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Regional identities: promoting dialogue and diversity in unity

Governance Committee

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Summary

All countries in Europe and beyond are confronted with internal diversity. One manifestation of such internal diversity – often linked to language, religion, culture, socio-economic features or geography – are regional identities. Such regional identities represent sources of wealth and inspiration and should be embraced and accommodated by countries. Positive approaches to regional identities are not only beneficial but often also required by law.

The aim of the present report is thus to address means and tools to inspire and ensure positive approaches to regional identities. It discusses mechanisms which improve dialogue, support consensus-building and encourage compromise-making between actors sharing a country but not all identity markers.

The report first presents an introduction to the concept of regional identity and explores legal obligations to address regional identities. It presents an overview of tensions that may possibly arise with regards to regional identities and establishes a toolbox of mechanisms providing means to accommodate diversity and to peacefully address tensions, such as institutional frameworks for dialogue, territorial change mediation, as well as mechanisms promoting unity in diversity in general and related to languages and culture in particular.

In its recommendation, the Congress welcomes the wide diversity of approaches and solutions to accommodate regional identities and invites member States to ensure that multiple identities, in particular regional identities, are approached positively, and seen as mutually enriching not mutually exclusive, and to use and strengthen a variety of approaches guaranteeing that the people of all regions live peacefully together in unity and diversity.

1 L: Chamber of Local Authorities / R: Chamber of Regions
 EPP/CCE: European People's Party Group in the Congress
 SOC/G/PD: Group of Socialists, Greens and Progressive Democrats
 ILDG: Independent Liberal and Democrat Group
 ECR: European Conservatives and Reformists Group
 NR: Members not belonging to a Political Group of the Congress.

RESOLUTION 488 (2022)²

1. The Congress of Local and Regional Authorities of the Council of Europe (hereinafter “the Congress”) refers to:

a. the Priorities of the Congress 2021-2026, in particular Priority b: Democratic societies: quality of representative democracy and citizen participation, paragraph 66; and Priority c: Cohesive societies: Reducing inequalities in the field, paragraph 70;

b. Articles 3 and 4 of the European Charter of Local Self-Government (hereinafter “the Charter”);

c. the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority, notably Article 2.2.ii.a and c;

d. Congress Resolution 453 (2019) on the Use of languages by local and regional authorities;

e. Congress Resolution 398 (2016) on Autonomy and borders in an evolving Europe;

f. Congress Resolution 361 (2013) on Regions and territories with special status in Europe;

g. Congress Resolution 268 (2008) on the Need for regional cultural identity;

h. the Council of Europe Reference Framework for Regional Democracy;

i. the United Nations Agenda 2030 for Sustainable Development, in particular Goal 4: Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all; Goal 11: Make cities and human settlements inclusive, safe, resilient and sustainable and Goal 16: Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels.

2. The Congress points out that:

a. The notion of regional identities is complex and multifaceted, with different forms and manifestations in theory and in practice.

b. Regional identities represent a source of orientation, wealth and inspiration.

c. The respect for and protection of regional identities goes hand in hand with the effective respect and protection of individual rights and freedoms for all.

d. People with distinct regional identities rightly claim certain rights, in particular the right to participate adequately in democratic decision making and the right to inclusive societies, to be consulted and to be informed, at least concerning matters directly affecting them, the right to equality and non-discrimination, the right to use and teach regional languages, the right to practice religion and culture, and the right to free expression, assembly and association.

e. Regional identities may also lead to tensions which need to be addressed peacefully and through dialogue.

3. In light of the above, the Congress invites the local and regional authorities of Council of Europe member States to:

a. establish and develop a culture of dialogue with the national authorities and between regional/local authorities and, where relevant, other actors, in order to respect, protect and promote regional identities and to resolve openly and constructively all issues and claims in the spirit of living together in unity and diversity;

b. strive to find a balanced equilibrium between the need to accommodate and foster regional identities and reduce and prevent detrimental rifts between different regional identities and with the national identity;

² Approved by the Chamber of Regions on 26 October 2022 and adopted by the Congress on 26 October 2022, 2nd Sitting (see Document CPR(2022)43-02, explanatory memorandum), rapporteur: Karl-Heinz LAMBERTZ, Belgium (R, SOC/G/PD).

- c. establish and analyse existing and potential tensions and provide suitable mechanisms and tools to peacefully prevent and resolve regional tensions, considering procedural and substantive aspects, the geographical scale, causes and claims as well as the temporal scale;
 - d. develop forms of political representation, consultation and cooperation as well as effective participation of regional identities;
 - e. develop cross border inter-regional cooperation to solve regional tensions.
4. The Congress calls on local and regional authorities and their national associations to take account of this resolution and the accompanying explanatory memorandum on this issue (Document CPR(2022)43-02).
5. The Congress asks its statutory bodies, such as its committees, to take into account the present resolution in the framework of their respective activities.

RECOMMENDATION 483 (2022)³

1. The Congress of Local and Regional Authorities of the Council of Europe (hereinafter “the Congress”) refers to:

a. the Priorities of the Congress 2021-2026, in particular Priority b: Democratic societies: quality of representative democracy and citizen participation, paragraph 66; and Priority c: Cohesive societies: Reducing inequalities in the field, paragraph 70;

b. Article 3 and 4 of the European Charter of Local Self-Government (hereinafter “the Charter”);

c. the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority, notably Article 2.2.ii.a and c;

d. Congress Recommendation 441, on the Use of languages by local and regional authorities;

e. Congress Recommendation 385 (2016) on Autonomy and borders in an evolving Europe;

f. Congress Recommendation 346, on Regions and territories with special status in Europe;

g. Congress Recommendation 278 (2009) on Regions with legislative powers: towards multi-level governance;

h. Congress Recommendation 250 (2008) on The need for regional cultural identity;

i. the Council of Europe Reference Framework for Regional Democracy;

j. the United Nations Agenda 2030 for Sustainable Development, in particular Goal 4: Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all, Goal 11: Make cities and human settlements inclusive, safe, resilient and sustainable and Goal 16: Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels.

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d. People with distinct regional identities rightly claim certain rights, in particular the right to participate adequately in democratic decision making and the right to inclusive societies, to be consulted and to be informed, at least concerning matters directly affecting them, the right to equality and non-discrimination, the right to use and teach regional languages, the right to practice religion and culture, and the right to free expression, assembly and association.

e. Regional identities may also lead to tensions which need to be addressed peacefully and through dialogue.

3. In light of the above, the Congress requests that the Committee of Ministers invite the national authorities of member States of the Council of Europe to:

a. ensure that multiple identities in particular regional and national are approached positively, as mutually enriching not mutually exclusive to ensure peaceful living together in unity and diversity;

³ Approved by the Chamber of Regions on 26 October 2022 and adopted by the Congress on 26 October 2022, 2nd Sitting (see Document CPR(2022)43-02, explanatory memorandum), rapporteur: Karl-Heinz LAMBERTZ, Belgium (R, SOC/G/PD).

- b.* embrace and accommodate regional identities and ensure their respect in line with requirements of relevant international standards and best practices;
 - c.* prepare and analyse a typology of tensions and provide suitable mechanisms and tools to peacefully prevent and resolve regional tensions, considering procedural and substantive aspects, the geographical scale, causes and claims as well as the temporal scale;
 - d.* consider examining all the regional claims, including the most far-reaching such as territorial boundaries and territorial change to find adequate solutions;
 - e.* take measures to involve the relevant actors in solving the regional tensions, including the legislative, executive and judicial bodies, ombudspersons as well as relevant national, regional and local actors, private actors, special committees or arbitrators;
 - f.* create and foster forms of political representation, consultation and cooperation as well as participation of regional identities, considering their institutionalisation through Constitution or law;
 - g.* design electoral systems so as to best account for regional identities;
 - h.* promote cross border inter-regional cooperation as a useful means to solve regional tensions;
 - i.* sign and ratify the relevant international instruments in particular the Framework Convention for the Protection of National Minorities, the European Charter for Regional or Minority Languages, and the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities and its protocols.
4. The Congress calls on the Committee of Ministers and the Parliamentary Assembly of the Council of Europe to take account of this recommendation and the accompanying explanatory memorandum (Document CPR(2022)43-02) in their activities relating to Council of Europe member States.

EXPLANATORY MEMORANDUM

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1. Introduction⁴

1. All countries in Europe and beyond are confronted with internal diversity. Their populations usually share a common history, which can be short or long, uniting or divisive, a territory which is often agreed upon but sometimes controversial, and a legal system which is sometimes comprehensive and binding on all, and at times fragmented and disputed. People living in a country may share a common identity, which can be strong and stable, but which can also be fragile and contested. Even strong and stable common identities are not encompassing but fluid and multiple. People differ in origin, gender, age, profession, language, religion, ideological and political convictions, social and economic lifestyles, etc. Dealing with internal diversity is hence a task that all states are confronted with. It is a task full of opportunities: the diversity of identity markers and the plurality of overlapping identities means a plurality of approaches, a plurality of ideas and concepts, a plurality of wisdoms.

2. When relevant identity markers are concentrated in one or several areas of the country, internal diversity has a regional component. Such regional identity components cannot only be found in states considered as multinational, but in all states composed of different regions which have a history, language, religion or culture of their own – and hence an identity of their own. Identities with regional components tend to be more controversial than others as the identity of the nation – and potentially even the integrity of the territory – can sometimes seem to be at stake.

3. For this reason, most state-building processes of the past were conceived as nation-building processes and aimed at the making of a homogenous nation. Many States either attempted to have or acquire a territory corresponding to cultural identities (“one nation – one state”) or undertook to create a nation on their given territory by defining one people of the territory as the “nation” and by – sometimes violently, sometimes more subtly – assimilating or marginalising other peoples or communities linguistically and otherwise. While it is broadly recognised that imposed assimilation, including forced resettlements, violate fundamental rights and are unacceptable, new approaches to internal diversity are sometimes lacking or can remain controversial.

4. The purpose of this report is to remind member States and local and regional authorities of the many possibilities to approach internal diversity positively and to propose mechanisms of how to improve dialogue and ways and means to peacefully live unity in diversity. It aims at promoting the existence of regional identities as an asset and a common feature of living together with many advantages for democratic and open societies at all levels of government.

5. Key elements of the present report show and discuss mechanisms allowing for dialogue, consensus-building and compromise-making between actors sharing a country but not all identity markers. The report considers conditions for success for improved dialogues, such as an appropriate institutional framework, various fora for information exchange and consultation, mutual respect and willingness to participate, in both situations of low- or high-levels of regional tensions. It also proposes mechanisms for creating an atmosphere of respect and mutual understanding.

6. The present report briefly explores the notion of regional identity – or rather regional identities – in theory and in practice, before arguing that regional identities are not only sources of wealth and inspiration but also objects of legal obligations. The report then presents an overview of possible tensions and – building on that overview – turns to various mechanisms to address and reduce such possible tensions and explores tools and ideas to create an atmosphere of respect and a willingness to cooperate if such atmosphere is lacking or has been destroyed by conflict. Such a toolbox can be used by states and local and regional authorities to establish and strengthen a mixture of context-specific mechanisms for improving dialogue across identities. The theoretical elaborations will be illustrated by examples, without however aiming at being exhaustive or at providing ready-made solutions.

⁴ Report prepared with the contribution of Prof. Dr Eva Maria BELSER and Ms Géraldine CATTILAZ, Institute of Federalism, University of Fribourg, Switzerland

2. Regional identities: what, how and why?

2.1 Concepts of regional identities

7. Regional identity has become a notion widely used and an important category, especially in the context of the “Europe of regions”. However, despite the regular use of the expressions, defining the notions of “region”, “identity” and even more so “regional identity” is not self-evident. The notion of regional identity is complex and multifaceted, and, in fact, its various meanings are still rather vague and ambivalent and vary greatly according to social, political, geographic, cultural and historical context and viewpoints. Thus, this report attempts to promote a conception of the notion of regional identity that is as comprehensive as possible and not restricted to only a few forms of regional identity. Indeed, a wide understanding of the concept of regional identities – in theory and in practice – is beneficial in the sense that it will allow a number of different regional formations to be categorised as regional identities and induce a sensitivity for differences and an openness for dialogue and adaptive solutions.

8. Regional identity, as well as any identity – or region for that matter –, can be defined as a form of categorisation “where boundaries are used to distinguish one areal domain or social collectivity (‘us’) from others”.⁵ It consists of an individual dimension – the personal feeling towards or identification with a place that “results from the strong ties between an individual and a region”⁶ – and a collective one, on which this report mainly focuses. A regional identity can thus be defined as a category using territorial boundaries to distinguish one entity (a region) from other entities (other regions, the state) (FN) With regards to its territorial scale, the notion of ‘region’ must be differentiated from the level of nation-states as well as from local entities but can otherwise refer to both sub- and supra-state entities and be conceptualised at various territorial scales. In this report, our main focus lies on subnational regional identities.

9. The concept of regional identity does not merely relate to a territorial entity, but also to a social construct. The territorial and social cohesion, the collective ‘us of a regional identity, can be based on various elements, such as a particular landscape or a common territorial historical background, a common language or dialect, economic aspects, cultural elements as well as shared values and norms. Oftentimes, it is not only one, but several of these characteristics that contribute to the formation of a regional identity. What is decisive is not necessarily the objective existence of such common characteristics, but the belief in the existence of a collective, its construction, cultivation, mobilisation and sometimes instrumentalisation. A regional identity can arise organically but in certain cases also by means of – politically, economically or otherwise motivated – identity-building; these processes can be top-down (often ‘ideal identities’ or identities of coherence) or bottom-up (often ‘real identities’ or identities of resistance). The strength of an identity can thereby depend on the way the regions and their populations are perceived and treated by other actors and the narratives developing around such perception and treatment.

10. Therefore, there is not just one type of regional identity, but many forms of regional identities depending on their territorial scale, on the foundation (geography, history, language, policy, religion, culture, etc.) and intensity of the social cohesion. Furthermore, regional identities are not to be conceptualised as ‘given’, but as entities that can be or are “created and recreated in the process of transformation”,⁷ that are “perpetually ‘becoming’ instead of just ‘being’”,⁸ that develop and change over time.

