

Intermunicipal co-operation

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Introduction

This manual has been devised as a practical tool, enabling a better understanding of intermunicipal co-operation through its various components. It is intended for use both by central governments of member States, which are the instigators of the legislation which allows intermunicipal co-operation to operate, and by local authorities wishing to engage in co-operation of this type. It may also be of use to any institution or individual with an interest in intermunicipal co-operation.

The manual attempts to give a practical response to a series of questions about intermunicipal co-operation, in particular concerning its organisation, competences, functioning and effectiveness. It has been drawn up on the basis of the information gathered and the comparative analyses made with a view to preparing the report on intermunicipal co-operation in member States of the Council of Europe¹.

Based on the detailed study of intermunicipal co-operation contained in the above-mentioned report, and identification of related good practices, this manual proposes choices for the design, organisation and management of intermunicipal co-operation. It also explores a number of ideas concerning appropriate legal instruments and the effectiveness of such co-operation.

Each theme addressed is presented both in theory and in practice, along with references to the experience of Council of Europe member States offering appropriate or effective examples of transferable practices in this field. Additional details, often essential to an understanding of the originality of certain models, can be found in the above-mentioned report. As a minimum, this manual can be regarded as a source of comparative information and suggestions.

Definition of intermunicipal co-operation

How can intermunicipal co-operation be defined? It involves a number of local authorities, or municipalities, in proximity to one another, which join forces to work together on developing and managing public services, amenities and infrastructure or on service delivery, to better respond to the needs of their users and with the aim of local development. Intermunicipal co-operation will place their joint action on a formal footing in both organisational and

¹ "Good practices regarding intermunicipal co-operation in the member states", 2007, Clotilde Deffigier, lecturer in public law at the University of Limoges, member of the Scientific Council of the Association EUROPA. The report is available on: www.coe.int

operational terms. It is thus possible to realise economies of scale through mutualised management of services of general public interest for all members, while at the same time expecting a high degree of quality of service.

As regards the level of development or organisational optimisation of co-operation, it is possible to talk about intermunicipal co-operation proper where, in particular, a self-governing body is established expressly to deal with the co-operation and the joint management of various key services and is governed by a number of specific rules. Where this is not the case, the co-operation does not go beyond the common-or-garden variety, which could eventually develop into an appropriately institutionalised form of intermunicipal co-operation. The borderline between different levels of development of co-operation is nonetheless difficult to discern. Intermunicipal co-operation concerns horizontal forms of co-operation between communities belonging to the same tier of government, but does not exclude vertical relations between grassroots authorities, intermunicipal entities and higher-level authorities where these are necessary for intermunicipal co-operation.

A manual based on good practices

What is meant by “good practices”? All intermunicipal practices are of interest and deserve to be more widely known, but a selection must be made among the best. This choice is necessarily open to controversy - what some people regard as a good practice may translate into a bad practice for others; this therefore means that good practice selection criteria must be determined. Certain ideological, economic and, notably, political choices necessarily shape the intermunicipal co-operation concept subscribed to at state or local level, for example with regard to the areas of competence of intermunicipal co-operation, the public or private law nature of the managing body, sources of funding for intermunicipal co-operation, its managers’ remuneration and political independence and the degree of public participation in intermunicipal local administration.

There are a few criteria that can be used to identify “good practices”: such practices are generally applicable, original, and effective, whether presumptively or measurably. It may be a sign of good practice that the rules and principles whereby intermunicipal co-operation is organised lend themselves to widespread application, the aim being to establish a number of practical rules for the appropriate organisation of intermunicipal co-operation. Conversely, the originality of some of the rules followed in such matters may also constitute a good practice criterion, in that they entail novel, inventive

practices, worthy of mention. At the same time, it is possible to regard as “good” practices which are effective, or have been identified as such by States, since they, for example, result in economies of scale, enable citizens to make themselves heard or satisfy the users of services delivered through intermunicipal co-operation. All these criteria are naturally liable to fluctuate, sometimes at random, since they are not defined in a precise, uniform way and are not subject to any regular independent review. They nonetheless offer a matrix for analysing intermunicipal co-operation, which, in relation to the key aspects and objectives of intermunicipal co-operation (managing bodies, competences, management and financing methods, the exercise of democracy, state supervision), can enable the identification of worthwhile practices, which may constitute a guide.

More often than not, for each key aspect of intermunicipal co-operation, a number of model rules and types of practices or initiatives are proposed, and each State is free to set up its own model according to its needs, its political approach and its economic objectives.

It goes without saying that there are no miracle solutions, and not all the practices are necessarily applicable in all countries. There may indeed be a number of legal, economic, financial, historical or geographical barriers thereto. However, States can take into account adaptations, ideas or guidelines derived from these practices when they are considering the implementation or the reform of an intermunicipal co-operation policy.

It must also be pointed out that this manual is not exhaustive and that other practices exist.

Intermunicipal co-operation data

What source data have been used for the manual? It is based on a questionnaire concerning key intermunicipal co-operation themes, which was completed by 23 member States of the Council of Europe (Austria, Belgium, Bulgaria, Cyprus, the Czech Republic, Finland, France, Georgia, Germany, Hungary, Italy, Lithuania, Luxembourg, the Netherlands, Norway, Portugal, the Russian Federation, Slovakia, Slovenia, Spain, Sweden, Switzerland, the United Kingdom). The questionnaire contained several headings: the nature of intermunicipal co-operation (foundations, degree of independence, nature of the bodies involved, applicable law), powers and responsibilities - competences - in intermunicipal co-operation (nature of competences, areas, territorial boundaries), management and effectiveness of intermunicipal co-

operation (assessment, resources, staffing), democracy and intermunicipal co-operation (citizen participation and information). It focused solely on the principal areas of co-operation, and the emphasis was therefore on delivery of public services and on particularly interesting experiences and innovations. Moreover, it stands to reason that the survey took place at a given point in time and intermunicipal co-operation is constantly changing.

A report was drawn up on the basis of an analysis of the replies to the questionnaire, with a view to identifying and promoting good practices and issuing guidelines on intermunicipal co-operation. Its objective was to review the structures and practices in this field. It also endeavoured to provide an overview of institutional and functional aspects of intermunicipal co-operation, covering its organisation, competences, operation, effectiveness and development.

Structure of the manual

With the aim of ensuring comprehensive coverage and for clarity's sake, this manual addresses the key aspects of intermunicipal co-operation (institutions, functions, legal rules governing its management, participation by citizens) from two main angles: the institutional aspect of intermunicipal co-operation (structural components) (III) and the operational aspect of intermunicipal co-operation (functional components) (IV). However, it begins with a more global approach to the subject, concerning the aims and methods of intermunicipal co-operation (I), and also current issues and prospects (II).

I. Intermunicipal co-operation: how and why?

To understand the logic of intermunicipal co-operation and describe the key stages in its development, it is necessary, after pinpointing the reasons for setting up and developing forms of intermunicipal co-operation (A), to break it down into its key components, setting out the features and foundations of typical intermunicipal co-operation (B).

A. Objectives of intermunicipal co-operation

1. Essential aims

States generally choose to develop intermunicipal co-operation for reasons of effective management. The aim is to ensure that local structures are realistic and relevant as far as the exercise of competences is concerned. It is a question of rationalising the exercise of competences at local level and ensuring that the assignment of key competences is matched by their responsible, effective exercise. For example, in Italy the allocation of competences is governed by two principles, subsidiarity and appropriateness: competences may be conferred on municipalities, but municipalities must be capable of exercising the competences conferred on them. Co-operation makes it possible to choose an appropriate scale for performing given types of function. It will therefore be for States to determine the relevant territorial unit, depending on the degree of effectiveness sought with regard to the purpose of the intermunicipal co-operation; this is a matter of adopting the best possible response to subsidiarity requirements. The territorial unit must also be chosen in line with the possibilities for pooling services.

States wish to deliver more and better-quality services, if possible at the lowest cost. This makes it important for a State to know whether intermunicipal co-operation is to involve municipalities or institutions that are equivalent in size, or conversely whether the arrangements are to apply to a lead municipality and a number of smaller municipalities or institutions, thus enabling enhanced control and effectiveness but to the detriment of the principle of equality and doubtless also that of local self-government.

Co-operation may be dictated by administrative or financial factors. From the administrative viewpoint, the goal may be to manage tasks together or to pool resources for the setting up or use of infrastructure and networks. This makes it worthwhile to share plans, resources and knowledge. On a financial level, intermunicipal co-operation should make it possible both to achieve economies of

scale by diminishing average costs per user, and to take advantage of grants from the State or the European Union. In some cases this requires States to be careful about the legal nature of the intermunicipal body, as not all grants or funds are available to all institutions under the same conditions.

