



**CEMR'S CODE OF
GOOD PRACTICE
IN CONSULTATION**

Conseil des Communes
et Régions d'Europe
Council of European
Municipalities and Regions

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Introduction

The Council of European Municipalities and Regions (CEMR) affirms that respect for the principles of subsidiarity and proximity constitutes an essential element of modern democratic good governance. Competences and tasks should be assigned to and carried out by the sphere or level of government closest to the citizen, which is effective for the purpose.

In order for local and regional self-government to work efficiently and effectively, timely and well-organised consultation by national or other relevant spheres of government is essential, whenever their proposals will have a significant impact on local and regional governments.

We have identified four main areas (which may also overlap) in which consultation is of particular importance:

A. Proposals for changes in the system and structure of local and regional government.

These changes may sometimes relate to the provisions of the national Constitution or, more often, in legislation. This may include, for example, enforced changes in municipal boundaries, or mergers of municipalities. It goes without saying that consultation of local and regional authorities, and their associations, is imperative in these areas at an early stage.

B. Proposals for legislation which affect the competences or interests of local and regional authorities.

The competences of local and regional government are in each country laid down in legislation by the central government, and/or, in federal states, by the legislative regional government. Moreover, for countries within the European Union and the EEA (European Economic Area), the legislation of the European Union may also have profound implications for local and regional government, either directly or through its transposition into national laws.

In each of these cases, there will be a preliminary process, often informal at the start, and later formal, for consideration of draft legislation, followed by the actual process of Parliamentary scrutiny and decision-making. We affirm that local and regional government must be consulted at all of the preliminary stages of drafting legislation, commencing at the formative stage, and must have the right to put forward proposed amendments for consideration by the legislative assembly or assemblies.

C. Proposals in relation to the finances of local and regional authorities.

The question of financial resources is, of course, of central concern to local and regional governments everywhere. Central (or federal regional) authorities frequently make decisions on the allocation or distribution of resources, or make fiscal changes, or define borrowing powers, or change relevant accounting rules, which have a significant impact. These will often, inter alia, include decisions on annual general revenue grants to authorities, including the system and principles adopted for the distribution of finances under equalization schemes, as well as changes to the tax-raising powers of local / regional government, and/or to their right to receive a share of taxes raised by other spheres of government.

The issue of finances is often of particular importance, and lead to disagreement, in cases where completely new competences are delegated or assigned to local / regional authorities, which were previously the responsibility of central or another level of government. It is particularly important to ensure full consultation, based on the best factual information, to ensure that the correct level of resources is transferred. The same issue can arise in relation to new rules that apply and add to existing local / regional competences, e.g. strengthened environmental regulations, which impose new cost burdens on the implementing authority.

D. Other non-legislative decisions which impact on individual authorities or a group of authorities.

Central governments also make many important administrative decisions which have a great impact on one or more local or regional authorities, e.g. on the siting or route of a particular infrastructure project. In each case where the interests of a specific authority, or group of authorities, and/or their population, are significantly affected, then specific consultation of those concerned is essential.

In 2007, CEMR published a study of the consultation processes in operation in 35 European countries, based on information provided by the relevant national associations. This study shows that, whilst a few countries have well-developed, formally agreed processes for consultation on some or all of the above subjects, in many countries, practice falls well short of what is desirable. Even where some reasonable processes and practice exist, the system often has no legal basis and could be dispensed with, e.g. in the event of a change of government.

This short Code of Good Practice in Consultation has therefore been drafted with the intention of persuading governments across Europe to adopt and implement its principles, and as an instrument for the national associations of local and regional government to seek to help them in any discussions with their national governments. It takes into account the provisions already internationally agreed, or discussed, in particular in relation to the European Charter of Local Self-Government, the draft Charter of Regional Democracy and other relevant Council of Europe texts, as well as – in the international domain – the Guidelines on Decentralisation and the Strengthening of Local Authorities adopted by the *Governing Council of UN Habitat*.

Code of good practice in consultation

Adopted by the Policy Committee of the Council of European Municipalities and Regions on 8 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, the draft Charter of Regional Democracy, and other relevant texts of the Council of Europe, and from 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:
 1. 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

2. 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
3. to promote the development of effective local and regional self-government
4. 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:

- (1) 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.
- (2) proposals for legislation which affect the competences or interests of local and regional authorities
- (3) 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
- (4) 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.

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The **Council of European Municipalities and Regions (CEMR)** is the broadest association of local and regional authorities in Europe.

Its members are national associations of local and regional governments from over thirty European countries.

The main aim of CEMR is to promote a strong, united Europe based on local and regional self-government and democracy; a Europe in which decisions are taken as closely as possible to its citizens, in line with the principle of subsidiarity.

CEMR's work covers a wide range of themes, including public services, transport, regional policy, the environment, equal opportunities...

CEMR is also active on the international stage. It is the European section of the world organisation of cities and municipalities, United Cities and Local Governments (UCLG).



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