11. A diversity of identities is a source of individual and collective well-being. When nation-states embrace regional identities, regional identities are invaluable assets for a country. For this to happen, the collective with a regional identity of its own must be seen as part of the nation-state contributing to and enriching the overall national identity. The national identity should therefore include the regional identity and not exclude it.

12. As nation-states have to welcome and accommodate internal diversity, regions are even more confronted with this challenge. When relating to regional identities, it is hence important to keep in mind that regions are rarely homogenous and often home to many collectives, including minorities and people identifying with the national identity (only). Just like national authorities, regional and local authorities

5 PAASI, Bounded Spaces, p. 139.

6 POHL, Regional Identity, p. 12917.

7 PAASI, Resurgence of the ‘Region’ and ‘Regional Identity’, p. 128.

8 PAASI, Resurgence of the ‘Region’ and ‘Regional Identity’, p. 133.

should therefore be inclusive and approach internal diversity openly and positively. The protection and promotion of regional identities should strengthen overall diversity and not come with a cost for other identities (such as minorities within minorities).

2.2 A plurality of forms and approaches

13. Regional identities as defined above do exist in different forms and degrees and are dealt with in different ways in Europe and throughout the world. Indeed, almost all Council of Europe member States possess different regions and there are also a number of supra-national (or at least cross-national) regions. Oftentimes, these regions can be associated with some form of regional identity.

14. However, regional identities do not necessarily coincide with internal state borders. Regional identities can correspond with one or several political or administrative entities (a province, a region, a Land or Bundesland, a canton, or a district) but they can also overlap or crosscut such entities.

15. In fact, while the existence of regional identities is generally acknowledged, the question of whether a specific regional unit is to be categorised as regional identity is not always clear, oftentimes implied rather than substantiated, and might depend on the context. Indeed, the nature and characteristics of regional identities as well as their legal or political status vary considerably – not only in theory but also in practice.

16. Different examples and constellations of regional identities can be found throughout Europe. Some regional identities are based on one dominant identity marker (such as language, religion, history or geography), but most are determined by a multitude of overlapping and often dynamic components of identity. For instance, the regions (and communities) in Belgium are determined by language but also by history, economy and politics, the Finnish Åland Island by language, but also by geography and history, Scotland and Wales are entities with histories and cultures of their own, some of the regions in the Balkans by religion but also by history and language, Greenland, Corsica and the Faroe Islands by geography but also by culture and language, some of the Spanish and Italian regions by the economy but also by history, language, geography and culture.

17. Independent of these characteristics, regions can be differentiated according to their legal status. Some regional identities correspond more or less sharply to sub-units of a federation, as is the case e.g., in Belgium, Switzerland, Germany, Bosnia-Herzegovina, and thus enjoy substantial constitutionally guaranteed autonomy in certain areas (self-rule) and various possibilities to contribute to national decision-making (shared rule). Other regional identities such as the Italian and Spanish autonomous regions – albeit being part of a unitary (or regional) state – are granted more or less extensive autonomy, competences and rights by means of constitutional provisions or by bilateral agreements between the nation-state and the region. Other regional identities are considered when delimiting administrative units and are granted the right to (limited) self-administration, still others have received a special status, such as the Sámi in Finland, Norway or Sweden, guaranteeing autonomy and participation rights. Yet other regional identities are not given any form of autonomy but are granted other rights or freedoms.

2.3 Regional identities as sources of wealth and inspiration

18. Both the individual and the collective dimension of regional identities can be sources of orientation, wealth and inspiration. Regional identities in their individual dimension often serve as useful frameworks for individuals' decisions and behaviour. Identities provide individuals with a feeling of belonging and security and are pillars of trust and solidarity. They offer a "home world in contrast to the strange world outside",⁹ and facilitate orientation in an unstable and complex world, where boundaries – not only territorial ones – become more and more fluent. Opinion polls have indeed indicated that regional identity is one of the most important sources of (individual) identification when it comes to territorial reference points.¹⁰ From a collective point of view, a regional identity creates a community, a feeling of belonging together, thus producing social (and territorial) cohesion. Regional identities can therefore be an important factor of (political) cohesion, cooperation and solidarity.¹¹

9 POHL, Regional Identity, p. 12919.

10 For example, Special Eurobarometer 508, Report on Values and Identities of EU Citizens, published in November 2021, pp. 69 ff.; see for more references also DONAT ELISABETH, Regional Identity between Inclusion and Exclusion, p. 25 f; PAASI, Resurgence of the 'Region' and 'Regional Identity', p. 125.

11 This has been the case *nota bene* in the EU.

19. Indeed, especially against the background of accelerating globalisation challenging state-centric spatiality and current models of territorial organisation, it can be beneficial to rescale territorial governance considering regionally based processes of economic, political and social integration and co-operation, so as to accommodate regional identities. As a matter of fact, it has proven to be advantageous for national actors to form alliances with regional identities as well as to decentralise or devolve some of their competences (and responsibilities) to regional institutions. Regional identities are more flexible and fluid than the construct of the nation-state and thus allow for more adaptive and accommodative solutions.¹² In addition, regions often fulfil “an important linking function between citizens and ‘upper’ levels in the political decision-making process”. In fact, nation-states may – with regards to some aspects – be “too large and remote for cultural identification and participatory and active citizenship”.¹³ Regional identities can thus – through the nearness to and in their quality as an object of identification for citizens – serve as source of legitimacy and efficiency. Not least, regional identities may serve as basis for (political) movement, generating action. Regional identities can also hold advantages with regard to economic points of view. In fact, the embeddedness of economic actors in a certain region as well as shared values may “produce trust, confidence, and reciprocity”¹⁴ which may favour economic development.

20. These findings should not, however, be interpreted as threatening with regards to national (or supra-national) identities (and the territorial integrity of states). In fact, territorial identities – as well as identities in general – can be and oftentimes are multiple: One individual may identify with different spatial (and social) entities. Thus, a French person of the city of Ajaccio may identify as inhabitant of Ajaccio, Corsican, French, Corsican-speaking or European, depending on the context. Different spatial (and social) identities – such as regional and national identities – may not only coexist on an individual level, but also with regards to their collective dimension.

21. Multiple identities, however, can only exist and flourish when the different identities are not seen as mutually exclusive but as compatibly and mutually enriching. For instance, a German-speaker of the region of South Tyrol can also identify as an Italian if the national Italian identity is broad and does not require full (linguistic) allegiance to a homogenous national identity.

22. The intensity and effects of regional identities thus crucially depends on their accommodation. If multiple identities are tolerated, recognised and respected, they are most likely to contribute to mutual enrichment. If, however, regional identities are oppressed and people forced to choose between a lived regional and an imposed national identity, the divide between communities and regions risks deepening, leading to political mobilisation based on identity, to polarisation and, in the worst case, to exclusionary politics.

3. Relevant international legal obligations

23. Most countries have adopted constitutional and legal principles and rules relating to regional identities, such as norms on decentralisation and devolution or on the protection and promotion of minorities (and their languages). In addition, there are international legal obligations often prompting states and local and regional authorities to establish mechanisms and tools taking into account such regional identities, their recognition, rights and representation and allowing to peacefully live unity in diversity. These legal obligations require the recognition of groups and communities, the respect, protection and promotion of rights and freedoms, including collective rights, and the fair representation of groups or other mechanisms to ensure their involvement in decision-making.

24. The Framework Convention for the Protection of National Minorities of the Council of Europe is a fundamental instrument regarding legal obligations towards regional identities. In particular, the parties to the Convention “undertake to promote the conditions necessary for persons belonging to national minorities to maintain and develop their culture, and to preserve the essential elements of their identity, namely their religion, language, traditions and cultural heritage” and “refrain from policies or practices aimed at assimilation of persons belonging to national minorities against their will” (Article 5). States must also “encourage a spirit of tolerance and intercultural dialogue and take effective measures to promote mutual respect and understanding and co-operation among all persons living on their territory, irrespective of those persons’ ethnic, cultural, linguistic or religious identity” (Article 6). Importantly, states are also

¹² The “analytical ambiguity” of the notion of regional identity can thus be displayed as “one of the term’s strengths”, see e.g., DONAT/MEYER, *European Regions*.

¹³ PAASI, *Resurgence of the ‘Region’ and ‘Regional Identity’*, p. 123.

¹⁴ POHL, *Regional Identity*, p. 12921.

obliged to “create the conditions necessary for the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, in particular those affecting them” (Article 15).

25. Other relevant instruments of the Council of Europe are the European Charter for Regional or Minority Languages, the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities including its protocols,¹⁵ the Council of Europe Landscape Convention as amended by its Protocol as well as thematically related instruments,¹⁶ the European Cultural Convention as well as the Council of Europe Convention on Offences relating to Cultural Property,¹⁷ and to some extent even the European Convention on Nationality.¹⁸

26. In a wider sense, other instruments, such as the Council of Europe Reference Framework for Regional Democracy, which is “a veritable code of rights and duties of regional entities, aimed at intermediate authorities between central government and the basic (local authority) tier”¹⁹ may serve as a “source of inspiration when countries decide to establish or reform their regional authorities” or “act as a corpus of political reference principles on which the Congress of Local and Regional Authorities can rely in the context of its statutory task of monitoring regional democracy in the member States of the Council of Europe”.²⁰

27. The European Convention on Human Rights (ECHR) and its jurisprudence – even if principally focusing on individual rights and freedoms irrespective of identity and residence – are also relevant with regards to regional identities. Firstly, because regional identity markers also have an individual right component (for instance, the right to speak and teach a language). Secondly, because the respect and protection of individual rights may help to, or indeed be necessary for the protection of the regional identity itself. Thus, rights and freedoms such as the right to liberty and security, the freedom of thought, conscience and religion, the freedom of expression or the freedom of assembly and association may protect the individuals constituent of a regional identity and the regional identity itself. The ECHR and its international enforcement, thirdly, is an important tool to deal with multiple, fluid and dispersed diversity (and to protect minorities within minorities) as it guarantees rights and freedoms to all – irrespective of identity and residence.²¹

28. Legal obligations with regards to regional identities also stem from the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights. Article 27 of the latter guarantees that “in those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language”, which may be particularly relevant with regards to regional identities.²²

29. The ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169) applies to tribal peoples “whose social, cultural and economic conditions distinguish them from other sections of the national community”, and to indigenous peoples “who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions” (Art. 1). States hosting such communities are not only responsible for ensuring equal rights and freedoms to their members and to overcome socio-economic disparities but also to promote “the full realisation of the social, economic and cultural rights of these

15 Additional Protocol to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities; Protocol No. 2 to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities concerning interterritorial co-operation; Protocol No. 3 to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities concerning Euroregional Co-operation Groupings (ECGs).

16 Such as the Council of Europe Framework Convention on the Value of Cultural Heritage for Society, the Convention for the Protection of the Architectural Heritage of Europe, the European Convention on the Protection of the Archaeological Heritage or even the Convention on the Conservation of European Wildlife and Natural Habitats. These instruments are of relevance if some element of cultural heritage is of special value and importance for a specific regional identity.

17 The latter entering into force on 1 April 2022.

18 These conventions are not always ratified by all member States of the Council of Europe. Whether they are legally binding for the nation-state in question thus has to be analysed in each specific case.

19 Council of Europe Reference Framework for Regional Democracy, S. 6.

20 Council of Europe Reference Framework for Regional Democracy, S. 6.

21 See for instance, the research report on Cultural rights in the case law of the European Court of Human Rights, published by the European Court of Human Rights of the Council of Europe, updated on 17 January 2017.

22 In this regard, another UN-related instrument, namely the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, is worth mentioning. It provides even ampler rights but, as a declaration, does not establish binding obligations. In particular, it requires States to protect the existence and identities of minorities and calls upon them to encourage the promotion of such identities.

peoples *with respect for their social and cultural identity, their customs and traditions and their institutions*" (Art. 2).²³

4. Overview of possible tensions

30. In some contexts, regional identities may lead to tensions. It is not only crucial to note that tensions are not inherently bad or to be avoided at any cost. Regional tensions can result from legitimate expressions of grievances that should be addressed and can initiate constructive debates and act as important motors for change and governance improvements. Indeed, as international relations and national policies typically affect different communities and regions differently and one-size governance decisions rarely fit all, tensions are useful expressions of mismatches and offer chances for better governance.

31. There is, however, a need to deal with tensions and to prevent their escalation. The section below compiles an overview of tensions that can erupt from various claims and causes. It shows that tensions with regards to regional identities can be very diverse. Thus, categorising these tensions is helpful in order to identify appropriate and suitable mechanisms to address and deal with such tensions.

4.1 Geographical scale and actors involved

32. Tensions triggered, sourced or deepened by different identities, differ in terms of geographical scale and can in this regard be further divided into intra-regional, inter-regional and "extra-regional" tensions.

33. *Intra-regional tensions* exist within one or several subnational units of a State. They often oppose cultural, linguistic or religious minorities and majorities as well as minorities within minorities, for instance speakers of different regional languages or speakers of the regional language and speakers of the (only) national language. Intra-regional tensions can also relate to social or economic aspects and are, more and more often, characterised by an urban-rural divide opposing increasingly multicultural and economically dynamic regional centres and a more (or less) homogenous countryside.

34. *Inter-regional tensions* oppose subnational units of the same country. They are often related to economic matters, infrastructure, finances and financial equalisation, but can also relate to internal migration and internal border issues.

35. The category of "*extra-regional*" tensions may be further subdivided into tensions between a region and the nation-state and tensions between a region and extra-national actors, such as a neighbouring nation-state or a neighbouring region. The first and most common subcategory – *tensions between a State and one or several of its regions* – often oppose regionally concentrated national minorities and national majorities but can also relate to other identity markers. The latter can relate to cross border (ethnic) relations, border issues, interventions or the international relations and treaties of the country as such, for instance when an international treaty negotiated-between two nation-states has a particular impact on one/certain regions, as might be the case for economically over- or underdeveloped regions with regards to trade agreements or for border regions with regards to migration policies.

36. In all categories, the actors involved in regional tensions are usually varied and include local, regional and national authorities, neighbouring or kin States, political parties, civilians belonging to a regional identity, economic actors, non-profit organisations and others. Different actors often behave differently in a given conflict, refer to different causes and make different claims.

