

# TOOLKIT MANUAL

# INTER-MUNICIPAL COOPERATION

## FOREWORD

This IMC Toolkit has been prepared by the Council of Europe (CoE), the United Nations Development Programme (UNDP) and the Local Government Initiative (LGI) of the Open Society. It has been developed at this point of time because local self government in many European countries is faced with challenges for which IMC offers possible solutions.

On the one hand, forces for decentralisation are gathering pace. There is increased awareness of the need to strengthen local government institutions in order to consolidate democracy and engage people in the decision-making that affects their daily lives; at the same time, these institutions have to deliver good governance and reinforce the capacity for local development. Further European integration and meeting European standards in important local government policy areas are major incentives.

On the other hand, Governments and citizens need greater confidence in local self government. Poor performance is less easily tolerated when people can see good practice elsewhere. Many municipalities have to prove themselves. This applies in particular to the many small municipalities that have insufficient capacity to provide quality services on their own or to respond effectively to the expectations of their communities.

For larger municipalities, there are many opportunities for investment in local services and infrastructure, but investors seek larger economies of scale and more integrated development that would make their investments more viable.

Inter-municipal cooperation (IMC) offers a serious way forward. It is not an easy option; it can be complex and it carries risk. But it has the potential to deliver significant advantages to all municipalities, both large and small.

IMC has many stakeholders, but Governments themselves must give the lead. Governments have key responsibilities for creating the right legal, financial and administrative frameworks for IMC. Municipalities must also play their role. They need the right leadership, deep understanding and sufficient expertise to make good use of IMC. For that, they will need the support of their Local Government Associations (LGA).

The CoE, UNDP and LGI will have trained teams in several countries to be able to use this IMC Toolkit creatively as a training tool and to take it forward in national programmes. The first step in any national programme is to translate and adapt the Toolkit to national circumstances, adding local case-studies and explanations of the local legal framework. The teams seek to build up the understanding and the sense of purpose among central and local self government to pursue an IMC agenda.

International organisations can assist. They can draw upon the wealth of IMC experience in the wider Europe; they can make funds available to support IMC projects.

The most important challenge, however, is for municipalities to make good use of the opportunities, manage the risks, and deliver good IMC.

## INDEX

	<b>PAGE</b>
Introduction	5
<b>1. Understanding IMC</b>	<b>9</b>
1.1 Rationale	9
1.2 Possibilities of IMC	10
1.3 Different kinds of IMC	12
1.4 Reasons for creating IMC	14
1.5 Side effects of IMC	19
1.6 Summary	22
<b>2. Creating an IMC-friendly environment</b>	<b>24</b>
2.1 Obstacles to IMC	24
2.2 Need for national IMC policy	27
2.3 An appropriate legal framework	28
2.4 Incentives	32
2.5 Local Government Association	33
2.6 Creating a municipal IMC culture	34
<b>3. Initiating IMC</b>	<b>36</b>
Preliminary stage	36
Steps 1 & 2: Identification of needs, opportunities, potential partners and possible areas of cooperation	42
Step 3: Analysis	45
Step 4: Decision on IMC and establishment of negotiating platform	49
Step 5: Building self-awareness and support	50
<b>4. Legal forms</b>	<b>55</b>
4.1 Why do we need a legal framework for IMC?	55
4.2 Key legal questions	56
4.3 Different legal forms	62
4.4 Choosing an appropriate legal form	71
<b>5. Financing IMC</b>	<b>75</b>
5.1 IMC's financial strengths	76
5.2 Choices of financial framework	76
5.3 Utility services	78
5.4 Social services	82
5.5 Administrative services	83
5.6 Physical and economic development	84
5.7 Contributions from municipal revenues	84
5.8 Financial management	85

5.9 Summary	85
<b>6. Accountability</b>	<b>87</b>
6.1 Lines of accountability	87
6.2 Technical accountability	89
6.3 Democratic accountability	90
<b>7. Deciding on and implementing IMC</b>	<b>93</b>
7.1 The formal decision	93
7.2 Procedure for launching the IMC	94
7.3 Starting the IMC	95
7.4 Remember the Critical Success Factors	96
Case study	99
Bibliography	104

*This Toolkit Manual has been prepared by the Council of Europe, UNDP and LGI on the basis of chapters prepared by Professor Robert Hertzog (Strasbourg University), Professor Pawel Swianiewicz (Warsaw University), Professor Ken Davey (Birmingham University), and Professor Massimo Balducci (Florence University). Its preparation was coordinated by Professor Robert Hertzog and the text edited by John Jackson (Capacity Building International, UK).*

***This IMC Toolkit aims to help all persons interested in understanding and mastering IMC and its operation.***

## INTRODUCTION

**Inter-municipal cooperation (IMC) is inherent in a decentralised territorial administrative system. The more autonomous municipalities<sup>1</sup> are, the more they *need* to cooperate; the more they *can* cooperate.**

In a centralised State, where municipalities have few competences and limited resources, there is little need for common action. Most local challenges will be tackled by the Government itself. When municipalities are endowed with a large number of competences, when they are free to organise the delivery of services to citizens and to fulfil administrative responsibilities, **there are many occasions when cooperation with other municipalities can bring significant advantages.**

Municipalities can choose to join forces with other municipalities, if this is the way to improve their efficiency and effectiveness. For certain services, they can share expertise; they will find that a bigger territorial area than the municipality itself can be a more appropriate size for efficient service provision; there may even be a legal requirement for services like waste management, water supply, transport and economic development to be delivered through IMC.

Local government reform in European post-soviet countries was sometimes accompanied by territorial fragmentation; municipalities wanted to be more independent, especially in respect of the former “rayons” or districts. This desire for independence, paradoxically, must now be balanced by opportunities for cooperation.

Entering into a certain form of cooperation is often a clear answer to the challenges faced by municipalities. But it may not be easy; there can be obstacles that make it difficult: political differences between municipalities; the complexity of IMC legal procedures and forms; the lack of finance and expertise.

Comparative studies show that IMC is more frequent than is thought because many municipalities actually practise it, mostly in very practical and modest ways, without specific additional resources and without even calling it IMC. But it is clear that there may be important issues at stake and that a **national policy** on IMC is needed, with special legal provisions and with incentives to facilitate its expansion.

The greatest need is for central and local government to understand the benefits that can be obtained through IMC by municipalities and their citizens, and how they can be gained in a reasonable manner.

---

<sup>1</sup> We will use here this general denomination for the first tier of local self government, whatever the different national terms may be.

IMC is of special importance because it is municipal. Municipalities everywhere have vital competences that determine the quality of life of citizens and their collective welfare. They are about roads and traffic management, transport, water supply, schools and kindergartens, health centres, sports facilities, waste collection and disposal, museums, theatres and music halls, cemeteries.

Municipalities and communes are the smallest territorial units of public administration and constitute the first tier of local self government. This does not mean that they are necessarily too small or weak, but very often they do not have sufficient size and resources to undertake all the functions they are required to carry out. There is no better way of strengthening the capacity of municipalities than through **partnership and cooperation**.

Cooperation is essential for the welfare and development of any society and very common between public entities. Ministries cooperate with universities and laboratories; regions cooperate with other regions. There are everyday working relationships between municipalities and local State bodies in domains such as education and water supply. This “vertical cooperation” is a necessity because the territory and the population served by the different official bodies are the same, and many competences are overlapping or complementary.

Each municipality is in theory independent from its neighbouring municipalities and is entitled to be self-administered. It is therefore not surprising that relationships between local authorities may sometimes be limited because they have no common challenges; or they have just one challenge (e.g. drawing water from the same water supply); or they face occasional challenges (e.g. a calamity).

However, experience shows that municipalities are never totally self-sufficient, whatever the size of their territory and population may be.

**This is why IMC is both a universal challenge and a frequent practice. It is a logical solution for limiting the consequences of a non-optimal distribution of competences and resources or of inadequate municipal boundaries.**

Municipalities have very ancient roots in the history, geography, demography and culture of their respective countries. They are the products of the political and administrative organisation of old settlements in rural societies, industrial sites or cities with traditional political or commercial functions. But society is changing quickly, due to:

- *New technology (e.g. transportation, communications);*
- *New economic realities (e.g. less agriculture, less industry, with people living in a different place from their work);*
- *New cultural realities (e.g. television, schools and universities, internet);*

- *Changing life-styles (e.g. production of waste, demand for more public services);*
- *Changing demography with people moving from rural to urban areas with little regard to administrative frontiers.*

The traditional limits on local government are not in line with this reality.

A municipality is no longer the place where the whole life of a family takes place and where all the facilities and services needed by citizens can be delivered. The enterprises where they work may be in one place while their houses, shops, and schools are in another. Territories and municipal populations have become more and more **inter-dependent**. This has an impact on the image people have of their political environment and of the way municipalities must operate.

IMC is part of a general evolution of modern societies. It is not only a technical or legal question about the optimal size of municipal administration. IMC is rather an answer to very diverse situations. It is complex and needs to take account of political, economic, legal, financial, demographic, cultural, technical and organisational dimensions in order to find its most appropriate form.

#### **IMC: A DEFINITION**

***There might be many different forms of, and multiple reasons for, IMC but there are still features common to all. IMC is when two or more municipalities<sup>2</sup> agree to work together on any of the tasks assigned to them in order to gain mutual benefits.***

***The term, IMC is a relationship between two or several local authorities (ie entities in the first level of territorial administration) having a status of legal persons, endowed with competences, powers and resources in accordance with the European Charter of Local Self-Government<sup>3</sup>.***

To avoid misunderstanding, it is useful to say what IMC is NOT. In this Toolkit, IMC does NOT refer to:

- National / regional associations representing municipalities to government;
- Re-shaping boundaries or jurisdictions of municipalities through merging;
- Cooperation between municipalities / communes and public administrations with another nature and status, e.g. State, Region, County;
- Trans-border co-operation between municipalities of neighbouring countries, except in certain circumstances.

<sup>2</sup> The term 'municipality' is used to cover communes.

<sup>3</sup> The Committee of Ministers of the Council of Europe adopted the Charter in the form of a convention in June 1985 (link to the CoE's web site: <http://conventions.coe.int/treaty/en/Treaties/Html/122.htm>)

### **THE CHARACTERISTICS OF IMC**

- ***IMC is about two or – more typically – several municipalities working together.***
- ***By cooperating, partner municipalities agree to work together at some cost to produce new benefits for each of them that would be unavailable through isolated and unilateral action.***
- ***The joint effort may concern one or several domains falling within the legal competence of the municipalities. The law can specify that certain competences given to municipalities cannot be transferred to IMC (e.g. State competences delegated to the Mayor).***
- ***Cooperation has a cost for each partner municipality: it needs effort, financial contributions and sharing resources (staff, land, machines, buildings, etc).***
- ***IMC is the result of a deliberate decision and not just the mechanical implementation of a legal provision. Agreement is voluntary, rather than imposed by the law, although the law may sometimes strongly encourage or even oblige municipalities to look for co-operative solutions.***
- ***New gains for the partner municipalities may have different characteristics, such as: creating the capacity to provide services which cannot be delivered by a small municipality, saving on costs of service delivery, improving service quality, better coordination in development planning, more efficient and visible development policy.***
- ***Cooperation is not incidental; it has a certain duration and is most often a permanent arrangement with an undefined expiry date.***
- ***There is no permanent transfer of local tasks or competencies; municipalities keep indirect control over the decisions and services that result from cooperation.***



## CHAPTER 1 UNDERSTANDING IMC

### 1.1 IMC purpose

**Mayors are not elected to create IMC and citizens do not seek additional complex institutions.** But both are eager to see more investment in infrastructure and have better or new public services. They want more efficient waste collection, accessible schools, modern sports facilities. They would like to attract private investors and create jobs and opportunities.

In any country, there are municipal services that many municipalities do not deliver although they have the competence to do so, or they provide them inefficiently and ineffectively. **Inadequate financial resources or insufficient capacity are reasons frequently given for weak service provision.**

**In addition, many municipalities are too small to raise private investors' interest.**

#### *Example*

*In Armenia, more than 93% of communities (municipalities) have populations of less than 5000. This fragmentation has led to huge development disparities. These communities lack administrative and fiscal capacity. This is a serious constraint on the development of local services, sustainable development and further decentralisation.*

Source: UNDP (2006)

IMC enables any municipality facing these kinds of challenges to join with other municipalities to act together. Such a decision is not taken because IMC is politically correct or recommended by an international organisation or popular in foreign countries; it is taken **because IMC is the right way to get the benefits that municipalities and local people want.**

It is the need to provide a certain service better or to build some infrastructure that leads municipal leadership to an IMC solution.

The heart of IMC policies is not found in particular legal forms or financing mechanisms. **Rather, these policies are founded on the very purpose for which the IMC is established: delivering better services and promote development, becoming more efficient and effective than would have been otherwise possible.**

## 1.2 Possibilities of IMC

Unless the law says differently in a given country, all the functions performed by municipalities can be performed jointly through an IMC arrangement.

Municipalities perform three kinds of **direct functions**:

- *They issue regulations.*
- *They provide community and utility services.*
- *They commission the building of infrastructure.*

To support the operation of these direct functions, municipalities carry out some **indirect functions**.

### **MUNICIPAL FUNCTIONS CLASSIFICATION**

<b>REGULATORY FUNCTIONS</b>	<ul style="list-style-type: none"> <li>- <i>Development planning; urban planning; construction permits</i></li> <li>- <i>Environment protection</i></li> <li>- <i>Commercial and health regulations</i></li> <li>- <i>Traffic management</i></li> </ul>
<b>COMMUNITY SERVICES &amp; THEIR INFRA-STRUCTURE</b>	<ul style="list-style-type: none"> <li>- <i>Economic development (trade fairs, enterprise zones, tourism, rural development...)</i></li> <li>- <i>Education and school facilities</i></li> <li>- <i>Social services (family care, social work, social housing...)</i></li> <li>- <i>Health centres and sanitation</i></li> <li>- <i>Cultural services, facilities and events (theatres, festivals, libraries, sports activities...)</i></li> <li>- <i>Communal police; fire service; rescue / civil protection</i></li> <li>- <i>Registers (civil status, population; property / cadastre), certifications</i></li> </ul>
<b>PUBLIC UTILITIES &amp; THEIR INFRA-STRUCTURE</b>	<ul style="list-style-type: none"> <li>- <i>Water supply and distribution; sewerage</i></li> <li>- <i>Waste management (collection, disposal, treatment / recycling)</i></li> <li>- <i>Urban heating; energy supply</i></li> <li>- <i>Public transport; roads and lighting; car parks</i></li> <li>- <i>Public gardens and green areas</i></li> </ul>
<b>INDIRECT FUNCTIONS</b>	<ul style="list-style-type: none"> <li>- <i>Human resources management and development</i></li> <li>- <i>Procurement of goods and services, legal advice</i></li> <li>- <i>Budgeting; tax collection; accountancy and bookkeeping; internal audit</i></li> <li>- <i>Maintenance of buildings and equipment; catering and cleaning</i></li> <li>- <i>Electronic data processing</i></li> </ul>

**Unless the law says differently, any of these functions can be carried out through IMC.** However, each presents different problems. It may be easier to

share some of the indirect functions with other municipalities because they are straightforward and are unlikely to give rise to political problems (e.g. a data processing facility, tax collection).

There are also many direct services, like water supply, waste management and transport, that are amenable to IMC; they are expensive and have strong technical requirements that may seem easier to deliver through IMC because they offer limited political risk. Yet experience shows that these are also areas of sensitivity. So each kind of function has its own attractiveness; each has its own objectives and each carries its own benefits and risks.

<b>DOMAIN</b>	<b>POSSIBLE OBJECTIVES OF IMC</b>
<b>HEALTH CARE</b>	<i>Ensure availability of basic health care services (general medicine, health education, dental care...) to all citizens within a larger area, avoiding duplication of efforts and enhancing their quality (better professional skills and technologies).</i>
<b>WELFARE SUPPORT AND SOCIAL ASSISTANCE</b>	<i>Develop jointly welfare services with a limited number of beneficiaries and related infrastructure (e.g. housing, elderly care); harmonise social policy in a territory where many families cross municipal borders, providing visible and effective support for vulnerable people.</i>
<b>EDUCATION SERVICES</b>	<i>Build, manage, and maintain shared school facilities to offer higher level of education in rural areas and prevent closure of classes for lack of pupils.</i>
<b>ENVIRONMENTAL MANAGEMENT AND PROTECTION</b>	<i>Harmonise environmental policy in areas of common interest by achieving political coordination and consensus on goals and measures to reach them.</i>
<b>WASTE COLLECTION AND DISPOSAL</b>	<i>Find adequate locations for landfills and share their use; acquire trucks; build central waste disposal / treatment plant; develop joint policies for solid waste management and recycling to achieve better environment protection.</i>
<b>WATER DISTRIBUTION &amp; SEWERAGE</b>	<i>Share equipment (water tower, purification station); join in outsourcing procedures to strengthen negotiating capacity; join in project development to attract capital investment.</i>
<b>AGRICULTURAL IRRIGATION</b>	<i>Rationalise water management and the use of available water sources, to extend water distribution and improve settlement of water disputes.</i>
<b>ECONOMIC AND TERRITORIAL DEVELOPMENT</b>	<i>Harmonise strategic planning and perform joint studies on local development for a larger area. Improve territorial marketing to tap tourism potential. Support development of business incubators and markets.</i>
<b>CULTURAL EQUIPMENT AND EVENTS</b>	<i>Harmonise cultural development policy. Share management of key sports and cultural facilities to optimise their use. Organise festivals and cultural events to gain better press coverage and attract more visitors from other municipalities.</i>
<b>URBAN PLANNING</b>	<i>Develop single urban plans for larger area to rationalise other policies (housing, enterprise zones, roads...) and deal effectively with issues that cross municipal boundaries (eg social housing, transport...). Unify planning procedures to ensure criteria for</i>

<b>DOMAIN</b>	<b>POSSIBLE OBJECTIVES OF IMC</b>
	<i>development does not favour one municipality unfairly.</i>
<b>MANAGEMENT OF EU FUNDS</b>	<i>Develop the capacity to design and manage joint projects to gain access to EU structural funds.</i>
<b>CONSTRUCTION AND MAINTENANCE OF ROADS</b>	<i>Share policy goals and priorities in the development of roads network, and harmonise / coordinate road construction and maintenance works.</i>
<b>PUBLIC TRANSPORT</b>	<i>Establish rational and cost effective public transport system for larger area.</i>
<b>TRAFFIC REGULATION</b>	<i>Harmonise traffic regulation and unify traffic equipment to improve traffic management; achieve better deployment of traffic police.</i>
<b>FIRE AND RESCUE SERVICES</b>	<i>Maintain modern, well-equipped service able to manage in difficult conditions.</i>
<b>TAX COLLECTION</b>	<i>Rationalise tax collection processes, develop better links with register offices and with State tax administration to improve control procedures, increase staff specialisation, fight tax evasion; raise higher levels of local revenues.</i>
<b>PUBLIC PROCUREMENT</b>	<i>Develop purchasing power for smaller municipalities. Develop professional legal and economic experience.</i>
<b>HR MANAGEMENT AND DEVELOPMENT</b>	<i>Provide jointly professional HR to raise performance standards and levels of HR expertise.</i>
<b>ADMINISTRATIVE TASKS</b>	<i>Manage more effectively electoral roll, civil-status register, property register, payrolls, accountancy.</i>
<b>TECHNICAL SERVICES</b>	<i>Maintain and use machines and equipments.</i>
<b>ELECTRONIC DATA PROCESSING (EDP)</b>	<i>Secure access to a modern EDP service.</i>

**The concrete IMC objective is a decisive factor that impacts on all its other characteristics, including its legal, administrative and financial frameworks.**

### **1.3 Different kinds of IMC**

**IMC development varies considerably from country to country.** Some of these differences derive from culture, traditions and patterns of development.

- ❖ *In some countries, municipal autonomy is recent and IMC has developed through the initiatives of individual Mayors rather than as a result of Government policy (e.g. Hungary and Bulgaria).*
- ❖ *In some countries, municipal autonomy is strong from both historical and political perspectives, and IMC has been seen as the only way for small municipalities to deliver many services effectively (e.g. France).*
- ❖ *In some countries, municipalities are large and IMC plays only a limited role (e.g. UK).*

- ❖ *In countries coming out of a period of conflict, IMC may be particularly difficult and needs to start with initiatives that build confidence.*

Yet, there are also numerous similarities between the IMC arrangements that exist all over Europe. It is possible to classify IMC in four broad categories.

### **1.3.1 Informal IMC**

Many relationships between municipalities are informal; they do not need a precise legal basis because they do not entail any binding legal decision. Meetings of Mayors, senior officials or technical committees can solve a lot of problems and improve the coordination of policies between neighbouring municipalities. This can have a direct effect on important questions of, for example, economic development, town planning and environment protection.

### **1.3.2 Weakly formalised IMC**

This kind of IMC may be based on agreements or contracts. For example, many IMC projects for sharing administrative services, like data processing and procurement, are covered by contract.

### **1.3.3 IMC in functional “enterprises”**

These IMC arrangements are mainly for the management of public utility services (e.g. water supply, waste management, sewerage), infrastructure (e.g. roads) or amenities (e.g. cultural institutions, sports facilities, health centres). They may be public entities with their own legal ‘personality’ and their own budget and property. They therefore need an appropriate legal status.

