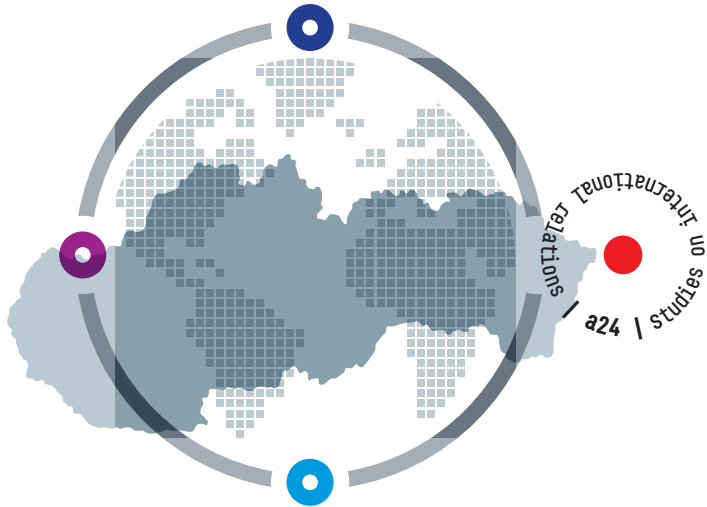




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# Bilateral framework for cross-border cooperation

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Yevhen Haydanka  
Anatoliy Klyuchkovych  
& Yuriy Ostapets

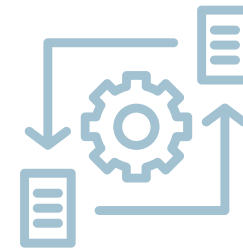
Iceland  
Liechtenstein  
Norway grants



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The overall goal of the SIBSU project is to facilitate the exchange of ideas, knowledge, information and experience among border and custom services of Slovakia, Ukraine and Norway. The aim is to analyze the opportunities for deepening integrated border management and increase awareness and understanding about the work of the border police and custom services in border regions and municipalities in Slovakia and Ukraine. The project also includes an analysis of the impact of the border on the socio-economic development of the border regions, as well as on opportunities for further cross-border cooperation on both sides border.



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# Bilateral framework for cross-border cooperation

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The bilateral Slovak–Ukrainian cross-border cooperation agreement was signed on December 5, 2000, and entered into force on January 29, 2001.<sup>1</sup> The agreement (Art. 1) defines cross-border cooperation as follows: “all administrative, technical, economic, social and cultural activities aimed at consolidating and developing relations between the parties as well as municipalities, cities and regions and their bodies on both sides of the common state border, as well as the conclusion of appropriate agreements to address common problems”. The provisions of the agreement apply to three regions in Ukraine (Transcarpathia, Lviv and Ivano-Frankivsk) and two self-governing regions in Slovakia (Prešov and Košice).

Under the agreement the Slovak and Ukrainian government have to consult each other on any legal, administrative or technical problem that could hinder the development and smooth running of cross-border cooperation. They also have to support local and regional authority activities to initiate and develop cross-border cooperation and to provide local and regional authorities with financial resources, within the limits of their capabilities, for initiating and developing cross-border cooperation (Art. 4). The agreement lists the sectorial areas, in which regional

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<sup>1</sup> “Dohoda medzi vládou Slovenskej republiky a Kabinetom ministrov Ukrajiny o cezhraničnej spolupráci, December 5, 2001,” [Agreement between the Government of the Slovak Republic and the Cabinet of Ministers of Ukraine on cross-border cooperation] Communication No. 172/2001 Z.z. by the Ministry of Foreign Affairs of the Slovak Republic.

and local actors are authorized to establish and develop cross-border cooperation (Art. 9).

