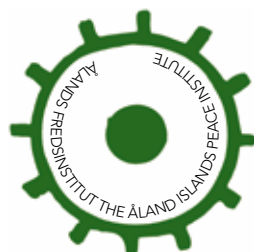


Regional voices in the European Union  
– regions with legislative power  
and multi-level governance.  
Perspectives for the Åland Islands

Sarah Stephan





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## Preface

This is the second time that a report within the Åland Islands Peace Institute Report Series focuses on the position of regions in European integration. Our previous report, entitled 'Constitutions, Autonomies and the EU' (Report No. 3-2008) discussed the institutional solutions and challenges at the domestic and the European levels and did so primarily through a comparison of Spanish and Ålandic experiences. This time Sarah Stephan, LL.M. and researcher at the Peace Institute has chosen to examine the theoretical foundations of the debates on multilevel governance and regional blindness and to contrast them to the actual practices of regions with legislative competence, drawing mainly upon the examples of Åland and the German Länder. One of her main conclusions is that the constitutional status and the intergovernmental relations necessary for a successful regional representation within the EU need to be complemented by regional entrepreneurship. Indeed, one of the aims of research activities at the Åland Islands Peace Institute is to combine theoretical insights with the experiences of practitioners. We believe therefore that the present report offers important and timely challenges both to the European institutions as well as to regions such as Åland.

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## List of abbreviations

AER	Assembly of European Regions
Art.	Article
BS RAC	Regional Advisory Council for the Baltic Sea
BSSSC	Baltic Sea States Subregional Co-operation
B7	Baltic Sea Islands Network
CALRE	Conference of Chairmen of the Legislative Federal State Parliaments of Europe
CoR	Committee of the Regions
EC	European Community/Treaty of the European Community
ECJ	European Court of Justice
Ed./eds.	Editor/editors
EEC	European Economic Community
EFA	European Free Alliance
e.g.	Exempli gratia (for example)
Et seq./seqq.	Et sequens (and the following one/ones)
EU	European Union
GG	Grundgesetz (Basic Law of the Federal Republic of Germany)
GmbH	Gesellschaft mit begrenzter Haftung (limited liability company)
i.a.	Inter alia (among others)
ibid.	ibidem (see preceding footnote)
IGC	Intergovernmental Conference
MEP	Member of the European Parliament
MP	Member of Parliament
No	Number
OJ	Official Journal of the European Communities
p./pp.	Page/pages
RegLeg	Conference of Presidents of the Regions with Legislative Power
SNA	sub-national authority
TFEU	Treaty on the Functioning of the European Union
UBC	Union of Baltic Cities
UK	United Kingdom of Great Britain and Northern Ireland
v	versus (against)

## Abstract

The point of departure for the research conducted at the Åland Islands Peace Institute has been the debates around the terms “regional blindness” and “multi-level governance”. Although contradictory at the first sight both terms taken together describe the reality of regions in the European Union. Regional blindness is met with demands for the adaptation of the treaties and the accommodation of regions in the formal institutional structure of the European Union. While this demand has not weakened regions participate in European policy processes through structures described as multi-level governance. It thus seems that neither perspective alone can lead to an accurate definition of the relationship regions - EU.

The Member States, the Committee of the Regions, interregional organizations, regional representation in Brussels, the European Parliament and not least the Commission have been the most prominent channels through which regions participate formally and semi-formally in European decision-making. Whether participation leads to influence then depends on the constitutional position of regions within their Member States, their interregional relations and the degree of regional entrepreneurship exhibited. Although the Åland Islands are a small region their autonomy is not only guaranteed under the Finnish Constitution but also under Public International Law. Åland participates in regional networks and is an active entrepreneur offering its expertise in question concerning, for example, maritime environment and trade. However, small regions have fewer resources at hand and thus have to limit their priorities. This report raises an inventory of channels of participation used by the Åland Islands and points to the unexploited potential of multi-level governance for small regions with legislative power.

## Sammanfattning

Debatten om termerna ”regional blindhet” och ”flernivåstyre” har varit utgångspunkten för Ålands fredsinstitut under arbetet med denna rapport. Även om dessa termer ofta uppfattas som varandras motsatser beskriver de tillsammans verkligheten för regioner i Europeiska unionen. Regional blindhet bemöts med krav på bearbetning av fördragen så att regionerna bättre inkluderas i den Europeiska unionens formella institutionella struktur. Samtidigt som detta krav står fast deltar regionerna i politiska processer inom EU genom strukturer som beskrivs som flernivåstyre. Det verkar därför som att inget av dessa två perspektiv ensamt kan definiera förhållandet mellan regionerna och EU.

Medlemsstaterna, regionkommittén, interregionala organisationer, regionernas representation i Bryssel, det europeiska parlamentet och inte minst kommissionen har varit de främsta kanalerna genom vilka regioner deltar formellt och halv-formellt i europeiskt beslutsfattande. Huruvida deltagandet leder till inflytande beror på regionernas konstitutionella position inom en medlemsstat, på deras interregionala relationer och graden av regionalt entreprenörskap. Även om Åland är en liten region så är självstyrelsen garanterad inte endast enligt Finlands konstitution men också enligt internationell lag. Åland deltar i regionala nätverk och är en aktiv entreprenör som erbjuder sin expertis i frågor gällande t.ex. maritim miljö och handel. Samtidigt har små regioner begränsade resurser, vilket gör att de måste prioritera.

Den här rapporten gör en inventering av de kanaler för deltagande som Åland använder sig av och pekar på den outnyttjade potential som flernivåstyre kan erbjuda för små konstitutionellt grundade regioner.

## 1. Challenges for regions with legislative power - regions in the European Union

Certainly, every international lawyer has heard about the Åland Islands. The archipelago was object of a crisis between Sweden and Finland in the after-war period of the early 1920s, when a majority of the islanders declared their wish to secede from Finland in order to become part of Sweden. In 1921, the Council of the League of Nations was called in as an arbiter and decided that the Åland Islands were to remain under Finnish sovereignty. However, the League recognized Åland's unique character, emphasized by the 1856 Convention on the Demilitarization of the Åland Islands, and prescribed certain guarantees to be inserted in an Act on the Autonomy of the Åland Islands, most notably the continued demilitarization and neutralization of the archipelago and the protection of the Swedish language.<sup>1</sup> This settlement resulted in a unique arrangement under international law. Today, the Act on the Autonomy of Åland guarantees Åland wide and exclusive legislative competence.<sup>2</sup>

While Åland is often discussed as a precedent for successful demilitarization, neutralization and autonomy in international law, the contemporary challenges of the islands are often overlooked. The Åland Islands are a prime example of so-called "regions with legislative power" in the Euro-

pean Union, a group of 74 more or less unique regions exercising legislative competence.<sup>3</sup>

One of the prevalent terms in the debate about the status of regions in the European Union is "regional blindness".<sup>4</sup> This term implies a certain unwillingness of the EU to recognize or rather accommodate the exclusive competences of the regions and carries the accusation that Europeanization diminished the intrastate competences of the regions. This is one angle from which to look at the status of regions within the EU. It focuses on the institutional set-up of the EU, that is to say on the question whether and how the treaties could be adapted to the concerns of the regions.

However, another term has emerged in this debate, which seems to contradict "regional blindness" on the first sight. In the mid-1990s, governance in the European Union started to be described as "multi-level governance".<sup>5</sup> Depicting European governance as multi-levelled suggests that Europeanization does not prima-

1 Decision of the Council of the League of Nations on the Åland Islands including Sweden's Protest, League of Nations Official Journal, September 1921, 697.

2 Cf. Act on the Autonomy of Åland, Section 18; Moreover, the autonomy of the Island is protected by the Finnish Constitution and cannot be amended without the consent of the Ålanders themselves, cf. Act on the Autonomy of Åland, Section 69; Constitution of Finland, Sections 75 and 120.

3 For an overview of these regions see the webpage of the RegLeg, [http://www.regleg.eu/index.php?option=com\\_content&view=category&layout=blog&id=4&Itemid=5](http://www.regleg.eu/index.php?option=com_content&view=category&layout=blog&id=4&Itemid=5), last accessed 07.05.09.

4 This term has been coined by H.P. Ipsen, *Als Bundesstaat in der Gemeinschaft*, in: *Festschrift für Hallstein, Klostermann, Frankfurt am Main, 1966*, p. 256; For further discussion see Weatherill, Stephen, *The Challenges of the regional Dimension in Europe*, in: Weatherill, Stephan Bernitz, Ulf (eds.), *The role of regions and sub-national actors in Europe. Essays in European Law*, Hart Publishing, 2005, 1-35; Jeffrey, Charlie, *Sub-National Mobilization and European Integration: Does it Make Any Difference?*, 38 *Journal of Common Market Studies* 1, 2000, 1-23.

5 Cf. Marks, Gary, Hooghe, Liesbet & Blank, Kermit, *European Integration from the 1980s: State-Centric v. Multi-level Governance*, 34 *Journal of Common Market Studies* 3, 1996, 341-378.

rily deprive the regions of their competences but enhances governance across multiple levels, including the sub-state level. It has been argued that the particular mode of governance prevailing in the EU can no longer be accurately described as the “Community method”, describing the sui generis interplay between Council, Parliament and Commission in the European Community.<sup>6</sup> New channels of participation have opened up, structures created by secondary law or composed informally, which complement the European Union’s institutional balance.<sup>7</sup> The hypothesis is that sub-regional actors, the regions with legislative powers in particular, participate in European policy- and law-making through various channels, some of them directly linked to the European Institutions, that is to say without a detour via Member State governments. Instead of being blind to regional concerns, it is argued that the European Union is eager to involve regions.<sup>8</sup>

6 In the Europa Glossary the Community Method is defined as “the expression used for the institutional operating mode set up in the first pillar of the European Union. It proceeds from an integration logic with due respect for the subsidiarity principle, and has the following salient features: Commission monopoly of the right of initiative; widespread use of qualified majority voting in the Council; an active role for the European Parliament; uniform interpretation of Community law by the Court of Justice”, see [http://europa.eu/scadplus/glossary/community\\_intergovernmental\\_methods\\_en.htm](http://europa.eu/scadplus/glossary/community_intergovernmental_methods_en.htm), last visited 26 march 2009.

7 Cf. Bache, Ian, Europeanization and multi-level governance: Empirical findings and conceptual challenges, 16 ARENA Working Paper, July 2008, available at [http://www.arena.uio.no/publications/working-papers2008/papers/wp08\\_16.pdf](http://www.arena.uio.no/publications/working-papers2008/papers/wp08_16.pdf), last accessed 7.12.2009.

8 The discussion of multi-level governance in the European Union can be accommodated in the broad quest for grasping “governance”, transnational, global, you name it.

It should not come as a surprise that two so seemingly opposing views on the position of regions in the European Union are still discussed to date. The picture is complex. The terms “regions”, “sub-national governments” or “regions with legislative power” and “constitutional regions”<sup>9</sup> respectively, capture a great variety of entities. The position of the regions within their Member States, the relationship between regional and central governments and not least the competences of the regions differ substantially. In some Member States the whole state consists symmetrically of regions with legislative powers. In others only part of the state consists asymmetrically of regions. While the German and Austrian *Länder*, the Spanish *Comunidades Autonomas* and the Italian and Belgian regions fall within the former category, Scotland, Wales, Northern Ireland, the Portuguese Azores and Madeira and the Åland Islands in Finland fall within the latter category.<sup>10</sup> General statements about the position of regions within the European Union are thus over-simplifications of a topic that is highly sensitive. It touches upon *i.a.* questions of constitutional law, federalism, autonomy, international organizations, regional identity and regional economy. Nevertheless, in general terms it can be said that regions with legislative power in the EU face similar challenges. How they master these challenges, however, depends on many factors, apart from the regions’ own demands, constitutional factors, intergovernmental relations and notably the degree of entrepreneurship demonstrated by the regions are key factors for regional influence.<sup>11</sup> This re-

9 This term is often used synonymously to regions with legislative power, however, it more specifically refers to regions with constitutionally protected powers.

10 Cf. webpage of the RegLeg, [http://www.regleg.eu/index.php?option=com\\_content&view=category&layout=blog&id=4&Itemid=5](http://www.regleg.eu/index.php?option=com_content&view=category&layout=blog&id=4&Itemid=5), last accessed 7.12.2009.

11 Jeffrey, Sub-National Mobilization and



port sets out to explore which factors are decisive for the position of regions with legislative power in the European Union.

### 1.1 Structure

Subsequent chapter II will outline what is meant by regionalism and sketch the different phases of regional mobilization in the European Union. Chapter III will then introduce the two perspectives mentioned previously, regional blindness and multi-level governance. Chapter IV will, with reference to three indicators for influence – constitutional factors, interregional/international relations and regional entrepreneurship – look at Member State governments, the Committee of the Regions, interregional associations, regional representation in Brussels, the European Parliament and the European Commission as possible channels for participation and explore under which conditions regions can successfully pursue these channels and gain influence on European policy processes.

### 1.2 Methodological remarks

The method employed is a close reading of scholarly literature on the one hand, and policy documents and legislation originating in the regions and the European Union on the other hand. To the effect that certain information and practical insights were not always available in writing, interviews have been conducted with the Head of a German *Länder* Office to the European Union, the Counselor of the Åland Islands at the Permanent Representation of the Republic of Finland to the EU at that time and the Ålandic Minister for Culture and Education.

The Åland Islands serve as the main case study in chapter IV. Questions concerning its relationship to the EU are high on the agenda of the

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European Integration: Does it Make Any Difference?, pp. 8 *et seqq.*

regional government of the Åland Islands. Like many other regions with legislative power, the Åland Islands want to make their voice heard, not only in Helsinki but also in Brussels.<sup>12</sup> The autonomy of Åland is protected under international law, a status that the Islanders fear to see eroded by an expanding European Union that fails to accommodate the status of constitutional regions. The question whether and where multi-level governance and regional blindness are realities can have valuable implications for the further development of strategies of mobilization and participation. After all, strategies need to be applied targeted and that requires clarity on how European governance works. Which channels of participation are open to the regions and how can these be used successfully?

Although the Åland Islands are the prime case-study of this report, reference will be made to other regions, especially the German *Länder*, frequently. This is partly because constitutional regions in a symmetric federation like Germany serve well as a contrast to the autonomous Åland in an otherwise centralized Finland and partly

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12 On the particular challenges of the Åland Islands see, Suksi, Markku, Sub-National Issues: Local Government Reform, Re-Districting of Administrative Jurisdiction, and the Åland Islands in the European Union, 13 *European Public Law* 3, 2007, pp. 390 *et seqq.*; Silverström, Sören, Implementation of EU Legislation on the Åland Islands, in: Spiliopoulou Åkermark (ed.), *Constitutions, Autonomies and the EU*, Report from the Åland Islands Peace Institute, No. 2-2008, 42-50, available online at <http://www.peace.ax/images/stories/pdf/autonomiwebb.pdf>, last accessed 7.12.2009; Jääskinen, Niilo, The Case of the Åland Islands – Regional Autonomy versus the European Union of States, in: Weatherill, Stephan Bernitz, Ulf (eds.), *The role of regions and sub-national actors in Europe. Essays in European Law*, Hart Publishing, 2005, 89-101.

because the German *Länder* have been active mobilizers for regional concerns before Finland acceded to the European Union. German regions have thus gained considerable experience in European governance. Åland is often compared to islands with territorial autonomy as for example the Faroe Islands, Greenland and English speaking territories like the Channel Islands and Gibraltar. Thus far no comparison exists between the autonomous Åland and the states in the Federal Republic of Germany. However, such a comparison is valuable as both types of regions are vested with strong competences and affected by EU membership.

It should be noted that it shall not be dealt with any European policy in particular. Certainly, regions are most directly affected by European regional policy and reference will be made to this policy area repeatedly. However, European governance affects the regions in many areas, not least because it is local and regional authorities who implement two-thirds of all legislation coming from Brussels.<sup>13</sup> The EC's Common Agricultural Policy can have strong effects on regional governance just as policies made in the area of European Police and Judicial Co-operation in Criminal Matters can. Considering that the German *Länder* as well as the Åland Islands have competence concerning police services, this holds especially true. Until most recently however, sovereignty had been transferred only to the European Community. Within the other two pillars, Police and Judicial Co-operation in Criminal Matters and the Common Foreign and Security Policy, the Member States co-operated on an intergovernmental level, and the European Union as such was not a supranational organiza-

tion. Because the experiences of the Lisbon era are yet to be made, this report shall refer to the experiences of regions within the EC, which has been the only supranational pillar of the EU up to December 2009. The EC is of special interest because it is here where the third level of governance formally came into the picture. The EC had legislative power of its own. Consequently the regional, national and now also the European level are set in direct relation to each other. The Lisbon Treaty has abolished the pillar structure when it entered into force on 1 December 2009. However, even after entry into force, the European Union will continue to function on both bases – the distinction between supranational and intergovernmental decision-making will be sustained by and large. After all, Lisbon has not turned the EU into an omni-competent organisation. It can thus be expected that the regions with legislative power will remain concerned with the European level primarily when their legislative competences overlap.

