

**WHITE PAPER**  
**ON**  
**CONSULTATION**  
**PROCEDURES OF LOCAL**  
**AND REGIONAL**  
**AUTHORITIES IN**  
**EUROPE**

**COUNCIL OF EUROPEAN MUNICIPALITIES AND REGIONS**  
**THE REPRESENTATIVE ORGANISATION OF LOCAL AND REGIONAL**  
**AUTHORITIES IN EUROPE**



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With the contribution of the member national sections and associations of  
CEMR



# AUSTRIA



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## AUSTRIA

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### **Introduction**

Although a federal State, Austria maintains a relatively centralised structure : 65 % of public expenditure is managed by the central government. Thirty-five percent is shared more or less equally between the 9 Länder and the approximately 2350 municipalities.

Austria has, for several reasons, developed a rather remarkable system of formal co-operation between the different levels of government. A tradition of consultation has existed for several decades. With diverse historical experiences behind them, Austrians consider that negotiation is the method most adapted to the implementation of new ideas. Austria is also characterised by a high-level of regulation and continual changes with regard to legislation, including the Constitution, which can be modified quite frequently.

### **The associations representing local and regional authorities**

Austrian local authorities are grouped into two associations, with one representing cities and towns and the other smaller municipalities. Each association employs around thirty persons (including regional organisations) and their administrative capacity is thus rather limited. Nevertheless, at political level, the fact that the President of the Association of Municipalities is a member of the EPP while the President of the Association of Cities and Towns is socialist - and the fact that the plurality of the political parties has been respected within the Bureaux of the two associations, reflecting the two parties which are members of the governmental coalition at national level - legitimises their common action and strengthens their position in relation to central government. Mention must also be made of the fact that the President of the Association of Cities and Towns is the Mayor and Governor of Vienna, one of the nine Länder, which thus strengthens the position of this Association.

The right to local self-government was introduced into the Constitution in 1962 and the government has consulted the local level for quite some time via the two associations, particularly with regard to financial questions. Since 1988, the two associations are mentioned in the Constitution as representatives of local authorities (article 115, para 3 : The Association of Cities and Towns and the Association of Municipalities are competent to represent the interests of the local authorities).

Even before this clarification, around 100 regulations decided at federal level were being submitted each year for comment. Thus, the workload did not undergo any real increase. The true expansion of these proceedings took place when Austria joined the European Union.

### **Involvement in European Union related issues**

When Austria presented its request for EU membership in 1989, the central government decided to actively associate diverse organisations - including the Länder and the local authorities through their representative associations, that is the Association of Austrian Cities and Towns and the Association of Austrian Municipalities - in the membership preparation process and in the information programmes on the European Union. This was done to facilitate the transition period. The federal government wanted to avoid losing the referendum on membership and therefore wished to involve the most important political organisations including the local authorities in order to legitimise its action (Law on the Council on Austrian Integration Policy, BGBl. 368/1989).



The field of consultation of the Associations was therefore progressively enlarged, but in 1994, the government once again strengthened the consultation by inscribing this right in the Constitution (Articles on European Union, particularly Article 23 c) - right to nominate representatives to the Committee of the Regions by the two Associations and the Article 23 d) - right to be informed on all European Union issues of importance for the local level and right to comment on them).

As regards the questions linked to the European Union, representatives of local authorities are officially invited to participate in all the national Committees but true involvement is largely dependent upon the working capacity available at local level. Meetings in the various ministries on EU-related matters take place up to once a week.

### **Creation of a “ Consultation Mechanism ”**

In regard to the principle of the redistribution of finances, the consultation procedures were further strengthened in recent years, with the creation of a “ Consultation Mechanism ” in the Austrian Constitution in 1999 (BBGI. 35/1999). The government had to reduce the public deficit from 5.1 % in 1995 to 3 % in 1997 in order to fulfil the convergence criteria in view of the changeover to the single currency. From this point of view, the government needed the full co-operation of the Länder and local authorities - which have a certain independence in the adoption of their budget - to reduce their deficits. At the same time, the Länder and the associations asked for consultations on all questions having a financial impact on local authorities and the Länder. This means that prior to introducing new legislation, an agreement must be found on the financial consequences.

### **Political weight of the consultations**

A true partnership exists between local authorities, Länder and the federal government. The partners cannot block new legislation but can require that the necessary financing be made available for its application. The costs of introducing new laws must thus be evaluated before new legislation passes before Parliament.

The principle of partnership was thus strengthened by this modification but it must be underlined that, in the countries where regions have legislative power, the relations between the local authorities and the Länder are the most difficult as the latter have the habit of submitting their draft laws for consultation but not of debating the costs of new legislation with the municipalities. However, the “ Consultation Mechanism ” is also applicable to the relations between the Länder and the municipalities.

The true importance of the “ consultation mechanism ” is not the question of receiving additional financial resources, but of clarifying the covering of costs entailed by new legislation and of opening negotiation and discussion procedures to avoid the introduction of costly and useless provisions.

In conclusion, one can say that :

- the principle of partnership is strengthened by compulsory consultations.
- the government draws up texts which are more adapted and better accepted when it is able to estimate the effective costs by consulting the experts of the Länder and associations.
- the consultation of associations gives better results than an individual consultation of cities.
- the Austrian model is - from a constitutional point of view - the most advanced in Europe.

### **Examples of consultation procedures in Austria**

The consultation procedures, such as organised until recently, allowed the associations to be involved in the normal consultation process during the introductory stage of draft laws. This means that - according to the subject addressed - nearly one hundred institutions are invited to give an opinion on draft laws. Whenever new legislation has an important financial impact, negotiations must be held by the Minister of Finance with the representatives of the nine Länder and the two associations. However, all their requests are usually rejected, with the most frequent reason being that the Länder and the local authorities receive a share of the national income taxes and that they thus share in the benefits of economic growth and income tax increases. With regard to the negotiations on the “ redistribution of finances ”, a consensus is not necessary. It is sufficient to simply participate in the deliberations.

A consensus is generally found when the “ Law on Financial Equalisation ”, which is enforced for a period of three or four years with regard to its provisions on the division of financial resources, is renegotiated and when important events occur, such as Austria’s financial contribution to the Community budget or significant fiscal reforms.

The new procedure of the “ Consultation Mechanism ” obliges the governmental level which implements a new law to ensure negotiations and, in case of disagreement, the covering of financial costs relating to the new regulations. However, it should be pointed out that these additional funds might be difficult to obtain since, in case of disagreement on the level of the costs to be reimbursed, it is the Constitutional Court which decides. The constant threat of starting the Consultation Mechanism compels the federal level and the Länder to evaluate the costs of new legislation and to negotiate adapted financial measures.

*Österreichischer Städtebund*



# BELGIUM

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## BELGIUM

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### Introduction

Belgium is a federal state with regions with legislative power and has two levels of local authority : the municipality and the province.

While the principles of local self-government and subsidiarity are materialising between the Federal State and the Regions, the same cannot be said for the local level.

In each Region, subsidiarity is applied using different approaches which does not help the cause of municipal self-government.

The protection of local authorities is organised through different associations of cities and provinces. Regional associations were created in order to better defend the interests of members.

### Legal framework of the consultations

The principle of subsidiarity is not included in the legislation at federal level, nor at regional level.

### Framework common to all the municipalities

#### 1. The Constitution

The Constitution includes two articles on the organisation of local authorities.

“ Art. 41 : Interests which are exclusively of a communal or provincial nature are ruled on by communal or provincial councils, according to the principles established by the Constitution.

The law defines the competencies, rules of functioning and mode of election of intra-municipal territorial organs that are authorised to regulate matters of municipal interest.

These intra-municipal territorial organs are created in municipalities with more than 100,000 inhabitants at the initiative of the local council. Their members are elected directly. In execution of an act adopted by majority vote defined by article 4, last paragraph, the decree or regulation envisaged in article 134 regulates the other conditions and modes according to which such intra-municipal territorial organs may be established.

This decree and the regulation envisaged by article 134 can only be adopted after a majority vote of two-thirds of the expressed votes, under the condition that the majority of the members of the council in question are in agreement. ”

The last three paragraphs were added in 1997 and allow municipalities to create districts within the municipality.

“ Art. 162 : Provincial and communal institutions are governed by the law.

The law applies the following principles :

- 1) the direct election of provincial and of communal Council members ;
- 2) the attribution to provincial and communal Councils all that which is in the provincial or communal interest, without prejudice to the approval of their actions in cases and following that manner determined by law ;
- 3) the decentralisation of attributions in favour of provincial and communal institutions ;

- 4) the publicising of provincial and communal Council meetings within the limits established by law ;
- 5) the publicising of accounts and budgets ;
- 6) the intervention of overseeing authorities or of the federal legislative power, to prevent violations of the law or harm to public interests.

In application of a law adopted by majority vote as described in Article 4, last paragraph, the organisation and application of administrative overseeing may be determined by community or regional councils.

In application of a law adopted by majority vote as described in Article 4, last paragraph, the decree or the ruling described in Article 134 establishes the conditions and the manner in which several provinces or communes may associate themselves or co-operate. However, the convening of several provincial or communal councils for joint deliberation may not be allowed. ”

## 2. The new municipal law

A specific law on municipalities includes the overall powers of local authorities. This law, comprising 317 articles, forms the basis of the organisation of municipalities in Belgium. Supervisory authority is assigned to the regions. Local authorities wish for a regionalisation of this law.

## Consultation procedures in the different regions

### 1. Walloon region

In the Walloon region, the “ Conseil supérieur ” of cities, municipalities and provinces of the Walloon Region provides for the systematic and compulsory consultation when new regulations are being drafted (Decree of 1/7/1993). The “ Conseil supérieur ” meets once a month and addresses all the aspects of the law on local and regional authorities. The procedure is compulsory, but opinions are not binding on the partners.

The “ Conseil supérieur ” consists of 28 members. The Union of Cities and Municipalities of Walloon, as well as the Association of Walloon Provinces are directly designated.

The “ Conseil supérieur ” itself takes initiatives on the basis of draft texts submitted to it by the Walloon Government.

### 2. Vlaanderen (Flanders)

The Flemish Government signed a pact with the Flemish Municipalities on 8 March 1999. The pact is a political agreement between the Flemish Government and municipalities in which the partners (the government, the cities and municipalities and public centres for social welfare) agree to co-ordinate and work together toward more democratic and efficient policies in favour of citizens.

The Pact, which introduces a climate of trust between the regional authority and local authorities, aims to incite the latter to participate in decision-making processes at regional level.

The consultation of local authorities represents one part, but the pact also addresses many other aspects of communications between the region and the municipalities.

## Procedures for Community issues

The consultation procedures for European questions are the same as those applied to actions carried out by the competent authorities at national level. For example, on regional issues, the regional governments are consulted. The national government approves the decisions made at this level at an Interministerial Conference.

## Political perspective

In spite of the existence of a consultation system in almost all the regions, and even though the principle of municipal self-government is included in the Constitution, Belgian local authorities do not consider that the principle of subsidiarity has been applied.

The ratification of the Charter on Local Self-Government also presents a genuine problem. In addition to the constitutional difficulties (the Charter must be signed by all the governments which are not in agreement with regard to the reserves) the administrative supervision is considered as a breach of autonomy.

Nevertheless, it should be noted that several dossiers, well-prepared by the associations of cities and supported by their administrative councils, have had positive results.

### **Evaluation of the procedures**

Belgium is slowly developing a more systematic consultation of local authorities. The bodies necessary to help this process have been created, but the decisions taken at these meetings are not binding on the upper levels.

### **Conclusions**

Constitutional provisions on consultation are appearing but they are both vague and promising, particularly taken within the context of a country where the 'tradition of municipal self-government' is a founding myth. As no clear definition exists of municipal interests, nor of their protection, Belgian local authorities find themselves in a weak position vis-à-vis the higher decision-making levels.

