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Tomasz Studzieniecki
Gdynia Maritime University, Poland
ORCID: 0000-0002-1272-0908
t.studzieniecki@wznj.umg.edu.pl

Andrzej Jakubowski
Maria Curie-Skłodowska University (Lublin), Poland
ORCID: 0000-0003-2368-7426
andrzej.jakubowski@mail.umcs.pl

Joanna Kurowska-Pysz
WSB University (Dąbrowa Górnicza), Poland
ORCID: 0000-0002-3967-9263
jkurowska@wsb.edu.pl

Cross-Border Functional Area as an Organisational and Legal Instrument of Polish-Lithuanian Cross-Border Cooperation*

Transgraniczny Obszar Funkcjonalny jako instrument organizacyjno-prawny polsko-litewskiej współpracy transgranicznej

CORRESPONDENCE ADDRESS: Tomasz Studzieniecki, PhD, Assistant Professor, Gdynia Maritime University, Faculty of Management and Quality Science, Department of Marketing and Quantitative Methods, Morska 81-87, 81-225 Gdynia, Poland; Andrzej Jakubowski, PhD, Assistant Professor, Maria Curie-Skłodowska University (Lublin), Faculty of Earth Sciences and Spatial Management, Institute of Social and Economic Geography and Spatial Management, Kraśnicka 2d, 20-718 Lublin, Poland; Joanna Kurowska-Pysz, PhD, Dr. Habil., University Professor, WSB University (Dąbrowa Górnicza), Faculty of Applied Sciences, The Research Institute on Territorial and Inter-Organizational Cooperation, Cieplaka 1c, 41-300 Dąbrowa Górnicza, Poland.

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ABSTRACT

The development of cross-border cooperation in the European Union requires the refinement of organisational and legal instruments which support the cooperation of the local and regional authorities in neighbouring border regions. One such instrument may be the Cross-Border Functional Area (CFA). The authors of the article were in charge of the implementation of a pioneering project commissioned by Directorate-General for Regional and Urban Policy (European Commission) to establish the first CFA in Europe in the Polish-Lithuanian border region. It was formed by nine cities and communes (Pol. *gmina*) from Sejny and Suwałki counties and three Lithuanian local authorities: Lazdijai, Vilkaviškis and Kalvarija. The main objective of the article is to identify the qualities of a CFA as an organisational and legal instrument supporting the development of cross-border cooperation. An additional objective is to identify the key organisational and legal determinants of the development of the CFA in the Polish-Lithuanian border region. The article has a scientific and research character. It characterises CFAs in relation to other forms of institutional cross-border cooperation, discusses the legal basis for the establishment of a CFA, presents the organisational structure and identifies the key stakeholders. The lack of a legal definition of a CFA makes its use difficult, but not impossible. The importance of functional connections in cross-border cooperation in the EU is sufficiently significant to warrant further research on the institutionalisation of cooperation within cross-border functional areas.

Keywords: cross-border cooperation; functional area; European Union; Poland; Lithuania

INTRODUCTION

Cross-border cooperation plays an important role in the development of border regions.[1] It enables barriers created by national borders to be overcome.[2] For local communities, it provides social and economic advantages. Harmonious development of cross-border cooperation is determined by a number of factors, notably the bilateral relations of the neighbouring countries as well as the organisational and legal frameworks of cooperation, including the international and national law of the countries in which the cross-border cooperation takes place.[3] In cross-border regions, organisational structures are created to coordinate cross-border cooperation.[4] The organisation and functioning of these structures must comply with the existing legal order.[5]

[1] K. Basboga, *The Role of Open Borders and Cross-Border Cooperation in Regional Growth across Europe*, "Regional Studies, Regional Science" 2020, vol. 7(1), pp. 532–549.

[2] D. Davidov, T. Chekalina, *Cross-Border Cooperation as a Mechanism of Regional Marketing in the Baltic Region*, "Baltic Region" 2020, vol. 2, pp. 46–51.

[3] I. Zabielska, *Cooperation, Partnership and Integration in the Cross-Border Area: The Role of Borders and Cross-Border Cooperation*, "Ekonomia i Prawo – Economics and Law" 2020, vol. 19(3), pp. 569–583.

[4] K. Terlouw, *Border Surfers and Euroregions: Unplanned Cross-Border Behaviour and Planned Territorial Structures of Cross-Border Governance*, "Planning Practice and Research" 2012, vol. 27(3), pp. 351–366.

[5] M. Perkowski, *Współpraca transgraniczna. Aspekty prawno-ekonomiczne*, Białystok 2010.

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With the development of cross-border cooperation in Europe after World War II, various organisational and legal instruments were created to support cross-border integration and facilitate absorption of European funds for the development of cross-border cooperation. As part of the legislative work on the Regulation of the European Parliament and of the Council on the European Regional Development Fund and Cohesion Fund, the Committee of the Regions proposed that functional areas be given special support.[6] In this context, the European Commission introduced an initiative to formulate and implement a concept for the development of a cross-border functional area in the Polish-Lithuanian border region. To this end, the Directorate-General for Regional and Urban Policy (DG REGIO) launched the project titled "Identification of key elements for creating the Touristic Cross-Border Functional Area at the Lithuanian-Polish border".[7] The choice of the Polish-Lithuanian border region resulted from many years of extensive stakeholder cooperation and a bottom-up initiative of the local authorities to establish a Cross-Border Functional Area (CFA).

The authors of the article – executors of the above-mentioned project – discuss the complex process of establishing the CFA. They analyse the development of Polish-Lithuanian relations with a particular focus on the inter-state agreements that made establishing the CFA possible, present the organisational model of a CFA and analyse its functioning with regard to the possibilities of obtaining EU funding and implementing cross-border projects, and also identify key institutions operating at different levels which play an important part in the development of CFAs.

