

# RECOGNITION OF THE LEGAL FORMS OF INTERNATIONAL ACTION OF LOCAL AUTHORITIES IN FRANCE AND ALGERIA

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## Abstract:

*Based on the practice and desire of local elected officials to promote their territory at the international level, the international actions of local authorities initially took the form of friendly partnerships. The sudden emergence of local authorities on the international stage, traditionally dominated by states, goes hand in hand with these first forms of cooperation. The evolution of practices and the emergence of frameworks for local international action have led to the development of specific rules that distinguish local international action from cooperation with NGOs or states.*

*Within seventy years, the first partnerships have evolved into lasting collaborations based on reciprocity and a logic of exchange between territories. Today, these friendly partnerships exist alongside a wide range of cooperation, ranging from solidarity to highly technical cooperation, How do French and Algerian legislators manage the different legal forms of external action by local authorities? In our study, we have chosen different approaches, including historical, analytical, and comparative approaches. The aim of this study is to provide a well-defined technical analysis that serves the research objectives. It describes the contemporary context in which decentralised cooperation must operate and the different legal forms it can take, depending on the situation.*

*This study contributes to a better understanding of decentralised cooperation between regional authorities and their networks and groups. It also emphasises the central role of governments in solving major global development challenges and the contribution of regional groups in this area.*

*In the near future, especially when we move into the field of actions with an economic objective or in connection with global issues, there will be much more diverse forms of obligations to which the law has had to and must adapt.*

**Key words:** Decentralised Cooperation; Friendship Matches; Own Rules; Water And Sanitation Sectors; Energy And Waste Sectors; Sustainable Development Goals.

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## INTRODUCTION

Based on the practice and the will of local elected officials who want to promote their area at the international level, the international action of local authorities was initially manifested through friendship partnerships.

Beyond decentralised cooperation, the overall external action of local authorities (EALA) experienced significant growth in 1999 and 2000. It is indeed important to distinguish between two different forms of international action by local authorities.:

- “Decentralised cooperation” (DC), which refers to the interventions of local authorities within the framework of agreements, conventions, partnerships, etc.

- The external actions of local authorities, which include all actions of international authorities, regardless of whether they are carried out within the framework of decentralised cooperation or whether they correspond to “unilateral” actions (with the exception of partnerships): commercial promotion of regional products, campaigns to promote territorial attractiveness, scholarships for students, most representative offices, etc. decentralised cooperation partnerships are therefore a subset of EALA.<sup>1</sup>

The projected yearly worth of EALA varies from 700 million to one billion euros, depending on whether the global measures of the different community services are taken into account. Local authorities dedication has not changed, even in the face of the financial pressures placed on local budgets recently. Timely rationalisations more or less offset the savings. With a few exceptions related to particular political situations, the working tool's capacity for intervention is still present<sup>2</sup>. Decentralised cooperation is a form of EALA, a broader term that includes all actions carried out or supported by local authorities and their associations. It is characterised by the conclusion of an agreement, whatever it is called, with one or more foreign local authorities. Contrary to what is sometimes claimed, the term “cooperation” does not necessarily imply actions involving local authorities in developing countries.

Under French law, it is perfectly possible to have “decentralised cooperation” with a country of the OECD or the European Union, even if the regulations of the latter use this term mainly to qualify actions in favour of development (EC Regulation 1659/98 of July 17, 1998). It is therefore important to ensure that the terms are used according to the national or European context in which they fit<sup>3</sup>. The results of centralised cooperation in Algeria are modest, while the forms of decentralised cooperation are diverse, and the projects lack coherence. Nevertheless, it is important for Algeria to promote decentralised cooperation because it offers concrete opportunities to local authorities and strengthens their institutional capacities.

The unexpected emergence of local authorities on the international stage, traditionally reserved for states, is due to these first forms of cooperation. The change in practices and the emergence of local territories for international action have led to the establishment of specific rules that distinguish local international actions from cooperation by NGOs or states<sup>4</sup>. The phenomenon of emergence of local authorities in international stage deserve to be examined from a legal view, especially in Algeria where the international action of local authorities is growing significantly. In this context, a comparative study between French and Algerian legislations in this respect is very important to figure out what legal forms that regulate the external action of local authorities, and if these legal forms contribute in promoting the performance of local authorities.

Within the framework of our study, we have chosen various methods, including historical, analytical, and comparative approaches. The aim of this study is to provide a precise technical analysis that meets the objectives set. It presents the current context in which decentralised cooperation must develop and the different legal forms it can take depending on the circumstances.

#### **Paragraph 1: The emergence of spaces for action**

<sup>1</sup> DIPLOMATIE ET TERRITOIRES POUR UNE ACTION EXTÉRIEURE DÉMULTIPLIÉE 21 PROPOSITIONS POUR UN NOUVEAU PARTENARIAT MAEDI/COLLECTIVITÉS TERRITORIALES, 15 (ministère des affaires étrangères et du développement international ed., 2017), [https://www.diplomatie.gouv.fr/IMG/pdf/livre\\_blanc\\_diplomatie\\_et\\_territoires\\_cle01a131.pdf](https://www.diplomatie.gouv.fr/IMG/pdf/livre_blanc_diplomatie_et_territoires_cle01a131.pdf).

<sup>2</sup> *ibid* 16.

<sup>3</sup> Pierre POUGNAUD, *Guide juridique de l'action extérieure des collectivités territoriales* (1er Edition, Délégation pour l'action extérieure des collectivités territoriales, la Direction générale des collectivités locales (DGCL) du ministère de l'Intérieur 2019) 22 <<https://www.diplomatie.gouv.fr/fr/politique-et-rangere-de-la-france/action-exterieure-des-collectivites-territoriales/outils-et-methodes-pour-la-cooperation-decentralisee/guides-pratiques/guide-juridique-de-l-action-exterieure-des-collectivites-territoriales/>> accessed 15 June 2021.

<sup>4</sup> Anissa Marre, ‘L'action internationale des collectivités territoriales françaises: La construction d'une coopération interterritoriale et interrégionale dans l'Arc latin et le Maghreb’ (these doctorat en droit public, Université Montpellier 2016) 149 <<https://theses.hal.science/tel-01497935v1>>.

The emergence of local areas for international action, the recognition of the actions carried out, and the responsibility of local authorities for their implementation are the results of a progressive textual development. This development process took place in two observable phases: the legal consideration of existing practices (1) and the attempt to define a legal framework that corresponds to these practices (2)<sup>1</sup>.

### 1. Symbolic twinning practices

The origins and development of the first forms of symbolic partnerships between French and foreign cities are closely linked to the historical context (a). These pioneering initiatives emerged from practice and were implemented at the lowest level of the French institutional hierarchy (b).

#### a. Historical development

The engagement of local authorities on the international stage has evolved as a function of the global historical and geopolitical contexts arising from national and local political and legal history. Although today the state has granted local authorities genuine international jurisdiction, the originality of this public policy lies in the origins of this first exchange with foreign territories. The concept of town twinning was born in 1951, when Jean-Marie Bressand, a figure in the Resistance between 1939 and 1945, founded the Bilingual Worlds Association. With this organisation, he is committed to promoting bilingual education as a means of understanding between peoples and as a means of promoting peace. In 1957, the Bilingual World Association evolved into the World Federation of Twinned Cities, which defined the concept of cultural partnerships<sup>2</sup>. These local partnerships, which were originally established between municipalities shortly after the Second World War, bear witness to a long tradition of exchange.

The first twinning between French and German cities were created to compensate for a lack of diplomacy or to show disagreement with French foreign policy (a form of territorial diplomacy)<sup>3</sup>. With the aim of promoting reconciliation between peoples, “friendship twinning” gradually evolved into “cooperation twinning” during the Cold War, following the independence of formerly colonized states. This twinning-cooperation, which demonstrate North-South solidarity, aim at both peace and the development of “developing countries”. This first twinning is considered the pioneers of what would later be called *decentralised cooperation*<sup>4</sup>.

#### b. A local initiative outside of regulations

The aim of the first town twinning schemes was to mobilise citizens at the local level, as Edouard Herriot, the first president of the French Association for the Council of European Municipalities, emphasised. According to him, “wherever there are organised societies, there is the municipality at the base and the state at the top.” However, the states are in opposition to each other, and if we move downward in the national order, from the state to the community, we get closer to the individual. When we talk to an English, German, or Russian mayor, we see that we have the same concerns. That is why I am convinced that communal rapprochement is the essential prerequisite for human rapprochement<sup>5</sup>.

