclude "international treaties" in the formal sense of the term. However, we ask whether the acts which these companies concluded with the States are they so different, in terms of content, from the traditional international agreements?

In the classical jurisprudence of the Permanent Court of International Justice¹⁷ (PCIJ, created in 1920 by the League of Nations) and its successor, the International Court of Justice (ICJ, established in 1946) found some relevant cases. Thus, the Serbian and Brazilian business loans in 1929, the PCIJ stated that "any contract not a contract between states as subjects of international law is based on national laws". However, "Dupuy sentence" PCIJ observed that this formulation is not strict, not excluded, therefore, the possibility of international law can regulate this type of situation where agreements or customs which establish common rules.

The International Court of Justice said the Anglo-Iranian business in 1952: "the fact that the concession contract was subject to a report by the Council of the League of Nations and is found in its archives is not the act turns into a treaty that binds the government of Iran with a government of Great-Britain; the concession contract linking the Iranian government by the British company concessionaire; the British government is not party to the contract and cannot therefore rely on its diplomatic relations against Iran".

In conclusion, the ICJ and PCIJ were constantly held by their jurisprudence, meaning that conventional acts are subject to one or other of the following legal regimes: the case of "agreements between states" will apply the rules of public international law, if agreements between "other people" will apply national laws, the difficulty of determining the applicable national law are solved under the principles of private international law (conflict of laws)¹⁸. Constantly, it refuses to recognize the status of international law subject for multinational companies. However, some authors appreciated the need for the international law

¹⁵ *Ibidem*, p. 31-32.

¹⁶ *Ibidem*, p. 32.

¹⁷ Romania had an outstanding representative of the Permanent Court of International Justice in the person of Demetru Negulescu. He was Judge at the Permanent Court of International Justice (1921-1940). In this position he participated in the adoption of decisions in the famous cases of the Permanent Court of International Justice: "Mavrommatis Concessions", "Certain German interests in Silesia", "Jurisdiction of the European Danube Commission", "the Chorzow Factory", "Free Zones of Upper Savoy and the District of Gex", "Oscar Chinn case" and others. Demetru Negulescu was a doctor in law from the University of Paris (1900), Judge at the Bucharest Tribunal (1901-1908), professor of international law at the Faculty of Law, University of Bucharest, a professor at the Academy of International Law in The Hague and the Institute of International Studies in Paris.

¹⁸ Dominique Carreau, *work cited*, p. 182.

governing the status of multinational companies, aiming not to lose touch with economic reality today¹⁹.

Frequently, the superiority of international law issue is discussed in relation to international contracts concluded between a state and multinational companies („*State contracts*”). Although, as we have seen, in international jurisprudence shown consistently that these contracts are subject to the law of the Contracting State, international courts have stressed that the state cannot unilaterally amend the contract terms by virtue of its sovereignty, as imperative that the principle of "*pacta sunt servanda*" ("every treaty in force is binding upon the parties to it and must be performed by them in good faith"²⁰), fundamental in international law. Thus, case law²¹ has held that amending international concession contracts unilaterally decided by the states is contrary to international law and opens the possibility of seeking appropriate redress likely to lead to international responsibility of the countries that were wrong.

3. The cross-border cooperation contract governed in Romania by Law no. 215/2001 on local public administration. The legal nature of this contract

This agreement is governed by Art. 15 and art. 16 of Law no. 215/2001 on local public administration²². According to art. 15 para. 1 of this Act the territorial-administrative units in border areas adjacent to each other may enter cooperative arrangements with similar structures border from neighboring states, under the law. The general provisions of Law no. 215/2001 shall be supplemented by: Government Ordinance no. 120/1998²³ for the ratification by Romania of the European Framework Convention on transboundary cooperation between territorial communities or authorities adopted by the Council of Europe on 21/05/1980, Law no. 315/2004 regarding regional development in Romania²⁴ and the treaties signed

¹⁹ *Ibidem*, p. 32.

²⁰ From the Vienna Convention on the Law of Treaties, signed at Vienna on May 23, 1969, entered into force on January 27, 1980, art. 26, and the Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations, signed at Vienna on March 21, 1986, *not yet entered into force*, art. 26.

²¹ See Case "Serbian and Brazilian loans" in 1929, when the Permanent Court of International Justice found infringement clauses inserted in the loan agreement between the two governments; Case "El Triunfo" in 1902, which opposed arbitration before a committee of the United States and El Salvador, saying the failure by officials last country of the concession contract – Cases cited by Dominique Carreau, *work cited*, p. 452.

²² Published in the Official Gazette no. 204 of 23 April 2001, republished in the Official Gazette no. 123 of 20 February 2007, as amended.

