

# Local and regional governments in the age of Europeanisation and globalisation: legal and policy options in a multi-level polity

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## 1. Introduction – general scope of multilevel governance

Over the past decade, globalisation and global governance have become central themes, not just in international relations and politics, but also in the study of international and national law. A likely reason for this is that the distinction between domestic and international law is less clear as soft-law rules are becoming increasingly more important and the concept of sovereignty of states is no longer self evident. Domestic legal systems – traditionally, by definition, caught in national logic – increasingly recognise the influence of international and transnational regulation and law-making on their development.

The expansion of international and European law and policy, as well as the related need to implement ever more international rules, are not restricted to national governments, but increasingly affect the regional and local administrative levels. The interactions between national and international legal and political spheres, including the European sphere for EU member states, have intensified and gained increased visibility over the last few years. It is becoming ever more difficult to draw dividing lines between the administrative levels: international decisions increasingly come to play a role in national (and EU) legal orders, whereas national (and EU) legal developments are exerting a bottom-up influence on the evolution of the international legal order. In political science and public administration, the well-known phenomenon of interacting and partly overlapping policy spheres is usually referred to as *multilevel governance*. These phenomena involve important questions concerning the location of power, the sharing of responsibility, the legitimacy of decisions and decision takers, and the accountability to citizens and organizations in different national, sub-national and international settings.

From a legal perspective, the interactions between global, European and national regulatory spheres point to the phenomenon of “multilevel regulation”.<sup>1</sup> “Regulation” should be understood in a broad sense here, referring to the setting of rules, standards or principles that govern conduct by public and/or private actors. Whereas “rules” are the most constraining and rigid, “standards” leave a greater range of choice or discretion, while “principles” are still more flexible, leaving scope to balance a number of (policy) considerations.

The workshop on *Local and regional governments in the age of Europeanisation and globalisation: legal and policy options in a multi-level polity* focussed on the restraints and possibilities for regional and local

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<sup>1</sup> Follesdal, Andreas, Ramses A. Wessel, Jan Wouters (eds.), *Multilevel Regulation and the EU. The Interplay between Global, European and National Normative Processes*. Martinus Nijhoff Publishers 2008.

governments to act in a multilevel setting. The more specific aim was to look for innovations in governance featuring a direct relation between regional and local governments and the international and European administrative levels.

## **2. Relevance to the Budapest Agenda and the Conference theme**

The Conference of European Ministers responsible for Local and Regional Governments, on 25 February 2005, adopted the Budapest Declaration which established "... delivering good local and regional governance as an essential objective to be pursued by Council of Europe member states and also through their cooperation within the Council of Europe." The Budapest Agenda for delivering good local and regional governance adopted at the same Ministerial Conference (and endorsed by the Action plan adopted by the Heads of State and Government of the Council of Europe, at their Third Summit held in Warsaw on 16 and 17 May 2005) identified the major contemporary challenges facing local and regional governments and committed themselves to the implementation of the actions agreed to in the Agenda, by member States individually and through the Council of Europe.

Of the various concerns addressed in the Budapest Agenda, two clearly relate to the aims of opening up new arenas in the context of a multilevel polity. The Budapest Agenda, amongst others, addressed the following concerns, viz., (a) the development of the transfrontier and interterritorial co-operation of territorial communities or authorities and (b) the legal framework and institutional structure of local and regional governments. The Agenda points in the direction of reforming the framework and functioning of local and regional governments, in terms of their democracy, financial independence, capacity building and public ethics, elements which also relate to present trends of Europeanisation and Globalisation.

