

Legal Instruments for the Collaboration of Divided Cities with Polish Constituents in Municipal Services Management

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Abstract

One of the principal tasks of regional and local authorities in any state is to manage municipal services for the people living in the area. In the case of divided cities, or cities intersected by national borders, municipal services are, in principle, provided separately for the residents of each state. The author presents a definition of divided cities and the matter of potential collaboration between such cities in the area of joint management of municipal services. The article also attempts to answer the question, among others, what legal instruments may be applied in this respect and what benefits would be brought by municipal collaboration between divided cities. Furthermore, the author presents the current status of collaboration between divided cities in the area concerned.

Keywords: *Municipal services management; municipal company; regional and local authorities; divided cities; cross-border collaboration*

Introduction

The results that international conflicts and state breakups of the 20th century produced included relatively frequent shifts of national borders. That led to the formation of so-called divided cities on the borders, which had once constituted a whole but were artificially split apart because of an unstable political situation, in particular in consequence of two world wars and breakups of certain countries in Central and Eastern Europe (Kulczyńska, 2013: 47-48).

The relatively new term of divided cities is derived from the notion of twin towns, which was used to refer to directly neighbouring towns (Zenderowski, Brzezińska, 2014: 165, Schultz, 2002: 4-5). It is even believed that divided cities may be labelled “genuine twin towns”, as their names, in consequence of various historical experiences, are most often similar and recognisable in both languages, e.g. Cieszyn and Český Těšín (Schultz, 2004: 163).

Divided cities are characterised by two features in particular: their mutual heritage and immediate geographical proximity (Szalbot, 2011: 143, Schultz, 2002: 4-5). Whenever permitted by the political situation, these cities naturally collaborated with each other in social and economic dimensions. One might even say that in this respect, they were ahead of a certain trend to establish so-called sister cities, the European sister city network encompassing more than 20,000 cities today. If this integration should make a substantial step forward, divided cities might face an opportunity once more to form a single urban organism, which may be labelled “connected cities” (although in science this term is sometimes restricted to refer to

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the integration of two different urban locations which had not constituted a whole before) (Zenderowski, Brzezińska, 2014: 166, Jańczak, 2013: 266).

Subject matter and aim, research methods

This article aims to discuss the legal grounds for international collaboration between divided cities in the area of municipal services management, and to see what kind of municipal companies operate in divided cities with Polish constituents and whether there are any municipal companies in those cities whose shares would be held by entities from different countries. The analysis also sheds light on the legal options that divided cities may utilise in order to manage municipal services on a joint basis, and points out the advantages of such solutions being used.

The study was based on an analysis of Polish and EU regulations in terms of options available to entities from different countries in the area of joint management of municipal services (legal-dogmatic method) and an analysis of public information published by the authorities of divided cities regarding the municipal companies in place (empirical method). The principal points of interest while applying the empirical method included: the legal status of municipal companies in which divided cities hold shares, their ownership structure (with particular emphasis on international constituents), the tasks assigned to such companies.

Furthermore, the article also presents other potential forms of collaboration of borderland cities and regions and sheds some light on their legal format.

Divided cities with polish constituents and their municipal services management

According to the available knowledge, there are a dozen-odd divided cities in the European Union. For the purpose of this study, the cities were selected that meet all of the following conditions:

- 1) they have a Polish constituent (one of the cities is Polish);
- 2) their combined population is at least 20 thousand;
- 3) each city's individual population is at least 10 thousand

These conditions are met by four pairs of divided cities situated on the Polish-German and Polish-Czech borders. They are presented in Table 1 below:

Table 1. EU divided cities that have Polish constituents, combined populations of at least 20,000, and individual populations of at least 10,000 (Kulczyńska, 2013: 51)

State 1	City 1	#	City 2	State 2
<i>Poland</i>	Słubice	1	Frankfurt an der Oder	<i>Germany</i>
<i>Poland</i>	Gubin	2	Guben	<i>Germany</i>
<i>Poland</i>	Zgorzelec	3	Goerlitz	<i>Germany</i>
<i>Poland</i>	Cieszyn	4	Český Těšín	<i>Czechia</i>

In the present paper, the author would like to raise the issue of formal collaboration between these cities in the area of municipal services, analysing whether such co-working is possible and whether it occurs in practice.