4.2 Causes for regional tensions

37. There are at least as many causes for regional tensions as there are identity markers. Most of these do not necessarily end in large-scale action or even the open expression of grievances, but context, history and the political situation may facilitate the emergence of a potential source of tensions. Just like identities, tensions are usually linked to a number of multifaceted and dynamic issues. In addition, the origins or and reasons for tensions are often disputed and a variety of – often conflicting – narratives are circulating.

²³ See also United Nations Declaration on the Rights of Indigenous Peoples, which "establishes a universal framework of minimum standards for the survival, dignity and well-being of the indigenous peoples of the world". <https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html> (last visited on 20 January 2021).

38. Ethnic and cultural diversity, including a diversity of languages and religions, can lead to tension when actors fear or claim that their identity is not respected or not protected. Most crucially, regional identities tend to turn into controversial identities of contestation and resistance when threatened by assimilation policies, oppression or marginalisation. Imposed identities tend to cause tensions as regions which are not accommodated tend to alienate themselves from the centre. In the past, there were cases of forced assimilation, sometimes complemented by demographic engineering and resettlement policies, which often led to negative spirals during which the culture of dialogue was broken (if it ever existed) and to lasting trauma.

39. Economic and social inequalities are also important causes for regional tensions. The ownership and management of natural resources as well as tax systems and (regional) economic development can be sources of conflict. The same is true for the distribution of infrastructural resources, especially in border regions, Islands, mountainous or other remote geographically challenged regions.

40. Often, economic and social causes overlap cultural causes. Tensions are most likely to escalate when regions with ethnic, linguistic or religious identity markers are or feel economically disadvantaged and/or socially neglected. Various grievances then overlap, a situation which favours ethnic mobilisation and polarisation.

4.3 Regional identity claims

41. The various causes and grievances can lead to different claims. Vice versa, claims may not only be caused by, but also result in (regional) tensions.

42. Regional claims can be categorised according to their implication with regard to the nation-state, the most far-reaching probably being claims for external self-determination, i.e., secession, followed by claims for internal self-determination and stronger and/or broader forms of autonomy in the region, claims for better representation and (more) participation, consultation and information.

43. Regional identity claims can also aim at being recognised as a distinct group, society, nation or national minority or at the acknowledgment of wrongs of the past. Claims can also relate to specific guarantees and the protection of certain rights and (regional) minorities (claims for non-interference with but also claims for the active protection of such rights/minorities) or claims of certain “entitlements” (financial, infrastructural, resource related). For example, a regional identity may demand the right to run schools, universities, youth and cultural centres in the regional language – and claim more autonomy in the field of education – or that the central government operates schools in the regional language. It can also demand more respect and protection of diversity without advocating for more autonomy. Similarly, a geographically remote, mountainous regional identity might demand more autonomy to plan its own development, request more financial and infrastructural support from the centre or stronger participation in national budgeting and financial equivalence. Most regional identities do claim for certain rights to participate, to consult and to be consulted or to be informed, at least concerning matters directly (or indirectly) affecting them.

44. Regional claims do not *a priori* have to be perceived as threats but rather as issues that have to be addressed and that offer the chance to better accommodate groups and to strengthen the cohesion of the State.

4.4 Nature and temporal scale

45. Concerning the nature of tensions, one can differentiate between situations of violent conflict and situations where peaceful means are used to call the attention to (regional) issues that have to be addressed – there being a whole spectrum of intermediate scales between ‘violent’ and ‘peaceful’. It can also be distinguished between situations in which political instruments are being taken – such as the exercise of the right to take a referendum or to veto a certain decision – and situations of legal or even judicial tensions – for example if a regional claim is qualified as unconstitutional by a national constitutional court. A further category are situations in which extra-legal measures are being used by one or several sides, situations of non-cooperation, lack of trust, blockage, and frozen conflicts.

46. Concerning their temporal scale, one can distinguish permanent tensions, in the sense of long-lasting ones, from tensions occurring at a specific moment in time as well as recurring from singular situations, such as a traditional holiday for instance. Similarly, economic tensions might be permanent (because of very unequal regional development in a State) or appear suddenly as a reaction to new tax

rules, amendments to fiscal equalisation arrangements, the exploitation of regional natural resources or a changing economic environment.

5 Toolbox of mechanisms to accommodate diversity and to peacefully address tensions

47. This toolbox explores various mechanisms to deal with and accommodate diversity, to address tensions and to improve dialogue to prevent tensions from escalating. However, successfully addressing or preventing tensions in a way that is beneficial for all involved actors can be complex at times. This is especially true if a culture of favourable dialogue has not yet been established or is threatened, or if the regional tensions are of a violent nature or rendered more threatening by foreign interference and fears relating to the stability and territorial integrity of the country.

48. The toolbox of mechanisms proposed below should provide some inspirations and guidelines, an analytical framework with regards to that complex endeavour. It is based on the following premises: First, regional tensions can be dealt with by establishing, using and institutionalising certain forms and means of or possibilities for dialogue. However, successful dialogue may sometimes not only require the framework for dialogue, but also that some potentially delicate issues (e.g., certain causes of or claims caused by regional tensions) are not categorically excluded with regards to the content of dialogue. Secondly, regional tensions cannot be avoided by ignoring the existence of regional identities, nor by negating the underlying regional tension and the resulting regional claims. Rather, they have to be acknowledged and addressed by one mechanism or another, depending on the situation at hand.

49. Indeed, depending on the category of tension at hand, some mechanisms are more adequate and efficient than others. Thus, if the regional tensions at stake are limited to an intra-regional – or even inter-regional – territorial scale, it might not be necessary – with regards to the horizontal level of competence – to involve the nation-state in solving the tensions, but rather the relevant regional authorities. However, an involvement of the nation-state might be necessary if the regional tensions are – even if territorially limited – of a particular violence or do otherwise affect the nation-state or other regions not directly involved in the tensions. If the regional tensions are caused by dissents about economic resource distribution, a possible mechanism might be to grant limited financial autonomy. Recurrent or permanent tensions might necessitate an institutionalised mechanism – that may, in turn, have a preventive effect – rather than a/several individual *ad hoc* procedure(s) as a reaction to specific regional tensions.

50. When choosing the appropriate tools and mechanisms further differentiations with regards to the aspect of time and status are useful. Indeed, one can differentiate between mechanism that are limited in time and permanent mechanisms, as well as mechanisms that aim at preventing regional tensions before they arise (“preventive mechanisms”) and mechanisms reacting to regional tensions after they have arisen (“subsequent/problem solving mechanisms”). Countries with diverse territorial identities should have permanent mechanisms of information exchange, consultation and entrenched mechanisms facilitating consensus and promoting compromise. In case of an escalating conflict, special measures and fora are often useful. Countries, in such a situation, should enter negotiations about how to go about the conflict and not hesitate to call upon neutral, if necessary external, actors. One example of a mechanism are intergovernmental relations, conferences of ministers and the like, where politicians and governmental officials meet on a regular basis or as needed. While it is legitimate for a State to investigate and sanction criminal acts committed by individuals, it is not to deny dialogue to communities, to listen to grievances and to make best efforts to find solutions acceptable to both sides. *Ad hoc* bodies can also be necessarily to deal with wrongs of the past and to establish truth and reconciliation after violent conflict.

5.1 Addressing and acknowledging diversity and/or self-rule

51. Regional identities may be accommodated, and regional tensions prevented or reduced by promoting, fostering and advocating unity in diversity. Indeed, it is crucial to find a balanced equilibrium between accommodating and fostering (regional) diversity while at the same time reducing or preventing detrimental rifts between different regional identities and emphasising the advantages of working together.

52. Effective protection of fundamental rights and freedoms is paramount for regional identities and their effective protection. This can include the acknowledgment of diversity and mechanisms concerning self-rule, such as different forms of autonomy and self-regulation in legal texts.

53. The respect for and protection of regional identities goes hand in hand with the effective respect and protection of individual rights and freedoms for all. Regional identities are first and foremost

accommodated by the guarantee of the right to equality and non-discrimination, the right to use and teach regional languages, to practice religion and culture, the right to free expression, assembly and association and the right to democratic participation and access to government positions. The effective implementation of rights and freedoms, the rule of law, the independence of the judiciary and a functioning democracy hence are fundamental mechanisms for dealing with diversity. These provisions are enshrined in the European Convention on Human Rights but also in member States' Constitutions or fundamental laws.

54. The guarantee or recognition of a degree of self-rule by law can be a useful tool to prevent and deal with tensions as it allows for diversity and accommodates different identities. It refers to different forms of regional autonomy in decision-making, financing and/or implementation. One can further distinguish between the right to self-identification, self-administration, self-regulation, and self-adjudication – hence between different forms and degrees of recognition and autonomy.

55. Granting regional autonomy is often seen as the royal road to peacefully deal with and accommodate regional identities. Indeed, providing a region with a degree of self-rule in certain policy areas can be a very effective way to reconcile a group characterised by a strong regional identity with democratic decision-making at the national level. After all, without such mechanisms, regional minorities risk ending up as permanent losers in majoritarian systems, especially when cultural or ethnic divides are or have become deep and polarising. Indeed, in situations of culturalised or ethicised decision-making, minorities can perceive democracy as a threat to their identity and either turn into spoilers of democratisation processes by supporting authoritarian tendencies or in disconnecting themselves otherwise from national decision-making. In such contexts, preserving, strengthening or creating space for regional self-rule and to allow for different spheres of democratic discourse and decision-making offers a way out of (potential) conflict.

56. The spheres of self-rule typically relate to the characteristics of regional identity and thus to cultural autonomy, language and education, religion, and – especially when there are severe grievances in these fields – health, public services, infrastructure, and economic development. In these spheres of self-rule, regional minorities no longer have to fear being (permanently) outnumbered but can deal with arising issues autonomously. Regional autonomy, more generally, also creates spaces for innovation, experimentation and learning laboratories. At the same time, it does not threaten unity, as the regions are bound by international and national law, in particular human rights and minority rights law; by these obligations, they are also bound to treat “their own” minorities (“minorities within minorities”) equally and fairly.

57. Regional self-rule as a mechanism of respecting and accommodating regional diversities works best when the community represents a national minority but a regional majority. Democratic self-rule can then bring regional leaders to regional power and provide the community with effective rights to self-governance in non-centralised or decentralised policy fields. If, however, identities and political entities do not match, several options, such as sub-regional decentralisation, cross-border cooperation or readjustment of borders, can be considered.

58. In all cases, human and minority rights as well as local self-government should be guaranteed by the national constitution and effectively enforced. Such mechanisms guaranteeing minimum rights and freedoms to all are necessarily to make self-rule acceptable to communities living in the region but not sharing the regional identity, such as minorities within minorities or members of the majority community.

59. The mechanisms contributing to acknowledging diversity can take different forms. The most extensive form probably is the constitutional institutionalisation of a federal State system, which can be symmetrical²⁴ or asymmetrical,²⁵ or by granting more or less extensive forms of autonomy to (some) sub-national regions without necessarily installing a federal system. The respective areas of competence of the State and sub-State entities and thus the scope of the sub-national autonomy may be regulated by the constitution, which is the case for example in Belgium, Bosnia and Herzegovina, Germany and Switzerland. In the case of Bosnia and Herzegovina, the federal power-sharing system is replicated in one of the constituent units.

²⁴ Thus, with all sub-national units being attributed the same rights and obligations and the same representation at the centre.

²⁵ Thus, with some sub-national units being attributed more autonomy and powers than others and/or more participation rights at the centre.

60. In other cases, the sub-national autonomy may be constitutionally guaranteed, or otherwise specified by bilaterally negotiated autonomy statutes – such is the case for example for the autonomous regions of Italy and Spain – or by special sub-constitutional laws – as is the case in Belgium or in many of the autonomous sub-national regions within an otherwise unitary State such as the Autonomous Territorial Unit of Gagauzia in the Republic of Moldova, Vojvodina in Serbia or the Åland Islands in Finland or the Crimea and the city of Sevastopol in Ukraine²⁶. In other cases still, the (more or less extensive) autonomy granted to a sub-national region might lack a constitutional foundation at all and only be based on sub-constitutional statutes (e.g., Scotland in the UK or Corsica in France), or conversely be additionally (and often temporarily) protected by an international agreement (e.g., South Tyrol [in the past], Åland Islands).

61. Constitutional and legal entrenchment may also play a crucial role in acknowledging a country's diversity, e.g. by mentioning different identities in the preamble (e.g. the preamble of the Constitution of Bosnia and Herzegovina reading “Bosniaks, Croats and Serbs, as constituent peoples [along with others] [...]”) or by recognising different languages as national languages, in guaranteeing specific rights to specific groups or in obliging the State to respect, protect and promote regional identities (e.g. in regard to the Sámi people the constitution as well as the Sámi Act in Norway).

62. However, not only different forms of regional autonomy might be constitutionally entrenched or otherwise legally institutionalised, but also other mechanisms such as the parliamentary representation of regional identities via a second parliamentary chamber or by a (constitutionally or otherwise legally) guaranteed minimum number of representatives, the institutionalisation of certain (regional) veto powers or the (constitutional or otherwise legally guaranteed) obligation to inform and consult regional identities on matters that concern them, and many others.

63. Individual *ad hoc* mechanisms may be constitutionally or otherwise legally institutionalised as well – for example in the form of the constitutionally guaranteed possibility to bring (regional) disputes before a (constitutional) court. However, they can be differentiated from the first category discussed above – as indicated by the term *ad hoc* – in the sense that even if the mechanism itself is institutionalised, the utilisation of it is carried out with regards to a specific case of regional tensions at hand. Such individual *ad hoc* mechanisms may take the form of a (unilateral) decision of judicial, political, arbitral nature, but also the form of a concession, a multi- or bilateral treaty or covenant. The most common example probably is the already mentioned judicial decision by a (constitutional) court. Indeed, such a formal legal decision-making procedure by an independent court might be necessary in some cases, for example if (alleged) violations of human rights are concerned. In other cases, however, it might be more effective to “engage” the actors involved in regional tensions in a more flexible way in the process of resolving those tensions, for example through involving them as parties in the political or arbitral decision-making procedure – some examples have already been mentioned with regards to the competent actors involved – or through bi-/multilateral negotiation procedures. Some federal and regional States further have well-established forms of intergovernmental relations and use many forms of “federal dialogues” to bring the different actors together.²⁷

64. Concerning both, the institutionalised as well as the *ad hoc* mechanisms, it may be advisory if not necessary in some cases – for example if the cooperation between nation-state and regional identities or a culture of dialogue are not yet well established – to construe such mechanisms as being mandatory and to establish some procedural rules. For example, it could be constitutionally defined that regional identities have to be – mandatorily – consulted about matters that impact on their regional identity, how the consultation procedure should be executed in terms of framework parameters (written vs. oral procedure, timeline, etc.) and what value is to be attributed to the opinion rendered by the consulted entity.²⁸

65. Not least, there are also informal or soft mechanisms for acknowledging regional identities. Such mechanisms have the advantage of being very flexible and allowing for adaptive solutions and to “think outside the box”. Conversely, they have the disadvantage of – at least oftentimes – not being (legally or politically) binding and thus not necessarily enforceable. The mechanisms attributable to this category can be very varied.