### **Example of procedures**

While numerous aspects of these consultations are positive, the following is an example of a disappointing case :

In October 1998, there was a case involving delays in the refunding of municipal funds by the Federal State. The loss for municipalities was estimated at 17 billion BF. The Belgian associations of cities and municipalities made several attempts to meet with the Minister of Finance to seek a negotiated solution to this matter. The Minister systematically refused to meet the Belgian Union's representatives under the pretext that this body was associated with the State-Regions working group on municipal finance. Yet, this group is a technical body of information and consultation and is in no way involved in political negotiations, an element essential to resolving the problem.

*Union des Villes et Communes Belges*





# DENMARK

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## DENMARK

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### Introduction

The National Association of Local Authorities in Denmark (NALAD) represents all primary local authorities in Denmark.

The Association of County Councils in Denmark (ACC) represents all counties in Denmark.

The City of Copenhagen and the Municipality of Frederiksberg enjoy both municipal and county status and are therefore not affiliated to either of the associations.

NALAD was created in 1970 following an extensive geographical reform where the total number of local authorities was reduced from 1388 to 275.

The Association of County Councils was also set up in 1970, when the 25 counties were reduced to a total of 14.

### Legal framework of the consultations

There is no legal framework for consultation procedures in Denmark, but parliamentary rules of procedure stipulate that all relevant partners are to be consulted prior to the presentation of a bill to parliament. This means that the local and county government associations (NALAD and ACC) are consulted on all legislation with a bearing on local and regional authorities, as are individual local authorities or counties whenever pending legislation has a special bearing on them.

The status of consultations are purely consultative for all parties (Parliament/government and the local government partners). This is partly a consequence of the division of powers under the constitution, and partly a consequence of the legal status of NALAD/ACC as private, voluntary organisations of local authorities and counties, to whom formal competence can only be delegated if all members so agree.

### Detailed description of the consultation process

#### Representing the interests of local authorities and counties

In representing the interests of local authorities, the main objectives for NALAD and ACC are :

- to create the best possible conditions for local authorities in solving their problems
- to ensure maximum freedom in local decision-making processes
- to ascertain that financial responsibility and the right to make decisions go hand in hand
- to procure state funds for local authorities when new tasks need to be addressed
- to make rules and regulations easier to administer at the local level

As a general rule, the local government partners are consulted or directly involved in drafting legislation of importance to local authorities and are therefore represented in a wide array of government committees and boards drawing up new legislation and defining tasks to be solved locally.

The local government partners seek to become involved as early as possible whenever legislation is being prepared. Each case is followed all the way to the appropriate ministry/minister or to the Parliament – the Folketing.

In all major local issues, NALAD and ACC have the requisite expertise to act as a worthy sparring partner in dealing with ministries and other organisations. This expertise is a result of collaboration with local officials and politicians, combined with the documentation constantly being collated by NALAD and ACC.

### Local authorities and finances

Most services taken care of by the public sector are rendered by local authorities. The total amount of public spending makes up 57 per cent of the gross national product (1997); local authorities are responsible for disbursing 52 percent of all public funds.

Public finances at the local level have therefore a significant and direct effect on the entire economy in Denmark.

That is why the economic framework and targets for local and regional public spending is drawn up by the government and the local and regional authority organisations as a collective effort.

### Annual negotiations on public spending

Once a year, NALAD, ACC, the City of Copenhagen and the Municipality of Frederiksberg separately negotiate with the Minister of Finance, representing the central Government, on the overall economic framework for local and regional budgets for the next financial year. The objective is to reach a collective agreement with central government. The conclusions of the agreement are consequently applied throughout the budget process within the local and county authorities. However, it is important to note that the agreement is voluntary and there is no legal demand for an agreement.

On several occasions in the 1980s, this meant that no agreement was reached as a result of severe economic restraints and a central government eager to cut costs. It also meant that under the agreement in 1998, for the first time including a four-year framework agreement, an annual growth of the public sector in total is foreseen at only one per cent in real terms per each of the four years. It should be noted that none of this growth should be found within the state budget but should for reasons of service provision and demographic development be limited to local and regional authorities.

It is equally important to note that the agreements are not in any way legally binding for any single local authority or county and there is no system of sanctions. However, the agreement is politically binding for all local and county authorities collectively. This implies the principle that one local authority may spend more than allowed under the agreement, as long as another local authority compensates by spending less. It is the overall economic result that counts. The same principle applies to the counties.

It is of course very important for the system of collective bargaining itself that local authorities and counties feel committed towards acting in accordance with the content of these agreements when planning their budgets for the following year.

Through the system of economic negotiations, local authority and county finances are co-ordinated with overall, national economic targets, and the general framework for local/regional financial manoeuvrability for the years lying ahead is projected.

This is always a balancing act between giving due consideration to the national economy as well as leaving room for local and county authorities to prioritise and deal with the tasks locally. But the fact that local and county authorities are responsible for allocating half of all public funds means that their financial decisions have a significant macro-economic impact and requires them to assume their responsibilities.

### The Danish EU-decision-making process

Within the Danish EU decision-making process, the formal influence of interest groups is generated through the so-called "EU Special Committees".

At the moment there are approximately 30 EU Special Committees divided according to sector. The chairmanship and secretariat of each Committee is located under the appropriate Ministry.

The fundamental examination of the Commission's proposals takes place within the Committees. During this process, the responsible ministry is obliged to evaluate the juridical, administrative and economic consequences that the proposal in question might have in Denmark, as well as whether the proposal is contradictory to Danish interests.

The four local government partners are currently represented within more than 10 Committees concerning legal issues, environment, regional and industrial politics, shipping, social and labour market, taxes, health, technical trade barriers, education, transport and research.

Work within the special committees is often complicated by the very short deadlines of both written consultations and convocation of meetings. NALAD and ACC have on several occasions pointed these problems out to the government. Furthermore, the Danish EU-decision-making process is generally initiated at such a late stage in the European decision-making process (when the minister in question receives his negotiation-mandate) that it becomes rather difficult to radically alter any substantial content of the Danish draft position, let alone the EU-proposal itself.

As a consequence of this experience, focus is increasingly placed on the networking and legitimising functions of the Committees during prior informal consultation with relevant officials within ministries, while still paying attention to the formal participation within the Committees.

Besides the EU Committees, the Danish members of the Committee of the Regions are in regular contact with the European Committee of the Danish Parliament as well as with members of the European Parliament and the Economic and Social Committee. Views and interests of the secretariats of the institutions in question are continuously co-ordinated.

## **Examples of consultation**

### Public Procurement

In principle, each international issue with a bearing on local authorities raises the following question for the local government partners: whether to seek to influence the Danish national position by getting central government to advocate local government points of views (a "go through" strategy) or to act more independently vis-à-vis relevant international institutions (a "bypass" strategy).

When the public procurement directives were negotiated and agreed in the late 1980s and in the early 1990s, NALAD and ACC, using a "go through" strategy, did not succeed regarding their demand to include higher threshold values in the national position.

The lack of success and the importance of the legislation subsequently led to a change in strategy, focusing more upon co-operation and direct representation at European level, namely through the Committee of the Regions and CEMR. This strategic change was considered to have been worthwhile, particularly when the European Commission published its Communication on the revision of legislation in 1998 and when the European-Parliament later adopted its opinion proposing higher threshold values and more focus on "green" procurement.

### Administration and reform of the structural funds

NALAD's and ACC's involvement in the Danish EU-decision making process with regard to the reform of the structural funds differs according to the specific target area and appropriate Ministry.

The Ministry of Industry has generally been positive towards a decentralised administration of the Funds, whereas the Ministry of Agriculture and Fisheries has been very reluctant, seeking to preserve a central control of the funding.

Consequently, the approval of applications for funding from the Regional and Social Funds within objective areas 2 and 5b have been granted by regional executive committees assisted by regional secretariats of county and local authority officials.

On the other hand, the funding for the development of rural districts (the EUGFL) and transition in areas dependent on fishing (the FIUF), has traditionally been administered by the Ministry of Agriculture and Fisheries leading to a regrettably narrow focus on direct support measures for the agricultural and fishing sector.

*Kommunernes Landsforening*

# FINLAND



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## FINLAND

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### Introduction

Both the European Charter of Local Self-Government and the Finnish Reform of Fundamental Rights affect the perspective from which the State/municipalities relationship is approached. There are two additional perspectives to municipal self-government: the freedom of municipalities in relation to the State, and the citizen's point of view, i.e. ways in which residents can participate in and influence affairs.

### Negotiations

The Ministry of the Interior, Ministry of Finance, Ministry of Education and Ministry of Social Welfare and Health take part in negotiations on behalf of the Government, and the Association of Finnish Local and Regional Authorities on behalf of local and regional authorities.

Regular negotiations are arranged in February-March, April-May, and also in August-September, when the draft of the State budget is made available. At other times, negotiations can be entered into on the initiative of one of the parties.

The Delegation for Local Government Administration and Economy, consisting of an equal number of delegates representing both central and local government, constitutes the practical framework for negotiations.

The negotiations in February-March deal with the implementation of the recommendations concerning the previous year and accounts relating to growth prospects for the economy. The negotiations in April-May deal with the following items:

- legislative projects, resolutions and plans that affect the development of local government functions, and their impact on local finance,
- the prospects for the local government economy,
- the targets to be set for public finance in future.

If possible, the parties agree upon joint recommendations concerning, for instance, local tax rates, future activities, operating and investment expenditure, and the distribution of costs between central and local government.

If an agreement on joint recommendations has been reached, the local authorities are expected to follow the recommendations. It should be noted, however, that implementation of recommendations at local level is not compulsory. Each individual municipality decides how it takes the general guidelines and recommendations into account in the management of local activities and finance. Nor can it be guaranteed that the State authorities and Parliament will follow the agreed recommendations in the preparation and adoption of new legislation.

Though the recommendations reached through negotiations have not always been implemented to the letter, experiences have been positive. This process has provided a forum for open and confidential dialogue between central and local government representatives and opened a channel for the exchange of relevant information and discussion of common interests.



In recent years, recommendations have not been given because of the difficult economic situation, especially in municipalities, and because the State has not been able to keep its promises. Now that the economic trends are more stable, the new government has set up a new group consisting of central ministers and political and operative leaders of the Association of Finnish Local and Regional Authorities to co-operate on questions dealing with coming changes in the local economy and administration.

### European Union

The Ministry of Foreign Affairs founded the system of sectoral EU Committees in the early 90s when Finland started its membership negotiations, first targeting the EEA (European Economic Area) and afterwards the EU itself.

Today there are 36 sectoral EU Committees within the separate ministries/government departments. In 24 of these, there is a representative of local administration as a member. In most cases this member is from the staff of the Association of Finnish Local and Regional Authorities (AFLRA).

### **Legal framework of the consultations**

In 1975, a new approach to the co-ordination of public finance was introduced in Finland. It was agreed between central and local government that, in order to adjust developments in public finance to macro-economic developments and to co-ordinate the measures to be taken, annual negotiations would take place with a view to creating the conditions necessary for stable developments in public finance.

The agreement reached through negotiations between the local authorities and central government was signed on behalf of the government by at least one minister, and for the municipal sector by the central organisations, which later passed the protocol on to the municipalities with the recommendation that they should adapt their operations accordingly. In other words, action was recommended, not made mandatory. Gradually, however, the procedure made progress and the protocol was passed up to the Cabinet Economic Policy Committee and later to the Government for consideration.

The actual protocol was signed by representatives of central and local government, and a large number of protocols were also signed in various areas of the administration, agreeing how certain functions would be financed jointly by the State and the local authorities. The whole negotiating procedure was co-ordinated by an advisory body which later became known as the Delegation for Local Government Administration and Economy.

Action was based solely on mutual understanding until the Decree on the Delegation came into effect in 1977. This required the Delegation to work on matters of joint concern to central and local government related to the management and development of public finances. Though the Decree contained provisions on a negotiating system, the agreements made were considered to be recommendations, not legal requirements or obligations. For instance, no sanctions were provided or planned.

The last joint agreement was signed in 1991 by representatives of the Finnish Government and the local authorities. When a recession hit Finland with full force, the current agreements were abandoned because neither party felt able to commit themselves to anything when the future looked so unsure.

