

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

Strasbourg, 13 November 2018

CDDG(2018)3  
Item 6.1 of the agenda

**EUROPEAN COMMITTEE ON DEMOCRACY AND GOVERNANCE  
(CDDG)**

**REVISION OF COMMITTEE OF MINISTERS' RECOMMENDATION  
R (98) 12 ON SUPERVISION OF LOCAL AUTHORITIES' ACTION**

**Draft text prepared by the working group and  
reviewed by the CDDG Bureau at its meeting on  
19 October 2018**

**For discussion and adoption**

Secretariat Memorandum  
prepared by the  
Directorate General of Democracy  
Democratic Governance Department

---

*This document is public. It will not be distributed at the meeting. Please bring this copy.  
Ce document est public. Il ne sera pas distribué en réunion. Prière de vous munir de cet exemplaire.*

**RECOMMENDATION \*\*\*  
OF THE COMMITTEE OF MINISTERS TO MEMBER STATES  
ON SUPERVISION OF LOCAL AUTHORITIES' ACTIVITIES**

*(Adopted by the Committee of Ministers on \*\*\*  
at the \*\*\* meeting of the Ministers' Deputies)*

The Committee of Ministers, having regard to Article 15.b of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage, and to foster their economic and social progress;

Considering that, when local authorities have, as provided for by Article 3, paragraph 1, of the European Charter of Local Self-Government (hereinafter referred to as "the Charter") "the right and the ability ..., within the limits of the law, to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population", these authorities are accountable to the citizens and the State authorities as provided by law;

Considering that, as provided for by Article 4, paragraph 3, of the Charter: "public responsibilities shall generally be exercised, in preference, by those authorities that are closest to the citizen.";

Considering that compliance with the principles of the rule of law and with the defined roles of various public authorities, as well as the protection of citizens' rights and the effective management of public property, justify the existence of appropriate supervision;

Considering that the principles enshrined in Article 8 of the Charter concern primarily supervision of local authorities' activities;

Considering that the financial situation of local authorities constitutes a major concern in most countries and that therefore, supervision relating to financial activities takes on greater importance;

Considering that the nature and scope of supervision on local authorities' activities must normally be differentiated depending on whether they are tasks implemented on behalf of superior authorities or acts within their own competencies;

Considering that clarity in local self-government statutes, in particular in the definition of competencies and procedures, is an essential condition for good governance and for appropriate supervision over local authorities' activities;

Considering that transparency is the best guarantee that public authorities carry out their activities in the interests of the community, that it is an essential pre-requisite for effective democratic supervision;

Considering that supervision is an important aspect of the relations between the State and local self-government;

Considering that the experience of many member States illustrates the need to ensure that the systems of supervision are organised in a way that guarantees, in accordance with the Charter, both their efficiency and the preservation of a "wide degree of autonomy with regard to [local authorities'] responsibilities, the ways and means by which those responsibilities are exercised and the resources required for their fulfilment";

Considering that, in accordance with Article 7.1 of the Charter, sanctions concerning local authorities' representatives (suspension or dismissal of local elected representatives and dissolution of local bodies, fines) should be exceptional and only when the functioning of the institution is hindered;

Considering that under Article 11 of the Charter, "local authorities shall have the right of recourse to a judicial remedy in order to secure free exercise of their powers", which implies the possibility of recourse against improper exercise of supervisory powers;

Having regard to:

- The European Charter of Local Self-Government (ETS No. 122);
- The Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207);
- The Council of Europe Convention on Access to Official Documents (CETS no. 205);
- Recommendation CM/Rec(2018)4 of the Committee of Ministers to member States on the participation of citizens in local public life and the Guidelines for civil participation in political decision making;
- The Valencia Declaration and the Strategy on Innovation and Good Governance at local level, including the 12 Principles of Good Democratic Governance;
- Recommendation 395(2017) of the Congress of Local and Regional Authorities of Europe on Recurring issues based on assessments resulting from Congress monitoring and election observations missions in relation to the implementation of the European Charter of Local Self-Government;

Recommends to the governments of member states that they undertake the tasks set out in articles 1. and 2. below or entrust these tasks to the competent public authorities taking into account their respective constitutional or legislative arrangements.

