

## Chapter 5 Intermunicipal cooperation

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**Abstract:** Cooperation and intermunicipalism are two essential concepts in the study of the current reality of local governments in Spain. Taking into account the complex territorial organization of the state and analyzing the current political-administrative framework, it is increasingly necessary to find mechanisms for intergovernmental and administrative relations that allow us to respond to the needs of citizens with greater dynamism. The traditional "subjective" analysis, in which each municipality represents a unit that manages the common good in a grouped manner, has been left behind and new "functional" formulas are imposed, in which these municipalities no longer work in isolation, but in relation to others based on criteria of necessity and opportunity. Moreover, this intermunicipal cooperation can take place in a variety of forms, types and legal regulations. The chapter analyzes its viability in light of the major systemic challenges that occur at this level of government, such as the hyperfragmentation and dispersion of local government, the chronic insufficiency of local entities to ensure the provision of their public services after multiple legal reforms, and the social commitments that are established in a context of multilevel governance. It lists some of the political challenges posed by inter-municipal cooperation formulas such as the opacity of their structures, the dilution of political responsibility for the management of public services or the lack of direct democratic legitimacy, among others. The chapter ends with some recommendations on how these relations can be addressed from our institutional framework, with special reference to the geographical and demographic problems derived from the configuration of the Spanish local structure.

**Keywords:** Cooperation, Collaboration, Coordination, Local government, Governance, Governmental relations, Interadministrative relations, Municipality, Reform, County.

### 2.1 Introduction

Cooperation and intermunicipalism are two essential concepts in the study of the current reality of local governments in Spain. On the one hand, cooperation is understood as the situation that occurs when two or more government structures, voluntarily and in the exercise of their competencies, assume specific commitments with the aim of achieving a common action. On the other hand, intermunicipalism can be described as the set of initiatives and structures put in place by local entities in order to cooperate for the exercise of competencies and the joint provision of municipal public services, as well as for the performance of tasks of common interest.

Taking into account the complex territorial organization of the Spanish state and analyzing the current political-administrative framework, it is increasingly common to find inter-municipal cooperation mechanisms that allow responding to the needs of citizens with greater dynamism and efficiency. The traditional "subjective" analysis, in which each municipality represents a unit that manages the common good in a grouped manner, has been left behind and new "functional" formulas

are imposed, in which these municipalities no longer work in isolation, but in relation to others based on criteria of necessity and opportunity. Moreover, this intermunicipal cooperation can take place in a variety of forms, types and legal regulations (at the state or autonomous community level), depending on the constitutional and municipal tradition of each country. Thus, municipalities can cooperate with each other within a permanent subjective framework or, on the contrary, they can cooperate informally, through association mechanisms.

The chapter focuses on the analysis of the cooperation structures in the municipalities of Spain, given their permanent concern to offer common public services of quality for which it is increasingly complex to provide them with criteria of equality and efficiency. First, attention is focused on the current context of multilevel governance in order to understand the phenomenon of intermunicipality and its legal regulation. Secondly, the formulas of intermunicipal cooperation in force so far and how they are generally structured are presented. Thirdly, its viability is analyzed in view of the serious systemic problems that occur at this level of government, such as the hyperfragmentation and dispersion of the local plant and the chronic insufficiency of local entities to ensure the provision of their public services. Fourthly, it lists some of the political challenges posed by intermunicipal cooperation formulas, such as the opacity of their structures, the dilution of political responsibility for the management of public services or the lack of direct democratic legitimacy, among others. The chapter ends with some general considerations that summarize the main arguments put forward in the text.

We have chosen to develop a descriptive research, applying a scientific methodology based on qualitative techniques, analyzing secondary sources, reports, legislation and jurisprudence and from a normative perspective. The main conclusion drawn from the study is that it is necessary to bet on a concrete, concise, basic and homogeneous regulation that structures intermunicipal cooperation throughout the state. This challenge forces the legislator, whether national or regional, to opt for a more operative and less subjective vision, as this is the only way to review territorial models in the face of the growing divergence between institutional spaces and institutional mechanisms that help to provide the best public service to an increasingly complex and demanding society.

## **2.2 Intermunicipal cooperation: essential elements for its understanding**

One of the factors driving the impulse and change of local governments in Europe has been the political initiatives to decentralize the intergovernmental architecture, as well as the strengthening of municipalities (Wollmann and Iglesias 2011: 97). This has also occurred in Spain, a country with a complex political-territorial framework, where public power is distributed among several levels of government, where a marked historical municipalism persists in a very specific geographical, demographic and cultural context.

Cooperation is understood as the situation that arises when two or more government structures, voluntarily and in the exercise of their competences, assume specific commitments with the aim of achieving a common action. Intermunicipalism is the set of initiatives and structures set up by local entities with the aim of cooperating for the exercise of competences and the joint provision of municipal public services, as well as for the performance of tasks of common interest. At this point, the definition, legal regulation and importance of the term are presented, in order to be able to develop the most notorious aspects of intermunicipal cooperation in Spain.

### **2.2.1 Intermunicipality: a controversial definition**

Moreno Molina (2013:216) defines *intermunicipalism* as the set of initiatives and structures put in place by first-level local entities (municipalities) in order to cooperate for the exercise of competencies and the joint provision of municipal public services, as well as for the performance of tasks of common interest.

Toscano Gil (32:2013) argues that the concept has emerged in recent years, as opposed to the classic term *supramunicipality*, to allude to the articulation of relationships that occur between municipalities in order to achieve common goals, emphasizing the voluntary nature of the implementation of these synergies, unlike traditional *supramunicipality*, which was based on formulas built from verticality. Therefore, intermunicipality implies, for the author, horizontality versus verticality, equality versus hierarchy, voluntariness versus obligation and cooperation versus coordination, flexibility versus rigidity, and little regulation versus dense regulation<sup>1</sup>.

Fernández-Figueroa Guerrero (2013: 42) states that intermunicipality is a type or modality of inter-administrative relationship that occurs whenever two or more municipalities meet/associate with each other or with other public and/or private entities. Thus, it is based on essential principles, such as cooperation, collaboration and/or coordination, although their purposes are different depending on the thematic areas or services they encompass.

