

Portuguese Republic

(República Portuguesa)



Capital: Lisbon

Inhabitants: 10.584.344 (2006)

Area: 92.345 km²

1. Introduction



In Portugal, the expression «local autarchies» refers the set of local territorial communities that group three categories: parishes, municipalities, administrative regions.

The municipalities are the most relevant category of local autarchies and with more roots in Portugal, retracing their origin to the medieval time (12th and 13th centuries).

The liberal revolutions (19th century) promoted some reforms mainly in the municipal organization. There were extinct some municipalities due to the centralizing nature of those reforms, as well as, transforming the municipal agencies just in consulting agencies of the authorities nominated by the State.

The implementation of the First Republic in Portugal (20th century), the decentralization gains a new impulse, even if in a limited form, because of the still existence the magistrates nominated by the state, endowed of powers upon the municipal agencies.

The New Regime (20th century) promoted again new centralizing tendencies: the municipalities were subject to a strong administrative tutelage by the state; they did not dispose of own resources; also they were financed through subsidies and co-participations granted by the state; the mayor was no more elected, being now on governmental nominated agency.

The Revolution of April 1974 pointed out deliberately to decentralization, with a reinforcement of the local authority and elections by their citizens. The Constitution of the Portuguese Republic (CPR) of 1976 would grab, in this sense, the ideas defended by the revolution.

2. Legal and Constitutional Framework of the local autarchies

The substance respecting local autarchies is envisaged in more detail in the CPR.



From the first beginning, the CPR refers, in the nº.1 of the article 6 that the State is Unitarian and respects, in its organization, the principles of autonomy of the local autarchies and democratic decentralization of the public administration.

The title VIII of the section III, under the epigraph "Local Power", is entirely dedicated to local autarchies (articles 235 and followings of CPR). From the articles that refer to them, we point out:

- The concept of local autarchies: are defined as territorial collective entities, endowed of the representative agencies, which objective is to serve the interests of their population (article 235);
- The categories of local autarchies: are the parishes, the municipalities and the administrative regions (article 236);
- The existence of own competences: defined by law, in compliance with principle of administrative decentralization (article 237);
- The principle of financial and inheritance autonomy: the local autarchies have own inheritance and own finances (article 238);
- The existence of own agencies: the local autarchies dispose of a deliberative assembly and an executive agency (article 239);
- The acknowledgment of the normative power: within the limits of the CPR, the law and the regulations coming from the local autarchies of high level, as well as coming the authorities with tutelage power (article 241);
- The existence of own personnel: applying them the regimen of the personnel and States officers, with the necessary adaptations (article 243);
- Election of the agencies titular: through direct, secret and periodical universal suffrage, being the conversion of these votes into mandates done in compliance with the principle with the principle of proportional representation (article 239);

- The issues that have to do with local autarchies are from their competence of the Assembly of the Republic: the competence to legislate on local elections, the direct consults of the electing citizens at a local level and the regimen of territorial creation, extinction and change of the local autarchies are entirely competence of the Assembly of the Republic, therefore, the government cannot apply legislative delegation on it (article 164). Moreover, the statute of the local autarchies, the regimen of local finances and the participation of the inhabitant organizations in the exercise of local power constitute relative reserve of the legislative competence of the Assembly of the Republic. Nonetheless, the Assembly of the Republic may authorize the government to legislate in these issues (article 165);
- Subjection of the local autarchies to the administrative tutelage of legality: the State may just supervise the law accomplishment by the local autarchies agencies, exercising them in the situations foreseen by the law (article 242);
- The local power autonomy constitutes a material limit to the constitutional revising laws: the revising laws of the CPR must respect the direct, secret, periodical and universal suffrage for designating the electing personnel of the local autarchies agencies, as well as the local autarchies autonomy (article 288);

3. Legal Framework of the local autarchies

At the legal level, Portugal disposes, nowadays, of six main diplomas on local autarchies. Those are:

- a) Law 159/99, of September 14th: framework of transference of competences to local autarchies;
- b) Law 169/99, of September 18th: framework of competences and regimen of functioning of municipal



- and parishes' agencies, actualized by Law 5-A/2002, of January 11th;
- c) Law 27/96, of August 1st: juridical regimen for administrative tutelage over the local autarchies;
- d) Organic Law 1/2001, of August 14th: electoral law of the local autarchies agencies;
- e) Law 2/2007, of January 15th: local finances;
- f) Law 53-E/2006, of December 29th: general regimen on the taxation of the local autarchies.

