The Congress
of Local and Regional Authorities

Chamber of Local Authorities

14th PLENARY SESSION
CPL(14)6REP
4 May 2007

The Institutional Framework of Inter-Municipal Co-operation

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Explanatory memorandum
Institutional Committee

Summary:

The present report is an outline of the status, forms and current state of inter-municipal co-operation in Council of Europe member states, which features prominently in Article 10.1 of the European Charter for Local Self-Government. The institutional and economic scope of such co-operation has expanded considerably for many local authorities caused by the vitality of modern societies, their drive to efficiency and through globalisation itself. The report identifies further factors accounting for the significant growth of inter-municipal co-operation, such as the problem of the small size of municipalities, the increasingly complex and costly services to be provided by municipalities, inadequate financial resources and the lack of sufficiently qualified staff. The report also draws on traditions and main fields of inter-municipal co-operation in different countries as well as on the most common forms and legal grounds of such co-operation. The report concludes with recommendations on how to further encourage and improve inter- municipal co-operation as a beneficial tool - in terms of management savings and efficiency - as well as an inevitable tool to meet the new challenges of the 21st century.

R : Chamber of Regions / L : Chamber of Local Authorities
ILDG : Independent and Liberal Democrat Group of the Congress
EPP/CD : Group European People's Party – Christian Democrats of the Congress
SOC : Socialist Group of the Congress
NR : Member not belonging to a Political Group of the Congress

1. INTRODUCTION

1. As part of its activities, the Institutional Committee, assisted by its Group of Independent Experts (GIE) on the European Charter of Local Self-Government started work a few years back on so-called "second-generation" reports, which consider specific aspects of the institutional framework for local self-government.

2. Among these aspects, inter-municipal co-operation is increasingly relevant to assessments of the effectiveness of local and regional authorities. Inter-municipal co-operation may be described as the right of local authorities (municipalities/communes), in exercising their powers, to co-operate as part of specific structures and to form consortia with other local authorities in order to carry out tasks of common interest It features prominently in the text of the European Charter of Local Self-Government. Article 10.1 deals explicitly with co-operation between local authorities and their right to form consortia with a view to "seeking greater efficiency through joint projects or carrying out tasks which are beyond the capacity of a single authority" (Explanatory Report, page 18). Article 10.3 deals with transfrontier co-operation, which is also the subject of a specific Council of Europe Convention, the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (ETS No. 106), known as the 1980 Madrid Convention. Article 10.1 has not yet been the subject of a specific study by the Institutional Committee and by the GIE..[1]

3. At its meeting of 3 November 2004, the Institutional Committee of the Chamber of Local Authorities decided "institutional framework of inter-municipal co-operation" to be the theme of the next general report on the implementation of the Charter (7th general report on the application of the Charter) and called upon the Group to treat this subject as a priority. The Bureau of the Congress, at its meeting of 10 December 2004, approved the proposed subject of the report. At its meeting of 14 April 2005, the Committee designated Michel Guégan (France, L, NI) to be the rapporteur [2]. Also at its Strasbourg meeting of 14 March 2005, the GIE asked Professor Angel-Manuel Moreno to draw up a draft questionnaire on the "institutional framework of inter-municipal co-operation". The questionnaire was finalised by 10 November 2005 following the comments made by the Group at its meeting of 12 October 2005 (St. Gallen, Switzerland) (Appendix II).

4. The experts were then asked to prepare and submit their replies to the questionnaire by 31 January 2006, a deadline subsequently postponed to 15 February 2006. In total, 34 replies (or reports) were received from GIE experts in respect of the following states: Armenia, Austria, Azerbaijan, Bosnia Herzegovina, Bulgaria, Croatia, Czech Republic, Denmark, Estonia, Finland, "former Yugoslav Republic of Macedonia", France, Georgia, Germany, Greece, Iceland, Italy, Latvia, Liechtenstein, Luxembourg, Malta, Netherlands, Norway, Portugal, Romania, Russia, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Turkey, Ukraine and United Kingdom.

5. The Rapporteur would like to thank the GIE on the Charter of the Institutional Committee of the Congress for its much-appreciated assistance during the preparation of this Report and particularly Professor Dr. Angel-Manuel Moreno for his precious contribution.

6. Given the considerable amount of information contained in the replies to the questionnaire, this draft consolidated report cannot provide a comprehensive compilation of all the reports submitted by the experts in respect of each State or an extensive description of inter-municipal co-operation (or "intercommunality"). Its main purpose is to outline the current situation with regard to inter-municipal co-operation in Europe.

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[1] Inter-municipal co-operation is also implicit in Article 4 of the Charter, since it may be regarded as a means of exercising responsibilities and providing services, and the very decision or choice to implement co-operation is regarded as a manifestation of local self-government. Furthermore, Article 6 of the Charter allows municipalities to determine their own administrative structures with a view to ensuring effective management. Although the article refers to "internal structures", such organisational independence can also apply, by analogy, to "external" structures.

[2] M. Guégan attended the 19th Annual Seminar and Annual General Meeting of the European Network of training organisations for local and regional authorities (ENTO) on intermunicipal co-cooperation in Osijek (Croatia) on 18-20 October 2006.

7. The consolidated report deals with co-operation between municipalities in the true sense. As a result, it does not discuss (a) associations representing municipalities, such as national or regional associations and those whose main aim is to protect and promote their interests, since these associations are specifically covered by Article 10.2 of the Charter; (b) co-operation between municipalities and other territorial authorities, such as central or regional government; (c) co-operation between "second-tier" local authorities such as provinces, districts, *départements, Kreise,* etc., or (d) mergers between municipalities, which go well beyond the aim of co-operation.

8. The report makes only brief reference to transfrontier municipal co-operation, as a particular or special form of inter-municipal co-operation, bearing in mind that this subject is dealt with specifically in another Council of Europe convention.

2. GENERAL SITUATION WITH REGARD TO INTER-MUNICIPAL CO-OPERATION IN EUROPE

2.1. Importance of inter-municipal co-operation and reasons for its development

9. Local authorities face new challenges in the 21st century, connected mainly with the vitality of modern societies, their drive for efficiency, and globalisation. In particular, municipalities are increasingly having to work together in order to meet growing and ever more complex social demands and the needs of a mobile or unduly fragmented population (large conurbations, scattered population in rural areas, etc.).

10. Inter-municipal co-operation has become an increasingly important topic on the local government scene all over Europe. The institutional and economic scope of such co-operation has expanded considerably in many countries (particularly in western Europe) over the last thirty years. In France, for example, inter-municipal co-operation is so highly developed that it has practically become a second, supra-municipal tier of local democracy.

11. On the strength of the experts' reports in respect of each State, it is possible to identify a number of factors accounting for the significant growth of inter-municipal co-operation:

- the development of inter-municipal co-operation appears to be bound up primarily with the problem of municipal fragmentation, the small size of municipalities and a scattered population. In several countries, inter-municipal co-operation plays a crucial role in the national organisation of local authorities, owing to the large number of small municipalities. Even in countries with no tradition of inter-municipal co-operation, the very small size of municipalities is conducive to such co-operation. This is the case, for example, in the Slovak Republic, where 67% of municipalities have fewer than 1000 inhabitants;

- there is also the added complication – especially for small municipalities – of having to deliver public services that are increasingly complex in technical terms (in the area of waste management, for example) and increasingly costly in financial terms. Municipalities thus have to deliver ever more numerous and expensive public services with resources that are all too often inadequate. They consequently find themselves having to co-operate in order to pool their resources so as to create synergies and economies of scale. It is also a question of meeting needs or resolving problems whose geographical scope goes beyond the boundaries of the municipality or which affect several neighbouring or bordering municipalities;

- local finances are inadequate, and there is a lack of qualified staff;

- second-tier local authorities (such as *départements*) are not suited to co-operation with municipalities because they are too big (France). Moreover, some countries simply do not have second-tier local authorities (Austria, Georgia);

- given that the rapid development of inter-municipal co-operation is often bound up with the problem of municipal fragmentation, some countries regard inter-municipal co-operation as a more workable alternative to mandatory mergers between tiny municipalities, which always encounter fierce opposition from the citizens affected (example: Ukraine);

- planned mergers and/or groupings of municipalities sometimes fail (for example, the Act of 16 July 1971 in France). Given that plans to merge municipalities have often failed in most countries, inter-municipal co-operation is regarded as the least upsetting solution to a situation that appears both irrational and impossible to change. On the other hand, in countries that have not yet actually embarked on the process of merging municipalities, inter-municipal co-operation may be seen as the first step towards such mergers (Latvia);

- public service provision is subject to new requirements for efficiency. The current proponents of "public management" emphasise the need for efficient administration and the development of new, "imaginative" forms of public service provision in which inter-municipal co-operation allows optimum use of public resources;

- some countries have specific natural features that lend themselves to such an approach, such as a very mountainous landscape (Norway).