Other aims are pooling knowledge and improving administration by means of benchmark comparisons and also having the possibility of recruiting qualified staff, thereby enabling further improvements in service quality.

There are also political reasons: co-operation makes it possible for municipalities to meet growing demand for services with unchanged, or even decreasing, financial resources. Pooling of services can be seen to be an important aspect of intermunicipal co-operation; this requires the State to give specific consideration to the body's purpose (single or multiple) and perhaps to perform a precise assessment upstream, so as to determine whether it is not more cost-effective to pool a number of services in similar fields (water supply and sewerage or education and school transport, for instance).

There are also geographical or spatial development reasons for setting up intermunicipal co-operation. Special local or regional characteristics may dictate the establishment of a particular type of co-operation structure, as in Italy's mountain communities, which have a separate legal system and special powers and responsibilities that are indispensable in the areas over which they have authority. In France the three main models of intermunicipal co-operation (communities of municipalities, "agglomeration" communities and urban communities) constitute a response, through the development of joint projects, to the break-up of municipalities and to size differences between authorities (of the country's 36 685 municipalities, 33 912 have less than 3 500 inhabitants, and only 37 more than 100 000 inhabitants). Each of these models is suited to the needs of rural areas or to those of urban conglomerations. Here again, legal systems vary according to models, and competences (such as waste management, spatial development or economic development) are determined in accordance with the model adopted. The Czech Republic has also chosen intermunicipal co-operation as a means of solving problems of population size or isolation.

States must therefore identify the underlying logic of the form of intermunicipal co-operation they wish to introduce: if the challenge is to combine spatial development objectives with considerations concerning coherent, sustainable development, it is clear that care must be taken to adapt the structures to the territories concerned. It is hard to imagine that the organisational approach could be the same in both mountain areas and shore or

maritime areas, or in both relatively inaccessible and well-served areas. Here too, an assessment must be made, since intermunicipal co-operation can help open up access to certain areas (competence for road building or transport links).

2. Rationalising the number of bodies

Rationalisation of local management is generally linked to a reduction in the number of municipal entities. The reduction of the number of entities is perceived in some European States as associated with the policy of intermunicipality (Germany, Finland, France, Italy, Slovakia, Sweden, Switzerland). Here the State's objective, as in the case of development of intermunicipal co-operation, is enhanced effectiveness of management. This is often a necessary preliminary stage for the development of intermunicipal co-operation in situations where municipal structures are inappropriate from a spatial, economic or demographic standpoint and consequently hinder the effective performance of the functions assigned to them.

Some States, which practice a highly advanced, or integrated, form of intermunicipal co-operation, have introduced merger policies, which make it possible to form a single municipality out of several adjoining municipalities. This so-called 'simple' merger, in which a single municipality continues to enjoy legal existence, is distinguished from an associative merger, in which the municipalities which are absorbed may continue to enjoy certain privileges, such as a branch town hall. France is an original example of this. After promoting the merging of municipalities, that of intermunicipal structures was undertaken. This is possible from the moment when one of the structures has its tax system (the Law of 13 August 2004 offered the basis for the merging of ten communities of municipalities to five ones).

In some States, there is no need for a reduction in the number of municipalities, which does not, however, mean that intermunicipal co-operation is ruled out. This may be due to a historically low number of grassroots local entities or to geographical, economic or demographic factors.

Nonetheless, intermunicipal co-operation can be seen to be pertinent, and in practice achievable with some success, only where the number of municipalities is consistent with the realities of local administration and is therefore sufficiently reduced.

B. Key building blocks for developing intermunicipal co-operation

1. Typical features of intermunicipal co-operation

There is an irreducible number of questions to be answered in order to build a given type of intermunicipal co-operation. In each of these areas it is possible to identify guidelines.

At least nine fundamental questions can be used to steer the intermunicipal co-operation development process.

1 What are the main aims of intermunicipal co-operation? Is it a matter of pooling management resources in order to perform functions, of rebalancing or adapting the territorial unit in geographical, economic or political terms, or is there a need to provide relays for functions performed by the State, to propose a new concept of local grassroots administration or to kick-start local private initiative?

2 Which intermunicipal co-operation models should be chosen? The existing models may be highly regulated, i.e. integrated, resulting in a complex organisation obeying its own specific rules, but States can also opt for more flexible, or more pragmatic, models that are less integrated and more directly suited to the performance of ad hoc functions.

3 How much freedom of choice should municipalities have? What types of municipality should be involved in intermunicipal co-operation (as determined by geographical or demographic criteria or the types of tasks managed)? Should it be left to municipalities to decide whether they wish to co-operate, as is generally the case, although national governments and the European Union may offer financial incentives? Should municipalities take the ultimate decision and, if so, how - by a unanimous vote, a qualified majority or some other means? Can States insist on intermunicipal co-operation?

4 What types of intermunicipal institutions should be set up? Should emphasis be laid on public or private law institutions with legal personality, ad hoc institutions or existing ones, such as associations or corporations? Should preference be given to establishing a formal organisation or to more informal practices? What types of body should be set up (executive bodies, deliberative or consultative assemblies, internal auditing bodies)?

5 What functions should be entrusted to intermunicipal co-operation? It is a question of whether the entity will have a single purpose, i.e. will be specialised, or will be multi-purpose, performing several functions, or even general purpose. Will the intermunicipal co-operation structure be able to manage public-service functions in the fields of energy, sanitation or major infrastructure? Should mandatory or priority competences be identified?

6 Which forms of financial support should be chosen for intermunicipal co-operation? Is it preferable to opt for public or private funding, or cross-financing? Should it be possible for intermunicipal entities to raise taxes (specific taxes such as a single professional tax may be introduced) and pursue their own fiscal policies?

7 What legal framework should apply? Here the choice can be summed up as application of public or private law; a decision will need to be made on public or private management of staff and assets, or a mix of the two. It may also be a question of introducing arrangements for the sharing of services and staff. Another matter is that of the controls to be set up, such as administrative or financial controls, or more comprehensive forms of control such as supervisory authority, which may extend to control over the municipalities' organs (including dissolution and removal from office) not just over actions.

8 What role should be reserved for citizens? The State must know whether it wishes to enact and promote direct democracy processes (petitions, consultations, local referendums).

9 What means of assessing the effectiveness of intermunicipal co-operation should be implemented? The State will have to formulate assessment criteria (for example, financial criteria, criteria relating to the quality of service delivery, criteria concerning economies of scale or criteria regarding lead-times for the delivery of services). Should it introduce satisfaction surveys of users of services managed by the intermunicipal entity or audits to be performed by bodies with varying degrees of independence?

In each of these fields the State is therefore required to take decisions, which are primarily governed by local circumstances and the objectives being pursued.

2. Compliance with the principle of local self-government

Intermunicipal co-operation is based on respect for local authorities' self-government, as enshrined in Article 3 of the European Charter of Local Self-Government². Local authorities may organise them-selves into intermunicipal co-operation structures, even if the State does oftentimes set the criteria and direct the remodelling of the territory.

Local authorities are, in principle, free to establish forms of intermunicipal co-operation. As a general rule, it is the local authorities which decide the terms on which they participate in intermunicipal co-operation arrangements, as well as the provisions governing dissolution or withdrawal. It is also usually possible for local entities to refuse co-operation arrangements, if only through non-participation or rejection of a project. Often, under integrated models, a specific refusal procedure is provided for. The voluntary nature of this decision is a tangible reflection of the principle of local self-government endorsed by the member States, more often than not in their constitutions. This free choice is usually exercised within an established legal framework, the preferred format for expressing this freedom being an association or union.

For example, in Portugal, the legal bases for intermunicipal co-operation can be found in the 1976 Constitution, under which it is possible to set up associations of municipalities and other forms of local self-government in major urban areas. In 1981, legislation was introduced (Law No. 266/81 of 15 September 1981), which drew on this basis and set up associations of municipalities, and these in turn formed the basis for other forms of organisation governed by Law No. 172/99. Law No. 11 of 2003 introduced further new forms of co-operation between municipalities and enhanced integration. Two metropolitan areas, for Lisbon and Porto, were set up under Law No. 44 of 2 August 1991, and they are now covered by new legislation, Law No. 10 of 2003, which makes a distinction between the major metropolitan area and the municipal authorities. There are also now tourist regions, which were set up in 1982 and can be joined by municipalities.

In Finland, intermunicipal co-operation has always existed, and Finnish municipalities, which are autonomous, acquired the right to establish bilateral or multilateral co-operation arrangements based on their own needs. The State regained the initiative in this area from 1970 onwards through a series of reforms designed to foster co-operation, and then from the 1990s onwards, it gave tangible support and encouragement through special projects and programmes and various

² Adopted on 15 October 1985, entered into force on 1 September 1988.

types of grant. In some areas co-operation was triggered by legislation as the government made it compulsory to arrange certain intermunicipal services. However, many municipalities realised themselves that they could not provide certain services.

