

## **THE ISSUE OF THE INTERNATIONAL LEGAL PERSONALITY OF SUB-NATIONAL UNITS OF THE EU MEMBER STATES (A CASE STUDY OF GERMAN SUB-FEDERAL UNITS)**

Yakoviyk I.V.<sup>1</sup> Smyrnova K.<sup>2</sup> Tragniuk O.Y.<sup>3</sup> Donets A. A.<sup>4</sup> Shestopal S.S<sup>5</sup>

<sup>1</sup>Ivan V. Yakoviyk, Doctor of Law, Full Professor of the Department of International Law, Yaroslav Mudryi National Law University, Kharkiv, Ukraine  
sir5@ukr.net

<sup>2</sup>Kseniia Smyrnova, Doctor of Jur. Sciences (Dr.hab.), Professor, Department of Comparative and European Law, Institute of International Relations Taras Shevchenko National University of Kyiv  
kseniya.smyrnova@gmail.com

<sup>3</sup>Olesia Y. Tragniuk, PhD in Legal sciences, Docent of the Department of International Law, Yaroslav Mudryi National Law University, Kharkiv, Ukraine

<sup>4</sup>A. A. Donets, PhD in Legal sciences, Assistant professor of the Department of International Law, Yaroslav Mudryi National Law University, Kharkiv, Ukraine

<sup>5</sup>Sergey S. Shestopal, PhD in Legal sciences, Docent of Law Department, Vladivostok State University Of Economics And Service, Vladivostok, Russia  
ss.shestopal@ya.ru

### **ABSTRACT**

The objective of the research is to determine the peculiarities of the international legal status of sub-national units of the EU member states, and the specifics of their rights exercised within the European Union. German sub-federal units are used as a case study to explore these issues. Therefore, the research is based on inductive reasoning, comparison and theoretical modeling. The dialectical method is used to analyze connections between the scope of international competence of sub-federal units according to their domestic law and the peculiarities of their international legal personality exercise. The comparative method is used to identify the correlations in the regulation of the sub-national units' status under domestic and international law. The system-structural method is used to "locate" sub-federal units among other participants in international relations. Attention is focused on examining preconditions, leading to intensified sub-national activity on the international level. Particularly, such factors as integration, regionalization and increased economic interdependence between states force them to build a flexible management system in order to effectively meet regional and national demands, including those that can be best satisfied through international cooperation. The international legal personality of sub-federal units is analyzed through generalization different doctrinal approaches to this issue. It is stated, that traditional approaches consider the federation itself a subject of international law, excluding the possibility of the limited legal personality of its sub-federal units despite their actual participation in international relations. However, recognition of sub-national units, and in particular sub-federal units, as a separate category of participants of international relations, endowed with an autonomous will, allows assuming that they are bearers of the international legal personality of a nature differing from a state's personality nature. Determination of the way sub-national units' realize their international legal personality the EU is based on the case study of German sub-federal units. It is concluded that German sub-federal units realize their international legal personality by means of concluding international agreements on their behalf within their jurisdiction, taking part in various regional programs of cross-border cooperation, establishing representatives in the EU, as well as associations with other EU regions, and joining the decision-making process in the EU through Committee of the Regions Determining legal bases and peculiarities of exercising sub-national units' international rights helps to establish clear limits to their international legal status in the context of deepening global integration processes. Such analysis will also help to predict further development of sub-national units' international behavior and to prevent potential problems associated with such development.

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## **INTRODUCTION**

Legal personality is a fundamental category in the theory of law and the central element of each of its branches. At first glance, the purely theoretical issue of the international legal personality of certain international players is, in practice, the question of the legitimacy of their participation in international relations; of the right to influence them; and their efficiency in protecting their interests. In contemporary international law, the participation of sub-national units (particularly sub-federal units) in international relations is one of the most controversial issues.

Intensification of international activity of the states' sub-national units, especially within the European Union, can be regarded as evidence of the evolution of their legal status for purposes of international law. Not prohibited and yet not properly regulated, their activities turn out to be in the "gray zone" of international law. Sub-national units themselves are in fact participants of international relations governed by international law but at the same time are not recognized as their subjects. The above leads to a number of problems. On the one hand, international activity of sub-national units is sanctioned primarily by the domestic law of a state, which can cause conflicts due to different states' competing domestic legal regulations. On the other hand, activities of some sub-national units, such as German Federal States (hereinafter *Länder*), go beyond the constitutionally established limits. Given the above, the non-recognition of the international legal personality of sub-national units excludes them from the scope of international legal regulation and can cause several problems, including: precluding sub-national units liability under international law; discrediting the state as a whole because of the unregulated actions of state's units; facilitating undesirable relations or foreign influence between sub-national units and other international players; and heightening the potential for separatist tendencies through the central government's failure to address sub-national units' desire for international cooperation.