<sup>1</sup> *ibid.*

<sup>2</sup> *ibid* 150.

<sup>3</sup> Cross-border cooperation is a form of territorial diplomacy that emerged at the end of the Second World War, marking the beginning of the history of international relations. Its main objective is to promote reconciliation between border peoples by supporting the process of European integration. This form of cooperation develops spontaneously and uses informal instruments of cooperation. The first Franco-German partnerships were pioneers in this field, and from the end of the 1950s on, cross-border associations were set up to complement these initiatives.

It is important to emphasise that cross-border cooperation is a secondary foreign policy activity carried out by local and regional authorities and is not directed against states. Therefore, states tolerate this form of territorial diplomacy as long as it does not undermine their prerogatives of national sovereignty. This distinction is important because it clearly distinguishes cross-border cooperation from paradiplomacy, which is carried out by national governments. Birte Wassenberg, ‘Diplomatie territoriale et coopération transfrontalière en Europe depuis 1945’ (2019) 179 *Relations internationales* 9, 23.

<sup>4</sup> Marre (n 4) 151.

<sup>5</sup> *ibid.*



Compared to other local jurisdictions, which from the outset are subject to a set of rules imposed by the state and must respect the definition of public order, the international jurisdiction is characterised by its independence in creation. Despite fierce criticism and repeated attacks from legislators, the international jurisdiction of local authorities has been able to prevail<sup>1</sup>; the first attempt to supervise these actions dates back to a decree of 1956<sup>2</sup>. According to B. Dolez and R. Lafore, the development of partnerships leads to the need to distinguish friendship partnerships from cooperation partnerships. Indeed, in the 1970s and 1980s, new forms of partnerships emerged<sup>3</sup>, and the cooperation agreements concluded between French and foreign local authorities contained reciprocal commitments that gave them a binding value.

## 2. The first legal frameworks and the first theoretical reflections

Between the 1956 decree and the decentralisation laws of 1982, the international action of local authorities developed outside the legal framework and simply benefited from the tolerance of the state, which wanted to grant local authorities a certain autonomy and limited capacity. Despite their "folkloric" aspect, town twinning gradually developed into more sophisticated and lasting forms of cooperation<sup>4</sup>. In an opinion of April 5, 1950, the Assembly of the Council of State has already emphasised that the territorial limits of local authorities are not necessarily the limits of their interests. However, it took thirty years for the legislator to enshrine the international action of local authorities in law. It was not until the 1980s that town twinning, which until then had only limited symbolic significance, developed and enabled local authorities to emancipate themselves on the international stage. This decade will see a real turning point in the international activities of local authorities, supported by legislators and reinforced by the proactive commitment of some local elected representatives.

Local international actions have developed and expanded thanks to the decentralisation processes initiated in the 1980s. These processes made it possible to free these actions from state supervision and favoured the emergence of local power. Article 65 of Law No. 82-213 of 2 March 1982 on the rights and freedoms of the municipalities, departments, and regions, which is the result of an amendment by the Senate, stipulates that "the regional council may decide, with the approval of the government, to organise regular contacts with foreign decentralised authorities that share a border with the region for consultation purposes and in the context of cross-border cooperation." This legal provision effectively recognises local international action but nevertheless has some shortcomings<sup>5</sup>.

Following the legislative recognition of the external action of the French border regions by Article 65 of the law of March 2, 1982, and the lack of detail criticised at the time, three circulars were promulgated by three different prime ministers, namely MM. Mauroy, Fabius, and Chirac. These include Circular No. 1789/SG of May 26, 1983, on the external action of local authorities<sup>6</sup>, circular

<sup>1</sup> *ibid* 152.

<sup>2</sup> ... The decree of January 24, 1956, marked a turning point in French legislation, as it allowed municipalities to establish links with their foreign partners, whether European or not. This decision represents a significant advance in the field of positive law, as it allows municipalities to exercise international jurisdiction by extending their scope of action at the international level. The government has thus set up a commission to coordinate international exchanges in the municipal sector and to give its opinion on all issues relating to the study of municipal problems at the international level.

Article 2 of the decree stipulates that the mayors concerned are obliged to declare each winning project to the prefect, who then forwards it to the commission. This administrative declaration procedure enables the state to control the international actions of local authorities and ensure their consistency with national foreign policy.... *ibid* 152–153.

<sup>3</sup> *ibid* 154.

<sup>4</sup> *ibid* 155.

<sup>5</sup> *ibid* 156.

<sup>6</sup> The first circular of May 26, 1983, represents a significant step forward in the extension of cross-border cooperation to all local authorities. From now on, they are authorised to establish relations with their foreign partners, provided they respect the state's foreign policy guidelines. With this circular, the government recognises for the first time the role of local authorities in international affairs. It is aware that "the development

no. 2063/SG of May 10, 1985 relating to the same subject <sup>1</sup> and Circular No. 3241 of May 12, 1987 relating to France's international relations and the external action of the Overseas regions and departments <sup>2</sup>.

In the specific area of international action at the local level, these texts have strengthened the existing legal framework by extending the legal scope to other forms of cooperation. In addition, they have made it possible to extend the competence of local authorities in this area. One ambiguity is that these circulars have been considered equivalent to the law, with the aim of "creating a basis for action rather than erecting a legal edifice". Another view is the assertion that these circulars are not regulatory in nature and were developed with the sole purpose of providing guidance to decentralised authorities and ambassadors on the room for manoeuvre granted to local authorities in international actions due to the lack of clarity in the Act of March 2, 1982. They also reflect the desire of the government, represented by three different prime ministers between 1983 and 1987, to emphasise the importance of the unity of French foreign policy as well as freedom and local autonomy.

In 1992, a legal framework for decentralised cooperation was created, which was accompanied by the provision of the necessary resources for its expansion<sup>3</sup>. In states with a federal structure, however, local authorities have sufficient autonomy to establish cooperative relations with foreign authorities. In Canada, the United States, Switzerland, and Germany, regional governments are free to establish contacts with other regional governments or even maintain representations in certain countries. Sometimes national and local policies in these countries do not even coincide.

In his book, Brian Hocking analyses this phenomenon of the deep involvement of local actors in the dynamics of international relations by highlighting the conflict between national interests and those of the regional government. In this context, he mentions the conflict between certain American states and the federal administration over former President Ronald Reagan's policy on weapons of mass destruction, as well as the American position towards apartheid in South Africa. In Europe, the Spanish, Belgian, and German regions have established a very strong representation in the bodies of the European Commission. They lobby vigorously and effectively when their respective governments prove incapable of defending their interests, particularly in the context of the Regional Development Fund (ERDF).

This phenomenon is attributed to the increasing complexity of international relations, which is mainly due to the emergence of new challenges and the decreasing importance of ideological and military concerns<sup>4</sup>. The twenty-sixth session of the United Nations General Assembly promotes relations between cities. With the Madrid Framework Convention of May 21, 1980, the Council of Europe created a legal framework for cross-border cooperation between two states. The European Union recognises decentralised cooperation in the Lomé Convention of 1989, which was reinforced by the Cotonou Agreement of June 23, 2000. The European Union has programmes to promote the emergence of sub-state actors in the countries of Central and Eastern Europe (CEE), Africa, the

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of these contacts can be beneficial not only for local authorities but also for the country as a whole." . Indeed, the regions, departments, and municipalities can help to multiply and diversify France's involvement in the world.

However, it should be noted that the scope of action remains limited to cross-border cooperation.. *ibid* 158.

<sup>1</sup>The second circular of May 10, 1985, which also concerns the communities' external action, underlines the importance of this action in complementing French foreign policy. However, the government must ensure that there is no interference that could have harmful consequences for France's foreign policy. It is recalled that these actions must not violate the principles of the indivisibility of the Republic and national sovereignty, the powers conferred on the State by the Constitution and the law, the international obligations of the State, the powers exercised by other communities, as well as the laws and regulations limiting the exercise of certain powers. Finally, the circular provides for vertical cooperation between prefects and local authorities in the form of consultation, cooperation, and the exchange of information. *ibid*.

<sup>2</sup> *ibid* 157.

<sup>3</sup> *ibid* 156.

<sup>4</sup> Dris Cherif, 'La Coopération Décentralisée Comme Politique Publique Locale à Dimension Internationale : Un Exercice De Jeu D'acteurs Complexe' *Revue Algérienne des politiques Publiques* (Algeria, 1 February 2014) 8 12.



