

## *Metropolitan Areas of Lisbon and Porto: Model of Inter-Municipal Cooperation*

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As an association of a big city and its satellite towns, the metropolitan area is a form of intermunicipal cooperation. It can be voluntary or mandatory. Due to new cooperation structures and common bodies, it differs from mergers of local units or other forms of intermunicipal cooperation. Portuguese legislator has adopted the concept of metropolitan area for Lisbon and Porto, the biggest two cities in the country. After short historical introduction, the system established by Statutory Order 46/2008 has been analysed. Special attention is devoted to the metropolitan area of Lisbon, which consists of 18 municipalities with almost 3 million inhabitants. Metropolitan areas have their own bodies: metropolitan assembly, metropolitan council, executive metropolitan commission, and consultative commission (optional). At the end, causes of recent legislative solutions are briefly described.

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## 1. Organizational Particularities of Big Cities and Their Surroundings

The growth of big cities is an old problem. Although the importance of agricultural activity kept many people in rural areas, the security and commercial opportunities in the cities had already become rather attractive. Along the coast, principal ports were expanding fast, creating housing problems and the problems related to health and traffic.

The industrial revolution of the nineteenth century aggravated the situation by creating workers' districts in the vicinity of factories, normally at the outskirts of big cities. Furthermore, the demographic growth after World War II, coupled with the progressive desertion of agriculture and intensification of the tertiary sector contributed decisively to the appearance of a new urban phenomenon: metropolitan areas. The outskirts of big cities grew and formed new satellite towns; the towns where people sleep during the week and spend their weekends, since the prices there are lower and the quality of life is better. Therefore, it is more than just the problem of the management of a big city; in fact, it is necessary to ensure the links between the services of a big city and the ones of its satellite towns. This cooperation imposes itself due to traffic needs, but also in the sectors such as waste treatment, education, health and environment.

The existence of metropolitan areas is related to two principles; subsidiarity, meaning the organisational division between local authorities and the structures closely related to the state;<sup>1</sup> and cooperation, intended to achieve optimum fulfilment of the territorial public interest of the population residing in the area (Martinez López-Muñiz, 2006: 72ff). In the 1976 Constitution of the Republic of Portugal (CRP), the principle of subsidiarity is narrowly linked to decentralisation (Article 6/1) – with regard to metropolitan areas, solidarity, which is linked to subsidiarity, implies that the transfers of state allocations (or of higher local authorities) are accom-

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<sup>1</sup> As underlined by Martinez López-Muñiz (2006: 61 ff, 66), subsidiarity promotes the material dimension of autonomy.

panied by sufficient financial means.<sup>2</sup> As for cooperation, it is the opposite trend – although always infra-state – because smaller structures should be unified in order to achieve more efficient results for their populations (cf. Articles 267/1 and 2, and in particular Article 253 of the CRP).

There is no single model of inter-municipal cooperation.<sup>3</sup> The solutions vary in accordance with the needs and the tradition in different countries, from more centralising to more decentralising. It should be noted that inter-municipal cooperation nowadays is not limited to national space, insofar as the European Territorial Cooperation Strategy,<sup>4</sup> formulated in the Regulation 1028/2006 of the European Parliament and of the Council of 5<sup>th</sup> July 2006, permits the creation of European groupings of territorial cooperation (EGTC). These are autonomous legal entities set up with a view of intensifying economic and social cohesion.<sup>5</sup>

There are three ways of cooperation aimed at exercising common interests: 1) cooperation agreements, without the establishment of a new legal entity; 2) inter-municipal enterprises with the capital shared by several municipalities and by other legal entities of inter-municipal nature; and 3) inter-municipal associations (groups of municipalities) of public or private law, holding legal personality and possessing their own heritage, which get together in order to achieve specific goals.<sup>6</sup>

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<sup>2</sup> »... different territorial entities share clear, yet concentric solidarity links. In the same way, even though they acquire different degrees of intensity, individuals show or should show solidarity with each other in smaller groups and in all communities where they are registered. Also, the groups, communities or entities, where individuals are integrated, should show mutual solidarity«. Martinez López-Muñoz, 2006: 72

<sup>3</sup> On this notion and its materializations (c.f. current legislation): Alves Correia, 1986.