13 See webpage of the CoR, <http://www.cor.europa.eu/pages/PresentationTemplate.aspx?view=folder&id=be53bd69-0089-465e-a173-fc34a8562341&sm=be53bd69-0089-465e-a173-fc34a8562341>, last accessed 24 April 2009.

## 2. European regions mobilize

### 2.1 Regionalism and regional mobilization

Before tracing why questions concerning the position of regions within the European Union have acquired such relevance today, it should be clarified what is meant by the recurring terms “regionalism” and “regional mobilization”. In broad terms regionalism should be understood as the formation of distinct regions within a state; that is to say as the administrative division of a state into smaller, territorially delimited sub-state entities exercising certain state functions (jurisdiction). For the purposes of this report the term “region” should be understood as covering

“in principle local authorities immediately below the level of central government, with a political power of representation as embodied by an elected regional Assembly”,

as defined it in the Statute of the Assembly of European Regions.<sup>14</sup> Regionalism thus requires more than the mere division of the state into municipalities as it captures the idea of decentralised political power. Regions with legislative power may be designed as states within a federation or as autonomous regions in states that do not have a symmetric federal structure. In both categories the degree of power may vary.

Some authors make a distinction between “regionalism” and “regionalization” according to whether the respective phenomenon is a bottom-up or a top-down approach to decentralization.<sup>15</sup> Others simply speak about top-down

or bottom-up “regionalism”.<sup>16</sup> As regards the term “regional mobilization”, it refers to the process towards regionalism or regionalization respectively,<sup>17</sup> but it also captures the striving of regions, constitutional regions in particular, for greater participation in the decision-making processes affecting them.

European Integration itself is an example of regionalism, although of a different kind, a regionalism beyond nation states.<sup>18</sup> The international commercial system is coined by regionalism in form of customs unions, free trade areas or common markets as the EU. Although this form of regionalism has led to a growing “closeness” between EU Member States and especially between cross-border neighboring regions, regional mobilization and regionalization are not EU-wide phenomena. After the 2004 and 2007 EU enlargements the majority of EU member states are unitary, non-regionalized states. This does not mean that no forms of regional mobilization exist within unitary EU Member States. However, in these states regional mobilization has not led to the division of power between a central government and regional authorities.<sup>19</sup> In fact,

14 See Statute of the Assembly of European Regions, Art. 2 (2).

15 Loughlin, John et al., Regional and local democracy in the European Union, European Union, Committee of the Regions, Official Publications of the European Communities, Luxembourg, 1999, p. 6.

16 Keating, Michael, Is there a regional level of government in Europe?, in: Le Galès, Patrick, Lequesne, Christian, Regions in Europe, Routledge, London, 1998, pp. 12 *et seqq.*

17 For an analysis of different motivations behind regionalism/regionalization see Keating, Is there a regional level of government in Europe?, pp. 11 *et seqq.*

18 For a definition of this form of regionalism see Fawcett, Louise, Exploring regional domains: a comparative history of regionalism”, 80 International Affairs 3 (2004), pp. 431 *et seqq.*

19 Balme, Richard, French Regionalization and European Integration: Territorial Adaption & Change in a Unitary State, in: Jones, Barry & Keating, Michael (eds), The European Union and the Regions, Clarendon Press Oxford, Oxford, 1995, p. 167-190; It should be

only eight of the currently 27 EU Member States contain regions with legislative power. In addition, regions with legislative power in the EU today are accommodated through very different structures in their respective nation states.

It is crucial to understand that regionalism, although a very diverse phenomenon, is a tradition shared by the European Union with its Member States and thus has a rightful position in the EU. Some states look back on a long tradition of federalism, as for example the Federal Republic of Germany. Others have found autonomy solutions to accommodate the needs of national minorities, as Finland has. Regionalism is not only a recurring theme in the traditions of many European states but also a theme central to European integration. Michael Keating has described European integration and regionalism as “twin challenges to the nation state in western Europe.”<sup>20</sup> This report does not provide for an analysis of the effects of European integration or regionalism on the notion of state sovereignty, nevertheless, the idea of a twin relationship between supranationalism and regionalism serves well to show that both forms of governance can be complementary. Keating speaks of “elements of consistency and mutual reinforcement in the two movements.”<sup>21</sup> For the purposes of the present report it shall be of particular interest how European integration has reinforced regional mobilization within regions with legislative power.

## 2.2 European Integration and regional mobilization

The impact of European integration was experienced in the regions ever since the creation of

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noted that local authorities in all MS have in one way or another made adjustments in their administrative structures to the European environment.

20 Keating, *Europeanism and Regionalism*, p.1.

21 *Ibid.*

the European Economic Community in 1958 but with increased intensity since the Single European Act in 1987. By establishing a common market, regions in the EEC were placed in direct competition to each other. Concerns about the economic and social consequences of the common market increased especially within regions with less advantageous geographical positions.<sup>22</sup> Moreover, regions with legislative power felt they had been sidelined, their competences conferred to the central government and the European Institutions, their own power eroded, leaving them without influence while faced with the burden of implementing decisions made on the European level.<sup>23</sup> The experiences and observations within the EEC let the regions, first and foremost the German *Länder*,<sup>24</sup> to articulate their concerns at all levels – pressuring their Member States to pay regard to domestic constitutional balances, building coalitions with other regions and at the European level directly, by appearing as distinct political actors alongside the Member States. The regions demand for the extension of their internal competences to the European level “foro interno, in foro externo”.<sup>25</sup>

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22 *Ibid.*, p. 5 *et seqq.*

23 Weatherill, *The Challenges of the regional Dimension in Europe*, p. 6.

24 Jeffrey, Charlie, *The ‘Europe of the Regions’ from Maastricht to Nice*, *Queen’s Papers on Europeanisation* No 2/2002, p. 3, available online at <http://www.qub.ac.uk/schools/SchoolofPoliticsInternationalStudiesandPhilosophy/FileStore/EuropeanisationFiles/Fileupload,38418,en.pdf>, last accessed 7.12.2009; See also, Bulmer, Simon, Jeffrey, Charlie, Paterson, William E., *Germany’s European diplomacy. Shaping the regional milieu*, Manchester University Press, Manchester 2001, pp. 40 *et seqq.*

25 Jeffrey, *Sub-National Mobilization and European Integration: Does it Make Any Difference?*, p. 7.

### 2.2.1 Regional Policy

Although regional mobilization is often viewed as a response to negative experiences, increased competition and the loss of competence, the fact that regions understood themselves as European actors early on may well be connected to the positive experiences made with regard to the European regional policy and structural funds. It has been argued that European regional policy has activated the regional level and that in fact, the regions have been much more open to implement regional policy instruments than the Member States, who have originally assumed a more obstinate position.<sup>26</sup> The first two structural funds, the European Social Fund and the European Agricultural Guidance and Guarantee Fund have been set up in 1958. In 1975 the European Regional Development Fund was created. It introduced the notion of redistribution and aims to assist those regions suffering from economic decline.<sup>27</sup> Regions compete for structural funds and cohesion funds<sup>28</sup> but at the same time these are incentives for co-operation and give bargaining power to the regions.<sup>29</sup> Since the reform of the structural funds in 1988 part-

nership with *i.a.* sub-national governments has been a fundamental principle with regard to the design, the implementation and the monitoring of structural funds.<sup>30</sup> This has had many effects; one of them is that the regions were “forced to qualify for European politics,”<sup>31</sup> another that the Member States were forced to enable their regions.<sup>32</sup> As Hooghe and Marks have observed, through such arrangements “subnational governments were discovering Europe at the same time that Europe, under the leadership of Jacques Delors, was discovering subnational governments.”<sup>33</sup> Although regional mobilization can by no means be reduced to issues related to structural and regional policy, it is important to recognize that European structural and regional policy constitutes one channel through which regions have entered the European plane rather unnoticed early on.

### 2.2.2 Maastricht

During the 1992 Intergovernmental Conference that led to the adoption of the Maastricht Treaty regions then appeared as active advocates of their own concerns with the aim to secure formal recognition and participatory rights, whenever a decision made on the European level concerns an area falling within regional competence.<sup>34</sup>

26 Tömmel, Ingeborg, *Die Regionalpolitik der EU: Systementwicklung durch Politikgestaltung*, in: Conzelmann, thomas, Knodt, Michèle (eds.), *Regionales Europa - Europäisierte Regionen*, Campus, Frankfurt/Main, 2002, p.44; See also Hooghe, Liesbet, Marks, Gary, *Multi-Level Governance and European Integration*, Rowmann & Littlefield Publishers, Oxford, 2001, pp. 83 *et seqq.*

27 See webpage of the European Commission, Regional Policy – Inforegio, History of the Structural Funds, [http://ec.europa.eu/regional\\_policy/funds/prord/prords/history\\_en.htm](http://ec.europa.eu/regional_policy/funds/prord/prords/history_en.htm), last visited 27.05.2009.

28 The structural and cohesion funds are the financial instruments of the regional policy.

29 Tömmel, *Die Regionalpolitik der EU: Systementwicklung durch Politikgestaltung*, p. 46 *et seqq.*

30 Bache, Ian, Flinders, Matthew, *Multi-level Governance*, Oxford University Press, Oxford, 2004, pp. 166 *et seqq.*; See also Council Regulation (EC) No 1260/99 of 21 June 1999 laying down general provisions on the Structural Funds, Official Journal L 161 , 26/06/1999 P.0001 – 0042, Art. 27.

31 Tömmel, *Die Regionalpolitik der EU: Systementwicklung durch Politikgestaltung*, p. 48.

32 Jeffrey, *Sub-National Mobilization and European Integration: Does it Make Any Difference?*, p. 4.

33 Hooghe, Marks, *Multi-Level Governance and European Integration*, p. 81.

34 Jeffrey, *The ‘Europe of the Regions’ from*

There were four concrete demands voiced by the regions. A three-level European Community should; (1) incorporate the subsidiarity principle in the Treaty; (2) allow regional-level access to the Council; (3) establish a Committee of the Regions and (4) provide for a regional right for appeal to the European Court of Justice.<sup>35</sup> The German *Länder* and the Belgian regions were leading the regional lobby. They built alliances with other regions in Europe, both regions with and without legislative power. The *Länder* lobbied with the German government, using their votes on the Maastricht Treaty in the *Bundesrat*<sup>36</sup> as bargaining power. Most notably, the regions lobbied directly at the European level. Maastricht can thus be regarded as the momentum which “marked [...] the development of the regional tier in the EU.”<sup>37</sup> The efforts of the regions did not remain without success. In 1993 the Treaty of Maastricht established the Committee of the Regions as an advisory body, it provided for the possibility of regional ministers to represent their member state in the Council of the European Union<sup>38</sup> and it formally incorporated the principle of subsidiarity into the primary law of the European Community. However, regions with legislative power were not fully satisfied. Fully fledged institutional representation and a regional right of appeal to the European Court of Justice remain on the agenda of the regions to date.<sup>39</sup>

Maastricht to Nice, p.1.

35 *Ibid.*, p.3.

36 Constitutional body in which the *Länder* are represented and participate in the legislation and administration of the Bund and in matters concerning the EU, German Grundgesetz Art. 50.

37 Hopkins, John, *Devolution in Context: Regional, Federal and Devolved Government in the European Union*, Cavendish Publishing, London, 2002, p. 200.

38 Ex Art. 203 EC.

39 The fear of the *Länder* that the institutional arrangements in the EU could lead to a

### 2.2.3 Nice and Amsterdam

At the subsequent intergovernmental conferences leading to the adoption of the Treaty of Amsterdam in 1997 and the Treaty of Nice in 2000 respectively, the regions appeared to be less active. The institutional set-up of the European Union was not further adapted to the so-called “third level” of European governance. After Maastricht it was the newly established Committee of the Regions which was to represent the regions at the European level. However, the diversity of member regions soon posed problems. Regions with legislative power and especially those that are crucial political players within their own member states have different needs, priorities, simply different aspirations than weaker regional and local authorities. The Committee of the Regions was thus to represent entities with only minor common denominators. The situation in the CoR has been characterized as “internal disorder”<sup>40</sup> and was not suited to further the ambitious agenda of regions with legislative power. It is often argued that the regions successfully worked towards being “let in” into European governance during the Maastricht intergovernmental conference.<sup>41</sup> With regard to Nice

distortion of their competence was in principle supported by the Bundesverfassungsgericht, the German Constitutional Court, in its famous Maastricht. See decision. Brunner v. The European Union Treaty [1994] 1 CMLR 57; See also Birkinshaw, Patrick, *European Public Law*, Butterworths LexisNexis, London, 2004, pp. 82 *et seqq.*

40 Nergelius, Joakim, *The Committee of the Regions Today and in the Future – A Critical Overview*, in: Weatherill, Bernitz, *The role of regions and sub-national actors in Europe. Essays in European Law*, p. 122.

41 See *i.a.* Jeffrey, Charlie, *Regions and the European Union: Letting them In, and Leaving them Alone*, in: Weatherill, Bernitz, *The role of regions and sub-national actors in Europe. Essays in European Law*, pp. 33 *et seqq.*

and Amsterdam however, it is argued that regions employed their energy towards ensuring that the EC/EU would “leave them alone”. Instead regions confined to securing influence on their national governments in questions concerning regional competences.<sup>42</sup> However, regions did not withdraw from multi-level governance and regional mobilization on the European level did not stagnate or decrease after 1993. Regional presence at the European level was further increased. After the adoption of the Treaty of Maastricht many regional authorities established offices in Brussels.<sup>43</sup> Although these offices might be regarded as some of many stakeholder representations that have settled around the European institutions, such as industry-lobbies or NGOs, they have undeniably contributed to the fact that regions are now a fixture in Brussels, individually. Moreover, further regional associations with more specific agendas have been set up.<sup>44</sup> The fact that regions kept appearing in Brussels after Maastricht indicates that after all the regions did not withdraw from the European level but employed new tactics and strategies.

In fact, in 1995 not only Austria, a federation with nine autonomous Bundesländer, but also Finland joined the EU. As outlined above, the Åland Islands are an autonomous region in Finland with exclusive competences in areas such

as trade, farming and forestry, fishing and hunting, the environment, health care, social welfare, education and the postal service.<sup>45</sup> Although the Åland archipelago is a peripheral Baltic Island region hosting a population of not more than 27.000, the 14 Member States of the EU at that time were open to negotiate substantial and permanent derogations from the treaties with the Finnish government and the two representatives of the Ålandic government when Finland acceded to the EU in 1995.<sup>46</sup> In a referendum the Ålandic then voted in favour of joining the European Union along with Finland and decided not to remain outside of the scope of the treaties. This success of the post-Maastricht phase of European integration should not be neglected as an example of the active involvement of a region with legislative power, making its voice heard successfully in Finland and on the European level directly in the mid-1990s.

#### 2.2.4 Lisbon

When the European Union entered into the long and painful process of what was sought to be constitution-making in 2001, representatives of the Heads of State and Government and the national parliaments of the Member States and candidate states, representatives of the Commission as well as Members of the European Parliament were convened to draft a Constitution for Europe. The Committee of the Regions had observer status and the right to fully participate in the meetings, however, without the power to prevent a consensus at

42 Jeffrey, *Regions and the European Union: Letting them In, and Leaving them Alone*, pp. 33 *et seqq.*

43 Marziali, Valeria, *Lobbying in Brussels. Interest Representation and Need for Information*, ZEI discussion Paper C 155, 2006, p.11, available online at [http://www.zei.de/download/zei\\_dp/dp\\_c155Marziali.pdf](http://www.zei.de/download/zei_dp/dp_c155Marziali.pdf), last accessed 9.12.2009.

44 CALRE, for example, the conference of chairmen of the legislative federal state parliaments of Europe, has been established in 1998. See webpage of the CALRE, <http://www.calre.be/EN/default.html>, last visited on 12 November, 2009.

