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Report on European practice and legal framework on governance system and administrative territorial reform

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Introduction

The present Report was requested[1] by the Ministry of Regional Development, Construction and Municipal Economy of Ukraine within the framework of the implementation of the Council of Europe Programme "Decentralisation and local government reform in Ukraine".

The government of Ukraine is again considering the concept of the new versions of the Laws "On Local Self-Government in Ukraine" and "On Local State Administrations" ("On perfects") and new draft Law "On Administrative and Territorial Structure".

The present Report was prepared on the basis of the contribution of the Council of Europe expert. It is structured according to the questionnaire prepared by the Ministry and provides general overview on existing legal frameworks and practices related to governance system and administrative territorial reform in the selected Council of Europe member-states, providing brief country-specific examples.

I. Registration of place residence and right to participate in the affairs of a local authority

Whilst there is no official European standard on this matter, European countries tend to use similar systems. In almost all countries, people cannot vote or act in more than one community. The key concept to define where a citizen must be registered in order to be able to vote and act is the **principal residence**.

In **France**, in order to participate in local and national elections, every citizen has to be registered on a special file called electoral register or electoral roll, which is held by every municipality, but criss-cross managed, as a citizen cannot be registered on several lists. Every citizen reaching the voting age (18) is automatically registered in the commune where he has been counted during the last census. For people owning real estate in several municipalities, it means that, sometimes, a choice has to be made. Criteria have been provided for by the law to regulate these situations and define when a citizen can ask to be registered on the electoral list of a municipality:

- A citizen can ask to be registered if he/she has his/her principal residence (i.e. the place where he/she spends a substantial amount of time) in the municipality for at least six months. His/her children have the same right until they reach twenty-six years old.
- A citizen can ask to be registered if he/she pays local taxes for at least two years, and, even if he/she does not have principal residence in the community, if he/she asks to be registered in this municipality. The same rule applies to people owning a company registered in the municipality for at least two years.
- A citizen can ask to be registered if he/she is a permanent civil servant affected on the territory of the municipality.

[1] By letter on behalf of First Deputy Minister Nehoda dated 19 July 2019.

When a citizen asks for registration on a list, his/her name is automatically deleted from the list of his/her previous residence or choice during the annual revision of the list.

Very similar systems and procedures are in force, for example, **in Belgium** (where the national population register is used to set up the electoral roll), **in Germany**, **Italy**, **Norway**, **Poland** or **Sweden** (where the national population register of the Swedish Tax Agency is used to decide whether somebody has his/her main residence in a community or not). The main difficulty is to define how somebody can prove that he/she has his main residence in some place. In some countries, the electoral roll is linked to other registers in order to facilitate and objectivate the choice.

Great-Britain has a different way of dealing with its electoral register. Electoral registration officers within local authorities also have to manage electoral registers. The first distinctive characteristic comes with the fact that it is compulsory for a citizen to register under penalty of fine. Every citizen must register to vote if he/she is asked to do so and meet the conditions for registering. The second peculiarity results from the fact that it is possible to register at two addresses. A citizen can be registered to vote at two different addresses if he/she is a resident at both addresses and spends an equal amount of time at each. Whether or not someone resides at an address is not defined in law. Therefore, residence is understood to mean a "considerable degree of permanence". This implies that a person who has real estate or rents a house in two communities *and* who spends the same amount of time in each can legally register at both addresses. Students are the main example of this situation. Simply paying local tax on a second home is not enough to prove certain permanence. It is for the local Electoral Registration Officer to decide whether somebody can be said to be resident at an address and is therefore eligible to register.

When somebody is registered at two different addresses, he/she can vote in elections at two separate local councils but cannot vote twice at a general election.

II. General meetings and conferences at the place of residence

It is now widely accepted that citizens should be involved in local decision-making. Meetings and conferences are a recognised way to invite people to participate in the debate, but they could sometimes be dominated, if not well framed, by those who are more comfortable with public speaking or are having personal interests to the discussions. Framing these methods is unavoidable in order to guarantee the quality of these procedures for direct public participation.

It is possible to give some organisation examples taken from a general observation.