4. Types of local autarchies

There exists in Portugal, as referred above, three categories of local autarchies: parishes, municipalities and administrative regions.

It does not exist any kind of hierarchy among the local autarchies. This fact does not mean that does not exist some articulation between them (and even systems of collaboration, namely between municipalities and parishes). The own CPR establish a hierarchy between the regulations introduced by the local autarchies (article 241), also foreseeing in the article 251, that the parishes' chairmen integrate the respective municipal assemblies. In the article 260, it is referred that the representative elements of the municipal assemblies' members are part of the regional assemblies.

4.1 Parishes

The parishes are infra-municipal local autarchies, hosted in the territory of each municipality, and follow the interests of the respective populations.

The parishes dispose of the following agencies:

- a) The Parish Assembly: representative and deliberative agency of

the inhabitants, whose respective members are directly elected by the citizens registered for voting in each of the parishes;

- b) The Parish Body: executive agency constituted by three members elected by the Parish Assembly (Indirect election system). The chairman of the parish body is always the element that heads the most voted list in the elections for the parish assembly.

The main attributions of parishes are the following ones:

- a) Responsible for electoral registration of its citizens; also it is in the parish services that all the processes and the electoral acts are developed;
- b) Carry out the administration of the parish goods and the ones under their jurisdiction (properties, public water, cemeteries, etc.) and public construction (public trails, etc.);
- c) To develop relevant actions in the areas of popular culture, social assistance and public health.

4.2 Municipalities

The municipality is, in all levels, the most important autarchy.

As like as the parishes, the municipalities are collective entities with public law, or even collective entities of population and territory.

The municipalities dispose of the following agencies:

- a) The municipal assembly: deliberative agency that functions as a municipal parliament. The municipal assembly is constituted by directly elected members and members by inheritance – the chairmen of the parish bodies -, but the number of directly elected members must not be less than the one of the chairmen of the parish bodies.



The municipal assembly approves the municipal regulations (for example, the municipal planning for territory ordering), and establishes taxes and fees.

- b) The city council is the municipal executive agency, in competence of the permanent management of municipal services and activities. Many laws progressively attributes a wide range of own competences (not only delegated) to the mayor, which is in the base of its consideration as municipal agency.

Due to the administrative decentralization, the municipalities dispose nowadays of many and relevant attributions as:

- Rural and urban equipment;
- Energy;
- Transports and communications;
- Education;
- Inheritance, culture, science;
- Free time and sport;
- Health; social action and housing;
- Civil Protection;
- Environment and basic sanitation;
- Consumer rights defense;
- Developing promotion;
- Territorial Ordering and urbanization;
- Foreign cooperation and urban police.

4.3 Administrative regions

The administrative regions are foreseen in the CPR (articles 255 and 262), although they are not specifically instituted. By force of the article 256 of CPR, the institution of the administrative regions depends on the favorable voting expressed by the majority of the citizens who pronounced in direct consulting, with national range and relative to each regional area, foreseen in the institution law of each administrative region. In the year 1998, a Referendum was done, which rejected the law of institution specifically for the administrative regions. Though, Portugal still does not have that category of local autarchy.

5. The democracy in the local autarchies

By imposition of the article 239, number 2, of CPR, the Municipal Assembly is elected by direct, secret and universal suffrage of the registered citizens in the area of the respective autarchy. But not all the members of the municipal parliament are directly elected by the electors, because the parish bodies' chairmen are part of it by inheritance. Therefore, it exist a mix system: the system of direct election by the citizens and the system of inherence. Now, with respect to the city council, the mayor and other members (superintendent) of this agency are directly elected by the citizens (article 239, number 3, of CPR). The mayor is the first candidate of the most voted list. The number of superintendent that compounds the city council varies depending in the dimension of the municipality. It should be referred that the applications for the elections of the local autarchies agencies can be presented by the political parties or citizens groups (article 239, number 4, of CPR).

The members of parish bodies are directly elected by the respective inhabitants, and parish bodies members are elected by that assembly. We may remark that in the parishes with 150 or less electing citizens does not exists election of the parish assembly, due to the few number of electors. The functions of this agency are directly exercised by the citizens congregated in plenary assembly of the electing citizens, which constitutes a genuine system of direct democracy.