There needs to be political debate and specific decisions to establish them, and their operation requires a significant management and technical dimension. They can be ‘**single-purpose**’ institutions, ie only providing one service, but may also be ‘**multi-purpose**’ institutions.

Services provided by such functional ‘enterprises’ may be paid for by user fees; equipment may be paid for by contributions from each partner municipality according objective criteria.

Municipalities can establish municipal ‘enterprises’ under public or private law. Under private law, it is a joint business-oriented activity and shares are held by the municipalities who create it. If the law does not prohibit it, private shareholders can be associated with it in a public-private partnership.

On the other hand, several municipalities may sub-contract a private company to deliver a service. This kind of an IMC outsourcing arrangement is very common. In Eastern Europe, local public services are often delivered by ‘communal enterprises’ under private law; there is a tendency for such enterprises to develop their services for a wider range of municipalities.

Such 'private law associations' are particularly used by municipalities for cultural events (e.g. festivals) and social activities (e.g. homes for elderly persons). Sometimes municipalities delegate further competences to such an association.

#### **1.3.4 IMC as a model of integrated territorial cooperation**

Certain IMC forms look like second level self-government authorities. They have their own legal 'personality', along with multi-purpose competences in matters of **strategic interest** (e.g. economic development, town planning, roads, public transport). They have strong political structures and a degree of financial autonomy, even perhaps the power to decide and collect taxes.

### **1.4 Reasons for creating IMC**

Municipal bodies are elected to run public affairs within the boundaries of their municipalities. Their legal position prevents them from taking responsibility for matters that are not within their jurisdiction. Cooperation with neighbouring municipalities is not an explicit part of their official functions.

***Cooperation on a broader level than just a polite handshake agreement is not a spontaneous behaviour of municipal leadership.***

Municipal law considers generally that all municipalities are on an equal footing, have the same scope of competences and may independently fulfil all the tasks assigned to them by law. This creates the potential for rivalry and competition between neighbouring municipalities, not only between the municipal leadership but also between the citizens themselves.

**Yet there are serious reasons for neighbouring municipalities to collaborate in the real interests of their communities. They may need to deal with problems that require shared solutions. It may be better to accept reciprocal limitations to their autonomy and reinforce solidarity and partnership in order to improve living conditions across their territories. This is what IMC does; but it must be built on clear objectives and the will to achieve a worthwhile outcome.**

#### **1.4.1 Economies of scale**

Achieving better economies of scale is possible in many local services. The cost of service delivery is lower if more people benefit from the service or if the size of the service is greater. When a service is provided for two or more municipalities, the number of service users increases; this allows a reduction in unit costs.

***In the 1990s in Hungary, and later in the Czech Republic and Slovakia, some small municipalities have created "Joint Offices" for two or more***

***municipalities to deliver administrative services.***

Sharing administrative services can be a good example of economies of scale. Per capita spending on administrative tasks is usually very high in small municipalities and the cost of administration is a high proportion of the budget. This has significant implications for countries with many small municipalities.

**Percentage of municipalities with less than 1000 inhabitants**

<b><i>Latvia</i></b>	<b><i>30%</i></b>
<b><i>Hungary</i></b>	<b><i>50%</i></b>
<b><i>Azerbaijan</i></b>	<b><i>50%</i></b>
<b><i>Armenia</i></b>	<b><i>65%</i></b>
<b><i>Czech Republic</i></b>	<b><i>65%</i></b>
<b><i>Slovakia</i></b>	<b><i>65%</i></b>

For some services, IMC also provides a cost-effective way forward for large municipalities.

***Illustration***

***Solid waste management is a municipal function that is affected by the size of the municipality; it is often beyond the capacity of a single municipality to handle it well. Research suggests that a modern technological solution for proper waste management requires a population of not less than 70,000. This is because of the high cost of the investment needed for a modern landfill site and the technology needed for recycling and utilising waste.***

Modern waste management facilities are costly. While large municipalities may find it difficult to cover their costs, smaller municipalities will find them unaffordable. Another problem is that facilities like landfills and recycling plants require suitable locations – these are virtually impossible to find within urban centres - and people do not like to see them established in their own community.

***Example***

***In 1993, 18 municipalities around the city of Żywiec established a regional waste management company, Beskid, following the exhaustion of the old waste disposal plant. Proposals for five new landfill locations were all met with local protests; the only acceptable location was in Żywiec. There were two arguments for co-operation:***

- 1. If the city were to 'go it alone', it would be much more expensive in***

***terms of unit cost; citizens would have to pay higher bills.***

- 2. Radical improvements in environment protection would only be possible with IMC. Using a private contractor would improve management mechanisms and speed-up decision-making processes.***

***Currently the company operates the most modern facilities and has introduced a cost-effective programme of waste segregation and recycling.***

With IMC, it is possible to reduce the number of facilities and share the costs; the municipality where it is located may receive compensation from the others for the social and economic burden it has to support.

#### **1.4.2 Better services**

IMC is often driven by a desire to improve the quality of service provision or even to introduce a new service or build new infrastructure.

IMC might allow a group of municipalities to:

- ✓ *build a more modern health clinic with easier access for the local population;*
- ✓ *improve education by sharing schools and attracting better teachers;*
- ✓ *provide cleaner water more efficiently with new infrastructure.*

In small municipalities in several countries, services for children and the elderly are not provided at all; nor is it realistic to expect these municipalities to introduce such services by themselves. But they could do this through an IMC institution. The same applies to any costly infrastructure.

However, sharing costs does not necessarily mean reducing costs. Setting up an IMC to build and manage a solid waste treatment plant cannot reduce costs if the starting point is zero spending on waste management, but it will improve the environment and put an end to unregulated dumping.

#### **1.4.3 Catchment area**

A municipality may be responsible for services which are used by people in surrounding municipalities. Unless the full cost of such services is recovered, the municipality ends up subsidising such services through higher local taxes.

#### ***Illustration***

***A city bus system generally serves not only the central city but also suburb municipalities. Usually, tickets do not cover 100% of the costs; passengers from the suburbs are “free riders”, since they are indirectly subsidised by tax-payers from the city.***



Similar problems may occur with other services where the natural “catchment area” is wider than the administrative boundaries of a single municipality:

- *Waste collection in urban areas;*
- *Public transport in tourist regions;*
- *Cultural facilities (theatres, orchestras, museums, libraries, stadiums).*

There is also a **problem of accountability**. The suburb municipalities cannot influence such services even though their citizens use them. This often leads to poor services in the suburbs, weak service integration and conflicts over finance. An IMC approach to such services might overcome these problems.

#### **1.4.4 Joint management of infrastructure and public functions**

Many infrastructure networks, such as water pipes, sewerage systems, central heating systems, cable television, gas and electricity networks are constructed across more than one municipality. This may be because of the physical environment (e.g. one valley with several municipalities in a mountain area); it may also be the heritage of a former administrative system.

##### ***Example***

***In Poland, infrastructure facilities such as water-pipe networks and central heating systems were originally owned and managed by the Government and were often constructed across municipal borders. New policies were introduced after 1990 to transfer their ownership to municipalities. The creation of inter-municipal Associations to manage such infrastructure was often the condition for the transfer. The alternative was for the Government to retain ownership and management responsibility. Many of these Associations are still operating successfully.***

IMC provides a logical approach to the construction and management of shared infrastructure.

#### ***IMC ECONOMIC RATIONALE***

- ***Reduces unit costs and enables economy of scale (by increasing the number of units of product delivered relative to the costs of production)***
- ***strengthens negotiation, particularly in out-sourcing deals (by extending the number of users / beneficiaries)***
- ***reduces the number of beneficiaries receiving services at ‘below cost’ (by extending the catchment area)***
- ***raises “own” investment capacity of partner municipalities (by***

***bringing together their limited capital funds)***

- ***enhances creditworthiness and the ability to attract external funds - both public and private (by improving costs-benefit ratios of projects)***

***IMC makes affordable and effective for the many what would neither be affordable nor effective for the one alone!***

Similarly, an IMC approach can facilitate the provision of particular services across municipal boundaries (e.g. local transport).

Where such integration is rational, it may be sensible to go further and integrate the physical planning and technical strategies that need to underpin such services. Joint plans will be more effective than separate ones. **A joint association that brings together municipalities sharing a common economic development challenge would be more efficient and effective in bringing jobs and investment into an area than a fragmented approach.**

#### **1.4.5 Better visibility and marketing**

Municipalities may decide to work together to achieve greater visibility and to market themselves jointly to promote cultural activities or attract investment. In themselves, they are each too small to be attractive. Such IMC allows them to share advertising costs and to make best use of regional symbols or attractions.

##### ***Example***

***The Association of Jura Municipalities brings together 40 municipalities located in the region north of Krakow (Poland). The region is full of rocks, caves and castle ruins. They plan and mark tourist tracks, train local residents who support tourist activities and promote the region in national and international tourism fairs. They have been able to make a spectacular film to promote their amenities.***

In many countries, municipalities have come together in IMC to attract investment, build facilities or to integrate an economic area where raw material, communications and transportation, skilled workers and research centres spread beyond any particular municipality.

##### ***Example***

***In France, for example, hundreds of “Tourist Offices” are managed by inter municipal Associations.***

#### 1.4.6 Access to external funds

IMC is particularly important for many countries of Central, Eastern and South-Eastern Europe because provides access to a range of external funding.

##### ***Example***

***A project to improve water supply in the region of Cluj, Romania, received strong support from the European Investment Bank because it was submitted by several municipalities and would affect the lives of more than 500,000 people.***

Several programmes supported by the EU and other international donors require either (a) a minimal threshold for the project size (which is too high for smaller municipalities) or (b) a single application of two or more municipalities.

### 1.5 Side-effects of IMC

There are potentially both positive and negative side-effects to any IMC project. Some of these will be unexpected. But as far as possible they should be anticipated and managed.

#### 1.5.1 Positive side-effects

- IMC may positively influence management practices in the partner municipalities as each partner seeks to emulate the best practice of the others or of the IMC institution.
- IMC may encourage a more co-operative political culture; this can be particularly beneficial where partner municipalities are governed by different political parties; political parties learn to cooperate for the common interest.
- The process of jointly applying for EC / World Bank / other donor funds may help to develop the will and capacity of each individual municipality for partnership-working with other public, private and voluntary organisations even outside the IMC institutions.
- IMC can give more time to the Mayor to focus on strategic responsibilities by reducing demands on his/her time from minor issues that become the responsibility of the IMC.
- IMC can reduce the level of corruption arising from the use of personal connections in getting jobs or achieving promotion in local self government.
- Partner municipalities may develop a greater sense of solidarity and this contributes to the amelioration of the social environment.

- IMC may create more opportunity for engaging local organisations in local self government (NGOs, sports clubs, cultural associations, businesses, village associations...) and contribute to building up social capital.
- IMC may bring opportunities to participate in trans-border cooperation.
- IMC may encourage municipalities to explore the option of public- private partnerships for specific activities.

### **Example**

***In Bulgaria, the Ministry of Agriculture and Forests prepared a strategic approach to participating in the EU's LEADER programme, which entails a specific approach to rural development. With NGO support, a Local Action Group (LAG) was established to prepare and implement an integrated rural development strategy. The LAG brought together the municipalities of Kresna and Strumyani (pop: 13,000) and all the other stakeholders. Over 50% of the Board members were from local organisations.***

***Early priorities included raising awareness, strengthening capacities of rural institutions, training in managing finances and building networks. A memorandum was signed between the 2 municipalities and the lead NGO (FLGR). Criteria and procedures for LAG membership agreed; a Local Operational Group was established; newsletters were disseminated. The LAG was registered as an NGO.***

***As part of a bottom-up planning approach, a series of public discussions were held on the following themes:***

- 1. The LEADER approach***
- 2. Priorities of the local development strategy (subsequently developed by working groups)***
- 3. Identifying measures and projects***
- 4. Agree the Local Development Strategy.***

***On the basis of this process, the LAG is anticipating EC funding support after a competitive application process.***

### **1.5.2 Negative side-effects**

IMC carries risk. These risks may not necessarily become obstacles if they are avoided or properly managed.

- ***Slow decision-making process***

IMC entities can be slow in making decisions. Delegates may have to consult their own municipalities in cases where decisions are crucial. Decision-making becomes more complicated since it involves more decision-makers, and lacks an over-riding authority to get out of any deadlock.

The extent to which this issue is a problem depends on many factors, such as the legal form of the IMC institution or the internal regulations agreed among the municipalities. It is more of a problem when IMC is only based on contract and decision-making lies with the constituent Mayors or Assemblies. It is less of a problem if the IMC institution is a separate legal entity with appropriate powers.

- ***Duplication of costs and personnel***

IMC should, in theory, help to reduce costs or to achieve more for the same cost. But practice may be different. Municipalities may still suffer from bureaucratic inertia; ambitious municipal leadership may not be ready to give up control; management may be inefficient. Sometimes, individual municipalities may still employ personnel to deal with issues that have been transferred to an IMC.

In such cases, IMC generates additional costs instead of savings; but this can be avoided.

- ***Democratic deficit***

Mechanisms for democratic control over municipalities are well known. Meetings of the council are open for the public; the media takes an interest; minutes from meetings are available. The mechanisms for key decision-making are set out in statute.

However, procedures for decision-making in IMC institutions are less well known. It partly depends on the legal form. In certain cases, the partner municipalities' own rules are applied to the IMC. But IMC councils tend to attract less attention from the media as they rarely have to deal with political matters.

For IMC entities delivering technical services (water, transport, waste...), consumer associations or environmental organisations may well watch the IMC with care and be act robustly where they think it is required.

IMC council members may be less well informed about the IMC's activities than about their own municipalities, thus threatening accountability. The establishment of a proper **internal control system** in an IMC entity is more challenging than in a municipality. Audit procedures will certainly be important. Some suggest that IMC institutions that are big contractors and deal with large sums of money are more vulnerable to corruption.

- ***Political costs of co-operation***

IMC requires the political leadership to **share power** and prestige. Sometimes they are reluctant to join an IMC structure because they are not ready to that. But even after they join, the issue still remains. The ambitions of municipal leadership - their pride and their limited ability to compromise - may lead to conflict and hamper co-operation.

Sometimes, municipalities who formally joined an IMC institution are happy to receive the benefits but remain unready to provide their proper personnel and financial contribution. These are also “free-riders”.

These issues may result in a deterioration of relationships instead of an accumulation of trust among partners; in the long run this will endanger the sustainability of the IMC arrangement.

## **1.6 Summary**

In itself, IMC will not remove weakness that is already present in a municipality. Indeed, continuing poor performance by member municipalities may well hamper an IMC operation. Thus, any municipality participating in IMC should first ‘clean out its own stable’ rather than expect the IMC to do it for them.

**IMC is not a panacea for a weak municipality.**

IMC entails risks: it may slow down decision-making or make it more opaque, thus reducing democratic control; it may generate duplications; it may have political costs. **These risks must be addressed and managed properly.**

However, not only can all these risks can be reduced or avoided, but there are several **benefits** that accrue to municipalities using IMC:

- ✓ *Municipalities can do together what they would never afford to do alone; they can provide new services or enhance the quality of service they already provide.*
- ✓ *A larger “market” of consumers leads to reduced unit costs, larger catchment area may reduce (or even avoid) ‘free-riders’ and partner municipalities may share knowledge and experience; this makes service provision more effective.*
- ✓ *The ability to attract private investments and enter into Public Private Partnerships increases; more favourable contracts with private companies become possible.*
- ✓ *Investment capacity and creditworthiness are enhanced, making it easier to get loans, and attract grants and EU (and other external) funds.*

- ✓ *Administrative services can be reorganised: better trained and more specialised, staff can be attracted, leading to a more professional work force; redundant staff can be mobilised to fulfil new responsibilities.*
- ✓ *Sharing a common economic development challenge and having greater visibility is more successful in bringing jobs and investment into an area than a fragmented approach.*

### **WHAT IMC CAN DO FOR YOU**

- ***Overcomes the technical, demographic or financial inadequacy of isolated municipalities.***
- ***Gives access to higher standards of technology.***
- ***Brings efficiency through cost sharing in administrative tasks, equipment, employees.***
- ***Reduces disparities of expenditures in neighbouring municipalities and promotes equal service to citizens.***
- ***Establishes common standards for all the citizens of the IMC area.***
- ***Creates solidarity in an area, especially by unifying taxes and fees and sharing revenues.***
- ***Raises quality of services by enabling greater specialisation in staff and higher levels of expertise.***
- ***Enhances the visibility of municipalities in certain domains in a way that can be particularly useful for attracting new employers, investment and tourism.***
- ***Offers critical size for getting access to funding, specifically from EU and international organisations, and to possible loans or bonds.***
- ***Leads to more rational urban planning and development policies.***
- ***Gives more time to the Mayor to focus on more strategic matters.***
- ***Reduces private and party political influences that bring corruption.***

## CHAPTER 2 ENABLING AN IMC-FRIENDLY ENVIRONMENT

IMC rarely happens spontaneously except perhaps where the leadership in nearby municipalities already has close relationships; in such cases, the outcome is usually informal. **Yet, given the potential benefits of IMC, why is there not more IMC, particularly in Eastern and South Eastern Europe?** There may be several reasons: a lack of a cooperation culture, no understanding of the legal mechanisms, fear of the political costs.

**IMC only flourishes if the national and local environments are IMC-friendly.**

There is, therefore, an important role for:

- a) the Government in establishing the right legal, financial and administrative frameworks;
- b) the Local Government Associations (LGA) in providing support through capacity-building, expertise and information.

Consultation and cooperation between the Government and the LGA is critical. Support from international institutions can be valuable.

**But municipalities also have a role in establishing an IMC-friendly environment at local level.** The leadership has to be willing to drive IMC because it sees its value. Transparency and good communications in individual municipalities will support the foundation of mutual trust that IMC requires. Citizens have to be persuaded of the value of IMC.

### **2.1 Obstacles to IMC**

IMC is not an easy option. Numerous difficulties may stand in the way. The most significant ones tend to lie within municipalities themselves and result from ignorance and fear. The personal position of the leadership may be vulnerable; political parties may be hostile to the idea; financial constraints may prevent the search for alternative approaches. Overcoming such difficulties will require information-sharing, research studies, seminars, promotion campaigns and confidence-building measures.

In some countries, IMC is relatively undeveloped because municipalities are already quite large (e.g. Scandinavia, UK). In some other countries, local self-government is a more recent phenomenon, decentralisation is not such a high priority and there is not yet any real policy to promote IMC (e.g. Serbia, Croatia); the culture of partnership between public or private entities is limited and taking initiatives is difficult.



### 2.1.1 Municipalities

Where decentralisation is recent, municipalities want to be as autonomous as possible. The leadership, councillors and staff may not want to share competences with others in a way that allows an external authority – one outside their immediate control – to decide on matters that are important for their own communities.

Political differences between municipalities may play a role. Experience suggests that many IMC projects were initiated by municipalities where there were close political ties among the leadership. However, rivalry is sometimes as strong inside parties as between them. Where municipalities are governed by different political parties, multi-party IMC projects can operate quite well because it requires a search for consensus and an acceptance of compromise.

Finance can also have an influence. There are municipalities who would seek to pay more so that they can control more; others may be tempted to reduce unduly their share of the costs. This makes clear financial arrangements for revenues and expenditure necessary.

There may be no tradition of giving priority to the needs of the population; rather, municipal staff may have become used to waiting for government instructions rather than use their initiative to find appropriate solutions by themselves. They may resist because they do not like change.

### 2.1.2 Citizens

Citizens are not familiar with IMC. Experience suggests that most citizens are initially not in favour of new local bodies; their objections have frequently blocked the establishment of larger IMC entities. Their motivation may be varied: innate conservatism; a fear that taxes or fees will rise and that they will have less control over the IMC entity than over the municipal council; an unwillingness to travel further than the municipal offices for formalities; objections to seeing their local taxes spent in other municipalities.

Furthermore, citizens do not like an external authority deciding on sensitive matters such as the location of a waste facility, housing policy and urban planning. In some of these matters, citizens may have a direct personal interest.

**Experience shows that, in the long run, citizens are quite happy with services delivered by IMC.**

Hence the importance of giving citizens **full information** on the real advantages IMC can bring them as soon as possible.

### 2.1.3 Central government and Parliament

Some Ministers, senior officials and Parliamentarians want to encourage IMC; others may not dare to create problems by going against Mayors who oppose IMC. Technical Ministries generally support the creation of local IMC entities able to negotiate, finance and operate technical programmes (e.g. environment, roads, waste management, schools). Ministries responsible for local self government would like to see larger municipalities getting involved in IMC, but well know the political opposition of the Mayors of small municipalities.

Ministries of Finance would like to see fewer municipalities as this would simplify their financial management (e.g. taxation and accountancy) and make the calculation of transfers and equalisation grants much easier. Even better if money can be saved as a result of better economies of scale. But their support may change if they see the development of IMC entities leading to more financial demands on the Government.

There must therefore be a **national champion** – a Ministry or a Parliamentary party – that can launch a national IMC policy, a champion strong enough to prepare and guide appropriate legislation through the Cabinet and Parliament and establish the necessary technical and financial support mechanisms.

### 2.1.4 Local Government Association

LGAs will be well aware of the weakness of many municipalities and their consequent poor performance in service provision; they will also be informed about IMC practice in foreign countries and about the general concept of IMC.