12. In addition to these preliminary observations, however, a comparative analysis of the experts' reports in respect of the States reveals sharp variations between the different countries. Two groups of countries may be identified, according to the scale of inter-municipal co-operation and the existence or otherwise of a tradition in this area.

(1) On the one hand, inter-municipal co-operation has traditionally been very important in the majority of countries. Those countries with a strong tradition include Germany, Spain, the Netherlands and the Nordic countries in general (Finland, Denmark, Norway). In this group, which is not entirely homogeneous, differences may be observed between, for example, France, Italy and the United Kingdom: inter-municipal co-operation is very extensive in France; in Italy it was extremely limited until the second half of the 1990s; and in the United Kingdom it is not very vigorous, apparently because the existence of large municipalities reduces the need to engage in co-operation. In Greece inter-municipal co-operation dates back to the beginning of the 20th century (1912) but has not become a tradition because of the differences in political interests at the municipal level, which prevent a mood of co-operation from developing. In Sweden, although the first major Act on federations of municipalities was passed in 1918, inter-municipal co-operation is less extensive owing to the successful process of merging municipalities over several decades: there are now just 290 municipalities, compared with 2500 in the 1940s. In the light of these comparisons, it may be concluded that inter-municipal co-operation is not very highly developed in those countries whose municipalities are generally large (e.g.: Sweden and the United Kingdom).

The majority of west European countries share similar features, forming a kind of matrix for the historical development of inter-municipal co-operation:

(a) provision for, or regulation of, inter-municipal co-operation appeared in the early 20th century (example: Act of 14 February 1900 in Luxembourg, Act of 22 March 1890 in France, 1919 Act in Sweden);
(b) such co-operation developed gradually over the next few decades;
(c) it expanded rapidly from the 1960s and 1970s;
(d) it occupies a special place in current legislation on local government (for example, Italy's constitutional reform and Single Act on Local Authorities of 2000, and the constitutional reform and Acts of 1980, 1986, 1994 and 2001 in Greece).

(2) On the other hand, there are countries – with the notable exception of Slovenia – where inter-municipal co-operation is neither particularly vigorous nor rooted in tradition, for various reasons (including the Russian Federation, the Czech Republic, Ukraine, "the former Yugoslav Republic of Macedonia", Romania and Armenia). In some countries, inter-municipal co-operation is hardly practised (Georgia, Bosnia and Herzegovina).

13. According to GIE experts from the aforementioned States, this situation may be ascribed, *inter alia,* to the following factors:

- mistrust on the part of local politicians, who do not believe inter-municipal co-operation is effective (Latvia);

- a tradition of considerable centralisation (particularly in Ukraine and Georgia), the lack of any tradition of inter-municipal co-operation (Armenia); a "hierarchical" mentality handed down from the past (Russian Federation); a transition period following the move away from a state-controlled system (Bosnia and Herzegovina);
- an unduly "individualist" approach to local democracy combined with a legislative framework affording little encouragement for inter-municipal co-operation and various political impediments (Romania);
- the adverse effects of the traditional "administrative culture", with an excessive focus on distinctive features and individuality ("the former Yugoslav Republic of Macedonia");
- an excessively party political approach to municipal affairs, meaning that decisions to engage in co-operation rely on a political consensus between mayors of neighbouring municipalities;
- budgetary impediments and restrictions on municipalities' budgets (Czech Republic).

14. Several of these countries have not yet fully completed the process of municipal decentralisation. Inter-municipal co-operation is thus a "second-generation" development, which does not appear to be entirely relevant as yet (Bosnia and Herzegovina).

2.2 Areas and fields in which "permanent" inter-municipal co-operation is most common / most frequently used

15. In most of the countries studied, inter-municipal co-operation is used in a wide range of sectors coming within the remit of municipalities:

- drinking water supply
- waste water treatment
- sewage treatment
- public transport
- fire fighting, fire brigades
- waste collection and management, including building and operating waste management facilities
- health
- welfare support
- economic and territorial development
- public amenities
- supply of machines and materials
- school facilities
- road maintenance
- town and country planning
- environmental management and protection
- management of abattoirs and municipal markets
- leisure and tourism

16. In addition to the usual sectors, in some countries inter-municipal co-operation has also developed in specific areas, such as:

- primary education (Luxembourg)
- libraries (Malta)
- psychological support and dental care services (Denmark)
- strategic planning (UK)
- use of "shared" bridges (UK)
- electoral roll (UK)
- civil-status register
- agricultural irrigation projects (Turkey)
- management of European Union structural funds available to municipalities (Estonia, Slovak Republic)
- tourism promotion (Spain)
- rescue services (Sweden)
- studies on local development.

17. One very interesting issue in this respect is whether municipalities are entirely free to decide on the sectors or public services in relation to which they wish to co-operate, or whether, on the contrary, national legislation (or *Land/*regional legislation) can restrict this capacity by stipulating "mandatory" areas of co-operation or limiting the range of sectors in which co-operation is allowed. As a rule, municipalities are free to decide on areas of co-operation, with the notable exception of France, where communities of municipalities – a form of specific co-operation structure – must exercise responsibilities in at least three areas, two of which are stipulated by law (spatial planning and economic development), while the third must be selected by municipalities from a list of five other areas stipulated by law.

2.3 Inter-municipal co-operation: a voluntary step that may sometimes be imposed

18. In most countries, inter-municipal co-operation takes place spontaneously, although in some cases it is a response, as it were, to failed government plans to merge municipalities. According to the GIE experts' replies, inter-municipal co-operation appears to be entirely voluntary, based on independent decisions by municipalities.

19. In any event, governments do not remain indifferent to inter-municipal co-operation. Central governments generally support, encourage and foster such co-operation, to varying degrees. In some countries, they do no more than encourage **inter-municipal** co-operation at a purely political level (Portugal); in others stronger inter-municipal co-operation is linked to the government's concern to impose mergers on municipalities (Greece); elsewhere, they even go so far as to provide specific grants (as in France). In countries with a federal structure or considerable regional decentralisation, the *Länder* or regions are usually favourable to inter-municipal co-operation. In some countries, however, the central government does not encourage inter-municipal co-operation at all, owing to a policy of hyper-centralisation (as appears to be the case in Georgia).

20. The voluntary, spontaneous nature of inter-municipal co-operation does not mean it is possible to establish co-operation structures without any kind of intervention from higher levels of government, whether this is the result of a general power of supervision or other reasons (co-ordination, exercise of autonomous powers, etc.). In fact, in some countries the central government intervenes either to initiate the procedure for establishing a specific co-operation structure, or to "approve" or set up the structure itself (see point 4.4).