With the aim of promoting and coordinating cross-border cooperation, the agreement (Art. 7) established the Slovak–Ukrainian Intergovernmental Commission on Cross-Border Cooperation, which has the right to set up working groups to address specific issues. The statute specifying the scope of its activities, organizational structure, budget and procedures was adopted at the first meeting of the commission on May 6, 2004, in Zemplínska Šírava (Slovakia). The commission is co-chaired by the Deputy Interior Minister of the Slovak Republic and the Deputy Minister of Ukraine for Regional Development, Construction, Housing and Communal Services. Since its establishment in 2004, the commission has met 14 times, with the last meeting held in November 2018 in Uzhhorod (Ukraine).<sup>2</sup>

The commission has become the main institutional intergovernmental platform for the coordination and development of cross-border cooperation on the Slovak–Ukrainian border.<sup>3</sup>



<sup>2</sup> See “Protokoly zo zasadnutí Slovensko-ukrajinskej medzivládnej komisie pre cezhraničnú spoluprácu,” [Minutes of the meetings of the Slovak–Ukrainian intergovernmental commission for cross-border cooperation] Ministry of Interior of the Slovak Republic. Available online: <https://www.minv.sk/?protokoly-zo-zasadnuti-slovensko-ukrajinskej-medzivladnej-komisie> (accessed on February 24, 2023).

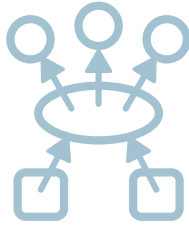
<sup>3</sup> For an analysis of strengths and weaknesses of the commission’s activities, see O. Marchevský, “The Slovak–Ukrainian intergovernmental commission on cross-border cooperation: institutional framework, activities, and outcomes,” in A. Duleba, ed., “Cross-border cooperation between Slovakia and Ukraine,” Vol. II: *Impact of intergovernmental relations*. Prešov: Prešov University Publishing House, 2019, pp. 129–43.

One could therefore conclude that, by 2004, Slovakia and Ukraine had established a full-fledged bilateral legal and institutional framework for cross-border cooperation development on the common border by national authorities and regional and local actors.

However, while the existence of the legal and institutional mechanisms for intergovernmental cross-border cooperation generates opportunities for regional and local actors, it does not ensure the effectiveness of regional and local cross-border cooperation. In practice regional and local mechanisms of Slovak–Ukrainian cross-border cooperation are much less effective than national mechanisms.



The main obstacles to bilateral cross-border cooperation, including regional and local trade, can be identified as follows: insufficient cross-border governance, scarce financial resources, historical legacy of the Slovak–Ukrainian borderland, including the complicated identities, insufficient legislation for dealing with legal protection for businesses, inadequate institutional setup (different competencies of regional and local authorities, inefficient custom offices that paralyze small businesses, local public administration offices, police and court practices), lack of infrastructure (number of border crossings, transport), corruption (local corruption often hampers trade cooperation more than national corruption), undercapitalization of enterprises in the region, lack of coordination in the use of EU funds



etc.<sup>4</sup> Generally, the systemic obstacles to cross-border cooperation are bound up with the Slovak–Ukrainian border itself, as it is an external EU border and performs a restrictive and protective function for the integrated area of the four fundamental freedoms within the EU.

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Slovakia’s bilateral cross-border cooperation agreements with neighboring countries provide the legal framework for cooperation between regional and local actors. But project funding is dependent on the EU’s INTERREG program. Entities based in the Prešov and Košice Regions could apply for support for bilateral or multilateral cooperation projects with Ukrainian partners within the Hungary–Slovakia–Romania–Ukraine ENI Cross-border Cooperation Program, financed from the European Neighborhood Instrument. It should be noted that the financial support a project receives from these EU programs cannot exceed 85 per cent of the total project budget.

However, it should be noted that the Slovak regions make very limited use of the available resources from the INTERREG B (transnational cooperation) and INTERREG C (interregional cooperation) programs, not to mention the other horizontal programs of the European Structural and Investment Funds (e.g., Horizon 2020 or Horizon Europe in the upcoming programming period 2021–2027). INTERREG B

<sup>4</sup> For an analysis see M. Lačný, A. Polačková, “Cross-border cooperation between Slovakia and Ukraine.” Vol. IV: *Perceptions of local and regional actors*. Prešov: Prešov University Publishing House, 2019.