Therefore, intermunicipality requires the existence of municipalities, the presence of common interests among them and the voluntary decision to share the means for the best satisfaction of all their interests. It is a matter, therefore, of achieving objectives that are not possible to achieve individually or through the unilateral imposition of another entity. On the basis of these common characteristics, there are many possible formulas of intermunicipality which will be analyzed later.

Knowing the specific competences and the level of autonomy enjoyed by the local entities that wish to exercise this cooperation will be transcendental for understanding new multilevel governance formulas, with a greater projection in the distribution of power among the different territorial levels and in the configuration of power democratically (Díez Sastre 2019: 115). Governance, as an art or way of governing, is located at the crossroads of three processes: state, society and market, involving the simultaneous and dialectical action of various institutions and social, economic and political actors, in an integrated and coordinated manner. This new paradigm is based on the application of five basic principles: openness, participation, accountability, effectiveness and coherence (White Paper on Governance 2001). Intermunicipal cooperation, in such multifaceted and fragmented realities, turns out to be one of the ideal mechanisms for governance to develop fully as a way of directing and managing public services that are increasingly in demand, and applying structural requirements of financial sustainability and economic stability.

### **2.2.2 Legal regulation**

At the European level, as Moreno Molina (2013:216) states, intermunicipal cooperation has been structured in the form of functional associationism, and recognized and protected by the European Charter of Local Self-Government (CEAL). Article 3 enshrines the right of these entities, in the exercise of their competences, to cooperate and associate with others for the performance of tasks of common interest. The same precept regulates the associations representing municipal interests for the defense

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<sup>1</sup> The concept of intermunicipality is included as such in the White Paper on Local Government Reform in Spain (2005).

and political interlocution of the local world. Local cooperation operating on both sides of national borders is also recognized in a special way<sup>2</sup>. Article 6 of the Charter closes this content, which recognizes the right of municipalities to autonomously define their own administrative structures, allowing them to manage as efficiently as possible, referring both to the internal structures of local entities, as well as to external structures by analogy.

In recent years, the Spanish local regime has been regulated through various legal instruments and has also undergone numerous reforms<sup>3</sup> si bien todas ellas han tenido un alcance limitado, especialmente la última en 2013 al adoptar una perspectiva exclusivamente económica para lo que es una cuestión de orden constitucional, de distribución del poder público en el territorio y de gran importancia a nivel social.

In Spain, the Spanish Constitution recognizes that the state is organized territorially into municipalities, provinces and autonomous communities and that all these entities enjoy autonomy for the management of their respective interests (Article 137.1). Likewise, it includes the possibility of creating groups of municipalities other than the province (Article 141.3). In turn, Rivero Isern (1985: 662) argues that the complex model of territorial organization of the State designed in the Magna Carta is based on a harmonious integration and interrelation of entities which, although enjoying autonomy, are called upon to cooperate, by a constitutional imperative derived from the constitutional principles of solidarity, efficiency, coordination, unity and autonomy.

Specifically, Article 138 regulates the principle of solidarity in order to achieve the establishment of an adequate and fair economic balance between the different parts of the Spanish territory. The principle of solidarity thus acquires a new perspective, presenting itself as a guiding and modulating criterion for relations between municipalities and provinces. On the other hand, the Constitution, in its article 103, obliges all public administrations to act in the service of general interests with objectivity and in accordance with the principles of efficiency, hierarchy, decentralization and coordination. Based on this assumption, it would be difficult to achieve the intended coordinated and efficient action between municipalities without articulating an inter-administrative relational system of mutual cooperation<sup>4</sup>. And, finally, the principles of unity and autonomy, which Rivero Isern (1985: 662) sets out from the Explanatory Memorandum of the Law of Bases of Local Regime as the constitutional principle of autonomy and the administrative principle of decentralization, cannot imply the invertebration of the administrative public power, 'post simultaneously plays the principle of unity and its administrative translation into those of coordination and efficiency'. Thus, the relationship techniques between administrations should aim 'rather at defining the framework and procedures that facilitate the meeting and communication even of an informal nature for inter-administrative collaboration and coordination

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<sup>2</sup> In the 1980 European Framework Convention on Transboundary Cooperation of Local Authorities, also known as the "Madrid Convention".

<sup>3</sup> The most important are the following: Law 7/1985, of April 2, 1985, Regulating the Bases of the Local Regime; Royal Legislative Decree 781/1986, of April 18, 1986, approving the rewritten text of the current legal provisions on Local Regime; Law 11/1999, of April 21, 1999, amending Law 7/1985, of April 2, 1985, Regulating the Bases of the Local Regime, and other measures for the development of Local Government; Law 40/2015, of October 1, on the Legal Regime of the Public Sector; Royal Decree 2568/1986, of November 28, approving the Regulations on the Organization, Operation and Legal Regime of Local Entities; Royal Legislative Decree 2/2004, of March 5, approving the revised text of the Law Regulating Local Treasuries (published in the Official State Gazette no. 59, March 9, 2004); Organic Law 1/2010, of February 19, 2010, amending the organic laws of the Constitutional Court and the Judiciary; Law 27/2013, of December 27, 2013, on the rationalization and sustainability of the Local Administration.

<sup>4</sup> Law 40/2015, of October 1, on the Legal Regime of the Public Sector includes the regulation of inter-administrative relations between the different levels of government and administration (Vilarta Reixach 2017: 50).

that are fundamentally voluntary and based on negotiation`. On the other hand, the different scope and meaning of regional autonomy (with legislative power) and local autonomy (without it) does not generate the possibility of a hierarchical relationship between local authorities and higher administrations.

The State is thus competent to draw up the bases of the local regime and the Autonomous Communities the legislation for the development of this regime. In addition, territorial planning corresponds to the autonomous community, which implies the power to modify municipal boundaries, suppress or create municipalities, or other supra-municipal entities. Consequently, the absence of a regulation that includes a minimum list of competencies of the local entities causes a certain differentiation with respect to the rest in the place they occupy in the political system (Montabes Pereira and Rosado Rodríguez 2006:61). So far, the autonomous state legislator has contributed little to determining the scope of the constitutionally designed general competency model.