Some States have made provision for specific organisational arrangements reflecting their own intermunicipal integration approach, which necessarily entail restrictions on autonomy, as co-operation may be made compulsory and prescribed by law, or withdrawal may be regulated. Many States have also laid down withdrawal rules, which often go hand in hand with compulsory co-operation in specific areas such as urban development and protection of the environment. Others prefer binding forms of co-operation, sometimes to the detriment of spontaneous, flexible arrangements. For example, Sweden, the Netherlands, Finland and Austria have made provision for compulsory co-operation (see the analysis of intermunicipal co-operation models in section II).

The freedom to choose whether or not to join a structure must be enshrined in a legal instrument. However, it can be useful, in practice, to establish majority rules concerning the formation of co-operation bodies. This means that a municipality may be obliged to join a structure without giving its consent, as in France. As a rule the majority required is “two thirds at least of the municipal councils of the municipalities concerned representing at least half of the inhabitants, or half at least of the municipal councils of the municipalities representing two thirds of the inhabitants”. There are also limits on the time allowed to take decisions (generally three months).

States may provide for compulsory forms of co-operation (Italy, Portugal, Spain, France). These are based on criteria such as population thresholds or geographical features, applying for instance to certain mountain areas. The form of co-operation, the powers that may be exercised and the rules that apply are set out in detail, leaving the municipalities with no choices to make. Some States stipulate a minimum period of co-operation, others require the dissolution of co-operation arrangements in certain circumstances or impose withdrawal requirements. Financial incentives to participate in certain types of co-operation are also effective in some cases (Switzerland).

In Italy, for example, joining a partnership or suspending it requires a resolution by the municipal council, and the rules of procedure of unions of municipalities usually provide that if a municipality suspends the partnership the union must be dissolved. There are also compulsory forms of co-operation, as in the case of the mountain communities and certain types of league. In Portugal, integration is

promoted by requiring municipalities to remain within the entity for five years; this represents the stability principle in action.

At the same time, Switzerland has a system of both compulsory and incentive-based co-operation; some cantons can legally compel municipalities to co-operate in a specific field of competence, but they more often than not resort to financial incentives.

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Governments or municipalities wishing to establish intermunicipal co-operation must think carefully about the kind of co-operation they want to set up. Their aims will be ambitious (including economies of scale and pooling of resources, services, networks, information and knowledge) and their decisions about the various means of building up an intermunicipal system will be complex. Each national government has its own particular rules, from which it may be useful to draw inspiration. Inevitably the rules adopted initially will have to be changed several times over depending on changes in the prevailing circumstances and the aims pursued.

II. Major trends in intermunicipal co-operation

States have established models of degrees of intermunicipal integration with a wealth of variety in the possible combinations of models chosen (A). It is possible to identify the prospects for intermunicipal co-operation (B) based on a review of its institutional and functional aspects.

A. Available models of intermunicipal co-operation

1. Integrated and informal intermunicipal co-operation

The intermunicipal co-operation established can take more or less complex forms. It may remain informal and be developed through mere agreements or it may be fully institutionalised, or integrated, involving bodies set up specifically to manage, develop and perpetuate intermunicipal co-operation.

The most widespread practices generally involve formal intermunicipal co-operation, especially where it is integrated. Informal co-operation is also common, being used in addition to institutionalised co-operation, which it may also precede. The model initiative in such matters is unquestionably a mix of formal and informal practices to ensure both stability and flexibility.

Formal intermunicipal co-operation is doubtless more satisfactory from a legal standpoint, in so far as it allows all the participating institutions to benefit from the legal stability essential to the implementation of joint activities. For local people it also facilitates clear identification and knowledge of the intermunicipal co-operation structure and gives it legal consistency. Conversely, with more informal intermunicipal co-operation, based on an agreement, the emphasis is on the mechanism's flexibility and its potential for adaptation to particular circumstances and, possibly, given territories.

Purely informal forms of co-operation may exist where there is no specific body, in some cases apart from an association, deemed to represent the interests of the country's municipalities at national, and even international, level, as in Lithuania.

A good illustration of this is provided by France, where the law provides for various forms of co-operation but not all forms result in the establishment of specific institutions with legal personality. Arrangements include intermunicipal understandings, contracts and conferences. Understandings are established by municipal councils, the deliberative bodies of public establishments for

intermunicipal co-operation (EPCIs) or syndicates of municipalities (*syndicats mixtes*), and can relate to items connected with municipal or intermunicipal purposes. Where it relates to private assets, the agreement establishing the understanding may be governed by private law. The same bodies may negotiate contracts to share the costs of construction or maintenance of institutions serving a shared purpose. Matters of joint interest are debated at conferences in which each municipal council and deliberative body of the EPCIs and syndicates is represented by a special three members committee. Decisions are binding if ratified by the various deliberative bodies concerned. This kind of intermunicipal co-operation is very flexible.

Norway also has forms of informal co-operation in the field of regional and economic development and regional planning, while in Bulgaria, this type of arrangement is made in specific areas such as infrastructure, culture and youth policy. In Switzerland, co-operation can be arranged through simple non-binding exchanges of views or informal discussions between local government officers. In Spain, there is also an extensive tradition of more informal co-operation between municipalities, which is sometimes based on contracts but sometimes completely unplanned.

2. Types of intermunicipal co-operation

Three major models of intermunicipal co-operation can be described: the first is very integrated, while the second is, conversely much less integrated. The third model combines elements from both others.

A highly integrated, mainly public-law model, based on specific intermunicipal entities with their own legal personality. These entities are usually in the public sphere. The structure is conceived so as to take decisions on behalf of the member municipalities through internal, integrated mechanisms, which somewhat restricts the local authorities' autonomy. The initiative to set up such co-operation generally comes from central government, although the decisions concerning the establishment and the duration of co-operation, and sometimes its machinery and the areas of competence concerned, lie with the local authorities. These structures centralise considerable powers and responsibilities and perform key basic service functions, often mandatorily provided for in the relevant legislation. They have huge management resources and also broad decision-making powers. State supervision is also well-developed in both financial and legal matters. The applicable legal framework is very detailed. This fairly widespread model has been adopted in France, Spain and Portugal. The excessively formal nature of this type of intermunicipal co-operation can detract from the spontaneity of joint

activities; it can also undermine the autonomy of bodies, particularly their political autonomy. However, this model does offer structural and financial reliability and rules by means of which to resolve crises.

A second, more flexible model, is mainly founded on the freedom and autonomy of lower-tier local authorities to organise co-operation as they see fit. The aim is to draw together municipalities in the context of intermunicipal structures. Intermunicipal co-operation is here based on voluntary agreement and is hosted by already existing entities, such as associations, unions or corporations. Private partnership is prioritised. The applicable law is private and relatively limited legal supervision is exercised. It is the statutes that lay down the bulk of the applicable rules. The competences conferred on intermunicipal co-operation are narrow and its resources fairly small. This less widespread model can be found in Bulgaria, Lithuania and the Czech Republic. Municipal autonomy is entirely preserved but there is no guarantee of stable and reliable co-operation. As a result, projects may be on a smaller scale and will not necessarily be completed.

Lastly, there is a third, more pragmatic, intermediate model, adopted by the majority of States, which borrows from the two preceding models. From institutional standpoint, the structures may be public law bodies, for democratic legitimacy and durable financing, or private law bodies, for flexibility and possible cross financing. The applicable law is public or private, the financial and staffing resources available to the intermunicipality are sufficiently developed. In this model, States solicit private management structures, in addition to public structures, to gain in flexibility.

As regards the member States' model initiatives, it can be seen that they primarily involve a combination of formal and informal practices and both flexible and integrated forms of intermunicipal co-operation, so as to derive dual benefit from the flexibility offered on one hand, and the stability and reliability afforded on the other.

One of the most interesting examples of this is the Finnish system. It is an original and relatively flexible intermediate model, based on municipal bodies acting as independent public entities, known as joint municipal councils. The arrangement is governed by the Local Self-Government Act (No. 365/1995), which includes provision for charters governing joint municipal authorities, which are the most common form of intermunicipal co-operation. These joint authorities automatically acquire their own legal personality as independent public entities governed by local government legislation. Charters must set out

the procedures for decision-making in the joint councils while establishing how many members council bodies must have or how many delegates there must be at general meetings and the basis for their voting rights. They determine the powers and functions of general meetings as well as setting up the body which is required to attend to the council's interests, represent it and negotiate agreements on its behalf. Charters also establish the rules regarding council signatures as well as the percentages of member authorities' contributions to the joint council's capital, their liability for its debts and all other financial matters. They also include rules on the removal of members, the status of those removed and those that remain, audits of council management practices and finances, and dissolution of the joint municipal council. They may also stipulate that a qualified majority is required for decisions on certain matters. Decision-making authority in joint municipal councils lies either with the general meeting and the member authorities, or with a body identified in the charter and elected by the member authorities. Joint councils may also set up other bodies. Charters may be amended if at least two thirds of the councils of its member authorities agree and if their population comes to at least half the population of all the member municipalities.