The objective of the research is to determine the peculiarities of the international legal status of sub-national units of the EU member states and the specifics of their rights exercised within the European Union. The research uses German *Länder* as a case-study to explore these issues.

In accordance with the research objectives, this paper will:

- examine the factors that influence the sub-national units' involvement in international communication
- review and generalize domestic and foreign doctrinal approaches to the recognition of the international legal personality of sub-national units, using the example of sub-federal units
- determine the types and features of sub-national units' international legal status realization within the EU

## **CAUSES OF INTENSIFIED SUB-NATIONAL INTERNATIONAL ACTIVITY**

One of the major factors contributing to the growth of sub-national units' international activity is the deepening of worldwide integration and regionalization. Ever more areas that were recently under state jurisdiction are now subjected to international legal regulation. This tendency is particularly clear in the European Union, where EU members are adapting to these new conditions and redistributing jurisdiction to international organizations and sub-national units. The states' sub-divisions acquire rights necessary to maintain a flexible system of governance and effectively meet regional and national needs [42, p. 63]. According to P. Soldatos (1990), sub-national units' involvement in international relations is due to their disappointment in the effectiveness of the central government's foreign policy and/or an awareness of its inability to function efficiently, when relying on only its own strength [23, p. 34–36].

According to the principle of *subsidiarity*<sup>1</sup>, a sub-national unit is objectively closer to the needs of people living within its region than the central government. This is because they take into account regional, economic and socio-cultural factors; and effectively use natural, logistical and financial regional resources to meet these needs. Furthermore, in order to ensure sound regional development, a sub-national unit often needs capacity to engage in international cooperation.

I. Busigina (1993) claims that the dissemination of the "Europe of the regions" idea creates an additional drive to world-wide regionalist tendencies. Its essence is a higher level of integration of the constituent units of the European states through expansion and deepening of regional cooperation. Combined with the "regional cooperation-friendly environment" of the EU, this idea has a considerable effect on driving forward the European regional cooperation [31].

II.

M. Farukushin (1998) argues that one of the most significant factors contributing to the expansion of the international activity of sub-national units is the end of the Cold War. International cooperation and market competition replaced centralization, confrontation and militarization, as economically powerful members of the international community began to pose a greater threat to national security and economies than militarily powerful states. The above trend puts on the agenda such issues as foreign trade and its efficiency; and the competitive ability of the state and its regions in the world economy. Ultimately, the optimal response to these issues by the state hinge on the broad involvement of its sub-national units [44, p. 257-258].

At the same time, the more that an economy of a sub-national unit is exposed to external factors, then the more need there is for sub-national units to involve themselves in foreign economic relations. Sub-national units' increased influence is an inevitable consequence of deepened integration and interdependence between states, which is particularly evident in the EU. On the other hand, effective foreign economic policy of states, and especially federations, is impossible without participation of their sub-national units because the latter, having a rather wide range of powers, can contribute to (or hinder) the development of international cooperation (particularly in the sphere of economic regional cooperation). Thus, regions' capacity to act independently both domestically and internationally gives them levers of influence on the foreign (principally, economic) policy of the entire state<sup>2</sup> [39, p. 124]. The desire to enter the international arena is particularly illustrative of economically developed sub-national units with a high degree of autonomy and historical experience of self-governance, such as Catalonia in Spain, Veneto in Italy, Bavaria in Germany, etc. In addition, there are specific causes of regional cooperation in countries with a complex ethnic composition. The activity of sub-national units in such countries can be explained by the aim to preserve ethnic ties of national minorities, which for various reasons ended up on different sides of state borders [44, p. 263]. Tensions between the state and its regions can be increased when: the central authorities fail to address, through neglect or intention, the political aims of sub-national units, or when central authorities mistakenly grant subnational units too broad/narrow international jurisdiction. These tensions pose challenges to the

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<sup>1</sup> that states that decisions should be taken as closely as possible to the citizens [22].