26 The Autonomous Republic of Crimea and the city of Sevastopol of Ukraine have been illegally occupied by the Russian Federation since 2014.

27 See examples in chapter 5. 2.2.

28 See for example the Swiss consultation procedure (“Vernehmlassung”).

66. Some mechanisms can be of a more “symbolic” nature, for example alluding to regional identities in constitutions, even if only in the preamble or in programmatic norms; or – with regards to education and academic research – to favour history books conveying a diverse image of national and regional identities or to promote academic research focusing on cultural, ethnic similarities (within diverse groups) instead of reinforcing cultural/ethnic cleavages; and generally recognising – in national policy statements, history textbooks for schools, museums, etc. – the varied cultures and identities of a country and the contributions of all groups to the national identity, honouring national days of celebration and allowing regional days of celebrations to be honoured too, to name only a few models.

5.2 Institutionalising dialogue

5.2.1 Determining competencies for facilitating dialogue

67. When addressing the various mechanisms available to deal with different identities, it is key to identify the most relevant level of government for better handling claims. Mandates for calling and facilitating dialogue, the form and the time and status of the dialogue platform are often shared between different actors. Competences can be analysed vertically – between different tiers of governance – and horizontally – between different actors of the same tier.

68. The vertical level of competence may be attributed to a region or the nation-state, but it may also be a parallel, shared or concurrent competence between the two, or even involve the participation of other vertical levels of competence such as local or extra-regional authorities. For example, if a local municipality wishes to change from being part of one region to being part of another – which may lead to tensions – it is the concerned local and regional authorities and constituencies that should be involved, but not necessarily the nation-state.²⁹ With regards to cross-border issues, it may – depending on the issue at hand – be best to allow a border region to enter into bilateral agreements with corresponding regions or actors. Matters are more complex – and controversial – when international borders are at stake. In many countries, foreign affairs fall into the exclusive competence of the nation-state. However, such competence should not be used to inhibit subnational cross-border relations.

69. With regards to the actors that are – or should be – involved in solving regional tensions, these can be legislative, executive or judiciary bodies, but it may also be local, regional or national constituencies, private actors, special committees or arbitrators. For example, disputes between the State and the sub-State autonomous regions of Greenland and the Faroe Islands are to be resolved by special joint committees composed of officials of both the State and the sub-State level that may be described as a loose form of arbitration. A mediation process to resolve regional tensions is expressly mentioned in the Swiss constitution – the role of the mediator may be carried out by the nation-state or by other actors. When the canton of Bern was unable to deal with an increasingly vigorous separatist movement among the Jurassic population of the canton, the federal government facilitated negotiations and helped the conflicting parties to agree on a process to deal with border and identity issues.³⁰ One could also imagine the establishment of Ombudspersons to resolve – and possibly even prevent – conflicts or regional tensions.³¹ In Belgium, linguistic groups can use an alarm bell by declaring that a draft bill or motion is of a nature “to gravely damage relations between the Communities”. The parliamentary procedure is then suspended, and the motion referred to the Council of Ministers.³²

70. In many countries, constitutional courts play an important role with regards to conflict resolution. The judiciary has the great advantage of enforcing rules independently, thereby increasing trust in constitutions and agreements made. Judicial conflict resolution, however, most often comes at the price of leaving winners and losers. When there is room for interpretation – or should be – more flexible mechanisms may be preferable. They allow both sides to freely express themselves, to negotiate and to compromise. Often, such mutually agreed solutions – where parties meet in the middle – are more easily implemented and prove to be more sustainable. In some countries, second chambers (e.g., in Bosnia, Germany or Switzerland) and/or intergovernmental bodies play a crucial role in mediating between various regional interests.

29 In Switzerland for example, different forms of internal border adjustments require different forms of involvement of the nation-state level, inter-cantonal boundary adjustments necessitating no involvement of the nation-state at all, see art. 53 Swiss Constitution.

30 See examples in Chapter 5.2.

31 The Constitution of Bosnia and Herzegovina for example has established the institution of Human Rights “Ombudsmen”. Such Ombudspersons could also be envisioned with regards to the resolution of regional tensions.

32 Art. 54 of the Constitution of Belgium.

71. Sometimes, with regards to the vertical as well as horizontal aspect of competence, it might even be useful to install a two-phase mechanism, in the sense that one type of actor should be given the possibility to solve tensions in a first place, but that another actor will step in in case the first one(s) do(es) not come to a solution. In Switzerland for example, the Cantons (and the Confederation) should wherever possible solve inter-cantonal disputes or disputes between Cantons and the Confederation by negotiation or mediation.³³ Should they fail to come to a negotiated solution to their dispute, their case can be addressed to the Federal Supreme Court.³⁴

5.2.2 Fostering shared rule and inclusive political processes

72. Shared rule is as important as self-rule when it comes to accommodating different regional identities. Shared rule refers to mechanisms of co-decision-making and regional involvement in national decision-making processes. It comprises election systems, rights to be informed, to be heard, to be consulted, to be represented and to co-determine or even initiate decisions (national policies and laws, international relations, national budgets), but also early warning systems, alarm bells, possibilities to opt-in and opt-out and other tools creating fora for dialogue without imposing uniform answers. All these mechanisms are pivotal with regards to improving dialogue.

73. While self-rule allows for the preservation of regional identities and stands for diversity, shared rule ensures that all the regions fairly contribute to unity. In a system of shared rule, regional leaders are also active in the capital, minorities are listened to and contribute to the common good. Shared rule hence strengthens national belonging as it transforms the national sphere into a sphere in which the regional identity, its needs, priorities and aspirations, matter. Mechanisms of shared rule, in one way or the other, mitigate the effects of majoritarian democracy and add counter-majoritarian approaches to democratic decision-making. In addition, they create fora for dialogue and ensure information and feedback loops between the centre and the region and among the regions. These mechanisms may be all the more stabilising if they are established in an institutionalised form. Indeed, institutionalisation may not only lead to the regularity of the exchanges but, in time, also to a “culture of dialogue”, even between actors that may not be inclined to dialogue to begin with.

Fair participation and representation of regional identities in political life

74. A crucial element for effective political dialogues is the adequate political representation of a country's regional diversity as well as means for participation. Political representation and participation of regional identities may relate to the national legislative and its committees, the central government and judiciary, the central administration as well as independent bodies, advisory boards and the like, but also the grouping of electoral districts at the constituent's level. Political representation and the inclusiveness of all central bodies, authorities and constituencies in particular may be qualified as a first and crucial step towards further and more extensive means of consultation, cooperation and participation. More generally, adequate representation and inclusiveness of government institutions as well as means for political participation of regional identities are likely to deepen democracy and strengthen social coherence.

75. For political representation and participation to flourish, not only theoretically but practically as well, specific measures must be taken to create an environment of equal rights, enabling or facilitating political participation of certain regional identities with regards to practical difficulties. Thus, measures to support and facilitate diversity such as language courses for the administration and multilingualism as a criterion for the recruitment of public officers and other measures with the same goal are important. Other mechanism can be to establish remote polling teams or electrical voting favouring the political participation of regional identities located in remote areas or in areas not easily accessible, or to provide information about elections or popular votes – if the possibility of such votes is established in a certain country – in different languages. In Switzerland the so-called “Abstimmungsbüchlein” providing official information about national popular votes is provided in French, Italian or German language depending on the linguistic region. It can also comprise mechanisms with regards to the workings of political institutions, for example allowing representatives of regional identities to communicate in their (minoritarian) language during parliamentary sessions and/or to provide translations if necessary.

33 Art. 44 par. 3 Swiss Constitution.

34 Art. 189 par. 2 Swiss Constitution; However, even if there is a strong political incentive to negotiate or to mediate their disputes, Cantons and the Confederation are under no legal obligation to do so. The Federal Court may also hear their dispute if no previous negotiation or mediation has taken place.

76. A first set of mechanisms relates to electoral systems. Electoral districts can be designed to guarantee the representation of regional interests. In Finland for example, the autonomous region of the Åland Island is one of the electoral districts with regards to parliamentary elections,³⁵ which guarantees that representatives of that region are present in the Finnish parliament, regardless of the proportional number of votes the region has. For States dealing with regional differences, adequate geographic representation can strengthen the feeling of belonging and improve the quality and acceptability of central decision-making. Accordingly, constitutional mechanisms should be in place to strengthen the representativity of central bodies and to prohibit, on the one hand, manoeuvres aiming at or leading to disadvantages for minority groups and to prevent, on the other hand, gerrymandering. As a rule, proportionate electoral systems are more likely to ensure the adequate representation of diverse population groups. Majority system can also lead to fair representation of minority groups if regions with identities of their own are recognised as electoral districts or if special or double electorates are provided for. In Slovenian parliament, for instance, two representatives of the Italian and Hungarian minorities are elected separately by their groups.³⁶ Likewise, the German-speaking community of Belgium constitutes a separate electoral district with regards to elections at the EU level (not at the national level) and is guaranteed to be represented.³⁷

77. In order to further improve the representation – and participation – of regional identities, it may be beneficial, if not necessary, to establish reserved seats in parliament, the government, the judiciary or local and regional authorities for people belonging to a certain community. Reserved seats underline the existence and importance of such identities and communities and allow them to access political “seats of power”. It can be used as a tool to protect and promote groups disadvantaged by wrongs of the past and victims of negative stereotypes. These measures can sometimes be considered controversial, and their legitimacy also depends on equal treatment for all groups and minorities in the same situation – and not being reserved to certain groups in particular.

78. Indeed, many European countries do have reserved seats for certain communities, at national as well as at sub-national level. In Kosovo*, 20 out of the 120 parliamentary seats are reserved for the country’s minorities.³⁸ In Belgium, all three linguistic groups have reserved seats at the Senate (national level), a rule that is of particular importance for the German-speaking community, which is thus granted one seat at the Senate.³⁹ At the subnational level, the Parliament of the Brussels-Capital region reserves a fixed number of seats to the Flemish minority (but there are no separate electorates).⁴⁰ Another example of reserved seats at the subnational level is the Swiss canton of Berne, which has a fixed number of seats reserved to representatives of the Bernese Jura region.⁴¹

79. Representation may also be strengthened with regards to local and national governments. Indeed, the canton of Berne does not only establish reserved seats to representatives of the Bernese Jura region in the cantonal parliament, but also in its government. On the national level, the Swiss Constitution stipulates that in electing the Federal Council, care must be taken to ensure that the various geographical and language regions of the country are appropriately represented.⁴² Not only does it – symbolically but constitutionally as well – underline the importance of the institutionalised representation of regional identities but has ensured that the representation of the linguistic regions has been respected most of the time.⁴³

80. Another mechanism to ensure or at least facilitate political representation and participation of regional identities are exceptions from threshold criteria. Such an affirmative action electoral rule has been implemented in Germany for example. While political parties generally must receive a minimum threshold of 5% of electoral votes in order to gain seats in the legislative, political parties representing national minorities are exempt from that threshold.⁴⁴ This exception from the threshold criterium is of

35 Section 5 (361/2016) par. 5 Finnish Election Act.

36 Art. 80 Slovenian Constitution, as well as the legislation deriving from it.

37 Art. 9 par. 4 and Art. 10 par. 5 Belgian Act concerning the election of the European Parliament.

*All references to Kosovo, whether to the territory, institutions or population, in this text shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.

38 Art. 64 Kosovar Constitution.

39 Art. 67 par. 1 3°, 4° and 5° Belgian Constitution.

40 Art. 118 par. 2 Belgian Constitution and the legislation based on it; See also POPELIER/LEMMENS, The constitution of Belgium, p. 113 ff.

41 Art. 73 par. 3 Constitution of the Swiss canton of Berne.

42 Art. 175 par. 4 Swiss Constitution.

43 However, it can be questioned whether the representation of non-German speakers is sufficiently guaranteed if two representatives of ‘Latin’ Switzerland are part of the Federal Council.

44 See art. 6 par. 3 German Federal Electoral Act; But this exception from the threshold criteria is also implemented in some of the Länder, in Brandenburg and Schleswig-Holstein in particular.

special importance where national minorities are territorially distinct, forming regional identities. Indeed, even if minorities at national level are not so important as to profit from the threshold exception in practice, the situation is quite different at the level of the Länder where national minorities forming regional identities are exempt from the 5 % threshold. This is the case in particular in Schleswig-Holstein with regards to the Danish minority, which – in the form of the South-Schleswigian Voter’s Association⁴⁵ – has been represented in the parliament at Länder level (“Landtag”) since 1947.

81. Where bicameral parliamentary systems are in place, in federal systems in particular, second chambers may play a crucial role in bringing regional voices to the centre and establishing a culture of dialogue and compromise, in Germany, Belgium, Bosnia and Herzegovina and Switzerland for instance. Their representation and level of participation, such as equal powers, veto rights, etc. vary depending on the country.

82. In some cases, mechanisms for an (even more) active participation of regional identities might be envisaged. Indeed, regional identities may be granted means to participate in foreign affairs or even the right to initiate political processes such as the legislative procedure. In Belgium for instance, a regions domestic competences relate to foreign affairs as well so that internal and external competences match. Consequently, numerous international treaties can be vetoed by regions. In contrast, the Swiss cantons competences in foreign affairs are less far reaching, they can contribute but not block. Foreign relations are the responsibility of the confederation, but cantons shall not only be consulted on foreign policy decisions that affect their powers or their essential interests but may even conclude treaties with foreign States on matters that lie within the scope of their powers or deal directly with lower ranking foreign authorities.⁴⁶ The Åland parliament in Finland may submit initiatives to the national authorities on matters within the legislative power of the State. These initiatives have to be presented to the national parliament for consideration.⁴⁷ Such means of active participation of regional identities – of which other models are imaginable – represent lawful means of bringing regional concerns to the attention of national authorities and thus may contribute to reduce or even prevent tensions.