<sup>4</sup> The update of the Portuguese situation with regard to the programmes of the European Territorial Cooperation, under the aegis of the QREN (Quadro Nacional de Referência Estratégica/National Strategic Reference Framework) can be consulted on the website [www.qren.pt/item3.php?lang=1&id\\_channel=44&id\\_page=314](http://www.qren.pt/item3.php?lang=1&id_channel=44&id_page=314)

<sup>5</sup> In Portugal, the Order in Council 376/2007 of 8<sup>th</sup> November 2007 provides for the EGTC to be set up by local authorities, by the associations of municipalities and by metropolitan areas (Article 4/1), as long as they benefit from the financing of the European Regional Development Fund, of the European Social Fund or of the Cohesion Fund (Article 3/1). Therefore, the EGTCs implement co-financed projects or those without co-financing, by managing collective infrastructures and equipment and by delivering services of public interest (Article 3/2).

<sup>6</sup> Carro Fernández-Valmayor (2006: 9 ff, 11) underlines that, even though several models are possible, the establishment of an autonomous legal entity is essential for an efficient institutional dialogue with other authorities that intervene in the same territory, and with economic and social actors.

Metropolitan areas belong to the third group that can be formed by means of association, voluntary or mandatory. The result is that the position of metropolitan entities is above the position of municipal bodies.<sup>7</sup> In fact, the metropolitan area is a special type of inter-municipal association.<sup>8</sup> However, forced association – by means of legislation – is little compatible with the right to association, positive or negative, which ensues from Article 9/1 of the European Charter of Local Self-government. Yet, the Charter in Article 3/3, 2<sup>nd</sup> part, stipulates that the transfer of an originally local responsibility to another authority »should weigh up the extent and nature of the task and requirements of efficiency and economy«. Mandatory association can be justified if the associated municipalities can benefit from it.

It does not mean that a metropolitan area is the only solution for the association of satellite towns and big cities. In fact, parallel to that, there is a possibility of creating a mega-municipality (by merging all the municipalities that constitute a metropolitan area), or of establishing specific forms of inter-municipal cooperation (without the creation of new structures). In Portugal, there are different forms of inter-municipal cooperation, but regarding Lisbon and Porto (the biggest two cities) the legislator has adopted the concept of metropolitan area, even though the Constitution has provided for other options as well.

## 2. A Brief History

The origin of the concept of metropolitan area, as described by law, does not go far back.<sup>9</sup> In fact, the 1976 Constitution introduced this new legal institute in Article 236/3, which stipulates that »In large urban areas and

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<sup>7</sup> For the European panorama of the regimes of metropolitan areas, see Rodríguez Álvarez, 2005: 229 ff, *passim*.

<sup>8</sup> Rodríguez Álvarez (2005: 233) notes that, for the reason of social challenges (integration of new residents, foreign nationals included), for demographic reasons (drastic population growth in big cities), for town planning reasons (adequate accommodation, for the reason of town planning (service and leisure infrastructure), for economic reasons (establishment of the offices of major companies), etc., the phenomenon of metropolitan areas spreads beyond their territories, and *metropolitanisation* is a special expression within the notion of *globalisation*.

<sup>9</sup> On the evolution of metropolitan areas' regime see Vital Moreira, 2007: 5, 15; Freitas do Amaral, 2006: 622.

on the islands, according to their specific conditions, the law shall be able to establish other forms of autonomous territorial organisation«.

The above suggests two solutions:

- On the one hand, the creation of a type of local authority different from parishes (*freguesias*), municipalities (*municípios*) or administrative regions, described in paragraphs 1 and 2 of Article 236 – with bodies elected directly by their respective populations (cf. Article 239/1 and 2 of the CRP), possessing democratic legitimacy and their own competences.
- On the other hand, the creation of *supra-municipal cooperation structures* starting from the municipalities integrated in the same area of a big city – with their own bodies, but not elected directly by the residents of the constituency (here, with reference to Article 253 of the CRP, original version).

Prior to the 1976 Constitution, the Administrative Code 1936/40 had stipulated (Article 195) mandatory federation of the municipalities of Lisbon and Porto with the neighbouring municipalities,<sup>10</sup> in order to »pursue the common interests of their respective constituencies«. Since the Constitution did not define the type of association, the legislator departed from the formula of the federation of municipalities and chose mandatory inter-municipal cooperation within a special organic structure, the metropolitan area.<sup>11</sup> The Statutory Order 44/91 of 2<sup>nd</sup> August 1991 constituted the first legal framework for metropolitan areas; at the time, this law referred to Lisbon and Porto only.<sup>12</sup>

The Statutory Order 44/91 defined the metropolitan area as a collective territorial entity of public law, pursuing the interests of the populations of member municipalities. The definition makes it resemble a local authority, but without directly elected bodies. According to the Statutory Order of 1991, the metropolitan areas of Lisbon and Porto had three types of bodies: assemblies (deliberative), juntas (executive) and councils (con-

<sup>10</sup> For all other municipalities, the solution was the one of voluntary federation.

