

## IS SOMETHING BETTER THAN NOTHING? MULTI-LEVEL GOVERNANCE AND THE EUROPEAN COMMITTEE OF THE REGIONS IN EU POLICYMAKING

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In a globalised, polycentric, fragmented and increasingly uncertain world, many voices are calling for a radical change in the governance models of development policies. New, urgent problems – COVID-19, climate change, digitalisation, growing inequalities – invite a paradigm shift in collective decision-making models. Increasingly, “from government to governance” is the slogan used to express this change. On the one hand, it underlines the inadequacy of traditional centralised public decision-making models and, on the other, the openness of policymaking to actors who were until now largely absent from the various national, European and international political arenas.

In this context, it seems that local and regional authorities (LRAs)<sup>1</sup> are gaining ground on central governments, which have always been the centre of political power and undisputed rulers of public decisions. The 2030 Agenda recalls, for example, that localisation – the involvement of LRAs in the implementation of the SDGs – is fundamental to achieving its goals and that cities and territories must be able to maintain certain autonomy to define and implement public policies on a local scale.

Although substantially dominated by inter-governmental logics, the European Union (EU) has recognised the greater and growing interdependence between its different levels of government. Recent estimates reveal that 60% of the decisions taken by local and regional authorities are influenced by European legislation and nearly 70% of EU legislation is implemented by local and regional authorities (CEMR, 2016). With the approval of the Territorial Agenda 2020 (2011) and the Pact of Amsterdam (2016), the EU has in fact reinvigorated the territorial and urban dimension of its public policies.

In the early 1990s, thanks to the 1992 Maastricht Treaty, the territorial question and the urban dimension acquired relevance on the European agenda through the creation of the European Committee of the Regions (CoR) – a voice and consultative body for territorial interests. After almost 30 years of operation, the evaluations of the CoR’s work are conflicting and fluctuating. Nonetheless, it is worth remembering that the CoR remains the only supranational body that guarantees cities and

1. The vocabulary is often contested and the literature and official documents give a variety of terms, such as local and regional authorities (LRAs), local and regional governments (LRGs), sub-national authorities (SNAs) and sub-state authorities (SSAs). In this text reference is mainly made to regional, supra-local and local governments, meaning (on the whole) representative public organisations with (some) degree of autonomy and control over (some) salient policy areas.

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In light of this debate, the main objective of this paper is to respond concisely to three fundamental questions: a) when and why LRAs became central in EU policymaking; b) how – and by which means – LRAs can take part in EU policymaking; and, finally, c) the extent to which the CoR adequately frames LRA representation in EU policymaking. As its analytical framework, the paper uses the now classic approach of multi-level governance (MLG), a combination of reflections that first emphasised the forms of mobilisation of LRAs in European policymaking.

The analysis focuses on the CoR and warns that while on the one hand its consultative nature, political fragmentation and composition constitute major obstacles, on the other hand, the wide heterogeneity of territorial interests makes the development of coordinated and ordered collective action between the many and varied interests of the cities and regions of Europe extremely challenging.

## **I. The territorial and urban dimensions of EU policies in a multi-level governance context**

Historically, the traditional prudence regarding urban matters and the “territorial blindness” of the EU have limited the formal rights of LRAs and their organisations to participate in supranational decision-making. Nevertheless, in the last decades, the role of LRAs in EU policymaking has been increasingly recognised. A first relevant question is when and why cities and regions became central to EU policymaking.

Scholars agree that, starting in the 1990s, the deepening of the European process of integration and the implementation of decentralisation reforms in many states encouraged the “territorial turn” of development policies. This approach enhanced the decentralisation of decision-making to LRAs with the aim of implementing territorially targeted public policies more aligned with local preferences and policy instruments. At the end of 2000s, the influential Barca Report put the need for place-based approaches on the European agenda, stressing the importance of regional specificities and local institutions as well as of an endogenous model of socioeconomic development (Barca, 2009). The expansion of cohesion policy – thanks to the partnership principle – stimulated the generation of development policies based on the active involvement of a wide range of local and regional actors. Territorial and urban disparities, social exclusion, industrial recovery and the environment were some of the main concerns for which place-based approaches were considered most appropriate.

Although place-based approaches have been criticised for their “local bias”, they are still considered a major source of inspiration and they have been included in the 2030 Agenda framework through the concept of localisation. In the SDGs context, localising means “taking into account sub-national contexts in the achievement of the 2030 Agenda, from the setting of goals and targets, to determining the means of implementation and using indicators to measure and mon-

itor progress”.<sup>2</sup> Basically, localisation recognises local development as an endogenous and spatially integrated phenomenon, conferring primary responsibility for its planning, management and financing on LRAs.