83. Instead of – or complementary to – mechanisms allowing regional identities to actively initiate political processes at the national level, it may in some cases be beneficial to establish early-warning systems, mechanisms granting regional identities limited veto powers or requirements of qualified majorities if regional interests are at stake. The Belgian Constitution for example provides that certain laws have to be voted with a double majority – thus a general majority and a majority in each linguistic group – in order to protect the interest of both groups, and it furthermore establishes the so-called “alarm-bell procedure”, which can be qualified as an example of an early-warning system. In application of this procedure, the Belgian linguistic groups are granted the possibility to provoke the suspension of a parliamentary procedure with regards to a national bill in case some of its provisions are deemed to “gravely damage relations between the Communities”.⁴⁸ It obliges the involved national authorities to take regional interests into account and to justify the measures it intends to adopt.

84. Similar mechanisms can be found with regards to the Nordic Autonomies in Finland and Denmark, where national bills or other provisions that only concern, are especially significant to or may otherwise affect the autonomous territories have to be submitted to the subnational governments which may then render an opinion on the matter.⁴⁹ Other examples of early-warning systems ranging from requirements of qualified majorities to proper veto powers can also be found in many eastern European States. North-Macedonia as well as Kosovo* have both established constitutional provisions requiring qualified majorities – thus a majority not only among the representatives of parliament as a whole but also among representatives of ‘communities that do not belong to the majority’. While in North Macedonia, such a qualified majority is generally required for “laws that directly affect culture, use of language, education, personal documentation, and use of symbols”,⁵⁰ the constitution of Kosovo* explicitly lists the laws for which a qualified majority is required.⁵¹ Bosnia and Herzegovina has established the so-called vital

45 See <https://www.ssw.de/en> (last accessed on 8 February 2022).

46 See art. 54 ff. Swiss Constitution, in particular art. 55 and art. 56 par. 1 and 3.

47 Section 22 of the Finnish Act on the Autonomy of Åland.

48 Art. 54 Belgian Constitution; the Communities represent the three linguistic groups in Belgium.

49 See e.g., Section 33 of the Act on the Autonomy of Åland.

*All references to Kosovo, whether to the territory, institutions or population, in this text shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.

50 See amendment X par. 2 of the Constitution of North Macedonia, replacing its art. 69.

51 These are the following: Laws changing municipal boundaries, establishing or abolishing municipalities, defining the scope of powers of municipalities and their participation in intermunicipal and cross-border relations; Laws implementing the rights of Communities and their members, other than those set forth in the Constitution; Laws on the use of language; Laws on local elections; Laws on protection of cultural heritage; Laws on religious freedom or on agreements with religious communities; Laws on education; Laws on the use of symbols, including Community symbols and on public holidays; see art. 81 of the Constitution of Kosovo.

interest veto, according to which “decisions that concern the vital interest of any of the constituent peoples” require, in the House of Peoples, a majority vote by Bosniak, Croat or Serb delegates who are present and voting. In case the majority of Bosniak, Croat or Serb delegates object to an invocation of the vital national interest, the Speaker of the House of Peoples immediately convenes a Joint Commission consisting of three delegates each elected among Bosniak, Croat and Serb delegates to resolve the issue. If the Commission is unsuccessful, the question is to be determined by the Constitutional Court of Bosnia and Herzegovina. Such qualified majority requirements amounting to veto powers may indeed be beneficial in that they allow regional interests to be accounted for. Such mechanisms may even have an indirect preventive effect in the sense that the mere existence of the possibility of a bill being vetoed may incline the involved parties and different communities to find solutions that constitute acceptable compromises for all. However, when establishing and designing such mechanisms, one has to be careful to consider the possible negative effects and to implement procedures to counteract such effects. Indeed, mechanisms described above may be problematic in that they may lead to deadlock situations, they may reinforce rifts between different regional identities instead of closing them and in that the before-mentioned “indirect preventive effect” may in practice turn on the contrary into a negative effect in the sense that the parties – knowing they do have veto powers – are less inclined to compromise. To counteract such an effect, opting-out-options may be used, to accept the veto of a region but still allow the rest of the country to implement its consensus (“variable geometry”). The vital interest veto in Bosnia and Herzegovina has further been criticised with regards to the lack of a (constitutional) definition of the notion of “vital interest” – a critique that can, at least partly, be countered by the fact that the Bosnian and Herzegovinian Constitutional Court can, and has indeed done so, contribute to the definition of “vital interest”. The mechanisms of all three countries can be criticised in the sense that – by requiring double majorities – they may hinder or at least complicate the establishment or amendment of rules with regards to culture, language and other identity makers, giving (some) communities the right to have a say in other communities cultural and other identity-relevant affairs, when regional identities and their cultural rights might be better promoted by granting some form of autonomy in cultural, linguistic or other identity-relevant affairs.

85. Another interesting example of a soft early-warning system are territorial impact assessments. This mechanism is not only used on national levels, but on a European level in particular, especially within the framework of the European Union, for example in the context of the Committee of the Regions. The Committee of the Regions calls “for territorial impact assessments to become a standard practice promoted by the European Commission” and underlines that “scrutinising and assessing the territorial impact of EU legislation on the single market and relating to initiatives which are designed to have a territorial impact” is necessary and important.⁵² Indeed, assessing the territorial impact of (EU) policies may strongly promote regional identities, even though territorial impact assessments and their outcomes are oftentimes of a political rather than strictly legal nature and thus not legally enforceable.

Institutionalised and ad-hoc consultation and cooperation mechanisms

86. Consultation, cooperation and conflict resolution mechanisms may also induce or contribute to improving dialogue and reducing regional tensions. Such mechanisms may have a most stabilising and positive effect if they are established in an institutionalised form. However, especially in situations where the institutionalisation of such mechanisms is not possible, *ad-hoc* consultation, cooperation and conflict resolution mechanisms can lead to fruitful dialogue.

87. The Swiss constitution for example expressly provides for a consultation procedure (Vernehmlassungsverfahren), according to which the cantons, the political parties and interested groups are invited to express their views when preparing important legislation or other projects of substantial impact as well as in relation to significant international treaties.⁵³ Even though only some entities, amongst others cantonal governments, are invited to participate in a consultation procedure by the federal authorities involved, anyone and any (other) organisation may participate and submit an opinion,⁵⁴ thus not only giving regional identities in the form of cantons, but also any other possible regional identities the

52 Committee of the Regions, Resolution on the European Committee of the Regions' priorities for the sixth term of office 2015-2020, Official Journal of the European Union 2015/C 260/01, par. 19 and 27.

53 Art. 147 Swiss Constitution and Swiss Federal Act on the Consultation Procedure (Consultation Procedure Act, CPA); A consultation procedure generally takes place with regards to amendments to the Constitution, draft federal legislation, international law agreements that are subject to a referendum or which affect essential cantonal interests, ordinances and other projects of major political, financial, economic, ecological, social or cultural significance, ordinances and other projects that significantly affect individual cantons or all the cantons or are implemented to a significant extent outside the Federal Administration, but a consultation procedure may also be carried out in projects that do not meet any of the requirements listed before (see art. 3 CPA).

54 Art. 4 CPA.

possibility to be consulted. The consultation procedure aims at allowing the consulted entities “to participate in the shaping of opinion and the decision-making process of the Confederation” and “is intended to provide information on material accuracy, feasibility of implementation and public acceptance of a federal project”.⁵⁵ The procedure is a consultation procedure in the strict sense of the term, in that the participants may submit an opinion – or participate in consultation meetings if the authority responsible for carrying out the consultation procedure should invite them to such a meeting –, but they are not provided the possibility to exchange (directly and bi-/multilaterally) with other participants (or with the confederation) nor means to participate in the revision of the draft in question – for example through joint revisions or through further accompanying a project in any other way. Even so, the procedure is of great value for the cantons – and other possible regional identities. Indeed, the opinions rendered by the consulted entities are acknowledged, considered and evaluated and the results of the consultation procedure are summarised in a report.⁵⁶ Furthermore, most of the documents related to the consultation procedure – in particular the consultation documents, the opinions rendered and the minutes of consultation procedure conferences, as well as the summary of the results of the consultation procedure – are made available to the public.⁵⁷ Thus, the (political) incentives to account for the opinions of the consulted entities are very high – especially in combination with the constitutionally established possibility for an optional referendum⁵⁸ – even if there is no legal obligation to revise draft legislation according to the opinions rendered.

88. Another mechanism to foster cooperation and (limited) participation – are so-called “minority councils”. Such councils have been established in different countries, attributing an advisory role – but no veto powers or rights to be represented in the strict sense – to representatives of national minorities. In Croatia – inspired by the Hungarian model –, the right to form national minority councils through which to participate in public life and local self-government has been granted to national minorities by means of the Constitutional National Minority Rights Act. This act also regulates the conditions for the election of such national minority councils.⁵⁹ National minority councils may be elected in the interest of advancement, preservation and protection of the status of national minorities in society. They operate on the level of the self-government units and are entitled to propose measures to improve the position of the respective national minority nationally or in a specific area, to nominate candidates for posts in the civil service and the bodies of self-government units, to be kept apprised of any issue to be discussed by the committees of the representative bodies of a self-government unit that are relevant to the status of that national minority and to provide opinions and submit proposals pertaining to local and regional radio and television broadcasts intended for national minorities or addressing minority concerns.⁶⁰

89. In the preparation of draft ordinances, national minority councils are further asked to render opinions and proposals on provisions which regulate the rights and freedoms of national minorities.⁶¹ Similarly to the “alarm-bell procedure” in Belgium, national minority councils may even provoke that the enforcement of an ordinance of a self-government unit is halted and that the ordinances’ compliance with the law is assessed. While the Communities in Belgium do have the right, but not an obligation, to initiate the “alarm-bell procedure” if they deem a provision to “gravely damage relations between the Communities” a Croatian national minority council is obliged to notify the authority in charge if it deems that an ordinance of a self-government unit or any provision thereof contravenes the Constitution, the Constitutional National Minority Rights Act or special legislation which governs the rights and freedoms of national minorities.⁶² In addition to such national minority councils operating at the level of self-government units, the Croatian Constitutional National Minority Rights Act also establishes the National Minorities Advisory Board, whose role is to promote the interest of national minority participation in public life at the national level and in particular to consider and propose modes for the regulation and resolution of matters pertaining to the exercise and protection of minority rights and freedoms by means of cooperation with the relevant governmental, non-governmental and self-governmental bodies, national minority councils and other entities involved in activities related to the exercise of national minority rights and freedoms.⁶³ Similarly, a Committee for Inter-Community Relations which considers issues of inter-community relations and makes appraisals and proposals for their solution – appraisals and proposals that the assembly is obliged to take into consideration – has been established in North-Macedonia.⁶⁴

55 Art. 2 CPA.

56 Art. 8 CPA.

57 Art. 9 CPA.

58 According to which a fixed number of constituents or cantons may request federal acts (and other federal decisions) to be submitted to a vote of the People, see art. 141 Swiss Constitution.

59 Art. 7 par. 9 and art. 23 ff. Croatian Constitutional National Minority Rights Act.

60 Art. 31 par. 1 Croatian Constitutional National Minority Rights Act.

61 Art. 32 par. 1 Croatian Constitutional National Minority Rights Act.

62 Art. 32 par. 2 - 6 Croatian Constitutional National Minority Rights Act.

63 Art. 35 Croatian Constitutional National Minority Rights Act.

64 See Amendment XII to the Constitution of the Republic of North Macedonia replacing its art. 78.

90. A similar example are the Sámi-Parliaments in Finland, Norway and Sweden. Despite their denomination, they do not have a legislative function, but are mainly advisory and consultative bodies representing the Sámi people and promoting their interests – nationally and internationally. The establishment of these parliaments is based on the international recognition of the rights of indigenous people and on national legislation.⁶⁵ The three Sámi -Parliaments are elected by and among the Sámi people and differ (slightly) with regards to their ambit, but otherwise do have a similar structure and role. Sámi -Parliaments may render opinions and statements, address proposals and initiatives to authorities and be consulted by them in all matters concerning Sámi interests. The Sámi -Parliaments thus play an important role in preserving the right to cultural self-determination of the Sámi people, covering matters such as language, traditional livelihood, land rights and social wellbeing.

91. Cooperation can also take place between different State-actors on different territorial scales. Such cooperation mechanisms may be particularly benefitting if regional identities are represented by some form of political or administrative State-entity. Switzerland for example has established different mechanisms of intergovernmental cooperation that are good examples of mechanisms of improved political dialogue reducing or preventing regional tensions. On the one hand, the cantons have established a “Conference of cantonal Governments” composed by all cantonal governments – each cantonal government being entitled to one seat – and whose purpose is to promote cooperation between the cantons as well as to ensure the necessary coordination between and information to the cantons.⁶⁶ On the other hand, the heads of the different cantonal governmental departments form the so-called “Direktorenkonferenzen” (conferences of cantonal ministers), which are fora for the promotion and coordination of the cantonal departments activities in their respective sphere of competence but also to elaborate collective statements for the attention of the nation-state when cantonal interests are at stake. The conference of cantonal governments as well as the conferences of cantonal ministers thus serve as fora for cooperation and consultation, a political platform for opinion-forming among the cantons, through which the cantonal governments can make a targeted and coordinated contribution to federal policy when cantonal interests are affected. In addition to these intergovernmental conferences involving all cantons, other permanent and institutionalised conferences exist. For instance, there are six regional intergovernmental conferences composed by the governments of several – but not all – cantons working together to promote their interests.