Caribbean, and the Pacific (ACP), the Southern Mediterranean, and Latin America. Decentralised cooperation will become a preferred area of intervention for donors to finance projects, provide technical assistance, and bypass central bureaucracy<sup>1</sup>.

**Paragraph 2. The legal legitimacy of the international involvement of local authorities**

It was not until 1992, almost forty years after the first town-twinning agreements, that a law was passed regulating these partnerships more precisely and completely than the previous one. It was only with the adoption of the law on the territorial administration of the Republic on February 6, 1992, that the concept of decentralised cooperation and the practice of local international actions were officially recognised and enshrined in Article L 1115-1 of the French GCLA. The territorial administration of the Republic (TAR) Act, which is considered the cornerstone of decentralised cooperation<sup>2</sup>, establishes a special legal category. The delegation of powers to local authorities leads to a change in the relationship between central and local power and enables the simultaneous exercise of powers by these two levels<sup>3</sup>.

However two decades later, the same approaches were developed: a "culturalist" approach to cooperation, driven by a political and humanist project, and an "economic" approach, which sees relations between communities as a means of connecting economic actors. Since the early 1990s, however, the legislator has created a legal framework for local international cooperation measures (1) and provided local authorities with the necessary tools to put them into practice (2).

**1. The indisputable legality of the international action of local authorities**

Decentralised cooperation, which is the first link between citizens and the international world and is the result of strong political will at the local level, underwent significant legal development between 1992 and 2014 in order to secure actions and adapt the law to practice. In addition to the general legal framework, several specific frameworks have been created to take into account all local international actions. Only ten years after the adoption of the law of March 2, 1982, on the decentralisation of the Republic, the law of February 6, 1992, officially recognises the international competence of local authorities. However, twenty-five years will have to pass before certain legal restrictions are lifted, giving local authorities more autonomy in this area.

➤ **The law of February 6, 1992, on the territorial organisation of the Republic: legal recognition**

Article 131 of Law No. 92-125 of February 6, 1992, allows local authorities and their associations to conclude agreements with foreign local authorities and their associations within the scope of their powers and in compliance with France's international obligations. This law does not contain an explicit definition of all actions related to decentralised cooperation, but we know that it covers all North-South and North-North cooperation and concerns two subgroups: cross-border cooperation and regional cooperation. According to Mr. Perrot, decentralised cooperation is the ambition of local authorities in different states to establish lasting relations between them, ranging from simple partnerships to genuine cooperation, possibly involving other economic and social partners, in order to create closer and more personal links than those created by cooperation between states<sup>4</sup>.

The TAR law, also known as the law of February 6, 1992, on the territorial administration of the Republic, was introduced to standardise the legal framework for the various forms of cooperation between French and foreign territorial authorities. This law made it possible to group all these

<sup>1</sup> Taib Essaid, 'La Coopération Décentralisée Des Collectivités Territoriales Algériennes' *Revue Algérienne des politiques Publiques* (Algeria, 1 October 2014) 6 09.

<sup>2</sup> There are two different types of intercommunality:

- ✓ flexible or associative form (without its own taxation), which is financed by contributions from the member municipalities. It enables the joint management of public activities or services.
- ✓ The deep, or federal, form (with its own taxation) is characterised by the existence of compulsory competences and its own taxation.

For more information, we advise you to read: Manuel DELAMARRE, *L'administration et les institutions administratives* (3e édition, La documentation Française 2022) 127.

<sup>3</sup> Marre (n 4) 160.

<sup>4</sup> *ibid* 162.

forms of cooperation under a single heading: decentralised cooperation. Decentralised cooperation thus includes all agreed measures carried out by French local authorities in cooperation with their foreign partners<sup>1</sup>. The law of February 6, 1992, allows local authorities to carry out international cooperation measures within the scope of their competences and thus creates a special form of exercising local competences. In practice, however, local authorities carry out measures that go beyond the powers assigned to them, such as humanitarian aid, development aid, or technical assistance. For 15 years, local authorities will carry out cooperation measures that do not fall within their remit, with some being left to the discretion of the judge. We will have to wait for the legislative intervention of 2007 to see how the legal regulation of decentralised cooperation evolves towards greater coherence<sup>2</sup>.

➤ **The 2007 law: the expected evolution of the legal framework**

It was therefore necessary to wait for Law No. 2007-147 of February 2, 2007 for decentralised cooperation and development aid measures to fall under the new competence of the municipalities. On January 25, 2007, the National Assembly unanimously adopted the bill on the external action of municipalities, introduced by Michel Thiolliere, Senator and Mayor of Saint-Étienne. This text removes the legal uncertainties contained in the 1992 law and amends the general code of local authorities.

The new article L 1115-1 of the GCLA now states that "local authorities and their associations may, in accordance with France's international commitments, conclude agreements with foreign local authorities to carry out cooperation or development aid actions.". These agreements shall specify the purpose of the planned actions and the estimated amount of the financial commitments. (...) In addition, local authorities and their groupings may, if the emergency justifies it, carry out or finance actions of a humanitarian nature". On the one hand, local authorities and their groupings may, in compliance with France's international commitments, conclude agreements with foreign local authorities to carry out cooperation or development aid operations. André Rossinot's amendment no longer makes agreements subject to the sole condition that they are not incompatible with France's international commitments. In addition, local authorities and their groups now have the option of carrying out or funding humanitarian operations if the emergency so requires<sup>3</sup>.

There are three reasons that explain the intervention of this law. Firstly, Mr Thiollière's bill comes after the 2004 tsunami and the incredible mobilisation of the French local authorities. Then, this law was enacted after the administrative court annulled several decentralised cooperation projects for lack of local interest. Finally, *this law helps to clarify the legal grey areas* of 1992 and to remove uncertainties regarding the types of actions that can be carried out within the framework of decentralised cooperation and the existence of emergency humanitarian aid. It makes decentralised cooperation a specific capability by removing the link to other community capabilities. This law applies to partnerships, decentralised cooperation, the exchange of experience, and development aid. An agreement must be signed defining the purpose of the cooperation, the modalities, and the mutual obligations of each community. A state agreement is not required to enter into a partnership with a foreign community. However, partnerships must not violate certain constitutional principles, such as the indivisibility of the Republic and national sovereignty, respect for national interests, and coherence with France's foreign policy. Furthermore, it must not interfere with the powers of another level of territorial administration<sup>4</sup>.

**2. Specific frameworks - access to new financing**

In addition to the general framework established by the 1992 law and reinforced by the 2007 law, there are two additional laws that form specific frameworks for cooperation in the areas of water and sanitation (a), and in the energy sector (b).

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<sup>1</sup> ibid 161.

<sup>2</sup> ibid 162.

<sup>3</sup> ibid 163.

<sup>4</sup> ibid 164.



**a. Global initiatives in the water and sanitation sectors**

The transition from partnership agreements to large-scale bilateral or multilateral cooperation initiatives has highlighted key areas in international cooperation between local authorities, in particular cooperation in the field of water and sanitation. In addition to friendly relations or cultural actions, local authorities have established genuine technical cooperation based on the exchange of expertise.

In a spirit of solidarity, they pool their know-how and skills to share with their foreign partners. Even though the 1992 law allows local authorities to finance international cooperation measures from their general budget, they cannot mobilise funds from their subsidiary budgets. This restriction also applies to water boards and water authorities, which are not authorised to participate in or finance cooperation measures. With the aim of promoting technical partnerships in the field of water supply and sanitation, which require special monitoring, France has introduced innovative legislation that allows local authorities to finance solidarity actions in these areas from their budget earmarked for water supply and sanitation. It is important to emphasize that this law was quickly adopted in response to criticism by the Court of Auditors of a practice initiated by André Santini, then President of the Île-de-France Water Board, which consisted of charging 1 centime per cubic meter of water to finance decentralised cooperation actions.

On February 9, 2005, following a parliamentary initiative supported by the government, the Oudin-Santini law was passed, enabling municipalities, public bodies for inter-municipal cooperation, and mixed water and wastewater associations to carry out actions by international organisations in this field. Municipalities, public bodies for inter-municipal cooperation, and special-purpose associations responsible for public drinking water supply and wastewater disposal may carry out cooperation measures with foreign local authorities and their associations within the framework of the agreements provided for in Article L. 1115-1. They may also carry out emergency aid and international solidarity actions in the water and sanitation sectors, up to a limit of 1% of the funds allocated to the budgets of these services. This provision aims to facilitate international cooperation while alleviating the budgetary constraints of the local authorities concerned<sup>1</sup>.

