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The consultation of local authorities by higher levels of government

Governance Committee

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Resolution 437 (2018)	2
Guidelines	3
Explanatory memorandum	8

Summary

The right of local authorities to be consulted by higher levels of government, on matters that concern them is a core principle of local democracy, enshrined in the European Charter of Local Self-Government. For such consultation to be effective, it must be translated into a policy and regulatory framework that reflects the needs of local government in each member State.

The Congress pays great attention to the existence of effective and efficient systems of consultation in member States and advocates a thorough and comprehensive approach to consultation, in order to achieve better decisions and quality governance at local and national levels. Resolution 368 (2014) 'Strategy on the right of local authorities to be consulted by other levels of government' calls upon national and local authorities and associations of local authorities to work together to establish systematic and regular consultations in their countries. The strategy identifies key actions to improve consultation in member States, notably for the Congress to provide guidelines for national associations in this respect.

These guidelines outline the main elements that such consultation procedures should include.

1 L: Chamber of Local Authorities / R: Chamber of Regions
EPP/CCE: European People's Party Group in the Congress
SOC: Socialist Group
ILDG: Independent and Liberal Democrat Group
ECR: European Conservatives and Reformists Group
NR: Members not belonging to a political group of the Congress

RESOLUTION 437 (2018)²

1. The right of local authorities to be consulted by higher levels of government is a fundamental principle of European legal and democratic practice, enshrined in the European Charter of Local Self-Government (ETS No. 122, Articles 4.6, 5, 9.6 and 10). When consultation is conducted in due time and in an appropriate way on all matters which concern them directly, it contributes to strengthening democracy and good governance and to development and implementation of sound policy and legislation.

2. In accordance with its Resolution 368 (2014), whereby it adopted the strategy on the right of local authorities to be consulted by other levels of government and undertook to elaborate guidelines to improve consultation processes by making them more carefully defined and result-oriented, the Congress of Local and Regional Authorities of the Council of Europe:

a. adopts the guidelines on the right of local authorities to be consulted by higher levels of government, as appended to this resolution;

b. undertakes to use these guidelines as a reference document in its monitoring activities;

c. calls on local authorities and the national and regional associations of local and regional authorities to use these guidelines as a tool and inspiration in their dialogue with their regional and national governments about improving consultation processes.

² Debated and adopted by the Congress on 8 November 2018, 3rd sitting (see Document CG35(2018)20, explanatory memorandum), rapporteur: Anders KNAPE, Sweden (L, EPP/CCE).

APPENDIX

GUIDELINES ON THE CONSULTATION OF LOCAL AUTHORITIES BY HIGHER LEVELS OF GOVERNMENT

I. Introduction

1. The right of local authorities to be consulted by higher levels of government, a fundamental principle of European legal and democratic practice, that is enshrined in the European Charter of Local Self-Government (ETS No. 122, Articles 4.6, 5, 9.6 and 10), contributes to good governance and the development and implementation of sound public policy and legislation.

2. Consultation has to be a required part of policy making and administrative processes, in order for the wishes of local authorities to be known in good time and properly taken into account in the decisions of national and regional authorities.

3. Local authorities need to have an active role in drawing up the decisions and public policies on all matters that concern them. Their contribution needs to be organised in an appropriate way and a timely manner such that they have a real opportunity to formulate and articulate their own views and proposals, in order to exercise influence.

4. To avoid consultation processes remaining just mechanisms for the provision and exchange of information, these guidelines aim to enable local governments and their associations to strengthen and facilitate effective consultation, and to develop a system of genuine political negotiation.

II. Purpose and principles of consultation

A. Purpose

5. Creating favourable conditions and mechanisms for effective consultation of local authorities by higher levels of government is in the interest of both parties as it can increase reciprocal understanding of the challenges and realities faced, the division of responsibilities and the objectives and priorities of both parties. This dialogue can provide a forum for general discussion, in particular with regard to financing issues, and can create the conditions for a shared perception of the problems and opportunities relating to local self-government and municipal operations. It can facilitate the understanding among higher levels of government of the conditions in which local authorities have to deliver their share of the public services. In return, this can give local authorities a better understanding of the overall responsibility of parliaments and governments for the whole public sector. Effective consultation mechanisms hence favour the development and implementation of more pertinent legislation and policies.

6. The guidelines on the consultation of local authorities by higher levels of government aim to provide national associations of local authorities and national delegations guidance on:

- the concept of consultation;
- the legal framework and institutional settings;
- the process and procedure (format, timing, information, publicity).

7. Their objective is to inspire local authorities and their associations to improve consultation processes by making them more carefully defined and result-oriented. The overall aim of these guidelines is to help reinforce the culture of communication, consultation and dialogue between the different levels of governments in the Council of Europe member States, in the interest of both democracy and the efficiency of governmental decision making.