<sup>11</sup> For a description of institutional typology of the solutions related to the organisation of big cities, see Rodríguez Álvarez, 2005: 237.

<sup>12</sup> Legislative competence, concerning the Law on Local Authorities, belongs to the Parliament of the Republic, which can delegate it to the Government – Article 165/1/q) of the CRP. However, metropolitan areas, in this model of cooperation/superposition, are not new local authorities; thus, the Government freely exercises its legislative competence, pursuant to Article 198/1/a) of the CRP.

sultative). The assembly was indirectly elected by the councillors of member municipalities, according to proportional representation. The Junta encompassed all the mayors of the municipalities in the area. The Council was of mixed composition, consisting of the President of the Regional Coordination Commission (deconcentrated state administrative body) the area belonged to, members of the Junta and the representatives of state public services functioning in the area.

Although the legislator had determined the composition of these two areas in advance, their concrete institution remained dependent upon the initiative of the municipalities in question and had to be approved by two thirds of the member municipalities, representing absolute majority of the population in the metropolitan area. The differences between this regime and the general regime of municipal association were substantial. For instance, according to the Statutory Order 266/81 of 15<sup>th</sup> September 1981, the municipalities likely to become associated were not predetermined by law, municipal assemblies could not intervene in the election of inter-municipal assembly, and finally, there were no representatives of the direct administration in the bodies of association.

In 2003, political decision-maker promoted a profound change in the legislative framework referring to metropolitan areas. Main modifications introduced by the Law 10/2003 of 13<sup>th</sup> May 2003 were the following:

- Extension of metropolitan areas to the entire national territory – that is, the possibility to create other metropolitan areas beside Lisbon and Porto;
- Distinction between two types of metropolitan areas: on one hand, *large metropolitan areas* (GAM), with at least nine integrated municipalities, comprising minimally 350,000 inhabitants and, on the other hand, *urban communities* (ComUrb), with a minimum of three municipalities and at least 150,000 inhabitants;
- Voluntary foundation (by the majority vote of the assemblies of interested municipalities), in line with legal assumptions mentioned below and according to the *principles of exclusivity* (one municipality could not be integrated in more than one metropolitan area) and *stability* (municipalities had to remain within the established metropolitan area for at least five years);
- Territorial delimitation was free, while respecting the territorial continuity;
- The bodies were the same as the ones described by the Statutory Order 44/91 (assembly, junta, and metropolitan council).

Along with the existing metropolitan areas of Lisbon and Porto, this law induced the foundation of five GAMs: Minho, Aveiro, Viseu, Coimbra and Algarve, and ten ComUrbs: Vale-e-Mar, Trás-os-Montes, Douro, Vale do Sousa, Beiras, Tâmega, Leiria, Oeste, Médio Tejo, and Lezíria do Tejo.

Surprisingly, five years after the appearance of this new and original regime, the Government reversed the course and *killed* the Large Metropolitan Areas and Urban Communities. Current legislative framework is as follows: the Law 10/2003 was abolished by Article 41 of the Law on Municipal Associations (Law 45/2008 of 27<sup>th</sup> August 2008),<sup>13</sup> Article 2/3 of the LAM established the metropolitan areas of Lisbon and Porto as inter-municipal communities (*comunidades intermunicipais*, CIM); metropolitan areas' general goals are regulated by the Law on Metropolitan Areas of Lisbon and Porto (Law 46/2008 of 27<sup>th</sup> August 2008, LAMLPL).

### 3. System of the Statutory Order 46/2008

The LAMLPL introduces certain novelties to the arrangements that preceded metropolitan areas (from 1991 and 2003), whilst keeping the exclusivity of the two areas of Lisbon and Porto.<sup>14</sup>

The new arrangement dispenses the approval of the establishment of metropolitan areas by municipal assemblies, but that is understood with regard to historical continuity of the areas of Lisbon and Porto.<sup>15</sup> The

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<sup>13</sup> Article 38 of the Law 45/2008 contains a transitory norm for the GAMs and the ComUrbs established pursuant to the Law 10/2003. It provides for their conversion into inter-municipal communities with multiple goals (CIMs), as soon as they approve new statutes and establish a new community (no. 1). If they do not make such a choice, they are automatically transformed into the associations of municipalities with specific goals (no. 3). However, after the approval of the statutes, these CIMs (those transformed and those new ones), when their area corresponds to the NUTS II (see below), exercise the same competences as the administrative regions (cf. Article 33 of the Law 45/2008), until the establishment of the latter.