- *Difference between compulsory and facultative procedures.*

Concerning the legal origin of the meetings/conferences rules, it seems that a difference should be made between facultative and compulsory consultation procedures. If in some matters (for example, environmental issues) these procedures are compulsory parts of the

general decision-making process, a national framework could guarantee an equal treatment all-over the territory of the country. It could also guarantee that all the reasons for the State to introduce this procedure are well taken into account. However, if these procedures are facultative, it seems preferable, in accordance to the general trends issued of the article 6.1 of the European Charter of Local Self-Government, to let local communities frame these techniques by special and local regulations. This solution could encourage local communities to develop such procedures and adapt them to their specificities, giving them the possibility to develop informal but nevertheless useful procedures for the direct participation of citizens.

This being said, it must be reminded that the *Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority* provides: "*Any formalities, conditions or restrictions to the exercise of the right to participate in the affairs of a local authority shall be prescribed by law and be compatible with the party's international legal obligations.*" (Art. 5.1)

"*The law shall impose such formalities, conditions and restrictions as are necessary to ensure that the ethical integrity and transparency of the exercise of local authorities' powers and responsibilities are not jeopardised by the exercise of the right to participate.*" (Art. 5.2)

These provisions tend to justify that the law sets the general framework of the most important procedures for direct public participation when these procedures concern sensitive and transverse domains (among other things, as regards public enquiries in planning, environmental matters etc.). Formalities, conditions and restrictions are to be evaluated by each country, depending on its needs and specificities. Outside the domains where for specific reasons public involvement in decision-making is governed by detailed rules laid down at the national level, regulation is, in the Council of Europe Member States, to a large extent left to local authorities' discretion within their fields of self-government. This is all the more evident when most meetings/conferences have no decision-making vocation but are simply informal processes preceding real decision-making processes framed by law.

- *Practices*

Citizens' meetings and public hearings are more widespread than popular assemblies. These instruments of direct contact between local authority and local population provide a forum for citizens to express their views, wishes or proposals. This form of citizen participation in general can be found in **Austria, Croatia** (where it is provided for by the Constitution)**, Cyprus, Estonia, Greece, Hungary, Lithuania, Malta, North Macedonia, Romania, Serbia, Slovenia, Spain, Turkey or Ukraine**, and more informally in some other States, where local authorities have decided to implement informal participation procedures. The role of citizens' meetings and public conferences is generally purely consultative and spontaneous. This is why, as far as known, no condition of proxy has been defined by the law.

In some other countries, meetings are held within pre-defined and more constrained bodies. **France** is a good example of this system. The law provides for several structures for direct public participation (*comités consultatifs locaux, conseils de quartier, conseils citoyens, commission consultative des services publics locaux*…), without giving too much detail about

their composition and their way of functioning. This leaves a large room for manoeuvre to the local authority, who can appoint representative people into these structures, especially from local associations. These associations ensure the representativeness of the people attending the meeting and their link with local realities. Drawing of lots is sometimes used (ex: *conseils citoyens*), which probably leads to a more spontaneous representativeness. All these structures can be qualified as citizens' panel. Their purpose is to help local bodies identify local priorities and to consult service users and non-users on specific questions. In reality, these structures are rarely demographically representative of the public and very few ensure that their members represent a representative sample of political or social attitudes.

This choice of establishing specific bodies for public participation sometimes leads to interesting experiences. For example, in **the Netherlands**, neighbourhood councils serve as real discussion partners for the municipal council through specific procedures and bodies that ensure a permanent link between citizens and their institutions. In **Italy**, a "citizens' monitoring board" (*Comitati di monitoraggio cittadino*) can be set up in order to supervise the municipality's "strategic plan" and assure a deeper link between citizens and their assembly.

III. Dismissal of a directly elected mayor by a local council

Firstly, it must be noted that the system of indirect election of the mayor is the most traditional in Europe and is used, for local elections and with depending on certain variations, in the **Czech Republic, Denmark, Estonia, Finland, France, Iceland, Latvia, Norway, Spain and Sweden**. Some countries have more recently implemented some possibilities of direct election. **In Great-Britain**, England and Wales have experimented directly elected mayors since the *Local Government Act* of 2000, among other executive arrangements. Before 2007, a referendum was necessary to set up this type of designation. Since 2007, councils can adopt the elected mayoral model without a referendum. As of August 2019, 15 council areas are using the "mayor and cabinet" model of governance with a directly elected executive mayor. The mayor of London is the best-known example of a directly elected mayor in England.