Municipalities and cities are required to look after the interests of their local communities. Under the laws of Poland, where certain tasks are performed by regional or local self-government authorities in order to satisfy the collective needs of the self-governing community, which includes in particular public service tasks focused on satisfying people's collective needs on a regular and uninterrupted basis by way of providing generally available services, it is known as municipal services management. That includes, but is not limited to: healthcare, education, public safety, water and waste management, technical services (electricity, heat), and public transport (Dolnicki, 2021: art. 7). Notably, the foregoing is a global list, which is applied throughout the developed international community.

In subjective terms, municipal services management primarily concerns regional and local self-government authorities, as they are in charge of conducting municipal services management and responsible for exercising municipal services management. The Polish adjective “komunalny” (municipal) is derived from the French word *communal*, which denotes community, historically referring to townships. The word “commune” designated an organisation of townsmen in medieval Europe. However, municipal services refer to all levels of regional and local self-government (Banasiński, Jaroszyński, 2017: 18).

Just as Polish regulations, German municipal regulations in objective terms presume that any regional or local self-government authority should be capable of performing its public tasks in the area of municipal services independently, while geographically de-concentrated tasks ought to be assigned to entities situated at the same level in the organisational structure of public administration (Zimmermann, 1999: 75). In subjective terms, it must be borne in mind that the Federal Republic of Germany is a country of dualist nature, which consists of a federation and constituent states (German: *Land*), which are divided, in simplest terms, into districts (German: *Kreis*, *Landkreis*) and municipalities (German: *Gemeinde*) (Maurer, 2003: 298, Miemiec, 2015: 253). German regional and local self-governments are structural constituents of the federal states, components of the national administration in a broader meaning (v. Unruh, 1974: 654).

The Czech legal system, in turn, presumes that tasks related to municipal services should be performed by municipalities (Czech: *obec*; there are three types of those: “regular”, with extended competencies, and with a supervisory body) and towns or cities unless they are reserved by law to regions (Czech: *kráj*) (Kubas, 2015: 131).

The Polish divided cities presented in Table 1 form or co-form the following municipal companies.

The question thus arises: do local authorities in the borderland collaborate with each other in the area of municipal services? The answer to this question is not as clear as it would be in the case of local authorities operating on the same side of the national border.

Table 2. Municipal companies of the divided cities listed in Table 1

City	Municipal Companies
1. Słubice	(1) Kostrzyńsko-Słubicka Specjalna Strefa Ekonomiczna S.A. (joint-stock company), (2) <u>Investor Center Ostbrandenburg GmbH - Betreiber des World Trade Centers Frankfurt (Oder) - Słubice</u> (3) Zakład Usług Wodno-Ściekowych sp. z o.o. (limited company), (4) Przedsiębiorstwo Usług Komunalnych sp. z o.o. (limited company), (5) Słubicki Ośrodek Sportu i Rekreacji sp. z o.o. (limited company)
2. Gubin	(1) Kostrzyńsko-Słubicka Specjalna Strefa Ekonomiczna S.A. (joint-stock company), (2) Przedsiębiorstwo Usług Miejskich sp. z o.o. (limited company), (3) <u>Przedsiębiorstwo Oczyszczania Ścieków Gubin-Guben sp. z o.o. (limited company)</u> , (4) Regionalne Towarzystwo Budownictwa Społecznego sp. z o.o. (limited company), (5) Zakład Zagospodarowania Odpadów sp. z o.o. (limited company)
3. Zgorzelec	(1) Zgorzeleckie Przedsiębiorstwo Energetyki Ciepłej sp. z o.o. (limited company) (2) Przedsiębiorstwo Wodociągów i Kanalizacji „NYSA” sp. z o.o. (limited company), (3) Miejskie Przedsiębiorstwo Gospodarki Komunalnej sp. z o.o. (limited company), (4) Przedsiębiorstwo Zarządu Nieruchomościami sp. z o.o. (limited company), (5) Centrum Sportowo-Rekreacyjne sp. z o.o. (limited company), (6) Zgorzeleckie Towarzystwo Budownictwa Społecznego sp. z o.o. (limited company)
4. Cieszyn	(1) Zakład Budynków Miejskich sp. z o.o. (limited company), (2) Zakład Gospodarki Komunalnej sp. z o.o. (limited company), (3) Wodociągi Ziemi Cieszyńskiej sp. z o.o. (limited company), (4) Energetyka Cieszyńska sp. z o.o. (limited company)

Joint municipal companies of the divided cities studied

Although local authorities' own tasks are frequently performed through commercial companies, divided cities, in principle, choose not to collaborate with their cross-border neighbours in this way. This is surprising because such collaboration would bring a number of advantages, including, but not limited to, greater investment and human capital and, consequently, a better economic result, streamlined performance, higher chances of obtaining external funding.