21. In addition to this "procedural" type of intervention by higher levels of government, it is also worth exploring whether, notwithstanding the generally voluntary nature of inter-municipal co-operation, the State/Region/*Land* can impose such a co-operation structure (either by merging the administration of several municipalities or by forcing a number of municipalities to form a consortium) irrespective of how keen the municipalities concerned are to engage in co-operation. A number of the GIE experts' reports provide relevant information in this connection:

- in Latvia, for example, inter-municipal co-operation can be imposed by law, as it can in Italy in respect of specific tasks or measures;

- in Switzerland, some cantonal legislation provides for the possibility of a mandatory transition to inter-municipal co-operation (the Constitution of St Gallen, for example);

- in Denmark, the Ministry of the Environment may impose inter-municipal co-operation for the management of certain environmental protection tasks;

- in Germany too, the law provides that the *Land* may organise more or less mandatory forms of co-operation by merging the administration of several municipalities;

- in Austria, public-law associations (*Gemeindeverbände)* may be made mandatory by the *Land* (in Tyrol, for example);

- in Turkey, the Council of Ministers may decide to require certain municipalities to form a consortium;

- in Portugal, mandatory co-operation in the form of "groupings of municipalities" goes back to 1979. Curiously, these mandatory groupings (which are now disappearing) were the first seeds of the current move towards voluntary consortia;

- in Spain, alongside "pure" inter-municipal co-operation structures, such as "mancomunidades" (unions of municipalities), a trend has recently been observed in some regions (such as Catalonia) towards the establishment of "mandatory" inter-municipal co-ordination structures involving the regional government, which *de facto* takes the strategic decisions. In this case, co-operation or "co-ordination" is in fact mandatory;

- in the Slovak Republic, inter-municipal co-operation may be imposed in respect of delegated responsibilities;

- in Sweden, co-operation may be mandatory in the case of a regional plan providing for co-ordinated water and land use by the municipalities concerned;

- in Greece the law stipulates that a municipality may be obliged to join a union by decision of the Secretary General of the Region (who represents the State) in specific cases: a) when it is not possible to cater for the residents' needs by other means; b) if the board of governors of the union so decides; c) if the municipality concerned lies within the geographical area covered by the union.

3. GENERAL INSTITUTIONAL FRAMEWORK FOR INTER-MUNICIPAL CO-OPERATION

22. The following section of the draft report will explore and outline the most common mechanisms for inter-municipal co-operation, from an exclusively legal perspective.

3.1. Right to co-operate and/or form consortia with others

23. Firstly, the question arises as to whether inter-municipal co-operation is based on a "right" or a legal "capacity/power" jointly to exercise powers and deliver services deriving from the legal provisions on local authorities. Analysis of the various reports confirms that in most cases this right/power is explicitly enshrined in law, if not the Constitution, although it may stem from historical tradition or be implied by the legislation.

24. A simple classification of the different countries may be attempted according to the legal basis for this right:

- countries in which the right to co-operate and/or form consortia with others is enshrined in the national Constitution: Ukraine, Austria, Portugal, Bulgaria; in Germany, the right to co-operate is encompassed by the constitutional guarantee of municipal autonomy;

- countries in which the right to co-operate is enshrined in the Constitutions of the cantons/*Länder* or other levels of government: Switzerland (implicitly);

- countries in which the right to co-operate and/or form consortia with others is recognised in the legislation governing local authorities. The majority of countries come into this category, including Slovenia, France, Greece, the United Kingdom, Azerbaijan, "the former Yugoslav Republic of Macedonia", Romania, Armenia, the Russian Federation, Norway and Spain. In those countries with a federal or highly decentralised structure, both national legislation and the specific legislation of each region/*Land* may grant local authorities this right;

- countries in which the right to co-operate and/or form consortia with others is also enshrined in legislation in particular sectors and/or rooted in tradition: Denmark.

25. Municipalities are not alone in enjoying the right to co-operate and/or form consortia with other local authorities. This right may also be exercised by authorities smaller – or covering a smaller area – than municipalities (such as parishes) or by supra-municipal authorities (such as counties, *Kreise* or *provincias*). Although this report deals with co-operation between municipalities in the true sense, it is

worth ascertaining whether the domestic legal system also gives other local authorities the right or capacity to co-operate and form consortia with one another.

26. The reports indicate that in those countries without any second-tier local authorities (such as Slovenia, Armenia and Austria), this right is naturally granted only to municipalities. In other countries, the right to co-operate is available to almost all non-State territorial authorities within both the "first" and "second" tiers.

27. For example:

- in Denmark, counties also have the right to form consortia with others;
- in Romania, there is considerable co-operation between counties;
- in Turkey, provinces and villages – as well as municipalities – can form consortia with one another. As a result, it is possible to set up "homogeneous" associations (made up exclusively of municipalities or provinces) or "mixed" associations (made up of municipalities and provinces, for example);
- in Portugal, sub-municipal local authorities also have the right to form consortia with one another;
- in the Russian Federation, the three types of local authority have the right to engage in inter-municipal co-operation;
- in Norway, "county municipalities" (second tier) also enjoy the same rights;
- in Latvia, regional authorities have the right to co-operate;
- in Spain, national legislation explicitly allowed association between "second-tier" local authorities (*provincias*) from 1913, but current national legislation does not provide for this form of association. That does not prevent regional legislation from regulating inter-provincial co-operation within regional boundaries;
- in the Netherlands, all local authorities are also granted the right to co-operate;
- in the Slovak Republic, regions also have the right to form consortia with one another;
- in Sweden, this also applies to counties or regions in the south of the country;
- in Germany co-operation between the *Kreise* (second-tier authorities) and also between the *Länder* is both possible and frequent.

3.2. Legal regulation of inter-municipal co-operation

28. It is worth ascertaining whether inter-municipal co-operation is highly regulated by the State or *Land*/region/canton or whether, on the contrary, the rules governing it are entirely or largely determined on an *ad hoc* basis by decision of the partner municipalities.

29. In some countries (such as France, Portugal and Greece), the rules governing inter-municipal co-operation are highly regulated by law, leaving municipalities little room for manoeuvre. In the majority of countries, however, the converse is the rule. In the Netherlands, a specific Act (1984/2006) provides a general legal framework for co-operation, but municipalities can determine many organisational and operational aspects by means of agreements. In Germany, although the laws of the various *Länder* are fairly comprehensive, they give municipalities the right to draw up the regulations governing the co-operation structure. In Switzerland, the extent of regulation varies from one canton to another. In Spain, the legal regime governing inter-municipal co-operation is not highly regulated. On the contrary, national (and in most cases regional) legislation simply lays down minimum substantive and procedural rules. As a result, the legal regime governing inter-municipal co-operation is determined mainly on an *ad hoc* basis by decision of the partner municipalities, as reflected in the inter-municipal co-operation body's "estatutos" (regulations). In Latvia, municipal co-operation is not highly regulated, and specific aspects of co-operation are determined on an *ad hoc* basis by decision of the municipalities concerned.

30. At the other end of the spectrum, legislation may be very general in scope, failing to lay down any rules concerning the various forms of and mechanisms for inter-municipal co-operation (Romania, Armenia and Georgia), or there may not be any specific "administrative" regulation because associations of municipalities are considered to come under private law, with the only legal rules applicable being the Commerce Code and Civil Code (Slovak Republic).

31. Naturally, the system of government has an obvious impact on the extent to which regulation of inter-municipal co-operation is uniform. In unitary countries (Portugal, Turkey), such regulation is

universal. In federal or highly decentralised countries, it may vary from one region to another (Austria, Spain, Germany, Italy).

32. The existence or otherwise of extensive regulation of inter-municipal co-operation is a significant issue, as it might be worth exploring the possible link between the level of regulation of inter-municipal co-operation and the degree of autonomy enjoyed by local authorities. Such a link may be inferred from the fact that, in countries with considerable regulation of inter-municipal co-operation, municipalities' freedom is restricted since they cannot determine any major aspect of co-operation structures; in countries with little regulation of inter-municipal co-operation, on the other hand, municipalities appear to enjoy a greater degree of autonomy. The basis for this interpretation is not sufficiently sound, however, given that two situations may be observed in the group of countries where inter-municipal co-operation is not highly regulated: countries such as Spain, where municipalities enjoy considerable autonomy in practice, and others such as Romania and Armenia, where regulation of inter-municipal co-operation is minimal, if not non-existent. In the latter cases, little regulation does not necessarily reflect a transfer from higher levels of government to municipalities, but, for instance, a lack of political concern justified by the unusual nature of inter-municipal co-operation.