However, negotiations continued, despite the fact that central government cut subsidies to the local authorities year after year, however much the latter complained. The earlier Decree aimed at co-ordinating central and local government finances and activities was repealed in 1993, and a new one entered into force early the following year. The new provisions integrated the negotiating procedure into the municipal legislation and section 8 of the Finnish Local Government Act

contains a reference specifically to the Decree on the Delegation for Local Government Administration and Economy.

The system of EU Committees is an official part of the central administration. There is no specific law on this system. On the other hand, according to Finnish law, the government is obliged to listen to the views of municipalities when the legislation in preparation concerns local administration.

### **Present and future trends in public sector co-operation (successes/disappointments)**

In past years, the overall fiscal performance of the municipal sector has generally been strong, reflecting a tradition of conservative management and the supportive function of the State transfer programme. However, beginning in the early 1990s, the sector was confronted by a number of challenges that dampened financial results :

- high unemployment, rising from an annual rate of roughly 3 % in the late 1980s to 17 % in 1995, and its adverse effect on municipalities' social welfare expenses ;
- central government's fiscal austerity programme, which has resulted in lower transfers to local authorities ;
- less revenue flexibility as a result of recent tax increases ;
- more limited expenditure flexibility after several years of expenditure restraint by municipalities.

To date, local authorities have dealt with fiscal pressures mainly by raising taxes and reducing their expenditure, particularly the large public-sector wage bill. Also, municipalities have cut back on their capital programmes, thereby reducing their borrowing significantly in the past two years. This combination of tax increases and spending cuts enabled the sector to maintain modest overall budgetary surpluses every year between 1993 and 1997.

Yet, because of slower economic growth and additional reductions in transfers announced by central government for 1996-1998, the municipalities are expected to record overall budget deficits in the coming period. Nevertheless, the sector's accumulated cash reserves will provide some cushion to help limit the increase in net debt.

Central government's fiscal austerity programme, which has resulted in lower transfers to local authorities, will have an impact on local government finances reaching quite far into the future.

No major changes are needed in the formal organisation of the negotiation procedure between the State and the municipalities. How well the negotiation procedure and the exchange of information between the State and municipalities work in practice will depend on their mutual attitude rather than on legal provisions. Sincere and informal interaction between the State and the municipalities ought to be increased.

The Delegation for Municipal Administration and Economy and its various sections will play a central role in the development of the negotiation procedure. When the work of the Delegation is considered, it is important that it is not seen merely as a formal observance of the legal provisions, but that it is used to search for new forms of communication and negotiation that will have a positive influence on the atmosphere of co-operation, improve information and make it available at an earlier stage, and thus offer both parties a chance to prepare for the decisions to be made and for the changes that these solutions bring about. The data and statistics on municipal finances must naturally find common acceptance, and their interpretation must be possible. The findings of the most important sector-specific working groups appointed by various ministries and related to municipal administration and economies ought to be examined within the Delegation for Municipal Administration and Economy.

## **Monitoring, control and assessment**

The trend in the 1980s and 1990s towards stronger municipal self-government is also perceptible in citizens' attitudes to monitoring and control systems. Planning has become less ponderous, and standardised monitoring and control systems are being torn down. Though different municipalities have different capacities and ways of operation, the present trend will probably continue, meaning that monitoring and control by State authorities will both decrease and, to some extent, change in character. The changed character of this monitoring and control will relate, on the one hand, to the control of citizens' fundamental rights, and to the development of evaluation and monitoring systems, on the other. The need for expert monitoring and control will be more marked in municipalities, and this is something for which not every municipality has the resources.

The ultimate aim is, however, that the municipalities will primarily be in charge themselves of assessing and monitoring the results and quality of their services. The better this is carried out, the smaller role the State authorities will play in assessment, monitoring and control. Though co-operation between the State and the municipalities is needed to develop public service quality systems, the municipalities themselves decide what kind of service commitments they make, and, for instance, how they monitor the quality of their services internally.

### European Union

The EU Committees are not 'political'. The members are public civil servants or experts, advisers or directors from interest organisations. Consultation takes place in meetings where all the members are present. Some of the Committees may sometimes also convene so that only civil servants are present. The frequency of the meetings vary. Some Committees have meetings nearly monthly, some before the Council meetings and some only twice or so per annum.

The EU Committees were founded in the very beginning without representation of local and regional authorities. After negotiations, initiated by the AFLRA, the representatives of local administration were welcomed to participate. This form of consultation, combined with frequent person to person contacts between government officials and local level representatives, is regarded as a genuine, open and successful forum for exchanging information and views concerning EU affairs.

*Suomen Kuntaliitto*

# FRANCE

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## FRANCE

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In France, the consultation procedures of local and regional authorities are organised under the law. The Constitution does not provide any particular stipulations on this subject.

These procedures are compulsory, but the opinions handed down are purely consultative. The consultations mainly concern financial matters as well as a certain number of fields relating to local and regional competencies (transport, spatial planning, housing, construction, sanitation, environment, etc.)

At State level, the consultations are launched by the ministries, the “ Commissariat général au plan ”, but also by the decentralised services of the State and the prefects. These consultations are for the most part held directly with the local and regional authorities.

There are also specialised consultation bodies.

**At national level**, there are a large number (more than 80) specialised consultation bodies on issues of interest to local and regional authorities, on which representatives of mayors, general councils and regional councils hold seats.

The law provides for the creation of most of these committees.

Among these committees is the “ Conseil National de l'Habitat ” (housing), the “ Conseil National de la Montagne ” (mountains), the “ Conseil National de l'Aménagement du Territoire ” (spatial planning), the “ Conseil National des Villes ” (urban questions) and the “ Commission Nationale de la Coopération Décentralisée ” (decentralised co-operation).

There is also a “ Conseil supérieur de la Fonction publique territoriale ” (CSFPT), a representative consultative body, called on to give its opinion on any draft laws relating to the local and regional public domain or any draft decrees concerning local and regional civil servants. The CSFPT is made up of 20 representatives of local politicians designated by college according to the size of the local authority, and 20 representatives of employees members designated by the trade unions. It meets in a plenary session at least four times a year.

In general, it is the ministry in charge of local authorities which questions the CSFPT, but the latter can also take the initiative and issue proposals.

In addition, the representatives of local and regional elected representatives also hold seats within the administrative councils of such bodies as the “ Centre National de la Fonction Publique Territoriale ”.

As regards local finance, there is a specialised committee for these questions : the “ Comité des finances Locales ”. The government can consult this Committee on any governmental draft laws, draft amendments or any regulatory provisions of a financial nature of concern to local authorities. With regard to decrees, this consultation procedure is compulsory.

Among its missions, the “ Comité des finances locales ” is charged with providing the government with analyses necessary to the drafting of those provisions of the draft Law on Finance which are of interest to local and regional authorities.

The “ Comité des finances locales ” consists of :

- 2 MPs designated by the National Assembly
- 2 senators designated by the Senate
- 2 general council presidents elected by the college of general council presidents
- 2 regional council presidents elected by the college of regional council presidents
- 2 presidents of municipal bodies elected by the college of presidents of municipal groupings
- 15 mayors elected by the college of mayors
- 11 State representatives

The committee is chaired by an elected representative designated by its members.

Alongside these institutionalised consultations, the French government of course has also traditionally consulted the large associations of elected representatives of local and regional authorities on any legislation which concerns them.

In particular, these associations are the “ Association des Maires de France ”, the “ Assemblée des départements de France ” and the “ Association des Régions Françaises ” which, among the 40-something national associations of elected representatives, have general vocations.

They are consulted on a one-off basis by the Ministry of the Interior or the ministries concerned in all the stages of the decision-making process : during the preparation of the draft laws or regulations, i.e. at the beginning of the process, but also when decrees are adopted, during the implementation stage.

At local or regional level, the authorities are of course directly consulted by the decentralised State services (either at regional level, or at “ départemental ” level) and by the Prefect concerned on all decisions of concern to them.

They are thus compulsorily consulted for an opinion on documents relating to the preparation and application in the region of the national Plan.

There are also specialised commissions or committees (around fifty per “ département ”) which meet at the initiative of the Prefect, made up of elected representatives (often designated by the “ départemental ” associations of elected representatives), which are consulted for an opinion on the drafts of concern to them.

These include the “ Conseils Départementaux de l’Habitat ” (housing), the “ Commissions Départementales d’Equipement Commercial ” (business development), the “ Commissions Départementales d’Elaboration des Plans d’Elimination des Déchets Ménagers ” (treatment of household waste), etc.

As regards European issues, there are no specific consultation procedures of local and regional authorities on European questions if one looks only at national provisions.

On the other hand, French local and regional authorities are of course represented on the Committee of the Regions of the European Union.

The French delegation of the Committee of the Regions consists of 24 members (as well as 24 substitute members) from local and regional authorities, broken down as follows :

- 12 members from the regions
- 6 members from the “ départements ”
- 6 members from the municipalities

These members are designated by the government upon the proposal of the large associations of elected representatives.

French local and regional authorities are also active in the Council of Europe’s Congress of Local and Regional Authorities of Europe.

The French delegation is made up of 18 titular members (nine representatives of the municipalities and “ départements ” and nine for the regions).

The French Association of the Council of European Municipalities and Regions (AFCCRE) has been consulted regarding the designation of French members of these two bodies.

*Association Française pour le Conseil des Communes et Régions d'Europe*





# GERMANY

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## GERMANY

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### Introduction

The constitution of Germany (Article 20 and 28 of the Basic Law) stipulates that Germany shall be a democratic and social federal state and that the constitutional order in the Länder shall conform to the principles of the republican, democratic and social state governed by the rule of law within the meaning of the Basic Law.

The German Länder have the status of States. This means that they can conclude laws through their parliaments, execute them through their governments and have an independent juridical system. Article 28 of the Basic Law guarantees as well that the municipalities have the right to manage all the affairs of the local community on their own responsibility within the limits set by law. The same applies to associations of municipalities within the framework of their statutory functions. The interests of the local level vis-à-vis the Federal Government are not directly protected, but indirectly by the Länder.

In this sense the Federal Republic of Germany has two levels of government : the Federal government and the governments of the Länder. Within the Länder there also exist two tiers of government : the Länder government and the local governments.

Under Articles 30 and 70 of the Basic Law the prime responsibility for legislation rests with the Länder. Essentially the autonomous powers of the Länder are in the areas of education, culture, local legislation and public safety and order. Although the Federation is empowered to legislate only where specifically stated in the Basic Law (Article 71), in practice it is now the Federation which carries the main responsibility for legislation. Foreign affairs, defence, monetary policy, air transport, post and telecommunication, economic and labour law, competition law, shipping and road transport are, inter alia, federal matters.

This development is at least partly due to the fact that the Länder can only exercise their rights as long as, and to the extent that the Federation does not make use of its legislative prerogatives. However, through the Bundesrat, the upper chamber of parliament, the Länder are able to participate in federal legislation (Article 50 and Article 79 III of the Basic Law). The Bundesrat also has co-decision-making powers on matters relating to the European Union (Articles 23 and 50).

There are sixteen Länder in Germany : five new States in East-Germany and eleven in West-Germany. The size of the population differs from 686 000 in the city-State of Bremen to more than 17.6 million inhabitants in the State of North Rhine-Westphalia.

The local level includes cities (Städte), municipalities (Gemeinden) and counties (Kreise). The number of tasks carried out by the counties varies between the Länder. They often carry out the tasks of social assistance, waste disposal and hospitals. Currently there are 426 counties with about 16 000 municipalities and an additional 117 cities which also completely fulfil the tasks of counties.

There are three associations of local authorities : the German Association of Cities and Towns (Deutscher Städtetag) in Berlin and Cologne, whose membership consists of more than 6 000 cities representing about 51 million inhabitants, including all German cities with a population of more than 100 000 and the three city-States : Berlin, Hamburg and Bremen ; the German Federation of Towns and Municipalities (Deutscher Städte- und Gemeindebund) in Berlin and Bonn, which consists of 16 regional local Government association, representing mostly smaller cities and villages ; and the German Association of Counties (Deutscher Landkreistag) in Bonn, whose membership consists of 13 regional Associations

representing all counties in Germany. These three associations together form the Federation of

German Local Authority Associations, which represents the entire local government field of activities. The German Association of Cities and Towns is responsible for the administration of the Federation of German Local Authority Associations.