45 See Section 18 of the Act on the Autonomy of Åland.

46 Jansson, Harry (ed.), *Vitbok för utveckling av Ålands självbestämmanderätt, Ålands framtid*, Mariehamn, 2007, p.17; Protocol 2 on the Åland Islands of the Finnish accession treaty (OJ C 241, 29.08.1994).

the Convention for the Future of Europe.<sup>47</sup> Notably, regions with legislative power or rather their parliamentary assemblies have been most active during the Convention via the Conference of Chairmen of the Legislative Federal State Parliaments of European, short CALRE<sup>48</sup> and RegLeg, the Conference of European Regions with Legislative Power.<sup>49</sup> Peter Lynch has described the Convention as a déjà-vu experience. Just as the Intergovernmental Conference leading to the Treaty of Maastricht, the Convention could have been a forum for national governments “negotiating away regional policy competences to the EU.”<sup>50</sup> But likewise it created an opportunity for regions to take up the demands that had not been satisfied by the Maastricht Treaty.<sup>51</sup> These were foremost the right for regions to appeal to the European Court of Justice and the formal recognition of all dimensions of the subsidiary principle including the regional level.<sup>52</sup> Moreover, the regions lobbied for an upgrade of the Committee

of the Regions, from advisory body to institution with the right to appeal to the ECJ.<sup>53</sup> Although the Constitutional Treaty has proven to be an over-ambitious project, it remains, the Treaty of Lisbon implements some of these demands. The Lisbon Treaty explicitly recognizes regional identities.<sup>54</sup> The subsidiarity principle is now defined with explicit reference to the local and regional level in Art. 5 (3) EU. Read in conjunction with Protocol No 2 on the Application of the Principles of Subsidiarity and Proportionality, the subsidiarity principle has been strengthened considerably. Not only shall all EU institutions ensure constant respect for the principles of subsidiarity and proportionality. According to Art. 8 Protocol No 2 the Committee of the Regions can bring actions before the European Court of Justice on grounds of infringement of the principle of subsidiarity by a legislative act, for the adoption of which the Treaty on the Functioning of the European Union provides that the CoR be consulted. Moreover, national parliaments have been empowered to enforce the subsidiarity principle. A national parliament can submit a reasoned opinion stating why it considers that the draft in question does not comply with the principle of subsidiarity. It is the national parliaments who decide, with two votes each, whether a legisla-

47 See webpage of the Convention for the Future of Europe, <http://european-convention.eu.int/organisation.asp?lang=EN>, last accessed on April 21, 2009.

48 Lynch, Peter, *Regions and the Convention for the Future of Europe: A Dialogue with the Deaf?*, 11 *European Urban and Regional Studies* 2, 2004, p. 171.

49 Jeffrey, *Regions in the European Union, Letting them In, and Leaving them Alone*, pp. 38 *et seqq.*

50 Lynch, *Regions and the Convention for the Future of Europe: A Dialogue with the Deaf?*, p. 170.

51 Lynch, *Regions and the Convention for the Future of Europe: A Dialogue with the Deaf?*, p. 170.

52 For a list of demands of the German *Länder* see *Stellungnahme der Deutschen Länder zum Stand der Beratungen im Konvent, Anlage zum Beschluss der Europaministerkonferenz zur Zukunft der EU*, Berlin, 5 December 2002.

53 Lynch, *Regions and the Convention for the Future of Europe: A Dialogue with the Deaf?*, pp. 170 *et seqq.*

54 Art. 4 EU stipulates that “The Union shall respect the equality of Member States before the Treaties as well as their national identities, inherent in their fundamental structures, political and constitutional, inclusive of regional and local self-government. It shall respect their essential State functions, including ensuring the territorial integrity of the State, maintaining law and order and safeguarding national security. In particular, national security remains the sole responsibility of each Member State.”



tive act complies with the subsidiarity principle. According to Art. 7(2) Protocol No 2, where reasoned opinions on a draft legislative act's non-compliance with the principle of subsidiarity represent at least one third of all the votes allocated to the national Parliaments the draft must be reviewed. Art. 6 stipulates that it will be for each national Parliament or each chamber of a national Parliament to consult, where appropriate, regional parliaments with legislative powers. Regional parliaments are thus not automatically included by virtue of the EU Treaty to participate the control of the subsidiarity principle.

The regions have been "let in", that is to say they have achieved access to European governance, not just through the Committee of the Regions. Instead of moving from a "letting in" to a "leaving alone" strategy regions have adapted to a reality of multi-level governance and complemented their early approach with further components. When depicting regional mobilization as either a "letting in" or a "leaving alone" strategy, a too narrow and misleading picture is composed. Regions have employed complementary "intra-state" and "extra-state" strategies and adjusted their priorities to the circumstances prevalent at the respective point of time on all three levels.<sup>55</sup> In a system of multi-level governance participation on the national and international levels is not an either or question. It is true that at times regions have adopted a cautious approach and mobilization at the European level has been less intense. This should not be misunderstood as a withdrawal from the European level but could very well be an indicator for sentiments prevailing among European citizens. The bumpy way to the Lisbon Treaty has revealed that European citizens feel left behind while the process of European integration is pushed for-

55 Lynch, Peter, *Regions and the Convention for the Future of Europe: A Dialogue with the Deaf?*, p. 171.

ward.<sup>56</sup> Especially regions with legislative power maintain close proximity to the democratic constituencies of the European Union and are careful not to follow an integration-logic that has lost force. The legitimacy crisis of the European Union revealed by the Lisbon debacle has led to increased attention on the regions whose democratic legitimacy is envied. As Jeffrey has concluded, albeit his well-founded scepticism towards over-ambitious views on regional mobilization,

"the significance of these trends of decentralization and growing sub-national policy activism is that they have provided a broader and more solid intra-state base for sub-national mobilization in European policy-making."<sup>57</sup>

Regions have put questions related to autonomy and federalism on the European agenda and triggered a discussion on how regions with legislative power can be accommodated best at all levels on all levels. The quest for answers to these questions continues.

56 See *e.g.* Dehousse, Renaud, *Constitutional Reform in the European Community: Are there Alternatives to the Majoritarian Avenue?*, in: Hayward, Jack E.S. (ed.), *The Crisis of Representation in Europe*, Frank Cass & Co. Ltd., Oxon, 1995, pp. 119 *et seqq.*

57 Jeffrey, *Sub-National Mobilization and European Integration: Does it Make Any Difference?*, p. 6.

### 3. European governance: blind or multi-levelled?

According to the European Commission, governance means

“rules, processes and behavior that affect the way in which powers are exercised at European level, particularly as regards openness, participation, accountability, effectiveness and coherence.”<sup>58</sup>

These rules have traditionally been summarized as the “Community method”. This method “provides a means to arbitrate between different interests by passing them through two successive filters.”<sup>59</sup> These filters are the Community’s executive arm, the Commission which makes legislative and policy proposals and the Community’s legislative arm, the Council, representing the Member State governments and the European Parliament, representing the citizens. In addition to these two filters the Community judiciary, the European Court of Justice, guarantees respect for the rule of law.<sup>60</sup>

Regions mobilize and have successfully established their presence in Brussels. But how are regions accommodated alongside the Community method of European governance today? After almost twenty years of regional mobilization, successes and drawbacks, the position of regions in European governance can still be viewed from both perspectives - “regional blindness” and “multi-level governance”. However, it seems that these concepts do not have to be mutually exclusive. The term “regional blindness” has come up in the 1960s, at a rather early state of Europe-

an integration.<sup>61</sup> However, the term has kept re-appearing. In the 1990s the perception that the European Union suffers from regional blindness was countered indirectly, first and foremost by Liesbet Hooghe and Gary Marks.<sup>62</sup> Instead they describe European governance as multi-levelled. This chapter shall introduce both perspectives. Regional blindness and multi-level governance both provide valuable frameworks through which the position of regions with legislative power can be assessed.

#### 3.1. Regional blindness

It can be argued that the European Union suffers from regional blindness because it effectively obstructs the exercise of the constitutionally guaranteed competences of the regions by virtue of its institutional set-up. Proponents of the claim that the European Union is blind to the concerns of regional governments point to a “formal remoteness”<sup>63</sup> effectuated by the Treaties, which precludes the regions from effectively participating in European governance. The core argument when claiming that the EC is “blind” to regional concerns is the centrality of the Member States in the European Union. Regional blindness could be looked upon as a side-effect of state-centric models of the European Community. Intergovernmentalists, for example, view the entire European Union as a bargaining structure for national governments. According to Andrew Moravcsik,

“the unique institutional structure of the EC is acceptable to national governments only insofar as it strengthens, rather

58 European Governance. A White Paper, Commission of the European Communities, COM (2001) 428 final, Brussels, 25.7.2001. p. 8.

59 European Governance. A White Paper, p. 8.

60 European Governance. A White Paper, p. 8; See also chapter II above.

61 See Ipsen, H.P., *Als Bundesstaat in der Gemeinschaft*, p. 256.

62 See *i.a.* Marks, Hooghe, Blank, *European Integration from the 1980s: State-Centric v. Multi-level Governance*.

63 Weatherill, *The Challenges of the regional Dimension in Europe*, p. 3.

than weakens, their control over domestic affairs, permitting them to attain goals otherwise unachievable. [...] EC institutions appear to be explicable as the result of conscious calculations by Member States to strike a balance between greater efficiency and domestic influence, on the one hand, and acceptable levels of political risk, on the other.<sup>64</sup>

The Member States are seen as “gatekeepers” who decide who is to enter and who is to remain outside European policy- and law-making processes. Although those lamenting regional blindness are not necessarily in agreement with this model of the European Community, the way in which Moravcsik depicts European governance serves well to explain why regions may be excluded from decision-making in the EC and most notably, why this deprives them of their constitutionally protected competences.

The formal decision-making process in the EC and access to the ECJ are areas regional mobilization has concentrated on without notable success. With reference to those examples the following paragraphs will illustrate how regional blindness manifests itself in the daily functioning of the European Community.

### *3.1.1 The decision-making process*

The Treaty on the Functioning of the European Union lays down formal procedures for the adoption of legislation. According to Art. 294 TFEU, decision-making in the European Community involves the European Commission, the European Parliament and the Council of the European Union. Under the ordinary legislative procedure, formerly known as the co-decision procedure as described by Art. 251 EC, the Eu-

64 Moravcsik, Andrew, Preferences and Power in the European Community: A Liberal Intergovernmentalist Approach, 31 *Journal of Common Market Studies* 4, 1993, p. 507.

ropean Commission drafts a legislative proposal and submits it to the European Parliament and the Council.<sup>65</sup> Consent in the Council requires a qualified majority. A legislative proposal might thus pass without the unanimous consent of all Member States. Being out-voted is part of any decision-making procedure not demanding unanimity. This holds true for the regional, national and European level. Nevertheless, regions tend to feel the most detached from the decision. Not to speak of situations where regional governments did not have the possibility to channel their opinion into the national position.

Art. 203 EC explicitly allowed for the representation of regional level ministers in the Council. Although this has been one of the successes for the regions at the IGC leading to the adoption of the Maastricht Treaty, it needs to be kept in mind that it is up to the discretion of the respective Member States to decide whether a minister of a regional government can participate in Council meetings. In cases where a regional minister sits in the Council he or she represents the entire Member State. Thus far only Germany, Belgium and Austria have allowed for representation by a regional minister. Certainly, these three countries host the most powerful regions.<sup>66</sup> For these regions it is possible to successfully channel their concerns into the national position and hence represent a position in the Council that pays regard to their concerns. However, regions with legislative power in the UK, Spain,

65 After the Treaty of Nice the co-decision procedure covers a wide scope of issues, for a list see [http://ec.europa.eu/codecision/procedure/legalbasis\\_en.htm](http://ec.europa.eu/codecision/procedure/legalbasis_en.htm), last accessed on 16.04.2009; Under the Lisbon Treaty the co-decision procedure will become the “ordinary legislative procedure”, see Art. 294 Consolidated Version of the Treaty on the Functioning of the European Union, not yet entered into force.

66 Hooghe, Marks, Multi-Level Governance and European Integration, p. 83.

Italy, Finland and Portugal have less access to the Council and, arguably, the last two are furthest away from representation in the Council. Hence, regions have at best limited, conditional access to the Council but they have no right based on the EC Treaty to participate in Council meetings. The Lisbon Treaty does not explicitly mention the right of the Member States to be represented by a regional level minister. Today Art. 16 EU simply states that the Council shall consist of a representative of each Member State at ministerial level, who may commit the government of the Member State in question and cast its vote. Member states continue to be free to assign a minister at the regional level to represent his Member State.

### *3.1.2 Infringement procedures against Member States*

Often the argument that the EU is blind to regional concerns is made with reference to a number of actions for the failure to fulfill obligations brought before the European Court of Justice by the Commission. The ECJ has found that it is “incumbent upon all the competent authorities, including legally recognized professional bodies and local authorities” to observe rules of EC law and has thus adopted a broad notion of the state.<sup>67</sup> Consequently, regions with legislative power such as the German *Länder* or the Åland Islands are responsible for the implementation and application of EU legislation that falls within their constitutionally protected competences. In fact, it is regional and local authorities who implement about three quarters of all EU legislation.<sup>68</sup> However, legal responsibility

67 Case C-197/84 Steinhauser v City of Biarritz [1985] ECR 1819.

68 See webpage of the CoR, <http://www.cor.europa.eu/pages/PresentationTemplate.aspx?view=folder&id=be53bd69-0089-465e-a173-fc34a8562341&sm=be53bd69-0089->

for any breach of EU law rests with the Member States and so infringement procedures initiated by the Commission are always addressed to the Member State governments. According to Art. 17 EU, the European Commission shall oversee the application of Union law under the control of the Court of Justice. If the Commission considers that a Member State has failed to fulfill an obligation under the EC Treaty, it shall deliver a reasoned opinion on the matter after giving the State concerned the opportunity to submit its observations, as foreseen by Art. 258 TFEU. If the State concerned does not reply to the opinion within the period laid down by the Commission, the latter may bring the matter before the ECJ.<sup>69</sup> Paul Craig and Gráinne De Búrca described the nature of the enforcement procedure as

“in part [...] a diplomatic means for dissolving disputes amicably without recourse to litigation, in part [...] a channel for individuals to complain to the Commission about breaches of EC law, and in part as on ‘objective’ law enforcement tool by the Commission.”<sup>70</sup>

The attempts of solving a conflict by diplomatic means might however, not extend to the regions. According to Art. 27 of the Vienna Convention on the Law of Treaties a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty. Thus, being bound by public international law, the Mem-

465e-a173-fc34a8562341, last accessed 24 April 2009.

69 The Commission can initiate proceedings either in response to a complaint or at its own initiative after it has gained the information that a MS has failed to fulfil its obligations, see Craig, Paul, De Búrca, Gráinne, *EU Law. Texts, cases and Materials*, 3rd edition, Oxford University Press, Oxford, 2003, p. 398.

70 Craig, De Búrca, *EU Law. Texts, Cases and Materials*, p. 397.

ber States cannot simply point to the domestic division of competence to escape responsibility. When the respective Member State does not ensure that the regions concerned will be adequately involved in preparing a reasoned opinion or in representing the Member State before the Court, the reasoned opinion delivered to the Commission or the position represented before the ECJ by the Member State government might not correspond to the defense of the regional government who has committed the actual infringement. Obviously, this leads to a certain distortion in the infringement procedure.<sup>71</sup> Should the ECJ impose a penalty payment on the Member State, the payment can be imposed domestically on the regional government in question by way of redress. The regions thus carry the financial consequences without being able to plead their case and Member States might not have the power to implement the judgment.