Ultimately, Finland has a whole range of different types of co-operation with their own specific features and degrees of formal organisation, but the most important thing is the service they provide and not the method they use. There are joint authorities, which offer services to inhabitants such as hospital treatment and vocational training, regional councils and other types of regional co-operation run by municipalities. There are also regional and municipal offices and joint municipal officers, as well as limited-liability companies and co-operation companies and foundations. Co-operation may also be organised on a contractual basis and municipalities may purchase services from others. Lastly, there may be sub-regional co-operation in land-use planning, regional development, transport, communication systems, nature protection, commerce and industry. There are currently 228 joint municipal councils and an unknown number of other highly diverse structures.

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Choosing between models is, first and foremost, a political decision in favour of the application of public or private law, the former entailing greater rigidity but allowing intermunicipal co-operation to be organised in such a way as to guarantee that certain principles continue to apply within the territory concerned (equality, free service delivery, quality, strong state supervision), and the latter offering more flexibility and above all allowing economies of scale.

B. Prospects for intermunicipal co-operation

1. Institutional and functional aspects of intermunicipal co-operation

From an institutional angle, intermunicipal co-operation assumes varying degrees of complexity; it establishes formal or informal practices, and the organisational arrangements are often intended to evolve. The rules governing the establishment of such co-operation are generally initiated by central government, or at least subject to its legal supervision, in the form of laws. The bodies set up may come under public or private law, public-law solutions being chosen for their democratic legitimacy and the lasting availability of resources and private-law solutions for their flexibility. As a general rule, intermunicipal co-operation is not provided for in constitutions.

With regard to the management organs, it can be noted that democracy does not have a strong foothold within intermunicipal co-operation entities; above all, it can be seen that, in practice, the municipalities' representatives are not directly elected. Apart from that, it can be observed that scant use is made of local participative democracy processes, of which there are few examples. It will be for States to determine whether this is a good or a bad practice, since citizen participation can slow down decision-making and contribute to a degree of paralysis of the system.

From a functional standpoint, intermunicipal co-operation structures can have a single purpose, but are more frequently multi-purpose in nature; their future appears to lie in performing a diversity of functions, and current practice is tending towards a broadening of the competences conferred on intermunicipal co-operation.

Intermunicipal co-operation structures may exercise competences delegated by the municipalities or compulsory competences laid down by law. In general, they are not allowed to experiment. This concerns the possibility for intermunicipal co-operation bodies to test, and accordingly, exercise competences which have so far been conferred on local or central government. The intention is that they should prove their local administration capabilities and, eventually, following an assessment, notably by parliament, be permanently assigned the competence in question. This system is found solely in France, but it is not devoid of interest as it can give citizens a tangible demonstration of the benefits of intermunicipal co-operation.

The areas of competence are often similar: water, waste, transport, emergency services, the environment, tourism, the economy, culture. The European Union has a strong influence on the management aspects, particularly as regards the application of competition rules. Germany, Spain, Portugal and France attach importance to the delivery of local public services and the performance of fundamental general-interest functions by intermunicipal co-operation bodies.

Intermunicipal co-operation generally derives its resources from the participating municipalities' contributions, but cross-financing is on the increase and some opening-up to private financing can be observed. This tendency can be regarded as a good practice and an avenue to be followed. Few intermunicipal entities enjoy autonomy in tax matters and are therefore able to levy local taxes (France and Germany constitute exceptions in this field), although this is a matter which affects the entity's independence. Tax collection is governed by state-established rules. On the other hand, such bodies' financial autonomy, in the budgetary sense, is usually a principle enshrined in law.

Staff may have public or private law status but the recurring question is whether special rules should be introduced for intermunicipal staff - or, where they already exist, preserved - or whether the ordinary law on employees should be applied. If new rules are introduced, those that apply to aspects such as guarantees, rights, particularly the duration of functions, remuneration and promotion have to be established. There is a current trend in member States towards alignment of the public and private law rules in this field. Staff may also be shared between the municipalities and the intermunicipal bodies.

2. Challenges for intermunicipal co-operation

A feature of modern intermunicipal co-operation is its pragmatism. States are looking for greater flexibility in the structures established and the way they are managed. The aim is to increase cooperation's capacities for action and margins of manoeuvre. A number of tendencies or initiatives can be noted in this connection.

1 Mention can be made of a tendency towards the development of informal practices when establishing intermunicipal co-operation. Agreements are given preference over unilateral, legislative, regulatory or constitutional arrangements. The latter increasingly tend solely to constitute a structural framework, and the diverse rules governing intermunicipal co-operation are now devised at local level.

2 It can be noted that public-private partnerships are on the increase, as are partnerships among private parties and cross-financing. Private financing is thus taking over from public funding, especially as the bulk of intermunicipal co-operation entities cannot levy taxes.

3 The rules governing intermunicipal co-operation are adaptable; in some countries they increasingly come under private law, in other countries they remain under public law, however municipalities are free to choose how to organise their cooperation. The supervision exercised is becoming more flexible; in personnel matters private-sector management principles constitute a source of inspiration.

These trends show a growing autonomy of will among local authorities. Nonetheless such practices can have a destabilising effect in terms of equal treatment of citizens at local level, through a multiplication of the models applied. The lack of transparency of intermunicipal co-operation arrangements can also have harmful implications in terms of the enhanced responsibility - notably political responsibility - of co-operation entities. They perform essential functions without necessarily being subject to any specific form of supervision by citizens or state authorities. Many States accordingly retain the financial equalisation mechanisms in force at national level, while fostering local authorities' freedom to organise their co-operation as they see fit.

States are also striving for enhanced effectiveness from the managers' standpoint. They want the intermunicipal co-operation structures they establish to attain a degree of profitability, or at the very least that they should manage to cover their costs.

1 Intermunicipal co-operation must permit economies of scale, and a growing number of States are adopting mechanisms which allow municipalities to withdraw from co-operation arrangements, or which facilitate the dissolution of co-operation, where the results are not as good as expected.

2 Intermunicipal co-operation is increasingly deemed to be destined for use in certain fields, where joint management is regarded as a more efficient solution, such as certain kinds of local service delivery. States therefore make a selection of functions they wish to entrust to intermunicipal co-operation entities.

3 The need for policy co-ordination can be seen to be essential, especially where various private entities assume responsibility for compartmentalised activities.

4 There is a tendency to rationalise human resources management; sharing of staff or of services is common, and e-administration is playing a growing role in the supply of information and even service delivery.

5 Scrutiny of the effectiveness of intermunicipal co-operation is more and more organised. User satisfaction is taken into account. However, there is often still room for more appropriate supervision of intermunicipal action using more reliable assessment indicators: real savings, user satisfaction, quality/cost ratios, jobs created or lost, rationalisation of locations, economic growth, spatial development considerations, etc. The issue here is to use these indicators as a basis for identifying activities to be treated as a priority, or complementing those already managed, and for determining the changes required, notably as regards staffing.

Within the European Union, intermunicipal co-operation must comply with Community competition law, particularly that established by the EU directives on public contracts, public procurement and public aid (see Part IV - B) where its structures (e.g. intermunicipal syndicates, companies) have economic tasks or engage in an economic activity. So-called special sectors such as water, energy, transport and mail services have been opened up to competition.

III. Structural components of intermunicipal co-operation

A key feature of intermunicipal co-operation is its quest for greater flexibility and more adaptable forms of organisation (A), combined with a desire for democratic legitimacy (B).

A. The challenge of organisational flexibility

1. Establishment and development of intermunicipal entities

Co-operation is usually a central government initiative. Legal texts set out and regulate its creation. In federal States it is the laws of the federated entities which lay the foundations for co-operation.

Co-operation can also be initiated at local level and then regulated at central government level through legislation; in such cases the flexibility of the legal framework may vary.

National or federal legislation governing intermunicipal co-operation can help place it on a somewhat more permanent footing, while the relevant law or regulations set minimum standards, leaving it to each entity to adapt them when applying them in detail.

An intermunicipal body can usually evolve into another form of intermunicipal co-operation, which adds to the organisational flexibility. Flexible types of co-operation arrangements can be changed in line with the member municipalities' wishes. This is more of an issue in the case of integrated forms of intermunicipal co-operation. Some States rule out this possibility (Portugal, Slovenia, Slovakia).

