

# 8

## Multilevel Governance: The interface between the national and the sub-national level

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This chapter looks at the interface between the national and the sub-national level of government in Croatia. It explains the organisation of regulatory attributions and the oversight mechanisms in place for regulation at the sub-national level and points to challenges and opportunities for regulatory policy in Croatia's municipalities, counties and cities. Finally, it gives recommendations for improvement of the multilevel regulatory governance set-up.

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## The importance of sub-national regulatory policy

In most OECD countries, different levels of government have the authority to make regulations. In Croatia, central government bodies function alongside regional and local governments, which have their own set of rules and mandates. The different layers of government have the capacity to design, implement, and enforce regulation.

The 2012 *OECD Recommendation of the Council on Regulatory Policy and Governance* addresses multi-level regulatory governance in two sections regarding coherence and co-ordination, and regulatory management capacities. Achieving co-ordinated reform across multiple levels of government is certainly a case where the whole is greater than the sum of its parts.

This multi-level regulatory framework poses a serious challenge. According to a report from the *Conseil d'État* in France (Marcou and Musa, 2017<sup>[1]</sup>), decentralisation of regulatory powers can create serious economic frictions because businesses and citizens have to manage an extra level bureaucratic process. Multi-level regulation affects the relationships of public administration with citizens and businesses and, if poorly managed, may negatively influence economic growth, productivity, and competitiveness.

Among others, multi-level regulatory governance should include avoiding duplicated or overlapping rules, low quality regulation, and uneven enforcement.

### Box 8.1. The eleventh recommendation of the council on regulatory policy and governance

Foster the development of regulatory management capacity and performance at sub national levels of government.

11.1 Governments should support the implementation of regulatory policy and programmes at the sub-national level to reduce regulatory costs and barriers at the local or regional level, which limit competition and impede investment, business growth and job creation.

11.2 Promote the implementation of programmes to assess and reduce the cost of the compliance with regulation at the sub-national level;

11.3 Promote procedures at the sub-national level to assess areas for which regulatory reform and simplification is most urgent to avoid legal vacuum, inconsistencies, duplication and overlap;

11.4 Promote efficient administration, regulatory charges should be set according to cost recovery principles, not to yield additional revenue;

11.5 Support capacity-building for regulatory management at sub-national level through the promotion of e government and administrative simplification when appropriate, and relevant human resources management policies;

11.6 Use appropriate incentives to foster the use by sub-national governments of Regulatory Impact Assessments to consider the impacts of new and amending regulations, including identifying and avoiding barriers to the seamless operation of new and emerging national markets;

11.7 Develop incentives to foster horizontal co-ordination across jurisdictions to eliminate barriers to the seamless operation of internal markets and limit the risk of race-to-the bottom practices, develop adequate mechanisms for resolving disputes across local jurisdictions;

11.8 Prevent conflict of interest through clear separation of the roles of sub-national governments as regulators and service providers.

Source: (OECD, 2012<sup>[2]</sup>), *Recommendation of the Council on Regulatory Policy and Governance*, <https://doi.org/10.1787/9789264209022-en>.

The OECD has found that poor regulatory quality at one level may undermine high-quality policies and practices at other levels. In order to ensure regulatory quality across levels of government, governments at the national level need to have plan to ensure regulatory quality at lower levels of government that goes beyond merely enforcing the constitutionality or legal quality of sub-national regulations. National government should put in place clear definitions and effective implementation of the mechanisms to achieve good co-ordination, coherence, and harmonisation in making and enforcing regulation. Finally, measures to avoid and eliminate overlapping responsibilities are also critical.

There is no single ideal form for regulatory co-operation between national and local governments. Which level of government has the authority to regulate and in what manner is dependent on many internal and external factors, including the overall economic performance of the given country.

