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Study on the democratic accountability of elected representatives and elected bodies at local and regional level

Prepared in the context of the CDDG's work on a draft
Recommendation of the Committee of Ministers on this subject

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STATUS OF THE COUNCIL OF EUROPE'S TERMS AND WORK

1. As part of its work, the European Committee on Democracy and Governance has been asked to prepare a draft Recommendation of the Committee of Ministers to member States on mechanisms for the democratic accountability of elected representatives and elected bodies at local and regional level.
2. This effort follows on from various Council of Europe initiatives on the subject, in a context of growing mistrust among citizens throughout Europe regarding the functioning of their democracies.
3. Democracy has been established in Europe in the form of representative democracy. Nonetheless, it is inadequate to say that all this requires is the designation of a set of elected officials who are entrusted, for the duration of their mandate, with managing public affairs. At the heart of the post-war liberal project of democracy lies also, indeed, the commitment to maintaining the link between power and responsibility, which requires the implementation of a simple principle: those who have power must account for their action.
4. As simple as the principle may be, its implementation is actually fairly complex. While giving accounts is an essential democratic imperative for an elected official, the operation of this principle faces many questions that are difficult to resolve:
 - who is accountable?
 - to whom?
 - for what purpose?
 - according to what procedures?
 - in what time frame?
 - for what types of facts or outcomes?
 - according to what principled framework of control?
 - with which consequences?
5. Moreover, there are more specific questions about the extent to which forms of accountability can coexist with the principle of representative democracy - that is, to put it more clearly, the question of when accountability mechanisms lead to forms of imperative or quasi-imperative mandate that subvert or destroy the representative dimension that has been integral to European democracies on both a local and regional scale.
6. In addition to the great intrinsic difficulty of all these issues, the plurality of the rights, practices and traditions of the countries making up the Council of Europe makes it difficult, if not impossible, to define a single framework for prescribing the forms of accountability of elected representatives and elected bodies at local level. The implementation of a recommendation in this area must take the form of defining a general framework that establishes the need for accountability mechanisms and lays down basic principles that should govern accountability.

7. The present study aims to illustrate some lines of interpretation of various accountability mechanisms, informed by the individual experiences of various Council of Europe countries. Its purpose is to underline, as a background to the Recommendation, a few key points that will facilitate the reader's understanding of the issues, mechanisms and purposes of the accountability mechanisms for elected representatives and bodies at local and regional level. The meaning and scope of the Recommendation can thus be strengthened by reading this report which, while it does not claim to be exhaustive or to provide an indisputable reading or complete typology of accountability mechanisms at the local and regional level, nevertheless endeavours to offer the reader an analytical and systematic framework through which the major issues of the question can be highlighted.

1. Circumscribing the scope and defining the terms of the study

8. This study has accompanied the drafting of a Recommendation of the Committee of Ministers on the democratic accountability of elected representatives and elected bodies at local and regional level.
9. Whereas in English the term "accountability" does not raise particular issues with regard to its meaning and thus the scope and expected content of a text on this subject-matter, the equivalent term "responsabilité" which is commonly used in French (and which was used by the terms of reference of the CDDG Committee to designate the work to be done in this field) appeared to be too narrow. In French, the term "redevabilité" was thus preferred as it was more attractive and better able to synthesise different pertinent mechanisms into a single project. As will be shown, responsibility mechanisms *in the strict sense* of the term are, thus a specific form of accountability.

1.1 Democratic accountability

10. Democratic accountability is defined by the draft Recommendation as the condition of "*being willing and able to take responsibility for one's decisions, to report on and explain those decisions and to be prepared to be examined on those decisions, and to accept any proportionate sanction against inappropriate decisions or omissions*". This means that an elected official or a representative body of a community, or a community itself accounts for his/her/its activities and accepts the consequences that the law provides for the occurrence of certain facts or situations. Accountability thus constitutes the expression of this liberal democratic requirement: that the power of an elected official is a position of trust accorded to him/her by the community and that the community retains the right to hold him/her to account for the actions taken in office. This accountability has long been thought of in terms of a 'simple' legal responsibility, but it is clear that such an approach fails to reflect the many forms that the requirement for accountability of the elected official or the elective body can take.