²³ Published in the Official Gazette no. 329 of 31 August 1998, approved with amendments by Law no. 78/1999 (published in the Official Gazette. no. 207 of 13 May 1999), as amended.

²⁴ Published in the Official Gazette. no. 577 of 29 June 2004, as amended.

between Romania and neighboring countries²⁵.

Cross-border cooperation is a component of regional development policy which aims at ensuring economic growth and social development and sustainable development of border regions (art. 2. (4) of Law no. 315/2004).

We appreciate that these cross-border cooperation arrangements are legal nature of administrative contracts. In the following we highlight some features that determine their classification in administrative contracts category²⁶:

- Parties are administrative units adjacent border areas;

- Law no. 315/2004 in the art. 3¹ shows that the main goals of cross-border cooperation are: promoting cooperation between regions, communities and authorities situated on both sides of the border, in solving common problems by designing and implementing cross-border strategies and projects to contribute to the development of those communities in terms of increased wealth and economic development; promoting good neighborliness, social stability and economic progress in border regions by funding projects with obvious benefits for regions and communities in these regions; supporting the implementation of decentralization of responsibility, through local initiatives, carried out under local strategies. Following the achievement of these goals, the cross-border cooperation contract will cover development of a public interest;

- Conclusion of the contract is subject to derogation at common law. The project cooperation agreement is to undergo a legal review by the Ministry of Foreign Affairs (MFA). Law no. 215/2001 establishes in Art. 16 requirement that the draft co-operation agreements that the administrative-territorial units intends to conclude with the administrative units in other countries to be submitted for endorsement to the Ministry of Foreign Affairs, by mayors, presidents of county councils respectively, prior to submission for approval of local councils or county councils, as appropriate. The endorsements have to be issued within 30 days of the receipt of the request, otherwise it shall be considered that there are no objections and the respective draft can be submitted for the approval of the interested local or county council. Therefore, the Ministry of Foreign Affairs exercises control of the legality of the project (mainly conformity with the European Outline Convention on Transfrontier Co) and issue an opinion which is the legal nature of an assent;

- financing of these contracts are made from public funds. Cross-border cooperation policy objectives are achieved through programs that are financed by the National Fund for Regional Development and Regional Development Fund, which is according to Law no. 315/2004.

²⁵ On regulating cross-border cooperation through treaties concluded by Romania with neighboring countries, see Dan Stan., *La réglementation juridique de la coopération transfrontalière, dans les documents internationales de la Roumanie signés avec ses voisins* (I) and (II), "International Law Notebooks" no. 2/2008 and no. 3/2008.

²⁶ Cătălin-Silviu Săraru, *Contractele administrative. Reglementare. Doctrină. Jurisprudență (Administrative contracts. Regulatory. Doctrine. Jurisprudence)*, "C. H. Beck" Publishing House, Bucharest, 2009, p. 339-340.

4. Cross-border cooperation between territorial-administrative units adjacent border areas in the international documents signed by Romania with its neighbors

Cross-border cooperation between Romania and Bulgaria is governed by the Treaty of friendship, cooperation and good neighborly relations between the two countries, ratified by Romania by Law no. 74/1992²⁷. In art. 16 of the Treaty states that contracting parties "shall give special attention to expansion of contacts between the parliaments of two states and between local authorities, particularly in border areas". Another document on border cooperation between Romania and Bulgaria is the Agreement between Romania and the Republic of Bulgaria on cooperation between border authorities, signed in Sofia on 22 December 2004 and ratified by Romania by Law no. 172/2005²⁸. This agreement relates to cooperation but only between the central authorities²⁹ of both countries to combat cross border crime in the border area and to provide oversight and control of the common state border; local authorities are not involved³⁰.

Cross-border cooperation between Romania and Ukraine are regulated by the Treaty on good neighborly relations and cooperation between Romania and Ukraine, signed at Constanta on 2 June 1997, ratified by Romania by Law no. 129/1997³¹. Article 8 of the Treaty states that "the Contracting Parties under the European Framework Convention on transboundary cooperation between territorial communities or authorities will encourage and support direct contacts and mutually beneficial cooperation between the administrative-territorial units in Romania and Ukraine, especially in areas border. They also contribute to the cooperation between administrative units of the two countries under the existing Euro-regions and Euro-regions of "Upper Prut" and "Lower Danube", the newly-created, which may be invited to participate administrative-territorial units of other interested states. Contracting Parties shall act to incorporate the relevant activities of cooperation within the European institutions". On the basis of good neighborly Treaty were signed cooperation agreements in various fields with an impact on cross-border cooperation, such as the Agreement between the Governments of Romania and Ukraine on cooperation in border water management, signed on September 30, Galati 1997, ratified by Romania by Law no. 16/1999³², which states that Parties will support cooperation of local public authorities and public

²⁷ Published in Official Gazette no. 174 of 23 July 1992.

