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Project “Implementing the cooperation of local governments to improve the fulfilment of local government responsibilities and to attain a higher quality and better efficiency upon rendering public services“

SUMMARY

Compiled by:

PhD Mikk Lõhmus, MSc Rivo Noorkõiv

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TALLINNA TEHNIKAÜLIKOOL
TALLINN UNIVERSITY OF TECHNOLOGY

Introduction

The given summary has been compiled in the framework of the project “Implementing the cooperation of local governments to improve the fulfilment of local government responsibilities and to attain a higher quality and better efficiency upon rendering public services“ financed by “Tarkade otsuste fond“/“The Fund of Wise Decisions” and will elaborate on the most significant findings obtained in the course of the research.

The objective of the study was to deliver an analysis of the various possibilities for a more efficient use of resources and a higher quality level in the public services rendered and duties performed by cities and rural municipalities, taking into consideration the general background of the cooperation models of local self-government entities. Furthermore, it is necessary to focus on the solutions that would enable to advance the capacity of the rural municipality or town for rendering its services and performing its duties in such cases in which the cooperation would be the most effective option in the economical sense (i.e., where the economies of scale and/or scope would become apparent), which would help to improve the quality of the service, and, at the same time, to ensure the availability of the services at an equal level, taking thereby into consideration both the need for services under the changing demographical circumstances, the current capacity in rendering the service, as well as the probable impediments and current reasons for the lack of cooperation between local governments.

Three interim reports were written in the course of the study:

- Organisational framework and possible models of cooperation;
- Describing the services and duties, and modelling of the cooperation region;
- Possibilities for applying the cooperation models.

I Organisational framework and possible models of cooperation

In local self-government cooperation, a difference should be made between the cooperation upon organising a service (and performing a duty) and the cooperation upon rendering a service. While in case of rendering a service there are hardly any significant restrictions deriving from the legal theory across different countries, then in the case of organisation of services (and performance of duties) it is a quite different situation with some legal restrictions applicable to the various forms of cooperation that are being constructed.

The so-called core functions of the state and of the local government as well as the public administration duties are stemming from the constitution and the judicial area of Estonia (other countries likewise); the conferral of these functions to a cooperation institution or delegation on the contractual basis is either impossible, or it is possible only provided that certain conditions are met and only to an institution operating on the basis of a certain legal form.

The authors discriminated between the following possibilities for rendering and/or organising a service in the framework of cooperation:

1. *“Intra-institutional organisation of a service/performance of a duty”*
2. *“A coordinated organisation of a service/performance of a duty”*
3. *“Conferring a task to another entity of local government“*

4. *“A joint organisation of a service/performance of a duty by a partially autonomous institution“*
5. *“A joint organisation of a service/performance of a duty by an autonomous legal person governed by public law“*
6. *„Delegation to a legal person governed by private law“*

The analysis of the situation in other countries revealed that although the objective of the reforms of local self-governance carried out in the Nordic countries has been to establish the local governments with administrative abilities and with sufficient capacities, the implementation of the cooperation models of local government in different domains has not been ruled out. In Finland, Denmark, and in Norway alike, both compulsory cooperation, joint agencies, as well as conferral of functions to another entity of local government have been implemented as a form of cooperation based on a given specific cooperation motivation and corresponding competence. The legislation thereat provides for a sufficiently sound legal basis for organising the cooperation. In Finland, it has been laid down by the regulation of the Rural Municipality Act that joint agencies of rural municipalities can be established, and it has prescribed by a specific law that in the rural municipality or in a cooperation region which is responsible for the principal health services and social welfare, there must be at least 20 000 residents; furthermore, a cooperation area can also be assigned other duties of the given field, and the population of the rural municipality of cooperation area, which is holding the authorisation for the organisation of the basic vocational training applied by the Vocational Education Act, must be at least 50 000. Regional cooperation structures have been established in the capital region. In Denmark, the Act of the Compulsory Cooperation of Local Governments is regulating the employment and social domain, and the Act of the Regional Public Transport Centres – the public transport organisation. In 2012, the cooperation provisions in the Local and Regional Self-Government Act were substantially renewed in Norway.

The translations of the most relevant legislation pertaining to the cooperation have been annexed to the study.

The experience with cooperation models in the Nordic countries also outlined the bottlenecks connected with the cooperation:

- Local democracy: customarily, the managing body of a cooperation institution is not democratically elected, but formed of the delegated representatives from the participating local governments. It leads to the following questions: who are the customers of this cooperation institution, to whom it is bearing its political responsibility, and, in addition, in what manner the users of the service are able to influence the quality and availability of the service.
- Coordination issue: the service areas, which can be managed in various ways and which operate with a variety of responsibilities and regions, make it complicated both for the exercisers of official authority as well as for the constituents to get an overview and an understanding of the service provider as well as the institution responsible for the service.