As literature emphasises, the basic motive for regional and local authorities to collaborate in the area of municipal services is their desire to reduce the cost of delivering such services through the benefit of scale. This can be achieved by utilising the union's bargaining power because, for example, if a certain service is to be delivered to a greater area, better prices may be obtained. Operating together also makes it possible to collect greater funds, and thus to generate a provision for mutual operation, to reduce fixed costs, to be able to hire professionals. Furthermore, the increased potential of a joint company run by divided cities would make it possible to increase the scope of its services by adding such as are unavailable to two smaller companies (Ławińska, Wolniakowska, 2007: 291-293).

In spite of this, according to the details published in the Public Information Bulletins (Polish: *Biuletyn Informacji Publicznej*) of the Polish divided cities, only two of the divided cities have



chosen to manage municipal services in actual collaboration with their cross-border partners. Those are Gubin (working together with Guben within Przedsiębiorstwo Oczyszczania Ścieków Gubin-Guben sp. z o.o.) and Slubice (working together with Frankfurt an der Oder within Investor Center Ostbrandenburg GmbH - Betreiber des World Trade Centers Frankfurt (Oder) - Slubice). The names of these companies are underlined in Table 2.

Przedsiębiorstwo Oczyszczania Ścieków Gubin-Guben sp. z o.o., which is mentioned above, was registered in the National Court Register by two shareholders: Guben Water and Wastewater Special Purpose Association (10 shares with a total value of PLN 100,000) and the city of Gubin (5 shares with a total value of PLN 50,000), and it has been active since 1994. Each city is represented by one member in the management board of the company and by two members in its supervisory board.

The company's operations basically cover regular municipal services, such as urban wastewater treatment and waste disposal in the territories of the divided cities. Besides, the company's tasks also include, but are not limited to, the assembly, repair and maintenance of machines, the installation of electrical systems in buildings, road cargo transport, and continuing education of adults.

The other instance of divided cities' cooperation is the German company Investor Center Ostbrandenburg GmbH - Betreiber des World Trade Centers Frankfurt (Oder) - Slubice, which the city of Slubice joined in 1992. In spite of it being a municipal company, it notably does not perform the usual and most common municipal services for the residents, but it was established in order to "provide services aimed at supporting economic development of the region, regardless of political, religious or ideological opinions". The company's tasks include, among others: supporting international economic development of the region of Brandenburg, intermediation in contacts with customers, business marketing, investment support. Therefore, its operations involve promoting business and trade, which, under Art. 2.2 of the Brandenburg Municipality Act, is an own task of the municipality.

Currently, the city of Slubice is a minority shareholder holding shares with an aggregate value of PLN 5,521 (less than 4%), and the city of Frankfurt an der Oder holds shares with an aggregate value of EUR 48,800 euro. The company operates under a licence granted by The World Trade Center Association of New York.

As a fun fact to highlight the social aspect of the divided cities' collaboration in the area of joint municipal services management, reference may be made to the studies that described how the terms "Slubfurt" and "Gubien" became coined in the course of that collaboration. The cities' nicknames, in which Polish and German elements are combined, were formed to accentuate the fact that although the circumstances have changed, the divided cities can still form a single organism, as they once did, in terms of urban management, the economy, and the awareness of the local population (Konopacki, 2009: 181).

Other potential forms of divided cities' collaboration

European Groupings of Territorial Cooperation (EGTC)

The EU instruments designed to facilitate cooperation between borderland cities include the relatively new concept of European Groupings of Territorial Cooperation (EGTC), which also turns out to be of most interest to this study. The concept was regulated by the Regulation

of the European Parliament and of the Council of 5 July 2006 on a European grouping of territorial cooperation (EGTC) (hereinafter also: the Regulation), in order to overcome the obstacles hindering territorial cooperation, because previous instruments (such as, e.g. European economic interest groupings) had not been fully equipped to shape organised collaboration between regional and local authorities.