B. Principles

8. The consultation of local authorities by higher levels of governments should be guided by the principles:

- mutual respect between all actors;

- openness and transparency;
- responsiveness, with all actors providing appropriate feedback.

III. Guidelines on how to conduct consultations

9. An efficient consultation of local authorities by other levels of government rests on two pillars: a well-defined national regulatory framework and an appropriate institutional setting. The right of local authorities to be consulted should be enshrined in national legislation. It is equally important that each member State has an appropriate institutional framework for organising consultations with local authorities. For their part, local authorities need institutions that are capable of representing and protecting their interests, such as national associations of local authorities that can allocate the appropriate resources and time to ensure effective representation of local authorities in consultation procedures.

10. Another key component to any successful consultation is the existence of an appropriate administrative practice and decision-making culture at the level of national and regional governments. This requires not only a well-formulated legal framework at the national level and, where appropriate, the regional level, with written rules and regulations, but also the possibility of organising formal meetings, both standing and ad hoc commissions/committees, and working groups for exchange of views and knowledge on particular issues (especially in areas of local finance and asset management) of an operational nature, which require measures to be taken by the national and regional governments.

A. Legal framework

11. The consultation of local authorities by higher levels of government requires a well-formulated legal framework at the national level. The European Charter of Local Self-Government stipulates in its core principles that: local authorities should be consulted in a timely manner and an appropriate way in the planning and decision-making processes for the matters that have direct impact on them (Article 4.6); that they should be consulted on the ways in which redistributed resources are to be allocated to them (Article 9.6); and that changes in local authority boundaries shall not be made without prior consultation of the local communities concerned (Article 5).

12. Signatories to the Charter should enshrine the rights of local authorities to be consulted and these core principles in their domestic legislation, preferably in the constitution. Steps must be taken to ensure that the right to consultation is guaranteed both in law and in fact. Moreover, recognising that some countries have successfully developed consultation traditions, which are not underpinned in the legislation, it is recommended that the relevant legislation also provides clear and detailed regulations of the process of consultation in order to make this process formal, predictable and result-oriented. The relevant legal framework could therefore clearly describe a. the objectives of consultations; b. the parties involved and their rights and obligations; c. the time frame, forms and procedures for consultations; and d. the expected outcomes of consultations.

13. The legislation should also guarantee that written records of consultations are maintained and that local authorities have the right to receive clear and detailed information in writing about proposed policy documents and regulatory decisions. Domestic legislation should recognise the role of national associations of local authorities in the process of consultation of local authorities by higher levels of government. The legislation should also guarantee the right of complaint or petition of local authorities if they believe that necessary consultations have not been properly conducted or conducted at all.

14. National legislation and, if appropriate, regional legislation should recognise the right of national associations of local authorities to be involved in consultations and to represent the interests of their members.

B. Institutional setting

15. The consultation of local authorities is a process which requires a formal and adequate institutional setting. Consultation with local authorities is the responsibility of the particular national (or regional, if appropriate) public institution that holds a decision-making mandate on the matters concerning local government.

16. Accordingly, the national executive power is a key actor in the consultation of local authorities on policies and decisions that have a direct impact on local life. A line ministry is usually responsible for local government and territorial administration: this ministry should take measures to organise consultations with local authorities. If there is no line ministry responsible for local authorities, the ministry of finance should be responsible for the organisation of consultations with local governments on the resources to be allocated to local budgets. Consultations can also be conducted at higher levels, such as with the president of the State or/and prime minister, but while consultations at this level are to be welcomed, consultative meetings with the relevant line ministries are also needed in order to ensure practical results. Regulations at the level of the relevant line ministries should clearly stipulate the forms and procedures for the consultation of local authorities.

17. Another key actor in consultation is the national (and, where appropriate, the regional) legislative body which has the mandate to adopt a national regulatory framework on local self-governance. When national legislative bodies have structural units (committees) that deal with specific sectoral affairs (in most countries a specific committee is responsible for local self-governance and regional policy in the parliament), legal initiatives are usually discussed at the level of committees before they go to the session of parliament for adoption. The level of parliamentary committees is thus the most appropriate for organising consultations on legal initiatives that have a direct impact on local government. Parliamentary committee rules of procedure should therefore include specific provisions on the organisation of consultations with local authorities, identifying the subject of consultation, the procedures and time frame, and the participants in this process.

18. The rules of procedure should not only allow local authorities and associations of local authorities to attend sessions of the committees, but also to have full access to all relevant documents and to present written opinions on draft legislation. The rules of procedure of parliamentary committees should also include the possibility of involving experts from associations of local authorities in the preparation of draft laws that have an impact on local authorities, their legal status, tasks and functions and economic or financial situation.

