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Inter-Municipal Cooperation – An Alternative Solution for The Amalgamation Projects?

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Abstract: Over the last three decades the Republic of Moldova has experienced several waves of reforms and counter-reforms. The governing political forces have implemented different reform strategies, mostly of them influenced by their political interest are short-term. Recently, in the public and also in the academic world we hear more and more about the need for an „administrative-territorial” reform. There are several projects and approaches of the future reform. What is common to the most of the discussed projects is the solution offered to overcome existing territorial fragmentation – amalgamation of the local communities. The European experience in territorial organization of local public power offers solutions other than amalgamation. One of these solutions is inter-municipal cooperation. The problem is the following: can inter-municipal cooperation be a solution for overcoming the territorial fragmentation in the Republic of Moldova or it can only be a complementary factor of the amalgamation?

Keywords: reform; amalgamation; inter-municipal cooperation

The success of inter-municipal cooperation implies a territorial reassignment, first of all, in a larger, more relevant and more united area than existing territories. This reassessment will ensure an advantageous cooperation between legal, public and private entities. Thus, the inter-municipal cooperation provides another way of action for local public authorities. It is obvious that the size of local public authorities is important for inter-municipal cooperation because it directly influences the purpose, tasks and the forms of inter-municipal cooperation. The search for a territorial optimum is also one of the objectives of the inter-municipal cooperation because to determine an appropriate area for cooperation it is taken into account the demographic, geographic, sociological, economic and political weight (Deffigier, 2007, pp. 80-81).

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As a general rule, the search for solutions to strengthen the administrative capacity, scale economies and to increase the public service efficiency has led to the local public authority mergers while the promotion of local democracy, legitimacy and reactivity of public authorities has generated smaller entities and fragmented local administrative systems.

Inter-municipal cooperation is also seen as a solution to overcome the issues related to territorial fragmentation or as an alternative to the merger of small sized local municipalities. Starting from the idea that the main problem of fragmented structures is the lack of some services provision in smaller local municipalities, R. Hertzog suggests that the development of inter-municipal cooperation can be considered as a viable alternative for the territorial mergers of some small municipalities (Hertzog, 2010, pp. 285–308). And, V. Prohnițchi considers the inter-municipal cooperation as a remedy to solve the problem of territorial fragmentation in countries where it is offered much resistance to merger reforms (Prohnițchi, 2011, p. 47).

But inter-municipal cooperation must not be necessarily be treated as an alternative to the merging of local municipalities but rather as an element of a modernization process of the local power. The merging of local municipalities does not necessarily mean abandoning the inter-municipal cooperation, on the contrary, the merging can offer new opportunities and approaches to cooperation, the use of unused potential for the benefit of local people. The cooperation can be also successful when it is combined with a merger policy. On this, P. Swianiewicz argued that, even if the local administrative systems are not territorially fragmented, the local authorities can benefit from the joint provision of services (Swianiewicz, 2011, p. 4).

The contents of *inter-municipal cooperation* notion. The inter-municipal cooperation is always a topical issue. Since the early 20th century, the issue of the inter-municipal cooperation benefits was discussed in Romanian area. P. Negulescu, in the “Romanian Administrative Law Treaty”, published in 1903-1904, explained the inter-municipal cooperation as follows: “... it can happen that several municipalities have identical interests on certain matters. In such a case, each of these municipalities could not have own sufficient resources to satisfy these interests, since the several municipalities will joined together, the financial means will be higher and so that such actions would be possible. It could be created, to satisfy such inter-municipal interests, a new administrative legal person, for example, the syndicate of municipalities for the construction and maintenance of

neighboring roads, for the construction of some professional schools of local interest and for other local needs” (Negulescu, 1903-1904, p. 136).

To understand the phenomenon, it is very important to elucidate the content of the inter-municipal cooperation notion. The inter-municipal cooperation is a collaboration agreement that exceeds the administrative boundaries of the authorities involved in gaining benefits. Inter-municipal cooperation takes place when two or more local public authorities agree to work together on any of their tasks in order to obtain mutual benefits (Jackson et al., 2015, p. 10). The need of such an initiative can be generated by the financial constraints and limited capacity of the small administrative units to efficiently deliver public services that involve economies of scale or generate externalities (education, health, water supply, waste management, culture, emergency service, public order, environmental protection, tourism and many others) (Prohnițchi, 2011, p. 47).