In this article, the authors aim to answer the following research questions:

1. What is the legal basis for the functioning of a CFA?
2. Which institutions play an important part in the establishment and functioning of a CFA and to what extent?
3. What should be the organisational structure of a CFA?

The main objective of the article is the conceptualisation of the CFA as an organisational and legal instrument supporting the development of cross-border cooperation. An additional objective is to identify the key organisational and legal determinants of the development of the CFA in the Polish-Lithuanian border region.

The authors form two hypotheses:

H1. The establishment of a CFA is based on the applicable international and national law.

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[6] Opinion of the European Committee of the Regions on European Regional Development Fund and Cohesion Fund, COR 2018/03594; Opinion of the Commission for Territorial Cohesion Policy and EU Budget: Recommendations for the successful design of regional development strategies beyond 2020, COTER-VI/052.

[7] J. Kurowska-Pysz, A. Jakubowski, E. Spiriajevas, T. Studzieniecki, *Identification of Key Elements for Creating the Touristic Cross-Border Functional Area at the Lithuanian-Polish Border*, Brussels 2021.

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H2. A CFA is an organisational and legal instrument which supports the cooperation of a broad body of stakeholders and facilitates the absorption of EU funds.

Verification of the hypotheses by answering the posed research questions required conducting literature research and analysing secondary sources with a particular focus on applicable legal regulations. Additional insights were obtained using the participant observation method in the course of the project implementing the establishment of the CFA. Additionally, an interview was conducted with an employee of the Polish Ministry of Foreign Affairs regarding the interpretation and application of legal regulations concerning international cooperation of local government units.

RESEARCH AND RESULTS

1. Cross-border functional areas in the context of the institutionalisation of cross-border cooperation

Cross-border cooperation (CBC) became one of the hallmarks of the European Union's political identity referring to the idea of "open borders".[8] It can be defined as "political projects carried out by the private, state, and, to an extent, third-sector actors with the express goal of extracting benefit from joint initiatives in various economic, social, environmental and political fields".[9] According to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities,[10] CBC means "any concerted action designed to reinforce and foster neighbourly relations between territorial communities or authorities within the jurisdiction of two or more Contracting Parties and the conclusion of any agreement and arrangement necessary for this purpose". M. Perkmann, in turn, calls it "a more or less institutionalised collaboration between contiguous subnational authorities across national borders".[11]

Among the most important European legal acts laying the foundations for cross-border cooperation are:

- the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (Madrid Outline Convention) adopted in 1980 in Madrid, which is the basic legal act of the Council of Europe

[8] J.W. Scott, *The European Groupings of Territorial Cooperation as a Process of Europeanisation*, [in:] *15 Years of the EGTCs: Lessons Learnt and Future Perspectives*, ed. G. Ocskay, Budapest 2020, pp. 63–80.

[9] *Ibidem*, p. 63.

[10] ETS No. 106.

[11] M. Perkmann, *Cross-Border Regions in Europe: Significance and Drivers of Regional Cross-Border Co-Operation*, "European Urban and Regional Studies" 2003, vol. 10(2), pp. 153–171.

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relating fully and directly to international cooperation at regional and local levels, and which sets out the legal and structural patterns of the framework for cooperation of border regions;
- the European Charter of Local Self-Government adopted in 1985 in Strasbourg,[12] which gives territorial units general competence to cooperate across borders with other local communities and to associate with them in order to carry out tasks of common interest;
- the Charter for European Border and Cross-Border Regions (until 1995 the European Charter of Border Regions) adopted by the General Assembly of the Association of European Border Regions (AEBR) in 1981 in EUREGIO and amended in 1995, 2004 and 2014, which specifies the objectives and goals to be taken into account in the development of border and cross-border regions. It has no binding effect but is a kind of code of conduct for CBC.

According to the Charter for European Border and Cross-Border Regions, CBC helps to "mitigate the disadvantages of the borders, overcome the peripheral status of the border regions in their country, and improve the living conditions of the population in border regions". This document lists the following main objectives of CBC:
- a new quality of borders, which should become a meeting place;
- partnership and subsidiarity through improved coordination and intensive cooperation at local, regional, national and European levels as an indispensable condition of a "bottom-up" development of Europe;
- territorial integration of cross-border regions as a process leading to stronger economic, social and geographical integration.

Since 1991, when the INTERREG programme was established based on the European Regional Development Fund, CBC in the European Communities (and later in the European Union) gained a new impetus that broadened its scope and scale. Positioning the CBC as one of the key instruments for achieving the objectives of the Cohesion Policy has significantly increased the opportunities for cross-border projects in financial terms, improved abilities for counteracting the negative influence of the border on development processes and preventing marginalisation, and made the processes of cross-border integration more dynamic.[13]

The increasing role of CBC along with the multidimensional processes of European integration and the evolution of the function of borders in the European Union towards reducing their role as a spatial barrier has led to the development of a variety of cross-border functional links and, along with them, to the formation of

[12] ETS No. 122.

[13] A. Miszczuk, A. Jakubowski, *Evolution of the European Union Cohesion Policy Towards Border Regions*, [in:] *Cohesion Policy and Development of the European Union's Regions in the Perspective of 2020*, ed. J.A. Kukuła, Lublin 2015, pp. 169–191.

