

# Mapping the obstacles to inter-municipal cooperation in Eastern Partnership countries



MAPPING THE OBSTACLES TO INTER-MUNICIPAL COOPERATION IN EASTERN PARTNERSHIP COUNTRIES

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## Programmatic Cooperation Framework for Armenia, Azerbaijan, Georgia, Republic of Moldova, Ukraine and Belarus

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**MAPPING  
THE OBSTACLES  
TO INTER-MUNICIPAL  
COOPERATION  
IN EASTERN PARTNERSHIP  
COUNTRIES**

Strasbourg, 2015

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# Foreword

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Inter-municipal cooperation (IMC) is one of the ways to deal with excessive municipal fragmentation – a common problem in many European countries - and is high on the agenda of central and local authorities from Eastern Partnership countries, along or as alternative to the slowly advancing territorial reforms. Legal framework in most of the countries from the region allows for the cooperation but a lot more needs to be done in order to achieve the level of co-operation and integration of local services which could deliver good services to local populations.

This Study was prepared by a team of international and local experts under the Council of Europe/European Union Eastern Partnership Programmatic Co-operation Framework for 2015-2017 for Armenia, Azerbaijan, Georgia, Moldova, Ukraine and Belarus.

The national and cross-country reports show that legislation is only the first element of a national and local environment conducive to practical and effective cooperation. A national policy on promoting IMC and the creation of incentives to encourage local governments to co-operate are key elements. The co-operation culture, which is still under-developed in the region needs to be boosted by the identification and dissemination of success stories from the region and beyond, thus exposing decision making representatives from both the central and local level to these good practices.

This study maps the obstacles to inter-municipal cooperation in the Eastern Partnership countries and comes up with concrete recommendations to overcome the respective drawbacks. It is now time to advance from theory to implementation and these studies will be followed by practical work to support the development and implementation of IMC arrangements in the countries of the region.

I wish you all success in this undertaking.

Daniel POPESCU

Head of the Centre of Expertise for Local Government Reform of the Council of Europe



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# Inter-municipal cooperation: many ways, various models for strengthening local self-government

SUMMARY REPORT

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# Introduction

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This survey on inter-municipal cooperation (IMC) in six countries of Eastern Europe is part of a joint action of the Council of Europe and the European Union: **STRENGTHENING INSTITUTIONAL FRAMEWORKS FOR LOCAL GOVERNANCE PROGRAMME (2015-2017)**.

With six renowned national experts, we propose a general survey of the situation of IMC in **Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine**<sup>1</sup>. These countries have a common history in administrative organisation and are building a territorial decentralised system in accordance with the principles of the European Charter of Local Self-Government<sup>2</sup> and the national political orientations. This system is in constant evolution. Though many substantial reforms have been achieved in the last twenty years, the architecture is not yet fully stabilized. All have or had a fragmented territorial organization, with many small and weak communes<sup>3</sup>, sometimes in a process of depopulation and impoverishment.

Consolidation of this territorial structure has been discussed in various occasions, with more or less intensity, considering the options between IMC and amalgamation of communes. Many reports have been developed on these subjects, often with the support of international organizations (CoE, UNDP) and NGOs and international conferences were devoted to promote the concepts and the institutions of IMC. Yet achievements were rather poor or modest. These similarities allow comparison. Municipal systems are, however, unique in each country, not only because of legal provisions but also because of differences in political life, geography (Armenia and Georgia have high mountainous regions, which don't exist in Moldova or Ukraine), demography (proportion of cities and small villages), level of public services, infrastructures and public facilities, etc.

Differences are also important and they show the many facets of this political problem and how diverse the situations and political orientations are. Comparing countries with similarities and differences helps to understand why reforms, which look inescapable to experts, are delayed since many years. It allows also detecting the main causes of blockades, which are not the most visible ones and clearly are rooted in the system itself and are not just on a "technical" level.

The situation has become even more difficult since the general economic and financial crisis. It is public knowledge that reforms have a cost and need additional money to cover the expenditures for reorganisation and for launching new policies and show the efficiency of the new institutions. Money has become rare and reforms should be cost efficient, which is very problematic. Communes engaged in reforms can hardly expect to get much incentive money from the central government and this latter has to decide severe arbitrages between national and local budgets, between a general growth of local government resources or targeted grants for communes engaged in structural reforms, IMC or amalgamation. In the same time, any additional support is now a strong incentive, as we see in countries where a dedicated Fund has been established (Georgia and Ukraine).

Reshaping the administrative organization cannot be discussed only in terms of structures, political considerations and financial procedures. It needs a global approach in an era of economic depression and fiscal stress. Improving service delivery to the population, with more efficient public administrations, and promoting regional and local development are major challenges. There is no prejudice or doctrinal position on the need of IMC, and it is not an explicit requirement of the European Charter of Local Self-Government (ECLSG). This survey is not meant to promote inter-municipal cooperation as if it was some "must"

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1. The team had two times a two days working session in Prague, in May and in September, and the general conclusions were presented at the Kiev conference of 1 October 2015 on **INTER-MUNICIPAL COOPERATION: MODELS FOR EMPOWERING LOCAL SELF-GOVERNMENT**, organised under CoE-EU PCF Programme "Strengthening institutional frameworks for local governance" in cooperation with the Council of Europe Programme "Decentralisation and territorial consolidation in Ukraine"
  2. Belarus is not a member State of the CoE and has not signed the Charter. Yet there are observers at the Congress of local and regional authorities in Europe who know the Charter and it may become a reference in the future.
  3. We will call *municipality* or *commune* the first level of local self-government, whatever the name is in a given country.

by itself. Its benefits and possible applications are well known and the Council of Europe offers already an exhaustive **Toolkit**<sup>4</sup> that has been adapted for several countries who participate to this study.

### Why is IMC not more developed and popular?

The starting point of this study on the actual situation of inter-municipal cooperation (IMC) in six countries of Eastern Europe is an interrogation: why not more IMC, as it is a very common practice in many countries in Europe, but also in America, and seems to be an appropriate solution for consolidating municipal institutions in these countries? Why is IMC not more demanded by local self-governments or their associations, more supported by the national governments and parliaments, though it is discussed since many years, analysed in substantial reports and has been declared, at certain periods, a priority or even a part of a decentralisation strategy?

The general answer of our team is that difficulties with IMC cannot be analysed apart from the difficulty to strengthen, develop and modernize the local self-government system as a whole. There is a systemic relation between the territory and the other decisive components of local self-government: competences (or powers) of communes and resources (financial and human). **Public actors consider thoroughly the territorial issues when they are dealing seriously with both others and must admit that certain problems in competences distribution and in financing cannot find a satisfying solution without adapting the territorial dimension.** And, for that, comparative practices show only two ways: association of communes in an inter-municipal entity to cooperate on certain functions or matters; merging the communes to create a bigger one.

Small territory means little population, poor resources, limited competences and an inability to exercise (correctly) all the legal powers. This is the situation for a significant number of communes in all six states. Therefore, engaging in a virtuous circle (more powers and resources) needs to deal with the territorial issue. The level of the political will to strengthen autonomy of local self-government bodies is directly expressed in what is done - or is not done - for territorial consolidation.

The Council of Europe, thanks to close relations with all actors in these countries, had the distinct feeling that we are entering a period of maturation and that long-delayed reforms are ready to be started. This is confirmed by the survey, at least for three countries, others being more cautious and slower to progress.

Looking around in Europe, we observe that all countries have reshaped or consider reshaping their local self-government structures. Deeply rooted in history, they are no longer in accordance with the society, the demography and the economy, which have dramatically evolved in recent times. Time tables are, of course, very different and no specific model is prevalent. But, in recent times, analysing the factors of the crisis and the ways to improve the efficiency of public institutions brought a growing awareness **of the decisive role that good municipal organization plays for this efficiency and the national wealth.** Cities and metropolises are leaders in economic development and innovation. The quality of their governance is an important factor of growth and enrichment of a country and its effects can be measured in economic data<sup>5</sup>.

” Therefore municipal reform, though complicated, should have a high priority on the political agenda.

4. **TOOLKIT MANUAL - INTER-MUNICIPAL COOPERATION 2010.** Contains valuable information on the reasons to create IMC, the different domains of application, legal forms, methodology for choosing a model and implement it...This report will not go in details; see the Toolkit.

5. OECD *The Metropolitan Century - Understanding Urbanisation and its Consequences*, Paris, 2015.

## Chapter 1

# IMC in different stages: some framing considerations

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The precise description of the municipal institutions, the situation and legislation on IMC and the policy of local self-government reform are presented in the national reports and we will not repeat them here. We want just to underline some basic assessments.

### 1.1. IMC, A SPECIFIC COMPONENT OF THE LOCAL SELF-GOVERNMENT SYSTEM

IMC has no direct relation with the political regime of a country and there is no need to describe the differences between the countries in that domain. IMC is part of the LSG system and we must consider the evolution and situation of this latter in a summarized historical perspective.

The territorial organization edified in the Soviet period was not exactly the same in all six countries. Communes and second level (rayons) area have a common heritage. Differences concern the level of Regions or Oblast. The concept of autonomy for local self-government was unknown and the nature of the different tiers made no clear difference between State and non-State entities. So there was no long tradition of LSG as in Western Europe or North America. With the admission in CoE and the ratification of the ECLSG, and due to new national political orientation, a new system had to be built. The Charter was the clear and compulsory reference. It contains general fundamental principles, which define autonomy of local self-government entities, but it shows no precise territorial model and the existing territorial structures and mapping could remain without contradiction with the Charter.

IMC was not unknown in the Soviet period but it was run on a very pragmatic way and generally for very precise activities, like ambulances, fire protection..., without systematic legislation. So the starting point was no culture of self-government, no frame for cooperation and uncertain distribution of competences between local governments and the State and even between local entities (communes and rayons).

This latter question is very important in the problematic of IMC, which is a way to reorganise competences distribution. For example, in Ukraine or Moldova, where rayons kept a strong position, the logic of subsidiarity was often that the rayon should do what communes cannot do; so there was political debate and sometimes expert analysis on this question rather than on the need to have an IMC solution, which would have been the creation of a third local entity.

Clarifying and reshaping the competences between the different administrations was an important part of LSG reform in all countries and this debate did not give much place for an IMC debate. When this one was engaged, it was often in parallel with the amalgamation alternative that created additional complexity, as explained below.

Let us make an additional assessment. These countries had not only to reshape LSG; the first task was to organize a new political regime and a new State, sometimes in difficult conditions with wars in separatist regions, some still frozen. The need of strong central institutions, with an important proportion of public means concentrated at this level, must also be counted as an obstacle for extending the capacities and powers of LSG. Centralisation at a certain level is still a reality in Belarus and Azerbaijan, and a temptation in Moldova and perhaps in Armenia (it is unclear if the creation of larger communities by amalgamation will be completed by new transfers of competences, or not).

These fundamental reasons explain why IMC was not a matter in which political leaders and ministries wanted to invest in priority!

## 1.2. IMC NOT VERY DEVELOPPED IN THE SIX COUNTRIES

IMC is not a new concept in the different countries. It exists already, on a modest level, in Armenia, Georgia, Moldova and Ukraine; Belarus and Azerbaijan are on a more distant path.

### A. An incomplete legislation

The visibility of the provisions on IMC is variable in the laws on local self-government and the expression is often unknown. This is the consequence of inadequate attention paid to IMC by national authorities and the absence of a dedicated policy. This matter just has not been seen by the authors of the founding laws on LSG. This institution did not exist in the former law and the attention was focused on the creation of municipal institutions that comply with the principles of the ECLSG, which has no specific provisions on IMC. When speaking on the subject of cooperation between communes, many leaders in Eastern Europe understand the creation of national associations uniting cities or officials for representation to national authorities or to the Congress of LRAE.

The principle of cooperation is in the laws, in Ukraine or Armenia. And lawyers consider that anyhow cooperation is legally possible as far as it is not prohibited. But, for the practitioners and the political leaders this idea looks quite theoretical and when there are no specific procedures, no institutional frames or incentives, no spontaneous projects are launched in the field. And in Belarus the law gives little space for initiatives.

Considering what existed in the Soviet period, the legal provisions are mainly meant for cooperation between municipal enterprises in charge of certain facilities. Such cooperation has been established and looks like a business union without aiming and facilitating a broad cooperation between communes on common policies and general municipal competences.

The situation is changing. IMC is more clearly on the political agendas and the national authorities are more conscious of its potential. But, as we will see with Ukraine, adoption of a law and defining a national policy are not sufficient conditions for developing IMC on a large scale.

### B. Scattered IMC experiences

As there has been no systematic policy for IMC we observe in four countries punctual achievements, mostly for one purpose activities. Most of them, as described in the national studies, have been initiated and conducted with international support (UNDP, USAID, GIZ, Swiss Fund...), who brought some money and provided methodology and expertise. This is valuable, but has not produced a more general movement. It was perhaps even an alibi for a certain passivity of governments who, of course, supported these actions; but they were not included in a national policy and the best practices learned at this occasion are not systematically spread to other municipalities by the LSG associations or the ministries.

### C. No national strategy and no methodic support

This is crucial. IMC may happen on a very low level as an informal relation between authorities of two or more communes. But for important matters and on a large scale, it is never spontaneous and there must be a clear commitment of the State authorities, at national and/or regional level. The absence of a national policy favouring IMC is evident in all countries. IMC is on low position on the agenda of the governments. We have examples when ministries, directly concerned by LSG activities (territorial affairs, regional development, finances and economy), don't care at all about it. This may have diverse and specific or punctual explanations. But the survey shows with great evidence that there are some systemic obstacles that go far away from the sole opposition of political leaders or ignorance by municipal authorities.

Despite the repeated findings, in many studies and reports, IMC was not seen as an important stake by the governments. As no one of these countries had a steady will to enlarge and strengthen the autonomy, powers and resources of local governments, there were no reasons to deal with the complex territorial issues.

There was no demand from communes and their associations were rather cautious, knowing the prudence or reluctance of the mayors; yet the Moldovan association was active on information and training sessions. The minister in charge of local self-government has no specific interest to engage in such a policy that would occupy the staff without much political benefit. He is also aware of the cost of a reform and of the difficulty to convince the Ministry of Finance to give additional money for communal reform, especially in recent times when this ministry was told by IMF or the World Bank that decentralization was no longer a first recommendation.

Then we have the hesitations when IMC is discussed as an alternative to amalgamation. As long as no decision is taken on this alternative, it seems problematic to launch an IMC strategy when the possibility stays open that the final option could be amalgamation. And when this latter is decided, IMC becomes a second level priority. Armenia offers a good example of such a situation. Ukraine is also a case to consider. Having since 2014 a law on IMC and a fund for incentives, it generated 21 new experiments of modest ambitions, probably to take advantage of the financial opportunities. But then the government opted for general amalgamation and the future of these entities is quite uncertain; they will probably disappear, either absorbed in an amalgamated community or dismantled between several ones. This seems to demonstrate that even a big country cannot go forward on both tracks; it would probably also have had great difficulties in financing both policies. Georgia, who decided amalgamation in 2005, let IMC aside. But now, it is exploring IMC as a way to keep the relations between the new communes that will result from the future division of the “rayon communes” created in 2006.

The consequences of the inertia of State authorities are the weakness and inadequacy of the legislation, the absence of financial incentives for communes that create IMC and the lack of technical and legal support for the preliminary studies and the definition of the status of the IMC entities.

	IMC LAW	IMC EXPERIENCES	AMALGAMATION	PROSPECTIVE
<b>ARMENIA</b>	Partial	Very limited	Decided in 2015	Priority: implementation of amalgamation and reorganization of the concerned communities
<b>AZERBAIJAN</b>	No		No Project	Priority: strengthening LSG; IMC could help.
<b>BELARUS</b>	No	No	NO PROJECT	Priority: LSG strengthening ; IMC possible on very modest level
<b>GEORGIA</b>	Partial; project to extend and improve		IMPLEMENTED IN 2006; now in revision by splitting certain communities	Redefining limits and size of communities; will need an IMC policy
<b>MOLDOVA</b>	Allows creation of IMC, but needs rewriting	Several experiments with external support	Still in debate	Need for larger political consensus to decide the territorial reform
<b>UKRAINE</b>	Law and active policy decided in 2014	Visible but modest progress since 2014; stopped by priority given to amalgamation	Decided and on course since 2015	Questions on speed of amalgamation. Sufficient financing? Future of Rayon?

## Chapter 2

# The IMC paradox: too weak to cooperate or the three structural handicaps

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This is the main finding of this research, though it is an implicit idea in former studies: weak municipalities need cooperation; but weakness is the main and definitive obstacle to enter into a process to substantial cooperation.

This statement confirms the opinion that IMC is a part of the broader problem of decentralisation and development of local self-government. IMC can only grow and prosper if there is a steady will of the central authorities (Government and Parliament) and also of local governments to extend the range of powers (competences) and the resources of the municipalities.

IMC is presented as an evident way to enhance the capacities of municipalities to invest, to create new facilities and to extend the service delivery to the population. Therefore, it is considered as specially adapted for small and weak communes, which are numerous in all six countries. But such communes have also the greatest difficulties to engage in structural reforms and organize cooperation structures or procedures.

Most decisive is the fact that they don't expect future benefits because they know that they will not have more resources and they don't see how they could get better capacities to implement competences together. This is a major reason of the passiveness and inertness of municipal leaders that prevents to overcome the more visible, but less fundamental obstacles: municipal identity, political rivalries... IMC is not only a way to strengthen communes: it requires some strength as a condition to its own development. After long hesitations, the Government of Armenia came to the conclusion that IMC cannot overcome the structural handicaps of a too fragmented territorial division. Therefore, the explicit policy is to give priority to consolidation, leaving IMC as a future solution for specific tasks between stronger municipalities. It is the trend in Ukraine and is an option in Moldova and Azerbaijan.

### 2.1. INSUFFICIENT POWERS (COMPETENCES)

IMC is a way to work and undertake together. So, the more responsibilities the municipalities have, the more opportunities they will find to do so. Many competences listed in the law or that could be freely undertaken just cannot be fulfilled in fact or are not implemented in a satisfactory manner; so this raises the wish to do that in partnership with other communes. The problems and political priorities are not the same everywhere; therefore initiatives will burgeon if there is a wide range of matters where cooperation can seem fruitful. Economic development by tourism is not a policy that all communes will consider as important. Waste collection and water supply are in various situations, depending of the location. Etc.

In countries where the effective competences of many communes are very short, especially in the domain of infrastructures, facilities, public utilities, IMC has little attractiveness. This is very clear in nearly all countries, specifically in Belarus, Azerbaijan and Armenia. In Armenia water supply is mainly the task of the national society; so this basic service, which is often the first one where IMC is applied, is not concerned here. There are numerous other examples.

In countries with several tiers of territorial administration, in Moldova and Ukraine, an additional problem may occur from the uncertainty of competences distribution between them. Municipalities consider that certain tasks should be done by the upper level (district or rayon) and just do not try to find solutions by themselves.

This is a circular problem: no competences, no IMC; and there is, of course, no logic, nor will to transfer to these weak communes more competences. The only way to break this vicious circle is to upgrade the

size of the communes by amalgamation, completed with an attribution of additional competences and resources. The new municipality will be able to implement them thanks to its critical size and improved resources or by entering in a cooperation process with others.

## **2.2. INSUFFICIENT FINANCIAL RESOURCES**

This is very evident and well known. When the budget of a municipality is just sufficient to pay the salaries of the officials and cover mean current expenses, there seems to be of no interest to engage in cooperation where new tasks and management costs will need additional resources that the communes cannot bring or find. Some pilot experiments conducted with the support of NGOs show that there can be economy of scale even on administrative tasks; sharing the personnel and having a certain specialization in professional skills can significantly improve the management of united communes. But this can only be initiated with technical, legal and financial support. So it is, in fact, a limited solution.

For engaging in more costly actions (creation of new public services, infrastructures, sport or cultural facilities, etc.) there is need of special financial tools. The experience in Western European countries shows that IMC has become popular when the State or other local government entities (departments in France, regions in Italy) gave special grants for developing certain services. In several countries of this study, the support was brought by foreign donors. This may also have an exemplary function that creates a competition between municipalities. When municipal leaders see that neighbouring municipalities could get money to create more services, this is an incentive to try to do the same. Dissemination of good practices through visible achievements often brings a contagion process because local politicians are more convinced by what they see than by what they are told. But then there must be a permanent public fund with sufficient money.

This issue is definitely clear: if the central State has no money or will not give money for supporting IMC initiatives, there is little hope that something will move in the field. There is no experience in our studies that shows that spontaneous IMC can bring significant economies and allow the united communes to do more or better together.

## **2.3. INSUFFICIENT HUMAN RESOURCES**

This is another strong obstacle for developing IMC. Small communes have few employees, with low salary and often poor professional skill and training. These persons are of little help to mount a project of creation of new structures and for requesting special funds. They have a lukewarm motivation: cooperation will be an additional workload and there is fear that it may become a risk for keeping the job.

Then there is the question of managing the IMC entity. There is rarely a workforce ready to do it in addition to its existing responsibilities. Appointing new employees will not be very attractive, especially if this or these persons must have special professional competences in technical, managerial or other domains.

Training of municipal employees to explain them the benefits of IMC and the procedures to prepare a project is a critical issue. Paying better salaries and attracting skilled employees is another one. And, finally, preparing a pertinent structure for the staff who will manage the IMC entity enhances the probability of greater success.

## Chapter 3

# Hesitation between amalgamation and IMC: a major political blockage

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This is another important explanation of the slowness of reforms.

In all six countries the diagnostic has been expressed since a long time by national experts, ministries and political leaders and sometimes quite steadily by international experts: too many small and weak communes create a long list of problems and handicaps in public management as well as in economic and social development. Despite official declarations, conferences and documents that seemed to prepare a governmental plan, the political movement did not succeed in a final decision. One could list the momentary events or causes that blocked the process but this is so common and frequent that we must look for the fundamental reasons, which are in the LSG problematic of these countries.

From what we learned thanks to the survey, this political stalemate is largely due to the incapacity to decide in the alternative: IMC or amalgamation. There is the feeling that amalgamation, which has been done in many Western European countries and also in the Soviet period, is the logical solution, but it looks complicated and raises immediately strong opposition from local politicians, from the population and national political parties. So, one looks for an alternative.

But inter-municipal cooperation is also difficult to decide as a national policy of municipal consolidation. It has its own oppositions and shortcomings. More fundamentally, it is in competition with the solution of amalgamation or merging of communes, which creates a new and bigger commune and will reduce dramatically the global number in the country. Both solutions have their own difficulties and advantages. Experts and political leaders are often confused on opting for one or the other and this has led to endless debates which delayed decisions in Armenia, Ukraine and Moldova.

The rather abrupt decision taken by the President of Georgia in 2005, on changing the rayons into municipalities and reducing thus the number of “communes” from 1004 to 64, was a way to close a discussion which he considered becoming endless. But this method was not optimal as there was a lack of studies and preparatory measures; a two hasty amalgamation is clearly not something that can be counselled.

If hesitations lasted many years in some countries, the evolution decided by Ukraine and Armenia shows how to solve the problem. On the basis of the survey we can see that there are rational criteria that help to settle the debate, though political decisions must be taken in all cases.

In countries with a very fragmented municipal structure and many small communes, of which many are on a path of depopulation and economic decline, there is no hope of spontaneous improvement. *Status quo* is the only solution that is not sustainable. IMC will bring no structural betterment. A national policy that aims to cover the whole country with IMC would not be realistic<sup>6</sup>: high cost, complicated and does not solve the problem of fragmentation; it would delay a possible amalgamation policy for many years as we see it in the French example. It is fully understandable that the governments don't want to engage in an IMC process that would exclude further consolidation for a long time.

The most rational choice is then the option of amalgamation. The political leaders of the small villages, and the citizens, generally oppose such a change, considering that it will “kill” the village, left without own political steering (Ukraine, Armenia, Moldova). One can understand this emotional attitude, but these villages are dying without amalgamation and it will not be its responsibility if it cannot stop this dramatic evolution. But greater community gives a chance for strengthening the human and financial capacities, in order to create facilities, improve public services and enter in a development process. So, in many cases

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6. Unless the IMC entities are a kind of “half amalgamation” with extended competences and important resources, the communes keeping only residual competences defined by subsidiarity. This is the French orientation with the creation of strongly integrated “communities” and “metropolis”.



IMC does not look as the most pertinent solution, amalgamation seeming much more adapted to deal with the structural problems of territorial administration, like in Armenia, Moldova or Ukraine, for instance.

The only amalgamation that has been implemented, in Georgia in 2005/2006, shows yet that this brings not automatically better governance and services to the population. Its success depends on different conditions. A commune resulting from the union of several existing ones, who had their traditions, geographic and demographic specificities, is not just a larger commune that can be managed like any large commune. It is a new and different community that must have appropriate governance on the political and administrative level and innovative methods for defining and running the policies. Therefore, it must be organized with much care and after solid preliminary studies, in order to avoid malfunctions that reduce dramatically the benefit of the reform.

Let's make one last remark. In some countries participating at this study (Armenia, at a certain time Georgia) or outside (Albania for ex.), political leaders or experts proposed, as a third way to avoid the alternative between IMC and amalgamation, to create "regions" when these did not yet exist. This was never adopted because the discussion made quite clear that, whatever the regions could have as powers and functions, they cannot compensate the difficulties generated by a fragmented municipal system.

## Chapter 4

# Perspectives

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The perspectives differ in each State. They depend on many factors. One is the existing situation, which shows significant differences that will not be compensated in short term. Another factor is the global policy for LSG development: is there a steady will to develop LSG autonomy (competences and resources)? The more ambitious it is, the greater are the probabilities that a consolidation strategy will also be considered. And then, there is the general political life, considering that these questions are nowhere the most urgent preoccupations of the government, parliament and political parties. A lot of other priorities may appear that delay the adoption of reforms already conceived and prepared, especially in Moldova.

### 4.1. A NATIONAL ANALYTIC APPROACH

A long way has to be done in **Belarus** for strengthening LSG. IMC is still to be discovered as a separate policy. Some very concrete projects, on a modest level, and with financial support could yet be tested as pilot experiences. One could try to be more ambitious in **Azerbaijan** where the discussion on LSG reform is livelier and where IMC projects of a certain scope concerning cities and their boroughs could find attention of local and national leaders. Both countries need to make efforts for improving the competences and the autonomy of communes; IMC should be a direct part of the reflection.

**Georgia** is willing to define good provisions on IMC, but must first reshape the communes by splitting the too large rayon-communes; cooperation can then be organized in specific domains of common interest.

**Moldova** is still hesitating between IMC and amalgamation. They are not contradictory but cannot be both general policies. The most rational would be the drastic amalgamation of the very small and poor communes whose situation (depopulation, economic decline) cannot improve by the *status quo*. However, there exist opposition of the population and strong disagreements in the national parties, for various reasons, one being the fact that they use local governments to place their supporters in official jobs. Yet IMC has some success in the country thanks to active involvement of several NGOs and UNDP; this can continue and should get better support by the government in terms of legal provisions and special financing. In addition we must consider the problem of the districts, which have competences interrelated with the communes. Their existence and role should be revised when larger communes are created; the districts could also become a kind of IMC structure, in a position of subsidiarity with the communes. But there seems to be no consensus in the political sphere on these issues.

**Armenia** has finally opted for an amalgamation process, which is launched by a law in discussion in the Parliament in autumn 2015 and should enter into force in 2016. The definition of the limits of the merged communities has been prepared by thorough studies and consultations. Of course, there is still some resistance, but this is definitely a sane policy. The perspectives are now focused on the additional measures to support the process. Amalgamated communities will be new entities, very different from existing communities; new governance must be invented for political leaders and administrative managers. IMC provisions could be rather easily improved to allow the new communities to engage cooperation on specific purposes where their perimeter is not optimal. No strategy of IMC is needed here. This original approach deserves to be followed closely and can provide lessons for other countries.

Finally **Ukraine** seems to be the frontrunner in IMC, but the situation is complex. It is the greatest country and has several levels of territorial administration, which need all substantial modifications. A law on IMC that was discussed since long time has been adopted in June 2014; regional agencies bring legal and technical support for creating new IMC and these get grants from a special Fund. This generated some opportunism to catch the grants, and most of the 21 projects are of modest scope, but this is the play in such policies. Systematic amalgamation, on a semi-voluntary basis, has been decided immediately after and has become the new priority. Most recent IMC will then probably disappear and an extended IMC policy will not be favoured; IMC may yet be a solution for specific situations. Municipal consolidation in Ukraine

is especially complex because of the different types of municipal self-governments and of the status and powers of the rayon: keeping it even with only few communes inside? Redistribute powers between communes and rayon? The stakes are really important: adjust the territorial maps, the distribution of powers and resources in order to have a coherent LSG system.

#### 4.2. CREATE A FRIENDLIER ENVIRONMENT FOR IMC, ESPECIALLY A LEGAL ONE

This is quite evident. Isolated communities need financial and technical or administrative support to engage in an IMC negotiation. Municipal associations must be convinced to spread the message to their members, create training sessions, have experts to help conceiving IMC project....

Promoting IMC requires to deal with the main obstacles that have been detected in the six countries: insufficient legal frame; no national strategy and no organized support for communes which engage in cooperative actions; few concrete territorial studies taking into account the demographic, social, cultural and economic data, in relation with the kind of powers (missions) assumed by municipalities; lack of a national policy for financing investment by local governments.

The most general recommendation, for all six countries, is to improve the legislation on IMC. None of them has a project to cover the whole country with IMC, as a substitute to amalgamation, which would need the definition of some very precise models. So IMC must be considered for what is its greatest and definitive advantage: flexibility. **Flexibility is the most serious asset of IMC and the one that is not sufficiently highlighted.** Whatever the territorial organisation is: fragmented or partly amalgamated, with rich or poor municipalities, with cities and villages, there are always adapted forms of IMC for facing specific problems, especially when the communes have a wide range of powers and some resources. This is another conclusion of the study: that the creation of bigger communes by merging small ones is not exclusive of IMC. The new communes may have better capacities to cooperate and their limits are not everywhere in accordance with all their missions. Broader cooperation may be needed for economic development, tourism, water supply, garbage collection and disposal, transportation, hospital... This is explicitly understood in Georgia and Armenia.

In comparative law there are many different models of IMC and a given country has often several legal procedures and institutions. Various options should be proposed in the law. Discretionary decision power should be given to municipal authorities to choose, on a voluntary basis, the most appropriate for their situation and policy objectives. Defining the conditions for implementing communal competences is a full part of local self-government autonomy as ruled by the ECLSG. Eventually, some forms may be compulsory in precise cases.

The *CoE Toolkit* mentioned above presents a comprehensive list. Our proposal is that the legislator should consider all the most general and flexible forms, excluding the ones which seem to be inappropriate in the given country.

#### 4.3. NEED OF TERRITORIAL STUDIES

Modifying the territorial structures is for long time and has deep consequences on the whole society and not just on the administrative structures. Therefore it must be done by considering the greatest number of factors that have a determinant impact on the pertinence and quality of the final decision. This one cannot be only a result of political bargaining. Decision makers and citizens must know and take into account the realities for which they need adequate data and information. A thorough analysis of the geography, of existing facilities, of the economic, demographic and social situation is an absolute obligation. It could be done as a preliminary, without any precise idea of the future political and legal decisions; it would be a rational way to clarify the debate when it will be initiated.

The size of an IMC entity or the perimeter of amalgamation cannot be just decided by negotiations between municipal leaders and government representatives. There must be an objective motivation, based on pertinent data and prospective studies measuring the impact of the institution, the possible resources and the adequacy with the functions and tasks that the new entity will fulfil.

In Georgia, a too hasty decision of amalgamation without preliminary studies and choosing the rayon as the perimeter of municipalities showed negative impacts: growth of number of employees and current expenses, greater dependency on national grants, reduction of fiscal autonomy, "centralization" of the administration, poor investment and dissatisfaction of inhabitants. There has not even been some coherence between the municipal division and the demographic realities (71 municipalities, but 100 towns and boroughs).

The reforms in Armenia and Ukraine seem to have taken this experience into account and studies have been fulfilled in both countries. They are in direct relation with the reform, but they could be even more useful if they were more ahead. This is a recommendation that can be given for all countries.

Finally, local governments must be consulted before any modification of their territorial limits or their competences. This is a requirement of the ECLSG (art 4-6; 5).

#### **4.4. A NATIONAL STRATEGY FOR FINANCING INVESTMENT IN LOCAL GOVERNMENT**

Local governments are for delivering services to the population and cooperation is for action. There is not much need to unite if the partners can do nothing because of lack of resources. There is no need to look for complicated explanations about lack of IMC: if local government leaders don't care for it, it is just because they don't see any interest to do it. Concretely, for the mayor on the spot, only two objectives may seem attractive. Saving really money in all day administrative tasks by merging several municipal services in a more rational organization does not look very convincing and strongly motivating; in fact, few people advertise for that. Creation of new services, infrastructures, facilities is a stronger motivation to associate several communes, especially when it requires a critical number of customers. Economy of scale or a pertinent scale is a concept that any city councillor understands. Anyhow, the project must also seem financially feasible. IMC is attractive only if it brings additional money. Just joining the budgets of different communes will rarely bring enough. So, there will be no envy to create complicated structures that have to be run in addition to the existing ones.

We have the demonstration when taking the example of any public service. Communes don't reject water distribution, waste collection, public transportation, better school buildings, sport facilities, etc. But IMC rarely brings this by itself. Cooperation will only be attractive if there is a concrete objective (service or equipment) on which to cooperate and the needed means to be put in the marriage basket. No project, no need to have a new entity; no money - no project.

It is not the role of the experts to propose financing resources and/or procedures.

Yet, let us underline that the availability of special or additional money is the critical condition for pushing IMC or for facilitating amalgamation. This supposes probably some special line in the national budget or the establishment of a special *Fund*, perhaps by deciding that the growth of money allocated from the central budget to communes will be for the next three years of X % of which 1/3 of X is for the Fund.

Then there are two options. One is using the Fund mainly to provide a general support or non-earmarked credits for any IMC project, whatever its object will be. Another option may be to dedicate the Fund to investment expenditures in some domains which have the greatest impact for development and/or for meeting the services demand of the population. Foreign donors and active NGOs could be associated to such a policy and asked to concentrate their efforts on these domains.



# Mapping the obstacles to inter-municipal cooperation in Armenia

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# Introduction

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This study is part of the thematic programme “Strengthening institutional frameworks for local governance” implemented by the Centre of Expertise for Local Government Reform, Directorate General of Democracy (DG II), Council of Europe (*the Centre*) under the CoE/EU Eastern Partnership Programmatic Co-operation Framework (PCF).

The main objectives of the above mentioned programme are to support the on-going process of local government reform in the participating countries (i.e. Armenia, Georgia, Moldova, Azerbaijan, Belarus and Ukraine) by improving and streamlining the legislative frameworks, increasing the efficiency, transparency, accessibility and accountability of local authorities, by increasing the leadership capacity of their elected representatives, promoting effective provision of services to citizens, in particular through inter-municipal cooperation (IMC), support to central governments and local authorities in the improvement of financial and human resources management of local administrations based on European standards and benchmarking processes.

Inter-municipal cooperation is an important but less developed aspect of local governance in transition countries including Armenia. Local self-government system in Armenia is extremely fragmented and local government units are weak in capacities. There are many small municipalities, which can't deliver many services assigned to them by the law, on the one hand, and these municipalities don't have financial resources for putting in joint fund for services delivery together, on the other hand. That's why IMC is not developed in Armenia. Undeveloped legislation is other main reason for such situation.

Armenia started a pilot programme on municipalities' amalgamation and this issue is a priority for the Government of Armenia. But anyway IMC is remaining as an important element for the complex development of local governance in Armenia.

The audiences targeted by this study are local authorities, national governments, experts, civil society and relevant NGOs working in the field of local democracy and citizens.

## Chapter 1

# Local self-government in Armenia

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### 1.1. GENERAL FRAME OF LSG IN ARMENIA

Armenia is one of the oldest countries in the world. But it didn't have independency for a long time. Armenia lost its independence in 14<sup>th</sup> century and only in 1918 it became again an independent country known as the 1<sup>st</sup> Republic of Armenia (1918-1920). The 1<sup>st</sup> Republic had a short life and could only establish primary components of local self-government.

#### A. Administrative and Territorial System in the Soviet Period

The establishment of Soviet government system in Armenia (1922) gave rise to the formation of administrative and territorial division of the country inherent to the Soviet Union. The administrative and territorial division of Soviet Armenia was part of a powerful system that constituted the Soviet state. According to the existing legislative acts, populated settlements were classified into urban and rural areas. Urban municipalities were considered to be the cities and towns of republican and regional significance, and rural municipalities included villages and smaller rural settlements. The territory of Armenia was divided into 37 administrative rayons (regions). Local councils together with their executive committees implemented the state government in rayons. The head of any rayon, city or village was elected from among the council elected by the population in the given administrative and territorial unit. These councils represented the local authorities and formed part of the national government.

