

RAPID RESPONSE SERVICE NO. 44

Ukraine: Questionnaire on legal personality at local level



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Introduction

Following the request of the Ukrainian Specialised Parliamentary Committee on Local Self-Government, the Council of Europe is providing extended and comprehensive support on the issues concerning legal personality at local level in Ukraine. The present Report was prepared by the Centre of Expertise for Good Governance, Department of Democracy and Governance of Directorate General II – Democracy in the framework of the Programme “Enhancing decentralisation and public administration reform in Ukraine”.

The principle of a legal personality reform at local level has been discussed among Ukrainian stakeholders in recent months in the context of the preparation of (i) a new version of the basic law on local self-government and (ii) Constitutional amendments on decentralisation. The European Committee on Democracy and Governance (CDDG) was asked by the Ministry for Communities and Territories Development to collect information from the Member States through a short questionnaire circulated by its Rapid Response Service. Feedback was collected from the following 17 countries: Belgium, Bulgaria, Czech Republic, Denmark, France, Georgia, Germany, Greece, Moldova, Poland, Portugal, Romania, San Marino, Slovak Republic, Slovenia, Spain, Sweden.

Legal personality at the local level

All the countries responded that at local level the administrative territorial unit has legal personality.

Legal status of the State

The State has legal status in almost every country. In some cases, such as Bulgaria, Denmark and Slovakia, the legal personality is granted to central bodies of state administration (e.g. ministries).

Legal personality of intermediate level authorities

In most of the responding countries, intermediate level authorities (e.g. regions, provinces etc.) have legal personality. Some countries have responded indicating associations of municipalities (e.g. Germany, Portugal).

In a few cases, there are no intermediate level authorities (e.g. Portugal, San Marino, Slovenia). An exception is represented by Georgia, where Administrative Regions do not possess any legal status and are led by officials appointed by the government.

Legal framework

In most of the respondent countries the legal personality/status of the state and the municipalities are enshrined in the Constitution and in some cases by general or special legislation. The main outliers are Belgium, where the legal personality of the state, provinces and municipalities is based on old traditions, and Sweden, where the legal status of the state and municipalities is not stipulated by law.

The application of the concept of “municipality”

The application of the concept of “municipality” varies according to the country in question. In many Council of Europe member states, the term “municipality” defines a territorial unit (e.g. Portugal, Slovakia and Spain) and/or the community (e.g. Poland), and this definition does not encompass the municipal authorities. In Greece the term “municipality” is used for both a territorial entity and its governing structures. There are a few countries (e.g. France and Georgia) where the concept of “municipality” is linked to the local administrative bodies, i.e. mayors and municipal councils, but loosely. In many countries the term “municipality” is used in the everyday language, rather imprecisely, to designate in turn the community, the authority or the list of local services provided by the local authority, hence the direct correspondence with the English language should be made with caution.

Country	Question 1 – Legal personality at the local level	Question 2 - Legal status of the State	Questions 3 and 4 - Legal personality of intermediate level authorities	Question 5 - Legal framework	Question 6 - The application of the concept of “municipality”
Belgium	Municipality	Yes	Regions, communities and provinces	N/A, based on old tradition	N/A
Bulgaria	Municipality	Yes – State bodies	District and territorial administrations, but they are headed by government representatives	Constitution; different Acts	Basic administrative territorial unit
Czech Republic	Municipality	Yes	Regions	Constitution; Civil Code; different Acts	Key attributes: "community of citizens", "territorial unit" and "own property"
Denmark	Municipality	Yes (Ministries and boards)	Regions	Reflected/expressed in the Danish legislation	Territorial unit, the local authority that performs a task, or financing
France	Municipality (<i>Commune</i>)	Yes	Departments, regions, overseas and special statute collectivities	Constitution; General Code of territorial collectivities	<i>Commune</i> : the area managed by the Mayor and the municipal body
Georgia	Municipality	Yes	Administrative Regions have no legal status	Constitution; Code on Local Self-Governance	Basic administrative territorial unit
Germany ¹	Municipalities	Yes (Länder, Federation)	Associations of municipalities	Local Government Law of Rhineland-Palatinate	Territorial community, characteristics: inhabitants, municipal territory
Greece	Municipalities	Yes	Regions	Constitution; Law 3852/2010	Territorial area and the governing municipal authorities
Moldova	Administrative territorial unit	- Yes	<i>Rayons</i> , which have legal personality	Constitution; different Laws.	Localities
Poland	Administrative territorial unit	- Yes	Counties, regions	Constitution	Community
Portugal	Municipality or Parish	Yes	Associations of municipalities or metropolitan zones	Constitution; Law 75/2013 of 12 September	The respective territorial unit
Romania	Administrative territorial unit	- Yes	Counties, which have legal status	Constitution; Administrative Code	Basic administrative territorial unit (not to be confused with <i>municipium</i> = large city)
San Marino	Municipality (<i>Castello</i>)	Yes	There is no intermediate level	The Statutes of 1600; Law no. 158 of 24 September 2020	The <i>Castello</i> is a territorial entity
Slovak Republic	Municipality	Yes (Ministries)	Self-governing regions, but not districts	Constitution; different Acts	Territorial unit
Slovenia	Municipality (<i>občina</i>)	Yes	No Regions established yet	Local Self-Government Act	Territorial unit
Spain	Municipality	Yes	Autonomous Communities, <i>comarcas</i> , <i>mancomunidades</i>	Constitution; Law 7/1985; organic laws	Territorial unit
Sweden	Municipality (<i>Kommuner</i>)	Yes	Regions (<i>Regioner</i>)	N/A	A defined territory and a political and administrative structure

¹ The answers provided refer to one specific German Land (federal state), Rhineland-Palatinate, presenting the legal circumstances of this federal state by way of example.

Annex I: Questionnaire responses

1. **Who has legal personality** (is a legal entity and hence recognised as subject of legal rights and responsibility) in your country **at local level, the community** (or “administrative territorial unit”) **or the authority** (council, executive...)?

Belgium

The municipality has legal personality governed by public law.