<sup>2</sup> These include, for example, the rules of taxation, including the taxation of transnational corporations; the closure of enterprises regulations, that restrict the owners' freedom to stop production and dismiss workers; labor legislation, especially the federal states' laws governing the right to work; a policy that determines the conditions for the extraction of natural resources; priorities and barriers in government procurement from foreign suppliers; regulations in the field of health care and environmental protection, etc. In addition, various non-tariff barriers limiting the flow of imported goods and services, subsidizing of production of goods and services manufactured for export, or regulation of large volumes of state procurements remain a powerful means of influencing foreign economic activity of the state by sub-national units.

state's capacity to maintain internal and external security, while also potentially threatening its territorial integrity in the medium and long-term.

## **THE FOUNDATIONS FOR SUB-NATIONAL UNITS' INTERNATIONAL LEGAL PERSONALITY**

The specifics of European political and legal tendencies lead to broader involvement of sub-national units into international relations. The theoretical understanding of the bases of their international legal personality is compounded by the heterogeneity of sub-national units and significant differences in their legal status at the national level. It is difficult to generalize the features not only of various sub-national units, but also even the constituent parts of one state. Thus, it seems reasonable to examine this issue based on a case study of sub-national units' status of a certain state. The further research will be focused on federations. A considerably high level of self-governance and, sometimes, even the right for foreign relations provided by federal constitutions create favorable conditions for sub-federal units' entering the international arena.

According to the established view, international law applies only to the federation, and international relations are considered as a classical sphere of central government's competence. This view is still legitimate, consistent with the content of most federal constitutions, in particular because the ability of members of a federation to be subjects of international law remains questionable [19, p.81].

International law does not take a certain position on this. The Montevideo Convention on the Rights and Duties of States of 1933 claims that a federation embodies only one person in international law (art. 2), and this is generally confirmed by international practice. At the same time, there is no such source of international law, which would contain a direct prohibition on participation of any categories of subjects in international relations. In the Convention on the Law of Treaties draft, it is stated that the recognition of the sub-federal units' right to conclude international treaties depends on whether this right was recognized by the federal constitution and if it adheres set constitutional limits. Although the relevant provision was not included in the final version of the Vienna Convention on the Law of Treaties of 1969 [35, p. 269], it can be claimed that it has already become a customary law [42, p. 343].

The formation of customary law on regional cooperation of sub-national units is also evidenced by numerous European acts<sup>3</sup> of recommendation (non-binding) nature, in which state parties declare their willingness to encourage and facilitate international connections of sub-national units. In scientific disputes on the prerequisites of sub-federal units' participation in international relations two opposite concepts can be distinguished.

*The first concept* insists on the largely interstate nature of international relations and, if it tolerates the international legal personality of federal subjects, then on the basis of their inherent statehood features or its state-derived origin. In their extreme, attempts to derive the international legal personality of sub-federal units from the personality of the federation, which authorizes them for certain international activities, lead to a definite denial of their potential to possess an independent international legal personality. An explanation of such a logic can be found in T. Fischer (T. Fischer, 1999). He claims that the provision that only a federal republic as a whole is a state (has international legal personality) in the sense of international rights states in favor of exclusive federal jurisdiction over international relations. *The understanding of legal personality of sub-federal units, thus, should be limited to "the legal personality from the constitutional law point of view"*, so that the

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<sup>3</sup> See, for instance, The Helsinki Final Act of 1975, The European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities of 1980 p., The Declaration on regionalism in Europe of 1996, European Community Charter for Regionalization 1988, etc.

international legal “armor” of the external sovereignty of the Federation would not be damaged [11, p. 134].

According to K. Heilbronner (2011), only states have unlimited international legal personality, since they only have a full range of rights and obligations under international law. In the German doctrine they are also called primary, main subjects of international law [36, p. 214]. H. Mosler (1962) describes states as necessary subjects of international law, since the existence of international law without them is impossible and it is their duty to guarantee the observance of international law [21, p. 32, 46].

Subjects of international law can be divided into two main groups. States belong to the first group of the necessary (original) subjects. Their international legal personality rests on sovereignty. The second group consists of secondary (non-original) *subjects whose legal personality is derived from rights granted by their state*. They are also referred to as partial or limited subjects of international law, since they are granted only certain rights and obligations. According to this approach, K. Heilbronner (2011) distinguishes among various participants of international legal relations such subjects as states that are members of the federal state [36, p. 214]. According to H. Mosler (1962), *non-original subjects of international law do not have the so-called "fundamental" rights of the state, which stem from its sovereignty*. However, this does not prevent them from engaging in international activities, but only in such a way as *to serve interests of original subjects* [21, c. 46–47].