92. An interesting system of intergovernmental cooperation can also be found in Belgium, where a committee of consultation (comité de concertation/overlegcomité) composed of members of the different governments of the federal State (the federal government and the regional and community governments) on the basis of a double parity – linguistic parity (French- and Dutch-speaking) and parity between representatives of the federal level and the federated units – has been established. Its aim is to resolve or prevent conflicts of interests as well as conflicts of competence between the different sub-national units as well as between a sub-national unit and the federal State. The Consultation Committee is the central point for consultation, cooperation and coordination between the State, the communities and the regions in order to achieve common or individual objectives, while respecting the respective competences.⁶⁷ To promote consultation and cooperation between the State, the Communities and the Regions, the Consultation Committee may set up specialised committees called “interministerial conferences” composed of members of the Government and of the Executives of the Communities and the Regions.⁶⁸ These Interministerial Conferences are means for cooperation and consultation in specific sectors of governmental activity, where the respective ministers can enter into dialogue in their field of competence. They thus focus on policies in specific areas. In principle, the Consultation Committee may decide freely in which sectors it establishes an Interministerial Conference. However, it is obliged to establish an Interministerial Conference on Foreign Policy, within which the (national) government regularly informs the regional governments of foreign policy issues.⁶⁹ To date, there are 19 Interministerial Conferences specialised in topics as varied as institutional reforms, public health, culture or the environment.

93. Useful mechanisms of (multilateral) intergovernmental cooperation by means of intergovernmental conferences composed by representatives of regional and national levels have been established in Italy⁷⁰

65 Finnish Act on the Sámi Parliament, Norwegian Sámi Act and the Swedish Sámi Parliament Act; The governments of the three countries have drafted a common Nordic Sámi Convention, but it has not entered into force yet.

66 See Art. 1 and 2 of the Convention on the conference of cantonal governments.

67 See art. 31/1 of the Belgium Ordinary Law on Institutional Reforms of 1980.

68 See art. 31^{bis} of the Belgium Ordinary Law on Institutional Reforms of 1980.

69 See art. 31^{bis} of the Belgium Ordinary Law on Institutional Reforms of 1980.

70 “System of Conferences”: permanent State-Regions-Autonomous Provinces Conference, State-Municipalities-Local Autonomies Conference, State-Regions-Autonomous Provinces-Municipalities-Local Autonomies Conference.

and Spain.⁷¹ However, bilateral mechanisms between the nation-state and a specific autonomous region are of greater importance for preventing and resolving conflicts in these (asymmetrically organised) countries. Indeed, bilateral commissions – joint bodies composed of an equal number of representatives of the State and of the region, thus based on the principle of parity – have been put in place. Whereas some of these bilateral commissions are institutionalised explicitly in the Statute of Autonomy of the respective autonomous region – this is the case with regards to the Italian autonomous regions as well as for some of the Spanish autonomous regions.⁷² Some of the Spanish bilateral commissions are rather informal instruments that do not have a legal basis in the respective Statute of Autonomy. These bilateral commissions are fora to exchange information, for consultation and cooperation, and to prevent and settle conflicts through political negotiation – especially with regards to the development of the autonomy regime of the specific autonomous region.

94. Examples of joint committees based on the principle of parity providing an – institutionalised – forum for consultation, cooperation and conflict resolution between the nation-state and regional entities can be found with regards to the Nordic Autonomies. Indeed, disputes between the State and the sub-State Nordic Autonomies⁷³ are to be resolved by special joint committees composed of officials of both the State and the sub-State level. One example is the so-called Åland Delegation,⁷⁴ which is composed by four members, two of which represent the Finnish State/the region of the Åland Islands respectively. The Åland Delegation may not only give opinions to the Council of State, the ministries thereof, the Government of Åland and the courts if requested to do so,⁷⁵ but also resolve controversies arising between the nation-state and the region of the Åland Islands in situations listed in the Act on the Autonomy of Åland.⁷⁶ It thus may be described as a form of mediation/arbitration procedure to resolve conflicts between the region and the nation-state.

95. In contrast to these – more or less – formalised and institutionalised mechanisms of cooperation, consultation and conflict resolution, informal intergovernmental relations and conflict resolution mechanisms have been established in the UK with regards to the devolved administrations in Scotland, Wales and Northern Ireland. Indeed, the principles underlying the relations between these territorial entities have been set in a Memorandum of Understanding and in several (bilateral or quadrilateral) supplementary agreements termed Concordats. These instruments do only constitute statements of political intent and are not to be interpreted as legally binding. Still, they are of political importance and set standards with regards to communication, consultation and cooperation between the national and sub-national (administrative) entities. One of the supplementary agreements even establishes a Joint Ministerial Committee (JMC) consisting of UK Government, Scottish, Welsh and Northern Ireland Ministers. This Committee should hold plenary meetings at least once a year and may also meet in other “functional” formats. It mainly has a coordinative role but may also consider disputes between the devolved administrations or try to resolve differences between the UK Government and one of the devolved administrations.⁷⁷

5.3 Promoting unity while accommodating linguistic and cultural diversity

96. One of the most important factors with regards to successful communication and thus an essential element for dialogue between different regional identities or between regional identities and the State to take place and to be successful is language. This is particularly true against the background that regional identities oftentimes involve linguistic diversity. Mechanisms with regards to languages, their recognition, use and education, are thus an important prerequisite for the implementation of other rights – of representation, participation, consultation, coordination, conflict resolution.

97. Before elaborating on specific examples, it has to be pointed out that many of the mechanisms described below are not only “good practices” but required by law. Indeed, many (European) countries have ratified the European Charter for Regional or Minority Languages and/or have adopted internal legislation on the protection of regional or minority languages.

71 Different sectoral Conferences of Ministers (some based on a formal legal basis, others rather informal) and the Conference of Presidents (regular intergovernmental conference of the prime ministers of both the State and the Autonomous Communities).

72 See as examples: art. 183 of the Statute of Autonomy of Catalonia and art. 107 of the special Statute for Trentino-South Tyrol.

73 Åland, Greenland, Faroe Islands.

74 See section 55 ff. of the Finnish Act on the Autonomy of Åland.

75 Section 56 Act on the Autonomy of Åland.

76 Section 62 in relation with section 30 par. 12 and section 61 par. 1 or 2 Act on the Autonomy of Åland.

77 See UK Supplementary Agreement on the Joint Ministerial Committee.

98. Recognition as official language(s) or as regional or minority languages is one key mechanism for accommodating linguistic diversity.⁷⁸ Different modalities are possible. On the one hand, a State may recognise multiple official languages with regards to the entirety of its territory. On the other hand, the recognition of multiple official languages or of a diverging official language may be limited to a certain region only. Various gradations are possible with regards to the recognition as a regional or minority language.

99. One example of a country where multiple official languages are recognised is Switzerland.⁷⁹ At national level, German, French, Italian and Romansh are recognised as official languages. Indeed, its quadrilingualism is seen as “one of Switzerland's fundamental characteristics” and regulating the use of the official languages and promoting the understanding and exchange between the linguistic communities is intended to “consolidate the internal cohesion of the country”.⁸⁰ On the regional level, the Cantons can decide on their official languages. However, in doing so, they have to respect the traditional territorial distribution of languages and take account of indigenous linguistic minorities in order to preserve harmony between linguistic communities.⁸¹ Even if Switzerland's quadrilingualism is thus societal rather than individual – in the sense that Switzerland is composed by four linguistic regions but that the inhabitants of these regions are mostly unilingual or bilingual at the most – it is mandatory that at the end of their compulsory schooling, students have skills in at least one second national language.⁸²

100. Another example of a State where multiple official languages are recognised is Belgium, which knows three official languages – Dutch, French and German. The leading principle with regards to languages is territoriality: In each language Region, the language of the territory is the official language. Indeed, Belgium is divided into four linguistic regions – the Dutch-speaking region, the French-speaking region, the bilingual region of Brussels-Capital and the German-speaking region – that are entrenched in the Constitution and can only be changed by a qualified majority.⁸³ In terms of federate entities, Belgium is comprised by three Communities reflecting the linguistic (Dutch-, French- and German-speaking) groups.⁸⁴ Indeed, the regulation of the use of languages for administrative matters, education and some other areas falls into the sphere of competence of the Communities.⁸⁵ Thus, Dutch, French and German are used as public languages in their respective linguistic area, the Brussels-Capital region is bilingual (French, Dutch). However, some border municipalities enjoy so-called “language facilities”, which means that residents – instead of using the official language of the territory – have the right to use the official language of the adjacent territory in administrative matters.⁸⁶ Linguistic division in general is a very important aspect in Belgium, with language groups in the parliament being relevant for special majority laws or for the alarm-bell procedure, linguistic parity in the central Government. Language parity being an important aspect with regards to the composition of courts. The Belgian linguistic system is very sophisticated. However, it has been criticised for its lack of incentives for cooperation between the different linguistic groups, focusing mainly on linguistic divide, possibly leading to Communities that “live side by side in isolation”.⁸⁷

101. Another example is Finland, where Finnish and Swedish are the national languages and where, at the national level, everyone has the right to use his or her own language, either Finnish or Swedish, before courts of law and other authorities, and to receive official documents in that language, (Section 17 Finnish Constitution). In the Finnish Åland Islands,⁸⁸ Swedish is the official language used in the administration and by the Åland Delegation, and it is also the language of correspondence between Åland officials and State officials in Åland as well as other State officials to whose jurisdiction Åland or parts of it belong. However, individuals do have the right to use Finnish in matters concerning this person a citizen

78 Regional or minoritarian languages are defined in the European Charter for Regional or Minority Languages as languages that are “traditionally used within a given territory of a State by nationals of that State who form a group numerically smaller than the rest of the State's population” and that are different from the official language(s) of that State (art. 1 lit.a).

79 Art. 70 par. 1 Swiss Constitution; The status as official language of Romansh however is limited to the communication with persons who speak Romansh.

80 Art. 1 lit. a and b and art. lit. a and b Swiss Languages Act.

81 Art. 70 par. 2 Swiss Constitution; Presently, one canton is officially trilingual (Graubünden: German, Italian, Romansh), three cantons – and one city – are bilingual (Bern, Freiburg, Wallis – the city of Biel/Bienne –: German and French), one canton has Italian as its official language, 4 cantons have French as their official language and 17 cantons have German as official language.

82 Art. 15 par. 3 Swiss Languages Act.

83 Art. 4 Belgian Constitution.

84 Art. 2 Belgian Constitution; Other than the Communities, the Belgian federal system also comprises three Regions – the Flemish Region, the Walloon Region and the Brussels Region – as federate entities, see art. 3 Belgian Constitution.

85 Art. 129 par. 1 and art. 130 par. 1 Belgian Constitution.

86 However, many controversies exist with regards to these language facilities, see e.g. POPELIER, power-sharing, p. 96 f.

87 POPELIER, Power-Sharing, P. 104.

88 Section 36 ff. Act of Autonomy of Åland.

of Finland⁸⁹ and Åland official authorities may be under the obligation to produce Finnish translations in certain circumstances.⁹⁰

102. Croatia and Serbia – respectively the Serbian autonomous region of Vojvodina – are examples where one or multiple other languages are – in addition to the national official language applicable to the entire national territory – recognised as official languages with regards to specific regions. Indeed, the Croatian Constitutional National Minority Rights Act stipulates that in the municipalities where members of an ethnic and national community or minority compose the majority of a total number of inhabitants, their language and script is to be in official use – along with the Croatian language and Latin script.⁹¹ In Vojvodina, six official languages and their respective scripts – the national Serbian language and Cyrillic script as well as five others – are recognised according to its Statute of Autonomy.⁹² These official languages do not all apply to the entire territory of Vojvodina, rather it is stipulated by further Statutes which official languages apply to which municipality, city or certain settlements.

103. Recognising a language as official language – and, even if to a lesser extent, as a regional or minoritarian language – entails several consequences. Not only should public services be available in such languages and the administration and other State authorities be equipped to communicate in these languages with the people concerned. Also, national statutory texts – at least the most important ones and those relating particularly to users of these languages – have to be made available in these languages. Furthermore, the working methods within State authorities – especially with regards to the parliament and the government – have to be designed in such a way that speakers of different official languages or speakers of a regional or minoritarian language are able to actively participate – despite linguistic diversity. It may even implicate that road signs, the denomination of streets, places, State authorities, institutions and the like have to be bi- or multilingual. These consequences require the public authorities to be organised in such a way as to fulfil the linguistic requirements. Thus, there needs to be staff – in a sufficient number – that is able to communicate not only in the majoritarian official language, but also in other recognised national, regional or minoritarian languages. At best, members of staff would be bi-/multilingual or at least have sufficient knowledge of more than just one officially recognised language.

104. For instance, the Committee of Experts of the European Charter for Regional or Minority Languages commended the Welsh Language Schemes as an “innovative method of securing and promoting Welsh”,⁹³ which have in the meantime been replaced by Standards to be specified by the Welsh Ministers.⁹⁴ Both mechanisms aim at ensuring the principle that in the conduct of public business and the administration of justice in Wales English and Welsh are treated on an equal basis.⁹⁵ Standards may relate to service delivery, record keeping, policy making but also to promoting or facilitating the use of the Welsh language more widely in general. There is a duty to comply with Standards and different enforcement mechanisms have been established.⁹⁶ Another interesting example is one contained in the Finnish Sámi Language Act, which grants the right to a paid leave of absence and liberty from work for studies in the Sámi language to (certain) State officials – under certain circumstances.⁹⁷ Furthermore, the said act provides that the Sámi Parliament shall have a Sámi Language Bureau – which in practice is called Sámi Language Office – for translations, especially official translations (for which – under certain circumstances – the State has to bear the costs),⁹⁸ but also for other tasks.⁹⁹

105. Other than linguistic requirements with regards to State authorities and activities, an important factor is that language teaching facilities to learn (regional or minoritarian) languages and more so education in these languages are available. Indeed, many countries provide by law for education in a regional or minoritarian language. In that regard, it is important to point out that it is not only necessary to provide sufficient numbers of facilities and staff – quantitatively speaking – to ensure education in regional or minoritarian languages, but also and especially that teachers themselves are sufficiently educated and trained – qualitatively speaking. For example, quotas for students speaking the Sámi language in the

89 Section 37 Act of Autonomy of Åland.

90 Section 39 Act of Autonomy of Åland.

91 Art. 7 Croatian Constitutional National Minority Rights Act.

92 Art. 24 Statute of the Autonomous Province of Vojvodina.

93 Committee of Experts of the European Charter for Regional or Minority Languages, Report about the application of the Charter in the United Kingdom, Report of 24 March 2004, N 144.