**b. Expansion to the energy and waste sectors**

In the last ten years, 200 million euros have been made available to finance 1,000 projects related to water supply and sanitation in around fifty countries. Some 400 to 500 municipalities have participated, and 50% of French users are now involved. Despite the protests, Oudin Santini's law has been extended to other areas of action. The first extension was in the energy sector through Law No. 2006-1537 of December 7, 2006, which added the "public service of electricity and gas distribution" to Article L 1115-1-1. During the second Forum for Local International Cooperation organised by the CUF<sup>2</sup> in 2011, the speakers focused on the energy issue. It is a global problem that is exacerbated by climate change and affects everyone on the planet. The waste of energy in the North must be redistributed to the South. The speakers concluded by stressing the importance of making energy a priority issue and a privileged axis of decentralised cooperation.

Law No. 2014-773 of July 7, 2014 recently extended<sup>3</sup> the scope of the collection and treatment of household waste. According to Article L 1115-2 of the GCLA, municipalities, public inter-municipal

<sup>1</sup> *ibid* 165.

<sup>2</sup> Cités Unies France: <https://cites-unies-france.org/-Cites-unies-France-EN->

<sup>3</sup> The MAPTAM Act of January 2014 amended the agreements with the aforementioned states without specifying the conditions;

The Development Orientation and Programming Act follows the Laignel report and extends, at the legislative level, the concept of external action by local authorities, already mentioned in a circular from the Prime Minister in 1983, by limiting the concept of "decentralised cooperation" to actions carried out under agreements with foreign partners. It provides for a system similar to the "1%" system for waste, in addition to the systems for water, wastewater, and energy, and in its annexes, it defines in particular the relations between the municipalities and the actors involved in the development actions supported by France.

It can therefore be assumed that the law has evolved in parallel with practice, so that no legal gaps or contradictions remain between the regulations. As a result, stakeholders now have a modernised legal system at



cooperation bodies, and joint associations responsible for the collection and treatment of household waste may carry out cooperation actions. These actions are limited to 1% of the funds allocated to the budgets of these services and must be carried out within the framework of Article L. 1115-1<sup>1</sup>, development aid or of a humanitarian nature in the areas of collection and treatment of household waste ».

International solidarity actions have evolved beyond their charitable aspect and are now based on a logic of reciprocity of interests. Their effects are visible in both the North and the South. In the North, communication about the projects carried out in the South makes it possible to initiate and facilitate dialogue, raise awareness, and provide information. While the economic, social, and political dimensions of water and sanitation require more and more discussion and communication between communities and users in the North, experience shows that international solidarity actions on the same issues offer every opportunity to facilitate this dialogue.

If we continue to take the approach of “wasting less” in the North and redistributing in the South without compromising the comfort of Northern countries, it is regrettable that the law of July 7, 2014 did not extend the Oudin Santini law to other public sectors, such as transport. Especially since transport is a major development issue in the South and a priority issue in spatial planning in the North. Normative and institutional instruments have been created to enable local authorities to increasingly implement technical cooperation measures that are developed and implemented by municipalities that have gained autonomy and professionalism<sup>2</sup>.

### **3. Instruments serving the international action of local authorities**

Classic cooperation is based on an agreement between a French and a foreign territorial authority. This type of agreement is called a cooperation agreement. Although the cooperation agreement remains the preferred instrument of decentralised cooperation, it raises questions about its legal nature. In addition to the international jurisdiction of local authorities, the legislator has provided a number of instruments: a normative system (a) and institutional mechanisms (b).

#### **a. The Cooperation Convention “cornerstone” of local international cooperation**

The 1992 legislator wanted the Co-operation Convention to be the main legal instrument for international action by local authorities, but without giving a precise definition. According to Article L. 1112-1 of the GCLA, “local authorities and their groupings may conclude agreements with foreign local authorities and their groupings within the limits of their powers and in compliance with France's international obligations”.

The 1992 law made no distinction between agreements containing simple declarations of intent and those containing real obligations with material, financial, or regulatory consequences for the signatories. After that it was not until the circular of April 20, 2001, that the concept of agreement was clarified and specified that it could be any contract or act signed between French and foreign local authorities and their groups. These agreements, known by various names (*co-operation agreements, partnership agreements, memoranda of understanding, or framework co-operation agreements*), aim to define mutual obligations, establish control, and determine the rules applicable in the event of disputes.

The Thiollière law of 2007 made the cooperation agreement the basic principle of local international cooperation, considering acts outside the agreement as an unequivocal exception and excluding agreements with declarative value. After 2007, all cooperation agreements must include “the object of the planned actions and the estimated amount of the financial commitments”.

When drafting the cooperation agreement, the rules and principles of constitutional and legislative value must be respected, such as the principle of the indivisibility of the Republic and national sovereignty, respect for France's international obligations, respect for the prohibition of control by one community over another, etc. The agreement must set out a list of specific measures and

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their disposal to promote “multiplied diplomacy.” ministère des affaires étrangères et du développement international (n 1) 35.

<sup>1</sup> Marre, *supra* at 166.

<sup>2</sup> *ibid* 167.

objectives and provide for the law applicable to the agreement. The agreement thus drawn up is adopted by the consultative assembly of the local authority concerned and is subject to a legality check by the prefect. Conventional bilateral town twinning is the original and still the most widespread form of international engagement by local authorities. The cooperation agreement is the normative basis for these actions, which, thanks to its contractual nature, enables the long-term nature of cooperation projects and guarantees the reliability of these exchanges for all partners<sup>1</sup>.

➤ **The nature of cooperation agreements**

The complexity of legally qualified cooperation agreements lies in their organic specificity, as they are concluded with foreign public institutions and are partially or entirely subject to foreign law. It is therefore essential to take into account the application of foreign law in order to determine the administrative nature of the agreement and, consequently, to recognise the jurisdiction of the administrative judge. Under French administrative law, these cooperation agreements **could be assimilated into administrative contracts**. Case law has defined these contracts on the basis of two essential criteria: *the existence of an exorbitant common law clause and the relationship with the public service*, regardless of whether the contract is concluded between a public person and a private person or between two public persons. On the basis of these criteria, it is indisputable that the cooperation agreement falls into this category, regardless of whether it is a French or foreign public entity.

Regardless of whether the criterion of the nature of the contracting parties or the criterion of the subject matter of the contract is applied, the cooperation agreement is generally classified as an administrative contract. This categorization entails the application of public law or administrative law and the jurisdiction of the administrative judge in the event of a dispute. the parties to the cooperation agreement may opt for the application of French law, which gives jurisdiction to the administrative contract and the administrative judge. If foreign law is applicable to the cooperation agreement, the classification as an administrative contract and the jurisdiction of the French administrative judge must be excluded. This last hypothesis introduces the element of foreignness into the debate on these cooperation agreements. The case law has chosen a different line of reasoning.

✓ First, it has favoured the administrative nature of the contract by rejecting the foreign elements and deciding on the exclusive application of French law, thus excluding foreign law.

✓ Then, the case law always favoured the administrative nature of the contract but recognised the foreign elements. This thesis separated the question of the applicable law from the jurisdiction of the administrative judge. In other words, foreign law is taken into account to determine the law applicable to the dispute but not to determine the nature of the contract.

✓ Finally, the case law has radically reversed the reasoning, favouring the foreign elements of the contract to determine the applicable law. In this respect, the Tegos judgement of the Council of State is *clear* «The French administrative judge does not have jurisdiction to hear a dispute arising from the execution of a contract which is in no way governed by French law»<sup>2</sup>.

**b. The institutional instruments only concern European cooperation**

The cooperation agreement remains the preferred instrument and framework for most international actions by local authorities. However, in certain situations, it can be useful to establish legal structures with legal personality. European Union law has already enabled the Union's local authorities to carry out joint projects by setting up a European Economic Interest Grouping<sup>3</sup>, then a European Territorial Cooperation Group, a Euroregional Cooperation Group, or a local group. cross-border cooperation.

<sup>1</sup> *ibid* 168.

<sup>2</sup> *ibid* 170.