1. To adopt, having regard to the guidelines set out in the appendix hereto, appropriate measures:

- to apply the principles enshrined in Article 8 of the Charter in relation to administrative supervision to all forms of supervision of local authorities' activities;

- to put in place an appropriate legal, institutional and regulatory framework for supervision of local authorities' activities which is
    - proportionate, in law and in practice, to the interests which it is intended to protect, and
    - in line with Council of Europe standards, in particular the Charter and the 12 Principles of Good Democratic Governance;
  - to foster the role of democratic supervision by citizens including by promoting a vibrant local democracy;
  - to provide that the consequences of supervision be the maintenance or, as necessary, the restoration of legality or sound finances;
  - to ensure the free exercise of local electoral mandates;
  - to encourage local self-governments to create internal control procedures and services that will reduce the risks of errors and litigation and facilitate the relations with external control authorities;
  - to create appropriate conditions so that those responsible for supervision may advise local authorities, if required by them, on legal, financial and administrative matters.
2. To periodically review the measures adopted and undertake legislative reforms as needed to improve the effectiveness of the systems of supervision and their consistency with the principle of subsidiarity and, in doing so, have regard to issues raised as a result of monitoring and election observations missions by the Congress of local and regional authorities of the Council of Europe in relation to the implementation of the European Charter of Local Self-Government.

## **Appendix to Recommendation \*\*\***

### *Guidelines on the improvement of the systems of supervision of local authorities' activities*

For the purpose of this recommendation, the terms 'supervision' and 'activities' shall be understood as having the same meaning as that in the European Charter of Local Self-Government ("the Charter"):

#### **I. Principles of supervision**

1. Principles enshrined in Article 8 of the Charter in relation to administrative supervision are:
  - i. The principle of legality: Article 8.1 states "Any administrative supervision of local authorities may only be exercised according to such procedures and in such cases as are provided for by the constitution or by statute". Accordingly, supervision, its scope, procedures and consequences should/are to be as provided by law;
  - ii. The principle of proportionality: Article 8.3 states "Administrative supervision of local authorities shall be exercised in such a way as to ensure that the intervention of the controlling authority is kept in proportion to the importance of the interests which it is intended to protect". Accordingly, supervision should be restricted so as to reflect the importance of the interests to be protected.
  
2. Application of these principles should, in every aspect, respect the concept of self-government as set out in Article 3 of the Charter and distinguish between own and delegated competencies where these have the meaning set out below:.

Own competencies; In accordance with Article 4.4 of the Charter, "Powers given to local authorities shall normally be full and exclusive".

Delegated competencies; as provided for by Article 4.5 of the Charter, "Where powers are delegated to them by a central or regional authority, local authorities shall, insofar as possible, be allowed discretion in adapting their exercise to local conditions".

3. Since supervision of local authorities' activities is an important factor in conducting public policies and managing financial resources, it should also take into account the 12 Principles of Good Democratic Governance. Of these principles, the following have particular relevance for the supervision:
  - i. Openness and transparency: which ensures public access to information on decisions and implementation of policies allowing authorities and the public to follow and contribute to the work of the local authority;
  - ii. Rule of Law: which ensures that authorities abide by the law and judicial decisions and rules and regulations are adopted, and impartially enforced, in accordance with procedures as provided for by law;

- iii. Competence and capacity: which ensures that professional skills of those who deliver governance are continuously maintained and strengthened;
- iv. Sound Financial Management: which ensures that prudence is observed in financial management and that risks are properly assessed and managed;
- v. Accountability: which ensures that all decision-makers, collective and individual, take responsibility for their decisions which are reported on, explained and can be sanctioned and that effective remedies are in place against maladministration.

## **II. Aims and framework of supervision**

1. The aims of supervision ultimately are ensuring the effectiveness of local self-government and the efficient management of public resources, including the management of finance and public property. This involves the protection of the rights of citizens.
2. The nature and scope of supervision over local authorities' activities should be defined by law depending on whether they relate to responsibilities carried out within their own competencies or implemented on behalf of central or regional authorities.
3. A distinction should be made between three different types of supervision:
  - Administrative supervision;
  - Financial supervision;
  - Democratic supervision.
4. In relation to administrative and financial supervision, the law or regulatory texts, in as far as possible, should clearly define a general supervisory authority and the authorities and bodies responsible for supervision of delegated competencies, as well as their remit in order to avoid duplication and major gaps in the supervision system or uncertainty over which authority is responsible for carrying out any particular supervision.
5. The framework of supervision should ensure the expertise of those responsible for administrative or financial supervision and that their activity is carried out efficiently, professionally and impartially.

## **III. Types of supervision and their scope**

### ***Administrative supervision***

1. As provided for by Article 8.2 of the Charter, "Any administrative supervision of the activities of the local authorities shall normally aim only at ensuring compliance with the law and with constitutional principles. Administrative supervision may however be exercised with regard to expediency by higher-level authorities in respect of tasks the execution of which is delegated to local authorities".

