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CODE OF GOOD PRACTICE IN CONSULTATION

Adopted by the Policy Committee of the Council of European Municipalities and Regions on 8th December 2008 in Paris

The Council of European Municipalities and Regions, which represents the national associations of local and regional governments across Europe, has drawn up this Code in order to promote good practice in all countries in relation to consultation of local and regional authorities and in particular their representative associations

PREAMBLE

Considering that elected local and regional authorities, established within each country's constitutional framework, represent an essential foundation of the national and European systems of democracy and good governance, and are full partners in the overall governance of their country;

Reaffirming that the principles of subsidiarity, proportionality and proximity require that those authorities have the responsibility and ability for decisions and action on a wide range of competences in the interests of their territory and their population;

Emphasizing that, to carry out their tasks for their population in an efficient, effective and responsive manner, local and regional authorities require appropriate, well-adapted powers and resources;

Noting that in this regard the laws and decisions made by other spheres and levels of government can have profound consequences for local and regional authorities;

Drawing inspiration from the European Charter of Local Self-Government and other relevant texts of the Council of Europe, and of the Guidelines on Decentralization and the Strengthening of Local Authorities of UN Habitat;

Convinced that timely, formal and effective procedures for consultation of local and regional authorities, and in particular of their representative national associations, are essential to enable those authorities to carry out their tasks and responsibilities to best effect;

Declaring that good quality consultation should be based on the principle of partnership and mutual respect between the different spheres of government, and should include effective negotiations on important relevant issues;

The Council of European Municipalities and Regions has agreed on the following Code of Good Practice in Consultation:

Article 1 – the scope of consultation

- (1) Local and regional governments have the right to be consulted by the relevant authorities in due time and in an appropriate way in the planning and decision-making processes on all affairs, decisions and legislation which significantly affect them.
- (2) “The relevant authorities” in this Code means the national authority or, where appropriate, another governmental authority (e.g. the regional government in federal states) which has responsibility for proposing or deciding on the relevant matters.

Article 2 – formal guarantee of the right to consultation

The right of local and regional governments to be consulted should be enshrined in the constitution or in law, or by long-standing arrangement, universally recognized, which has similar force. A formalised framework for consultation should be defined by legislation and/or in a formal cooperation agreement which has effect independently of a particular government, if possible by agreement with all major political parties.

Article 3 – the partners for consultation

- (1) The relevant national, and if appropriate the regional, representative association or associations should be consulted by the relevant authorities on all matters which affect their members generally, or which affect a group of those members.
- (2) Where the matter in question affects or relates (only or in particular) to a single authority or a small number of authorities, they should be consulted individually; the representative association should also be consulted if the issue is of wider interest or concern, or if the individual authorities so request.

Article 4 – the purposes of consultation

- (1) The overall purpose of an effective system of consultation of local and regional governments, as set out in this Code, is to improve the quality and effectiveness of decision-making by all levels of government, working together in the public interest.
- (2) In addition, such a system of consultation aims:
 - to ensure that the relevant authorities (which may be a government or other public decision-maker) is aware of the likely impact upon local and regional governments of their decisions or legislative acts
 - to ensure fairness, equality of treatment and transparency in the relations between the relevant authorities and the local and regional governments, for example in relation to systems of financial grants or equalisation
 - to promote the development of effective local and regional self-government
 - to facilitate an ethos of co-operation and partnership between the different spheres of government

Article 5 – the main subjects of consultation

Consultation between the relevant authorities and the local and regional governments should take place on all significant issues that fall within Article 1(1), and in particular:

- (a) proposals for changes in the system and structure of local and regional government, including constitutional and legislative changes, e.g. compulsory mergers of municipalities, boundary changes etc.
- (b) proposals for legislation which affect the competences or interests of local and regional authorities
- (c) proposals in relation to the financing and resources of local and regional authorities, e.g. decisions on annual general grants to local governments, on the system and principles to be adopted for the equalisation and redistribution of resources, on relevant fiscal changes which may affect the resources of local or regional governments, on limitations on capital or revenue expenditure or budgets, on borrowing, or on significant changes in accountancy rules
- (d) other non-legislative decisions which impact on individual authorities or a group of authorities, e.g. administrative decisions on the siting or route of important infrastructure developments.