They can help to inform municipalities about the benefits of IMC. However, the controlling bodies of the LGA may give IMC a different priority than the staff. LGAs can only be as active in supporting IMC as the majority of Mayors will allow.

### 2.1.5 International organisations, NGOs and foreign donors

These organisations have different views on IMC. Some just ignore it or do not consider it as a priority. It may be difficult for them to intervene in matters that may be politically sensitive. Their officials, coming from countries with different public administration models, may not be able to agree on a precise strategy for IMC in a given country. Disputes can arise about the priorities of their action; IMC is in competition with their support for regional development, training programmes, reform of the local tax system.

Other institutions may want to promote IMC but have little money or relevant expertise. Some promote municipal amalgamation rather than IMC in order to reduce public expenditure.

UNDP, LGI and CoE pay much attention to IMC and have a clear policy of support, but their means are limited. This new Toolkit is intended to open doors for new synergies with other partners in this crucial area.

**The push for IMC must come from somewhere and from somebody. It can come from any of these stakeholders but it has to bring all partners along if an IMC-friendly environment is to be established.**

## **2.2 NEED FOR A NATIONAL IMC POLICY**

**Efficient and effective local self government is of national interest, considering the important functions that have been decentralised. IMC may help to deliver many of these functions more cost effectively. For this reason, Governments and Parliaments should care about co-operation among municipalities. IMC helps to achieve policy goals of the Government by strengthening municipalities and raising their standards of performance in key domains.**

Hence the importance of encouraging municipalities to form IMC institutions. It is significant that, in countries where IMC institutions are flourishing (e.g. France, Italy), there are clear national or regional policies to stimulate such arrangements. Municipalities enter co-operation voluntarily, but sensible national policies can provide them with strong **incentives** to do so, including a proper **legal framework** and **financial support**.

### **How to overcome the obstacles of national inertia?**

- ***Gather and share information on the benefits of IMC.***
- ***Identify national politicians who understand the stakes in IMC and are ready to push the idea.***
- ***Encourage a series of meetings between the Government and the LGA to seek consensus and agree a way forward.***
- ***Encourage Ministerial meetings between the Ministry responsible for local government and technical Ministries to consider municipal performance in the relevant domain and how IMC could improve it.***

National policy is not limited to the design of a legal framework; we even see situations where we have a legal framework but no active **national strategy**. Enacting a law is not the end of the Government's obligation; there should be an on-going concern to detect situations or territories where IMC would bring evident

improvement in public services and in public spending in order to encourage municipalities to prepare IMC proposals.

Any national policy should not be aimed at creating IMC as the prime objective, but as a tool for better performance. The Government should not present IMC just as a reform of municipal administration but rather as a key instrument for developing infrastructure, delivering services and improving administration. The only alternative for small municipalities, if weak performance is to be avoided, is to amalgamate them, as happened in Georgia.

The way forward for the Government would be to set **new standards** for key services that might best be achieved through IMC and to offer specific **financial incentives** to encourage municipalities to go down the IMC route. But how municipalities use IMC will be up to them; there can be no one standard model.

The Government will also need its own capacities to promote IMC. The Ministry responsible for local government should have experts with a good knowledge of IMC. There should be data and studies on the consequences of weak performance from small municipalities (e.g. a lack of sufficient urban planning expertise can delay planning applications and have a negative effect on local economic development). Such studies can be carried out by research centres and universities. Technical Ministries should have pertinent data for their specific domains.

Such information provides a solid basis for discussions with local government and for campaigns designed to get support from citizens and the media.

A major task of the Government is to provide **legal and technical assistance** to municipalities for implementing IMC. This can be done by the appropriate Ministry or regional state office. There must be trained staff with proper guidance and the power to offer appropriate financial and technical support (e.g. for an IMC feasibility study).

The Government also has a responsibility for **monitoring and evaluating** both the process of establishing IMC projects as well as their performance, where there is a national interest. While the Government cannot unreasonably intervene in the autonomy of local self government, it should be able to prevent unreasonable IMC proposals.

### **2.3 AN APPROPRIATE LEGAL FRAMEWORK**

A decisive pre-condition for helping IMC to flourish is a legal framework that facilitates IMC arrangements. The pertinent provisions can be in the general law on municipal administration or in a separate law that deals uniquely with IMC. In some countries, there are both.

The law on IMC may not be exclusive in the sense that cooperation between municipalities may also be possible (i) on basis of other rules (contract, private law institutions) or (ii) without rules (handshake agreement).

**Specific IMC legislation has several effects; it:**

- **demonstrates the support of the Government and Parliament for IMC;**
- **gives models of legal procedures and forms;**
- **enhances the confidence of partners in the solidity of the IMC institution to be created;**
- **reduces the risk of litigation;**
- **makes the resolution of disputes easier.**

**Guidelines for formulating the legal framework**

- ***It has to be flexible enough to allow different forms of IMC institutions: contract or separate entity; single-purpose and multi-purpose; public or private law.***
- ***It should allow the creation of special legal IMC entities with their own budget and debt policy and the ability to own property and contract with private companies.***
- ***It may contain provisions that adapt commercial law to allow the establishment of a company owned by a group of municipalities.***
- ***It should set clear rules for the oversight of IMC institutions, including supervision of their finances and debt level.***
- ***It must be complemented with bylaws and administrative regulations that clearly set out the procedure for creating an IMC; these act as guidelines for officials for solving legal questions and provide security and transparency.***
- ***It should not be too complicated or over-regulatory in order to leave municipalities enough space to choose solutions that best suit local conditions.***

The legal framework can establish rules to avoid the most frequent problems that sometimes affect IMC (e.g. lack of a feasibility study, limited transparency, weak control). The legal framework in any country responds to the particular circumstances of municipalities in that country and results from political negotiations between the Government, Parliament and municipal leadership.

### **A CHECK LIST FOR THE LEGISLATORS**

***There cannot be a model IMC law that would fit for all countries. But it is possible to list the key questions that need to be answered by legislators.***

***The law on IMC will mainly relate to public law entities. But it can also have provisions for contracts or contain specific rules for when municipalities cooperate with private law institutions.***

***A comparative study shows everywhere a mix of compulsory and optional provisions, in proportions that vary considerably. The following are basic elements that should be included in any law on IMC:***

- 1. The principle that IMC is authorised by law and is a desirable solution for strengthening local government and improving efficiency in service delivery and public management.***
- 2. The domains in which IMC can operate; the law may say that certain competences (e.g. urban planning and economic development) may be restricted to certain legal forms or that the transfer of certain municipal functions to IMC is prohibited.***
- 3. The procedure for deciding which municipalities will be consulted in preparing an IMC proposal, including rules on a preliminary feasibility study.***
- 4. The procedure for formally creating an IMC project / entity - whether or not municipal unanimity is required; the option of a referendum.***
- 5. The definition of the nature of the legal body (e.g. public or private law) and its general regime.***
- 6. The definition of the organs of the IMC entity; the method of election or nomination; general rules for operating the IMC entity.***
- 7. Rules on budget, accountancy and resources; decisions on debt, property and other financial aspects; incentives and special grants.***
- 8. The status of IMC employees.***
- 9. Rules of control (legality of acts, finances, audit) by the State; periodical reports to municipal councils; rights of citizens and service users to obtain certain data or have access to documents.***

IMC law can contain precise incentives. For example, it can allow the Government to act as legal adviser for municipalities or take the initiative to propose IMC. It may even specify that IMC is mandatory under certain circumstances (e.g. depending on the size of municipality or the specific domain).

### **Example**

#### ***The Netherlands – The Joint Regulations Act***

***In the Netherlands, public forms of co-operation between municipalities are collectively called ‘joint regulations’. The rules on the structure and operations of these public forms are laid down in the Joint Regulations Act. This law is meant to make IMC more orderly and to increase the influence of the participating municipalities in the process of joint decision-making.***

***The Act lists the following three basic models for public co-operation:***

#### ***1. Public authority.***

***This consists of a governing body, an executive committee and a chairman. Advisory and administrative committees and services may also be created. Within this Act, the public authority is the only co-operation structure with a legal form. It can therefore act as an independent legal body. In practice, a Public Authority is created as an IMC to undertake a range of executive tasks in the form of an environmental agency, a public health service, etc.***

#### ***2. Joint agency.***

***This is usually set up for relatively simple types of cooperation. A Joint Agency does not have a hierarchical structure; neither does it have the status of a legal person and it cannot exercise certain powers. It is usually given a mere consultative role (e.g. in the field of welfare or public housing).***

#### ***3. Core Municipality.***

***Separate from, or in conjunction with, the Public Authority and the Joint Agency, an agreement may stipulate that certain powers shall be exercised by one of the participating municipalities only. This model is useful for carrying out executive tasks such as contracting out the collection of household waste to a larger (neighbouring) municipality.***

***Municipalities are also allowed to form a Light Agreement without establishing a legal entity. Powers or competencies cannot be delegated to other bodies. Co-operating municipalities usually choose this form if they wish to mark off their rights and duties against each other.***

***The Act allows a co-operation agreement that creates a legal person incorporated under civil law.***

Source: VNG International (2004)

The regulations that are adopted by Parliament are a **political choice**. The Government should seek a wide consensus on them through cross-party agreement following thorough negotiations with the LGA. These regulations will probably need to be periodically modified to take account of the evolution of IMC or to correct faults that become apparent during implementation.

The Government wants IMC models that are attractive for municipalities and that encourage them to initiate IMC. The way the municipal leadership and citizens see IMC is important. Where, for example, there is a deep wish to protect municipal autonomy, the law on IMC must leave discretionary power to municipalities for deciding the creation of each IMC; there may be a wide range of optional forms, more or less integrated, so that each IMC can adjust to local conditions. In other countries, different political conditions may allow more forceful rules.

## **2.4 INCENTIVES**

There is a need to stimulate IMC. Without it, it is unlikely that many IMC projects will develop; too much will depend on the initiative of individuals. Governments have the main role to play, but the EC and other international institutions can also provide support. The LGA and NGOs can help with advocacy and with technical and legal advice.

### **2.4.1 Financial support,**

Financial support will mainly come from the Government, but also from regions (e.g. Toscana in Italy) or international donors. Such support can be quite decisive. Municipalities with few resources - whatever their size - do not have sufficient capacity to implement serious public service programmes. But through IMC they can. However, this will only be possible with financial support; such support should be seen as a very sound objective of public expenditure.

#### ***Example***

***An incentive for IMC, used by the French government in 1999 to encourage the creation of 'integrated IMC communities', was the allocation of permanent additional grants from the State budget. This made the option very attractive for communes. In a situation where resources were limited and competition between municipalities strong, the possibility of getting this additional funding proved to be very attractive.***

One efficient incentive aimed specifically at IMC is to provide support for the initial Feasibility Study. **More generally, the Government may provide funding (e.g. special grants) conditional upon projects being submitted jointly by two or more municipalities.** If the grant is for a function in which IMC may



increase its effectiveness, like solid waste management, it can be fully justified from an economic point of view.

This kind of financial incentive may be explicit, when a joint application is a formal condition for access to the grant. But such incentives can be implicit where a minimal threshold for the project size is applied to the grant (e.g. the number of people who will benefit). In several EC programmes (Instrument for Pre-Accession, Cohesion Fund), funding has been available only for big projects.

**Access to much EC funding is, for small municipalities, only possible through IMC.**

Even if there is no formal threshold, rules for assessing applications may favour bigger projects; they might include the number of users or the total volume of benefits among the assessment criteria. A proposal submitted by a small municipality has no chance of passing the relevant threshold.

#### **2.4.2 Functional incentives**

The Government may offer to transfer a new competence to municipalities but, due to its complexity, may establish a condition of size, thus encouraging IMC arrangements particularly between smaller municipalities.

#### **2.4.3 Targeted support**

Another specific incentive may be support for a “big event” that would require the co-operation of several municipalities in the region. The 2000 Olympic Games in Athens is a well documented example of the use of such an incentive. The event might be a regional music festival or an agricultural show. Where the culture of cooperation is minimal, using IMC to host such an event can be a good way of introducing IMC into local government culture.

Legal assistance and technical expertise by Government experts in specific domains (e.g. transport, waste disposal, water supply) may be important when the core challenge is not creating the IMC but finding the best technical solution.

## **2.5 LOCAL GOVERNMENT ASSOCIATION**

The role of the LGA in supporting IMC can be very important but their experience is generally limited. The LGA is more trusted by municipalities as it represents their interests and can draw on best practice. It has its own communications channels with the Government and Parliament and networks of supporters. LGA support would normally be less expensive than using private consultants.

There are three conditions if the LGA is to play its proper role:

- a) *A clear vision of the IMC benefits for municipalities;*

- b) *Political support within the LGA Board for an IMC policy;*
- c) *Sufficient financial resources and staff with appropriate expertise.*

If IMC is not a priority for Mayors, it is unlikely to be a priority for the LGA. Information campaigns may need to be organised first. LGAs are generally aware of IMC through their international partners. Yet their support for IMC is quite diverse.

European experience suggests the following role for LGAs in promoting IMC:

1. LGAs should be active partners with the Government and Parliament in preparing IMC policy, legislation and financial framework. They could develop an IMC **advocacy strategy** and lobby relevant Parliamentary committees and Ministries in order to raise IMC up the political agenda.
2. LGAs should:
  - a. *Gather IMC information;*
  - b. *Develop an IMC website and data base (ie a register of IMC initiatives, case studies, legal and financial documents);*
  - c. *Disseminate useful information on IMC to municipalities (ie examples of IMC benefits, best practices, information on foreign models, pilot experiences).*
3. LGAs should support municipalities by:
  - a. *Running IMC training sessions;*
  - b. *Organising networking between IMC practitioners;*
  - c. *Encouraging the more progressive municipalities to become leading examples and promote the idea of IMC with other municipalities;*
  - d. *Advocating for IMC through seminars and conferences;*
  - e. *Accrediting IMC experts able to assist municipalities, especially in providing guidance for carrying out the feasibility study and establishing the right legal framework;*
  - f. *Providing advice on legal, financial, administrative and technical questions;*
  - g. *Influencing the media and attracting their attention to the importance of IMC and to successful IMC experiences.*

## **2.6 CREATING A MUNICIPAL IMC CULTURE**

There are many successful cases of IMC in regions where there is a well-developed “culture of co-operation”. This culture is able to accept political compromise as a constructive way of managing public affairs. This culture requires an attitude of trust among the players and is particularly demonstrated through voluntary organisations. This culture does not just happen; it requires **skills** and **attitudes** like the ability to listen and a sense of purpose.

This kind of social capital is not common in Eastern and South Eastern Europe; therefore, any national policy for supporting IMC should be integrated within a much broader long term policy to cultivate it.

Interest for IMC will develop in parallel with the decentralisation of more competences to local self government. Local pressure for stronger local self government will continue to grow; citizens will be more likely to ask their municipal leadership to look for more ways of delivering good public services, using the supplementary resources that IMC provides if necessary. **IMC thus becomes a by-product of further decentralisation.**

IMC is about horizontal, non-hierarchical relationships among municipalities. Experience suggests that a key stimulus to IMC is competent **municipal leadership** that can see the opportunities that IMC provides and will use influence, conviction and commitment to bring other municipalities on-side.

Such leadership will take the time to:

- *Explain the benefits of IMC;*
- *Acknowledge the different interests of potential partners;*
- *Seek a 'win-win' solution to the challenges faced;*
- *Mobilise all efforts in a common purpose.*

In such circumstances, the use of traditional, hierarchical authority will be counter-productive; such power will be distrusted. Small municipalities do not want to end up under the control of big municipalities. Modern leadership is a 'sine qua non' condition.

## CHAPTER 3 INITIATING IMC

### Preliminary stage

There are many ways in which IMC is **triggered**; each case is different. It depends on the legal framework, the availability of incentives, the possibility of Government involvement, the relationships between municipalities and their leadership, the political culture, available staff and resources.

Sometimes, an external stimulus – by the Government or international organisation - may start the process. Strong local concerns about inefficient services may create the impetus for specific action (e.g. on waste collection or health services).

Sometimes a Mayor engages in a lobbying campaign to convince other politicians and citizens that an IMC should be established.

It is important to understand the implications of triggering IMC. There are fifteen steps (set out below) that, in general, it would make sense to follow in setting up an IMC project (see the chart below). However, the actual practice of setting up an IMC project may well vary the order of some steps, and give particular emphasis to some of them rather than to the others.

### THE IMC STEPLADDER

<p><b>PHASE 3</b></p> <p><b>Implementing and evaluating IMC</b></p>	<p><b>15 Conduct regular evaluations</b>  <b>14 Ensure continuous and effective communications</b>  <b>13 Ensure continuous monitoring and self-assessment</b>  <b>12 Develop co-operation mechanisms</b>  <b>11 Establishing management and representative structures</b></p>	<p>↑</p>
<p><b>PHASE 2</b></p> <p><b>Establishing IMC</b></p>	<p><b>10 Finalise agreement / statute</b>  <b>9 Define the institutional arrangements</b>  <b>8 Determine the financial arrangements</b>  <b>7 Choose the legal form</b>  <b>6 Identify scope for IMC</b></p>	<p>↑</p>
<p><b>PHASE 1</b></p> <p><b>Initiating IMC</b></p>	<p><b>5 Build awareness and support</b>  <b>4 Decide on entering IMC and set up negotiating platform</b>  <b>3 Analyse the legal and economic environment</b>  <b>2 Identify potential partners and possible areas of cooperation</b>  <b>1 Identify needs and opportunities</b></p>	<p>↑</p>

**WARNING**

Progress up the stepladder (see above) towards a mature IMC depends on many factors. However, it is important to bear in mind that, before embarking on an IMC project to provide services and/or regulatory functions, the cooperating municipalities should:

- a) harmonise their management functions (e.g. staff salaries, tax and fees collection procedures etc.); this will smooth the way towards an effective IMC;
- b) establish the appropriate organisational and accounting framework so that each municipality can identify how much it contributes and how much it gets in return; this will avoid those feelings of mutual distrust that could destabilise the cooperation.

**TRIGGERING IMC: OVERVIEW OF THE STEPS**

PHASE	STEPS	KEY QUESTIONS TO BE DEALT WITH	ACTIONS
<b>I. INITIATING IMC</b>  (explore possibilities for cooperation with partners; examine risks / advantages of IMC; launch formal negotiations)	<b>1. Identify needs and opportunities</b>	<p><i>Is there a general feeling of dissatisfaction about services or developments? Do people see a need for improvement?</i></p> <p><i>What are the most evident shortcomings in service delivery (services which are not provided at all; services delivered but not to all who are in need; services not achieving quality standards; services that have too high a per capita / unit cost...)? Would IMC be a logical solution for solving them?</i></p> <p><i>Is there an untapped potential or opportunity which IMC could help to exploit?</i></p> <p><i>What are the driving forces within the municipality that could support an IMC process? What are the obstacles to be overcome?</i></p>	<p>Carry out a <b>customer satisfaction survey</b> to understand citizens' perception</p> <p>Carry out <b>baseline research</b> (NB: Although the situation is often self-evident, it is a good practice to collect a few relevant <b>performance indicators</b> for key services)</p>
	<b>2. Identify potential partners and possible areas of cooperation</b>	<p><i>Is there in neighbouring municipalities a feeling of dissatisfaction over the performance of some municipal functions or over specific opportunities that are not being fully exploited?</i></p> <p><i>Do the stakeholders in these municipalities agree that joining forces in an IMC would be a reasonable way forward in dealing with (at least some of) the identified shortcomings?</i></p> <p><i>Would the Government be in favour of an IMC project (and ready to assist)? Would the LGA be able to help? Are there any best practice examples that could be studied?</i></p>	<p>Start <b>informal negotiations</b> (meetings and bilateral talks)</p> <p>Exchange <b>technical information</b></p> <p>Hold a <b>formal meeting</b> (to decide to go further)</p>
	<b>3. Analyse the legal and economic environment</b>	<p><i>What is the legal framework (legislation and regulations) applicable to the possible areas of cooperation?</i></p> <p><i>What are the legal options (advantages and disadvantages of each one) and constraints in these areas?</i></p> <p><i>Do central/regional authorities operate IMC backing schemes that would be</i></p>	<p>Prepare a <b>legal analysis</b></p> <p>Prepare a <b>feasibility study</b></p>

		<p><i>relevant in the present case?</i></p> <p><i>Which municipalities should be involved in which domains (it is possible that not all municipalities will be involved in all services)?</i></p> <p><i>What are the financial aspects and what would be the economic impact (both in terms of costs and benefits) of IMC in the various areas considered?</i></p> <p><i>What is the legal impact of the targeted cooperation options?</i></p> <p><i>What would be the requirements for IMC employees and for technical issues to be addressed?</i></p> <p><i>All in all, what would be both convenient and affordable for the concerned municipalities (both in legal and economic terms)?</i></p>	(including a detailed legal impact assessment of suggested options)
	<b>4. Decide on entering into IMC and set up the negotiating platform</b>	<p><i>Which municipalities / representatives could be brought together?</i></p> <p><i>What is the expertise required within the Task Force?</i></p> <p><i>Who may lead the process?</i></p>	<p>Adopt a <b>formal decision</b> (in all partner municipalities)</p> <p>Establish a <b>Joint Task Force</b> and the <b>negotiation procedure</b></p>
	<b>5. Build awareness and support</b>	<i>What information and messages should be communicated to citizens (eg rationale for IMC and follow-up process)? How should the messages be presented in a clear and convincing way?</i>	Organise an <b>information campaign</b> in the concerned municipalities and launch public discussions
<b>II. ESTABLISHING IMC</b>	<b>6. Identify IMC scope</b>	<i>Based on the legal and economic analysis, and on partners' interests and availability, what are the functions that could be covered by IMC?</i>	Decide on a concrete <b>list of policy areas / functions</b> to be covered by IMC
<b>(build foundations of</b>	<b>7. Choose the legal form</b>	<i>What is the proper legal form, given the scope and nature of functions delegated to the IMC?</i>	Decide on a <b>legal form</b> of the IMC