<sup>3</sup> Ahoéfa KOUGBEADJO and Eve DERRIENNIC, 'INTERCOMMUNALITE ET INTERNATIONAL L'engagement des structures intercommunales dans une coopération décentralisée' 32

<[http://www.coopdec.org/UPLOAD/mediaRubrique/file/77\\_Cooperation\\_decentralisee\\_et\\_intercommunalite.pdf](http://www.coopdec.org/UPLOAD/mediaRubrique/file/77_Cooperation_decentralisee_et_intercommunalite.pdf)> accessed 1 February 2017.

In 1992, French law gave local authorities the possibility of creating structures capable of receiving funds, implementing the actions undertaken, and guaranteeing their completion. As far as development cooperation is concerned, cross-border cooperation often requires the creation of such legal structures to facilitate the association of French and foreign municipalities. These French legal instruments include local mixed-economy companies with foreign participation, public interest groups, foreign law structures, and European districts. They are subject to strict conditions and, once again, only concern cooperation between European communities.

➤ **Local mixed economy companies with foreign participation and public interest groups**

The law of February 6, 1992, in the context of improving the legal regulation of international action by local authorities, provided for them to have recourse to two instruments already existing in national law and adapted to the situation: the LMEC<sup>1</sup> and the PIG<sup>2</sup>. LMEC is a legal form regulated both by the law of July 7, 1983, on the special rules of the mixed economy and by the law of July 24, 1996, laying down the general rules of commercial company law. The LMEC enables the creation of institutionalised public-private partnerships and thus offers a method of managing local public services. Thanks to the law of February 6, 1992, local authorities were able to use this legal structure to carry out international cooperation activities, allowing municipalities from border countries to participate in the capital of the LMEC<sup>3</sup>.

Initially, this authorization created a very restrictive legal framework by limiting this possibility to four conditions: the need for a *prior agreement* between the States concerned, the inclusion of *reciprocity rules* in this agreement, the limitation of *the object of the LMEC* to a public service activity of general interest, and the prohibition for foreign communities to hold more than half of the capital and votes of the LMEC. All these requirements put the foreign community in an “inferior position” and impaired “the attractiveness<sup>4</sup> of this sui generis<sup>5</sup> public organisation”. In response to the severity of these conditions, the demands of French and foreign elected officials, and the failure of this structure, the legislature decided to relax them thanks to the law on solidarity and urban regeneration. This law made it possible to extend the companies' room for manoeuvre by transferring all activities to a LMEC under common law conditions.

The Solidarity and Urban Regeneration Act (SUR) of 2000 and Act No. 2002-1 of January 2002 modernising the status of SEMs abolished the condition of prior consent of the States concerned and the reciprocity clause. Subsequently, the Law of 2002 and Law No. 2004-806 of August 9, 2004

<sup>1</sup>Local mixed economy company: <https://www.collectivites-locales.gouv.fr/competences/les-societes-deconomie-mixte-locales-sem>

<sup>2</sup> Public interest group: <https://www.economie.gouv.fr/daj/gip#:~:text=Le%20Groupement%20d'int%C3%A9r%C3%AAt%20public,du%20secteur%20de%20la%20recherche>.

<sup>3</sup> Marre (n 4) 171.

<sup>4</sup> Today, medium-sized and large cities have changed their discourse. They want to position themselves in global competition and now only talk about their attractiveness and influence. United Cities France has long supported this idea of “return on investment” in cooperation. Many cities today emphasise the positive impact of their cooperation on their territorial strategy in France, in terms of social cohesion of the territory, openness, mobilisation of youth, integration of the diaspora, facilitation for economic players, etc. There are so many arguments that are now well recognised and tangible. The time of collaboration with the Mayor's Dancer is also over. The AICT is capable of bringing a new transversality to municipal services, provided that elected officials develop an international vision for their areas of expertise. “The real battle of decentralised cooperation is to prove that it concerns all services,” emphasises Bertrand Gallet with conviction. In doing so, the cities can rely on international networks with which Cities United France maintains close links, Estelle Hédouin, , in COOPÉRATION DÉCENTRALISÉE, LA FIN D'UN ÂGE D'OR? 01, 2 (2015), [https://cites-unies-france.org/IMG/pdf/actesjed\\_cuf\\_27octobre\\_2015.pdf?6004/db8dd186deea5cdf93d794b6a224bdb5db2aa3fb](https://cites-unies-france.org/IMG/pdf/actesjed_cuf_27octobre_2015.pdf?6004/db8dd186deea5cdf93d794b6a224bdb5db2aa3fb) (last visited Sep 9, 2019).

<sup>5</sup> It is a Latin legal term, meaning “of its own kind” and describing a legal situation whose singularity prevents any classification in an already listed category and requires the creation of specific texts.

Or not like anyone or anything else: In the American academy she remains sui generis, one of a kind.

He produced a steady stream of superb comic novels and sui generis non-fiction.

<https://dictionary.cambridge.org/dictionary/english/sui-generis>

adapted the tasks of the cross-border LMEC to the common law regime of the SEML, the object of which is defined in Article L 1521-1 GCLA. In particular, the 2002 law extended the possibility of participating in the capital of a LMEC to local authorities in non-neighbouring countries.

However, despite this legislative progress, the participation of municipalities in cross-border LMECs is still extremely rare under French law, in particular due to the limitation of French status and the prohibition for foreign municipalities to hold more than half of the capital of LMECs. The GIP offered local authorities and their groups the opportunity to cooperate with foreign local authorities of a Member State of the European Union. However, this structure put foreign local authorities in an inferior position, and the numerous administrative controls discouraged their participation. As a result, the management of European funds by EGTCs has eliminated inequality between local authorities, leading to the repeal of Articles L 1115-2 and L 1115-3 of the GCLA with regard to GIPs by Law No. 2008-352 of April 16, 2008.

➤ **Participation in foreign law structures and European districts**

Following the failure of the LMEC and the PIG as instruments for international action by local authorities, the legislator has created two other structures that seem better suited to the specific nature of these measures. Since the law of February 4, 1995, French local authorities have been able to join foreign-law structures or participate in the capital of a foreign-law legal entity, regardless of whether it is a public or private entity. However, the conditions for participation in a foreign-law structure are limited by a number of restrictions. Once again, this new possibility has only been offered within the framework of European cross-border cooperation.

With the adoption of Protocol No. 2 to the Madrid Framework Agreement and Law No. 2008-352 of 16 April 2008 on strengthening cross-border, transnational, and inter-territorial cooperation, French communities and their groups can now join an organisation governed by foreign law or participate in the capital of a legal entity governed by foreign law within the limits of their possibilities. This possibility now goes beyond the standardised framework of cross-border cooperation. A French local authority may join an organisation governed by foreign law within the framework of cross-border cooperation, provided that another local authority belonging to a Member State of the European Union or the Council of Europe joins this organisation or also participates in it.

Certain, albeit reduced, conditions remain. Membership or participation must be authorised by the representative of the state in the region, and the agreement providing for such participation is subject to equality control. In addition, the participation of local authorities is subject to certain conditions. The law of August 13, 2004 on local freedoms and competences established the European District, which is the second structure under foreign law. The European District extends the legal framework of the GLCT<sup>1</sup>, whose legal basis was conventional, to all initiatives taken in a cross-border context. According to Article L 1115-4-1, "local authorities and their groupings may, in the context of cross-border cooperation with foreign local authorities and their groupings, form a local cross-border cooperation grouping known as a European district, which has legal personality and financial autonomy. As a legal entity under public law, the European District has financial autonomy, the legal capacity to conclude contracts, organizes tenders on behalf of its members, and become the client of cross-border projects.

The European District has a wide scope of application and enables technical cooperation, in particular thanks to the open mixed grouping scheme (Article L 5721-1 et seq. of the GCLA), which can be formed "with regard to works or services of benefit to any of these legal entities.". In addition, this regulation allows local authorities to associate local public institutions with the European district (Article L 5721-1 of the GCLA), such as public health institutions, chambers of commerce and industry, high schools, or technical colleges. Finally, the law also provides that the creation of a European district may result from the transformation of an existing open mixed association to which foreign territorial authorities and/or their political groups wish to join. The transformation is authorized by an order of the regional prefect.

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<sup>1</sup> Local cross-border cooperation group: <https://annuaire-entreprises.data.gouv.fr/entreprise/groupement-local-de-cooperation-transfrontaliere-des-transports-publics-transfrontaliers-glct-200006450>

The main purpose of the creation of the European District by the French legislator is to remedy the lack of an intergovernmental agreement with regard to certain borders, in particular the French-Italian border, the French-British border, and triple borders such as the French-Italian-Swiss border and the French-Belgian-Luxembourg border. There are currently only two European districts along the French-Italian border<sup>1</sup>.