<sup>14</sup> Details on the activities of the two areas can be found at [www.aml.pt](http://www.aml.pt) and [www.amp.pt](http://www.amp.pt).

<sup>15</sup> The enlargement of the metropolitan area of Porto to the region situated between Douro and Vouga should be underlined. According to the LAMLPL, the metropolitan area of Porto includes Arouca, *Espinho*, *Gondomar*, *Maia*, *Matosinhos*, Oliveira de Azemeis, *Porto*, *Póvoa de Varzim*, Santa Maria da Feira, Santo Tirso, São João da Madeira, Trofa, Vale de Cambra, *Valongo*, *Vila do Conde* and *Vila Nova de Gaia* (the names in italics correspond to the municipalities that got integrated into the metropolitan area after the Statutory Order

municipalities integrated into a metropolitan area may not join the communities with multiple goals, but they can be associated with the communities having specific goals (cf. Article 2/2 of the Law 45/2008).<sup>16</sup>

The new regime holds the option of a model of organisational structure above the member municipalities – these are not new local authorities.

They have, however, a vast set of competences (cf. Article 4, LAMLP), although the majority are of coordinative or procedural nature:

- participation – in the development of plans and programmes of public investments, and in the promotion of their implementation; in the management of regional development support programmes; in defining network services and metropolitan amenities;
- establishment of metropolitan enterprises, especially in the sectors of transport, water distribution, energy supply, waste treatment;
- planning – investments and the activities of metropolitan entities;
- articulation of municipal services and those of the central administration (e.g. in the fields of supply networks, waste treatment, education, transport, infrastructure for sports and culture), beyond other competences transferred to the metropolitan areas by the central administration or delegated by the municipalities.

In order to develop these competences, the metropolitan areas act through three bodies (cf. Article 5 LAMLP).

1. *Metropolitan assembly* (Articles 9 to 12 LAMLP). The assembly consists of 55 members; elected by an electoral college consisting of the assembly members coming from the member municipalities of a metropolitan area (the terms of office are determined according to the principle of propor-

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of 1991). The metropolitan area of Lisbon includes Alcochete, Almada, Amadora, Barreiro, Cascais, Lisboa, Loures, Mafra, Moita, Montijo, Odivelas, Oeiras, Palmela, Seixal, Sesimbra, Setúbal, Sintra and Vila Franca de Xira.

<sup>16</sup> The Law 45/2008 differentiates between the communities having *multiple goals* – i.e. the competences described in Article 5, besides those transferred to them by the municipalities and by the central government – the communities having *specific goals* – i.e. the cooperation objective well-defined by the municipalities that become associated (cf. Article 34 of the Law 45/2008). Only the CIMs have the status of a legal entity of public law, whilst the associations with specific goals have the status of a legal entity of private law (Article 2 of the Law 45/2008).



tional representation).<sup>17</sup> This assembly has several competences, among which is the approval of

- the programmes of action proposed by the council;
- the budget proposal and its reviews proposed by the council;
- the minutes on the transfer of competences;
- the regulations proposed by the council;
- the collection of municipal taxes by the metropolitan area;
- the authorisation of metropolitan area to contract loans.

Further, the assembly has the power to authorize the association of a metropolitan area with other entities, public or private ones, and the establishment of metropolitan enterprises. It holds at least three regular annual meetings.

2. *Metropolitan council* (Articles 13 to 15 LAMLPL). The council is the representative body of the mayors of the metropolitan area's member municipalities. Its competences include the proposals to the assembly of

- the strategic guidelines for the metropolitan area;
- the metropolitan area's Action Plan<sup>18</sup> and of the inter-municipal space management plans;
- the loans requested by, and necessary for the activities of the metropolitan area;
- the association of the metropolitan area with other entities, public or private, from the social or cooperative sector; and
- the establishment of metropolitan enterprises.

Furthermore, the council proposes the approval of the plans, programmes, investment projects and metropolitan development projects to the Government – and it has a say in all the plans and programmes approved by the central administration affecting the metropolitan area.

Its competences are important at the level of coordination of the activities of municipalities integrated into the metropolitan area. Finally, the council – represented by its president (Article 15/1/d) LAMLPL) – has the

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<sup>17</sup> Cf. Article 12 of the Statutory Order 25/2008, on the assemblies of inter-municipal communities (CIMs).