In recent years, the various reforms in the territorial organization with the aim of adapting it to the principles of efficiency and administrative rationality in the provision of services, have not solved the problems arising from administrative and political transformations. Since the 1978 Constitution established the necessity of the province in the pluriprovincial autonomous communities, and of the islands in the archipelagos, recognizing autonomy to both, the autonomous communities, in use of their competences on territorial organization and local regime, have created new intermunicipal entities (metropolitan areas and comarcas), to which are added other intermunicipal entities of a voluntary nature such as the mancomunidades (associations of municipalities)<sup>5</sup>. We will see below that there are other formulas for inter-municipal cooperation today.

### **2.2.3 Cooperation, coordination or collaboration?**

As previously stated, when it comes to knowing how intermunicipal cooperation is produced and modulated with other constitutional parameters, it is also necessary to relate its content with the basic principles of cooperation, coordination and collaboration because they tend to be confused (Carbonell Porrás 2019:53). Such principles regulate inter-administrative relations and are included in the Public Sector Legal Regime Law.

Starting with the first, cooperation is generated when two or more public administrations, voluntarily and in the exercise of their competencies, assume specific commitments for the sake of common action<sup>6</sup>. Cámara Villar (2007: 83) maintains that, strictly speaking, cooperation has a qualitative scope and is linked to the most modern conceptions of federalism. Thus, it can be understood as: 'a joint decision making, a co-exercise of competences and, consequently, a co-responsibility of the actions carried out under that regime`. As such a statement makes clear, the competence or matter involved in that inter-administrative relationship, in order to be realized, implies the joint action of the public authorities. In turn, Arias Maiz (2010) states that such cooperation is embodied in agreements, as an agreement of wills producing legal effects between the subjects that agree on them, effects that do not come from only one of them but from all of them. As the Constitutional Court has stated, the agreement -as a way of giving effect to the principle of inter-administrative cooperation-, although it has 'an undoubtedly practical scope, is completely irrelevant for determining the material competence order'<sup>7</sup>.

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<sup>5</sup> The Ley de Bases de Régimen Local recognizes the possibility of creating other entities (Article 42 et seq.).

<sup>6</sup> Article 140.1.d) of the Public Sector Legal Regime Law.

<sup>7</sup> This is evidenced by the 2nd Legal Basis of the Constitutional Court's Decision 71/1983, of July 29, 1983.

With respect to the second, coordination, Article 103.2 of the Spanish Constitution recognizes it as a principle of relations between public administrations. This principle implies the establishment of homogeneous lines of action and policies for the institutions, but without this implying a modification of the established system of distribution of powers, either in their ownership or in their exercise. Each of the powers involved in such relationship must keep intact its powers and faculties and the material scope over which these are exercised; thus: 'perseveres the integration of the diversity of the parts or subsystems in the whole or system, avoiding contradictions or reducing dysfunctions which, if they subsisted, would impede or hinder, respectively, the very reality of the system'<sup>8</sup>.

Coordination<sup>9</sup> is generated when a public administration has the obligation to guarantee the coherence of the actions of others affected by the same subject for the achievement of a common result. Álvarez Rico (1982) argues that coordination is 'an elastic vaporous concept, joker or bus, within which everyone places their own desires or ideas and, therefore, an instrument of marked effectiveness to obtain all kinds of political consensus`.

Comparing this coordination with the former cooperation, it can be concluded that while cooperation is voluntary and includes cooperating public administrations on an equal legal footing, coordination includes entities coordinated by an act, which have directive capacity or a decision-making position, so that those who are related in this way will not have a legal position of equality.

Lastly, the general duty of collaboration is a requirement of the public authorities for the proper functioning of the political-administrative institutions and the achievement of their purposes<sup>11</sup>, which, moreover, seems to be logical. In this way, collaboration comes to be considered as a necessary resource for the harmonious exercise of competences by each entity, 'avoiding or providing solutions to eventual frictions derived from the understanding of the scope of the respective jurisdictional titles' (Cámara Villar, 2007:78). Thus, although it is not expressly formulated in the Spanish Constitution of 1978, 'it is not necessary to justify it in specific precepts because it is of essence to the model of territorial organization of the State implemented by the Constitution` (Cámara Villar, 2007:78)<sup>12</sup>. In its negative dimension, collaboration obliges each instance of state power, in the exercise of its respective competencies, to respect the general interests of the state as a whole. In its positive dimension, collaboration urges all the authorities to collaborate, or to provide the aid and assistance that may reasonably be required or demanded by others, in the legitimate exercise of their competences. As stated by Tajadura Tejada (2002:78), the configuration of collaboration as a legal-constitutional duty is what distinguishes it from coordination or cooperation, since 'from the principle of collaboration obligations arise for the conduct of the various instances of power`.

Based on the above, it can be drawn that institutional cooperation, coordination and collaboration constitute important tasks and challenges in political-administrative systems (Canales Aliende 2014: 467), and are essential to help define inter-municipal cooperation relations. In these trends towards new models of shared power, negotiation is a constant that involves relations of coordination, collaboration and cooperation. From this perspective and based on the formulas adopted in the decision-making process, intermunicipal relations can be instrumented through: institutional or deliberative cooperation formulas, of a stable and permanent nature; contractual cooperation formulas,

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<sup>8</sup> This argument is expressed in the 2nd Legal Basis of the Constitutional Court's Decision 32/1983, of April 28, 1983.

<sup>9</sup> Article 140.1.e) of the Public Sector Legal Regime Law.

<sup>11</sup> Article 140.1.c) of the Public Sector Legal Regime Law.

<sup>12</sup> Legal Basis 66 of Constitutional Court Ruling 118/1996, of June 27, 1996.

for the integration of several entities in a common project; and integration formulas for collegial coordination, which require unanimity in the decision-making process (Moreno Molina 2013).

## **2.3 Intermunicipal cooperation formulas in Spain**

### ***2.3.1 A new vision: from the subjective to the functional***

Municipalities must provide increasingly numerous, complex and expensive public services, meet growing and diversified social demands, respond to the needs of an increasingly dispersed population, face major demographic and geographic challenges due to the density of the population, and all this in a context of great uncertainty and change. The parameters that used to be used to define, organize and evaluate municipal activity are now insufficient because society has evolved and the context has changed at great speed. The development of intermunicipal cooperation is also linked to the problem of fragmentation and dispersion of the local plant that uncovers a chronic insufficiency of local entities to ensure the provision of their public services (Moreno Molina 2013:215). Other authors such as Montabes Pereira and Rosado Rodríguez (2006:61) affirm that the decentralization of a political system, whether it has a functional or territorial basis, encounters serious coordination problems that need to be ironed out.