The European Grouping of Territorial Cooperation is a transnational institution that has legal personality. Under Art. 3 of the Regulation, an EGTC is made up of members, within the limits of their competences under national law, belonging to one or more of the following categories: EU Member States or state level authorities, regional authorities (e.g. voivodeships), local authorities (e.g. districts, municipalities), public enterprises within the meaning of Art. 2(1) letter b) of Directive 2004/17/EC of the European Parliament and of the Council, bodies governed by public law within the meaning of Art. 1(9) of Directive 2004/18/EC of the European Parliament and of the Council (e.g. higher education institutions, cultural institutions), enterprises required to perform services in the general economic interest (e.g. municipal companies), and certain state, regional or local authorities, or entities or enterprises from third countries.

The opinion of the doctrine differs as to whether the European Grouping of Territorial Cooperation could, under the laws of Poland, be used directly by divided cities to carry out tasks related to municipal services on a joint basis. According to Art. 2 of the Municipal Services Management Act, such management may be carried out by regional and local authorities, in particular using the form of local government budgetary establishments (Polish: *samorządowy zakład budżetowy*) or commercial companies (limited or joint-stock). Although the regulation formulates an open list of potential forms, it is not a random list and it must also follow from other laws and regulations that govern this matter (Banasiński, Jaroszyński, 2017: art. 2). The laws of Poland do not provide for the option to manage municipal services through European Groupings of Territorial Cooperation, yet certain options are enabled (however not clearly) by the laws of the EU.

The Regulation, in Sections 10-13 of its Preamble, briefly states that the tasks and competencies of a European Grouping of Territorial Cooperation are to be set out in a convention (a document adopted unanimously by its members, specifying, among others, the organisation, duration and the conditions governing dissolution of an EGTC), and those may not include the powers of local authorities in their capacity of public authorities, in particular police and regulatory powers, justice and foreign policy.

In accordance with Art. 7 of the Regulation, a European Grouping of Territorial Cooperation may carry out the tasks given to it by its members (including local government authorities) and involving the facilitation of and support for territorial cooperation to strengthen economic, social and territorial cohesion and to overcome barriers on the internal market. The tasks of an EUWT may concern primarily implementation of cooperation programmes or parts thereof, or implementation of operations supported by the European Union through the European Regional Development Fund, the European Social Fund or the Cohesion Fund.

In practice, the European Groupings of Territorial Cooperation established in Poland are of limited significance in the context of regions' or cities' joint management of municipal services. Their operations tend to focus on facilitating and supporting cooperation between their members in order to strengthen economic and social cohesion, in particular through the



implementation of territorial cooperation programmes or projects. Although joint management of municipal services would not be contrary to the objective of European Groupings of Territorial Cooperation, there are no current plans to broaden the scope of cooperation and embrace that area. The territorial span of these entities is not an advantage in this respect, either, as communal services are usually rendered in smaller areas.

Currently there are four EGTCs with Polish membership:

Table 3. European Groupings of Territorial Cooperation with Polish membership

European Grouping of Territorial Cooperation	Members
1. Europejskie Ugrupowanie Współpracy Terytorialnej Tritia z ograniczoną odpowiedzialnością z siedzibą w Cieszynie	1. Silesian Voivodeship (<i>Województwo Śląskie</i> , Poland) 2. Opole Voivodeship (<i>Województwo Opolskie</i> , Poland) 3. Moravian-Silesian Region (<i>Moravskoslezský Kraj</i> , Czechia) 4. Žilina Region (<i>Žilinský Kraj</i> , Slovakia)
2. Europejskie Ugrupowanie Współpracy Terytorialnej Tatry z ograniczoną odpowiedzialnością z siedzibą w Nowym Targu	1. Tatry Euroregion Association (<i>Związek Euroregion „Tatry”</i> , Poland) 2. Tatry Region Association (<i>Združenie Región „Tatry”</i> , Slovakia)
3. Europejskie Ugrupowanie Współpracy Terytorialnej Środkoeuropejski Korytarz Transportowy z ograniczoną odpowiedzialnością z siedzibą w Szczecinie	1. West Pomeranian Voivodeship (<i>Województwo Zachodniopomorskie</i> , Poland) 2. Lubuskie Voivodeship (<i>Województwo Lubuskie</i> , Poland) 3. Vas County (<i>Vas Megye</i> , Hungary) 4. Zala County (<i>Zala Megye</i> , Hungary) 5. Skania Region (<i>Skåne Län</i> , Sweden)
4. Europejskie Ugrupowanie Współpracy Terytorialnej Novum z ograniczoną odpowiedzialnością z siedzibą w Jeleniej Górze	1. Lower Silesian Voivodeship (<i>Województwo Dolnośląskie</i> , Poland) 2. The Association of Polish Municipalities of Glacensis Euroregion (<i>Stowarzyszenie Gmin Polskich Euroregionu Glacensis</i> , Poland) 3. The Association of Polish Municipalities of Nysa Euroregion (<i>Stowarzyszenie Gmin Polskich Euroregionu Nysa</i> , Poland) 4. Liberec Region (<i>Liberecký kraj</i> , Czechia) 5. Hradec Králové Region (<i>Královéhradecký Kraj</i> , Czechia) 6. Pardubice Region (<i>Pardubický Kraj</i> , Czechia) 7. Olomouc Region (<i>Olomoucký Kraj</i> , Czechia) 8. Nysa Euroregion – Regional Association (<i>Regionální sdružení Euroregion Nisa</i> , Czechia) 9. The Borderland Euroregion of Bohemia, Moravia and Klodzko Land – Glacensis Euroregion (<i>Euroregion Pomezí Čech, Moravy a Kladska - Euroregion Glacensis</i> , Czechia)