I. Brownlie (1977) has a similar point of view. He claims *sub-federal units may exercise certain rights of independent states, including the right to conclude treaties*. But in this situation their *rights will be delegated*. They will exercise certain rights as members of a union, even if relevant acts are carried out on behalf of a member state of the union [30, p. 108].

According to Ph. Kunig (2011), although states are empowered to enter into international treaties as a part of their international legal personality exercise, *member states of a federation have elements of statehood* regardless of the existence of the external sovereignty [36, p. 142].

K. Aranovsky (2000) takes a similar position. Analyzing the legal status of sub-federal units, he concludes that the sub-federal units not only have certain administrative powers, but *are endowed with a certain part of state power*, the origin of which should be sought in the very fact of its (the sub-federal unit's) existence, and not in rights delegated from above. Thus, *sub-federal units appear as subjects "with incomplete sovereignty"*, "limited statehood" [29, p. 15]. Notions like *"double sovereignty"* [34], *"perforated sovereignty"* [8], [9]; [18] are also often used in political science, constitutional and international law to describe the international legal status of state members.

T. Fischer (1999) explains the phenomenon of "perforated sovereignty" when referring to the fact that boundaries between external and internal politics are becoming increasingly blurred. This tendency provides the appearance of "perforated national sovereignty" of modern states, especially federations, whose sole presence on the international level is gradually becoming an illusion. Among numerous players of international relations, sub-federal units are becoming increasingly more involved in cross-border relations [11, p. 134].

All the above-mentioned views on the issue of the origin of sub-federal units' international legal personality characterize sub-federal units as specific subjects of international law, *the legal personality of which in one way or another is interconnected with the concept of the legal nature of federal states*. The *international legal personality of the federation* in case of such an approach is considered as a *source/premise/analogue of the limited legal personality of its members*.

In accordance with **the second concept**, the international legal personality of sub-federal units does not have a state origin (should not necessarily be derived from a state legal personality).

The second concept supposes that the international legal personality of sub-federal units does not have a state origin and should not necessarily be derived from a state legal personality.

V. Tolstykh (1998) claims, that the “neo-etatist” approach to explaining the international status of sub-federal units implies that sub-federal units united in a federation, recognizing the supreme federal authority, however, do not completely lose their sovereignty. This description is not an adequate

reflection of their international status. The scholar argues that the international legal personality of sub-federal units is not inextricably linked with the concept of the federal state's legal nature. Such a concept is a result of in-country studies and cannot have a decisive international legal significance, since the status of subjects of international law depends, first of all, on their objective features, and not on hypotheses and ideal models [43, p. 19–20]. Then the question naturally arises, what are the objective features that determine the international legal personality of sub-federal units.

Citing S. Chernichenko (С. Черниченко), V. Tolstykh claims that sub-federal units' ability to be subjects of international law is conditioned not by the recognition of their sovereignty in the federal constitution and not by sovereignty as such, but, first of all, by independent performance in the interstate sphere [43, p. 20].

However, it seems like the performance of a certain player on the interstate, or rather, international level (since the contemporary international law regulates relations not only between states), is rather a manifestation of the exercise of the international legal personality, yet not its basis. Instead, the existence of an autonomous will of a certain entity (a potential participant of international relations) can be proposed as a general objective criterion of the international legal personality existence. An autonomous will, according to M. Ivanov (М. Иванов, 1988), should be understood as the entity's ability to independently pursue certain objectives in relations governed by international law; and the ability to independently organize activities aimed at achieving these objectives. It is due to the existence of an autonomous will that an entity can be a bearer of international rights and obligations. The federation as the primary subject of international law gives its members certain rights on which the realization of their legal personality is based. However, it should be emphasized that the choice of the state in this area is not arbitrary, but based on a set of sub-federal unit's objective features, which determine the existence of its autonomous political will. Otherwise, any entities that states would declare as subjects would become barriers of international legal personality [32, p. 89–90].

Indeed, a federation is a state emerging as a result of two or more sovereign states' union. They recognize its supreme authority over themselves, but do not completely lose their political will [43, p. 19]. For instance, German sub-federal units (Länder), have a long historical experience of political independence that was inherent for them before the unification and, accordingly, does not disappear and cannot disappear merely through their unification into a single state entity.