From the theoretical perspective, pioneering contributions on MLG revealed, for the first time, that the presence of LRAs in EU policymaking was a novel phenomenon of a potentially innovative nature in the context of EU policy, polity and politics (Hooghe and Marks, 1996; for a review, see: Piattoni, 2010). Basically, MLG revealed that LRAs were increasingly involved in EU affairs beyond and within member states even in cases where the formal right to make a decision lay with national governments or the EU legislator. More optimistic defenders of the MLG approach claimed that this increasing interdependency between regional, local and national governments and the EU institutions could open the door to the establishment of a “new mode of EU governance” with the involvement of a third tier of government alongside member states and EU institutions.

Although, formally, LRAs have not gained decision-making power over EU affairs, MLG is still important because it has contributed to inserting the debate about the role of LRAs into the EU political and policy agenda. The development of LRA external action (usually labelled paradiplomacy or municipal diplomacy), the proliferations of Euroregions and Eurocities in the field of territorial cooperation, the establishment of official delegations in Brussels and the proliferation of city networks are the “classic” examples used to justify this greater involvement of LRAs in the EU’s multi-level polity. There were 15 regional lobby offices in Brussels in 1988 and more than 200 in 2013 (Callanan and Tatham, 2014). In the field of territorial cooperation, recent studies confirm the presence of more than 300 Euroregions – a model of institutionalised cooperation between LRAs across the EU’s internal and external borders (Durà et al., 2018).

In sum, MLG reinforced the conceptual shift “from government to governance” that recognised the emergence of a novel decision-making mechanism characterised by the sharing of authority between levels of government during the entire process from policymaking to implementation. Under this three-tiered EU polity scenario, MLG directed scholarly attention to the means through which governments try to achieve coordination in efforts to improve policy outcomes, legitimacy and coherence.

## II . The LRAs in EU policymaking

So, regions and cities have been considered a relevant tier of government within the EU multi-level political system. The second question regards how – and by what means – LRAs can take part in EU policymaking.<sup>3</sup> Basically, LRAs can influence EU policymaking in two ways: by participating in the supranational legislative arena and, domestically, by being involved in the negotiation process of EU affairs within the member states (in the context, for example, of cohesion policy, in intergovernmental meetings on EU affairs and in the monitoring of the subsidiarity principle by regional parliaments).

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2. Statement adopted by the Global Taskforce of Local and Regional Governments at the Local and Regional Authorities Forum at the HLPF of June 2018.
3. In this section, I will focus on the legislative process (the upstream phase of policymaking). For reasons of time and space, I will not consider the downstream phase of policymaking, i.e. the role of LRAs in the implementation of EU legislation. This choice is justified by the fact that, while the role of LRAs as implementers of EU policies and legislation is widely recognised and analysed, much less emphasis is usually devoted to the participation of LRAs in the legislative process.

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In both cases, formal representation spaces are limited. When LRAs have the opportunity to meet with their central governments to discuss EU affairs, they usually prefer to activate their rights through the formal member state structures rather than beyond them. In the end, most LRAs – particularly sub-state entities – collaborate with central state authorities rather than bypassing them (Tatham, 2008). In some cases, however, the weakness of formal domestic channels of representation has contributed to the development of alternative models including informal “going it alone” and “variable geometry” strategies aimed at circumventing central governments’ gatekeeper positions.

At the supranational level, legislative powers are framed within the EU’s classical “institutional triangle”, which includes the three main institutions: the Commission as the agenda-setter and the two “legislative chambers” represented by the Council and the European Council. If we exclude the role of the European Committee of the Regions (CoR; see next paragraph), LRA access to the three institutions is constrained and usually occurs via lobby activities performed, respectively, by individual LRAs, national associations of LRAs and international networks of LRAs (such as the Council of European Municipalities and Regions, CEMR; the Conference of Peripheral and Maritime Regions, CPMR; Eurocities; and Metropolis, to name just a few).