The OECD has developed a framework to analyse key issues of multi-level regulatory governance (Rodrigo, Allio and Andres-Amo, 2009<sup>[3]</sup>). It sets out that an analytical framework for multi-level regulatory governance should address a number of issues, including regulatory policies and strategies, institutions, and policy tools. On regulatory policies and strategies, issues related to harmonisation of regulatory policy and vertical co-ordination for regulatory quality must be addressed. The definition of roles and responsibilities of institutions responsible for regulatory policy is also an important element in this context, with the aim to strengthen institutional capacities. Finally, a set of regulatory policies and instruments that should be applied at lower levels of government, such as the introduction and use of regulatory impact assessment, transparency, reduction of administrative burdens, as well as tools to improve compliance and enforcement of regulation, are included in the agenda of a multilevel regulatory governance framework.

## **The organisation of regulatory attributions in Croatia**

### ***National law-making powers in the Croatian constitution***

Croatia is a unitary state so much of the regulatory power rests with the national government. Since independence, Croatia has devolved significant duties to local authorities in part due to political pressure to ensure that local communities – which may have significant minorities – are able to operate independently (Korpic, 2003<sup>[4]</sup>). The Constitution of the Republic of Croatia stipulates in Article 129a that affairs falling within the purview of local and regional self-government are regulated by law.

More generally, the Constitution of the Republic of Croatia stipulates the principles of separation of powers into the legislative, executive and judicial branches. It includes the constitutionally guaranteed rights and limits to local and regional governments. Separations of powers encompassed in the Constitution include forms of co-operation and reciprocal checks and balances between the different levels of government.

### ***Powers of local and regional governments to adopt regulations and general acts***

The Constitution guarantees citizens the right to local and regional self-government, which is exercised through local or regional representative bodies, composed of members elected in free elections by secret ballot on the grounds of direct, equal and general suffrage. Citizens may also directly participate in the administration of local affairs, through meetings, referenda and other forms of direct decision-making, in compliance with the law and local statutes. The above rights are also exercised by EU citizens in compliance with the law and EU *acquis communautaire*. Furthermore, in Croatia the Constitution states that local government units are:

- municipalities and towns/cities
- territories of which are to be determined in the manner stipulated by law
- and other units of local self-government that may be established by law.

The Constitution states that regional governments are counties. The territory of a county is to be determined in the manner stipulated by law. In addition, the capital city of Zagreb has been accorded the status of a county.

Local and regional governments adopt general acts and regulations in all areas of their scope as defined by law (specified below). They have the authority to implement regulations adopted at the state level as defined by the LRSGA and special regulations.

Local and regional governments are responsible for the provision of services in all areas included in their scope, as well as services in other areas when authorised by special regulations. For instance, waste management and healthcare services are in their scope.

Local and regional governments also maintain important administrative matters related to services and regulations. They issue permits and approvals and issue plans in their administrative areas. For instance, counties and large towns issue location and construction permits and other acts related to construction and implementation of planning documents.

Ultimately, local governments are responsible for the quality of the regulations they adopt. The national government supervises the regulations and acts for the purpose of protecting constitutionality, citizens' rights and legality. However, the national government does not monitor their quality. The final review of the quality of local government regulations may only be given by the High Administrative Court of the Republic of Croatia through the review procedure to their general acts.

According to the Constitution of the Republic of Croatia, affairs which fall within the competence of local or regional self-governments are related to:

- housing, zoning and urban planning
- public utilities
- child care
- social welfare
- primary healthcare services
- pre-school and primary education
- culture
- physical education and sports
- technical culture
- consumer protection
- environmental protection and improvement
- fire prevention and civil defence.

Regional governments additionally administer affairs in key economic areas related to economic development, transportation and the development of the network of educational, health, social and cultural institutions.

The authority for local and regional governments to manage these areas are regulated by law. When devolving such matters, the national government should give priority to the bodies that are closest to the citizen. When determining these areas, the scope and nature of affairs and the requirements of efficiency and economy should be taken into account.

Local and regional governments are entitled to their own revenues and to spend them freely for areas under their purview. The revenues of local and regional governments must be proportional to their powers as envisaged by the Constitution and law. The national government is obligated to provide financial assistance to weaker units of local and regional governments in compliance with the law.

Under Article 33 of the Act on the Government of the Republic of Croatia, the Government resolves any conflicts of jurisdiction between government bodies. Any conflicts of jurisdiction between the bodies of the legislature, the executive and the judiciary are to be resolved by the Constitutional Court of the Republic of Croatia, in accordance with Articles 81 and 82 of the Constitutional Act on the Constitutional Court of the Republic of Croatia (Official Gazette No. 99/99, 29/02 and 49/02).