Another way of the participation of the citizens in the life of the local autarchies is through the local referendum, where the citizens may pronounce directly on the issues respecting the local autarchies (article 240 of CRP).



6. Local autarchies in numbers

Currently, there are 308 municipalities in Portugal, of which 278 are in the continental territory and 30 in the Autonomous regions of Azores and Madeira. In the table above, we may check the evolution of the number of municipalities.

Table 1: Evolution of the number of municipalities

Years	1898	1950	1974	1996	2007
Continent	261	273	274	275	278
Azores	19	19	19	19	19
Madeira	10	11	11	11	11
Total	290	303	304	305	308

Portugal has 4.251 parishes, of which 4.047 are in the continental territory and 204 in the Autonomous regions of Azores and Madeira.

Table 2 – Evolution of the number of parishes

Years	1898	1950	1974	1996	2007
Continent	3739	3667	3835	4018	4047
Azores	126	134	141	149	150
Madeira	52	52	53	54	54
Total	3917	3853	4029	4221	4251

7. Indicators

7.1. Financial indicators

Respecting the financial situation of the local autarchies, we present the following statistic data on municipalities, taking as reference the year of 2005:

Table 3: Municipal Revenues (in €)

Taxes and fees	=	2.397.371.008
32,8%		
Property Rents	=	141.678.821
1,9%		
State Transfers	=	3.151.490.854
43,1%		
Sale of Goods and Services	=	641.910.094
8,8%		
Other current revenues	=	62.407.045
0,9%		
Sale of enduring goods	=	289.538.587
4,0%		
Financial Assets	=	37.434.095
0,5%		
Financial liabilities	=	342.979.891
4,7%		
Other capital revenues	=	56.626.247
0,8%		
Total	=	7.121.436.642
97,5%		

Table 4: Municipal Expenditures (in €)

Expenditure (employees)	=	1.950.049.626
28,3%		
Acquisition of goods and services	=	1.308.451.158
19,0%		
Interests and incumbencies	=	101.790.279,5
10%		
Transferences and subsidies	=	918.459.217
13,3%		
Other current expenditures	=	91.983.302
1,3%		
Acquisition of capital goods	=	2.128.215.554
30,9%		
Financial assets	=	68.593.167
1,0%		
Financial liabilities	=	303.787.786
4,4%		
Other capital expenditures	=	23.008.814
0,3%		
Total	=	6.894.338.902
100%		



The analysis of the financial indicators respecting the year of 2005 may show the following conclusions on the autonomy of the Portuguese municipalities:

Respecting the revenues, we may verify that the financial autonomy of the municipalities – own revenues and total revenues – varies between 90% (very high) and 3% (very low). While the big municipalities have a financial autonomy varying from 44% till 90%, the financial autonomy in smaller municipalities varies between the 3% and 67%.

The financial dependence of the municipalities in relation to the transferences of the state, is located between 10% and 94%. In the smallest municipalities, the transferences of the state represent in average, 69% of total revenues, in the biggest municipalities, the transferences of the state is, in average, 25% of the total revenues, and in the municipalities of median dimension represents 47% of their revenues.

It is important to refer the weight differential of some revenues, when analyzing small, median and big municipalities, specifically referring to the weight of taxes and fees (11,2% for small municipalities, 29,4% for median municipalities and 50,8% for big municipalities) and of transferences (66,9%, 45,5% and 24,8%, respectively).

Respecting expenditures, we verify differences in the weight in their components, when analyzing small, median and big municipalities. The major differences can be found in the topic acquisitions of capital goods: in the bigger municipalities is 24,5% and 36,4% of total expenditure for the smaller municipalities. The expenditures with employees constitutes, in average, 28,3% of all municipalities.

7.2. Indicators of personnel

Personnel serving local autarchies

Managers – 2 442

Technicians and others – 154 655*

The personnel serving local autarchies do not exceed 20% of total state officials in Portugal. The state employs almost 750.000 state officials.

*Does not include the personnel in regimen of individual labor contract.

8. Other forms of local organization

As it exists by the Constitution, local autarchies, there also exist inter-municipal cooperation entities, in matters of common interest to some municipalities, and that claim, more intensively, a treatment at a supra-municipal level: the **metropolitan areas** and **inter-municipal municipalities with public legality**.