2. Options regarding the organisation of intermunicipal entities

The internal composition of intermunicipal entities is generally modelled on that of local authorities, with an executive and a deliberative assembly. In terms of the actual organisation, several types of intermunicipal bodies as such exist. They can be classified as follows: public-law bodies, mixed bodies, private-law bodies and bodies based on geographical distinctions; these constitute as many models available to States for organising their intermunicipal co-operation

1 Co-operation bodies that are fully public and specific are fairly rare (France, Portugal, Spain, Luxembourg, Belgium). In such cases the organisation

of intermunicipal co-operation involves a high degree of integration. The functions assigned to such bodies are of a public service nature. The advantage of this solution lies in the community of law between the entity's members and the entity itself, which facilitates their relations.

Each country adopts its own original form of intermunicipal co-operation. The examples given here are perhaps somewhat pointless, since each model is unique. Nonetheless States can choose two or more levels of intermunicipal co-operation or draw inspiration from the existing models.

For example, in Spain, formal intermunicipal co-operation takes the form of public law legal entities, the "Mancomunidades" and the "Comarcas". They are of the nature of local authorities, which is not the case elsewhere. Starting from minimum basic rules, each "Mancomunidad", which is set up on a voluntary basis, must adopt its own statutes, regulate its own organisation and functioning and determine its activities. The "Comarcas" are compulsory entities, whose activities are defined by the legislation of the Autonomous Community concerned; their power to regulate their structure and operation is also restricted. There are 1 011 Mancomunidades and 81 Comarcas.

France has opted for a model on several levels. The bodies with their own tax system, the urban communities, the "agglomeration" communities and the communities of municipalities, must be distinguished from the rest. A minimum population size requirement applies for the creation of "agglomeration" and urban communities, respectively 50 000 inhabitants, around a central municipality with over 15 000 inhabitants, and 500 000 inhabitants.

The other bodies do not have their own tax system and are funded through the budgetary contributions of the member municipalities (unions and syndicates of municipalities).

Keen to enhance flexibility, States are increasingly opening up intermunicipal co-operation to private parties and to partnerships, even where the initial arrangements came under public law. This is the case in Portugal, Luxembourg, Slovenia and Belgium. In the latter country there are also several levels of co-operation. The bodies, which sometimes adopt a private form, come under public law and cannot engage in commercial activities. Private parties can nonetheless participate in them.

2 Co-operation bodies including both public and private law elements. In this model, as previously mentioned, States solicit private management structures,

in addition to public structures. The public bodies are established specifically and solely for co-operation purposes, whereas the private bodies reproduce organisational models already in use in the commercial or voluntary sectors. Corporations or associations can serve as vehicles for co-operation.

It is difficult here to pick out standard or model types of state systems of intermunicipal co-operation, since all the nomenclatures are original; various configurations are used, all of them institutionalised to varying degrees but predominantly flexible (Italy, Norway, the Netherlands, Sweden, Switzerland, Germany, Austria and Finland).

The case of the Netherlands can serve as a source of inspiration for other states. A public body can be established under a public-law arrangement, under the Joint Provisions Act (*gemeenschappelijke regelingen*) of 20 December 1984, as amended. This is the most far-reaching form of co-operation, with delegated responsibilities and powers. There are three other types of co-operation based on the same Act: intermunicipal authorities, which are not legal entities, the metropolitan centre municipalities, based on a mandate, and the secondary schemes, based on a voluntary agreement. A private-law corporation can also serve as a co-operation vehicle, in which case the Legal Entities Act applies as described in Book 2 of the Civil Code. These bodies are therefore governed by private law.

The co-operation arrangements established in Sweden, Austria and Finland also come under public or private law, but in a far less formalised way and, above all, making maximum use of existing forms and models which can be used to host intermunicipal co-operation.

3 Private co-operation bodies. Some States have opted completely in favour of private-law entities and have not introduced specific organisational arrangements for intermunicipal co-operation. Existing structures are used to direct co-operation, which is mainly informal and voluntarily based in the form of associations (Slovakia, Bulgaria, Lithuania, Hungary). The co-operation processes implemented may create local strategic partnerships, but depart from the definition of intermunicipal co-operation. In such cases the mechanism may be completely disconnected from local administration and focus solely on economic efficiency.

4 Rural or urban co-operation. Another potentially relevant distinction concerns the area in which the intermunicipal co-operation takes place. Intermunicipal co-operation is becoming a means of organising urban, peri-urban

and rural areas and even island areas. The type of body established, its governing legislation and, in particular, the functions assigned to it reflect the issues affecting the area concerned (desertification, crime, economic development, tourism, etc.) and attempt to respond to them. This is the case in the Netherlands, Italy, where mountain communities have been set up, Portugal and, to a more limited extent, Switzerland. In France, the establishment and the transformation of certain bodies is subordinated to a demographic minimum requirement; on the other hand there is not a formal distinction between urban and rural areas.

B. The challenge of democratic legitimacy

Several questions of democracy arise in the choice of the requisite type of intermunicipal co-operation. Is it desirable to confer political responsibility on managers? Should intermunicipal managers be directly elected, and if so should this apply to all or only some of them? Should a statute be devised providing for their remuneration, their term of office, ethical rules, tasks and powers? Or should we make do with indirectly elected bodies? Can bodies representing civil society be co-opted, on a consultative basis, for example? Apart from the possible election of the members or leaders of such bodies, what tools can be placed at the disposal of intermunicipal co-operation bodies in order to involve citizens in the whole procedure?

Recommendation 221 (2007) on the institutional framework of intermunicipal co-operation, adopted by the Congress of Local and Regional Authorities, on 1 June 2007, provides the beginnings of an answer by laying down that the legal framework for intermunicipal co-operation must respect such key principles as local self-government, political pluralism, democratic principles, the right to information and citizen participation. The rules formulated must take account of political, economic, demographic, social and local balances. The Congress also stresses that it is vital to associate citizens with local management by means of elections, information and consultation. The beneficiaries cannot be left outside the decision-making process. This approach stems from a constant concern to guarantee transparency in the operation rules governing intermunicipal co-operation and the results of its action. And the approach must be accompanied by initial and ongoing training for the elected representatives and citizen information on intermunicipal co-operation.

1. Representativeness of intermunicipal bodies

The effort to secure political legitimacy for intermunicipal bodies and citizen participation in management may be a further objective alongside that of guaranteeing the quality of the service provided. This endeavour may be a matter for the State, the municipalities, such other local structures as the territorial authorities, or else the citizens. Nevertheless, such issues are mainly a matter for highly integrated public intermunicipal co-operation bodies exercising extensive competences. Elected intermunicipal bodies are designed to conduct comprehensive development and planning policies throughout a given territory. Other types of co-operation can be implemented by bodies appointed by state or federate institutions, for example, or by municipal executive organs.

It may actually be difficult to confer essential competences vis-à-vis the major services (water, sanitation, waste and social benefits) to legally independent public entities with sizeable budgets without any concomitant political responsibility, in addition to administrative, civil and criminal responsibility. This would be particularly true of intermunicipal co-operation bodies which are empowered to raise taxes.

States have generally opted for a system of indirect participation by citizens by means of elections to the organs of the intermunicipal bodies; these involve municipal councillors elected by direct universal suffrage, who are therefore representatives effectively managing the intermunicipal bodies.

In France, for example, the management organs of intermunicipal bodies do not result from election by direct universal suffrage. EPCIs are administered by deliberative organs, by councils in the case of own-tax-system EPCIs and by committees in the case of unions of municipalities without their own tax system; they consist of delegates elected by the councils of the member municipalities (Art. L 5211-6 CGCT). The chair is the elected by the deliberative organ.

In the case of communities of municipalities and “agglomeration” communities, each municipality’s representatives on the EPCI’s deliberative organ are elected by secret ballot from among the members of the town council, an absolute majority being required in the first two rounds, a relative majority in the third round. Conditions on standing for office and impediments to holding office are the same as for municipal councils. Renewal of the community council occurs naturally after renewal of the municipal councils. In the case of urban communities, election takes place under a single-round list system with no addition or removal of names and no changes to candidates’ order on each list.

Seats are allocated among the lists by highest-average proportional representation. Majority voting does not favour representation of minorities and proportional representation allows the emergence of an opposition within the deliberative organ, which sometimes causes problems.

However, the electoral debate cannot highlight all the intermunicipal issues at stake. Municipal management is not all that different from intermunicipal management, and this leads to confusion: elected representatives are more interested in protecting their municipality's specific interests and do not necessarily have an adequate vision of the common intermunicipal interest.

It is certainly unnecessary to elect intermunicipal management organs where intermunicipal co-operation is confined to carrying out specific selective tasks, possibly with partially delegated, non-transferred powers, and where the management organ is private.