Based on the judicial area regulating the cooperation between the Estonian local government entities, the authors of the given study have identified the following institutional and legal factors as the obstacles for cooperation:

1. The legislation regulating the cooperation of local governments in Estonia provides for the grounds of the cooperation, which is targeted to organising a service or performing a responsibility, in a rather laconic manner. Furthermore, the compilers of the given study highlight the insufficiency of legislative provisions pertaining to a joint agency and to conferral of the responsibilities to another entity of local government, and the consequent lack of administrative practices.
2. The authors of the study have a common agreement that a non-profit making association and a foundation as a form of cooperation targeted for the purpose of service provision and/or service performance fails to take into account the specific character of local government as a public institution; the most significant shortcomings derive from its character of private law and the specifics of its management model.
 - Bestowal of the performance of public administration functions (be it either in the framework of organising a function or performing a function) to an extra-administrative legal person governed by private law has its limitations. Moreover, the conferment of certain responsibilities is not allowed at all (e.g., the core functions of local government, etc.). For that reason, there are restrictions on the implementation of such form of cooperation both upon organising the services as well as upon performing a duty.
 - The jurisdiction functions, such as misdemeanour procedure, cannot be assigned to a legal person governed by private law (including also a county-level local government association).
 - A significant bottleneck is the inappropriateness of the decision-making process. The Non-profit Associations Act has been devised based on the presupposition that it is a voluntary association of private individuals and the law does not provide for any voting right specifications stemming from the specific character of an individual member.
3. In principle, the constitution and the judicial area of Estonia, are not ruling out the compulsory cooperation, as long as it is introduced recognising the conditions elaborated in the course of the given study. It would be contrary to the Constitution and the autonomy of local self-governance, if a predominant share of the core functions of local life would be considered a so-called compulsory cooperation task, and its functions should be handed over to such an extensive degree, that the entity itself would become in essence incapable of function. That kind of situation may occur, first and foremost, in the smaller cities and rural municipalities which have a lesser economical capability/lesser administrative capacities and which, in order to meet the minimum requirements of services, should assign a significant part of their competence to a cooperation institution. The authors of the given research estimate that in such case the cooperation would fail to provide any solutions to the existing problems.

II Describing the services and duties, and modelling of the cooperation region

During the Part II of the study, the experts concentrated on two domains of local government functions - waste management and social welfare (welfare of the elderly).

The results of the case studies in **waste management** demonstrated that considerable economies of scale will become evident upon such activities whereby a general framework is created for the organisation of waste management – upon drawing up the waste management

plans and devising regulations to regulate the domain of waste management, upon carrying out procurements and concluding agreements. In principle, the higher the number of residents and waste holders in region, the smaller the organisation expenditures per resident or waste holder.

The economies of scope related to the specialisation of staff will be less evident in the service area starting from 20-30 thousand residents, in which it is possible to employ more than one waste management specialist. The need for specialisation in connection with the waste-related supervision is considered to be the most important aspect.

In conclusion, it means that upon determining the optimum service area for an organised waste transport, one of the main criteria is the needs of the managing organisation, which have been discussed above. The optimum service area is ca 20 000- 30 000 residents. To boost the economies of scope upon procurement procedures, the maximum size of the region could even reach up to 100 000 residents or more.

An e-survey covering 134 local governments (59,3% out of the total number of local governments) was carried out as part of the **social welfare study**. According to the data from the local governments that returned the survey form,

- more than 80% of them had devised or were in the process of devising their development plan for social welfare, predominantly as part of the development plan of the given town/rural municipality. 18% of the local governments that responded were without any social welfare development plan.
- More than 80% of the development plans of social welfare had been devised for a single local government and, as a rule, there was no cooperation with any other local government involved upon devising these.
- 2/3 of the general care home services for the elderly have been organized by the local governments themselves. 10% of the local governments have assigned the organization of the given service to other local governments and 23% is using the service through other organizations.
- The housing service and social counselling service for the elderly are normally organized by the city local governments or rural municipality local governments themselves. In the majority of local governments, the position of a specialist dealing specifically with the social counselling has not been formed, but such activity has been combined with social work in general.
- The service of general care home for the elderly people is rendered by the authorities under the administration of local governments, the non-profit associations/foundations established by local governments, companies, non-profit associations, and companies of the private sector.
- Approximately 35% of the day centre service for the elderly is provided by the city and rural municipality governments, the agencies administered by local government, the non-profit associations/foundations established by local government, and the non-profit associations of private sector. In most cases, rendering this particular service is the responsibility of local government (40%) or the agency administered by a local government unit (36%).
- The housing service for the elderly is mainly provided by the city and rural municipality governments, the agencies administrated by a unit of local

government, the non-profit associations/foundations established by the local governments, and companies.