## Legal Framework of the consultations

When referring to the participation of the main associations of local authorities, a distinction must be made between participation concerning general policy issues and European ones.

- As regards the participation of the main local authority associations on general policy issues, it is regulated by article 25 (informing main local government associations) of the joint rules of procedure of the Federal Ministries (GGO II), as well as by article 69, paragraph 5 of the rules of procedure of the Bundestag (Lower Chamber of the Federal Government - GOBT). In light of the fact that it only concerns provisions of the rules of procedures, there is no legal recourse.

Article 25 of GGO II states in its first paragraph that “ draft laws which affect the interests of municipalities and associations of local authorities (...) must be communicated as early as possible to the main associations of local authorities which exist at federal level ”.. Initially, this covers all aspects. The first paragraph of article 25 of GGO II refers in its second sentence to article 24, paragraph II of GGO II. The text specifies that “ during the information stage (...), inquiries should be made in the professional circles and of the associations concerned with regard to the costs of implementing the law that are likely to be incurred by professionals, in particular for the SMEs. By implementation costs, we mean the expenses incurred in executing the law, including those for personnel and equipment ”.

Article 69 of GOBT stipulates in its 5<sup>th</sup> paragraph “ when the commission is called on to debate a draft which has been transmitted to it and which affects essential interests of municipalities and local authority associations, prior to any decisions being taken within the commission, the main associations of local authorities at federal level should have the possibility of taking a position. This applies in particular to draft laws which are to be executed in whole or in part by the municipalities or the associations of local authorities, which directly concern public finance or their methods of management ”.. Thus, article 69, paragraph 5 limits compulsory consultations to the essential interests of municipalities and local authority associations by specifying in particular that they must be responsible for the execution in whole or in part of the laws which must concern their finance or methods of management.

- As regards the participation of the main local authority associations on European policy issues between the States, i.e. as regards draft laws at European level, a distinction must be made between the federal government and the Bundesrat, the representation of the German Länder.

According to article 85 d (informing of main associations of local authorities on European Union laws) of the joint rules of procedure of the Federal Ministries (GGO II), “ the proposals relating to legal acts at European Union level, directly affecting the interests of municipalities and local authority associations, (...) are to be transmitted by the Ministry concerned to the main associations of local authorities which exist at federal level ”. The remark on article 25 of GGO II applies to this provision as well : a complaint for failure to comply is not admissible in court and in no way leads to the nullification of draft EU legislation within a State.

Article 10 of the law on co-operation between the federal government and the Länder on questions relating to the European Union, which reaffirms Article 23 of the Constitution, stipulates : “ within the framework of drafts at EU level, the right of municipalities and local authority associations to manage local community affairs must be respected and their interests protected.” Nevertheless, nothing is specified in the law on its implementation in practice. Consequently, this provision does not have much effect in practice.

Article 14 of the law on co-operation between the federal government and the Länder on questions relating to the European Union regulates the nomination procedure of German members to the Committee of the Regions. It states : “ the Länder organise a procedure of participation for the municipalities and local authority associations to guarantee that - upon the

proposal of main local authority associations - the latter are represented by three elected representatives on the Committee of the Regions." The result is that, out of the 24 seats held by the Federal Republic on the Committee of the Regions, only three represent the municipalities. Furthermore, the municipalities are obligated to delegate elected representatives to the Committee of the Regions, while the German Länder can also send non-elected representatives, e.g. Secretaries of State.

### **Detailed description of the consultation procedure**

In order to simplify the presentation, and considering the fact that in reality, there is practically no difference between the consultation mechanisms in terms of general policy and European policy, we include only the main characteristics below :

- According to article 25 of GGO II, the draft laws which affect the interests of municipalities and local authority associations must be communicated as early as possible to the main associations of local authorities which exist at federal level.
- According to article 69, paragraph 5, of the GOBT, the main associations of local authorities existing at federal level must be authorised to take a position prior to the passing of any decision within the commission on draft laws which concern the essential interests of municipalities and local authority associations. As it involves private commission sessions, the position can only be made in writing. There is no link between these sessions and hearings organised by the Bundestag commissions on specific themes and to which the main local authority associations and other interest groups can also be invited.
- According to article 85 d (informing of main associations of local authorities on European Union laws) of the joint rules of procedure of the Federal Ministries (GGO II), " the proposals relating to legal acts at European Union level, directly affecting the interests of municipalities and local authority associations, (...) are to be transmitted by the Ministry concerned to the main associations of local authorities which exist at federal level ". No mention is made of a timetable for the consultation.

### **Political prospects**

As regards the consultation procedures, there is no specific comment to be made concerning the overall German political context. As regards European affairs, the consultation procedures are mainly the result of the ratification process of the Maastricht Treaty. The German Länder, whose agreement via the Bundesrat was essential for the ratification of the Treaty on European Union by the Federal Republic of Germany, requested a strengthened participation on European affairs in exchange for the transfer of competencies towards the Union. While the Länder thus reinforced their position in relation to the federal level, the municipalities did not receive any compensation for their loss of power, e.g. in the area of public procurement.

### **Evaluation of the procedures**

The remarks below exclusively concern the participation of the main associations of local authorities.

As regards the German Länder, the possibilities for participation are vast and comprehensive, due to their State status and the fact that they form an integral part of the federal system, but also as a result of the ratification of the Treaty on European Union.

On the other hand, the local authority associations are not satisfied with the consultation mechanisms or their results. As explained above, the consultation obligations only work on a one-

way basis vis-à-vis the Federal Ministries and the Bundestag, and there is no legal recourse. Thus, where a law is prepared without consulting the main local government associations, despite this procedure being stipulated in the rules of procedure, it does not become invalid.

Consequently, it is not surprising that the main local authority associations are completely unsatisfied with the result of the consultations. This applies in particular to the transfer of duties from the federal or regional lawmakers to the municipalities, without the corresponding necessary finance (principle of connection).

In terms of European policy in particular, the main local authority associations request that the Basic Law be amended as follows :

*“ As regards draft laws and legislation and positions adopted by the Federal Government on draft EU legislation or directives which affect the principal interests of municipalities and local authority associations, their representative organisations are to be consulted. ”*

The request was also expressly made to allow the main local authority associations to participate, at federal level, in the debates of the Bundesrat and the Bundestag, as well as in the European work of the federal government. The President of the Bundestag Commission in charge of EU affairs must be invited to encourage the future participation of the main local authority associations in the Commission meetings dealing with municipal interests, in order to give them the possibility of introducing a municipal position. In addition, the main local authority associations seek closer co-operation between their representative office in Brussels and the permanent representation of the Federal Republic of Germany in the EU.

Lastly, the main local authority associations of the Federal Republic of Germany request :

- an increase in the number of seats assigned to the municipalities on the Committee of the Regions
- a better (early) participation at regional level in the preparation work for EU legal acts which, owing to the competencies of the Länder, are applied later in the framework of regional law
- the guarantee of a consultation of the local level as stipulated in article 10 of the law on co-operation between the federal government and the Länder on questions relating to the European Union, possibly through a corresponding provision to be integrated in the rules of procedure of the Council of European Ministers (e.g. by according a guest status for activities relating to the Council of European Ministers).

## Conclusions

Within this context, it is difficult to give examples of good, effective functioning of consultation procedures of local authorities in Germany.

*Rat der Gemeinden und Regionen Europas  
Deutscher Städtetag*

# GREECE

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## GREECE

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The setting up of Local Unions (TEDK), uniting all the organisations of local authorities at prefectural level, as well as the founding of the Central Union of Municipalities and Communities of Greece (KEDKE) at national level, resulted from the need to ensure co-ordination and follow-up with regard to the activities of Greek local authorities (OTA) within a specific geographical area. Another objective was the establishing of co-operation to achieve common goals, find solutions to problems and to strengthen local self-government in Greece.

First of all, it must be pointed out that the creation of these Unions, and the introduction of interventions by local authorities, even on a consultative basis and through collective bodies dealing with questions of regional development and decentralisation, has never been easy, systematic nor co-ordinated. This was due to the very centralised nature which the Greek State had until recently and to the particular geopolitical situation of the country.

Following their creation, the Local Unions functioned more like trade unions rather than partners involved in the consultation procedures of local authorities by the central government. Both the general organisation and the formal framework were unsatisfactory. The main consequence of this was the lack of guarantees regarding consultation procedures for local authorities.

Consequently, it is difficult to describe the historical development of consultation procedures in Greece. However, the Unions have strived from the start to establish a dialogue with the central authorities on a series of subjects of concern to Greek local and regional authorities, such as competencies, matters of finance or the status of local elected representatives.

With regard to the profile of the Unions, we wish to point out that the Local Unions (TEDK) were created by the representatives of local authorities in the prefectural area where they are elected (the prefecture, i.e. the Prefectural Administration, is currently considered a local level of government - with elected representatives).

### At national level

There is no constitutional guarantee for the intervention of local authorities in the decision-making process regarding issues of direct concern to them. The sole constitutional guarantee which exists concerns the administrative and financial independence of local authorities. Consequently, there is no constitutional recourse except where decisions or policies applied by the national level threatens the autonomy at local level or where the freedom of action of local and regional authorities is to be limited in an area which is usually considered as part of their competencies.

Overall, procedures mainly involve the preparation of positions by local and regional authorities (at 1<sup>st</sup> and 2<sup>nd</sup> levels) on national legislation (the State alone has independent legislative power) rather than a consultation procedure entailing specific or lasting influence leading to institutionalisation.

The lawmakers have described the cases in which local authorities are asked to express an opinion, either through the intermediary of KEDKE, or through TEDK (when issues in question have a limited reach regionally). In other cases, the consultative role of local authorities is limited to the participation of representatives of local and regional authorities on committees established by the State to deal with subjects of a rather general nature which concern, among others, local authorities.

The role of the committees established by KEDKE is a more substantial one. Their objective is to submit proposals and to hold discussions with the central government on questions such as social problems, local finance, regulations, etc.

The Code of the Communities and Municipalities (PD 410/95) provides for the consultation of local and regional authorities (1<sup>st</sup> level) or associations of local and regional authorities in the prefectures prior to the adoption of measures concerning environmental protection or spatial planning projects.

Naturally, this most frequently involves local and regional authorities located in the geographical area concerned by these draft regulations.

The law provides for consultation procedures of a general nature by defining the participation of representatives of local authorities within national structures responsible for regional development projects or environmental protection.

Overall, it must be stressed that there are no specific consultation procedures which allow local and regional authorities to prepare and transmit opinions to the central government on questions of concern to or having an impact on local authorities.

### **Consultation on European questions**

Greece's entry into the European Community did not influence the situation. Firstly, the questions were naturally viewed to be part of the national stakes, and secondly, the representative bodies of local and regional authorities had difficulties in expressing their opinion. However, there is no doubt that during the period of preparation and over the following years, the fact that the State structure was heavily centralised played a decisive role in this process, not to mention the influence of mentalities which did not encourage decentralisation nor social participation in the decision-making process.

However, it must be pointed out that the consultative role of representative bodies was strengthened following the transfer of powers to the local authorities, with the creation of a second level of local government and the implementation of community regulations which has become internal law. However, the same cannot be said regarding the existence of well established institutionalised procedures, or even informal ones, leading to any specific results. It is thus difficult to provide concrete examples.

### **Evaluation**

However, in order to provide some details regarding certain oversights or weaknesses linked to the procedures, we would like to point out the following :

- a) In most cases, the representative bodies of local and regional authorities themselves open dialogues or intervene on specific issues, i.e. they are the ones who take the initiative.
- b) When consultations are held, they are mainly focused on themes of direct concern to Greek local authorities and not general issues concerning, for example, Europe and Community policies or even national ones which affect the local level.
- c) When consultation procedures are held at the initiative of the State, they take for granted that a draft law has already been prepared or that a problem already exists ; however, it is relatively rare that this takes place.
- d) This process is not a compulsory one when it only involves an opinion. Nevertheless, the lack of consultation in the cases with a legal basis could lead to the nullifying of a law for failure to comply with proper procedures.
- e) Results are not always positive for local authorities. By this, we mean that the opinion of representative bodies, and KEDKE in particular, which plays a role of expert in the proceedings, is not always binding. KEDKE's main role is to provide information on the position of local authorities on specific issues or to take the responsibility of issuing proposals.