19. In federal and regional States, regional and federated State authorities are also key actors in the consultation process and they should communicate policies and decisions to local authorities under their mandate. Where regions with legislative powers are concerned, consultation processes should be organised with regional legislative and executive powers. If there are no ministries at the regional level, consultations should be organised with the head of the regional legislature and the relevant executive departments of regional administrations.

C. Role of national associations of local authorities

20. National legislation should recognise the right of national associations to be involved in consultations and to represent the interests of their members. Local authorities and their associations of local authorities are both actors and beneficiaries of the consultation process. Local authorities should speak to national and regional governments, as far as possible, with a united voice. The existence of strong national associations of local authorities is therefore a precondition for the successful consultation of local authorities by other levels of governments. In addition to the national legal framework, associations are encouraged to draw up a memorandum of understanding with the national parliaments and line ministries, to function as a guideline which defines the details of consultation processes and their modus operandi relating to the practical application of the right to be consulted, as guaranteed by the Charter.

21. In countries where local authorities are represented by several associations, national governments should facilitate the establishment of a national system for consultation with local authorities and guarantee the representation of all associations in the consultative process. All levels of government should be represented in this national system of consultation. National associations should co-operate together as closely as possible, in order to define common positions on issues that affect them.

22. The national association of local authorities usually represents local governments in the consultation process. However, this does not exclude the possibility for local governments to be consulted individually. When the consultation is carried out only through the associations of local authorities, it is an obligation of these associations to disseminate the documents and information to their member authorities, and to collect feedback from them. In countries where no association of local authorities exists, it is the responsibility of line ministries with a decision-making mandate to send the draft decisions and policies to local authorities and request their opinion.

D. Processes and procedures

23. Local authorities shall be consulted, insofar as possible, in due time and in an appropriate way in the planning and decision-making processes for all matters which concern them directly.

Participants in the process

24. National associations of local authorities should represent local governments in the consultation process. They should ensure that they are regularly invited to review relevant legislative and policy initiatives, co-operate with other associations and regularly exchange good practices with each other.

25. Individual local governments can be consulted. However, if the subject of consultation relates to more than one local government unit, co-ordination between the local government representatives concerned needs to be ensured.

Object of the consultation

26. Local authorities should be consulted on all matters that concern them directly. They are directly concerned when the implementation of a government policy or any legal act directly affects their legal status, competences, economic and/or financial situation.

27. In particular, consultation should be mandatory when any decision concerning changes to local authority boundaries is discussed (Article 5 of the Charter) or the way in which redistributed resources are to be allocated to them (Article 9.6). Whenever additional tasks are transferred to local authorities, an economic impact analysis is necessary (Article 9.2).

Stages of involvement of local authorities

28. Local authorities and their associations should have an active role in the preparation of decisions and a real opportunity to express their own views and proposals.

29. National and regional authorities should also ensure that the form and timing of consultations are such that local authorities and associations of local authorities have the possibility, other than in exceptional circumstances, to properly inform and consult their members, prepare and submit constructive propositions, and to express their interests and opinions in time for them to be taken into account in policy and legislative formulation. The Charter does not specify any normative time frame as it depends on the conditions and context in each member State. The complexity of the issue must, however, always be considered so that the parties being heard have time to give a relevant response.

30. Consultations should be organised at the preparatory stage of drafting of decisions/policies and not after their adoption by the relevant decision-making body, so that local government expertise can be included.

Forms of consultation

31. State authorities in co-operation with associations of local authorities should define the details of the process and the form that the consultation should take, to ensure that the process respects the principles of the Charter, namely to organise consultations in an appropriate manner. Both sides should agree in advance on any transparency measures and communication with the media with regard to the consultation process, and also identify the person(s) responsible for providing the reports of the sessions. Meetings should have specific and well-structured agendas and pre-agreed lists of participants, and meeting documents should be disseminated to all participants.

32. The European Charter of Local Self-Government does not define or prescribe the forms of consultation or give any precisions on the consultation process. As there is no "one size fits all" solution, a variety of forms can be used, according to the issues discussed and in accordance with the laws and regulations and specific traditions of the country concerned.

33. Consultations may be conducted in written form. In such cases, the written records of the consultations should be maintained and made available to all interested parties.

34. Formal meetings: consultations may include the organisation of formal meetings or the establishment of ad hoc commissions and working groups for exchange of views and knowledge on particular issues of an operational nature (especially in areas of local finance and asset management), which require rapid measures to be taken by the national and regional governments.

35. Joint consultative platforms: a platform bringing together the national government and the associations of local authorities can be put in place. Such bodies consist of both the representatives of the government and the associations, with both sides delegating representatives in equal numbers.