Thus, the federation only grants its members certain rights outside its borders, enabling the realization of their international legal personality, yet not its existence. Since international legal personality is an international law category, the legal capstone for the international legal personality bases is provisions of international law, and not domestic law of states. Most definitions of the notion of "international legal personality" can be reduced to the following: a subject of international law is a participant of international relations that has international rights and obligations<sup>4</sup> [4]. Therefore, the potential presence or absence of international legal personality depends not on the arbitrary decision of a state, but on the ability of a certain entity to have international rights and obligations, thus to be a participant of international relations. It should not necessarily be derived from the features of statehood or sovereignty.

The recognition of sub-national units, and in particular sub-federal units, as a separate category of participants of international relations, endowed with an autonomous will allow us to make an assumption that they are bearers of international legal personality of a nature differing from a state's personality nature [217, p. 348].

This assumption, however, remains purely theoretical and can hardly be of any value unless it is supported by evidence of sub-national units realizing their international legal personality.

## **THE REALIZATION OF SUB-FEDERAL UNITS' INTERNATIONAL LEGAL PERSONALITY**

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<sup>4</sup> See, for example, [30, c. 104], [37, c. 32], [26, c. 22]

A key feature of regions' international performance as of both federal and unitary EU member states is that the scope and specific forms of their international legal personality realization depend on the central government's discretion and differ by state. Their action does not yet rely on an integrated international legal base or unified mechanisms of cooperation. This represents a significant organizational and legal difference between the sphere of international cooperation of sub-national units and the system of interstate relations, based on international treaties, international organizations, foreign missions, etc. [39, p. 111].

Realization of the international legal personality of sub-federal units will be analyzed with the example of German Länder.

Three main areas can be distinguished in their international activity:

1. Concluding agreements with foreign states or their constituent parts
2. Participating in permanent platforms for international cooperation
3. Establishing representatives in foreign states and international organizations

### ***1) Concluding Agreements with Foreign States or Their Constituent Parts***

International agreements of sub-federal units are not considered as international treaties (in accordance with the Vienna Convention on the Law of Treaties 1969 [27], and the contractual capacity of sub-federal units is secondary (limited to the competence granted by the federal government). This naturally raises a question of the status of international agreements concluded by sub-federal units and, particularly, whether such agreements create obligations for the parties.

In resolving this issue one should proceed from the fact that within the scope of their jurisdiction sub-federal units are just as competent as a federation, since providing its members with international powers in a certain sphere, the federation to some extent gives its jurisdiction away. This is the essence of the federal system with its inherent mechanism for the separation of powers. V. Pustogarov (B. Пустогаров, 1992) states that a sub-federal unit concludes international agreements with other international players not because federal authorities occasionally give it such an opportunity, but due to the fact that it is the one who is empowered to do that on the issues raised, and not a federation [40]. This position can be illustrated by Art. 32 Abs. 3 of the German Basic Law (constitution), according to which, insofar as the Länder have power to legislate, they may conclude treaties with foreign states with the consent of the Federal Government [13].

In addition to the Basic Law of the Federal Republic of Germany, the right to conclude treaties is enshrined in constitutions of Länder, and such treaties are referred to as "state treaties" ("Staatsverträge"), emphasizing a high degree of Länder autonomy. To illustrate, in 1952 an agreement was signed at the Jochenstein power plant on the Danube. The parties of the agreement were the governments of Austria, Germany and Bavaria. In this case, a sub-federal unit of Germany was a party of an international treaty along with the federation itself, since certain issues of the treaty concerned its exclusive jurisdiction [38, p. 79]. In 1958, Rhineland-Palatinate and Luxembourg concluded a treaty on the construction of a dam on the boundary river Ure. Bavaria concluded a number of trade and economic treaties with Austria, and in 1965 Concordat with the Vatican. In 1953, an agreement was concluded between Baden-Württemberg and the Canton of Thurgau on hunting on tops of the mountains around Lake Constance [38, p. 103].

International agreements of sub-federal units differ, however, from treaties of independent states. It is specific for sub-federal units' agreements that they are limited by constitutionally established competence; do not deal with political issues (such as issues of war and peace, national economy and security, state international representation, federal foreign policy etc.); and mainly regulate non-political relations (such as economic border cooperation, communal issues, culture, sports, police cooperation, etc.) [28, p. 103].