The other system – direct election of the mayor by population – is building in strength and number since the 1990s and has been encouraged by the Council of Europe[2]. It now tends to become a new European standard. The main examples are: **Albania** (since 1992), **Armenia**, **Austria** (partially, in six *Länder* since 1994), **Bulgaria**, **Croatia** (since 2009), **Cyprus**, **Georgia**, **Germany** (in most *Länder*, except Berlin, Hamburg & Bremen), **Greece**, **Hungary** (since 1994), **Italy** (since 1993), **Lithuania** (since 2015) North **Macedonia** (since 1995), **Poland** (since 2002), **Portugal** (where the whole executive is directly elected, the candidate heading the list which receives the most votes becomes a mayor), **Slovenia** (since 1993),

[2] CLRAE, *Advantages and disadvantages of directly elected local executive in the light of the principles of the European Charter of Local Self-Government - CPL (11) 2 Part II*, rapporteurs Ian Micallef and Guido Rhodio (2004).

Romania, **Slovakia**, **Turkey**, **Ukraine** and, as explained before and more partially, **the United Kingdom**. Some other countries or regions are considering this system.

In these countries, the existence of direct[3] dismissal procedures by the council and the procedure that has to be followed are really variable. Some countries do not have any procedure (ex: Albania, Bulgaria, Portugal, the United Kingdom…), which is not going without entailing occasional difficulties when the link between the Chair and its council is broken. But most of them have introduced a way to discharge a mayor in case of dissension with an assembly. Two ideal-types of procedures can be distinguished, by requiring or not to a referendum.

a. *Some countries do not require a referendum: a council vote is sufficient to discharge a mayor.*

For example, **in Italy**, a mayor or president of a *provincia* and a council must cease to exercise their functions if a motion of censure voted by an absolute majority of members of a municipal or provincial council is approved. The motion must be motivated and signed by at least two-fifths of council members (without counting a mayor or president of a province). It means that carrying a vote of no confidence automatically results in the dissolution of an assembly (in application of the principle "*Simul stabunt vel simul cadent*") and therefore in new elections.

Following the same principle, a pretty similar system has been set up **in Croatia** in 2012, in order to solve severe problems caused by the introduction, in 2009, of the direct election system. The dismissal of a mayor can only be a consequence of the non-adoption of a municipal budget. The possibility of the simultaneous dissolution of the council and dismissal of a mayor, with new early elections for both bodies, is thus framed in a very specific situation.

In Georgia, directly elected mayors can be dismissed by the local council if a written consent of more than half of the local council members or at least 20% of registered local voters leads to a two-thirds majority passing the vote in the council. **In Turkey**, a similar system exists, requiring a third of a municipal council to launch the procedure and a simple majority to be fulfilled.

b. *Some countries require a referendum: a council vote is not sufficient to discharge a mayor but starts the procedure.*

In Austria, each *Land* applying the direct election system has a law providing for votes of no confidence concerning mayors. In *Burgenland*, a mayor could be dismissed by a referendum if a motion of no confidence initiated by at least a quarter of a municipal council leads to a vote by at least two thirds of an assembly. This solution, requiring a referendum, differs from the one in force in the *Länder* which are not using the direct election system and where a simple vote of an assembly is sufficient to dismiss a mayor. For example, in *Nieder-*

[3] This excludes from the study the cases when the dismissal of a mayor needs, to be fulfilled, a jurisdictional decision (ex: Albania) or a referendum (ex: Austria).

Österreich, any council member can propose a motion of censure, that has to be voted by at least two thirds of a municipal council in order to lead to a mayor's removal. This discretion may be explained by the difference of origin of mayor legitimacy.

In Germany, the situation deeply differs according to the different *Länder*. Most of them have a dismissal procedure, but the way this procedure is initiated and completed differs. Most of them require reinforced two thirds majority, sometimes three quarters. Mostly, the procedure requires a referendum by simple majority and quorum conditions (between 20 and 30%).