#### B. Development of Administrative and Territorial Division after Independence

In the aftermath of the declaration of independence (September 23, 1991) Armenia encountered unprecedented blockade and energy crisis. The state was involved in addressing a number of other crucial problems, which postponed the commencement of administrative and territorial division reforms until 1995. It was evident that, given the establishment of market relations, the implementation of old type government in the former regions will be complicated in view of different levels of their development. Maintaining the former system would force the central government to get involved in permanent and active reallocation of financial and material resources, since the establishment of market relations would further deepen the differences between the regions certainly resulting in shrinking interest on the part of local governments towards efficiency of operations and feed their desire to seize more resources from the central government. In view of these circumstances an effort was undertaken to create a new system of territorial administration through consolidation of regional units based on the logical approaches of minimizing the differences between the areas and ensuring the availability of resources adequate to reproduce public life in each of the marzes (regions).

For the newly established Armenian state the priorities were the establishment of state institutions and the introduction of public administration system. Changes taking place in the public administration system were stipulated in the Constitution of Armenia adopted upon the national referendum held on July 5, 1995. The Constitution stipulated the powers of all branches of government, the human and civil rights and obligations.

Administrative and territorial division has a special role and place in the public administration system; it is not incidental that the National Assembly adopted the Law on Administrative and Territorial Division of the Republic of Armenia as a priority among the first legislative initiatives aimed at democratization of public administration system, taking into consideration that Article 104 of the Constitution has defined the administrative and territorial units of the Republic of Armenia, i.e. marzes and municipalities.



The new system of administrative and territorial division instituted by the Constitution plays two-fold role in the building of statehood. First of all, the system of regional authorities is established as a part of national government in accordance with the administrative and territorial administration structure, with the regional authorities performing functions inherent to national executive authorities. Secondly, the administrative and territorial structure envisages the existence of local self-government bodies.

In accordance with the Law on Administrative and Territorial Division of Armenia, the territory of Armenia has been divided into 10 marzes and the city of Yerevan, with the status of a marz. There were formed 930 municipalities: 48 urban, 871 rural and 12 district municipalities (boroughs) in Yerevan in 1996.

There have been insignificant changes during the last 20 years. There are 10 marzes and 915 municipalities operating now, including 49 urban and 866 rural ones. Yerevan became municipality in 2009 and the 12 district municipalities of Yerevan were reorganized.

### C. Short description of state territorial administration

The Armenian government has a two-tier structure – central government and local self-government - with most administrative powers exercised by the central government. *Marzer*, the regional units, are subdivisions of the state administration rather than a separate tier of the government system, as they lack elected officials or bodies and budgets.

Marzer are governed through the system of state administration. The Armenian government appoints and dismisses regional governors (*marzpetner*) to carry out the following duties with the assistance of regional administration (*marzpetaran*):

- to implement the government's regional policy;
- to coordinate the activities of regional agencies of state administration;
- to mediate between the central and local governments;
- to regulate inter-municipal issues within their competence.

The regional administration employees are civil servants functioning under the Law on Civil Service.

Marzpet and regional administration have no responsibilities in case of municipalities amalgamation or IMC<sup>1</sup>.

The regional council is an advisory body, composed of the marzpet and all municipality heads from the marz. Although its competencies are not defined by law, the regional council typically discusses issues of regional policy and regional development. The marzpet may take the results of these discussions under consideration *when performing government duties*.

In Armenia, local self-government is exercised only within the unit of the municipality.

So, there is a clear State territorial organization, as well as competences of the regional administration and local governments, defined by the Law on Local Self-government and the Presidential Decree. The government system is being centralized rather than a decentralized democracy with powers to effect change and deliver public services. The level of decentralization is very low.

## 1.2. 1<sup>ST</sup> LEVEL (MUNICIPAL) OF LOCAL SELF-GOVERNMENT

### A. Number and demographic tiers

As of January 1, 2014 the population of Armenia was 3017.1 thousand people<sup>2</sup>. The average number of population per municipality was 3297 people and 2132 people excluding Yerevan. The average territory

1. The term, IMC is a relationship between two or several local authorities (i.e. entities in the first level of territorial administration) having a status of legal persons, endowed with competences, powers and resources in accordance with the European Charter of Local Self-Government

2. [www.armstat.am](http://www.armstat.am)

per municipality remained unchanged from the previous year, i.e. 31.1 km<sup>2</sup>, and 30.9 km<sup>2</sup> excluding Yerevan.

The population in 49% of the Armenian municipalities is less than 1000 inhabitants and in 43% the population is 1001-5000. The local self-government units of Armenia are still highly fragmented keeping Armenia in the last places of the list of Council of Europe member states (Table 1).

**Table 1: Number of municipalities in Armenia, by marzes and selected population strata (as of January 1, 2014)<sup>3</sup>**

Marzes	Less than 500	501-1000	1001-5000	5001-10000	10001-15000	15001-50000	50001-100000	100001-1000000	Total
<b>ARAGATSOTN</b>	36	36	37	4		1			114
<b>ARARAT</b>	4	14	69	6	1	3			97
<b>ARMAVIR</b>	5	6	80	4		2			97
<b>GEGHARKUNIK</b>	27	19	31	11	2	2			92
<b>LORI</b>	45	19	41	4	3		1		113
<b>KOTAYK</b>	7	12	35	9	1	3			67
<b>SHIRAK</b>	41	29	44	3		1		1	119
<b>SYUNIK</b>	74	16	15	1	1	2			109
<b>VAYOTSDZOR</b>	19	7	14	4					44
<b>TAVUSH</b>	12	16	30	2		2			62
<b>TOTAL</b>	270	174	396	48	8	16	1	1	914

## B. Local self-government bodies, election, main powers and competences

There are 2 local self-government bodies: the local council (avagani) and the head of municipality (mayor). Local self-government bodies are elected for 4 years directly<sup>4</sup> by the population. Local self-government bodies are elected through the majority voting system in the marzes of the country, and through the proportional voting system in Yerevan.

In May 2011 a new election code was approved and promulgated thus rescinding the former one. Many changes have been made in the new election code, which encompass also the local self-government. For example, according to the new election code, municipality councils should consist of five members for municipalities with population of less than 1000 people, seven members in those with 1000-2000 population, nine members for 2000-4000, eleven members for 4000-10000, fifteen members for 10000-70000 and twenty-one members in communities with more than 70000 population. Yerevan local council has 65 members.

Candidates for mayor and member of avagani may be nominated by political parties by the decisions of their field (initial, local) office, while citizens who are entitled to be elected under the legislation may also run for the elected positions by self-nomination<sup>5</sup>. A political party may propose a candidate who is not a member of the given political party, for the positions of mayor and/or member of avagani.

Local self-government bodies are responsible for providing the following public services:

- water supply, sewerage,
- irrigation,
- central heating system,
- landscaping and municipality improvement,
- use and maintenance of municipality building stock, including residential and non-residential buildings, dormitories, administrative buildings and other municipality-owned structures,

3. Yerevan isn't taken into account.

4. Only the Mayor of Yerevan can be elected directly or indirectly by the council.

5. Prior to adoption of the Election Code of Armenia in 2011, candidates for mayors and members of avaganis ran only under the principle of self-nomination. In the aftermath of the adoption of the new Election Code, the political parties were also entitled to propose their own candidates.

- ensuring the proper maintenance of cemeteries,
- construction, maintenance and operation of roads, bridges and other engineering structures within the municipality's jurisdiction,
- operation of municipal public transport,
- waste collection and disposal,
- kindergartens,
- specialized education,
- cultural homes, libraries,
- museums,
- street lightning.

Local authorities give permission to launch the construction (designing) of new facilities, to reconstruct, reinforce, modify the exterior of the existing buildings in the municipality, for sellers of alcoholic beverages and/or tobacco in the municipality, to gambling facilities, public catering, saunas, and entertainment facilities, permission to work after 12 pm, etc. Local authorities also implement other administrative powers.

### **C. Administration and human resources (status of employees)**

The municipality head represents the executive body of local government, acting on the principle of individual leadership. The head is required to submit a proposed organizational structure, as well as the number of employees, the personnel list and the salaries of the local administration and budgetary agencies to the municipality council for approval. The municipality is a legal entity, with its own seal bearing its name and the municipality or state emblem of the Republic of Armenia. The size of local administration staff is defined by the municipal council.

The main part of municipal administration is formed by municipal servants. The Law on Municipal Service establishes the major principles of municipal service, regulates the classification of positions and the service categories, as well as the relations associated with appointments to positions in the municipal service, appraisal and training of municipal servants, human resource databases, the legal status of municipal servants, the organization and administration of municipal service, and other related issues. The processes of municipal service development were more coordinated in the last years, but they are as yet far from the optimal pace of development.

### **D. General financing: structure of resources**

The Law on the Budget System of the Republic of Armenia regulates all budgetary relations between central and municipality budgets in a system based on unified state fiscal, monetary and taxation policies. The Armenian budget system includes the state budget and municipality budgets, which follow the common procedures of developing draft budgets, classifying revenues and expenditures, accounting, reporting and implementation. The aggregate of the revenues and expenditures of the state budget and municipality budgets forms the consolidated budget of the Republic of Armenia.

The main sources of municipality budget revenue are as follows (Table 2):

- local taxes
  - property tax
  - land tax
- state duties
  - duty for registering acts of civil status such as birth, marriage and death certificates, amending records and issuing copies of certificates or documents that were lost;
  - duty for Notary Office services, such as issuing copies of documents certified by the notary, drafting contracts and applications and issuing copies or extracts of official documents.
- grants from the state budget
  - equalization grants

- subventions
- other grants
- local duties and fees
- land and property rent
- other revenues.

**Table 2: Municipal budget revenues and their individual shares in 2011-2013 (in mln AMD)<sup>6</sup>**

Revenues		2011		2012		2013	
		Amount	Share in total (%)	Amount	Share in total (%)	Amount	Share in total (%)
1	2	3	4	5	6	7	8
1000	TOTAL REVENUES	87342.4	100	95515.8	100	105802.4	100
1100	including						
	1. Taxes and duties	19550.7	22.4	20034.5	21.0	21121.5	20.0
1110	including						
	1.1. Property taxes from real estate (including land tax)	10006.4	11.5	9536.4	10.0	9463.9	8.9
1121	1.2. Property taxes from transportation	6207.7	7.1	6761.7	7.1	7462.6	7.1
1131	1.3. Local duties	2544.4	2.9	3020.9	3.2	3492.8	3.3
1151	1.4. State duties	791.8	0.9	715.1	0.7	702.1	0.7
1160	1.5. Other tax revenues	0.4	0	0.4	0	0.1	0.0
1200	2. OFFICIAL GRANTS	42445.8	48.6	48799.7	51.1	54799.5	51.8
1300	3. OTHER REVENUES	25345.9	29.0	26681.6	27.9	29881.4	28.2
1342	including State budget allocations to local self-government bodies for funding the expenditures associated with the implementation of delegated powers	19688.1	22.5	17823.5	18.7	20644.4	19.5
1392	Receipts generated by transfers from the reserve fund of the administrative budget to fund budgets of municipalities	2739.0	3.1	5132.3	5.4	8478.2	8.0

## E. Municipal enterprises and ways of managing local services: PPP, public companies, privatization

There are three types of organizations in the subordination of local governments and ownership of municipalities: budgetary, non-commercial and commercial. Commercial organizations are mainly registered in urban municipalities. They are operating in sanitation cleaning, planting of greenery, waste collection and disposal and other fields.

Municipal non-commercial organizations (Table 3) mainly exist in urban and large rural municipalities. Among them are kindergartens, art, music and sport schools, etc. As of January 1, 2014, the total number of municipal non-commercial organizations was 1201, 69 more than in the previous year. The number of commercial legal entities 100% owned by municipalities decreased by two to make a total of 425, and the number of commercial legal entities jointly owned by the state and municipalities increased by one to make a total of 219.

6. [www.minfin.am](http://www.minfin.am)

**Table 3: Number of kindergartens, music and arts schools, crafts organizations and sports institutions by marzes<sup>7</sup>**

<b>Marzes</b>	<b>Kindergartens</b>	<b>Music and arts schools</b>	<b>Crafts organizations</b>	<b>Sports institutions</b>
<b>YEREVAN</b>	207	49	12	55
<b>ARAGATSOTN</b>	20	8	1	7
<b>ARARAT</b>	74	22	1	7
<b>ARMAVIR</b>	56	14	2	6
<b>GEGHARKUNIK</b>	42	17	3	9
<b>LORI</b>	61	22	4	18
<b>KOTAYK</b>	52	24	6	16
<b>SHIRAK</b>	45	27	6	36
<b>SYUNIK</b>	52	17	4	10
<b>VAYOTSDZOR</b>	18	7	1	4
<b>TAVUSH</b>	56	19	3	4
<b>ARMENIA, TOTAL</b>	683	226	43	172

Commercial and non-commercial organizations of municipalities deliver local services mainly by their inhabitants. But sometimes they also deliver services for neighbouring municipalities' inhabitants. Some municipalities set for the neighbouring municipalities' inhabitants a fee higher than that for own municipality inhabitants (kindergartens, music and art schools) taking into account the building maintenance expenses.

7. [www.armstat.am](http://www.armstat.am)

## Chapter 2

# The law on IMC in Armenia

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### 2.1. GENERAL LEGAL PROVISIONS

Legislative provisions on IMC are very poor in Armenia. The Constitution of Armenia includes one provision on IMC. Article 110 provides that “Inter municipal unions<sup>8</sup> may be established in accordance with the legal procedure.” There is no special law on inter-municipal unions (IMUs). But there are some articles in the Law on Local Self-government on IMUs - consortia, municipal associations and direct contracts (Box 1). But, anyway, municipalities can’t establish IMUs because the objectives and powers of IMUs haven’t been defined by any law (Article 78). That’s why there is no registered IMU in Armenia yet.

There is the Government Decree on November 10, 2011 Government session N 44, which approved the Municipalities Amalgamation and Inter-municipal Unions Formation Concept. The Concept includes purpose and principles, centres, bodies, responsibilities, budget, etc. of IMU. But the main attention is given to the municipalities’ amalgamation than IMC.

### 2.2. LEGAL PROVISIONS ON IMC ORGANIZATIONS OR PROCEDURES

There are some organizational and procedural provisions in the Law only related to the IMUs. IMU must be a specific institution and it would be established by signing a contract between the founder municipalities’ heads, which should be approved by the respective municipality councils.

#### ■ Box 1. Fragment from the Law on Local Self-government of RoA

##### ” Article 16. Powers of municipality Council

10) take decision on submitting proposal to the authorized state body on amalgamation with other municipalities as well as creation of inter-municipal unions;

11) take decision on the appointment of its representative in the inter-municipal union;

22) ratify by its decision the agreements on cooperation with other municipalities of Armenia and other countries; for the purposes of coordination of municipalities activities, as well as representation and protection of common interests, adopt decisions on becoming member of the associations created by the municipalities and payment of membership fees;

##### ” Article 32. Powers of the Head of Municipality

11) sign agreements of cooperation with other municipalities of Armenia and other countries and submit them for the ratification of the municipality council. He/she shall submit for the approval of the municipality council draft decisions on the creation of inter-municipal union, as well as membership to the associations created by the municipality and payment of the membership fees;

#### ” CHAPTER 8. INTER-MUNICIPAL UNIONS

##### Article 78. The Right to Form Inter-Municipal Unions

Local self-government bodies may form inter-municipal unions for the purposes of providing solution to some problems faced by the municipalities and decrease of expenses.

Inter-municipal unions shall have the status of legal person.

Objectives and powers of inter-municipal unions shall be defined by law.

##### ” Article 79. Order of the Formation of Inter-Municipal Unions

Inter-municipal unions shall be formed by the heads of municipalities through the execution of agreements, which shall be approved by the municipality councils.

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8. IMU is an interpretation of IMC in the legislation of Armenia (mijhamajnjajinmiavorum in Armenian)

## » Article 80. Bodies of the Inter-Municipal Union

For the purposes of management of inter-municipal union a council shall be formed, comprised from heads of municipalities. The inter-municipal union council shall elect from its composition the chairman of the council.

Any session of the council of the inter-municipal union shall be legitimate [have quorum], if more than half of the members of the council are present at such session. Decisions are adopted by the majority vote of the members present.

Municipalities shall be represented in the IMU council by the heads of municipalities. There is no provision in the Law on representation of municipalities in the executive power, as well as the financial participations paid by member municipalities.

## 2.3. OTHER LEGAL POSSIBILITIES

### Municipalities Associations

Local governments associations are established and functioning. There are 25 municipalities associations in Armenia, which include only 495 municipalities (Table 4).

The management body of municipality association is the council, which consists of mayors of member municipalities. The council will elect a chairman, a secretary and a supervisory commission from among the members. The staff is small because of the scarcity of financial resources and limited sectors of operations. Financial resources of the associations are generated by membership fees, fees for delivered services, as well as resources allocated by donor organizations. By signing inter-municipal contracts, 17 municipality associations implement centralized management of property and land tax bases, including assessments and calculation, deliver advisory services, hold seminars and workshops.

Actually municipality associations implement one local government responsibility by direct contracts, which is the IMUs task and some of them are ready to re-establish as IMUs.

**Table 4: Territory, population and number of municipalities of Armenia, as well as municipality associations and their member municipalities by marzes**

Marzes	Area (km <sup>2</sup> )	Permanent population, 1000 people	Number of municipalities	Number of municipality associations	Number of municipalities in associations
<b>YEREVAN</b>	223	1066.3	1	1	40
<b>ARAGATSOTN</b>	2756	133.0	114	2	33
<b>ARARAT</b>	2090	261.4	97	4	67
<b>ARMAVIR</b>	1242	267.1	97	-	-
<b>GEGHARKUNIK</b>	5349	235.6	92	4	61
<b>LORI</b>	3799	234.7	113	4	91
<b>KOTAYK</b>	2086	255.3	67	-	-
<b>SHIRAK</b>	2680	251.3	119	1	8
<b>SYUNIK</b>	4506	141.7	109	4	108
<b>VAYOTSDZOR</b>	2308	52.2	44	1	27
<b>TAVUSH</b>	2704	128.3	62	4	60
<b>TOTAL, ARMENIA</b>	29743	3026.9	915	25	495

### Corporations

Vedi municipalities association established a "Clean Country" Ltd in 2009 with the objective to implement trash removal activities in the member municipalities. This company started actual activities on January 1, 2010 and it delivers garbage removal services to Vosketap, Urtsadzor and Avshar municipalities, which are not members of the association. The members of the association include Vedi, Aralez, Goravan, Dashtakar, Yeghegnavan, Lusarat, Noyakert, Nor Kyank, Nor Ughi, Shaghap, Vanashen, Aygavan, Sisavan, Ginevet, and

PokrVedi municipalities, which naturally are recipients of the service. Trash removal services are implemented in the above municipalities through 230 metal and plastic containers, plastic bags distributed to 5200 households and 326 legal entities. Trash removal in Vedi urban municipality is carried out twice a day, and once a week in rural municipalities. Garbage from the involved municipalities is collected in the garbage collection site of 5 thousand hectares allocated to the Company, which is fenced, has water, electricity supply and relevant structures. Trash removal is implemented in accordance with the scheme and timetable approved by the Manager of the company, agreed with the heads of involved municipalities.

In the future, it is planned to clean other areas, which were previously used as garbage collection sites, and a trash processing plant is designed to be constructed in the currently operating site<sup>9</sup>.

## Agreements

There is successful experience of managing land and property taxes bases by municipalities in a centralized manner sustained. 68 structures established by municipalities are operating on a contractual basis (their number remains unchanged from the previous year), which cover 427 municipalities (Table 5).

There are few cases when one municipality delivers services for other municipality's inhabitants. For example, Sysian urban municipality on contractual basis delivers waste collection and disposal service for neighbouring rural municipality Uyts. Municipality Uyts pays a fee for this service, which is defined in the contract.

There are also examples of unregistered cooperation and the information on this is very scarce.

**Table 5: Structures managing property and land tax bases (as of January 2013)<sup>10</sup>**

Marz	Municipality associations (MA)		Inter-municipal structure (IMS)		Municipalities in MA and IMS	Municipalities managing their own database only	Municipalities lacking own databases	Computers with databases installed
	N	Number of MA member municipalities	N	Number of IMS member municipalities				
<b>ARAGATSOTN</b>	1	9	17	48	57	57	39	75
<b>ARARAT</b>	2	27	2	12	39	58	35	62
<b>ARMAVIR</b>	0	0	1	2	2	95	1	96
<b>GEGHARKUNIK</b>	0	0	7	30	30	62	23	69
<b>LORI</b>	3	48	5	16	64	49	59	57
<b>KOTAYK</b>	0	0	1	2	2	65	1	66
<b>SHIRAK</b>	0	0	17	53	53	66	36	83
<b>SYUNIK</b>	4	100	0	0	100	9	100	13
<b>VAYOTSDZOR</b>	3	28	1	2	30	14	26	18
<b>TAVUSH</b>	4	50	0	0	50	12	50	16
<b>TOTAL</b>	17	262	51	165	427	487	370	555

9. Source: Yura Harutunyan, Manager of Clean Country Ltd.

10. [www.mta.gov.am](http://www.mta.gov.am)



## Chapter 3

# Municipal reform in Armenia

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The current situation of the municipal reform is related to the implementation of municipalities' amalgamation program of the Government in Armenia. This program is directed to the provision of full implementation of local authorities' responsibilities at the whole territory of Armenia but not to decentralization of new powers.

### 3.1. A GENERAL DEBATE: AMALGAMATION OR COOPERATION?

There were discussions before approving the Municipalities Amalgamation and Inter-municipal Unions Formation Concept by the Government of Armenia in 2011. The result of these discussions is reflected in the Concept, as IMU is not an alternative but a complementary to the amalgamation. It is mentioned in the Concept that small municipalities can't cooperate, having lack of financial and other resources, only amalgamated municipalities can cooperate. There have not been serious discussions after approving the Concept. But still the Government of Armenia and particularly the Ministry of Territorial Administration and Emergency Situation keep this opinion and especially do not put the issue into discussions.

### 3.2. IMC IN PROGRESS IN ARMENIA

There are few reports on IMC progress in Armenia, which are related mainly to the creation and development of IMUs. The leader in this issue is CFOA, which mentioned the necessity of IMUs establishment and operation in its all annual reports on monitoring the local self-government reforms in Armenia<sup>11</sup>.

There is another paper "Strategic Approaches to Further Development of Local Self-Government and Decentralization of Power", Yerevan 2012, developed by 6 NGOs (*Communities Finance Officers of Armenia, Councillors Association of Armenia, Information Systems Development and Training Centre of Armenia, International Centre for Human Development, Union of Communities of Armenia, Urban Foundation for Sustainable Development*) in the framework of *Civil Society and Local Government Support Program – CSLGSP(USAID/Counterpart International)*. It is mentioned in this paper "Take effective measures to develop and expand inter-community cooperation, namely to support the communities that voluntarily form inter-community unions and to regulate by law the creation and operation of other forms of inter-community cooperation." This paper is submitted to the Ministry of Territorial Administration but it was not approved.

There is no registered IMU in Armenia yet.

### 3.3. SPECIAL STATUS OF THE CAPITAL CITY

The capital city of Armenia – Yerevan - is a municipality. There is one tier local self-government system in Yerevan, which excludes IMC existence in the capital city.

### 3.4. THE ACTORS OF IMC

One can introduce the collective approaches only taking into account individual meetings with different representatives of the IMC actors as there were no serious discussions on IMC.

### Municipal leaders

The main part of mayors from municipalities included in the regional associations believes that IMUs can be an alternative to the municipalities' amalgamation and it is necessary to establish such Unions.

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11. Local Self-government in Armenia (2011), Book 5, edited by David Tumanyan, Yerevan 2012. Local Self-government in Armenia (2012 and 2013), Book 6, edited by David Tumanyan, Yerevan 2015.

## **Municipal associations**

Municipal associations rather prefer the establishment of IMC or IMU than municipalities' amalgamation. Their representatives think that these associations are ready to change their status and become IMUs. This is related with the corporative interest of these Associations because some of them will be closed after amalgamation.

## **Sectorial associations (employees; association of finance officers...)**

There are 4 registered sectorial associations in Armenia – Communities Finance Officers Association (CFOA), Municipalities Councillors Association of Armenia (MCAA), Municipalities Lawyers Association (MLA) and Municipal Employees Association (MEA) but actually only the first 3 Associations work.

CFOA consider parallel implementation of municipalities' amalgamation and IMUs formation. This is no alternative, but complementary issue by CFOA. Even CFOA has developed additions in the Law on Local self-government on the bases of the Concept on Municipalities Amalgamation and Inter-municipal Unions Formation (approved by the Government of Armenia in 2011) and submitted to the Ministry of Territorial Administration but that draft has not been discussed and included in the legislative process yet.

MCAA, when discusses local self-government related issues among them, sometimes have considered IMC in general also. But recently the issue has not been on the agenda of the Association.

MLA discussions show that there are different opinions on IMC.

## **The Government as a whole**

The Government of Armenia has approved the Concept on IMUs Formation recently and it is based on the opinion of the responsible Agency for local self-government reform – the Ministry of Territorial Administration and Emergency Situation (see below).

## **Ministry of Territorial Administration and Emergency Situation**

The Ministry mainly focuses attention on the amalgamation of municipalities. IMUs formation will be the target of the Ministry after amalgamation will be implemented in the whole country. The Ministry believes that first of all it is necessary to strengthen municipalities, then think about ICUs establishment. Armenia hasn't got the resources for parallel implementation of both. But amalgamation of municipalities will be continuing in coming years by using the piloting approach. The Ministry has not specified the time for the beginning of the process.

## **Ministry of Finance, Ministry of Economy, Line ministers**

The issue is not discussed in other ministries because it is not put on the agenda by the Ministry of Territorial Administration and Emergency Situation.

## **Citizens, Media**

There are no serious discussions or publications in the media. The whole attention is concentrated on amalgamation of municipalities

## **3.5. ROLE OF DONORS AND INTERNATIONAL ORGANIZATIONS**

Donors and international organizations took an active part in the discussions on ICUs formation before approving the Municipalities Amalgamation and Inter-municipal Unions Formation Concept by the Government of Armenia in 2011. USAID, UNDP, World Bank, LGI/OSI, GIZ and others believed that it was necessary to form IMUs. But after approving the Concept by the Government of Armenia they became passive in this issue. Nowadays all donors and international organizations focus their efforts to support the Government of Armenia in the municipalities amalgamation program. They plan to invest some funds in the municipalities included in the amalgamation program.

## Chapter 4

# Assessing IMC in Armenia

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### 4.1. LEVEL OF EQUIPMENT IN BASIC PUBLIC SERVICES

The RA legislation (including the Constitution, the Law on Local Self-government) entitles municipalities to own and autonomously manage property. Own property of municipalities may be kindergartens, water and sewage networks, heating, garbage removal and other communal utilities and infrastructures, roads, squares, bridges, administrative buildings, educational, cultural, sports and other facilities and structures, agencies and organizations, means of transportation and other immovable and movable property located in the territory of municipalities.

The majority of municipally owned property in general and equipment of public services was built or acquired decades ago and has undergone physical and moral wear-and-tear since then. Both maintenance and operation of municipally owned property has become a complicated task. Majority of the property is in desperate need of renovation, but the resources of the municipalities are inadequate to do so, while the physical condition of the assets that are not exploited or only partially exploited gradually deteriorates. Some LSGs are in desperate need of property and various assets to implement their powers; others use what is available in an inefficient manner.

### 4.2. DOMAINS WHERE IMC IS MOST NEEDED OR WOULD BE EASY TO IMPLEMENT

IMUs are most needed in public services delivery and administrative tasks as well. The main domains are:

*Management and collection of local taxes, local duties and fees:* Recently all municipalities have the responsibility to collect local duties and fees and do it by themselves. Related to the local taxes they have the same responsibility but some municipalities have established structures by contracts and do it together. It seems there are no bases to separate tax related responsibility and it is necessary to transfer this responsibility to IMUs.

*Water supply, sewerage, irrigation and their maintenance:* Recently different institutions delivered these services – state company, JSCs, water users' companies and municipalities. It is necessary to provide a centralized management of these services at the local level for effective implementation of these services.

*Landscaping and municipality improvement:* This responsibility is the competence of local authorities but many of them cannot implement it due to the lack of appropriate resources. Specialized organizations of IMUs may implement this responsibility in all municipalities and effectively.

*Construction, maintenance and operation of municipal and inter-municipal roads, bridges and other engineering structures are within the municipality's jurisdiction:* This responsibility is not implemented in many municipalities. But additional resources will be necessary for the real implementation of this responsibility by IMU.

*Operation of municipal and inter-municipal public transport:* Currently this responsibility is implemented by the marzpet related to the inter-municipal transport and mainly delivered by the private sector and by the local authorities' municipality transport. Specialized organizations of IMUs may deliver this service more effectively.

*Waste collection and disposal:* This responsibility is assigned to the local authorities but many of them don't deliver it. But there is a good practice in Vedy cluster of municipalities to deliver this service by a specialized company for the municipalities included in the regional association. So it can be transfer to the IMUs.

*Specialized education and sport:* This is a local authorities' responsibility but many of them have no appropriate facilities. Transferring this responsibility and facilities to the IMUs will create the possibility for all municipalities' inhabitants to receive this service.

*Social assistance and healthcare:* Recently social assistance is a central government and healthcare responsibility (few local authorities have healthcare facilities). These responsibilities can be more effectively implemented at local level but taking into account the existence of many small municipalities, it will be better to transfer these responsibilities to the IMU.

#### **4.3. NEED TO CREATE OR IMPROVE THE LAW ON IMC?**

It is necessary to develop a special law on IMC. There is the approved Concept by the Government of Armenia and the law must be developed on the basis of the Concept. The law may define the development of regulations for the implementation of different services.

#### **4.4. IMC and accessibility to services or management**

Accessibility to services can be provided when some services will be delivered first of all - *Construction, maintenance and operation of municipal and inter-municipal roads and bridges and operation of municipality and inter-municipal public transport.*

#### **4.5. Cross-border IMC**

Armenia has ratified the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (ratification 31.10.2003), the Additional Protocol to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (ratification 31.10.2003) and Protocol No. 2 to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities concerning inter-territorial co-operation (ratification 31.10.2003).

But, anyway, Cross-border cooperation is still weak in Armenia. For well-known reasons, the borders with Turkey and Azerbaijan are closed, while there are no examples of cooperation with Iran. As for cooperation with bordering regions of Georgia, it should be mentioned that in the framework of European Neighbourhood Policy and Eastern Partnership the implementation of territorial development projects in the bordering areas was launched through three pilot projects (environment protection, promotion of small and medium businesses, and tourism development). These projects involve urban municipalities of Alaverdi, Vanadzor, Tashir, Dilijan and Ijevan.

## Chapter 5

# Perspectives and conditions of progress

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### 5.1. HELP TO CREATE A FRIENDLIER ENVIRONMENT FOR IMC

There are no obstacles related to the IMC investment as an institution in Armenia, especially in regard with the CoE toolkit. The only problem is the absence of clear guidelines for that. There is no clear schedule when the amalgamation of municipalities will finish and when will start IMC creation.

The only work done in this direction is the re-establishment of the Armenian Social Investment Fund (ASIF) into Territorial Development Fund (TDF), whose activities will be based in the clusters of municipalities or IMC.

The Standing Commission of the Parliament on Territorial Administration and Local Self-government has not discussed the IMC issue. The Commission mainly focuses on the amalgamation of municipalities.

Political parties, both power and opposition, are passive in this issue. The main issue here is the amalgamation of municipalities again. Some parties favour and some are against the amalgamation.

The draft of the new Constitution, which the President submitted to the Parliament, includes some provisions on IMUs. That shows that IMC is in the attention of national authorities.

### 5.2. FINANCIAL ISSUES

Financial issues are not discussed as currently IMC is not on the agenda of the Government.

### 5.3. HUMAN RESOURCES ISSUES

There were trainings on IMC implemented by NGOs before the Government approved the Concept on IMC. Nowadays municipal servants obligatorily participate in trainings, once each 3 years. IMC is in the training curriculum of municipal servants. But anyway, during and after the creation of IMC it will be necessary to organize special trainings for IMC employees.

### 5.4. NEED, WILL OR PERTINENCE TO ADOPT AN EXPLICIT NATIONAL POLICY?

There is the Concept on IMC approved by the Government of Armenia and it can be considered as a national policy. It is important now to develop the draft law on IMC and an action plan with responsible agencies/officials and timetable and start its implementation. It will be better to form a consultancy expert group for facilitating the establishment of IMC. This group may include lawyers, management and financial specialists for legal, organizational and financial advice provision.

The Government must define special financial means for the creation and development of IMC by pilot projects. Donor and international organizations may play a crucial role in this matter.

Associations of local authorities and sectorial associations have great role in this issue. First of all some regional associations can be re-structured as IMUs and others support the establishment of IMUs.

## Chapter 6

# IMC in the energy efficiency sector

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### 6.1. NATIONAL ENERGY POLICIES ORIENTED ON LOCAL GOVERNMENTS

The legislation and normative acts on energy efficiency comprise the below mentioned documents, but local governments are not actors in this field and haven't been involved in the national energy policy.

#### Law on Energy

"The Energy Law of the Republic of Armenia" was adopted by the Armenian Parliament in April 2001, to regulate the interrelations between legal entities involved in the energy sector, electricity, heating and natural gas consumers pursuant to the law and the state bodies. Currently, the Law guarantees the market for the electricity produced by all small hydropower plants in Armenia.

#### Law on Technical Supervision in Energy System Electricity Usage Sphere

According to the Law on Technical Supervision in Energy System Electricity Usage Sphere, approved in December 2004, the main provisions relate to rights and responsibilities of persons working in the energy system, the supervision procedure and role, the authorized state body's functions.

#### Law on Energy Efficiency and Renewable Energy

According to the Energy Efficiency and Renewable Energy Law, approved in December 2004, the principles of Armenian policy in energy saving and renewable energy are: increasing the level of supply by indigenous renewable energy carriers to satisfy the energy demand of the economy, implementation of energy saving strategies, as well as development and enforcement of the legal and economic mechanism for the promotion of renewable energy, ensuring increasing usage of renewable energy resources as well as the application and development of new renewable energy technologies aimed at its promotion, etc.

#### Water Code

The Water Code, which has been adopted on 4 June 2002, establishes the procedures to obtain water permit for hydro power plants. According to this Code, water permit for a hydro power plant is given for 3 years at the first, but once the plant is operational or even if it is under construction, then the permit is extended for a much longer period. The purpose of this provision is to prevent people getting a water permit and then not proceeding to construct the plant.

#### Energy Security Concept

The Energy Security Concept of the Republic of Armenia was approved by the President in October 2013, outlining the main directions of energy security arrangements and stipulating the development of the Action Plan 2014-2020 within a short period of time. The document mentions the development of renewable energy sources and increasing energy efficiency as one of the directions of ensuring energy security in the country.

But none of these legal and normative acts contain provisions related to local governments. Local governments have no responsibilities for planning, production and supply of energy to the population. The only responsibility is street lightening.

## 6.2. EXAMPLES OF IMC IN ENERGY ISSUES IN ARMENIA

USAID, UNDP and EBRD have been active in the promotion of energy efficiency/public lighting projects in Armenia. Below are some examples of those projects:

The USAID-funded **Clean Energy and Water Program (CEWP)**<sup>12</sup> is a four-year project (2011-2015) designed to support Armenia in improving sustainable management of the water and energy sectors.

### **Energy efficient lighting and heating project in the Berd Sports School**

In September of 2014, The USAID CEWP, in partnership with the municipality of Berd and World Vision Armenia, completed an energy efficient lighting and heating installation project in the Sports School of Berd (total Project cost – \$29,291, estimated savings – 2,700/year). The municipality and World Vision have shared the costs for the installation of the heating system in the school's locker-rooms. The municipality of Berd will be responsible for the running and maintenance of the new energy efficient lighting and heating system. The community will now save up to 40% of their operational costs annually.

### **Aparan energy efficient lighting** (completed on 26.06.2014)

Through the Aparan energy efficient lighting project (total project cost: \$11,549 USD, estimated annual cost savings: \$4,313 USD), CEWP rehabilitated the street lighting infrastructure of the town by installing nearly 100 cfl (compact fluorescent lamp) fixtures in collaboration with the municipality of Aparan. New lighting was added, and the community's remaining old, energy-intensive gas discharge lamps were replaced. The entire population of the town directly benefits from the project because the new street lighting will significantly increase their safety while also significantly reducing energy consumption and energy expenses for the community.

### **Energy efficient street-lighting project in Tatul village** (completed on 23.07.2013)

The Clean Energy and Water Program (CEWP) implemented a street lighting project on the inter-community road which connects 5 neighbouring villages with each other and with the highway, as well as the central street of Tatul village (total budget: \$20,502 USD, estimated annual cost savings: \$1,640 USD). In total, 40 LED (light-emitting diodes) lamps were installed. The project was implemented in partnership with World Vision and the local municipality.

CEWP also completed **street-lighting projects** in Ashnak village (23.07.2013), Zovasar village (23.07.2013), Darbas village (12.09.2013) and in Lernagog village (27.02.2013), energy efficient heating project in Darbas Rural Clinic (14.04.2013). CEWP, in collaboration with World Vision International and the local community, installed solar and radiant heating systems in the polyclinic of Darbas village. The polyclinic provides outpatient services to six neighbouring communities (Darbas, Shenatagh, Lor, Getatagh, Shamb, Ltsen) with a total population of 2,237 people (640 households).