It is also interesting to note the development of consultative bodies capable of offsetting the lack of representativeness in intermunicipal co-operation. This raises the need to define their fields of responsibility, their powers and their make-up. Portugal's intermunicipal management organs include consultative bodies, but they are not elected. France has consultative committees which are open to representatives of local associations, and consultative boards have been set up for local public services. These boards are open to users' associations in the case of EPCIs with populations of over 50 000 and mixed syndicates comprising at least one municipality with a population of over 10 000.

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The representativeness of intermunicipal bodies is an area conducive to a variety of experiments geared to forging a more or less direct link between the bodies in question and the citizens. Local participation tools can also help achieve this aim.

2. Local participation tools

Several tools are available for intermunicipal bodies to associate, in the broad sense of the term, not only citizens but also users in the management of services, by means other than electing the management organs.

The main approach adopted by States is to allow public access to the management of intermunicipal co-operation, which guarantees a minimum level of

transparency. However, this is a mere information facility, rather than directly involving the users in the management procedure.

The meetings of the decision-making bodies may be open to the public. Visits to intermunicipal sites and encounters with intermunicipal staff are further means of opening up this area to the public. Opinion polls and questionnaires can also serve to ascertain users' wishes and their levels of satisfaction.

States can also legislate on a right to information extending to intermunicipal co-operation. Such information would be displayed or published in special compendia or official journals of intermunicipal decisions. Access to administrative decisions and documents relating to intermunicipal co-operation must also be regulated (time-limits, places of access, photocopying facilities, explanations, etc). Some intermunicipal bodies may also disseminate specialist information, for instance in the form of brochures, circulars or newsletters, or via websites outlining various intermunicipal co-operation ventures.

Moreover, petitions, referendums or simple consultations may be used to facilitate direct participation in the decision-making process. This is genuine participatory democracy, because such procedures do not always entail decisions.

Where the relevant procedural details are concerned, we must first of all decide which authorities should initiate the procedure (the municipal councils, local executives, intermunicipal bodies or the citizens themselves [with the requisite minimum number]). The fields for consultation must also be specified (either all or some of the competences exercised under the intermunicipal co-operation process), as well as the stages in which the co-operation process is to be established or amended. The periods during which consultation can be carried out may be specified. Participation thresholds may be laid down in order to make consultation or the right of petition, for instance, more or less binding on the intermunicipal bodies. All the rules can be adapted to suit local realities and the intermunicipal co-operation aims pursued.

The French rules in this field might provide a useful model. French law provides that consultation can be held in any of the public co-operation body's areas of responsibility. An application for a consultation to be held may be submitted by a fifth of the electorate. The decision on the application is set out in an information dossier made available to the public. A period of one year must elapse between any two consultations, the period being two years when the consultation is on the same subject. Unlike the territorial authorities, intermunicipal bodies are not empowered to organise local referendums and do not have the right of petition.

In Spain, where co-operation entities are legally territorial authorities, the same participatory mechanisms are available as for all such authorities: local referendums, the right to information and the right of petition. In Switzerland public consultations and referendums are provided for by law, as in Slovenia, which has a right of petition at both local and national levels, apparently including intermunicipal co-operation.

There are also some potentially more original mechanisms. The Swedish Law on Local Self-Government provides for municipal boards and county councils responsible for promoting consultation with those using their services. However, there is no specific legal procedure: selective consultations are organised with the public whenever decisions are to be taken on local development, building projects or waste disposal issues. The same rules might be applied here to intermunicipal co-operation bodies. Local authorities can also organise referendums on a decision from their local assemblies, but intermunicipal enterprises and Joint Committees cannot organise referendums. Furthermore, authorities such as the intermunicipal bodies can conduct information policies.

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The structural aspect of intermunicipal co-operation is essential: it is necessary to set up management organs capable of ensuring optimum management of the co-operation process. They guarantee the stability, representativeness and adaptability of the intermunicipal co-operation in managing its ongoing assignments. The functional aspect of intermunicipal co-operation complements the institutional aspect. Having examined all the different options concerning the management organ, we must consider which activities should be covered by intermunicipal co-operation and how.

IV. Functional aspects of intermunicipal co-operation

The functions generated by intermunicipal co-operation bodies constitute their *raison d'être* and are fairly characteristic. Varying degrees of material, financial and human resources may be used for fulfilling these functions. The manner in which these aspects are combined determines the real effectiveness of the intermunicipal co-operation, which the States sometimes fail to assess adequately or satisfactorily.

A. Adaptability of competences

Intermunicipal bodies may exercise special competences. The areas of competence for intermunicipal co-operation are increasingly extensive, and the competences are now becoming adaptable. Intermunicipal bodies can select their competences in accordance with various criteria determined by the States, including the cost-effectiveness, proximity, quality and necessity of the service provided, or the lack of public or private initiative, etc.

1. Nature of competences

a) single and multiple competences

Broadly speaking, it seems useful to set up multi-purpose intermunicipal bodies, given the wide variety of tasks to be dealt with by several municipalities by means of intermunicipal co-operation. The tasks may have a more or less broad or specialised common theme, such as assistance for individuals (social benefits, aid for persons with disabilities, the elderly and the sick) technical service provision (water, sanitation and waste management), transport services, or fire and emergency services, schools or even health services.

The State may initially organise single-purpose entities dealing with one task only, and then gravitate over time towards bodies with wider areas of competence capable of mutualising not only the services provided but also their modes of management (funding and staffing, infrastructures and material, etc). The bodies responsible for these tasks will be more or less specialised, depending on their mandates: for instance, a private body will be used for selective tasks, and a public one for more systematic, comprehensive responsibilities in line with such objectives as general-interest services covering the whole territory.

However, in order to ensure competence adaptability, changes to the types of bodies chosen and competences exercised should be allowed, or indeed encouraged, for instance by financial incentives.

Few States have confined intermunicipal management to one single area of competence. One model seems to be the multi-purpose intermunicipal body, whether it be set up concurrently with or subsequently to the intermunicipal co-operation procedure itself.

Nevertheless, the existence of both types of model, single- or multi-purpose, can be justified by the responsibilities exercised and their specific and/or technical nature. In Finland, for instance, special hospital services and special services for people with disabilities are single-purpose, but the municipalities can assign other functions to them. Joint municipal bodies for physical planning have two responsibilities, namely spatial planning and regional development. On a voluntary co-operation basis, municipalities can decide which functions and services they wish to delegate to a co-operation body; such bodies are often multi-purpose.

b) delegated and transferred competences

The intermunicipal competences can be delegated and transferred by the local authorities. In the context of the delegation, intermunicipal structures exercise delegated competences subject to the limit of powers and responsibilities held by the member local authorities as laid down in the national constitution or by law. Intermunicipal structures are therefore competent to deal with local affairs coming under municipal jurisdiction. This framework constitutes the minimum functional framework for intermunicipal co-operation, delegation does not necessarily permit the development of real projects for the territory and privileges management.

In the context of integrated intermunicipal co-operation set-ups and bodies of a mainly public nature, texts may regulate the total or partial transfer of the mandatory competences of the intermunicipal bodies. This makes it advisable to provide for exclusive competences not shared between the municipalities and the intermunicipal bodies, so as to avoid overlapping competences and ensure that the managers' responsibilities are clear to the public. The competences provided for may vary in number and detail, leaving room for the territorial authorities to complement or alter them if so desired by central government. The competences may also sometimes exceed those of the local authorities and be specifically assigned to the intermunicipal co-operation body.

The choice of the nature of competences is vital, and may be effected by the State, the federate States or the member municipalities, depending on the aims pursued: straightforward selective local co-operation, which is highly adaptable, or establishment of policies throughout the territory (tourism, spatial planning, economic development, environment, etc). The requisite choice is therefore a matter for the prevailing intermunicipal philosophy, whether that of a service manager or an initiator of broader dynamics for the territory.

Different types of competences can also be assigned to different types of intermunicipal co-operation bodies, and different combinations are conceivable in order to guarantee the adaptability of competences, but also overall harmonisation of the exercise of intermunicipal competences throughout the territory, with the criterion, for instance, of respect for the equality and diversity of the territories concerned. The member municipalities can also, optionally, delegate competences, which are straightforward competences delegated on a non-definitive basis without any specific formal procedure.

Such competences may also be compulsory ones automatically transferred by a unilateral text, such as a piece of legislation, given the existence of some sort of intermunicipal co-operation body. The legal text may specify these competences or leave it to the intermunicipal bodies to define them in more detail, for example by consigning the competences exercised by municipalities to specific groups of competences.

The law may also provide for optional competences, whereby the intermunicipal co-operation body must choose a number of mandatory competences from a list drawn up by central government. In such case the intermunicipal bodies must make a guided choice.