The needs-based rendering of social services and the practical solutions related to rendering the services, depend on the policies implemented by local governments, which are based on their capacities either in performing the service by themselves, conferring the rendering of the service to some organizations connected with them, or outsourcing the service on the private market. Advancing the cooperation culture of different stakeholders continues to be an important issue so as to prevent the unnecessary duplication of rendering the services and to ensure cost-efficiency arising from the economies of scale in the price of services

III Possibilities for applying the cooperation models

1. Based on Phases I and II and the thematic questions of the study, the authors analysed the aforementioned alternative options with the presumption that the cooperation is, first and foremost, targeted to organising services and performing a duty. In Phase III, the concept of a joint agency of local government entities was defined, the legal options for conferring the performance of a responsibility or organisation of a service to a joint agency were analysed, and, if needed, the principles for amendments in the local government organisation act and other laws were devised;
2. Legislative alternatives for conferring the performance of a duty or organisation of a service to another entity of local self-government were analysed, and the principles for the amendments in local government organisation act and other laws were designed;
3. As an exceptional case, the possibilities for implementing joint officials of the local government entities were scrutinized and the corresponding solutions will be suggested.

The provided solutions have a universal nature and are not related to any particular realm of local life responsibilities (such as waste management, social welfare, public transport) or some specific duty with administrative or jurisdiction-related nature.

The legislation amendments devised in the framework of the study

The authors have provided the following amendments of legislation for the purpose of applying a joint agency and a conferral of a responsibility (to another entity of local self-government):

1. **“Local Government Organisation Act”** § 7 Subsection 3 will be amended and reworded so that the legal acts of a council and government of a given local government entity may be applied also to the administrative territory of another local government entity, given that it has been facilitated by law. This provision is essential for the purpose of delegating the contracting a service to another entity of local government.
2. **“Local Government Organisation Act”** § 22 Subsection 2 will be amended and reworded in such a way that it would enable the council to assign an issue not falling into the exclusive competence of the council to the government, to an administrative agency of a rural municipality or a city, to some structural unit of an administrative agency, or to a rural municipality or town official.

3. **“Local Government Organisation Act”** Chapter X shall be supplemented by the provisions dealing with the conferral of a responsibility to a joint agency and to entities of another local government.
4. **“Civil Service Act”** should be supplemented by adding § 2 subsection 3 Clause 6 (administrative agency of a local government entity is also a joint agency in the meaning of the given section clause 1).
5. **“Accounting Act”** should be supplemented in such a manner that the provisions pertaining to an accounting entity shall be applied to a joint agency of local government entities.

Full texts of these amendment acts have been provided in Interim Report III.

Policy recommendations

1. The authors of the given study maintain that the entities of local government must be sufficiently capable in order to fulfil a predominant part of the local life responsibilities falling into their field of responsibility. It would be contrary to the Constitution and to the autonomy of local self-governance if a predominant share of the core functions of local life is considered the duty of the so-called compulsory cooperation, and own functions should be handed over to such a notable extent that the entity itself would become practically incapable to function. Such incident will possibly occur, first and foremost, in smaller towns and rural municipalities, which have lower economical capability/ lesser administrative capacities and which, in order to meet the minimum requirements for services, would be pressed to confer a significant share of their competence to a cooperation institution. The Constitution of Estonia does not exclude the application of the compulsory cooperation of local government entities, provided that it occurs for the purpose of ensuring a significant public interest as well as the quality and accessibility of the service.
2. In the framework of the planned reform in local government organisation it is definitely necessary to conduct a proceeding regarding the cooperation issues, because although the entities of local government established in the course of the possible reform will be larger in size and have more capabilities, still the cooperation between the entities of local government would remain an expedient and justified option in a number of domains (such as public transport, waste conditioning, managing misdemeanour procedure and state supervision). This has also been evidenced by the experience in the Nordic countries.
3. The public administration systems being established will apparently require a much more regulated judicial area than the currently acquired systems that in many ways function on the basis of customary law and developed administrative culture. Therefore, the legal management of a cooperation institution should be laid down by our laws as much as possible. The latter estimation is also supported by the practical experience from the Nordic countries. The authors of the given study call attention to the fact that several problems are deriving from the wording of the Local Government Organisation Act passed in the year 1993. Although the study has provided some recommendations for amending the Local Government Organisation Act, the entire Act would benefit from a more comprehensive and systematic updating.

4. The authors encourage making more use of the public administration experiments (pilot programmes), whereby new cooperation models can be tested in the interested cooperation regions.