### **Paragraph 3. The motivations of local authorities internationally**

#### **1. The external action of local authorities is motivated by human connection and universal values**

The human dimension plays an essential role in cooperative partnerships between communities. First and foremost is *leadership*: most external actions by local authorities are motivated by the personal commitment of one or more elected officials or territorial leaders. As in many other areas, this personal factor is a necessary, if not sufficient, condition for the development and success of a partnership. Therefore, meetings between elected officials and territorial leaders are critical to the vitality of the EALA. Many large-scale initiatives have emerged from sometimes chance meetings between local elected officials who wanted to work together<sup>2</sup>.

It is important to clearly define mutual expectations during a partnership. French local authorities are also driven by the desire of some of them to participate in improving the quality of their human resources thanks to the working relationships created by cross-border cooperation: exchange of experience, networking, etc.<sup>3</sup>, International openness strengthens the transversality of services, which often tend to operate in isolation. This has a direct impact on the management of territorial authorities and on relations between the community and its main partners, such as associations, companies, hospitals, and educational institutions<sup>4</sup>.

#### **2. Local authorities tend to focus their foreign policy on the promotion of their territory**

The importance of territorial action in achieving the objectives of economic<sup>5</sup> development and solidarity, good governance, cultural dialogue, citizen mobilisation, and the fight against climate change is undeniable today and is becoming increasingly important to ensure the effectiveness of actions carried out by states or international organisations.

Many French and foreign local authorities are currently pursuing proactive strategies to promote their territory in order to highlight their assets, specialties, know-how, and image. The competition between territories for national and international visibility fully integrates decentralised cooperation partnerships into a global approach, thus contributing to tourism attraction, investment by French or foreign companies and the associated job creation, as well as the revitalisation of previously neglected neighbourhoods or areas, etc.<sup>6</sup>.

#### **3. External action also meets a requirement for solidarity -The action of local authorities in responding to crises:**

The role of local authorities in crisis management, which used to be recognised only marginally, is now recognised worldwide. Because of their proximity to the population, their expertise, and their institutional legitimacy, local authorities are among the first actors to intervene in the

<sup>1</sup> Marre (n 4) 174.

<sup>2</sup>For more read: Laziz Ahmed HABIRECHE, 'The Application of Territorial Intelligence Dimensions in the Legal System of Territorial Collectivities in Algeria' (2018) 8 AL TURATH Journal 1, 9.

<sup>3</sup> *Id.* at 16 see note n° 25.

<sup>4</sup> ministère des affaires étrangères et du développement international (n 1) 43.

<sup>5</sup> ... It seems that many elected officials now see economic cooperation as a priority. However, this is more a matter of political will and a reaction to reduced budgets than an inevitable change. The emergence of such forms of cooperation not only reflects a move towards more 'selfish' or 'profitable' forms but also testifies to the development and diversification of the Association of Professionals of European and International Action (AEALA), which permeates the various facets of local government public policy.... Eric RECOURA, 'L'évolution de l'Action internationale des collectivités territoriales vue par ses artisans' (2017) 15 <<https://www.ciedel.org/wp-content/uploads/2018/04/3.3.-ARRICOD.pdf>> accessed 3 May 2023. For more go to this link : <https://www.arricod.fr/cooperation-economique/>

<sup>6</sup> ministère des affaires étrangères et du développement international (n 1) 45.



management of a crisis<sup>1</sup>, whether it is an armed conflict, a natural disaster, a health crisis, or climate change. Local authorities are increasingly called upon to help maintain or restore public services and support the population in vulnerable situations.

The representatives of foreign local authorities are showing a growing interest in benefiting primarily from the expertise of their French counterparts, both at the level of elected officials and technical services. A significant example of this approach can be observed in northern Mali, where the municipalities play a key role in the implementation of the Algiers peace agreement. However, the weakness of local partner authorities combined with a lack of coordination with higher (state, international organisations) and lower levels (community organisations, traditional authorities) is an obstacle to the effectiveness of decentralised cooperation in crisis management. Despite these challenges, French local authorities have important assets to support their partners in crisis situations, such as technical skills, in-depth knowledge of the territory, and established political links.

Stabilising communities may require a reorientation of decentralised collaborative partnerships towards a more policy-driven approach to decentralisation, with a continued focus on providing basic services to the population. In countries that are in or going through a crisis, it can be difficult to mobilise French expertise due to security issues. However, by making use of local partners, cross-border cooperation, or triangular decentralised cooperation partnerships, municipalities can highlight their added value in fragile contexts. Strengthening the role of municipalities in humanitarian crises also involves the development of multi-actor projects involving the state, municipalities, public operators (water authorities), NGOs, and the private sector, each making their own technical and/or financial contribution<sup>2</sup>.

It should be noted that since the adoption of the law of July 7, 2014, which amended Article L 1115-1 of the GCLA, the distinction between humanitarian interventions limited to emergency situations provided for in the original version of the Thiollière law has been difficult to implement in practice. Paradoxically, this distinction risked slowing down the actions of local authorities in areas where they excel, such as supporting reconstruction efforts and restoring essential public services for the affected population<sup>3</sup>.

#### **4. A challenge of understanding and analysis for the State**

Given this context, MEFA<sup>4</sup> It is essential to adequately accompany and support the external actions of local authorities by implementing the recommendations of André Laignel's report (January 2013). To do this appropriately, this action must be based on a statistical tool that is as reliable as possible. Whether by geography (by country or by French region), by theme, or by municipal level, it is essential to have an accurate picture of the situation at the time it is needed to ensure a good understanding and therefore the effectiveness of the measures. However, this tool is not perfect; until 2015, it depended exclusively on the goodwill of local authority representatives, who had to provide information on partnerships and projects in their municipality. Every year, the delegate publishes a circular via the regional prefectures reminding the municipalities of this need.

In the same way, French communities have the obligation to declare their ODA<sup>5</sup> on the NCDC website<sup>6</sup>, So that this participation is taken into account in the ODA statistics that France reports at the national level within the framework of the OECD Development Assistance Committee in cooperation with the services of the Ministry of Finance and the Ministry of the Economy, (DAC<sup>7</sup>) of the OECD<sup>8</sup>. In both cases, the municipalities provided these explanations imperfectly, making the

<sup>1</sup> HABIRECHE (n 43) 12.

<sup>2</sup> ministère des affaires étrangères et du développement international (n 1) 46.

<sup>3</sup> POUGNAUD, *supra* at 22.

<sup>4</sup> The Ministry of Europe and Foreign Affairs

<sup>5</sup> Official development assistance - Aide publique au développement

<sup>6</sup> National Center for Development Cooperation - Centre national de coopération au développement

<sup>7</sup> Development Assistance Committee : <https://www.oecd.org/dac/development-assistance-committee/>

<sup>8</sup> Organisation for Economic Co-operation and Development - Organisation de coopération et de développement économiques

picture of the reality of EALA rather blurred and the recommendations based on this data relatively dangerous. The margin of error was estimated at 10 to 20%. In 2015, specific measures were taken to remedy this, and they began to bear fruit: Firstly, only municipalities that have completed the Atlas and reported their ODA can now benefit from co-financing from MEALA, and secondly, a new edition targeting the reporting of ODA and aimed at municipalities that had not reported it (although the information collected indicated spending in this direction) significantly improved the quantity and quality of MEALA 's findings (+7.2%; this campaign encouraged 89 additional municipalities to report their ODA). Finally, the improvement in coordination<sup>1</sup> with diplomatic missions has led to their greater involvement in the monitoring of decentralised cooperation files and, in particular, Atlas information with DEALA agents<sup>2</sup>.

## 5. New features of the IALA toolbox

### ➤ Diplomatic tools:

✓ The network of French embassies, the second-largest diplomatic network in the world, is at the disposal of municipalities to provide logistical support, appointments, or information about the country's municipalities. The embassies have in-depth knowledge of the territories and can facilitate the connection of projects and actors, particularly with the FDA<sup>3</sup>.

✓ Two new developments are worth mentioning: the Minister recently decided to appoint diplomatic advisors to the regional prefects in 2016. In addition, former experienced diplomats are now in charge of promoting various French regions abroad. To date, eleven regions benefit from this representation.

➤ **DEALA financial tools:** 8.5 million euros were made available as part of a call for projects for decentralised cooperation.