### **Green Urban Lighting project–UNDP**<sup>13</sup> (start date: November 2013, end date: October 2017)

Based on the Statement of Intent between Yerevan city municipality and UNDP in Armenia, the lighting retrofit in Isakov Avenue and Tairov Street of Yerevan city with 482 LED fixtures was completed successfully. The inauguration ceremony was put in the context of "Earth Hour" international environmental event, held on 27 March 2015. Annual GHG emission reduction is about 234 tCO<sub>2eq</sub>. The second demonstration project in Yerevan city with 155 LED fixtures was performed for the Zoological Garden in the frame of a larger-scale reconstruction and expansion programme implemented by the Yerevan Municipality.

The demonstration project in Alaverdi town, on-going according to the signed tripartite Statement of Intent between UNDP (55 LED luminaries), "French-Armenian inter-professional network" NGO (15 LED luminaries) and the Municipality (pole renovation and relevant matters) is in its final stage of implementation. Annual GHG emission reduction is about 10 tCO<sub>2eq</sub>.

12. <http://cew.am/en/projects/renewableenergy-efficiency-projects/>

13. [http://www.am.undp.org/content/armenia/en/home/operations/projects/environment\\_and\\_energy/green-urban-lighting.html](http://www.am.undp.org/content/armenia/en/home/operations/projects/environment_and_energy/green-urban-lighting.html)

Consultations were conducted with the municipalities of Yerevan, Spitak, Alaverdi, Tashir, Stepanavan, Sevan, Abovyan and Hrazdan cities on their municipal plans on the improvement of the street urban lighting in their respective cities. Municipal programs for Alaverdi, Spitak, Goris and Stepanavan towns are underway. The Statements of Intents signed with the respective Municipalities include the provision “to establish a special revolving fund for financing energy efficient technologies for introduction of outdoor lighting systems”. Consequently, the template of revolving fund concept, the respective procedure and methodology for fund operation/special account management were developed and provided to the respective cities/towns.

### **Yerevan Street Lighting Project**

Armenia and the European Bank for Reconstruction and Development (EBRD) have signed the Yerevan Street Lighting Project and project support agreements on 11.05.2015 (the total project cost is estimated to be up to US\$ 7 million including technical cooperation, a sovereign loan of up to US\$ 4 million to be complemented by a grant component of up to US\$ 2 million to be funded by an international donor). The EBRD is considering financing a project aimed at the rehabilitation and modernisation of the street lighting network in the Armenian capital city, Yerevan. The key project components include 80 km of underground cabling in primary and secondary streets, the replacement of existing lighting fixtures with modern, energy efficient technology, and the installation of a central lighting-management system with automated control and energy monitoring. The proceeds of the EBRD loan will finance a pilot project to refurbish the street lighting network of 28 streets in Yerevan.

## **6.3. POSITION OF LOCAL AUTHORITIES**

Local authorities have no responsibilities on energy supply to the municipality. But many mayors said that the inhabitants of the municipality address them when there is a problem arising with energy supply. They would like to have some responsibilities in this respect (e.g. approval of local energy efficiency programmes and plans). But it is necessary to mention that local governments do not have capacities to identify, co-finance, implement and ensure the sustainability of the energy efficiency projects.

## **6.4. Perspective of municipalities to implement IMC in energy issues**

Energy supply is provided by private companies now. Street lighting is under the responsibility of local governments. It is possible to establish specialized companies under the IMC and transfer this responsibility to the IMC body. It is possible also to involve IMC bodies into the development of local energy efficiency programs and plans.



# Conclusion

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So, we can say that, according to the government of Armenia, IMC is not alternative but complementary to the municipalities' amalgamation. First of all it is necessary to implement the amalgamation of municipalities, to strengthen the municipalities' capacities and then start the development of IMC.

But it will be more productive to develop a draft law on IMC and approve it now and give an opportunity to municipalities included in the pilot projects on amalgamation and those which have not been amalgamated to form IMUs.

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## Interviews done by expert

1. Vache Terteryan – 1st Deputy Minister of the Ministry of Territorial Administration and Emergency Situation of Armenia
2. Ashot Giloyan – Head of Local Self-government Department of the Ministry of Territorial Administration and Emergency Situation of Armenia
3. Araik Hovhannisyan – Deputy Head of the Standing Commission on Territorial Administration and Local Self-government of the Parliament of Armenia, President of the Municipal Councillors Association of Armenia, member of the Republican Party
4. Hovsep Khurshudyan – Member of the Board of the Heritage party
5. Samvel Hovsepyan – Executive Director of the Berd Municipalities Association
6. Andranik Veranyan – Executive Director of the Noyemberyan Municipalities Association

# Mapping the obstacles to inter-municipal cooperation in Azerbaijan

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# Introduction

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The development of the assessment regarding the current state of the Inter-municipal Cooperation (IMC) in Azerbaijan is connected to the implementation of the Eastern Partnership Programmatic Co-operation Framework (PCF) for 2015-2017, carried out directly by the Council of Europe and supported by the European Union. The main goal of this program is to support the reforms in local self-governance in 6 Eastern Partnership Program participating countries, including Azerbaijan, through improvement of the existing legislation. The main goal of this study assessing the current state of the inter-municipal cooperation in Azerbaijan is to identify the legal, political and regulatory framework enabling mutual cooperation of local self-government bodies in terms of undertaking of their functions. At the same time, the study draws the real picture with regard to the attitude of all stakeholders of the inter-municipal cooperation process towards this mechanism. However, the study is not limited only to assessment of the current situation. It reviews the favorable sectors with potential for the development of inter-municipal cooperation, various types of public services, and based on this, presents proposals and recommendations to the stakeholders for IMC development.

The Assessment is worked out on the basis of the Best IMC Practices Manual jointly prepared by UNDP, CoE and OSI. Thus, when assessing the current situation in Azerbaijan we referred to the activity principles and the major important conditions for IMC mentioned in the Manual. The legal basis of IMC in Azerbaijan and the real status of cooperation in the practical life have been assessed within this study.

Assessments show that Azerbaijani legislation does not prohibit IMC. However, this cooperation experience is not spread in practice. The main reason for this is that the possibility to introduce the IMC model is not envisaged either in the sector laws regulating the delivery of various social and public services available for the population residing in municipalities, or in the legal-normative acts regulating the carry-out of various public powers that ensure socio-economic development at the local level. The functions related to the provision of major public services, which has potential for IMC development, are delegated to various public agencies or State-owned companies. In other words, there is no potential sphere for IMC development. Taking this into account, the report cites the advantages of IMC in terms of efficiency, accessibility and effectiveness of services, and suggests concrete mechanisms for practical development of IMC.

However, assessments show that in recent years the official policy was aimed at increasing the size of municipalities by amalgamating them, rather than developing IMC. The official approach is that small municipalities are not effective, they have very weak financial, cadre and administrative potential to deliver public services. Growth in size of the municipalities may help increase their potential to deliver the services. As a result of this approach and the policy of amalgamation of small municipalities, during the last 6 years, the number municipalities decreased by 40%.

The findings of the assessment allow saying that Azerbaijan needs well-thought strategy for IMC development. The strategy should accurately define the role of various institutions, their impact potential, activity directions and resources at the local and international level. Undoubtedly, the main role in this process belongs to the central government. If the government includes IMC into its local self-governance development priorities, this would eliminate all political obstacles for a comprehensive and thorough development of legal aspects of cooperation. The central government also can be considered the major actor in the definition of the administrative and financial boundaries of IMC. One of the main roles in this process belongs to the relevant international organizations. The organizations can contribute to the strategic paper for IMC development through their experts, and conduct various training programs to improve skills and knowledge of the relevant institutions and individuals, should IMC mechanism is introduced. It is possible that such education and training programs may encourage the interest groups in Azerbaijan to reconsider the importance of IMC and launch reforms in this direction.

## Chapter 1

# Local self-governance in Azerbaijan

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### 1.1. OVERALL FRAMEWORK OF LOCAL SELF-GOVERNANCE

The territorial governance of Azerbaijan started to form since the restoration of the country's independence 24 years ago. According to the first Constitution of the independent Azerbaijan, adopted in 1995, Azerbaijan is a unitary state. According to the Constitution, there are two governance structures at the local level: local executive authorities and municipalities.

Pursuant to Article 124 of the Constitution, the local executive authorities are appointed by the President, whereas pursuant to Article 142 of the Constitution, municipalities are elected through nationwide elections<sup>1</sup>.

Local self-governance in 1991-1995 included only district and town executive authorities as part of the public authorities system. These structures were formed on the basis of district (town) party committees that functioned during the Soviet period and their appointment was the sole prerogative of the President. In accordance with the Constitution, the first municipal elections were held in 1999 and thus municipalities started functioning in the local self-governance system alongside the executive authorities.

The initial legal framework of the administrative-territorial structure and territorial governance of Azerbaijan is regulated by the Law of the Republic of Azerbaijan "On the Territorial Structure and Division". Pursuant to Article 2 of the Law, Azerbaijan, as a unitary state, is divided into territorial units in the form of cities, districts, settlements and villages<sup>2</sup>. According to the data of the State Statistics Committee, Azerbaijan presently is formed of 66 administrative districts, 78 cities, 261 settlements and 4249 villages and 1 autonomous republic (Nakhchivan Autonomous Republic)<sup>3</sup>.

Pursuant to Article 2.5 of the Law "On the Territorial Structure and Division", the administrative-territorial units are those, within the limits of which, the public authorities are established. For example, presently 4249 villages exist in Azerbaijan as historical residential areas. But the number of village executive authorities is little more than 1600. It means that, approximately, village level executive committees are established per 2.6 villages. Since the population of the majority of the villages is too small, local executive bodies covering several neighboring villages are established. For instance, according to the official statistics, currently the population of 2624 rural residential settlements (61.7%) in Azerbaijan is less than 1000 people.

However, individual local executive authorities are available for 66 districts and 78 cities.

The municipal system in Azerbaijan is a single-level one. That is, there is no hierarchical subordination between city, district and village municipalities. In the situation when one fifth of the territory of Azerbaijan is under occupation and the Nagorno-Karabakh conflict has not been resolved yet, the Government of Azerbaijan has a cautious approach to regionalization reforms that may undermine the integrity of the country. Therefore, Azerbaijan still maintains the administrative-territorial division inherited from the Soviet period. Overall, local self-governance bodies of second and third tier covering district and city administrative-territorial units have not been established. The governance of districts and cities is fully delegated to local executive authorities and municipalities function in parallel with all administrative-territorial representations of executive authorities at village, settlement and town level established within all district.

The activities of local executive authorities are regulated by the Statute "On Local Executive Authorities" approved by the Decree of the President of Azerbaijan dated June 6, 2012. The Statute defines the scope of

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1. <http://e-qanun.az/framework/897>

2. <http://e-qanun.az/framework/510>

3. <http://www.stat.gov.az/source/demography/>

authorities of local executive bodies. These bodies have the following exclusive competences at the local level: implementation of social protection activities, management of housing and communal economy and beautification, ensuring socio-economic development of the relevant territory, support to the development of the agriculture sector, and regulation of the architecture and urban-planning fields.

Municipalities are presently established under almost the same principles as the local executive bodies. City municipalities are established in the standalone cities (like Mingachevir), which do not have district or settlement divisions, and individual district and settlement municipalities are established in the cities which have district and settlement divisions (like Baku and Ganja). Elections to village municipalities are conducted based on the principle of existence of local executive authorities. For example, if 2 or 3 villages are governed by 1 village executive authority representation, then those villages have a single municipality. Presently, 1607 municipalities function in Azerbaijan. About 250 of them are town and settlement municipalities, and 1357 are village ones. The official statistics shows that 1 municipality in Azerbaijan covers on average 3 villages.

The status and mission of the institution of municipality in Azerbaijan is defined by the Constitution and the Law "On the Status of Municipalities". According to Article 1 of the Law "On the Status of Municipalities", local governance in the Republic of Azerbaijan is a system of organization of citizens that enables them to exercise their right to independently and freely solve the issues of local importance within the legislation and take part in the public activities envisaged in the Constitution.

Presently, even the smallest administrative-territorial units' local executive representatives function along with municipalities. The current principles of organization of the public administration in Azerbaijan are inherited from the Soviet Union. Thus, the model of local administration called "territorial (village, settlement or town) soviets" has been replaced with "territorial (village, settlement or town) executive representations".

## 1.2. STRUCTURE AND INSTITUTIONAL CAPACITY OF MUNICIPALITIES

Presently, 15,682 elected people function in 1607 municipal councils. In other words, the average number of councilors per municipality is nine. The number of elected councilors differs based on the number of people residing in the territory of that municipality. The smallest municipal councils consist of 5 members, whereas the largest – 19 members. The number of councilors in the rest of the municipalities ranges from 7 to 17 depending on the number of population. Thus, pursuant to Article 210 of the Election Code, the municipal council members shall be elected on the basis of election territories as follows: 5 municipal members in territories with a population of less than 500 people, 7 municipal members in territories with a population from 500 to 999 people, 9 municipal members in territories with a population of 1,000 to 4,999 people, 11 municipal members in territories with a population of 5,000 to 9,999 people, 13 municipal members in territories with a population of 10,000 to 19,999 people, 15 municipal members in territories with a population of 20,000 to 49,999 people, 17 municipal members in territories with a population of 50,000 to 99,999 people; and 19 municipal members in territories with a population of 100,000 to 299,999 people.

90% of all people (or 13,434 persons) elected as municipal councilors in the 2014 Municipal Elections have higher education. 35% or 5,236 of them are women, and 36.4% or 5,450 – are young people.

Municipalities carry out their activities through various structures. Activities of those structures are regulated by the legislation. According to Article 17 of the Law "On the Status of Municipalities", any municipality shall establish standing and other type of commissions to hold discussions on issues related to its competence, and oversee the activities of the enterprises, offices and organizations under its subordination.

According to Article 18 of the Law "On the Status of Municipalities", the executive body of a municipality is its executive apparatus. The Executive Apparatus is comprised of the chairman of the municipal council and the structural divisions established in accordance with the municipal council's statute. The Executive Apparatus of the municipal council carry out the information, organizational, record keeping and logistical activities, execute the tasks of the chairman and the decisions of the council.

Municipalities in Azerbaijan are represented by the councilors elected by the people. The councilors elect the chairperson and his/her deputy among themselves. The main duty of the chairperson is to convene

the council's meetings, sign the council's decisions, issue orders and instructions in the name of the council. In his/her absence, his/her powers are automatically delegated to the deputy chairperson.

The officials of the municipal councils, who are not elected, are called municipal servants and their activities are regulated by the Law "On Municipal Service". The effectiveness of local self-governance bodies, making efficient and quick decisions on the issues of local importance and their effective implementation, depends on the capacity of the municipal cadre. Presently, more than 15 thousand municipal servants work in the municipal system of Azerbaijan. According to the effective legislation, municipal chairpersons are responsible for hiring municipal servants on a competitive basis. However, in some cases when municipalities do not have enough funds to maintain and develop their own cadre, this leads to shortage of employees. A system of training, re-training and development of qualifications of municipal cadre has been established in the country. Training of local self-governance cadre is carried out in the Public Administration Academy under the President of Azerbaijan, the State Economics University, Baku Business University, Qafqaz University, Azerbaijan International University, Nakhchivan State University and Ganja State University. The annual average number of people enrolled to local self-governance specialties in the universities is around 200-250. And the development of qualifications of the municipal servants is undertaken at the Public Administration Academy under the President of Azerbaijan and the Justice Academy.

The annual reports submitted by the Ministry of Justice to the Parliament about the administrative oversight on the activities of municipalities demonstrate that every year newly elected municipal councilors and servants receive numerous qualification development training courses and at least 400-500 listeners got lectures on urgent issues in those courses. Additionally, qualification development training courses are delivered also in the Public Administration Academy. It is noted that on average 450-500 municipal cadres got their qualifications improved in those courses.

Municipalities do not have large potential in Azerbaijan. The total budget income of all municipalities in Azerbaijan in 2014 was 49.1 million manat (41.3 million EUR), per capita income of the local budgets nationwide was approximately 5.1 manat (4.2 EUR)<sup>4</sup>. Presently, the proportion of total budget income of municipalities in the grand State budget is less than 0.2%. The effective legislation - the Tax Code, the Laws «On Local (Municipal) taxes and payments », «On Financial Basis of Municipalities », «On Budget System» set forth a number of income sources for local self-governance bodies.

The analysis of statistical data reflecting the status of local self-governance bodies demonstrates that, despite the identification of more than 10 income sources for municipalities by the legislation, none of them can play a significant role in the formation of local budgets. Specifically, property and land taxes collected from natural persons can potentially constitute a large income source for municipalities. However, according to the results for 2014, only 11.4 million manat was allocated from these two sources to local budgets. Overall, the proportion of local taxes in the nationwide municipal budgets for 2014 was 13.4 million manat or 27.3%.

The effective legislation envisages that municipalities can receive targeted (subsidies and subventions) and non-targeted (grant-in-aid) financial aids from the state budget.

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4. Statistical bulletin on municipal bodies' budgets, Jan-Dec 2014, Baku – 2015, SSC

## Chapter 2

# The legislation on inter-municipal cooperation in Azerbaijan

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### 2.1. GENERAL LEGAL PROVISIONS

The main legal framework for inter-municipal cooperation in Azerbaijan is the Law “On Joint Activities, Amalgamation, Splitting and Liquidation of Municipalities”. Article 7 provides that municipalities can have joint activities to increase the efficiency of their activities in economic, social, cultural, ecological and other fields within their powers and strengthen their mutual cooperation. Joint activities of municipalities are conducted based on decision of the municipalities. Municipalities need to conclude agreements for such joint activities. The agreement should include the areas of cooperation, the rules for financial operations and other terms and conditions. The territories of municipalities do not change upon such joint activities. Since the establishment of municipalities in Azerbaijan 16 years ago, the law enabled the amalgamation of municipalities in larger ones and the number of municipalities decreased since then from 2757 to 1607. However, no inter-municipal cooperation examples exist based on the mentioned form of agreement. The Law does not include conditions, procedures for inter-municipal cooperation, nor does it state the responsibilities of potential parties under their contractual obligations.

The Law “On Approval of the Statute for Municipal Tax Bodies” also creates legal opportunities for inter-municipal cooperation. Thus, Article 2.2 of the Law provides that, depending on the territory, financial capacity, local (municipal) taxes and number of taxpayers and other aspects, based on agreement, several municipalities may establish a tax service that would serve them. The agreement should indicate the names of municipalities the service will cover, the period of authority of the service, terms for withdrawal of municipalities from the agreement, and the rule for division of service’s costs among the municipalities.

One of the important legal means for the formation of inter-municipal cooperation is that municipalities have the right to establish economic entities for various purposes. Because in practice, according to the agreement signed by local self-governance bodies for inter-municipal cooperation, they deliver their mutual services through joint enterprises they establish. Pursuant to Article 34 of the Law “On the Status of Municipalities”, municipalities can establish legal entities to undertake economic activities and other activities not prohibited by legislation. According to Article 35 of the Law, municipalities define the scope and terms of activities of the legal entities they establish, and set the prices and tariffs for their products (services).

### 2.2. PROVISIONS ON THE ORGANIZATIONS OR PROCEDURES RELATED TO INTER-MUNICIPAL COOPERATION

The model of inter-municipal cooperation has not been tested during the period of formation of the institution of local self-governance in Azerbaijan. At the same time, the country’s legislation is silent about concrete mechanisms and ways for the establishment of inter-municipal cooperation and its forms. Though, based on the international best practice, there is a need to define legal provisions for the forms of inter-municipal cooperation bodies depending on their mandate (those established for concrete single purpose or multiple purposes), the mechanisms and principles of establishment and operations. At the same time, it is important that the regulation of relations between the inter-municipal cooperation body and the local self-governance body established, as well as the commitments of the parties are reflected in the legislation.

According to Article 34 of the Law “On the Status of Municipalities”, in order to ensure the undertaking of its authorities, each municipality can establish entities and organizations. However, this provision sets forth the right of an individual municipality to independently establish an entity or organization. The fact that inter-municipal cooperation envisages the involvement of 2 and more municipalities suggests the forma-

tion of joint entities by the partner municipalities. In turn, if inter-municipal cooperation is based on formal relations, municipalities have to establish the entities operating on commercial principle. The problem is that the existing legislation of Azerbaijan prohibits such joint establishment of entities by municipalities. Thus, pursuant to Article 64 of the Civil Code, municipalities cannot establish commercial organizations like limited or additional liability companies, as well as joint stock companies<sup>5</sup>.

The Azerbaijani legislation also does not envisage the possibility of development of informal forms of inter-municipal cooperation, as well as public service areas to be covered by such cooperation. Considering the international practice, it is expedient for the legislation to cover such aspects like the development of inter-municipal cooperation on a formal or informal basis, and whether the cooperation should be compulsory or voluntary.

The mechanisms of transferring municipal powers to an institution created as inter-municipal cooperation body must be clear from the legal point of view. It is important to reflect in the legal documents the mechanism of transferring the financial aids allocated from the state budget to a inter-municipal cooperation body covering several municipalities and which carries out the powers of those municipalities.

Inter-municipal cooperation was never a discussion issue on the public agenda in Azerbaijan. During the past period, wider discussions were held on the boundaries of municipal powers, their financial potential, property and ownership issues, and the state of their relations with public structures and amalgamation of municipalities. Inter-municipal cooperation model becomes a working mechanism under the condition of existence of the powers of local self-governance gained through an exclusive right. In turn, the official policy in Azerbaijan in recent years was geared towards the establishment of larger municipalities. As a result of this policy, the number of municipalities operating in the country was reduced from 2757 to 1607 in 2009-2014. Overall, since the issue of inter-municipal cooperation in Azerbaijan is not widely debated, it does not have political sensitivity.

### **2.3. OTHER LEGAL LEVERAGES**

The contractual mechanism can be used for the development of the inter-municipal cooperation model and there are certain, although limited to few sectors, legal leverages for this. For example, according to Article 40 of the Water Code, any property owner has the right to lease their water facilities on a contractual basis. Using this right, the public bodies may transfer the State-owned water supply facilities located in the territory of municipalities to the municipalities or the inter-municipal cooperation bodies established by them for long-term usage. Similar contracts can be used to transfer transportation, social and other services of local importance to inter-municipal cooperation bodies without changing their ownership. The mechanism of concession envisages the long-term leasing of public and municipal property to the third economic entities. Some CIS countries have already adopted laws on concession (for instance, Ukraine and Kazakhstan).

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5. <http://e-qanun.az/code/8>



## Chapter 3

# Municipal reform in Azerbaijan

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### 3.1. GENERAL DISCUSSION: AMALGAMATION OR COOPERATION?

During the last 7-8 years, amalgamation of municipalities has been actively discussed at the official level in Azerbaijan. The Government considers the enlargement of municipalities by amalgamating them as the main alternative to inter-municipal cooperation. The official approach is that smaller municipalities are the least effective in their scope, the services provided get more expensive and they become unfeasible. Also the cadre potential of such municipalities is low and inevitable. Since the government was mainly focused on amalgamation of municipalities as alternative to their joint cooperation, inter-municipal cooperation has never become a discussion issue.

2757 municipalities have been operating in Azerbaijan in 1999-2009. The population of 1257 of them or 46% was less than 1000 people. When the municipalities were initially established, neither the size of their territory, nor their population and the principle of their location in the administrative-territorial areas were taken into account. Administrative-territorial unit is the one within which the executive body is established. For example, village and settlement executive authorities are sometimes established to cover 3-4 or even more villages, however, all of them together are considered as one administrative-territorial unit. Until 2009, municipalities were basically covering all villages and sometimes there were several municipalities in one administrative-territorial unit and they were mostly small ones.

For the first time, in May 2009 the Law "On Establishment of New Municipalities by Amalgamating in the Republic of Azerbaijan" was adopted and the process of amalgamating of municipalities took place. After this reform, the number of municipalities was reduced from 2757 to 1718. Later, in May 2014, the Law "On Joint Activities, Amalgamating, Splitting and Liquidation of Municipalities" was adopted. As a result of implementation of this law, the number of municipalities reduced again and became 1607. Presently, the number of municipalities is equal to the number of administrative-territorial units and on average one municipality covers 2.5 villages. After the implementation of the two laws on amalgamation, the population of only 12% of the municipalities is less than 1000, whereas at the initial stage this indicator was 46%. At the same time, the share of the municipalities with population of less than 5000 people remained unchanged. Before the reform this indicator was around 77%. After the amalgamation steps, the level is pretty much the same. The reason is that the amalgamation process mainly impacted the municipalities with less than 2000 population. Although the reduction in the number of all municipalities by more than 40% as a result of the amalgamation is a positive thing, taking into consideration the international practice, we can say that the share of large municipalities in the total number of municipalities is still small. Because usually the municipalities with more than 10,000 people are considered as large ones in a number of countries. Whereas, currently in Azerbaijan, save large city municipalities, the average number of population in 90% of the rest of the village (settlement) municipalities is 3000 people. From the "coverage effect" point of view, this level demonstrates the necessity for inter-municipal cooperation in the urban areas of Azerbaijan. Or as an alternative to the inter-municipal cooperation, the Government should continue the amalgamation process of municipalities and achieve the reduction in their number on average by 2.5-3 times.

### 3.2. INTER-MUNICIPAL COOPERATION (IMC) CONTINUES IN AZERBAIJAN

A formal inter-municipal cooperation mechanism does not exist in Azerbaijan. Even on small scale, the municipalities in the country try to develop this cooperation informally. Informal inter-municipal cooperation is observed mainly in the following areas: cleaning of internal irrigation canals and organization of distribution of irrigation water resources. IMC in the mentioned areas is mainly carried out on a voluntary basis as public initiatives. Because unlike other public service areas, the irrigation water resources usually cross the territories of several municipalities. We need to take into account that the activities of 90% of the rural

population of Azerbaijan are connected with the agriculture. Therefore, it is very important to maintain good condition of the internal irrigation system during the agricultural season to ensure uninterrupted and unimpeded irrigation water flow.

### **3.3. IMC ACTORS**

Turning IMC into a working mechanism is significantly dependent on the support provided to this model by all stakeholders. Especially, chairpersons of municipalities, associations representing the interests of local self-governance, governmental institutions should have positive attitude towards this process, and should believe that IMC is the effective management model at the local level to provide quality public services. The positions of potential stakeholders in this process in Azerbaijan have been analyzed and the arguments are presented below.

#### **A. Municipal chairpersons**

Municipal chairpersons in Azerbaijan are not directly elected by the population. The councilors, elected through nation-wide elections, then elect their chairpersons and deputy chairperson among themselves. All municipal decisions are made collectively. Because of this, even if municipal chairpersons do not accept the concept of IMC, the collective decision-making process may neutralize their personal preferences. In general, municipalities may consider the new management mechanisms under IMC (for instance, inter-municipal entities) as a limitation of their authority and can be against such cooperation. However, for the community, the most important thing is ensuring quality and sufficient access. Community has large tools to influence municipal decisions. First of all, if communities find IMC as feasible, and municipalities are against such cooperation, the population wouldn't vote for the councilors in the elections, and would support those candidates who support IMC. Secondly, communities have leverages to influence the council's decisions during its tenure. For example, pursuant to Article 29 of the Law "On the Status of Municipalities", the population has the right to come up with initiatives to draft municipal acts on issues of local importance. Draft municipal acts on issues of local importance presented by the population to the councils must be publicly discussed in the town-hall meetings and the decision made on them must be officially announced. This means that communities can ensure that the decisions on introduction of IMC model are discussed in the town-hall meetings. According to Article 30 of the Law, citizens have the right to submit individual and collective petitions to municipal councils. Municipal councils, bodies and their officials must provide substantiated responses to the petitions within 30 days. Finally, according to Article 52 of the same Law, if more than half of the participants in the town-hall meetings attended by at least 25% of the population with voting right are unsatisfied with the municipal council's annual report, their position, based on the minutes of the meeting, shall be sent to the Ministry of Justice as the administrative oversight agency. If the Ministry finds the petition substantiated, he/she can send a request to the Parliament on the dissolution of the municipal council.

The availability of these mechanisms shows that communities living in the territory of the municipalities should be interested in IMC more than the municipal councils. And there is no serious ground for communities not to be interested in IMC, because IMC is the best model to improve the quality and effectiveness of the services in the territories of small municipalities.

#### **B. Municipal associations**

The associations protecting the interests of local self-governance bodies in Azerbaijan have few real leverages and tools to change the current situation. However, these institutions have close day-to-day contacts with the Ministry of Justice and municipal councils. This is a real opportunity and the initiator of the IMC model has the opportunity to use the capacity of the associations to promote and advocate for this model.

In recent years, no IMC programs have been delivered by associations to municipalities on the provision of technical assistance and improvement of their skills and knowledge. But experts from the associations could develop and distribute guidebooks on IMC among municipalities and organize training sessions

on the development of IMC agreements and their implementation, and there are no obstacles for such activities.

### **C. Authorities as a whole**

There are many stakeholders on IMC. But the political authorities should play a leading role in this process. The authorities, including the Parliament, so far have not taken any steps to develop the legislative, as well as to define the financial-administrative framework for IMC.

### **3.4. ROLE OF DONORS AND INTERNATIONAL ORGANIZATIONS**

Donors and international organizations have not implemented IMC-related projects in Azerbaijan. The main reason for that is the absence of IMC in the agenda of the host government. And donors and international organizations, as a rule, try to coordinate their interventions and set priorities in line with the government's policy agenda. But this type of organizations, in particular the Council of Europe and its relevant institutions, were interested in strengthening the local self-government institution in Azerbaijan. For example, CoE Congress of Local and Regional Authorities twice - in 2003<sup>6</sup> and 2012<sup>7</sup> - prepared packages of recommendations for strengthening the municipalities in Azerbaijan. It is true that there were no recommendations specifically related to IMC in those packages, however, upon the implementation of recommendations on strengthening the independence of municipalities, increasing their powers and financial capacity, many current institutional obstacles for IMC would be lifted.

If the political authorities include IMC on their agenda, donors and international organizations undoubtedly would have this issue on the top of their priority list.

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6. <https://wcd.coe.int/ViewDoc.jsp?id=36939&Site=COE&BackColorInternet=C3C3C3&BackColorIntranet=CACC9A&BackColorLogged=EFEA9C>

7. <https://wcd.coe.int/ViewDoc.jsp?id=1992639&Site=COE&BackColorInternet=C3C3C3&BackColorIntranet=CACC9A&BackColorLogged=EFEA9C>

## Chapter 4

# IMC assessment in Azerbaijan

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### 4.1. LEVEL OF EQUIPMENT IN PROVISION OF MAIN PUBLIC SERVICES

From the legal perspective, the impediment to formal IMC development in Azerbaijan is not limited only to lack of individual legislation on this topic. The possibility to introduce the IMC model is not indicated either in the laws regulating the delivery of various social and public services, or in the legal-normative acts regulating the realization of various local public authorities ensuring socio-economic development at the local level. Such approach is linked to different reasons. The problem basically emerges from the lack of explicit municipal powers in Azerbaijan. Thus, certain part of the powers delegated to local self-governance institutions is not full, and there are uncertainties in the legislation with regard to the right of municipalities and executive authorities to give orders based on those powers. Article 4.4 of the European Charter of Local Self-government states the necessity of exclusiveness of powers. The Article says that the powers given to local authorities shall normally be full and exclusive. They may not be undermined or limited by another, central or regional, authority except as provided for by the law. For instance, according to the Law "On the Status of Municipalities", municipalities can deal with collection and take-out of waste in their territories. However, Article 12 of the Law "On Industrial and Domestic Garbage" adopted on October 26, 1998, states in general terms that residential areas must be regularly cleaned from domestic garbage, but no responsible structure is defined to do this work. In order to implement the Law, the Cabinet of Ministers approved the Decision #74 of April 21, 2005 (the Decision is about ensuring sanitary rules in the residential areas, temporary storage of domestic garbage and its regular take-out), under which local executive authorities are delegated with full power to undertake this task.

The same situation is with potable water supply and waste water management services at the local level. Presently, the services in all villages and cities of the country are delivered by the 100% state-owned "Azersu" Open Joint-Stock Company. The Company's structures operate in the whole territory of the country.

The introduction of IMC in road infrastructure is not possible from the legal point of view. Because according to the Law «On Automobile Road», municipal automobile roads include only the roads that are within the limits of the municipalities. It becomes clear from the list of the roads of local importance prepared under the Decision #59 of the Cabinet of Ministers dated March 31, 2005 to implement the above-mentioned Law, that the roads of local importance connecting individual residential areas and settlements are not in the municipal ownership. This type of roads is managed by the local executive authorities. So, IMC with regard to the road infrastructure could be possible, only if the road network connecting territories of different municipalities and used by several communities residing in different municipalities are under the competence of those local self-governance bodies. In the Azerbaijani realities, the roads within the limits of a single municipality and used by the people residing in the territory of that municipality are under municipal ownership. Such roads, by their status, are considered inter-territorial and inter-residential ones.

Similarly, the powers in various public service areas within the territories of municipalities are given to 100% State-owned companies, including "Melioration" OJSC for the irrigations services in accordance with the Law "On Melioration and Irrigation", local executive authorities and local Departments of the Ministry of Education for the education services of local importance, in accordance with the Law "On Education", local executive authorities and local Departments of the Ministry of Health for the health services of local importance, in accordance with the Law "On Public Health", and SOCAR and "Azərişiq" OJSC for gas and electricity supply to the population. Obviously, in accordance with the legislation, the powers to organize all local-level transportation, communal and social services are given to the relevant executive authorities or State-owned companies. Municipalities do not have exclusive and precise role in the execution of these powers. In contrary, the powers of the relevant executive authorities or State-owned companies to undertake the mentioned activities are unambiguously and clearly stated. In such legal environment, even informal ties and initiatives make IMC on the services impossible.

Investment needs for these service areas are also big and the current financial potential of the municipalities is too small vis-a-vis those services. For example, a bit more than 2 billion manats were allocated from the State budget to the local executive authorities and different service companies in 2014 to deliver services like potable water and electricity supply, automobile roads maintenance, garbage collection and take-out, as well as maintaining local level health and education institutions. This amount is about 40 times more than the total income of all municipalities in the country.

## **4.2. THE AREAS IN NEED OF IMC AND EASY TO IMPLEMENT**

Currently, the development of two IMC areas can yield positive results in Azerbaijan: potable water supply and collection and take-out of garbage. This specifically is relevant to entire urban areas where the municipalities operate. Because both potable water supply and collection and take-out of garbage in the big cities and towns are undertaken by the State-owned enterprises in the centralized manner. In the urban areas, as a rule, there is no centralized potable water supply infrastructure and no communal-housing department function for the collection and take-out of domestic garbage.

As there is no centralized water supply system, the provision of this service is chaotic. In the mountain areas, the population mostly use spring water, and in plain areas - artesian wells. However, due to the lack of funds, it is impossible to move forward spring and artesian water resources to special tanks and distribute them to the population through a pipeline network. The "Household Budget Assessment" conducted by the State Statistics Committee confirms that at least 45% of the urban population is not able to receive water in a centralized manner.<sup>8</sup> This category of the population gets water from special vehicles by payment or carries water from remote sources using their personal vehicles.

As a rule, since the number of population in the urban areas is small, it is not economically feasible to build costly water supply infrastructure for each village. As mentioned above, one municipality in Azerbaijan has on average 3000 residents. Building on the benefits of technical and technological opportunities to ensure integrity of the infrastructure and on the aspects of proximity of several areas to each other, the development of a single potable water infrastructure within the territories of 3-4 municipalities (app. 10-12 thousand people) based on the IMC model seems quite real. From this perspective, the establishment of joint water supply infrastructure through municipal associations could create conditions to reduce costs. These associations that serve population of several municipalities at the same time, on the basis of an integrated structure, would provide the services efficiently, even if the number of population is small. On the other hand, sometimes water sources are located in the same proximity of several municipalities. In such case, ensuring the access of more people to water based on an integrated tank network and water pipelines increases the effectiveness of the investment.

The same situation is in the collection and take-out of domestic garbage in rural areas. District (town) communal and housing associations function only in district centers and major cities, and are responsible for collection and take-out of garbage in those areas. The population of rural areas takes their garbage to the outskirts of the residential areas. Sometime the areas are not cleaned up for years and this creates an anti-sanitary situation. In such situation, several neighboring communities could set special joint garbage deposits, jointly use vehicles for take-out and establish responsible integrated inter-municipal associations to deliver this service.

## **4.3. IS THERE A NEED TO DEVELOP A LAW ON IMC OR FOR ANY IMPROVEMENT OF THE CURRENT LEGISLATION?**

The legislation regulating the joint activities of municipalities in Azerbaijan is available and there is no need for any new law in this field. However, it is possible to improve certain aspects of that law. For instance, possible forms of IMC and principles to introduce the public mechanisms for their application can be added to the law. Or it is possible to clarify the scope of the voluntary and compulsory IMC spheres. The law can be improved by adding the following provisions: basic duties and responsibilities of the municipalities that

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8. [http://www.stat.gov.az/source/budget\\_households/](http://www.stat.gov.az/source/budget_households/)

sign IMC agreement, mechanisms for the resolution of disputes emerging from their interrelations, and possible frames of public organizational and financial support to functionalities within IMC.