Inter-municipal cooperation is the result of a deliberate decision by the local authorities involved, the association being rather with a predominantly voluntary nature than required by the legal norms. Therefore, the inter-municipal cooperation agreement varies depending on form, field and integration. It results from the political initiative of the public authorities with diverse visions and presents different forms in their intrinsic nature and in the theoretical optics used to study them. The national administrative traditions, governance systems, political culture and the various levels of local autonomy in each country make the attempt to develop a typology of inter-municipal cooperation to be a dangerous or even impossible task. The only sure thing that is known about inter-municipal cooperation is the diversity of its forms of manifestation being even more diverse than the European local government (Teles, 2016, pp. 88-89).

Arguments in favour of inter-municipal cooperation. The inter-municipal cooperation is one of the ways to streamline the management of local affairs by rationalizing and consolidating the work of the nearby local authorities.

In favour of inter-municipal cooperation, the following arguments are often made:

- It is a remedy for the limited financial autonomy of the local public government and low administrative capacity;
- It allows the intact preservation of the local autonomy, especially in terms of expenditures and taxation (Prohnițchi, 2011, p. 48);

- Through association, the local authorities can provide services that they cannot individually provide;
- For certain services, the local authorities can use the same expertise resource (for example, legal services) or the same service units (for example, fire fighting equipment); this is more advantageous in terms of financial costs;
- It contributes to the creation of a bigger market which will be more attractive for foreign investments both for public and private (Jackson et al., 2015, pp. 7-8);
- It contributes to the streamlining of the public services delivery process;
- It reduces the unit cost of the service deliveries through „economy of scale”;
- It compensates the insufficiency of funds available to the local government, the lack of specialized staff able to attract funding, it eliminates issues caused by environmental conditions and meets the conditions imposed by the regional development operational programs (Regional Development, 2014, pp. 122-123);
- It ensures the achievement of “economies of scope”, especially in the Central and Eastern Europe states where the cooperation of small local authorities makes the services delivery possible that would otherwise remain unsolved even if they are on a list of authorized local services;
- It facilitates the joint management of the integrated areas but fragmented from a territorially and indivisible technical infrastructure point of view;
- It ensures better visibility for local authorities;
- It facilitates the access to external funds;
- The areas of services delivery are larger than administrative boundaries (Swianiewicz, 2011, pp. 14-15);
- It allows a territorial reassignment but through a more flexible legal model (Deffigier, 2007, p. 84);
- It mitigates the existing economic and social disparities in the development of the local municipalities.

Inter-municipal cooperation may have one or more objectives. The objectives of cooperation determine the areas and the substance of the cooperation, and also the form of the relationship. Respectively, only the local public authorities' competences can be the subject of the inter-municipal cooperation and can eventually be delegated to some inter-municipal structures. The tasks of the inter-

municipal cooperation entities will be defined based on the objectives of cooperation. It is very important to clearly define the competences and attributions of the inter-municipal cooperation structures. It is advisable to avoid the confused terminology in the description of tasks. The status of inter-municipal entities must very clearly specify the areas of competences (Jackson et al., 2015, pp. 92-93).

To understand the phenomenon and the practical ways of achieving the inter-municipal cooperation it is important and useful to know its essential components. According to the results of a study conducted in the Eastern and Central Europe states, the inter-municipal cooperation includes the following components:

- ♦ The joint provision of services by two or more local public authorities in the country that may involve different functions such as administrative services, water supply, public transport and also the joint activities within wider policies such as the promotion of the local economic development which could be a single or multi-purpose arrangement;
- ♦ The voluntary cooperation of the local public authorities (it does not refer to any form which is strictly imposed by law while the law can sometimes stimulate or even oblige the local authorities to seek cooperative solutions);
- ♦ The cooperation is not incidental and has a certain duration and is most often a permanent arrangement with an unspecified termination date;
- ♦ It includes various legal forms of cooperation. In some cases, this may include the creation of a new legal entity (for example, the co-ownership between the local authorities involved), while in others, it may take a less pronounced legal form;
- ♦ At the same time and contrary to the amalgamation, there is no definitive transfer of local tasks or skills; the local authorities keep control over the decisions and services that result from co-operation (Swianiewicz, 2011, p. 3).