<b>IMC and reach agreement with partners on IMC structures and operation)</b>	<b>8. Determine the financial arrangements</b>	<p><i>What should be the key financial resources of the IMC (both revenues and costs)?</i></p> <p><i>How to share costs of joint service provision between the constituent municipalities?</i></p> <p><i>What are the budget rules for the IMC?</i></p>	<b>Decide on a IMC resources and budget plan</b>
	<b>9. Define the institutional arrangements</b>	<p><i>In the case of private entities: what are the decision-making bodies (and their powers) according to common law? How will representation of partner municipalities be ensured?</i></p> <p><i>In case of public entities: how representation of constituent municipalities will be ensured within the IMC council? Is the deliberative body constituted (only) by elected representatives or (also) by appointed members? How the executive body is appointed?</i></p> <p><i>What is the administrative structure of the IMC?</i></p>	<b>Decide on the IMC bodies and administrative structure</b>
	<b>10. Finalise Agreement / Statute</b>	<i>What are the additional clauses that are needed (required by the law or necessary to ensure smooth operation)?</i>	<b>Decide on other contractual clauses; complete and formally adopt it the draft IMC Agreement / Statute</b>
<b>III. IMPLEMENTING AND EVALUATING IMC</b>  <b>(mechanisms to ensure effective</b>	<b>11. Establish management and representative structures</b>	<p><i>Are all partner municipalities satisfied with their representation? Does the IMC Council have sufficient authority to ensure efficient and informed decision-making?</i></p> <p><i>Are the procedures clear for resolving conflicts? Are the links between the IMC Council and the partner municipalities clear?</i></p> <p><i>Do the staff have the necessary experience, expertise and commitment to manage the IMC to high standards? Do they have sufficient authority to avoid bureaucratic delays? Are the links between the management and partner municipalities clear?</i></p>	<p>Set up representative <b>IMC Council</b> with clear procedures</p> <p>Establish a <b>clear organisation chart, working procedures, codes of conduct, job descriptions</b> etc; ensure <b>facilities</b> are 'fit for purpose'</p>



<b>IMC operation)</b>	<b>12. Develop co-operation mechanisms</b>	<p><i>Is collaboration across Local Administrations encouraged?</i></p> <p><i>Are there appropriate IMC Council and management meetings to ensure coordination and cooperation between the administrative services concerned?</i></p>	Establish clear <b>timetable</b> for meetings; develop a <b>culture</b> of cooperation
	<b>13. Ensure continuous monitoring and self-assessment</b>	<p><i>Are there clear procedures for monthly and annual reporting between the IMC management and Council, and between the IMC Council and partner municipalities?</i></p> <p><i>Do stakeholders (staff, service users...) have a chance to give their views on IMC performance?</i></p> <p><i>Is there at least an annual meeting in which the IMC can present its report and plans to the public?</i></p> <p><i>Are the objectives, targets and performance indicators clear and straightforward?</i></p> <p><i>Can an internal audit process be established?</i></p>	Establish <b>reporting procedures</b> for the IMC Council and for the IMC management; establish a <b>performance management</b> system
	<b>14. Ensure continuous and effective communication</b>	<p><i>Is responsibility for communications clear?</i></p> <p><i>Are the IMC Council and staff clear about the target audiences, messages, and communications vehicles? Is sufficient money invested in communications?</i></p> <p><i>Does the communications strategy ensure stakeholders are well informed?</i></p> <p><i>Do people have confidence in the IMC leadership?</i></p>	Develop an IMC <b>Communications Strategy</b>
	<b>15. Conduct regular evaluation</b>	<p><i>Are citizens (both beneficiaries and potential beneficiaries) happy with the service / performance of the IMC?</i></p>	Set up mechanisms for regular <b>feedback</b> from beneficiaries; conduct a <b>staff survey</b> and a <b>citizen survey</b> every 2 years

## **Steps 1 & 2      Identification of needs, opportunities, potential partners and possible areas of cooperation**

The key reason for establishing IMC is the will to improve municipal governance. Therefore, the first step should be to diagnose the causes of current shortcomings in existing services and the reasons why, in particular municipalities, some services are not being delivered at all.

**IMC usually begins in response to a challenge, to questions that are being asked.**

To trigger off any IMC venture the following elements must be there:

1. Usually, it is the need to perform a certain service or to build some infrastructure jointly, if at all, that brings municipal leadership to an IMC solution. **There must be a generally perceived feeling that the existing situation needs to be improved.** If citizens or municipalities are not concerned, they will not want to embark on a complex venture like IMC.

It might therefore be a good idea to carry out a customer satisfaction survey to determine if there is sufficient demand for change. This survey could be accompanied, where possible, by a baseline research project on the way municipalities currently perform in delivering the targeted services; this will enable any progress under IMC to be properly assessed.

Acknowledging problems will remain unproductive without someone who can transform dissatisfaction (e.g. with frequent traffic jams or school closures) into a vision and propose IMC as the way forward. It is about seeing opportunities. The IMC **champions** should seek to identify untapped potential that cooperation with neighbouring municipalities could help to exploit.

2. The IMC partners should start a process of **getting a range of people on side** - elected representatives, managers and staff, local businesses, NGOs, and citizens in general - by discussing the possibility of developing IMC as a tool to address drawbacks in local public service delivery or to develop needed infrastructure.
3. The IMC champions must at the same time consider whether similar problems exist in bordering municipalities and if dissatisfaction is spread there too, and whether there are opportunities (e.g. for tourism development) that might benefit several municipalities if exploited.

4. If there is a **shared perception of a common challenge**, there should be an informal phase where the potential partner municipalities should be brought together to ascertain which municipalities would be interested in joining forces to meet common challenges and start identifying possible areas where cooperation is likely to be viable.

These four elements, even though they are logically separate from one another, often overlap.

Preliminary discussions should be held with the Government, especially if there is a national IMC campaign or if particular Ministries are proposing better ways of exercising a function; the creation of an IMC in this way results from negotiations.

In these preliminary discussions, the following stakeholders should be involved:

- a) *Senior officials of the partner municipalities who are often best placed to assess whether it might be possible to exploit opportunities or solve the problems through IMC.*
- b) *Elected representatives who will have to make the 'stop-go' decision.*
- c) *Citizens and users of public services who may fear being deprived of particular facilities if the IMC proposal implies moving some offices from the premises of one municipality to those of another.*
- d) *In some cases, Government officials, especially those in charge of "technical" services, who may have a good idea of the technical requirements and be able to access grants to cover the costs of the initial Feasibility Study or fund part of the IMC operations in the early years.*

It is important for municipalities not to be drawn into IMC just because money is available. The key driver must be to improve the quality of services and/or reduce their costs, while external financial support should be considered only as an early **catalyst**.

The discussions should be held in a way that fosters mutual trust and minimizes mutual fear. The IMC proposal should be analysed and discussed as a win - win opportunity; all potential partners should be able to see clearly what they will gain.

**Be careful!**

- ***All stakeholders must be involved in discussions from the beginning.***
- ***The 'win-win' approach must be clearly and frequently demonstrated.***

If the people concerned are afraid that their perspectives and interests are not taken into consideration or that one municipality might gain an unfair advantage, the negotiations will not advance.

The following order of meetings usually proves to be successful:

1. A preliminary phase of informal meetings among senior officials and elected representatives to explore the general attitude towards the idea is essential: **bilateral talks** by the lead Mayor with other Mayors who might have an interest; other **events** where the attitudes of colleagues can be explored. During this phase, the following issues should be covered:
  - *Is there in concerned municipalities a feeling of dissatisfaction over the performance of some municipal functions, the quality of infrastructure or opportunities that are not being fully exploited?*
  - *Do the stakeholders agree that joining forces in an IMC appears to be a reasonable way forward?*
  - *Would the Government be in favour of an IMC project?*
2. If this preliminary phase proves positive, officials should plan an **exchange of technical information**, legal and financial data and forecasts.
3. Next comes a **formal meeting** of senior elected representatives and officials; Government officials might be invited, if appropriate.

### **OFFICIAL MEETING**

#### **IMC: A MEANS OF IMPROVING LOCAL GOVERNANCE**

***Participants:***

***Mayors and their deputies; Heads of Administration, Finance Directors, Service Directors (as appropriate); Government and LGA officials (if appropriate); lawyer or consultant.***

#### **AGENDA**

- 1) ***Identify municipal functions with performance perceived as unsatisfactory in each municipality / all municipalities.***
- 2) ***Identify any development opportunity (e.g. business development).***
- 3) ***Identify the causes of the dissatisfaction:***
  - ***Costs are too high; lack of economies of scale.***
  - ***Lack of financial resources.***

- **Lack of professional competence.**
  - **Lack of coordination with bordering municipalities (over urban planning, water supply, traffic regulation, environment, etc.)**
  - **Other ...**
- 4) Decide which opportunities or functions might be approached by IMC.**
- 5) Final decision:**
- **stop here, or**
  - **go further and agree the next step**

In a region where no experience of IMC exists and where the sense of municipal autonomy is very high, confidence-building measures may be needed to build up an awareness of the benefits of cooperation and introduce the beginnings of a culture of cooperation. Something as simple as a shared school sports competition may be a good starting point.

**IMC is a process; it could start with an informal ‘handshake’ agreement between the Mayors and, little by little, the municipalities could develop more complex forms of IMC as their confidence, mutual trust, experience and expertise develop over the years.**

### **Step 3      Analysis**

This step is unfortunately too often missed out. Yet it is essential. Once it is clear that there is a shared view on common problems or opportunities, and a common will to approach them jointly, there is a tendency to move directly into the following phase and establish the IMC structures. Such haste may result in a lot of problems later.

Before taking further action, it is always a good idea to gather data, study alternative solutions and elaborate some plans.

***Without proper preliminary analysis, an IMC initiative is likely to fail.***

An analysis of *the legal framework* will take stock of legislation and regulations applicable to the proposed IMC project, and identify the main legal options and constraints. The legal options depend on the nature of the planned activities:

- 1) Managing jointly some indirect function (such as employee payroll, tax collection or EDP) or even some direct functions with specific technical requirements (e.g. school catering, school bus service) could be done using just an **ad hoc contract**.

- 2) The creation of a separate IMC **legal entity** might be required for the management of a particular direct function (e.g. waste collection), whether or not the private sector is involved.
- 3) Using IMC to manage strategic policy functions (e.g. urban planning or economic development) would require the establishment of a more **complex legal entity**.

**The IMC choice is in general not straight-forward because the legal options are very diverse; the choice will also depend, not only on the nature of the IMC, but also on the level of detail in the law (or the level of discretion left to the municipalities), the national IMC policy and the local situation.**

Sometimes municipalities have to choose a certain legal form; the exercise of some competences may require an IMC approach as a legal obligation. The financing of the IMC – whether or not it will generate revenues from fees, for example - may also affect the choice of legal form.

The legal analysis must be complemented by an economic / financial analysis; this should examine key issues such as the investment required and its sources, the costs and revenues of any services that could be provided jointly, the appropriate balance between using municipal budgets and IMC-generated revenues to pay for the IMC, and the availability of grants.

For these reasons, a Feasibility Study needs to be carried out that will build on the legal and economic / financial analyses. It does not have to be very sophisticated or costly, but it has to set out the requirements of implementing the IMC.

#### **A. Who will carry out the Feasibility Study?**

- a) External experts (e.g. from universities or international organisations) tend to have a high level of competence and a low level of engagement; they look “impartial” but are unlikely to be aware of local conditions. The cost is usually quite high. Any such expert must be under direct supervision of an IMC municipal committee established to take the IMC idea forward.
- b) Officials of the partner municipalities probably have a good understanding of local conditions and may have sufficient expertise to carry out the Feasibility Study. They will certainly be engaged. However, they may lack the experience and professional expertise required to deal with the more complex issues of the IMC.
- c) A mixed solution is when such municipal officials act with the support of an external expert. This approach combines professionalism and engagement with sustainability and awareness of the local environment. The LGA is best situated to establish a pool of experts who can be put at the disposal of interested municipalities.

## **B. Who will pay for the Feasibility Study?**

The costs of the experts should be shared by the partner municipalities according to an agreed formula. Municipalities tend to pay in proportion to the size of their population. In many countries, the Government contributes to the cost of the Feasibility Study.

## **C. The content of the Feasibility Study**

The Feasibility Study should be very much a matter of fact rather than opinion; it should provide hard data. It should contain a comprehensive description of the partner municipalities and the services or functions subject to the potential IMC. The most recent and exhaustive data on the demography, economy, and service budgets and performance should be supplied.

In summary, the Feasibility Study should provide answers to:

- a) *Which municipalities should be involved in which domains (it is possible that not all municipalities will be involved in all IMC activities);*
- b) *The different options for the legal form, with the advantages and disadvantages of each one;*
- c) *The financial aspects, including any new revenues, tax or tariff policy, and the likely impact on municipal budgets;*
- d) *The need for IMC employees;*
- e) *Technical requirements and opportunities for sharing technology.*

The Feasibility Study *should* deliver an **Action Plan** to create an IMC solution and a provisional strategy for the targeted service(s) and developments.

### **CONTENTS OF A FEASIBILITY STUDY**

For each concerned service:

1. *Describe how the service is performed by each municipality.*
2. *Identify the current level of service in each municipality in quantifiable measures and its strengths and weaknesses.*
3. *Estimate the costs currently borne by each municipality to perform the service.*
4. *Identify the level and quality of service that is required over the next two to five years.*
5. *Assess the possibility of improving the level/quality and/or reducing the costs of delivering the service over the next two to five years by:*

- *Sharing common existing equipment*
- *Sharing staff*
- *Investing jointly in more expensive equipment*
- *Hiring more and better qualified staff*
- *Better coordinating bordering services*
- *Other*

6. *Assess the cost achieving the above objective - an annual cost calculation based on planned service levels for each partner municipality will need to be developed.*

7. *Review what other municipalities have done in similar domains.*

8. *Provide a summary of the findings of the legal impact assessment and of the legal provisions pertaining to the domain.*

9. *Provide a final evaluation of the following matters:*

- *what financial resources will be saved;*
- *what will the service level/quality improvements be;*
- *what will the other potential benefits be;*
- *who will be positively affected, who negatively affected;*
- *what equipment, facilities, staff and financial resources will be required from each municipality;*
- *which external resources can be mobilized (grants from the Government, private investment or donor support);*
- *which legal provisions have to be observed;*
- *which legal forms may be most appropriate (handshake or contractual agreement, establishment of an ad hoc legal entity)*
- *what the implications are for the financing of the IMC;*
- *what the risks are;*

10. *Provide recommendations on the Action Plan to create an IMC solution and a provisional strategy for the service(s) or developments*



#### **Step 4 Decision on IMC and establishment of negotiating platform**

The key decisions will be political; they will cover the partners to be included in the IMC and the domain(s) to be covered. This is when the level of ambition for the IMC will be apparent. The domain(s) chosen will impact directly on determining the precise scope of cooperation, the legal form of the IMC and the financial options.

Who then takes the proposal forward? By this time, a **Joint Task Force** should have been set up. This will comprise delegated elected representatives from each partner municipality along with relevant officials and experts. If there are many partners in the IMC, a representative executive committee may have to be established.

#### ***HOW AMBITIOUS WILL OUR IMC BE?***

➤ **Just to deliver one or more services jointly with other municipalities?**

*In this case, we will deliver jointly only an output, such as:*

- *An updated urban plan*
- *More school meals*
- *More primary school classes*

*Here the legal framework may be relatively simple (e.g. a contract), adapted to the specific service; a separate legal entity will not be required.*

➤ **Or to develop a common, integrated function with other municipalities?**

*In this case we will manage jointly a shared function, such as:*

- *A single urban plan*
- *A single public transport system*
- *A single system for regulating traffic*

*Here, a separate, more complex legal entity, with its own resources, political visibility and supervisory system, might be preferable.*

The partner municipalities will want to agree clear Terms of Reference for the Task Force, including the negotiating procedures. Its job is to advise the municipalities on how to take the IMC forward. It must respect the varied interest and expectations of the member municipalities. Representatives must stay in

close touch with their municipalities so that everyone is clear about what they are considering and issues that need to be resolved.

The responsibilities of the Task Force will be to:

- *Identify the scope of IMC, defining precisely the services, developments and/or functions to be covered by the IMC agreement (Step 6)*
- *Identify the best legal form (Step 7)*
- *Agree the sharing of costs (Step 8)*
- *Define the institutional arrangements (Step 9)*
- *Draft the Agreement / Statutes (Step 10)*

Preparing the contract or statute is very much technical task; it must be done with care. It will be the permanent and precise legal form of the IMC. It must give clear and robust answers to all questions that might arise during the life of the IMC, even after future elections when there may be new leadership and staff in the partner municipalities. All stakeholders in the IMC must find in the text the correct and complete content of the founding agreement.

The drafting of the contract or statute can be carried out by staff of the partner municipalities in a special committee. It may be useful to:

- *Seek advice from the Government and from a specialised lawyer;*
- *Carry out a benchmarking exercise with the statutes or contracts of other IMC arrangements that can be used as models;*
- *Examine decisions of the Courts in this domain to identify and avoid any major difficulties in implementing similar IMC arrangements.*

The method will be set out in national legislation, and the procedure will depend on the kind of legal basis that has been chosen for the IMC.

## **Step 5      Build awareness and support**

Engaging all stakeholders will be important; their support will be based particularly on an understanding the benefits accruing from the IMC and on the trust between the partner municipalities and their communities.

### ***Example***

***In Bulgaria, the municipalities of Bolyarovo and Straldzha established an IMC for integrated development planning in order to have greater regional***

***impact. With international and local NGO support, they used Community Forum Meetings to ensure that all stakeholders were fully engaged.***

***Meetings were called each month, bringing together some 100 people to examine particular aspects of the planned IMC. Each stakeholder sat at one table. Facilitation was independent. This helped them to consolidate their interpretation of issues, agree solutions and make recommendations.***

***There were clear rules on participating in the Forum; these were set out in a Protocol. Transparency was given high importance.***

Good communications is essential. Municipalities should use the media and the internet as much as possible; they should launch an information campaign. This is not a one-off task; good communications and public relations will need to be on-going and should be put on a firm institutional foundation.

## ANALYSIS CHART FOR ESTABLISHING IMC

KEY QUESTIONS	POSSIBLE STRATEGIC AIMS	LEGAL AND INSTITUTIONAL FORMS	ISSUES TO CONSIDER
<b>REASONS FOR IMC: OBJECTIVES AND POLITICAL DEMAND</b>	Enhance effectiveness, efficiency, economy.	A range of single-purpose and multi- purpose arrangements are available. Single-purpose IMC has a wide choice of legal solutions. Multi-purpose IMC needs a solid institutional structure.	IMC complicates local government architecture. It takes competences and resources from municipalities and it may be costly.
<b>SIZE OF IMC: - OPTIMAL SIZE? - HOW MANY MUNICIPALITIES WILL COOPERATE?</b>	Ensure consistency between functions and their policy areas  Bring together, if possible, all the municipalities (and no others) for which IMC will entail better service delivery / development in targeted areas of cooperation.	All legal forms can be adjusted to any number of partners.	Policy areas are not identical for all functions. The determination of the most suitable size also depends on the resources available.  IMC boundaries must take account of other administrative limits (e.g. region).  The Feasibility Study may be used to consider functional, demographic and geographic factors relevant to the determination of the IMC boundaries.  A large number of partners may become counter-productive. Contract and business arrangements usually function better with a limited number of partners.
<b>COMPETENCES TO BE TRANSFERRED TO IMC</b>	The founders of the IMC decide on competences in the light of their needs and after an analysis of the benefits IMC can bring.	Different legal forms are possible, depending on a range of factors.	The scope of competences and their size of the IMC are inter-related. It is essential to distinguish: 1. <i>Functions / tasks</i> entrusted to the IMC (urban planning, schools...). 2. <i>Powers</i> specifically given to perform certain functions (regulations, budget) or establish certain services / facilities.