One outstanding experiment has been the partial delegation of competences in Finland, where competences are often shared between municipalities and unions of municipalities. There is no transfer of competences by municipalities to unions but rather a simple partial delegation. The municipalities remain the last links in the service chain: unions supply water to the local reservoirs, after which it is for the municipalities to supply water to the public and bill them for it. Co-operation can also be compulsory, in which case the competences are completely delegated, for example in the case of hospital services or special services for persons with disabilities.

It might be noted that in Italy and France, the responsibilities exercised by intermunicipal bodies are clearly exclusive: transfer to the intermunicipal body automatically removes responsibilities from the municipalities, and this is generally the case in the interests of rational exercise. The intermunicipal body acts in place of the municipalities, which no longer possess the responsibilities and cease to manage the related services. In France public intermunicipal co-operation bodies with their own tax system have competences which are defined by law, mandatory competences, but also optional ones. The competences exercised can also be shared with the municipalities. Under such a system, the definition of “community interest” is vital, pinpointing the line for apportioning competences between the municipalities and the intermunicipal bodies, whereby the law stipulates the procedure for apportionment.

c) areas of competence

The areas of competence of intermunicipal co-operation bodies are selected either by the municipalities themselves or by the States or federate States. The criteria for selection must be determined: cost-effectiveness, service quality, proximity, or economic and social criteria, etc. The choice may be influenced by practical needs or by a more complicated policy, particularly if it is a central government one.

It can also be a case of co-ordinating the exercise of competences in the territory, for example among the different local and regional levels. In such cases the aims are to prevent duplication, save money, improve service provision and the level of competence and determine the most relevant territory for managing the service in question. Such planning may be successfully effected by a higher territorial level; planning the exercise of competences at the intermunicipal level may prove somewhat limited.

It is necessary to allow for evolution in the competences exercised: modification, extension and abolition. Sometimes the intermunicipal co-operation itself may be discontinued where it has been inactive for a certain period of time. The intermunicipal bodies or the municipal assemblies may take the decision, depending on how integrated the arrangements defined by law or the intermunicipal statutes are.

The key areas of intermunicipal competence concern management of water, waste, traffic and transport, decisions on planning, lighting, emergency services, environmental protection, tourism, economic and social development, sports amenities, medical services, sometimes social security and public order, and public security. Energy and education may also be catered for by intermunicipal

bodies. There is no necessary limit to the list of transferred competences. There may, however, be state prerogatives which cannot be transferred to the local level, and so, for instance, functions of authority cannot be delegated to intermunicipal bodies. Moreover, intermunicipal bodies must, in principle, remain within the municipal area of competence and respect the competences of the other state levels.

To mention some potentially useful examples, in Norway the areas of administrative and technical competence are (figures from 2008): audition (88%), waste-collection (75%), procurement (46%), fire-fighting (45%), ICT (42%) and water services (15%). From 2007 new areas of competence where many municipalities co-operate are social welfare institutions for children (28%) and agriculture (35%). French intermunicipal bodies have wide areas of competence: spatial planning, economic development, housing, the living environment, road infrastructures, urban policy, crime prevention, and cultural, sports and educational amenities. According to a 2002 survey by the Association of Mayors, the public services whose management is most often assigned to intermunicipal bodies are transport, sanitation and waste processing. Water and waste services are also managed at the intermunicipal level, although to a lesser extent (60%, with 40% managed by the municipalities). Social welfare and school meals are still matters for the municipalities, in the context of municipal social welfare centres, but intermunicipal social welfare centres are now developing.

It can also be noted from the experiments conducted that areas of competence differ according to the nature of the managing body; there is thus a certain correspondence between the nature of the managing entity, whether public or private, and the services provided, whether public or technical. States which have opted mainly for management by public entities stress that public general-interest services must be the responsibility of intermunicipal co-operation bodies. Intermunicipal co-operation is here seen as the tool for developing and managing local public services.

In States which have opted for private bodies, the latter mainly exercise such technical competences as housing, water and electricity.

The Netherlands experience might be enlightening here. In the public-law domain, the authorities co-operate mainly in the following areas: nature/environment, waste recycling and social affairs. Matters increasingly handled by the authorities are general administrative affairs and security/assistance. On the other hand, co-operation in the economic field and housing is declining. In the private and public-law sphere, the commonest fields

for co-operation are social affairs, the PIOFACH (procurement, information technologies, wage accounting, security and assistance) and also the fields of nature and the environment and waste recycling.

Lastly, the question arises of the priority choice of competences, which is an eminently political matter. Nevertheless, the Swedish experience might provide some pointers here. In this country, intermunicipal co-operation is considered “cost-effective” and efficient in the fields of the environment, planning, building and civil engineering, as well as the various technical fields. It generates advantages of scale which can reinforce organisational capacities. Nonetheless, it is apparently considered less efficient to co-operate in the fields of social assistance or individual care, as such services must be provided *in situ* where the beneficiaries live. There are no advantages of scale here and the high costs of the transaction do not change even where the management sector is broader. So the competent authorities have to decide whether their aim is cost-effectiveness or priority service provision and possibly find compromise solutions.

A further precondition for guaranteeing effective intermunicipal co-operation is the provision of adequate financial, material and human resources.

B. Tailoring methods to goals

Managing intermunicipal co-operation involves securing the requisite financial and human resources. States have a wide variety of options. However, the aim here is to provide maximum and optimum resources for developing intermunicipal co-operation.

The influence of the EU law should not be underplayed. The European Union can provide funding for intermunicipal co-operation from the structural funds. The EU law provides the basic legal framework for the competitive activities of intermunicipal bodies: such areas as water supplies and sanitation are now open to competition. The fields of public contracts, public procurement, public aid and the setting up dissolution of intermunicipal co-operation bodies are also covered. Municipalities participating in any kind of co-operation process must therefore comply with EU regulations on public aid and treat the co-operation body like a commercial enterprise. Furthermore, the European Directive on public contracts providing for open competition could also apply to intermunicipal co-operation. Of course this will all depend on the type of co-operation, whether the co-operation body is public or private, and on the tasks assigned, as well as on the definition of the terms of the public contract, i.e. whether it gives total control over the entity implementing the action as if it were its own organisation, so that

the business is considered “in-house”, but also the concept of economic activities. All these rules, which do not affect the nature of the body, have a considerable impact its management and operations, so the States should standardise the application of the rules.

The management of intermunicipal co-operation, which must endeavour to tailor the resources to the task in hand, primarily concerns material and human resources.

1. Appropriate resources and cross-financing

Several funding procedures are possible, the concern here being to guarantee sufficient finance for the bodies to discharge their duties. The bulk of the funding may come from the municipalities or other public or private bodies. The intermunicipal body’s budget may be maintained by contributions from the participating local authorities. The financial autonomy of the intermunicipal bodies must be established *de jure* and *de facto*. In the case of autonomous legal bodies, they should be given their own budgets to cover the intermunicipal co-operation activities.

Intermunicipal bodies can also levy charges for services or articles provided, which entails a proportional reduction in the municipal contributions. This would help the bodies’ efforts to balance their budgets.

Intermunicipal bodies may receive subsidies from the European Union, the State, the federate States, or territorial authorities other than the municipalities, notably the regions. Public entities, various types of groupings, public, cultural, social or territorial establishments and mixed-economy companies may also contribute to their finances, as can private individuals and entities, including enterprises. This is one advantage of the public-private partnership arrangement. The main thing here is to preserve the body’s room to manoeuvre and ensure monitoring of the arrangements and the tasks completed. The vital aspect is joint management of services, one priority being to meet the local population’s needs.

The criteria for granting these subsidies must include the number of inhabitants, the rate of utilisation of the service in question, the competences exercised, an assessment of the functions fulfilled, etc.

Financing can also be more autonomous, based on income from the services provided or from taxation. This ensures greater administrative freedom for the

intermunicipal body so that it can balance its budget on its own, although a possible drawback is over-taxation of service users.

A combination of these different modes of operation, particularly a mixed public-private mode of financing, can ensure that the body operates on a permanent footing. Here again, the way in which these funding methods are combined depends on political options and the importance attached to the need to protect the body's independence, enabling it to set its own objectives, including general-interest goals.

Of course, provision must be made for independent supervision and evaluation of the financial management methods. Special auditors must be introduced, capable of conducting prior control of budgetary decisions and also subsequent checks on the application of the latter. Guarantees on the independence of intermunicipal body managers must also be provided (adequate remuneration, career guarantees, code of ethics, periodical controls, training or transfers).

Tax autonomy can be a further option, enabling the intermunicipal bodies to raise taxes and thus ensure decision-making and management autonomy. However, it also gives the management organs some degree of political responsibility, as they must be accountable to the citizens for their management.