Poland has a different way of dealing with its dismissal procedure. Such a procedure can only be started nine months after the election and nine months before the following election. When the council has to complain about mayor actions, it can refuse to discharge the mayor of budget execution. After a specific debate, the decision to launch a referendum can be voted by an absolute majority. Such a referendum can also be held if, for two years, a municipal council refuses to give its vote of confidence after the report presented each year by a mayor before May 31.

IV. Definition of the administrative-territorial unit and structure. Criteria of effectiveness of the administrative-territorial structure

1. An effective territorial structure firstly starts with history and **inherited social structures**. In order to be accepted by citizens and viewed as legitimate, a territorial level must be linked to real social communities and **senses of belonging**. Forgetting this point will lead to social and political tensions and reduce the effectiveness of the administrative structure. This social legitimacy is the main reason why capable territorial structures are recognized inside the State and why specific powers are given to them. This is why the article 3 of the European Charter of Local Self-Government stipulates: "*Local self-government denotes the right and the ability of local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population*", considering that "*the existence of local authorities with real responsibilities can provide an administration which is both effective and close to the citizen*" (Preamble).

   This necessary sense of belonging is not inevitably frozen. As amalgamation of Ukrainian local communities showed, communities can voluntarily decide to amalgamate in order to get a critical size in order to organise, finance or deliver basic public services to their citizens. The process of institutionalization of these structures preserves the essential links between social and administrative organisation. Of course, these elements are not sufficient to make the administrative-territorial structure completely effective.

2. Indeed, there must be **a clear parallel between the different levels of administration and their responsibilities**. The choice can be made using the guideline of the principle of subsidiarity, which encourages proximity in public action and tends to organise multi-level governance based on questioning about the legitimacy to act for each level of administration. The main question should be: is the *infra* level technically, financially and effectively capable of dealing with a competence or should it be given to a *supra* level? This is what the Charter implies at article 4.3 when it stipulates: "*Public responsibilities shall generally be exercised, in preference, by those authorities which are closest to the citizen. Allocation of responsibility to another authority should weigh up the extent and nature of the task and requirements of efficiency and economy*". In addition, this principle allows to resolve the critical question of finding the best solution to assure a better availability of services.

3. Another important issue of a well-constructed territorial-administrative structure is the **deletion of duplicates**. In order to make the system effective and readable by citizens, "*Powers given to local authorities shall normally be full and exclusive. They may not be undermined or limited by another, central or regional, authority*" (art. 4.4). This does not prevent systems of administrative and jurisdictional control but avoid redundancy and paralysis of public action. It also avoids from State interferences in the scope of local competences, which is an unavoidable need of a real decentralisation system.

4. As a power cannot be properly pursued without sufficient resources, it is noteworthy that competences should be accompanied by **an amount of sufficient resources**. These resources can result from a determined fiscal capacity, which allows local communities to build financial strategies for their investments and increase the level of decentralisation.

Observing these points helps to elaborate a system that reconciles the different facets (historical, political, sociological, financial…) of the challenge of decentralisation.

That being said, it is noticeable that during the last two decades, local governance in Europe have moved towards a model mainly focused on efficiency issues, based on economic and budgetary criteria. While the ability to produce effective public policies is an important criterion for structuring territorial institutions, it should not be used in isolation, since the institutional question is foremost a social issue, and therefore complex. Consequently, a balance must be found between the different rationalities at work in order to guarantee the identification of citizens with their institutions.

V. Public consultation in a process of change in local authorities' boundaries

A difference should me made whether the process aims to change local boundaries or if it is just reforming responsibilities or financial aspects.

1. Change in local authority boundaries

The European Charter of Local Self-Government stipulates that "*Changes in local authority boundaries shall not be made without prior consultation of the local communities concerned, possibly by means of a referendum where this is permitted by statute*" (art. 5).