Bulgaria

Bulgaria is divided into two NUTS-1 regions, six NUTS-2 level planning regions, 28 districts or regions (*oblasti*), including the metropolitan area Sofia-capital, and 265 municipalities (*obshtini*). Districts (oblast) are deconcentrated government units at the intermediary level which were created in 1999. They are headed by a district governor, appointed by the Council of Ministers.

According to the **Regional Development Act**, District development councils shall be established in every district and the chairman of the Council is the District governor. The Council’s permanent members will be the mayors of municipalities in the respective district, one representative of the municipal council of each municipality in the district, as well as delegated representatives of the district structures of the representative organisations of employers and employees at national level.

Bulgaria has a single tier of subnational government, composed of municipalities. There are 265 municipalities subdivided into 3 160 sub-municipal units or mayoralties (the information is updated to 31st December 2020). The municipalities (or local communities /or “administrative territorial units”) have granted legal entity status.

Czech Republic

According to the Czech legal system, the municipality has legal personality at local level, but not its internal bodies (municipal council, municipal board, municipal office).

Denmark

In Denmark all administrative authorities are legal personalities with legal rights and responsibility. This includes municipalities, regions and administrative authorities at state level such as ministries and boards.

The local council is the supreme body of the municipality.

France

According to French law, physical persons and legal persons have legal personality.

Legal persons are divided into three categories:

- Legal persons of public law (e.g. the State or local collectivities)
- Legal persons of private law (e.g. example civil society)
- Legal persons of mixed law (e.g. professional bodies)

Thus, local communities are legal persons governed by public law, enjoying legal personality, and having bodies (council, executive body) capable of representing them in legal life. Indeed, for example in the case of a municipality, the municipal council regulates the affairs of the municipality through its deliberations.

By delegation of the municipal council the mayor can be responsible, in whole or in part and for the duration of his mandate, to bring legal actions on behalf of the municipality or to defend the municipality in actions brought against it, in the cases defined by the municipal council.

Georgia

According to the Georgian Constitution (art 74, comma 2), "A self-governing unit is a legal entity under public law" (<https://matsne.gov.ge/en/document/view/30346?publication=36>).

At the local level, the authorised bodies granted by the Georgian Law are only the Mayor (elected) and the City/Municipal Council - "*Sakrebulo*" (elected). Mayors are the elected heads of Municipalities with the relevant powers and responsibilities granted by the Organic Law of Georgia - Local Self Governance Code. The City/Municipal Council is represented by elected delegates, which endorse their powers in accordance with the Code on Local Self Governance. At the same time, to optimise governance, a municipality can be divided into administrative units that are not administrative bodies and therefore do not have separate powers.

Germany

Local territorial communities (municipalities and associations of municipalities) are legal persons and have legal rights under public law. The actions of their organs (municipal council/district council/council of municipal association and mayor/district chief executive) are attributed to the local communities.

Greece

In the widest sense, the term "municipality" includes and refers to both the territorial area and the governing municipal authorities.

Local government authorities in Greece consist of 332 Municipalities and 13 Regions. The Municipalities and Regions of the country are public entities which form the first level of local government and the second level of local government, respectively. Each public entity is expanded within a specific single territorial unit.

The public entities of the first level of local government (municipalities) are administered by the municipal authorities, while the public entities of the second level of local government (regions) are administered by the regional authorities. In accordance with article 102 of the Constitution for the administration of local affairs, there is a presumption of competence in favour of local government agencies. The range and categories of local affairs, as well as their allocation to each level is specified by law. The law may assign to local government agencies the exercise of competences that constitute the mission of the State.

Moldova

Under the conditions of art.3 of the Special Law no.436/2006 on local public administration, the public administration in the administrative-territorial units is based on the principles of local autonomy, decentralisation of public services, eligibility of local public authorities and consultation of citizens in local issues of special interest.

In the same order, the local public administration authorities benefit from decisional, organisational, managerial and financial autonomy, they have the right to initiative in everything regarding the administration of local public affairs, exercising, under the law, the authority within the administered territory.

In art.6 the same law establishes that there are no subordination relations between the first level and the second level public authorities (i.e. between the central and local authorities), except for the cases provided by law.

According to art. 4 of Special Law no. 436/2006 on local public administration, the administrative-territorial unit is a legal entity under public law and has, under the law, a patrimony distinct from that of the state and other administrative-territorial units.

At the same time, based on the principles of administrative decentralisation and in accordance with art.1 of Law no.435/2006 on administrative decentralisation, local public authorities have the right to approve, under the law, the statute, internal administrative structures, and ways of functioning, the states and their organisational chart, as well as to establish legal persons of public law of local interest - organisational autonomy.

Poland

An administrative territorial unit has its own legal personality.

Portugal

In Portugal, at the local level, the holder of legal personality is the municipality or the parish. Currently, there are 308 municipalities, of which 278 are in the Mainland, 19 in the Autonomous Region of the Azores and 11 in the Autonomous Region of Madeira.

The national administrative reform, implemented in 2013, reduced the number of parishes in Portugal by about 27%, from 4 259 to the current 3 091. The parishes in Portugal sought to be distributed across the Continent (2 882), Autonomous Region of the Azores (155) and Autonomous Region of Madeira (54).

The representative bodies ("the authority") are parishes or municipal assemblies (deliberative-bodies) and parish or executive councils (executive-bodies) elected every four years.

Romania

According to art. 96 in the Government Emergency Ordinance no. 57/2019 (GEO no 57/2019), regarding the Administrative Code, **the administrative-territorial units** are legal persons under the public law, with full legal capacity and their own patrimony.

San Marino

The territory of the Republic of San Marino is divided into nine municipalities (called “*Castelli*”), namely: Città di San Marino, Borgo Maggiore, Serravalle, Acquaviva, Chiesanuova, Domagnano, Faetano, Fiorentino, Montegiardino. The “*Castelli*” are territorial entities.