²⁸ Published in Official Gazette no. 511 of 16 June 2005.

²⁹ The competent authorities of both Contracting Parties shall implement the Agreement are:

a. from Romania: General Inspectorate of Romanian Border Police;

b. from the Republic of Bulgaria: National Service "Border Police".

³⁰ Dan Stan, *work cited*, (II), "International Law Notebooks" no. 3/2008, p. 87. The author points out that in the villages, towns and cities are set up community police, an institution that has, among other tasks and therefore to participate in actions on combating border crime, an institution which is not given any role in the Agreement.

³¹ Published in Official Gazette no. 157 of 16 July 1997.

³² Published in Official Gazette no. 13 of 19 January 1999.

organizations of both parties, taken to implement the provisions of the Agreement (Article 19). The agreement provides that contracts may be concluded between the two governments concerning the conditions of realization of projects on the work of the border waters and water management measures of mutual interest (art. 8 and art. 9).

Regarding cooperation between Romania and Moldova, it must be said that by 2009 there were very few documents on a bilateral basis between the two countries involving cross-border cooperation³³. An important role in cross-border cooperation between the two countries have had funding agreements in the European Union's PHARE program. Thus, the "Financing Agreement for running PHARE CBC Programme between Romania and Moldova-2006"³⁴ established the award of a grant to increase the general level of social and economic cross-border cooperation and improve the level of consistency in cross-border infrastructure. To achieve this goal they have developed programs and projects that were implemented through contracts for investment and/or services or grant schemes managed by the Romanian authorities. These contracts have an administrative nature, because in section 4.2 of the financing Agreement states that "in accordance with art. 164 of Financial Regulation, the Commission may decide to allow contracting authorities to whom management responsibilities have been entrusted to carry out procurement in accordance with national legislation and guidelines which transpose EU directives on public procurement". After the change of political regime in Moldova and thawing relations between the two countries on 13 November 2009 was signed in Bucharest, the Agreement between Romania and the Republic of Moldova on local border traffic, ratified by Romania by Law no. 10/2010³⁵. This Agreement will undoubtedly contribute to strengthening economic relations between the two countries, allowing free movement of persons living in the border area³⁶ by allowing to pass only on the common border with a valid permit from 2 to 5 years.

The cross-border cooperation between Romania and Hungary is regulated by the Treaty of understanding, cooperation and good neighborly relations between Romania and Hungary³⁷ of 1996 which in art. 11 (2) states that "contracting parties will also cooperate on issues relating to transboundary waters that interest both

³³ See on these documents Dan Stan, *work cited*, (II), "Caiete de drept internațional" no. 3/2008, p. 88.

³⁴ Published in the Official Gazette no. 682 of 8 October 2007. Such financing agreements were concluded with Bulgaria, Hungary, Ukraine and Serbia.

³⁵ Published in the Official Gazette. no. 52 of 22 January 2010.

³⁶ According to art. 1 para. (2), point a) of the Agreement, the border area includes territory Member of the Contracting Parties, not exceeding 30 km from the state border and is one side of the state border between Romania and Moldova. The administrative-territorial units which are located partly in the area of 30 km and partly in the area between 30 and 50 km from the common border will be considered as belonging to the border area. The border area comprises the administrative-territorial units that are listed in Appendix no. 1 to the Agreement.

³⁷ Published in the Official Gazette no. 250 of 16 October 1996.

countries based on bilateral and multilateral treaties to which both Contracting Parties are or may become parties”.

The cross-border cooperation between Romania and Serbia are carried out under the Treaty on the relations of friendship, good neighborliness and cooperation between Romania and Yugoslavia³⁸ signed on 16 May 1996. In art. 9 of the Treaty states that contracting parties will support and facilitate mutual cooperation, both at the central public authorities and between local administrative units of the contracting parties. They will encourage partnership and direct relationship between cities and other localities, in the spirit of good neighborliness.

Conclusions

Recently, the cross-border cooperation agreements acquire increasingly more important in the context of cooperation policies developed by the European Union on the Member States or the European Neighbourhood Policy.

The border regional cooperation, operating a “reallocation of authority”³⁹ from the state level to local administrative units adjacent border areas, can lead to mitigation of regional imbalances. Thus, cross-border cooperation agreements are a way of promoting good neighborliness, stimulating balanced economic development and social stability by building local and regional resources in joint projects.

At the end of the article, we emphasize that further cross-border cooperation between territorial-administrative units adjacent border areas of Romania will depend on the openness of political system allowed by the standard of living and cultural, historical and ethnic affinities from neighboring countries.

³⁸ *Ibidem.*

³⁹ Ioan Alexandru, *work cited (Tratat de administrație publică/Treatise of public administration)*, p. 903.

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