Proposals for changes of its boundaries (for example, in case of amalgamation with other authorities), are obviously of fundamental importance to a local authority and its citizens. Prior consultation of the local community, either directly or indirectly, is essential, as it leads to a certain appropriation of their new institutions by citizens. Referendum seems to be the best appropriate procedure for such consultations but there is no statutory provision for them in a number of countries. Where statutory provisions do not make recourse to a referendum mandatory, other methods of consultation may be used. During the 16th session of the Council of Europe Conference of Ministers responsible for Spatial Planning, a declaration[4] has been adopted that could be declined to the neighbouring domain of territorial reform.

Despite the provisions of the European Charter, **French** government did not set up any consultation when amalgamating its regions in 2015. This choice has been deeply criticized and has led to some difficulties in this reform[5], which are not behind us. Some special provisions have been set up concerning voluntary amalgamation of *départements* and *régions*. Prior 2015 and according to the law passed in 2010, any voluntary amalgamation was to be confirmed by a referendum. These provisions are no longer in force. This kind of project now only requires an appropriate decision from local bodies concerned by the project. Since 2010 and about amalgamations of *communes*, a referendum can be held if one or more of the concerned representative bodies refuses to continue the project. The last word is thus given to citizens.

In **Estonia**, the government consulted local government associations about its reform of 2016. Additionally, meetings were held with local leaders and "reform seminars" conducted, in which elements of the reform were discussed.

In **Denmark** (2007) and **Finland** (2005-2007), local governments negotiated their own boundary changes with neighbours. Consultations with citizens were considered a task for the municipalities themselves. Denmark appointed arbitrators in order to facilitate negotiations and sometimes rule referenda in order to ensure the chosen solution had social support.

[4] https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805c558f

[5] In a recent recommendation 384 (2016), the Congress of local and regional authorities of the Council of Europe expressed its concern regarding this situation.

2. Changing in local authority responsibilities of financial issues

The European Charter of Local Self-Government stipulates that "*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*" (art. 4.6). Concerning the institution of financial equalisation procedures, it also stipulates that "*Local authorities shall be consulted, in an appropriate manner, on the way in which redistributed resources are to be allocated to them*" (art. 9.6). These provisions do not provide for mandatory direct consultation with population. Their sole goal is to give local authorities a real possibility to exercise influence about a text, and if the Charter makes the right of local authorities to be consulted by higher levels of government a fundamental principle, it does not prescribe a precise manner according to which this consultation must be carried out.

Such consultation could take place directly with the authority or authorities concerned or indirectly through the medium of their associations where several authorities are concerned.

During its 35th session, the Congress of Local and Regional Authorities of the Council of Europe adopted guidelines on the consultation of local authorities by higher levels of government. It stresses "*the consultation of local authorities by higher levels of government requires a well-formulated legal framework at the national level*" which is usually responsible for the reforms.

Consultation of local authorities by higher level of government has increased during the past decades testifying to the increased consideration given to the question of local self-government. Binding consultation in local issues – legal reforms, budget definition, local taxes – with local government associations is established **in most countries**. This also often involves hearings of representatives of these associations by Parliaments during the legislative process. Lots of countries also created formal structures of consultation in order to institutionalize a framework for discussions. Periodically gathered, these structures rarely have a real power of decision. Some countries have chosen to organise a series of meetings each year between the government and associations of elected officials.

An interesting example comes with **Italy**, where all regions must designate a political representative (president or member of the regional executive) who is in charge of relations with other local authorities. This specific role favours co-operation between regional and local level and allows to discuss in common the stakes of reforms.

One of the most advanced systems comes from **Switzerland** where the cantons have the constitutional right to be consulted for every federal measure that would have an impact on them. In 2005, this country passed a law that precises the way this right, which is written in the Constitution, has to be concretized. In addition, there are

procedures for consultation of municipalities at cantonal level. Cantonal authorities carry out the necessary consultations whenever a question concerns municipalities. Municipal authorities can also petition at the cantonal level. Municipalities can also group together at the cantonal level in association to be their representative voice.

VI. Special regimes of governance

The coverage of the entire territory by local institutions does not imply the impossibility for the State of providing special rules for areas of strategic, military or other interest. Indeed, a difference must be made between the issue of territorial division and that of the division of responsibilities. Nothing prevents the State, for superior reasons of general interest relating to its military interests, the existence of a zone of disaster or other particular reasons, from establishing on the territory of a community a zone in which the traditional division of competences is modified. This zone then belongs to the territory of a municipality but is subject to exceptional rules.