Article 1, paragraph 2 of Law no. 158 of 24 September 2020 reads as follows: “Each “*Castello*” is an institutional and territorial entity, to which **the law attributes legal personality, in addition to administrative, representative and proposal functions concerning the territory to which the entity refers**, also for the purposes of implementing the principle of subsidiarity. This principle is expressly recognised in the context of international European cooperation and constitutional traditions common to European States, for the purposes of achieving an effective administration that meets the citizens’ needs”

<https://www.consigliograndeegenerale.sm/on-line/home/archivio-leggi-decreti-e-regolamenti/scheda17169796.html>

Slovakia

In the Slovak Republic the municipality is the holder of legal personality at the local level, and it is defined by law as an independent territorial self-governing and administrative unit of the Slovak Republic, which unites persons who have a permanent residence in its territory. The municipality is a legal entity which, under the conditions laid down by law, independently manages its own property and its own income. The basic role of a municipality in the performance of self-government is to take care of the all-round development of its territory and the needs of its inhabitants. Municipalities may be imposed obligations and restrictions in the exercise of self-government only by law and on the basis of an international agreement.

Slovenia

In the Republic of Slovenia the local self-government is autonomous at administrative and political level. It is organised in 212 municipalities with their own competences, including regulatory ones. According to the Constitution of the Republic of Slovenia and in line with the European Charter of Local Self-Government, the Slovene municipality (“*občina*”) has a municipal council (“*občinski svet*”) composed of members freely elected by secret ballot on the basis of direct, equal, universal suffrage, and a mayor (“*župan*”) as executive organ responsible to the municipal council. According to Article 140 of the Constitution, the competencies of a municipality comprise local affairs, which may be regulated by the law or by the municipality autonomously and which affects only the residents of the municipality. State authorities supervise the legality of decisions of municipalities.

Slovenian people exercise their right to local self-government in municipalities. Municipalities are an equal partner of the State and are managed by three independent bodies — the mayor, the municipal council, and the supervisory committee. The mayor and the municipal council members are elected by the people in municipal elections every four years, while the monitoring committee is appointed by municipal councillors. Out of the 212 municipalities in Slovenia, 11 have the status of urban municipalities. Urban municipalities are allowed by law to have wider responsibilities than ordinary municipalities.

The Local Self-Government Act provides that municipalities have the status of a legal person governed by public law (entities under public law). Neither the mayor nor the municipal council as organs of the municipality have legal personality.

Spain

The administrative territorial units:

1.1 Spanish Constitution 1978.

PART VIII Territorial Organisation of the State.

CHAPTER TWO Local Government

Article 140 The Constitution guarantees the autonomy of the **municipalities, which shall enjoy full legal personality**. Their government and administration shall be incumbent on their respective Town Councils, consisting of Mayors and Councillors. The Councillors shall be elected by the residents of the municipalities by universal, equal, free and secret suffrage, in the manner laid down by the law. The Mayors shall be elected by ten Councillors or by the residents. The law shall regulate the terms under which an open council system shall be applicable.

Article 141

1. The **province** is a local entity, **with its own legal personality**, determined by the grouping of municipalities and by territorial division, in order to carry out the activities of the State. Any alteration of the provincial boundaries must be approved by the *Cortes Generales* (N.B. Congress and Senate) by means of an organic law.
2. The government and autonomous administration of the provinces shall be entrusted to Provincial Councils ("*Diputaciones*") or other Corporations that are representative in character.
3. Groups of municipalities other than those of the provinces may be formed.
4. In the archipelagos, the islands shall also have their own government in the form of «Cabildos» or Councils.

CHAPTER THREE Autonomous Communities

Article 143

1. In the exercise of the right to self-government recognised in Article 2 of the Constitution, bordering provinces with common historic, cultural and economic characteristics, island territories and provinces with historic regional status may accede to self-government and form **Autonomous Communities** in accord with the provisions contained in this Title and in the respective Statutes.
2. The right to initiate the process towards self-government lies with all the Provincial Councils concerned or with the corresponding inter-island body and with two-thirds of the municipalities whose populations represent at least the majority of the electorate of each province or island. These requirements must be met within six months from the initial agreement to this effect reached by any of the local Corporations concerned.
3. If this initiative should not be successful, it may only be repeated after five years have elapsed.

Article 144 The *Cortes Generales* may, in the national interest, and by means of an organic law: a) authorise the setting up of an Autonomous Community provided that its territorial area does not exceed that of a province and that it does not possess the characteristics outlined in clause 1 of Article 143; b) authorise or grant, as the case may be, a Statute of Autonomy for territories not forming part of the provincial organisation; c) take over the initiative of the local Corporations referred to in clause 2 of Article 143.

Article 145 1. Under no circumstances shall the federation of Autonomous Communities be allowed.
(...)

1.2 Law 7/1985, of April 2, 1985, Regulating the Bases of the Local Regime.

Article 11.

1. The **Municipality** is the basic local entity of the territorial organisation of the State. **It has legal personality** and full capacity for the fulfilment of its purposes.

Article 31.

1. The **Province** is a local entity determined by a grouping of Municipalities, **with its own legal personality** and full capacity for the fulfilment of its purposes.

Sweden

In Sweden the municipalities (*kommuner*) have legal personality. Municipalities are governed by directly elected councils but it is the municipality as such that has legal personality.

2. In case in your country **local communities or “administrative territorial units”** are granted legal entity status (and hence recognised as subjects of legal rights and responsibilities), **does the State possess a similar legal status?**

Belgium

The state has legal personality governed by public law.

Bulgaria

The State does not possess a legal status. The administration of the Council of Ministers, the ministries, the state agencies, the state commissions and the executive agencies possess a legal status similar to that of municipalities.

Czech Republic

Yes, according to Czech law, the State possesses the same status of legal entity, i.e. it is capable to have rights and obligations, to act in legal proceedings etc. The so-called “organisational units of the State” (or “state authorities”) act on its behalf (e.g. ministries, financial or building offices).

Denmark

See the answer to question 1.

France

The State is also a legal person.

Georgia

Yes, the State is also a legal person. In addition, since the mayor and city council are elected units, they exercise their statutory powers individually. Consequently, the central government does not have the legal authority to exercise the same powers as elected authorities at the municipal level.

Germany

The Federation and the *Länder* are also legal persons under public law and as such have legal capacity and the capacity to be party to legal proceedings.

Greece

The State is also a public entity, the administration of which, as provided for in Article 101 of the Constitution, is organised according to the principle of decentralisation. This decentralised system is composed of central State organs (central administrations of the State) and of decentralised State organs. The central State organs, in addition to special powers, have the general guidance, coordination and review of the legality of the acts of regional administrations, as specified by law.