In France, tax revenue and own revenue are required to form a substantial part of total intermunicipal resources. However, this fiscal autonomy on the part of intermunicipal groupings is limited by legislation, which sets bases and rates. Some public intermunicipal co-operation establishments draw directly on their own specific tax systems, and these are the bodies which exercise most competences, running large territorial projects. There is an additional fiscal level on top of the taxes already levied by the municipalities, and an alternative fiscal level based involving specific intermunicipal taxes. This system ensures stability in the major budgets. Overall intermunicipal budgets represent approximately a quarter of all local budgets, and their total corresponds to 1/6 of the state budget. Tax resources account for 35 to 40% of the total intermunicipal budget, whereas local tax represents 40 to 45% of the resources of local and regional authorities.

These tax-raising powers combine with other resources. Own resources - local taxes, proceeds from charges, proceeds from public services and the use of intermunicipal property, donations and legacies -, amount to 60% of intermunicipal budgets. One of the largest resources for EPCIs is the tax on household waste. Intermunicipal bodies also receive state, regional, departmental and municipal subsidies. In 2003, funds from competitions and transfers

amounted to € 14 000 million out of a total revenue of €47 000 million, i.e. 30% of the total intermunicipal budgets.

Many States would like to introduce mixed public-private funding, but it is not always easy to find private partners willing to invest.

Finland provides another example of cross-financing. This country's total national budget for 2006 came to € 39 800 million, while operating expenditure of joint municipalities totalled € 7 700 million. Finance for intermunicipal co-operation generally comes from member municipalities. There are customer payments in the case of special public health provision and special care for persons with disabilities. The maximum level of payments is fixed by government decree. In the field of special public health provision, the municipalities pay for operations and treatment for their local residents. In the case of joint municipal boards that organise vocational training and polytechnic education, basic funding comes from the State according to a unit price ratio. Joint municipal entities receive no grants from the region.

2. Staff mobility

Depending on the decision as to whether intermunicipal co-operation is to be public or private, intermunicipal co-operation bodies can employ public or private staff. The public law system guarantees some degree of stability in the rules applicable to staff. The private law system is more flexible, but also offers less security. The mainly private employment system can be combined with the mainly public career system.

Intermunicipal bodies can also recruit staff directly. It is useful to ensure that staff can be employed according to both the public and private systems, thus combining the advantages of permanent availability of highly qualified staff who could be granted public status, with a facility for selective recourse to temporary staff for specific assignments, of a seasonal nature for instance or in order to organise ad hoc projects, under a private employment system.

It might also be appropriate to ensure that transfer of a competence from a municipality to an intermunicipal body is accompanied by transfer of the department or part of the department responsible for its implementation, as well as of the relevant staff.

In certain cases, to facilitate management, staff may be jointly employed by the intermunicipal bodies and the member municipalities. Applying such a joint

system to staff would facilitate the sharing of staff and money savings. In practical terms, territorial authority staff could discharge some of their duties in a department transferred to an intermunicipal body, remaining in the territorial authority for the rest of their work. An agreement, or even a law, could be drawn up to stipulate their situation.

A staff training and support system could be established, accompanied by a choice of various legal systems. Similarly, specific management techniques could be applied.

The example of Italy should be mentioned, where municipalities and intermunicipal co-operation bodies set up joint services such as accounts departments and municipal police forces; a town hall secretary works for two or more municipalities. Municipalities often enter into agreements on use of shared staff at different times. Intermunicipal bodies may thus employ officials, possibly under public law, who will use joint offices. The staff of unions of municipalities includes individual delegated employees of the municipalities and staff belonging to the union as such. There is no quota for jointly employed staff. Because Italy applies private law to most local authority staff, intermunicipal staff employed by comes under ordinary law. Staff who jointly manage services can also be given special training.

C. The need for supervision and appraisal

Intermunicipal co-operation is generally apprehended as a good practice in itself. However, its proper functioning must be guaranteed by a choice of appropriate rules and also compulsory supervision.

Beyond such proper functioning, more detailed evaluation of its effectiveness must be effected in order to facilitate any necessary reorientations, changes and improvements.

1. Efficiency and supervision of intermunicipal co-operation

Co-operation bodies must be monitored if they are to operate properly.

Most States employ supervision of administrative, financial and civic natures. It would seem logical that it should be similar to the supervision of local and regional authorities, particularly the municipalities, given that they exercise the same competences.

At the administrative level, supervision procedures target documentation proving the lawfulness of decisions taken. Mechanisms may also exist allowing withdrawal on the ground of ineffectiveness, compulsory disbanding of bodies, financial sanctions and tax incentives. The administrative or civil courts or the administrative authorities are responsible for such supervision.

Where finances are concerned, special local auditors could be introduced where they do not already exist in order to monitor accounts. They would be responsible in particular for checking the consistency of budgetary decisions, budget balance and the implementation of the budget.

On the political front, democratic supervision is exercised by the intermunicipal bodies' assemblies, representing the member municipalities. However, if the intermunicipal management organs were elected a mode of supervision by the electorate might be possible here.

Supervision procedures might also cover the effectiveness of the action taken and management methods, ascertaining whether activities have been properly carried out under the stipulated conditions and the requisite aims achieved. This type of supervision is not unlike appraisal, and could provide a basis for the latter.

Germany, for example, supervises legality and technical aspects, whereby the authorities ascertain whether the bodies are discharging their duties lawfully and appropriately. In Italy, intermunicipal bodies are subject only to internal control or self-checking, and to supervision, which is more external or "heteronymous". In financial matters the State can check, by requesting documents, whether intermunicipal bodies have actually delivered the public service for which they received central financial transfers. Furthermore, each region has available to it specific forms of financial control for intermunicipal bodies.

When bodies are governed by private law no special control is generally required: they are subject to the controls laid down in the statutes of the bodies chosen.

2. Effectiveness and appraisal of intermunicipal co-operation

If the efficiency and appraisal of intermunicipal co-operation are essential, it is liable to prove difficult and expensive to gauge the results of such co-operation.

On the other hand, we must assess the efficiency of managers and managing bodies, above and beyond accounting results. It is a case of learning lessons from the past and preparing the future for local co-operation. This means devising

reliable indicators for evaluating actions already conducting, in line with the following criteria:

- economic criteria: real economy, quality/cost ratio, jobs created or lost, adequate budgets, etc.
- social criteria: user satisfaction, adequate participation in management, demand/supply match, service quality/proximity, etc.
- administrative criteria: speed of decision-making, extent of bureaucracy, absence or presence of leadership in managing the intermunicipal co-operation, respect for local self-government, sufficient co-ordination of action conducted, etc.
- political criteria: rationalisation of installation, development of economy, tourism, spatial development, etc.
- demographic criteria: stabilisation, expansion, ageing of the population, etc.

Few European States have any relevant statistics on experiments conducted this field.

In the Netherlands, the development of co-operation has led to a bureaucratic overload through a proliferation of meetings and debates on identical subjects. The trend is towards a more commercial approach, an approach which should continue in the interest of greater public transparency and to balance the costs and benefits of co-operation. The speed of decision-making and the cost/profit ratio of co-operation, which are the two evaluation criteria adopted, depend on the particular area of co-operation. Two-thirds of the municipalities are satisfied with practice, service delivery and administrative performance, while two-thirds are dissatisfied with policy co-ordination, pointing to a need for change.

In Sweden, it is generally agreed that intermunicipal co-operation based on contract offers advantages from the democratic viewpoint because it gives the assemblies decision-making powers. This legal foundation also allows cost-sharing and more effective use of resources. However, such contractual co-operation does not offer any opportunity of transferring municipal activities to other municipalities, quite apart from the difficulties of applying public-procurement legislation to a combination of entities. The federation of authorities, which represents the most integrated co-operation model, does not permit such broad participation in decision-making; a member authority may also prove dominant.

Conclusions

The success of intermunicipal co-operation is indisputable, as witness the fact that this local management method is now used to varying degrees in many countries and is developing in others. Article 10 (1) of the European Charter of Local Self-Government explicitly provides for the right of local authorities to engage in co-operation and form consortia in order to reinforce their effectiveness by co-operating in projects or missions that lie beyond the means of one authority on its own.

Intermunicipal co-operation genuinely rationalises local action in terms of efficiency and economy. A common approach to local affairs helps meet the increasing, and increasingly complex, demands of mobile and increasingly mixed populations. This facility is therefore fundamental; it has enormous potential and can help implement new forms of local action without systematic recourse to complete privatisation of services.

However, States must clearly set out their objectives for intermunicipal co-operation, which can range, for example, between a mere mode of management for missions shared by several territorial authorities, a veritable management policy for a given territory, and relaying central government police to the regional or local level. It is now for the politicians to decide: the legal tools are already in place for building up a model corresponding to the expectations of the territories and their conception of local management.