It is in this context that the examination of Europeanisation, globalisation and the legal and policy options for a multi-level polity becomes necessary. European States are being melded into a multi-level polity by their governments and by the actions of numerous sub-national and supranational actors. With its dispersed competencies, contending but interlocked institutions, and shifting agendas, multi-level governance opens multiple points of access for interests. In this process of mobilization and counter-mobilization, national governments no longer serve as the exclusive nexus between domestic politics and international relations. Direct connections are being forged among political actors in diverse political arenas (Multi-level governance and European integration).<sup>2</sup>

The workshop sought to address the complexities of the challenge to patterns of interaction which emerge in a multi-level polity or an emerging trans-European legal domain within the realm of the Council of Europe.<sup>3</sup> References to various CoE documents could be made in this context. The Steering Committee on Local and Regional Democracy (CDLR) constituted by the Committee of Ministers of the Council of Europe, for example, has as its

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<sup>2</sup> Multi-level governance and European integration, *Liesbet Hooghe, Gary Marks*, pp 27-28

<sup>3</sup> Concept from – "Sovereignty at the Boundaries of the Polity", *Jo Shaw*, ARENA Working Papers, WP 02 (16 at p 1)

aims to promote a sound institutional framework for local and regional democracy and transfrontier cooperation. One of the terms of reference for this Committee is contained in Chapter 1.3 of the Action Plan, viz., '[pursue]...intergovernmental cooperation on democracy and good governance at all levels and develop further transfrontier cooperation.'<sup>4</sup> The terms of reference also provide (in the section of project added value) that the project sought to cover new ground in the sense that local and regional democracy is not a new phenomenon but it constantly evolves.

The Council of Europe has played an essential role in asserting the rights of local authorities, by means of adopting the 'European Charter of Local Self-Government', which has acted as an important tool in guaranteeing the re-establishment of local democracy in the new member states. The basis of the participation of local and regional governments in national and international settings in their capacity as the representatives of the people concerned directly, evolves from the principle of *subsidiarity*, a principle which was given consideration as early as 1995 by the Committee of Ministers in their recommendation to member states on the implementation of the principle of subsidiarity<sup>5</sup>, when it was held that the provisions contained therein constitute a first effort to define the criteria to be followed in the implementation of the principle of subsidiarity in a text of international law and elaborated on the division of powers in such a manner that it involved the participation of local and regional governments, when necessary, in the decision-making process of the tiers of governments above them.

The Recommendation of the Committee of the Ministers to member states on capacity building at local and regional level<sup>6</sup>, under the terms of Article 15.b of the Statute of the Council of Europe, provided various recommendations to the consideration of member states. In this recommendation, consideration was given to the fact "*that development of the capacity of local authorities may in such cases involve not only local authorities themselves, but also central and regional government, in so far as they have responsibility for local government, as well as other actors at national and international level, including associations of local authorities.*"

Thus the relevant CoE documents mentioned above showcase the evolution of a multi-level setting in the Council of Europe regime, which involves local, regional, national and international bodies in the policy and legal frameworks.

### **3. Recommendations**

Having discussed the relevance of this workshop to the broader theme of this Conference and the Budapest Agenda and having considered the papers presented under this workshop, two groups of recommendations are being proposed for good local and regional governance in the context of a multi-level polity. The first group is meant to exclusively point at the role that the

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<sup>4</sup> Appendix 7 (Item 11.2) of the meeting on 29 November 2006, available at <https://wcd.coe.int/ViewDoc.jsp?id=1069741&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75#RelatedDocuments>

<sup>5</sup> Recommendation No. R (95) 19 adopted by the Committee of Ministers on 12 October 1995 at the 545<sup>th</sup> meeting of the Ministers' Deputies) available at [www.coe.int](http://www.coe.int)

<sup>6</sup> Recommendation CM/Rec(2007)12 adopted by the Committee of Ministers on 10 October 2007 at the 1006<sup>th</sup> meeting of the Ministers' Deputies) available at [www.coe.int](http://www.coe.int)

Council of Europe may play in enhancing good local and regional governance pertaining the workshop's multi-level perspective. As to the second group of recommendations apart from relevant concern from the Council of Europe the objective is to also call upon other players, such as regional and local governments, as well as educational and research institutions, to respond to.