International agreements of sub-federal units have an international scope, but are not always international treaties. The Declaration on Regionalism in Europe, instead of a clear and unambiguous

notion of “international treaty” concluded on the basis of international law, uses a more vague concept of “international sphere of application” [45, p. 124].

According to F. Johns (2016), sub-national units in federal states can engage in internationally recognizable and enforceable treaties [15, p. 134]. Thus, agreements concluded by sub-national units within their competence are legally binding for them and their counterparties.

To sum it up, the status of international agreements of sub-federal units differs from the status of international treaties of the federation itself. In regulating international relations, such agreements occupy a separate place in the system of legal acts that are sources of rights and obligations of the relevant subjects of international law, as well as participants of international relations whose international legal personality is so far disputable, such as sub-national units. The denial of international legal nature of such agreements because of their dissimilarity to intergovernmental treaties, not diminishing their practical value, may yet exclude them from the sphere of influence of the international law norms and principles, thus creating a basis for misreading and abuses.

G. Ignatenko (1995) claims that the current contractual processes, involving new subjects of international law, are mediated by particular contractual decisions and international customs formed on their basis. In the long term it is viable, however, that we will witness a transition to the conventional method of regulation, which will result in the formation of a set of norms on international treaties involving sub-federal units with limited international legal personality. As an intermediate form of such regulation, Ignatenko foresees mutually recognized rules in the form of bilateral agreements between the concerned states. This will serve to legitimize independent participation of their sub-national units in international contractual relations [33, p. 20]. An example of the discussed agreements is the agreement concluded by Germany, France, Switzerland and Luxembourg in the German city of Karlsruhe (Karlsruher Übereinkommen). It establishes a framework of cross-border cooperation of border regions of the states concerned, in which they are free to exercise their international powers without requesting the central government’s permission in each particular case. Among the goals of the agreement is to facilitate establishment of international associations, particularly, facilitating cooperation on waste management, cross-border public transport, joint kindergartens and schools in border regions to promote multilingual education, etc. [16].

## **2) Participating in Permanent Platforms for International Cooperation**

Although the Basic Law of the Federal Republic of Germany regulates only the international contractual capacity of Länder, their external activities turn out to be much more diverse. In particular, they participate in activities of various permanent platforms of regional cooperation (international organizations, programs and networks of cross-border cooperation). Such activities are especially noticeable within the EU.

M. Knodt (2001) states that cooperation between the European regions is based on two main motives: on the one hand, it is caused by the need to identify and solve common local issues; on the other hand, such cooperation helps to better coordinate and strengthen regional positions on the national and, even more importantly, on the EU level [17, p. 71].

According to motives, regional relations can be classified as follows:

- Cross-border cooperation of neighboring regions
- Interregional cooperation of regions that do not have common borders
- Groups Representing the Interests of Regional Bodies

*Cross-border cooperation of neighboring regions.* German Länder have made significant progress in providing for themselves legal space, in which they can carry out independent border cooperation. In 1992, paragraph 1a was added to the previous edition of Art. 24 of the German Basic Law. It enshrines the right of the Länder to transfer their powers<sup>5</sup> to transfrontier institutions in neighboring

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<sup>5</sup> with consent of the Federal Government and insofar as the Länder are competent to exercise state powers and to perform state functions.



regions. This amendment reflects deepened cross-border cooperation and the legalization of its new forms [45, p. 145]. As a rule, the Länder transfer their powers to the interregional level in the realm of tourism promotion, environmental protection, economic assistance, etc. [24, p. 124].

Cross-border cooperation of Länder rests on information and coordination; and pursues the following goals:

- improving regional planning coordination that crosses national borders
- developing economic potential
- Improving infrastructure in transport and energy sectors
- developing environmental initiatives
- developing cultural sector
- effective solution of local level issues [17, p. 71]

These goals are being successfully achieved through participation in regional cooperation programs. Such programs include Euroregions (cross-border regions), which represent an association of two or more neighboring regions pursuing common economic, cultural and political interests. The first Euroregion, "Euroregio," was established on the German-Dutch border in 1958 [10]. Today, all bordering Länder carry out international activities within Euroregions. For example, Saxony is a member of the Neisse Euroregion (together with regions of Poland and the Czech Republic), the Aachen region along with the Belgian and the Netherlands sub-national units form the Meuse-Rhine Euroregion, etc. [25].

One of the oldest programs of border cooperation "Arge Alp" unites regions of Germany, Austria, Italy and Switzerland to promote a better understanding among Alpine populations and to foster cooperation in the environmental, cultural, social and economic spheres [1]. The European program for the strategic development of the Alpine region in 2017 was chaired by Bavaria [3].