In the last decade, there have been attempts to reverse this situation, such as the projects for the merger of municipalities, which have not been as successful as expected. In this sense, intermunicipal cooperation is seen as the least traumatic, and almost the only, remedy to a situation that seems to be both irrational and immovable, but which stems from the history and traditions of the communities. It follows from all these factors that local authorities are nowadays pushed in an almost irresistible way towards cooperation, collaboration and even partnership.

Therefore, as Moreno Molina (2013:215) argues, the traditional analysis of local entities used to respond to a preferably subjective perspective, in which each municipality represented a unit that managed the affairs of more or less grouped populations, with no connection with each other. Now, however, new functional analytical perspectives are emerging, in which municipalities no longer have to work in isolation, but in line or in a network. Thus, local authorities find in this cooperation procedure a solution to their problems, pooling their means and resources to benefit from incremental synergies.

### ***2.3.2 Typology and classification***

In Europe, intermunicipal cooperation is presented under a great variety of legal forms, types and regulations, depending on the constitutional and municipal tradition of each country. These modalities of intermunicipal cooperation may be regulated exclusively by state legislation, only by sub-state legislation or by both levels of government. In Spain, such cooperation has a bifronte character, since at least under state legislation commonwealths and metropolitan areas are regulated as the only purely intermunicipal associative structures recognized as local entities, but then the autonomous communities can regulate other formulas in their respective spheres of action. In order to establish a general classification, the doctrinal contributions of (Moreno Molina 2013), Fera Toribio (2013) Toscano Gil (2013) and Fernández-Figueroa Guerrero (2013) will be taken into account.

Moreno Molina (2013:217) makes a first classification of the forms of cooperation between "first level" locals: a) associations representing municipalities, such as state or regional associations (e.g. the Spanish Federation of Municipalities and Provinces or the various associations at the regional level),

whose main purpose is the protection and promotion of their respective interests<sup>13</sup>; b) cooperation between municipalities and other territorial public administrations, such as central, state or regional, even if it takes on specific organic formulas (such as consortia); c) cooperation between "second level" local entities, such as provinces; d) the merger of municipalities, since this phenomenon goes far beyond the purpose of intermunicipal cooperation; and e) the technique of twinning between municipalities.

Feria Toribio (2013: 14) includes other associative formulas such as cooperation networks, consisting of three different typologies for this purpose: (a) normative-based cooperation networks are based on legal prescriptions for the development of certain public functions and activities that require multilevel cooperation and coordination, such as Land Management Plans or Natural Resources Management Plans; b) induced cooperation networks have their origin in the need or obligation to cooperate in order to obtain certain financial resources from higher level administrations, such as those linked to the obtaining of European funds; and c) voluntary cooperation networks, arising from local initiative for the development of their policies, competencies and provision of public services, such as the different types of associations of municipalities and consortiums or strategic plans, among others.

Other authors, such as Fernández-Figueroa Guerrero (2013: 34), establish a very varied typology, based on several criteria:

- By virtue of who integrates them: they can be territorial: participated solely and exclusively by territorial public administrations. In turn, they are classified as: own, made up solely of municipalities (mancomunidades); improper, made up of municipalities, other local entities and/or other territorial public administrations; and mixed: non-territorial, public or private entities may form part of them.
- Based on their legal nature: they can be personified, with their own government and management (such as differentiated local entities: province, county, metropolitan area, commonwealths, consortia or other differentiated personifications: inter-local companies, groups of public capital companies, foundations or private associations; and nonpersonified, without their own differentiated government (such as joint management without differentiated personified entities: networks of local entities, collaboration agreements, etc.).
- Based on the legal nature of its members: they may be public intermunicipalities (e.g., metropolitan area) or mixed intermunicipalities.
- Based on their "corporate purpose": common political positioning or execution/provision of works, services and projects.
- By the territorial scope they affect: they can be regional, provincial (provincial council), regional (consortium), international, etc.

As can be seen, the range of classifications is very extensive, so it is appropriate to make a more generic typology of the cases of inter-municipal collaboration that can be found in the Spanish legal system.

### ***1. Informal cooperation***

Municipalities may cooperate with each other de facto, or assist each other, spontaneously or informally, outside a permanent legal or subjective framework. This is the case, for example, when a

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<sup>13</sup> These associations are also regulated by Article 10.2 of the European Charter of Local Self-Government.

municipality helps a neighboring municipality when a fire or natural disaster occurs. This possibility is not governed by a precise or detailed material legal framework.

## ***2. Collaboration bodies***

Its configuration as a body for this purpose, with administrations from other territorial levels, such as the state or the autonomous community, and also its functions, which are merely deliberative or consultative, distance them quite far from the idea of intermunicipality that we have been talking about up to now.

## ***3. Agreements***

The inter-administrative cooperation agreements result in the participating municipalities committing themselves to cooperate, collaborate and assist each other in specific fields or sectors (for example, for the joint provision of public services such as transportation). These conventional formulas do not necessarily crystallize in the creation of new organizations, but are the manifestation of a power or competence that is normally derived from the legal personality and full and complete capacity to act of the local entities. They are governed entirely by administrative law. They are more than agreements between municipalities, whose object can be very varied, to order the pooling of the interests of the parties signing the agreement. A cooperation agreement may include non-municipal entities, and even private parties, although in the latter case we cannot speak of inter-administrative agreements. In addition, they may result in the constitution of an organization, with or without legal personality, which would be another form of inter-municipal cooperation.

## ***4. Permanent organizations under public or private law***

First of all, we can name the commercial companies. This subjective modality of intermunicipal cooperation is very common by applying private law formulas by shares in the field of the management of certain public services such as energy or waste management. The shares of such a company are distributed among the constituent municipalities, according to variable criteria (size, population) or the respective financial outlay.

Secondly, legal entities under private law, such as local foundations, with representatives of several entities on their board of trustees. Domestic law does not provide that the commercial company or the foundation constitute genuine forms of inter-municipal cooperation under local legislation, but the municipalities may resort to these subjective formulas in the exercise of their capacity for self-organization and their capacity to act.