Moldova

The legislation of the Republic of Moldova regulates the issue of granting the status of legal entity, through the special norms provided in Law 98/2012 on the specialised central public administration and Law no. 436/2006 on local public administration, which derives directly from the supreme law of the state - the Constitution.

Additionally, art. 174 of the Civil Code no. 1107/2002 establishes that the state and the administrative-territorial units participate in the civil legal relations on equal positions with the other subjects of law. The attributions of the state and of the administrative-territorial units are exercised in such relations by their bodies, in accordance with their competence.

At the same time, the bodies empowered to exercise a part of the functions (attributions) of the Government possess legal personality only if it derives from the provisions of the law or, in the cases expressly provided by law, from the acts of the central or local public administration authorities.

Poland

Yes, the State has a similar legal status - it has the status of a legal person.

Portugal

The original competence for the pursuit of purposes of public interest rests with the Collective State. However, under the terms of the Constitution of the Portuguese Republic (CRP), a democratic organisation of the State understands the existence of local autarchies, such as the territorial legal persons endowed with representative bodies (Article 235).

When it comes to administrative decentralisation, in principle, we think of the provision by the Constitution and the Law of attributions that, in theory, could belong to the Collective State and that are committed to other public legal persons (and also to some private associations or collective bodies), in the performance of the administrative function of the Collective State.

A series of sectoral decree-laws were published in 2019, in order to implement the process of decentralisation to the municipalities. The decentralisation programme from the central government to the municipalities is underway in a wide range of domains, in particular on education and health areas. The main objective of this process is to bring public management closer to the populations, in a budget-neutral way. It is expected that the strengthening of the proximity to the population will guarantee a higher quality of public policies, following the development and use of mechanisms by the municipalities with effective execution structures. However, strict monitoring of the process is essential in order to assure its budget neutrality, and minimise its impact on municipal indebtedness, and consequently on public debt.

On the other hand, the European Charter of Local Autonomy, which prevails over ordinary law, also stipulates principles of decentralisation and subsidiarity. Those principles necessarily lead us to attribute public ends to State Administration entities that are closer to the citizen, the municipality and the parish.

Romania

The patrimony is one of the constitutive elements of the legal person. Thus, the prerogatives deriving from the management of the patrimony (exercise of rights and responsibilities regarding the public or private property) are the prerogative of the legal personality.

According to the Constitution (art. 136), in Romania public property is guaranteed and protected by law and belongs to the state or administrative-territorial units.

According to art. 15 of the Administrative Code (GEO no 57/2019), the Government exercises the function of managing the state property, which ensures the administration of public and private property of the state.

San Marino

The State has legal personality when it is sued or when it establishes property relations. (See answer to question no. 5.)

Slovakia

No law stipulates that the Slovak Republic is a legal entity. The Constitution defines the Slovak Republic as a sovereign, democratic and legal state. The Slovak Republic may enter into contractual relations, international obligations and also be the holder of rights and obligations. The central bodies of state administration (ministries) are legal entities.

Slovenia

Yes, the State has the same legal status.

Spain

The current Constitution is silent on any reference to the legal personality of the State or of the Administration, while it is expressly attributed to municipalities and provinces (arts. 140 and 141.1), nor is it expressly recognised for the autonomous communities.

However, the content of the Constitution, the Organic Law of the Constitutional Court, the Organic Law of the General Council of the Judiciary, in harmony with many other legal texts, such as the Civil

Code, the Law of State Patrimony and the General Budgetary Law, lead to the conclusion that the State has legal personality in the internal order, with which our legal system is doctrinally homologated with that of other countries with an administrative regime. (López, 1982)²

Sweden

The state has legal personality, although this is not mentioned explicitly in legislation, neither is the legal personality of municipalities.

3. In case in your country local communities or “administrative territorial units” are granted legal entity status (and hence recognised as subjects of legal rights and responsibilities), who has the legal personality at other levels (region, sub-region, county...)? In other words, are communities, “administrative territorial units” or authorities recognised as legal entities at these levels?

Belgium

The Regions, Communities and provinces (=counties) have legal personality governed by public law.

Bulgaria

District administrations and the specialised territorial administrations, created by a normative act, have granted legal entity status.

In particular, districts (oblast) and their administrations are deconcentrated government units at the intermediary level which were created in 1999. They are headed by a district governor, appointed by the Council of Ministers.

The specialised territorial administrations, created by a normative act, are headed by the ministries, the state agencies, the state commissions and the executive agencies.

Czech Republic

The situation at regional level is the same as at local level, i. e. the region has legal entity status and not its internal bodies (regional council, regional board, regional office). The Czech Republic has only two sub-national levels (14 regions, 6.250 municipalities).

Denmark

See the answer to question 1.

France

In France, the local collectivities which have legal personality are:

- Communes [municipalities],
- Departments,
- Regions,

² López, Laureano. (1982). La personalidad jurídica del Estado. *Anales de la Real Academia de Ciencias Morales y Políticas*, núm. 5. https://www.boe.es/biblioteca_juridica/anuarios_derecho/abrir_pdf.php?id=ANU-M-1982-10034100355

- Overseas collectivities
- Special statute collectivities.

Georgia

There are only two levels of Governance in Georgia: the Central and Municipal levels, which are recognised as a legal entity. At the same time, there are 9 administrative (historical) Regions in Georgia, which geographically cover a number of Municipalities. Administrative Regions have no legal status, but are represented by the State Trustees appointed by the Central Government, who ensure and monitor the fulfilment of state powers at the local level.

In addition, there is a Regional Advisory Council for the Municipalities led by a State Trustee.

Germany

Along with municipalities (local communities, cities administered as independent districts, large cities belonging to districts, non-associated towns and cities), associations of municipalities (municipal associations and districts) are as local territorial communities legal persons under public law, and as such have legal capacity and the capacity to be party to legal proceedings.

Greece

In accordance with article 102 of the Constitution, local authorities of the first and second level (Municipalities and Regions) have both the same status and enjoy administrative and financial independence. Therefore, as laid down in article 4 of Law 3852/2010, between these two levels of local government there are not any relationships of control, or any hierarchical relationship. Their relationship is built on mutual cooperation and support, being developed based on laws, joint agreements and the coordination of common actions.