9

Bilateral framework for cross-border cooperation

and INTERREG C are untapped opportunities that Slovak regions could exploit for their own regional development, provided that they cooperate in sectors with “distant” foreign partners.<sup>5</sup>

Moreover, the Slovak regions do not make effective use of the INTERREG A funding, owing to deficiencies in central government management. The Ministry of Investments, Regional Development and Informatization of the Slovak Republic (MIRDI) coordinates the bilateral commissions on cross-border cooperation (BCCCs) with neighboring countries, but in previous programming periods (2007–2013 and 2014–2020) the Ministry of Agriculture and Regional Development of the Slovak Republic (MARD) was the managing authority for INTERREG A (MIRDI took over in 2020). The unanswered question for the government

<sup>5</sup> A. Duleba, P. Kováč, V. Oravcová, M. Cirner et al, “Legislatívny a inštitucionálny rámec pre medzinárodnú spoluprácu samosprávnych krajov SR,” [Legislative and institutional framework for international cooperation of self-governing regions of the Slovak Republic] Research Center of the Slovak Foreign Policy Association, 2021.

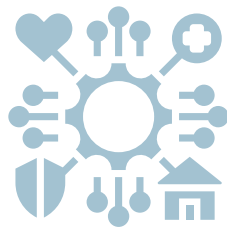


is why the planning of cross-border cooperation development with neighboring regions is coordinated by one central state administration body (MIRDI) through the BCCC while the other central state administration body (MARD) manages the program for financing cross-border cooperation projects.

Cross-border cooperation planning and implementation should be the responsibility of one central government body. The institutional separation of the planning and implementation processes hampers effective development of cross-border cooperation with regions in neighboring countries, in which the self-governing regions of the Slovak Republic play a key role.

Moreover, based on the current practices in cross-border cooperation between Slovak regions and foreign partners, it can be stated that one of the main deficits in the cross-border cooperation on the Slovak–Ukrainian border is the absence of a specific INTERREG program, which could serve as a financing source.

In Ukraine, the Ministry of Development of Communities and Territories of Ukraine is responsible for drafting and implementing state regional policy, in line with a decision by the Cabinet of Ministers of Ukraine.<sup>6</sup>



<sup>6</sup> “Постанова Про затвердження Положення про Міністерство розвитку громад та територій України,” [Resolution on approval of the regulation on the Ministry of Communities and Territories Development of Ukraine] No. 197-2014-р, April 30, 2014. Available online: <https://zakon.rada.gov.ua/laws/show/197-2014-%D0%BF> (accessed on February 24, 2023).

In 2006–2021, the Ukrainian government approved four state programs for cross-border cooperation development (2007–2010, 2011–2015, 2016–2020, 2021–2027). The last such program was approved in 2021.<sup>7</sup> The program goals are to a) implement the EU Strategy for the Danube Region and the Danube Transnational Program in Ukraine; b) implement internationally funded programs, including border cooperation programs within the framework of the European Territorial Cooperation for 2021–2027 (NDICI); c) develop the border infrastructure in the mountainous territories of the Carpathians; d) develop institutional capacity among cross-border cooperation participants.<sup>8</sup>

The main contractual legal document regulating bilateral relations between Ukraine and Slovakia is the Agreement on Good Neighborhood, Friendly Relations and Cooperation between Ukraine and the Slovak Republic of June 29, 1993. It enhanced opportunities for cross-border cooperation in the Ukrainian–Slovak border region. The key bilateral agreements creating opportunities for cross-border cooperation and making it easier for local residents to cross the border include the Agreement between the Cabinet of Ministers of Ukraine and the Government of the Slovak Republic on cross-border cooperation from December 5, 2000, Agreement between Ukraine and the Slovak Republic on local border traffic from May 30, 2008.<sup>9</sup>

<sup>7</sup> “Постанова Про затвердження Державної програми розвитку транскордонного співробітництва на 2021–2027 роки,” [Resolution on approval of the state program for the development of cross-border cooperation for 2021–2027] No. 408, April 14, 2021. Available online: <https://www.kmu.gov.ua/npas/pro-zatverdzhennya-derzhavnoyi-programi-rozvitku-transkordonnogo-s140421> (accessed on February 24, 2023).