### 3.1.3 Review of legality

But it is not only in this way that one could express discontent about the access to the European Court of Justice. It is not only that regions are often prevented from defending their case but, unlike Member State governments, regional governments cannot bring actions under Art. 230 (2) EC on grounds of lack of competence, infringement of an essential procedural requirement, infringement of the EC Treaty or of any rule of law relating to its application, or misuse of powers by a Community institution. In its famous decision *Wallonian Region v Commission*, the European Court of Justice confirmed that

“[...] it is apparent from the general scheme of the Treaties that the term ‘Member State’, for the purposes of the institutional provisions and, in particular, those re-

lating to proceedings before the courts, refers only to government authorities of the Member States of the European Communities and cannot include the governments of regions or autonomous communities, irrespective of the powers they may have. If the contrary were true, it would undermine the institutional balance provided for by the Treaties, [...]”<sup>72</sup>

Hence, regions are treated as non-privileged applicants, just as individuals are. Art. 230 (4) EC requires that the decision in question is of direct and individual concern to a non-privileged applicant. Thus far regions had only limited success in invoking Art. 230 (4) EC, as they have been found to be directly and individually concerned only in cases concerning state aid.<sup>73</sup> Constitutional regions however, are directly and individually concerned by a broad range of EC legislation. Directives confer obligations on regional governments continuously; these potentially limit the exercise of regional competence. Moreover, due to the direct effect<sup>74</sup> of EC law, individuals can directly enforce directives<sup>75</sup> before national courts against state organs, including regional governments. Again, regions face the burden of implementing EC legislation with neither the possibility to par-

72 Case C-95/97 *Wallonian Region v Commission* [1997] ECR I-1789, summary.

73 Oliver, Peter, *The Convention on the Future of Europe: the Issues and Prospects*, in: Andenas, Mads, Usher, John (eds.), *The Treaty of Nice and Beyond. Enlargement and Constitutional Reform. Essays in European Law*, Hard Publishing, Oxford, 2003, p. 43; See cases T-214/95 *Vlaams Gewest v Commission* [1998] ECR II-717; T-238/97 *Comunidad Autónoma de Cantabria v Council* [1998] ECR II-2271.

74 See case C-26/63 *Van Gend en Loos (NV Algemene Transporten Expeditie Onderneming) v Nederlandse Administratie der Balastingen* [1963] ECR 1.

75 Case 41/74, *Van Duyn v Home Office* [1974] ECR 1337.

71 Weatherill, *The Challenges of the Regional Dimension in Europe*, pp. 6 et seq.

ticipate in decision-making nor the full privilege to turn to the Court and request a review of the legality of the legislation in question.

These instances can be regarded as manifestations of regional blindness. The Commission has indicated that it recognizes the flaws of this system by saying that

“[t]here is [...] clearly a contradiction: the European Union considers that decisions have to be taken at the closest possible level to the citizens; but it makes no provision for resources to implement this principle, thus doing nothing to facilitate transparency. Consequently the debate on multi-level governance is becoming difficult and skewed in the sense that the participants choose the interpretation of subsidiarity which favours them, often leading to a dialogue with the deaf.”<sup>76</sup>

### 3.2 *Multi-level governance*

Regional blindness points to the collective exclusion of regions from decision-making in the European Union and is connected to the state-centric model of the European Union. By contrast, the multi-level governance model recognizes the centrality of the Member States but asserts that Member States do not monopolize European governance.<sup>77</sup> Instead of excluding regional governments from decision-making procedures, proponents of the multi-level governance theory argue that governance in the EU is dispersed and provides for various entry points. European Integration has triggered a dispersion of power upwards towards the supranational level whereas regionalization has triggered a dispersion of power downwards toward the sub-national level.<sup>78</sup>

76 Report by Working Group on “Level Governance: Linking and Networking the various Regional and Local Levels” (Group 4c), p. 5.

77 Marks, Hooghe, Blank, *European Integration from the 1980s: State-Centric v. Multi-level Governance*, p. 346.

vel.<sup>78</sup> These dichotomies, European integration/supranational governance and regionalization/regional governance should not be considered as closed though. As outlined in chapter 2.2 above, European integration itself has to a certain degree empowered regions to participate in European governance. Multi-level governance does thus not function according to a hierarchy with the Member States as joints between the supra- and the sub-national level. Instead of acting solely within the domestic arena

“subnational actors operate in both national and supranational arenas, creating transnational associations in the process. States do not monopolize links between domestic and European actors, but are one among a variety of actors contesting decisions that are made on a variety of levels. In this perspective, complex interrelationships in domestic politics do not stop at the nation-state, but extend to the European level.”<sup>79</sup>

If the major forums in which decisions can be contested, the Council and the European Court of Justice are as inaccessible to regions and blind to regional concerns, as often argued, how is it then that European governance can be seen as multi-levelled?

Ian Bache has described multi-level governance as

“a concept that directs attention to increasingly complex vertical and horizontal relations between actors and sharpens questions about the mechanisms, strategies, and tactics through which governing takes place in these contexts.”<sup>80</sup>

78 Hooghe, Liesbet, Marks, Gary, *Multi-Level Governance and European Integration*, Rowman & Littlefield Publishers, Oxford, 2001, p. xi..

79 Marks, Hooghe, Blank, *European Integration from the 1980s: State-Centric v. Multi-level Governance*, pp. 346 et seq.

80 Bache, *Europeanization and multi-level gov-*

The lack of a treaty-based role of the regions in decision-making beyond the Committee of the Regions' advisory status and the regions' limited access to the European Court of Justice are criticisms that relate to "mechanisms", if mechanisms are understood as participatory structures enforced by national law or the *acquis communautaire*. However, there may be efficient "strategies and tactics" to secure participation and influence on European governance, irrespective of legally enforceable participatory rights. Strategies and tactics can be employed at any point of time in European policy processes, including decision-making processes with regard to European affairs on the national level. Moreover, strategies and tactics do not have to be collective but can be employed by individual regions.

The term multi-level governance is today frequently used within the European Union administration. Commissioner Danuta Hübner for example, responsible for Regional Policy in the Barosso Commission, has used the term on multiple occasions to describe the position of regions in the EU.<sup>81</sup> Multi-level governance is implied by the treaties, through *i.a.* the subsidiarity principle and has become yet more visible in the Lisbon Treaty. Other originally informal or semi-formal strategies such as "partnerships" within structural and cohesion policy, have found their way into legally enforceable directives.<sup>82</sup> Arguably, the role of regions in these mechanisms is limited. However, strategies and tactics employed by the regions and by the EC institutions, first and foremost the

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ernance: Empirical findings and conceptual challenges, p. 7.

81 See *e.g.* Hübner, Danuta, Regions in a system of multi-level governance, Scottish Jean Monnet Centre Occasional Paper Series, Vol. 1, No. 1, January 2009.

82 See *e.g.* Council Regulation (EC) No 1260/99 of 21 June 1999 laying down general provisions on the Structural Funds, Official Journal L 161, 26/06/1999 P. 0001 – 0042, Art. 27.

Commission, have had a transforming effect and it can be argued that regions have become indispensable actors in European governance.

Apart from the Committee of the Regions and the sporadic appearance of regional level ministers at Council meetings, Hooghe and Marks point specifically to the links between regions and the Commission and the presence of regions in Brussels to illustrate how multi-level governance takes place within the European Union.

### 3.2.1 Regions and the Commission

The Commission is the Community's executive arm and has the exclusive right to submit legislative proposals to the Council and the European Parliament. Hence, the Commission is the agenda-setter and at the same time monitors the observance of the valid Community legislation. Although the Commission is divided into specialized, area-specific Directorates-General, it has to rely on information from the outside to identify demands for legislative proposals and to gain the expertise necessary for drafting legislative proposals. With a staff of only 32.000 the Commission has only a fraction of the resources national administrations have and therefore has to cooperate closely with the European Parliament and the other Community institutions and bodies and with the Member States, on all levels, including the regional level.<sup>83</sup> Where state-centrists argue that demands for legislation originate to an overwhelming extent in Member State governments, proponents of the multi-level governance perspective have observed already in the early 1990s that initiatives for legislative proposals originate also in the European Parliament, the Economic and Social Committee, private and public-interest groups

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83 See webpage of the European Commission Civil Service, [http://ec.europa.eu/civil\\_service/index\\_en.htm](http://ec.europa.eu/civil_service/index_en.htm), last accessed 29.04.2009.

and regional governments.<sup>84</sup> Drafting a legislative proposal for a territory as big as the European Community, comprising 27 governments, 74 regional governments and a great number of local authorities, thousands of private and public-interest groups and more than 450 million citizens is a process craving scrutiny and deliberation. This necessitates processes of consultation at various stages during the drafting phase. The Commission consults stakeholders through different instruments such as Green and White Papers including calls for reactions, communications, advisory committees, expert seminars and groups, business test panels, forums, conferences, online consultations and ad hoc consultations.<sup>85</sup> The Commission's White Paper on European Governance put great emphasis on participation and transparency as decisive characteristics of "Good Governance".<sup>86</sup> The Commission tries to ensure transparency, for example by operating a "register of expert groups", accessible to the public on the Commission's webpage.<sup>87</sup> While the register of expert groups excludes *i.a.* comitology committees, it displays the expert groups in different categories, such as NGO or industry and formal or informal, and shows in which key areas

the respective groups are working. In the area of Regional Policy for example, *Régions Ultra-périphériques*, a group consisting of local authorities of peripheral regions, are listed as an expert group.<sup>88</sup> Many of the consultation instruments are described as in-put oriented.<sup>89</sup> The Commission wants to secure a "sound knowledge base for better policies".<sup>90</sup> Although neither the Commission nor regional governments might utilize consultation mechanisms to the greatest extent possible, it bears great potential for regional influence. Consultation is a principle protected by the Treaties. Art. 2 Protocol No 2 states that before proposing legislative acts, the Commission shall consult widely and that such consultations shall, where appropriate, take into account the regional and local dimension of the action envisaged. Title II of the EU Treaty on democratic principles provides the basis for many provisions to be found in the EU's primary and secondary laws laying down the Commission's obligation to consult "with parties concerned" in the diverse policy areas.

### 3.2.2 Brussels Offices

Taking into account the width of consultation instruments, it is widely considered beneficial by regions with legislative power to preserve a close proximity to the Commission and establish themselves as distinct from their national governments. According to Hooghe and Marks, the main motivation for regions to establish offices in Brussels is informational exchange and to represent distinct regional demands.<sup>91</sup> Sub-na-

84 Marks, Hooghe, Blank, European Integration from the 1980s: State-Centric v. Multi-level Governance, pp. 356 et seq.

85 European Governance. A White Paper, p. 15; See also Quittkat, Christine, Finke, Barbara, The EU Commission Consultation Regime, in: Kohler-Koch, Beate, De Bièvre, Dirk, Maloney, William (eds.), Opening EU-Governance to Civil Society. Gains and Challenges, CONNEX Report Series No. 05, Mannheim, 2008, pp. 183 *et seqq.*, available online at [http://www.mzes.uni-mannheim.de/projekte/typo3/site/fileadmin/Factsheets/RZ%20RG4\\_publications.pdf](http://www.mzes.uni-mannheim.de/projekte/typo3/site/fileadmin/Factsheets/RZ%20RG4_publications.pdf), last accessed 9.12.2009.

86 European Governance. A White Paper, p. 10.

87 Webpage of the Commission, register of expert groups, <http://ec.europa.eu/transparency/regexpert/>, last accessed 30.04.2009.

88 *Ibid.*

89 Quittkat, Finke, The EU Commission Consultation Regime, p. 195.

90 See webpage of the Commission, <http://ec.europa.eu/transparency/regexpert/faq.cfm?aide=2>, last accessed 01.12.2009.

91 Hooghe, Marks, Multi-Level Governance and European Integration, p. 87.



tional offices cooperate and often join forces to lobby on specific policy areas in order to gain an even stronger voice. Regional governments have the chance to react to the information gathered by their Brussels offices and contact the Commission, the Parliament and their Member States governments to express their position and submit recommendations. Regional governments react to the Commission's calls for consultation and offer their expertise.

This is, in a nutshell, what is behind the terms regional blindness and multi-level governance. Both concepts point to channels regions pursue more and less successfully to participate in European governance. Both concepts reveal the challenges and opportunities for regional mobilization and European integration.

#### 4. Channels of participation – dead ends or multiple opportunities?

Having traced how regions with legislative power in the EU have mobilized since the late 1980s, constitutional regions can be well referred to as established stakeholders who have been “recalibrated in a significant way”<sup>92</sup>. The multi-level governance perspective suggests that regions are no longer excluded from participation, a fact that does not disable the argument that the EC is blind to regional concerns. Instead one might wonder what difference participation makes?<sup>93</sup> As Charlie Jeffrey has pointed out sub-national authorities (SNAs)

“may well mobilize in full sound and fury in regard to Europe; whether this signifies any real change in the ‘structure of authoritative decision-making’ in the Union is a different matter: mobilization and influence are not synonymous. Moreover, SNAs are differently constituted throughout the Union, and display wide variations both between and within Member States (a) in their capacity and commitment to mobilize and (b) in their ability to transform mobilization into influence. A further challenge for work on SNAs and the EU is therefore to identify those conditions under which mobilization is likely genuinely to ‘make a difference’ and to pinpoint and account for variations in the extent of ‘difference’ SNAs can make.”<sup>94</sup>

This chapter looks at the channels the German *Länder* and the Åland Islands pursue and under which conditions regions can most likely gain real influence.

92 Jeffrey, Sub-National Mobilization and European Integration: Does it Make Any Difference?, p.2.

93 *Ibid.*

94 *Ibid.*

#### 4.1 Indicators for influence

Whether regional mobilization results in participation on the one hand and real influence on the other is dependent on certain conditions. Jeffrey proposes a set of indicators to measure the potential of regions to influence European policy processes which is

“dynamic in the sense of being capable of accommodating changing conditions; capable of differentiating SNA capacity to ‘make a difference’ between different Member States; capable of capturing and explaining some of the variations in the intensity and effect of mobilization by different SNAs in the same Member State.”<sup>95</sup>

Whether sub-national authorities, to stick to Jeffrey’s terminology, are likely to gain influence on European policy processes depends on three key indicators: 1) constitutional factors, 2) intergovernmental relations and 3) regional entrepreneurship.<sup>96</sup>

**1. Constitutional factors**, the first and strongest indicator, vary even in regions with legislative power. According to Jeffrey

“SNAs which possess the most internal competences will be affected most by the European policy processes as EU level competence expands and [...] have the sturdiest internal base from which to mobilize to gain influence over EU decision-making.”<sup>97</sup>

Constitutional factors vary even in regions with legislative power. It is worthwhile to explore how constitutional factors can determine the degree of influence a respective region has on European policy processes.

95 Jeffrey, Sub-National Mobilization and European Integration: Does it Make Any Difference?, p. 8.

96 *Ibid.*, pp. 8 *et seqq.*

97 Jeffrey, Sub-National Mobilization and European Integration: Does it Make Any Difference?, p. 8.

2. The second indicator, **intergovernmental relations**, provides for an assessment of regional influence beyond the domestic arena. However, intergovernmental relations can be exercised not only through regional-national co-ordination structures but also through diverse structures of cooperation between regions and a variety of actors. Jeffrey points to “resource dependency”. Regional governments

“possess policy resources in the form, for example, of expertise, information and legitimacy [...]. Such resources can create a less entrenched, but still significant form of access to EU decision-making.”<sup>98</sup>

Expertise, information and legitimacy can connect regions with different actors - other regions, national governments, European institutions and international organizations. Certainly, influence is less certain and hard to measure in this respect. However, the existence of intergovernmental relations, broadly defined, can be an indicator for influence.

3. The third indicator, **regional entrepreneurship**, points out that regional governments are architects of their own fortune. In this context entrepreneurship means that a region is active and successful in promoting, not only its expertise and input in European policy processes. Important indicators for such entrepreneurship are the presence of

“(a) internal administrative adaptation to this [European policy] environment; (b) leadership; and (c) strategies of coalition-building which lend support to SNA European policy interests”<sup>99</sup>.

98 Jeffrey, Sub-National Mobilization and European Integration: Does it Make Any Difference?, p.10.

99 Jeffrey, Sub-National Mobilization and European Integration: Does it Make Any Difference?, p.10.

Here again a differentiation between mechanisms on the one hand, and strategies and tactics on the other hand, can be discerned. Whereas the first indicator, the constitutional role of regions, relates to mechanisms, the other two relate to regional strategies and tactics. Member State constitutions can provide for mechanisms that ensure the participation of regional governance on decisions made on the national level concerning European Affairs. Beyond that regions can pursue strategies and tactics to gain more influence through intergovernmental relations and regional entrepreneurship.

In the previous chapters different channels through which regions participate in European governance were mentioned incidentally.

1. One channel of participation is the national governments of the Member States.
2. Regions are represented at the European level by the Committee of the Regions.
3. Regional governments participate in organizations and network structures within and outside the formal structures of the European Community institutions.
4. Regions are present in Brussels also individually as many regional governments have set up offices in Brussels.
5. Regions have the possibility to lobby Members of the European Parliament and convince them to mobilize for their concerns.
6. Regions have access to the Commission, traditionally with regard to European structural and regional policy and many other policy areas today.

It shall now be turned to these six channels in more depths. If it is assumed that these channels constitute entry points for regional participation in European governance, under what conditions has regional participation resulted in influence? This question shall be tackled with reference to Jeffrey's indicators for influence.