Both (commercial companies and legal entities) can serve to pool the interests of the municipalities, when they are used for this purpose. What happens is that they are private law entities, which are governed mainly under private law and are not public administrations, nor are they allowed to exercise administrative powers. These entities are also constituted, with very different purposes, in the interest of the associated subjects, and enjoy recognition in the legislation of local regime. Moreover, they do not have to be limited to the municipalities, giving rise to the participation of public entities of another order, and even of private subjects.

Thirdly, there are the specific structures of public law. The cooperating municipalities can create a structure with a public-legal nature and governed by administrative law, which can be considered either as a local entity for all purposes, or as a public body without such nature, or as an unincorporated organization. Within this large group, different typologies can be observed:

- Province: being a compulsory constitution, it is the Spanish Constitution, and not a law of ordinary rank or a decision of another administration, which obliges this grouping of municipalities. And being its constitutional function that of assisting, technically, economically and materially, the municipalities, and being a subject distinct from them, however much it groups them together, the province has traditionally been closer to the model of supra-municipality than to that of inter-municipality. But it should also be taken into account.
- Common structures that lack legal personality, such as commissions, joint office, etc.
- Associative structures that are considered as agencies and have full legal capacity to carry out their specific tasks and responsibilities.
- Commonwealths or consortia: these are voluntary associations of municipalities. The consortium admits the association between different types of entities, not only municipalities. Thus, there may be the province, but also the autonomous or state administration, and even private non-profit entities. In any case, for it to be a local consortium, the presence of local entities must be a majority, and indicative of predominantly local interests. However, if intermunicipality means relations between municipalities, the local consortium could only be considered as such in a broad sense, since it is not only municipalities that are associated in the consortium. For their part, commonwealths enjoy their own legal personality for the fulfillment of their purposes, and may exist without time limit, or may be created only for a specific time and for the performance of one or more specific activities.
- Metropolitan areas or counties: they may or may not exist. The decision to create a comarca or a metropolitan area is usually attributed by local legislation to the autonomous community, so it does not normally respond to an initiative of the municipalities concerned. Although they can oppose its creation, in the case of the comarca, this is not the case of the metropolitan area, for which a decision of the autonomous parliament is required, formalized by means of a regulation with the status of a law. Therefore, a mere decision of the autonomous administration would not be sufficient<sup>14</sup>.

Finally, it should be emphasized that the phenomenon of inter-municipal associative cooperation is not a purely and exclusively internal matter of sovereignty, legislation and domestic traditions<sup>15</sup>, but can also be regulated at the external level. The action of the Council of Europe itself in promoting cross-border cooperation is noteworthy, referring to the relations between regional and local authorities on territorial borders for collaboration in carrying out works, services and activities of any kind that are of common interest. This cooperation includes the cooperation that can be carried out by Local Entities in general and Spanish municipalities in particular with French and Portuguese municipalities. Therefore, it would also be an intermunicipal cooperation, although it goes beyond the borders of Spain (Carbonell Porras 2010).

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<sup>14</sup> According to the Registry of Local Entities of the Ministry of Territorial Policy and Public Function of the Government of Spain (February 2022), of the total number of local entities existing in Spain (13,008), 8,131 are municipalities, 58 deputations, councils and councils, 968 mancomunidades, 83 comarcas, 3 metropolitan areas, 3,683 minor local entities and 82 other types of entities. This shows the importance of cooperation.

<sup>15</sup> Recommendation 221 (2007) on inter-municipal cooperation, adopted by the Plenary Session of the Congress of Local and Regional Authorities (the second most important body after the Parliamentary Assembly within the Council of Europe's organization chart) at its session of June 1, 2007/44.

**Table 5.1.** Total number of local entities in Spain by autonomous community (2022).

Autonomous Community	Municipalities	Diputatio ns, councils and local govern.	Manco m.	Counties	Metro p. Areas	Othe r	Minor Local Entitie s	TOTAL
Andalusia	785	8	82	-	-	1	34	910
Aragon	731	3	36	33	-	2	43	848
Asturias	78	1	16	-	-	2	39	136
Canary Islands	88	7	13	-	-	4	-	112
Cantabria	102	1	23	-	-	-	518	644
Castilla y León	2.248	9	241	1	-	61	2.210	4.770
Castilla-La Mancha	919	5	123	-	-	2	42	1.091
Catalonia	947	4	76	42	1	-	65	1.135
Valencian Community	542	3	61	-	2	-	7	615
Extremadura	388	2	58	-	-	4	22	474
Galicia	313	4	38	-	-	-	9	364
Balearic Islands	67	4	7	-	-	-	1	79
La Rioja	174	1	31	-	-	-	4	209
Madrid	179	1	54	-	-	-	2	236
Murcia	45	1	8	-	-	-	-	54
Navarra	272	1	62	-	-	4	346	685
Basque Country	251	3	39	7	-	2	341	643
Ceuta and Melilla	2	-	-	-	-	-	-	2
<b>Total Spain</b>	<b>8.131</b>	<b>58</b>	<b>968</b>	<b>83</b>	<b>3</b>	<b>82</b>	<b>3.683</b>	<b>13.008</b>

Source: Prepared by the authors, based on data extracted from the Registry of Local Entities of the Ministry of Territorial Policy and Public Function of the Government of Spain (February 2022).

### **2.3.3 Brief outline of the organization and operation of the inter-municipal structures created**

In general, as Moreno Molina (2013) points out, certain common features can be observed in the creation, organization, financing and control of the structures in charge of intermunicipal cooperation in Spain.

As for their creation, in states with a profound political decentralization, national legislation is limited to establishing the general aspects of the establishment procedure, aspects which can of course be supplemented by the legislation of the autonomous communities. In accordance with the principle of voluntariness which informs intermunicipalism, the creation of specific administrative structures of intermunicipal cooperation depends on the decision of the municipalities concerned<sup>16</sup>.

The voluntary and spontaneous nature of intermunicipalism does not mean that the creation and implementation of administrative structures of cooperation is possible without the intervention of what are usually called "superior" administrations. As a general rule, public bodies of intermunicipal

<sup>16</sup> In the case of Spain, the only provisions of basic state legislation that include this content are concentrated in article 44.3 of Law 7/1985, of April 2, 1985, LRBRL. Likewise, article 35.3 of RDLEg 781/1986, of April 18.

cooperation are established by virtue of the simple or mere will of the participating municipalities, but sometimes they must also be recognized or authorized by one of these higher administrations, or at least be entered in a register managed by these authorities.