<sup>18</sup> See also Article 22/1 LAMLPL (the council must submit the Action Plan to the assembly in November).

competences of political representation<sup>19</sup> of the metropolitan area before the Government, central administration and international institutions. The council has at least one regular meeting a month.

3. *Executive metropolitan commission* (Articles 16 to 21 LAML). The commission is the executive body of the metropolitan area. It has three to five members nominated by the metropolitan council and submitted to the assembly for approval. Duty in the commission is incompatible with duties in the executive bodies of member municipalities. What is more, in case the commission members are also members of the metropolitan assembly, their latter office is suspended when they have become members of the executive commission.

The commission must implement all the decisions of the assembly and of the council. It is also responsible for the management of technical and administrative services of the metropolitan area, for budget execution, as well as for the collection of taxes. The commission develops several plans, which it presents to the council, which in turn submits them to the Assembly for approval. The council can delegate to the commission the competence of issuing opinions for the Government in relation to all the plans and investments of the central level that affect the metropolitan area.

4. *Consultative commission* (optional). The described model of organization resembles an atypical parliamentary system. In fact, the assembly ratifies the composition of the executive commission (its members have their duties conferred by the assembly) and the assembly dismisses the appointed members by simple majority, on the proposal of the council (cf. Article 11/g) and h) LAML).

However, the commission members are not necessarily part of the same majority that manages the assembly. The assembly does not have the power to decide autonomously upon the proposals of the council, while the council, in the same way depends on the assembly for the approval of its acts. Finally, the decision-making procedure is complex – all metropolitan acts have two authors; the one that makes proposals and the one that gives the approval.

A metropolitan area is not a local authority – its bodies are not elected directly<sup>20</sup> (cf. Articles 113/1 and 235/2 of the CRP), and consequently,

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<sup>19</sup> Judicial and social representation of the metropolitan area belongs to the President of the Executive Commission, Article 18/1/f) LAML.

<sup>20</sup> The counter current of the solution mostly practiced in the neighbouring European countries. Cf. Manuel Rodríguez Álvarez, 2005: 244 ff (where preference is observed for direct election of the metropolitan area assembly).

the electoral system envisaged in Article 239 of the CRP is not applied. However, one should notice the proximity of figures; on one hand, there is the unusual decision-making procedure (assembly and council), which projects the original constitutional solution of Article 239/3<sup>21</sup> (direct election of the municipal assembly and of the council (therefore a possibility of having two different majorities in these two bodies)).<sup>22</sup> On the other hand, metropolitan areas have the status of legal entities of public law (cf. Article 2/1 LAML) and they are subject to administrative supervision of legality (Article 3 LAML), as long as they are considered the entities equivalent to local authorities (cf. Article 1/2 of the Law 27/96 of 1<sup>st</sup> August: Law on Administrative Supervision).

This framework replicates the European model, with the Parliament, Council and Commission. Such a solution caused strong resistance on the part of municipal mayors because, contrary to the previous system (either of the Statutory Order 44/91, or of the Law 10/2003), they lost their executive competences in favour of a commission that has no democratic legitimacy (Vital Moreira, 2007: 18, note 6). At the same time, the activity of the metropolitan area gains on efficiency without losing democratic control of the purpose and the content of its decisions.

The activity of the metropolitan area is funded from its own revenues, described in Article 25 LAML. These include payments of the member municipalities, financial transfers of municipalities to the metropolitan area in case of delegated tasks, EU funds, fees and charges for public services, and state revenues. There is a special revenue source provided by the state: the transfer of 1% from the Fund of financial balance of the metropolitan area's member municipalities. The metropolitan area may contract loans, the payment of which is the duty of municipalities in a subsidiary manner (in proportion to their population compared to the entire population of the metropolitan area) but within the limits of their total credit debt (cf. Article 26 LAML).

The final accounts of the metropolitan area are controlled by the Court of Audit, and must be sent to the municipal assemblies for opinions (Article 24 LAML).

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<sup>21</sup> See also Article 11 of the Organic Law 1/2001 of 14<sup>th</sup> August (Electoral Law on Local Authorities).

<sup>22</sup> On this atypical model: Amado Gomes, 2002: 193 ff.

### 3.1. Some Notes on the Metropolitan Area of Lisbon

The metropolitan area of Lisbon (AML)<sup>23</sup> comprises the most important concentration of Portugal citizens. It integrates 18 municipalities, which constitute 3.3 per cent of the national territory with almost 3 million inhabitants (i.e. 1/3 of the national population). It has about 25 per cent of the active population, 30 per cent of national enterprises, 33 per cent of employment, and it generates 36 per cent of GDP.