Article 6 – the stages of consultation

- (1) Consultation should take place at each of the main stages of formulation of a relevant proposal or policy which has or may have a significant effect on some or all local or regional governments.
- (2) Consultation (including informal consultation) should normally commence at the initial, formative stage of any proposal, so that the initial formal proposal to be put forward may already properly take into account the likely impact upon local and regional governments.
- (3) Local and regional governments should be consulted properly, in a timely manner, at all formal stages of decision-making in relation to a proposal or decision, and have sufficient opportunity and time to make a reasoned written response and put forward any counter-proposals or suggested changes to the draft proposal.
- (4) Local and regional governments should have the right to propose amendments to legislation which affects their competences or interests.
- (5) Local and regional governments should also be consulted in relation to the follow-up and evaluation of relevant laws and decisions.

Article 7 – access to information

- (1) Local and regional governments should have free access to the information and documents available to the relevant authorities which directly relate to a matter or proposal which is the subject of consultation; any limitations e.g. on grounds of confidentiality or national security must be narrowly defined and specifically justified.

- (2) Local and regional governments should, on request, make available to the relevant authorities the information and documents which relate to the matter or proposal, on which they rely in putting forward their comments, representations or counter-proposals.

Article 8 – the formal procedures for consultation

- (1) Without prejudice to the importance of effective informal processes, there should always be a formal procedure for consultation between the relevant authorities and local and regional governments; these procedures may differ according to the type of subject-matter, provided the principles set out above are adhered to.
- (2) Formal procedures for consultation should be defined in or under legislation, or (where this provides a system satisfactory to all parties) by a consensus agreement which is treated as binding by all concerned; in the latter case, it should normally have the explicit support of all major political parties, to ensure that it is applied by successive governments.
- (3) Formal procedures should always include provision for meetings and dialogue between the most senior representatives of the relevant authorities and of the representative associations of local and regional government.
- (4) Consultation procedures should not in any case be limited to the ministers or ministry responsible for local or regional government, but should include all ministries whose proposals and decisions have a significant impact on local and regional governments in the discharge of their tasks and competences.

Article 9 – European Union legislation and policies

- (1) Local and regional governments should be consulted by the relevant authorities, in a timely manner and at all key stages, on proposals for European Union legislation and policies which would have a significant impact on them.
- (2) The principles set out in the above Articles shall apply equally to European Union matters as they do to domestic matters. The formal procedure for consultation on European Union matters may differ from the general procedure, to reflect the specific timescales and nature of the issues.
- (3) The fact that there has been consultation on European Union legislation at an earlier stage in no way diminishes the need for proper consultation at the point of proposals to transpose the EU legislation into domestic law.
- (4) This Article applies in particular to local and regional governments of member states of the European Union or EEA-EFTA countries; it could also apply, as appropriate, in relation to accession states, and other European states who may wish in future to join the European Union
- (5) This Article is without prejudice to the separate duty of the EU institutions to consult local and regional governments, and their representative associations, on all matters which may affect their competences or interests.

Article 10 – other European and international policies and decisions

Local and regional governments should be consulted by the relevant authorities on all other policy proposals of European and international institutions which may have a significant interest for, or impact on, local and regional governments, e.g. other EU policies or financial opportunities, relevant Council of Europe instruments and policies, or relevant treaties or texts to be adopted within the UN system.

Article 11 – consultations undertaken by national or regional Parliaments

- (1) The principles and provisions of this Code should apply equally to consultations undertaken on the initiative of national or regional Parliaments, with any necessary modifications to reflect the specific character of such consultation.
- (2) In particular, local and regional governments should be consulted by the relevant Parliament on any issues it is considering which may have a significant interest for, or impact on, local and regional governments.