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cross-border functional areas in some borderlands.[14] In the body of the literature and in planning practice, the most common way of defining functional areas is linked to spatial mobility. Functional areas are most often defined as areas concentrated around nodes (urban centres) and are characterised by a high intensity of functional linkages, or as areas designated according to specific criteria that determine their internal consistency and shape the nature of internal and external interactions.[15] The description of a functional area used in planning documents in Poland has been developed from the category of "problem area". Against this background, National Spatial Development Concept 2030 defined the functional area as "a compact spatial system consisting of functionally linked territories, characterised by shared conditions and anticipated uniform development objectives".[16]

To date, there is a lack of a universal definition of a CFA. According to J. Ładysz, a CFA consists of adjacent border areas separated by a national border with a relatively distinct, intensive and open system of social, economic or natural linkages determined by the features of the geographical, natural and anthropogenic environment.[17] However, while geographical location and linkages across the borders remain main features of CFAs, they are also often constructed through shared governance platforms ensuring implementation of joint projects and resource management based on a functional logic.[18] Thus, according to the broader definition proposed by A. Jakubowski et al.,[19] CFA is a specific spatial arrangement located on two (or more) sides of the national border, determined by cross-border functional connections resulting from common and/or integrating spatial or socio-economic features. A CFA is also characterised by the existence of a system of CBC between various stakeholders and the existence of a co-management mechanism allowing for better use of the potential of a given area and for solving common problems.

Along with the evolution and maturation of CBC in the EU, "local and regional collaboration across national borders has become embedded in the routines of many

[14] R. Knippschild, A. Schmotz, *Border Regions as Disturbed Functional Areas: Analyses on Cross-Border Interrelations and Quality of Life along the German-Polish Border*, "Journal of Borderlands Studies" 2018, vol. 33(3), pp. 371–391.

[15] CEMAT, *Functional Areas in Member States of the Council of Europe*, Preparatory Study for the 17th Session of the Council of Europe Conference of Ministers Responsible for Spatial Planning (CEMAT), Ministerul Dezvoltarii Regionale, Administratiei Publice si Fondurilor Europene, Bucharest 2017.

[16] Ministry of Regional Development, *National Spatial Development Concept 2030*, Warsaw 2011, p. 176.

[17] J. Ładysz, *Delimitacja transgranicznych obszarów funkcjonalnych*, Wrocław 2021.

[18] L.D. Sousa, *Understanding European Cross-Border Cooperation: A Framework for Analysis*, "Journal of European Integration" 2013, vol. 35(6), pp. 669–687.

[19] A. Jakubowski, K. Trykacz, T. Studzieniecki, J. Skibiński, *Identifying Cross-Border Functional Areas: Conceptual Background and Empirical Findings from Polish Borderlands*, "European Planning Studies" 2022, vol. 30(12), pp. 2433–2455.

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public authorities and civic associations",[20] which required institutionalisation to foster cross-border interaction and partnership across the borders. Since the establishment of the EUREGIO along the German-Dutch border in 1958, many CBC initiatives that have an "institutional-territorial dimension" and operate at different scales have developed across Europe.[21] The most important and common are:[22]

- Cross-border Working Communities – non-legal entities, cross-border cooperation structures of the largest scale involving representatives of local authorities with the aim of establishing cooperation and overcoming certain common problems, based on a legally binding agreement and having an organisational structure;
- Euroregions – the most widespread institutionalised form of CBC between border regions or local entities. They cover the area of voluntary CBC in economic, social, cultural, tourism and nature conservation matters. They do not constitute supra-national structures, are not separated from national jurisdiction, administration or control, and may not be in conflict with internal legislation and the system of international agreements. Euroregions are not legal entities, are constantly acting, and have an organisational structure on the side of each participant (who have their own administrative, technical and financial resources);
- European Groupings of Territorial Cooperation (EGTCs) – legal persons operating on the regional and/or local level(s) with the participation of the parties from the territories of at least two member countries to promote CBC and enhance social, economic and territorial cohesion. The rules for setting up and operating an EGTC are laid down in Regulation (EC) No. 1082/2006 of the European Parliament and of the Council of 5 July 2006 on a European grouping of territorial cooperation (EGTC).[23] European Groupings of Territorial Cooperation are constantly acting, have an organisational structure, their own financial and material resources and have the power to institute legal proceedings.

[20] J.W. Scott, *op. cit.*, p. 64.

[21] J. Kaucic, C. Sohn, *Mapping the Cross-Border Cooperation 'Galaxy': An Exploration of Scalar Arrangements in Europe*, "European Planning Studies" 2022, vol. 30(12), pp. 2373–2393.

[22] K. Prytula, Y. Kalat, *Directions of Cross-Border Cooperation Intensification in the Framework of the Euroregion 'Upper Prut': Ukrainian-Romanian Borderlands*, "Eurolimes" 2016, vol. 21, pp. 49–66; J. Kurowska-Pysz, K. Szczepańska-Woszczyna, H. Štverková, J. Kašík, *The Catalysts of Cross-Border Cooperation Development in Euroregions*, "Polish Journal of Management Studies" 2018, vol. 18(1), pp. 180–193; M. Krzymuski, *The EGTC as a Legal Solution of Institutionalisation of Cross-Border Cooperation*, [in:] *15 Years of the EGTCs…*, pp. 7–36.

[23] OJ L 210/19, 31.7.2006.

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In addition, institutionalised forms of CBC in the European Union can include Euroregional Cooperation Groupings (ECGs),[24] Local Cross-Border Cooperation Groupings (LCCGs), European Economic Interest Grouping (EEIG), European Companies (SE), Eurodistricts, Eurocities, Integrated Territorial Investments (ITI), Community-led Local Development (CLLD) and Joint Action Plans (JAP). None of these forms, however, has become universal, nor are they tailor-made solutions for dealing with the particular challenges specific to CFA. As M.W. Molak and J. Soukopová note, for this purpose existing institutional forms of CBC "seem so far unfunctional".[25]

Organisational and legal solutions in the sphere of CBC are influenced by a variety of factors,[26] the most important of which are political agendas and bilateral relations between neighbouring states. In Central and Eastern Europe (including the Polish-Lithuanian borderland), government administrations continue to play a major role in the construction of the legislative framework for CBC.[27]

2. Conditions of cross-border cooperation in Polish-Lithuanian borderland

The conditions for the development of CBC between Poland and Lithuania emerged when Lithuania regained independence and relations between the two countries resumed in 1991.[28] Poland and Lithuania were connected by a 104-kilometre-long state border. After both countries joined the EU in 2004, the border's status changed – it became an internal EU border.