Metropolitan areas are above all coordination structures, according to Article 4 LAMLP. The fact that they are not proper local authorities and the absence of significant financial funds explains their weak role in the organization of local administration. Considering the AML, it has not yet established a single metropolitan enterprise and it does not participate in the financing of any private entity. However, it is represented in the following public entities:

- Strategic Consultative Commission of Lisbon Regional Operational Programme, representing the municipalities integrated in the NUTS III of the Setubal peninsula and of the Greater Lisbon;
- Guiding Commission of Lisbon Regional Operational Programme, representing the NUTS II of Lisbon (bodies of the structure of Regional CREN/PO of Lisbon) ;
- National Council for the Promotion of Voluntary Work, within the National Association of Portuguese Municipalities;
- General Council and Executive Council of Lisbon Metropolitan Transport Commission;
- Consultative Commission for the amendments to the PRAT-AML;<sup>24</sup>

<sup>23</sup> The information used for the compilation was provided by Madam Sofia Cid, the Judicial Assessor of the AML, to whom we express our gratitude.

<sup>24</sup> The amendments to the PRAT-AML (Regional Spatial Plan-AML) result from the necessity to counterbalance the impacts of new infrastructures like the new Lisbon airport (the competition for the presentation of the proposals has been suspended because of the economic crisis), the project of the high speed train/railway and the third bridge over the Tejo, in order to integrate these in the general strategy for the development of the metropolitan area.

- Commission for the Monitoring of the Tejo Estuary Management Plan.<sup>25</sup>

The most important intervention domain of the AML is most certainly culture and leisure. The AML developed an agenda of sports and cultural events to take place in 18 member municipalities, which is available online. The Internet has dynamised the forms of collective identification and democratisation of culture. Posting tourist information on the AML website was a project for the year 2010.

Further, there is the project of symphonic orchestras for the young, aimed at their social inclusion, particularly when they have learning problems (inspired by the example from Venezuela and Simón Bolívar Orchestra). The project is implemented in six AML municipalities with the support of the European Union (the FEDER provides financial assistance up to the amount of 40 per cent of the investment, i.e. €352,490). The agreement with the National Ballet Company and the support of Lisbon semi-marathon are other examples of the AML's cultural engagements.

The AML financing is essentially provided from the annual State Budget transfers – the figure for 2010 is €691,831, which corresponds to 1 per cent of the Financial Balance Fund of the metropolitan area's municipalities, having in mind the maximum annual variation limit of 5 per cent (cf. Article 25/3/j) LAML). This figure indicates the reduction of almost €715,000 if compared to the 2008 data:

Year	Amount (€)	Annual difference (%)
2005	833,348	- 16.5
2006	1,463,576	75.6
2007	1,397,151	- 4.5
2008	1,406,160	0.6
2009	655,282	53.4
2010	691,831	5.6

Beside these funds, the AML counts on the contributions coming from the integrated municipalities (€592,049) and on the EU co-financing (€119,760 – amount intended for 2010). The overall AML income for

<sup>25</sup> This is a special management plan, which pursues ecological objectives. The plan is applied to 87 per cent of the Tejo Estuary Nature Reserve, established by the Statutory Order 565/76 of 19<sup>th</sup> July, and to other areas classified within the Natura 2000 network.

2010 was about €1,458,840, the figure that, according to the AML, would not be sufficient for ensuring the continuity in executing its tasks and competences.

#### 4. Causes of Legislative Deviation: Metropolitan Areas and Administrative Regions

What about the succession of the regime of metropolitan areas? There used to be an Order that was in force for twelve years (1991/2003) followed by a legislative framework that lasted only five years, until the abolishment of the 2003 law by the LAMLP in 2008. What are the reasons behind this instability?

The 2003 law is called *Relvas Reform*, after the name of its author, the then State Secretary for Local Administration, a powerful figure opposed to regionalisation. The Laws 10 and 11/2003 (on metropolitan areas and on the associations of municipalities, respectively) were intentionally presented as the alternatives to regionalisation. The GAMs and ComUrbs, because of their size, were physically identified as administrative regions, which the Constitution indicates as being the third level of local authorities (Article 236/1), according to new Article 253 of the CRP, following the 1997 amendments to the Constitution.

