

SUMMARY OF DOCTORAL RESEARCH

The hybridity of inter-municipal cooperation

Caught between public and private, between government and undertaking

De hybriditeit van intergemeentelijke samenwerkingsverbanden – Geklemd tussen publiek en privaat, tussen overheid en onderneming

L'hybridité de l'intercommunale – Pris entre public et privé, entre gouvernement et entreprise

'**Les intercommunales**' – Two or more cities can collaborate with a view to jointly provide local services to their citizens, such as waste collection, energy distribution, and water delivery. This cooperation can be achieved by the creation of a legal entity, namely an 'inter-municipal association' – or in French and Dutch an '*intercommunale*'. Since inter-municipal cooperation (IMC) has many advantages, e.g., creating a more efficient local service delivery, achieving economies of scale, and reducing risks, countless inter-municipal associations are mushrooming in all European countries, including Belgium.

Research questions – Typical of these inter-municipal associations is that they are hybrid creations: they are caught between public and private law and between government and undertaking. An example of this hybridity is that their legal design is shaped by elements from both private-law company law and public-law administrative law. It is precisely this hybridity of inter-municipal cooperation that is the subject of this PhD research. To what extent and why are inter-municipal associations hybrid? Has this tension between public and private law and between government and undertaking always existed and how did it arise? What problems does that 'clamping' between the public and private sector cause? Finally, what solutions can make this hybridity workable? This dissertation answers this research question: '*To what extent should the (hybrid) legislation regarding the cooperation between cities be adapted to the legal and social evolutions of the past century?*'.

Outdated legislation and urgent need for remediation – From, on the one hand, legal-historical research and, on the other hand, an analysis and evaluation of the legislation regarding inter-municipal cooperation, it appears that the hybridity of inter-municipal associations causes difficulties. After all, the legal framework for inter-municipal cooperation that originated in 1922 – and was therefore adopted exactly one hundred years ago – has not been fundamentally revised. Therefore, it has not evolved along with the legal and social evolutions of recent decades, such as the rapprochement between governments and enterprises, the process of federalisation, the increasing economic role of the government, and Europeanisation.

The combination of, on the one hand, these social and legal developments and, on the other hand, the unaltered nature of the legislation has led to difficulties and problems. For example, the legislative technique of the *Flemish* legislator to refer to *federal* company law creates confusion with regard to the division of powers between the federal state and the regions, which brings, in turn, legal uncertainty for citizens. Another example is that, in practice, inter-municipal associations no longer pursue 'the municipal interest', an obligation that had been enshrined in legislation since 1922 since these local government entities were originally only intended to act in the field of traditional government activities.

This research shows that a number of widely criticised activities of inter-municipal associations exceed the municipal interest, e.g., the activity whereby a Flemish inter-municipal association acts to a large extent as an international private company in the market by producing wind energy in Kenya. This is problematic since an inter-municipal association that does not represent the interests of the participating municipalities and their inhabitants acts illegally and unconstitutional. In sum, these 'hybrid' local entities escape the bureaucratic legal framework of public government in search for the 'freedom' of the private sector. Scandals (e.g. the Publifin scandal) and legal uncertainty point to the need for remediation.

'De lege ferenda': recommendations – With my research, I want to make the legislator aware of the changed context in which inter-municipal associations operate *anno* 2023, since the legislation is no longer up to date and needs revision. Through six guidelines and a menu of twenty recommendations, this intradisciplinary PhD research aims to be the start of a modern, future-proof inter-municipal cooperation that is adapted to the needs of the 21st century and in which a sustainable balance is found between *traditional* and *economic* local government tasks. These recommendations are not only proposed to the legislator, but also address participating municipalities, private companies, and even you and me, as citizens. In my opinion, a functional differentiation and uniformity are the best response to the hybridity of inter-municipal cooperation. Only with this approach inter-municipal cooperation remains an instrument for and by the municipalities, just as it was intended a hundred years ago.