#### *4.2 The Member State channel – constitutional guarantees and practical difficulties*

The Member States are without doubt the prior channel for regions to participate in European policy and decision-making processes. Irrespective of whether regionalism is a symmetrical or an asymmetrical phenomenon or how regionalism is organized, regional governments operate within Member States and Member States are the traditional forums for the expression of regional concerns. One of the indicators for regional influence proposed by Jeffrey are constitutional factors. A constitution providing for clear-cut mechanisms of central-regional cooperation on matters concerning European affairs can guarantee a basic degree of influence on European policy processes.

##### *4.2.1 Constitutional guarantees: The German Grundgesetz*

According to Art. 70 of the German constitution, the Basic law (*Grundgesetz*), the *Länder* shall have the right to legislate insofar as the *Grundgesetz* does not confer legislative power on the Federation. Arts. 73 and 74 GG then stipulate which matters fall under the exclusive legislative power of the Federation and which matters fall under concurrent legislative powers respectively. The German *Länder* seized the opportunity presented by the constitutional reform process after the German reunification to make sure that the *Grundgesetz* would also protect their legislative powers in the face of European integration.<sup>100</sup> Art. 23 paragraphs (4) to (6) *Grundgesetz* read as follows,

- (4) The *Bundesrat* shall participate in the decision-making process of the Federation

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100 Hopkins, Devolution in context: Regional, Federal and Devolved Government in the European Union, pp. 200 et seq.

insofar as it would have been competent to do so in a comparable domestic matter, or insofar as the subject falls within the domestic competence of the *Länder*.

(5) Insofar as, in an area within the exclusive competence of the Federation, interests of the *Länder* are affected, and in other matters, insofar as the Federation has legislative power, the Federal Government shall take the position of the *Bundesrat* into account. To the extent that the legislative powers of the *Länder*, the structure of *Land* authorities, or *Land* administrative procedures are primarily affected, the position of the *Bundesrat* shall be given the greatest possible respect in determining the Federation's position consistent with the responsibility of the Federation for the nation as a whole. [...]

(6) When legislative powers exclusive to the *Länder* concerning matters of school education, culture or broadcasting are primarily affected, the exercise of the rights belonging to the Federal Republic of Germany as a member state of the European Union shall be delegated by the Federation to a representative of the *Länder* designated by the *Bundesrat*. These rights shall be exercised with the participation of, and in coordination with, the Federal Governments; their exercise shall be consistent with the responsibility of the Federation for the nation as a whole.<sup>101</sup>

This so-called “*Europaartikel*” ensures that the constitutional position of the *Länder* is protected even where the federal government has transferred sovereignty to the European Union. Art. 23 provides for mechanisms designed to channel the collective position of the German constitutional regions into the position of the Member State. The German *Grundgesetz* recognizes the sui generis character of the European Union and maintains a distinction between European and Foreign Affairs. The former being a competence shared between *Bund* and *Länder*, the latter be-

101 Art. 23 Basic law of the Federal Republic of Germany (*Grundgesetz*).

ing an exclusive competence of the federal government. In this regard the *Länder* have secured a sturdy constitutional base from which they can configure themselves as European actors. They participate in drafting the national position and have the right to represent the Federal Republic of Germany in the Council when primarily *Länder* competences are affected.

#### 4.2.2 Constitutional guarantees: the Act on the Autonomy of Åland

The government of the Åland Islands also operates from a strong constitutional basis. It should be noted that there is no hierarchy in the relationship between Finnish and Ålandic law. Åland's competences are exclusive and Finnish law does not apply subsidiarily in cases where Åland fails to legislate or implement EC law.<sup>102</sup> Unlike the German constitution the Finnish Constitution does not make a difference between European and Foreign Policy. Section 93 of the Finnish Constitution simply states that

“the Government is responsible for the national preparation of the decisions to be made in the European Union, and decides on the concomitant Finnish measures, unless the decision requires the approval of the Parliament. The Parliament participates in the national preparation of decisions to be made in the European Union, as provided in this Constitution.”<sup>103</sup>

At the same time Section 59 of the Act on the Autonomy of the Åland Island stipulates that

102 Palmgren, Sten, The Autonomy of the Åland Islands in the Constitutional Law of Finland, in: Hannikainen, Lauri, Horn, Frank (eds.), *Autonomy and Demilitarisation in International Law: The Åland Islands in a Changing Europe*, Kluwer Law International, The Hague, 1997, p. 88.

103 Finnish Constitution, unofficial translation, published by the Finnish Parliament 1999.

“if a treaty or another international obligation binding on Finland contains a term which under this Act concerns a matter within the competence of Åland, the Åland Parliament must consent to the statute implementing that term in order to have it enter into force in Åland.”<sup>104</sup>

Åland gave its consent to the Finnish accession treaty to the European Union, including a protocol granting Åland to derogate, notably on a non-discriminatory basis, from the Treaties with regard to restrictions on the right to domicile (*hembygdsrätt*), to own real property (*hembygdsrätt* and *jordförvärvsrätt*) and the right to establish a business (*näringsrätt*).<sup>105</sup> Furthermore, Åland is excluded from the territorial application of the EC provisions in the fields of harmonization of the laws of the Member States on turnover taxes and on excise duties and other forms of indirect taxation.<sup>106</sup> The protocol takes account of the special status the Åland Islands enjoy under international law.<sup>107</sup>

104 Act on Ålandic Autonomy, unofficial translation, published by the Åland Parliament 2005.

105 Treaty between the Member States of the European Union and the Kingdom of Norway, the Republic of Austria, the Republic of Finland the Kingdom of Sweden, concerning the accession of the Kingdom of Norway, the Republic of Austria, the Republic of Finland and the Kingdom of Sweden to the European Union, Protocol No 2 on the Åland Islands, Art. 1.

106 *Ibid.* Art. 2.

107 This formulation includes Ålands demilitarization and neutralization, see e.g. Bring, Ove, Ålands självstyrelse under 80 år: Erfarenheter och utmaningar, published by the government of the Åland Islands, Mariehamn, 2002, pp. 69 et seq.; See also Fagerlund, Niklas, The Special Status of the Åland Islands in the European Union, in: Hanikainen, Horn, Autonomy and Demilitarisation in International Law: The Åland Islands in a Changing Europe; With an ex-

During the first ten years of EU membership co-operation between Åland and Finland concerning Finland’s national position in the Council was problematic. During these years the Ålandic member to the Finnish parliament proved to be the most effective channel through which to communicate Ålandic concerns regarding the Finnish position preceding a decision made on the European level.<sup>108</sup> Even today the Ålandic MP is one of the strongest link between the autonomy and the state. Nevertheless, according to the current MP the opportunities of this direct link to Helsinki are not always fully exploited.<sup>109</sup> The link between the autonomy was strengthened in 2004 when the Act on Autonomy was amended. It now contains provisions concerning the preparation of national positions with regard to European Union affairs, the implementation of decisions made in the European Union and positions in matters pertaining to Treaty violations and state liability of Åland.<sup>110</sup> According to Art. 59a

“The Government of Åland shall have the right to participate in the preparation, within the Council of State, of the national positions of Finland preceding decision-making in the European Union, if the matter would in other respects fall within the powers of Åland or if the matter otherwise may have special significance to Åland. If the positions of Åland and the State cannot be harmonised in accordance with this Act in a matter falling within the powers of Åland, the position of Åland shall on

panding EU and European security co-operation, the demilitarization and neutralization of Åland is today emphasised on many occasions by Ålandic politicians.

108 Suksi, Markku, Ålands Konstitution, Åbo Akademis förlag, Åbo, 2005, p. 272.

109 Personal conversation with the Ålandic Member of the Finnish Parliament in August 2009.

110 Act on the Automomy of the Åland Islands, chapter 9a.

the request of the Government of Åland be declared when the positions of Finland are being presented in the institutions of the European Union.”<sup>111</sup>

The Act on Autonomy states further that, upon request, the Ålandic government shall be reserved the opportunity to participate in the work if the Finnish delegation<sup>112</sup> and that the Finnish state authorities shall co-operate with the government of Åland in preparing a response to the position taken by the Commission on shortcomings of the fulfillment of obligations that fall within Ålandic competence.<sup>113</sup> However, these provisions have not yet been implemented to a satisfying extent and Åland is working towards a stronger role in preparing the Finnish national positions.<sup>114</sup> Whether Åland's competences are concerned is sometimes assessed differently by the respective ministries in Helsinki and their counterparts on Åland, often with the result that the Ålandic government is excluded from the preparation of the national position.<sup>115</sup> Moreover, there have been several proceedings before the European Court of Justice against Finland after the 2004 amendments to the Autonomy Act in which the Commission claimed that EC directives had not been implemented on the Åland Islands. In all of these cases the central government represented the Finnish position before the Court and the Ålandic felt that their position was not taken account of to a sa-

111 Unofficial translation, published by the Åland Parliament 2005.

112 Act on the Autonomy of Åland, Section 59a.

113 *Ibid.*, Section 59c.

114 RP 57/2009 rd, Regeringens proposition till Riksdagen med förslag till lag om ändring av 59 c § i självstyrelselagen för Åland, 24.04.2009, p. 3; Silverström, Experiences From Implementation of EU Obligations in the Åland Islands, p. 44.

115 *Ibid.*, p. 3; Suksi, Ålands Konstitution, pp. 274 *et seqq.*

tisfying extent. This concerned in particular the *Oral Tobacco* case concerning the selling of snus on the territory of Åland.<sup>116</sup> In 2009 the government of the Åland Islands has produced a “*principdokument*”, including a proposal to change the Act on Autonomy to the effect that Åland's position, if deviating from the Finnish position, will be visible for the Commission during an infringement procedure and that Åland will have the right to defend itself during oral proceedings before the European Court of Justice.<sup>117</sup> This proposal has been adopted by the Finnish parliament and Section 59c has been changed accordingly and entered into force on 1 December 2009.<sup>118</sup> The *principdokument* moreover, stresses the importance of language and underlines the right of the Ålandic government to choose Swedish as the language used during an infringement procedure touching upon Ålandic competence. This concern is related to the persisting problem, that the information necessary to assess the Finnish position is often not accessible

116 C-343/05 Commission v Finland, OJ C 178, 29.07.2006, p. 10; See also case C-344/03 Commission v Finland, Spring hunting (OJ C 48, 25.02.2006, p. 3.), C-327/04 Commission v Finland, Equal treatment (OJ C 93, 16.04.2005, p. 3.), C-107/05 Commission v Finland, Greenhouse gases (OJ C 60, 11.03.2006, p. 10.), C-152/06 Commission v Finland, Hazardous electrical equipment (OJ C 326, 30.12.2006, p.20.), C-154/06 Commission v Finland, Waste electrical equipment (OJ C 326, 30.12.2006, p.21), C-159/06 Commission v Finland, Assessment of environmental effects (OJ C 326, 30.12.2006, p.21).

117 RP 57/2009 rd, Regeringens proposition till Riksdagen med förslag till lag om ändring av 59 c § i självstyrelselagen för Åland, 24.04.2009.

118 RSv 92/2009 rd - RP 57/2009 rd, Lag om ändring av 59c § i självstyrelselagen för Åland, Helsingfors, 6.11.2009.

in Swedish.<sup>119</sup> Nevertheless, the government of the Åland Islands has underlined that in practice co-operation between Åland and Finland has been working well in most cases.<sup>120</sup> One positive example is the Regulation on Trade in Seal Products which has been adopted in July 2009. The government of Åland was actively involved in drafting the Finnish position and present along with the Finnish government at the ministerial-level Council meetings. In this case, no conflict of interest arose as central and regional positions did not diverge.<sup>121</sup>

However, conflicts can arise and effective means for their resolution are explicitly provided for only with regard to the implementation of decisions made in the European Union. The competences of the Åland Delegation<sup>122</sup>, notably not an institution administering day-to-day contacts between the regional and the central level, have been extended to situations in which the authorities of Åland and the State do not agree on the measures to be taken to implement a decision made on the European level. When such a decision falls within both, the powers of Åland and

the central state and no agreement can be found, a recommendation for the resolution of the conflict can be requested from the Åland Delegation according to Section 59 b of the Act on Autonomy. Section 59 b continues that “if, under Community law, a Member state may designate only one administrative authority in a situation where both Åland and the State have powers, the authority shall be designated by the state. A decision by such an authority in a matter that would in other respects fall within the powers of Åland shall be consistent with the position put forward by the Government of Åland.” However, the competences of the Åland Delegation do not extend to conflicts concerning the preparation of national positions. Such conflict can finally be solved by the Supreme Court. There are constitutionally protected mechanisms to protect Ålandic autonomy in the face of EU integration.<sup>123</sup>

Although not all regions benefit from clear-cut constitutionally protected mechanisms ensuring central-regional co-operation, other regions with legislative power benefit from similar arrangements of non-constitutional status. In Belgium and the UK for example, co-ordination agreements have been signed.<sup>124</sup> However, in a survey implemented in connection to the White Paper on European Governance all respondents (about 50 regions and organisations representing European regions answered) felt that Member States “act as a filter and often even a screen, particularly in policies with a territorial impact, while they should act as a relay, passing regional views upwards in full transparency.”<sup>125</sup>

119 Suksi, Ålands Konstitution, pp. 274 et seq.

120 RP 57/2009 rd, Regeringens proposition till Riksdagen med förslag till lag om ändring av 59 c § i självstyrelselagen för Åland, 24.04.2009, p. 3

121 Interview with the Counsellor of the Åland Islands at the Permanent Representation of Finland, Brussels, 25 February 2009.

122 The Åland Delegation is an organ linking the national and regional governments, which appoint two representatives each. The landshövding who presides over the Åland Delegation is appointed by the Finnish president with the consent of the Ålandic parliament according to Section 55 of the Act on the Autonomy of Åland; See e.g. Nr.6/04, D 10 04 01 6. Landskapslag om ändring av landskapslagen om verkställighet av den gemensamma fiskeripolitiken inom Europeiska gemenskapen, antagen av lagtinget 28.5.2004 (ÅFS 27/04).

123 Palmgren, The Autonomy of the Åland Islands in the Constitutional Law of Finland, p. 91.

124 Beaumont, P.R., Lyons, Carole, Walker, Neil, Convergence and Divergence in European Public Law, Hart Publishing, Oxford, 2002, pp. 24 *et seqq.*

125 Report by Working Group on “Multi-Level Governance: Linking and Networking the

Constitutional mechanisms are an important basis for regional influence on European processes. However, to ensure the effective functioning of these mechanisms a certain degree of entrepreneurship is needed on both sides. Central and regional governments have to adapt their internal administration to these structures. Governments have to allocate resources to structures for co-operation with regard to European Affairs. Although the government of Åland has set up an internal EU unit which deals with questions concerning European affairs, just as all German *Länder* have, this is where Finland and Åland struggle. Altogether only four civil servants work for the EU unit and knowledge about the autonomy within the ministries in Helsinki is limited. Problems arise through diverging assessments of the question whether Ålandic competences are at stake and through problems related to language and delayed or non-existent communication.

#### *4.3 The Committee of the Regions – coordinated multi-level governance?*

The Committee of the Regions was created by the Treaty of Maastricht. According to Art. 13 (4) EU and Art. 300 TFEU the CoR has advisory status. It is to be consulted on legislative proposals concerning transport (Art. 91 TFEU), employment (Art. 148 TFEU), social policy (Arts. 164 TFEU), education (Arts. 165 TFEU), vocational training and youth (Art. 166 TFEU), public health (Arts. 168 and 172 TFEU), economic and social cohesion (Arts. 174, 177 and 178 TFEU) environment (Arts. 192 TFEU) and energy (Art. 194 TFEU). Outside these areas, the Commission, the Council and the European Parliament have the option to consult the CoR in cases, in particular those which concern cross-border co-operation, in which one of these insti-

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various Regional and Local Levels” (Group 4c), May 2001, pp.16 et seq.

tutions considers it appropriate.<sup>126</sup> The CoR may issue an opinion on its own initiative in cases in which it considers such action appropriate.<sup>127</sup> The maximum 350 members of the CoR reflect the political, geographical and regional/local balance within their member states and have to be representatives of regional and local bodies who either hold a regional or local authority electoral mandate or are politically accountable to an elected assembly.<sup>128</sup> The four political groups currently represented are the Party of European Socialists, the European People’s Party, the Group of the Alliance of Liberals and Democrats for Europe and the Union for Europe of the Nations – the European Alliance.<sup>129</sup> The current Ålandic Minister of Culture and Education is an elected Member of the Alliance of Liberals and Democrats for Europe group bureau and the only representative of the Åland Islands at the Committee of the Regions.