Another form of cooperation between the Benelux countries (Belgium, the Netherlands and Luxembourg) and North Rhine-Westphalia in Germany is unique for the EU regions. Today, the so-called "Eurodelta" with a population of 45 million people is a key EU region with an intensive internal network of cooperation. It includes police cooperation, civil protection, fine dust issue, regional development, tackling animal diseases, food safety, Eurodelta population mobility improvement, etc. Additionally, as an example, a simplified procedure for the mutual recognition of general secondary and vocational education certificates facilitates the Eurodelta population mobility [20, p. 20-21].

*Interregional cooperation of regions that do not have common borders.* Cooperation between remote regions aims not only at solving similar problems, but also at joint representation of interests and at strengthening the regions' position in relation to their states and the EU [17, c. 71].

For example, such goals are pursued by the association of highly developed industrial regions "Four Motors for Europe", created in 1988 on the initiative of Baden-Württemberg. In addition to the German region of Baden-Württemberg, it also includes Spanish Catalonia, Italian Lombardy and French Rhône-Alpes. Initially, the aim of the cooperation was to promote internationalization and strengthening of their role in Europe, and particularly in EU institutions. Today these regions are leaders in their countries and have much in common, including a higher level of GDP than in the rest of Europe, a dynamic economy with a high degree of innovation interest and a developed tourism industry. In recent years, the development strategy of the association has aimed at strengthening competitiveness in economic, scientific and technological branches of the four regions, regarding global interdependence and economic crisis [12].

Realization of the international legal personality of sub-national units is facilitated by the EU Regional Initiative called "Interreg". As part of the fifth stage of the "Interreg V" or "Interreg

Europe"<sup>6</sup> program (2014 –2020) Brandenburg participates in an interregional environmental protection and efficient resource use project COCOON [14].

*Groups Representing the Interests of Regional Bodies.* Sub-national units of the EU member states realize their legal personality through associations lobbying for common regional interests, such as principle of subsidiarity adherence, creation of a multilevel governance system in the EU, involvement of European regions' representatives in the decision-making process in the EU, etc.

Among such associations, the oldest and largest European association of local and regional authorities is the Council of European Municipalities and Regions. It is comprised of four German associations [7] and the Association of European Border Regions, whose head office is located in Gronau (North Rhine-Westphalia) and includes 23 members and associate members from Germany [3].

Some scholars<sup>7</sup> believe that it is the actions of the Council of European Municipalities and Regions and Assembly of European Regions that influenced EU institutions to decide on the creation of a representative body for regions in the EU. Today, it is the Committee of the Regions (hereinafter CoR), an advisory body of the European Union, through which the sub-national units, represented in CoR by their delegations, indirectly realize their international legal personality.

### **3) Establishing Representatives in Foreign States and International Organizations**

There are no provisions in any federal constitution concerning sub-national unit's capacity to issue representatives to foreign states and international organizations. However, this phenomenon is quite widespread nowadays. Presumably, it should be considered as a constitutionally recognized custom under conditions when constitutions simply cannot keep up with rapidly developing international relations and strengthening of sub-national units' role in international communication. Such representatives fulfill information and coordination functions. According to German law, representatives of Länder (Landesvertretungen) in Brussels are not internationally accredited as diplomatic missions [5, art. 8]. There is no legislation, however, preventing Länder from informal relations with foreign states and sub-national units below the level of formal diplomacy. Furthermore, representatives of Länder in Brussels are successfully maintaining the so-called "early warning system", advising the governments of Länder on intentions of the Union during the preparatory stage of the adoption of European laws. This is crucial for the further development of the international legal personality of Länder, given the gradual extension of EU jurisdiction to virtually all areas of policy. The transfer of some sovereign rights of the German Federation to the EU level creates a rather difficult situation for Länder in terms of uncertainty over the areas now controlled by EU that directly affect their interests. In such circumstances, collection of information, and assessment of legislative initiatives of the European Commission and the consultation sessions of European Parliament represent an important informational background for Länder governments in their participation in the EU decision-making process.

## **CONCLUSIONS**

let us briefly summarize the key points answering the questions posed at the beginning of the research.