In 1997, Article 253 allowed the unions and associations of municipalities to have specific tasks and their bodies to have their own competences. Thus, typical features stipulated by Article 236/1 (which solely consider local authorities, *município* and *freguesia*, linking them to direct democratic representation of their citizens) were lost. Furthermore, in case territorial boundaries were too long, the procedural guarantee concerning the regions would be put at risk.<sup>26</sup> In other words, if there were too many associations of municipalities with general objectives that, according to their geographic expansion, are replaced by regions, Article 256 of the Constitution would be circumvented.

A considerable problem lied in the constitutional obligation that the law on regionalisation must be approved at the national referendum. It was attempted in 1998 and did not bring the expected result. The Laws 10

<sup>26</sup> Rodríguez Álvarez (2005: 236) remarks, regarding the advantages and inconveniences of the creation of metropolitan areas, that their territorial expansion creates resistance on the part of some European states, which perceive them as political *Gargantuas*.

and 11/2003 created *disguised regions*, without direct democratic legitimacy but with significant territorial range and the competences that the Constitution has reserved for administrative regions. This is considered a constitutional fraud.

The step back from 2008 certainly reduced the expansion of metropolitan areas, which with their vast territories can constitute a real alternative to administrative regions. According to the administrative division of the national territory into NUTS (*Nomenclature of Territorial Units for Statistics*)<sup>27</sup> there are:

- 3 NUTS I units (continental territory, the archipelagos of Madeira and of the Azores);
- 7 NUTS II units (Alentejo, Algarve, Centro, Lisbon, Norte, Madeira and the Azores; NUTS II are the closest to regions, if they exist);
- 28 NUTS III units on the continent:
  - In NUTS II Norte, there are 8 NUTS III units: Alto Trás-os-Montes, Ave, Cávado, Douro, Entre Douro and Vouga, Greater Porto, Minho-Lima and Tâmega;
  - In NUTS II Centro, there are 12 NUTS III units: Baixo Mondego, Baixo Vouga, Beira Interior Norte, Beira Interior Sul, Cova da beira, Dão-Lafões, Médio Tejo, Oeste, Pinhal Interior Norte, Pinhal Interior Sul, Pinhal Litoral, Serra da Estrela;
  - In NUTS II Lisbon, there are 2 NUTS III units: Greater Lisbon and Peninsula de Setúbal;

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<sup>27</sup> The NUTS are currently regulated by the Statutory Order 68/2008 of 14<sup>th</sup> April »for the territorial organization of the associations of municipalities and of metropolitan areas, with a view to participating in the governing structures of the Strategic Reference Framework 2007-2013 (QREN)«. However, this concept has existed since 1986 (Resolution of the Council of Ministers 34/86 of 5<sup>th</sup> May), aiming at purely statistic objectives (acquisition and analysis of regional data with a view of preparing political decisions related to the planning of regional development). According to Judgment 524/08 of the Constitutional Court (No. 11), the Statutory Order 68/2008 added to the concept of NUTS a normative functionality, since they define the criterion of the delimitation of the associations of municipalities. They were also adopted within the EU, with a view of creating common statistical rules and procedures, in order to allow fair distribution of structural funds among the member states. Thus, they have a standardizing function (cf. Regulation EC 1059/2003, of the European Parliament and of the Council of 26<sup>th</sup> May, on the NUTS and the Annex to the Regulation EC 105/2007 of the Commission of 1<sup>st</sup> February 2007).

- In NUTS II Alentejo, there are 5 NUTS III units: Alentejo Central, Alentejo Litoral, Alto Alentejo, Lezíria do Tejo, Baixo Alentejo;
- In NUTS II Algarve, there is 1 NUT III unit: Algarve;
- Finally, the Azores and Madeira also belong to NUTS III class.

NUTS II Lisbon coincides with the metropolitan area of Lisbon, but it is an isolated case.

However, even if the solution of metropolitan areas is fading away, the constitutional ambiguity seems to tolerate it. It is doubtful whether the Constitution, following the 1997 amendments, holds a coherent position on this issue. The modifications of Article 253 seem to allow to the unions and associations of municipalities to obtain their own tasks or tasks delegated by the member municipalities, by means of a simple legislative dictate without its corresponding to a true democratic intention. In other words, the forms of inter-municipal cooperation can be generalized and replaced by supra-municipal local authorities (especially by the administrative regions).

