

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



STRENGTHENING INSTITUTIONAL FRAMEWORKS FOR LOCAL GOVERNANCE PROGRAMME

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STUDY

**MAPPING THE OBSTACLES TO INTERMUNICIPAL
CO-OPERATION in Moldova**

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Executive summary

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).¹

The 1998 territorial-administrative law did not last for long and was repealed by the 2001 law on territorial-administrative organization, the current law in force, which basically reinstated the previously known rayons, which can be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.² 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.”³

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.⁴

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.⁵ 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

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

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

Government should find resources to support the implementation of IMC options for various types of services in the local governments.⁶

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, 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. 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.

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

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.

Chapter 1. Local self-governance in Moldova

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).⁷

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.⁸

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.⁹ 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 regions¹⁰. 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.

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 inhabitants¹¹. Over 1/3 of the first level units have less than the

⁷ For details please refer to the Law no. 306-XIII from 07.12.1994 on territorial-administrative organisation

⁸ For details please refer to the Law no. 191-XIV from 12.11.1998 on territorial-administrative organisation

⁹ For details please refer to the Law no. 764-XV from 27.12.2001 on territorial-administrative organization

¹⁰ The regions were created in 2006 as a result of approval of the Law no. 438-XVI of 28.12.2006 on regional development

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 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 14th 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.¹² 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 inhabitants¹³. 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 administration¹⁴ and the Law on decentralisation¹⁵. 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 services¹⁶

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

¹¹ Data provided by the Ministry of Finance for 2013

¹² Article 119 of the Electoral Code no. 1381-XIII from 21.11.1997

¹³ Article 11(1) of the Law no. 436-XIV from 28.12.2006 on local public administration

¹⁴ Law no. 436-XIV from 28.12.2006 on local public administration

¹⁵ Law no. 435-XIV from 28.12.2006 on decentralisation

¹⁶ Article 4(1) of the Law on decentralisation

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.¹⁷ The employees of the first level administrative units are not public servants, with the exception of the secretary 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;
- j¹) 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;

¹⁷ Annex. No. 2 of the Law no. 355-XVI from 23.12.2005 on the payroll system in the budgetary sector

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 establishment 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.¹⁸ 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 Code¹⁹
- 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 funds²⁰

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.²¹

¹⁸ Law no. 397-XV from 16.10.2003 on local public finance

¹⁹ 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.

²⁰ Article 5 of the Law on local public finances

²¹ For more details, please refer to Article 10 of the Law on local finances

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.²²

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 revenues²³. If one will lower the financial viability requirement, and accept up to 100% coverage of the administrative expenses from own revenues, only 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.²⁴

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.²⁵

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.²⁶ 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.²⁷ 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

²² Article 11 of the Law on local public finance

²³ Article 11 (2) of the Law on administrative decentralization

²⁴ Adrian Ionescu, Sasa Drezgic, Iulian Rusu "Report on territorial administrative structure options for the Republic of Moldova", UNDP Moldova, March 2015, page 8

²⁵ Article 14 (4) of the Law on local public finance

²⁶ Government Decision no. 387 from 06.06.1994 on the template regulations of the municipal enterprise

²⁷ Para. 1 of the Template Regulations of the municipal enterprise

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.²⁸

Private-public partnerships

The public private partnerships are allowed under the Law on public private partnerships.²⁹ The provisions of this law are also complemented by the Law on concessions³⁰ and the Law on local public communal services.³¹ 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.³²

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 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 property³³. 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.³⁴

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.³⁵

²⁸ Para. 30 of the Template Regulations of the municipal enterprise

²⁹ Law no. 179-XVI from 10.07.2008 on public private partnership

³⁰ Law no. 534-XIII from 13.07.1995 on concessions

³¹ Law no. 1402-XV from 24.10.2002 on local public communal services

³² Article 19(1) of the Law on public-private partnership

³³ Law no. 121-XVI from 04.05.2007 on management and privatization of public property

³⁴ For details, please refer to the Annex to the law on management and privatization of public property

³⁵ Article 4 (12) of the Law no. 1308-XIII from 25.07.1997 on the normative price and the selling of the land

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.³⁶ 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.³⁷

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.

Chapter 2. Legislative provisions on inter-municipal cooperation in Moldova

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.”³⁸

“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”.³⁹

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.