The internal organization of intermunicipal organizations and associative entities is a very difficult subject to systematize and explain since, in most European countries, this organization is determined by the decision of creation of the participating municipalities. The internal legislation either does not usually establish an essential organization or is limited to very ambiguous generic rules. The basic organization usually consists of a monocratic representative body (president) and a direct management body (manager), as well as a deliberative/decisional collegiate body made up of members from the councils or assemblies of the participating municipalities, who are elected by them in a number that obeys either various proportional rules (percentage of contribution to the budget of the new entity, number of inhabitants, number of councilors of each participating municipality, etc.) or the egalitarian rule of one representative per associated municipality. The monocratic governing bodies of these associative entities are directly elected by the municipal councils.

As for their financing, the internal legislation determines the way in which the organizations and associative entities are financed. Most of the intermunicipal cooperation structures have their own budgets and specific assets, distinct from those of the founding municipalities. The supreme deliberative and decision-making body of the entity is the one that makes decisions on the preparation and approval of the budget. In addition, the budget of these administrative structures is financed in whole or in part by financial contributions from the participating municipalities, which may be established in the creation agreement or in the statutes regulating the structure. In other cases, it is determined that the financing will be proportional to the number of inhabitants of the participating municipalities. Beyond this common note, the associative entities may also obtain financial resources from different sources. Thus, in many countries, cooperative structures can usually collect fees or public prices by invoicing or charging for public services rendered, which are economic fees to be paid by the inhabitants of the associated municipalities<sup>17</sup>.

Finally, as regards control, in strongly decentralized states, this type of control is carried out, if necessary, by the autonomous community. As regards the control exercised over the associative entity by the founding municipalities, this is evident and complete, and it is not possible to speak in law of an "autonomy" of the former with respect to the latter, given that they are nothing more than an instrument at the service of the provision of municipal public services. Consequently, the municipalities can establish different types of control over the activity of the inter-municipal structures (control of efficiency or even of opportunity in those matters that exceed certain thresholds or budgetary or management magnitudes).

These are only some of the general characteristics of the organization and structure of intermunicipal cooperation groups. The specific regulations of each case will specify further precepts that develop or complement these most salient features.

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<sup>17</sup> In Spain, the Law of Local Treasuries (Articles 150 et seq.) regulates the resources of municipal associative entities and establishes, in this respect, that the associations of municipalities may establish and demand fees, public prices and special contributions, but not taxes. In many countries, cooperative structures can usually levy fees or public prices by invoicing or charging for public services rendered, which are economic rights to be paid by the inhabitants of the associated municipalities.

## 2.4 Context, importance and future of intermunicipality

### 2.4.1 *The articulation of intermunicipality in Spain*

Spain is one of the countries where most inter-municipal formulas have been developed. There are also many factors that contribute to this fact. According to (Moreno Molina 2013:219), some of these factors are the following: a) a high number of municipalities with few inhabitants and small size, which has contributed to the dispersion of the population in the territory<sup>1</sup>. In turn, in those entities where intermunicipalism lacks tradition, its diffusion has also been favored by the very small size of the municipalities; b) the provision of public services, increasingly complex and to such segmented populations, becomes more and more burdensome from a technical and financial point of view; c) following the latest local government reforms, in order to provide an answer to the problem of fragmentation and smallness of municipalities, in some states the compulsory merger of tiny municipalities, which always faces strong opposition from the affected citizens, instead of promoting a more practical and less traumatic alternative, which is inter-local cooperation in the face of a local government reality that seems both irrational and impossible to evolve; and d) the new and stricter parameters of efficiency, budgetary stability and financial sustainability force us to think about the need to establish new and "imaginative" formulas for the provision of public services, where inter-municipal cooperation appears as a very interesting alternative in order to optimize public means and resources, while respecting local identity, tradition and culture.

Another factor that has a substantial influence on Spanish intermunicipalism has to do with whether or not cooperation is voluntary, especially in a political-territorial framework as complex as that of the country. Analyzing to what extent municipalities are completely free to decide or identify the sectors or public services in which they wish to cooperate or whether, on the contrary, national or autonomous legislation can limit this discretion or aptitude - determining or limiting the fields or sectors in which cooperation can crystallize - is transcendental. In this sense, the general rule applicable in Spain is that municipalities are free to decide the fields or public services in which they will cooperate with each other (Moreno Molina 2013:221), although a kind of tutelage or guidance tends to be established from a supramunicipal level of government.

Thus, intermunicipal cooperation is basically a spontaneous and free movement among those entities that are willing to work together in certain public sectors, although at times such cooperation may be articulated as a sort of recommended reaction to a governmental project of merger or alteration of municipalities that has previously failed. Be that as it may, the state and the autonomous communities do not usually remain indifferent to intermunicipal cooperation, since they usually support, encourage and favor it with varying degrees of intensity. The voluntary and spontaneous nature of intermunicipalism is qualified by the intervention of other levels of government, which, although minimal, can compromise the principle of local autonomy.

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<sup>1</sup> In Spain (INE 2018), 80% of the population lived in cities and, in 2050, this figure will rise to 88%. In 2035, the forecast is that almost a third of Spaniards will live distributed between Madrid and Barcelona, reaching 33% if Valencia, Seville and Zaragoza are added. In turn, Spain will have more than 49 million inhabitants in 2033, 2.4 million more than in 2019, according to the INE, if fertility, mortality and migration trends are maintained. Thirty percent of the territory concentrates 90% of the population. 48% of the municipalities have a population density of less than 12.5 inhabitants per square kilometer -threshold at which the European Union considers the density to be low-. As a result, half of all Spanish municipalities are already at risk of extinction; in 14 Spanish provinces, more than 80% of all their municipalities do not have more than 1,000 inhabitants; in just 15 years, 358 municipalities have joined the list of localities that do not have more than 100 registered inhabitants; and during the last year, 36 provinces have lost population due to a dynamic of demographic regression that continues to affect mostly rural areas (FEMP 2016).