The single market did not influence the situation in the way expected by Greek local authorities. However, a study is being made on the impact of the euro on local authorities. This study aims to collect information on the financial and legal implications and to submit proposals. It will form the basis of a dialogue with the government in view of the adoption of regulations and other measures. This initiative, which began with the creation of a committee within KEDKE is probably the only



case of reflection on a Community theme insofar as these initiatives are generally limited to participation in European bodies and, to a lesser extent, in Community initiatives. An effort is being made in any case to support KEDKE's action with the use of scientists acting as consultants and to monitor the legislative consequences resulting from bringing Greek law in line with the rest of the European Union, and the impact that this process will have on local authorities. The main objective of this monitoring is the revision of the most negative reforms for local authorities (for example, the modification of legislation on public procurement).

There has not been a complete assessment made on the participation or consultation procedures of local authorities but, generally speaking, it can be said that the main aim of participation in numerous cases is the legitimisation of the central government's action while the consultations represent the most obvious cases of co-operation.

*ΚΕΔΚΕ*



# IRELAND

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## IRELAND

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### **Presentation of the structure of local government in Ireland**

The 1937 Constitution carried virtually no reference to local authorities but the Irish Government announced in April 1999 after much lobbying by the General Council of County Councils that a referendum would be held on 11 June to insert a provision in the Constitution giving recognition to local government.

The prerogatives of local and regional authorities and their methods of management were defined and modified on many occasions : in 1898, 1940, 1941, 1978, 1991 and 1994.

#### Powers

Irish local and regional authorities are responsible for infrastructural development, such as construction and road maintenance, water supply and sewers as well as the construction and management of social housing. They are also in charge of implementing legislation in terms of environmental protection and spatial planning, road transport, safety of buildings as well as fire prevention.

Local and regional authorities are responsible for general development in their region. They have power to act in the interest of the population and to provide recreational and sport facilities, etc. They also have residual functions in relation to agriculture, education and health.

The Department of the Environment and Local Government is in charge of supervising the activities of local and regional authorities. A commission on devolution has reported on the possibilities relating to decentralisation from central authorities towards local authorities.

#### Financing

The total expenditure of Irish local authorities represents around 5 % of the GDP and 11 % of total public expenditure.

The general expenditure of local authorities are covered by three different sources of financing, namely :

- State grants and subsidies ;
- fees on goods and services ;
- property taxes on commercial property only.

Around half of the county councils' expenditure is financed by State subsidies. The large cities, as well as the other urban authorities, receive approximately a quarter of their revenue as subsidies.

In Ireland, there are two main organisations representing local authorities : the Association of Municipal Authorities of Ireland, created in 1912, and the General Council of County Councils, created in 1899.

### **Consultation procedures**

There are no formal consultation procedures between the government and local and regional authorities.

However, there are informal procedures which address a wide diversity of themes. All subjects which are of concern to local authorities are likely to be the focus of consultation. They are mainly questions which are topical in nature or ones which need to be addressed urgently : finance, housing policy, spatial planning, etc. These procedures are always optional and are not binding on the partners.

As local and regional authorities are placed under the supervision of the Department of the Environment and Local Government, the latter is the privileged spokesperson of local government. Although there is no specific consultation structure, local and regional authorities can be represented, on a case by case basis, on sectoral representative bodies or in delegations to the Department of the Environment and Local Government.

Consultations are not held according to a pre-set timetable and are usually initiated by local authorities in response to a perceived need, e.g. questions on finance. Nevertheless, the initiative can come from the ministerial level when new legislation is being prepared. Thus, the Department of the Environment and Local Government invited the representative associations to submit their proposals in regard to the preparation of a new draft law on spatial planning.

Generally speaking, the consultations usually involve lobbying actions or information meetings rather than genuine negotiations producing binding decisions. Moreover, there is no specific tool for evaluation. Overall, it seems that it is more the prominent politicians and civil servants which hold the strongest influence on the political guidelines followed.

## **Conclusions**

Given the essentially local character of Irish politics, there are many informal communication networks between the national and local level. The influence of members of parliament (TDs) at local level is almost as strong as that of the local elected representatives. TDs are often subject to pressure by local interest groups on topics that the TDs can raise for discussion at national level.

The representative bodies play an increasingly important role with regard to the interaction between the local authorities and the national ministries. However, the consultations maintain a strictly consultative nature and are in no way binding.

It can also be noted that after many insistent efforts to consult local authorities by the central government, the questions of concern to the former were pushed into the background in comparison to the themes advanced at national level.

*General Council of County Councils*

# ITALY

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## ITALY

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### Introduction

In recent years, we have witnessed in Italy a new era of debate and of institutional projects mainly focused on the objective of federal reforms of the State.

Law n° 59, known as the “ Bassanini law ” - the name of the Minister of Public Office in charge of public administration reform - introduces a radical reorganisation of central-peripheral relations without recourse to any constitutional modifications.

Law n° 59 defines and enlarges the prerogatives of the State-Regional Conference. On the one hand, it increases the competencies and duties of regions through the “ participation in all decision-making processes of regional, interregional and infraregional interest, with regard to compulsory consultation procedures ”, and on the other, it aims at a “ simplification of co-ordination procedures between the State and Regions by assigning to the Conference all competencies concerning relations between the State and Regions ”.

The first significant step was made on 12 October 1983, at which time the State-Regional Conference began its action at administrative level - it was formally created in 1988 under article 12 of law n° 400 of 23 August which regulates the governmental and institutional activities of the presidency of the Council of Ministers. This measure was taken around eight years after the conclusions of the Parliamentary Commission on regional questions' preparatory survey, which underlined the need to have a body enabling a permanent dialogue with the State's central bodies, and a participation of regions in the drafting of general State policy planning.

Law n° 400/1988 assigns to the Conference missions of “ information, consultation and co-ordination from the point of view of general policy planning likely to have an impact on local and regional authorities, with the exception of guidelines concerning foreign policy, defence policy, national security, justice ”.

It is chaired by the President of the Council of Ministers (PCM), except when the Minister for Regional Affairs or another minister is so delegated.

It is made up of the Presidents of Regions with special and ordinary status and of the presidents of Autonomous provinces. The Ministers concerned by the items on the agenda, as well as the representatives of State administrations or public bodies, are invited to the sessions. The sessions are open to the public and are normally held on a monthly basis. They are convened by the Chair who sets the agenda.

The Conference is considered as an advisory and consultation body regarding major policy involving State planning and programming (e.g. reform of certain general accounting standards used by the State in budget matters, financial legislation, environmental protection policy, etc...).

Law decree n° 418 of 16 December 1989, defined the duties of the State-Regional conference, reorganised bodies of equal representation of the State and Regions, with certain ones being removed. As a result, this organisational structure was never completely implemented : the general committees, for example, were never formed and, *a fortiori*, never carried out any activities.

In recent years, the Conference has been supported by a secretariat expressly formed by the decree of the PCM of 16 February 1989, with personnel coming partly from the State and partly from the regions, which had to implement not only organisational and logistical planning, but provide constant technical assistance and co-ordination between the centre and the regional authorities.

In 1981, the regions had begun to take action within the Conference of Presidents of Regions and Autonomous Provinces, created as a body of co-ordination of the different territorial realities.

The Conference of Presidents, which includes the participation of all the Presidents of Regional Councils and two autonomous provinces, is the body in which :

- common positions are defined on main questions of regional interest ;
- documents and proposals are prepared for submission to the Parliament, Government and other institutional bodies ;
- opinions and agreement principles are established in accordance with the law in force as well as with the aim of defining common positions to present to the Standing Conference on relations between the State, regions and autonomous provinces ;
- as stipulated by numerous laws, representatives of the regions and autonomous provinces are designated within representative committees, commissions and administration councils ;
- the participation in meetings, hearings, working groups and technical bodies is established by the Conference delegation.

During its 17 years of activity, the Conference of Presidents of Regions and Autonomous Provinces has worked according to a rotation system whereby all the Presidents take turns in leading the co-ordination. It is only recently that the Conference decided to elect a president and a vice-president (in addition to a presidential office and two officers for institutional reforms) who will remain in office until the end of their political mandate (Spring, 2000).

The Conference of Presidents plays a role of co-ordinator of the different regional differences and one of intermediary between the regions and the central State, particularly within the framework of the State-Regional Conference. Above all, the Conference represents the political expression of the united will of regional bodies at national level.

The Conference of Presidents of Regions and Autonomous Provinces develops its activities by using as a reference framework the work of the State-Regional Conference.

The Conference plays a role of consultation (issuing of opinions), of co-ordination between the Government and the regions (agreements), of verification and follow-up, of impetus (proposals), and of designation of regional representatives to the bodies with a mixed State-Regions representation.

Following law decree n° 418 of 16 December 1989, the Conference's duties were restructured and enlarged to include the periodic monitoring of the implementation of plans and programmes on which the Conference had issued opinions. It was also given responsibility over the planning and closure of bodies with a mixed State-Regions representation, by specifying the functions of the Conference (e.g. the former Interregional Commission at the Budget Ministry or the transfer of certain competencies of the National Health Council, definitively closed by law decree n° 266 of 30 June 1993).

The legislator thus wanted to confirm the participation and political confrontation between the State and the Regions within a single institutional body. The recent change in relations between the State and Regions also conferred administrative tasks upon the Conference.



The Conference was created out of a concern for political co-ordination - as shown in its composition. However, it was later assigned administrative duties. There is thus the danger that the many administrative tasks risk weakening the Conference in its role as a body for political confrontation and negotiation between the levels of national and regional government. The Conference continues to perform a large number of specific administrative tasks (particularly the compulsory consultative duties). Thus, the “ progressive diminution of its role of general political co-ordination and confrontation ” and the “ parallel growth in its role as a representative body in decision-making and in procedures ” could be seen.

The legislative decree 281/1997 seeks to reinstate the importance of the Conference's political role by integrating it into the procedures whereby governmental texts relating to the competencies of the Regions are defined. In particular, the Conference is compulsorily consulted on the pre-draft laws, law decrees or governmental legislation in the areas of regional competency. In the case of an emergency, a short consultation is held : the Government takes into account Conference opinions during parliamentary debates on legislative measures which are the focus of consultation or, if the “ opinion concerns measures already definitively adopted, the State-Regional Conference can request that the Government evaluate it in view of a possible abrogation or reform of the adopted measures ” (article 2, paragraph 6)

The Constitutional Court, for its part, confirmed the crucial role of the State-Regional Conference, by way of decree n° 116 of 1994, by defining its vocation as an “ institution acting within the national community as an instrument promoting co-operation between the State and regions (and autonomous provinces) ”. The Conference therefore constitutes the “ privileged forum for debate and political negotiation between the State and the regions ”.

Law decree 281/1997 also assigns to the State-Regional Conference the designation of the regional delegates within the European Union's permanent representation.

To date, around 150 different legislative provisions attribute competencies to the Conference. Law n° 662 on finance of 28 December 1996 assigns it 11 new competencies. Law decree n° 22 of 5 February 1997 on waste treatment confers on it 18 additional prerogatives. Law n° 59 of 15 March 1997 on the delegation of powers to the Government for the assigning of duties to the regions and local authorities revised, in article 8, the allocation of the State's powers of planning and co-ordination. The law stipulates that the planning and co-ordination texts of regional administrative duties, the standards on technical co-ordination, as well as the directives on the exercising of delegated duties must be adopted in agreement with the Conference.

Article 9 of this law also conferred upon the Government the authority to define and enlarge the Conference's competencies in order to combine within one single body, for areas of common interest, the regions, provinces and municipalities. This decree also rationalised the procedures and attempted to accelerate the decision-making process by specifying the circumstances in which the Conference is to act as a spokesperson on agreements and those in which it is called on to conclude agreements.