### **A. recommendations towards Council of Europe**

A distinction is made between recommendations which concern the strategic position concerning multi-level good governance and recommendations which relate to the most important means to reaching the strategic goals.

#### **1. Promoting a uniform strategy on levels of governance**

*a. ensuring that there is a coherence between levels of governance, functions, and territories.*

Participants to the workshop strongly feel that to serve matters of public interest in a manner which is both effective and efficient and which fosters the development and contribution of civil society to the benefit of these interests, it is necessary that in as much as possible there is an appropriate fit between function and governance form(at). When functions, levels and territories are not properly related, not only will this lead to high transaction costs, miscommunications and thwarting of policy making and implementation, but it will also fail to enhance accompanying public participation (in various forms).

*b. clarifying the responsibilities between the different levels of governance.*

Similarly (to a.) it is felt that, as governance rests on the notion of multi-level, multi-actor and multi-problem approaches, there is a serious threat that within governance networks both powers to act and responsibilities for (not) acting become blurred, negatively affecting both effective and efficient outcomes, communication and a base-line for public trust in the workings of government (e.g. in terms of 'when everybody is responsible, nobody is responsible'). Transparency in governance is a prerequisite for legitimacy and effectiveness.

*c. respecting the principle of subsidiarity, understood as bringing decision making as close to the citizen as possible.*

In multi-level governance the aforementioned legitimacy and effectiveness come with the need to put subsidiarity first – clearly in line with the remarks made in the above – under 2. ('Relevance... theme') on the subsidiarity principle. The workshop participants fully acknowledge that there may be instances where 'as close to the citizen as possible' does not entail a role for decentralised authorities, but are of the opinion that with each policy issue an explicit analysis on the 'as close as possible' criterion is in place to enhance the chances of successfully involving citizens and civil society to these issues.

*d. giving priority to direct elections of decision-makers wherever appropriate and improving democratic legitimacy, accountability, openness and transparency at all levels of governance.*

This recommendation is clearly meant to link the perspective of local and regional governments to principles of good governance<sup>7</sup> and to provide an intrinsic further underpinning for adherence to the principle of subsidiarity. As to the element of direct election of local and regional decision-makers, the general opinion within the workshop was that this is especially relevant where these decision-makers actually have discretionary power, whereas if they merely technically implement higher regulations and/or decisions a more indirect or perhaps bureaucratic appointment seems more appropriate. One should, for the benefit of both public involvement and the elected, avoid a situation where a decision-maker is considered 'democratically responsible' for decisions which they themselves cannot influence substantively.

Clearly effectiveness (including efficiency) of governance is an important value both with regard to subsidiarity (in recommendation c.) and to good governance (in recommendation d.).

## **2. Implementing mechanisms – Council of Europe can consider**

*e. Adopting a consistent and cooperative approach in insisting on a more direct influence of local and regional actors in multi-level governance and institutionalized access to decision making*

Without doubt the presentations and discussions in the workshop made it abundantly clear that both direct influence in multi-level governance, without an intermediary role of member states governments, and suitable and indeed institutionalised channels for access to decision-making, on other levels of governance, require from the Council of Europe a clear and sophisticated approach which promotes an active role of local and regional governments in the multi-level polity. This recommendation was discussed as the 'vertical dialogue' to which local and regional governments can play an important role – while by-passing national government. This dialogue should be 'cooperative' not merely in better explaining top-down policies, but also in ensuring a constructive bottom-up input to formulating new (joint) policies.

*f. Supporting network of regions and local authorities, city twinning and joint initiatives by cities and regions to establish and implement reforms and economic projects, thereby enabling transfer of best practices between local and regional governments.*

In turn this recommendation involves especially the horizontal, but also diagonal governance dialogues, involving a (horizontal) dialogue between regional and between local governments, especially with the objective of exchanging information (such as on best practises) but also to (reciprocally) support each other in and work together on specific projects and undertakings (e.g. on climate change policies).

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<sup>7</sup> E.g. European Governance, A White Paper, Brussels 25/7/2001, COM(2001) 428 final.