36. Round table discussions: in federal States, these roundtables may include representatives of three levels of government – federal, regional and local. Such multilevel roundtables tend to be organised on matters that have an impact on all levels of public administration. Typically such roundtables are organised to examine draft federal budgets and to discuss central subsidies for regional and local governments. They allow associations of local authorities to channel their experience and expertise into the legislative process at an early stage. They should take place regularly and have a predefined agenda.

37. Special advisory boards: national and regional governments may wish to introduce special advisory boards for the elaboration of draft decisions. It is important that the experts who take part in such consultations have a clear mandate from the national association(s).

38. Participation in parliamentary committees: this process should be regulated by a memorandum of understanding between the association of local authorities and the relevant parliamentary bodies, which should define the obligations of the participants and their contribution to the legislative process.

Information and publicity

39. National and regional authorities should provide clear and detailed information, in writing, about proposed policies, well before the consultations are due to take place, in order for those consulted to be well informed about the motives and objectives of each planned decision or policy. Adequate information should also be provided in a timely manner during the consultation process itself, in order to facilitate substantive input by the local authorities.

40. The contributions of the different parties consulted and the results of consultation should be made public.

41. Public authorities should provide publicly available feedback on the outcome of consultations. The results should be published and disseminated according to national regulations. A detailed explanation of the reasons for retaining or not retaining certain proposals should also be communicated in writing and published.

42. National associations of local authorities should regularly publish information about consultations with national and regional authorities for the attention of the general public and disseminate the results of consultations among their members. When the national association supports the final decision of the consultation, an official statement of its support should be made. When it does not agree with the decision, it can make an appropriate public statement, giving the grounds for its position.

43. All parties involved in consultations should make maximum use of the increased consultation opportunities provided by new media.

EXPLANATORY MEMORANDUM

1 Introduction

1. In 2014 the Congress adopted Resolution 368: 'Strategy on the right of local authorities to be consulted by other levels of government', with the objective of strengthening the consultation process between the different levels of government in the member States, in order to make the involvement of local authorities more effective and thereby to improve the quality of legislation and policy at national and regional levels.

2. The European Charter of Local Self-Government contains several articles on consultation of local authorities by other levels of government, there are two types of consultation: a) consultation on general terms, namely on every matter that has a direct impact on local authorities (Article 9 para 6) and b) special consultation on changes of in local authority boundaries (Article 5) and on the distribution and allocation of financial resources to local authorities (Article 9 para 6). As both types of consultation have the same legal status, importance and procedures, their importance should be equally recognized by all levels of government.

3. The Congress has adopted several other recommendations and resolutions on the right of local authorities to be consulted by other levels of government. In its Recommendation 171 (2005)³ the Congress emphasizes that the right of local authorities to be consulted ("enshrined in Articles 4.6., 5, 9.6 and 10") is a fundamental principle of European legal and democratic practice, the aim of which is to contribute to good governance. Consultation has to be a required part of policy-making and administrative processes, enabling the wishes of local authorities to be known in good time and properly taken into account in the decisions of national and regional authorities. In this Recommendation the Congress welcomes the fact that "the consultation process is gradually becoming an essential feature of political negotiation between the state and local authorities" and that associations of local authorities play a very important part in the processes "of advancing common interests and carrying on institutional dialogue either with national government or with the regions". At the same time the Congress recognizes that consultation "rarely takes the form of genuine political negotiation" while it is "almost always a mechanism for the exchange of information". Therefore it recommends, inter alia, to "develop the consultation process into a system of negotiation"; furthermore to recognize national associations as partners in the consultation process and set up a permanent consultation body.

4. In its Recommendation 328 (2012)⁴ the Congress stressed that local authorities should have an active role in adopting the decisions on all matters that concern them and in a manner and timing such that local authorities have a real opportunity to formulate and articulate their own views and proposals, in order to exercise influence. The Congress further refined previous suggestions and asked member States, inter alia, to specify the format of consultations, provide proper, clear and detailed information in writing well before the consultation, involve local government expertise in drafting policies and legislation, carefully analyse implications of strategically important decisions, publicize the results of consultation (also explaining reasons for not retaining proposals) and recognizing the right of local authorities to petition and to redress when consultation procedures were not properly conducted.

5. In its Resolution 347 (2012)⁵ the Congress called on national associations of local and regional authorities to lobby their national/regional governments to implement all Charter articles concerning consultation, furthermore to allocate appropriate resources to ensure effective representation of local authorities in consultation procedures. National associations should also ensure that they are regularly invited to review relevant legislative and policy initiatives, cooperate with other associations and regularly exchange good practices with each other. Finally, the Congress resolved to develop guidelines and present a strategy to further strengthen the consultation process.