11. In fact, alongside legal responsibility (i.e. liability) in the *strict sense*, which tends to seek financial or criminal condemnation of a legally defined fault, other ways of rendering accounts exist that participate in one and the same democratic requirement, making their synthesis possible. In addition to legal accountability, it is possible to link forms of political accountability (before superior or subordinate bodies or directly or indirectly to voters) and managerial accountability (in administrative and financial matters), all of which can contribute to fulfilling the same accountability requirement by making possible and providing a framework for forms of democratic control of the actions of elected officials and bodies.
12. The term "democratic accountability", conceived as a basic and general objective of rendering accounts, is thus thought to be resolutely attractive in that its purpose is to bring together, in a single approach, mechanisms that one might tend to separate in that they do not *a priori* grasp the same types of facts, do not mobilise the action of the same actors, or do not *a priori* have the same perimeter of requirement. By attempting to understand these different mechanisms as working towards the same requirement of transparency and democratic control, the term 'democratic accountability' is intended to demonstrate the need to think transversally, in the interest of democratic requirements, about the different tools that enable the control of elected officials or elected bodies.
13. Thought of as a "principle" by the Recommendation, and therefore as a general objective whose pursuit must produce practical effects, democratic accountability translates concretely into the implementation of a varied and adaptable range of legal and institutional solutions aimed at guaranteeing that elected officials and bodies "take responsibility for their decisions" according to a framework that is demanding but is also proportionate to the need to protect the proper functioning of the logics of representative democracy.
14. With particular regard to the "democratic" nature of accountability, the adjective also gave rise to some hesitation at the beginning of the work as to its consequences for the scope of the work. However, it was quite quickly clear that the CDDG should not be limited to mechanisms inspired by direct democracy that bring decision-makers and elected bodies into direct interaction with voters, and can ultimately culminate with the recall or dismissal of the former by the latter. The questionnaire used to collect information from countries thus sought to cover the widest possible range of mechanisms for holding the persons and bodies concerned to account for their action.
15. What prevails in the democratic nature of accountability mechanisms is the taking into account of the democratic achievements made by the Council of Europe and its various working bodies. The general idea behind it is the search for a balance between:
 - on the one hand, the requirements of sufficient and effective accountability, as provided for in particular by the twelfth of the 12 Principles on Good Democratic Governance (see paragraph 39 below), and

- on the other hand, the need to be able to draw conclusions – if necessary – from the action, inaction, conduct in bad faith etc. of the elected decision-makers and bodies, in the sense of preserving the functioning (democratic and effective) of the institutions while avoiding interference or insufficient guarantees in the objective and fair treatment of a given situation.

1.2 Local and regional elected officials and bodies

16. The annex to the draft Recommendation refers to the addressees of forms of democratic accountability as:
 - *"those elected directly or indirectly by the people of a geographic unit to represent them. This includes those selected by other elected representatives to hold an office within a local or regional authority and/or its executive organ (including a councillor, mayor, leader, provost etc)";*
 - *"bodies composed exclusively or mainly of elected representatives, including an authority's assembly and/or its executive organ and any sub-committee of that assembly /executive organ (including councils, municipalities and municipal districts, territorial units, counties, regions, provinces etc)".*
17. By these definitions, the Recommendation intends first of all to conceive the mechanisms of democratic accountability in the most general way possible, by targeting elected officials in their individual capacity (personal accountability), but also elective bodies (organic accountability). The aim is to give the Recommendation the widest possible scope by adapting it to the numerous and variable political combinations that give life to local and regional action. The Recommendation is thus intended to target all elected representatives, whether their function is deliberative or executive, and to ensure that the accountability mechanisms the person or body is subject to are appropriate to the legal or material act that is subject to accountability.
18. Secondly, the Recommendation aims to cover all sub-national communities, whether they are located at local level - a term that most often designates sub-regional authorities - or at regional level. In this respect, the Recommendation thus assumes a certain transversality, which is justified by the fact that the issues motivating the implementation of accountability mechanisms, do not differ fundamentally according to the specific geographical level at which power is exercised.