In the words of the author, the establishment of structures of cooperation between municipalities can be materialized without any type of intervention on the part of higher administrations, either because it derives from a general competence of supervision of the municipalities, or for other reasons such as the exercise of their own competences. In Spain, and together with the "pure" structures of voluntary intermunicipal cooperation -such as the mancomunidades-, there are also metropolitan areas, created, modified and suppressed by the autonomous communities by their parliamentary law. The autonomous legislation which regulates the three metropolitan areas currently in existence -two in the Valencian Community and one in Catalonia- does not expressly establish the voluntary nature or more or less forced by the autonomous level of these structures, although the latter is implicitly predominant since it does not establish the municipal initiative in their creation. They are, therefore, forced groupings of municipalities, agreed at the autonomous level<sup>2</sup>.

Thus, intermunicipalism is based on a "right" or on a "power" of self-organization for the common exercise of the competences and services deriving from the legal provisions regulating local entities. This right to cooperate and associate with other local entities is recognized, as such, in the legal texts regulating local administration, in addition to the specific legislation that each autonomous community may have that includes this power in its legal system<sup>3</sup>.

In view of the above, it can be argued that in Spain there is, strictly speaking, no uniform or even basic regime regulating intermunicipal cooperation structures. The mancomunidades and metropolitan areas are governed almost exclusively by autonomous community law, except for concise legal provisions in basic state legislation. Therefore, the requirements to be taken into account in the constitution of these and other associative formulas, both of a material and procedural nature, are regulated preferably in autonomous legislation. In any case, it is left to the will and decision of the participating municipalities. The legal regime of intermunicipal cooperation is thus essentially determined by means of the decisions of the municipalities participating in the associative structure, a will that crystallizes in the "statutes" of the mancomunidad or other intermunicipal cooperation organization.

#### **2.4.2 Advantages and disadvantages**

Why do local entities resort to intermunicipal cooperation formulas? As Fernández-Figueroa Guerrero (2013) argues, intermunicipality entails its own governance, but not differentiated from the entities that make it up. Therefore, it does not necessarily have to have interests, competences and budgets different from those of its members, but rather the sum of them, which could lead to duplication of functions.

However, it offers numerous advantages:

- It is a suitable institutional forum for reaching consensus, precisely because of this awareness that what is important is what is common over what is proper. Moreover, the relative distance from the citizens, not being in the front line of the political debate, has allowed the rapprochement of positions that, in principle, seemed irreconcilable but that have managed to materialize in favor of the common benefit.

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<sup>2</sup> At most, Article 43 of the Law of Local Regime Bases provides for a right of audience of the affected municipalities (but not in its proposal or initiative), as it establishes.

<sup>3</sup> As is the case in Spain's autonomous community regulations

- Individual contributions have been made for joint results, applying the principle of solidarity in the results. The importance of networking is essential, even more so in a context of multilevel governance.
- The territorial proximity of its members has strengthened territorial cohesion and has been an example to open the door to different forms of inter-administrative collaboration that, in principle, were not thought possible to activate.
- It has helped to specialize in very specific public purposes and services, which has allowed an exhaustive knowledge of their management and operation, making the intermunicipal entity created for this purpose a true expert capable of exporting knowledge and experience to other similar cases.
- The symmetry of legal forms (commonwealths, consortiums) has made it possible to clone structures, which facilitates internal and external knowledge of the entity and the identification of a common and shared identity.
- So far, the creation of structures regulated by public law has prevailed in local entities, which avoids a flight to private law.

Thus, if two possible scenarios for the future of democracy are envisaged -one, towards greater centralization and control, and the other towards greater empowerment of local communities- , although the second seems more improbable, even though it is the most desirable, because it is equitable and effective (Barbeito and Iglesias Alonso 2020: 710), intermunicipal cooperation can make it much more possible to improve the quality of public service provision and the performance of the political system.

However, not everything that intermunicipal cooperation formulas offer are positive aspects. There are a number of disadvantages that need to be detected in order to further develop these associative mechanisms, which can be divided into the following (Fernández-Figueroa Guerrero 2013):

- There is a worrying lack of public awareness of the functions and competencies of intermediate local institutions, creating a certain image of institutional delegitimization among citizens, who do not see them as anything more than mere associations with principles of efficient allocation of resources and effectiveness.
- There is a certain confusion and dispersion of their organic regime, of their statutes. Even in the case of entities that ordinarily provide public services in a more efficient voluntary manner - such as commonwealths and consortiums-, they have never had an eminently technical character, but have been underpinned by the political imprint in an attempt to control the organization. Any political interest detracts from the objectivity of decisions and increases distrust among the members, so that sometimes everyone is convinced that they have to cooperate together, but with a certain distrust towards the one who has the majority in the decisions.
- Although the generalization of local administrative law in practically all forms of inter-municipality is certain, as they are removed from the first line of government, they have seen their controls relaxed and, above all, their formal obligations of budgetary and accounting management and responsibility, their rigor in the forms of personnel selection, or other transcendental actions in municipal life.
- On some occasions, there has been a duplication of structures, since even though they operate on the basis of criteria of effectiveness and efficiency, structures have been duplicated in some areas.
- The oversizing of structures is a constant occurrence, usually due to the absence of rigorous studies for this purpose and of clear regulations that define and regulate them.

- An added difficulty of unilateral separation persists, since its creation must be planned so that its structure remains over time and is not due to cyclical whims.
- Their financing is a problem common to all of them. Few groupings have managed to become self-financing. Their starting point is usually to be found in a loss-making service for the municipality that joins with others in the same situation, commonwealths, consortiums, metropolitan areas and networks of municipalities to continue providing a loss-making service that is borne by all of them, only that the deficit is smaller due to an adequate management of economy of scale. The fee that should be charged to achieve, at least, the self-financing of the service is not charged, being, in general, its amount much lower. The lack of payment of these contributions -ordinary and extraordinary- means that the entity has to resort to private credit and, therefore, to the risk of indebtedness.

Finally, inter-municipal cooperation structures also face difficulties in their forms of control:

- From a social perspective, these groups are seen as too distant from the citizenry and as second-tier entities. Neighborhood pressure for the provision of services continues to fall on the municipality, where the neighbor has a more direct relationship with the government. Faced with these problems, the mayor suffers the pressures, but cannot provide unique solutions because he depends on a subsequent entity over which, perhaps, he has no control or decision-making power because he is in a minority.
- From a political perspective, there are often confrontations that affect decision making, although information about them has much less media coverage.
- From a legal and economic perspective, many of these associations have failed in their pre- and post-control systems, which is why it is vitally important to improve them.