#### **4.4. MC AND SERVICES OR ACCESS TO GOVERNANCE**

The optimal physical distance between the municipalities that intend to have a partnership is one of the main conditions for the effectiveness of the IMC model. Distance between the municipalities in plain areas of Azerbaijan is not big and is on average between 3 and 5 kilometers. About 75% of all villages in Azerbaijan are located in plain areas.

Up to 25% of village municipalities operate in mountain areas and sometimes the distance between the local self-governance bodies that are closest to each other may be even 10 kilometers.

The optimal distance can be evaluated during the needs assessment for IMC in concrete situation. One of the possible options here is that the government and the Municipal Association draw an IMC map for each district of Azerbaijan. The map could identify the list of potential IMC municipalities based on the distance between them and with concrete indication of the future services to be delivered by them. Based on the data from this map, it would be possible to define the number of IMC agreements to be made on the individual services.

#### **4.5. CROSS-BORDER IMC**

Back in 2004, Azerbaijan acceded to the European Framework Convention on Cross-Border Cooperation of Territorial Communities and Authorities and its Additional Protocols. According to the Convention, based on the cross-border consultations, authorities of adjacent countries, including local governments, can cooperate on issues like regional development, tourism, environment, transportation and communication, waste disposal and management, sewerage, etc.

Since Armenia - one of the 5 countries which have common borders with Azerbaijan - keeps our lands under occupation, all ties are broken. As the governance systems existing in Georgia and Russia are different from the Azerbaijani system, there are certain obstacles for such cooperation. For example, these countries have multi-tier municipal systems, whereas Azerbaijan has a single-tier one. Or the functions of the municipalities in those countries, that could be a subject for cooperation, are within the authorities of executive bodies in Azerbaijan.

## Chapter 5

# Perspectives and conditions for development

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### 5.1. HELP CREATE FRIENDLY ENVIRONMENT FOR IMC

In the current situation in Azerbaijan, IMC does not seem viable only based on the leadership skills of heads of neighboring municipalities. It is very important to make the first critical step to make municipals closer to each other, which would improve IMC. This step is about promoting the advantages of IMC to develop the culture of such communication, and ensuring that all stakeholders accept the benefits of IMC for the entire country. Especially, municipalities should not be rivals, but have friendly relations with each other in terms of provision of public services that can be delivered based on their joint cooperation and mobilization of resources, because the main goal of municipalities is to provide communities with high-quality and accessible services. If IMC is a feasible tool to achieve this goal, the notion of “competition” should be put aside. It is possible that the main obstacle here may be psychological factors. For example, municipal leaders concluding an IMC agreement may think who will be “victorious” in this process and be perceived as a strong leader by the public. Promotion and education should help the public understand that it is irrelevant to consider who is the winner or the loser, who is strong or weak in the projects implemented for the public good. If the IMC mechanism is established, all participating municipalities will have equal power of influence and will have proportional level of cost and benefit. Especially within formal relations, all interactions are based on agreement and important points like provisions, obligations and duties of the parties, division of activities and cost-share are regulated by the agreement. Overall, the formation of a culture of cooperation envisages the ability of municipal leaders to achieve consensus on any issue, build dialogue and compromise on the important matters.

One of the main conditions in order to turn IMC into a successful model is the introduction of the best management principles and the mechanisms of transparency. Only transparent and accountable municipalities approach the establishment of IMC without hesitation. Because they have no activities they would like to hide from each other.

If we take into consideration also the legal framework principles indicated in the Manual developed by CoE, UNDP and OSI, it is important to clarify in the legislation of Azerbaijan some issues like the status and structure, the status of the cadre and the type of legal entity of IMC body.

Development of a positive public opinion about IMC is very important for successful overcoming of the above-mentioned obstacles. The leading Azerbaijani CSOs specialized in local self-governance are interested in strengthening the institution of municipality in the country. The public not only have a positive approach to the transformation of municipalities into the decisive institution in local socio-economic development, but in fact have been waiting for this for long time. This is because the public services at the local level are rendered in a centralized manner and the public do not interact with the entities responsible for low-quality services on a daily basis. The attitude of the public is that if municipalities become the leading body to render the services, their quality can be improved significantly. This is because daily oversight on the municipalities is possible, besides the current legislation provides mechanisms of such oversight on municipalities, rather than the public service entities. On these issues, the media takes into account the public opinion, particularly the position of the civil society. Since the public perceives municipalities as needed structures with limited powers and financial resources, there are no doubts that they will have the same attitude to IMC among self-governance bodies.

## 5.2. FINANCIAL ISSUES

In order to push forward the development of IMC in Azerbaijan, the municipalities and the bodies established by them should be financially supported. Currently, municipalities have weak potential. Except for administrative costs of municipalities (cadre maintenance and management costs), the mentioned funds are too small for undertaking of powers, especially for rendering the public services. So, the IMC format established for the delivery of public services or the protection of environment can be supported by the central government in two ways:

**1) It is possible to allocate targeted transfers from the State budget to the IMC body for execution of concrete duties.** The current legislation envisages that municipalities may receive both targeted financial support (subsidies and subventions) and non-targeted (grant-in-aid) financial aids. At the same time, during the past 15 years after the establishment of local self-governance in Azerbaijan, no targeted aid was allocated from the State budget to municipalities. The legislative framework for allocation of targeted financial support to municipalities has not been developed and there is a big need for such framework;

**2) Capital-type budget funds within the public investment projects can be allocated for development and restoration of the infrastructure managed by the IMC body functioning in the territory for the municipality.** According to "The Guidelines for Composition, Execution, Monitoring and Evaluation of the Public Investment Program of the Republic of Azerbaijan" approved by the Decree of the President of Azerbaijan of March 15, 2010, municipalities can act as the customer of investment projects within the Public Investment Program. To this end, it is critical to create mechanisms for engagement and forms of participation of municipalities in the development and implementation of the targeted budget programs and public investment programs.

The introduction of the shared tax system could be another mechanism. This mechanism envisages the return of a part of the taxes paid by the legal entities and natural persons operating or residing in the territory of a municipality to the State budget, back to the municipality based on the proportion explicitly stated in the legislation. The government can purposefully introduce the shared tax mechanism and set a requirement to allocate the funds accumulated in this source for the execution of powers within IMC.

Thus, targeted subsidizing, ensuring the participation of local self-governance in the public investment projects and introduction of the shared tax system may meet the financial needs of IMC institutions.

If the central government agrees to launch the IMC model without introducing any of the above-mentioned mechanisms, then the forms (e.g. debts, introduction of service tariffs, etc.) and terms of self-financing by municipalities of their joint activities must be explicitly set forth in the legislation.

## 5.3. HUMAN RESOURCES RELATED ISSUES

The IMC institutions carry out the activities that individual self-governance institutions are either not able to carry out independently, or cannot implement effectively. In such situation, the need for professional employees of IMC institutions emerges. The institutions can fulfill their obligations namely through those employees. If we take into account that no finances were available to hire and keep the municipal cadre in Azerbaijan in recent years, it is impossible to claim that the institutions have developed large and professional cadre. However, if the IMC model is established, there is certain available institutional basis in the country to meet the need for cadre and increase the level of professionalism of human resources. For example, currently there is professional cadre in the entities and institutions providing public services. Consultancy and training services can be established within the Municipal Associations to improve the capacity of IMC bodies' cadre, and experts can be hired as trainers in those services. In the later stage, the municipal unions can ensure training, re-training and further development of qualifications of the cadre based on individual agreements with vocational institutions. It is possible that in the initial stage the central government would provide financial, methodical and expert support to the IMC bodies for the development of their cadre. After development of a critical mass of the cadre in several IMC bodies, it would not be difficult to develop mechanisms to extrapolate the skills and knowledge through exchange of experience.



#### **5.4. IS THERE NECESSITY, DESIRE OR APPROPRIATENESS FOR ADOPTION OF AN OPEN NATIONAL POLICY?**

The findings of the assessment allow saying that there is a need for well-designed strategy for the development of IMC in Azerbaijan. The strategy should explicitly define the role of various local and international institutions, their impact potential, directions of activity and resources.

Especially international organizations and the municipal associations of Azerbaijan can make significant contribution to the development of the strategy. The international organizations through their experts can establish a dialogue between all stakeholders on IMC formation and enlighten the stakeholders on the advantages of this mechanism based on the best practices. At the same time, the international organizations could support study tours for all stakeholders for on-the-spot learning of the best practices.

As for the role of the associations, these structures can take the responsibility for the development of the strategy and ensure the achievement of the targets envisaged in the strategy through regular contacts with the central government. For instance, they may set a target to establish 20 IMC bodies in 5 pilot districts of the country during the coming 3 years and based on this experience, the mechanism for the establishment of IMC bodies throughout the entire country will be supported within the next 5 years. Or the associations may undertake the task to develop the legal mechanisms for IMC and their subsequent submission to the Parliament.

Finally, activities of the associations might include organization of promotional work to make the IMC mechanism a working institution, the arrangement of legal services to promote the mechanism at the local level and the training of expert lawyers to deliver the services.

# Mapping the obstacles to inter-municipal cooperation in Georgia

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# Introduction

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A modern system of self-governance is unlikely to function effectively without inter-municipal cooperation (IMC). Various spheres of public service require the existence of both minimal standards as well as the critical mass of service recipients and beneficiaries. These services vary across their content and character. For instance, even a small community of few hundreds (including children population) suffices for a pre-school education facility to run and function while a fire safety service operates more effectively in large settlements (with several thousand residents).

Regardless of the size of municipalities (population and area) they may be too large for the delivery of certain types of services and too small for others. Therefore, there is often the need to establish coordination between municipalities to the extent which will enable them to overcome challenges together where individual efforts cannot take effect.

Based on the above said, inter-municipal cooperation (IMC) can easily be viewed as an alternative of the vision which seeks mechanical amalgamation of small municipalities to create the required minimum demand for specific services.

Georgia has just started to make steps forward towards effective decentralization, as considerable part of the public and the political elites started to see the problems inflicted by the overly centralized system, which has failed to adequately respond to the local needs and provide quality delivery of services at a local level. In the light of intentions to devolve part of central authorities' competences to local self-governments, the implementation of inter-municipal cooperation is becoming increasingly important.

## Chapter 1

# Local self-government in Georgia

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### 1.1. GENERAL FRAME OF LSG IN GEORGIA

#### A. History

While characterizing Georgia's local self-government system, the country's administrative-territorial arrangement must be first examined.

The country's territorial organization is still an ongoing process. The following section of the paper provides a brief overview of the development of the country's territorial organization:

Historically there were two levels in Georgia:

- The first level - town/city, borough, village and community (a union of several small and medium size villages) - there are more than 4.5 thousand on the Georgian territory;
- The second level - historical regions which represented either independent political units or administrative units of the unified country at different times - 10-15 such entities on the modern territory of Georgia.

After the annexation of Georgia by the Russian Empire (since 1801) 25 *Uyezds* were established on the basis of historic provinces (including 18 within the internationally recognized boundaries). The first level of the local self-government consisted of self-governing towns (since the 1860s) and village communities with election based governance system and competences.

It was at these two levels that the first national municipal elections were conducted in 1919 during the Georgian democratic republic (1918-1921). However, the development was suspended as a result of the occupation of Georgia by the Soviet Russia (1921) and the country's accession to the Soviet Union (1922).

The year 1930 saw the introduction of a *Rayon* level throughout the Soviet Union. *Rayons* were smaller than regions and the need for their introduction was brought about by the requirements of the Soviet system:

- Economic functions - as the State was the sole owner of the economy, a *rayon* leader (a secretary of the local committee of the Communist Party) acted both as a head of administration and a manager of the economy;
- The exercise of a centralized control by the Soviet security services was much easier in comparatively smaller entities;
- As a rule, *rayons* would be created on any territory based on the number of the Communist Party members rather than on economic assessment or any other calculations whatsoever.

In the Soviet Union, authorities - councils (Russian: *sovyet*) of all levels (village/town, rayon, autonomous entities, autonomous republics, a common-soviet level) had analogous competences. The system ensured the dominance of the central bodies in decision making processes.

By the time the Soviet Union collapsed (1991) Georgia had:

- 3 political autonomies (Republics of Abkhazia and Adjara and the *Oblast* of South Ossetia)
- 75 *rayons* and towns with the rayon status (+10 *rayons* of the capital)
- 1,051 entities of the first level (towns, boroughs, village, community)

After the restoration of Georgia's independence and over the course of the first fifteen years no considerable territorial changes had taken place. The introduction of a position of central authorities' representative into the regions but without the establishment of any structural entity was the only exception (9 entities).

As a result of the 2006 reform the first level of the self-government was abolished (1,004 entities) and therefore a rayon level self-government (64 entities) remained the only level, which resulted in increased gap between the population and the local self-governments. The changes were justified by alleged ineffectiveness of small municipalities in delivering public services, even though no sufficient financial resources had ever been devolved to local self-governments.

As a consequence of the reform the average number of population in a self-governing entity increased from 4,350 to 68,050. However, the rise was not accompanied by the improvement of the quality of public service delivery and an increase in per capita funding. The period that followed saw yet further decrease in the competences of the self-governments and intensified supervision both formal and informal by the central authorities. Most of taxes (income and profit) were completely centralized.

As of today the agenda of a decentralization reform originating back in 2012 envisages the formation of comparatively smaller, homogenous municipal entities with shared interests. The formation of the municipalities should be based on pre-defined criteria and with the view of local needs.

## **B. Legislation**

The constitution adopted in 1995 does not stipulate the country's administrative-territorial arrangement. Article 2 of the Constitution states that "Constitutional law shall determine the territorial state structure of Georgia on the basis of the principle of delimitation of powers after the complete restoration of jurisdiction of Georgia over the whole territory of the country" (Clause 3) and "The citizens of Georgia registered in a self-governing unit shall regulate the affairs of local importance through local self-government, without prejudice to the state sovereignty, in accordance with the legislation of Georgia. State authorities shall promote the development of local self-governance" (Clause 4).

Amendments to the Constitutions enacted in 2010 defined the following principles of self-governance (Chapter VII<sup>1</sup>): electoral rights, the obligation to consult the self-governing entity while setting up a new one or revoking an already existing entity, principles for the separation between their own competences and those delegated by central authorities, principles of delimitation of property and finances.

The principles of supervision over self-government bodies by the state authorities are also defined by the Constitution of Georgia: "State supervision over the activities of local self-government bodies shall be carried out in the manner prescribed by law. State supervision provides compliance of normative acts of local self-government with the legislation of Georgia and proper implementation of delegated powers. State supervision shall be exercised in proportion to its goals" (Clause 3 of Article 101<sup>3</sup>).

With the adoption of a new organic law (*Local Self-Government Code*) it was possible to put together the respective norms scattered in various laws and set up the basic legal framework for the new system to function properly. At the same time a tradition of exerting a strict control by the central authorities over the activities of local governments still remains in practice. However, even the State's representatives/governors have started raising concerns and demanding that the system has to be changed.

### **1.2. 1<sup>ST</sup> (MUNICIPAL) LEVEL**

#### **A. Statistics**

The accuracy of statistical data on self-governments has always raised suspicions. I rely on the official data from the 2002 census and partially on the preliminary results of the 2014 census as the results will be finalized only by April 2016. There is a huge difference between the findings of these two censuses. For instance, if according to the 2002 census the country's population is 4,371,000 (which was an obvious overstatement in light of increased migration outflow), the 2014 census has shown a much realistic picture of the country's population - 3,729,500.

As of today there are 71 municipalities in the country: 12 self-governing cities (including the capital Tbilisi) and 59 self-governing communities (towns plus rural zones). All of them except for the capital Tbilisi have similar structures and competences, the names being the only difference.

While characterizing the country's self-governing entities, asymmetry between their sizes is striking:

- Average area - 850 sqkm, minimum - 1.6 sqkm (Ambrolauri), maximum - 3,044.5 sqkm (Mestia),
- Average population - 61.500, minimum - 2600 (Ambrolauri), maximum - 1,081,679 (Tbilisi)<sup>1</sup>.

The findings of the two censuses indicate to depopulation affecting rural zones:

- In 2002 urban population of the country was 2,282,250 while 2014 saw 2,140,126,
- In 2002 the country's rural population was 2,073,423; it dropped to 1,589,509 in 2014.

## B. Bodies

The municipalities have their own representative (*Sakrebulo* - council) and executive (mayor in cities and *Gamgebeli* in communities) bodies.

- The representative body - *Sakrebulo* is elected for four years by citizens of Georgia registered on the territory of a municipality through direct elections based on universal and equal electoral right and secret ballot;
- Executive body - mayor/*Gamgebeli* who is accountable to a municipal council and local population. S/he is directly elected based on universal and equal electoral rights through secret ballot.

One of the goals of the ongoing reform has been to enhance the accountability of local bodies towards local population. The visibility of local authorities was extremely poor. Findings of a survey administered in 2007 show that the public knew the mayors and *Gamgebelis* (92.4% in Tbilisi and 61.8% in the regions) better than the heads of councils (27.6% in Tbilisi, 54.6% in the regions). Council members suffer from even poorer visibility (35.6% in the regions).<sup>2</sup>

The changes to the legislation in 2014 saw the introduction of direct elections for the executive branch (mayor, *Gamgebeli*). In the first round of run-up for mayors and *Gamgebelis* the 50% threshold was introduced. In councils the threshold for political parties was reduced from 5 to 4% (which previously had been the case only in Tbilisi). The number of proportional mandates has been increased from 10 to 15 in councils with no changes affecting the capital Tbilisi (25 proportional and 25 majoritarian) and self-governing cities.

Gender balance has improved comparatively. Overall 1,550 members were elected in local councils in 2010 with only 11.1% being women. The outcomes of the 2014 elections showed that the share of female members increased slightly: out of 1,035 members elected proportionally, 160 (15.46%) are women while 85 (8.11%) from 1048 majoritarian members are female. There is only one woman among 71 *Gamgebeli* and mayors elected directly.

## C. Human Resources

The Georgian legislation does not differentiate between the status of state level public employee and that of local authorities. Activities of public servants are regulated by the Law on Public Service.

Local government agencies were characterized by overstaffing and high level of politicization, as well as drastic changes to staff lists causing either a decrease or increase. Just shortly after the Rose Revolution in 2005-2006 the number of employees in self-governments decreased from 8,340 to 6,734. However, the period of curtailment was again followed by the time which saw the number of employees on the increase (especially during the run-up). Based on 2012 data, the number of servants employed at local self-government agencies has almost doubled to a total of 11,770 individuals.

The Local Self-Government Code has introduced the principle of defining the maximum number of servants (Article 156), which will remain into force at the first stage of the reform effective up to January 1, 2019. As a result of this limitation the number of officials and public servants totals 9,668 as of spring 2014.

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1. There are less than 30,000 residents in 50% of self-governments, while the third is the home to 20,000. Therefore, the implementation of competences which requires extensive resources (both financial and human) is unrealistic.

2. Annual Report on Local Democracy, *Open Society - Georgia Foundation*. 2008.

The underdeveloped system of retraining and the low level of qualification of servants is yet another problem affecting local governments. Poor financial (on average the salary of a servant amounts to 583 GEL while a low career manager receives 908 GEL on average) or other incentives (frequent reshuffles of structures, total dependence on an immediate supervisor, absence of a learning system) prevent the development of a layer of highly qualified servants at the local level.

## D. Competences

Pursuant to the legislation, the competences of self-governments are divided into their own and delegated competences. The latter are delegated to self-governments based on agreements or in compliance to the rule defined by the Georgian legislation.

The own competences of self-governments include:

- *Fiscal and management issues* - adoption of budgets, introduction of taxes and duties, definition of their rates and collection, management of local property, procurement.
- *Planning and regulation of services and programs* - land and spatial-territorial planning, establishment of landscaping rules, approval of municipal programs to support employment, regulation of street trade, determining parking rules, issuing permits for construction, municipal transportation, issues related to animals, creating a favorable environment for people with disabilities, regulating the matters concerning assemblies and manifestations.
- *Communal sphere* - planning of motorways and traffic of local importance, street maintenance and lightning, providing the population with potable and technical water (which had been a competence of the central authorities since 2009), organizing drainage and sewage systems, waste collection and disposal, cemetery maintenance, territorial landscaping and greening, naming and numbering streets and squares.
- *Education, healthcare, culture and social fields* - establishing pre-school and extra school facilities and developing their statutes; organizing activities of cultural entities of local importance, setting up a municipal archive.

Issuing permits to forest utilization as well to mine local natural resources (for instance, inert materials), organizing the emergency medical assistance for local population (except for the Capital Tbilisi), heating and running water, electricity and gas provision are yet out of the local governments' scope of competences. In 2014 fire and rescue services were centralized.

## E. Finances

The period between 2003 and 2012 saw the centralization of taxes: the types and payment shares of taxes including the property tax base.<sup>3</sup> At the same time the self-governments have not received compensation. In the same period a process of centralizing the tax revenues begun - in 2007/2008 shared taxes (profit and income) were totally centralized.

Up to date self-governments' own tax revenues are scarce (only property tax remains in local budgets) and they have to rely mostly on equalization, targeted or special transfers allocated by the center. While in 2007 local incomes constituted 50% of the local budget, by 2008 this figure dropped to 15%. So the share of own revenues of local budgets decreased in the consolidated budget (2002 - 30.0%, 2010 - .2.3%).

Unequal distribution of local tax and non-tax revenues is yet another problem. Self-governing cities account for more than two third of local revenues while municipalities are restricted to attract additional sources of funding as a self-governing entity can have access to loans or grants solely from the Georgian government or permitted by the latter. The owner of the largest part of the property is the State as the process of handing over the property to self-governments has long been suspended.

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3. Between 2002 and 2003 self-governments fully or partially collected 12 types of local and shared taxes. In 2004-2005 due to the curtailment of the types of taxes and the cancellation of shared taxes, they were left with just four types of taxes.

The improvement of transfer policy and an increase of the absolute capacity of transfers can be welcomed as undoubtedly positive developments in the sphere of fiscal relations. This is particularly true in reference to the equalization transfer, whose introduction and formula development is one of the achievements. However, the formula requires further improvement, also recommended by the Council of Europe's recommendation - The Georgian Government needs to further "improve the financial equalisation procedure (both as regards distribution and increasing the equalisation fund)".<sup>4</sup>

For local authorities to implement their delegated competences the central budget allocates a targeted transfer, whose all type capacity in 2015 exceeded 855 million GEL (more than 1/10 of the central budget). In addition, the central authorities allocate special and capital transfers so that self-governments can implement municipal projects: *Municipal Development Fund* (690 million GEL - 2014) and the *Fund for Implementation of Regional Projects* (2012 - 297 million GEL, 2013 - 449 million GEL, and 2014 - 293 million GEL).

The analysis of an expenditure part of the local budgets demonstrates the presence of a series of problems. The number of servants had been on an increase based on the political conjuncture, which in turn entailed the increase in administrative costs. Up to 2006 salary payments accounted for an average 10.7% of the total costs, while by 2012 they hit on average 23% (in some municipalities 45%).

The new Local Self-Government Code increased the competences of self-governments as well as laid down legal frameworks. Local authorities now have the right to determine the upper limit of local servants' remuneration (which had been the competence of the President of Georgia). Only the upper salary limit of elected officials is decided by a resolution of the government.

At the same time, pursuant to Article 156 of the Local Self-Government Code, there are some restrictions according to which administrative costs must not exceed 25% of the budgetary costs. The restriction will remain effective up to January 1, 2019.

Yet another flaw of the local budgetary spending is its unpredictability. As the revenues of local budgets are determined by the Ministry of Finance, the changes are made far too often because of various transfers and sometimes local budgets are readjusted eight or ten times a year and changed by 100, 200 and 300%.

The flaws in procurement of various services by the municipalities also cause problems. The introduction of an electronic procurement system few years ago has considerably improved the administration of budgetary funds. At the same time, the focus is on low prices rather than on the quality of the service, which leads to a situation where the public service is forced to purchase a service of low quality but at considerably low cost. This compromise ultimately results in incurring additional costs.

Finally, issues related to the regulation of local property still stand out. As of today, the State owns most public (non-private) property while municipalities have very little in their possession. At the same time, accurate information on the property is not available to the State (the record of the last complete inventory goes back as far as the 60s of the past century).

This issue is planned to be dealt with over the course of the reform. The Government of Georgia shall prepare 'a bill of law on the identification of natural resources of local importance' before January 1, 2017 while a schedule and a rule for handing agricultural lands to self-governments must be developed before January 1, 2017 (the Local Self-Government Code, Articles 162, 165).

## F. Municipal Enterprises

Pursuant to the existing legislation, self-governments have the right to set up municipal enterprises in the form of Ltd and non-profit (NP). At the same time, the capital has the right to set up an Agency - legal body of public law (LBPL).

The statistical data on functional workshops and facilities are incomplete and need to be further clarified as old services are being transformed and new ones are being formed to this day.

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4. Local and Regional Democracy in Georgia, Recommendation N334 (2013). Strasbourg, March, 19-20, 2013.



As of today (except for Tbilisi) the number of municipal enterprises is approximately 1,060. 263 million GEL has been spent on their activities for 2015 (including 260.5 million GEL from municipal budgets). Overall 46,000 individuals are employed in these enterprises. Their remuneration accounts for 59.6% (156 million GEL) of the budget.

Most of enterprises function as non-profit entities (821), the number of Ltds is 220, with only 10 legal bodies of public law (LBPL).<sup>5</sup>

Pre-school and extra-school enterprises account for 31% of the total number of the enterprises. 30% operate in the sphere of culture, 16% - communal services, while 13% function in the areas of social affairs and healthcare.<sup>6</sup>

Commercial enterprises (water and electric power) of the business sector deserve special attention. The information on such enterprises is extremely scattered. At the same time, self-governments whose hands are tied by the law have no control over the former. Nor do they possess sufficient information on their activities.

In order to address the above mentioned problems the Government of Georgia has been planning to harmonize the legal framework (179 laws need to be harmonized with the Local Self-Government Code) to be completed by the end of 2015. At the same time, the *Municipal Development Fund* (supported by the World Bank) is about to start a program to provide an inventory and an assessment of existing enterprises.

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5. The municipalities (except for Tbilisi) have no right to found legal bodies of public law, however, LBPL in the regions has been founded by the central authorities and handed to municipalities later on.

6. The document is prepared by the author based on the data provided by the Ministry of Regional Development and Infrastructure.

## Chapter 2

# The law on IMC in Georgia

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### 2.1. GENERAL LEGAL PROVISIONS

As I have already indicated there is no tradition (except for rare exceptions) of inter-municipal cooperation in Georgia. Each and every political power ascending to the country's central government attempted to respond to the challenges in municipal service delivery through maximal centralization. Although the legislation generally made a reference to the right of self-governments to implement joint activities, however, this entry provided little clarity on procedures.

The Local Self-Government Code adopted in 2014 dedicated specific articles (20 and 21) to the matters of inter-municipal cooperation, which had not sufficed for creating a legal framework for such type of cooperation. However, changes made to the Local Self-Government Code in 2015 have brought some clarity to the definition of procedures:

- Pursuant to Article 20, municipalities have the right to set up non-profit (non-commercial) legal body or/and obtain membership of such body. Such associations have the right to cooperate with the state authorities as well as with international unions (associations).
- Article 21 of the Local Self-Government Code grants to municipalities the right to found joint enterprises, become partners/founders of Ltds and/or their members, set up joint servants and unify budgetary resources.

Article 106<sup>1</sup> determining the status and forms of activities of municipal legal bodies of private law was added to the Local Self-Government Code.

- This right extends to only those enterprises that are founded by municipalities with more than 50% of share owned by the latter,
- These enterprises can receive property through auctions or direct disposal (gratuitously or with recompense),
- Transfer of property without auction, free of charge with the right of utilization for maximum two years unless the property is handed over to other public authority bodies - municipality, central authorities, legal bodies of public law (except for political parties), etc.

### 2.2. LEGAL PROVISIONS ON IMC ORGANIZATIONS OR PROCEDURES

In spite of its general character, there is a legal framework in place which allows municipalities to actively engage in inter-municipal cooperation. Therefore, if there is the need for new and profound regulations, the respective amendments will be made to the Local Self-Government Code without adopting a stand-alone law. It is worth noting that 179 laws (from existing 630) need to be harmonized with the Organic Law of Georgia (the Local Self-Government Code) and therefore the adoption of a new law would have complicated the situation even further.

The development of necessary regulations for the above mentioned provision is another matter. The process of harmonization of legislation (to commence in September 2015) should be followed by the elaboration of subordinate legislation acts and relevant standards at a later stage.

For instance, it is important to revise the regulations of the centralized system of service procurement (a unified scheme), which prevent the municipalities from making decisions in a fast, effective and efficient manner.

At the same time, works need to continue to create a common information base and measures to be taken in order to develop guidelines for specific areas (the number of children in pre-school education system, the education and nutrition standards, etc.) and forms of activities (determining the principles and mechanisms for municipal shares, developing IMC structure and regulations for decision making, etc).

## 2.3. Other legal possibilities

### A. Creation of Municipal Enterprises

In spite of the fact that a mechanism for inter-municipal cooperation is being just developed in Georgia, some self-governments have already expressed their desire to engage in cooperation and have even taken some steps forward.

For instance, several municipalities (Borjomi and Kareli) have already started thinking to establish a shelter for homeless animals and a rabies prevention joint service (non-profit). The municipalities in the Kakheti region (Telavi, Gurjaani) have also applied to the Ministry of Regional Development and Infrastructure for recommendations on similar matters.

Pursuant to the resolution N690 adopted by the Government of Georgia on April 14, 2014 on *Rabies Prevention Activities for 2014-2018* the Ministry of Regional Development and Infrastructure was supposed to obtain relevant information from the self-governments and develop recommendations on measures to be taken with this regard before August 15, 2015. The recommendations prepared by the Ministry for organizations to monitor the populations and the number of stray animals suggest the development of a public-private partnership (PPP). An emphasis must be put on setting up relevant services by larger cities, which will also serve neighboring and comparatively weak municipalities. There is a track record of success in some cities (Tbilisi and Batumi) and 0.47% of local budgets have been spent in this regard.

The need for setting up joint municipal enterprises is particularly dire in those municipalities which have been created as a result of the new legislation and following the division of previous self-governments into rural (self-governing communities) and urban (self-governing cities) entities (14 in total).

For instance, the city of Zugdidi and Zugdidi community (the Samegrelo-Zemo Svaneti region) managed to keep a joint service for waste management. Other areas also require the resolution of the issue: a municipal swimming pool of Ambrolauri city also serves the population residing in Ambrolauri community while the swimming pool is maintained from the budget of the self-governing city of Abmroaluri. The infrastructure of pre-school and extra-school education in some self-governing cities (i.e. Gori) also accommodates the needs of neighboring municipalities, while the latter do not share the financial burden of maintaining this infrastructure.

### B. Other Forms of Inter-municipal Cooperation

*Regional Advisory Councils* at governors' offices in the regions, stipulated by the new Local Self-Government Code, provide yet another mechanism for cooperation between the municipalities. *The Councils* comprise officials of self-government bodies (Gamgebelis/mayors, heads of the councils and their deputies) and the State's representatives-governors of the region. *The Councils* are responsible for reviewing issues pertaining to development and planning, as well as projects of specific regional importance. *The Regional Advisory Councils* took effect in the end of 2014.

Other mechanisms for cooperation have little presence mostly due to a series of problems:

- The future status of majoritarian membership of the Parliament elected from the municipalities is not clear yet (since the Soviet period most of majoritarian MPs consider themselves as "guardians" of a rayon and frequently engage in confrontations with local authorities. It takes a constitutional reform to change the status quo and although in the pipeline, but it is not yet clear when the changes will be made and which form they may take).
- The role of self-government associations is still underestimated. One of the results of 2005-2006 reform was the centralization of self-governments' representation. There was and still is only one association of self-governments (National Association of Local Authorities of Georgia - NALAG) where all municipalities of the country are members. The monopolistic approach undermines the efficiency of the Association and enhances the level of politicization. There are almost no other associations based on sectoral or territorial principles and if any their role is close to being minimal.

## Chapter 3

# Municipal reform in Georgia

### 3.1. A GENERAL DEBATE: AMALGAMATION OR COOPERATION?

Due to the presence of circumstances touched upon in the previous chapter there were no debates around IMC in Georgia. Discussions revolved mainly around the territorial arrangement, the number of levels and the size of municipalities. However, these discussions involved only a small group of politicians and experts. Eleven different models have been elaborated concerning the territorial arrangement, focused on the following issues:

- The size of a self-governing entity or in other words where self-governance should be implemented: in every settlement (more than 3,700 entities)<sup>7</sup>, in communities existing before 2006 (1,000 entities), on the territories of former Soviet *rayons* (60-70 entities) or in historically developed regions (10-20 regions);
- The number of levels of self-governance - how many levels should there be (one or two). If there were to be two levels, which of the following pairs would be the most appropriate: settlement-rayon, community-rayon, community-region or rayon-region.

#### A. The size of a self-governing entity

By the beginning of the 21<sup>st</sup> century there was almost an overarching consensus that the existing 1,000 entities were far too much fragmented (ten per cent of them had less than 500 residents, while only 1,000 resided in a quarter of them) and therefore, they had to be incorporated in larger entities. There were different approaches to the issue: 1. Diminish 1,000 self-governing entities to 200-300, or 2. Abolish the first level and bring the self-governance to the second, rayon level (64 entities).

Based on the analysis of these approaches, some of CSOs, with the participation of a wider community of experts, developed and introduced a concept of administrative arrangement and separation of competencies in Georgia and the capital - Tbilisi.<sup>8</sup>

A new power, the coalition Georgian Dream appearing on Georgia's political scene in 2011-2012, based its vision on those principles which had been identified in the concept developed by the group of CSOs back in 2005.

A group of authors of the 2005 concept, under the aegis of *the Georgian Development Research Institute*, revised the concept introduced as a *Broad Concept of the Development of Georgian Self-governance System* in the beginning of 2012.

Both old and new legislation concerning the regulation of the self-governance system stipulated the creation of new municipalities or the possibility for their unification (the Local Self-Government Code, Articles 10-13) based on an initiative of the Georgian authorities, as well as self-governments and some groups of the population.

These norms have never been implemented in practice. For instance, when in 2009 the community of Jvari and its surrounding villages demanded that the rayon be separated from Tsalkenjikha (Samegrelo-Zemo Svaneti region) and filed their demand in full compliance with procedures and rules, the central authorities completely ignored this request.

7. This implies all territories under the Georgian jurisdiction except for the occupied territories.

8. A conceptual model of Georgia's administrative-territorial arrangement and for delimitation of administrative, financial, property and legal competences between the levels of authority, Georgian Young Economists Association, 2005.

## B. The issues related to regional arrangement

The issues related to regional environment have always stirred controversy in Georgia. Resolving these issues has always been complicated because of its overly politicized nature. Some groups of the society fear that the institutionalization of a regional level will eventually lead to not only provoking separatism in the regions densely inhabited by ethnic minorities (Samtskhe-Javakheti and Kvemo Kartli), but also may serve as a precondition for disintegrating Georgia into sub-ethnic regions (Samegrelo, Svaneti, etc.)

At the same time the need to implement specific social-economic projects in the regions is coming to the fore. This task is extremely difficult to fulfil in the light of unified approach employed by the central authorities. Small municipalities having limited capacity to provide broader services have been requesting to bring up certain competencies to a regional level.

On March 1, 2013 the Government of Georgia by its resolution N223 approved the *Key Principles of the Decentralization and Self-Governance Strategy of the Government of Georgia for 2013-2014*, which stipulates the introduction of self-governance elements into the regional authority.

The first stage of the reform saw an increase in the number of self-governing cities (from five to twelve) as a result of which seven more self-governing cities (Telavi, Mtskheta, Gori, Akhaltsikhe, Ambrolauri, Ozurgeti and Zugdidi) were added to existing five (Tbilisi, Rustavi, Kutaisi, Poti and Batumi).

Pursuant to the Local Self-Government Code, the Government of Georgia shall prepare and submit to the Parliament proposals about the formation of new municipalities upon prior consultations with self-governments and interest groups. The proposals shall be submitted before October 2016.

In the course of adopting the new legislation and as a result of the influence of a number of political factors, some articles have been removed from the bill of the Local Self-Government Code. The articles concerned:

- Granting the status of self-governing city to all Georgian towns (20 entities with population more than 10.000) - Section I,
- Forming regional level - Regional Advisory Councils to consist of the representatives of municipalities within a region - Section VII,
- Implementing the bulk of territorial optimization before the municipal elections in 2014 - Section VIII<sup>9</sup>,

The period since the past two years has demonstrated that the resolution of these issues is a precondition for successful operation of the system. Therefore, it is expected that debates around these issues will resume, which in turn requires strong support.

### 3.2. IMC IN PROGRESS IN GEORGIA

There are no known reports on IMC in Georgia. Specific reports mostly supported by donors (UNDP, USAID, EU, GTZ, OSGF, etc.) focused largely on local communities' perceptions of self-governments and the services they provided to their constituencies.<sup>10</sup>

When it comes to researching IMC related issues in Georgia, the EU supported program Georgian Applied Research Facility - Regional Development (CARF) is the only exception. The program aims to develop 10 policy papers including the one on inter-municipal cooperation and the first draft of policy papers is expected by the end of 2015.