Factors of influence on intercommunal cooperation. The inter-communal cooperation relations are the result of the influence of several factors that may favour or impede the cooperation of local authorities. According to F.Teles, these factors are:

The nature of the problem. The problems faced by today's local authorities are extremely complex and much more interdependent. The efforts and common resources are seen as a way to meet these challenges.

History of previous collaboration. The quality, quantity and, more importantly, the success of the previous interactions play a relevant role in recognizing opportunities to continue or improve efforts to strengthen the cooperation.

Identity and territorial context. The territories define the opportunities of local municipalities to join common goals, whereas the geography and territorial identity can provide the area for some similar issues with a greater number of common concerns, especially among neighboring municipalities.

Balanced power relations. The asymmetric power relations between local municipalities that share initiatives or collaborative projects can hinder further steps.

The institutional context. The law may impose cooperation or constrains the decision of local authorities to cooperate with each other. The regulatory context explains, in part, the incentives or deadlock and the nature of many existing collaboration relationships between local municipalities. Therefore, the legal environment plays a relevant role in explaining the nature and incentives of inter-municipal cooperation.

External influence. Unexpected situations or third party intervention in the cooperative game can function as a trigger and as a “linking mechanism”. External agents acting as brokers between institutions can bring the knowledge, resources or the needed power to introduce the need to collaborate. (For example, the universities’ involvement in regional development)

Expected results. The cooperation requires significant efforts and therefore the important costs of transactions need to be taken into account both through actions and management processes undertaken in time and effort. When the rewards and results of cooperation exceed the costs and there are missing better alternatives, it is assumed that the anticipated benefits will play a role in explaining of the actions’ intensification.

Public authority’s profile. The public authority’s profile is determined by several elements, among which the availability or institutional capacity to collaborate have an important role (Teles, 2016, pp. 10-12).

The regulatory framework for inter-municipal cooperation. The concrete ways to put in practice the inter-municipal cooperation are stipulated in several normative acts both international and national.

The principle of local autonomy recognized by all member states of the Council of Europe by signing and ratification of the *European Charter of Local Self-Government* has established the existence of the local authorities and their capacity to be grouped into cooperative structures. The *Charter*, in Article 10 provides the local municipalities' right to associate: "local municipalities have the right, within their powers to cooperate within the law, to associate with other local municipalities to carry out some tasks of common interest". And "the right of local municipalities to join an association to protect and promote their common interests and to join an international association of local municipalities must be recognized in every state". Each signatory state of the *Charter* can define its ways either legislative or other to implement this principle.

The local municipalities' right to associate and cooperate in the provision of public services is provided by several normative acts of the Republic of Moldova.

Law on local public administration no.436 of 28.12.2006, stipulates in art. 14, paragraph 1, letter (j) the competence of the local council to decide under the law, the association with other local authorities, including from abroad to carry out some works and services of public interest, to promote and protect the local authorities interests, also to collaborate with economic agents and non governmental organisations from the country and abroad in order to achieve some actions or works of common interests. Similarly, art. 43, par. (1), letter (t) of the same law provides the rayonal councils' right to decide the association with other authorities of the local public government in achieving the local public services.

The Law on Administrative Decentralization no.435 of 28.12.2006, stipulates in the article 3, letter (h) the principle of public-privat, public-public and public-civil partnerships, which implies the guarantee of some real opportunities for cooperation between the government, local authorities, privat sector and the civil society. Also, the law provides in art. 5 the fact that local public authorities of the first and the second level as well as the central can cooperate, under the law, in order to ensure the achievement of some projects or public services that requires common efforts of these authorities based on some agreements signed between the parties containing clear provisions of the funding sources and limits of the power of decision for each level of public authority.

The Law on Public Services of Municipal Utilities no. 1402 of 24.10.2002, establishes in the Article 6, paragraph (2), letter (f) that one of the principles that govern the organisation and administration of public services of municipal utilities

is the inter-municipal association and partnership, and in the Article 14, paragraph (4) is provided that the local public government authorities can take decisions on the association of public services of municipal utilities with the purpose of realizing investments of common interest in technical urban infrastructure as well on their participation with share capital or with capital goods or with goods of the economic agents in order to perform works and to provide public services of municipal utilities at the local or district level, where applicable, on the basis of conventions which also provide financial resources made up of the contributions of the local public government authorities (the conventions are concluded by the main credit release authorities based on the mandates approved by each local or district council). Also, in the Article 13 the law mentions that the Government ensures the promotion of the inter-municipal partnership and association for the establishment and exploitation of some regional technical urban systems.