The Committee of the Regions is organized through six standing commissions.<sup>130</sup> Within these commissions, acting on a proposal from their chairmen, rapporteurs are appointed to draw up a draft opinion or report.<sup>131</sup> According

126 Art. 307 TFEU.

127 Art. 307 TFEU.

128 Art. 300 (3) TFEU.

129 See webpage of the CoR, Presentation, <http://www.cor.europa.eu/pages/PresentationTemplate.aspx?view=folder&id=3bcddbcb-0f43-4fd1-bc85-2a153495bd99&sm=3bcddbcb-0f43-4fd1-bc85-2a153495bd99>, last accessed 24.07.2009.

130 These are the Commissions for Territorial Cohesion (COTER), for economic and social policy (ECOS), for Sustainable Development (DEVE), for Culture, education and research (EDUC), for Constitutional Affairs, European Governance and the Area of Freedom, Security and Justice (Const) and for External Relations and Decentralised Cooperation (RELEX).

131 Rules of Procedure of the Committee of the



to the Ålandic representative, winning a rapporteurship is highly desirable and the Ålandic representative has competed for rapporteurships, although unsuccessfully. Rapporteurs can form debates and highlight matters important to his or her home region and party and thereby shape the proposal. However, he has to ensure a fair and balanced allocation of opinions and reports.<sup>132</sup> Within the CoR and its commissions European regions have the chance to maintain structures for co-operation. The Ålandic representative has described the value of the CoR for the Åland Islands as a “platform”.<sup>133</sup> The CoR assembles the regions and within the CoR regions form groups and alliances. The interregional group “Baltic Sea Regions” within the Committee of the Regions is one such example.<sup>134</sup> Moreover, the CoR maintains relationships with other organizations outside its own structure. The CoR has signed a declaration of common interest with the Baltic Sea Subregional Co-operation (BSSSC), the Union of Baltic Cities (UBC) and the Baltic Sea Islands Network (B7) the government of Åland being represented in the latter.<sup>135</sup> The CoR moreover has co-operation agreements with *i.a.* the Congress of Local and Regional Authorities of the Council

Regions (OJ, L 23/1, 31.01.2007), Art. 51(1).

132 Rules of Procedure of the Committee of the Regions (OJ, L 23/1, 31.01.2007), Art. 51(2).

133 Interview with the Ålandic Minister of Culture and Education, 4 May 2009.

134 See for example Position Paper of the Interregional Group “Baltic Sea Regions” of the Committee of the Regions on EU Strategy for the Baltic Sea Region, available online on the webpage of the Euroregion Baltic, <http://www.euroregionbaltic.eu/downloads/file83.pdf>, last accessed 07.05.09.

135 Available online on the webpage of the CoR, [www.cor.europa.eu/COR\\_cms/ui/ViewDocument.aspx?siteid=default&contentID=f1335773-1096-4253-b369-bd37dfd5c292](http://www.cor.europa.eu/COR_cms/ui/ViewDocument.aspx?siteid=default&contentID=f1335773-1096-4253-b369-bd37dfd5c292), last accessed 07.05.09.

of Europe<sup>136</sup> and common action plans the Conference of Peripheral Maritime Regions<sup>137</sup> and with RegLeg, the Conference of Presidents of the Regions with Legislative Power<sup>138</sup> and with CALRE, the Conference of European Regional Legislative Assemblies.<sup>139</sup> Besides the value of the reports and opinions submitted to the Commission and the European Parliament, regions have found a forum to market their expertise in the CoR. Regions can build coalitions with the like-minded and share resources. But the CoR does not only connect regions. Representatives of the Commission are present at all CoR plenary debates and the Committee of the Regions could be seen as a forum which facilitates finding the right regional expertise needed drafting a certain legislative proposal.

The Committee of the Regions has taken up the topic of multi-level governance and recently published its first White Paper on precisely this topic. The June 2009 Committee of the Regions White Paper on Multilevel Governance<sup>140</sup> is based on a definition of multi-level governance as

136 See webpage of the CoR, <http://www.cor.europa.eu/pages/PresentationTemplate.aspx?view=folder&id=46742d12-8460-452a-8106-ed2b1ff32bf6>, last accessed 07.05.09.

137 See webpage of the CoR, [http://www.cor.europa.eu/migrated\\_data/asso279.pdf](http://www.cor.europa.eu/migrated_data/asso279.pdf), last accessed 7.12.2009.

138 See webpage of the Committee of the Regions, [www.cor.europa.eu/cor\\_cms/ui/ViewDocument.aspx?contentid=fb49da6b-b00d-46be-9524-452e56680843](http://www.cor.europa.eu/cor_cms/ui/ViewDocument.aspx?contentid=fb49da6b-b00d-46be-9524-452e56680843), last visited 07.05.2009.

139 See webpage of the CoR, [www.cor.europa.eu/COR\\_cms/ui/ViewDocument.aspx?siteid=default&contentID=a9cba19b-774f-4462-8f89-ac3f76157bff](http://www.cor.europa.eu/COR_cms/ui/ViewDocument.aspx?siteid=default&contentID=a9cba19b-774f-4462-8f89-ac3f76157bff), last visited 07.05.2009.

140 Committee of the Regions, White Paper on Multilevel Governance, CdR 89/2009 fin, Brussels, 17.6.2009.

“coordinated action by the European Union, the Member States and local and regional authorities, based on partnership and aimed at drawing up and implementing EU policies”.<sup>141</sup>

Compared to the Commission’s definition of multi-level governance as rules, processes and behaviours, “coordinated action” indicates a much narrower definition. The CoR aims at formally incorporating multi-level governance into the Community Method, without however, sacrificing its flexibility. The Committee of the Regions has thus undertaken to

“initiate a consultation process with a view to drawing up a European Union Charter on multilevel governance, which would establish the principles and methods for developing a common and shared understanding of European governance, based on respect for the principle of subsidiarity, which would support local and regional governance and the process of decentralisation in the Member States, candidate countries and neighbouring states, and which would stand as a guarantee of the political will to respect the independence of local and regional authorities and their involvement in the European decision-making process.”<sup>142</sup>

The CoR underlines that the principle of partnership

“goes beyond participation and consultation, promoting a more dynamic approach and greater responsibility for the various players.”<sup>143</sup>

Accordingly, the White Paper sets out further concrete and diverse recommendations as to how to achieve this goal, such as access to the Council for the Committee of the Regions, re-

141 White Paper on Multilevel Governance, p. 6.

142 *Ibid.*, p. 8.

143 *Ibid.*, p. 4.

gional action plans as complements to each major Community strategic reform, an Erasmus programme for local and regional elected representatives, a reform of the Open Method of Coordination and more inclusive e-governance. The Åland Islands have managed to “bring home” the debate on what coordinated multi-level governance should look like. On 7 September 2009 the Commission for Constitutional Affairs, European Governance and the Area of Freedom, Security and Justice held their 20th meeting in Mariehamn on Åland, followed up by a CoR organised seminar on “Multi-level governance: reinforcing the co-operation between the EU, Member States and local and regional authorities: reaching out to small regions”.

The idea of the CoR as a platform is often overlooked while great criticism for the CoR is articulated from within and outside the regions. The CoR is widely presented as inefficient, reasons for this being its unclear founding purpose, its limited and only advisory role, the diversity in membership, especially the divergence of interests between regions with legislative powers and weaker regional and local administrations and the fact that regions have found other more efficient ways to channel regional concerns into European governance.<sup>144</sup> It is also apparent however, that the intrinsic potential of the CoR is recognized by many. Although not all demands as to the status of the CoR have found their way into the Lisbon Treaty, the Committee of the Region’s function to monitor the application of the broadened subsidiarity principle has been strengthened substantially by the right to appeal to the European Court of Justice.<sup>145</sup> In this re-

144 Jeffrey, *Regions and the European Union: Letting them In, and Leaving them Alone*, p. 36.

145 Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union, Protocol 2 on the Application of the Principles of Subsidi-

spect the regions have gained a mechanism to review and thereby influence decision-making, protected by the Treaties. In this way the CoR can be considered as a “constitutional factor” contributing to a strengthened status of regions. The CoR has underlined that

“respect for the principle of subsidiarity and multilevel governance are indissociable: one indicates the responsibilities of the different tiers of government, whilst the other emphasises their interaction.”<sup>146</sup>

It remains to be seen how effective the right to appeal will be. Today, regions value the Committee of the Regions primarily for the intergovernmental or rather interregional relations, the networks established and cultivated within and around the Committee. To what degree regions seize these opportunities does of course depend on the entrepreneurship exhibited by the individual representatives.

#### 4.4 Networks – regions join forces

It is not just within the Committee of the Regions that regions co-operate. The term network probably captures best the variety of structures open for regional participation outside the institutional structure of the EU. Networks have become important platforms for regional actors, including the governments and legislative assemblies of regions with legislative power. The largest independent network of European regions is the Assembly of European Regions which has been established in 1985. The AER brings together 270 member regions across 33 countries, twelve geographical interregional associations, among them the BSSSC, and four sectorial interregional associations.<sup>147</sup> The Council of European Mu-

niary and Proportionality, Art. 8.

146 White Paper on Multilevel Governance, p. 7.

147 See webpage of the Assembly of European Regions, <http://www.aer.eu/en/about-aer/>

nicipalities and Regions is the largest organisation of local and regional governments in Europe with members representing over 50 national associations of towns, municipalities and regions from 37 countries.<sup>148</sup> Numerous organizations represent regions that share geographical characteristics and/or common interests. Examples mentioned earlier are RegLeg and CALRE and associations dealing with issues concerning the Baltic Sea such as the BSSSC, UBC and the B7. Even political parties, traditionally deeply rooted in their respective communities, join European political parties. This holds true not only with regard to those national parties represented in the European Parliament. The European Free Alliance for example, has many member parties who are neither represented in the European Parliament or a national or regional legislative assembly. *Ålands Framtid*, an Ålandic party seen generally as working towards more independence for the Åland Islands and represented with one out of thirty seats in the *lagting*, the legislative assembly on Åland, is a member of the European Free Alliance.<sup>149</sup> Interregional organiza-

aer-members.html, last accessed 08.05.2009.

148 See webpage of the Council of European Municipalities and Regions, [http://www.ccre.org/presentation\\_en.htm](http://www.ccre.org/presentation_en.htm), last accessed 08.05.2009.

149 The European Free Alliance believes that “Europe should grow and should also grow up, should become more green and more social. EFA means that we want a more supranational Europe instead of a watered down free trade Europe. We want European solidarity to grow. That is why we as EFA also want to embrace small states. From the point of view of democracy it is important that EFA represents minorities within member states AND supports emerging new states at the same time AND also small states who are a minority within the enlarged EU-27 context.”, see webpage of the European Free Alliance, <http://www.e-f-a.org/home.php>, last accessed 08.05.2009.

tions, associations, parties and networks can be important forums for regional actors to articulate their policy priorities and find the like-minded. This section shall focus on two interregional organizations bringing together regions with legislative power, RegLeg and CALRE.

#### 4.4.1 *RegLeg*

The Conference of Presidents of the Regions with Legislative Power or RegLeg was a result of the 1999 Congress of Local and Regional Authorities in Europe. Today, RegLeg unites 73 regions with legislative power across Austria, Belgium, Finland, Germany, Italy, Portugal, Spain and the UK. The RegLeg is a forum for regions with legislative power which is focused on the achievement of an active role of those regions in the European Union, according to their competences and responsibilities.<sup>150</sup> The underlying belief of the RegLeg member regions is that regional governments are closer to the citizen and therefore to the effects of EU legislation, and so share the responsibility for communication about Europe. The RegLeg believes in effective multi-level governance involving institutions, Member States and regions and believes that regional governments can add to the legitimacy of European policy making.<sup>151</sup> However, the RegLeg does not recognize these responsibilities without demanding strengthened rights such as

1. the right of direct access to the Court of Justice of the European Communities in defense of their rights and prerogatives,

<sup>150</sup> See webpage of the RegLeg, [http://www.regleg.eu/index.php?option=com\\_content&view=section&layout=blog&id=2&Itemid=2](http://www.regleg.eu/index.php?option=com_content&view=section&layout=blog&id=2&Itemid=2), last accessed 07.05.2009.

<sup>151</sup> See webpage of the RegLeg, [http://www.regleg.eu/index.php?option=com\\_content&view=section&layout=blog&id=2&Itemid=2](http://www.regleg.eu/index.php?option=com_content&view=section&layout=blog&id=2&Itemid=2), last accessed 08.05.2009.

2. the establishment of the Committee of the Regions as a fully-fledged institution of the Union,
3. a provision for Member States to designate regions as “Partners of the Union”, enjoying specific rights at the European level, as these regions have exclusive competences and shared competences with Member States, and
4. guarantees regarding a wider use of languages with co-official status from Regions with Legislative Power in EU institutions.<sup>152</sup>

Although the Lisbon Treaty can be regarded as only one step towards these goals, the RegLeg has expressed its commitment towards the achievements of the Lisbon Treaty and to fully take up the responsibilities and opportunities offered.<sup>153</sup>

#### 4.4.2 *CALRE*

Whereas the governments of constitutional regions are represented at the RegLeg, their legislative assemblies are represented at the Conference of Chairmen of the Legislative Federal State Parliaments of Europe. 74 regional legislative assemblies across eight European Union Member States are represented at the CALRE. Since 1998 the CALRE has defined its goals in the following terms:

<sup>152</sup> Declaration of Brussels, 4-5th December 2008, adopted by the 9th conference of presidents of regions with legislative powers, p. 2, available online on the webpage of the RegLeg, <http://www.regleg.eu/downloads/activities/declaracion5dec08.pdf>, last accessed 07.05.2009.

<sup>153</sup> Declaration of Brussels, 4-5th December 2008, adopted by the 9th conference of presidents of regions with legislative powers, pp. 1 *et seqq.*, available online on the webpage of the RegLeg, <http://www.regleg.eu/downloads/activities/declaracion5dec08.pdf>, last accessed 07.05.2009.

1. as the democratic control on European government begins with the regions, it must be prevented that a democratic deficit affects these regions. Also the subsidiarity principle has to be protected;
2. the CALRE has to be a stimulus in the organisation of parliamentary control on European Affairs, among others via competent committees in each department;
3. there is a need for information-exchange, on the one hand between the CALRE-members and on the other hand between the national parliaments and the European Parliament;
4. the CALRE has to be able to function as the voice of regional parliamentarism in Europe.<sup>154</sup>

RegLeg and CALRE have concluded a common memorandum of understanding and both have concluded joint action plans with the Committee of the Regions.<sup>155</sup>

Through CALRE and RegLeg regions with legislative power, their governments and parliaments build up intergovernmental relations. Both entities have been effective advocates for the concerns of constitutional regions. As indicated above in chapter 2.2 regional mobilization has achieved some of the results desired precisely because it is a collective phenomenon - regions with legislative power have joined forces and later appeared primarily through RegLeg and CALRE at the Convention for the Future of Europe. Nevertheless, the success of RegLeg and CALRE is limited to broad objectives. The

154 See webpage of the CALRE, [http://www.calre.eu/en/about\\_en.html](http://www.calre.eu/en/about_en.html), last accessed 08.05.2009.

155 See webpage of the Committee of the Regions, [www.cor.europa.eu/cor\\_cms/ui/ViewDocument.aspx?contentid=fb49da6b-b00d-46be-9524-452e56680843](http://www.cor.europa.eu/cor_cms/ui/ViewDocument.aspx?contentid=fb49da6b-b00d-46be-9524-452e56680843), last visited 07.05.2009.

common denominator of their members is their wish to secure increased influence on European policy processes. Other, issue-specific policy objectives are then furthered through other networks, not necessarily of a merely interregional nature. Certainly, enhanced co-operation springs from regional entrepreneurship and is most valuable for regions that continue to be actively engaged. Generally, to maintain intergovernmental relations or networks of any other kind requires a certain administrative capacity. Information passes not only from national governments, the Committee of the Regions and interregional associations down to regional governments. Moreover, regional governments have to process incoming flow of information and feed information upwards, to national governments and the EU and the various networks it is part of. Enhanced administrative capacity and expertise can thus be decisive for effectively benefiting from participation in such networks. Many regions have extended their administrative capacity by establishing special regional offices that deal with questions arising from EU membership. Regional offices might not be channels proper but they maintain channels and support regional governments in gaining and spreading information and in marketing regional expertise.