It can be concluded that existing researches are far too fragmented and the absence of a state strategy up to date has undermined a process to involve relevant research and development of programs.

9. A bill - The Organic Law of Georgia "the Local Self-governance - Local Self-Government Code". Available at: <http://www.mrdi.gov.ge/ge/news/selfmanagment/529db93c0cf276b73b39d851>.

10. A research on the satisfaction level with public services of Georgian population, ACT, 2014.

### 3.3. SPECIAL STATUS OF THE CAPITAL CITY

The structure and the list of competences pertaining to the capital city Tbilisi differ from those of other municipalities.

Structural differences:

- There are 50 members in the representative body - the council - and unlike other municipalities their work is paid,
- The mayor of Tbilisi has wider competences and authorization than other mayors and Gamgebelis,
- For instance, she or he has the discretion to set up legal bodies of public law (Tbilisi is the only city which is entitled to set up such bodies),
- The capital has the collegial executive branch - the government of the capital city.

Additional competences in addition to those shared with other municipalities:

- Provision of emergency medical services,
- Utilization and cleansing of drainage and sewage system.

Up to 2014 the solid waste management was also within the competencies of the capital city, but is currently under the responsibility of the central authorities.

Problems that the capital faces are of the same nature to some extent as the ones other municipalities have to cope with. In general, the interests of cities and those of small rural municipalities often differ. Cities which serve as administrative centers of self-governing communities (rural municipalities), spend disproportionately large share of local budgets than villages. For instance, part of the cities with more than 15,000 residents (8 out of 13) consume 70-80% of budgets (some go as far as 95%) while the population in the cities account for maximum 50% of the total number of population in the municipality (the share of city population is one third in eight towns). As a result, budget per capita spending in municipal centers is at least twice as much and sometimes thirty six times much as per capita financial resources allocated to villages (on average 10.5 times).<sup>11</sup>

Tbilisi faces the same problem. The biggest part of the city's budget is spent on meeting the needs of the large central districts while the peripheral (not so prestigious) districts and villages under its constituency are overlooked.

In the bill of Local Self-Government Code it was stipulated to create a self-governance of lower level in the capital's districts, with comparatively limited competences than those of municipalities, but which would have been able to resolve some issues of local importance (mostly commodities). However, this article was removed during the discussions of the bill of the Local Self-Government Code. On the other hand, Tbilisi's self-government managed to maintain the right to create certain structures as mechanisms of public participation at its own discretion.

### 3.4. THE ACTORS OF IMC

As of today both supporters and opponents are not happy with the way the reform has been proceeding:

- Supporters of the reform (civil society, population particularly in the regions) argue that the reform has failed to reach the goals laid down in the government's strategy of 2013.
- Opponents of the reform, on the other hand, hold that the reform has involved too much of compromise and there is a dire need to restore the pre-reform status quo in a number of areas.

#### A. Authorities

The visions within the government of Georgia and between the ministries differ to large extent. A part of sectoral ministries argue that it is only under a highly centralized government system and their direct supervision that the country can manage to overcome pressing problems. Those who are willing to carry on

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11. The Reform of Local Government, presentation, MRDI, November 6, 2015.

with the reform rely mostly on public support. The positions of the latter have considerably strengthened after former Prime Minister Ivanishvili made a supportive statement.

In the recent period (since spring 2015) a new tendency has come to the fore: the level and extent of resistance from sectoral ministries has decreased. In light of the inefficiency of the centralized system, a part of them agree to devolve some of competences to self-governments:

- The Ministry of Education and Science of Georgia plans to first delegate and then devolve as their own (from 2019) the competence involving school maintenance and administration to self-governments.
- Testing waters to delegate emergency medical assistance to the municipalities has already begun at the Ministry of Labour, Health and Social Affairs of Georgia
- The Ministry of Justice plans to hand legal service centers in large villages and towns over to municipalities, etc.

Political powers (regardless of party affiliation) present in the Parliament of Georgia can be divided into the following groups: a group with liberal values, those upholding ethnocentric and traditional values, supporters of libertarian ideology, representatives of old party-nomenclature system, groups with shared mercantile interests and finally the ones without any ideological stand. The diversity makes it difficult to proceed with the development of the legal framework with regard to profound changes.

For the past five years, self-governments in Georgia have tended to refrain from being proactive because of their total dependence on the centralized state system. The recent period has seen some positive developments in this regard as locally elected politicians have already started to push their own programs. An increase in financial sources of the self-governments and less strict supervision, both formal and informal, from the central authorities have positively contributed to strengthening these trends.

However, weak capacity of associations of self-governments and their centralized character (please refer to Paragraph 2.3 above).

## **B. Society**

The role of political parties with regard to issues related to self-governance is quite weak as they are not in the focus of their majority. Decentralization tends to come to the fore just during the election run-ups. Opposition constantly criticizes the ruling coalition and it is therefore less likely to recognize (not to mention full support) and acknowledge right steps of the ruling party fearing to lose already scarce political dividends. Non-parliamentary opposition spectrum enjoys even weaker public support.

A scope of civil society organizations (CSOs) is quite broad in Georgia. However, there are just few organizations working on decentralization and most of them are not very well aware of specific issues. In this context CSOs support the statements fostering the reform but they still have a long way to go in order to turn themselves into multipliers of decentralization ideas for the benefit of wider public.

It is true that there are many high-class professionals within the country's academia, but most of them are not familiar with the self-governance standards and therefore shape their own opinion by their specific fields of knowledge (economics, welfare, environmental studies, etc.).

Media involvement, rather weak, is yet another issue. As a matter of fact most of the Georgian media seek and highlight scandals rather than promote conceptual matters.

In general the population are not much concerned with the self-governance. They are not happy with the quality of local services delivered to them but this rarely stirs engagement in decision making process as very few actually hope that they will be able to solve any problem whatsoever.<sup>12</sup>

The above said does not necessarily mean that there are no active public groups when the environment and circumstances allow them to do so. For instance, most of the population especially in the regions welcomed the news on the upcoming reform. A movement to support the idea of creating their own municipi-

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12. 2007 and 2008. Annual Report on Local Democracy, Open Society - Georgia Foundation, 2007 and 2008

palties began in two Georgian towns (Zugdidi and Gori) where the local population had been demanding a status of self-governing cities for more than two decades. Demands to grant the status of self-governing cities were also made by initiative groups representing the population of numerous settlements (Jvari, Chiatura, Zestaponi, Borjomi, Sagarejo, Kobuleti, the high mountain community of Tusheti).

In July 2015 amendments concerning the additional mechanism for public participation (village gatherings, etc.) were made to the Local Self-Government Code. Practical implementation of these articles and a new stage of invigorating public participation are expected to start from autumn 2015.

### **3.5. Role of donors and international organizations**

In light of the absence of the State's long term visions, international organizations found it difficult to develop their own long-term strategies. Activities of donor and international organizations largely depend on the State's policies as a result of which:

Projects targeting self-governance and regional development, supported by such donors as EBRD, WB, ADB, DFW, EU, USAID, JBC, EIB, GIZ, UNDP, were fragmented and disconnected from each other.

It should also be noted that the government's initiative to kick off with the decentralization reform was met with skepticism by international organizations as there was a likelihood that the reform would be just a façade like it had happened before. However, the period that followed saw some changes in these attitudes. Presumably, if the Georgian government manages to develop a strategy for IMC, the chances that donors (in particular EU and EBRD) will support this effort are high.



## Chapter 4

# Assessing IMC in Georgia

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### 4.1 LEVEL OF EQUIPMENT IN BASIC PUBLIC SERVICES

The quality of service delivery was far from being high in Soviet Georgia. The situation became even worse after restoring the country's independence in 1990s as a result of total collapse of the state structures. The transfer of the whole series of services to private companies, without any mechanism for control by the authorities, deprived self-governments of any means to protect public interests.

Collecting taxes rather than quality appeared to be in the core of public service delivery. The ambiguity of service delivery is caused by unequal access to public goods for all groups. Therefore, even though in the past decade financial resources spent in the regions increased almost tenfold, actual progress in public service delivery has never been achieved.

Paragraph 1.2 above deals with the status quo of municipal enterprises. Sadly no other data were available because of scarcity of relevant materials. However, one conclusion that can be made with a high level of certainty is that there is a dire need for development in every competence under the authority of self-governments (local road infrastructure, water provision, preschool education, waste disposal, etc.).

### 4.2. DOMAINS WHERE IMC IS MOST NEEDED OR WOULD BE EASY TO IMPLEMENT

The problems pertaining to public service delivery are clearly demonstrated when specific directions are analyzed:

*Water provision and maintenance* - Pursuant to the new Local Self-Government Code, water provision and maintenance is now a competence of self-governing entities. However, there is neither regulatory act (to be prepared by the Ministry of Regional Development and Infrastructure) nor relevant standards. Issues related to water provision and sewage maintenance of cities and largely populated areas are still under the responsibility of a centralized state company and funds allocated to self-governments with regard to this matter are far from being sufficient (approximately 5-6% of local budgets). There is no control of drinking water safety parameters and quality, as due to the reforms in the past ten years the laboratories for drinking water quality control were shut down almost everywhere.

*Roads of local importance* - Since 2008 the construction and rehabilitation of roads of local importance are done in a centralized manner because of scarcity of financial means in local budgets. Since 2008 the development of infrastructure has become one of the State's top priorities.

*Waste disposal and residue collection* - Existing normative acts are incompatible and outdated. Residue removal is more or less organized in self-governing cities and administrative centers of self-governing entities, which is not the case in villages where the service, if any, is provided poorly. Fees for residue removal cover only 30-40 % of the budgetary spending of the municipalities.

*Transportation of commuters* - According to the new legislation, municipalities now have the right to determine permitted routs. However, there has not been any practical implication of this right.

*Social assistance and healthcare* - rendering social assistance is a so-called optional competence to be exercised under social programs. Social and healthcare programs account for 6- 8.5% of local budgets.

*Kindergartens* - approximately 5-7% of local budgets are spent on preschool care facilities. The funding covers only 60-70% of expenses, because of which beneficiary families had to pay the rest of money up to 2013. As a result of legal changes, now pre-school facilities are fully funded (including maintenance and development of infrastructure) from local budgets. Issues related to internal structures of these facilities are not yet clear. There are cases when only one childminder takes care of several dozens of children while equally the same number of individuals work for the administration of the facility.

*Cultural facilities* - in 2005 the central authorities started to hand over a series of facilities (libraries, etc.) to self-governments. Most of these facilities were in devastating conditions. As local budgets (since 2012 such costs accounted only to 3-5% of total costs) had no financial means to operate them, most of these facilities (mostly village libraries) were shut down.

*Permits* - Since 2005 the absolute majority of administrative services has been centralized. As of today local municipalities are only authorized to issue permits for constructions.

In order to identify more specific priorities, it is critical that a comprehensive needs assessment be administered.

#### **4.3. NEED TO CREATE OR IMPROVE THE LAW ON IMC?**

First of all, a holistic state strategy needs to be developed and then to be followed in the development of regulations and standards of specific municipal services.

At the same time, programs implemented in various areas need to be connected. Coherence between the Regional Development State Program and the potential IMC strategy is of particular importance in order to avoid overlapping and duplication. In other words, IMC should implement those programs which are not among the priority lists for the Regional Development Program (for instance, investments, tourism development, etc.) and the implementation of which is possible without setting up regional level structures.

While developing IMC strategy, the plans elaborated by the Government of Georgia with respect to the development of local self-governance should also be embedded in the strategy:

- A set of changes envisaging the separation of the State and municipal competences should be prepared by autumn 2015
- The Ministry of Regional Development and Infrastructure is supposed to develop terms and conditions of legal relations between municipalities, the Georgian National Energy and Water Regulatory Commission and private providers before September 1, 2015;
- A bill of law on the identification of natural resources (including water and land) should be developed before January 1, 2016.

#### **4.4. IMC AND ACCESSIBILITY TO SERVICES OR MANAGEMENT**

These issues have already been dealt with in previous paragraphs. More in-depth analysis is not possible at this stage due to the lack of relevant information.

#### **4.5. CROSS-BORDER IMC**

Pursuant to Article 22 of the Local Self-Government Code, municipalities can cooperate with foreign self-governance bodies as per the European Outline Convention on Trans-frontier Cooperation between Administrative Communities or Authorities and the Georgian legislation.

The practical implementation of such cooperation is about to start in the country. The first Euro-region Georgia-Armenia has already been established, which implies programs of cooperation between the neighbouring regions of the two countries. Two contests have already held and winners were identified. However, for this instrument to set in motion, it is critical that relevant regulations are developed at the State level.

In perspective, the Georgian authorities should work hard to become signatories to other protocols as well, more specifically the Protocols I and II. As for the Protocol III, this is rather a long term perspective and the full affiliation will be possible when not only Georgia, but also its neighbouring states have created the relevant legislative and institutional environment.

## 4.6. IMC IN THE ENERGY EFFICIENCY SECTOR

Programs designed to improve energy efficiency failed to hit a political agenda within the first two decades since the restoration of Georgia's independence. A series of challenges which the country had been facing (economic collapse, armed conflicts) prevented incumbents from developing and implementing a long term strategy in the field.

Only recently the Georgian authorities have started developing an energy policy in general, but not without flaws. The major emphasis is put on extensive development of hydropower, and power plants are being built at a rapid pace facing the resistance of environmental organizations.

At the same time the Georgian government plans to provide the country's population with energy carriers during the decade. It has been declared that Georgia's lowlands should be completely covered with gas networks. As for the high mountain regions, setting up of gas infrastructure is extremely costly and cost ineffective. Therefore, use of sun and wind energy as alternatives to gas is being discussed.<sup>13</sup>

As the process is totally centralized (the Ministry of Energy), the competences of self-governments are equal to zero and mostly limited to issuing specific licenses and permits.<sup>14</sup> However, at the same time they are eligible to implement specific activities in the field of energy efficiency (Article 16, the Local Self-Government Code).

There are no specific researches to describe the programs implemented by self-governments for energy efficiency in the country. Few studies refer only to some activities implemented by the state. Nevertheless, it is now possible to identify few success stories and it is promising to see an increase in their number.

- At the initial stage specific activities were supported by various donor organizations (UNDP/GEF SGP - Energy efficiency program in Racha-Lechkhumi and Kvemo Svaneti region; USAID - pilot projects on energy efficiency and renewable energy sector; EBRD - pilot projects for businesses in energy efficiency and renewable energy sources; UNDP - the use of biomass, etc.);
- At the next stage Georgian municipalities gradually start engaging in international programs. In 2010-2013 the capital city together with 6 self-governing cities joined the Covenant of Mayors (Brussels, 2009). The engagement is further supported by the fact that relevant standards (ISO 50001:2011 - *energy management system*) are based on the so-called Deming Cycle and therefore easily compatible with other ISO standards;
- A number of municipalities and in particular big cities (Tbilisi, Rustavi, Kutaisi) have implemented a series of projects ("sanitation" projects for public institutions, weatherization of kindergartens, etc., energy efficiency networks of street lighting, etc.).

One of the main problems the energy efficiency sector faces is the absence of a specific institution founded by municipalities because of financial resources.

At the same time many municipalities are willing and ready to implement relevant measures, provided that there is adequate support for this.

- High mountain municipalities (Oni, Ambrolauri, Lentekhi, Tsageri, Tianeti) are ready to test waters in such fields as construction and rehabilitation/reconstruction under green principles (insulation, diode eco-bulbs, energy efficient heating systems, etc.), agriculture, timber industry, tourist industry, usage of solar and small rivers energy;
- Small and medium size cities (Russtavi, Kutaisi, Telavi) as mentioned above, have been implementing energy efficient construction works in public establishments and raising funds from international sources.

Under such conditions it is relevant to create a relevant inter-municipal institution (i.e. an inter-municipal agency for energy efficiency and use of renewable energy sources or other form) to aim at supporting the

13. Main Directions of the State Policy in Energy Sector of Georgia. Available at: <http://www.energy.gov.ge/projects/pdf/pages/MAIN%20DIRECTIONS%20OF%20THE%20STATE%20POLICY%20IN%20ENERGY%20SECTOR%20OF%201047%20eng.pdf>.

14. The Law of Georgia on Licenses and Permits. Available at: [http://forestry.gov.ge/files/%E1%83%A4%E1%83%9D%E1%83%A2%E1%83%9D/licenzirebisa%20\\_da\\_nebarTvebis\\_Sesaxeb.pdf](http://forestry.gov.ge/files/%E1%83%A4%E1%83%9D%E1%83%A2%E1%83%9D/licenzirebisa%20_da_nebarTvebis_Sesaxeb.pdf).

investment policy as initial costs of energy management system total 2-3% of energy provision expenses incurred by municipal budgets and have a short efficiency period (less than a year).

Other perspective activities may include:

- Assessment of opportunities available in the country;
- Raising funds from additional sources;
- Supporting the development of relevant human resources;
- Cooperating with public organizations in order to raise awareness of broad public and encourage public participation;
- Implementing energy efficiency projects and disseminating information on successful cases throughout the country.

## Chapter 5

# Perspectives and conditions of progress

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### 5.1. HELP TO CREATE A FRIENDLIER ENVIRONMENT FOR IMC

As noted in Paragraph 3.4 above, a number of representatives of the central authorities were not particularly enthusiastic to support decentralization and more specifically IMC because of the following circumstances:

- The willingness to maintain over-centralization in the structures of central authorities
- Organizational selfishness of the sectoral ministries - implementing a reform requires additional human and time resources, which has become a luxury after the introduction of the so-called 'narrower belt' policy.
- The mentality dominating the political class - devolution of power to the local level is primarily linked with the issues of low level of qualification and the fear for corruption (both political and economic) at the local level

However, recent changes in dispositions and attitudes observed within the ministries (please refer to Paragraph 3.4) give some grounds for optimism.

In addition to the ministries, some of the parties in the ruling coalition (i.e. the Republicans) and the President of Georgia have also expressed their support to the reform. Representatives of the State in the regions (governors) have expressed their support to the development of effective and efficient structures at the regional level and devolution of their own competences to the regions.

The government of Georgia has been actively working towards the regional and local development. On October 31 the Government set up the *Commission on Regional Development and Local Self-governance Reform of Georgia*, chaired by the Prime Minister who presented the strategies on regional development in the regions. This points out to the priority importance of these issues for the State.

### 5.2. FINANCIAL ISSUES

I have already mentioned above that the sectoral ministries are slowly changing their attitudes in favour of devolving more rights to self-governments, and the Ministry of Finance is one of the stakeholders of the process.

As long as two years ago, the Ministry of Finance was one of the fiercest opponents for increasing the financial base at the local level because of alleged savings of public funds. Therefore, the Ministry was quite reluctant to agree with the idea to leave part of tax revenues to the self-governments. The recent period has seen the Ministry of Finance proposing to keep not only the income but also other state taxes at the local level. However, the idea is currently at the initial stage of discussion.

I assume that the changes in the attitude of the Ministry of Finance stem from the problems related to tax mobilization. Self-governments receive a fixed share from the central budget in the form of equalization transfer and other allocations. This method was favoured by the central authorities as long as taxes and other revenues were on the increase and funds left after allocating their fixed shares to the municipalities were at the disposal of the central authorities. In the light of diminishing the budget revenues the Ministry of Finance sees little sense in handing over a fixed amount (which increases from year to year) of money to self-governments. It'd rather central and local authorities proportionally share the responsibility when financial revenues are on their downfall to not allow doing otherwise.

In addition to the above said there is yet another positive factor which may take care of the financial aspect of IMC for local municipalities: when it comes to financially incentivizing IMC, we should keep in mind that, pursuant to the rule on allocating funds for infrastructural projects from the centrally funded programs to be implemented in the regions<sup>15</sup>, this mechanism has already been set up and there will be no need for the central budget to develop other mechanisms for the purpose to incentivize the cooperation between the municipalities.

There have already been some successful cases of inter-municipal cooperation between the projects under the *Fund for Implementation of Regional Projects*. In 2013 two municipalities of Imereti region (Tskaltubo and Tkibuli) implemented a project on the rehabilitation of road infrastructure through proportional share (2/3 and 1/3 respectively). In 2015 a similar project proposal has been submitted by Mtskheta and Dusheti municipalities (Mtskheta-Mtianeti region).

It is planned to continue the financial stimulation of ICM through capital transfers. In this case the activation of EU support mechanisms such as CoE/EU Easter Partnership Programmatic Co-Operation Framework (2015-2017) will increase the motivation of both self-governments and central authorities.

### 5.3. HUMAN RESOURCES ISSUES

Low qualification of available human resources is one of the key challenges for self-governments. In order to overcome this shortfall, Article 101 of the new Local Self-Government Code rules that self-governments must allocate at least 1% of the payroll budget line for training activities for public servants.

By the Resolution N959 of May 29, 2014 the Government of Georgia approved the Concept for Continuous Learning of Public Servants in Local Self-Governments and the action plan for the implementation of the concept.

According to the concept, Vano Khukhunaishvili Center for Effective Governance System and Territorial Arrangement Reform shall develop standards for curriculum to be reviewed by the Board and approved by the Ministry. The curriculum to be developed according to the standards will be registered in a program register and learning priority directions for public servants will be identified through the analysis of permanent needs in order to elaborate the annual curriculum plan.

Learning programs will be funded from municipal budgets (1% of salary budget line) as well as by the state budget, donor organizations and other funds raised by the Center.

Pursuant to the Resolution N319 signed on July 7, 2015 by the Government of Georgia on *Approving the Principles and the Rule for the System for Continuous Learning for Local Servants, Competences of Agencies Involved in this System and the Operation of the System*, it is determined that a relevant normative act must be laid down before December 31, 2015 concerning needs assessment, the development of curriculum and standards, as well as monitoring procedures for Vano Khukhunaishvili Center for Effective Governance System and Territorial Arrangement Reform.

While implementing the IMC program, stakeholders should bear in mind the above mentioned circumstances, as well as the fact that the Government of Georgia has been working on the bill of a new laws on regional development and public service, the adoption of which is stipulated under the agenda of the Association Agreement of 2015 with the EU.

### 5.4. NEED, WILL OR PERTINENCE TO ADOPT AN EXPLICIT NATIONAL POLICY?

As a conclusion, in order to implement IMC principles in Georgia, stakeholders need to support all the activities dealt with in the paragraphs above.

In addition, the work needs to be developed in the following directions:

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15. Resolution N23 of the Government of Georgia on *Approving Procedures and Criteria for Selecting Local Self-governments and Regional Projects to be Funded from the Fund under the State Budget of Georgia for Regional Projects of Georgia* (signed on July 2, 2013). Available at: <https://matsne.gov.ge/ka/document/view/1842752>.

## A. Developing regulations

- First of all a dialogue among the stakeholders requires support, so that a consensus is reached on the creation/development of those institutional and financial mechanisms which will contribute to implementing IMC in Georgia
- The central authorities to develop an action plan in this area
- Start developing regulations and standards (through technical assistance of international institutes and primarily of the Council of Europe) in order for the self-governments to implement their competences based on needs assessment

## B. Application of the Existing Mechanisms

Apply already existing resources in the process of developing IMC:

- *Regional Advisory Councils* operating in the regions
- An instrument of twin towns/cities
- Various programs supported by donor organizations (for instance EU supported Georgian Applied Research Facility - Regional Development (GARF) program, etc).

## C. Financial side

- International and donor organizations to start providing long term and consistent support to the decentralization and by doing so help the Government of Georgia to achieve the objectives set (for instance, study tours of practitioners working in local municipalities and civil society representatives in both EU and Eastern Partnership countries)
- Plan joint activities in municipalities and implement IMC pilot projects

## D. Engaging new actors

- Involve municipalities in the State funded programs (at least at the initial stage for the sake of providing information)
- Support thematically united self-governments based on territorial (regional) and thematic (cities and rural areas) principles to coordinate better
- Involve coalitions of civil society networks, which will enable CSOs to receive and disseminate information on ongoing changes and become providers of specific services (social, educational, cultural, etc.) at the local level if the need be.

## ANNEXES

### 1. Municipal Enterprises (Except for Tbilisi)

Region	No of municipalities	Municipal Enterprise	Budget for 2015 (MLN GEL)	Number of Employees	Juridical Form			
					LBPL	LTD	NP	Other
ADJARA	6	102	60090103.0	6176	1	21	72	9
GURIA	4	58	14285900.0	3152	1	7	50	
IMERETI	12	190	40994627.0	9995	4	42	144	
KAKHETI	9	124	26735499.4	6473	1	24	99	
MTSKHETA-MTIANETI	5	64	9896175.0	1861	1	25	38	
RACHA-LECHKHUM KVEMO SVANETI	5	56	5641504.0	1573		8	48	
SAMEGRELO-ZEMO SVANETI	10	148	36949705.0	6402	1	35	111	
SAMTSKHE-JAVAKHETI	7	79	11379432.0	2158		10	69	
KVEMO KARTLI	7	94	37400429.0	5204	1	22	71	
SHIDA KARTLI	5	145	19642333.0	3507		26	119	
<b>TOTAL</b>	<b>70</b>	<b>1060</b>	<b>263015707.0</b>	<b>46500</b>	<b>10</b>	<b>220</b>	<b>821</b>	<b>9</b>

Source: Expert assessment of MRDI materials

### 2. Municipal Enterprises by types (Except for Tbilisi)

Field	Quantity	%
EDUCATION (PRE-SCHOOL ETC.)	310	30.5
SPORTS	180	17.7
HEALTHCARE AND SOCIAL PROTECTION	131	12.9
CULTURE	126	12.4
COMMODITY	117	11.5
TRANSPORTATION	25	2.5
WATER PROVISION	23	2.3
ARCHIVE AND INFORMATION SERVICES	18	1.8
TOURISM	11	1.1
PROJECTION	10	1.0
AGRICULTURE	6	0.6
ENVIRONMENT	2	0.2
OTHER	57	5.6

Source: Expert assessment of MRDI materials

### 3. Interviews

1. Giorgi Toklikishvili, Director, Vano Khukhunaishvili Center for Effective Governance System and Territorial Arrangement Reform
2. Giorgi Tsakadze, Head of Department for Development of Self-Government and Regional Policy in the Ministry of Regional Development & Infrastructure
3. Irakli Kakhidze, Head of the Legal Department in the Ministry of Regional Development & Infrastructure
4. Mamuka Abuladze, Ministry of Regional Development & Infrastructure
5. Kakha Djamburia, Gamgebeli, Lagodekhi Municipality
6. Vakhtang Zarqua, Chairman, Energy Efficiency Foundation
7. David Jikia, Mayor, City of Rustavi



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# Mapping the obstacles to inter-municipal cooperation in Moldova

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# Executive summary

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The Republic of Moldova declared its independence in 1991. It inherited the territorial-administrative organization from the former USSR. The territorial-administrative organization existing before 1991 was transposed into the national Law on territorial-administrative organization from 1994, which reconfirmed the existence of 38 rayons, 4 municipalities (metropolitan areas) and one autonomous territorial-administrative unit (Gagauz Yeri).<sup>1</sup>

The 1998 territorial-administrative law did not last for long and was repealed by the 2001 law on territorial-administrative organization, the current law in force, which basically reinstated the previously known rayons, which can be found in the 1994 territorial-administrative law.<sup>2</sup> Again, the number of first level territorial-administrative units has not changed and presently is of 898 units (villages, communes, towns and cities).

In 2012 the Parliament approved the National Decentralisation Strategy and Action Plan, which among others, tackled the issue of territorial-administrative reform via the principles of efficiency, subsidiarity, transfer of competences to the local governments, and most importantly, assurance of sustainability of the development of communities. Although talks were held, including on the Parliament and Government level, to initiate a territorial administrative reform in the spring of 2015, at the edge of the mandate of the local elected councils and mayors, this initiative was then dropped due to lack of support from a stable political majority and because of high political risks associated with the reform. The next possible territorial-administrative reform arrangements may occur only in May 2019, when the mandate of the newly elected councils and mayors expires.

Inter-municipal cooperation is mentioned as a form of cooperation between local public administration authorities in the Law on administrative decentralisation:

“The local public administration authorities of the first and second level, as well as the central authorities, may cooperate, as provided by the law, to ensure the implementation of projects or public services which require common efforts from the respective authorities.”<sup>3</sup>

The Law on administrative decentralisation, the Law on public-private partnership, the Law on concessions and the Law on local public communal services, as well as the Government Decision on the template regulations of municipal enterprises provide the conditions to create either a PPP or a municipal enterprise.

Thus, the template regulations mention what the statute of the municipal enterprise should contain, what are the specific provisions of the contract, how the property is managed by the enterprise and how its activity may be subject to internal audit and monitoring.<sup>4</sup>

The Law on public-private partnership and the Law on concessions also mention the forms of PPP which may be used by local public administration authorities, which can be found in the previous chapter.

The IMC option is considered to be rather limited in scope by some experts, compared to the option of amalgamation or even asymmetric decentralisation.<sup>5</sup> On the other hand, some representatives of the local associations of local authorities believe that the option of amalgamation is rather dangerous and that the Government should find resources to support the implementation of IMC options for various types of services in the local governments.<sup>6</sup>

The local administration who participates in the creation of a municipal enterprise shall have representatives in the board of directors. The template regulations on the municipal enterprise do not mention specif-

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1. For details please refer to the Law no. 306-XIII from 07.12.1994 on territorial-administrative organisation (abolished)

2. For details please refer to the Law no. 764-XV from 27.12.2001 on territorial-administrative organization

3. Article 5 (1) of the Law on administrative decentralisation

4. Para 10, 101, 16, 30 of the Template Regulations of the municipal enterprise

5. For details please refer to “Report on territorial-administrative structure options for the Republic of Moldova”, UNDP Moldova, March 2015, pp. 32-35

6. Interview with Viorel Furdui, Executive Director of the Congress of Local Public Authorities (CALM), 10 December 2014

ically how the decision making process should take place, it just requires that the statute of the enterprise provide for the process of decision-making. Although, it is left to the founders of the enterprise to decide on the contents of the statute, and this may render endless discussions on what should be the minimum number of votes to approve a decision in the board of directors, or even worse, due to lack of options of knowledge transfer, leave the municipal enterprise with no clear rule on how a decision is to be adopted. Although the Government may not intervene in the local autonomy and include more specific provisions, it could facilitate it via the preparation of standard version template statutes and other founding documents for local councils to avoid the failure of the municipal enterprises in the future.

The template regulations of the municipal enterprise do not mention either the share of liquid funds and physical assets to be offered to the municipal enterprise, or the share of these contributions based on the population, wealth, number of beneficiaries and other considerations when constituting a municipal enterprise. This is a serious limitation to the viability of a municipal enterprise, the burden of establishment of these details being left solely on the shoulders of the local government who founded such enterprises.

Except the “municipal enterprise” form, there are no other possible legal forms for an enterprise if two or more local public administration authorities participate. There is an exception for certain forms of services: water supply, thermal energy supply, waste and pluvial water disposal, sanitation, local transport, management of public and private housing.<sup>7</sup> These services can be managed collectively by more than one LPA participating in the creation of the enterprise.<sup>8</sup> The form is not particularly confined to municipal enterprise. Taking over an existent enterprise, which used to be a state enterprise and then was transformed into a joint stock company via the privatisation process may constitute an additional option if the municipalities decide to acquire stocks, including via an additional issue of stocks. If there is a newly created municipal enterprise, practice says that the name of the municipal enterprise will take the names of all the participating communes. If a PPP option is used, then the options of enterprise forms are practically all the available options under the current entrepreneurship legislation: limited liability company and joint-stock company.

A series of conclusions on the current Moldovan IMC legislation are shown below in order of importance:

First, the options of IMC in Moldova are confined to municipal enterprises, which can be created by two or more LPAs. This option must be backed with others to ensure proper implementation of the IMC under different legislation (PPP, concessions, etc.)

Second, the LPAs cannot participate in common PPP projects, i.e. present the option of joint concession of certain public services to the private sector, in exchange for the option of competitive price for the private partners and continuous development of the infrastructure. The Law on PPP, the Law on concessions and the secondary relevant legislation (i.e. local public services) require amendment to allow the use of PPP for IMC purposes.

Third, there is a need for an improved Regulation on inter-municipal enterprises, which would define the process of creation, management and upkeep of these types of enterprises, including the decision-making process.

Fourth, the IMC should be backed with financial incentives in the form of a Fund. Caution should be exercised not to overlap with other available Funds, such as the Energy Efficiency Fund or other possible financial incentives which overlap with the present one.

Fifth, an institution should be empowered to monitor the implementation of the IMC. Most suitable for this job is either the institution who shall manage the IMC Fund, or another institution, such as the Ministry of Regional Development.

Sixth, the decentralisation law must allow the creation of IMC not only at the same level of administration, but also at different levels of administration (for example, village and central level) to ensure increased accessibility of some of the centralised services.

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7. 3 (1) of the Law no. 1402-XVI from 24.10.2002 on public communal services

8. Article 14 (3) letter e) of the Law no. 1402-XVI from 24.10.2002 on public communal services

## Chapter 1

# Local self-governance in Moldova

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### 1.1. GENERAL FRAMEWORK OF THE LOCAL SELF-GOVERNANCE

The Republic of Moldova declared its independence in 1991. It inherited the territorial-administrative organization from the former USSR. The territorial-administrative organization existing before 1991 was transposed into the national law on territorial-administrative organization from 1994, which reconfirmed the existence of 38 rayons, 4 municipalities (metropolitan areas) and one autonomous territorial-administrative unit (Gagauz Yeri).<sup>9</sup>

The territorial-administrative structure was then amended by the 1998 Law on territorial-administrative organization, which established ten counties (judet), as larger second level territorial-administrative units, with 10 municipalities (metropolitan areas) as the cities who host the administration of the ten judet. The first level administration was left unchanged, which in turn generated a migration of the competences further away from the citizens and increased the cost of accessibility of services. The 1998 territorial administrative organization law also included the Nistru left bank regions as part of an autonomy.<sup>10</sup>

The 1998 territorial administrative law did not last for long and was repealed by the 2001 law on territorial-administrative organization, the current law in force, which basically reinstated the previously known rayons, which can be found in the 1994 territorial-administrative law.<sup>11</sup> Again, the number of first level territorial-administrative units has not changed and presently is of 898 units (villages, communes, towns and cities).

In 2012 the Parliament approved the National Decentralisation Strategy and Action Plan, which among others, tackled the issue of territorial-administrative reform via the principles of efficiency, subsidiarity, transfer of competences to the local governments, and most importantly, assurance of sustainability of the development of communities. Although talks were held, including at the Parliament and Government level, to initiate a territorial-administrative reform in the spring of 2015, at the edge of the mandate of the local elected councils and mayors, this initiative was then dropped due to lack of support from a stable political majority and because of high political risks associated with the reform. The next possible territorial-administrative reform arrangements may occur only in May 2019, when the mandate of the newly elected councils and mayors expires.

Besides the two layer territorial-administrative organisation mentioned above, there are 6 development regions<sup>12</sup>. These development regions do not have legal personality and are formed of the representatives of the local governments elected from the first and second levels.

### 1.2. FIRST LEVEL MUNICIPALITIES

#### A. Demography and fragmentation

As previously mentioned, the number of local governments in Moldova presently account to 898 units. These units have a population on average of 2,958 inhabitants<sup>13</sup>. Over 1/3 of the first level units have less than the minimum provided by law (1,500 inhabitants). Only 14% of the first level administration units have a population larger than 5,000 inhabitants. On the other hand, 94% of the settlements (i.e. 844 units) are rural ones, which hold 65.8% of the entire population of the country. This is the most vulnerable part of

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9. For details please refer to the Law no. 306-XIII from 07.12.1994 on territorial-administrative organisation (abolished)

10. For details please refer to the Law no. 191-XIV from 12.11.1998 on territorial-administrative organisation (abolished)

11. For details please refer to the Law no. 764-XV from 27.12.2001 on territorial-administrative organization

12. The regions were created in 2006 as a result of approval of the Law no. 438-XVI of 28.12.2006 on regional development

13. Data provided by the Ministry of Finance for 2013

the society, as rural settlements have much less access to services and lack or very small opportunities for community members.

## **B. Local bodies, the election process and main competences**

The local elections run once in 4 years. The last general local elections took place on the 14<sup>th</sup> of June 2015. Once in four years the communities elect their mayors and the local councils. There is also a rayon council, which is elected by the communities of that rayon.<sup>14</sup> For each settlement and rayon there is a number of councillors to be elected. Their number varies from 9 councillors in settlements (rayons) of up to 1,500 inhabitants to 43 in settlements (rayons) with more than 200,000 inhabitants<sup>15</sup>. In practice, the rayons have 27 and more councillors as this threshold is established for a population between 20,001 and 50,000 inhabitants. There are special regulations on the number of councillors for the Chisinau and Balti municipalities.