In addition, in accordance with article 102 of the Constitution, the State adopts the legislative, regulatory and fiscal measures required for ensuring the financial independence and the funds necessary to the fulfilment of the mission and exercise of the competences of local government agencies, ensuring at the same time the transparency in the management of such funds.

Moldova

Similar to p.1. The second tier of local authorities, *rayons*, have legal personality.

Poland

Yes, administrative territorial units are recognised as legal persons at other levels (county, region).

Portugal

The Constitution of the Portuguese Republic (CRP) calls for the Administrative Regionalisation of the Territory (article 236/1 and articles 255 to 262), with the Administrative Regions constituting the third autarchy, placed in an intermediate level between the Central Administration and Local Power, and endowed with increased democratic legitimacy as seen in the constitutional formula for the election of members of the regional assembly (deliberative body) (article 260 of the CRP).

Despite the advantages that regionalisation then presented, it was not endorsed favourably in the Referendum held in November 1998, so Regions have not yet been established (articles 255 and 256 of CRP). Therefore, currently there is no second tier of local government in Portugal, hence no intermediate level between the State and the municipalities.

Romania

Romania has 2 levels of administration as recognised by law – the central and the local level. The local level covers both the counties (*Judete*) and the municipalities/cities and communes, and they all have legal personality, as stipulated in the Administrative Code.

Regions do exist in Romania, but they are neither administrative-territorial units nor do they have legal personality. Known as development regions, they are regional subdivisions established in 1998. These regions are not administrative-territorial units; they are administrative areas that provide a framework for implementing and evaluating regional development policy, as well as collecting specific statistical data, in accordance with European regulations issued by EUROSTAT for the second level of NUTS-2 territorial classification existing in the European Union. Each region is coordinated by an agency for regional development, non-governmental, non-profit, public utility bodies with legal personality.

San Marino

Given its very limited territorial extension (64 Km²), in the Republic of San Marino the “*Castello*” is the only territorial entity.

Slovakia

In addition to municipalities, higher territorial units are also the basis of territorial self-government in Slovakia. The higher territorial unit is a self-governing region. A self-governing region is a legal entity which, under the conditions established by law, independently manages its own property and its own income, secures and protects the rights and interests of its inhabitants. Self-governing regions as well as municipalities have the status of legal entities in Slovakia. Self-governing regions are divided into districts, but despite the fact that the law considers districts to be administrative units, it does not consider them to be legal entities.

Slovenia

According to the Constitution, the Republic of Slovenia should have two levels of local self-government: municipalities and regions. Article 143 of the Constitution provides legal basis for establishing regions as a self-governing local community that manages local affairs of wider importance, and certain affairs of regional importance stipulated by law. Regions should be established by a law which also determines their territory, seat, and name.

However, Slovenia has no regions established yet. If or when established, the regions will have the same legal status as municipalities.

Spain

Autonomous Communities (*Comunidades Autónomas*), or regions, are recognised as such.

In addition, article 24 bis, of the Law 7/1985, of April 2, 1985, Regulating the Bases of the Local Regime, establishes that:

”1. The laws of the Autonomous Communities on local government shall regulate the entities of a territorial scope smaller than the Municipality, which shall have no legal personality, as a

form of deconcentrated organisation of the same for the administration of separate population nuclei, under their traditional denomination of *caseríos, parroquias, aldeas, barrios, anteiglesias, concejos, pedanías, lugares anejos* and other similar ones, or the one established by law.

2. The initiative shall correspond indistinctly to the interested population or to the corresponding City Council. The latter must be heard in all cases.”

According to article 42 of the Law 7/1985, of April 2, 1985, Regulating the Bases of the Local Regime, Autonomous Communities may establish in their Statutes (organic laws) that by an autonomous community law local entities superior to the municipality (such as, for example, the comarca in the Autonomous Community of Galicia) may be recognised as a local entity with its own legal personality and demarcation, without the creation of the comarca necessarily implying the suppression of the municipalities that comprise it. They may also recognise legal personality to entities inferior to the municipality, such as the rural parish.

Article 44 of the same law provides that:

“1. The municipalities are recognised as having the right to associate with others in commonwealths (mancomunidades) for the joint execution of specific works and services within their competence.

2. The commonwealths have legal personality and capacity for the fulfilment of their specific purposes and are governed by their statutes. The statutes must regulate the territorial scope of the entity, its purpose and competence, governing bodies and resources, term of duration and all other matters necessary for its operation.

In any case, the governing bodies shall be representative of the municipalities the association.”

Sweden

Sweden has regions (*regioner*) which are regarded as legal entities. They have the same legal status as the municipalities.

4. In case intermediate-level communities (regions, subregions, counties...) are not granted legal entity status, which authority has such status at these levels?

Belgium

N.A., see answer to question 3.

Bulgaria

Please see the answer to question 3.

Czech Republic

Not applicable.

Denmark

Not applicable.

France

Not applicable.

Georgia

The Central Government is represented by the State Trustee.

Germany

In Rhineland-Palatinate this is not the case.

Greece

Based on the above stated information, no answer is given to this question.

Moldova

According to art. 110-111 of the Constitution and art. 4 of Law no. 764/2001 on administrative-territorial organisation, the territory of the Republic of Moldova is organised, from an administrative point of view, in villages, towns, districts and the autonomous territorial unit of Gagauzia and is carried out on the following levels: villages (communes) and cities (municipalities) constitute the first level, districts, Chisinau municipality and Balti municipality constitute the second level, and the autonomous territorial unit Gagauzia has a special level of administration. There are no intermediate level communities. Only administrative territorial units.

Poland

Not applicable, as they have legal personality - refer to point 1 and point 3.