#### *4.5 Regional representation in Brussels*

Constitutional mechanisms can secure, at least in theory, a degree of regional influence on the positions of their Member States with regard to EU affairs. Nevertheless, regions have concerns, related for example to their distinct geographical position or economy, which they might not be able to place on the agenda of their Member States. Regions thus pursue their own objectives at the European level, not only through its networks. Individual regional representation in Brussels aims at securing information and marketing the respective region as a European actor.

A main objective of the regional representatives in Brussels is certainly to establish relationships with EU officials, especially those working within the Commission, and with the Members of European Parliament that might support regional concerns either because of regional and national affiliations or their own political priorities.<sup>156</sup>

#### 4.5.1 The German *Länder* in Brussels

The German *Länder* are all individually or, in the case of Hamburg and Schleswig-Holstein in groups, represented in Brussels. They maintain offices, some called permanent representations without however, being permanent representations proper. *Länder* offices are part of the state chancelleries of the *Länder* but not of the foreign service of their respective Member States. This means that the *Länder* have to allocate their own resources to their Brussels offices. Consequently, *Länder* offices and regional offices more generally may be more or less well equipped, depending on the size and economic capacity of the regions and on the political prioritization of the regional government.

One example of a regional representation is the permanent representation of the *Land* Brandenburg. Brandenburg considers Brandenburg's MEPs, the Permanent Representation of the Federal Republic of Germany to the European Union, the German Embassy in Brussels, the office of the *Land* Berlin, the Berlin Partner GmbH, a limited liability company providing representation services in the area of trade to Berlin and Brandenburg in Brussels, and its Polish partner regions as its main contacts in Brussels. Another *Land* maintaining an office in Brussels is Mecklenburg-Vorpommern who considers the northern German and Baltic re-

<sup>156</sup> Marziali, Lobbying in Brussels. Interest Representation and Need for Information, p. 12.

gions among its closest partners in Brussels. The main objectives of the Information Office of the *Land* Mecklenburg-Vorpommern to the European Union are to

1. provide information to the regional government and public offices on legislative proposals and political developments on the EU level at an early stage,
2. organize and arrange visits of the members of the regional government to Brussels,
3. support and advise private and public institutions in facilitating contact with EU institutions and the acquisition of European funds,
4. attain to visitors from Mecklenburg-Vorpommern and organise seminars and conferences in Brussels, and most importantly
5. contribute to the representation of Mecklenburg-Vorpommern's concerns vis-à-vis the organs of the European Union.

Its main focus lies on issues concerning the Baltic Sea and Baltic co-operation. Moreover, the information office aims at sensitizing the European level for regional concerns through marketing the region and spreading information about trade, research, tourism and cultural diversity in a proactive manner.<sup>157</sup> According to the head of Mecklenburg-Vorpommern's regional information office in Brussels, German regional offices are rather specialised and try to promote distinct regional concerns. Mecklenburg-Vorpommern has been particularly active with regard to the EU Strategy for the Baltic Sea. Between Febru-

<sup>157</sup> See webpage of the state chancellery of Mecklenburg-Vorpommern, [http://www.regierung-mv.de/cms2/Regierungsportal\\_prod/Regierungsportal/de/stk/Informationsbuero\\_bei\\_der\\_EU/index.jsp](http://www.regierung-mv.de/cms2/Regierungsportal_prod/Regierungsportal/de/stk/Informationsbuero_bei_der_EU/index.jsp), last accessed 08.05.2009.

ary 5th and 6th 2009, Mecklenburg-Vorpommern hosted the 2nd Stakeholder Conference in Rostock-Warnemünde with approximately 370 participants from 17 countries in Europe to discuss the EU-Strategy for the Baltic Sea Region.<sup>158</sup> Questions concerning the accommodation of regions in the institutional design of the Union, that is to say questions concerning issues of a constitutional nature are either addressed by the Conference of European Ministers in Germany or by the governments of the big *Länder* such as Bavaria or North Rhine-Westphalia.<sup>159</sup>

Although most regions with legislative power and many other regions and municipalities have their own offices in Brussels, not all regions have chosen this model of representation. Another possibility for regions to gain information and to be represented in Brussels is to buy the services of a legal firm or a contact agency. Some regions that maintain regional offices buy support from these firms as it might be more economic to out-source certain objectives. One such example are Berlin and Brandenburg who use the services of the Berlin Partner GmbH with regard to business and trade promotion in Brussels.<sup>160</sup>

As indicated above, individual regional representation is disconnected from the foreign service of a Member State. Regional representatives do not have diplomatic status and thus no access to Council meetings or to Coreper, the Permanent Representatives Committee responsible for preparing the work of the Council. Regional officials working in Brussels have to be invited to

follow plenary sessions in the European Parliament and the advisory bodies. This necessitates good contacts to the parliamentarians and EU officials. The limited status might thus trigger increased entrepreneurship as pro-activism is indispensable for making and maintaining close contacts to other European actors.

#### 4.5.2 *The Åland Islands in Brussels*

The Åland Islands are a region with legislative power not represented individually in Brussels. Instead the Ålandic government has assigned one embedded civil servant to the Permanent Representation of the Republic of Finland to the European Union. Åland's counsellor is thus part of the national representation and an official member of the Foreign Ministry, although he or she has been appointed by the governor of the Åland Islands and is supported by Ålandic resources. The benefit of such an arrangement is that Åland's counsellor has diplomatic status and can attend Coreper and Council meetings as an observer. Moreover, the counsellor is working closely with his colleagues in the Permanent Representation who are experts in the diverse policy areas of the European Union. The disadvantage might be however, that the Ålandic government cannot assign its counsellor to pursue distinct objectives or to brand Åland in Brussels.<sup>161</sup> The counsellor can represent the interest of Åland alone only vis-à-vis Members of the European Parliament. Here he can lobby for regional concerns which might not be visible in the national position of Finland.<sup>162</sup> Just as tho-

158 See webpage of the EU Strategy for the Baltic Sea 2nd Stakeholder Conference, <http://www.conference-rostock.de/>, last accessed 08.05.2009.

159 Interview with the Head of the Information Office of the *Land* Mecklenburg-Vorpommern to the European Union, Brussels, 18.02.2009.

160 Webpage of the Berlin Partner GmbH, <http://web92.typo1.server-home.net/index.php?id=329>, last accessed 10.05.2009.

161 Some regions are officially part of their national Permanent Representations but have their own premises. They bear their own cost for maintaining their premises but get the chance to brand themselves by *i.a.* flying their own flags.

162 Interview with the Counselor of the Åland Islands at the Permanent Representation of

se working within regional offices the Ålandic counsellor is strictly bound to the policy programme decided upon by the government of the Åland Islands. The annual policy programmes set priorities also with regard to European affairs. Certainly, a small administration like the Åland Islands has limited capacities in assessing the impact of everything happening in the diverse policy areas of the European Union at all times. This is why a clear political prioritization is considered necessary and why there needs to be efficient coordination between government and counsellor.<sup>163</sup> The government has set clear priorities since Åland became member to the European Union in 1995. For 2009 the government of the Åland Islands has prioritised the following legislative proposals:

- The Treaty of Lisbon
- Proposal for a regulation of the European Parliament and of the Council concerning Trade in Seal Products, COM(2008)469
- Provisions implementing the Community Customs Code
- Proposal for a regulation of the European Parliament and the Council laying down the obligations of operators who place timber and timber products on the market, COM(2008)644
- Proposal for a Council regulation establishing a Community control system for ensuring compliance with the rules of the Common Fisheries Policy, COM(2008)721
- The Commission's review of regulation 1406/2002 establishing the European

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Finland, Brussels, 25 February 2009; See also Bring, Ålands självstyrelse under 80 år: Erfarenheter och utmaningar, p. 74.

163 Ålands landskapsregering, Europeiska unionen och Åland – prioriteringar år 2009 och verksamhet år 2008, Meddelande nr 2/2008-2009, 05.03.2009, p. 3.

Maritime Safety Agency

- Proposal for a regulation of the European Parliament and of the Council concerning the rights of passengers when travelling by sea and inland waterway and amending Regulation (EC) No 2006/2004 on co-operation between national authorities responsible for the enforcement of consumer protection laws, here the focus of the Åland government lies on the compensation paid to handicapped on maritime transport
- Proposal for a directive of the European Parliament and of the Council on the application of patients' rights in cross-border healthcare, COM(2008)414

In addition the government has prioritised to follow several Commission communications, *i.a.* concerning the EU's Strategy for the Baltic Sea Region, implementing European Community Environmental Law, strategic goals and recommendations for the EU's maritime transport policy until 2018 and the Roadmap for Maritime Spatial Planning: Achieving Common Principles in the EU.<sup>164</sup>

The government of the Åland Islands has adapted to membership in the European Union and the European policy environment by setting up an internal EU unit, adopting a clear political prioritization and by placing a civil servant within the Permanent Representation of Finland to the EU. These are clear signs of regional entrepreneurship.

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164 Ålands landskapsregering, Europeiska unionen och Åland – prioriteringar år 2009 och verksamhet år 2008, Meddelande nr 2/2008-2009, 05.03.2009, p. 6.



#### 4.6 *The European Parliament*

The role of the European Parliament has been strengthened continuously. With the entry into force of the Lisbon Treaty the European Parliament has come closer to being on an equal footing with the Council as it has gained lawmaking powers in areas where it did not have under the Treaty of Amsterdam, notably in setting the EU's budget, agriculture policy and justice and home affairs.<sup>165</sup>

Consent of the European Parliament is needed for the majority of legislative proposals. The European Parliament can propose amendments to the Commission's legislative proposals in the first and second reading of the co-decision procedure, now called the ordinary legislative procedure.<sup>166</sup> Members of the Committee responsible for considering the proposal concerned, especially the respective rapporteur, are thus important contacts for regions. Regions are free to present their objectives to MEPs and convince them to propose amendments to that effect. The closest links are certainly MEPs from the regions' own elective constituencies, the same Member State but also MEPs with the same party affiliations as the parties in power in the regions.

The Åland Islands are no elective constituency of their own for the purposes of European Parliament elections. This is a reason for great discontent on Åland and the demand for an own seat has existed since accession in 1995.<sup>167</sup> The Åland Islands have their own party system and

there are no "transnational" parties active both in Finland and on Åland. A special arrangement has been met for the latest elections. A member of Åländsk Center, the Ålandic Centre party, ran for the European Parliament, however, on the mandate of the Svenska folkpartiet, the Swedish People's Party active on mainland Finland. With a small population of only 27.000, Åland alone does not have the voter capacity to secure a seat in the European Parliament for an Ålandic candidate. It is thus necessary for Ålandic candidates to win votes on the Finnish mainland as well. However, due to the segregation of Ålandic and mainland parties, Ålandic politicians have a low profile on the mainland. For that reason the regional government of the Åland Islands has been working actively towards becoming an elective constituency of its own for the European Parliament elections thereby securing a guaranteed seat for the Åland Islands in the European Parliament. A proposal to that effect has been submitted to the Finnish Parliament under Section 22(1) of the Act on the Autonomy of Åland in 2006 but has not been successful.<sup>168</sup> In the 2009 elections it has been a Swedish-speaking candidate from the mainland who has obtained a seat for the Swedish people's party. Fulfilling his campaign pledge he has recruited one Ålandic assistant. Notably, with 48.8% Åland had the second highest voter turnout in the 2009 European Parliament elections in Finland, and compared to the 1999 elections twice as many people on Åland have found their way to the polls.<sup>169</sup> This is presumably an effect of the active cam-

165 See webpage of the European Parliament, Press Release, Lisbon Treaty: Constitutional Affairs Committee welcomes increased powers for national parliaments, [http://www.europarl.europa.eu/news/expert/in-fopress\\_page/002-51314-068-03-11-901-20090309IPR51313-09-03-2009-2009-false/default\\_en.htm](http://www.europarl.europa.eu/news/expert/in-fopress_page/002-51314-068-03-11-901-20090309IPR51313-09-03-2009-2009-false/default_en.htm), last accessed 11.05.2009.

166 See 294 TFEU.

167 Bring, Ålands självstyrelse under 80 år: Erfarenheter och utmaningar, p. 73.

168 Ö 3/2006 rd, Regeringens skrivelse till riksdagen med anledning av Ålands lagtings initiativ som innehåller förslag till lag om ändring av vallagen; 13/2006 rd, Grundlagsutskottets betänkande.

169 In 1999 21,8% of the Ålandic voted in the European Parliament elections, see Silverström, Sören, Åland och EU: Det lokala och jordnära i de globala och avlägsna?, radar 2/2001, p. 14.

paign of the Ålandic candidate and the continuous coverage of EU-Ålandic relations in the Ålandic media.

Although there is no Ålandic MEP, nothing prevents the Ålandic government or any other actor from lobbying other MEPS. This has been successful mainly with Finnish MEPs. The former MEP on the Swedish People's Party mandate has submitted two proposals for an amendment to the Regulation on Trade in Seal Products proposed by the government of Åland.<sup>170</sup> However, little contact seems to exist to Finnish-speaking MEPs.

#### 4.7 The European Commission and the regions – friends in need?

It has been argued that “the new structures of opportunities created by governance led to the establishment of a stronger role for the European Commission.”<sup>171</sup> The formulation and revision of European policies is an ongoing process.<sup>172</sup> The role of the Commission in this process is indeed central. It is in the Commission where legislative proposals are made and thus where regions want to put forward their concerns. Various stakeholders try to channel their views into the European Commission. Vice versa the Commission resorts to a variety of actors to gain information. Lasting partnerships are sought to be build with *i.a.* regional governments.

170 Ålands landskapsregering, Europeiska unionen och Åland – prioriteringar år 2009 och verksamhet år 2008, Meddelande nr 2/2008-2009, 05.03.2009, p. 7.

171 Magone, José M., Introduction: The Role of the Regions in European Multilevel Governance, in: Magone, José M. (ed.), Regional institutions and governance in the European Union, Praeger Publishers, Westport, 2003, p. xxi.

172 Report by Working Group on “Multi-Level Governance: Linking and Networking the various Regional and Local Levels” (Group 4c), p. 21.

#### 4.7.1 Partnerships and consultation

As mentioned in chapter 2.3., the European Commission has tried to involve regional authorities in decisions concerning Structural and Regional Policy early on. Since then “generations” of instruments aimed at involving the various stakeholders have matured in the Commission.<sup>173</sup> In response to what one could call an ongoing legitimacy crisis of the European Union, the Commission became active and proposed a series of initial actions to open up “the policy-making process to get more people and organisations involved in shaping and delivering EU policy”<sup>174</sup> and has since introduced a new generation of consultation instruments.<sup>175</sup> The Commission is divided into 40 directorates-general and services, which are subdivided in turn into directorates, and directorates into units. The Commission also administers a number of executive agencies.<sup>176</sup> Today transparency and participation are not just questions concerning structural and regional policy but should be understood as guiding principles for all activities of the Community’s executive.

The White Paper on European Governance presented by the European Commission in 2001 received great attention. The Commission’s proposals for change towards better involvement and more openness acknowledged that “there needs to be a stronger interaction with regional governments and civil society”. The Commission resolved to

“establish a more systematic dialogue with representatives of regional and local go-

173 Quittkat, Finke, The EU Commission Consultation Regime, pp. 187 *et seqq.*

174 European Governance. A White Paper, p. 3.

175 Quittkat, Finke, The EU Commission Consultation Regime, p. 189.

176 See webpage of the European Commission, [http://ec.europa.eu/dgs\\_en.htm](http://ec.europa.eu/dgs_en.htm), last accessed 14.05.2009.

vernments through national and European associations at an early stage in shaping policy, bring greater flexibility into how Community legislation can be implemented in a way which takes account of regional and local conditions, establish minimum standards for consultation on EU policy”

and to

“establish partnership arrangements going beyond the minimum standards in selected areas committing the Commission to additional consultation in return for more guarantees of the openness and representativity of the organisations consulted.”<sup>177</sup>

In the aftermath of the White Paper new consultation instruments have indeed been introduced, most prominently online consultations.<sup>178</sup> Today, Green and White Papers try to launch debates and explicitly call for contributions, using the internet as a forum. The online consultation on the Green Paper on Territorial Cohesion<sup>179</sup> for example, resulted in 97 contributions from regional and local governments, including the Flemish government in Belgium, *Land Tirol* in Austria and the Açores, the Portuguese archipelago in the Atlantic Ocean.<sup>180</sup>

The Working Groups examining the different issues brought up by the White Paper on European Governance have explicitly referred to single contributions submitted during the consultation procedure.<sup>181</sup> However, considering the

wealth of contributions the Commission receives, especially by way of online consultations, the question of how the Commission processes the information obtained and which contributions find their way into working group reports is pertinent. Certainly, it is hard to measure influence in this regard but a clear and transparent framework for assessment is wishful and could be an incentive for high quality contributions. Since simple consultation procedures focus on communication and information, the Commission itself has acknowledged that

“it is one thing to make a Community text available on the internet and in this way to open up general consultation on that text, but quite another to conduct an organised, systematic dialogue with partners representing the regional and local authorities.”<sup>182</sup>

Although the Commission has emphasized that the European Union must remain a union of states, it has acknowledged the need for interregional co-operation and development beyond mere consultation. Regions have thus been singled out from the broad group of public stakeholders.<sup>183</sup> After the publication of the White Paper on European Governance two working groups have dealt with the involvement of regional and local actors. The working group on “Multi-Level Governance: Linking and Networking the various Regional and Local Levels” has stated that

(Group 4c), p. 4, here the Commission refers to the contribution of the Council of European Municipalities and Cities.