2. State of work of the Council of Europe

19. Although democratic accountability, as defined above, has not yet been the subject of a specific and general text within the Council of Europe, it appears that many sources refer either to its objective or to some of its modalities, so that the draft Recommendation is part of a certain logical continuity, the general progression of which should be outlined.

2.1 Conventional sources

- 2.1.1 The European Charter of Local Self-Government and the establishment of a useful basis for the implementation of democratic accountability

20. The [European Charter of Local Self-Government \(CETS 122\)](#) of 15 October 1985 contains a number of principles and objectives relating to accountability mechanisms. Accountability has not been the subject of specific provisions or enshrined as a treaty requirement. Nonetheless, it is possible to combine some of its provisions and to outline a framework for accountability at the local and regional level, with the Charter defining the need for, and constraints on that framework.
21. From a needs perspective, the preamble to the Charter enshrines a "*right of citizens to participate in the conduct of public affairs*", which was clarified in the *additional protocol on the right to participate in the affairs of local authorities* of 19 November 2009 (see below). Article 3 of the Charter also states that local self-government "*denotes the right and the ability of local authorities, 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*", without, however, specifying the conditions of this responsibility or defining precisely to whom it is addressed.
22. From the point of view of constraints, Article 7 of the Charter states that "*the conditions of office of local elected representatives shall provide for free exercise of their functions*", thus affirming the independence of elected representatives at local level vis-à-vis central government but also, in a way, its commitment to seeing the logic of representative democracy preserved. In Article 8, which is devoted to the mechanisms of administrative control of local authority acts, the Charter also lays down some very useful general boundaries for control mechanisms by stipulating that they must be established by the Constitution or by law, "*shall normally aim only at ensuring compliance with the law and with constitutional principles*" and must "*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*". Although these provisions are aimed at a different kind of control than the one intended by the draft Recommendation contain elements of implementation that can be transposed, as will be emphasised below.

23. Following the general principles laid down by the Charter, several other texts have specified conditions for democratic accountability by establishing, in particular, a genuine right to citizen participation and a right of access to public documents.

2.1.2 Conventional recognition of the right to participate in local government affairs

24. The right to participate in the affairs of local authorities, after being provided for in the preamble to the Charter, was the subject of an [additional Protocol on the right to participate in the affairs of a local authority \(CETS No. 207\)](#) signed in Utrecht on 19 November 2009. Article 1 of this text presents the right to participation as the right *"to seek to determine or to influence the exercise of a local authority's powers and responsibilities"*. To be facilitated by legislative measures, this right includes the right *"to participate, as voters or candidates, in the election of members of the council or assembly of the local authority"* but it is not limited to this dimension. Article 2 provides for a number of complementary measures, including *"procedures for involving people which may include consultative processes, local referendums and petitions and, where the local authority has many inhabitants and/or covers a large geographical area, measures to involve people at a level close to them"*. The text conceives local democracy as involving mechanisms to enable the direct participation of citizens in local decisions, in addition to the periodic election of councils and bodies.
25. This vision is reinforced by the implementation, in the same article, of an objective of transparency aimed at establishing procedures for access to *"public documents held by local authorities"* and the implementation of *"mechanisms and procedures for dealing with and responding to complaints and suggestions regarding the functioning of local authorities and local public services"*. These two objectives go well beyond the simple consultation of citizens, insofar as they pave the way for the implementation of a critical analysis of local decisions by guaranteeing access to public information concerning them and by opening the way to logics of 'complaints' and 'suggestions' that are clearly close to the logics of democratic accountability.
26. It thus appears that, through the clarifications it has made to the objectives set out in the Charter, the additional protocol of 19 November 2009 has laid a useful conventional foundation for the further development of the principle and procedures of democratic accountability.