The competences of the two level territorial-administrative units are regulated by the Law on local public administration<sup>16</sup> and the Law on decentralisation<sup>17</sup>. Thus, the clusters of competences of the first level council are the following:

- a) urban planning and management of green areas
- b) waste management
- c) water supply, sewage disposal and treatment
- d) construction and management of public lightning and local roads
- e) local public transport
- f) management of cemeteries
- g) management of local public domain and private domain goods
- h) management of pre-school and extra-school institutions
- i) development and management of gas and thermal energy networks
- j) cultural, sports, youth activities and management of the related infrastructure
- k) management of agricultural markets, commercial areas and other actions to develop the economy of the administrative unit
- l) creation and management of municipal enterprises
- m) building of social housing and management of social housing services for vulnerable groups
- n) management of fire fighting services<sup>18</sup>

These clusters of competences are assigned to all 898 local administration authorities, irrespective of their size, financial and human resources capacity, location on the map and financial viability.

## **C. Administration and human resources**

Due to a very fragmented nature, in many of the first level settlements the administrative and human resources capacity is very limited. Statistical data show that on average the 898 local municipalities have on average 5.68 employees, which includes the mayor and the secretary of the local council. In about one third of the local municipalities the real number of employees is 4, including the mayor and the secretary of the local council.

The level of payroll is also very limited. Pursuant to the employment and payroll legislation, the local public administration authorities are limited in setting the payroll for their employees. The positions of local and rayon councillors are not paid jobs. The level of payroll for the mayors varies from 5,000 to 6,800 MDL.<sup>19</sup> The employees of the first level administrative units are not public servants, with the exception of the secretary

14. Article 119 of the Electoral Code no. 1381-XIII from 21.11.1997

15. Article 11(1) of the Law no. 436-XIV from 28.12.2006 on local public administration

16. Law no. 436-XIV from 28.12.2006 on local public administration

17. Law no. 435-XIV from 28.12.2006 on administrative decentralisation

18. Article 4(1) of the Law on administrative decentralisation

19. Annex. No. 2 of the Law no. 355-XVI from 23.12.2005 on the payroll system in the budgetary sector

of the council. Thus, the employees' status is rather limited in terms of legal, social and financial guarantees in case of dismissal or reduction of the position.

## D. Main competences

Pursuant to the Law on local public administration, the main competences of the local councils relevant to our study are to:

- a) decide on the application and amendments, as provided by the fiscal legislation, of the local taxes and fees, of their payment methods, as well as the application of reductions or other advantages during the fiscal year;
- b) manage the goods of the public and private domain of the village, city;
- c) decide on the concession, lease of public domain goods of the village, city, as well as on the local interest services, as provided by the law;
- d) decide on the sale, privatisation, concession or lease of private domain goods of the village, city, as provided by the law;
- e) decide and propose the change of the destination of land plots of the village, city, as provided by the law;
- f) decide on the drafting, construction, upkeep and improvement works for roads, bridges, housing, as provided by the law on housing, as well as of the local economic, social and leisure infrastructure;
- g) decide on starting an internal audit;
- h) decide on the creation of local interest public institutions, organise local public management services, determine the financial support in case of budgetary expenses, decide on the cleaning rules in the community;
- i) decide, as provided by the law, the creation of municipal enterprises and commercial organisation with the participation in the statutory capital of the commercial enterprises;
- j) decide, as provided by law, the association with other local public administration authorities, including from abroad, to deliver public interest works and services, to promote and protect the interests of the local public administration authorities, as well as the cooperation with commercial enterprises and NGOs from the country and from abroad to implement common interest works and actions;
- j') decide the delegation of competences on approval of the fees for water supply and sanitation to the National Energy Regulation Agency;
- k) decide on the establishment of cooperation frameworks, including cross-border, fraternity links with settlements from abroad;
- n) approve the local budget, the limits of use of the reserve funds, as well as of the special funds, approve the borrowings and the year budget closing accounts; make amendments to the local budget;
- o) approve, as provided by law, the urban plans of the settlements in the composition of the territorial-administrative units, as well as the local development plans;
- p) approve socio-economic and other types of development studies, forecasts and programmes;
- q) approve, as provided by the law, specific regulations and fees for subordinated public services and public institutions, with the exception of fees for thermal energy and technical water supply, including approval of working schedule of the commercial enterprise and water supply service, irrespective of ownership form and legal form of organisation, as well as for natural persons who practice trade;
- r) approve the maximum admitted limits on the use of natural resources of local interest;
- x) contribute, as provided by the law, to ensuring public order, approve decisions on the activity of the municipal police, of the firemen and the civil defence units, propose measures to improve their functioning;

As we can see, these competences include, among others, the power to decide on the management of local services and local infrastructure, the creation of municipal enterprises, the participation in the estab-

lishment of commercial enterprises along with private actors, etc. All these competences allow theoretically for the creation of IMCs in various areas of interest for the local population.

## E. General financing: structure and resources

The process of creation of local finance is regulated by the Law on local finance.<sup>20</sup> The law was subject at the end of 2013 to a significant set of amendments, which transferred to the local governments more power to collect and manage local funds.

The local budgets are comprised of:

- a) Own incomes
- b) Revenues from real-estate tax
- c) Entrepreneurship patent tax
- d) Private tax
- e) Local taxes as provided by the Fiscal Code<sup>21</sup>
- f) Income from the lease of private domain property of the local government
- g) Personal income tax (75% of the amount for villages and cities, and 45% for Balti, 50% for Chisinau municipalities, 20% of the amount for the capital towns of rayons)
- h) Transfers from the central budget with general and specific purpose
- i) Grants
- j) Special funds<sup>22</sup>

The rayon level collects 50% of the road taxes collected in the settlements of the rayon.

The general purpose transfers from the central government are made from the local budgets equilibration Fund, which is aimed to support the local governments which cannot sustain their local expenses. There is a complex formula, based on which the transfers are calculated and then transferred.<sup>23</sup>

The special purpose transfers cover the central competences, which have been delegated to the local level. Thus, the preschool, primary, secondary, special and complementary school education is covered from the special means, as well as any other delegated function from the Parliament or the Government.<sup>24</sup>

Although education is the most prominent chapter of special purpose transfers to the local budgets, the local governments complain that there are other competences, which belong to the central government, such as the population registration (birth certificates, marriage certificates), which are issued and managed by the mayor, and the military incorporation services, also managed at the local level, as well as other central competences delegated to the local level, which are not financed at all by the central government via special purpose transfers.

The amendments to the local public finance law with respect to the equilibration fund are relevant until the end of 2016, i.e. two years from the full-fledged entry into force of the amendments on 1 January 2015.

This may constitute a serious threat to the financial sustainability of many of the local governments, as only 10 of them are actually viable from the financial perspective and can invest in local development. Based on the requirements of the Law on decentralisation, a local government is considered financially viable if its administrative expenses do not exceed 30% of its own revenues<sup>25</sup>. If one will lower the financial viability requirement, and accept up to 100% coverage of the administrative expenses from own revenues, only

20. Law no. 397-XV from 16.10.2003 on local public finance

21. Article 289 (2) of the Fiscal Code no. 1381-XIII from 21.11.1997: local infrastructure management tax, lotteries and auctions tax, advertising tax, tax on use of local symbols, tax on local commercial units/service providers, market tax, hotel tax, spa tax, passenger transport services tax, parking facilities tax, domestic dogs tax, parking tax, sanitation tax, advertising equipment tax.

22. Article 5 of the Law on local public finances

23. For more details, please refer to Article 10 of the Law on local finances

24. Article 11 of the Law on local public finance

25. Article 11 (2) of the Law on administrative decentralization



157 local governments (i.e. 17%) could cover these administrative expenses. The rest of 83% cover up their administrative expenses out of the central budget transfers.<sup>26</sup>

With respect to the local taxes, the list quoted above from the Fiscal Code is an exhaustive list of local taxes. This is also an important limitation of the local self-governance and disincentive for smart and result-driven local development policies, which if not addressed in the medium term, may create serious limitation in the local development, even for local governments which are currently financially viable.

The borrowing capacity of the local government is also limited to 20% from the annual budget of the local administration.<sup>27</sup>

## **F. Municipal enterprises and ways of managing local services: PPPs, public companies, privatization**

### **Municipal enterprises**

The local governments have a list of options to manage the local services. Thus, the traditional way is to create a municipal enterprise. The procedure of creation, management and termination of a municipal enterprise is regulated by the Template regulations of the municipal enterprise.<sup>28</sup> Recently the normative act was amended to allow the possibility for local governments to create a municipal enterprise with the participation of two or more local administrations.<sup>29</sup> However, the decision to create the municipal enterprise must come from all the local municipalities, the decision of employing a manager is taken by all representatives, each local government must approve a decision on each of the above-mentioned, i.e. the creation, the appointment of a representative, and there must be a person appointed to present the registration papers to the central state authority who registers enterprises – the State Registration Chamber. A very important element when establishing the municipal enterprises is the transfer of assets and their subsequent management and audit. As we have mentioned above, the local governments may decide on an internal audit. If the enterprise is created by two or more local governments, this implies the need for a decision to order the audit from all the local governments, which is again a rather complex and sometimes impossible exercise. In many cases, the municipal enterprise is residing in one of the central local governments who have decided to create a municipal enterprise. If there are concerns with respect to the management of assets, this internal audit may take place only with the consent of all the local governments. This exercise is however different from the one of the enterprise audit, which is done on a systematic basis by a committee of censors or an externally contracted audit company.<sup>30</sup>

### **Private-public partnerships**

The public private partnerships are allowed under the Law on public private partnerships.<sup>31</sup> The provisions of this law are also complemented by the Law on concessions<sup>32</sup> and the Law on local public communal services.<sup>33</sup> These three laws allow for the initiation and implementation of public-private partnership projects in various areas. There is a list of forms of public-private property.<sup>34</sup>

The limitation of the public-private partnership legislation is that it does not allow the option of PPPs with the participation of two or more local administrations. Thus, for large investment projects, such as water supply, sanitation, sewage disposal, waste management and disposal, etc. the viability of an enterprise, precisely because of the very fragmented nature of the territorial-administrative organisation and because of the objective nature of the service, implies the need for the participation of several local governments in

26. Adrian Ionescu, Sasa Drezgic, Iulian Rusu "Report on territorial administrative structure options for the Republic of Moldova", UNDP Moldova, March 2015, page 8

27. Article 14 (4) of the Law on local public finance

28. Government Decision no. 387 from 06.06.1994 on the template regulations of the municipal enterprise

29. Para. 1 of the Template Regulations of the municipal enterprise

30. Para. 30 of the Template Regulations of the municipal enterprise

31. Law no. 179-XVI from 10.07.2008 on public private partnership

32. Law no. 534-XIII from 13.07.1995 on concessions

33. Law no. 1402-XV from 24.10.2002 on local public communal services

34. Article 19(1) of the Law on public-private partnership

the public-private partnership projects. This limitation is not in line with the amendments the Government made to promote IMC in the form of municipal enterprises, as it does not allow more than one local public administration as party to the PPP and confines these initiatives to large local governments, where a PPP may be viable.

### **Privatisation**

This option is available under the Law on management and privatisation of public property<sup>35</sup>. This option allows the local public administration authorities to privatise local public property of private domain (the public domain property is subject to either the PPP or the concession option analysed above) or the property of the public domain which is not included in the list of goods that cannot be privatised due to their strategic importance. The list is part of the annex to the Law on management and privatisation of public property.<sup>36</sup>

Except the list of goods not subject to privatisation mentioned above, there is a series of goods and real-estate objects, which is subject to additional requirements and limitations in the privatisation process. Thus, the local public administration authority must comply with additional requirements if it wants to privatise land plots it holds in private domain property, including the use of funds to improve the condition of the rest of the land it owns and increase the fertility of the soil.<sup>37</sup>

If the public administration wishes to change the destination of the agricultural land plots to other purposes, including for construction or other infrastructure projects, it must compensate the change of destination and complete a cumbersome process, which culminates with the decision of the Government.<sup>38</sup> Exception to the requirement of compensation when changing the status of agricultural land is available only if the land is used for public purposes, including for the creation of industrial parks.<sup>39</sup>

There is a high degree of ambiguity in the provisions mentioned above, especially from the IMC perspective, as it can take many forms, including private enterprises who have agricultural land in possession and would like to participate with it in a form of public-private partnership, but who would be obliged to follow the compensation requirement, as it is their property, although as a result of the PPP with a local authority, it may generate services of public use.

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35. Law no. 121-XVI from 04.05.2007 on management and privatization of public property

36. For details, please refer to the Annex to the law on management and privatization of public property

37. Article 4 (12) of the Law no. 1308-XIII from 25.07.1997 on the normative price and the selling of the land

38. Article 12-14 of the Law on the normative price and the selling of the land

39. Article 12 (4) of the Law on the normative price and the selling of the land

## Chapter 2

# Legislative provisions on inter-municipal cooperation in Moldova

### 2.1. GENERAL LEGAL PROVISIONS

Inter-municipal cooperation is mentioned as a form of cooperation between local public administration authorities in the Law on administrative decentralisation:

“The local public administration authorities of the first and second level, as well as the central authorities, may cooperate, as provided by the law, to ensure the implementation of projects or public services which require common efforts from the respective authorities.”<sup>40</sup>

“With the purpose of successful implementation of the local public interests, increase the efficiency of public assets, local public administration authorities from the first and second levels will develop the cooperation with the private sector based on private-public partnership contracts.”<sup>41</sup>

The rest of the provisions on inter-municipal cooperation are scattered in the national legislation, much of which has been presented in the previous chapter.

The process of creation of municipal enterprises became smoother after the Government amended the template regulations on the municipal enterprise. There are however important drawbacks in the process, including the decision making process, which must include all local administrations participating in the creation of an inter-municipal enterprise. The Law on local public administration does not expressly allow the delegation of management of the property to another local public administration in case of creation of inter-municipal enterprises. This option may allow additional savings, while retaining the possibility to audit and monitor the effectiveness of the inter-municipal enterprise.

The PPP option is available, as the legislation currently stands only between one local public administration authority and one or more private enterprises. Although the Law on administrative decentralisation mentions PPP as an option for cooperation, it does not allow participation with assets by two or more local governments, as the PPP processes are linked to the central Public Property Management Agency, which confines projects to one local public administration only.

### 2.2. LEGAL PROVISIONS ON IMC ORGANISATION AND PROCEDURES

The Law on administrative decentralisation, the Law on public-private partnership, the Law on concessions and the Law on local public communal services, as well as the Government Decision on the template regulations of municipal enterprises provide the conditions to establish either a PPP or a municipal enterprise.

Thus, the template regulations provide what the statute of the municipal enterprise should contain, what are the specific provisions of the contract, how the property is managed by the enterprise and how its activity may be subject to internal audit and monitoring.<sup>42</sup>

The Law on public-private partnership and the Law on concessions also provide the forms of PPP that may be used by local public administration authorities, which can be found in the previous chapter.

The IMC option is considered to be rather limited in scope by some experts, compared to the option of amalgamation or even asymmetric decentralisation.<sup>43</sup> On the other hand, some representatives of the local associations of local authorities believe that the option of amalgamation is rather dangerous and that

40. Article 5 (1) of the Law on administrative decentralisation

41. Article 5 (4) of the Law on administrative decentralization

42. Para. 10, 101, 16, 30 of the Template Regulations of the municipal enterprise

43 For details please refer to “Report on territorial administrative structure options for the Republic of Moldova”, UNDP Moldova, March 2015, pp. 32-35

the Government should find resources to support the implementation of IMC options for various types of services in the local governments.<sup>44</sup>

The options presented by the representatives of the local associations of local authorities are to continue the implementation of the Law on administrative decentralisation, as it currently stands, and identify more resources to the local authorities to increase the pace in the implementation of IMC projects.

The issue of financing of IMC projects is rather sensitive as there have been literally no interventions at the Government level to support IMC project from state budget funds and all the IMC projects are supported by international donors. There are 17 projects implemented by UNDP and GIZ, which have not been all successful due to local contexts and impracticalities in the creation and management of the municipal enterprises.

The local administration who participates in the creation of a municipal enterprise shall have representatives in the board of directors. The template regulations on the municipal enterprise do not mention specifically how the decision making process should take place, they just require that the statute of the enterprise provide for the process of decision-making. Although, it is left to the founders of the enterprise to decide on the contents of the statute, but this may render endless discussions on what should be the minimum number of votes to approve a decision in the board of directors, or even worse, due to lack of options of knowledge transfer, leave the municipal enterprise with no clear rule on how a decision is to be adopted. Although the Government may not intervene in the local autonomy and include more specific provisions, it could facilitate it via the preparation of standard version template statutes and other incorporation documents for local councils to avoid the failure of the municipal enterprises in the future.

The template regulations of the municipal enterprise do not provide either the share of liquid funds and physical assets to be offered to the municipal enterprise, or the share of these contributions based on the population, wealth, number of beneficiaries and other considerations when constituting a municipal enterprise. This is a serious limitation on the viability of a municipal enterprise, the burden of establishment of these details being left solely on the shoulders of the local government which founded such enterprises.

Except the “municipal enterprise” form, there are no other possible legal forms for an enterprise if two or more local public administration authorities participate. Practice says that the name of the municipal enterprise will take the names of all the participating communes. If a PPP option is used, then the options of enterprise forms are practically all available under the current entrepreneurship legislation: limited liability company and joint-stock company.

### 2.3. OTHER LEGAL POSSIBILITIES

Except the municipal enterprise, there are no other formal options for two or more local public administration authorities to implement an IMC.

There are however informal options of cooperation via the use of civil contracts with a private or public enterprise. The LPAs sign service provision contracts with a municipal enterprise or a private enterprise, created under a PPP project, to deliver the respective services. The limitations of this option are:

- a) The LPAs contracting the services cannot capitalise on the use of their assets, which could be used in an IMC project
- b) The prices charged by the service provider may not be as attractive as possible and decrease public expenditure in the community
- c) There are public procurement limitations, which may require passing a cumbersome process to select the bidding company
- d) This option is a source of potential corruption

The LPAs cannot use any other options legally. One solution, but which undermines the public authority, is enterprise agreements, or NGOs created by the inhabitants of the communities who intend to deliver some of the services to the parties of the enterprise agreement or the NGO. Such an option was already used in some settlements, but it is unviable and partially legal option, as there is a clear responsibility of the local government to deliver the services of local interest and not transfer them on the shoulders of individuals.

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44. Interview with Viorel Furdui, Executive Director of the Congress of Local Public Authorities (CALM), 10 December 2014

## Chapter 3

# Municipal reforms in Moldova

### 3.1. THE DEBATE ON THE MUNICIPAL REFORMS: AMALGAMATION VERSUS COOPERATION

The subject of municipal reforms has been on the agenda of the Moldovan Parliament and Government with different intensity, but with a more prominent action since 2012, when the National Decentralisation Strategy and Action Plan for 2012-2015 were approved.

Although many of the aspects of the municipal reforms, such as decision making, property management, financial, including tax and services decentralisation, are mentioned in the Strategy, there are serious concerns with respect to lack of territorial-administrative reform as one key instrument which could enforce the decentralisation process generally and increase the quality of services provided to the population, as well as decrease the distances between the services providers and the beneficiaries.

The territorial-administrative reform came back to the attention of the public at the beginning of 2015 with an option to review the territorial-administrative organisation. In this respect, the donor community was asked to present the options for territorial-administrative reform. Part of the discussions and presentations of the options were the meetings with MPs, State Chancellery and the LPAs, including their representing associations.

The MPs from two parties in the Parliament – Liberal Democratic Party (LDP) and Democratic Party (DP) perceived the option of amalgamation as a viable one with certain conditions. For instance the LDP considered that additional criteria were necessary to be put in place to create a map of new LPAs after amalgamation<sup>45</sup>. The DP on the other hand, considered the option too radical in terms of restructuring of the territorial organisation and suggested a piloting process for a number of selected settlements before embarking into a full-fledged administrative reorganisation.<sup>46</sup>

The representatives of the associations of LPAs, on the other hand, believe that the amalgamation scenario is a dangerous one and a tool to undermine local autonomy. Thus, cooperation should be instead promoted via the option of inter-municipal cooperation, with funds from the Government and the international community.<sup>47</sup>

Some experts consider the option of IMC as complementary to the process of amalgamation, as the IMC does not offer the advantages the full amalgamation process may offer to the country, such as economies of scale, specialisation of the public service and services closer to the general public.<sup>48</sup>

### 3.2. IMC IN PROGRESS IN MOLDOVA

Besides the reports mentioned above<sup>49</sup>, the IMC option was considered as an option for technical assistance. Since 2010, seventeen IMC pilot projects<sup>50</sup> have been started in the Republic of Moldova, some of them providing good results. These pilot projects have occurred with the active support and involvement of the

45. Position expressed by MP Mr. Iurie Tap, LDP, during the presentation meeting of the UNDP Report on the options for territorial-administrative reform, 13 March 2015

46. Position expressed by MP Mr. Vitalie Vrabie, DP, during the presentation meeting of the UNDP Report on the options for territorial-administrative reform, 13 March 2015

47. Interview with Viorel Furdui, Executive Director of the Congress of Local Public Authorities (CALM), 10 December 2014

48. For details please refer to "Report on territorial administrative structure options for the Republic of Moldova", UNDP Moldova, March 2015, pp. 32-35; Analytical Study on the Optimal Territorial-administrative structure for the Republic of Moldova, Expert Grup, Chisinau, August-October 2010, available at: <http://www.expert-grup.org/ro/biblioteca/item/746-studiu-analitic-privind-structura-administrativ-teritorial%C4%83-optimal%C4%83-pentru-republica-moldova>

49. Ibid.

50. GIZ Project "Modernization of Local Public Services" (7 projects), and UNDP - Joint Integrated Local Development Programme (10 projects, covering 40 communities and 120,000 people).

international organizations and donors (UNDP and GIZ) and cover typically (12 out of 17) the provision of a single service (water and sewerage, waste management, energy efficiency). Multi-functional IMC projects are few (5), and they are as well limited to communal services (water and sewage, waste management, public lighting, public roads maintenance). Each of these projects has received heavy donor support, ranging from 100,000 USD (UNDP) to 2.3 mil EUR (GIZ/EU). It has taken 2-3 years for an average IMC project to become functional and sustainable, while some initiatives are still struggling.

For IMC to have a broad impact and ensure effective service provision at the national level, we should assume the creation of 250 to 1000<sup>51</sup> functional IMC partnerships during the next 4 years.<sup>52</sup>

### 3.3. SPECIAL STATUS OF THE CHISINAU CAPITAL MUNICIPALITY

The Chisinau municipality has a special law, which governs its status<sup>53</sup>. In many aspects the law has been criticized for being outdated and not responding to the needs of a modern capital city, effective use of resources and involvement of various forms of cooperation among the surrounding settlements<sup>54</sup>.

The Chisinau municipality acts as a second level public administration authority, meaning that it has much of the competences of the rayon level with respect to management of public finances and provision of public services, as well as any other pertinent competences related to public administration. The Chisinau municipality has, according to the Law on territorial-administrative organisation, 18 first level LPAs and 35 settlements. Both the Chisinau city (as a first level unit) and the 18 first level LPAs in the composition of the Chisinau municipality hold similar competences related to provision of services to the population. The Chisinau city does not have a local representative body, the municipal council acting as that body. With the approval in 2006 of the Law on local public administration there were transitional measures set to establish additional district administrations within the 5 districts of the Chisinau city. The deadline of the entry in force of these provisions was set for 2011, then amended for 2015 and, recently postponed for 2019. The logic behind this arrangement, including the creation of additional municipal representative bodies, was a political one and had little background analysis on the effectiveness of the local public administration. Until 2019 the district councils and mayors will not be elected.

Currently, the public services run by the Chisinau mayoralty are covering the needs of many of the suburban settlements. Due to the possibility to develop infrastructure as a result of high population density and increased incomes, the traditional public services such as water supply and sewage disposal, waste collection and disposal, public transport, road infrastructure are constantly extending their accessibility to regions outside of the five districts and continue to be run by the municipal mayor's office, whilst the decisions on the administration of these services are made by the municipal council.

On the other hand, the management of the assets in the 18 LPAs is still in the hands of the local councils and carried out by the local mayors, elected by the local population of the village, city.

This poses a serious challenge to further development of the services and infrastructure, including highways and other large scale investment projects, as the assets are managed by the LPAs part of the municipality, whilst the decision to initiate such projects is made by the municipal council. This is also a strong disincentive for the international donors, banks and private investors as the potential contracting authority will not control the decision making process over the management of the infrastructure. Striking examples would be the lack of authority to decide on the use of land in the private domain, as it is managed by the first level LPAs in the municipality (metropolitan area).

This condition is a lose-lose situation, as the Chisinau city districts, which fund the extension of public services to the surrounding settlements, cannot benefit from cost-effective investment projects (highways,

51. We assume at least 80% of the local governments have 1 to 10 local functions that need to be addressed through IMC, through cooperation between 2-10 local authorities (an average of 4)

52. Adrian Ionescu, Sasa Drezgic, Iulian Rusu, "Report on territorial administrative structure options for the Republic of Moldova", UNDP Moldova, March 2015, p. 32

53. Law no. 431-XIII from 19.04.1995 on the status of Chisinau municipality

54. One of the latest legislative initiatives to clarify the functioning of the Chisinau municipality is a draft law on the Chisinau municipality from 10.06.2015, available at: <http://www.parlament.md/ProcesulLegislativ/Proiectedeactelegislative/tabid/61/LegislativId/2750/language/ro-RO/Default.aspx>

waste disposal and recycling facilities, etc.) as the municipality cannot decide on the assets of the surrounding first level LPAs. On the other hand, the first level LPAs and the 35 settlements cannot benefit from a coordinated approach to urban development, as they all decide on asset management individually, not allowing them to benefit from the results of large scale investment projects.

### 3.4. THE RELEVANT IMC STAKEHOLDERS

The authorities in favour of IMC

The municipalities, especially the small ones, who cannot attract funds to develop local services and who have a relatively low financial capacity due to low population, are in favour of IMC, especially when these initiatives are supported by external assistance. The associations of LPAs are also advocating IMC, instead of amalgamation and see it to have extended prospects in the medium and long term.<sup>55</sup>

The Ministry of Finance representatives have expressed a mild acceptance of the IMC due to the following reasons: in theory, the IMC is a source of less expenditure and increases the value of public money, as the savings can be used for other pressing needs. In practice, it has proven a mixed level of efficiency, with plenty of drawbacks in the decision making process within the involved settlements and high interests to preserve the control over the inter-municipal enterprise by all participating LPAs.

The Ministry of Regional Development expressed reserved optimism with respect to the IMC option, not because of the perspectives of IMC per se, but because of the constant problems this Ministry encountered while negotiating with the international donors the implementation of IMC projects. They believe that the LPAs need to have more openness when negotiating the creation of various inter-municipal enterprises and adjust them to the objective conditions for each particular case.<sup>56</sup>

The State Chancellery considers the option of IMC as an important tool to enhance public services. On a more pragmatic note, the representatives did not want to openly support the territorial-administrative reform as there was no clear message from the Parliament on this initiative.<sup>57</sup>

Although the Decentralisation Strategy was presented in many of the settlements and media was involved in the process of awareness rising for the population generally, it seems that there is a high degree of confusion, even among journalists, on the differences between IMC, decentralisation and amalgamation. The general conclusion extracted from the discussions with citizens is that the quality of local services is very low and actions, irrespective of their nature, are required to increase accessibility and quality.<sup>58</sup>

### 3.5. ROLE OF DONORS AND INTERNATIONAL ORGANISATIONS

The two active international organisations (international donors) are UNDP and GIZ.

UNDP has strongly supported the implementation of the local development agenda, including substantial work on the development of the National Decentralisation Strategy and Action Plan, as well as its implementation. Part of IMC initiatives are 10 UNDP funded projects with financial support from the donor of up to 100,000 USD. Most of the projects are single service oriented, although some of them have extended the initial purpose. The projects have not been all successful. This is due to two main reasons: the cumbersome procedure of creation and management of inter-municipal enterprises and the lack of cooperation from certain representatives of LPAs.

GIZ has also supported 7 projects with a total of 2.3 million Euro. The IMC projects were directed at water supply, waste management, including solid waste management and recycling. Some included energy efficiency. The level of efficiency of these projects is also not at the expected level due to similar reasons as the ones mentioned above.

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55. Interview with Viorel Furdui, Executive Director of the Congress of Local Public Authorities (CALM), 10 December 2014

56. Interview with representatives of the Ministry of Regional Development, Mr. Valerian Binzaru, Igor Malai, Dorin Andros, 11 December 2014

57. Interview with the representative of the State Chancellery, Victoria Cujba, 8 December 2014

58. Focus group discussion (8 people), Chisinau, 20 July 2015

## Chapter 4

# Assessment of inter-municipal cooperation in Moldova

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### 4.1. LEVEL OF EQUIPMENT IN BASIC PUBLIC SERVICES

The basic public services are, in most of their part, very poorly financed by the LPAs. Exceptions to this finding are the Chisinau and Balti municipalities, as well as another 8 cities. Based on the financial expenditures structures of the LPAs, the majority of them (83%) are not able to fund their own administrative costs out of their own revenues. Thus, the process in infrastructure and service delivery is based in the majority of cases on external funding (either central budget or external donors). As the central budget equilibration funds shall no longer be available since 1 January 2017, the most important source of balancing the local budgets will disappear and the prospects for the development of services are rather odd.

Basic services such as waste management, water supply and sewage disposal are available to only 5% of the rural population. Much of the infrastructure is inherited from before 1991, with upkeep investments only, if any, done to maintain the services. Most of the rural settlements who had water supply and sewage disposal dropped the option of further using them due to very high costs per unit of service provided.

### 4.2. SECTORS WHERE IMC IS MOST NEEDED AND WOULD BE EASY TO IMPLEMENT

There are two stringent areas where IMC may be particularly useful: water supply and waste management services. These two forms of IMC have been used by the donor community to implement their assistance in Moldova.

Additionally to that, road upkeep and management (snow cleaning and chemical treatment during winter) were on the agenda of the UNDP assistance projects. These basic services can ensure economic activity for the involved villages and the basic accessibility needs for the local population, especially during the winter season.

Based on the current legislation, the upkeep of rayon roads is the competence of the rayon council. Thus, 50% of the resources collected from the road tax are transferred to the respective rayon enterprises. In this respect, road management could be carried out with respect to village roads only. However, the first level LPAs do not receive any revenues from the road tax, only the rayon level receives 50% of it. In the long-term, this is not a sustainable approach to local finance, as the local budget will not be able to sustain economically these high costs for village or city road management.

### 4.3. THE NEED TO IMPROVE THE IMC LEGISLATION

A series of conclusions on the current Moldovan IMC legislation have been mentioned above. We shall reiterate them here and present them in order of their importance.

First, the options of IMC in Moldova are confined to municipal enterprises, which can be created by two or more LPAs. This option must be backed with others to ensure proper implementation of the IMC under various legislation (PPP, concessions, etc.)

Second, LPAs cannot participate in common PPP projects, i.e. present the option of joint concession of certain public services to the private sector, in exchange for the option of competitive price for the private partners and continuous development of the infrastructure. The Law on PPP, the Law on concessions and the secondary relevant legislation (i.e. local public services) require amendment to allow the use of PPP for IMC purposes.



Third, there is a need for an improved Regulation on inter-municipal enterprises, which would define the process of creation, management and upkeep of this type of enterprises, including the decision-making process.

Fourth, the IMC should be backed with financial incentives in the form of a Fund. Caution should be exercised not to overlap it with other available Funds, such as the Energy Efficiency Fund, or other possible financial incentives which overlap with the present one.

Fifth, an institution should be empowered to monitor the implementation of the IMC. Most suitable for this job is either the institution who will manage the IMC Fund, or another institution, such as the Ministry of Regional Development.

Sixth, the decentralisation law must allow the creation of IMC not only at the same level of administration, but also at different levels of administration (for example, village and central level) to ensure increased accessibility of some of the centralised services.

#### **4.4. IMC AND ACCESSIBILITY TO SERVICES OR MANAGEMENT**

IMC has strong potential not only for local services. There is plenty of potential for services, which are centrally managed and are available only at the rayon level. As part of the decentralisation process, IMC may be used to services such as documentation of population, issuance of authorisations, certificates and other certification type services. Combined with the use of ICTs, some of them could be transferred at the local level, where potential exists, to limit the distances and decrease the general cost for population when accessing the service.

Reduction or at least keeping the same distance of access for services is a strong political objective, which must be considered when presenting the options of local public administration reform. In this respect, IMC may prove to be a very useful instrument of cooperation between the first level LPAs and central specialised institutions and an opportunity for the first level LPAs to attract some of the revenues out of the provision of these services.

#### **4.5. CROSS-BORDER IMC**

Within the cross-border cooperation programmes between Moldova and Romania two important projects with IMC relevance could be used to replicate the practice to other sectors. Thus, the SMURD (the Mobile Emergency, Reanimation and Extrication Service) present in Romania was extended to Moldova. The project is run at the central level at this stage, with regional offices of the Ministry of Interior who manage the teams spread across the country. Even though the central level administration is present in the implementation, this is a good example, which could be used for other emergency services.

Also, the cross-border rehabilitation of three medieval castles in the Northern part of Romania, Moldova and South-West parts of Ukraine has developed the tourism infrastructure and boosted up the industry in the region. Although no institutionalisation took place as a result of the cross-border programme, this may constitute a start for the settlements where these castles are located to create a tourism based IMC which could capture and generate consolidated income out of common efforts to promote rural tourism.

## Chapter 5

# The perspectives and the requirements of progress for inter-municipal cooperation

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### 5.1. BETTER AND FRIENDLIER ENVIRONMENT FOR IMC

Thus far the IMC has not proved to be an instrument widely used in the context of promotion of better services for the communities participating in the IMC.

As we have mentioned above, there is a series of obstacles in the process of implementation of IMC.

First, the IMC is not attractive enough as there has been little funding available to promote it. Only two initiatives, of the UNDP and of the GIZ, with EU funds, have focused on traditional IMC practices. Even with substantial funding from the international communities, not all projects have been successful.

**This implies a more proactive attitude from the central government in promoting IMC, including IMC between different levels of governance, including with the central specialised authorities, expanding thus the opportunities for services not delivered by LPAs, but by deconcentrated services of the central government. The amendment of the current Decentralisation Strategy and the creation of an IMC incentives fund could improve this situation.**

Second, the IMC does not have a clear, thorough and encompassing legislative and normative basis. The IMC has scattered provisions in legislation with respect to LPA cooperation and has some provisions on the creation of municipal enterprises by two or more LPAs. There is nothing in the national legislation, which would allow PPPs with the participation of two or more LPAs. Additionally, collateral legislation relevant to the implementation of IMCs, either through a municipal enterprise or a PPP, generates problems in transposing the IMC projects: property management, change of land destination, approval of fees for some municipal services (water supply, sewage disposal, waste disposal, etc.)

**The national legal framework on IMC, namely the legislation on administrative autonomy, including property, financial, fiscal and decision-making autonomy, needs thorough revision to ensure that the IMC project can be viably implemented. This entails additional actions to support further decentralisation in the interests of LPAs. Additional regulation and best practices formulation is needed for the creation of municipal enterprises. The PPP law requires restructuring to allow the participation of two or more LPAs in a PPP project.**

Third, the public opinion of IMC is rather fragmented. The main stakeholders see differently the perspectives of IMC, some have a limited perception of IMC as another municipal enterprise, others consider the IMC as an opportunity to attract additional funding from outside but have little knowledge on how to absorb the funds and comply with funding requirements. The central government has different views of IMC as well, some see it as an opportunity to avoid amalgamation, which has financial incentives to be implemented, others consider IMC as a transitional option before a full-fledged territorial-administrative reform.

**The public opinion and the opinion of the media require elaborate awareness rising. This could be possible if a specific piece of legislation is drafted, publicly debated, with relevant regulatory impact assessment and peer analysis delivered, centrally placed in the decentralisation strategy as a strong instrument to promote decentralisation and consulted with the main decision makers, including a proper information training offered to the media on the subject. With proper accents, IMC may be requested by communities themselves from the local authorities.**

## **5.2. HUMAN RESOURCES**

The local public administration authorities will require elaborate capacity building for the participating LPAs in IMC projects. As we have mentioned above, most of the local governments have 4 employees in total, whilst the largest majority cannot afford more than 6. This is a strong disincentive for any complex projects, including for IMC projects.

The human resources trainings, either separate, or part of a territorial-administrative reform must include IMC training, when elaborate legislation and best practices are in place. It would be advisable to pilot the trainings in smaller, but promising settlements, from the IMC perspective, to obtain lessons learned and then launch a full-fledged capacity building exercise. The mayors and other decision making personnel at the local level should be firstly targeted to attain better results and understanding of IMC perspectives.

Capitalisation from IMC projects should also be done via the local government associations, especially when it comes to presenting project proposals to the national funds and international donor community.

## **5.3. THE NATIONAL DECENTRALISATION STRATEGY AND ACTION PLAN**

These two documents, approved in 2012, have not proved to have much impact on IMC in Moldova. This may be due to higher priorities and less interest to dedicate funds for this form of cooperation of LPAs.

As the value of IMC is to be evaluated based on each particular case, the National Decentralisation Strategy and Action Plan should put more emphasis on cooperation among the responsible entities for various forms of IMC and transfer the responsibility of monitoring the IMC projects to the institution who will manage the IMC incentives funds. This may require a revision and update of the National Decentralisation Strategy and of the Action Plan. Currently, a new Action Plan is being drafted for 2016-2020.