<b>NATURE AND LEGAL STATUS OF IMC</b>	<ol style="list-style-type: none"> <li>1. Provide precise, temporary tasks.</li> <li>2. Implement non-strategic functions and maintaining flexibility.</li> <li>3. Implement commercial activities / public utility services.</li> <li>4. Establish a territorial entity for policy-making and delivery of several services / developments.</li> </ol>	<ol style="list-style-type: none"> <li>1. Contract.</li> <li>2. Establishment of an association / civil law NGO.</li> <li>3. Business firm status or public entity (single- or multiple-purpose).</li> <li>4. Public entity with several competences, financial powers; strong political / administrative organisation.</li> </ol>	<ol style="list-style-type: none"> <li>1 &amp; 2. There may be legal restrictions; but tools are flexible.</li> <li>3. Compare management facilities in a public law and in a private law organisation.</li> <li>4. This is a kind of consolidation in the domain of transferred competences; it entails a loss of power for the municipalities.</li> </ol>
<b>TYPE OF POWERS TRANSFERRED</b>	<ol style="list-style-type: none"> <li>1. Management of public facilities and equipment supply</li> <li>2. Economic development policies</li> <li>3. Planning and co-ordination</li> <li>4. Regulatory powers entrusted to public authorities.</li> </ol>	<ol style="list-style-type: none"> <li>1. Most institutional structures are adapted for this.</li> <li>2&amp;3. It can be a "light" structure or a more integrated structure, depending on the legal force of the plans</li> <li>4. Public entities.</li> </ol>	
<b>IMC INSTITUTIONS (DEPENDS ON THE STATUS)</b>	<ol style="list-style-type: none"> <li>1. Establish an elected council.</li> <li>2. Establish an elected executive (president).</li> </ol>	<ol style="list-style-type: none"> <li>1. Indirect election by the municipal assemblies.</li> <li>2. Election by the IMC Council.</li> </ol> <p>NB If there are direct elections by citizens to the decision-making bodies, the new entity would be more a new local authority than an IMC structure.</p>	<p>Status of members and operating rules of the IMC council.</p> <p>Relationship between IMC council and executive.</p> <p>Relationship between municipal and IMC bodies.</p>

<b>FINANCIAL RESOURCES</b>	Find the balance between the level of financial independence and the level of municipal transfers.  Increase the level of financial resources available.	Solutions vary, depending on services and competences: - own specific taxes - tax-sharing with municipalities - fees and prices - special grants	Budget and accounting: private law or fully public rules – these are options presenting different pros and cons.  Importance of financial incentives and facilities (e.g. additional tax powers and/or increased State transfers).
<b>STAFF</b>	Make a sufficient number of trained / qualified staff available for the new IMC.  Need to avoid excessive administrative costs.	Different options concerning their status: private or public law. Whether same status as municipal employees or not depends on nature of IMC.	If IMC does not have qualified professional staff from the outset, failure is certain.  A key decision is about transferring staff from the municipal administrations or recruiting new staff; relocating staff, where possible, should be preferred.
<b>TIME REQUIRED AND COSTS</b>	Benefit from strong motivation (and citizen support) to set up IMC quickly.  Estimate correctly new expenditure entailed by the establishment of IMC and seek to reduce costs.		Setting up new structures takes time and money.  IMC is presented as a <i>solution</i> to problems of local public management; but it may lead to a <i>problem</i> with IMC's management  Promised improvements may take time; if expectations are not met, the reform may be severely criticized

## CHAPTER 4 LEGAL DIMENSIONS

### 4.1 WHY DO WE NEED A LEGAL FRAMEWORK FOR IMC?

Municipal competences are defined and limited by law. Like any other public authority, municipalities can exercise their competences only where there is a legal basis.

There are four possible legal situations:

- *The law prohibits IMC (this is no longer the case in European States).*
- *The law says nothing precise on IMC, but there is still a legal basis (eg private law) for municipalities to establish certain forms of cooperation.*
- *Special provisions in the law allow the creation of IMC; they generally describe the forms and status that IMC should or must adopt.*
- *There are legal provisions for IMC, but there are also general rules that allow other legal forms (e.g. private law) that can coexist with the specific IMC provisions.*

IMC needs a legal basis at two different stages:

- a) **When making the decision to join an IMC with other municipalities.** This can be done only if no provision in law prohibits it or if the law specifically allows it.
- b) **When the IMC is operational.** There must be a legal framework which sets out:
  - i. *Who makes decisions in the name of the IMC (joint decision-making by partner municipalities or the new IMC entity);*
  - ii. *What the domains and objectives (competences) of the IMC may be;*
  - iii. *What financial / budgetary powers procedures and rules are applicable.*

**The law on IMC should establish a framework of support for IMC and set out possible legal models that facilitate political negotiations. This would give confidence in setting up an IMC activity and provide greater legal security.** Such a legal framework is not against municipal autonomy and is in line with the European Charter of Local Self Government of the Council of Europe.

At both stages the legal framework is important as it ensures the validity of any IMC rules (e.g. about contracts, decision-making procedures, normative acts) and financial decisions (e.g. on expenditure, charging, loans, taxation).

The legal frameworks in different countries are very diverse. They demonstrate different levels of political interest in IMC and reflect differences in local government legislation. Policy and law on IMC are influenced by the institutional and political environment in each country:

- a) *The structure of municipalities (e.g. the balance between smaller and larger ones);*
- b) *Political positions (e.g. a preference for, or strong resistance to, amalgamating small municipalities);*
- c) *A national strategy to rationalise financial procedures and development policies in local government.*

Moreover, in federal and quasi-federal States, regional policies and legislations may replace or complement the national ones.

***It is essential for any municipalities seeking to establish an IMC to have access to good legal advice.***

**In establishing IMC, the critical element is making the ‘stop-go’ decision.** The responsible persons will have to know the pertinent legislation; they will need to be aware of the many options; they will need to anticipate the legal questions that will arise, whether or not the law refers to them.

## **4.2 KEY LEGAL QUESTIONS**

**Those persons responsible for establishing IMC need to be able to answer the following legal questions:**

### **4.2.1 Does law allow IMC?**

Modern European law does not explicitly prohibit IMC. But there is a general legal principle that says that public entities must themselves exercise their competences, duties and rights directly. So sharing them with others or delegating them to a new IMC entity is not possible outside a pertinent legal framework.

Specific legal provisions for IMC will provide the necessary framework and will probably also provide guidelines for drafting the IMC statute.



IMC will be part of a municipal law. Its legislation will depend on the constitution of each State. In unitary States there will be one legislation, but which can provide different types of structures for communes and for cooperation. In Federal States (Germany, Switzerland) municipal law is a competence of the Länder or Cantons and there are as many laws as there are federative states; this is also the case of law on IMC. Diversity can be inside a country. In regionalised States (Italy, Spain) the regions may have some regulatory powers and their own strategy to incite communes to enter in cooperation process.

If there are no specific provisions and at the same time no prohibition on IMC, it is necessary to look at what is allowed by the general legislation and identify the possible methods of cooperation between legal entities that may be also appropriate for municipalities, even if such legislation may not be directly intended for them.

**Experience shows that there is no absolute need for special IMC provisions if there is a strong political will for IMC and if municipalities are free to use ordinary legal tools.** There is always the possibility of resorting to non-formal “handshake agreement” procedures or to a wide range of contractual forms. Furthermore, private law (associations) or business law (enterprises) can be used, under certain conditions, for municipal cooperation.

#### **4.2.2 Which municipalities can be involved?**

Is there a legal procedure to establish the list of municipalities that should or may cooperate? Or is the municipal leadership totally free to negotiate an agreement on the number of municipalities which can associate and the conditions of association (eg if they are not adjacent)? These are key questions.

In certain countries, the parameters within which municipalities must decide whether or not to enter an IMC are set out in a decision by the Government (regional governor, prefect or minister); such a decision is taken after consultation with the Mayors concerned.

#### ***Example***

***In France, certain forms of IMC can only be used if the IMC population is above a certain figure; the strongly integrated “urban communities” must have a population of at least 500,000.***

It is possible that the law sets out criteria for rational or optimal parameters, such as the geographical extent of an IMC, the number of inhabitants, a minimal budget.

#### **4.2.3 Procedure for deciding the creation of IMC**

Each IMC entity must be created by a formal decision of the partner municipalities. The most general rule is a vote in each municipal Assembly. The law may set out:

- a) *Whether local councils should decide by a simple majority vote (50% of votes plus one), an absolute majority (50% of councillors plus one) or a qualified one (e.g. two thirds of votes and one half of the councillors).*
- b) *Whether a referendum is possible or obligatory and, if so, who should be allowed to vote and whether the result should be binding.*
- c) *Precise procedures in order to guarantee transparency for citizens and elected representatives.*
- d) *Any systematic studies in such areas as the size, competences and financial viability of the planned IMC.*
- e) *How the actual decision is taken that officially creates the IMC (eg by the completion of the municipal votes, or by an official act (like a birth certificate) by a Government authority (e.g. prefect, regional governor, minister, decree, Parliament).*

#### **4.2.4 Object of IMC**

**IMC means cooperation in certain domains. The domains provide the original reason for initiating the IMC; they give purpose and substance to any new institutions. The object of the IMC within the chosen domains will define the exact competences of the bodies charged with implementing the IMC.**

The basic principle is that only “municipal competences” can be the object of IMC and can be transferred to a new legal IMC entity. The law may contain a list of minimal compulsory competences for certain forms of IMC, especially for the most integrated ones such as economic development, urban planning and public transport.

The law may also say that certain municipal functions (e.g. civil status and electoral registers) cannot be transferred to an IMC and must stay in the hands of the Mayor or the municipal Assembly.

**An essential but difficult task is to define each competence precisely.** Commonly used terminology for domains is imprecise (e.g. environment protection, economic development, culture). The statute of the IMC must give the precise content of each domain in order to draw its exact limits.

<p><b>It is an absolute requirement to have clear and legally correct definitions of</b></p>
--

**the IMC entity's competences in order to avoid disputes, legal challenges or competition between the municipalities and the IMC entity.**

A logical requirement is that, like all local government powers, IMC powers “shall normally be full and exclusive” (European Charter of Local Self Government, Article 4-4). In reality, ‘subsidiarity’ is applied, not just between central and local government, but even within a local government entity. For example, sports infrastructure, public libraries and road maintenance can contain dimensions of municipal, as well as IMC, competence at the same time.

The law may enable the municipalities to decide that in such domains certain services and equipment can be explicitly transferred to the IMC as being “**of inter-community interest**” if they have a certain size, and that all others remain “**of municipal interest**”.

#### **4.2.5 Legal status and organisation**

If the IMC takes the form of an institution, the law must provide sufficient elements of its legal statute. There must be provisions for the organs of the IMC.

Such an IMC will have a **council** that will be the equivalent of the municipal Assembly. This raises key questions:

- *Must members of the IMC council be members of a municipal Assembly or not?*
- *How many representatives on the IMC council should each municipality have (e.g. an equal number, in proportion to the population or the municipal budget, or according to some other criteria)?*
- *Is the status of the members of the IMC council clear (e.g. the same as the status of elected representatives in the municipal Assembly or different)?*
- *How should the executive head of the IMC be designated by the IMC council? Can he/she be a Mayor or elected representative of one of the municipalities or is this prohibited? What should the level of remuneration be?*

If a private law organisation is chosen for the IMC, there will be no specific public status, unless the law has provisions that set out precise consequences for the participation of public entities in private associations or enterprises.

#### **4.2.6 Legal basis for the budget and financial system**

The law will set out how the IMC budget and financial system depend directly on the legal statute chosen for the IMC.

Several possibilities exist:

1. *A public budget using municipal budget rules and terminology;*

2. *A public budget with special rules (e.g. if the service is commercial);*
3. *Private accountancy rules (e.g. for a business firm or NGO).*

What financial resources can be made available to an IMC? The legal basis for the budget and financial system will depend on matters such as the purpose of the IMC and its ability to generate revenues.

<b>SOURCES OF REVENUE</b>	<b>COMMENT</b>
<b><i>Municipal grants</i></b>	<b><i>Amounts could be proportional to: the population; service users; financial capacity; physical criteria (e.g. km of roads...)</i></b>
<b><i>General municipal taxes</i></b>	<b><i>These would be in addition to existing municipal taxes or top-sliced from them</i></b>
<b><i>Specific taxes</i></b>	<b><i>For identifiable activities such as waste collection, where there is a direct service to households...</i></b>
<b><i>Fees and prices</i></b>	<b><i>For service delivery where there is a clear product for service users</i></b>
<b><i>State transfers</i></b>	<b><i>They usually follow Government priorities.</i></b>  <b><i>NB: It is not advisable to have State transfers directly paid to individual municipalities and then paid from them to the IMC entity.</i></b>
<b><i>Loans</i></b>	<b><i>Should the IMC have the authority to negotiate loans? Who will be ultimately responsible? How should debt be controlled?</i></b>

#### **4.2.7 Staff**

IMC has to fulfil tasks that the municipalities could not assume by themselves or could not perform efficiently and effectively. They need professional, skilled staff.

Where municipal performance is weak because of poorly trained and motivated staff, it is naive just to transfer the staff to an IMC and expect different results. **Indeed, both municipalities and the public will expect high standards from an IMC.**

Serious attention must be paid to the issue of staff. This issue may be a decisive reason for opting for a particular legal form (e.g. separate entity), because it will allow - or impose - one of two possibilities of HR management in the IMC:

**1. The IMC entity employs its own staff:**

- *They have the public status of civil servants; or*
- *They are contracted employees under labour law.*

**2. IMC has no staff of its own:**

- *The IMC's tasks are carried out by staff of one or more of the municipalities;*
- *A contract will define the method by which the cost of the staff is calculated and paid.*

Where an IMC entity is able to recruit, train and support its own staff, they may have a better chance of employing the right staff in the right job; they will not be restricted by the typical public sector constraints on HR management.

#### **4.2.8 Legal and financial controls**

Such controls depend on the law and on the form of IMC.

The founding partner municipalities of the IMC do not normally have to decide about these controls. **But they may want to examine the existing controls to decide whether or not a certain legal form, whether private or public, is more convenient because the controls will offer a better guarantee of transparency, probity and efficient performance.**

On the other hand, the municipalities may prefer a legal form that offers the greatest flexibility (ie less stringent controls).

Private law structures have their own forms of control, especially for accounts. The same range of Government controls apply to IMC entities as to municipalities, including the control of the legality of decisions and financial control by the audit institution.

The municipalities exercise overall control on the IMC through their representatives on the IMC council. The law may require the IMC to send an annual report to each municipality; the details can be set out in the statute.

#### **4.2.9 Other legal aspects**

There are other aspects of the legal framework that may be relevant:

- *Will public procurement legislation apply or not?*
- *What court – administrative (if it exists), civil or commercial – will have competence when there is litigation about decisions taken by the IMC entity or on behalf of IMC?*
- *What will be the liability of the managers of the IMC entity: civil, administrative, criminal?*

### **4.3 DIFFERENT LEGAL FORMS**

Different categories of IMC exist in European countries. This does not mean that all categories exist in each country or that only one of them is adopted in a given country. The law may provide for several forms and the non formal types of IMC can be used everywhere.

#### **SIX MAIN FORMS OF LEGAL FRAMEWORK**

- 1. Non formal***
- 2. Contract***
- 3. Private law entity (NGO, association)***
- 4. Private law entity (business firm, enterprise)***
- 5. Single or multi-purpose public entity***
- 6. Integrated territorial public entity***

A single municipality can cooperate with other municipalities in different domains and with different legal forms. For example, the legal form may be different for water supply, waste collection and economic development. Such complications are not recommended, but IMC law should be flexible enough to allow various arrangements.

There is a key question to be discussed when drafting IMC provisions in the national law or developing a specific IMC legal framework: **is it preferable to establish a multi-purpose IMC or several specialised ones?**

#### **4.3.1 Non formal legal forms**

Very important in practice, they are often a preliminary step to the creation of an IMC institution. They are typically based on relationships between the municipal leadership and seek to create a form of partnership to solve practical issues.

This can include periodic meetings to:

- (a) *Discuss matters of common interest;*
- (b) *Exchange information or share best practices;*
- (c) *Coordinate and harmonise certain policies (e.g. environment, schools, forest protection).*

Such meetings can be held on a political level by Mayors, Deputy Mayors or even by joint meetings of municipal Assemblies; they can also be on an administrative level with heads of services preparing political positions or solving minor problems.

It is up to the imagination of the leadership and depends on the shared challenges and political relationships in each case. **This kind of ‘handshake agreement’ is a particularly useful form of cooperation between a small number of municipalities.**

These forms need no legal basis because they cannot result in issuing decisions that put a legal obligation on people or on the management of public services. Nor do they require public funding. They end not with a formal legal decision but with ‘gentleman’ agreements without binding legal force.

**We should not underestimate these non-formal forms. They are easy to initiate and easy to terminate. They can prepare the ground for more formal relationships. Informal consensus can lead to positive action that can be implemented in a short time by each municipality, even in matters of importance.**

#### **4.3.2 Contract**

The easiest way to organise cooperation is by an agreement. It can be non formal as described above. It can also be set out in a written contract; this offers better legal security and obliges both sides to define clearly what will be done together and how it will be done.

The basis of such contracts is the principle of municipal autonomy. It means that the parties to this legal arrangement have the capacity to contract on all matters of municipal interest. The acknowledgement of this principle of ‘free contracting’ may not be the same in each country. It is mainly seen in decisions of courts as part of jurisprudence. It may not be written explicitly in law because it does not have to be; it is an implicit consequence of the “general competence provision” that enables municipalities to decide on every matter of local interest if it is not prohibited by law or given to another public entity.

Of course, the municipalities must respect the law in the procedures of contracting and in the content of the agreement.

Considering the procedures, attention must be given to two aspects:

1. It is important to respect the ordinary administrative rules that are set out in the national legislation. This generally implies a decision by each municipal council to allow the mayors to sign a precise contract.
2. The second aspect is about whether or not the public procurement legislation will apply; this would require publicity and competition in order to allow any interested enterprise to submit a proposal or bid. It is important to note the distinction between inter-municipal cooperation and commercial services.

### **Example**

***If the object of a contract is just to provide services by one municipality to another or to several others in matters where enterprises can do the same (e.g. data processing, transportation, renting of machines or equipment...), this will be considered as a “commercial activity” and requires the application of public procurement procedures. EU directives are absolutely clear on this. Such contracts can, of course be signed if they comply with these rules.***

Though service contracts of a pure “commercial” relationship, where one municipality ‘sells’ the service to other municipalities, may be seen as ‘soft forms’ of cooperation, they are not really inter-municipal because these are just bilateral relations for specific technical tasks.

Quite different is a mutual sharing of municipal employees to carry out legal administrative tasks.

### **Example**

***Some Macedonian municipalities share specialist staff among themselves, with each one having one well-trained and highly professional specialist in one given domain (e.g. urban planning, tax service, social welfare).***

To avoid competitive procedures, the municipalities can create a legal entity, under public or private statute, dedicated to cooperation in a given field. The associated municipalities can then exchange services without following public procurement procedures because this will be considered as an “in house” relationship, separate from the market economy.

As for contracts, they can only cover matters that are within the competences of the municipalities and on which they have power to decide. For instance, they cannot decide to change the legal rules for collecting taxes or registering family status; but they can decide to share the offices, employees and costs for doing this. Delegating by contract a competence explicitly given by law to a municipality is prohibited, unless the law explicitly says otherwise.



**Example**

***If the law says that urban planning must be decided by the municipal council, this cannot be delegated to another municipality or to an inter-municipal entity; but the technical work of mapping and office activities can be done by an inter-municipal office or by employees of another municipality on the basis of a contract.***

It is important that the articles of the contract are carefully written, so as to avoid conflicts or problems of interpretation.

Will such a contract be public or private law? It depends on the country concerned, because the significance, criteria and effects of this distinction are not the same everywhere. While public procurement rules will not apply, other administrative rules most certainly will. A contract between two municipalities will usually be a public law contract, considering its object. In countries with a separate administrative court system the disputes will be solved by these courts if the contract is considered as “public” and by civil courts if the contract is considered as “private”. Either civil or administrative law may apply.

This is the most flexible legal procedure. There are no preconditions for the negotiation of such an agreement; it can be either permanent with an unlimited timescale or for a short period with the possibility of renewal. A contract is particularly useful when IMC involves only a small number of partner municipalities; it can be used in many different circumstances.

Examples of contracts are numerous:

- *To run a specific one-off task like a cultural event (e.g. music festival) or sports competitions.*
- *To organise bus services for school children.*
- *To manage a historic place, commercial area or industrial estate.*
- *To share the work of particular officials among the municipalities, perhaps with employees working part time for several municipalities.*
- *To support trans-border cooperation (e.g. in twinning agreements or as part of a Euro-region).*

**Example*****Typical content of an agreement / contract***

- ***Identification of the parties***
- ***Laws applicable to this matter (if specific)***
- ***Purpose of the agreement***
- ***Duration of the agreement***
- ***Field and scope of the agreement***
- ***Rights and obligations of each party***
- ***Regulations governing the Management Board (if applicable)***
- ***Regulations governing the Supervisory Body (if applicable)***

- ***Selection of the Director (if applicable)***
- ***Organisation/management of activities***
- ***Budget, accounting and audit (if applicable)***
- ***Contribution of each municipality (costs, finance and property)***
- ***Rights of ownership, use, distribution and visibility (for services produced by IMC)***
- ***Responsibilities of the parties for any liabilities***
- ***Amendments to the agreement***
- ***Admission and withdrawal of a partner***
- ***Dissolution***
- ***Settlement of disputes***
- ***Supervision/control***
- ***Monitoring and evaluation mechanisms (if applicable)***
- ***Work plan and schedule of activities (if applicable)***

### 4.3.3 Private law entity

Legal forms for NGOs, like associations, are governed by general civil law and can also be used by public institutions for organised cooperation. This formula is quite flexible, much used in certain countries (e.g. France).

The use of a legal form like 'association' for IMC is a consequence of both the autonomy of municipalities and of the principle that associations can be freely created by all persons with legal capacity. A key question is whether this is how the Courts interpret the law on associations and the municipal law in a given country; this should first be verified.