2.1.3 Conventional recognition of the right of access to public documents

27. Signed in Tromsø on 18 June 2009, [the Convention on Access to Official Documents \(CETS 205\)](#) enshrined a general right of access to official documents based on the objective of transparency, which is itself essential to any "*pluralist democratic society*". To this end, the preamble of the text recalls that the exercise of this right is intended to allow the public to have access to sources of information through which it can "*form an opinion on the state of society and on the public authorities*". At the same time, it seeks to promote "*the integrity, proper functioning, efficiency and accountability of public authorities, thereby contributing to their legitimacy*". In the same vein as the additional protocol to the Charter mentioned above, this text seeks to impose on public authorities, which are expressly responsible for "government and administration at national, regional and local level" (Article¹), the obligation to guarantee "*any person, without discrimination of any kind, the right of access, on request, to official documents held by public authorities*" (Article 2). The obligation covers "*all information recorded in any form, drawn up or received and held by public authorities*". Exceptions to this right are limited to a number of legitimate reasons.
28. The right of access to public documents, insofar as it constitutes a tool for the transparency of public action, is an essential precondition for the implementation of any democratic accountability procedure. At the same time by allowing citizens to be informed about public decisions and the conditions under which they are made, it ensures that accountability mechanisms are to be based on tangible factual elements that can be verified by all. In this respect, it appears that the *Convention on Access to Official Documents* provides a valuable basis in Council of Europe treaty law for the implementation of the objectives of the draft Recommendation.

2.2 The Recommendations

29. While the conventional sources, with the enshrinement of the right to participate in local affairs and the right of access to public documents, have laid the foundations for the logic of democratic accountability, various recommendations have provided useful additions that bear witness to the Council of Europe's consistent attempts to guarantee the conditions for greater democratic transparency and control. Among these, some are dealing in greater depth with the conditions necessary for democratic accountability, while one of them deals directly with the financial liability of local elected representatives.

2.2.1 The Recommendations furthering the conditions for democratic accountability

30. Following the *Additional Protocol on the right to participate in the affairs of a local authority and the [Guidelines for civil participation in political decision-making](#)*, adopted by the Committee of Ministers on 27 September 2017, the Committee of Ministers adopted on 21 March 2018, [Recommendation CM/Rec\(2018\)4 of the Committee of Ministers to member States on the participation of citizens in local public life](#)¹, which continued the Council of Europe's efforts by recalling the essential principles for citizens' participation in "*public life at local level*". That is, according to its appendix, citizen participation in "*all matters, services and decisions and in particular the management and administration of the affairs relating to or concerning a local community*". This concept and its definition make it possible to cover as broadly as possible all acts, legal or material, performed by the community and identify these as appropriately subject to participation procedures.
31. Such a definition is certainly useful for work on democratic accountability as it aims to produce effects in the same field. The Recommendation also assumes this dynamic by recalling, in its appendix, that the objective of transparency and communication of information is "*enhancing the accountability of decision makers*". Without directly linking them to this obligation, the Recommendation also calls on states to set up participation mechanisms that could include "*petitions, motions, proposals and complaints filed by citizens with the local council or local administration*". The Recommendation is limited to a logic of participation that does not extend explicitly to establishing accountability mechanisms. In other words, while the recommendation is remarkably precise and ambitious in highlighting the mechanisms for genuine citizen participation in local affairs, it does not go so far as to explicitly establish mechanisms of accountability, let alone responsibility. The procedures mentioned are thus intended to complement representative forms of democracy, not to establish ways for the citizen to evaluate or challenge them.
32. An important turning point in the Council of Europe's work was taken by [Recommendation CM/Rec\(2019\)3 of the Committee of Ministers to member States on supervision of local authorities' activities](#), adopted on 4 April 2019, which took a further step in the consecration of accountability logics. This text covers all forms of control that can be exercised over the acts of local authorities. It distinguishes between three types of control that can be exercised over local authorities themselves (and not over elected representatives in their individual or institutional capacity): administrative, financial and democratic. Democratic control, which is a real innovation of the Recommendation, is the subject of the following provisions contained under item III of the appendix to the Recommendation, which contains the Guidelines for improving systems of control of acts local authorities :

¹ See also, earlier, *Recommendation on the evaluation, auditing and monitoring of participation and participation policies at local and regional level* of 11 March 2009.

Democratic supervision

9. Democratic supervision by citizens is their ability to hold to account and influence decision makers; it necessarily requires citizens to have access to appropriate information and for the decision-making process to be sufficiently transparent.