## Oversight of regulation at the sub-national level

In Croatia, supervision of local and regional governments is largely limited to their legality (constitutionality and conformance with other relevant laws and regulations) and the supervision of some financial and administrative matters. A number of representatives mentioned that corruption remains an issue in Croatia at the local level, particularly with respect to administrative matters like construction permits and procurement, which often go to preferred agents. See for example (Bejaković, 2014<sup>[5]</sup>) and (GAN Integrity, n.d.<sup>[6]</sup>).

The national government conducts supervision of the legality of work and legal acts of local and regional governments to protect constitutionality, legality and citizens' rights. The local or regional government's representative body and the Ministry of Finance (or other authority stipulated by law) supervises the legality of material and financial management of a local or regional government.

The Local and Regional Self-Government Act stipulates that supervision of the legality of work of the representative body of a local or regional government is conducted by the central state administration body competent for local and regional government. Once irregularities are detected in the work of the local or regional body, the central government body will issue a decision declaring the relevant sitting of the local or regional body or part thereof unlawful, and the legal acts adopted at the sitting null and void. An appeal against the above decision is not admissible, but an administrative dispute may be brought before the High Administrative Court of the Republic of Croatia.

In the procedure of supervision of the legality of general acts, if the head of the state administration office in the county finds that a general act is in violation of the Constitution and the law, or that there were irregularities, he or she will issue a decision suspending the application of the act. However, the decision on suspension of a general act from application may also be issued directly by central government bodies within their scope. The proceedings for the review of the legality of a general act may, depending on the phase of the proceedings, also involve the High Administrative Court of the Republic of Croatia, the Government of the Republic of Croatia and the Constitutional Court of the Republic of Croatia.

When it comes to supervision over the performance of transferred state administration tasks, the ministry competent for the performance of the state administration tasks may issue instructions. The Government may deprive local and regional governments of the authority to perform tasks if they fail to proceed as instructed.

Administrative appeals on local governments may be submitted to the responsible body in the county. For acts adopted by the administrative bodies of counties and large towns, an appeal can be lodged to the competent ministry, unless otherwise stipulated by a special law. Furthermore, an administrative dispute may be initiated under the provisions of the Administrative Disputes Act.

No appeal is admissible against individual legal acts adopted by the representative body or municipal prefect, mayor or county prefect, which address the rights, obligations and legal interests of natural and legal persons. However, an administrative dispute can be initiated, unless otherwise stipulated by a special law.

No appeal is admissible, unless otherwise stipulated by a special law, against individual legal acts issued by a representative body or a mayor or county executive, which address the rights, obligations and legal interests of natural and legal persons. However, an administrative dispute may be initiated.

## Multilevel co-ordination

The Regulatory Impact Assessment Act and the Rules of Procedure of the Government of the Republic of Croatia define co-ordination mechanisms between the national and subnational level. Local governments are regularly consulted, although only on an *ad hoc* basis, through their national associations as part of working groups. They are not a formal part of the civil society groups consulted through the established working groups.

When giving opinions on the proposals of laws and other regulations concerning local and regional governments, the Ministry of Public Administration refers all bodies to the provisions of the European Charter of Local Self-Government. The Charter stipulates that local authorities shall be consulted, insofar as possible, in due time and in an appropriate way in the planning and decision-making processes for all matters which concern them. Despite this, some local and regional government representatives mentioned that they were often consulted too late in the process for regulations. Often, they only learned of new laws when the draft was available on the e-Consultation portal. Local and regional governments were often times not involved appropriately during the working groups set up during the development of regulations. On the other hand, the Associations also said that they often had limited resources themselves to conduct their own internal consultations to get the opinion of members.

Ministries that are drafting proposals of laws and other regulations often send their drafts and proposals to the associations of local and regional with a request for their opinions.

National associations of municipalities, towns/cities and counties are themselves a kind of co-ordination mechanisms. Local and regional self-government units use them to assume a common position in policy-making processes, although this can be a challenge with so many local and regional governments.