Portugal

Considering the rejection of the Administrative Regionalisation, simultaneously with the manifestation of the will to continue or strengthen the administrative decentralisation, it was pointed out the reinforcement of the role played by the intermunicipal communities and metropolitan areas in the fields of action that require intermunicipal scale. The optimal level of scale is not easy to determine, yet it is assumed that certain tasks and competencies require an infra-regional and supra-municipal scale. In fact, municipalities have limitations that result from the impossibility of developing, in a sustained way, certain attributions and competences that are entrusted to them. The perception of this reality has obeyed to a profound political debate about the organic model of management of the territory, as well as about which entities should be placed in a pivotal position between the Local Government and the Central Government in order to maximise the efficiency of the administrative machine. In the Chapter of the CRP devoted to Local Power, in large urban areas, the law may establish other forms of territorial organisation (article 236/3).

The creation of associations of municipalities has a constitutional seat in article 253 of the CRP: municipalities can establish associations and federations for the administration of common interests,

to which the law may confer their own powers. The legislation on associations of municipalities (metropolitan areas and intermunicipal communities) and associations of parishes and municipalities with specific purposes, constitute the universe of autonomous associations, whose legal discipline is provided for in Annex I of the Law 75/2013 of 12 September (title III - 63 to 110). These entities have the nature of public associations of local authorities and are responsible for regional planning and development and for the provision of essential public services, promoting coordination between municipalities and central administration services.

Romania

Not applicable (see the answer above).

San Marino

There are no intermediate-level local communities (see answer no. 2).

Slovakia

The law grants the status of a legal entity only to municipalities and self-governing regions; in the districts, that represent the community at the middle level, there is no body to which the law would assign such status.

Slovenia

See answer no 3.

Spain

Not applicable.

Sweden

Not applicable.

5. Which act stipulates the legal personality/status of the State, local communities and, as the case may be, other levels of government (region, subregion, county...): the Constitution or the Law? In case it is stipulated by law, is it a general or special law? Please indicate the title of this law and provide a link to it, if available.

Belgium

Neither the Constitution, nor a law – general or special – contain a legal provision which stipulates the legal personality status of the State. The legal personality of the State is based on an old tradition.

Article 3 of the Special Law of 8 August 1980 concerning the Reform of the Institutions, stipulates that the Flemish Community, the French Community, the Flemish Region and the Walloon Region have legal personality (governed by public law):

https://www.ejustice.just.fgov.be/cgi_loi/change_lg_2.pl?language=fr&nm=1980080801&la=F.

Article 2 of the Law of 31 December 1983 concerning the Reform of the Institutions of the German-Speaking Community, stipulates that the German-Speaking Community of Belgium has legal personality (governed by public law):

https://www.ejustice.just.fgov.be/cgi_loi/change_lg_2.pl?language=fr&nm=1984023027&la=F#:~:text=La%20Communaut%C3%A9%20germanophone%20a%20la%20personnalit%C3%A9%20juridique.&text=La%20Communaut%C3%A9%20germanophone%20est%20comp%C3%A9tente,TITRE%20II.

Article 3 of the Special Law of 12 January 1989 relating to the Institutions of Brussels, stipulates that the Region of Brussels Capital has legal personality (governed by public law):

https://www.google.com/search?q=loi+sp%C3%A9ciale+12+janvier+1989+relative+institutions+bruxelloises&rlz=1C1GCEB_enBE891BE891&oq=loi+sp%C3%A9ciale+12+janvier+1989&aqs=chrome..69j57j0i22i30l5.62503j0j4&sourceid=chrome&ie=UTF-8.

The legal personality of the Provinces and of the Municipalities are primarily based on an old tradition.

The public legal entities, State, Communities, Regions, Provinces and Municipalities are all legal persons in charge of a public service, i.e. a task in the public interest which the public authorities consider essential. For this reason, the performance of that task is subject to a number of special characteristics, such as continuity and equality.

Bulgaria

The Constitution of the Republic of Bulgaria (art. 136, para 3) and the Local government and Local administration Act (art. 14) stipulate the legal personality/status of the municipalities. The Administration Act stipulates the legal personality/status of the administration of the Council of Ministers, the ministries, the state agencies, the state commissions, the executive agencies, the district administrations and the specialised territorial administrations, created by a normative act.

The Constitution of the Republic of Bulgaria: <https://parliament.bg/en/const>

Czech Republic

As regards the State, legal personality is conferred on it by Art. 21 of Act No. 89/2012 Coll., Civil Code. The State is considered a legal entity also in the field of private law. Another legal regulation stipulates how the State legally acts.

The “old” Civil Code (Act No. 40/1964 Coll.), was in its Article 18 more general regarding the State and more specific concerning the municipalities and regions:

(1) Legal entities also have the ability to have rights and obligations.

(2) Legal entities are

- a) associations of natural or legal persons,
- b) special-purpose associations of property,
- c) territorial self-government units,
- d) other entities stipulated by law.

Letter d) also included the State - this provision was then fulfilled in the relevant provisions of special legal regulations.

As far as municipalities are concerned, the legal basis is given directly in the Constitution (Article 101 para. 3), and then in Act No. 128/2000 Coll., on Municipalities (Article 2 para. 1), where municipalities are explicitly designated as public corporations, which are automatically granted the status of legal personality. For regional level, Act No. 129/2000 Coll., on Regions, sets the same regulation in its Art. 1 para. 2). In general, the status is also stipulated in the above-mentioned Civil Code.

Denmark

The legal personality of administrative authorities is reflected/expressed in the Danish legislation, e.g. sections 25-27 of the Danish Criminal Code:

”Section 25

A legal person may be punished by a fine, if such punishment is authorised by law or by rules pursuant thereto.

Section 26

(1) Unless otherwise stated, provisions on criminal responsibility for legal persons etc. apply to any legal person, including joint-stock companies, co-operative societies, partnerships, associations, foundations, estates, municipalities³ and state authorities.

(2) Furthermore, such provisions apply to one-person businesses if, considering their size and organisation, these are comparable to the companies referred to in subsection (1) above.

Section 27

(1) Criminal liability of a legal person is conditional upon a transgression having been committed within the establishment of this person by one or more persons connected to this legal person or by the legal person himself.

(2) Agencies of the state and of municipalities may only be punished for acts committed in the course of the performance of functions comparable to functions exercised by natural or legal persons.”⁴

France

The legal personality of the State derives implicitly from the Constitution.

The same applies to territorial collectivities, as was confirmed by the Constitutional Council in its decision of 28 December 1982 on the administrative organisation of Paris, Marseille and Lyon (<https://www.conseil-constitutionnel.fr/decision/1982/82149DC.htm>).