The first two border crossings were opened in 1992.[29] A consular convention and agreements regarding economic cooperation were also adopted.[30] Additionally, steps were taken to reduce mutual distrust and to remove mental barriers resulting

[24] Protocol No. 3 to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities concerning Euroregional Co-operation Groupings (ECGs), CETS No. 206.

[25] M.W. Molak, J. Soukopová, *Can Institutionalization Be Considered a Trap in Defining Functional Cross-Border Areas? Coopetition and Local Public Services in Borderlands*, "NISPAcee Journal of Public Administration and Policy" 2022, vol. 15(2), pp. 122–153.

[26] J.L. Wong Villanueva, T. Kidokoro, F. Seta, *Cross-Border Integration, Cooperation and Governance: A Systems Approach for Evaluating "Good" Governance in Cross-Border Regions*, "Journal of Borderlands Studies" 2022, vol. 37(5), pp. 1047–1070.

[27] G. Popescu, *The Conflicting Logics of Cross-Border Reterritorialization: Geopolitics of Euroregions in Eastern Europe*, "Political Geography" 2008, vol. 27, pp. 418–438.

[28] A. Banaszkiewicz, *Traktaty i najważniejsze umowy międzynarodowe zawarte przez Polskę z Republiką Litewską w latach 1991–2011*, "Wschodnioznawstwo" 2013, vol. 7, pp. 77–99.

[29] Agreement between the Government of the Republic of Poland and the Government of the Republic of Lithuania on border crossings, signed in Warsaw on 12 August 1992 (Gazette of the Government of the Republic of Poland 2003, no 37, item 552).

[30] W.T. Modzelewski, *Dwie dekady stosunków Polski z Litwą – wymiar polityczny*, "Środkowoeuropejskie Studia Polityczne" 2012, vol. 3, pp. 287–312.

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from the complex history of the two nations. The development of CBC was gradual. It necessitated the establishment of local and voivodeship governments, drafting of a legal framework and creation of institutions to coordinate cooperation (see Figure 1).

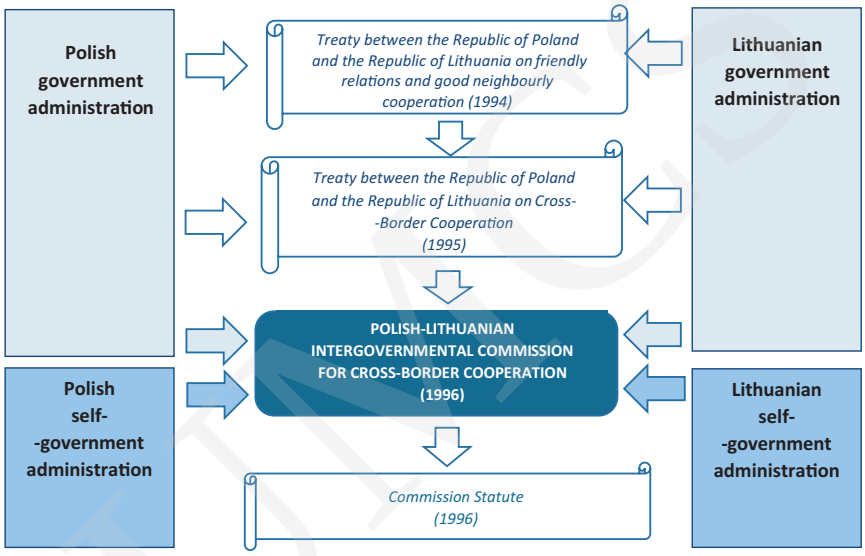


Figure 1. Organisational and legal framework of Polish-Lithuanian cross-border cooperation

Source: Authors' own elaboration.

The signing of the Polish-Lithuanian Treaty on Friendly Relations and Good Neighbourly Cooperation in 1994[31] contributed to the improvement of bilateral relations, which from then on became guided by the principle of partnership and good neighbourliness.[32] However, Poland and Lithuania had varying organisational systems of national and local government administration (see Figure 2). This situation hindered the development of cooperation. The decentralisation process was different in both countries. In the initial period, the key decisions related to CBC were made by national governmental bodies. Over time, both countries saw the empowerment of local government bodies, which were given the authority to develop CBC. The creation of self-governing authorities constituted the implementation of the stipulations of the European Charter of Local Self-Government.

[31] Treaty between the Republic of Poland and the Republic of Lithuania on friendly relations and good neighbourly cooperation, signed in Vilnius on 26 April 1994 (Journal of Laws 1995, no. 15, item 71).

[32] R. Miknys, *Litwa a Polska na przestrzeni wieków*, "Krakowskie Pismo Kresowe" 2021, vol. 3, pp. 29–36.