3.3 Main forms of inter-municipal co-operation

33. The forms and types of inter-municipal co-operation in Europe vary widely – as does the legislation governing it – according to each country's constitutional and municipal tradition. Possible arrangements for inter-municipal co-operation may be subject to: (a) national legislation, exclusively; (b) regional, *Land* or canton legislation, exclusively; (c) both.

34. Notwithstanding the wide variety of co-operation mechanisms, certain features may be identified:

- in some cases, domestic legislation makes fairly detailed provision for a comprehensive range of different forms of co-operation between municipalities. This appears to be the case in France, which has nearly ten different kinds of specific co-operation structure, Italy, where the 2000 Single Act provides for five different "forms of association", or Greece, where the Single Act on Local Authorities provides for four types;

- in other cases, however, the options are confined to one or two main forms of co-operation. In the extreme case of Liechtenstein, there is no specific form of inter-municipal co-operation; the State itself is the result of co-operation between eleven municipalities;

- in some countries, municipalities may establish legal entities under private law, but not administrative structures that constitute public institutions or bodies in their own right (as in Bulgaria); in others, local legislation allows a generic form of inter-municipal co-operation but does not itself lay down a code or specify different types. This appears to be the case in Romania, for example.

35. Be that as it may, in general municipalities are entirely free to choose the types of inter-municipal co-operation arrangement they deem most suitable. A specific form may, however, be imposed by law or by a higher level of government (State, region, canton, etc.), as indicated above.

36. The GIE experts' reports show that inter-municipal co-operation can take various forms, as outlined below.

(A) Informal co-operation

37. Municipalities can co-operate *de facto* or provide mutual assistance in a spontaneous or informal manner without any kind of permanent legal framework. This is the case, for example, when a municipality helps a neighbouring municipality in the event of a fire, disaster or accident. All the countries allow for this possibility, which is outside – or beyond – the scope of a specific, detailed substantive framework.

(B) Agreements

38. If two or more municipalities wish to establish a more stable, formal and permanent framework for co-operation, they are free to sign agreements or contracts with one another (*Arbeitsgemeinschaften* in Germany, *Samarbetsavtal* in Sweden, "inter-municipal co-operation contracts" and "planning contracts" in Greece, "inter-administrative co-operation agreements" in Spain), in accordance with which they undertake to co-operate, collaborate and provide mutual assistance in specific areas (for example, joint public works or joint delivery of public services such as transport, exchanges of municipal employees, etc).

39. Such agreements, which do not give rise to the establishment of new legal entities, are the result of powers or competences normally inherent in the full legal personality enjoyed by local authorities. In some countries, such agreements are in the nature of a contract between legal entities and are subject to civil/private law; in others, they are regarded as agreements between administrative entities and are entirely subject to administrative law (Spain).

40. The use of this form of co-operation is often appropriate for one-off or highly specific needs that do not need to be directed towards a specific co-operation structure. It is possible, however, that this may be a country's only form of inter-municipal co-operation, if its domestic law prohibits municipalities from establishing permanent administrative co-operation structures (as in Bulgaria and Latvia).

41. With some degree of uniformity in all the countries studied, municipalities enjoy sufficient autonomy and reasonable latitude to sign all kinds of bilateral or multilateral agreements with one another on **inter-municipal** co-operation. As a rule, such agreements do not have to be authorised by a higher level of government, but in some countries municipalities must at least notify the State and/or the region/*Land* to which they belong.

(C) Establishment of organisations under public or private law

42. Municipalities can decide to set up new, separate organisations with their own legal personality. Within this category, sub-categories may also be identified according to the types of arrangement chosen:

(C.1) *Setting up companies:*

This type of inter-municipal co-operation arrangement appears to be very common in some countries. For example, in Switzerland a *Privatrechtliche Aktiengesellschaft* or joint-stock company under private law may be set up to provide public services such as transport, energy and waste management. The situation is the same in Germany.

(C.2) *Setting up non-profit legal entities under private law:*

This appears to be the case, for example, in respect of private-law foundations (*Privatrechtliche Stiftung* in Switzerland*).*

Naturally, neither companies nor foundations were originally designed as mechanisms for inter-municipal co-operation; they may be used for this purpose, however.

(C.3) *Setting up specific public-law structures in the nature of administrative bodies:*

Such structures become public bodies in their own right and usually have their own legal personality, budget and assets, separate from those of the founding municipalities. These various arrangements are discussed in the following section.

4. SPECIFIC ADMINISTRATIVE STRUCTURES FOR INTER-MUNICIPAL CO-OPERATION

4.1 General approach

43. In the majority of countries, the law grants municipalities the capacity or right to set up *ad hoc* co-operation and joint management structures, which may have their own separate legal personality independent of that of the founding municipalities; this is not the case in all countries, however. Bulgarian legislation, for example, does not grant municipalities the right to set up administrative co-operation structures that constitute public institutions or bodies in their own right. The same applies to Latvia.

44. In some countries, these specific administrative structures are public institutions that cannot be regarded as local authorities (France); in others, they may be regarded as local authorities in their own right (Spain).

45. In some cases, national legislation provides for several types of co-operation structure (Germany, France), leaving it up to municipalities to choose one; sometimes, provision is made for only one type of institutional structure (in Luxembourg, unions of municipalities). In Germany there is more variety because each *Land* has its own legislation regulating these co-operation structures.

46. This form of co-operation is very widespread in countries with vigorous inter-municipal co-operation, although it appears to be difficult to obtain more or less centralised, up-to-date figures for the number of inter-municipal co-operation bodies and the types and categories of institutions. Several GIE experts explained that more or less centralised figures on inter-municipal co-operation bodies were not available in their countries ("the former Yugoslav Republic of Macedonia", Bosnia and Herzegovina), difficult to obtain, scattered too widely or limited to twinnings (Greece).

47. Some figures supplied by GIE experts attest to the importance of such institutions, however. In Luxembourg, for example, unions of municipalities receive revenue amounting to approximately 15% of municipalities' revenue (10% in the Netherlands). In Spain, numerous municipalities are involved in specific co-operation structures, particularly in some regions ("Comunidades Autónomas"). For example, according to July 2002 figures, 97% of municipalities in the Navarra region belong to at least one inter-municipal union ("mancomunidad") (92% in Extremadura region, 84% in Castilla-La Mancha and 78% in the Basque Country). Finland has 431 municipalities in total, and some 250 *kuntayhtymä* (joint local authorities).

4.2 Main types of administrative structure

48. These structures have different names and legal configurations in the various States studied. In order to give a general overview of the different types, the table in Appendix I to this report lists the main forms in each country.

49. Some of these structures are regarded as public institutions, such as *syndicats de communes* (France), and others as local authorities in their own right (*mancomunidades* in Spain). Some structures are set up to pursue a single goal or deliver a single public service, while others pursue several goals or deliver a number of services.

50. In addition to traditional arrangements, some countries have specific organisations allowing municipalities to transfer the performance of a task to one of the participating municipalities. This appears to be true of the *Centrumgemeende* in the Netherlands, the *öffentlich-rechtliche Vereinbarung* in Germany and the *Sitzgemeindemodell* in Switzerland.

51. Another type of administrative structure is designed to meet the specific needs of an inter-municipal or metropolitan area made up of a large city surrounded by other municipalities that have gradually been absorbed as a result of its expansion, such that *de facto* they form a single conurbation.

52. This is true of *"áreas metropolitanas"* in Spain, *"communautés urbaines"* and *"communautés d´agglomération"* in France and *"grandes áreas metropolitanas"* and *"comunidades urbanas"* in Portugal.

Such structures are also common in Germany, where they are known as *Stadt-Umland-Verbände* or *Regionalverbände.*

53. Municipalities may also belong to "consortiums", bodies made up of local authorities and other administrative authorities, such as regional governments. In view of their "mixed" nature, these structures are beyond the scope of this report.

54. Irrespective of the range of forms and legal configurations, all of these structures have one point in common: they are all organisations under public law. They have their own legal personality separate from that of their founding municipalities, and enjoy full legal capacity to discharge their specific tasks and responsibilities. They also have their own budgets, financial resources, staff, assets and so on.