<sup>8</sup> Ibid

<sup>9</sup> “Законодавство України.” [Legislation of Ukraine] Available online: <https://zakon.rada.gov.ua/laws> (accessed on February 24, 2023).



The institutional and legal basis of Ukrainian–Slovak cross-border cooperation includes general programs and development strategies in neighboring territories (for example, the Strategy for the Development of Slovak–Ukrainian Cross-Border Cooperation up to 2020). The main law setting out the institutional, legal, economic and organizational foundations of cross-border cooperation is the cross-border cooperation law, adopted on July 24, 2004.<sup>10</sup> It establishes the goals and principles of cross-border cooperation, spheres and organizational forms, the powers of the entities involved in cross-border cooperation, state support for cross-border cooperation etc.

In Ukraine effective cross-border cooperation, especially at the local level, is hampered by a number of problems and obstacles. Firstly, the regulatory and legal regulation is inadequate, especially the mechanism for implementing cross-border cooperation and the means of ensuring it. Secondly, there is a lack of effective institutional and personnel support for cross-border cooperation. Thirdly, cross-border cooperation needs proper resources. There is a need for co-financing in cross-border projects. Fourthly, cross-border cooperation requires better information support. Media support is also important so cross-border entities and participants can obtain information on the

<sup>10</sup> “Закон України Про транскордонне співробітництво,” [The law of Ukraine on cross-border cooperation] No. 1861-IV, October 11, 2018. Available online: <https://zakon.rada.gov.ua/laws/show/1861-15#Text> (accessed on February 24, 2023).

benefits and opportunities of cross-border cooperation. For example, a sociological study conducted as part of this project found there was a lack of information.<sup>11</sup>

The Slovak–Ukrainian intergovernmental commission for cross-border cooperation (ICCC) was established under the Intergovernmental Treaty on Cross-Border Cooperation concluded in 2000.<sup>12</sup> The Slovak side is represented by the interior ministry (the co-chair of the ICCC is the state secretary). The Ukrainian side was originally represented by the economy ministry, but at the last ICCC meeting in 2018 this role was taken on by the Ministry of Regional Development, Construction and Housing and Communal Economy of Ukraine (the co-chair of the ICCC is the first deputy minister).

The aim of the ICCC is to coordinate border management (cooperation between the border police and customs services) and to promote cross-border cooperation between regional and local actors on both sides of the border (under the 2000 treaty, the regional demarcation of cross-border cooperation consists of Prešov and Košice Regions on the Slovak side and three regions in Ukraine: Transcarpathia, Ivano-Frankivsk and Lviv).

<sup>11</sup> Respondents were asked: “Do you have any information about the activities of the Slovak–Ukrainian Intergovernmental Commission on Cross-Border Cooperation?” The respondents gave the following answers: “I have a lot of information” (0.7 per cent), “I have some information” (10 per cent), “I have little information” (26.1 per cent), “I have no information at all” (47.3 per cent), “I don’t know/I don’t want to answer” (15.9 per cent).

<sup>12</sup> “Dohoda medzi vládou Slovenskej republiky a Kabinetom ministrov Ukrajiny o cezhraničnej spolupráci, December 5, 2001,” op. cit.