## Chapter 6

# IMC in the energy efficiency sector

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### 6.1. EXAMPLES OF IMC IN ENERGY ISSUES IN MOLDOVA

As mentioned above, UNDP and GIZ (while implementing EU funds) have been active in the promotion of IMC projects in Moldova, some of them related to energy efficiency/public lightning. Below are some examples of the projects implemented by the two international donors:

#### **A. Public lightning/energy efficiency project (UNDP) in Ermoclia, Popeasca, Festelita (Stefan Voda rayon)**

Time-frame of implementation: August 2013 – February 2015

Funding: 100,000 USD from UNDP, 50,000 MDL co-financing from the 3 communities

Purpose of the IMC: maintenance and delivery of public lightning services

Undergone activities: improvement and upgrade of the lightning systems, public lighting of 21 km of public roads, increased energy efficiency by use of energy friendly equipment

Number of beneficiaries: 2900 households, 32 enterprises, 16 public institutions

The project was not related directly to the promotion of alternative energy resources. However, one of the important results was the implementation of new electricity consumption technologies, including the use of long-life public lightning equipment, which, as a result, has improved the local service of public lightning, decreased the costs per unit of service and created a local infrastructure (municipal enterprise) which delivers upkeep and maintenance services for the future.

#### **B. Efficient Public lightning in Tatarauca Veche commune, Soroca rayon<sup>59</sup>**

Funding: 222,500 EUR

Specific purpose: delivery of high quality and accessible public lightning service to the inhabitants of Tatarauca Veche, Tatarauca Noua, Slobozia Noua, Niorcani, Decebal and Tolocanesti villages of the Tatarauca Veche commune by the operator of public lightning.

Planned activities: negotiation and creation of IMC agreements (3 decisions), creation of a provider enterprise, awareness rising campaign and training, approval of the fee and methodology, installation of 22.79 km of public lightning equipment, approval of energy efficiency standards for public buildings.

Similarly to the above mentioned IMC project, this one is not an alternative energy sources promotion project, but rather an improved public lightning service provision IMC. However, as with the previous one, the implementation is subject to energy efficiency standards on use of equipment and standards of use of electricity for public buildings. It creates incentives to gradually implement the EU standards on energy efficiency and generates a better understanding among beneficiaries of the energy efficiency concerns and priorities, ultimately developing a culture of energy saving in the communities.

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59. For more details, please refer to the logical framework of the pilot project available in Romanian at: [http://serviciilocale.md/public/files/pilot/2014\\_04\\_25\\_Cadru\\_Logic\\_Format\\_Nou\\_EE\\_T.Veche\\_IN\\_RO.pdf](http://serviciilocale.md/public/files/pilot/2014_04_25_Cadru_Logic_Format_Nou_EE_T.Veche_IN_RO.pdf) (accessed 30 August 2015)

### C. Increased energy efficiency of the Orhei regional hospital<sup>60</sup>

Funding: 996,991 EUR from the German Government, 3000 EUR – contribution of the Orhei hospital, 7500 EUR – contribution of the Orhei Rayon Council

Specific purpose: increased energy efficiency of the hospital. Initial consumption in 2010: 3642 MWh/year, target for 2015: 2367 MWh/year, target for 2016: 2048 MWh/year.

Participating LPAs: Orhei rayon council, Orhei municipal council.

Activities: renovation of the hospital building and infrastructure to energy efficiency standards in order to decrease the energy consumption up to the mentioned targets; increase awareness of the hospital personnel on energy efficiency, approval by the Orhei rayon council of the energy efficiency standards and rules for public buildings.

## 6.2. NATIONAL ENERGY POLICIES ORIENTED ON LPAS

The Government has actively promoted energy efficiency in its efforts to decrease the dependency from energy resources imported from the outside by Moldova and to reduce the costs of public authorities, enterprises and final consumers.

The legislative and normative framework on energy efficiency comprise of the following:

- a) Law on energy efficiency<sup>61</sup>
- b) Law on renewable energy<sup>62</sup>
- c) Government Decision on the creation of the Energy Efficiency Agency<sup>63</sup>
- d) Government Decision on the Energy Efficiency Fund<sup>64</sup>
- e) Government Decision on the approval of the National Energy Efficiency Programme for 2011-2020<sup>65</sup>

According to the Law on energy efficiency, the rayon councils, the municipal councils and the Gagauzi-Yeri autonomy must approve local energy efficiency programmes and plans.<sup>66</sup>

LPAs may apply for energy efficiency projects to be funded by the Energy Efficiency Fund, and the proposed projects must comply with the following minimum requirements:

- a) At least 1/3 of the benefits from the project must come from savings due to energy efficiency (which can be measured)
- b) The project must implement energy efficiency technologies
- c) The requested amount must comply with the maximum amounts approved for the respective year by the Energy Efficiency Agency Council
- d) Co-financing from own resources of the beneficiary must be at least 20%
- e) Energy efficiency projects must have a maximum recovery timeframe of 7 years, whilst for renewable energy sources projects – 15 years
- f) The beneficiary of the funds must not have debts to the public budget and must be solvent<sup>67</sup>

The National Energy Efficiency Programme sets a list of obligations on the LPAs to approve local energy efficiency plans each 3 years. This is a rather complex exercise and requires specific knowledge that most of the LPAs do not have. The Law on energy efficiency itself poses this obligation on the rayon and municipal level only. The first level LPAs are not formally obliged to approve any energy efficiency plan. On the other

60. For more details, please refer to the logical framework of the project, available in Romanian at: [http://serviciilocale.md/public/files/pilot/2014\\_11\\_07\\_Cadru\\_Logic\\_EE\\_Orhei\\_ADRC\\_RO.pdf](http://serviciilocale.md/public/files/pilot/2014_11_07_Cadru_Logic_EE_Orhei_ADRC_RO.pdf) (accessed on 30 August 2015)

61. Law no. 147 from 02.07.2010 on energy efficiency

62. Law no. 160-XVI from 12.07.2007 on renewable energy

63. Government Decision no. 1173 from 21.12.2010 on the creation of the Energy Efficiency Agency

64. Government Decision no. 401 from 12.06.2012 on the Energy Efficiency Fund

65. Government Decision no. 833 from 10.11.2011 on the approval of the National Energy Efficiency Programme

66. Article 18 of the Law no. 147 from 02.07.2010 on energy efficiency

67. Para. 53 of the Government Decision no. 401 from 12.06.2012 on Energy Efficiency Fund

hand, 8.6% of total national consumption of energy belongs to the local public administration authorities, which is a rather high share in the total consumption of energy resources.

### **6.3. POSITION OF LOCAL SELF-GOVERNANCE**

The position of the local governments towards energy efficiency is generally positive. However, their positive intentions may not be backed-up with strong capacities to identify, co-finance, implement and ensure the sustainability of energy efficiency projects.

As we have mentioned above, there is a rather burdensome list of requirements for beneficiaries of energy efficiency funds. Taken alone the 20% co-financing requirement from own funds (no co-financing from other sources acceptable), leaves only a small number of potential beneficiaries practically eligible for such projects. As we have described in the previous chapters, only 17% of the LPAs can cover from own resources their administrative expenses. Part of those administrative expenses is also costs associated with energy supply for public buildings. Thus, with little financial capacity, but with a rather large share of costs related to energy supply, these LPAs are left outside the energy efficiency funding schemes available under the national law.

The National Energy Efficiency Programme is more focused on increasing awareness of LPAs on energy efficiency benefits, rather than the implementation of such projects.

As seen with the PPP legislation, the energy efficiency projects are not, formally, available when two or more LPAs are submitting their energy efficiency proposals to the Energy Efficiency Agency.

### **6.4. PERSPECTIVES OF MUNICIPALITIES TO IMPLEMENT IMC IN ENERGY SECTOR**

Judging from the real financial capacity and human resources capacity, the municipalities, which are eligible for energy efficiency projects are confined to two groups:

- a) Municipalities which are hosting the rayon administration and the capital (Chisinau) who have a strong financial capacity and a strong borrowing capacity to implement energy efficiency and renewable energy resources projects
- b) First level LPAs considered by international donors as capable to implement IMC projects with an energy efficiency/renewable energy component

### **6.5. SPECIFIC ENERGY RELATED ISSUES IN THE IMPLEMENTATION OF IMC PROJECTS**

As we have previously seen, besides the traditional municipal enterprise, there is theoretically the option to use PPP to implement IMC projects.

The renewable energy aspect has one important drawback, which does not allow the development of IMCs at the local level. Although Moldova has approved the Third Energy Package and has committed to transpose it into the national law under the ambit of the European Energy Community, public and private renewable energy providers have little incentives to invest in renewable energy infrastructure. The main reason is that the national electricity distributors are not obliged to purchase the excess of electrical energy from the public and private providers. The public ones may be the LPAs, which are implementing energy efficiency/renewable energy projects. The private ones, for the purpose of our analysis, are the PPP participants.

This regulatory impediment has already generated a series of problems for the entrepreneurs wanting to expand their electricity provider capacity and who have been denied access to the grid to either sell the surplus to near-by consumers or to the grid itself. In the medium-term, this may lead to private entities and potentially, LPAs with a stronger financial capacity, detaching from the national electricity infrastructure and generate issues of energy security and sustainability of the grid operators.

## ANNEXES

### Annex no. 1 List of consulted sources

#### National legislation

1. Law no. 306-XIII from 07.12.1994 on territorial-administrative organisation (in force from 1994 until 1998)
2. Law no. 191-XIV from 12.11.1998 on territorial-administrative organisation
3. Law no. 764-XV from 27.12.2001 on territorial-administrative organisation
4. Law no. 438-XVI from 28.12.2006 on regional development
5. Electoral Code no. 1381-XIII from 21.11.1997
6. Law no. 436-XIV from 28.12.2006 on local public administration
7. Law no. 435-XIV from 28.12.2006 on administrative decentralisation
8. Law no. 355-XVI from 23.12.2005 on the payroll system in the budgetary sector
9. Law no. 397-XV from 16.10.2003 on local public finances
10. Law no. 179-XVI from 10.07.2008 on public private partnership
11. Law no. 534-XIII from 13.07.1995 on concessions
12. Law no. 1402-XV from 24.10.2002 on local public communal services
13. Law no. 121-XVI from 04.05.2007 on management and privatization of public property
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15. Law no. 431-XIII from 19.04.1995 on the status of Chisinau municipality
16. Law no. 147 from 02.07.2010 on energy efficiency
17. Law no. 160-XVI from 12.07.2007 on renewable energy
18. Government Decision no. 387 from 06.06.1994 on the template regulations of the municipal enterprise
19. Government Decision no. 1173 from 21.12.2010 on the creation of the Energy Efficiency Agency
20. Government Decision no. 401 from 12.06.2012 on Energy Efficiency Fund
21. Government Decision no. 833 from 10.11.2011 on the approval of the National Energy Efficiency Programme

#### Draft laws

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26. Logical framework of the public lightning project in Tatarauca Veche, available at: [http://serviciilocale.md/public/files/pilot/2014\\_04\\_25\\_Cadru\\_Logic\\_Format\\_Nou\\_EE\\_T.Veche\\_IN\\_RO.pdf](http://serviciilocale.md/public/files/pilot/2014_04_25_Cadru_Logic_Format_Nou_EE_T.Veche_IN_RO.pdf) (accessed 30 August 2015)
27. Project summary: Creation of the Inter-community service of maintenance of electricity network in Ermoclia

#### Interviews, presentation events

28. Interview with Viorel Furdui, Executive Director of the Congress of Local Public Authorities (CALM), 10 December 2014
29. Presentation meeting of the UNDP Report on the options for territorial-administrative reform, 13 March 2015:
  - a. Positions of Mr. Iurie Tap quoted in the report
  - b. Positions of Mr. Vitalie Vrabie quoted in the report
30. Interview with the representative of the State Chancellery, Victoria Cujba, 8 December 2014
31. Interview with the representatives of the Ministry of Regional Development, Mr. Valerian Binzaru, Igor Malai, Dorin Andros, 11 December 2014
32. Focus group discussion (8 people), Chisinau, 20 July 2015

# Mapping the obstacles to inter-municipal cooperation in Ukraine

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# Introduction

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Inter-municipal cooperation (IMC) is the natural derivative of the local autonomy. If the local authorities feel as a main priority their responsibility to the local community and not to the central government bodies, they look for new possibilities to provide services to the citizens in a more effective way. Inter-municipal cooperation is one of such findings. It appears as a result of horizontal communications; such communication is not greeted in the centralized system.

As far as in 2001, the Council of Europe, in its "Recommendation 102 (2001) on local and regional democracy in Ukraine" stated:

"6. Regrets:

a. that in the context of a centralised public administration system, some Ukrainian political forces are still opposed to any reform involving the decentralisation of public powers on the basis of the subsidiarity principle (Article 4.3 of ECLSG)"

In spite of this and many other recommendations, these "some political forces" worked hard on further strengthening the "powerful executive vertical" – the expression of their political vocabulary.

Local self-governance was not in the center of interest of the central government. For a long time there was no ministry responsible for the local government, and the Minister of Justice usually presented the issue at the Council of Europe. Later the Ministry of Communal Services was established, though some aspects of local self governance were the responsibility of the Ministry of Regional Development and Construction. This ministry paid attention mainly to the issues of its traditional functions related to civil engineering. Only during last year the ministry become the champion in the reform of local and regional self-government, by orienting to the European standards and practices.

Of course, IMC is possible in the centralized system – as a result of a command in this vertical, to meet the needs of the vertical, and sometimes the communities really benefit of such cooperation. But in fact it is not a real cooperation, this is an additional task for local authorities, and the local authorities are not the initiators of such cooperation.

The situation changed after the events in Ukraine in 2013-2014. The new political forces announced the decentralization as one of the main strategic goals and started the necessary reforms.

The idea of IMC emerged automatically. But the majority of the local authorities, elected under the powerful vertical, were not ready to the new approaches, but often they simply need a new vision, a new training.

We hope that after the new local elections (October 2015) the situation would change, but the education and the European practices will be needed in much larger scale.

## Chapter 1

# Local self governance in Ukraine

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### 1.1. GENERAL FRAME OF LSG IN UKRAINE

Ukraine (area approx. 600 000 sq.km, population approx. 45 mln.) is divided into 24 regions (oblasts), the Autonomous Republic of Crimea, and two cities with a special status: Kyiv and Sevastopol. Oblasts and Crimea are divided into sub-regions (rayons), their total number is 490. There are 460 cities, 1180 towns and 27 214 villages.

It should be noted some specific features of Ukraine.

For about a century Ukraine had no individual farming, when a family lives in the middle of the land they use, apart from the other families. So, in fact, all Ukrainian rural population lives in compact villages. Rural population in Ukraine is approximately 13.5 millions, that is, the average population of a village is 500 residents. The average area per village is 22 sq.km, the average distance between the neighbouring villages is about 5 km.

Ukraine completely inherited the Soviet system of territorial division. In accordance to it the settlements are of different types:

- villages, which have only agricultural activities (no proletarians at all);
- towns ('settlements' in some of our translations), which combine agricultural and industrial activities (significant population of proletarians). Sometime the towns are divided in two types: towns of rural and towns of urban type;
- cities have no agricultural economy. The small city, which has not a complete set of municipal facilities, is called city of rayon significance, and there are about 290 such cities;
- cities of oblast significance, which have a complete set of municipal facilities.

Constitution of Ukraine (1996) says (Art.140):

***"Local self-government shall be the right of a territorial community - residents of a village or a voluntary association into a village community by inhabitants of several villages, a settlement and a city - to independently solve issues of local importance within the Constitution and laws of Ukraine. Peculiarities of implementation of local self-government in the cities of Kyiv and Sevastopol shall be determined by individual laws of Ukraine."***

"Voluntary association into a village community by inhabitants of several villages" mentioned in the Constitution is not, in fact, some reservation for amalgamation, but the statement of the fact that under the Soviet Union some neighboring villages were united into a single municipality (without any reference to 'voluntary'). So 27,214 villages now form 10,278 municipalities. In accordance with the Constitution only villages may associate.

The Constitution makes no difference between the communities depending on their size: ***"Territorial communities of villages, settlements and cities shall manage property of public ownership directly or through bodies of local self-government which they formed; approve programs of social, economic and cultural development and supervise their implementation; approve budgets of corresponding administrative and territorial units and supervise their implementation; establish local taxes and duties pursuant to law; ensure holding of local referenda and implementation of their results; set up, reorganize and liquidate public enterprises, organizations and institutions, and supervise their activity; solve other issues of local importance which are within their competence pursuant to law."*** – Art. 143.

The Law on Local Self-governing in Ukraine also makes no difference, it gives a list of responsibilities of the communities, which include education (schools of all three levels), kindergartens, health care, culture, sports, communal services, and so on. Police and fire protection is the state responsibility.

Communities (with the exception of Kyiv and Sevastopol) fit the requirements of Art.3 of the European Charter: they elect councils with executive bodies formed by the councils.

***“Oblast and rayon councils shall be the bodies of local self-government which represent joint interests of territorial communities of villages, settlements and cities”.***- Constitution, Art 140.

***“Oblast and rayon councils shall approve programs of social, economic and cultural development of respective oblasts and rayons and supervise their implementation; approve rayon and oblast budgets which are formed on the basis of funds of the state budget for their respective distribution among territorial communities or implementation of joint projects and the money attracted on the basis of agreements from local budgets to implement joint social, economic and cultural programs, and supervise their implementation; solve other issues which are within their competence pursuant to law.”*** – Constitution, Art 143.

Oblasts and rayons have elected councils, but these councils have no executive bodies. In accordance with the Constitution the functions of executive bodies on the regional and sub-regional level are exercised by the Local State Administrations, which are completely state bodies. These administrations, in addition, perform various tasks of the central government, being financed from the state budget.

## 1.2. FIRST LEVEL. MUNICIPALITIES

Each of the 10,278 rural municipalities has an average area equal to 60 sq.km and the average distance between their centers is 8 km. Such a pattern of administrative division was the result of objective reasons, for instance, a poor state of rural roads – the local administration could not govern larger area, additionally it was a principle ‘one municipality – one kolkhoz (collective farm)’. Now 92% of rural municipalities have less than 3000 residents, 11% - less than 500 residents. The process of migration of rural population to the cities was very intensive during the last decades.

The residents of the municipalities elect the council. The council forms the executive committee – a decision making board, and the executive committee forms the administration. The mayor is elected by the residents and he/she is the chairperson of both the council and the executive committee and the head of the administration.

Human resources of all municipalities are a serious problem. The specialization of Public Administration appeared in Ukrainian universities only approximately 15 years ago and now the universities train several hundreds people a year. There is some public attitude to the civil servants that their number is too large and their salaries are too high, this idea was supported by politicians and as a result the salary is lower than the average salary in the country and the number of public servants in the municipality is determined by the state. As a rule, the young university graduates look for jobs in private businesses. In spite of the high level of unemployment, vacancies in municipalities often are free for months.

In large cities the administrations are large, divided into dozens of departments and the employee deals with a very specific and narrow set of issues. In the middle size municipalities the staff is about 20-30 persons, it has the same scope of responsibilities as in a large city and every employee has to deal with a very broad set of issues.

After the adoption of the new Law on self-governance in 1997, it became obvious that the resources and the tasks do not match each other in the majority of municipalities. Especially a critical situation was in the rural areas, where small municipalities could not finance schools and medical facilities at all.

So in 2001 the Budget Code was adopted, which changed the situation drastically. Local budgets were divided into two “baskets”. The first one was formed mainly from the individual income tax and was spent to finance education, health care, culture, sport, and salaries for the municipality employees. To grant equal access of citizens to these services, the Ministry of Finance calculated every year the volume of the first basket for all rayons and the cities of oblast significance (larger cities) on the per capita base. If the city or the rayon has the income less than the calculated figure, it obtained the needed subsidy from the state budget, and the surplus was transferred to the state budget.

The second basket was formed mainly by the land tax; it was not equalized and was used by the municipalities for all other tasks – capital investments and current financing of municipal enterprises, roads, parks, lighting, etc.

Rayons become responsible for the tasks of the first basket – education, health care, culture, sport.

Villages, towns and cities of rayon significance had only the second basket, very limited, because they could tax only the land in the limits of the settlement, as the surrounding land was taxed by rayons. The number of their responsibilities is close to zero – in small villages they usually don't have centralized water facilities, waste collection, street lighting, parks and their streets are a couple of ground roads.

In the larger cities and rayons the public services are provided by municipal enterprises of different types. They may be enterprises which are not legal entities, but departments of the executive body: city archive, sometimes the school system. They may be municipal enterprises owned by the municipality and acting under the corporate law: housing maintenance companies. Sometimes it is a joint venture, where the municipality owns only a part of shares, and the other part of shares is private. Some services are provided by private companies working under contract with the city - public transportation. Companies which provide electricity and natural gas are private and the local authorities cannot influence their activities at all.

There is a significant difference between the enterprises – such legal entity as a school has in fact only one income source – the local budget, and the local authority may dictate its policy, while the water supply facility earns its money from the citizens' fee, so it is much more independent.

### 1.3. THE LAW ON IMC

IMC is not something new for Ukraine. Some examples of IMC existed in the country even under the Soviets. For instance, the large city of Kirovohrad has no reliable sources of water. So the large water treatment facility in the city of Svitlovodsk, which is on the Dniper river, produces potable water for Svitlovodsk and pumps it also to Kirovohrad. Traditionally the ambulance of a large city works also for the neighbouring towns and villages.

The right for IMC is fixed in the Constitution: ***“Territorial communities of villages, settlements and cities may unite on the basis of agreements objects of public ownership as well as budget money to implement joint projects or jointly finance (maintain) public enterprises, organizations and institutions, set up for these purposes respective bodies and services.”*** (Art.142). The same provision (without details) may be found in the basic Law On the Local Self-governing in Ukraine.

In fact, oblasts and rayons are some kind of IMC bodies – they have central hospital, schools for the disabled children, central library, etc.

The special Law “On the Cooperation of the Territorial Communities” was adopted on June 17, 2014.

It specifies the types of cooperation:

- delegation of tasks to one of the members of cooperation with corresponding transfer of resources;
- cooperation for some projects with accumulation of the necessary resources;
- joint financing of municipal facilities;
- creation of new facilities;
- creation of common managerial structure, which governs the common enterprise under the commercial law.

For each form of cooperation the law formulates the procedures to establish cooperation. The process of establishing the IMC is, according to the law, long and complicated. It includes such steps:

- Initiation of the IMC. The initial document is drafted in a special form, described by the law.
- The local council approves the initial document and commissions the Mayor to start the negotiations.
- As a result of negotiations the special committee shall be formed of the representatives of all future members of IMC.

- During 60 days the committee drafts the agreement about the IMC.
- All the councils of the future IMC approve the agreement.
- The Mayors sign the agreement and send one copy to the Ministry, which registers it.

The state supports the IMC project including by state subsidies in case the activities are in line with the main strategic goals of the state and there are at least three members of the cooperation.

The law was developed as some “soft” way to amalgamation of communities, but later it was decided to use some “hard” ways of amalgamation and the law and the cooperation itself are not widely discussed in the country. The largest and most influential Association of Cities and Communities has a very popular web resource. It has a section of “best practices” with hundreds of examples of national experiences. The section is divided in 24 different topics – from health care to gender issues. There is no IMC topic in the list.

There is no real need for cooperation now. The villages and towns have too short list of responsibilities to perform them jointly. The cities and rayons as a rule are rather far from each other and have some closed and complete system of services. There are only a few examples of cooperation. In Dnepropetrovsk oblast, municipalities of three rayons created a common service for trash collection and utilisation, and the idea was advocated by a private company which became a main stakeholder of the project. Several cities created the association “Energy effective cities of Ukraine” to provide exchange of the best practices, trainings, etc.

#### **1.4. OTHER LEGAL POSSIBILITIES**

There are some forms of IMC not mentioned directly in the law, not very actively used. I have mentioned already the creation of the public-private company where the share of municipalities is, as a rule, some non-financial resources like plot of land, equipment, etc.

In the western part of Ukraine some municipalities working under the cross-border legislation establish some cooperation in the form of regular festivals or sport events. The idea of such cooperation is beyond the announced one and is aimed at attracting investments, supporting business contacts and so on.

Some cities invite the neighbouring communities to develop mutual strategic plans of development – the central city is the evident economic and cultural center of gravity for the whole area.

## Chapter 2

# Municipal Reform in Ukraine

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### 2.1. A GENERAL DEBATE: AMALGAMATION OR COOPERATION?

As the little communities had serious problems with financial and human resources, their responsibilities were step by step reassigned to the higher level – to the rayon and oblast state administrations. Rayon and oblast councils could not provide these services because, in accordance with the Constitution, they have no executive bodies. Local state administrations are directly subordinated to the central government, so the system becomes more and more centralized.

The first attempt to start the decentralization process was done in 2005, when a group of experts drafted the strategy and a road map for decentralization. The idea was to make amendments to the Constitution and legislation to give oblasts and rayons the right to have executive bodies of their own, to redistribute the responsibilities in accordance with the subsidiarity principle and to foster the village communities merging through some soft mechanisms like high degree of IMC.

Because of the political struggles in the Parliament it was impossible to do some practical steps in this direction, and later President Yanukovich and his majority in the Parliament were quite satisfied with the centralized system.

After the parliamentary elections of 2014 the majority in the Parliament (constitutional majority, more than 2/3 of seats, which may change the Constitution) signed the Coalition Agreement, where there was a large chapter on decentralization.

During a year the Parliament adopted the Law on the Cooperation of the Territorial Communities (2014) and the Law on Voluntary Amalgamation of Territorial Communities (2015), and the Government started to develop the timetable for reforms.

Soon it became obvious that the communities do not have a voluntary wish to amalgamate and it was decided to force the processes. In every oblast special amalgamation committees were established. The committees mapped the territory. They draw circles of 20 km radius around the cities in the oblast, beginning from the largest, so that the whole territory was divided into new municipalities and proposed the village councils to approve the protocols about voluntary amalgamation. The communities were informed that the new municipality would have a significant state support; it would receive additional resource of the budget revenues and the full scale of responsibilities. Nothing was said about the communities which would not amalgamate.

The government planned to complete the work in a few months so that the local elections of October 2015 would be in accordance with the new map. But the process met a serious opposition on various levels – local, regional and in the Parliament, where many MPs of the majority started to criticize the Government's ideas. Now about 75 new amalgamated communities are formed and the elections would be carried out on a new geographical base.

The problem is that the new version of the Law on local self-governing, and new versions of the Budget and Tax code (as a minimum) are not yet even drafted.

Now it is decided to carry out the October elections on the existing map (with the exception of those 75), to perform amalgamation in two years and to announce the new local elections when the process of amalgamation will be close to its finish.

So the situation now is neither amalgamation nor IMC.

## 2.2. IMC IN PROGRESS IN UKRAINE

During the year of existence of the law, 19 IMCs were registered. The idea of the majority of the projects is as follows:

- IMC to repair the road to the cluster of villages;
- IMC to build the natural gas pipeline;
- IMC to repair the kindergarten, which serves four villages;
- IMC to build a new landfill
- Etc.

The members of these IMCs cannot realize such projects either individually or together. But the law promises state subsidies to some IMCs, which are in line with the state strategies.

So, in fact, the common purpose of all these IMC projects is to get a subsidy. Not a bad idea in fact. But I don't see the real spirit of cooperation here.

## 2.3. SPECIAL STATUS OF THE CAPITAL CITY

Kyiv and Sevastopol have a special status. They have the rank of regions, so there are local (city) state administrations in these cities, and the city councils have no executive bodies. Usually the elected Kyiv Mayor is appointed by the President to the position of the Head of Kyiv City State Administration, but there were examples when, in case of conflicts between the Mayor and the President, another person was appointed on this position. Kyiv was divided into 14 city districts (later their number was decreased to 10). Till 1995 both the city and the districts had their councils and executive bodies. In 1993 an agreement was signed between the city and the districts, and the responsibilities were shared between them in accordance with the principle of subsidiarity. The districts were responsible for schools and hospitals on their territory. If the resident of one district had to follow medical treatment in some specialized hospital in the other district, he had no problems, but one district had to send a bill to the other, and the same system worked in the other areas.

Starting from 1995, district state administrations were appointed. Since 2010 the districts do not elect the district councils, the district state administrations now are directly subordinated to the city administration.

Generally speaking the situation in Kyiv is just a clear and typical illustration of the processes in the whole country. Under the system of very high level of centralization there is no need for cooperation.

The new version of the Law on Kyiv is not even drafted now.

## 2.4. THE ACTORS OF IMC

The mayors are the most important decision-makers at the local level. The attitude to IMC depends on the Mayor. If he is interested in better and cheaper services for the residents, he would seek ways of cooperation. If he is interested in saving all his power in the municipality, he would oppose the process. It also should be taken into account the factor of corruption – the mutual enterprise is double and triple more checked by all members of cooperation.

Nominally the Association of Cities and Communities supports the idea of IMC, it took part in drafting the law. In fact, it is not active in the propaganda of this idea among the members.

It looks like the government pays no attention to the issue. When the government reports about the steps done in the reforms of local government, it always mentions that the law was drafted by the government and approved by the Parliament, but never mentions about the practical results.

The sectorial ministries do not express any notable interest to the IMC.

Media pay a very limited interest to IMC. Sometimes some short reports appear in the local media as a report on the activities of the corresponding local authorities – as a rule, local authorities of the level higher than a village have their own media.

A year ago the Kyiv office of CoE, together with the Ministry, organized a contest of best practices among cities and villages of Ukraine. One of the three topics was IMC. I was a member of the jury board. There were some 30 applications on the topic. Two thirds of them had nothing in common with IMC, the authors wrote about private-public partnership. Most of the others were some examples, rather far from the real cooperation, like “we took part in the festival of national embroidery”. This competition was just a demonstration of knowledge and understanding of the IMC among the professionals on site. The public as a whole has even less understanding.

## **2.5. ROLE OF DONORS AND INTERNATIONAL ORGANIZATIONS**

In 2014 the NGO “Institute of Civil Society”, under the grant of the CoE, financed by the Swiss Confederation and Denmark, prepared and published the Handbook “Cooperation of the territorial communities”. The book had a very detailed description of the technologies of establishing IMS. It looks like the handbook was used as a draft for the corresponding law.



## Chapter 3

# Assessing IMC in Ukraine

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### 3.1. LEVEL OF EQUIPMENT IN BASIC PUBLIC SERVICES

Usually the investment part of local budgets is very small and there are many investment projects of the first importance. So it is difficult to believe that the municipalities would invest in the IMC project if it would not be of the highest necessity. In all the mentioned areas the infrastructure and equipment are very old. As an example, 60 000 km of water pipes in Ukraine must be changed with new ones. So IMC would either use the old equipment of its members or attract the private business as a partner.

### 3.2. DOMAINS WHERE IMC IS MOST NEEDED OR WOULD BE EASY TO IMPLEMENT

Waste collection and utilization is maybe the most simple and effective area. The infrastructure projects, as the registered IMC show, are also among the priorities. There may be some project in the health care – organizing a center with expensive equipment. But these projects may and often are done under the rayon or oblast administration. It is much better for the municipalities – the project will be financed from the state budget.

### 3.3. NEED TO CREATE OR IMPROVE THE LAW ON IMC?

The law is rather new and not properly tested. Many advanced mayors say there was no need for it. It was quite possible to organize IMC under the legislation which existed before. The law may even limit the local initiatives because it categorically formulates some procedures. For instance, it does not mention any form of private-public partnership in IMC.

The question, which is not obvious, is whether the communities may establish IMCs which differ of those described by the law or ‘jump over’ the law and use the provision of the Constitution directly – it never says that the cooperation must be exercised exceptionally in the limits of the special law.

### 3.4. CROSS-BORDER IMC

In 2004 the Ukrainian Parliament adopted the Law On Trans-frontier Cooperation, where local communities are the main actors. The Law is in line with the CoE principles and practices in the area and it works for more than a decade now. The main areas of cooperation are business, culture, support to representatives of the other ethnic groups on our territory, environment.

Ukraine is a member of four Euroregions.

## Chapter 4

# Perspectives and conditions for progress

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IMC in Ukraine is now in a completely undetermined situation.

Past – because of very limited financial, material and human resources, very limited scope of responsibilities and lack of experience, IMC was not developed in Ukraine.

Present – legislative base is formed. There are experts, toolkits, some practical experience. But all 19 registered IMCs will be killed in maximum two years by the amalgamation processes, when either the inter-municipal group would enter the single new merged municipality or the members would enter different communities but without legal status.

Future is unclear. In fact, we do not know yet the finances, property rights, responsibilities of the new communities, their relation with the higher levels, etc.

The general attitude to the IMC in Ukraine is that this kind of cooperation is some theoretical toy of Europeans, and it has no sense in our hard life.

Promotion is needed!

In 2014 the book “Cooperation of territorial communities” was printed in Ukraine; it was sponsored by the European Union. The book describes a step-by-step process of IMC formation, gives examples of necessary documents (agreements, council decisions, etc.) but it does not answer the main question: what for?

UNDP comes to the village, makes a thermal audit of the local school, organizes the people, who make the necessary repairs in the building, and finally reports that this winter the community saved 50% on the heating of the school. Next year the mayors of the neighbouring villages do the same on their own. We need some project of this kind to show by real Ukrainian examples what the IMC gives to the community. Such kind of work may be started right now with the few new amalgamated communities.



# Mapping the obstacles to inter-municipal cooperation in Belarus

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September 21, 2015

# Introduction

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This report was prepared as part of the project CoE + EU programme. The thematic programme “Strengthening institutional frameworks for local governance” is part of a regional programme implemented by the Centre of Expertise for Local Government Reform, the Council of Europe and the Directorate General of Democracy of the European Commission, under the CoE/EU Eastern Partnership Programmatic Co-operation Framework in the period 2015 – 2017. The main objective of this programme is to support the ongoing process of local government reform in six participating EaP countries by focusing on the benefits of the inter-municipal cooperation.

IMC in Belarus looks like a very new phenomenon that is beyond the scope of actual public administration model. The rigid “presidents’ vertical” provides transparent and manageable hierarchy of responsibilities. Of course, these characteristics could explain the efficiency of the administration mechanism and in some way the Belarusian economic miracle. At the same time it totally excludes the local and regional authorities as active actors of public administration. Moreover any activities they would like to show to the community will be considered as a fuss or even contradiction to the central authority. So, it makes weak background for projects aimed on real acting of local and regional self-government.

On the other side, we could define the significant gap in the economic and social development planning tradition that leaves space for more intensive cooperation at local level. Regarding the loyal attitude of the Belarusian officials to any technical assistance, we could pretend a good start of IMC in the development of local and regional infrastructures (roads, electricity, including green energy, waste management, etc.). Those start-ups will not be needed in special reformation of legislation, but will be fully dependent on fiscal decentralization.

In some ways the problems of financial dependency at inter-municipal level could be resolved through the realization of projects with international partners’ participation. As a kind of best practices in this way we could address to the projects of Euroregions enacted in Belarus since 2010.

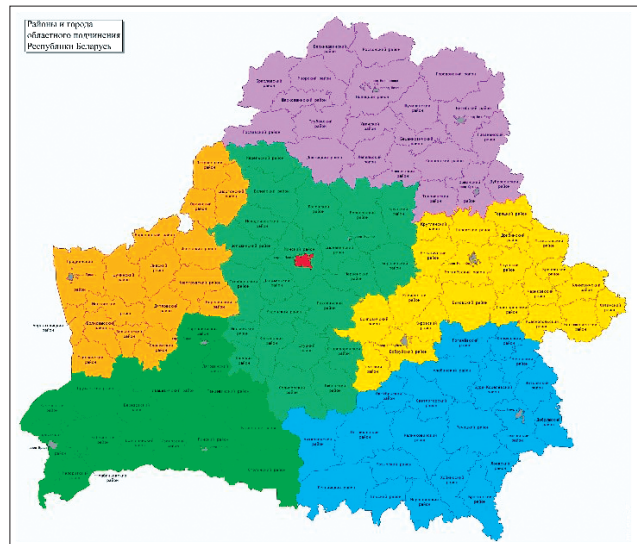
## Chapter 1

# The system of local government in the Republic of Belarus

### 1.1. GENERAL INFORMATION

The Republic of Belarus is located in Central Europe and has an area of 207.6 thousand square km. It borders with Poland, Lithuania, Latvia, Russia and Ukraine. 43% of the Belarusian territory is agricultural land, 39% is occupied by forests, 2% - lakes and rivers, 16% - other lands.

- 6 regions
- 118 districts
- 113 towns (14 cities with population over 100,000 people)
- 90 urban-type villages
- 23,229 rural-type settlements (as of January 1, 2015)
- Population: 9,480.9 thousand people
- Density of population: 46 people/km<sup>2</sup>
- Largest region - Gomel Region (1,424.0 thousand people)
- Largest district - Borisov District of the Minsk Region (185.3 thousand people)
- Smallest town - Disna of the Vitebsk Region (1724 people)



According to the "State Program of Development and Revival of the Village", approximately one third of agro-towns is located in settlements which are not administrative centers of the Village Councils. In separate areas it is carried out (Vitebsk oblast), and in some it is planned some work on optimization of the administrative-territorial structure (Mogilyov oblast), but there is no uniform, officially approved approach to the solution of this task. The method of association of the cities, areas and village councils reduces the administrative and territorial units. Thus there were situations when representative bodies (Councils) were abolished, and executive and administrative (executive committees) bodies continued to work (Borisov, Zaslavl).