4.3 Procedure for setting up such institutions

4.3.1 Establishment

55. The procedure for establishing a specific administrative structure for inter-municipal co-operation is determined solely by national legislation in unitary countries (France, Portugal), or by that of the *Land* or canton in federal countries (Switzerland, Germany). In countries with a high degree of political decentralisation (such as Spain and Italy), national legislation simply stipulates general aspects of the procedure, which may be supplemented by the legislation of the Autonomous Communities or *Regioni.*

56. In accordance with the principle of voluntary inter-municipal co-operation, the establishment of specific administrative structures for such co-operation must be sought and decided by the municipalities concerned. As a rule, the municipal organ empowered to take specific decisions on the establishment of such a body is the deliberative organ (the council). Domestic legislation may require the founding municipal councils to take decisions by a majority, or a qualified majority if need be (an absolute majority, for example), but never requires unanimous decisions.

57. Some countries' domestic legislation lays down certain minimum conditions for municipalities to be able to set the procedure in motion (territorial homogeneity, number of municipalities or residents concerned, etc.), but in most cases there are no restrictions. Unfortunately, one feature is almost universal: municipal residents do not usually play any role in the procedure for establishing the body.

58. In some countries (such as Spain), municipalities wishing to set in motion the procedure for forming an association must set up an assembly or board in which all the municipalities are represented. This inter-municipal assembly must draw up draft regulations for the "mancomunidad".

4.3.2 Intervention by administrative authorities at a higher level

59. As indicated above, the voluntary and spontaneous nature of inter-municipal co-operation does not mean co-operation structures can be set up without any intervention from a higher level of government. As a rule, inter-municipal co-operation bodies are set up simply by decision of the partner municipalities, but in some cases they also have to be recognised, authorised or registered by a higher level of government (State/region).

60. In some countries, the State intervenes either to initiate the procedure for establishing a specific co-operation structure, or to "approve" or set up the structure itself:

- in France, the initiative may have to come from the State's representative. The procedure for setting up an EPCI (public institution for inter-municipal co-operation) is a complex one, involving the municipalities, the *département* co-operation commission and the prefect, who, strictly speaking, takes the decision to set up the institution. In addition, national legislation lays down a number of substantive requirements any such arrangement must satisfy, such as geographical coherence;

- in the United Kingdom, the establishment of a "joint board" must first be approved by the relevant ministry;

- in Luxembourg, an agreement to set up a union of municipalities must obtain approval in the form of a grand ducal order;

- in Turkey, the establishment of unions of municipalities requires authorisation from the Council of Ministers.

61. Apart from these instances, no provision is made for authorisation from the region or State, and nor is such authorisation necessary. The founding municipalities merely inform the regional and/or central government of their decision to establish the new structure. It is simply a matter of notification. Another important aspect of such co-operation structures is the fact that, as a rule, municipalities have the power (or preliminary obligation) to approve regulations determining the structure, financing, functions and organisation of the co-operation institution, which may have to be published in the official journal of the State, region or province (in Spain, regulations or *estatutos;* in Italy, the "statuto" for *Unione di Comuni).*

62. In any event, the new institution usually has to be registered by the national and/or cantonal, regional or other authorities. In Spain, for example, every "mancomunidad" must be entered in the national register of local authorities. The establishment of a Zaednicki administracii (joint authority) in "the former Yugoslav Republic of Macedonia" must be published in the Official Journal of the Republic.

63. Lastly, when it comes to setting up certain types of structure, municipalities are entitled only to initiate the procedure, which is completed by decision of the region/State. This is the case for *áreas metropolitanas* ("urban communities") in Spain. In this instance, regions alone have the power to set up such authorities. Municipalities simply "request" the establishment of such a structure.

4.4 Organisation of administrative co-operation structures

64. The internal organisation of administrative co-operation structures is even more difficult to put on a systematic footing, for, as indicated above, in most cases it is determined by decision of the municipalities concerned.

65. Logically and almost universally, the GIE experts' reports highlight a common feature: governing bodies are elected directly by the municipal councils. In some cases, specific rules also apply: in Norway, where a company is set up, the plenary assembly is made up of representatives of the partner authorities according to the distribution of shares; in Germany, a director is put in charge of the joint authority, which is overseen by an assembly made up of representatives of the participating municipalities.

4.5 Funding of co-operation structures

66. The majority of inter-municipal co-operation structures have their own budgets and assets, separate from those of the founding municipalities. The inter-municipal governing board takes decisions in relation to budgetary documents. Domestic legislation usually determines the funding of such structures, although in some countries, such as Armenia, the law has nothing to say about this aspect of inter-municipal co-operation.

67. As a rule, the budgets of such structures are funded from financial contributions from the participating municipalities.

68. These contributions may be stipulated in the founding agreement or the regulations governing the structure. In other cases, they may be proportional to the number of residents in each municipality (as in Ukraine).

69. Such structures may also obtain resources from a number of sources:

- central government transfers and grants for specific projects (in the case of Liechtenstein) or even European Union funding (European Regional Development Fund, etc.);

- donations and income from economic activities (Russian Federation);

- the social security system (for hospitals, in Luxembourg);

- equipment and material and human resources transferred by the founding municipalities;

- in the majority of countries, co-operation structures can usually charge fees or bill for the services delivered, which must be paid for by residents of the participating municipalities (Spain, Finland, Sweden, etc.).

70. As regards the possibility of own taxation, this is probably a kind of *summa divisio* of inter-municipal co-operation bodies. In federal countries such as Germany, Austria and Switzerland, it depends on the *Land* or canton. Generally speaking, inter-municipal co-operation bodies are not entitled to raise their own taxes. This is the rule in "the former Yugoslav Republic of Macedonia". In Switzerland, cantonal law usually states explicitly that inter-municipal bodies cannot raise taxes. This is also the case in Ukraine. In other countries, such a possibility is even less likely, given that there are no local taxes (Czech Republic).

71. France, on the other hand, has two types of co-operation body: those that have the power to raise their own taxes and those that do not. The first type can rely on two forms of own taxation: the single business tax (a tax on companies) and an additional rate calculated on the basis of local municipal taxes. They also receive non-earmarked operating income in the form of a general financial grant from the State. The second type (those not empowered to raise their own taxes) are financed by contributions from the municipalities' budgets. Both types of body also receive equipment grants.

4.6 Supervision of administrative co-operation structures

72. In unitary countries, either central government authorities (the Ministry of the Interior in Turkey) or deconcentrated government authorities (prefects in France) may exercise a certain form of supervision or even control over the activities of co-operation structures, while in federal or highly decentralised States such supervision is exercised by the authorities of the *Land* or region, as the case may be (in Austria, Germany and Spain).

73. As regards the supervision exercised by the founding municipalities, legally speaking it is impossible to talk of co-operation bodies being independent of their founding municipalities, since they are an instrument for the delivery of municipal services. As a result, municipalities can exercise several kinds of supervision over the activities of inter-municipal co-operation structures, such as supervision of effectiveness or even expediency where certain thresholds or values are exceeded.

5. TRANSFRONTIER INTER-MUNICIPAL CO-OPERATION

74. Nearly all the countries studied have signed and ratified the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities [ETS n° 106] and the protocols thereto. Most of the GIE experts state that such co-operation is highly developed in their countries. The development of transfrontier co-operation is often prompted by political considerations or choices at national level. This would explain, for example, the fact that while transfrontier co-operation between Sweden and Norway is highly developed, there is very little such co-operation between Sweden and other neighbouring countries; transfrontier co-operation between Valka (Latvia) and Valga (Estonia) is another excellent example.

75. In European Union member States, the INTERREG programme (for the development of transfrontier regions) has done a great deal to further such co-operation. This is true, for example, of co-operation between municipalities in transfrontier areas of Spain and Portugal, and Spain and France.

76. Under the European Outline Convention ETS n° 106 and European Union regulations, transfrontier agreements between municipalities do not have to be authorised by a higher level of government (State, region, etc.), but in most cases these authorities must be notified of the existence of such an understanding (either in advance or after the fact).