6. In its Resolution 368 (2014)⁶ the Congress adopted a pertinent Strategy with the purpose of strengthening and making more effective the consultation processes, thereby also improving the quality

3 Debated and approved by the Chamber of Local Authorities on 1 June 2005 and adopted by the Standing Committee of the Congress on 2 June 2005 (see Document CPL (12) 5)

4 Debated and adopted on 18 October 2012 by the Congress (see Document CG(23)II, explanatory memorandum)

5 Debated and adopted on 18 October 2012 by the Congress (see Document CG(23)II, explanatory memorandum)

6 Debated and adopted by the Congress on 27 March 2014 (see Document CG(26)9 FINAL, explanatory memorandum)

of legislation and of local and regional policies. The key activities of this strategy would be to: (1) provide guidelines, (2) make use of the Congress's monitoring and other activities, (3) systematise the evaluation of consultation procedures, and (4) collect data from member States. Resolution 368 (2014) also included a systematic list of concrete elements to be included in consultation guidelines.

7. The objective of this report is therefore to explain the application of articles 4.6, 5 and 9.6 of the Charter in member States and to identify the role of national associations of local authorities in the process of consultation of local authorities by higher levels of government.

8. This report begins by a description of how the right of local authorities (and their associations) to be consulted should be institutionalised in the national legislation, examining the formal recognition and legal framework of consultation. It looks at the regulatory framework, the main types of regulation, subjects of consultation, participants and procedures of the consultation process.

2 The right to consultation in the Charter

9. Article 4 *paragraph 6*, about timely and appropriate consultation of local authorities when planning and decision-making processes deal with matters directly concern them, is not the only provision of the Charter on consultation. Article 4.6 introduces the right of local authorities to be consulted as a general principle, while two more provisions, Article 5 on local authority boundaries and Article 9 para. 6 on redistribution of resources refer to special fields of consultation. Article 10 refers to an association for the protection and promotion of local authorities' common interests.

10. According to Article 4.6 of the Charter, "local authorities shall be consulted, insofar as possible, in due time and in an appropriate way in the planning and decision-making process of matters which concern them directly". There is a general understanding that a public or private body is "directly concerned" when the implementation of a government policy or, in formal sense, any legal act directly affects its legal status, powers and functions, economic and/or financial situation.

11. If many local authorities are concerned, these local authorities can be represented by their legitimate representative, namely an association of local authorities. In many countries local governments are represented by a national association, which represents at least 50% of all local government units. However there are a number of countries where the representation of local authorities is fragmented into several associations of local authorities. Whether local authorities are represented by one or several associations, it is the responsibility of national and regional governments to guarantee the equal and efficient representation of local authorities in the process of consultations.

12. The requirement that consultations be conducted in an "appropriate way" implies that they should be organised in a way that allows local authorities to formulate and present their own views and proposals. This does not mean that national and regional authorities will accept those proposals, but it is a requirement that opinions and proposals from local governments be presented, discussed and taken into consideration before a final decision is taken. However, the right to take the final decision independently and under its own responsibility remains on the side of the institution that holds the decision-making mandate.

13. The meaning of "due time" is to ensure that the form and timing of consultations are such that local authorities will have the possibility to influence the decision-making process and avoid situations where the right of local authorities to be consulted is overridden on such pretexts as urgency and cost-saving. The Charter does not specify any normative timeframe for collocation "due time" as it depends on the conditions and context in each member State. However this implies, *inter alia*, that consultations should be organized at the stage of drafting of decisions/policies and not after their adoption by the relevant decision-making body.

14. The European Charter of Local Self-Government does not define or prescribe the forms of consultation or give any precisions on the consultation process. Recognising that the Charter's basic function is to establish the general concept and framework for consultations, it can be deduced that the main process of consultation is based on three basic conditions: a) local authorities should be able to get full information on decisions and policies that concern them directly and this information should be available at the initial stage of the decision-making process; b) local authorities should have the possibility to express their opinion on decisions and policies before these become legally binding

documents and c) local authorities should have the time and capacity to prepare recommendations or alternative drafts and present these for debate and consultation.

15. The right of local authorities to be consulted should be enshrined in national legislations, preferably in the constitutions of member States. In many countries the legal acts adopted by parliaments can be classified into two groups: a) those where the right to consultation is generally recognised and b) those where legislation provides for local governments to be consulted in specific areas (such as with regard to boundary changes, in accordance with Art. 5 of the Charter). In most cases, the right to be consulted is generally recognised “for all matters that concern local authorities directly”, which gives more power and flexibility to local authorities to present and defend their interests.

16. National legislation should recognise the role of national associations to be involved in consultations and to represent the interests of their members (Article 10 para 2 of the Charter). In this respect, national legislation can take one of two approaches. The first approach makes it mandatory for higher levels of government to consult with those associations that represent more than 50% of local government units, whereas the second approach does not set any conditions for associations to be involved in consultations. Whereas such ‘representativeness thresholds’ for associations to be involved in the consultation process may vary from country to country, the position of local authorities vis-a-vis other levels government is obviously much stronger if they can speak with a single voice.