Founders and members of an association are the partner municipalities as public persons. Unless there are legal provisions that say differently, the general legislation on associations will apply. **Associations give real advantages for management in terms of flexibility and quick decision-making.**

The finances of associations are managed under private bookkeeping rules; there is no public budget with the associated procedures. Financial resources will also be mainly "private", such as sales income, fees and members' contributions. But such an association often gets important support from public budgets, including grants from municipalities and from Ministries (e.g. Culture, Sports and Social Welfare). An association is able to recruit the best professionals and pay them the right salary; performance management is easier than in the public sector.

- ***An Association is an appropriate model for non-administrative activities like organising cultural festivals, establishing local development agencies and tourist offices and managing sport facilities and homes for the elderly.***

- ***An Association is not an appropriate model for managing utilities like water supply and waste disposal or running an urban transport system.***

A contract between the association and the municipalities can define the activity of the association and the conditions for getting grants and other support.

The **risks** are found mainly in recruitment where personal ties may be more important than merit, and in the financial field with the possibility of mismanagement due to the flexibility and secrecy in budget management that private law provides. This can lead to bankruptcy and to the civil or criminal liability of managers. It is therefore particularly important to put solid controls in place.

Because of these risks, there have been situations where audit institutions and financial courts have been critical of using this legal form for IMC.

#### **4.3.4 Business firm**

Establishing a business firm is allowed – or not prohibited – by both commercial law and municipal law. Several municipalities – even municipalities from different EU countries on a cross-border basis - can come together to create a company and become its shareholders. This company can then operate in the different municipalities in accordance with its statute.

Logically, this legal form is for activities and services that generate sufficient commercial revenues and need only marginal financial support from municipal grants. It can cover such areas as water distribution, sewerage, waste collection and disposal, public transport, trade fairs, communal heating, housing, the creation and management of development areas etc.

#### ***Example***

***In France, there are some 1200 ‘Limited Companies’, each with a minimum of 15% of the capital in private hands and a majority of at least 50.1% in public hands. Some have been created by a group of communes among themselves or with other public entities; many are run by one commune with private partners. Even in this last case, the company can contract with other communes.***

The company can be a contractor for the municipalities for managing a public utility service. This legal form is different from privatisation as the company belongs to the municipalities themselves. It is a form of “mixed economy” because it associates public and private shareholders.

A frequent form of the privatisation of municipal services is out-sourcing to private companies by concession or partnership. If an IMC entity can also out-source its competences to a private company, is it then necessary to create an IMC entity first?

A key issue is that a private investor may not be interested in taking contracts with individual municipalities; each is too small to constitute a **viable market**. A typical contractor is looking for such things as a homogeneous policy, a big market, a single source of finance, the same makes of machines, trained experts, a single water catchment or water tower. These things cannot be split in many small segments without losing viability. Therefore the establishment of an IMC entity could be a way both of strengthening the negotiation capacity of the municipalities and raising the interest of contractors.

There is another, less integrated, legal form that can be established for the same reasons. Several municipalities can draw up separate but identical contracts with a private company. In such a case, there is one manager (the company) for the service.

#### **Example**

***Three medium sized municipalities can issue the same tender offer for the creation and management of a cable television network and sign the same contract. Due to the joint contracting procedure, there is a sufficient number of potential clients to make investment profitable with a high level of technology and service quality.***

**These private legal forms are valued by commercial companies because of their advantages like flexibility of financial and staff management, superior technology and effective performance management.** The company can hire all the necessary specialists and technicians at market prices; it can easily cooperate with other firms to maximise, for example, their access to advanced technology in the particular domain.

As with the association, there are risks – sometimes high - in using this kind of legal framework. They include mismanagement, bankruptcy and possible civil and criminal liability of managers. These risks, as with any organisation, must be properly assessed and managed.

#### **4.3.5 Single or multi-purpose public entity**

**Provision for this kind of IMC entity must be explicitly set out in law.** Its exact shape and content will depend directly on the national law. It is a kind of “public law company” - a legal public ‘person’ with limited and precise competences.

**Example****The Italian IMC public law institutions**

**The institutionalised IMC legal forms regulated by the 1999 Local Government Act include:**

**Joint management of functions by means of conventions: This form does not give birth to a new local body. Its main aim is to achieve economies of scale and integrate activities by adopting two different methods (which can coexist in the same partnership): (i) the transfer of staff and (ii) the delegation of functions to one of the municipalities involved.**

**Association: This is public law body has full operational capacity on all delegated municipal functions. It respects municipalities' autonomy, since its institutional organisation is not dictated by the legislator, but by political decisions made by the municipalities themselves. The Association has the power to freely regulate (a) its own organisation, (b) the execution of assigned functions and (c) financial relations between the partner municipalities.**

**Mountain Community: The mountain community has the task of serving the mountainous areas, carrying out joint services and functions. Traditionally, this body has aim at the programming and implementation of policies in a specified area.**

Source: The Inter-related roles of the Regional and Local Government in Developing Local Partnerships in Italy, Elena Zuffada and Eugenio Caperchione (2003)

**Such entities can be single purpose or multi-purpose** with specific technical competences for public utility services like water distribution, sewerage, waste collection and disposal, public transportation, communal heating and the management of development areas.

In setting up such a legal form, the municipalities will transfer one or more of their functions to this IMC entity and will no longer have power over the day-to-day exercise of those functions; they will be managed under the full responsibility of the new legal entity. However, there is still strategic control by the municipalities because they elect their own representatives to the IMC council and may pay grants towards its operation.

The law may allow persons who are not councillors to be elected to the IMC council. The president and vice-president of the IMC entity are elected by its council; they may be Mayors from the partner municipalities, depending on the legal provisions in the country.

Resources depend on the services that are run by this IMC entity; they might include sales income, fees, grants, contributions from partner municipalities, Government transfers and loans.

This kind of IMC entity is sometimes created just to out-source a competence to a fully private company in the name of the associated municipalities; such a company would need to have the expertise and resources for such an investment and its management. Relevant competences might include roads, social welfare, health care, environmental protection, school bus services, economic development projects and security services.

This kind of IMC entity can take any competence as long as it is able to receive subsidies from the municipalities or from the Government to finance the necessary expenditure.

#### **4.3.6 Integrated territorial public law institution**

The founding municipalities of this kind of IMC entity will have decided that a common policy should be introduced in their collective territory for strategic functions or for the development of shared infrastructure. Its aim would be to improve the competitive position of the municipalities in the national or international arena.

This is the most institutionalised legal form, looking almost like a new tier of local self government. It is a very political option as the IMC entity will be taking on strategic responsibilities in major domains of adjacent municipalities. The transferred competences will be set out in the statute of each such IMC entity.

The law may set out a minimal list of competences, especially for economic development and urban planning, and leave the municipalities free to transfer any other municipal competences, unless the law prohibits it. The number and nature of the competences will thus be different in each such IMC entity, but they are always significant.

#### ***Illustration***

***An integrated territorial IMC entity can plan a coherent economic development strategy for the whole territory of all the municipalities; this makes the area more attractive to businesses and investors, encourages greater levels of investment and avoids the lack of integration arising from several different economic development strategies from the individual municipalities in the area.***

The budget and finances follow the same regime as in the municipalities. The resources must be enough to guarantee autonomy, and can include general local

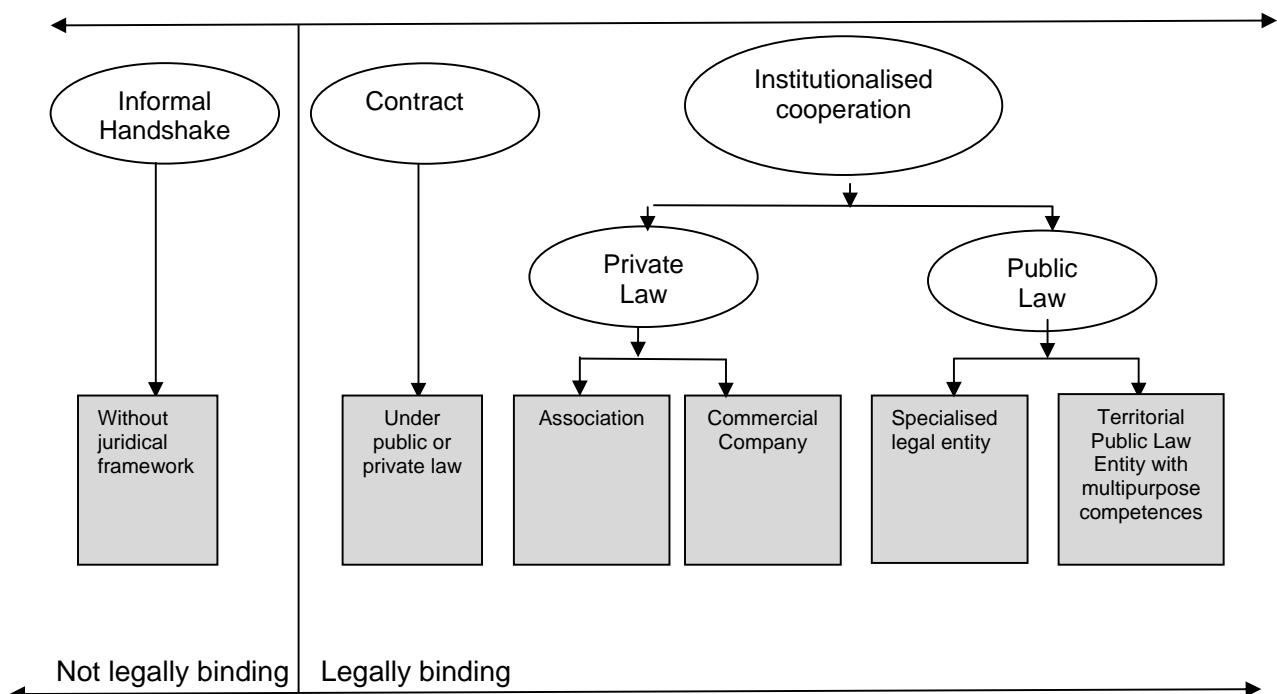
taxes, sales income, fees, grants and transfers from the Government. Such institutions are able to borrow money.

This kind of IMC entity reflects a deep solidarity between the municipalities and normally delivers higher levels of revenue (e.g. from rising business taxes).

A financial equalization system can be created within the IMC territory so that poorer municipalities can benefit through a redistribution of tax revenues.

### CHART OF APPROPRIATE LEGAL FORMS

#### INFORMAL COOPERATION, CONTRACTING AND INSTITUTIONALISED CO-OPERATION



#### **4.4 CHOOSING AN APPROPRIATE LEGAL FORM**

The choice of the legal form of IMC is a **strategic decision**, given the range of consequences that it will have. It expresses the political compromise that allowed the municipalities to launch the process of cooperation. The legal form for running the IMC determines its efficiency and performance.

***The occasion when an IMC acquires its 'legal personality' is a decisive moment.***

It is therefore essential for municipalities to take sufficient time to study exhaustively all the legal aspects before deciding on the creation of an IMC. This needs an in-depth “**legal impact assessment**” of the different legal forms that could fit the proposal. This will be an important part of the Feasibility Study.

Case studies show that many different ways are used to initiate, conceive and implement IMC. Unless the law leaves no choice, it is important not to decide too early the exact legal form of IMC; rather the decision should be the logical consequence of many other elements.



### **A LOGICAL STEP BY STEP PROCESS**

#### **1. Define the precise objectives of cooperation**

- *Why should the different municipalities join an IMC? What are the objectives? How ambitious should the project be?*

#### **2. Define the IMC domain**

- *The objectives and services / equipment involved must be made explicit.*

#### **3. Analyse the likely financial means**

- *Financial resources are directly related to the nature of the service. Some municipal services have their own resources like sales income or fees (e.g. water supply, waste collection, transport...) or they can levy specific taxes (e.g. waste disposal...). Investment programmes may be eligible for special financing facilities and subsidies from the Government, EU or international donors.*
- *Will the revenues of the IMC come from its own revenues or from contributions paid by the municipalities, or both? The financial arrangements must be discussed at an early stage because they are decisive for the viability of the IMC. They have a direct consequence on the legal form and financial regime. Using taxation needs a public statute. Market resources may allow the adoption of an enterprise statute and the use of commercial accountancy rules.*

#### **4. List other important components**

- *It is essential to fully understand the consequences of the provisions for employees, management processes, contracting procedures etc. Should employees have private or civil service status? Should public contracting procedures be avoided? Would the most convenient administrative arrangements be public or private?*

#### **5. Analyse the different legal forms**

- *This information should allow an analysis and evaluation of the possible legal forms in order to decide on the most appropriate one. It would be prudent to examine some existing IMC entities to gather information on the real effects of each legal form.*

#### **6. Choose the most appropriate form**

- *The legal form must be appropriate both for the technical criteria and for the political compromises that IMC requires.*

## CHART OF INSTITUTIONAL MODELS

INSTITUTIONAL MODELS	COMPETENCES	STATUS / ORGANS	FINANCES / HUMAN RESOURCES	CONTROL
<b>CONTRACT</b>	Can solve wide range of problems  Not good for complex arrangements	Ordinary rules for local government contracts	Budget of contracting municipalities  No specific employees	Through municipalities' procedures
<b>PRIVATE LAW BODY (Association / NGO)</b>	Wide range of possibilities: cultural events, hostel for elderly, kindergartens, ...  Appropriate for non-bureaucratic activities	In accordance with law	Contributions from municipalities; grants from other public budgets  Employees have ordinary labour law contract	By the private body, subject to the municipalities; control of State authorities on the municipal decisions
<b>BUSINESS FIRM</b>	Appropriate for specific <i>commercial</i> activities that have own contractual revenues (prices or fees), such as water and sewage; public transport; waste; collective heating plants ...	In accordance with law: - municipalities directly associated with the capitalisation and management of the business - several municipalities contract with same business for same task(s)	Income through prices or fees; commercial accounting  Employees have ordinary labour law contract	Legal control on the firm, as in commercial law; control by the municipalities; by State authorities on municipal decisions
<b>PUBLIC LAW BODY (SINGLE-OR MULTI-PURPOSE)</b>	Transfer of any <i>competence</i> by the municipalities: optional or even compulsory ones  Law may prohibit transfer of specific competences	Status of public legal entity  IMC council elected by municipal councils  Executive elected by IMC council	Depends on nature of public service: fees; municipal contributions; State transfers  Employees with public or private status depending on nature of service	Certain control by the municipalities who elect representatives to the IMC council  General control by State authorities: legal and financial
<b>PUBLIC LAW BODY (INTEGRATED TERRITORIAL COOPERATION)</b>	As above, but may be given several major competences	Public legal entity  Council elected by municipal assemblies  Executive elected by the IMC council	As above  Obligatory to have own resources: tax revenues, fees, transfers from State	Certain control by the municipalities who elect representatives to the IMC council  General control by State authorities: legal and financial

## CHAPTER 5 FINANCING IMC

Finance may be the prime reason for creating or not creating an IMC. Bringing together several municipalities that will share their resources and manage a bigger service or infrastructure is in theory a 'win-win' decision. But cooperation in sharing tax income is not a spontaneous political attitude. Working efficiently together requires a lot of pre-conditions – both technical and psychological - that are not always found in local government; it requires an expertise that the employees do not often have.

Furthermore, it is not very easy to organise joint activities that actually save money. There may be a fear that the IMC will be **asymmetric** and that certain partner municipalities will gain more – even in non-monetary aspects, like fame – than others.

**It is therefore most important for anyone who wants to push IMC policy - whether at the local or national level - to demonstrate that it is in the common interest to take the IMC route because:**

- *All partners can save money on certain services and use it to improve other services or invest in infrastructure;*
- *It opens up the possibility of securing more money from the Government and other sources;*
- *It can create the conditions necessary to attract investors in public services or enterprises that will generate new tax income.*

### **Example**

#### **Poland: IMC to access EU funds**

***In Poland local 'unions' of groups of municipalities were formed to address the challenge of absorbing EU funds. The Union of the Upper Raba Communities and Krakow was created to deal with water degradation in the Raba river basin. The plan was to construct sewage treatment plants and build sanitary pipelines. By forming 'Unions', municipalities were able to apply for pre-accession funds that were too large for municipalities to receive individually. Thus, a co-operative association can be used to develop local government capacity to provide services beyond the means of individual municipalities.***

Source: UNDP (2006)

## **5.1 IMC'S FINANCIAL STRENGTHS**

IMC is not in itself a money-saving process, but it has potential financial advantages. IMC may make it possible for partner municipalities to:

- *Share administrative overheads (e.g. of professional staff and equipment in a joint local taxation office);*
- *Reduce unit costs and improve service quality through economies of scale in the use of equipment and skilled personnel;*
- *Attract investment funds reserved for projects of a specified minimum size (e.g. EU Structural or pre-Accession funds for large scale landfill sites or sewage treatment plants);*
- *In some countries, attract additional grant aid offered as an incentive to co-operation (e.g. to meet the costs of the preparatory studies or initial equipment);*
- *Enhance economic performance through co-ordinated planning and environmental protection.*

To achieve these objectives, a supportive financial framework will need to be selected.

## **5.2 CHOICES OF FINANCIAL FRAMEWORK**

Choices of the financial framework for IMC depend on a sequence of decisions about:

- *The form of co-operation;*
- *The type of service covered;*
- *The types of revenue most appropriate to the service.*

### **5.2.1 Forms of co-operation: Contracts or Entities**

IMC may be undertaken through:

- ***Contractual arrangements*** under which one municipality provides services to the inhabitants of another; in such a case, how is that municipality compensated for its expense on services rendered to people who are not its taxpayers? ***or***
- ***An IMC entity*** established to serve two or more municipal populations; in such a case, how is the entity to be financed – by direct revenues, by

contributions from constituent municipal budgets (and, if so, on what basis), or by both?

### 5.2.2 The purpose of IMC services

The main purpose of IMC arrangements may vary; an IMC may be established to:

- *manage utility services such as water supply, sanitation, waste management, district heating or public transport;*
- *provide social services such as education, medical services or social care;*
- *share administrative resources such as legal services, HR professionals, accountants, regulators or tax collectors;*
- *formulate physical or economic plans, and promote development.*

Each of these justifies a separate approach to funding and to the assignment of costs.

### 5.2.3 Sources of revenue

Municipal services, whether or not provided through IMC, rely on a standard range of revenue sources:

- *Charges levied on consumers of services;*
- *Local taxes, levied by municipalities and accruing to their budgets;*
- *Inter-governmental transfers consisting of general purpose grants, earmarked grants or shares of specific national taxes;*
- *Fees paid for permits, licences and other administrative processes;*
- *Long / medium term loans to fund capital investment;*
- *Short term loans to meet cash flow imbalances.*

In deciding on the appropriate revenue source for IMC services, the initial option concerns the **balance of funding** between consumers and taxpayers. **Consumers** pay for a service through charges or fees, normally varying in scale according to the amount they consume. **Taxpayers** pay through national or local levies which have bases – income, property value, purchase of goods and services, etc – which do not relate directly to their personal consumption of a specific service.

Contributions by national taxpayers to IMC expenditure would normally be made through inter-governmental transfers such as grants and revenue sharing; they would arise where:

- *The provision of the service is seen as in the national as well as local interest;*
- *National funding evens out disparities in local revenue and the resulting quality of service.*

The balance between these revenue sources varies according to the main purpose of the IMC service.

### **5.3 Utility Services**

#### **5.3.1 When to charge**

Utility services are normally treated as private goods and sold to consumers; the level of the charges varies with the level of consumption. This to some extent simplifies funding since the consumer charges can be credited directly to the IMC entity – normally a company – operating the service. Nevertheless more complex issues arise.

**The general principle is that those who benefit from a service should pay for it.** Services should therefore be charged to the individual consumer if:

- *It is possible to measure how much each consumes and to exclude anyone else from the benefits;*
- *Charging promotes efficiency by linking the amount supplied to the consumer's willingness to pay for it;*
- *Charging suits administrative convenience, making it easier to enforce payment by the threat of cutting off the service.*

#### **5.3.2 Charges plus subsidies**

Consumers may only pay part of the cost of a service, the balance being met by a subsidy from general local or central government revenues. This may be justified where:

- *A particular service may be regarded as basic to human needs and living conditions.*

#### **Example**

***Social justice demands that people should not be deprived of access to it by inability to meet the full cost.***

- *A service may benefit one person particularly, but have impacts on others, positive or negative.*

**Example**

***Refuse collection is a service to individual businesses and households, but it also helps to keep the general environment clean and healthy. Public transport benefits individual passengers, but may also benefit other travellers by reducing congestion; fares might be fixed below full cost to encourage commuters to use buses or metros rather than cars. For the same reason, city centre parking charges might be fixed well above the cost of providing the car park, because of the congestion and pollution costs caused by traffic.***

In these cases, some hybrid mixture of charges and subsidies may be used. Small consumers may be subsidised by large, often commercial consumers; or the poor may be exempted from paying or be given some specific income support to enable them to pay.

**Illustration**

***Many European countries have a system of housing benefits which meet any gap between a fixed percentage of household income and the cost of housing and utilities (water, electricity, heating).***

**5.3.3 Setting tariffs**

While a utility company or other IMC entity may collect and spend consumer charges, the power to determine the tariff is usually vested in the partner municipalities. The IMC agreement might delegate the right to the IMC entity; if it does not, changes in rates would have to be agreed by all the respective municipal Assemblies, by a majority of them or by the Assemblies representing the majority of people served, as specified.