Trying to reconcile Articles 236/1, 253 and 256 of the Constitution, generalization of the forms of inter-municipal cooperation (of multiple objectives) by geographically significant groups of municipalities is still constitutionally admissible as long as the result of the association does not exhaust the regionalization hypothesis. Legislation can allow the establishment of municipal associations of general purpose as long as they are not large enough to coincide with the area of a NUTS II, thus avoiding the breach of constitutional guarantee of referendum prior to the creation of administrative regions (Article 256 of the CRP).<sup>28</sup> The only exception is the Lisbon metropolitan area. This upper limit has its counterpart in the lower limit: the tasks of the metropolitan area's member municipalities must be respected (notwithstanding the possibility of delegation), and the autonomy enjoyed by these municipalities is guaranteed by the stipulations of Article 235 of the CRP.<sup>29</sup>

<sup>28</sup> What the legislator may not have avoided in the current legislative framework.

<sup>29</sup> For a similar conclusion, in the Spanish context see Fernández-Valmayor, 2006:



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## Appendix: Provisions from the Constitution of the Republic of Portugal

(1976, amended seven times: 1982, 1989, 1992, 1997, 2001, 2004, 2005)

### Article 236

1. In a metropolis, local authorities are parishes (*freguesias*), municipalities (*municípios*) and administrative regions.
2. The autonomous regions of the Azores and of Madeira include both *freguesias* and *municípios*.
3. In large urban areas and on the islands, other forms of territorial organization of local authorities, adapted to their particular conditions may be established.
4. Administrative division of the territory shall be regulated by law.

### Article 253

In order to administer common interests, municipalities may form associations and federations, on which the law may confer specific powers and responsibilities.

### Article 256

1. The de facto institution of the administrative regions by means of the individual laws instituting each one shall depend on the law provided for in the previous Article, and on the casting of an affirmative vote by the majority of the registered voters who cast their votes in a direct national ballot covering each of the regional areas.
2. In the event that the majority of the registered voters who cast their votes do not respond in the affirmative to a question with a national scope on the de facto institution of the administrative regions, the answers to such questions as may be put in relation to each region that is created by the law shall not take effect.
3. The consultation of registered voters provided for in the previous paragraphs shall take place in accordance with the provisions of an organic law and by decision of the President of the Republic, upon a proposal from the Assembly of the Republic. The provisions stipulated in Article 115 shall apply *mutatis mutandis*.

## METROPOLITAN AREAS OF LISBON AND PORTO: MODEL OF INTER-MUNICIPAL COOPERATION

### *Summary*

*As an association of a big city and its satellite towns, the metropolitan area is a form of intermunicipal cooperation. It can be voluntary or mandatory. Due to new cooperation structures and common bodies, it differs from mergers of local units or other forms of intermunicipal cooperation. Portuguese legislator has adopted the concept of metropolitan area for Lisbon and Porto, the biggest two cities in the country. After short historical introduction, the system established by Statutory Order 46/2008 has been analysed. Special attention is devoted to the metropolitan area of Lisbon, which consists of 18 municipalities with almost 3 million inhabitants. Metropolitan areas have their own bodies: metropolitan assembly, metropolitan council, executive metropolitan commission, and consultative commission (optional). At the end, causes of recent legislative solutions are briefly described.*

*Key words: metropolitan area, Lisbon and Porto, metropolitan bodies, inter-municipal cooperation*

## METROPOLITANSKA PODRUČJA LISABONA I PORTA: MODEL SURADNJE JEDINICA LOKALNE SAMOUPRAVE

### Sažetak

Kao oblik udruživanja velikog grada i okolnih manjih gradova metropolitansko područje je specifični oblik suradnje lokalnih samoupravnih jedinica. Mogu ga dobrovoljno ustanoviti udružene jedinice svojom voljom ili zakonodavac ustanovljavajući obvezu njihovog udruživanja. Budući da metropolitansko područje ima svoje strukture suradnje i zajednička tijela, razlikuje se od spajanja lokalnih jedinica u jednu veliku jedinicu te od drugih formi suradnje lokalnih jedinica. Portugalski zakonodavac je usvojio koncept metropolitanskog područja za Lisabon i Porto, dva najveća grada u zemlji. Nakon kraćeg povijesnog uvoda analizira se sustav ustanovljen 2008. Posebna je pažnja posvećena metropolitanskom području Lisabona koje se sastoji od 18 jedinica lokalne samouprave sa skoro 3 milijuna stanovnika. Metropolitanska područja u Portugalu imaju vlastita tijela: metropolitansku skupštinu, metropolitansko vijeće, izvršnu metropolitansku komisiju te savjetodavnu komisiju (fakultativno tijelo). Na kraju se kratko opisuju razlozi koji su doveli do novijih zakonodavnih rješenja o metropolitanskim područjima.

Ključne riječi: metropolitansko područje – Portugal, Lisabon i Porto, metropolitanska tijela, suradnja jedinica lokalne samouprave