³⁶ Article 12-14 of the Law on the normative price and the selling of the land

³⁷ Article 12 (4) of the Law on the normative price and the selling of the land

³⁸ Article 5 (1) of the Law on administrative decentralisation

³⁹ Article 5 (4) of the Law on administrative decentralization

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.⁴⁰

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.⁴¹ 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.⁴²

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

⁴⁰ Para. 10, 10¹, 16, 30 of the Template Regulations of the municipal enterprise

⁴¹ For details please refer to “Report on territorial administrative structure options for the Republic of Moldova”, UNDP Moldova, March 2015, pp. 32-35

⁴² Interview with Viorel Furdui, Executive Director of the Congress of Local Public Authorities (CALM), 10 December 2014

enterprise forms are practically all available under the current entrepreneurship legislation: limited liability company and joint-stock company.

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.

Chapter 3. Municipal reforms in Moldova

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 amalgamation⁴³. 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.⁴⁴

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.⁴⁵

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.⁴⁶

2. IMC in progress in Moldova

Besides the reports mentioned above⁴⁷, the IMC option was considered as an option for technical assistance.

Since 2010, seventeen IMC pilot projects⁴⁸ 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 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 1000⁴⁹ functional IMC partnerships during the next 4 years.⁵⁰

3. Special status of the Chisinau capital municipality

⁴³ 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

⁴⁴ 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

⁴⁵ Interview with Viorel Furdui, Executive Director of the Congress of Local Public Authorities (CALM), 10 December 2014

⁴⁶ 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>

⁴⁷ Ibid.

⁴⁸ 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).

⁴⁹ 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)

⁵⁰ Adrian Ionescu, Sasa Drezgic, Iulian Rusu, "Report on territorial administrative structure options for the Republic of Moldova", UNDP Moldova, March 2015, p. 32

The Chisinau municipality has a special law, which governs its status⁵¹. 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 settlements⁵².

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, 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.

4. The relevant IMC stakeholders

The authorities in favour of IMC

⁵¹ Law no. 431-XIII from 19.04.1995 on the status of Chisinau municipality

⁵² 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>

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.⁵³

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.⁵⁴

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.⁵⁵

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.⁵⁶

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.

⁵³ Interview with Viorel Furdui, Executive Director of the Congress of Local Public Authorities (CALM), 10 December 2014

⁵⁴ Interview with representatives of the Ministry of Regional Development, Mr. Valerian Binzaru, Igor Malai, Dorin Andros, 11 December 2014

⁵⁵ Interview with the representative of the State Chancellery, Victoria Cujba, 8 December 2014

⁵⁶ Focus group discussion (8 people), Chisinau, 20 July 2015

Chapter 4. Assessment of inter-municipal cooperation in Moldova

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.

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.

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. 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.

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

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.

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.

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

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 rayon⁵⁷

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.

c) Increased energy efficiency of the Orhei regional hospital⁵⁸

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.

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 efficiency⁵⁹
- b) Law on renewable energy⁶⁰

⁵⁷ 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_Logica_Format_Nou_EE_T.Veche_IN_RO.pdf (accessed 30 August 2015)

⁵⁸ 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_Logica_EE_Orhei_ADRC_RO.pdf (accessed on 30 August 2015)

⁵⁹ Law no. 147 from 02.07.2010 on energy efficiency

⁶⁰ Law no. 160-XVI from 12.07.2007 on renewable energy

- c) Government Decision on the creation of the Energy Efficiency Agency⁶¹
- d) Government Decision on the Energy Efficiency Fund⁶²
- e) Government Decision on the approval of the National Energy Efficiency Programme for 2011-2020⁶³

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.⁶⁴

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 solvent⁶⁵

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 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.

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.

⁶¹ Government Decision no. 1173 from 21.12.2010 on the creation of the Energy Efficiency Agency

⁶² Government Decision no. 401 from 12.06.2012 on the Energy Efficiency Fund

⁶³ Government Decision no. 833 from 10.11.2011 on the approval of the National Energy Efficiency Programme

⁶⁴ Article 18 of the Law no. 147 from 02.07.2010 on energy efficiency

⁶⁵ Para. 53 of the Government Decision no. 401 from 12.06.2012 on Energy Efficiency Fund

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.

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

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
14. Law no. 1308-XIII from 25.07.1997 on the normative price and the selling of the land
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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24. Analytical Study on the Optimal Territorial-administrative structure for the Republic of Moldova, Expert Grup, Chisinau, August-October 2010
25. Logical framework of the Orhei regional hospital energy efficiency project, available at: http://serviciilocale.md/public/files/pilot/2014_11_07_Cadru_Logica_EE_Orhei_ADRC_RO.pdf (accessed on 30 August 2015)
26. Logical framework of the public lightning project in Tatarauca Veche, available at: http://serviciilocale.md/public/files/pilot/2014_04_25_Cadru_Logica_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