3 Participants in the process of consultation

17. In most cases the legislation of member States does not specify which institution of the national government is responsible for organizing consultations with local government. Conventional administrative logic suggests that the line ministry that has the mandate to take a decision on a particular matter should be responsible for organising consultations. Resolution 368 (2014) stresses the need “to create forms of continuous consultations between ministries and the political representatives of the different political levels”.

18. Where consultation with local authorities is concerned, the national government is usually represented by a ministry responsible for local government matters. Occasionally, other members of the government, such as the ministry of finance or ministry of economy, are also involved in the consultation process, in view of their responsibilities and the matters that are being discussed. In some countries (such as Georgia) the legislation defines the ministry that is responsible for consultation with local authorities, and this ministry has the mandate to present the results of consultations to other relevant ministries and/or to involve their representatives in the consultation process.

19. Consultations are often organized in the legislative process in national parliaments, specifically at the stage of hearings in the committees. As a rule, the relevant parliamentary committee holds three hearings with the participation of interested parties and independent experts. Thus, the committee stage is an appropriate moment for local governments and their associations to present their opinions and recommendations. The question remains as to who should be responsible for initiating and organizing such consultations, the local governments (and their associations) or the parliamentarians, as the latter have a legislative mandate. Unlike in line ministries, the legislative process in parliaments is not based on administrative processes, but on elected mandates and a process of deliberation. However, to distinguish consultations from lobbying, it should be recalled that the objective of consultations is to take decisions which are the most appropriate in the light of real needs, and therefore the body that takes such decisions should be responsible for organising the consultations.

20. National legislation rarely obliges parliamentary committees to organise consultations. Since governments submit most legal initiatives to the legislature, parliamentary bodies might assume that the necessary consultations had already taken place in the preparatory stages. Nevertheless, the parliamentary bodies are key decision-makers with regard to the legal framework of local government. Moreover, as initiatives submitted by the government often change at the parliamentary stage, it is important to organize consultations with the relevant parliamentary committees. In some countries, the association of local authorities and the relevant parliamentary bodies sign a memorandum of understanding that stipulates specific obligations, including a requirement that the association should be involved at the stage of committee hearings of those legal initiatives that have a direct impact on local government. Working with the legislature can be a powerful tool for local authorities to defend their

interests, and it is therefore important that parliamentary bodies play an active role in organising consultations with local authorities.

21. In federal and regional states there is a question concerning the level at which consultations with local governments should be organised. The experience of European countries shows, that in federal states, consultations are often organized at the level of subjects of the federation, while in other states with regional authorities, consultations tend to be organized at the national level, as this level usually has the mandate to take decisions on local government issues.

22. Usually the national association of local authorities represents local governments in the consultation process. However this does not exclude the possibility for individual local governments to be consulted. If the subject of consultation relates to more than one local government unit, then some coordination between local government representatives for the protection of their common interests is unavoidable. In some countries, there exist two or more associations of local authorities, which may be organised according to types of local and/or regional governments (county, region, land). Also in many countries there exists an association of local government officials (association of mayors, community finance officers etc.), which may also have a role to play in representing local interests, especially when sectorial legislation is concerned.

23. The consultation process is easier when local governments are represented by a unified association, which has well-established links with its members and has the capacity and expertise to participate effectively in the consultation process. Consultation with several associations is more difficult, especially when these associations are not homogenous, do not have equal capacities and in some cases include small associations which are divided across political lines. Whereas political connections provide valuable informal channels for lobbying for one's own interests, they carry hidden risks of making associations mere supplements to party politics, especially in countries with a centralised governance and polarised political system.

24. National governments may wish to encourage the establishment of a national consultative system in cases where several associations of local authorities exist. In such cases, the national government agency that is responsible for consultation should ensure that the associations are proportionally represented and there are clear and strict rules for making decisions and for formulating joint opinions on the subject of consultation. Indeed, national/regional authorities may decide to consult with each association individually, but in such cases the position of local authorities is relatively very weak, with the stronger associations tending to have more influence than the weaker ones.

4 Institutionalised system versus customised process

25. The European Charter of Local Self-Government does not specify in what form or institutional framework consultation with local authorities should take place. National legislation in member States also tends not to address this issue. As mentioned above, in some countries consultations are obligatory with those associations which represent the majority of local government units, while in other countries no such obligation is enshrined in national legislation. The procedures for consultation tend to be defined in bylaws and rules of procedure, adopted by ministries and other government institutions, and therefore the practice of consultation in member States varies significantly according to whether the procedure of consultations is formalised or not.