10. The means for citizens to exercise democratic supervision may include elections, referendums, 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 the 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 authorities' activities may help to reduce the cases of litigation and facilitate citizens' access to more convenient procedures.

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

33. As can be seen, the text attempts both to synthesise previous achievements in transparency and participation and to elucidate the idea that the accountability of decision-makers is a central form of democratic control. The text does not, however, attempt to identify elected officials (either individually or organically) as addressees, nor does it seek to strike a new balance between the representative and participatory dimensions of democracy. Nevertheless, by moving towards a lexical field calling for "democratic control" and accountability of decision-makers, this recommendation provides an important foundation for the work now being carried out by the draft Recommendation.

2.2.2 The Recommendation on the financial liability of local elected representatives

34. To date, only one Recommendation has been directly aimed at the implementation of accountability mechanisms directly applicable to elected representatives: [Recommendation CM/Rec\(99\)8 of the Committee of Ministers on the financial liability of local elected representatives for acts or omissions in the course of their duties](#) of 17 March 1999. The reasoning in the preamble directly links the pecuniary liability of elected representatives to the requirements of democracy through the confidence of citizens in elected representatives and the legal certainty that the system of legal liability of local elected representatives should provide.

35. The scope of this instrument is rather narrow, as it only covers the pecuniary liability of local elected representatives, understood as their obligation to make good unjustified damage caused to an individual or a legal person, including the local authority. The Recommendation aims to ensure that any person who has suffered such damage can have his or her rights promptly restored, while at the same time providing that elected representatives are liable only in cases where they did not act in good faith liability. The text recommends limiting direct actions against elected representatives to cases of serious or intentional misconduct and intends to provide a framework for the implementation of the responsibility of elected representatives through procedural principles (intervention or control by a judge, adversarial procedure, specific training of judges, etc.).
36. This text, which is very much inspired by the responsibility / liability mechanisms of French law, enshrines a form of responsibility of local elected representatives which the draft Recommendation seeks to include in a broader framework in which the pecuniary liability of elected representatives will be a component.
37. To these recommendations specifically related to the development of an accountability process, it is necessary to add texts adopted by the Congress of local and regional authorities, such as Recommendation 423(2018) "Conflicts of interest at local and regional level", Recommendation 424(2018) "Transparency and open government" and Recommendation 395(2017) "Recurrent problems identified in assessments following Congressional election monitoring and observation missions", as well as Recommendation 459(2021) "The holding of referendums at the local level", which provide useful contextual complements to the movement mentioned.

2.3 Other useful sources

38. Treaties and Recommendations alone do not reflect the full picture of the Council of Europe's work on the subject of democratic accountability. There are several additional resources that are worth mentioning.
39. Among them, the texts making up the [Valencia Declaration of the 15th session of the Conference of European Ministers responsible for Local and Regional Government](#) (CM(2008)14F) of 15 and 16 October 2007 constitute a notable contribution, having defined a number of strategic guidelines. In addition to a Declaration on democratic participation and public ethics at local and regional level, the Declaration includes a strategy on innovation and good governance at local level, which sets out 12 principles of good democratic governance, including accountability, to ensure "*that all decision-makers, collective and individual, take responsibility for their decisions*" (principle 12). Without mentioning the term, the Declaration thus refers directly to democratic accountability as a requirement, and also states that "*Member States and the Congress will sustain and develop the pan-European cooperation necessary for following and giving guidance towards the implementation of this Strategy, including by helping to achieve the mutual sharing of information and the exchange of experience*".