Law on the Framework-statute of the village (commune), city (municipality) no.436 of 06.11.2003, provides that the local council establishes, in the Status of locality which it approves, the term of cooperation of the public administration authority with other public administration authorities in the country and with other similar authorities from abroad and also establish the way of joining national and international bodies for the protection and promotion of common interests. Although, in the Republic of Moldova there is no legal limitation on local authorities' partnerships, the specialists consider that the existing legal framework „requires completion and adaptation”. And, in order to encourage cooperation between municipalities it would be necessary to develop and update the legal framework, particularly with regard to the form of association and the way of further management of the created public services. At the same time, it is necessary to promote the voluntary association of the local municipalities interested in the joint provision of the public services (Rața, pp. 34-35).

The forms of inter-municipal cooperation. One of the most important challenges is to find a formula through which the inter-municipal cooperation becomes more accessible, attractive and more advantageous to offer a wider range of services and a better quality.

The inter-municipal cooperation agreement varies depending on form, scope and integration. The most common forms of inter-municipal cooperation were elucidated in the specialized literature:

1. Informal cooperation;

2. Cooperation Agreement (contract);
3. Entity of public law;
4. Private law institution (economic agent);
5. Public institution with a single purpose or multiple purposes;
6. Integrated Territorial Public Institution (Jackson et al., 2015, p. 96).

In an attempt to identify the forms of inter-municipal cooperation, it is necessary to take into account the political, economic, social, demographic and legal realities of the Republic of Moldova.

As I. Beschieru mentioned, in the context of a unclear and even incompletely legislative regulation, the design and application of one or several models of institutionalization of inter-municipal cooperation is an exercise that is based on the analysis and the corroboration of several normative acts. As a result of the legal framework analysis of the local authorities' activity in the Republic of Moldova, I. Beschieru has identified some legal possibilities of inter-municipal cooperation, these being the following:

1. Non-institutionalized forms of cooperation (informal or on the basis of agreements, contracts - without the creation of a new legal person).

- ♦ A first non-institutionalized form follows from the possibilities offered by the Article 5 of the *Law on Administrative Decentralization no.435 of 28.12.2006*, which provides that local public authorities of first and second level as well as central may cooperate, under the law, in order to ensure the achievement of some projects or public services that requires common efforts of these authorities.

- ♦ Another non-institutionalized form of cooperation is the civil society contract governed by the Articles 1339-1354 of the *Civil Code*. According to the *Civil Code*, through the civil society contract, the contract parties mutually undertake to jointly follow up the economic purposes or other purposes without forming a legal person, dividing between them the benefits and losses.

2. Cooperation through the creation of a common (regional) operator with a wholly public shareholding.

The local public authorities can cooperate by jointly setting up an operator whom they will delegate the management of a public service and related infrastructure.

3. Provision of public services by the public operator of a municipality to the surrounding localities.

4. Concession of the service of a common private operator/or of a public-private partnership (Beschieru, 2013, pp. 8-12).

It should also be considered that to initiate an inter-municipal cooperation there are some preconditions required, such as: recognition of common issues, effective communication between stakeholders, openness to cooperation, the level of experience allowing such an approach and a good management at the level of local authorities (Rața, p. 34). And last but not least, the involvement of the inhabitants in the debates on the identification of options and ways of inter-municipal cooperation, of benefits, but also of the constraints of a possible association with neighboring local municipalities. Without the prior debate with the inhabitants of all these aspects, the efforts of the local authorities will not have the necessary support in the planned actions.

Disturbing factors of the inter-municipal cooperation. The initiation of a certain form of cooperation between local authorities is a clear proof that solutions are being sought for the problems faced by local municipalities. But this process can sometimes be disturbed by the action of some factors such as:

- *Fear of losing autonomy/powers.* Inter-municipal cooperation implies the assuming of roles and responsibilities, which leads to the “elimination” of some competences of the exclusive competence of the local municipality. The participant municipality influences the decision-making process through the vote of its delegate, which does not always lead to the desired solution.
- *Fear of losing direct income/funding.* As in the example above, there may be a loss, but not of the powers, but of the sources of funding related to these powers that are spent to meet common needs.
- *Lack of relationships.* The inter-municipal cooperation involves the relationship between the forthcoming municipalities. It is impossible to generate any form of partnership without establishing contacts and relationships with the neighboring municipalities.
- *Differences between municipalities.* The partnership between the municipalities implies the existence of some similar problems. But, in the nonhomogeneous municipalities, the spectrum of the existing problems is also heterogeneous, which reduces the opportunities for their solution through cooperation.