Clearly a horizontal dialogue not only in itself may foster good local and regional governance, but will also support the vertical (top down *and* bottom-up) dialogue (as mentioned in recommendation e.).

*g. Financial autonomy and Decentralisation are prerequisites for the local and regional governments to be active players in the European and international stage.*

Participants to the workshop are of the conviction that the involvement and activities within horizontal and vertical governance dialogues require that local and regional governments can operate in multi-level governance on the basis of a substantive measure of institutionalised autonomy in terms of sufficient financial resources and decentralised powers to address issues of local and regional interest in these multi-level contexts, especially when bypassing national government involvement (as a possibility which should, according to recommendation e. be promoted). The willingness to play an active part in multi-level governance, should not be hampered by uncertainty over of the fear of state restrictions as to financial autonomy or as to (the exercise of) regulatory decentralised powers – at the ‘whim’ of a national interest as defined (solely) at state level.

Of course this recommendation recognises the necessity for coherent state policies concerning matters of national interest, but proposes that such a necessity need not conflict with Decentralised governments being active players. To work out minimum requirements for local and regional autonomy (to enter multi-level play), while at the same time safeguarding national policy coherence is regarded in the workshop as a cornerstone of the Council of Europe’s position on good local and regional governance.

## **B. recommendations for setting the agenda for further exchanges between academics and professionals**

*a. Promote structured multi-disciplinary dialogues between practitioners and academics to the enrichment of both policy making and academic research.*

The topic of the workshop and the conference in which it was embedded has provided a setting for ‘participative observation’ for all participants, academic and professional/practitioning alike, and offered clear evidence for the usefulness of an exchange of facts, ideas and opinions between academics and practitioners to the interest of both groups. This recommendation is to simply but clearly state that exchanges of these kind need to be promoted – not only in terms of accompanying ministerial conferences, but also in terms of leadership within academia and professional/governmental organisations arranging for the preconditions to make involvement in such undertakings possible on a more frequent basis and also on more specific issues.

*b. Promote research on legitimacy issues (in the context of connectivity to citizens) on the one hand and policy effectiveness (in the context of overlapping networks) on the other hand.*

Providing opportunity is one, setting a proper agenda yet another. The focus on good local and regional governance has made it clear that within the context of this workshop there is clearly a need for more research on legitimacy and effectiveness issues to provide a stronger underpinning and a more dynamic bases for exchange of best practises both in terms of applying the subsidiarity-principle, vertical and horizontal governance dialogues and the accompanying preconditions. Both normative and conceptual research (such as on models of multi-level governance play) and ex ante and ex post evaluatory and empirical research (on existing and possible future practises) can play an important role in providing for (evidence based) good local and regional governance. Clearly all concerned, Council of Europe, governments and universities, should actively promote high quality research in this areas and along such lines.

*c. Promote room for experimentation.*

Providing improved opportunities for exchanges between academics and professionals, and research on topics of legitimacy and effectiveness, may also set the stage for experimentation concerning new modes of multi-level cooperation, within the context of vertical but also of horizontal dialogues between local and regional governments. Similar to the Committee of Minister's "Recommendation on the participation of citizens in local public life" (Rec 2001-19; Appendix II, sub B), entailing the recommendation that local and regional governments should experiment with a variety of measures to increase turnout in subnational elections, experiments could be initiated and fostered with regard to multi-level interaction and improvement of good local and regional governance hitherto.

#### **4. In conclusion**

Europeanisation and globalisation set the stage for promotion also of good local and regional governance, through the above mentioned means, rather than being considered as a threat to local and regional autonomy. This can be achieved by establishing a clear legal and institutional framework for local and regional governments, as envisaged by the Budapest Agenda, but in the context of a multi-level polity and governance, and the development of legal and policy options thereof, recommendations for which have been provided by participants in the workshop on 'Local and regional governments in the age of Europeanisation and globalisation: legal and policy options in a multi-level polity'.