26. As a rule, the legal acts adopted by national parliaments include detailed procedures of consultation with local authorities when it comes to changes of administrative boundaries. In some countries, the national budget law also includes procedures for organizing consultations with local authorities. However, when it comes to consultation on general matters, the legal acts do not usually give any detailed description of consultation procedures, and these tend to be determined by agreements and memoranda between national and local authorities.

27. In some countries, the negotiations are formalised, but informal practices and customs also play an important role. Frequently, the procedural rules relate only to the institutional arrangements of consultations, rather than the interactions between representatives of national and local authorities. However, informal consultations do not tend to contribute to achieving long-term results and do not contribute to the development of democratic practice in decision-making and policy formulation.

28. Institutionalised consultation requires well-established rules and procedures, as well as institutions that have a clear mandate in the process of consultations. Usually such rules and procedures are defined by agreements between local and national authorities, as well as by the rules of procedure of public bodies, and are known and understood by all parties involved in the consultation process. The key players in institutional consultations are the national associations, which have the capacity to articulate the interests of their member municipalities and present these interests in during the consultation process. National associations can also appoint experts to various committees and working groups organised by line ministries and parliamentary bodies in specific areas of local government policy.

29. The main characteristics of institutionalised consultation are:

- formally defined rules and procedures;
- identification of the institutions that have the mandate to represent their constituencies;
- consultations which are based on written communication, with procedures which are open and transparent.

30. Institutionalised consultations give local authorities the possibility to develop a long-term strategy for consultation with other levels of governments and to make the consultation process more result-oriented. Institutionalised consultation also provides additional participatory rights, such as involvement in the drafting of legal acts and in the elaboration of policy documents. As national governments are aware that they have to consult national associations, they are naturally interested in involving the representatives of those associations in the elaboration of draft decisions and policies.

31. However, such close cooperation between national and local authorities is difficult if consultations are carried out in an informal manner. In such cases, both parties may pursue short-term interests and the communication tends to end as soon as decisions are taken. For this reason, the model of institutionalised consultations between local and national/regional authorities should be promoted in Council of Europe member States.

5 Forms of institutionalised consultation

32. The most common practice of institutionalised consultation of local governments by other levels of government is through the establishment of a joint consultative platform between the national government and the associations of local governments. Such bodies consist of both the representatives of the government and the associations, with both sides delegating representatives in equal numbers. When the consultative platform is organised with many associations, these are usually represented on a proportional basis.

33. The round table discussion is another practical form of consultation, which allows associations of local authorities to channel their experience and expertise into the legislative process at an early stage, thereby increasing their opportunities to influence the decision-making process. Such roundtables must take place regularly and have a pre-defined agenda. In the interests of transparency it is advisable to invite the press and media to these roundtables. Associations of local authorities should ensure that their designated elected representatives play an active part in the discussions and that member municipalities are well informed of the agenda and the outcome of the roundtable. Roundtables can also be an effective tool for the consultation of local authorities by line ministers on current policy priorities. In such cases, it is important to identify the possible impact of draft policies on local governments and to formulate recommendations to ensure that these policies take into consideration the legitimate interests of local authorities. Associations of local authorities should publish regular reports on such roundtables, disseminating information on the subjects, the conduct and the results of these roundtables.

34. In federal States, these roundtables may include representatives of three levels of government – federal, regional and local. Such multilevel roundtables tend to be organised on matters that have an impact on all levels of public administration. Typically such roundtables are organized to examine draft federal budgets and to discuss central subsidies for regional and local governments. However, a multilevel roundtable is a complex instrument and it can be difficult to achieve a consensus among all the parties concerned. In specific cases one or more of the parties may resort to the constitutional courts in order to protect their interests. As a rule, such roundtables must be formalised and organised

according to previously agreed rules of procedure. Any communication relating to these roundtables should be in written form and the consultation process must be well-documented.

35. One of the most efficient forms of consultation is by participation in the hearings of draft laws in parliamentary committees. This process should be regulated by a memorandum of understanding between the association of local authorities and the relevant parliamentary bodies. This memorandum should clearly define the obligations of the participants and their contribution to the legislative process. This form of consultation requires national associations to have appropriate expertise and experience. During the initial stages of the consultation, experts from the association should study the proposed legislation and prepare a draft opinion on the text and recommendations, to ensure that it reflects the interests of local authorities. The statutes of the national associations should give their executive boards the mandate to adopt such documents and send them to the parliament for consideration. The executive boards may also designate members to participate to the sessions of relevant parliamentary committees. In certain cases, the board of the association may ask experts from the association to draft an alternative draft law to present to the relevant parliamentary bodies.