Croatia does not have a central co-ordinating mechanism for developing or reviewing regulations. Each ministry is in charge of contacting relevant local authorities in a primarily *ad hoc* approach when co-ordinating with the subnational government. This might lead to excessive bureaucracy because of duplicate consultations.

### Box 8.2. Co-ordination between central and local governments in Denmark and Sweden

In Denmark, the local association of municipalities (LGDK) participates in a Steering Group for Cross-national Initiatives (STS). This has actively involved municipalities in the discussion of methods and results in areas such as e-government initiatives and the De bureaucratisation Programme. An example of policy based on co-operation between central and local government is the creation of a common citizens' portal. Following an annual agreement of 2007, the government has developed a portal, in co-operation with municipalities and regions. The portal provides a single guide to information regarding the public sector, and a common access for citizens to digital self-service solutions and access to own data across authority structures and levels. LGDK is also usually involved at a very early stage in the process of making rules, in an informal way.

In Sweden, the Swedish Agency for Economic and Regional Development – Tillväxtverket, a central government agency, has mapped the problems experienced by enterprises in their contacts with regional authorities and municipalities and possible solutions, in close co-operation with the Swedish Association of Local Government (SALAR). SALAR has also been active in identifying dysfunctional or

unnecessary regulations created at the national level which impact on the local level. SALAR has also encouraged the standardisation of often diverging municipal approaches to the interpretation and enforcement of regulations.

Source: (OECD, 2010<sup>[7]</sup>), *Better Regulation in Europe: Denmark 2010*, <http://dx.doi.org/10.1787/9789264084551-en>; (OECD, 2010<sup>[8]</sup>), *Better Regulation in Europe: Sweden 2010*, Paris, <http://dx.doi.org/10.1787/9789264087828-en>.

## Challenges and opportunities for regulatory policy in Croatia's municipalities, counties, and cities

Croatia has a total population of 4.3 million, but over 500 different units of local and regional government. More than half of municipalities have fewer than 3 000 inhabitants.<sup>1</sup> As noted in Marcou and Musa, the capacity for regulatory policy is often significantly more limited in sub-national governments, particularly when they are relatively small. According to the associations of local governments in Croatia, many small local governments adopt regulations that appear to work in larger, more populous areas, because they lack the resources or capacities to develop their own policies. Given these limitations, it is likely best then to focus efforts to implement RIA, *ex post* evaluation and consultation on Croatia's larger cities and counties and to use simpler tools, compared to the national level.

### *Use of regulatory management tools at the local and regional level*

Overall, use of regulatory policy tools in municipalities remains sparse. However, Croatian local and regional governments conduct some consultations and the situation is improving. The information commissioner of Croatia reported that just over 1 100 local consultations took place in Croatia in 2016, 1 721 in 2017 and 3 303 in 2018. Most consultations focus on environmental matters, urban planning, and sustainable waste management. This situation is also set to improve even more. There are currently plans to adapt the national level e-consultations portal for the local and regional level in Croatia (see Box 8.3).

#### **Box 8.3. Adapting the national level e-consultations portal for the local and regional level in Croatia**

Development of e-consultations portal for local and regional level in Croatia is planned within the Action Plan for the Implementation of the Open Government Initiative in the Republic of Croatia up to 2020. Local e-consultations will be integrated in the existing e-Consultations portal where local and regional units will be able to publish their own consultations, so in future, it is expected that all on-line consultation at all levels will be available to citizens in one place. This activity will be implemented by the Government Office for Co-operation with NGOs, Information Commissioner, Croatian County Association, Association of Cities in the Republic of Croatia and Association of Municipalities in the Republic of Croatia.

Local and regional development strategies also provide an opportunity to introduce regulatory management tools, such as RIA and *ex post* evaluation. Many counties and the capital city of Zagreb already use or plan to use certain regulatory policy tools. In Zagreb, for example, the City Office for Strategic Planning and Development used consultation during the production of the City of Zagreb Development Strategy for the period up to 2020 (see Box 8.4 for a summary of the strategy). Furthermore, the Development Strategy presents a good opportunity for Zagreb to use tools like the SCM when looking for ways to make the local economy more competitive.