Euroregions

Besides European Groupings of Territorial Cooperation, European regulations provide for another formal institution of transnational cooperation between regional and local self-government authorities. Based on a number of international treaties and arrangements (including, but not limited to the Madrid Convention, the European Charter of Local Self-Government), which resulted from tightening partner relations between European countries towards the end of the 20th century, transfrontier cooperation areas are established, known as Euroregions (Gomólka, 2006: 73).

Euroregions are intended to support entrepreneurship, tourism, culture and transfrontier trade, to support links between urban and rural areas, to develop collaboration, talents and mutual use of infrastructures, to support and improve joint protection of natural and cultural resources and to manage those on a joint basis (Perkowski, 2010: 28).

Just as with European Groupings of Territorial Cooperation, the laws of Poland do not clearly provide for an option for Euroregions to perform municipal services, yet the list of forms available is open. Another difficulty, unlike in the case of EGTCs, is that the activity of Euroregions is not solely based on EU laws but also on number of international treaties. Currently, no such services are carried out by Euroregions but a study proposing such a hypothesis would be recommended.

Local authorities in EU member states often use Euroregions to collaborate across national borders: currently there are 81 such entities, and 16 with Polish constituents:

Table 4. Euroregions with Polish membership (Gwizdała, 2015: 455).

Euroregion	Members
1. Euroregion Nysa	Poland – Germany – Czechia
2. Euroregion Karpacki	Poland – Ukraine – Slovakia – Hungary – Romania
3. Euroregion Sprewa-Nysa-Bóbr	Poland – Germany
4. Euroregion Pro Europa-Viardina	Poland – Germany
5. Euroregion Tatry	Poland – Slovakia
6. Euroregion Bug	Poland – Ukraine
7. Euroregion Promerania	Polska – Germany – Sweden
8. Euroregion Glacensis	Poland – Czechia
9. Euroregion Niemen	Poland – Belarus – Lithuania – Russia
10. Euroregion Pradziad	Poland – Czechia
11. Euroregion Bałtyk	Poland – Denmark – Lithuania – Latvia – Russia – Sweden
12. Euroregion Śląsk Cieszyński	Poland – Czechia
13. Euroregion Silesia	Poland – Czechia
14. Euroregion Beskidy	Poland – Slovakia
15. Euroregion Puszcza Białowieska	Poland – Belarus
16. Euroregion Łyna-Ława	Poland – Russia



Conclusion

Although local authorities of divided cities are permitted by law to perform tasks related to municipal services on a joint basis and the advantages of such international collaboration are evident, Polish local authorities have chosen this solution in but one instance. More in-depth research would be required to examine the reasons behind this situation and other related circumstances.

How Gubin and Guben collaborate to manage municipal services on a joint basis and how Slubice and Frankfurt an der Oder do it, to a lesser extent, in the area of joint performance of other public tasks may be an example and an impulse for actual and legal steps to be taken by other divided cities and, even more broadly, other borderland cities.

In the Polish legal framework it is not clear whether European Groupings of Territorial Cooperation (EGTCs) and/or Euroregions may be given the competence to manage municipal services by their constituent local authorities. As these forms of collaboration are frequently used in Poland, steps should be taken in order to have this matter regulated precisely by the Municipal Services Management Act or the European Grouping of Territorial Cooperation Act.

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