✓ The latter is general, triennial and open from October 15, 2015 to January 15, 2016. In addition, thematic calls for projects focusing on youth mobility and climate are launched annually.

✓ It is possible that a "Climate 2" call for projects will be launched in 2016, depending on the outcome of COP21 and the evaluation of the first call for climate projects.

✓ In addition, calls for "joint" projects will be launched in cooperation with other countries such as Morocco, Chile, Argentina, Mexico and Senegal. These calls for projects allow for co-financing with the country concerned to support a cooperation project between two communities. For the first time, Senegal has decided to co-finance this annual call for projects with €150,000, giving it the role of co-decision-maker.

➤ **Online tool up to date:** the CNCD website, which provides an updated overview of the AICT as well as an interactive map. It not only offers a funding opportunity for cooperation projects, but also facilitates the search for partners in various countries.

### ➤ FDA tools: "FEXTE" and "FICOL"

✓ **The Fund for Technical Expertise and Exchange of Experience (FEXTE):** aims to support the development of projects in middle-income countries that require rapid prior expertise.

✓ **The objective of the Investment Fund for Local Authorities (FICOL):** is to strengthen the support of the Directorate for External Action of Local Authorities (DEALA) by benefiting from the French Development Agency (FDA) in the context of cooperation in the joint development of files. The FDA provides expertise in various technical areas of development. In 2015, six projects were co-financed over a period of two years for an amount of €500,000 each.

Although local authorities are not recognised as actors under international law, they are nevertheless subject to the rules of international law that govern their actions and help define their objectives. This is all the more important in order to comply with France's international obligations, as mentioned above. In addition, its contribution has recently been recognised, albeit only partially and with a need for clarification, particularly in the context of the Sustainable

<sup>1</sup> Hédouin (n 39) 03.

<sup>2</sup> ministère des affaires étrangères et du développement international (n 1) 50.

<sup>3</sup> French Development Agency

Development Goals and global issues in general<sup>1</sup>. These principles and rules often serve as the basis and motivation for cooperation agreements and other measures they take, particularly in the humanitarian field. It is therefore crucial to understand the various sources of this particular law, which is constantly evolving.

Moreover, the European Union's strong commitment to development cooperation and structural funds and programs has led to a number of rules that are not covered in detail in this guide, but whose general knowledge is essential for decision-makers and practitioners<sup>2</sup>. It is important to underline that agreements have been concluded between DEALA and UNDP<sup>3</sup> since 2011 on various actions of common interest linked to the ART-GOLD programmes or thematic calls for projects (such as ISIMED against the digital divide), which you can find out about on the NCDC<sup>4</sup> website on France Diplomacy. A Memorandum of Understanding aims to strengthen joint actions to implement the SDGs at the local level with regard to public space and the New Urban Agenda.

It should be noted that the principles established by the international development community naturally apply to external actions carried out by French local authorities due to the primacy of international law and the explicit provisions of the Guidance and Programming Act of July 7, 2014, and its annexes, which are often very detailed in this regard, such as the principle of alignment with national development strategies, the unbundling of aid, and the transparency of transfers. This also applies to sanctions, even if they are rarely applied in the field of decentralised relations, so as not to punish the population for the failures of the states to which they are bound<sup>5</sup>.

#### **Paragraph 4: the Algerian case**

After gaining its independence, Algeria immediately began to build partnerships, mainly in the framework of intergovernmental cooperation, especially with fraternal and friendly countries. Since the 1980s, Algeria has also achieved success in the field of decentralised cooperation. At the legal level, Algeria pursues a sovereigntist approach to international relations, which considerably limits decentralised cooperation.

#### **1. Historical development**

<sup>1</sup> Local authorities, as local actors, play an essential role in achieving the 17 SDGs for all population groups, whether through their local policies or their decentralised cooperation projects. To highlight innovative initiatives for a more sustainable world, the Delegation for External Action of Local Authorities (DEALA) has published a brochure presenting best practices for the implementation of the SDGs based on the projects of the municipalities that won the three-year call for projects 2016–2018. In total, DEALA supported 65 projects carried out by 60 winning municipalities for a total of €7,000,000 spread over 26 countries. This brochure aims to highlight the commitment of French local authorities and their partners while underscoring the importance of international action to achieve the SDGs. These examples can inspire other local authorities to contribute to the realisation of the SDGs through their international partnerships. Christine MORO, *Contribution des partenariats de la coopération décentralisée à la mise en œuvre des ODD* (2019) <<https://www.diplomatie.gouv.fr/fr/politique-etrangere-de-la-france/action-exterieure-des-collectivites-territoriales/actualites/article/publication-de-la-brochure-contribution-des-partenariats-de-la-cooperation>> accessed 4 June 2021. Or you can read also Valérie Dumontet, *Les Objectifs de Développement Durable (ODD), référentiel des coopérations décentralisées Repères et pistes pour l'action* (Cités Unies France, 2020) <[https://cites-unies-france.org/IMG/pdf/plaquetteodd\\_final\\_v2.pdf?10014/ede1eba8bc30f570360f3a31c41c10a3fb07e249](https://cites-unies-france.org/IMG/pdf/plaquetteodd_final_v2.pdf?10014/ede1eba8bc30f570360f3a31c41c10a3fb07e249)> accessed 7 July 2022.

<sup>2</sup> POUGNAUD (n 3) 111.

<sup>3</sup> ...While states have clearly expressed their desire to monitor the cooperation activities carried out by their local authorities, it is less obvious that supranational actors share this desire. By intervening in these practices, supranational actors demonstrate their desire to influence the cooperation actions of local authorities, including those of non-governmental organisations, which they consider to be actors of decentralised cooperation. In order to better understand this supervisory relationship that supranational actors seek to establish over these cooperation actions, it is appropriate to analyze the initiatives led by the UNDP and the European Union....Cherif (n 19) 19.

<sup>4</sup> National Commission for Decentralised Cooperation:

<https://pastel.diplomatie.gouv.fr/cncdext/dyn/public/login.html;jsessionid=3A76742D83BE39EE8BB0134C31224604.jvm01g150-2>

<sup>5</sup> POUGNAUD (n 3) 112.

Official recognition of cooperation has been long delayed and limited, despite the potential benefits for Algerian local authorities and, consequently, for the state. In practice, centralised cooperation shows modest results; the forms of decentralised cooperation are diverse, and the projects are inconsistent. However, Algeria has a great interest in promoting decentralised cooperation. Not only does it offer concrete opportunities for local authorities, in particular by strengthening their institutional capacities, but it also enables the state to strengthen its diplomacy<sup>1</sup>. Decentralised cooperation is not recognised by law in Algeria. The Wilaya law<sup>2</sup> does not explicitly mention this concept. Article 8 carefully approaches relations with foreign territorial authorities and speaks of “links of exchange and cooperation” “and “relations of cooperation.”. The term “decentralised” is not used in the context of cooperation, which is no coincidence. Article 55 of the same law introduces a semantic regression when it comes to partnership conventions

➤ **Institutional cooperation frameworks**

In 1994, the organisational chart of the Ministry of the Interior did not mention a cooperation structure with the term “decentralised.”. In 2014, however, a sub-department for “Cooperation and Decentralised Exchange” was created, which is a step forward. There is no reference to decentralised cooperation in the organisational chart of the Ministry of Foreign Affairs. In Algeria, the state has a monopoly on international relations and has always been reluctant to allow local authorities to carry out actions abroad, except in a very limited framework. Cooperation is therefore considered to be the exclusive responsibility of the state, without delegation to local authorities<sup>3</sup>.

➤ **The first legal frameworks**

It is important that the Wilaya fully respect Algeria's interests and international obligations in its cooperative relations with foreign local authorities. It is important that the Wilaya is fully aware of the country's international affairs, and the opinion of the Ministry of Foreign Affairs is essential in this regard<sup>4</sup>. The consultations are approved by the Minister of the Interior after consultation with the Minister of Foreign Affairs. Prior control in matters of decentralisation is a constant in Algerian legislation, whether in terms of appropriateness or legality. However, it is also subject to the prior opinion of the Ministry of Foreign Affairs in order to verify the conformity of the agreement with Algeria's international obligations. In the event of an unfavourable opinion, it will be difficult to challenge it<sup>5</sup>. The terms used suggest that decentralised cooperation is intended to complement national diplomacy.