Should charges be uniform throughout the area served? The costs of providing the service and the quality are likely to vary between localities:

- *Refuse may be collected once a week in one municipality, twice in another.*
- *Public transport routes will cost more per passenger mile to outlying areas if buses travel half empty.*
- *Water will cost more to pump to hilly areas.*

Arguments of social justice or political compromise may require everyone to pay the same; on the other hand enterprises locating themselves in places which are

expensive to supply with water or electricity should be faced with the real cost of their choice.

#### **5.3.4 Capital costs**

The justification for consumer charging normally covers all costs, whether capital or operating. So charges would meet not only the running costs but also the amortisation (repayment and interest) of loans used to finance the initial investment plus major repairs to infrastructure, renewal of equipment and service extensions.

Where an IMC entity takes over a service with existing assets, the ownership of the assets should be transferred to it with the obligation to service any outstanding debt and provide for depreciation. An alternative is for the original owner to lease the assets to the IMC entity which would pay a rent covering debt service and depreciation.

In practice, investment costs are not always met by the IMC entity running a utility service or recovered through its consumer charges. The investment costs may be so great in relation to the capacity of the consumers to repay them, and the public gains so important, – particularly to environmental protection or economic development – that the partner municipalities decide to meet them from their own general revenues.

Alternatively the investment may attract a grant from the government or an international organisation (e.g. EC).

There might also be good reasons for distinguishing between charging the capital and operating costs of local infrastructure. Services like roads, drainage and street lighting may be public goods, but their installation may benefit landowners and developers in particular by increasing the value of their property. It may, therefore, be fair to charge capital costs directly to landowners, while operation and maintenance are funded through general tax revenues.

The choice between taxing and charging may vary between municipalities participating in an IMC-operated service. The IMC entity costs may be charged to partner municipal budgets with individual municipal Assemblies deciding whether to recover them through an earmarked tax or charge, or to absorb them in general expenditure.

#### **5.3.5 Loan finance**

In the case of the major utilities like water supply, sewage treatment and landfill, loan finance may be important in providing initial capital, serviced by consumer charges. However, the issue of who borrows may need to be considered, whether:

- *The IMC entity managing the service;*



- *The IMC entity, but with municipal guarantees;*
- *The partner municipalities.*

Who has **legal power to borrow** is obviously a determining factor. Another is the legal ownership of the **assets** financed by the loan. The form of security is also important; if loans are secured by the assets themselves, their owner would be expected to guarantee the loan, but it could be the operator if the security consists of a lien on the consumer charges.

### ***Illustration***

#### **FINANCING WASTE COLLECTION IN AN IMC: OPTIONS**

- 1. The IMC council establishes a special tax paid on the same basis in all municipalities; or on a variable basis, depending on the importance of the service in each one (e.g. one or two collections a week).***
- 2. A fee is paid by the users of the service, with different rates depending on the importance of the waste to be collected. The challenge lies in measuring the waste. There are many ways to calculate such fees.***
- 3. Each municipality pays a contribution to the IMC budget. The statute of the IMC and/or a deliberation of the IMC council determine what proportion of the cost of the service is paid by each municipality. The proportion might be based on the:***
  - number of population,***
  - size of the municipality,***
  - density of population (affects distances covered by trucks),***
  - fiscal capacity of each municipality.***

***The municipalities have their own options: either the money paid to the IMC comes from general budget revenues or from a special tax that each municipality can freely decide to establish.***

- 4. The IMC can receive special grants for investment (trucks, the landfill, dustbins) from the national or regional Government, Environment Protection Agency, etc.***

A further possibility is that investment costs are covered by loan but lenders insist on the partner municipalities guaranteeing repayment. Finally, the IMC entity may have no power to borrow and the partner municipalities have to do so instead.

### 5.3.6 Municipal budget contributions

IMC entities providing public utilities would normally recover their costs directly from consumers through charges. However, municipal contributions might be required to subsidise the cost to all or some consumers in order to:

- *Meet the initial capital costs of construction, renewal or extension;*
- *Guarantee repayment of loans;*
- *Provide access to low income consumers;*
- *Encourage consumption in the general interest.*

## 5.4 SOCIAL SERVICES

What might the financing arrangements be for institutions like schools, hospitals or residential homes which are municipal responsibilities but which serve more than one municipal jurisdiction?

Financing arrangements for these services differ widely, but compared with public utilities they attract far greater support from general revenues and often from the Government budget. This is because they are seen as having wider public benefit; they also imply notions of social justice and solidarity.

### **Example**

<b><i>Municipality A runs a secondary school attended by pupils from municipalities B and C. How does it recover costs from B and C?</i></b>	
<b><i>Question 1</i></b>	<b><i>Does the school or its staff receive payments direct from the Government budget (e.g. for salaries)?</i></b>
<b><i>Question 2</i></b>	<b><i>Does Municipality A receive any grant for education that covers pupils from other municipalities (e.g. a grant for teachers' salaries or a grant based on the total number of pupils in its school, regardless of their place of residence)?</i></b>
<b><i>Question 3</i></b>	<b><i>After deducting grants covered by questions 1 and 2, what is the net cost to Municipality A of the school?</i></b>
<b><i>Question 4</i></b>	<b><i>How much is the net cost per pupil in each age group, taking into account cost differentials (e.g. teacher/pupil ratios at each level)?</i></b>
<b><i>Question 5</i></b>	<b><i>How much should Municipalities B and C pay Municipality A, multiplying the number of their residents in the school in each age group by the net cost per pupil?</i></b>

The core costs of education - tuition, accommodation, heating - are normally funded from national or local taxes. Schools may raise charges for peripheral expenses such as meals, uniforms, text books and hire of sports facilities.

Residential care for elderly or infirm people is usually charged to the residents but, depending on their income, qualifies for reimbursement or subsidy by national or, more usually, local government, funded from general taxes.

Medical care is usually funded by some combination of general taxes and medical insurance. Medical insurance normally funds hospitals and primary care practices directly, based on usage (e.g. the number of beds, treatments, registered patients), thus obviating any conflict between catchment areas and municipal jurisdiction, so far as operating costs are concerned.

### ***Explanation***

***The European model of medical insurance is akin to taxation in that the contribution is usually compulsory, related to income and not related to the level of service provided to the payer.***

Government transfers frequently contribute substantially to the cost of social services operated by local government. Certain types of transfer can directly benefit IMC entities or municipalities providing a service to a wider catchment area than their own administrative boundaries. These include

- *Grants for specific services distributed on the basis of the number of beneficiaries; the most common example would be grants for teachers salaries or general education costs based on the number of pupils in municipal schools, regardless of their residence;*
- *General grants or tax shares distributed by a formula which calculates expenditure needs on the numbers of users of municipal services such as pupils in schools, residents in care homes etc, again regardless of their origin;*
- *Grants or tax shares which are distributed by a weighted population formula (as in the Czech Republic, Germany and Slovakia); this provides more revenue per capita to the larger towns on account of the services rendered to their hinterland.*

## **5.5 ADMINISTRATIVE SERVICES**

IMC offices undertaking joint administrative tasks may well collect fees directly from the public for building permits, trade licences, civil registrations etc.

Otherwise they would normally be funded by contributions from the partner municipalities' budgets.

**Example**

<b>Joint task</b>	<b>Funding source</b>
<b>Issue of building permits</b>	<b>Fees paid by applicants (in full or a fixed percentage)</b>
<b>Collection of municipal taxes</b>	<b>A fixed percentage of the tax collected</b>

## **5.6 PHYSICAL AND ECONOMIC DEVELOPMENT**

IIMC entities are frequently formed to promote the planning and development of adjacent municipalities that constitute a conurbation or area of common economic potential. They may simply co-ordinate planning and promote investment; in such cases, the entity would normally be funded by contributions from the partner municipalities' budgets.

**Example**

***In France, most of the “communautés” have exclusive taxation power on local business tax, the communes having competence on property tax. “Communautés de commune” may opt for this solution or for an additional tax on municipal business and property taxes. These are indirectly elected authorities running a wide range of services. Exclusive business tax is a way to unifying the tax rate in a wider area and to creating fiscal solidarity whenever enterprises are located.***

***In Britain, local police authorities and metropolitan transport authorities also surcharge the council tax (the municipal tax on occupants of residential property).***

Alternatively, such IMC entities may substitute for the lack of a metropolitan level of government and provide a range of urban infrastructure such as major roads, public transport and waste disposal. In such case they might receive shares of municipal taxes or even levy such taxes themselves.

## **5.7 CONTRIBUTIONS FROM MUNICIPAL REVENUES**

IMC financing arrangements generally leave a residue of cost to be met by contributions from the budgets of the partner municipalities, and thereby a charge on their revenues from municipal taxes and inter-governmental transfers.

The major question is how these contributions are apportioned between the partner municipalities. The simplest basis is population with equal per capita shares. Alternatively the apportionment may be based on the usage by each municipality of the joint service – the number of pupils in a shared school, the passenger miles on public transport routes, the quantities of waste disposed.

However, individual municipalities may argue that per capita costs are not uniform. The costs of supplying services to outlying or sparsely populated areas may be greater. Wealthier areas may be in a better position to contribute leading to some differential based on per capita revenues.

The apportionment of cost may be defined in the legislation governing IMC or in the IMC agreement setting up the IMC. Occasionally the Government has the power to adjudicate. For example, this is a function of the Prefect in France.

#### ***Explanation***

<b><i><u>Nature of co-operation</u></i></b>	<b><i><u>Funding options</u></i></b>
<b><i>Coordinated planning</i></b>	<b><i>Municipal contributions assessed:</i></b> - <i>per capita</i> - <i>per capita, weighted by municipal revenue per capita</i>
<b><i>Metropolitan services</i></b>	- <i>metro-wide tax</i> - <i>surcharge on municipal taxes</i> - <i>flat percentage of municipal budgets</i> - <i>flat per capita charge on municipalities</i> - <i>weighted per capita charge on municipalities (weighting appropriate to the service)</i>

## **5.8 FINANCIAL MANAGEMENT**

IMC entities providing utilities are frequently registered as companies and their accounting, budgeting and auditing processes are governed by company law. Other types of IMC operation are normally governed by the relevant legislation pertaining to local government.

## **5.9 SUMMARY**

The main issue is to distinguish between IMC co-operation through contractual arrangements and through an IMC entity.

Where one municipality provides services to others **by contract**, it may be compensated by:

- *A direct charge to consumers;*
- *An inter-governmental transfer specifically funding that service according to its usage;*
- *An inter-governmental transfer recognising the regional services it provides;*
- *A contribution from the budgets of the other municipalities served.*

An **IMC entity** may be funded by:

- *Charges and fees paid by its service consumers;*
- *A specific inter-governmental transfer for the service provided;*
- *A tax levied on the population served;*
- *Contributions from the budgets of the partner municipalities.*

## CHAPTER 6 ACCOUNTABILITY

### 6.1 LINES OF ACCOUNTABILITY

IMC activities are still municipal activities; they are public services whatever their legal form may be, whether private or public. They must be run with the same consideration for democracy:

- ✓ *Care of citizens' interests,*
- ✓ *Efficiency and effectiveness,*
- ✓ *The need to minimise public costs,*
- ✓ *The importance of respecting the ethics of public administration,*
- ✓ *Local accountability.*

This should be no more difficult under IMC arrangements than with ordinary municipal services, but it requires more attention for several reasons.

Under IMC, the managers do not bear the same direct **political accountability** towards the population as municipalities. The Mayor and elected representatives on the municipal Assembly are well known to the community and are directly accountable to citizens through elections; IMC is more complex.

An IMC entity is subject to a wider spread of accountability – to the partner municipalities, both individually and collectively, and their citizens, to supervisory Government authorities (e.g. regional governor, prefect, financial court, audit), and to the service users (e.g. consumers of water, waste disposal, transport etc). Any of these stakeholders can refer the IMC entity to the courts or other supervisory authorities.

**These lines of accountability must be considered in the early stages of establishing IMC arrangements and be incorporated into the IMC contract or statute as well as in the management arrangements.**

Because IMC is a relatively new phenomenon and tends to operate in complex service areas requiring a high degree of expertise and modern management techniques, an IMC entity can become a pioneer of modern local government, and incorporate modern mechanisms of accountability.

There are several different aspects of accountability:

- *Citizens and consumers want to know how the IMC entity is performing; but they must first understand the IMC and its operations.*
- *IMC entities are expected to be efficient and effective. Otherwise, why create a new body? Poor performance in IMC entities will be more*

*likely to be criticised by citizens. Organisational competence requires modern management, including recruitment based on merit and performance management techniques.*

- *Partner municipalities and their citizens want to be sure that one municipality is not benefitting at the expense of the others; this requires good communications and a culture of trust and cooperation.*
- *Decision-making processes have to be transparent so that people have confidence in the probity of the IMC entity. Any self-interest in contract arrangements, for example, must be not only avoided but seen to be avoided. Corruption must be tackled firmly.*
- *The delegated IMC council members represent the interests of their own municipality at the same time as they represent the interests of the citizens of all the partner municipalities. This requires maturity and an ability to secure political compromise. They will need training and support from their own municipalities. There must be clear reporting lines to the Assemblies of partner municipalities if clear democratic control over the IMC entity is to be retained.*

Good IMC accountability requires good **leadership** from the partner municipalities. The municipal leadership must welcome modern methods of accountability.

- ✓ *Where there is conflict, the leadership must learn to seek out the cause before directing blame.*
- ✓ *Where there is opportunity, good leadership must seek a 'win-win' outcome.*
- ✓ *Where there are different interests, good leadership will acknowledge them and seek appropriate compromise.*
- ✓ *Where performance is poor, good leadership will accept responsibility and propose solutions.*

**Good leadership clearly defines the parameters of an IMC arrangement, puts trust in the IMC partners and staff, gives them the tools to do the job and holds them accountable for their performance.**

### **Accountability to the Market**

New Public Management practices have encouraged the use of market mechanisms of competition and consumer choice rather than public scrutiny to enforce accountability and efficiency on public service providers. This may well apply to the providers of inter-municipal services. Schools may be municipally owned but funded according to the number of pupils they enrol, with parents



able to choose between them. Waste management may be contracted out to a private company selected by public tender.

Such market mechanisms may well provide strong incentives to quality and efficiency. This does, however, depend on situations in which there are alternative providers to compete for clients and contracts, and on the capacity of the inter-municipal entity to award and enforce contracts in a transparent and effective manner.

## **6.2 TECHNICAL ACCOUNTABILITY**

Technical accountability is achieved through good **performance management**. Performance management starts with clear objectives for the IMC and a balanced range or pyramid of performance indicators. Such indicators will be the basis for standards, targets and performance data. The key performance indicators – ie those at the top of the pyramid - must be simple enough for citizens to understand, so they can make judgements about the IMC achievements. Managers will want to use more detailed data relevant to their particular responsibilities.

### ***Illustration***

#### **Conceptual evaluation to assess how the overall cooperation/partnership has been working for the municipality.**

- ***Were the set objectives realistic, relevant, and have they been met to each partner's satisfaction?***
- ***Are there aspects that did not meet each partner's expectations?***
- ***What could have been done differently to improve the overall effectiveness of the cooperation?***
- ***What might be done at this point to improve efficiency and effectiveness?***
- ***What might be some lessons learned for the next cooperation?***
- ***Did the arrangement enhance the activities, programmes, services or products of each partner?***

#### **Financial evaluation to assess costs and benefits and the risk analysis.**

- ***Were there surprises that could have been more effectively and efficiently dealt with?***
- ***Did the cooperation meet the financial expectations?***
- ***Did the cooperation/partnership provide the expected benefits within the budget?***
- ***If there were budget overruns identify why this occurred, and how they could have been avoided.***

- ***Will each partner realize the expected return on their investment?***

**Administrative evaluation to review the project administration to ensure that it has been effectively managed.**

- ***Was the work plan accurate in view of the estimated timetable, budget, implementation etc?***
- ***Did each partner meet their obligations?***
- ***Were the control measures appropriate and sufficient?***
- ***Was the communication plan effective and were all participants satisfied with the information provided?***
- ***Have steps been taken to communicate and convey the know-how and practices that proved successful?***

Performance data can also be used to identify problems in performance that need resolution. Mechanisms and responsibilities for collecting and reporting the data must be clear and straightforward. There needs to be a link between the job descriptions of staff and the key performance indicators, so that staff can see how their work contributes to the objectives of the IMC.

IMC techniques of **performance management** should not necessarily be far more sophisticated than the ones used by the municipalities themselves. But in many municipalities, performance management is weak; as IMC entities are a more recent phenomenon, there is a chance to introduce a more modern approach to public service management. IMC entities can show the way.

This kind of management, based on objective information and clear mechanisms and responsibilities, is a condition for:

- *Generating confidence among the partner municipalities that the IMC is delivering a 'good return';*
- *Lowering any political antagonism between municipalities;*
- *Avoiding blame and accusations of unfair advantage.*

Performance management is also very important because such techniques create interest and confidence in the IMC entity with the Government, banks and international donors; this facilitates access to grants and loans.

### **6.3 DEMOCRATIC ACCOUNTABILITY**

Many municipal staff, elected representatives and citizens start by fearing that the resources they share through IMC - whether employees, investment finance, vehicles or equipment – will be used more to the advantage of their IMC partners, especially the larger ones. This is the risk.

IMC implies that the municipal leadership gives up a bit of control. Municipalities tend to find this difficult. IMC is more than a technical challenge; it is also a matter of **culture**. Hence the lack of IMC entities in many countries when the benefits are obvious. Trust is the essential ingredient. In any IMC initiative, mistrust is the ghost that must be laid to rest.

Appropriated measures need to be taken from the outset to manage the risk. Successful IMC needs all municipal partners to feel that they are kept up to date with what the IMC entity is doing in general and for the benefit of each of them.

### 6.3.1 Ad hoc contract

The municipality that acts as the lead partner will have to keep the other partners informed about the:

- *Quantity and quality of the services or developments delivered with reference to agreed standards and targets.*
- *Inputs (materials, staff, investment, running costs etc) into the services or developments with reference to agreed plans.*
- *Variations between achievement and plans, and the reason for any variance.*
- *Achievements that deserve celebration and problems that need resolution.*

Even more important, however, is that the responsible persons in the partner municipalities should meet together on a regular basis, perhaps quarterly, to share what information is available, evaluate progress and resolve issues as they arise. Municipal staff should be in close contact with their IMC counterparts.

### 6.3.2 IMC entity

The main control over an IMC entity is exercised by the elected representatives of each partner municipality who are delegated to the IMC council, whether its legal status is public or private. The addition of external delegates based on their non-partisan expertise adds power to the quality of that control.

In this way, the municipal representatives will:

- *Be given access to all documents;*
- *Receive all important information;*
- *Participate in decision-making processes.*

**It is the responsibility of those representatives to pay attention to what is happening in the IMC entity, seek advice as necessary and keep their own municipality fully informed.**

Standards, targets and plans should have been clearly defined in the IMC arrangements as well as the mechanisms for monitoring progress. Performance information should be set out formally every year in a public **Performance Report**. A draft could be discussed at public meetings to give an opportunity to anyone to contribute their views – whether as citizen or service user. The Report should be presented and discussed in the municipal Assemblies of each IMC partner.

The law may require IMC entities to send a copy of the IMC budget and the annual audit results to the partner municipalities, and even to ask their agreement to certain important decisions.

In these ways, municipalities can exercise sufficient control over an IMC entity, although there are many cases in which this control is not exercised properly.

If there is a financial Court or an Audit institution that has general control on local government, it will also have the power to supervise IMC entities. The legal control over the decisions taken by IMC entities may be exactly the same as for municipalities.

There is generally supervision of the legality of acts (contracts, budgets, loans, nominations, normative regulations) done on the first level by Government bodies and on the a second level by the courts. Courts have the power to annul illegal decisions.

There are other ways in which citizens may be able to exercise a degree of power over IMC entities. In some cases, the law requires that “user committees” are created for certain services. Consumer’s representatives on such committees have the right to a great deal of information and must be consulted before certain decisions are made, even if taking on board their opinion is not mandatory.

Of course, citizens can complain to the Ombudsman or go to Court to fight a decision they consider illegal.

Other bodies like contractor associations, consumer associations, public sector trade unions, voluntary agencies, business associations and banks continue to be active in working with municipalities and monitoring their performance, and can be just as active with IMC entities.

## CHAPTER 7 DECIDING ON AND IMPLEMENTING IMC

### 7.1 THE FORMAL DECISION

Once all preliminary studies and negotiations have been successfully completed, a formal procedure is necessary to create the legal basis for the IMC. Unless it is just a 'handshake agreement', there are two legal forms that may be selected: (a) a contract or (b) the creation of a new institution as a separate legal entity. The procedure and the regime will be very different in these two cases, and they will be different from one country to another due to the different legislation.

The method will be set out in national legislation, and the procedure will depend on the kind of legal basis that has been chosen for the IMC.

The municipal Assembly of each municipality will need to adopt the contract or statute, generally by a vote that authorises the Mayor to sign the document.

Different incidents can happen during this procedure. Public opposition may be expressed in the municipal Assembly - by citizens or the media before or after the vote. Any appeal can be addressed to a Court by the opposition or any person with the capacity to do so, in order to contest the legality of the content of the contract or of the procedural steps.