With regard to local authorities, reference may usefully be made to the General Code of Territorial Collectivities, which makes it possible in particular to detail the procedures for exercising this legal personality.

Georgia

Both the Constitution of Georgia and the Organic Law – “Code of Georgia on Local Self Governance” stipulate the legal personality: <https://matsne.gov.ge/en/document/download/2244429/15/en/pdf>

³ Regions are also covered by the section.

⁴ Unofficial translation.

Germany

Neither the Basic Law nor the Rhineland-Palatinate State Constitution specifically stipulate the legal character of the State (in the form of the Federation or the *Länder*) or of municipalities.

Section 1 (2) of the local government law of Rhineland-Palatinate (*Gemeindeordnung*, GemO RP) recognises the municipality as the entity responsible for public administration tasks. The law also expresses that the municipality is a legal person under public law, and specifically a (territorial) community which is characterised as an association with an organised membership. The Rhineland-Palatinate local government law (GemO RP) is a state law which, along with the state law on districts (*Landkreisordnung*, LKO RP) contains the federal state's main regulations on local authority.

Section 64 (1) sentence 1 of the local government law (GemO RP) identifies municipal associations as territorial communities formed for reasons of public interest.

Section 1 (1) sentence 1 of the law on districts (LKO RP) identifies districts as territorial communities.

Legislative texts are available online (in German) at:

<https://www.kommunalbrevier.de/kommunalbrevier/gemeindeordnung-gemo/>

Greece

The legal personality of Municipalities or Regions, through the explicit guarantee of their administrative and financial independence, is specified in article 102 par. 2 of the Constitution as well as in article 1 par. 1 and article 3 par. 1 of Law 3852/2010 for the Municipalities and the Regions, respectively. The legal personality of the State is recognised as such in the strict administrative sense of the term, and in general in the international law, and it is not explicitly stated in the Constitution.

Moldova

Constitution of the Republic of Moldova:

<http://www.parlament.md/CadrulLegal/Constitution/tabid/151/language/ro-RO/Default.aspx>

Law no. 98/2012 on the specialised central public administration:

https://www.legis.md/cautare/getResults?doc_id=120685&lang=ro#

Law no. 344/1994 on the special legal status of Gagauzia (Gagauz-Yeri):

https://www.legis.md/cautare/getResults?doc_id=86684&lang=ro#

Civil Code of the Republic of Moldova:

https://www.legis.md/cautare/getResults?doc_id=125043&lang=ro#

Law no. 435/2006: https://www.legis.md/cautare/getResults?doc_id=125085&lang=ro

Law no. 436/2006: https://www.legis.md/cautare/getResults?doc_id=126281&lang=ro

Poland

The Constitution of the Republic of Poland.

Portugal

The act that stipulates the legal personality/status of the State, local communities and other levels of government is the CRP. The administrative organisation of the local power is structured through articles 235 to 262 of the CRP: https://dre.pt/web/guest/legislacao-consolidada/-/lc/337/202105271748/exportPdf/normal/1/cacheLevelPage?LegislacaoConsolidada_WAR_drefrontofficeportlet_rp=indice

The Law 75/2013 of 12 September approves the legal regime for local authorities, the statute of intermunicipal entities and the legal regime of municipal associations:

<https://dre.pt/web/guest/legislacao-consolidada/-/lc/147103602/202105261646/exportPdf/maximized/1/cacheLevelPage?rp=indice>

Romania

The legal personality of the state and local communities is stipulated in the Constitution and in the Administrative Code.

Romanian Constitution: <http://legislatie.just.ro/Public/DetaliiDocument/47355>

Government Emergency Ordinance no. 57/2019 regarding the Administrative Code:

<http://legislatie.just.ro/Public/DetaliiDocument/215925>

San Marino

The State has legal personality by virtue of a provision already contained in the Statutes dating back to 1600 (Book I, Section XXXVI). In San Marino's legal system, when the State establishes property relations and exercises legal rights and responsibilities, it is called "*Eccellentissima Camera*". In this case, the State is represented by the Government Syndics. The Syndics are two members of the Parliament (called Great and General Council) and are appointed by the Parliament for the duration of the legislature. The Government Syndics represent the State (*Eccellentissima Camera*) in legal proceedings and in all acts involving the acquisition of immovable property in favour of the State, as well as in acts involving the disposal of property owned by the State and in all acts related to financial transfers involving any State commitments.

Book I of the Statutes of 1600 contains several provisions relating to the main constitutional bodies of the State. Over time, these provisions have been reformed by constitutional laws and in any case by hierarchically superior laws: <https://www.consigliograndeegenerale.sm/on-line/home/archivio-leggi-decreti-e-regolamenti/scheda17009068.html>

The territorial entities - the "*Castelli*" - are currently governed by Law no. 158 of 24 September 2020. This Law attributes legal personality to them.

Slovakia

The legal personality of municipalities and higher territorial units is defined by the Constitution of the Slovak Republic. The Constitution also states that the details of the legal personality of a municipality and higher territorial units shall be regulated by law. For this reason, the constitutional regulation of the legal personality of municipalities and higher territorial units can be considered as the most general.

The legal personality of municipalities is regulated by Act no. 369/1990 Coll. Act of the Slovak National Council on Municipal Establishment. This is a general law:

<https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/1990/369/>

The legal personality of higher territorial units is regulated by Act no. 302/2001 Coll. Act on Self-Government of Higher Territorial Units (Act on Self-Governing Regions). This is a general law:

<https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2001/302/>

Slovenia

The Local Self-Government Act stipulates the legal personality of municipalities. It can be found on the following website: www.pisrs.si/Pis.web/cm?idStrani=prevodi

Spain

Spanish Constitution 1978: https://www.congreso.es/constitucion/ficheros/c78/cons_ingl.pdf

Law 7/1985, of April 2, 1985, Regulating the Bases of the Local Regime.