The role of the conference in the development of aspects of Community policies of interest to the regions or provinces is defined under article 10 of law n° 86 of 9 March 1989 which had established a Conference “ Community session ” meeting at least twice a year. This session provided the opportunity to express opinions on the general guidelines concerning the drafting and the application of Community acts at regional level and the procedures to be used in order that regional practice be in conformity and respond to the obligations of Italy as a member State of the European Union.

The Conference “ Community session ” were infrequently held until 1995. Important draft agreements on this subject were adopted on 3 August of that year on the follow-up of financial fluxes relating to interventions co-financed by the EU and for the participation of the regions in the drafting of Community

draft laws. With the approval of law n° 52 of 6 February 1996, provisions were made for the regions to be able to initiate direct and closer contacts with the Community Institutions in areas relating to their authority, with the opening of representational offices in Brussels.

In practice, the Conference does not seem to have played an important role in Community questions. Legislative decree 281/1997 aims to strengthen this competency, by reaffirming that the Conference's task is to co-ordinate Community policies according to the needs of the regions and to give its opinion on the annual pre-draft Community law defined in law 86/1989.

It is useful to recall that the a renewal of the institutional process has strengthened in recent years the autonomy of both municipalities and provinces. The main steps of this process consist of a new system of local bodies (law 142/1990), the law on the direct election of mayors and presidents of provinces (81/1993) as well as the new finance and accounting system (legislative decree 77/1995).

The first action implemented was the establishment of the State-Cities and local authority Conference by way of the PCM decree of 2 July 1996, based on the model of the State-Regional Conference. The following year, law n° 59/1997 gave legal recognition to the State-Cities Conference. This Conference examines the problems concerning the nature and the functioning of local bodies, problems which are related to the work of managing and distributing public services. The Minister of the Exchequer and the Budget and economic planning is systematically part of the governmental delegation. The delegation of local bodies to the State-Cities Conference is made up of the Presidents of ANCI, UPI, UNCEM, 14 mayors designated by ANCI (5 of which represent the large Italian cities), and 6 presidents of provinces designated by UPI. This distribution represents the tendency to leave the regions outside of negotiations concerning the reform and functioning of local authorities. The (partial) unification of the two Conferences, State-Regional and State-Cities, is a new stage in the bringing together of State-Regions and State-Local Authorities.

Law decree n° 281 of 28 August 1997 stated that the “ unified Conference deliberates, encourages and establishes ententes and agreements, expresses opinions, designates representatives according to the subject matter and degree of interest relative to the regions, provinces, mountain communities ”.. The unified Conference mainly expresses opinions on the draft law on finance and related draft laws and on the document regarding economic and financial planning. This last text is of major importance as it includes local and regional authorities in approval procedures of major draft laws and involves them in decisions concerning the allocation of resources.

The very existence of such a body as the unified Conference “ obliges ” the regions and local authorities to agree on a common front to be used against the governmental position, particularly when discussing questions of special importance, such as the opinion on the draft law on finance.

Without a common front, the respective positions taken are destined to cancel each other, giving an advantage to the governmental position. If the regions and local bodies do not come to a joint agreement, there is a true risk that this body will be immobilised. It must be concluded that if there are contradictory views between the regions and local authorities, the impossibility for the unified Conference to express any opinion whatsoever allows the Government to follow its own path, without worrying about taking into consideration the opinion of local and regional authorities.

The role of the unified Conference is not only a consultative one in that it is also called on to conclude agreements between the Government, the regions and local authorities. By definition, the adopting of agreements or ententes presupposes the agreement of each of the parties concerned. Moreover, even if one of the parties does not express its agreement on the understanding provided by law, the Government can intervene through a justification of its reasoning.

On the other hand, the possible disagreement of local authorities does not prevent the regions and the government from concluding bilateral agreements within the framework of the State-Regional Conference.

## Examples of procedures

Within a packet of proposals presented to the Government during the State-Regional Conference, the regions requested that the Conference also take action with regard to the defining of cultural policy and for the attribution of the FUS (entertainment funds). Other requests concerned the cultural heritage in order that small municipalities and non-profit organisations would be exempted from the payment of SIAE rights (Italian company Autori ed Editori) for cultural and artistic initiatives.

Previously, on 7 April 1999, the co-ordination of cultural deputies met with the Minister on Cultural and Environmental Heritage concerning the administrative and decentralisation reform of the sector on cultural and environmental heritage, the laws on music as well as the regions' request to participate in the policy planning of the management of the FUS.

## **Conclusion**

We recently drew up a table on the development of legislative measures connected to the debate on institutional reform and on the results of the work of the bicameral Commission (mixed Chamber of Senators and MPs) created to propose modifications to the Constitutional Charter of 1948.

The first parliamentary debates on the constitutional reform were interrupted because of strong political differences.

This decision was viewed very negatively by the Associations representing regions and local authorities.

While appreciating the considerable efforts made by Minister Bassanini to push for as much administrative decentralisation as possible by using all the margins for manoeuvre available under the Constitution in force, AICCRE forcefully showed its disappointment after the interruption of the debate on institutional reforms. AICCRE fought in favour of the continuation of reforms aiming for the adequate reorganisation of the Italian State according to a system based on the principle of subsidiarity in view of a democratic and federal Europe united economically and politically.

AICCRE and the other federalist partners (movements, municipalities, provinces, Regional Conference, etc.) have always pushed the Parliament and the representative political forces for federal reforms, for the full implementation of self-government, and fiscal autonomy (fiscal and financial federalism).

AICCRE has led the struggle for a federal system using the German experience as a general point of reference while introducing the changes necessary to adapt to the reality and history of the Italian institutions.

*Associazione Italiana del Consiglio dei Comuni e Regioni d'Europa*



# LUXEMBOURG

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## LUXEMBOURG

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### **Introduction**

In 1951, the Luxembourg local authorities associated together for the first time by creating the “ Association of Luxembourg Towns and Municipalities ” (ALTM). At the time, the consultation of local authorities by the national authorities was not a current practice and the organisational form chosen by the municipalities, namely a non-profit association, was not of a nature to compel the authorities to change their attitude. However, ALTM gradually grew in importance and, at the end of the 1960s, the Minister of the Interior began to solicit more frequently the Association’s opinion - on an informal basis, of course - on draft laws and/or regulations issued by this Ministry. An example from this period is the draft law concerning the merger of municipalities, later withdrawn, whose fate was strongly influenced by the positions adopted by ALTM.

In 1987, ALTM abandoned its status as a non-profit association and transformed itself into an intermunicipal “ union ” (association) : SYVICOL (French acronym). Its functioning now has a very specific legal basis to it, which has contributed to its growing role and political influence over the last ten years.

Today, SYVICOL is often specifically mentioned in legislative and statutory texts in all the cases where the implementation of the law or statute provides for a body on which a municipal representative must be designated.

### **Legal framework of the consultations**

In Luxembourg, there is no specific legislation concerning the consultation procedure of local authorities.

### **Detailed procedure of the consultation process**

#### At national level

In spite of the lack of legal provisions, the consultation of SYVICOL is today seen as the customary procedure for all texts which are likely to present some interest for the municipal sector, not only by the Minister of the Interior, but by all the members of the Government. This consultation is either carried out through a simple exchange of letters, or through meetings with the relevant ministers or the services and administrations concerned.

For some time, SYVICOL’s opinions have even been transmitted to the Chamber of Deputies and are in this case published as parliamentary documents which form an integral part of the legal dossier for evaluating a draft law. Although this process is of course dependent on the goodwill of the national authorities, it constitutes important recognition of the role played by SYVICOL.

SYVICOL is now in a position to be able to inform the Government if it has been overlooked in the consultation process and it can take initiatives to prompt the drafting of legislation sought by the municipal sector.

An important change is the promise made by the Prime Minister to hold meetings twice a year between the Government and SYVICOL for the examination of all problems concerning the municipal sector. The first meeting of this type was held on 1<sup>st</sup> April 1999.

#### At European level

Consultation is the general rule for issues of interest to all the public authorities. However, due to the lack of regional authorities, debates on European themes are rare.

SYVICOL plays a determinant role in the formation of delegations for the Committee of the Regions and the Congress of Local and Regional Authorities of Europe. It is called on to propose the representatives likely to be named and as a general rule, the Government Council fully relies on these proposals.

With regard to financial matters, the Government also supplies adequate means for the attaining of objectives at municipal level within the framework of the “ Grande région Sarre-Lor-Lux ”.

### **Evaluation of the procedures**

It must be acknowledged that the impact of SYVICOL’s opinions is not negligible. In addition to the taking into account of certain proposals on legal modifications, the wide publicity which is made through the intermediary of the press, particularly when the opinion is published as part of parliamentary documentation should also be noted.

However, SYVICOL still does not have the status with the national authorities which, for example, is automatically given to a “ Professional Chamber ” which must be consulted. Due to politics or an oversight, it still happens that the Government does not consult the municipal sector on questions of concern to it.

### **Examples of consultation**

#### Example of a recent case of consultation that was successful

The reform of legislation on intermunicipal associations, which will be voted on shortly by the Parliament, takes into account many proposals submitted by SYVICOL.

The government has agreed to consult SYVICOL’s Committee twice a year to discuss problems relating to the municipal sector. At the first of these meetings held on 1<sup>st</sup> April 1999, the government - at the request of SYVICOL - declared that it was in favour of a clarification of competencies between the State and the municipalities. This reform would be undertaken through a working group in which SYVICOL would be equitably represented.

#### Example of a recent case of consultation that was disappointing

The law concerning the implementation of the national employment plan, voted on early this year, provided for a reduction in the municipalities’ share of income tax revenue, to the benefit of business. SYVICOL, consulted late in the process (following an intervention with the Prime Minister), was not able to obtain any substantial lessening of the sacrifices to be made by the municipalities.

*Syndicat des Villes et Communes du Luxembourg*

# THE NETHERLANDS



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## THE NETHERLANDS

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### Introduction

The Netherlands are a 'decentralised unitary state', which means that ultimately the tasks, powers and competencies of the municipalities and provinces derive from the state level, while at the same time respect for local and provincial self-government and guarantees for their autonomous competencies are firmly rooted in the legal and political framework of the Dutch society.

Until the end of the eighteenth century, the Netherlands were a confederation of more or less autonomous provinces. Since the occupation of the Netherlands during the French empire much of the administrative system of the Netherlands bears resemblance to the French administrative system. With the adoption of the constitution of 1848, however, the principle and practice of decentralisation and the constitutional recognition of autonomous competencies of municipalities and provinces became a significant characteristic of the system.

Another relevant characteristic of the Dutch political and administrative culture is the continuous search for consensus-by-consultation. This characteristic applies to the players on the national level (cabinet, chambers of parliament) as well as to the relations between central government, provinces and municipalities. The existence of three representative national associations :

- Vereniging van Nederlandse Gemeenten, the association of the municipalities (VNG; founded in 1907; 100% membership);
- Interprovinciaal Overleg, the association of the provinces (IPO; founded in 1986; 100% membership);
- Unie van Waterschappen, the association of water boards (UvW; founded in 1927; 100% membership);

has been very supportive for this culture of consensus and consultation, even without a legal framework (as was the case before 1994). Informal contacts, political and/or on officer's level, were the vehicle for the consultation process.

### Legal framework of the consultations

Notwithstanding the general disposition to use informal ways to reach consensus, there have been many instances of late, sloppy, or even no consultation at all, of the sub-central authorities. IPO and VNG have successfully persisted in putting forward the need for a legal framework. Under the present Law on the Municipalities (revised in 1992) and the present Law on the Provinces (also revised in 1992) this legal framework for consultations has been introduced. Almost identical articles in both laws lay an obligation on the government to consult the municipalities and/or the provinces ("or a body which can be considered to be representative for the provinces/municipalities concerned") in all matters and proposed legislation which affect them.

Relevant articles in the Law on the Provinces (abridged):

Article 110 :

"Our Minister in charge informs, on request, the provincial government of his opinions and intentions in matters relevant to the province, unless the public interest forbids him to do so."

Article 111 :

"Our Minister in charge consults, on request, the provincial government in matters relevant to the province, unless the public interest forbids him to do so."