77. In Spain, for instance, in accordance with the Royal Decree of 31 July 1997, local authorities wishing to set in motion a transfrontier co-operation procedure must notify the central government in advance of the draft agreement they intend to sign. This advance notification is necessary in order for the inter-municipal agreement to be valid. In addition, transfrontier agreements must be published in the central government's Official Journal.

6. OTHER ISSUES

6.1. Inter-municipal co-operation and democracy

78. In addition to a legal description of inter-municipal co-operation structures, consideration may also be given to social and political aspects of such co-operation. The most significant is probably the relationship between inter-municipal co-operation and democracy. Citizens are not usually consulted about the establishment of an inter-municipal co-operation structure. Moreover, members of the ruling bodies, councils or boards of such inter-municipal bodies are not elected by citizens. Ultimately, local elected representatives may be tempted to escape primary political responsibility while delegating the provision of public services to inter-municipal structures that do not belong exclusively to any one municipality and, in some cases, resemble obscure or "remote" authorities. This issue attracted the attention of several GIE experts. For instance, the fact that those in charge of inter-municipal co-operation bodies are not elected by municipal residents has been the subject of some debate in Sweden, concerning the somewhat "remote" nature of such structures. In Germany too, the issue has generated considerable discussion, giving rise to normative solutions such as the "Samtgemeinde" (inter-municipal structure found in the *Land* of Lower Saxony) and the "Verbandsgemeinde" (found in Rhineland-Palatinate). These bodies are considered as fully-fledged municipalities, with their respective council and mayor directly elected in the *Samtgemeinde/Verbandsgemeinde*, but they are made up of several "local" member municipalities each of which has its own council and mayor, also directly elected in the local municipality. In the United Kingdom, the "indirect" nature of "inter-municipal" democracy and the risk of confusion over accountability came in for a great deal of criticism prior to the 1974/75 reforms.

79. As in relation to many other issues connected with the exercise of democracy, the situation in Switzerland in this area is of considerable interest. The municipal legislation of the St Gallen canton provides that, in certain circumstances, the decision to join an inter-municipal structure may be put to a referendum. Other cantons also lay down similar rules, ensuring considerable involvement of citizens at the stage of setting up inter-municipal associations under public law. Public involvement continues at other points in the existence of inter-municipal associations, for instance when the association is wound up or needs exceptional financial resources. These decisions may also be put to a referendum, as happened, for example, in relation to the building of Fribourg's theatre (the responsibility of an **inter-municipal** association), when the municipality's citizens were called upon to give their opinion on the advisability of taking on the necessary debt. Other cantons have laid down different provisions on democratic supervision of inter-municipal associations under public law (Lucerne, Graubünden, etc.), and the Constitution of the Zürich canton even provides that inter-municipal associations under public law must be organised democratically, although some experts still consider the situation unsatisfactory. In other countries, however, such as Spain, this issue has not attracted significant attention.

6.2. Inter-municipal co-operation and Community law

80. Concerns have been voiced over the possible negative impact of Community law on inter-municipal co-operation in Europe. Although this aspect of the question was not covered by the experts in their written replies (which may mean that it is not a significant issue in their respective countries), it is worth considering the broad implications.

81. The restrictive effect of Community law on inter-municipal co-operation is of course confined to those Council of Europe member states which are also members of the European Union, but of no consequence to those which are not. This is therefore an issue which concerns a specific group of countries. Since the 1990s Community law on public contracts and competition and regulations on "services of general

interest"[3] have had a restrictive effect on a technique widely used by local authorities: that of setting up commercial or public companies (in which they own all or most of the capital) to provide public services.

82. Setting up such companies does not exempt them from Community laws governing the awarding of public and administrative contracts (such as Directive 2004/18/EC of 31 March 2004 (OJ 30.4.2004), especially in what is known as "in-house providing". In its decision of 18 November 1999, *Teckal* (C-107/98, Rec. p. 1-8121, point 50), the Court ruled that Council Directive 93/36/EEC of 14 June 1993, coordinating procedures for the award of public supply contracts, is applicable when a contracting authority, such as a local authority (in this case an Italian municipality) plans to conclude in writing, with an entity which is formally distinct from it and independent of it in regard to decision-making, a contract for pecuniary interest for the supply of products, whether or not that entity is itself a contracting authority. The important decision of the Court of Justice of the European Communities of 10 November 2005 (*Commission v. Austria*) concerns a municipal company the share capital of which was held in its entirety by the town of Mödling (*Land* of Lower Austria), and which was created to supply municipal waste management and elimination services. The Court found Austria guilty of violating Directive 92/50. However, in its decision of 11 January 2005, *Stadt Halle* and *RPL Lochau*, C-26/03, the Court held that a call for tenders is not mandatory when the public authority, which is a contracting authority, exercises over the separate entity concerned a control which is similar to that which it exercises over its own departments and that entity carries out the essential part of its activities with the controlling public authority or authorities.

83. There is thus concern that when municipalities set up inter-municipal co-operation structures to supply public services together they may contravene Community law (in the field of administrative contracts, public contracts and fair competition), especially when the corresponding regulations are interpreted and applied in the strictest possible manner.

84. In our opinion the possibility of European Union law being an obstacle to the development of inter-municipal co-operation in Europe is slight, as a clear distinction must be drawn between the problem of municipal public companies on the one hand and specific inter-municipal co-operation bodies on the other. While Community law on competition may affect the former, its impact on the latter would appear to be minor, for the simple reason that Community law does not (and cannot) oppose inter-municipal co-operation because of the principle of the institutional autonomy of the member states, as established in the case-law of the Court of Justice of the European Communities. The member states' administrative organisation is determined solely by their domestic law. Accordingly, and in keeping with the institutional autonomy principle, Community law cannot have a restrictive effect on the organisational decision to set up a specific public body for inter-municipal co-operation. This is a free and independent decision and, one might say, an example of the "sovereignty" of the power of organisational self-determination.

85. Furthermore, between the founding municipalities and the co-operation body (the union or association of municipalities, for example) there is no contract or agreement, no order or commission to provide a service, no payment, so there is no award of a public contract to speak of. Through its founding act, i.e. by inter-subjective delegation, the co-operation body is made responsible for providing the service to the residents. Often inter-municipal co-operation concerns areas which are generally the prerogative of the State (education, security, etc.), which are not necessarily covered by regulations governing competition. Of course, once this co-operation body is up and running, it becomes a "contracting authority" in its own right, in keeping with Article 1, para. 9 of Directive 2004/18/EC of 31 March 2004 (OJ 30.4.2004). Based on this brief summary, it is reasonable to conclude that Community law should not be a major obstacle to the development of inter-municipal co-operation, provided, of course, that Community law on competition and the awarding of public contracts is duly observed.

7. PROSPECTS

86. On the whole, the prospects for extending inter-municipal co-operation in Europe in the future are very positive. In central and east European countries, GIE experts predict a bright future for inter-municipal co-operation, given that they regard it as a step that is both beneficial, in terms of management savings and

[3] Cf. Article 86 of the Treaty establishing the European Community, the Commission's Communication on "services of general interest in Europe", year 2000 (OJ 01/C/17/04) and the Green Paper on services of general interest in Europe, of 21 May 2003 (COM (2003)270).

efficiency, and inevitable (Croatia). In Latvia, a number of studies have revealed a change in local elected representatives' views on the respective advantages and disadvantages of mergers between municipalities and inter-municipal co-operation. In 1998, only a minority thought inter-municipal co-operation could replace mergers between municipalities, while in 2005 a majority of elected representatives were inclined to favour co-operation.

87. However, a few GIE experts expressed doubts or concerns, pointing to factors that might impede the expansion of inter-municipal co-operation. In some countries, reforms under way are designed to reduce the number of municipalities by means of mergers between such authorities (Denmark and Sweden). Other experts (referring to the German example) also point to the privatisation of public service provision by local and regional authorities, which is also likely to replace inter-municipal co-operation.

88. Finally, in a few countries the debate on inter-municipal co-operation is still in the initial stages as decentralisation is a recent phenomenon. In these countries ("the former Yugoslav Republic of Macedonia", for example) the experts observe: a) a lack of structured data on inter-municipal co-operation; b) a tendency to privatise municipal public services, which, as an alternative form of public organisation and management, could hinder the development of inter-municipal co-operation; c) a certain legal vacuum, as inter-municipal co-operation is developing without a clear legal framework, largely in the form of inter-administrative agreements.