### **2.4.3 New challenges**

The appropriate design of supramunicipal grouping formulas, regulating by law their contents, competencies and resources, would allow transferring to these entities a large part of the administrative functions that cannot be provided by the municipalities, without compromising the political dimension of these entities where all the interests of the integrated municipalities would be represented (Fundación Democracia y Gobierno Local 2012).

Citizens are not usually consulted when it comes to setting up an administrative structure for municipal cooperation. Moreover, the members of the governing bodies and executive bodies of these entities and associative organizations are not elected by the citizens either. On the other hand, inter-municipal associationism also implies a sort of voluntary self-assumption of decision-making areas by the participating municipalities, which makes them, in a certain way, local entities with "weakened sovereignty", having ceded areas of responsibility and management to other administrative structures. For this reason, local councilors and politicians may be tempted to escape their primary political responsibility by delegating the provision of public services to intermunicipal structures that do not belong organically to any municipality exclusively and that often seem to function as bodies far removed from the citizen. In short, as opaque, irresponsible and ademocratic instances (Moreno Molina 2013: 243).

Politics is not separated from public life and activity. On the contrary, it also comprises cooperative activities, within and between societies, wherever the human species organizes the use, protection and distribution of human, natural and other resources in the process of production and reproduction of its biological and social life (Leftwich 1984: 64). Although with its flaws and virtues,

intermunicipal cooperation has proven to be a substantial element in shaping inter-administrative and intergovernmental relations, often even when more conventional mechanisms fail to do so.

Therefore, adapting the constitutional design to the weight, strength and presence that local governments, always guarantors of territorial structuring and of the foundations, development and expansion of the Welfare State, are having and will have in the new era marked by close, immediate and effective attention (FEMP 2021). Intermunicipal cooperation is a fundamental incentive to evolve along these lines.

Esteve Pardo (2013:27), states that the state is losing the position of dominance it held until now because it does not have the necessary means to ensure the welfare of citizens, while society is becoming stronger, but not in a harmonious and sustainable way, but rather serving the interests of a few and not the general interest. The aforementioned author goes on to point out that it is necessary to carry out a strategic withdrawal of the state "of internal organization, and another of external projection, towards society, where the new model would have to show its effectiveness". The new model of multilevel governance makes it necessary to advance in these formulas of intermunicipal cooperation because they are the ones that can best connect society, the state and the market.

Many authors argue that European intermunicipalism is at a real historical crossroads, driven by the economic crisis, globalization and the phenomena of privatization of local public services. Comparative experience shows us how intermunicipal cooperation can be an alternative way of managing and directing the public sector, without the institutional system losing citizens' support, proximity and closeness.

As previously mentioned, the Constitution expressly includes two classic local governments (municipality and province), one of them (the province) with a clear vocation of inter-municipality (grouping of municipalities). The islands are also expressly reflected in the constitutional text as a local entity with the vocation of intermediate local government. But, together with these, other groupings of municipalities "different" (and this is an essential point) to the provinces have appeared: on the one hand, comarcas and metropolitan areas, but also mancomunidades and consortiums. This whole institutional panorama must be rearranged under the configuration of the province as the institutional framework that can give greater coherence to the local political system and to intermunicipality itself (Fundación Gobierno y Democracia 2013).

In Spain, the large number of municipalities is the first obstacle to establishing effective coordination mechanisms that at the same time respect local autonomy and guarantee citizens the provision of a similar level of goods and services throughout the territory<sup>20</sup>; secondly, the need to promote inter-municipal cooperation formulas that allow municipalities, through the pooling of their resources, to achieve a similar level of service provision throughout the territory, or simply a better use thereof.

In short, the result of the territorial design of the state of autonomies leads to organizational pluralism, both horizontally and vertically, which requires formulas for coordination and cooperation among the public actors involved to address common problems. This is the only way to speak of good government and good governance.

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<sup>20</sup> In principle, this role corresponds to the provincial councils, but the regional governments have the power to create other entities of this type, always respecting the autonomy and institutional guarantee of the provincial entities.

## 2.5 Conclusions

1.- A joint interpretation of articles 103 and 137 of the Spanish Constitution is necessary to connect the public administrations with the territorial organization of the state. The relations between the different levels of government (local, autonomous and central) can help to legitimize the system and help citizens to perceive the political-administrative framework of the country as an integrated system, at the service of the general interest and the regime of full autonomy. Although, from a qualitative and quantitative point of view, their power is different, it is only through the sum of their parts that a global and shared idea of community can be achieved.

2.- The reform processes of local government in recent years have had as a fundamental objective the reduction of the number of municipalities, although the results do not seem to have met the initial expectations. Such attempts have taken place against the will of the citizens and against the historical and cultural criterion of a strong intermunicipalist tradition. Moreover, the number of entities and cooperation structures has not stopped growing in recent years. The rooting of the population in the municipalities should stimulate civic awareness, citizen participation and the quality of democracy, essential elements of any political system. Therefore, the solution of articulating, administratively and politically, the intermunicipality so that all of them are in full conditions to exercise clear competences and to provide public services, seems to be the most viable option.

3.- The panorama of intermediate local governments in Spain offers a very varied and singular reality, with intermediate local structures that make up a complex institutional space pending a profound revision. The idiosyncrasy of municipal life forces the adoption of formulas that are frankly fragmented and poorly structured when it comes to adopting policies and managing essential public services. It is necessary to build a more rational and efficient local political-administrative model that offers minimum responses to all equally, guaranteeing in this process the principle of local autonomy.

4.- Decentralization -understood as maximum proximity of public management to citizens-, democratic legitimization -which calls for citizen participation in institutions and decision-making- and efficiency -implemented through adequate inter-administrative and intergovernmental coordination-, constitute the basic elements of the conception of a Welfare State (Salvador Crespo 2019: 25). In a political-administrative scenario as hyperfragmented as that of Spain, intermunicipal cooperation can help in the sustainable and balanced management of the territory, respecting the history, culture and traditions of the small communities that make up the state.

5.- It is necessary to bet on a concrete, concise, basic and homogeneous regulation that structures intermunicipal cooperation throughout the state. This challenge forces the legislator, whether national or regional, to opt for a more operative and less subjective vision, as this is the only way to review territorial models in the face of the growing divergence between institutional spaces and institutional mechanisms that help to provide the best public service to an increasingly complex and demanding society.

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