Regional and local lobbying is usually welcomed by the Commission as it lacks the expertise and resources to gather insightful local data for initiating legislation on territorial issues at EU level. LRAs and their associations can offer the Commission such expertise and they act in this respect like other interest groups. LRA involvement in the initial stage of the legislative process can reduce the risks of implementation failure, as LRAs know what is technically feasible and politically appropriate at the local level (Heinelt, 2017). In response to the wishes expressed by LRAs in the consultation process for its “White Paper on European Governance”, in 2003 the Commission established a more systematic dialogue with European and national associations of LRAs at an early stage of policy shaping. The goal was to introduce a more systematic political dialogue with associations of LRAs before the formal decision-making processes got started. The “systematic dialogue” applied exclusively to local and regional government organisations is usually considered an example of the EU’s “new modes of governance”.

Due to its inter-governmental nature, the Council of Ministers of the EU is unlikely to be contacted directly by associations of LRAs – especially cities. Although access to the Council grants (some) sub-state governments a formal and direct role in the EU legislative process, central governments still act as “gatekeepers” and access to the Council depends in many member states on the political will of central government (Tatham, 2008). In this respect, contacts with representatives of individual national governments are more effective for LRAs attempting to influence negotiations at EU level and final decisions on EU legislation.

Given the increased salience of the European Parliament (EP) in EU legislative processes, MEPs are in need of greater knowledge, information and expertise on territorial issues if they want to make their participation valuable in the bargaining dynamics of co-decision procedures. LRAs and their associations can provide these information assets to MEPs

and allow them to increase their awareness of local political issues and debates that would otherwise remain too distant. Since 2005, for example, the URBAN Intergroup at the European Parliament has acted as a cross-party, cross-committee group with a horizontal approach to discussing urban issues. By bringing together over 89 MEPs representing all the political groups at the EP it collaborates with 143 partners from the local, regional, national and European levels that represent the interests of Europe's towns and cities or who work in the relevant field of urban development.

### III . The European Committee of the Regions

The third question regards the CoR's role and the extent to which the youngest of the EU's constitutional organs can adequately frame LRA representation in EU policymaking (Christiansen, 1996; Hönnige and Panke, 2015; Heinelt, 2017). Established by the Maastricht Treaty in 1992, the CoR is composed of 329 locally and regionally elected representatives from all member states who are organised into political groups. Although LRAs and their associations can propose candidates, in almost all member states, central governments formally decide on the list of candidates for the CoR. Candidates' profiles therefore vary depending on the relative powers LRAs possess domestically to get their preferred candidates approved by their national governments.

Moreover, the domestic administrative and territorial distribution of powers in each EU member state varies and central governments find different ways to privilege (or inhibit) local or regional representation. Member states with a strong regional tier of government (Austria, Belgium, France, Germany, Italy and Spain) send very few representatives from the municipal level to the CoR. Germany, for example, reserves only five of its 24 seats on the CoR for local government representatives. By contrast, all CoR members from Bulgaria, Estonia, Cyprus, Finland, Latvia, Lithuania, Luxembourg, Malta and Slovenia are from the municipal level because no "meso-regional" government exists in these member states between the municipal and national levels (Heinelt and Bertrana, 2012). As a consequence of this, representation in the CoR is highly fragmented and – more importantly – larger and influential cities have insufficient presence.

As the "voice" of regions and cities in the EU, the role and the functioning of the CoR are laid down in articles 300 and 305–307 of the Treaty on the Functioning of the EU (TFEU). Since the entry into force of the 2007 Treaty of Lisbon – granting the CoR legal status before the CJEU for actions for annulment under Article 263 of the TFEU – the CoR has strengthened its position, being regarded, along with national parliaments, as the guardian of the principle of subsidiarity. The fact that, until now, the CoR has never defended its own prerogatives before the CJEU should not decrease the value of the instrument itself, as it still represents a strong deterrent to EU institutions neglecting the subsidiarity principle in EU law making.

The CoR's consultative role can be exercised throughout the different stages of the EU decision-making process, including the pre-legislative phase, the adoption of the proposal and the discussion of said pro-

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positional. Consultative functions are fulfilled in various ways, one the most important elements being the opinions adopted at the plenary meetings. Beside this, however, the CoR also performs many complementary activities, such as specific collaborations with LRAs and networks of LRAs and the organisation of events, conferences and meetings in Brussels with local stakeholders. Formally, the CoR is involved in the law-making process by forming mandatory, requested and own-initiative opinions. Consulting the CoR is mandatory for both the Council and the Commission before deciding on matters that concern local and regional issues, such as economic, social and territorial cohesion, education, culture, public health, trans-European transport, telecommunications and energy networks. On other topics the CoR might be requested to issue an opinion if the Commission or the Council think it is necessary. Finally, the CoR may also take the initiative and issue an opinion when regional interests are involved.