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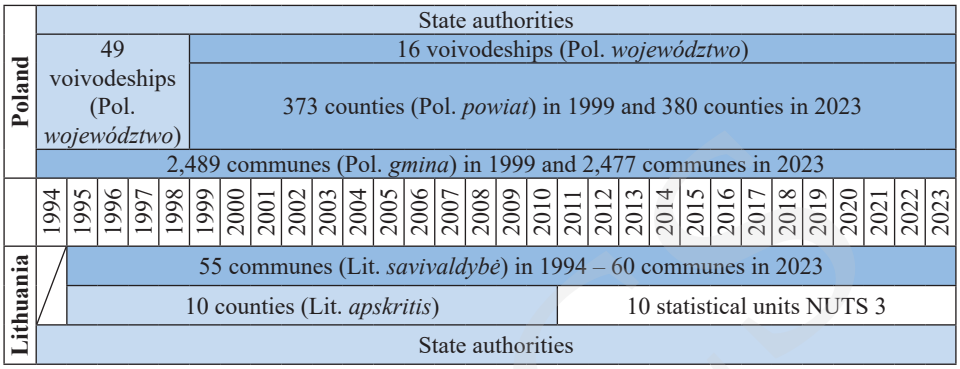


Figure 2. Organisational systems of administration in Poland and Lithuania

Source: Authors' own elaboration.

Lithuania had a post-Soviet state administration system until 1994.[33] The Lithuanian government implemented the reform in 1994 by adopting the Act of 19 July 1994 on the administrative units of the territory of the Republic of Lithuania and their boundaries[34] and establishing, thus, 55 local self-governing municipalities and 10 higher administrative units – counties. As appeared later, this division was not optimal in terms of governance, territorial boundaries and the number of residents. Counties were not proper units to replace post-Soviet *raions* in territorial as well as administrative understanding. They also did not meet the criteria of European regions.[35] Until 2010, the counties were managed by starosts (Lit. *apskrities viršininkas*) appointed by the central government. Their main duty was to ensure that local governments complied with the law. They had no major authority. Therefore, in 2010, the district administrations were dissolved, but the districts themselves were retained for statistical purposes. All the administrative functions were removed from the counties and re-distributed to either central or local government. Regional Development Councils (composed of municipal Councilors) were established in each county, claiming the right to make decisions on key issues for each region.[36]

In Poland, on the other hand, territorial reform began in 1997. A year later, the Sejm of the Republic of Poland passed two fundamental bills on administrative reform. In addition to the existing commune (Pol. *gmina*), these pieces of legislation introduced new levels of territorial division: the county (Pol. *powiat*)[37] and the

[33] L. Kraujutaityte, R. Riekasius, G. Burbulyte-Tsiskarishvili, *Territorial Decentralization in Lithuania: A Missing Continuum*, "Social Research" 2014, no. 1(34), pp. 53–62.

[34] State Gazette 1994, no. 601183.

[35] L. Kraujutaityte, R. Riekasius, G. Burbulyte-Tsiskarishvili, *op. cit*.

[36] D. Saparniene, A. Lazauskienė, O. Mejere, V. Juknevičienė, *Local Self-Government in Lithuania*, [in:] *Local Self-Government in Europe*, eds. B. Brezovnik, I. Hoffman, J. Kostrubiec, Maribor 2021, pp. 277–324.

[37] Act of 5 June 1998 on county self-government (Journal of Laws 1998, no. 91, item 578).

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voivodeship government (Pol. *województwo*).[38] At that time, Poland was divided into 49 regions, which were managed by governors (Pol. *wojewoda*) appointed by the government. In 1999, Poland introduced a new basic territorial division consisting of 16 regions and 308 counties, commonly referred to as "land counties" (Pol. *powiat ziemski*).[39] Additionally, 65 cities were given the rights granted to counties, along with their commune rights. The new territorial division and structure of public authorities were in line with the solutions adopted in European countries with a comparable population and area. This made it easier for local governments to undertake international cooperation at local and regional levels, including CBC.[40]

The agreement on CBC between Poland and Lithuania was signed in 1995.[41] State authorities committed themselves to informational and educational measures aimed at local and regional authorities with regard to the development of CBC. Local and regional authorities were granted the right to sign CBC agreements and to set up joint coordination bodies. In view of the different administrative structure of the two countries and the different competences of the local and regional administrations, the contracting parties agreed to clarify the terms "local authorities" and "regional authorities". It was also decided to set up a bilateral commission to oversee CBC.

The Polish-Lithuanian Inter-Governmental Commission for Cross-Border Co-operation commenced operation in 1996. This Commission consisted of two equal parts formed on a parity basis. The chairpersons were appointed by the governments of both countries.[42] It was decided that at least one person from Poland and one person from Lithuania would represent the regional and local authorities. It was agreed that working groups would be set up to deal with current issues. One of the tasks of the Commission became "the preparation of joint action programmes aimed at the development of cooperation between regional and local bodies of state and local government administration of the Republic of Poland and the Republic of Lithuania". The Commission was authorised to approve the joint statutes of local and regional coordination bodies.

The Polish-Lithuanian CBC was institutionalised in 1997 with the creation of the Euroregion Niemen, which encompassed the border area of Poland, Lithuania

[38] Act of 5 June 1998 on voivodeship self-government (Journal of Laws 1998, no. 91, item 579).

[39] Act of 24 July 1998 on the introduction of a basic three-stage territorial division of the state (Journal of Laws 1998, no. 96, item 603).

[40] J. Kraś, *Reforma administracji publicznej w III RP – od koncepcji do realizacji*, "Resovia Sacra" 2005, vol. 12, pp. 305–318.

[41] Agreement between the Government of the Republic of Poland and the Government of the Republic of Lithuania on cross-border cooperation signed in Vilnius on 16 September 1995.

[42] Statute of the Polish-Lithuanian Intergovernmental Commission for Cross-border Cooperation signed in Wigry on 22 June 1996.

