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Intermunicipal cooperation in Ukraine

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TABLE OF CONTENTS

Introduction

I. Local self governance in Ukraine

1. General frame of LSG in Ukraine

- 1. 1st Level (Municipal)**
- 2. The Law on IMC**
- 3. Other legal possibilities**

II. Municipal Reform in Ukraine.

- 1. A general debate: amalgamation or cooperation?**
- 2. IMC in progress in Ukraine**
- 3. Special status of the capital city**
- 4. The actors of IMC**

III. Assessing IMC in Ukraine

- 1. Level of equipment in basic public services**
- 2. Domains where IMC is most needed or would be easy to implement**
- 3. Need to create or improve the Law on IMC?**
- 4. Cross-border IMC**

IV. Perspectives = Conditions for progress

INTRODUCTION

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.

I. Local self governance in Ukraine

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.

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 can not 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.

2. 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. 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.

II. Municipal Reform in Ukraine.

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. 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 neither individually nor 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. 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.

3. 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.

4. 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.

III. Assessing IMC in Ukraine

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.

2. Domains where IMC is most needed or would be easy to implement

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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. Need to create or improve the law on IMC?

And even more the administration Regulations to implement the law.

Which aspects?

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.

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.

IV. Perspectives = Conditions for progress

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.