89. Other experts believe inter-municipal co-operation has reached saturation point, considering that increased co-operation may not afford any added value in administrative or financial terms (as in the case of Finland). There is also a degree of pessimism in Georgia, where the establishment of districts or new supra-municipal territorial structures is likely to stifle any possibility of developing inter-municipal co-operation.

90. Be that as it may, international organisations should be able to provide specific technical assistance to those countries in which inter-municipal co-operation is destined to be developed, either because it is necessary in order to strengthen project management and public finances at the local level or as an alternative to mergers or privatisation.

8. RECOMMENDATIONS

91. On the basis of the above and of various articles of the European Charter of Local Self-Government (4.3, 4.4, 6.1, 8 and 10), the following recommendations may be made:

i. Inter-municipal co-operation should be encouraged and supported by the competent national, federal or federated authorities. This recommendation applies particularly to those countries which do not yet have a tradition of inter-municipal co-operation;

ii. In countries which have no specific legal framework covering inter-municipal co-operation, steps should be taken to establish a clear and accessible reference framework for the development of inter-municipal co-operation;

iii. In countries which already have such a legal framework, this should be harmonised and updated to facilitate inter-municipal co-operation;

iv. The competent authorities in the Council of Europe member states should be encouraged to develop a political strategy to strengthen inter-municipal co-operation;

v. The competent national, federal or federated authorities should foster and strengthen the role of local authority residents in the procedure for setting up special inter-municipal co-operation structures. Their effective participation should also be encouraged throughout the existence of the public or private body concerned and when it is wound up;

vi. The competent national authorities should develop proper techniques and procedures to foster good governance and transparency in decision making and the running of special inter-municipal co-operation structures;

vii. Inter-municipal co-operation should not be imposed unless this eventuality is explicitly provided for by law, and then only after consultation with the municipalities concerned. In particular it should only be possible to oblige a municipality to join a special inter-municipal co-operation structure (union or municipalities or other consortium) for objective reasons of supra-municipal interest, duly specified by law, and after the municipality concerned has been consulted;

viii. The rules and principles governing the transposition of Community law on competition and the awarding of public and administrative contracts should be harmonised to make it clear that they do not apply to inter-municipal co-operation which gives rise to the establishment of a specific municipal co-operation structure (union or other type);

ix. Before taking the decision to privatise public services or merge municipalities, the competent national, federal or federated authorities should compare the respective costs and advantages of inter-municipal co-operation, mergers and privatisation of public services;

x. The competent authorities should consider the possibility of collecting data and producing statistics on inter-municipal co-operation with a view to assessing its real extent and whether or not they should take steps to strengthen it.

APPENDIX I

Main forms of inter-municipal co-operation
(replies to question 13 of the questionnaire)(*)

COUNTRY	NAME
Armenia	*Mighamajnkajin miavorum*
Austria	*Verwaltungsgemeinschaft,* *Gemeindeverband*
Azerbaijan	*Municipal associations*
Bosnia and Herzegovina	*Union of municipalities and cities*
Bulgaria	Non-existent
Croatia	*Udruge*
Czech Republic	*Svazek obcí*
Denmark	*Kommunale faellesskaber*
Estonia	*Kohaliku omavalitsuse üksuste liit,* *Ühisasutus*
Finland	*Kuntayhtymä*
France	Several forms of EPCI, including: - *communauté urbaine* *- communautés de communes* *- syndicat de communes*
Georgia	Non-existent
Germany	*Zweckverband* *Gemeindeverwaltungsverbände,* *Verwaltungsgemeinschaften* *Amt* *Verbandsgemeinde*
Greece	*sundesmoi* *sympoliteies*
Italy	*Consorzi* *Unione di Comuni*
Latvia	No specific terminology
Liechtenstein	*Konferenz der Bürgermeister* *Gemeindestiftungen* *Gemeindevereingungen* *Verbände* (ex : *Abfallverband)*
Luxembourg	*Syndicat de communes*
Netherlands	*Openbaar lichaam,* *Gemeenschappelijk orgaan* *Centrumgemente*

Norway	*Interkommunalt samarbied,* *Kommunalt foretak*
Portugal	*Grandes áreas metropolitanas,* *Comunidades urbanas* *Comunidades intermunicipais de fins gerais*
Romania	*Forms not stipulated by law*
Russia	*Local government associations*
Slovak Republic	*Združenie*
Slovenia	*Organi skupne uprave,* *Skupni organi upravljanja,* *zveza obcin*
Spain	*Mancomunidades municipales* *Areas metropolitanas*
Sweden	*Gemensam nämmd* *Kommunalförbund*
Switzerland (*)	*Sitzgemeindemodell,* *Öffentlich-rechtlicher Gemeindeverband/Zweckverband* *Öffentlich-rechtliche Anstalt* *Stiftungen* *Agglomération*
“the former Yugoslav Republic of Macedonia”	*Zaednicki fondov,* *Zednicki sluzbi* and *Zaednicki administracii*
Turkey	*Koyë hizmet götürme birligi*
Ukraine	No specific terminology
United Kingdom	*Joint Board* *Joint Authority*

(*) This table lists only specific inter-municipal co-operation structures in the nature of administrative or public-law bodies.

(**) Not in all cantons

APPENDIX 2

Questionnaire

"Institutional framework of inter-municipal co-operation"

drawn up by Professor Angel-Manuel MORENO,
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I. INTRODUCTION

Local authorities are traditionally analysed from a largely "subjective" standpoint where each municipality represents a unit managing the affairs of a population regarded more or less as an isolated entity. Nowadays, however, new approaches are gaining ground, such as the "functional" approach, in which municipalities no longer work in isolation, but together, in a linear or network structure, to meet growing and increasingly complex social demands and the needs of a mobile or unduly fragmented population (large conurbations, scattered population in rural areas, etc).

Inter-municipal co-operation has thus become an increasingly important topic on the local government scene in Europe. There are several general reasons for this trend, in addition to the specific circumstances of each country, which will be explored in this questionnaire. On the one hand, municipalities have to deliver increasingly numerous and expensive public services with resources that are all too often inadequate. They find themselves having to co-operate in order to pool their resources and thus create synergies and economies of scale. In other cases, they have to meet needs or resolve problems whose geographical scope goes beyond the boundaries of the municipality or which affect several neighbouring or bordering municipalities. On the other hand, the current proponents of efficiency in administrative action are putting forward new, "imaginative" forms of public service provision in which inter-municipal co-operation, in a linear or network structure, permits optimisation of public resources.

The development of inter-municipal co-operation appears to be connected with the problem of municipal fragmentation. This situation, which can be found in most countries, stems from a number of well known developments: democratic requirements, uniformity as a way of ensuring equality, etc. Municipal fragmentation does, however, have some very serious drawbacks, including a chronic inadequacy to ensure the provision of municipal public services, which in turn has even more harmful consequences for local authorities, such as, for example, a decision by parliament to place traditional municipal services in the hands of other levels of government (the region, the Land, etc). Given that plans to merge municipalities have often failed in the majority of countries, inter-municipal co-operation is regarded as the least harmful remedy to a situation which appears both irrational and permanent. In some countries, the vitality of inter-municipal co-operation is perhaps simply proof of the existence of municipal fragmentation.

The upshot of all these factors is that there is currently an almost irresistible momentum towards co-operation, collaboration and even association. However, inter-municipal co-operation raises other, not inconsiderable problems of a political or sociological nature: opaqueness of bureaucratic structures, sharing or even lack of direct political responsibility for management of public services, lack of direct democratic legitimacy, etc.