Its main activities are set out in the ICCC Statute.<sup>13</sup> Firstly, the ICCC issues general instructions and stipulates the forms of cross-border cooperation, ensuring compliance with the agreement between the Slovak and Ukrainian governments on cross-border cooperation. Secondly, it proposes favorable legal, economic, financial and trade conditions for mutually beneficial development in the economic, social, scientific, and technical, cultural, educational, environmental, and other spheres of cross-border cooperation, which are then considered by the competent authorities in Slovakia and the Ukrainian government. Thirdly, the ICCC aids on solving legal, administrative and technical problems that may hinder the development of

<sup>13</sup> "Štatút Slovensko-ukrajinskej medzivládnej komisie pre cezhraničnú spoluprácu," [Statute of the Slovak-Ukrainian intergovernmental commission for cross-border cooperation] Ministry of Interior of the Slovak Republic. Available online: <https://www.minv.sk/?statut-slovensko-ukrajinskej-medzivladnej-komisie-pre-cezhranicnu-spolupracu> (accessed on February 24, 2023).

the cross-border cooperation. Fourthly, it supports local and regional authorities involved in developing cross-border cooperation.

Between 2004 and 2018, the ICCC held 14 meetings. The analysis of the minutes of the ICCC meetings enables us to identify three key areas of its work:

1. joint planning and coordination of Slovak-Ukrainian cross-border cooperation;
2. improving traffic flow across the common border and border-customs control, including discussions and decisions on visa policy, small border traffic, exchange of operational information, developing border infrastructure and logistics;
3. sectoral cross-border cooperation covering such areas and sectors as: economy, ecology, tourism, education, science, culture.

The analysis of the minutes of the ICCC meetings and measures for implementing the recommendations shows that, in 2004–2018, the ICCC was active, although not on a regular basis. It made significant contributions to the discussion and resolution of a wide range of problems regarding cross-border interaction. In recent years, the ICCC has been less actively engaged in cooperation, although not for reasons of its own making, such as the pandemic, but current developments suggest there is hope of intensification.

Based on the analysis of the minutes of the ICCC meetings and verification of the results, it can be concluded that the ICCC fulfils its purpose, particularly in coordinating border management cooperation between the border police and customs services of the two countries and in developing border infrastructure. Interviews with representatives of the Slovak and Ukrainian ministries involved in the work of the intergovernmental commissions showed that on both sides there is much greater

satisfaction with the work of the ICCC than with other intergovernmental commissions (economic cooperation, national minorities, education and culture).<sup>14</sup> Negotiations within the ICCC led to around 15 agreements being concluded since 2000 between the interior and finance ministries and regulating cooperation between police officers and customs officers on border protection and management. Since 2006, the border police and customs services of both countries have carried out several joint projects that have enabled the sharing of experience and cooperation development. The cooperation between the border police and customs services is a positive example of cooperation between public institutions in recent Slovak–Ukrainian relations.

A major challenge for the ICCC is the development of border infrastructure to improve border permeability. That entails the upgrading of existing crossing-points as well as the opening and construction of new ones, as the current infrastructure is no longer able to cope with the flow of goods and people across the border.

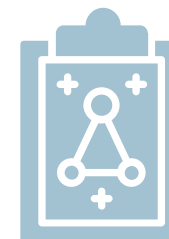
The EU–Ukraine visa-free regime introduced in 2017 has more than doubled the number of people crossing the border in both directions. Following the implementation of the EU association agreement, trade liberalization between Ukraine and the EU will follow the same trend as goods and services. If trade flows are not to be diverted to Ukraine’s borders with Poland, Hungary and Romania, the permeability of the Slovak–Ukrainian border must be enhanced. The existing infrastructure needs modernizing and new border crossing-points are needed as well,

<sup>14</sup> In September and October 2021, the authors of this chapter interviewed seven representatives from the Slovak ministries (transport, economy, interior and foreign ministries) and five representatives from the Ukrainian ministries (infrastructure, economy, education and science and foreign ministries) who are involved in organizing the meetings and work of the bilateral intergovernmental commissions.

not to mention the transport (road, rail and air) infrastructure between Slovakia and Ukraine. The ICCC has proved that it is a suitable platform for negotiation, coordinating progress and reaching bilateral agreements.