The **metropolitan areas** are collective entities with public legality of associative nature and territorial area, that pursue the own interests of the population in the resident area of the integrant municipalities. Their statute is "association of municipalities of special type". The process of the concrete institution of the metropolitan areas depends on the favorable vote of the evolved municipal assemblies. Their attributions respect particularly the articulation of investments and municipal services with a supra-municipal area and the articulation of the activity of municipalities and state in certain domains.

The urban regions of Lisbon and Oporto are two areas with own administrative statute, having truly metropolitan lines from a territorial, economical and social overview.

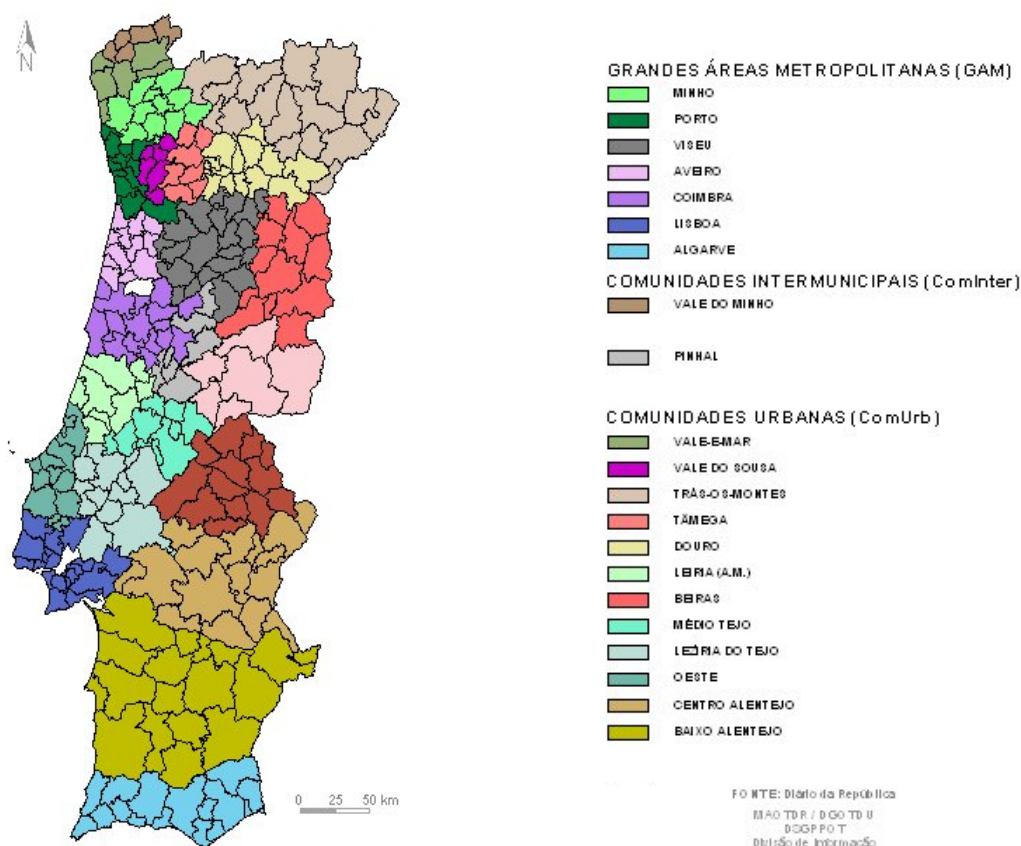


The current juridical regime for creation of metropolitan areas (Law 10/2003, of May 13th) distinguishes two types of entities, supposing that the integrated municipalities are connected by a nix of territorial continuity:

- a) Big metropolitan areas: minimum of 9 municipalities, with, at least, 350 00 inhabitants;
- b) Urban Communities: minimum of 3 municipalities, with, at least, 150 000 inhabitants.

The metropolitan areas of Lisbon and Oporto exist since 1991. Another 5 metropolitan areas were created recently, along with 12 urban communities and 2 inter-municipal communities in the continental Portuguese territory.

Figure 1- Metropolitan Areas



The regime of creation of the inter-municipal communities with public legality is established by the Law 11/2003, of May 13th, and distinguishes 2 types of entities:

- a) Inter-municipal Communities with general purposes, in which the integrating municipalities are connected by a nix of territorial contiguity;
- b) Associations of municipalities with specific purposes.