In addition to the "sociological" importance of the phenomenon of inter-municipal co-operation, the European Charter of Local Self-Government itself accords it a significant place. Co-operation is implicit in Article 4 as a means of exercising responsibilities and providing services, and the decision or choice to implement co-operation is thus regarded as a manifestation of local self-government. Furthermore, Article 6 allows municipalities to determine their own administrative structures in order to ensure effective management. Although this article refers to "internal structures", in our view it is clear that this organisational independence can apply perfectly well to "external" structures. Article 10.1, however, deals explicitly with co-operation between local authorities and their right to associate with a view to "seeking greater efficiency through joint projects or carrying out tasks which are beyond the capacity of a single authority" (explanatory report). In addition, paragraph 3 of this article deals with transfrontier co-operation,

which has also been the subject of a specific Council of Europe convention, the 1980 European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (ETS No. 106), or Madrid Convention. Article 10.1 has not yet been the subject of a specific study by the Group of Independent Experts.

All this provides ample justification for the group to work on the preparation of a general report on implementation of the Charter in the field of co-operation at local level. The purpose of this questionnaire is to guide us in our joint exploration of the situation and institutional framework of inter-municipal co-operation in our countries and in our joint thinking on the scope and scale of this phenomenon.

II. SCOPE AND SLANT OF THE QUESTIONNAIRE

This questionnaire focuses on co-operation between municipalities in the strict sense. Consequently, the following issues should not be addressed:

- representative associations of municipalities, such as national or regional associations and those whose main aim is to protect and promote their interests. These associations are covered by Article 10.2 of the Charter, and not Article 10.1.
- co-operation between municipalities and other levels of government, such as central government or the regions.
- co-operation between "second-tier" local authorities such as provinces, districts, départements, *Kreise,* etc.
- the merger of municipalities, as this phenomenon goes well beyond the aim of co-operation.

Reference will clearly have to be made to transfrontier municipal co-operation while bearing in mind that this is a subject dealt with specifically in another convention. The answers and comments on this point should be kept as brief as possible.

QUESTIONNAIRE

I. INTER-MUNICIPAL CO-OPERATION: GENERAL SITUATION AND PROSPECTS

The purpose of this section is to gain an idea of the current situation of inter-municipal co-operation in each country and ascertain its degree of development and efficiency. The subsequent sections will provide the opportunity to describe structures and give details of inter-municipal co-operation arrangements. This section is therefore a general approach, of a sociological or political nature, to the phenomenon of inter- municipal co-operation.

1. **What is the importance and scale of inter-municipal co-operation in your country in terms of its economic and institutional impact)? Does it have a long tradition or is it a recent phenomenon?**

2. **If inter-municipal co-operation has a major impact in your country: what are the reasons for this development? Are there reasons that are specific to your country as compared with other countries? If, on the other hand, inter-municipal co-operation is of minor importance: what are the hindrances or obstacles (legal, political, other) to its development?**

3. **What are the areas or fields in which inter-municipal co-operation is most common/used most?**

4. **Is inter-municipal co-operation encouraged/facilitated by the state/region or is it a spontaneous process initiated by the local authorities?**

5. **Is inter-municipal co-operation based on voluntary action by authorities or can it be imposed mandatorily by the law or by higher levels of government (state/region)? In what cases is that justified, and how?**

6. What are the future prospects for inter-municipal co-operation in your country?

II. THE GENERAL INSTITUTIONAL FRAMEWORK OF INTER-MUNICIPAL CO-OPERATION

The purpose of this section is to explore and describe the main lines of inter-municipal co-operation mechanisms and the most common forms. The analytical angle is legal.

7. In your country, do local authorities have the "right" or the legal capacity to co-operate and/or associate with others in order to exercise responsibilities and provide services jointly? Is this right/power explicitly recognised by the law or does it stem from tradition? Please identify the corresponding articles/provisions.

8. What types of local authorities have that right? Only municipalities, or other first-tier local authorities? What about "second tier" local authorities such as *provinces/départements/counties*, etc? Although this questionnaire deals exclusively with co-operation between municipalities in the strictest sense, it is important to know whether the internal legal system also recognises this right for other types of local authorities.

9. Is inter-municipal co-operation extensively regulated in your country, or are the co-operation arrangements determined on an ad hoc basis by decision of the partner municipalities? In the former case, are the rules the same throughout the country or are there several institutional frameworks?

10. Does inter-municipal co-operation occur in your country in a single form or type of structure, or is there a range of possible choices? Are municipalities entitled to choose the form they deem most suitable or can a specific form be prescribed by law or imposed by a higher level of government (state, region etc)?

Inter-municipal co-operation can take on a variety of forms. In our view, the most simple is the inter-municipal agreement, or even de facto collaboration or mutual assistance. At the other extreme, specific administrative structures may be set up by the partner municipalities and become an (independent?) organisation in their own right. The purpose of this question is simply to identify the different arrangements/structures, whose nature and characteristics will be described below.

11. The different forms and mechanisms of co-operation: if there are several possible inter-municipal co-operation arrangements, please give the name (in your language) and a brief description of each. What are, in your opinion, generally regarded to be the advantages and drawbacks of each form in your country?

12. Are municipalities sufficiently independent to sign agreements or contracts amongst themselves for the purposes of inter-municipal co-operation? In what cases? Do these agreements have to be authorised by a higher level of government? What is the relative importance of this form of co-operation?

Leaving aside the possibility of setting up specific administrative structures (which are the subject of questions of 13 to 21), municipalities may co-operate in other ways, for example by means of agreements or contracts. The purpose of this question is to explore inter-municipal co-operation when it does not involve the setting up of a permanent institution or administrative structure. NB: twinning is dealt with in question number 22.

III. SPECIFIC INTER-MUNICIPAL CO-OPERATION STRUCTURES

In several countries, the law grants municipalities the capacity or right to set up specific administrative structures for co-operation and joint management purposes (eg the "syndicat intercommunal" in France). These structures are public institutions in their own right, or even local authorities themselves, and may have a legal personality of their own, independent from those of the municipalities which form them. The purpose of this section is to explore the characteristics of these institutions. NB: if your country has too many different kinds of institutions, please answer questions 16 to 21 by focusing solely on the most representative or most widespread types of structure or institution.

13. Are municipalities entitled to set up public bodies or institutions for inter-municipal co-operation purposes? If so, specify the name and purpose of each type (eg: syndicat intercommunal, communauté urbaine, association de communes, etc)

14. In what fields are these institutions usually set up (eg public works or service provision)?

15. If you have centralised statistical data on inter-municipal co-operation bodies in your country (Ministry of Public Administration, Economy, Regions, etc), can you provide information concerning a. their total number and the types of institution; b. any trends that may be seen in the figures.

16. Are inter-municipal co-operation bodies set up simply by decision of the partner municipalities or do they have to be recognised/authorised/registered by a higher level of government (state/region)? Do they have full local authority status?

17. What organ of the municipality is competent to take specific decisions on the setting up of such a body? What is the role of the municipal population in the procedure for setting up the body? Are there minimum conditions required by law for setting up such institutions?

18. Give a broad description of how the most common inter-municipal co-operation bodies are typically organised, paying attention to the type of nomination or election of the Executive. Is their internal organisation determined by the law or by the founding municipalities, or are these bodies free to organise themselves?

19. How are these bodies funded? Can they raise funds of their own through, for example, fees or charges?

20. What types of supervision do the founding municipalities exercise over the activity of these bodies? What degree of independence do co-operation bodies enjoy vis-à-vis the partner municipalities?

21. In what cases and under what procedure can the founding municipalities decide to dissolve inter-municipal co-operation bodies?

IV. TRANSFRONTIER CO-OPERATION

The purpose of this section is to explore forms of inter-municipal co-operation in a transfrontier context, although it should be remembered that it is a topic which is covered by a specific Convention, and that the reply to question 23 should be brief.

22. Has your country ratified the Outline Convention on Transfrontier Co-operation between Territorial Communities and the protocols thereto?

23. With regard strictly to municipalities: what is the degree of development of this co-operation in your country? In what fields is transfrontier consultation most usual? Do transfrontier agreements between municipalities have to be authorised by a higher level of government (state, region etc)?

V. MISCELLANEOUS

23. Please discuss other questions or points which have not been dealt with in this questionnaire and which seem important to you. (For example, specific or particular forms of co-operation, which are not dealt with in the preceding questions).