Article 112 :

“Our Minister in charge gives the provincial governments concerned, or a body which can be considered to be representative for them, the opportunity, if necessary within a set time limit, to comment upon draft legislation which :

- a. demands regulation or ruling from the provincial governments, or which
  - b. significantly alters the tasks or competencies of the provincial governments.”
- (.....)

Article 114 :

“Our Minister of Home Affairs is charged with the co-ordination of all national policy which touches the provinces. He furthers the scope of own policy-making of the provincial government.”

(.....)

Article 115 :

“Our Minister of Home Affairs furthers the decentralisation on behalf of the provinces.”

The corresponding articles in the Law on the Municipalities are the articles 112, 113, 114, 116 and 117.

## Policy agreements

In addition to the legal framework for consultations there is a more political framework. Since 1987 every new cabinet has signed a *policy agreement* (“bestuursakkoord”) with the VNG and the IPO. The fourth one was signed in March 1999. These policy agreements contain (in addition to or as a more specific interpretation of what is already codified in legislation) :

- rules of conduct to be observed between the three tiers of government ;
- general principles for the division of public funds between the national level, the provinces and the municipalities; and
- points of departure for tri- or bi-lateral co-operation in particular fields of public policy and/or for new legislation. In the present policy agreement three broad themes are defined for this co-operation: social infrastructure and public security; spatial-economic infrastructure; and quality of governance. In this respect the policy agreement serves as a common agenda for local, regional and national government, for the term of the cabinet.

The first codification of the rules of conduct in the 1987 policy agreement has eventually led to the legal framework as presented above. In the most recent policy agreement, it was agreed to bring together new additional rules and an elaboration of the already existing legal rules into an inclusive ‘protocol’.

Also in this recent policy agreement the so-called “three tier conference” is introduced. At least twice a year representatives of the three tiers of government will meet, chaired by the prime minister, to discuss the implementation of the common agenda, and to complement or renew it if and when necessary.

## Detailed description of the consultation process

Though there does not yet exist something like a standardised procedure, several common features in the existing practice can be mentioned:

1. Initiative : may be taken by all partners.
2. Frequency : consultations ex art. 110-112 are mostly non-recurring. The “Three tier conference”, on the contrary, will be recurring at regular intervals. There are other more or less recurrent consultations, such as, for instance:
  - Four-tier consultation (department of environment, IPO, VNG, UvW) on environmental affairs (high officials, 2 or 3 times a year);
  - Three-tier consultation (departments of foreign affairs and of home affairs, IPO, VNG) on EU and Council of Europe matters (monthly; high officials);

- Three-tier consultation (department of finance, IPO, VNG) on the national budget and the Provincial and Municipal Funds (once a year, political level).
3. Timing : consultations ex art. 110-112 nowadays normally start in an early stage of the decision-making process, at the basis for instance of a draft or even pre-draft policy-letter, or law, leading to successive rounds of consultation. Consultation is much more a revolving process than a once only event.
  4. Optional/compulsory : the consultations ex art. 110-112 are definitely compulsory. The other consultations are optional, though a request or an invitation for bi- or trilateral consultation is rarely refused.
  5. Official/unofficial : official (at politicians' level) consultations never stand alone; they are almost always preceded (sometimes: enforced) and prepared by unofficial contacts – at officer level as well as at political level.
  6. Parliament/ministers : most official consultations take place between the ministers (and their departments) and the local authorities. The chambers of parliament of course have their own constitutional position and responsibilities, which also give rise to many formal and informal contacts with representatives of local authorities. These contacts sometimes serve as a leverage for formal consultation with one or more ministers.
  7. Role of the Associations : leaving aside consultations regarding the individual interests of single municipalities and/or provinces or of groups of them, all the other contacts between local government and national government are taken care of by the associations (VNG and/or IPO).
  8. National issues/European issues : European issues fall outside the scope of the articles 110-112. More generally speaking: the European decision-making process (in particular: the decision-making process in the European Council) is very weakly embedded in the normal and well-tried ways and procedures within the framework of our parliamentary democracy. 'Normal' consultation procedures only apply when EU-law is transferred into national law.

### Political perspective

Decentralisation does not necessarily imply the devolution of national tasks, but can also be carried out through the extension of existing competencies or by broadening the scope of municipal or provincial autonomy. On the national level the present cabinet has defined a slightly modified position in the decentralisation debate. Decentralisation or proximity are no longer considered to be political goals in their own right, but are looked upon as one among other possibilities (and not always as a necessary condition) to raise the overall quality of government performance (on the local level as well as on the provincial or national level).

Apart from the inclusive 'protocol' on consultation procedures (as announced in the last *policy agreement*) much progress is still to be made in the field of EU policy making and legislation. At the national level much emphasis is laid on procedural or even legal arrangements to ensure or even enforce the implementation of EU rulings and regulations by the sub-central authorities. IPO and VNG stress the necessity for an early implication of local and provincial government in the preparation of EU policy making and legislation. Both approaches are included in the 'agenda' in the policy agreement.

### Evaluation of procedures

IPO and VNG are strongly convinced that the existing legal framework for consultation procedures should be improved. Although the legislation which came to force in 1994 has brought about a

positive change in the general attitude of the departments, there still are too many examples of no consultation or only 'pro forma' consultation in a very late stage of the legislation process. A comprehensive procedure for the consultation of local and regional authorities on EU legislation, a procedure which could give them a real influence on the legislation process, is still lacking.

### **Examples of consultation**

#### Positive

The government recently proposed to the associations a biannual meeting in order to debate all questions of concern to local and regional authorities.

For example, co-operation and dialogue are particularly prominent in the draft of the social assistance programme.

#### Negative

The government, without holding consultations with representative associations beforehand, decided to limit the ability of local and regional authorities to impose taxes in terms of environmental issues.

The strong reaction of the associations to this unilateral decision is one of the reasons which can explain the introduction of the biannual meeting mentioned above.

*Vereniging van Nederlandse Gemeenten  
Interprovinciaal Overleg*

# PORTUGAL

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## PORTUGAL

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### **Introduction**

The National Association of Portuguese Municipalities (ANMP), which has the legal status of a 'collective body of private law', was set up in 1985. Its overall objective is to promote, defend, highlight and represent local authorities, and to ensure in particular :

- the representation and defence of municipalities and “ fréguesias ” vis-à-vis the national authorities,
- the carrying out of studies and projects on themes of interest to local authorities,
- the representation of its members within national and international organisations.

Prior to the creation of ANMP, there were no consultations held by the government and the Assembly of the Republic. This was one of the main reasons which compelled municipalities to create a national association.

With the institutionalisation of ANMP, a consultation process was introduced which, no matter what the results, must be recognised as an achievement.

### **Legal framework of the consultation**

The Constitution of the Portuguese Republic does not contain any provisions setting forth compulsory consultation of the associations created by municipalities.

However, an ordinary law establishes this possibility. Law n° 54/98 of 18 August, which revises Law-Decree n° 99/84 of 29 March (the previous legal text in this area) establishes in its article n° 4 that the national associations automatically obtain the status of State partners, which confers upon them specific rights and in particular the right to “ Prior consultation by sovereign bodies on all legislative initiatives concerning an area of their competency ”.

### **Detailed description of the consultation process**

The consultation procedures have not been fixed by way of a contract or through legislation.

Made compulsory by law, consultations concern all aspects of the life of local authorities, and in particular those which are part of their competencies.

Consultations are held by the government and by the Assembly of the Republic, with no specific timetable, when the themes concern local authorities.

As a general rule, ANMP's participation consists of the drafting of an opinion on the draft in question.

Consultation procedures are unsatisfactory. First of all, the deadlines assigned are short and second, consultations are sometimes not held.

In the large majority of cases, the results of consultations are disappointing. Generally, the proposals are not accepted.

It should also be stated that no particular rule was defined regarding consultations specifically on European Union issues.

### **Political prospects**

ANMP has held increasingly broad consultations on various themes, independently of the political majorities in the executive and legislative branches of power.

However, as seen by the efforts made to ensure that the consultation procedures lead to concrete and important results, experience proves that, when there is no absolute majority in the parliament, the government is obliged to negotiate and thus works towards the practical, efficient implementation of proposed measures.

Furthermore, during times of economic crisis or social instability, signs have been visible of efforts aiming to strengthen co-ordination through an emphasis being placed on consultation processes.

### **Evaluation of the procedures**

ANMP is consulted on draft texts. Our association generally does not take part in the drafting of laws.

In general, the consultation is held prior to the approval of the texts by the Council of Ministers during their meetings or by the Assembly of the Republic. In most cases, it represents a formal step, without significance, which serves only to legitimise the government's actions.

In order for this situation to change, it would be necessary for the consultation to be held at an earlier stage, to allow ANMP to be able to give an opinion within a more reasonable timescale.

The main objective must therefore be the creation of a new body - the National Commission of Local Administrations - which would be entirely made up of representatives of local administrations and the central administration and whose principal mission would be the permanent co-operation and issuing of opinions on questions of interest to local authorities.

The establishment of an obligation to publish proposals and opinions made by ANMP concerning draft texts is also very important.

### **Conclusions**

It can be said that the consultations are mainly a pure formality - given that the law makes them compulsory - without effect on the decision-making process.

The time period assigned to the consultations are short, which proves that the decisions have sometimes already been made.

Fundamental changes are necessary to build a genuine partnership and not only purely consultative procedures.

### **Examples of consultations**

1. The last revision of the Constitution made by way of Constitutional Law n° 1/97 of 20 September which, in article n° 237, entitled " Administrative Decentralisation ", highlighted the role of local politicians by conferring upon them the responsibility of co-operating in the maintenance of public order and in the protection of local communities.

In order to draw up a text to be presented to the Assembly of the Republic, the government proposed to ANMP to form a working group whose objective would be to draw up a pre-draft law.

At the close of an internal discussion within ANMP on the problems of municipal policies, their nature, the municipal organisation, its competencies and powers, its development, the status of personnel, etc., the ANMP representatives within this working group defended the positions previously defined and which had in large part been taken up by the representatives of the government.

Following the drafting of the article of this draft law, approved beforehand by the Council of Ministers and transmitted to the Assembly of the Republic, we are awaiting its approval.

2. Decree n° 445/91 of 20 November which, with several modifications in decree n° 250/94 of 15 October, exempted construction projects promoted by the direct or indirect State administration from an authorisation by local authorities.

Consequently, an absurd task has been assigned to ANMP, resulting in numerous conflicts of responsibility regarding constructions which are irregular under the terms of municipal urban policy.

The practice confirms the irregularity of these measures, which have been suspended in the meantime. Consequently, ANMP has been fighting for the revocation of these standards which represent a breach of local self-government in the areas of spatial planning and urban policy.

However, recently, with the proposal to publish the Framework Law on Spatial Planning (Law n° 48/98 of 11 August), ANMP has for once succeeded in having its points of view underlined during the consultation process, without however managing to change the government's stance with regard to the general situation.

*Associação Nacional de Municípios Portugueses*





# SPAIN

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## SPAIN

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### **Introduction**

The notion of local self-government did not truly appear until the Constitution of 27 December 1978 went into force, in which article 137 asserted that the territorial organisation of the State consisted of municipalities, provinces and Autonomous Communities. This same article specified that all these bodies enjoyed autonomy in the management of their respective interests.

In addition, articles 140 to 142 of the Constitution guarantee the financial autonomy of local authorities.

The consultation mechanism provided by the law is conducted by the National Commission of Local Administration (CNAL, created in 1985), representative body of the State and local authorities proposed by FEMP. The mission of this Commission is to issue opinions on all draft laws which affect local and regional authorities. Nevertheless, these consultations are not compulsory.

There are also other sectoral committees in which FEMP representatives participate. They are mainly committees or working groups which involve the different Ministries and central administrations.

Prior to the creation of the CNAL, the National Commission on state collaboration with local authorities - created in 1977 - held the functions of the old Provincial Collaboration Commissions whose duties were essentially the co-ordination of services.

### **Legal framework of the consultations**

There are two principal laws regulating local authorities :

- law 7/1985 of 2 April 1985, establishing the basic rules of local government management.
- law 38/1988 of 28 December 1988, regulating Local Finance.