Autonomous Communities' Statutes (organic laws): https://www.mptfp.gob.es/portal/politica-territorial/autonomica/Estatutos_Autonomia/est_autonomia.html

Sweden

The legal status of the above-mentioned entities is not explicitly mentioned in any legislation. The Instrument of Government (*regeringsformen*, 1974:152) is Sweden's main Constitutional law. It provides the basic organisation of the realm, including provisions on municipalities and regions. The Local Government Act (*kommunallagen*, 2017:725) further regulates the competence and governance of municipalities and regions.

- Link to non-official English translation of the Instrument of Government: [the-constitution-of-sweden-160628.pdf \(riksdagen.se\)](https://www.riksdagen.se/eng/om-riksdagen/160628)
- Unfortunately, to our knowledge there is no updated English translation of the Local Government Act.

6. In case in your country the concept of “municipality” or its analogue is stipulated in the legislation, is this concept applied to a community or a territorial unit? Or does it apply only/also to a local self-government authority (councils or their executive bodies)?

Belgium

N.A., see answer on question 5.

Bulgaria

According to art. 135-136 of the Constitution of the Republic of Bulgaria “the territory of the Republic of Bulgaria shall be divided into municipalities and districts. The territorial division and the prerogatives of the capital city and the other major cities shall be established by law. Other administrative territorial

units and bodies of self-government shall be establishable by law. A municipality shall be the basic administrative territorial unit at the level of which self-government shall be practised.”

Czech Republic

The basic definition of a municipality is enshrined in the introductory provisions of the above-mentioned Act on Municipalities. The key attributes of the municipality are "community of citizens", "territorial unit" and "own property".

In addition, it is necessary to point out that there is a so-called “joint” model of public administration in the Czech Republic, meaning that local authorities perform both self-governing and delegated (state administration) tasks.

Denmark

In Danish legislation, the term “local council” is used when referring specifically to the supreme body of the municipality, but also when referring to the *responsibility* for a task placed at the local (municipal) level or to a *decision* to be made at local (municipal) level. The term “municipality” is used when referring to the territorial (geographical) unit, and when describing the local (municipal) authority that performs a task or when referring to financing at local (municipal) level.

France

Before the term "*commune*" imposed itself in 1793 to designate the administrative unit administered by the mayor and the municipal body, it was the term "municipality" which was preferred to it by the decree of 14 December 1789 relating to the constitution of municipalities.

Nowadays, the term "municipality" is almost ignored by law, but it is still used in everyday language to refer to the deliberative body (the municipal council) and the executive body (the mayor) of the *commune*. Sometimes the term "municipality" is used in a more restricted sense, to refer only to the municipal executive.

Georgia

The Organic Law - the Local Self-Government Code (<https://matsne.gov.ge/en/document/download/2244429/15/en/pdf>) defines in art. 2 comma 2 that:

“A local self-governing unit is a municipality. A municipality is a settlement (self-governing city) with administrative boundaries, or an aggregation of settlements (self-governing community) with administrative boundaries and an administrative centre. A municipality shall have elected representative and executive bodies (‘the Municipal Bodies’), a registered population and its own property, budget and revenue. A municipality is an independent legal entity under public law.”

And in art. 3 comma 1:

“Self-government shall be exercised in municipalities - in self-governing cities and self-governing communities”.

Hence, the term “municipality” refers to the local territorial unit, which has also legal personality. The elected authorities exert the power in its name.

Germany

The term *Gemeinde* (municipality) designates the municipality as a territorial community. The defining characteristics of the municipality as a territorial community are the inhabitants of the municipality and the municipal territory, which combine to form a local community. The monocratic and collective organs of the municipality are differentiated from the concept of the municipality.

Greece

As stated above (Question 1), in the widest sense, the term "municipality" in general includes (and refers to) both the territorial area and the governing municipal authorities.

Moldova

According to Law no.764/2001 on administrative-territorial organisation, the concept of "municipality" applies to localities under conditions expressly provided by law. It does not apply to an executive and/or deliberative local authority.

Poland

The concept of municipality refers to a community, not to an authority.

Portugal

The concept of "municipality" applies only to the respective territorial unit, not to the local authority (government councils or their executive bodies).

The legal framework for the functioning of the deliberative and the executive body is also set out in the Law 75/2013 of 12 September, as well as in the Law 169/99 of 18 September in the articles not revoked by the law 75/2013 of 12 September (https://dre.pt/web/guest/legislacao-consolidada/-/lc/117652677/202105261651/exportPdf/normal/1/cacheLevelPage?LegislacaoConsolidada_WAR_drefrontofficeportlet_rp=indice).

Romania

According to the Constitution, Romania's territory is organised, from an administrative point of view, in communes, towns, cities and counties. The first three form the tier 1 of local government (the municipalities); counties are the elected tier 2. For historical reasons about 100 large cities are named "municipium", which should not be confused with the more general term "municipality" applicable to the whole tier 1.

San Marino

The "Castelli" are territorial entities. The territory of the "Castello" is not only the limit of the jurisdiction exercised by its bodies (Township Council and Head of the Township Council), but an element constituting the body itself. The bodies governing the "Castello" represent the residing population.

Please refer to the answer to question no. 1 above.

Slovakia

The term “municipality” applies only to the territorial unit, while the bodies of the municipality are the mayor and the municipal council.

Slovenia

As explained in the answer to question no. 1, legal personality is only related to the municipality and not its organs (mayor and municipal council).

Spain

Municipio is the territorial unit, whereas *Ayuntamiento* is the municipal council, composed of the Mayor and the Councillors.

According to Law 7/1985, of April 2, 1985, Regulating the Bases of the Local Regime:

“Article 19.

1. The municipal government and administration, except in those municipalities which legally operate under the Open Council system, correspond to the municipal council (*Ayuntamiento*), composed of the Mayor and the Councillors.
2. The Councillors are elected by universal, equal, free, direct and secret suffrage, and the Mayor is elected by the Councillors or by the neighbours; all of the above under the terms established by the general electoral legislation.
3. The system of organisation of the municipalities indicated in Title X of this Law shall be in accordance with the provisions thereof. In all matters not provided for in said Title, the common system regulated in the following Articles shall apply.”

Sweden

A municipality has a defined territory as well as a political and administrative structure. Everyone who lives or owns property (including legal persons such as corporations, although these lack voting rights) in the territory of the municipality is regarded as a member of that municipality. The councils and administrative bodies are organs of the municipality.

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