On the other hand, the interviews show that the ICCC is failing to deliver on the second part of its responsibilities – initiating cross-border cooperation between regional and local actors in border areas. Representatives of the Slovak regions (Prešov Region and Košice Region) and Ukrainian regions (Transcarpathia, Ivano-Frankivsk and Lviv) are invited to its meetings, but so far, the results have fallen far short. Prešov Region has concluded cooperation agreements with both Transcarpathian and Ivano-Frankivsk Regions, as has Košice Region with Transcarpathian Region; however, the number of joint cross-border cooperation projects implemented is minimal.

The border regions do not make sufficient use of the possibilities offered by European programs for financing cross-border cooperation, including the INTERREG sub-program HUSKROUA ENI, which is intended for cross-border cooperation on Ukraine’s borders with Slovakia, Hungary and Romania), as well as the horizontal programs of the European Investment and Structural Funds, which could be used to implement larger infrastructure projects. In other words, through cross-border cooperation, the regions could make use of additional resources from EU funds besides the national EU funds allocated to Slovakia under its partnership agreement or to support Ukraine in its association process. The insufficient



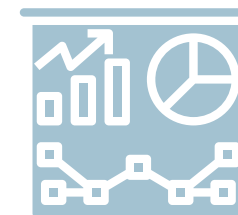
cross-border cooperation between regional and local government, and other entities (businesses, schools, NGOs, health facilities, social services etc.) means there is untapped potential for developing the Slovak and Ukrainian border areas. However, the Slovak and Ukrainian regional authorities should be taking the leading role in development, supported by the governments of the two countries.

The biggest deficits and missed opportunities in Slovak–Ukrainian relations are the lack of joint strategic regional development planning for the border areas in Slovakia and Ukraine that make up the common cross-border region, and the use of local and regional cross-border cooperation as a tool for border area development. In both countries, the border area is among the less developed areas. These are peripherally located and have less developed infrastructure, a lower economic performance, lack employment opportunities and local inhabitants migrate to other regions for work and education.

The ICCC should not prioritize cross-border cooperation between regional and local actors in border areas. Nonetheless, representatives of the regions and municipalities should continue to be invited to ICCC meetings, given that border management and infrastructure development has a direct impact on local and regional governance and the framework conditions for cross-border cooperation. However, the experiences of the ICCC since 2004 show there is no need to tackle cross-border cooperation issues that entail local and regional cooperation at the intergovernmental level. Instead, Slovak and Ukrainian regional authorities should lay down the institutions for a new format of regional and local cross-border cooperation, with government of course, but the regions should provide the leadership and guidance.

Ultimately, both sides should strive to ensure that Slovak–Ukrainian cross-border cooperation is set up in such a way as to allow the use of INTERREG funds, including INTERREG HUSKROUA NEXT 2021–2027, the Danube

Transnational Strategy (INTERREG B) and, other European Funds for horizontal (communitarian) programs. Creating a *European Grouping of Territorial Cooperation* (EGTC) for Slovak–Ukrainian cross-border cooperation would provide a suitable instrument for institutionalizing and developing cross-border cooperation, as EGTCs can access funding provided by the horizontal programs of European funds for regional development needs through cross-border cooperation projects.



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Slovak Foreign Policy Association (SFPA), founded in August 1993, is an independent, non-partisan and non-profit organization whose activities are devoted to active contribution to the integration of the Slovak Republic to the community of democratic states and their political and security structures. It is the oldest foreign policy think-tank in Slovakia. Through its programs of meetings, seminars, workshops and publications, the SFPA spreads objective information about international relations from primary sources. Its research center (RC) was established in 1995. In accordance with its status, the RC SFPA provides:

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- publishes periodical and non-periodical expert publications serving to increase awareness in the field of international relations and foreign policy and to serve as a source of qualified information for both, the expert and general public;
- organizes expert events and participates in international scientific cooperation in the field of international relations and security;
- contributes to the fostering of the expert discourse on international relations and foreign policy;
- creates a favorable environment for the growth of the new generation of the Slovak experts in the field of international relations; and
- stimulates the interest of wider Slovak public in the global events as well as a deeper understanding of the significance of foreign policy and its link to the domestic policy.

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