40. The work of the CDDG and the draft Recommendation, by seeking to deepen the conditions for the democratic accountability of local elected representatives, are in line with this strategy.
41. In parallel, the European Commission for Democracy through Law (Venice Commission) has carried out very detailed work on the development, in certain states, of mechanisms for the popular dismissal of mayors and local elected representatives. Its [report on the recall of mayors and local elected representatives](#), adopted in June 2019 and delivered in response to a request for an opinion from the Congress of Local and Regional Authorities, provides a precise overview of the legal framework, advantages and risks of this practice, calling for the exceptional nature of its mobilisation and a precise framework for the practice (see *below*).
42. Focusing on a specific mechanism of democratic accountability, this work has demonstrated the urgency of conducting a general and comparative reflection on the frameworks of democratic accountability.
43. The list drawn up here is not exhaustive because the issue of democratic accountability cuts across many dimensions and layers of government. In particular, one should add the important work carried out on the subject of corruption by the Group of States against Corruption (GRECO), following the adoption of the 20 Guiding Principles for the Fight against Corruption, which seek to ensure transparency, control and accountability of public officials ([Committee of Ministers Resolution \(97\)24 on the 20 Guiding Principles for the Fight against Corruption](#) adopted on 6 November 1997).

3. Methodology of the study

44. The purpose of this companion report is to propose, in support of the draft Recommendation, additional elements of situation, analysis and systematisation.
45. To achieve this, it relied first of all on the results of a questionnaire sent by the Secretariat of the CDDG to the States (see Annex), the replies to which were compiled², and thanks to which it was possible to draw up an inventory of State practices in the field of democratic accountability. This work has made it possible to take stock of the different dimensions of democratic accountability and to draw up a number of key points, thanks to which a systematization of accountability mechanisms can be proposed.
46. This approach to the subject was preferred to a general review of the European literature on the subject, which was made difficult - if not impossible - by the existence of a variety of systems and traditions and by the difficulty of accessing all the information required.

² This working document is available at <http://rm.coe.int/cddg-2021-7e-addendum-compendium-of-responses-to-questionnaire-on-demo/1680a20a8e>

47. A more inductive method seemed unavoidable because of the great variety of state systems and the clear clash between at least two major political and legal traditions in this area: a continental tradition, based on the operation of legal accountability mechanisms and little inclined to the development of political accountability mechanisms, and an Anglo-Saxon tradition more oriented towards accountability mechanisms perceived as the logical result of a requirement for transparency. In addition to these two main trends, various practices linked to political, geographical or cultural constraints specific to each State exists, which cannot be reduced to allow the identification of a single ideal system of accountability. In this area, as in many others, it is clear that the differences between States prevent a single, uniform model of democratic accountability emerging since much remains subject to the political, legal and cultural determinants of countries. Nonetheless, the questionnaire has made it possible to note that the question of accountability arises in each of the States. A general analysis of this issue will thus enable each State to compare the practices of other States and to find ways to deepen their own practices of accountability, according to a framework that also endeavours to situate the contributions of the draft Recommendation.
48. The main obstacle encountered by this work lies in the identification and definition of terms that are sufficiently general to encompass all situations and sufficiently precise to reflect a specific reality. To this end, it should be noted that while the CDDG's work initially sought to work on the 'responsibility' of local elected officials, the term 'accountability' soon became necessary to describe a more multifaceted reality, crossed by mechanisms of various types and functions. This development was coupled with a recognition of the need to identify and systematise different types of accountability mechanisms, which might in different combinations contribute to satisfying the ethical requirement of accountability.
49. In relation to this, the draft Recommendation insists a lot on the importance of accountability as a working culture to be promoted by various means (point 1 of the Recommendation and point 3.17 of the annex of the Recommendation). These are higher level objectives, and they might be met in different ways in different institutional and working cultures, each with its own more specific concerns, procedures and purposes.
50. In addition, it should be noted that some responses to the questionnaire had to be analysed in a corrective manner to overcome biases in respondents' understanding.

4. Categorisation and general pattern of accountability mechanisms

51. Work carried out on the responses from the States has thus, in our view, made it possible to highlight several accountability mechanisms that we have attempted to define by using the following terms and definitions which were used for the preparatory work:

"Accountability" means the obligation of an elected official, a body of a community or a community to account for its activities and to accept the consequences that the law provides for the occurrence of certain facts or situations.