This means that competence of local authorities will, in some respects, stop at the specific competences of the State that classification of a particular zone of the territory will have applied, even though this zone will be located on the territory of the community.

The question thus supposes to take into account the measures of public order and the penal measures necessary to the protection of the interests supposed by the classification of a zone. Circumstances involving the classification of such areas are rarely linked to the issue of local self-government, except that they reduce their jurisdiction over part of the territory that has become of little use to the communities.

In order to frame the reasons for the establishment of areas governed by special rules and frame the concept of national or exceptional interest, a law could be passed. A more detailed overview related to special regimes of governance can be found in the Council of Europe report "On European practice and legal framework on prefect institution, local government in emergency situations (CELGR/LEX(2015)2 as of 17 September 2015)[6].

VII. Change of local authorities' boundaries: decision-making authorities and nature of acts

Part of this question has been answered with question V above, about consultation mechanisms but the question of division of powers and territorial differentiation still needs to be discussed. First of all, it should be noted that there seems to be a European standard concerning the jurisdiction of Parliaments (of the State or, in the case of regional and federal States, regional or federated entities) over the main changes in the administrative-territorial

[6] http://www.slg-coe.org.ua/wp-content/uploads/2015/10/CoE-REPORT_On-European-practice-and-legal-framework-on-prefect-institution_local-government-in-emergency-situations_CELGR-LEX-2_2015_.pdf

structure. The reference to the legislative tool is indeed very frequent in the European Charter of Local Self-Government.

Obviously, the level, the variation and the procedures governing the legal rules used to settle the question of local and regional authorities vary according to the history and the political structure of the countries. Not all countries are equally open to local adaptation and differentiated regulation of community statutes, and therefore do not necessarily use the same type of legal rule to legally establish their frames.

As **France** is a strong unitary State, it is very attached to the principle of equality. Each level of local governance (*commune*, *département*, *région*) has a unique body of rules which is applicable to every institution belonging to this category. This leads to a certain uniformity of the administrative-territorial structure: same responsibilities, same political organisation. This situation stems from the framework inherited from the 1789 Revolution, which considered local communities as parts of a unique Nation ruled by the fundamental principle of equality, which leads to a certain statutory uniformity. Moreover, the territorial division is decided by the Parliament, which is according to the 1958 Constitution sole competent to adapt or modify it and does so most often by means of general laws. Local authorities (*communes*, *départements* and *régions*) are not entitled to modify a line of this structuration, whose broad lines of force are decided by law. It is noteworthy, however, that certain community merger procedures, such as those involving the *départements*, are carried out through decrees issued by the government. This is because they are voluntary amalgamations.

In regional states recognizing more autonomy for local authorities, such as **Italy**, some regions (Friuli-Venezia Giulia, Sardinia, Sicily, Trentino-Alto Adige/Südtirol and Valle d'Aosta/Vallée d'Aoste) have special forms and conditions of autonomy according to the article 116 of the Constitution, which are decided by means of a constitutional law. This sometimes implies that they have special ruling powers over municipalities. Since 2000, Italian law provides that the regions can modify the territorial districts of municipalities after hearing population concerned, in forms provided for by a regional law.

By providing for the possibility for mid-level institutions to regulate certain elements of the status or evolutions of mid-level institutions, regional States model thus seems to constitute a good transition towards federal States, in which this organisation is even more advanced. A good example of this comes with **Germany**, which, while leaving a certain place to the law, has a multi-level scheme, recognises real room for manoeuvre to the Lander and endeavors to preserve the existence of democratic consultations. Article 29 of the German Basic Law, which is particularly lengthy, states in particular that *"the division of the federal territory into Länder may be revised to ensure that each Land be of a size and capacity to perform its functions effectively. Due regard shall be given in this connection to regional, historical and cultural ties, economic efficiency and the requirements of local and regional planning. Revisions of the existing division into Länder shall be made by a federal law, which must be confirmed by referendum. The affected Länder shall be afforded an opportunity to be heard. The referendum shall be held in the Länder from whose territories or parts of territories a new Land or a Land with redefined boundaries is to be established (affected Länder). The*