The Associations of municipalities with specific purposes are collective entities with public legality created by 2 or more municipalities for pursuing common interests. These associations are subject to the regime of administrative tutelage of local autarchies. There exist also Associations of parishes with specific purposes. With respect to the associations of municipalities, for the year 2001, there exist 71 in the country, and just 2 associations of parishes.



9. Constitutional principles of the local autarchies

These principles constitute simultaneously a projection and a guarantee of one and other structuring principle in this matter – precisely, the principle of local autonomy.

9.1. Principle of administrative decentralization

In the terms of the article 237 of the CPR, the organization and attributions of local autarchies, as well as the competences of their agencies, are regulated by law, harmonizing with the principle of administrative decentralization.

Joining this article of CPR with other precepts, namely the article 235, which establishes that the democratic organization of Portuguese State understands the existence of local autarchies, resulting in a formal recognizing that the local autarchies have constitutional existence and this existence is inherent to its autonomy from the state (principle of local autonomy). This means that the local autarchies are different and separated entities from the state, pursuing their purposes and developing their activities without the state agencies stepping in. This characteristic of the local autarchies is defined by the idea of **auto-administration**. This evolves the power of autonomous management of the local autarchies through their agencies. The management can be done by elaboration and approval of the regulations (normative autonomy) and by the practice of administrative acts without subjection to any way of hierarchy or orientation of the state.

But the principle of administrative decentralization has also other dimensions. It constitutes a limit to the ordinary legislator, in the sense that this cannot by law transfer own interests of local

autarchies to the state. If he does that, it would be unconstitutional by violating the principle of decentralization and local autonomy. By other way, that principle imposes that the ordinary legislator proceeds to the transference of attributions and tasks to local autarchies. The CPR does not identify which tasks should be transferred to the local autarchies, except the matter respecting territorial ordering and urbanism (article 65, number 4). This means that CPR gives the ordinary legislator, the freedom for defining those tasks. Since the first beginning, the rule of the CPR is public tasks decentralization to the local autarchies and the exception is the concentration or centralization of the attributions to the state.

This dimension of the principle of administrative administration is reinforced with the association with another fundamental principle – the **principle of subsidiarity**. This principle impose the legislator the duty to reserve, to the state, only those matters that the local autarchies are not in conditions of pursuing.

Nonetheless, exist matters that co-evolve simultaneously state and local interests and because of that constitute a joining place of attributions of state and local autarchies, as happening in the matters of territorial ordering and urbanism.

Referring to the principle of decentralization, the local autarchies (including the administrative regions) do not match with the Autonomous Regions of Azores and Madeira. The local autarchies just have administrative decentralization; meanwhile the Autonomous Regions of Azores and Madeira have political and administrative decentralization (articles 225 and 226 of the CPR).

Effectively, the Autonomous Regions dispose, by force of the CPR, a specifically political-administrative statute, and



government agencies (article 231 of CPR) and own legislative powers, which they exercise through their legislative assemblies (articles 227, 228, 232; article 112, number 1 and 4, of CPR).

9.2. Principle of financial autonomy

The financial autonomy of local autarchies is expressively foreseen in the CPR, as written in the article 238 – “the local autarchies have their own inherence and finances”, who’s “revenues include the proveniences of their inherence management and the fees paid by the using of their services”. Also the local autarchies can “dispose of the taxing powers, in the cases and foreseen terms by the law”.

But still financial autonomy does not mean just the power of disposing own revenues.

In first place, it requires that autarchies have the freedom to define the destiny of their revenues and to do their expenditures (for example, the legislator is constitutionally blocked to establish that certain local autarchies revenues should be connected to certain expenditures).

In second place, financial autonomy also implies that local autarchies have powers to elaborate, approve, change and execute the own budgets and the activity planning and, in the same way, to elaborate and approve the respective accounting.

One of the main aspects of the financial autonomy of local autarchies is the domain of fiscal revenues. In the terms of the Law 2/2007, of January 15th (Law of Local Finances), local autarchies collect revenues of the following taxes: municipal tax on properties, municipal tax on revenues of properties transmissions, municipal tax on vehicles.

They also dispose the power of creating taxes, in the terms of general regime of taxes of the local autarchies (Law 53-E/2006, of December 29th). The most important are, without any doubt, the urbanization taxes that group the taxes on creation, maintaining and reinforcement of urbanization infrastructure, the urbanization compensation, namely the taxes on positive approval on construction, on urbanization construction and on execution of private construction.