- *Reluctance to increase the costs and the number of administrative staff.* In one way or another, the creation of any new structure involves a number of organizational problems and bureaucratic procedures. If this process is hampered by bureaucratic procedures, the reluctance to get involved has a negative impact on the formation of inter-municipal structures.
- *Lack of financial sources.* Lack of funding of different tasks makes it difficult to achieve them because they require identification of funding from other sources.
- *Lack of interest.* Lack of interest in inter-municipal cooperation is mainly determined by the lack of information and, consequently, the skepticism of application. Lack of interest makes it impossible to establish contacts with potential partners.
- *Low level of cooperation culture.* Some officials of local public authorities and some of the population share the conviction that local issues constitute the full and exclusive prerogative of their own local government, and nobody but the local authorities can solve them (Aivazov, 2007, pp. 52-53).
- *The political costs of cooperation.* The different political views of officials of local public authorities may influence or even jeopardize the inter-municipal cooperation.
- *The slow decision-making process.* The complexity of the organizational and legal procedures and forms of inter-municipal cooperation, the involvement of various actors in the decision-making process results in a slower decision-making process (Jackson et al., 2015, p. 8).
- *The democratic deficit.* The involvement in inter-municipal cooperation of various institutional actors, the overcoming of administrative boundaries in public service delivery may weaken the democratic control over local decision-makers and affect the transparency of decision-making process. The Development of civil society to help consolidate democratic control is a imperative necessity in order that the inter-municipal cooperation to produce its intended effects (Swianiewicz, 2011, pp. 8-10).

Conclusions. In the contemporary world, there is no a universal formula for calculating the optimal dimension of the local municipalities. Each state has its own visions and mechanisms to balance the economic efficiency of delivering public services to beneficiaries and to ensure the democratic legitimacy for local power.

Although, the political actors, government institutions, and literature recommend the merging of local municipalities, the experience and developments of European states indicate that forms of inter-municipal cooperation can be an effective alternative to these processes, can become a way to overcome the underlying causes of tendencies of merging (Rakar et al., 2015, p. 196).

As can be seen from international experience, inter-municipal cooperation is quite widespread. Despite the significant differences in the development of local self-government systems, the inter-municipal cooperation is present both in post-Soviet countries and in developed ones. The need to implement and amplify the mechanisms for implementing inter-municipal cooperation in the local self-government system in Moldova is determined by the fragmentation of local municipalities, the significant imbalance between urban and rural local municipalities, their poor administrative capacity, especially of the rural ones, which are the largest part. For the Republic of Moldova, the situation is also complicated by the fact that the same set of competencies, regardless of size and administrative capacity is given to local municipalities. Of course, the inter-municipal cooperation is not a panacea to solve all problems of local self-government, but as a result of the implementation of various inter-municipal association mechanisms, the coverage and efficiency of public services will be significantly improved. Thus, the main task of inter-municipal cooperation for the Republic of Moldova is the full realization of the attributions by the local authorities, thus reducing the territorial disparities existing between the local municipalities. The inter-municipal cooperation is directly related to ensuring the vital needs of the inhabitants, which determines their importance and priority. It should also be noted here that the task of inter-municipal cooperation is to improve the quality of services provided to citizens by the local government, but not to maintain them as administrative institutions.

The legislation of the Republic of Moldova recognizes the right of local public authorities to associate and initiate the inter-municipal cooperation, but does not make it clear what are the legal forms of institutionalization of inter-municipal cooperation. One of the solutions of the municipal cooperation institutionalization can be achieved through the creation of legal persons governed by private law, stipulated in the *Civil Code of the Republic of Moldova*.

The discussions about the subject - which is the most important the democracy or the effectiveness of public services - are far from complete and, as a result, the response is not very clear. As a rule, the decision on the prevalence of one or other

element depends on the will of politicians. The problem is that politicians' logic differs from that of experts or researchers because their primary objective is to keep them in power at either national or local level whatever the circumstances.

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