On average, the CoR adopts between 60 and 70 opinions per year (Schönlau, 2017). Although the CoR's opinions are not binding, when it issues own-initiative opinions EU institutions – particularly the Commission – tend to seriously consider them. Neskova concludes, for example, that the European Commission acts in accordance with the preferences of the CoR 45.5% of the time (Neskova, 2010). Regarding own-initiative opinions, Hönnige and Panke (2015) recognise that the committee's role improves when opinions are delivered quickly to the members of the European Parliament and the staff of the permanent representations. It is therefore crucial that the CoR submit its opinion quickly, as a delayed opinion could be less influential in the decision-making processes within the two legislative institutions.

Over its nearly 30 years of existence, the CoR, as a consultative "supra-national body" within the EU institutional system, has notably increased its own distinctive legitimacy thanks to certain forms of "institutional activism" that have contributed to the expansion of its competences and influence within formal and informal EU policymaking. Although some scholars recognise that this activism remains merely symbolic if not complemented by changes in the EU treaties, the CoR still remains the only official EU organisation that grants representation to LRA interests within EU policymaking. Whether the CoR can be considered the Union's third representative chamber or not is still up for debate. Nonetheless, given the representative and political mandate of its members, to consider the CoR a merely technical, consultative assembly would probably be to underestimate its real influence within EU policymaking.

In the end, this ambiguity is intrinsically linked to the differential nature of expectations that the CoR itself has always raised with respect to EU institutions. On the one hand, the Commission's interest in the CoR has focused on technical expertise and feedback on EU policies with a territorial impact. On the other hand, the European Parliament has, from the beginning, privileged the more political nature of the CoR in the hope of adding legitimacy to European integration and policymaking. Clearly, the structure that was set in the Maastricht Treaty – a committee with no formal decision-making power, and which brings together representatives of very different kinds of LRA and with a membership to be

determined essentially by national governments – represents a typical EU compromise (Piattoni and Schönlau, 2015). Indeed, this formula was very attractive for the supranational institutions, since it had the advantage of adding legitimacy at the EU level without creating potential for obstructing the decision-making process.

## Conclusions

Europe has many different types of LRA: there are municipalities, provinces, counties, sub-state federated units and regions. Capital regions and metropolitan areas cohabit with rural municipalities, peripheral areas and small and medium-sized towns. At the regional level, sub-state entities vary from democratically elected and economically endowed regional governments to deconcentrated administrative units with executive tasks and scarce autonomy (Hooghe et al., 2016). Considering the lack of a legal basis in the EU treaties and the heterogeneity of cities and regions in Europe, a single cohesive, shared and agreed model of LRA representation at EU level is hard to imagine (Heinelt, 2017). However, spurred by the deepening of the process of European integration and of decentralisation processes, a constant increase of the role of LRAs in EU policymaking can be observed. This is based on the recognition by the EU institutions that LRAs can improve the effectiveness and the legitimacy of European public policies.

Since the CoR was established LRAs have had access to the formal arenas of the EU's legislative process. The heterogeneity of its members and the way CoR representatives are selected by member states weaken the potential for more incisive and cohesive action as, more often than not, opinions are taken at the level of the minimum common denominator. Moreover, the fact that the largest and most influential cities are not fully represented in the CoR has increased the search for alternative routes, particularly city networks (Fernandez de Losada, 2020). Despite its consultative character and the non-binding nature of its opinions, the CoR has been able to position itself on highly salient issues with territorial impact that are of interest to LRAs.

In the international system, the CoR still represents a singular body that allows LRAs to engage in relevant institutionalised debates and to participate in the formal legislative process of the EU's multi-level political and policy system. In the current crisis of multilateralism and in the era of global agendas, international actors and central governments have begun to open decision-making arenas up to non-traditional actors (Galceran-Vercher, 2020). Better endowed and forward-looking LRAs and networks of LRAs have already explored some channels to ensure and increase their involvement in the definition, implementation and monitoring of global agendas. Honestly, it is hard to assess whether the CoR will contribute to inspiring a process of institutional reform within the United Nations or other international agencies. Nonetheless – and even considering all the limitations of the functioning of the CoR – it would be surely unwise and imprudent not to study this option. After all, there is no more advanced mechanism in the world than the EU for channelling the voices of LRAs in policymaking processes.

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