The process of merger of village councils gathers dynamics. **As a result, since 18.05.2006 until 25.04.2010 the number of village councils decreased by 97 units!** As there is this process, what criteria thus whether some scientific organizational and economic researches are considered, carried out, whether this process in scales of the state is unified, whether there are any recommendations or provisions prepared and adopted by appropriate authorities - these and many other questions remain open.

At the same time, on 29.09.2000 the congress of deputies in the Councils of deputies of the Republic of Belarus adopted the Resolution which provides in item 3: "It is considered necessary, relying on scientific researches on problems of local government and self-government, to provide the development of the Concept of reforming the local government and self-government in the Republic of Belarus ...".

The administrative-territorial structure of the Republic of Belarus consists of the capital - the city of Minsk - and 6 areas. In the republic there are 1328 administrative territorial units that include 6 oblast and the Minsk city, 10 cities of oblast submission, 14 cities of rayon submission, 19 settlement councils, 1160 village councils.

**Table 1. Belarusian Local Authorities in administrative territorial units (01.01.2015)**

Levels of local authorities	Kind of administrative territorial units	Number of local councils	Kind of executive body
<b>REGIONAL</b>	Oblast	6	Executive committee
	Minsk	1	Executive committee
	Total	7	Regional Councils
<b>BASIC</b>	District	118	Executive committee
	City of oblast submission	10	Executive committee
	Total	128	Basic Councils
<b>PRIMARY</b>	City of rayon submission	14	Executive committee
	Settlement	19	Executive committee
	Rural council	1160	Executive committee
	Total	1193	Primary Councils
	Totally	1328	Councils

The population density in the areas of Belarus is characterized by significant territorial asymmetry: the smallest level is noted in the northeast areas of the republic (30 people per sq.km in Vitebsk area) and the greatest - in the western areas (42 persons in the Brest and Grodno areas). Thus the largest density on area is in the Gomel, Vitebsk and Minsk areas, 19.2-19.3% of the territory of the country, whereas the specific weight of the Grodno region – 12.1% - falls into the share of each of them. Besides, low birth rate, which does not ensure simple reproduction of the population, and also leads to high death rate and to absolute reduction of population. The demographic landscape of Belarus is very diverse, which is brightly shown at the level of regions.

**Table 2. Territory and population density in Belarus (01.01.2015)**

Region	Population, th.people	Territory, th. km2	Population density, people/km <sup>2</sup>
<b>BREST OBLAST</b>	1 388.9	32.8	42
<b>VITEBSK OBLAST</b>	1 198.5	40.1	30
<b>GOMEL OBLAST</b>	1 424.0	40.4	35
<b>GRODNO OBLAST</b>	1 052.6	25.1	42
<b>MINSK OBLAST</b>	1 407.9	39.8	35
<b>MOGILEV OBLAST</b>	1 070.8	29.1	37
<b>MINSK</b>	1 938.2	0.307	5570
<b>REPUBLIC OF BELARUS</b>	9408.9	207.6	46

The greatest rates of reduction of the population are noted in rural areas. The specific weight of country people since 2005 was reduced from 27.8% to 22.7% in 2015. The greatest demographic changes occurred in the Grodno and Brest areas - reduction of country people by 6.9 and 5.7 items respectively. As a result of the urbanization process, the number of urban population increased and reached nearly 7 million 275 thousand people, i.e. three quarters of the population of Belarus. The least urbanized region is the Minsk region (56.7%) as it has no regional center. The greatest specific weight of urban population is observed in the Mogilyov, Vitebsk and Gomel areas. The growth of population in the regional centers and, generally in the cities of regional submission and large industrial centers is noted (Baranovichi, Pinsk, Polotsk, Bobruisk, Zhodino, Lida, Mozyr, Novopolotsk, Soligorsk). Other city settlements having less than 50 thousand persons are in a stage of demographic stagnation.

**Table 3. Settlements According to Population (01.02.2010)**

Settlement	The number of settlements	%	Inhabitants (thousand people)	%
< 1000	23638	99.13	2267	23.9
1000-2000	27	0.11	38	0.4
2000-5000	41	0.18	126	1.3
5000-10000	55	0.23	379	4.0
10000-20000	45	0.19	610	6.4
20000-50000	15	0.06	505	5.3
50000-100000	10	0.04	706	7.4
100000-500000	13	0.05	3011	31.9
> 1000000	1	0.01	1835	19.4
TOTAL	23845	100.0	9477	100.0

**The system is very fragmented and could be considered as a lead driver for IMC development or reformation of administrative territorial structure by amalgamation.**

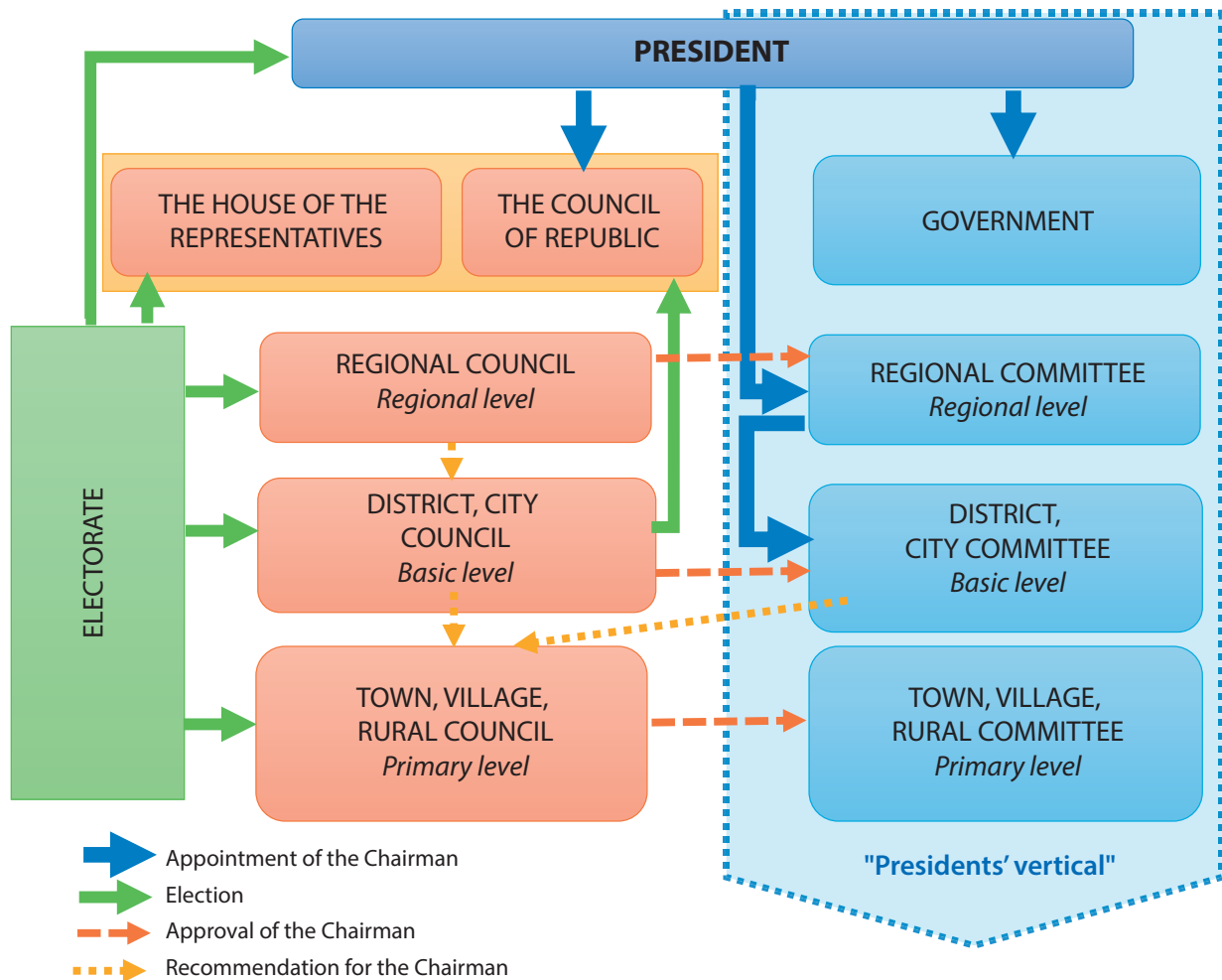
Since 1990 (during and after USSR disintegration), the mood was full of optimism and feelings of inevitability of reforms. The law "On the Bases of Local Self-government and Local Government in BSSR" adopted in 1991 delegated the power at the local level from party bodies and executive committees to Councils and created real prerequisites for the development of local government. However, since 1994, in Belarus the process of formation and development of LSG at first stopped, and then went back at all.

In 1995 the so-called "Presidents' vertical" of executive administrative bodies (executive committees) has been established through "delegation" of powers of Councils to executive committees. The competence of the committees significantly increased, otherwise the influence of Councils on executive committees was reduced in political, economic and HR issues. There were made special amendments to the Constitution and laws for reallocation of executive committee's subordination from Councils to the President and the Government.

As a result of such reformation, by 1999 it was built and empowered in the next years the "Presidents verticality" of local governing bodies.



Picture1. Governmental mechanism



Thus, in the Republic of Belarus the system of the local and regional government is based on the principles **of the state theory of local government**. This theory appeared in the works of the German scientists Rudolf Gneyst and Lorenz Stein in the middle of the 19th century. Those principles could be presented as follows:

- the local government is a continuation of the state, and its bodies are local branches of the central authorities in fact;
- the competence areas of local government are national objectives, they cannot have other purpose of activity besides those formulated by the state;
- any public deals are encompassed by central authorities, therefore the real sense of local government existence is subordination to the interests and goals of the government, rather than the promotion of local interests.

## 1.2. THE CONSTITUTIONAL MODEL OF PUBLIC ADMINISTRATION

The bases of the legal status of local authorities and self-government prescribed in the Constitution of the Republic of Belarus<sup>1</sup> and in the Law of the Republic of Belarus of January 4, 2010 "On local government and self-government in the Republic of Belarus"<sup>2</sup>.

The concept of the Constitution of the Republic of Belarus concerning local democracy assumes the existence of two types of local government (Section 5, article 117-124)<sup>1</sup>:

- **"Local government"** is understood as the activity of the local executive administrative bodies of authority subordinated and accountable directly to the President of the Republic of Belarus (article 119 of the Constitution of RB).
- **"Local self-government"** is understood as the activity of the local Councils of deputies elected by citizens for the term of 4 years (article 118 of the Constitution of RB).

The Constitution directly establishes top-down hierarchy both for the executive administrative bodies and for Councils, entering the concepts "higher executive administrative body" and "higher representative body" (article 122). Thus the highest level of power for executive administrative bodies is the President of the Republic of Belarus, for representative bodies – the Parliament – the National Assembly of the Republic of Belarus.

Thus, the model of power consisting of two coordinated verticals - the representative and the executive power (see Pic. 1) is constitutionally fixed in the Republic of Belarus. This model on the external signs is close to the Soviet model of organization of local government behind one essential exception. According to the Constitution of the USSR of 1977 (article 149 of the Constitution of the USSR) local executive bodies of the power were formed and controlled by local Councils of People's Deputies, as well as accountable to them. According to the Constitution of the Republic of Belarus, the President of the Republic establishes local executive bodies by appointing heads of appropriate authorities or settling the order of such appointment. In this part, it is possible to draw a paradoxical conclusion that the Soviet system of organization of local authorities corresponded more to the spirit of the European Charter of local government, than the system that nowadays exists in the Republic of Belarus.

The principles and legal framework of local government and self-government activity are settled by Section V "Local government and self-government" of the Constitution of the Republic of Belarus. But it is necessary to emphasize, that neither the main legislative document of the country, nor the standard legal base of local government activity in Belarus correspond fully to the definition *self-government*. There is no chance for them to realize the *self-government* purposes recognized in the world according to the formulation "*self-government*". It should be noted that, despite the powers declared by the Law "On local government and self-government in the Republic of Belarus" these bodies are almost deprived of opportunities to pursue independent regional development policy<sup>3</sup>.

Local government or self-government is considered as a form of organization and activity of population living on the territory for the settlement of state interests and interests of citizens taking into account the features of administrative and territorial units' development. This definition insufficiently, but functionally coincides with a perspective of regional development according to the Charter<sup>4</sup>.

The concepts "local community" and "community" are legally enshrined in all countries of Europe<sup>5</sup>. In world practice the community has the prime right to organize local communities, and delegates part of the rights

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1. Constitution of the Republic of Belarus of 1994 (with changes and additions adopted at the republican referenda of November 24, 1996\* and of October 17, 2004): <http://law.by/main.aspx?guid=3871&p0=V19402875e>

2. Law of Republic of Belarus of January 4, 2010 "About local government and self-government in Republic of Belarus": <http://www.pravo.by/main.aspx?guid=3871&p0=H11000108&p2={NRPA}>

3. Law of Republic of Belarus of January 4, 2010 "About local government and self-government in Republic of Belarus" / <http://www.pravo.by/main.aspx?guid=3871&p0=H11000108&p2={NRPA}>

4. European Charter of Local Self-Government 1985: <http://conventions.coe.int/Treaty/EN/Treaties/Html/122.htm>

5. См.: Jörby, Sofie (2002). «Местная Повестка-21 в четырех шведских муниципалитетах: инструмент продвижения к устойчивости». *Журнал экологического планирования и управления*.

to the elected Council<sup>6</sup>. In the Belarusian legal practice these terms are not used. **Actually, in Belarus there is no community, on which the local government is oriented.** Belarus appeared to be the only country of Europe, which was not ratifying the European Charter of local self-government. At **the same time we can find in the Belarusian legislation the term “property of the territory” that according to the international law is recognized as nonsense because the territory cannot be owned.**

**It is observed a steady tendency of excessive centralization**, mutual imposing of administrative functions of local government at different levels, constant shortage of funds to solve local problems. All those processes are aggravated by the low level of competence, “know-how” and **inertness of many local administrations.**

**The existing weak bodies of territorial self-government are not able to solve key problems of regional development, and their inadequate or in general the non-existent establishments are incapable to carry out properly the often duplicated functions**, despite many laws and decrees adopted by the central authority to increase efficiency<sup>7</sup>.

### 1.3. MAIN COMPETENCES OF LOCAL GOVERNMENT AND SELF-GOVERNMENT

According to article 117 of the Constitution of the Republic of Belarus **local government and self-government** are carried out by citizens through:

- local Councils of deputies;
- executive and administrative bodies;
- bodies of territorial public self-government;
- local referendum;
- meetings;
- other forms of direct participation in the public affairs.

**The united system of local authorities** in the territory of the Republic of Belarus consists from:

- oblast,
- rayon,
- city,
- settlement,
- rural executive committees,
- local administrations.

The local government is spread in the borders of administrative-territorial and territorial units.

The article 17 of the Law “On Local Government and Self-government” provides 30 own competences of local Councils of deputies, as local governments. Moreover, 24 competences (twelve of them are intra organizational) are exclusive, i.e. solved only at sessions of local Councils of deputies, including 4 special competences which are directly specified in the Constitution of the Republic of Belarus. **The exclusive competences of local Councils of deputies are:**

- approval of programs of economic and social development, local budgets and reports on their execution;
- establishment according to the law of local taxes and fees;
- definition (in the limits set by the law) of the management order and administration of municipal property;
- assignment of local referendum.

6. См. Закон Швеции о местном самоуправлении. Компетенция местных властей в Европе, <https://wcd.coe.int/ViewDoc.jsp?id=1377639>

7. Указ № 432 «О некоторых мерах по совершенствованию организации работы с гражданами в государственных органах, иных государственных организациях». Указ 220 13 сентября 2005 «О некоторых мерах по упрощению порядка совершения нормативных действий» 12 мая 2005, директива 2, «О мерах по дальнейшей де бюрократизации государственного аппарата 27 декабря 2007 г.

### Three territorial levels of Councils:

- **primary;**
  - rural;
  - settlement;
  - city (cities of rayon submission);
- **basic;**
  - city (cities of oblast submission);
  - rayon;
- **oblast (regional).**

Six oblast councils complete **oblast territorial level**. The Minsk city council has both rights of basic and oblast council.

The executive and administrative body on the territory of oblast, city, settlement, village Council is **the executive committee with the rights of legal entity** (executive committee). The executive committee within the competence makes **decisions**. Decisions of executive committee are accepted by simple majority of established structure of executive committee, and signed by the chairman and the chartered secretary (executive officer) of executive committee.

#### The **competence of executive committee:**

- development and introduction for the statement into Council of the scheme of management of local economy and municipal property, and also offers on the organization of protection of public order;
- development and introduction for the statement into Council of drafts of programs of economic and social development, the local budget, submission to Council of reports on their performance;
- ensuring the observance in the respective territory of:
  - the Constitution of the Republic of Belarus;
  - the laws of the Republic of Belarus;
  - acts of the President of the Republic of Belarus;
  - the decisions of Council and higher government bodies accepted within their competence;
- the organization of obtaining the income in the local budget and its use on the purpose;
- making decision on issue of local securities and carrying out auctions;
- the order on municipal property of an administrative and territorial unit in the order established by the Council;
- making decisions on creation, reorganization and liquidation of the enterprises, organizations, establishments and associations of municipal property;
- a consent to placement in the territory of the enterprises subordinated to it, organizations, institutions and associations which are not in municipal property of the corresponding administrative and territorial unit;
- implementation in the order established by the legislation of the Republic of Belarus, control in the subordinated territory of the use of municipal property;
- decision according to the legislation of the Republic of Belarus on questions of land management and land use.

Local Councils of deputies, executive and administrative organs *within their competence make the decisions having binding force in the respective territory.*

**The solutions of local executive and administrative bodies that are not corresponding to the legislation** are cancelled by:

- relevant Councils of deputies;
- higher executive and administrative bodies;
- the President of the Republic of Belarus.

The decisions of local Councils of deputies, executive and administrative organs limiting or violating the rights, freedoms and legitimate interests of citizens and also in other cases provided by the legislation, can be appealed in a judicial proceeding (article 122 of the Constitution of the Republic of Belarus).

On a number of questions, carried to competence of Councils, in regions executive committees are accountable to the relevant Councils. Higher executive and administrative bodies carry out the coordination of activity of subordinate executive and administrative bodies, give them necessary help, including organizational and methodical, material, technical, information. It is necessary to recognize that the system of local government is created, but its role in adoption of significant administrative decisions is extremely small. So, in particular, since 1991 in Belarus it was not held any local referendum.

The power on delegation of separate competences to Councils of other territorial levels, executive committees, their chairmen, bodies of territorial public self-government" belongs to special competence of Council. Part 3 of article 61 of the Law - *"Councils have the right unless not provided by acts ... by a mutual consent of Councils of various territorial levels to delegate each other separate powers along with resources necessary for their implementation"*.

**Unfortunately, among the competences of local Councils there is no number on the basic precepts of law connected with the formation of executive committees and effective control of their activity, with direct participation in the formation of local budgets, in the development of programs of social and economic development of the subordinated territory, and also in the management of the municipal property.**

Moreover, **there is not fixed in the legislation the right of territorial communities of citizens on direct implementation of local government at all.** The law defines only their rights and duties. However, all decisions made by citizens or their actions in realization of forms of direct democracy have only advisory nature and are not followed by obligatory legally significant consequences.

Nowadays both main and exclusive competences of local governments are fixed as in the Constitution, so in special legislation. It is also prescribed that the circle of these competences can be expanded, including due to their delegation to other territorial levels by Councils. Thus the law directly does not define such concepts as "own" and "delegated" competence of local government bodies.

#### **1.4. BODIES, ELECTION, MAIN POWERS...**

The structure of state bodies of Belarus was formed in conditions when after the disintegration of the Soviet Union many institutes maintaining stability of the society were destroyed. The loss of economic communications existing within the USSR predetermined the degradation of economy and social life. In such conditions the President of the Republic of Belarus A.G. Lukashenko took emergency measures on the restoration of controllability on economy, ensuring social support needed by it, creation of a control system which in fast terms is capable to take measures for development in all spheres of country's life.

**The distinctive feature of the structures working in the conditions of emergency is their vertical organization, strong subordination to the uniform center, orientation to command management style at the solution of the tasks set by the central control link.** Planning of regions development in such situation differs by existence of rigid command on economic growth, finishing plan targets from "top-down", and also increasing the role of control bodies tracing efficiency of investments. The role of regional governing bodies in the existing system is reduced, as a rule to direct realization of the state social and economic policy developed by the center. Besides they solve the separate own social and economic problems connected with the territories.

The Parliament of the Republic of Belarus - National Assembly - is the representative and legislative body and consists of two chambers: the House of Representatives and the Council of the Republic. The Council of the Republic - chamber of territorial representation.

The Council of the Republic has the right of legislative initiative. According to the Constitution of the Republic of Belarus, the Council of the Republic approves or rejects the drafts of laws on introduction of

changes and additions, about interpretation, and also drafts of other laws adopted by the House of Representatives.

As a chamber of territorial representation, the Council of the Republic was granted the right to cancel the decisions of local Councils of deputies which do not correspond to the legislation; to make the decision on dissolution of local Council of deputies in case of their systematic or gross violation of requirements of the legislation and in other cases provided by the law.

The role of the Council of the Republic in the formation and changing of the specified direction of state policy is small in comparison with the role of executive authorities.

**There is a Council for interaction of local self-governments bodies in the framework of the Council of the Republic of National Assembly of the Republic of Belarus. It is formed to ensure the unity of actions of republican state bodies and local governments. The activity of this structure has consultative, advisory character.**

The main objectives of this Council are: an explanation and promotion of a state policy in the field of local government, development of recommendations and offers on its realization; coordination of interaction between the Council of the Republic, local governments and state bodies. It is obvious that this structure is not the spokesman of interests of regions. It only helps with promotion of the central bodies' decisions. It is actually one more body for promoting the central made decisions "from top to down".

There is no National association of local Councils of deputies that could represent the interests of local governments both at national and international levels in the Republic of Belarus. The new Law "On Local Government and Self-government" of January 4, 2010 for the first time in the legislative practice of Belarus assigned such opportunity to local Councils of deputies.

**Belarusian law is limited only to ascertaining the fact of possibility to establish national and other associations of local Councils of deputies, without providing neither the procedures of their creation, nor the content of their activity.** Thus it is necessary to point to the lack of standard fixed procedure of their creation and activity, and standards on their legal status and competences. But at the same time we could observe **the experiment on the creation of regional authorities association in regions Grodno and Mogilev (2 regions among 6). The only principle grounded in the creation of those associations was administrative territorial division that contradicts the idea of freewill association and makes them a pale copy of administrative hierarchy.** This experiment was started in May 2015 and unfortunately the only reference in the media on it was the official opening statement. There is no any other information about it in open access over the past six months. This situation demands additional legal regulation, which would approve the relevant provisions on creation and activity of associations, and also an order and the principles for their interaction with bodies of authority and government of republican and local levels. This could be a driver for IMC development.

## 1.5. ADMINISTRATION AND HUMAN RESOURCES (STATUS OF EMPLOYEES)

One more very actual problem for the Republic of Belarus is training in the sphere of local government. Due to many reasons, the Belarusian experts have no sufficient analytical information on the contents, the essence, the principles and the norms of the European Charter and on other international documents in the sphere of local government, and also about the relevant legislation of foreign countries.

Courses on professional development of local governments, and also other educational events which are held both in Minsk from time to time, and in regions, are practically always directed on explanation or discussion of the current legislation standards or the new acts issued by the President. Drafts of laws or regulations in the sphere of local government, and most often - the current, daily problems of local value are discussed sometimes.

Anyway, practically **all training actions are limited to the existing national legislation.** Therefore experts at the local level (with rare exceptions) have very unilateral and limited only to the national legislation knowledge.

As a result, **experts have no uniform with all-European conceptual framework and uniform terminology**. There is no system and actual information on reforms, passed and still proceeding in the countries of the Central and Eastern Europe (including the CIS countries), about results of reforms, about their progress and failures. The topic of local government is not popular among scientific publications of the Belarusian academicians.

Much leaves to be desired both from the methodological base of the Belarusian universities, and the level of preparation of the faculty in the specialty "Public administration", and the discipline "Municipal Law" is excluded from the training curricula of universities.

The specialty "Public administration" is not prestigious since young specialists graduating of universities have problems with employment. **There are no more postgraduate works on local government issues since in the Republic of Belarus this topic is considered unpromising.**

Such situation can create very serious problems in the near future. Especially they will be felt during the modernization of the existing system of local government and its bringing in compliance with the basic requirements of the European Charter of local government. **Therefore the relevance of professional community preparation and development in the sphere of local government on the basis of modern knowledge is highest and demands special attention and amendments.**

## 1.6. GENERAL FINANCING: STRUCTURE OF RESOURCES

The current legislation provides local government with own resources and the possibility of their management in the fulfillment of their competences.

According to part 1 of article 1 of the Law "On Local Government and Self-government" the local government carries out the independent decision on "... social, economic and political affairs of local value ... on the basis of own material and financial resources and the raised funds".

The concept of own material and financial base of local government is provided in article 54 of the Law - "The economic basis of local government and self-government is made by municipal property, the income from the use of natural resources and other sources obtaining the income of local government and self-government according to the legislation on environmental protection and rational use of natural resources, the civil, tax, budgetary law".

According to part 1 of article 55 of the Law "The municipal property consists of treasury of an administrative and territorial unit and the property assigned to municipal legal entities according to acts of the legislation". The Law understands as treasury of administrative and territorial unit "means of the local budget and other municipal property which is not assigned to municipal legal entities".

In more detail, the financial and economic questions of the budgetary and tax character at the local level are regulated according to the Budgetary Code and the Tax Code of the Republic of Belarus. Article 27 of the Budgetary Code understands as own income of local budgets:

- the tax income enlisted in the budget according to the legislation on a constant basis;
- the non-tax income enlisted in the budget according to the legislation on a constant basis;
- grants, except of the inter-budgetary transfers.

According to articles 32 and 34 of the Code, the tax income of local budgets for shared taxes is:

1. income tax from natural persons;
2. income tax;
3. real estate tax;
4. value added tax;
5. ecological tax;
6. land tax;
7. uniform tax on individual entrepreneurs and other persons;
8. charge for implementation of activities for rendering services in the sphere of agro-ecotourism;

9. tax on gaming;
10. local taxes and fees, and also other tax income established by the Budgetary Code, the President of the Republic of Belarus and (or) laws.

According to articles 33 and 35 of the Code the non-tax income of local budgets for shared non-tax income received in the subordinated territory is:

1. income from the placement of monetary budgetary funds;
2. income from the leasing of land plots;
3. income from the leasing of municipal property;
4. the means coming to the account of a compensation for expenses of the state;
5. the income from the property confiscated and otherwise the state turned into the income;
6. payment from the sale of land plots to a private property;
7. penalties;
8. indemnification, caused to municipal property;
9. payment for the placement of outdoor advertising;
10. means of self-taxation of citizens, and also other non-tax income established by the legislation.

Unfortunately, **it is necessary to recognize that own tax and non-tax income of the majority of administrative and territorial units do not allow to create deficit-free budget** and covers expenses of local budgets in each case at the level of 20-50 percent. Missing means for the elimination of budget deficit arrive as the inter-budgetary transfers from budgets of higher levels that can be an additional tool of administrative pressure on local authorities and self-government.

Local taxes and fees by the legal nature are urged to provide efficiency of use of local tax base by identification of their specific opportunities to obtain additional own income in the local budget. Especially it is actual in the case of budget deficit in the absence of sufficient own budgetary income gained from republican taxes and non-tax financial activity.

According to article 9 of the Tax Code the local taxes and fees are:

- tax on dogs;
- fees on resort;
- fees from suppliers.

Unfortunately, the constitutional norm of part 3 of article 121 on the possibility of establishment of local taxes and fees by local Councils of deputies, extends only on Councils of a regional and basic level. **Councils of primary level as the most numerous link of local Councils of deputies, according to part 1 of article 12 of the Tax code, are deprived of the right to establish independently local taxes and fees**, and according to point 2.8 of article 34 of the Budgetary Code they are deprived of the rights to establish independently norms of transfers of local taxes and fees in the budgets of primary level.

Thus, currently in the Belarusian legislation, despite numerous actual restrictions, the norms provide the existence in the tax system of state and local taxes and fees, prescribed list of them, the order of introduction and transfer to local budgets.



## Chapter 2

# The Law on IMC in Belarus

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The legislation of the Republic of Belarus does not refer directly or indirectly to IMC. The only sense of amalgamation mentioned in the law is about the right to create associations of local self-governments.

There are no any precise ways to organize IMC prescribed in the Belarusian law. The only specific institutions that provide services on inter municipal level are created and work as institutions of central (or upper level) government. The contracting practice in the Republic of Belarus is also very weak and does not cover long-term services (public transport, garbage collection, etc.). The well-developed legal framework could be observed in sphere of procurement. The most popular issue discussed is corruption in holding of tenders by central and local governments.

At the same time, based on regulations about planning of development, there were developed and adopted some programs of republican level, *more than 100 programs of oblast level and more than 700 programs of rayon level*. These programs aimed on systematic development of various branches of economy of the republic, social sphere of the region. The selective analysis of such programs shows that the achievements of the international practice of planning are not used. The system approach to regional development is also absent.

Two large programs of development of regions present an example of state programs of development in Belarus:

- The State program on revival and development of the village for 2005-2010
- The State complex program on development of regions, small and medium settlements for 2007-2010.

The main objective of these programs is:

1. creation of conditions for priority *social and economic* development of the village, increase of overall performance of agro-industrial complex
2. creation of conditions for priority *social and economic* development of regions, small and average city settlements.

In 2011, there appeared the Decree of the President of the Republic of Belarus No. 342 "On the state program of sustainable development of settlements for 2011-2015". Its purpose is ensuring *stability* of social and economic development of the village and improvement of demographic situation on the basis of increase of economic efficiency of agro-industrial complex, development of enterprise initiative, ensuring balance of the domestic food market, building the export potential, increase of income of country people, the level of social and engineering arrangement of rural settlements, preservations and improvements of ecology, attraction and rational use of investments in them. Thus, despite the name of the program, it is about *efficiency of development* of economy of the village, but not *sustainable development* of the village.

The development programs at the level of regions and cities also have social and economic focus. For example, "The program on the development of dairy branch of Vitebsk area for 2012-2015", adopted by decision of Vitebsk oblast Council of deputies #163, 19.01.2012; The Decision of the Mogilyov city Council of deputies #25, 15.03.2013 - "On the approval of the program of the state support and development for small and medium enterprises in the city of Mogilev for 2013-2015" and many others.

**The majority of programs do not focus on sustainable development, but the economic component of development dominates.** Example of priority of economic development over sustainable development is the Decision of the Minsk city Council of deputies #31, 23.06.2010 "On the approval of the program on the main directions and priorities of *sustainable development* of Minsk in 2010-2014". The program logically developed ideas of the country's first regional strategy of sustainable development, which was developed for the capital of Belarus. Nevertheless, this decision lose its validity after one year and half, after

the adoption of the new decision of the Minsk city Council of deputies #187, 23.12.2011 "On the approval of the program on social and economic development of the city of Minsk for 2011-2015". It is also worth noting that the adoption of the program for 2011, one week prior to it, could be considered as a sign of **imperfection of organizational procedures and/or methodologies of development, consideration and approval of programs.**

As shown in the analysis, **programs connected with regional development in Belarus are developed on the basis of an outdated methodology.** It does not focus regions on system planning of activity taking into account priority of stability of development, and is concentrated on achievement of social and economic development of regions. **The inter regional or inter municipal cooperation issues is also out of current agenda.**

Actually, these programs are only the tool of the rigid vertical of administrative decisions execution. Its orientation "from top to down" makes easy to track the features connected with rigid vertical position of planning system in Belarus. Before the new forecast period the special Decree of the President of the Republic of Belarus is issued. For 2014 this is the Decree of the President of the Republic of Belarus #585, 31.12.2013 "On the most important parameters of the forecast of social and economic development of the Republic of Belarus for 2014". In the document approved by the Head of state concrete parameters of growth are established. So, it defines the reference points of development of certain regions and all country for one year.

By the resolution it is claimed that the heads of the republican state bodies and other state organizations subordinated to the Government of the Republic of Belarus, oblast executive committees and the Minsk Executive Committee, and also heads of subordinates bear personal responsibility for the performance of the indicators of the forecast of social and economic development of the Republic of Belarus. The performance of indicators is the main criterion at evaluation of the work of the above listed heads. They have to consider quarterly the questions of extension (cancellation) of contracts with the heads of subordinates taking into account the performance of the finished indicators of the forecast of social and economic development for 2014.

**Apparently, the "down-top" approach is not used. There is only a specification of the tasks set by the central body. The population of regions who very well know the situation in the field is not considered as actors of planning.** Subordinate heads of vertical in such conditions can only assume the raised obligations for the performance of the Decree signed by the President and also have some degree of freedom in the tactical decisions directed on the achievement of forecast parameters.

## Chapter 3

# Municipal Reform in Belarus

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Definitely, IMC is out of agenda in Belarus nowadays and nearest perspective of it is also cloudy. The list of IMC actors is very short. We could take into account national experts, international experts and institutions. There are no clear pro and contra actors' community in these issues in Belarus.

Mostly the problems appeared on local level related to dysfunction of local authority through depopulation of rural settlements. This problem officially is considered as a technical problem that is resolved accordingly to the particular situation in the concrete village and rayon. **Despite of significant degradation of rural units there is no project or approach to the administrative territorial division reform in Belarus. The predominant approach in resolving this problem is amalgamation.** Cooperation on inter-municipal levels is considered as a complicated approach that brings more problems, less transparency and hidden agenda of local communities. All this contradicts to the public administration concept of "presidents' vertical".

### 3.1. MAIN CONDITIONS FOR REFORMATION

There are four major factors for successful reformation:

1. **political will** of leaders, i.e. resolute desire to carry out changes;
2. **experts community** capable to define the purposes of reform and the ways of its achievement;
3. **public support** or, at least, public loyalty to reform;
4. **professionals** prepared for practical introduction of reforms into life.

From the optimistic point of view, Belarus is now close to keep only the second factor. All other are absent. So, the question is - Should we really start reform nowadays, or have to wait when people and society will be ready for it?

**Yes, people and society are not ready, but they cannot learn democracy by books. The maturation of the society is an ongoing process that includes all institutions of public administration, but not only the central government.**

**Postponement of reforms "for later (better) times" means refusal of reforms.** The key to success is not in choosing the right moment for the reforms to begin, but in **acceleration of evolution** of public consciousness and adaptation to the new system.

### 3.2. ASSESSING IMC IN BELARUS

Generally, the level of basic public services in Belarus is evaluated by experts for citizens very high. The only exclusion is the primary level where financial resources (local budget) and municipal infrastructure are not sufficient to be serviced on the level of urban area.

As the sharing of administrative tasks looks impossible in the Belarusian public administration model, **the most reliable sphere for implementation of IMC could be economic development.** With regard to loyal attitude of officials to any technical assistance, we could pretend on a good start of IMC in the development of local and regional infrastructures (roads, electricity, including green energy, waste management, etc.). Such kind of projects could be realized on a regular basis under the actual legal framework.

### 3.3. CROSS-BORDER IMC

This point despite of specific aspect in IMC issue appeared very prospective for the Belarusian circumstances. It is crucial from the point of Euroregions<sup>8</sup> that work in Belarus.



#### Euroregion "Dnepr"

Euroregion «Dnepr» unites from the Belarusian side Gomel region, from the Ukrainian side – Chernigovsk region, from the Russian side Briansk region.



#### Euroregion "Ozernykrai"

Euroregion includes: Braslav district, Verkhnedvinsk district, Miorsk district, Postavy district and Gluboksk district (Belarus); Daugavpils district, Kraslav district, Preylsk district, Rezeknensk district, including Daugavpils and Resekne cities (Lithuania); Zarasaysk district, Ignalinsk district, Utensk district and Shvenchensk district, including Visaginas city (Lithuania).



#### Euroregion "Neman"

Euroregion “Neman” unites from the Belarusian side – Grodno region, from the Polish side (since 1998) – Podlaska voevodship, from the Lithuanian side – Mariampol, Alitusk and Vilnussky regions (poviety), from the Russian side (since 2002) – Cherniakhov, Krasnoznamensk, Ozersk, Gusev and Nesterov districts of Kaliningradsk region.



#### Euroregion "Belovezhskayapuscha"

Euroregion “BelovezhskayaPuscha” unites: from the Belarusian side – Kamenets, Pruzhany, Svisloch districts, from the Polish side – Haynuvkapoviet.

8. [http://beleuroregion.by/index.php?option=com\\_content&view=category&layout=blog&id=48&Itemid=55&lang=en](http://beleuroregion.by/index.php?option=com_content&view=category&layout=blog&id=48&Itemid=55&lang=en)



## Euroregion "Bug"

Members of cross-border Euroregion "Bug": Brest region (Belarus), Lublin voivodeship (Poland), Volyn region (Ukraine).

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