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and Belarus.[43] The purpose of establishing the Euroregion was to develop cooperation between the border regions of the three countries. Following the start of the war in Ukraine in 2022, representatives of Poland and Lithuania restricted cooperation with partners from Russia and Belarus. Thus, CBC within the Euroregion Niemen became bilateral, covering only the Polish-Lithuanian border area.

Alongside CBC within the Euroregion Niemen, the cooperation of the communes within the Suwałki and Sejny counties with their Lithuanian neighbours intensified in the second decade of the 20th century. The turning point of this cooperation was the so-called Sejny Declaration of 2018 "on undertaking joint work enabling the Governments of the Republic of Poland and the Republic of Lithuania and the bodies of the European Union to decide on the creation of a Polish-Lithuanian cross-border functional area in order to improve the standard of living of the area's inhabitants".[44]

3. Organisation and development of the Polish-Lithuanian Cross-Border Functional Area

An analysis of the process of establishing the CFA and its development has made it possible to identify the key institutions influencing the creation and operation of this instrument. These institutions, operating at four organisational levels acting within their areas of competence, supported the development of the CFA either directly or indirectly.

1. Local level. Local governments from the Polish-Lithuanian border region played a key role in the establishment of the CFA. On the Polish side, these were the communes of Giby, Puńsk, Wiżajny, Rutka Tartak, Szypliszki and the city of Sejny, and on the Lithuanian side, the local governments (Lit. *savivaldybė*) of Lazdijai, Kalvarija and Vilkaviškis. These entities implemented a number of cross-border projects. This cooperation, however, encountered a significant barrier, which was the discrepancy between the existing EU support instruments and programmes and the needs of the inhabitants of the Lithuanian local governments in the border regions.[45] The efforts of the local authorities and experts in the project "Identification of key elements of a touristic cross-border functional area in the Lithuanian-Polish border region"[46] were an important step towards the establishment of the CFA. The project received financial and organisational support from the European Commission (DG REGIO). It enabled the delimitation of the CFA in the Lithuanian-Polish border

[43] T. Studzieniecki, *Euroregions – New Potential Destinations*, "Tourism Review" 2005, vol. 60(4), pp. 26–32.

[44] Urząd Miasta Sejny, *Raport: Nowe kierunki współpracy polsko-litewskiej*, Sejny 2018.

[45] *Ibidem*.

[46] J. Kurowska-Pysz, A. Jakubowski, E. Spiriajevas, T. Studzieniecki, *op. cit*.

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region on the basis of existing functional links (see Figure 3) and the identification of priorities and directions for the development of CBC. Based on the solutions developed as part of the project, the Polish and Lithuanian local governments signed a document in 2021 "Agreement on the Creation of a Touristic Cross-Border Functional Area 'Jatvingia – the land of the Yotvingians' in the Polish-Lithuanian border region" and, thus, formalised the creation of the CFA.



Figure 3. Delimitation of the Lithuanian-Polish Cross-Border Functional Area

Source: Authors' own elaboration.

2. Regional level. The Podlaskie Region's local authorities were not directly involved in the formation of the CFA. However, they did participate in a number of meetings organised in the Polish-Lithuanian border region. They did support the initiative, which was due to the fact that the development of CBC of Polish local governments with border regions of Lithuania was included in the "Priorities of Foreign Cooperation of the Podlaskie Voivodeship".[47] The document stated that the foreign cooperation of the Podlaskie region will focus on the continuation of relations with the border regions of Lithuania.

[47] Resolution No. XXXVII/480/06 of the Sejmik of the Podlaskie Voivodeship of 10 April 2006 on the Priorities of Foreign Cooperation of the Podlaskie Voivodeship.

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3. National level. The state authorities of the Republic of Poland, primarily the Ministry of Foreign Affairs, contributed significantly to the creation of the CFA. In 2018, the Polish Ministry of Foreign Affairs and the city of Sejny signed an agreement on the implementation of the public task "Support for the local government and civic dimensions in Polish foreign policy 2018".

The communication priority of the Ministry of Foreign Affairs which was used was "Poland is a leader in joint regional projects, in particular building agreements and sustainable regional relations with partners from the European neighbourhood and cooperation at the local government level for the creation of partnerships between cities in the field of culture and education".[48] As part of the public task, a wide-ranging public consultation was carried out, a diagnosis of the state was prepared and priorities for CBC were defined; the creation of a CFA was among these priorities.

4. European Union level. The European Commission supported the initiative to create a CFA with substantive information and with funding. It engaged experts who were commissioned to carry out the project aimed at establishing a CFA. Moreover, the leaders of the European Commission Representation in Lithuania and Poland actively participated in meetings and conferences organised by experts and local governments of the Lithuanian-Polish border region. Some of these events were held under the patronage of the leaders of EC Representations.[49]

The development of the CFA took place in several stages. Following an analysis of existing possibilities and conditions, an organisational structure was designed to ensure the coordination of CBC. The applicable legal regulations and provisions resulting from the Agreement establishing the CFA were taken into account.

The content of the Agreement referred to the following two basic legal regulations: (1) the 1980 European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities, and (2) the 1995 Agreement between the Government of the Republic of Poland and the Government of the Republic of Lithuania on cross-border cooperation.

The aforementioned Agreement establishing the CFA regulated such issues as the CFA's proper name, territorial scope, operational objectives, organisational structure and final provisions. As a result of public consultations and an analysis of the CFA's potential, it was decided that the name would take into account the leading role of the touristic function and the uniqueness of the Jaćwieski heritage associated with the Polish-Lithuanian border region. The full name Polish Lithuanian Touristic Cross-Border Functional Area "Jatvingia" appeared in two equivalent versions: Polish and Lithuanian. In order for a Polish or Lithuanian territorial local government unit to join the agreement on the establishment of the CFA, the consent

[48] Urząd Miasta Sejny, *op. cit.*, p. 4.
[49] *Ibidem*, p. 33.