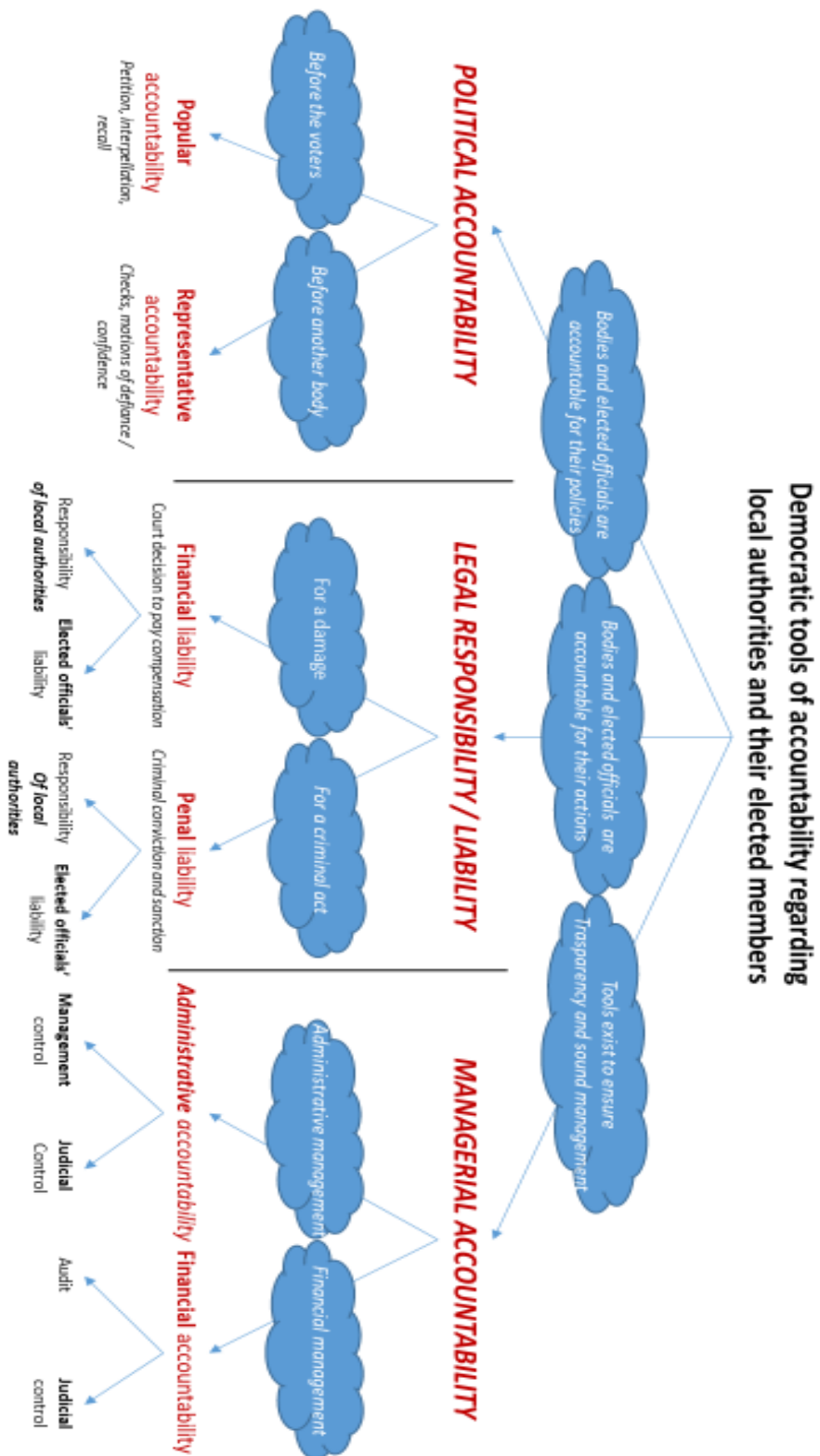
"Responsibility" means a form of accountability with binding effects for the elected official, the body of the community or the community to which it is attributed, whether this effect is political (removal from office, dismissal, resignation), pecuniary (payment of financial compensation) or penal (conviction to a criminal sanction).

"Political accountability" refers to forms of accountability that seek to hold one or more elected officials or a body of a community accountable for their policies through established procedures. This form of accountability may take the form of '**popular accountability**', when it is to the electorate, or '**representative accountability**' when it is to another representative body. These forms of accountability can lead to forms of '**political responsibility**' when they have consequences for the continuation of the mandate of the elected official or the bodies concerned (dismissal, removal, resignation).