182 Report by Working Group on “Multi-Level Governance: Linking and Networking the various Regional and Local Levels” (Group 4c), p. 5.

183 Report by Working Group on “Multi-Level Governance: Linking and Networking the various Regional and Local Levels” (Group 4c), p. 6.

177 European Governance. A White Paper, p. 4.

178 Quittkat, Finke, The EU Commission Consultation Regime, p. 208.

179 COM (2008)616 fin.

180 See webpage of the European Commission, Regional Policy – Info regio, [http://ec.europa.eu/regional\\_policy/consultation/terco/contrib\\_en.htm](http://ec.europa.eu/regional_policy/consultation/terco/contrib_en.htm), last accessed 5 May 2009.

181 See e.g. Report by Working Group on “Multi-Level Governance: Linking and Networking the various Regional and Local Levels”

“hierarchical, clear-cut decision-making processes no longer work in complex, constantly changing society like ours”

and that

“it is therefore essential to identify the potential partners in the process of governance for each field of competence.”<sup>184</sup>

The main focus of co-operation with these competence partners does however, not lay on the formal elaboration of the decision but on early consultation and the participation in the formulation of the policy as well as on the implementation phase. Nevertheless, in the end regions demand participation in all stages of the policy and law-making process whenever their competences are concerned. According to the outcome of the working group’s survey, regions with legislative power are primarily concerned with the implementation of their rights recognised by their constitution and the treaties on relations between the Community, national and sub-national levels. Other regions are much more concerned with “networking”, in particular with strengthening collaborations with their own state and the Commission.<sup>185</sup>

Openness and participation, the principles emphasised by the White Paper on European Governance, are implemented through building lasting relationships with the Commission. The Expert Register is one way for the Commission to identify sources of information valuable for drafting legislative proposals and at the same time to give an overview of the actors that assist the Commission and its services in prepara-

184 Report by Working Group on “Multi-Level Governance: Linking and Networking the various Regional and Local Levels” (Group 4c), p. 4

185 Report by Working Group on “Multi-Level Governance: Linking and Networking the various Regional and Local Levels” (Group 4c), p.16.

ring legislative proposals and policy initiatives.<sup>186</sup> The Expert Register is not complete and does thus not bring ultimate transparency but its potential is vast. An extended register of those stakeholders that have been consulted on a certain issue seems desirable. The Community encourages the setting-up of expert groups. Upon the proposal of the Commission the Council for example established standing Regional Advisory Councils under the Common Fisheries Policy.<sup>187</sup> The Commission declared the Regional Advisory Council for the Baltic Sea, short BS RAC, operational in 2006<sup>188</sup> and since then admitted 37 members to the BS RAC.<sup>189</sup> One of the groups represented is the Åland Island’s Fisheries Association. Although the Åland Island’s Fisheries Association does not represent the local government of the Åland Islands, it constitutes a link between the regional and the European level and this is precisely what was sought by the creation of the Regional Advisory Council. The Commission should ensure transparency by extending the idea of an expert register to all actors, providing additional information regarding the form of consultation used and where in the Commission the consultation process has been evaluated.

186 See webpage of the European Commission, Register of Expert Groups, <http://ec.europa.eu/transparency/regexpert/>.

187 Council Decision 2004/585/EC, OJ L 256/17, 3.8.2004

188 Commission Decision 2006/191/EC, OJ L 66/50, 8.3.2006.

189 See webpage of the BS RAC for a list of members, <http://www.bsrac.org/ooizzCMS/DA/members/generalassembly>, last accessed 30.04.2009.

#### 4.7.2 Åland and the Commission

The Commission has consulted with the government of the Åland Islands directly with regard to several of its legislative proposals. Again, one recent example is the Regulation on Trade in Seal Products. According to the Counsellor of the Åland Islands at the Permanent Representation of Finland to the European Union, representatives of the Commission have met both with the Finnish and Ålandic ministers responsible for hunting issues<sup>190</sup> and the Ålandic Parliament. Albeit these experiences, it seems that the regional government of the Åland Islands is less inclined to talk about in-put oriented consultations than multi-level governance scholars or the Commission itself. Often, meetings between Commission and representatives of regional governments seem rather like a tool for the Commission to legitimise its actions and to convince regions to take a favourable position towards the legislative proposal concerned than an opportunity for regional input.<sup>191</sup>

There are countless examples of consultation procedures, in all policy areas. The instruments used and stakeholders involved differ from case to case. Most regions, especially those with Brussels offices, consider it as worthwhile to uphold close relations to the European Institutions, including the Commission. Consultation procedures certainly aim at orderly relations with different stakeholders. Nevertheless, transparency implications remain. That the Commission is indeed accessible is a fact that is very well recog-

190 See Ålands landskapsregering, *Europeiska unionen och Åland – prioriteringar år 2009 och verksamhet år 2008*, Meddelande nr 2/2008-2009, 05.03.2009, p. 7; In this case there was no conflict between central and regional government and the Ålandic Minister of Trade has participated in preparing the Finnish position.

191 Interview with the Ålandic Minister of Culture and Education, 4 May 2009.

nized by interest groups and regional governments. Regions are not equipped with a veto but they have access to the decision-makers at home and in Brussels at all stages of the policy process. For small administrations like the Ålandic government however, it can be hard to assess whether it is worth to submit an opinion to the Commission. Direct contacts to the Commission are decisive for making such decisions. Interestingly, when looking at how the Finnish government influences decision-making on new EU legislation Anna Hyvärinen has found that since the Finnish bargaining-power in the Council is relatively low due to Finland's comparatively small size, the Finnish government has to seek alternative and supplementary ways of influencing decision-making on new EU legislation. Her interviews with Finnish civil servants showed that national input at an early stage of the legislative process and thus close links to the Commission, informal co-operation between Finland and other parties are important strategies also to national governments.<sup>192</sup> Just as national governments, regional governments need to be "sensitive to the timing and stages of the EU legislative process".<sup>193</sup>

It thus seems, that to be able to fully take advantage of the Commissions "openness", what is demanded again is regional entrepreneurship. Regions have to promote their ideas actively and build lasting relationships with the Commission bureaucrats.

192 Hyvärinen, Anna, *How does the Finnish Government influence decision-making on the new EU legislation?*, summary, National Research Institute of Legal Policy, Publication No. 241, Helsinki, 2009, pp. 149 et seq.

193 Hyvärinen, *How does the Finnish Government influence decision-making on the new EU legislation?*, p. 152.

## 5. Perspectives for the Åland Islands

European integration has been an ambivalent experience for many regions. The perceived loss of competences has triggered strong regional mobilization. Regions demand a strengthened and institutionalised role in European policy- and decision-making. While regions have not achieved full-fledged institutional representation, the role of regions has nonetheless been strengthened. Regions are present in Brussels in different configurations – individually, at the Committee of the Regions or within various networks, broadly defined. Governance in the European Union is described as multi-levelled today. Albeit the exclusiveness of the Council, inclusiveness seems to be the current paradigm in the European Union. A paradigm however, is no guarantee and the dynamics of modern multi-level governance continue to challenge the regional level. At the same time multi-level governance provides the regions with opportunities to influence European policy processes. Influence as such is hard to measure. However, 1) constitutional factors, 2) intergovernmental relations as well as 3) regional entrepreneurship serve well as indicators for the degree of influence a region potentially can exert.

1. **Constitutional factors** are the most obvious indicators for the degree of regional influence on European policy and decision-making processes. The case of the Åland Islands provides evidence for Jeffrey's observation that regions with strong internal competences are most affected by European policy processes. Participation in the preparation of the national positions preceding decisions made in the European Union is guaranteed by the German *Grundgesetz* and the Act on the Autonomy of Åland, both being constitutional documents. While co-operation bet-

ween the central and the regional level in Germany takes place within a sophisticated federal structure with collision rules in favour of federal laws (*Bundesrecht bricht Landesrecht*) in matters of concurrent competences,<sup>194</sup> Ålandic competences are exclusive. The independence from the Finnish state in the areas of exclusive competence has generally been considered as one of the strongest features of the Ålandic autonomy and has to some extent resulted in a system that is less tuned to co-operation. However, European multi-level governance necessitates co-operation between the autonomy and the state. Conflict cannot always be avoided and the Åland Delegation as well as the Supreme Court are last instances to resolve conflict. However, such procedures are rather resource intensive. Constitutionally guaranteed mechanisms can lead to actual influence only when they run smoothly. Åland has the right to participate in the preparation of the Finnish position and the work of the Finnish delegation. The question whether Ålandic competences are concerned has to be determined in an appropriate procedure within the Finnish government. Internal administrative adaptation is not satisfying in that regard. The Finnish government can achieve greater inclusiveness, not least through the prompt communication of matters touching upon Ålandic competence in Swedish. To be able to exchange information and make decisions standing structures of co-operation between the regional and central levels along the whole spectrum of policy areas are needed. The Ålandic government is free to make proposals for such structures. However, small administrations have limited resources and without the commitment of the state the realization of its constitutional guarantees is rather demanding.

Looking at the Åland Islands we see a very typical constitutional region – typical in that it is

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194 Art. 31 Grundgesetz.

unique. All European regions have unique identities and unique concerns. This is why it is a real challenge to accommodate the regional level in the European Union beyond the Committee of the Regions. The internal allocation of competences between central and local governments varies and falls within the exclusive domain of the single Member States. A one-size-fits-all solution on the European level is thus realistic only with regard to lowest common denominators, as for example the implementation of the subsidiarity principle. Individual solutions will have to be found on the national level.

2. Formal remoteness is hard to overcome. Informal closeness is at least partly a remedy. **Interregional relations** are another factor decisive for the degree of regional influence. Not only organisations like CALRE and RegLeg have succeeded in moving the regions closer to the European Union. Issue specific networks within the Committee of the Region, as for example the Baltic Sea Regions, allow regions to share information, resources and tasks. Especially small regions with legislative power benefit from sharing resources. The government of the Åland Islands is a member of many such networks. However, information about Ålandic participation in these networks is hard to obtain. Under the heading international co-operation on its webpage the government merely lists links to the webpages of the Baltic Islands Network, the Conference of Peripheral Maritime Regions, the Committee of the Regions, the Nordic Council of Ministers and the Helsinki Commission. The webpage of the government does not provide general information on RegLeg nor any information about the nature of the participation of the government in the organizations listed. The Ålandic parliament is only slightly more transparent when it comes to its participation in CALRE. Membership is all well and good but beyond the Committee of the Regions Åland seems to be

rather passive within the different fora for co-operation. Inactivity diminishes the benefits of membership. Certainly, the preparation of position papers and participation in conferences and meetings demands resources. Those can be kept at their lowest if a steady flow of information towards those preparing participation is maintained. It is intrinsically a question of entrepreneurship to identify opportunities and benefit from intergovernmental relations.

3. **Regional entrepreneurship** is a third indicator for the degree of regional influence. To keep pace with European policy processes is a great challenge, especially for small regional administrations. The governments of regions with legislative power need to adapt to the European policy environment not just when it comes to the implementation of EC law. Structures have to be created which allow regional governments to obtain and assess information in order to take a stand early during policy and decision-making processes. However, especially small regions can only allocate a limited amount of resources to internal adaptation. The European Affairs Unit of the Ålandic government works with three employees and is supported by one embedded civil servant working within the Permanent Representation of the Republic of Finland to the EU. In light of the limited capacities to monitor all developments on the European level clear policy priorities have to be set by the government and this is what has been done. Regional entrepreneurship is present within the government of the Åland Islands but there is potential for development. Structures linking Åland to the European level are rather weak. Coalition building can lead to support for internal structures and optimize the efficient exchange of information. Contact points to the state, the EU institutions, partner regions and networks can play an essential role. By striking a deal with the Swedish People's Party the Ålandic government has been

able to assign a special advisor from Åland to the party's MEP. This potentially fosters better contacts between the Ålandic government and other MEPs. However, Åland does not maintain offices in Brussels. The lack of resources and uncertainty about the efficiency of such offices might be hard to overcome by small regional administrations. However, Åland upholds offices both in Helsinki and Stockholm which offer information about many aspects of the life in the archipelago and facilitate contacts between the administrations, businesses and citizens of these regions. In an ever closer European Union the focus on Helsinki and Stockholm might be too narrow.

Another component of entrepreneurship is strong leadership. Clear and strong leadership can create a strong profile for the region, at home and beyond. Although not a traditional instrument for influence, governance seems to necessitate a "public relations approach". This does not mean that individual ministers need to appear as public profiles but that the government manages to create a dense atmosphere of communication with the central state, EU and the citizens.<sup>195</sup> A regional government that exudes confidence and successfully markets its expertise becomes more visible for potential partners across all levels – regional, national and European. By inviting the Committee of the Regions' Commission for Constitutional Affairs, European Governance and the Area of Freedom, Security and Justice to Åland, the Ålandic government has been able to "brand" Åland at least within the CONST Commission. Representatives of the CoR had the chance to discuss multi-level governance on Åland in September 2009. However, the debate does not seem to have spilled over to the Ålandic government as of yet. The White Paper on Multi-level Governance makes many proposals

<sup>195</sup> Jeffrey, Sub-National Mobilization and European Integration: Does it Make Any Difference?, p.11.

as to how to increase participation and influence. Many of these proposals concern the exchange of information and new types of co-operation. These proposals cannot only be applied to direct relations between the regional and the European institutions but also to regional-central relations. Not least in order to help to overcome language barriers. General recommendations like the reinforcement of administrative capabilities and the development of more extensive communication policies as well as more detailed proposals like an exchange programme for civil servants and elected officials and the establishment of European territorial pacts are only some suggestions that remain to be discussed on Åland. Strong leadership is not ubiquitous within the Ålandic government. EU membership preoccupies Ålandic politicians and a prevailing sentiment is that Åland has too little influence on what is decided on the European level. As a response the demand for an own seat in the European Parliament is repeated but more proactive responses remain only sporadic. After entry into force of the Lisbon Treaty the Ålandic government has been campaigning to gain one of the two votes assigned to the Finnish national parliament in the new subsidiarity control system. The Finnish parliament refuses to confer one of its votes to the parliamentary assembly on Åland. Nothing prevents the *lagting* however, while continuing to campaign for an own vote, to co-operate and notify the Finnish parliament of possible violations of the subsidiarity principle that have been observed. The spirit of entrepreneurship would suggest the need to extend regional capacities for subsidiarity monitoring, to increase awareness about the different consultation mechanisms within the Ålandic administration and to enhance the capacity to actually react to relevant legislative proposals, white and green papers or alleged violations of the subsidiarity principle. The difficulties in communicating with the Finnish government have to be



overcome. This can only be a mutual effort on the sides of both governments.

It should be kept in mind that Åland and all other constitutional regions have an advantageous position with regard to all the channels that have been examined here because they are vested with democratic legitimacy. They thus have what the EU seems to lack. This has contributed to increased attention to the demands of constitutional regions. Good intergovernmental relations and regional entrepreneurship are important to make the most of this favourable environment. In the foreseeable future interregional or issue specific mobilization as well as a pro-active leadership in the regions will thus remain strategic complements to quests for strengthened constitutional guarantees and the accommodation of regions in the institutional structure of the EU. The development of European integration has shown that interregional relations and entrepreneurship can have transformative force, from informal to formal influence, from soft law to hard law.

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power <http://www.regleg.eu/>

Conference of chairmen of the legislative federal  
state parliaments of Europe

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