**2. The first legal frameworks and the first theoretical reflections**

On the other hand, it should be noted that for a long time, there were no regulations governing the international actions of local authorities. This situation results from the mistrust of the central authorities towards the Algerian local authorities. It was not until 2011 that the concept of twinning was introduced for the first time with the new municipal law<sup>6</sup>. Otherwise, decentralised cooperation is implicitly and vaguely addressed in the Wilaya law, with caveats or reservations related to the national interest. Moreover, the term “decentralised” is not associated with cooperation. We will have to wait until 2017 for an executive decree defining the modalities for the establishment of decentralised cooperation relations between Algerian and foreign local

<sup>1</sup> Essaid (n 20) 11.

<sup>2</sup> Law No. 12-07 of 28 Rabie El Aouel 1433 corresponding to February 21, 2012 relating to the wilaya <https://www.interieur.gov.dz/index.php/fr/le-ministere/le-minist%C3%A8re/textes-legislatifs-et-reglementaires/40-le-dispositif-legal-regissant-la-wilaya-et-la-commune/399-loi-n%C2%B0-12-07-du-28-rabie-el-aouel-1433-correspondant-au-21-f%C3%A9vrier-2012-relative-%C3%A0-la-wilaya.html>

<sup>3</sup> Essaid (n 20) 14.

<sup>4</sup> ibid 17.

<sup>5</sup> ibid 18.

<sup>6</sup> Law No. 11-10 of 20 Rajab 1432 corresponding to June 22, 2011 relating to the municipality <https://www.interieur.gov.dz/index.php/fr/le-ministere/le-minist%C3%A8re/textes-legislatifs-et-reglementaires/40-le-dispositif-legal-regissant-la-wilaya-et-la-commune/400-loi-n%C2%B0-11-10-du-20-rajab-1432-correspondant-au-22-juin-2011-relative-%C3%A0-la-commune.html>

authorities<sup>1</sup>. This decree does not define a particular area of cooperation. The agreements may include friendship, mediation, and development, or they may be formalised by law.

As an operational framework, this decree aims to revitalize the decentralised cooperation relations of Algerian local authorities, provides for the appointment of a person in charge of decentralised cooperation working under the direction of the Wali, and insists on the regular evaluation of agreements to identify gaps. However, it is important to stress that decentralised cooperation has never been the subject of an evaluation. In contrast to many African countries, decentralised cooperation in Algeria has never been evaluated<sup>2</sup>.

CONTINENTS	DECENTRALIZED COOPERATION AGREEMENTS ESTABLISHED
Africa	18
Europe	60
Asia	6
America	2
Total	86

Table 1<sup>3</sup>

### CONCLUSION

This study focuses on decentralised cooperation between regional authorities and their respective networks and groups. It emphasises the essential role of governments in solving global development problems and the contribution of regional groups in this area. Furthermore, it emphasises the importance of using reliable statistical tools to understand the situation and take effective action. The text also mentions the European Union's commitment to development cooperation and the resulting rules. It also addresses symbolic partnerships between French and foreign cities, as well as the importance of territorial actions to promote economic development, solidarity, good governance, cultural dialogue, citizen mobilisation, and the fight against climate change. Finally, he raises the issue of household waste management and the importance of energy in decentralised cooperation.

Due to the characteristics of foreignness and transnationality in cooperation agreements, there is a lively debate as to whether they belong to domestic or international law. Some authors are in favour of their full or partial integration into international law. However, the position of the Council of State and the Additional Protocol to the Madrid Framework Agreement reject this integration. International law regulates relations between states, not domestic relations. Local authorities that are parties to cooperation agreements and have no international personality are subject to national law for their international actions and, depending on the content, to the law of one of the contracting parties. This position comes closest to reality and practice, as the local authorities that conclude cooperation agreements with foreign local authorities determine the applicable domestic law in the event of a conflict in their agreement.

In Algeria, cooperation is managed through different modalities and approaches. There are forms of decentralisation cooperation between Algerian and foreign local authorities. An executive decree was passed in 2017 to establish these decentralised cooperation relationships. This decree aims to revitalise the decentralised cooperation relations of Algerian local authorities by creating an operational framework. In particular, it provides for the appointment of a person responsible for

<sup>1</sup> Executive Decree No. 17-329 of 26 Safar 1439 corresponding to November 15, 2017 establishing the modalities for establishing decentralised cooperation relations between Algerian and foreign local authorities. <https://www.joradp.dz/FTP/fo-francais/2017/F2017068.pdf>

<sup>2</sup> Hassaine Mahfoudh and Belaid Abrika, 'Analyse de la contribution de la coopération décentralisée aux relations bilatérales franco-algériennes' *La Revue d'enseignant chercheur des études juridiques et politiques* (Algeria) 1135 1150.

<sup>3</sup> <https://www.interieur.gov.dz/index.php/fr/le-ministere/le-minist%C3%A8re/cooperation-et-partenariat.html#faqnoanchor>



decentralised cooperation, working under the direction of the Wali, and insists on a regular evaluation of the agreements in order to identify gaps. However, it is important to note that decentralised cooperation is not recognised by law in Algeria. The law on the wilaya (local authority) does not explicitly mention this concept but deals with relations with foreign territorial authorities.

Today, the international action of local authorities is no longer based solely on friendly partnerships. Traditional actions are multiplying, city diplomacy is establishing itself, and the areas of intervention by local authorities have diversified considerably. Conventional cooperation is outdated because it can no longer respond to all the modern challenges of international action on the ground. "In the future, especially when we move into the field of actions with an economic objective or in connection with global issues, there will be much more diverse forms of obligations to which the law has had to and must adapt".

### RESULTS:

1. The deep involvement of local actors in the dynamics of international relations by highlighting the conflict between national interests and those of the regional government. This phenomenon is attributed to the increasing complexity of international relations, which is mainly due to the emergence of new challenges and the decreasing importance of ideological and military concerns.
2. Law applies to partnerships, decentralised cooperation, the exchange of experience, and development aid. Required an agreement that must be signed defining the purpose of the cooperation, the modalities, and the mutual obligations of each community. A state agreement is not required to enter into a partnership with a foreign community.
3. Normative and institutional instruments have been created to enable local authorities to increasingly implement technical cooperation measures that are developed and implemented by municipalities that have gained autonomy and professionalism.
4. Under French administrative law, the cooperation agreements **could be assimilated into administrative contracts**, the case law always favoured the administrative nature of the contract but recognised the foreign elements. the Tegos judgement of the Council of State is clear «*The French administrative judge does not have jurisdiction to hear a dispute arising from the execution of a contract which is in no way governed by French law*».
5. The human dimension of territorial action plays an essential role in cooperative partnerships between communities. in achieving the objectives of economic development and solidarity, good governance, cultural dialogue, citizen mobilisation, and the fight against climate change; The role of local authorities in crisis management, which used to be recognised only marginally, is now recognised worldwide. Because of their proximity to the population, their expertise, and their institutional legitimacy.
6. Algeria began to build partnerships, mainly in the framework of intergovernmental cooperation, especially with fraternal and friendly countries.
7. Algeria has a great interest in promoting decentralised cooperation. Not only does it offer concrete opportunities for local authorities, in particular by strengthening their institutional capacities, but it also enables the state to strengthen its diplomacy

### RECOMMENDATIONS:

1. Clarification and the streamlining of financial procedures within the framework of decentralised cooperation actions. Recording financial movements, decentralised cooperation in the municipal budget.
2. Make your contribution to sustainable development. Thinking about sustainable development and the causes and consequences of global problems involves thinking globally.
3. Highlight your international know-how in various fields such as agriculture, education, health, heritage... Don't forget to promote the assets of your region.



4. Launch of several calls for projects intended to support community projects. In various areas covered: agriculture, youth, sustainable cities, etc. It also manages a set of bilateral mechanisms.
  5. Create a more flexible legal framework on how to cooperate and leave the field qualitatively open regarding areas of contribution within a regional diplomatic framework that is complementary and compatible with the general policy of state diplomacy.
  6. What enhances decentralized cooperation initiatives is the common interest, and in order to serve the desired purpose with complete impartiality, a written contractual framework must be determined, specifying the jurisdiction and the rules applied in this case.
  7. Algeria must reconsider the framework for treating and evaluating decentralized cooperation, as it takes on traditional dimensions that do not allow confronting existing challenges with the speed of intervention required. It must recognize other forms and value their intervention and participation, which will inevitably create the desired attraction to the regions and thus mobility and general benefit for all.
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