### **1. What factors contribute to participation of sub-national units in international communication?**

First, the intensified processes of global integration and regionalization has caused a redistribution of state jurisdiction. The central government's powers are being transferred to the supra-state (international organization) and sub-state (sub-national units) levels. This tendency reflects the states'

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<sup>6</sup> The project is funded by the European Regional Development Fund and has a budget of 359 million euro, which covers 85% of the costs of joint interregional projects of participating regions and significantly contributes to economic alignment and stimulation of cooperation between regions [14].

<sup>7</sup>See, for example, [6, c. 11], [17, c. 73].

need to create a flexible management system and to effectively meet regional and national demands, including those that can be best satisfied through international cooperation.

Second, trends indicating the strengthening of the international legal status of sub-national units are associated with an increase in economic interdependence and competition between states. Smart use of state's regional potential is necessary for conducting an effective foreign economic policy, one of the key branches of which is economic regional cooperation.

Third, broad involvement of sub-national units in regional cooperation can be explained by historical experiences of cross-border communication, which may be related to a high level of autonomy and economic potential, or a shared historical past for the border regions.

## ***2. What are the main domestic and foreign doctrinal approaches to the recognition of the international legal personality of sub-federal units?***

First, traditional approaches to legal personality in international law consider the federation itself to be a subject and exclude the possibility of the limited legal personality of its sub-federal units, despite the fact that they participate in international relations. A significant flaw in such point of view is the invalid comparison of the essence and peculiarities of potential subjects of international law with the same characteristics of primary, universal subjects (first of all, states). Such logic leads either to a) an unjustified dogmatism and refusal to see features of the legal personality in those participants of international relations that do not withstand a comparison with a state, or to b) the recognition of their ability to be subjects of international law based on false premises. This, in turn, makes it impossible to determine the actual nature of such entities and the specifics of their international legal status; and, consequently, an adequate assessment of their role and functions in international communication.

Second, international law does not establish restrictions for international communication between players, and does not advocate for a certain standard according to which it determines its subject in an absolute manner. The essential openness of the international legal system implies a possibility for diverse participants in international relations.

Third, when examining the status of certain participants of international relations, one should rely on the thesis that creation of a new entity should not be a goal in itself. Doctrinal recognition of a new subject of international law should contribute to improving the ability of both states and the entire international legal system to respond to public needs, adapt to global political, economic and socio-cultural transformations. Therefore, in scientific disputes about the status of a certain international player, it is necessary to proceed not only from hypothetical considerations concerning its ability to enter into international legal relations. More important is the practical expediency of certain subject's participation in international relation, the potential benefits for international community, states, their sub-national units and, above all, their citizens.

Fourth, in analyzing the international legal status of sub-national units in the context of its own unique features, one can conclude that sub-national units have a specific, limited legal personality. Evidence of their status consists, on the one hand, in the objective ability to participate in international relations, based on the existence of autonomous will. On the other hand, the purely theoretical existence of sub-national units' international legal personality becomes practically meaningful, if there are delegated exterior powers that enable the realization of their personality.

## ***3. How have sub-national units realized their international legal status within the context of European integration?***

First, using the case study of German Länder participation in international relations within the framework of the EU, one can conclude that sub-national units have successfully evolved from "observers" of political processes and executors of state will, to quite influential participants in international relations, capable of defending their own interests. German Länder conclude international agreements on their behalf within their jurisdiction, take part in various regional programs of cross-border cooperation, establish their own representatives in the EU, as well as associations with other EU regions in order to promote their interests, and join the decision-making process in the EU through Committee of the Regions.

Second, the main difference between the organizational and legal form of sub-national units' international cooperation and the established system of interstate relations is as follows: interstate relations are resting on a broad contractual basis, international organizations, foreign state missions, and are clearly documented in international treaties, whereas sub-national units' international performance lacks unified cooperational mechanisms that would provide a legal ground for all of them to equally perform in the realm of public UE law.

Third, the agreements concluded by sub-federal units are not conventional sources of international law in terms of the theory of international law. At the same time, they represent sources according to which their parties can obtain obligations. Sub-federal units' agreements take their place in the international sphere of application among other agreements on the interregional level, serving as an important regulator of international relations in "non-political" spheres that fall within their jurisdiction.

Fourth, the German model of federalism assures politically, economically and socially efficient international cooperation of German Länder, and provides for sound relationship between central government and sub-federal units. It can serve as an exemplary model for researching and implementing strategies of decentralization and self-governance, as well as for building inter-governmental relations based on the principles of subsidiarity and cooperation in Ukraine.

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