2. It may be undertaken by a supervisory authority appointed by a state authority. It can consider clearly defined activities of local authorities, in order to verify their legality. The supervisory authority can also consider or take action in relation to a legally required activity or, in the case of delegated competencies, required otherwise, which was not undertaken.

3. On this basis, the following should apply to administrative supervision:

- i. The activities subject to supervision should be clearly specified by law;
- ii. Compulsory automatic (ex officio) administrative supervision, where the supervisory authority has an obligation to systematically verify legality, should be limited to activities of certain significance, in conformity with the principle of proportionality.
- iii. Administrative supervision, in particular in respect of own competences, should normally take place after the exercise of the competencies (a posteriori).
- iv. *A priori* administrative supervision, where the involvement of a supervisory authority is necessary for a local decision to take effect or be valid, should be kept to a minimum and normally be reserved for delegated competences;
- v. The law should define the time limit or period granted for the supervisory authority to perform the supervision or require that this be done within a reasonable time;
- vi. In the case of a priori supervision, absence of a decision by the supervisory authority within a specified time should mean that the activity foreseen may take effect.

4. It is recommended

- to establish, within the legal framework, a methodology of supervision which should generally be available to the authority subject to supervision, in order to harmonise and improve the practice of supervision, offering certainty and transparency to local self-governments, and

- to also make information on the framework and generally applicable methodology of supervision easily accessible to the public in line with the relevant Council of Europe conventions and other international obligations.

### ***Financial supervision***

5. Financial supervision is distinct from administrative supervision of financial acts and has the aim of considering the local authority's financial position, records, accounts and arrangements. It may be undertaken with the aim of fostering good accounting practices, the effectiveness of management, prevent financial imbalances or to monitor financial rehabilitation of local authorities which encounter financial difficulties.

6. Financial, accountancy or management audits as well as evaluation of value for money should normally be undertaken by public authorities or by auditors appointed in accordance with the law, in coordination with or by a decision of the local authority concerned.

7. Observations following financial supervision could be made public to give effectiveness to the principle of transparency.

8. Financial supervision should not bring into question the policy aims of local elected representatives within the limits of their functions.

### ***Democratic supervision***

9. Democratic supervision by citizens is their ability to hold to account and influence decision takers; it necessarily requires citizens to have access to appropriate information and for there to be appropriate transparency of the decision making process.

10. Means for citizens to exercise democratic supervision may include elections, referenda, popular initiatives and various forms of participation, both direct and indirect.

11. Citizens should have the right to have their say in major decisions entailing long-term commitments or choices which are difficult to reverse and which concern them as recognised in the relevant Council of Europe instruments.

12. Recognising therefore the importance and value of this form of supervision, the law should facilitate its effective implementation by following the provisions, guidance and recommendations set out in those instruments.

13. Citizens should also have the right to contest decisions of public authorities by administrative or judicial procedures.

14. Strengthening the role of the independent bodies, such as ombudsmen and mediators, in matters related to local self-governments' activities may help to reduce the cases of litigation and facilitate access of citizens to more convenient procedures.

15. Democratic supervision may also take the form of supervision by elected persons, especially members of local councils, who can use their power to contest activities of local authorities including in financial matters, which they consider to be in violation of the law.

#### **IV. Mechanisms complementary to supervision**

1. Experience and best practice in member States shows that administrative and financial supervision should be complemented by:
  - strengthening the dialogue between central and local authorities;
  - developing internal mechanisms of supervision for informing and improving decisions taken by the local authorities;
  - facilitating the provision of advice and assistance by state authorities, including by supervisory bodies.

#### **V. Consequences of supervision**

1. In the event errors, illegalities or omissions, by action or inaction, are identified in relation to own competencies, redress should normally be sought by inviting the local authority to review its decision or by referral of the matter to the competent Court in accordance with the constitutional and legal provisions in force.
2. In the case of delegated competencies, procedures for redress by the delegating or supervisory authority may include issuing an advisory statement, requesting the modification, reversal, suspension or annulment of the decision or activity; substitution or coercive measures as allowed by law; annulment of activities should be kept to a minimum.
3. Where the legal framework on supervision provides for a matter to be referred to a Court for it to determine an issue, the law should ensure that the standards relating to the judiciary and judicial procedures of the Council of Europe are respected as well as the principles of autonomy of local self-government.
4. If, in exceptional circumstances, provisions foresee for a Court to take on a supervisory role, any such provision for the Court to have a role of substitution of the supervisory authority should be proportional and without prejudice to the principle of local self-government as set out in the Charter.

#### **VI. Effective recourse against decisions of the supervisory authority**

1. In accordance with Article 11 of the Charter, the law should provide the possibility of effective recourse to judicial remedies against improper exercise of supervisory powers.