RIA could also be a complement to Zagreb's priority to protect and preserve the local environment. Environmental assessments, for example, are already going to be a part of the process to protect the environment. Many other cities and regions in Croatia have experience forming development strategies that include economic and environmental goals.

#### **Box 8.4. Zagreb Development Strategy**

In The City of Zagreb Development Strategy for the period leading up to 2020, the City of Zagreb outlines the basic framework for all project initiatives and proposals at the level of the City that must be co-ordinated with the strategic document.

The development strategy was developed with stakeholders from many fields, including business, academia, NGOs, and private citizens. It outlines six key goals for the strategy:

1. A competitive economy
2. Development of human resources
3. Environmental protection and sustainable management of natural resources and energy
4. Improving urban quality and city functions
5. Improving the quality of life
6. Improving the development management system.

Each goal has a set of priorities and measures. Special emphasis in the implementation of the Development Strategy, along with the financial and institutional framework, was placed on strategic projects. The document focuses on and encourages further efficient realisation of 15 key strategic projects for the development of the City in the period ahead.

A number of the goals could also benefit from the implementation of regulatory policy tools. For example, the goal on environmental protection could be an entry point for a regulatory impact analysis that focuses on benefits to the environment.

Source: (City of Zagreb, 2017<sup>[9]</sup>), The City of Zagreb Development Strategy for the period leading up to 2020, City office for strategic planning and development of the city,

[https://www.zagreb.hr/userdocs/images/gu%20za%20strategijsko%20planiranje/rszg%202020%20%20eng\\_digital.pdf](https://www.zagreb.hr/userdocs/images/gu%20za%20strategijsko%20planiranje/rszg%202020%20%20eng_digital.pdf).

#### ***Opportunities for learning from each other***

In a 2018 report, the World Bank found significant differences between the ease of doing business between 25 municipalities across Europe, including five in Croatia.<sup>2</sup> The researchers found that Croatia had the widest variance in practices across cities. Entrepreneurs faced very different obstacles depending on the city.

Based on this, Croatia's cities certainly have a lot to learn from each other about how to reduce administrative costs to business for policies like dealing with construction permits or enforcing contracts. Additionally, the wide number of practices is likely a serious challenge to expanding a business in Croatia beyond the borders of the city in which the business started. The World Bank acknowledged that if Zagreb adopted the best practices of all the communities, Croatia's ranking would improve 11 places in the World Bank Doing Business Index.

Across the OECD, there have been a number of attempts to improve co-ordination and co-operation on regulatory policy between the different levels of government. For example, in Canada the Federal-Provincial-Territorial Committee on regulatory Governance and Reform (OECD, 2015<sup>[10]</sup>) is a group that



shares ideas and good practices in regulatory reform across provinces. The committee brings together policymakers from federal and sub-national governments to share best practices and to develop a common framework.

In Italy, amendments to the Constitution in 2001 gave significant powers to the regions. A number of co-ordination forums were established to encourage regulatory co-operation between sub-national and national governments (see Box 8.5).

### Box 8.5. Regulatory co-ordination and co-operation in Italy

In Italy, the amendments introduced to the Constitution in 2001 established the transfer of legislative and regulatory competences from the State to the regions. In general, regions have gained legislative powers due to the increase of matters of concurrent competence. They have also reinforced their competence in issues that are no longer an attribution of the State. In the new constitutional balance of power among different levels of government, co-ordination mechanisms play a fundamental role. The main mechanism in Italy is the so called “Conference System”, based on three co-ordination bodies:

- The Conference of State-Regions: It was established in 1988 to allow regional governments to play a key role in the process of institutional innovation, particularly regarding the transfer of attributions from the centre to the regional and local authorities. Its composition includes the Prime Minister or the Minister of Regional Affairs as President of the Conference, the presidents of the regions, and other ministers according to the competences of the issues under discussion.
- The Conference of State – Municipalities and Other Local Authorities: It was established in 1996 and its functions include co-ordinating the relations between states and local authorities, as well as analysing and serving as a forum for discussion of issues of interest for local authorities. Its composition involves the Prime Minister as President of the Conference, the ministers of the Interior, Regional Affairs, Treasury, Finance, Public Works, Health, the President of the Association of Italian Provinces, the President of the Association of Italian Mountain Communities, 14 mayors, and 6 presidents of provinces.
- The Unified Conference of State – Regions – Municipalities and Local Authorities: It was established in 1997 as the institutional mechanism to co-ordinate the relationships among the central government, regions, and local authorities. Its composition includes all the members of the previous two conferences. It served as the forum for an agreement on administrative simplification between the Italian regions and the national government in 2007. The signed document defines common principles for quality and transparency of the normative system in order to harmonise legislative techniques. In particular, it engages the State, regions, and local authorities to apply *ex ante* instruments, such as impact analysis and feasibility studies, and *ex post* evaluation.

Source: (García Villarreal, 2010<sup>[11]</sup>), “Successful Practices and Policies to Promote Regulatory Reform and Entrepreneurship at the Sub-national Level”, *OECD Working Papers on Public Governance*, No. 18, <https://dx.doi.org/10.1787/5kmh2r7qpstj-en>.

## Assessment and recommendation

*Croatia’s local and regional governments have significant authorities to develop their own regulations, particularly with respect to key economic areas like construction and environmental permits. The relative high degree of autonomy has led to significant differences in the quality of administration and regulation between subnational governments. Many of the smaller local governments lack the human resources or experience to effectively implement regulatory policy.*

The expansion of the e-Consultations portal in Croatia is a welcome development because it will extend a key regulatory policy tool to local and regional governments at little cost. At the same time, many of the regional governments' development plans offer a good opportunity to introduce regulatory policy tools at the subnational level.

Based on previous studies, *sharing best practices in Croatia's local and regional governments could lead to significant improvements in administrative burdens* with the help of the national government.

**The national government could encourage openness and transparency for economically important regulations and procedures at the sub-national level through the planned e-consultation portal.**

This portal could also be an opportunity for local governments to introduce a simplified RIA, which would serve as a launching pad for discussions about proposed regulations or decisions. This would be particularly important for economically significant regulations related to constitution permits, urban planning, environmental sustainability and waste management.

The national government could also find ways to encourage and help reduce administrative burdens at sub-national levels. To achieve this, **Croatia could develop a platform to share and easily access relevant licensing, urban planning regulations in local governments.** Often, a large economic barrier is the administrative and planning barriers for businesses. Improving the access to information of business and citizens across local governments will make it easier for them to make good economic decisions. It may also enhance knowledge transfer and competition between local governments to become more efficient.

To encourage rational regulations and policy at the local level, **the national government should help local governments use data and evidence-based policy at the local level for the most significant economic areas under the authority of local and regional governments.** A point of entry for such policies could be the development programs adopted by major cities and counties such as Zagreb and Rijeka.

**Croatia should make local governments and their representative groups (e.g. Association of Municipalities) key social partners in working groups, the proposed business forum, and any high-level committees on regulatory policy** (see Chapter 4 for more info). Many regulations and laws have serious effects on the revenues or operations at the local level and their continued co-operation in developing national laws is paramount. Including local and regional governments in the business forum could support administrative burden reductions at the local level.

More broadly, **Croatia could support administrative simplification efforts at the subnational level by taking advantage of economies of scale.** One way to do this would be for the Croatian government to target a simplification measure to a common bureaucratic procedure handled by local and regional governments (e.g. filing construction permits or environmental assessments). Targeting a specific set of procedures common to all local governments would have broader impacts across the economy. It would also take advantage of economies of scale of simplification, enabling easy wins for administrative burden reduction.

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## Notes

<sup>1</sup> An up-to-date count of local and regional governments is available at: <https://udruga-opcina.hr/en/about-us/localself-government-in-croatia-73>

<sup>2</sup> The cities included Osijek, Rijeka, Split, Varazdin, and Zagreb in Croatia; Brno, Liberec, Olomouc, Ostrava, Plzen, Prague, and Usti and Labem in the Czech Republic; Braga, Coimbra, Evora, Faro, Funchal, Lisbon, Ponta Delgada, and Porto in Portugal; and Bratislava, Kosice, Presov, Trnava, and Zilina in Slovakia.



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