94 Section 145 and Part 4 (section 25 ff.) Welsh Language (Wales) Measure 2011.

95 Such mechanisms may also contribute to “save” a minority language that is threatened to be extinct (because its speakers are forced to assimilate and speak the majoritarian language).

96 Section 25 and Part 5 (section 71 ff.) Welsh Language (Wales) Measure 2011.

97 Section 25 Finnish Sámi Language Act.

98 Section 21 ff. Finnish Sámi Language Act.

99 Section 26 of Finnish Sámi Language Act.

training of primary school teachers have been established in Finland, but the training of these teachers of and in the Sámi, language was insufficient, especially for the higher levels of education. This has been remedied.

106. The promotion of regional languages may not only take the form of allowing or even creating a conducive regulatory climate for (private) measures, but also the involvement of the State (or certain sub-units) in the establishment of mechanisms, institutions and projects as well as contributing to the necessary funding for public or private projects and initiatives. In Finland for example, in addition to the annual appropriation for the implementation of the Sámi Language Act, the authorities grant fundings for pilot projects on distance teaching, a pilot project on safeguarding the teaching of Sámi languages outside the Sámi Homeland and for the maintenance of Sámi (cultural and) language nests. The idea of so-called “language-nests” has been originally developed in New Zealand for families with Māori roots and is now implemented with regards to other indigenous peoples as well. The idea of language nests is to immerse young children – from birth to the age of approximately 5 years – in an environment where they can interact with fluent speakers of their indigenous peoples language in a home-like environment where rather than teaching the language to the children, they acquire it naturally as they would acquire their first language.¹⁰⁰ Some – if few – such language nests funded (partly) by the State have even been established in Helsinki – a city that lies outside the original Sámi Homelands (but where a lot of Sámi people currently live after having moved there for work). In language nests, the children are not only spoken to in Sámi, they also play games and sing songs, and are taught about Sámi culture as well.¹⁰¹ Indeed, language nests are being considered a very effective tool for the promotion of indigenous languages – but could be so for any other minoritarian language – and the Committee of Experts of the European Charter for Regional or Minority Languages has even recommended institutionalising a successful project such as language nests instead of providing project-based funding.¹⁰²

107. Another interesting mechanism has been established with regards to the promotion and protection of the Sámi languages: the Sámi Giellagáldu language centre. This centre is a cooperation project between the Sámi Parliaments of Finland, Norway and Sweden and was – at the beginning – co-funded by the EU. The language centre is an expert body aiming at developing, coordinating and strengthening cooperation between Sámi languages, as well as preserving and promoting the cultural heritage relating to the Sámi languages. More concretely, it acts as a vocational and resource centre responsible for Sámi language services intended for users of the languages, including tasks such as language planning, language development terminology work, standardisation, and a place name service.¹⁰³ Other than language centres for promoting one regional or minoritarian language, it may also be beneficial to establish centres for multilingualism, focusing on research on and promotion of multilingualism. Examples for such centres are the Centre for Multilingualism in Society across the Lifespan in Norway,¹⁰⁴ which has recently launched an Online Reference providing comprehensive documentation of indigenous and immigrant linguistic minorities in Europe,¹⁰⁵ or the Institute of Multilingualism in Switzerland.¹⁰⁶

108. The establishment of – official or semi-official – bodies (Language Boards, Language Commissioners or similar) whose purpose is the promotion of such languages/one such language may also be considered. Examples of such bodies are the Scottish Bòrd na Gàidhlig¹⁰⁷ and the Welsh Language Commissioner¹⁰⁸ – formerly the Welsh Language Board – whose aim is to promote and facilitate the use of the Gaelic and Welsh language respectively and to ensure the status of these languages as official languages (with regards to the respective territories) commanding equal respect to the English language. The Welsh Language Commissioner in particular has extensive competences with regards to the protection and promotion of the Welsh Language. Not only does the Commissioner have to produce reports on the position of the Welsh language, he or she also plays an important role with regards to establishing and enforcing Welsh Language Standards, he or she may conduct inquiries, institute or intervene in legal proceedings (in England and Wales), provide an individual with legal

100 See e.g., Language Nest Handbook for B.C. First Nations Communities by the First People’s Cultural Council, available online: https://fpcc.ca/wp-content/uploads/2020/08/FPCC_LanguageNestHandbook_EmailVersion2.pdf (last visited 4 March 2022).

101 See e.g., <https://finland.fi/life-society/sami-languages-making-gains-in-finland/> (last visited on 4 March 2022).

102 Committee of Experts of the European Charter for Regional or Minority Languages, Evaluation of the Implementation of the Recommendations for Immediate Action contained in the Committee of Experts’ fifth evaluation report on Finland, Evaluation of 7 October 2020, N 13.

103 See <https://www.samediggi.fi/finished-projects/giellagaldu-project/?lang=en> (last visited on 4 March 2022).

104 See <https://www.hf.uio.no/multiling/english/> (last visited on 7 March 2022).

105 See <https://www.degruyter.com/database/lme/html> (last visited on 7 March 2022).

106 See <https://institut-mehrsprachigkeit.ch/en> (last visited on 7 March 2022).

107 Art. 1 Gaelic Language (Scotland) Act 2005 and Schedule 1 of the said Act; see also: <https://www.gaidhlig.scot/en/> (last visited on 7 March 2022).

108 Part 2 (art. 2 ff.) of the Welsh Language (Wales) Measure 2011 and Schedule 1 of the said Measure; see also: <https://www.welshlanguagecommissioner.wales/> (last visited on 7 March 2022).

assistance with regards to matters related to his function (of protecting and promoting the Welsh language).¹⁰⁹ He or she is assisted by an Advisory Panel.¹¹⁰ The Welsh Language Commissioner even has to establish a procedure for the investigation of complaints (by individuals) about acts or omissions relating to the use (and its facilitation) and promotion of the Welsh language – the so-called “complaints procedure”.¹¹¹ The Commissioner’s decisions with regards to such complaints can be appealed against before an independent Welsh Language Tribunal.¹¹² Another interesting – and notable – competence of the Welsh Language Commissioner is that he may make settlement agreements with a person that failed to comply with a Welsh language standard and may apply to a county court for an order requiring the concerned person to comply with a settlement agreement if that person fails to do so.¹¹³

109. Media can also participate to the promotion and protection of regional and minority languages. Indeed, the European Charter for Regional and Minority Languages stipulates several requirements with regards to newspapers, radio and television channels and/or programmes in regional and minority languages.¹¹⁴ Thus, many multilingual countries have established mechanisms to encourage, ensure or financially support such endeavours. The Swiss Broadcasting Corporation for example supplies the entire population with equivalent radio and television programme services in the three official languages German, French and Italian and broadcasts at least one radio programme service for Romansh-speaking Switzerland.¹¹⁵ In the UK with regards to the Welsh language, an entirely Welsh-language radio station has been established and different Welsh television channels broadcast parts of their programmes – at prime time as well – in the Welsh language. Furthermore, there are several periodical news publications available in Welsh.¹¹⁶ In Belgium,¹¹⁷ media are a typical sphere of competence of the Communities,¹¹⁸ which is why public media are divided along linguistic lines. Each Community has its own public broadcaster, each broadcasting organisation being mutually independent as well as independent from the national level. Federal issues and other important information are covered by all broadcasting organisations. However, public broadcasters’ coverage of information concerning the Regions or Communities other than its own Community is sometimes lacking, the public broadcasters being oriented to a much larger extent towards regions or other (nation) States of the same linguistic affiliation. Intensifying the currently limited cooperation between the public broadcasters may thus help to improve inter-Communitarian dialogue.

110. Apart from the accommodation of regional and minority languages, other (more general) factors are relevant with regards to promoting dialogue and understanding between regional identities and the State, thus engendering unity while accommodating diversity. One such factor is culture. Indeed, forcefully suppressing cultural diversity with the alleged goal of promoting national unity is not only detrimental to the regional cultural identities concerned, but for the national cohesion as well. Rather, regional cultures should be embraced and protected, all while not overstating differences leading to rifts, but by also highlighting commonalities contributing to national unity and giving reason to its advantages.

111. A soft mechanism to foster cultural understanding can be to celebrate multiculturalism by highlighting its importance in preambles or other (programmatic) provisions. Thus, article 7 of the Statute of the Autonomous Province of Vojvodina states that multilingualism, multiculturalism and freedom of confession shall represent values of particular interest and that the autonomous province shall promote and help to preserve and develop multilingualism and cultural heritage of national minorities - national communities living in its territory and undertake special measures and activities to support mutual learning about and respect of languages, cultures and confessions. The preamble of the Swiss constitution proclaims the Swiss people and the cantons to be determined to live together with mutual consideration and respect for their diversity. Even if such provisions are not legally enforceable, they are of great political, diplomatic and symbolic value. A more concrete example of how to celebrate cultural diversity would be to not only allow national bank holidays, but regional bank holidays to be celebrated as well. Indeed, national symbols, monuments, heroes, etc. should be inclusive – and also celebrate minority cultures.

109 Art. 4 ff. Welsh Language (Wales) Measure 2011.

110 Part 3 (art. 23 f.) Welsh Language (Wales) Measure 2011.

111 Art. 14 Welsh Language (Wales) Measure 2011.

112 Art. 95 ff., Art. 120 ff. and Schedule 11 Welsh Language (Wales) Measure 2011.

113 Art. 91 f. Welsh Language (Wales) Measure 2011.

114 Art. 11 European Charter for Regional and Minority Languages.

115 Art. 24 par. 1 lit. a and par. 2 Swiss Federal Act on Radio and Television; the radio and television needs of the Romansh-speaking linguistic region must additionally be taken into consideration (art. 24 par. 2 of the same act).

116 Committee of Experts of the European Charter for Regional or Minority Languages, Report about the application of the Charter in the United Kingdom, Report of 24 March 2004, N 160 ff.

117 Which is not party to the European Charter for Regional and Minority Languages.

118 Art. 127 par. 1 and Art. 130 par. 1 Belgian Constitution; the Communities representing the different linguistic (and cultural) groups, see Art. 2 Belgian Constitution.

112. In addition to affirming the importance and value of cultural diversity, it may be beneficial if not necessary to establish mechanisms strengthening specific cultural – especially minoritarian and vulnerable– regional identities, their visibility, conservation and prosperity. One such mechanism is the establishment of (advisory) bodies with regards to culture. Two examples – that have already been mentioned in other parts of this report with regards to different aspects – are the Scandinavian Sámi Parliaments and the Scottish Bòrd na Gàidhlig. Indeed, one of the Sámi Parliaments main goals is to promote and protect not only Sámi languages, but more generally Sámi culture. In this function, the Sámi Parliaments may make initiatives and proposals to the authorities, as well as issue statements. The Scottish Bòrd na Gàidhlig, even if established by the Gaelic Language Act with the principal aim to promote the Gaelic language, does also have the function of promoting Gaelic education and culture more generally.¹¹⁹ In particular, the Bòrd may advise Scottish Ministers, public bodies and other persons exercising functions of a public nature as well as other persons on matters relating to the Gaelic culture.¹²⁰ Another such mechanism strengthening specific cultural identities is to establish cultural centres, one example being the Sámi Cultural Centre Sajos, which houses not only the Finnish Sámi Parliament's main office and parliament hall but also other Sámi organisations. It is the Finnish centre of Sámi administration, culture, education and know-how and offers facilities for meetings, congresses, seminars and events as well as other services.¹²¹

113. Other than culture, another factor contributing to improving dialogue with regards to regional identities to be mentioned is how regional identities are accounted for and given attention to in historiography, education and academic research. Indeed, acknowledging regional identities in historiography and educating people about their existence, culture and particularities contributes to reducing possible regional tensions. The latter presupposes that studies of regional identities are included in the curriculum and that teaching materials, in particular history books, exist that adequately portray such identities. This, in turn, necessitates that concerned regional identities have means and possibilities to contribute to or are consulted about historic, educational and academic consolidation of knowledge. Academic research examining regional identities, their particularities but also their embedding in the wider context is thus important. Equally however, it can be beneficial to focus not only on regional differences, but also on common traits, grounds, interests, thus promoting unity in diversity.

5.4 Addressing territorial claims and changes in boundaries

114. As has been stressed before, identities are never sharp, but fluid and dynamic. In addition, people and their families are mobile and often move from one region to another, in particular due to urbanisation. Furthermore, since regional identities do not necessarily overlap with internal State borders, some communities with regional identities do not have a region “of their own” but are divided into several or merged into larger entities. All these situations can incite communities to question borders and raise claims of border adjustments.

115. While there are numerous reasons for the stability of international and subnational borders, open dialogue is crucial if claims for territorial divisions, mergers or border adjustments are being raised. Raising territorial claims must not be perceived as a threat to territorial integrity or national security but should be seen as a political claim – usually based on real or perceived injustices of the past and/or the present and fears about a group's identity – to be solved in the political sphere. Such claims or rather mechanisms to address them will be analysed below.

5.4.1 Territorial reorganisation

116. One of the key challenges regarding territorial reorganisation is if and how regional identities should be considered with regards to (internal) territorial delimitation or reforms. There are often good arguments to adjust internal borders to regional identities and to transform national minorities into regional majorities capable of using the right to (limited) self-rule. However, there are also strong arguments for insisting on existing internal borders as the fluidity of borders can create instability and incentives for demographic engineering. In addition, the design of borders based on regional identities typically ends up creating very unequal regions in terms of size, population, wealth and other identifiers, and invite asymmetric forms of self-rule and shared rule. Finally, border adjustments or their possibility raise the fear that federalisation, regionalisation or decentralisation make hungry for more and are just a step on the way to independence or claims therefore.