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of the legislative body was required and the document had to be signed by a duly authorised representative of the local government in question.

The design of the organisational structure drew on previous practices employed in Euroregional cooperation in both countries. The organisational structure (see Figure 4) ensured flexibility in cooperation and minimised bureaucracy. It included bodies of the following nature:

- programmatic and control (the Council, which included representatives of all the territorial local government units from Poland and Lithuania that are part of the CFA);
- executive (Presidium composed of one representative from both the Polish and Lithuanian sides);
- technical (secretariats in Poland and Lithuania providing technical services).

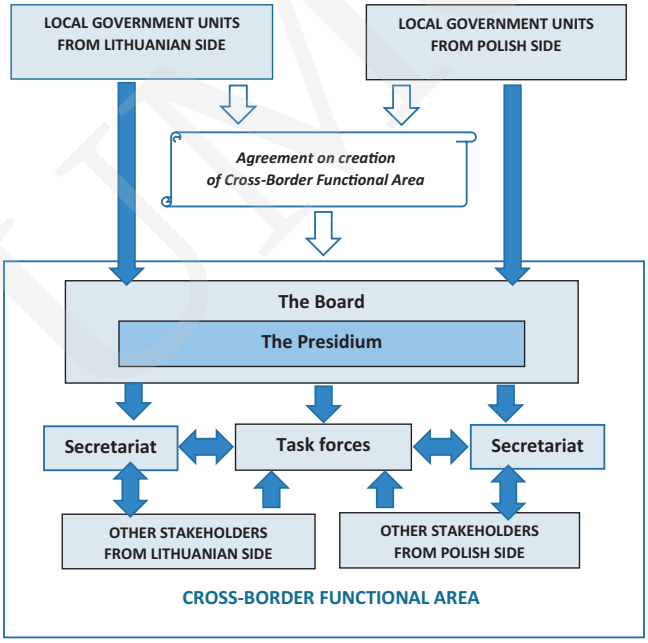


Figure 4. Organisational structure of the Cross-Border Functional Area

Source: Authors' own elaboration.

In order to include key stakeholders (economic sector, social sector, state and local administration) in the cooperation, the organisational structure was supplemented by cross-border task forces – appointed and disbanded by the CFA Council as needed.

With a view to the beginning of the new financial prospects of the European Union 2021–2027, the adoption of the Agreement on the establishment of the CFA in 2021 became an important step in the process of preparing, and subsequently implementing, the objectives of the CFA's activities, including cross-border projects and ventures.

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DISCUSSION AND CONCLUSIONS

The CFA is a spatial and organisational category. It should be understood as a specific spatial arrangement located on two (or more) sides of the national border, determined by cross-border functional connections resulting from common and/or integrating spatial or socio-economic features. The delimitation of a CFA has a key impact on its functioning. It must be based on functional connections taking into account the administrative boundaries of the territorial local government units of the neighbouring countries, as these units are the key stakeholders of CFAs playing a leading role in their development.

There is no legal definition of a CFA in either international or national law in Poland and Lithuania. For stakeholders, this situation is, on the one hand, a formal barrier[50] and, on the other hand, an opportunity to establish an optimal organisational structure that functions in accordance with the applicable law and facilitates cooperation and the securing of EU funding.

At the same time, a CFA can be interpreted as an organisational and legal instrument supporting CBC. From a legal point of view, a necessary prerequisite for the establishment of a CFA is the agreement of the local government's legislative body and the signing of a document establishing a CFA by a duly authorised representative of that local government. The agreement establishing a CFA is a kind of multilateral agreement on CBC of territorial local government units, the signing of which does not require the approval of the Ministry of Foreign Affairs.[51] Such approval would be necessary if the CFA were to acquire the status of an international organisation comprising local and regional communities[52] (e.g. if it were to acquire the status of a Euroregion).

The Agreement on the establishment of the Lithuanian-Polish Cross-Border Touristic Functional Area has the character of a target agreement.[53] It identifies objectives involving the use of the leading function of the CFA, which is the tourism function. Cross-border tourism requires multi-level cooperation[54]. A flexible management structure ensures the achievement of objectives and creates opportunities for cooperation with stakeholders in the border region and for obtaining EU funding.

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[50] J. Ładysz, *Spójność terytorialna Unii Europejskiej a transgraniczny rozwój zintegrowany*, "Prace Naukowe Uniwersytetu Ekonomicznego we Wrocławiu" 2014, vol. 339, pp. 76–88.

[51] Interview with a representative of the Ministry of Foreign Affairs conducted by phone on 26 June 2023.

[52] Act of 15 September 2000 on the rules of accession of local government units to international associations of local and regional communities (Journal of Laws 2000, no. 91, item 1009).

[53] S. Faliński, *Współpraca międzynarodowa polskich miast i gmin*, Warszawa 2019.

[54] T. Studzieniecki, A. Jakubowski, B. Meyer, *Transnational Tourist Destination Management: A Case Study of the Baltic Sea Region*, "Baltic Region" 2020, vol. 12(3), pp. 127–146.

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The establishment of the CFA should be seen in a broader perspective. The bottom-up initiative of local governments in the Polish-Lithuanian border region was supported by the governments of both countries and by EU institutions. The general legal framework for CBC of local government units was used. Interstate agreements were important, leading to the establishment of the Polish-Lithuanian Intergovernmental Commission for Cross-Border Cooperation. This Commission has taken a number of measures to foster cooperation between local and regional authorities. It should be noted that territorial local governments in Eastern Europe were established relatively recently. Therefore, the first cross-border initiatives in the Polish-Lithuanian border region were undertaken by state government bodies. Over time, local self-governments became more empowered. However, the different administrative systems and differing competences of the Polish and Lithuanian local governments hindered CBC. The European Union supported the establishment of the CFA in an unprecedented way. This was due to the fact that it was the only initiative whose implementation was a kind of testing ground.