36. In practice there are specific areas where consultation with local authorities is formally regulated and is of a binding nature. This mostly applies to the changes of local authority boundaries. In the majority of member States, local government legislation clearly defines forms and procedures of consultation with regard to boundary change proposals, including the official consent of the local council, as well as a requirement to consult with local communities. It is suggested to implement these procedures not only for changing boundaries of individual local government units, but also for any restructuring of the local government system (introduction, abolition of tiers, changes in legislation about inter-municipal cooperation etc.).

37. The manner of financial consultations varies from country to country. Although there are cases where the national government discusses the whole system of local government finance with the national associations, regular consultations are usually held on specific financial issues, such as the criteria for the allocation of equalization grants, changes in local taxation and/or local loans and debts. In some countries, the ministry of finance establishes a special advisory board to discuss draft decisions and policy on public finance. National associations tend to designate experts rather than politicians to such advisory boards, on the grounds that they will be discussing technical issues that require specific knowledge and experience. However, these advisory boards should not be regarded as a substitute for the more general consultative meetings with the participation of political leadership of the ministry and national association(s). Advisory boards are mostly used for drafting and revising draft decisions, while policy meetings and roundtables serve to reach a political consensus on the allocation of resources to local authorities and more specifically the draft annual state budgets.

38. It should be mentioned that all of the above-listed forms and instruments for the consultation of local authorities by higher levels of government have a positive impact when the consultation process has a proper institutional framework based on formal rules. Strong and capable national associations of local authorities are the key factor for making these complex systems of consultations work for the protection of local authorities and the strengthening of local democracy.

6 Challenges and problems of national-local consultations

39. According to a recent report on the implementation of the Charter in member States,⁷ provisions on consultation are frequently violated, while several member States have declared reservations to the pertinent provisions. Georgia and Turkey have expressed their wish not to be bound by Article 4, paragraph 6. In practice, this provision of the Charter has been found to be one of the most frequently violated. Monitoring reports reveal seven such cases, with a further nineteen cases of partial compliance and only ten countries where there is full compliance. Deficiencies in the formalization of consultations are the most common reasons given for partial or non-compliance.

⁷ Congress of Local and Regional Authorities, Monitoring Committee (2017), Comparative Analysis on the implementation of the European Charter of Local Self-Government in 47 member States. Rapporteurs : X. Cadoret and K. Van Overmeire (assisted by expert N.-K. Chlepas).

40. Concerning Article 5, Georgia and Greece stated not to be bound, while nine countries were found to partially comply and in three cases a violation of the Charter was found. Top-down and exclusive policy-making was often mentioned as the reason of partial or non-compliance.

41. Azerbaijan, Belgium, the Czech Republic, Georgia and Turkey have declared themselves not bound by Article 9 para 6. In the other member States, monitoring reports and recommendations reveal five cases of partial compliance and seven national cases of Charter violations. The lack of appropriate organization and stable consultation mechanisms were among the most frequent reasons for partial or non-compliance.

42. Whereas the right of local authorities to be consulted is recognised by most member States, the actual organisation of consultations depends on the willingness of national authorities, and some national authorities, which do not yet recognise local governments as equal partners, lack the motivation to organise consultations with them.

43. In younger democracies, ad hoc patterns of consultations rather than systematic dialogue are sometimes observed. The lack of legally institutionalised forms of consultations can lead to the risk that the consultations are organised at the discretion of the national government. It should be recognised that a general declaration of the right of local authorities to be consulted, without accompanying well-defined rules and mechanisms for consultation, is not in the interests of local authorities. Consultation rules and mechanisms are necessary in order for the right to consultation to be enforceable.

44. In most federal systems, it is the federated states (rather than the federal government) which have the mandate to regulate local government legislation and therefore consultation mechanisms tend to exist at the regional level only, while many federal laws also have a direct impact on local governments. In addition, associations have very limited influence over the federal government, which makes the process of consultation very difficult.

45. The limited capacity of local governments to express and articulate their interests, as well as the lack of adequate staff and capacity of some local government associations, can also be seen as a key weakness that serves as an obstacle for institutionalised and systemic consultations. Another problem is the fragmentation of local government associations in some countries, which reduces their influence over decision-making and policy formulation processes. The influence of political parties over some of the smaller associations can also hinder the process of consultations and consensus building.

46. Based on the issues outlined above, active measures need to be taken by the Congress to enforce the strategy on the right of local authorities to be consulted by other levels of government. Priorities for future activities should include:

- promoting institutionalised and systematic consultation of local authorities by higher levels of government through the formalization of the consultation process;
- cooperating with national governments and parliaments with a view to introducing efficient forms and mechanisms of consultation with local authorities in the rules of procedures and bylaws at the level of parliamentary bodies and line ministries;
- strengthening the capacities of national associations to be the national voice of local authorities and to serve as active partners of national authorities in the consultation process;
- providing assistance to fragmented associations with the aim of establishing national consultation systems to unify efforts to protect the legitimate interests of local authorities.