Once the procedure has started, no amendment can be added to the contract or statute in any of the partner municipalities; changing the text unilaterally would prevent a final agreement.

#### ***Questions to be answered prior to decision to establish IMC***

##### **Possible legal conditions for the establishment of IMC**

- ***Is there a need for a legally binding referendum?***
- ***Are there criteria about a rational/optimal perimeter for IMC (e.g. geography, number of inhabitants, minimal budget)?***
- ***Is there a requirement for a central or regional government institution to officially endorse the IMC?***
- ***Is there a list of minimal compulsory competences for certain forms of IMC (especially for the most integrated ones like economic development, town planning and public transport)?***
- ***Is the transfer of certain municipal functions to an IMC authority prohibited (e.g. civil status, electoral registers)?***

##### **Possible legal conditions related to contracts, legal status and organisation**

- ***Does the law provide the key elements of an IMC contract?***
- ***Does the law provide a legal status for certain areas of IMC, including the elements of the statutes of the institution?***

- ***Are the members of the IMC council elected by citizens or by municipal Assemblies?***
- ***How many representatives does each municipality have (e.g. an equal number, proportional to the population)?***
- ***What is the status of the members of the IMC council? Do they have to come from the partner municipalities?***
- ***Is the IMC executive elected by the IMC council? Can he/she be a mayor or is holding a plurality of offices prohibited? Do these persons receive additional salary or compensation for an IMC job?***
- ***What court – administrative, civil, commercial – will have competence when there is litigation about the decisions taken by IMC authorities or on behalf of IMC?***
- ***What may be the liability of the managers of the IMC entity: civil, criminal?***

**Possible legal conditions related to budget and financial system**

- ***Is the IMC entity budget rules a transposition of the municipal budget rules and terminology or is it a public budget with special rules?***
- ***Will public procurement legislation apply or not?***
- ***How are the municipal financial contributions to IMC determined? Are they proportional to population, service users, fiscal capacities, or are they based on physical criteria (such as km of roads)?***
- ***Can the IMC entity raise additional municipal taxes or will it rely on transfers from the members?***
- ***Can the IMC entity borrow from the banking system?***

## **7.2 PROCEDURE FOR LAUNCHING THE IMC**

The procedure will require following steps:

### **7.2.1 IMC is a contract:**

1. Submit the draft contract to each municipal Assembly for a vote and have a positive vote on it.
2. Submit the contract to the Mayor or another authority of each municipality for signature.
3. Send the two documents – the record of the municipal Assembly vote and the contract - to the Government authority that has to approve or verify its legality, if this is required by law.
4. Inform the partner municipalities that the contract has been fully adopted.
5. Publish the document if the law so requires.

### **7.2.2 IMC is a private body:**

1. Submit the draft statute to each municipal Assembly council and have a positive vote on it.
2. Sent the two documents – the record of the municipal Assembly vote and the statute - to the Government that has to approve or verify its legality, if this is required by law.
3. Inform all partner municipalities that the statute has been adopted.
4. Request a registration of the association or the society set up by the statute in the adequate official register.

### **7.2.3 IMC is a public entity:**

1. Submit the draft statutes to each municipal Assembly and have a positive vote on it.
2. Sent the two documents – the record of the municipal Assembly vote and the statute - to the Government that has to approve or verify its legality, if this is required by law.
3. Inform other partner municipalities that the adoption is fulfilled.
4. In certain countries, a Government authority - prefect or Minister - makes a decree or other act that establishes that the procedure has been successfully completed; this act creates the new legal entity.
5. In certain countries, enter the public entity in the official register, if one exists.

## **7.3 STARTING THE IMC**

A contract can be enforced the day after all procedures described above have been completed, or at any date decided by the contract or statute itself.

A legal entity can be created at any moment, especially if it is based on a private law statute. It is better to start public entities at the beginning of a new financial year, which is 1 January in most countries. This makes it more convenient for the preparation of budgets, the allocation of State subsidies and tax management. The law might even stipulate that this is the only option.

Whatever the date, several formalities have to be completed:

- *The governing structure of the IMC entity has to be established. The partner municipal Assemblies should have nominated their delegates to the IMC council in advance of the official start date. The first meeting of the IMC council can then be held immediately after the start day.*
- *The IMC council must elect the president, vice president(s) and other officials. It has to adopt its internal rules of procedures.*
- *The recruitment of the IMC staff may take time. If the IMC is to be staffed by employees or managers from one of the partner municipalities - which is often the case with small IMCs - the IMC structure can be established quite quickly, although a contract must first be signed between this municipality and the IMC. This contract will set out how the work of the staff is to be shared within the IMC and how the costs will be calculated by the employing municipality and paid by the IMC budget.*
- *Offices and facilities for the IMC administration must be secured (e.g. computers, cars, vehicles). This means that the new organisation may not be able to start delivering actual services in the immediate future. This period allows time for developing subsidiary projects, carrying out technical studies, preparing financial plans etc.*

**This is also the time to build up the understanding citizens of the IMC and the progress it is making. Early ‘wins’ are valuable. Citizens will want to be confident that the IMC will help to bring improvements to their lives.**

#### **7.4 REMEMBER THE CRITICAL SUCCESS FACTORS**

IMC is difficult to initiate and operate, but it is not so complicated if everybody accepts and acts on the economic logic and the political reality of the situation.

Public management by local government must respect a degree of economic logic because its justification is to deliver good services to the citizens more efficiently and effectively. It must have adequate resources. But the level of real resources always depends on the territorial situation itself: the number of inhabitants, their income levels, the amount of commercial activity etc.

**Public managers have then two options. They can leave things as they are and, if there are insufficient resources, accept the inadequacy of services or developments; or they can look for solutions that bring new capacities. IMC is one possible solution.**



There is the political reality. There cannot be cooperation without the will of the players: municipal leadership, citizens, enterprises. Potential political opposition is partly overcome if the law makes IMC compulsory for a particular service or if the Government provides sufficient facilities and incentives for a service to be established through IMC.

**But the will to cooperate must in practice come from the municipal leadership if IMC is to be durable.** Such a will may not be easy to sustain. There are many examples where IMC was initiated by political colleagues in the leadership of different municipalities or through the initiative of a particular person. The motivation may be genuine, but may not guarantee that the scope and competences of the IMC entity is the most sensible, or that the IMC is sustainable.

There are also many examples where municipalities with very different political leadership accepted to need to cooperate because it was in their mutual interest. They recognised that shared political will does not mean and does not require political uniformity. They showed political maturity.

#### **7.4.1 Building confidence**

The political life of the IMC itself can be complicated not so much for political party reasons but because there are diverse, sometimes opposing, interests of the partner municipalities that may be difficult to manage. The specific role of the leadership and managers of the IMC entity is to maintain and constantly build the confidence of the partners. Every partner must be convinced that they are not “losing out” through IMC to the benefit of other municipalities.

Potential strife in the implementation of the IMC policies should not make the definition of a strong common policy impossible. IMC is not an equal distribution of services and expenses to each municipality (called “sprinkling” in France). Many facilities (theatre, swimming pool, library, hospital...) or investments in social, economic, environmental and cultural development must be one-off and cannot be scattered all over the territory of the IMC. The decision on location often leads to conflict, but the common interest must be sought through open discussion and a proper decision-making process.

The most important ways of minimising conflict and generating consensus are:

- *Comprehensive studies of specific issues as necessary,*
- *Transparent decision-making processes,*
- *Adequate information for citizens*
- *Ensuring widespread understanding of the real reason for decisions and how they relate to the public interest.*

#### 7.4.2 Good management

It is not realistic to expect levels of perfection in IMC that are not achieved in municipalities. **But there is a particular need for good practice.** IMC has to continually demonstrate its utility - that it brings better service or saves money - both because it has been expressly established for this purpose and because its “marketing” has been based on this premise.

The municipal leadership and staff should never consider IMC entities as being of second class compared with municipal administration. On the contrary, they must be front-runners in management techniques and in their relationship with citizens and consumers. This is quite possible because they should have trained professional staff. At the same time, customers of utility services are becoming very demanding and ask for the best service at a reasonable price.

#### 7.4.3 Planning

Good planning is of particular importance in an IMC entity. It is the way to show how IMC can give satisfaction to the whole population on its total territory in due course. Roads cannot be built and maintained simultaneously everywhere; there cannot be a new sports facility in each municipality.

A **five or ten year plan** can show how the IMC will meet the needs of all the people in a way that each municipality by itself would never have been able to achieve. This is also a significant means of saving money by (i) preventing each municipality from ‘reinventing the wheel’ by, for example, duplicating studies and by (ii) creating an economy of scale that can be attractive to external investors.

#### 7.4.4 Financial arrangements

Using IMC to meet a particular challenge starts with a sense of purpose. That purpose must not be forgotten if the IMC is to remain viable; resources must be clearly directed. Great attention must be paid to the way finances are managed.

Where taxes are paid into the IMC budget, the taxpayers will want to see a clear return in terms of service quantity or quality.

There will be mechanisms for calculating the contributions paid by the partner municipalities to the IMC budget if there is a separate entity or for calculating any expenditure incurred by one partner municipality on behalf of the others in the case of a contract. **Those financial mechanisms must be transparent and non-disputable.**

## IMC CASE STUDY (ROMANIA)<sup>4</sup>

<b>TITLE: Horezu Depression Association (Asociația Depresiunea Horezu)</b>
<b>NO. OF MUNICIPALITIES: 10</b> <b>LARGEST MUNICIPALITY: HOREZU (pop: 6800)</b> <b>TOTAL POPULATION COVERED: 40,000</b> <b>GEOGRAPHY: MOUNTAIN AREA (highest altitude: 1900 metres)</b>
<b>DOMAINS:</b> <ul style="list-style-type: none"> <li>• <b>tourism infrastructure development and tourism promotion</b></li> <li>• <b>Planning, coordination, fundraising and project management</b></li> <li>• <b>Emergency services</b></li> </ul>

### 1. Need for IMC

Cooperation between these municipalities was triggered by a set of factors:

- Horezu is the administrative centre for the region, concentrating services in the field of health, education, emergency services, fiscal administration, legal services, courts etc. An administrative relationship between the 5 municipalities always existed. The town of Horezu also acts as the economic centre of the region, concentrating services such as banking and insurance, which are absent in the neighbouring municipalities.
- There are some services currently provided by Horezu to neighbouring municipalities, supported only by Horezu municipality funds, including emergency services and the population register.
- Funding for local projects is needed, especially for infrastructure development; roads, sewerage facilities, waste management facilities are all inadequate.
- There is a need to stimulate local economic development, since the unemployment rate is high and local businesses are weak.
- There is a concentration in the area of potential tourist destinations (Hurez Monastery – a UNESCO-protected monument; Woman’s Cave; traditional fabrics and pottery workshops; 16 century fortified manors; churches from the 15<sup>th</sup> - 17<sup>th</sup> century; 2 nature reservations; mineral water springs; mountain climbing; folk culture festivals).

### 2. Description of the IMC

#### Areas of cooperation

#### 1. Tourism infrastructure development and tourism promotion.

Several projects have been initiated, promoted and implemented jointly. Cooperation started with small scale projects, such as:

<sup>4</sup> Derived from case study prepared by UNDP

- a) The installation of route indicators providing information on all tourism sites in the region;
- b) The affiliation of the Horezu Depression Association to the National Association for Rural, Ecological and Cultural Tourism (ANTREC) and the participation of the Association's representatives in tourism fairs all over Europe;
- c) Training local businessmen in eco-tourism and marketing eco-tourism activities in partnership with a local NGO.

The first large project was planned for the rehabilitation and development of general and tourism infrastructure in the area, including:

- renovation work on several monuments,
- road repairs to facilitate access to some of the tourism sites,
- setting up a joint tourism information office,
- building facilities for the organisation of local festivals.

The estimated value of project was €4.5m. The project was accepted for funding but the contract was not signed because the procurement procedure was not completed in time. However, a major achievement has been the inclusion of the Horezu Depression programme in the European Destinations of Excellence (EDEN) program, 2nd phase Local Intangible Heritage (2007-2008).

## 2. Strategic planning and institutional development

With funding from the PHARE programme, the first project was successfully implemented; it focusing on several areas:

- drafting, public consultation, and approving a joint development strategy for the 5 municipalities that initially formed the Horezu Depression Association and 5 neighboring municipalities;
- expanding the membership of the Association to 10, by including the neighbouring municipalities;
- training personnel from all 10 municipalities on issues such as local development, fundraising, project management, public participation methods;
- setting up an office and a conference room, and purchasing equipment for the Association.

The main outcome of this process has been (a) agreeing a joint development strategy and (b) training of 3-5 civil servants from each of the 10 municipalities of the Association for their involvement in implementing the development strategy.

## 3. Emergency services

The municipality of Horezu was already delivering this service for the entire region at its own expense; this was considerable – 200,000 lei out of a total annual municipality budget of 1.5m lei. The other municipalities were not in a position to contribute to this service due to their limited budgets. Under the umbrella of the Association, Horezu municipality was able to obtain PHARE funding to continue the service and invest in its further development.

### **Legal form of cooperation**

In 2005 the Horezu Depression Association was established as an NGO (private law body). This organisation was, according to statute, led by a Council of Directors with 5 members (the Mayors of the 5 original municipalities). According to the statute, the

President of the Association is the Mayor of Horezu, while the Mayor of Vaideeni is the Secretary General of the Association (Horezu and Vaideeni being the municipalities that initiated the establishment of the Association).

The municipalities are represented in this Association based on the "one municipality, one vote" principle. Decision-making is majority-based; usually there is a consensus. Some decisions of the Association have to be ratified by each municipal council (eg use of public property, co-financing of projects from municipality budgets).

In 2006, the Association changed its legal status and transformed itself in a Inter-community Development Association (a quasi-public law body) with multiple competences, Abut keeping all other provisions of the statute. Currently a new statute of the Association is under discussion, since there is need for a new structure that will accommodate the 5 new members.

### **Staff**

The Association does not have its own staff; each municipality has delegated staff; some 30 to 35 civil servants work for the Association as necessary (usually part time). All of these civil servants have received training as part of the institutional development project.

### **Financing**

The financing of the Horezu Depression Association comes from grants from governmental and EU sources and the co-financing provided by member municipalities for specific projects. There are no membership fees. The municipality of Horezu is providing an in-kind contribution (office space, communication expenses, working time of some civil servants).

Representatives of the Horezu Depression Association consider that long term sustainability is guaranteed, since the Association has passed the critical stage (immaterial results, failed projects) and can now ensure sufficient funding for its activity and the successful promotion of its projects.

### **Accountability to citizens**

The PHARE-funded institutional development project included a strong public participation component, focused on training civil servants in (a) citizen information, (b) consultation and public participation issues and (c) the use of public participation instruments in elaborating the joint development strategy (eg public cafes and debates). This component, which also received local NGO support, has increased significantly the degree of citizen information and involvement in the activities of the Association.

### **Monitoring and evaluation**

There is continuous monitoring of the Horezu Depression Association activities by the member municipalities, since civil servants from all member municipalities are directly involved in day to day activities. Evaluation of the work of the Association is carried out by member municipalities on an annual basis, based on annual performance report and financial reports.

### 3. Establishment of the IMC

The Horezu Depression Association was established in 2005, at the initiative of the Mayors of Horezu and the neighboring commune of Vaideeni. The Association was actually built on the structure of an earlier attempt to cooperate in 1994 but abandoned in 1996. The initial concept for cooperation was based on (a) inspiration drawn from some French examples of IMC, (b) information obtained via the affiliation of the Horezu municipality to the Romanian Association of Towns (AOR), and (c) cooperation with an Bucharest-based NGO (Partners for Local Development Foundation (FPDL).

After 3 more municipalities agreed in principle to cooperate, a statute was drafted and the Association was legally registered, having the status of NGO. The statute of the Association contained, along with procedures and decision-making structures, reference to joint development objectives and projects. At this stage, no development strategy had been drafted and no donor was involved in the process. The establishment of the Association was supported by local resources only.

The **main difficulty in establishing this Association** was the reticence of some communes to cooperate, as there were fears that the town will take over the Association and that its activities will not bring much benefit to the communes. Some municipalities declined to join.

The **main factors determining the success** in establishing the Horezu Depression Association were:

- the leadership provided by the municipality of Horezu;
- prior attempts to cooperate – an earlier proposal for cooperation over gas supply failed in term of results but was successful in terms of cooperation;
- the homogeneity of the area - the municipalities have similar characteristics and similar problems and, consequently, seek the same things.

### 4. Benefits and shortcoming

#### Benefits

The main direct benefit for member municipalities has been the possibility to promote projects they had no financial and staff capacity to promote on their own.

The main direct benefits for the citizens have been:

- improved emergency services;
- the increase of tourism in the area resulting from the development of local tourism-related businesses (e.g. small hotels and private accommodation to let).

#### Shortcomings

The initial shortcoming of cooperation was the lack of material results in the first 18 months, leading to a certain cooperation fatigue. This was made worse by the memory of earlier attempts to cooperate.

No shortcomings for citizens were identified.

## 5. Future plans

At this point, there are no plans to change the **legal form of cooperation**.

After the completion of the current process of enlargement from 5 to 10 members, no **expansion of membership** is envisaged, mainly because the current membership already covers the area of influence of the town of Horezu (ie all communities are already linked in terms of public service delivery and the prospects for local economic development).

Expansion of IMC membership outside this area is considered not a very good idea since there will be no common ground (problems and objectives) for cooperation.

The **expansion of the areas for cooperation** is planned in accordance with the newly developed joint development strategy.

## 6. Main lessons learned

1. Leadership is essential. Even if there is some reluctance to cooperate when a larger municipality takes charge of the process, this leadership is essential for coherence and effectiveness.
2. Homogeneity is important. Municipalities involved in such forms of cooperation should be similar in terms of problems and objectives, so that there is common ground for discussion. Diverging interests resulting from significant differences between municipalities requires the organisation to work in too many directions at the same time, and results may not always be satisfactory.
3. Material results are not immediate. In the first years of cooperation, the results are rather invisible, taking the form of small projects and planning and co-ordination efforts and this may discourage cooperation.

## BIBLIOGRAPHY

- “A Report on the Status of Inter-municipal Cooperation”, Prepared for the OSCE- Spillover Monitor Mission to Skopje by VNG-International. June 2004.
- The Institutional Framework of Inter-Municipal Co-operation, Report by Michel Guégan, The Congress of Local and Regional Authorities - Chamber of Local Authorities, 14th Plenary session, 4 May 2007, Strasbourg, CoE.
- Elena Zuffada, Eugenio Caperchione. Working Paper N. 94/03, “The Inter-related Roles of the Regional and Local Government in Developing Local Partnerships in Italy”. June 2003
- “Good practices in inter-municipal cooperation in Europe”. Report of the European Committee on Local and Regional Democracy, Council of Europe. Prepared with the collaboration of Clothilde Deffigier. 2007
- Inter-municipal cooperation, Manual of the European Committee on Local and Regional Democracy (CDLR), Prepared with the collaboration of Clotilde Deffigier, Lecturer at the University of Limoges (France), Member of the scientific council of the association EUROPA, Strasbourg. 2008
- “Handbook on Inter-municipal Partnership and Cooperation for Municipal Government.” Union of Nova Scotia Municipalities (UNSM), November 2002
- “Local Government Resource Handbook”, Nova Scotia, December 2006
- Holger Osterrieder, Hachemi Bahloul, Glendal Wright, Kathryn Shaffner, Mark Mozur. “Joining Forces Cooperation among Municipalities – A Guide for Practitioners”. UNDP BRC, 2006
- “Intergovernmental Cooperation Handbook”. Originally prepared by Thomas S. Kurtz. Commonwealth of Pennsylvania, Department of Community and Economic Development. February 2006.
- “Inter-municipal Cooperation Act. Conceptual Framework”. FLGR Consult EOOD – Sofia. December 2004
- “Inter-municipal Cooperation and Consolidation. Exploring Opportunities for Savings and Improved Service Delivery” State of New York, Office of



the State Comptroller, Division of Local Government Services & Economic Development. 2003

- “Inter-municipal Cooperation Practices” collected from 8 countries of ECIS region within the frameworks of the “Strengthening Decentralized Public Service Delivery through Inter-municipal Cooperation” Project. UNDP BRC. June 2009
- “Inter-municipality Partnerships and Public Procurement Legislation” The Common Position of the German Association of Towns and Municipalities, Bavarian Regional Association of Municipalities and the Baden-Württemberg Regional Association of Municipalities. Berlin, Munich, Stuttgart, March 2006
- Intergovernmental Partnerships at the Local level in Spain: *MANCOMUNIDADES and CONSORTIA in a Comparative Perspective*, Javier Font, Rafael Gutiérrez Suárez and Salvador Parrado-Díez, *OECD*, 1999
- “Local Government Management Guide”. State of New York, Office of the State Comptroller, Division of Local Government Services & Economic Development. November 2003
- “Local Government Resource Handbook Service Nova Scotia and Municipal Relations”. Nova Scotia, Canada 2006
- “Practical Guidelines on Implementation of Inter-municipal Cooperation”. TA for the Implementation and Co-ordination of the Decentralization Process II, an EU-funded project managed by the European Agency for Reconstruction. July 2007
- Reto Steiner, “The Causes, Spread and Effects of Inter-municipal Cooperation and Municipal Mergers in Switzerland”, Center for Competence of Public Management, 2001.