question to be voted on is whether the affected Länder are to remain as they are or whether the new Land or the Land with redefined boundaries should be established. The proposal to establish a new Land or a Land with redefined boundaries shall take effect if the change is approved by a majority in the future territory of such Land and by a majority in the territories or parts of territories of an affected Land taken together whose affiliation with a Land is to be changed in the same way. The proposal shall not take effect if, within the territory of any of the affected Länder, a majority reject the change; however, such rejection shall be of no consequence if in any part of the territory whose affiliation with the affected Land is to be changed a two-thirds majority approves the change, unless it is rejected by a two-thirds majority in the territory of the affected Land as a whole". In addition, it should be noted that the Länder have the power to regulate the status of municipalities, provided they respect the constitutional principle guaranteeing them the right to regulate all local affairs on their own responsibility. When it comes to modifying municipal boundaries, the Länder usually provide for procedures to allow prior consultation of municipalities, as well as the collection of consent by citizens by referendum.

VIII. Local authorities' power to change their boundaries

As it is described above, the situation differs according to the constitutional tradition of each State. Federal States seem more open than unitary States to regional adaptation processes. However, there is no trace of a system in which a local institution could decide on changes in its structure without the control of a higher institution (regional or national). In addition, in a European context marked by numerous mergers of communities, the territorial transformations are most often the product of policies carried out at the highest level by the State.

Regarding **France**, it is possible to moderate the information provided in section VII by pointing out the capacity of local and regional authorities to influence directly or indirectly, by themselves, their normative environment. In order to promote larger communities (especially for *communes* and *départements*), the law authorizes them to propose merging solutions. But the final decision belongs to the State, which will adopt all necessary regulations and finally rule the new structure. Furthermore, local institutions now have new rooms for manoeuvre as they can decide, on a contractual basis, to delegate some competences to other local institutions. It only happens for specific responsibilities decided by the law, and makes the general structuration particularly shifting.

In **Germany**, article 29 of the Basic Law gives the Länder some room for manoeuvre in deciding certain changes in the territorial division, but it also provides for the final intervention of a law: "*Other changes concerning the territory of the Länder may be made by agreements between the Länder concerned or by a federal law with the consent of the Bundesrat, if the territory that is to be the subject of the change has no more than 50,000 inhabitants. Details shall be regulated by a federal law requiring the consent of the Bundesrat*

and of a majority of the Members of the Bundestag. The law must provide affected municipalities and counties with an opportunity to be heard. Länder may revise the division of their existing territory or parts of their territory by agreement without regard to the provisions of paragraphs (2) to (7) of this Article. Affected municipalities and counties shall be afforded an opportunity to be heard. The agreement shall require confirmation by referendum in each of the Länder concerned. If the revision affects only part of a Land's territory, the referendum may be confined to the areas affected; the second clause of the fifth sentence shall not apply. In a referendum under this paragraph a majority of the votes cast shall be decisive, provided it amounts to at least one quarter of those entitled to vote in Bundestag elections; details shall be regulated by a federal law. The agreement shall require the consent of the Bundestag". The settlement of the status of municipalities is carried out by the Länder.

IX. Specific legal and administrative regimes

In order to take into account certain historical, geographical, linguistic or cultural peculiarities, many European States provide for the existence of special legal regimes for the benefit of certain territories. In this case, the legal basis of these specificities usually lies in the Constitution, and then is specified by constitutional laws, institutional laws or simple laws. Without trying to be exhaustive, there are many examples of this situation. The **French** overseas territories, the **German** city-states, certain **Italian** or **Spanish** regions, certain **British** Isles or the **Belgian** communities are the most striking examples of this tendency of the European states to adapt the conditions of local self-government to certain situations of fact. Capital cities also are very often the place of special rules.

Some schemes sometimes depart considerably from the traditional framework of local and regional authorities. One of the most striking examples is probably French New Caledonia, which has a quasi-federal form and jurisdiction within a unitary State and is therefore a notable exception.

The changes most often affect the field of local jurisdiction and responsibilities, the legal nature of the decisions taken by the deliberative assemblies, and for the most important of them up to the form of the institutional bodies.