

THE CONGRESS OF LOCAL AND REGIONAL AUTHORITIES

Resolution 437 (2018)¹

The consultation of local authorities by higher levels of government

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

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

- a. adopts the guidelines on the right of local authorities to be consulted by higher levels of government, as appended to this resolution;
- b. undertakes to use these guidelines as a reference document in its monitoring activities;
- c. calls on local authorities and the national and regional associations of local and regional authorities to use these guidelines as a tool and inspiration in their dialogue with their regional and national governments about improving consultation processes.

Appendix

Guidelines on the consultation of local authorities by higher levels of government

I. Introduction

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

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

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

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

II. Purpose and principles of consultation

A. Purpose

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

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

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

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

B. Principles

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

- mutual respect between all actors;
- openness and transparency;

– responsiveness, with all actors providing appropriate feedback.

III. Guidelines on how to conduct consultations

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

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

A. Legal framework

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

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

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

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

B. Institutional setting

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

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

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

18. The rules of procedure should not only allow local authorities and associations of local authorities to attend

sessions of the committees, but also to have full access to all relevant documents and to present written opinions on draft legislation. The rules of procedure of parliamentary committees should also include the possibility of involving experts from associations of local authorities in the preparation of draft laws that have an impact on local authorities, their legal status, tasks and functions and economic or financial situation.

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

C. Role of national associations of local authorities

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

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

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

D. Processes and procedures

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

Participants in the process

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

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

Object of the consultation

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

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

Stages of involvement of local authorities

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

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

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

Forms of consultation

31. State authorities in co-operation with associations of local authorities should define the details of the process and the form that the consultation should take, to ensure that

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

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

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

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

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

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

37. Special advisory boards: national and regional governments may wish to introduce special advisory boards for the

elaboration of draft decisions. It is important that the experts who take part in such consultations have a clear mandate from the national association(s).

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

Information and publicity

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

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

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

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

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

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