The first of these laws defines, in article 117, the CNAL as a “ permanent body of collaboration between the State Administration and local administration ”.

Royal Decree 1431/1997 of 15 September 1997 established the composition and duties of CNAL.

### **Detailed description of the consultation process**

The Commission is chaired by the Minister of Public Affairs, and is made up of an equal number (9) of representatives of the State Administration and of local authorities. The designation of the latter is entrusted to the representative association of local authorities in the best position to negotiate with the central government, namely FEMP.

The Commission can be convened by its Chair, at its own initiative or at the request of the local authority representatives. Representatives of the Autonomous Communities can be invited to these meetings as auditors.

Of course, the agreements must be the result of a consensus between the two representations. The position of the local authority delegation is adopted by the absolute majority of its members.

It is up to the Commission to issue rulings on the following cases :

- draft laws and State legislation in areas which concern article 5 of the Law and which affect local and regional authorities ;
- the criteria for the authorisation of the local authority deficits ;
- the application decisions made by the Council of Ministers under article 61 of the Law.

Likewise, the Commission can make proposals and suggestions to the government in the area of local management and in particular on the assigning and transfer of competencies towards local and regional authorities : grant allocations, credit and State transfers to the local administrations, share of local tax participation in the national finances and overview of the general State budgets which affect local and regional authorities.

To accomplish its duties, the Commission can ask the Institute of Local Administration Studies, technical body linked to the Ministry of Public Office, to carry out studies and prepare reports.

The CNAL can also ask legal bodies set up by the Constitution to address the Constitutional Court for the abrogation of laws adopted by the State or by the Autonomous Communities which breach local self-government (the principle of local self-government has been guaranteed by the Constitution since 1998). This same request can be made by the representation of local and regional authorities within the Commission. Furthermore, a reform is underway which would allow local government representatives to directly file a complaint against draft laws for reasons of unconstitutionality.

### **Political prospects and evaluation of the procedures**

For now, the functioning of the CNAL can be deemed satisfactory. The fact that it can be convened by the representation of local authorities means that the State Administration cannot turn a deaf ear to the requests for dialogue made by local and regional authorities. This therefore allows for a debate on all subjects, in spite of the non-binding characters of these agreements and opinions.

Within CNAL, a consensus was possible on very divergent issues. With regard to legislation, particular note must be made of the laws on local administration mentioned above and the laws on local finance and their application measures. Questions of great significance for local authorities, such as the integration of local civil servants in the social security system, the contribution of local authorities to the functioning of schools, etc., were also resolved by the Commission.

On the other hand, it is certain that in regard to various questions raised by FEMP, it was not possible to reach an agreement. This was the case in particular for the question of unemployment benefits for elected representatives at the end of their mandate, or in the past, the actions by local authorities to secure the direct jurisdiction of the Constitutional Court for the defence of local self-government. However, for this question, there was a recent agreement in favour of legislative reform, which, with certain nuances, will endorse this appeal.

Perhaps, there lacks a consultation procedure of the type used by the Autonomous Communities to debate subjects concerning the European Union since this area is not covered by the CNAL. Nevertheless, the question has not been a source of tension between the representation of the State and local level as dialogue has always been kept open.

### **Examples of consultations**

Generally speaking, the consultation procedures implemented when introducing new regulations of concern to local and regional authorities are considered satisfactory by local authorities. This also applies to the legislation introduced when the application of the “Local Pact” on the decentralisation of competencies was prepared with the active assistance of local authorities.

On the other hand, certain questions remain the issue of serious disagreements. This is particularly the case regarding the discussions on the municipal budget contribution for 1991 or the composition of the Spanish delegation to the Committee of the Regions.

*Federación Española de Municipios y Provincias*



# SWEDEN





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## SWEDEN

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### Introduction

The Swedish constitution states that the country is ruled by national Parliament and through local self-government.

There are 289 municipalities and, forming a second regional tier of local self-government, 20 county councils. Since 1999 there are also, on a preparatory basis, three directly elected regions with extended authorities.

In Sweden there is a well-established system in which municipalities and county councils are consulted in matters which affect them. But the consultation procedures are not formalised in the constitution and/or by law. Instead the procedures run within the political system, where for instance representatives of municipalities and county councils - together or separately - meet with governmental bodies in formal negotiations, formal or informal hearings/consultations on different matters of common interest.

The Swedish Association of Local Authorities and the Federation of Swedish County Councils act as representatives for the Swedish municipalities and county councils. These organisations have been given this authority by their members, including to give opinions, negotiate and also to come to agreements with the government. The negotiations cover the full range of responsibilities, for instance state subsidies to the school system, health care and other parts of the social welfare system.

### Consultations procedures

The responsibility for planning and implementing the main parts of the Swedish welfare system rests with municipalities and county councils. This task, which is founded on special laws for education, care of the elderly, child care and so on, are financed to a major degree by municipal or county taxes. Other sources of finance are state block grants, fees etc. Financing is the single issue which is most important when it comes to systematic dialogue between government and municipalities/county councils.

While the basics of the local/regional responsibility in different parts of the welfare system are laid down in the law, with large freedom for municipalities/county councils to form the work on a short and long-term basis in accordance with own priorities, financing is a subject for discussions on a yearly basis. In practice government takes initiatives to revise the societal financial framework, and the amount of money given as state grants, municipalities/county councils. Government also initiates discussions about the financial principles and long term priorities of policy areas such as child care and health care.

Some years ago, Parliament introduced a law which demands a financing principle to be used within the national decision-making process: no additional responsibilities should be imposed on the municipalities/county councils without government at the same time adding to the economic resources of the municipalities/county councils. This principle has been a cornerstone in the negotiations with the government, although the effects have been somewhat less brilliant than was hoped for.

The most important procedures through which government consults with municipalities and county councils pass via their national associations. Consultation is carried out either directly on a bilateral (trilateral) basis or - for long term perspectives - in national committees specially set up for analysing and giving suggestion on the need for changes.

In the latter case each municipality/county council is also given the opportunity to give their opinion directly to the government when the final suggestions are sent out for broad consultation.

In the above mentioned issues there are no formally stipulated demands for consultations laid down in the law or the constitution. But it would be politically impossible for the government to take a decision without having consulted municipalities and county councils before the formal decision is made.

During the consultations there is really a chance to influence the results – the procedure is not just a matter of politeness.

The Swedish system is characterised by politics. The political parties are the most important links between the different levels of society. This is why the subsidiarity principle, from a Swedish perspective, should preferably be looked upon as mainly an expression of political values and desires, not as a legal principle.

*Svenska Kommunförbundet  
Landstingsförbundet*

# UNITED KINGDOM



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## UNITED KINGDOM

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### **Introduction**

There are, and have long been, many legal requirements in British law for central government (via individual ministries) to consult with what it considers to be representative bodies of local government. The way such consultation has been carried out has varied, but often is a paper exercise. There has, till recently, been no overarching framework for such consultation.

### **The Central / Local Partnership (CLP)**

When the new Labour government was elected in May 1997, it took two significant initiatives in relation to local government. The first was to sign (and swiftly ratify) the European Charter of Local Self-Government. The second was to set up a new Central / Local Partnership. This Partnership is in effect a framework whose highest level overview comes via regular senior level meetings between senior government ministers, and the local government leadership of the Local Government Association for England and Wales (known as the LGA). Scotland works with a different system, involving meetings between the Scottish Office and the Convention of Scottish Local Authorities, CoSLA, following a long tradition of partnership. The coming of the Scottish Parliament will lead to new arrangements, which should maintain this tradition. Likewise in Wales, the Welsh Local Government Association will have (in its case by law) a partnership arrangement with the new Welsh Assembly.

The CLP meets about 4 times a year, under the chairmanship of the Deputy Prime Minister (John Prescott). Meetings last only for about 2 hours, with a pre-agreed agenda. The attendance on the government side depends on the subject-matter of the agenda, but so far the government has ensured senior ministerial attendance. Whilst by definition the central government representation is one-party (the government), local government is represented on a cross-party basis.

The CLP was set up under a written agreement, but it is important to note that it has no formal legal basis, and could therefore be abrogated without legal recourse.

The express aim of the high level meetings is "consider major issues affecting local government in England", particularly those which cross ministerial boundaries and require a government-wide approach, and to "identify joint policy objectives or areas where joint programmes of work between Departments and the LGA would be beneficial". The agreement also provides for other meetings on specific services or issues, which in practice is very extensive.

Under the agreement, both sides agree that there shall be "full and effective consultation on all matters of common concern" (except national security). The government "accepts the need to have regard to the views of local government, and the benefit of local government's experience, in making decisions which affect local authorities". To facilitate this, "the Government recognises the Local Government Association as the national representative body for local government in England and Wales".

The time allowed for consultation should be sufficient to allow a considered response, giving 6 weeks wherever possible.

The subject-matter covers in particular:

- Relevant financial matters
- Preparation and planning for implementation of new legislation
- European legislation and policy issues of direct relevance to local government, where the government is required to form a view in international for a, especially the EU and Council of Europe.
- Appointment by government of representatives of local government to other bodies (at regional, national or international level)

Other points covered include:

- LGA will assist with advice and guidance to local government on practical ways of implementing new legislation
- Where the government proposes new legislation which imposes new burdens on local government, it will discuss the estimated costs of those new burdens with the LGA, and will review those costs subsequently.
- Where the government considers an authority is "failing" in one or more major services, it will consult the authority and the LGA, and the LGA will (with the authority's agreement) work with it to improve standards rapidly.

This last point is very important, as the government is critical of the quality of services provided by a substantial minority of local authorities.

## **Finance**

Given its importance, Finance is one of the main issues regularly discussed by the CLP, both at full meetings and in a smaller group involving the ministers and leading Councillors most concerned. Financial issues considered include the totals of local authority expenditure and the case for reform of the local government finance system. The government is also required by statute to consult local government on the distribution of government grant between local authorities.

Government grant provides about 50% of local authority expenditure - the other 50% comes in roughly equal measures from the nationally determined business rate, and locally set taxes; only about 25% is therefore raised by locally set taxes. So questions of distribution are taken very seriously, and have been the subject of extensive discussion among officials of central and local government in recent years. The government wants to see a simpler, more stable system of distribution; local government wants changes to the overall system that will leave local authorities less dependent on central government decisions.

## **Evaluation**

The senior level meetings are seen as a reasonably effective way of discussing a joint agenda. Some government departments have fulfilled the spirit of the Partnership more fully than others, and the Education ministry is sometimes seen as less whole-hearted. The issue of the "improvement" agenda is critical here - it is not yet clear how much space the LGA will be given to assist local authorities in addressing real problems before the government seeks to intervene with those it considers to be "failing".

At a deeper level, the Partnership reflects an imbalance in the power relationship, as the policy agenda is mainly that sought by central government, i.e. it is more about how to implement central government's agenda, than an agreement on a common agenda.

Despite this, the approach is a great improvement on the past, and the agreement is an important matter for the LGA. To date, the political majority of the LGA has been the same party as the national government (Labour). As the political balance within the LGA alters, as is envisaged, it will be important to ensure that this does not affect the overall relationship.

## **Examples**

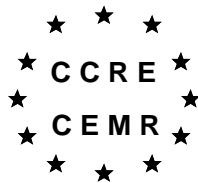
### Positive: "Modernising Government"

The government has started to involve local government representatives in some wider policy agendas than simply traditional local government ones. The Chairman of the LGA has been invited to sit on a central government Cabinet Committee looking at "Modernising Government" (not just local government), and the LGA's Chief Executive sits on the Permanent Secretary's Steering Group for this Committee. This work looks in particular at what is known as "joined up government" - how all the "spheres" can work together to address major cross-cutting agendas.

### Negative: "Failing local education authorities".

The government passed legislation which gives very strong powers to the Minister to intervene, and even remove education powers from local authorities, if in his view they are failing in a major way. This was done without significant local government consultation, and enables him to intervene in law without consultation with the LGA. The LGA is now trying to rescue the situation, by drawing up a "protocol agreement", under which in practice, the Minister will consult the LGA and give it an opportunity to assist the local authority before the Minister intervenes formally.

*Local Government International Bureau*



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