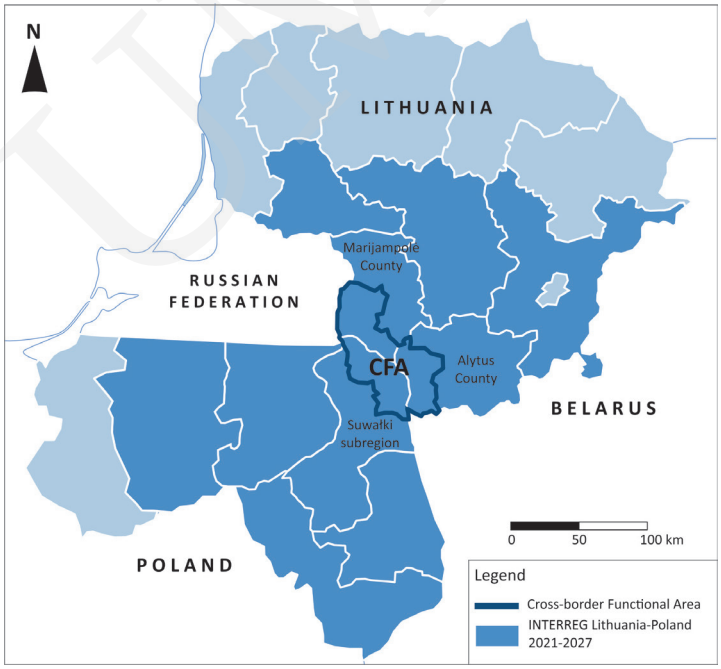


Figure 5. Touristic Cross-Border Functional Area "Jatvingia" as compared to the INTERREG Lithuania-Poland 2021–2027 Programme support area

Source: Authors' own elaboration.

Important for the development of the analysed CFA is the fact that it is entirely within the scope of support of the INTERREG Lithuania-Poland Programme (see

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Figure 5).[55] In a document of the aforementioned programme, the established CFA is presented in the context of good practices. Furthermore, it is emphasised that "there is room for creation of functional areas and links in the future".[56]

The European Parliament's rejection of the Committee of the Regions' proposal that CFA should be directly eligible to absorb aid funds under INTERREG programmes has reduced the power of this instrument and thus the interest of communes in setting up such cross-border structures. Regarding the funding of CBC, the European Union gives preferential treatment to EGTCs.[57] This is why the founders of the CFA "Jatvingia" have taken steps to establish such a structure.[58] As a European legal entity, the EGTC has a strong mandate in European and national law. However, it does have its limitations preventing the inclusion of a range of stakeholders, including economic entities and NGOs.

The hypotheses put forward by the authors were positively verified in relation to the Polish-Lithuanian cross-border region. The importance of functional connections in territorial cooperation is sufficiently significant to warrant further research on the institutionalisation of cooperation within cross-border functional areas. The experience of the CFA in the Lithuanian border region may have significant theoretical and practical applications.

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[55] Decision of European Commission on INTERREG Programme Lithuania-Poland 2021–2027 (CCI 2021TC16RFCB030).

[56] *Ibidem*.

[57] T. Studzieniecki, *The Determinants of EGTC Development in Poland*, "Optimum. Economic Studies" 2016, vol. 3(5), pp. 75–95.

[58] Draft resolution of the Puńsk Commune Council of 29 November 2022 on the accession of the Puńsk Commune to the European Grouping of Territorial Cooperation entitled "Polish-Lithuanian Cross-Border Functional Area" with limited liability.

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ABSTRAKT

Rozwój współpracy transgranicznej w Unii Europejskiej wymaga doskonalenia instrumentów organizacyjno-prawnych wspierających współpracę władz lokalnych i regionalnych sąsiadujących obszarów przygranicznych. Jednym z takich instrumentów może być Transgraniczny Obszar Funkcjonalny (TOF). Autorzy artykułu byli realizatorami pionierskiego projektu zleconego przez Komisję Europejską, którego celem było powołanie na pograniczu polsko-litewskim pierwszego w Europie TOF. Obszar ten obejmował dziewięć miast i gmin z powiatów sejneńskiego i suwalskiego w Polsce oraz trzy samorządy litewskie: Łoździeje (lit. Lazdijai), Wyłkowyszki (lit. Vilkaviškis) i Kalwarię (lit. Kalvarija). Celem głównym artykułu jest identyfikacja atrybutów TOF jako instrumentu organizacyjno-prawnego wspierającego rozwój współpracy transgranicznej. Celem dodatkowym jest wskazanie i omówienie kluczowych determinant organizacyjno-prawnych rozwoju TOF na pograniczu polsko-litewskim. Artykuł ma charakter naukowo-badawczy. Scharakteryzowano w nim TOF na tle innych instytucjonalnych form współpracy transgranicznej, omówiono podstawy prawne utworzenia TOF, przedstawiono strukturę organizacyjną i zidentyfikowano kluczowych interesariuszy. Brak definicji prawnej TOF utrudnia, ale nie uniemożliwia stosowania tego instrumentu we współpracy transgranicznej. Znaczenie powiązań funkcjonalnych w relacjach transgranicznych w Unii jest na tyle istotne, że wskazana jest realizacja dalszych badań dotyczących instytucjonalizacji współpracy w ramach transgranicznych obszarów funkcjonalnych.

Słowa kluczowe: współpraca transgraniczna; obszar funkcjonalny; Unia Europejska; Polska; Litwa