119 Art. 1 par. 2 lit. a (ii) Gaelic Language Act.

120 Art. 1 par. 2 lit. b and c Gaelic Language Act.

121 See <https://www.sajos.fi/frontpage/> (last visited 30 March 2022).

117. Border tensions can be reduced by several means: by rearranging the division of powers between the central and the regional level (for instance by nationally guaranteeing recognition, rights and representation for intra-regional minorities), by strengthening local self-rule, by allowing or encouraging cross-border cooperation, or by other means such as infrastructural or economic support of border regions – should this indeed be the cause for regional tensions. In case of strong and persistent territorial claims, however, political venues for territorial re-shuffles must be available. Some States provide rules on territorial restructuring, others do not. In both situations, some international standards apply: the principles of democracy (even though the very fact of who is the “demos” may be challenged), the principles of the rule of law, the right of all regions and communities concerned to be heard and consulted. According to the Reference Framework “Regional boundaries shall not be altered without prior consultation of the region(s) concerned. Prior consultation may include a referendum.” (para. 31). Important territorial changes typically require the cooperation of the region or regions and the central tier. Smaller adjustments can sometimes be agreed upon by two regions (and their populations).

118. An example where territorial rearrangements triggered by regional tensions have been handled based on political dialogue and cooperation is the creation of the Swiss canton of Jura and the subsequent internal border readjustments, especially with regards to the municipality of Moutier. The ad-hoc rules negotiated during the process have later been entrenched in the federal constitution and serve as guidelines for other territorial claims. The Jura region has been incorporated to the canton of Berne in 1815, as consequence of the Congress of Vienna, without consultation of Jurassic people. This incorporation, however, has led to – at times violent – tensions, amounting to a proper ‘Kulturkampf’ between the predominantly German-speaking, protestant canton of Berne and the – minoritarian – predominantly French-speaking, catholic Jura region. After some failed attempts, newly elected members of the cantonal government paved the way to the creation of a new canton of Jura, pushing for a policy of dialogue and cooperation. Indeed, at the time, the Swiss constitution did not provide a procedure for the creation of a new canton, but rather protected their autonomy and territory, which is why the following procedure had to be established through political dialogue: First, the cantonal constitution had to be amended in order to create a cantonal legal basis granting a right to self-determination to the population of the Jura region; second, the new canton and its territory was established through three plebiscites – one plebiscite at cantonal, regional and municipal level each; and lastly, the national constitution had to be amended, necessitating the approval by double majority – thus by the national electorate as a whole as well as by all cantons. The three-stage procedure of the plebiscites was established in order to allow a maximum congruency between the constituents that decide and the constituents that are affected by the decision. In a first plebiscite, the electorate of the Jura region was allowed to vote on whether or not they wanted to form a new canton. After the creation of a new canton had been approved, the Jura districts that had voted against the creation of a new canton of Jura could decide in a new plebiscite on district level whether they wanted to join the new canton of Jura or remain in the canton of Berne. Finally, in a last plebiscite, the municipalities bordering on a district that had decided to separate from or remain with the canton of Berne were allowed to vote one last time on their preferred territorial affiliation. The described procedure led to the northern parts of the Jura region to form a new canton of Jura and the southern districts of the Jura region to remain with the canton of Berne.

119. After the territorial tensions had first abated, ongoing claims, especially of the northern districts forming the new canton of Jura, to reunite the southern districts of the Jura region with the canton of Jura have in the aftermath a newly led to – more or less violent – regional tensions. New approaches had to be developed to deal with these ongoing conflicts and regional tensions, which is why the Bernese and Jurassian cantonal governments reached out to the Swiss Government for mediation. Consequently, a tripartite dialogue between both cantons under the direction of the Federal Government was institutionalised and the so-called inter-Jurassian assembly, equally composed by representatives of both cantons and headed by a president chosen by the Federal government, was formed. The thus established institutionalised political dialogue and cooperation led to a “final” plebiscite in the Jura regions on the question of whether the regions should be reunited in the canton of Jura. The southern districts of the Jura region – again – rejected such reunification and chose to remain with the canton of Berne. Only one municipality of a southern district, the municipality of Moutier, had voted in favour of the reunification, which is why it had been allowed to vote again on whether it wanted to remain with the canton of Berne or join the canton of Jura. After a first vote had to be annulled due to irregularities (illustrating to crucial role of the rule of law and the judiciary), in a second vote in March 2021, the electorate of Moutier decided to change its territorial affiliation and to join the canton of Jura. The finalisation of the territorial change will take its end with the approval of the Federal Assembly in the form of a Federal Decree. In the meantime, the inter-Jurassian assembly has been dissolved in 2017.

5.4.2 Responses to secessionist claims

120. In some cases, regional tensions may not only lead to claims for internal border adjustments, but to secessionist movements. As such claims threaten the territorial integrity of the State, they are often classified as being illegitimate. Indeed, the vast majority of nation-states¹²² do not provide a constitutionally or otherwise legally guaranteed right to secede. Moreover, the question of whether the right to self-determination includes a right to (external) secession is highly disputed and generally rejected in international law. However, despite the absence of a general right of secession, it is necessary and beneficial to seek a true dialogue to address the underlying issues and political claims at the core of secessionist aspirations. Indeed, such aspirations are usually based on real or perceived injustices and are not likely to disappear by negating their existence or by declaring them to be unconstitutional and illegitimate.

121. Several mechanisms can be envisaged to deal with secessionist claims: involving secessionist identities in national decision-making procedures by means of consultation or political participation and representation, granting some degree of regional autonomy or negotiating extended self-rule, allowing and encouraging cross-border cooperation and providing financial and infrastructural support where necessary. In case of strong and enduring secessionist claims however, the possibility of a right to secede – in the sense of a negotiated individual *ad hoc* procedure (in the absence of a constitutional institutionalisation of such a right) – its procedure and what concessions would have to be made in order to prevent a secession have to be discussed through political dialogue with the central authority.

122. An example where political dialogue has taken place and led to a referendum on independence being legally conducted is the 2014 Scottish independence referendum. Indeed, after the Scottish National Party (SNP) – one of whose political objectives was to hold a referendum on independence – won an overall majority in the Scottish Parliament in 2011, political claims for secession gained prominence and political weight. Even though the British government was not in favour of a referendum on independence, it was open to political dialogue. Indeed, Prime Minister David Cameron travelled to Scotland to discuss possible solutions¹²³ and the political dialogue finally led to an Agreement between the governments of the United Kingdom and of Scotland (2012 Edinburgh Agreement) which provided a clear legal basis for the holding of the 2014 Scottish independence referendum, delegating the relevant competences and powers – which normally were reserved for the parliament of the United Kingdom – to the Scottish parliament. Whether the Edinburgh Agreement was legally binding was controversial. However, an Order of Council drafted by the national government after the Edinburgh Agreement and signed and approved by both Houses of Parliament as well as the Queen, granted the necessary powers to organise a referendum on Scottish independence to the Scottish parliament and thus constitutionally legitimised the holding of the 2014 Scottish independence referendum. While the national authorities, in particular the government of the United Kingdom in the context of the negotiations of the Edinburgh Agreement, were thus involved in setting up a framework for the holding of the 2014 Scottish independence referendum, the final legislation on the holding of the referendum was passed by the Scottish parliament. Unlike what has been the case in Switzerland with regards to the canton and region of Jura, concerning the question of the independence of Scotland, only one referendum was held – and not different plebiscites at different local levels – and only the Scottish population was allowed to vote, at the exclusion of people belonging to neighbouring regions or the British population as a whole. The referendum was held in September 2014 and was rejected by a majority of 55.3 % – with a comparatively high overall voting turnout. This outcome has been accepted by all parties involved. Indeed, the political dialogue leading to the 2014 independence referendum can be qualified as a success and may serve as an example for new political dialogues, even with new territorial tensions potentially arising in Scotland due to the exit of the United Kingdom from the European Union.

123. In case of violent conflict, loss of trust and stalemate, international mediation should be considered as a helpful mechanism to reopen dialogue. Negotiations for the Belfast Agreement of 1998 (Good Friday Agreement), for instance, were chaired by US special envoy George Mitchell. The talks resulted in an agreement between the British and Irish governments, and most of the political parties in Northern Ireland, on how Northern Ireland should be governed. On the constitutional question of whether Northern Ireland should remain in the UK or become part of a united Ireland, it was agreed that there would be no change without the consent of the majority (“principle of consent”).

¹²² Ethiopia and the Principality of Liechtenstein each have an explicit constitutional provision concerning external secession. However, these constitutional provisions and the corresponding right to secede are controversial, to say the least.

¹²³ It was not the Scottish representatives that had to make the journey to London, which may have been of great symbolic value for the process of dialogue.

5.4.3 Promoting cross-border cooperation

124. As has been pointed out at different occasions, cross-border cooperation is one mechanism serving as a tool to solve regional tensions. It is thus commendable to allow and encourage such cooperation, and to politically, financially, infrastructurally and/or otherwise support it. The (political) objective to facilitate and promote cross-border cooperation has indeed been recognised by means of legal instruments, an example being the EU Regulation on a European Grouping of Territorial Cooperation.¹²⁴ Legal obligations with regards to cross-border cooperation from the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities including its protocols,¹²⁵ that have already been mentioned in a previous chapter. The Outline Convention provides that the contracting parties should undertake to facilitate and foster transfrontier co-operation between territorial communities or authorities within their jurisdiction and territorial communities or authorities within the jurisdiction of other contracting parties, that they shall endeavour to promote the conclusion of any agreements and arrangements that may prove necessary for this purpose,¹²⁶ and sets further and more detailed objectives.

125. Cross-border cooperation may solve regional tensions by fostering and stimulating regional development in border regions – which are sometimes seen as burdened by their peripheral location and because borders may complicate trade and flows of information and people – through coordinating policy, by means of jointly exploiting common development potential, helping to create and profit from synergies, by promoting cross-border trade and by providing networking opportunities. Furthermore, cross-border cooperation may connect communities forming regional identities separated by national borders, facilitating transborder cultural exchanges for example. Such cross-border cooperation requires regional autonomy (self-rule) to include the right to enter negotiations with neighbouring regions and to allow regional international relations and cross-border treaties. Cross-border cooperation has for instance been successfully implemented in the region of Tyrol and South Tyrol, the lake of Constance, the Euregion Meuse-Rhine, the central Baltic, the south Baltic, the “Grande-Région” (Saar – Lorraine – Luxembourg – Rheinland-Pfalz – Wallonie) etc.

126. Interesting examples to mention are the Interreg Europe cooperation programme co-funded by the European Union. Interreg Europe supports local, regional and national governments across Europe by funding projects to develop cross-border, transnational and interregional cooperation, thus helping to create an environment and opportunities for sharing solutions to regional development issues and assisting the exchange of good practices and policy learning among European regions in 29 countries. Currently, around 250 projects have been approved and contribute to bring policy changes to the respective regions.¹²⁷

127. The multiparty Belfast Agreement (Good Friday Agreement), mediated by outsiders, is another example of cross-border cooperation. In addition to devolution, it regulates the north-south relationship between Northern Ireland and the Republic of Ireland. The North/South Ministerial Council is made up of ministers from the Northern Ireland Executive and the Government of Ireland and establishes mechanisms of consultation and cooperation in twelve areas of mutual interest. As part of the agreement, the Northern Ireland Assembly and the national parliament of Ireland created a North/South Inter-Parliamentary Association. Finally, the agreement also foresees the establishment of a North/South Consultative Forum, an independent consultative forum representative of civil society.

6. Concluding remarks

128. This report shows and discusses mechanisms allowing for or improving dialogue, consultation and cooperation between actors sharing a country but not all identity markers, thus better embracing regional identities.

124 Regulation (EC) No. 1082/2006 of the European Parliament and the Council (2006) of 5 July 2006 on a European Grouping of Territorial Cooperation, Official Journal of the European Union L210/19, 31 July 2006, in its consolidated version of 22 June 2014.

125 Additional Protocol to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities; Protocol No. 2 to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities concerning interterritorial co-operation; Protocol No. 3 to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities concerning Euroregional Co-operation Groupings (ECGs).

126 Art. 1 Outline Convention.

127 See <https://www.interregeurope.eu/>, last visited on 11 May 2022.

129. The notion of regional identity – or rather regional identities – is complex and multifaceted, and different forms and manifestations of regional identities exist – in theory as well as in practice. Such regional identities represent sources of mutual enrichment and should be embraced and accommodated. However, regional identities being objects of legal obligations, positive approaches to regional identities are not only beneficial but often required by law.

130. While regional identities are generally sources of orientation, wealth and inspiration as well as objects of legal obligations, they may also lead to tensions in some contexts. There is a need to deal with such tensions, should they arise and to prevent their escalation. Therefore, it is useful to dress an overview of tensions, a categorisation on the basis of which the toolbox of mechanisms providing means to peacefully address tensions, to deal with and accommodate diversity and to improve dialogue to prevent arising regional tensions from escalating.

131. Different examples illustrate these rather analytical and theoretical deliberations. The focus of this report is on institutional frameworks for dialogue, territorial boundaries and territorial change as well as on mechanisms promoting unity in diversity in general and mechanisms related to languages in particular, because these areas are deemed to be of particular importance with regards to regional identities. The examples are illustrative, not exhaustive. Not only do other examples of mechanisms exist, but it is also imaginable to adapt and modify a certain already established mechanism according to the specific situation at hand or even to design and establish mechanisms that have not yet been implemented in practice elsewhere. Indeed, the possibilities of conceivable mechanisms are not limited by the list of examples given in this report.

132. As this report pointed out, the choice of suitable mechanisms and tools, their adaptation and combination depend on international frameworks, national agreements, regional aspirations as well as political, cultural, social and economic contexts. This is one of the reasons why it is difficult to establish best – or even good – practices: a certain mechanism might work well with regards to accommodating a certain regional identity in a certain country, but not for others, and *vice versa*. Furthermore, the efficacy of a mechanism depends not only on its establishment, but on its implementation in practice as well. Nevertheless, the examples discussed above should be seen as sources of inspiration – notwithstanding possible shortcomings. Indeed, (some) possible shortcomings do not necessarily mean that a certain mechanism represents a “bad practice” but can rather be overcome. In fact, an awareness for and careful consideration of possible shortcomings can help reflect on a mechanism, its positive and negative effects, and induce establishing procedures counterbalancing possible negative effects, so that the mechanism may deploy the best possible impact.

133. Thus, the large toolbox and its mechanisms presented in this report are permanently refined in an iterative process of learning from each other. Indeed, there are multiple possibilities for processes of transnational experience-sharing, learning and feedback, and such processes are the way forward to a future – and present – of peaceful coexistence and enriching living together of different regional identities.

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