10. Local autarchies and organization of the Portuguese Public Administration:

In the context of the organization of the Public Administration in Portugal, the article 235 of the CPR inserts the local autarchies in a specific sector of the Public Administration – namely in the autonomous public administration sector.

This framework of the local autarchies in the autonomous administration has consequences at the level of inter-subjective relationship with the state administration. The relationship between the local autarchies and the state is just of administrative tutelage, as imposed by the CPR in the article 242. The state does not have hierarchical power on the local autarchies. The administrative tutelage is just of legality and not merit. The Law 27/96, of August 1st attains that CPR precept: the state just monitors the accomplishment of the law by the local autarchies. And if in the inspection actions are verified irregularities done by the local autarchies agencies, the state does not have the power of dissolving or dismiss them. This power only can attribute to the courts; having the Public Ministry the power to open legal actions of lost of mandate or dissolution of local autarchies agencies.



Respecting the exercise the power of tutelage on the local autarchies, the state dispose of a agency in each district, designed Civil Governor, who must give information to the state of the irregularities committed on laws, rules and administrative acts by the autarchic agencies. The possibility of extinguishing this state agency has been put on the table, but, in this moment, is not possible to affirm that this can succeed.

11. Local entrepreneurial sector

Finally, it is convenient to make reference of another aspect that is related to local autarchies autonomy. This aspect is the power to create municipal and inter-municipal enterprises.

Some of those enterprises result of the transformation of the traditional municipal services, like clean water, energy, urban transportation, etc.

In Portugal, there exist a high number of municipal enterprises. This fact reveals a clear tendency to create enterprises to serve the local public services, which has been taking to the creation of a new Local Public Administration – the Local Public Administration -, aside the classical local Public Administration, generally constituted by the municipal services.

The local entrepreneurial sector joins certain firm categories: metropolitan, inter-municipal, and municipal firms. Its juridical regime is referred by the Law 53-F/2006, of December 29th.

These firms assume differentiate qualifications, in function of their social purpose. Following this criteria, we have:

- a) Firms in charge of managing services of general interest, whose activities is to ensure the universality and

continuity of the services, the satisfaction of the basic needs of the citizens, the economic and social cohesion at a local or regional level and the consumer's protection;

- b) Firms in charge of the promotion of local and regional development, whose activities must ensure the promotion of the local and regional economical growing, removing asymmetries and reinforcement of the economic and social cohesion at a local and regional level, inserting all those that have by purpose the promotion, maintaining and conservation of urbanization infrastructures and urban management, the urban renovation and rehabilitation, the management of the edified inherence and promotion of rural and urban development, the promotion and management of collective equipment and providing education, cultural, health services and others;
- c) Firms in charge of managing concessions: firms that have the purpose of managing the concessions attributed buy public entities, through the celebration of contract that defines the rights and duties of the public entity and concessionary firm.

The constitution of firms by the municipalities provokes that many of local public services are, nowadays, directly managed by these firms and not by the municipal services. This happens with the management of municipal services of clean water distribution to the population, management of urban transports, municipal waste treatment and collection, etc.



12. Conclusion

In Portugal, the local autarchies constitute a historical inherence. The tendency is to widen the local autarchies role in wider range of domains and activity sectors (urbanism and territorial ordering, environment, health, education, social assistance, infrastructures, etc.). The decentralization and subsidiarity of the state to the local autarchies constitute the structural principles of this evolution.

Another tendency has to do with the reinforcement of the Commissions of Coordination and Regional Development that constitute decentralized organism of the state, with relevant functions in the domains of territorial ordering, support and planning of local autarchies. Currently, exist 5 commissions distributed as follows: Commission of Coordination and Regional Development of the North (CCRD North); Commission of Coordination and Regional Development of the Centre (CCRD Center); Commission of Coordination and Regional Development of Lisbon and Tagus Valley (CCRD LTV); Commission of Coordination and Regional Development of Alentejo (CCRD Alentejo); Commission of Coordination and Regional Development of Algarve (CCRD Algarve).

This means that the country territorial organization tends to proceed in a way of defining the regional development areas — and probably, the creation of «administrative regions» — similar with the intervention area of those commissions, whose geographical area corresponds to the level II of Nomenclature of the Territorial Units for Statistical Purposes (NUTS), created through the regional policy of the European Union.

**Prof. Fernando Alves Correia,
Licio Lopes Martins
University of Coimbra**