"Legal liability" refers to forms of liability aimed at making one or more elected representatives or a local authority accountable for their actions before a court of law responsible for sanctioning behaviour by means of a sentence. This form of liability may take the form of "**pecuniary liability**" when its purpose is to order one or more elected representatives or a local authority to make good, by awarding compensation, a loss caused by local action, or "**criminal liability**" when its purpose is to order one or more elected representatives or a local authority to pay a criminal penalty to punish the commission of a criminal act.

"Managerial accountability" refers to forms of accountability aimed at guaranteeing the observation and control of good management through the institution of management control tools. This form of accountability can take the form of "**administrative accountability**" when its purpose is to verify, through internal, external or judicial control, the sound administrative management of the entity or "**financial accountability**" when its purpose is to verify, through internal or external control, or judicial review, the sound financial management of the entity. Managerial accountability is an indispensable condition for the proper operation of political accountability and legal responsibility mechanisms.

52. These different categories are linked together to form the political accountability mechanisms observed in European countries. In order to help understand how they are arranged, the following diagram has been produced:



SUMMARY ANALYSIS BASED ON THE RESPONSES TO THE QUESTIONNAIRE

53. The working group received twenty-two replies to the questionnaires. While this number does not allow the analysis to be exhaustive, it is sufficient to constitute a representative sample of States and practices, to highlight certain constants between countries and to locate divergences in systems. The responses received are as follows: Austria, Azerbaijan, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Finland, Georgia, Greece, Hungary, Iceland, Republic of Moldova, Poland, Serbia, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, United Kingdom.
54. The responses to the questionnaire first highlighted the fact that all States have made the issue of accountability of elected officials a real focus of attention. Despite different solutions and varying political and legal traditions, it appeared that the respondent States all have accountability mechanisms in place. Better still, leaving aside the question of political accountability, which accounts for most of the variation in practices, States often adopt very compatible approaches in the areas of the legal responsibility of local elected officials or managerial accountability.
55. The responses also show that there is little or no statistical data on the use of accountability mechanisms implemented by States. It is therefore very difficult to measure the use made of existing mechanisms and to provide the analysis with practical elements that would allow for a better mapping of state practices. The few quantitative elements that have come to our attention seem to indicate a very moderate use of accountability mechanisms by elected officials.
56. More specifically, the responses to the questionnaire made it possible to better circumscribe the field of democratic accountability (**1**), to specify the possible recipients (**2**) and to draw up a general inventory of existing forms of accountability (**3**).

1. Democratic Accountability as a Synthetic Concept of Accountability by Elected Officials

57. In French, the term *responsabilité* (responsibility), which is most commonly used to translate the term accountability, is used in a broad way to designate both the mechanism of accountability involving the resignation of one political body at the behest of another political body (we then speak of political responsibility) and that leading to forms of penal or pecuniary sanction for facts of various kinds, implemented before the judge. English, on the other hand, uses more varied terms (accountability, liability, responsibility, answerability, etc.) to designate dimensions that do not all have the same purpose or the same objective.

58. It soon became apparent that in French, the term "*responsabilité*" would be unsuitable both for describing all the mechanisms highlighted by States in their responses to the questionnaire and for the ambitions of the CDDG's work in this area. If one focuses wholly on the implementation of a legal or political consequence to a situation, one excludes the operation, however significant, of what ultimately brings about a synthesis of accountability mechanisms: the wider rendering of accounts by those who have a local elective mandate. Under favourable conditions (working culture, tradition of openness and dialogue / constructive confrontation, established routines etc.) this can be done without any binding mechanism through transparency, but the narrower understanding of responsibility does not capture this. Thus, if a set of arrangements makes it possible to guarantee transparency, this constitutes a significant contribution to democratic accountability, which is wholly not captured by describing the mechanisms in which a local elected official is 'responsible' to his or her electors.
59. Thus, the wider term "*redevabilité*" is more attractive because it enables a better, more inclusive characterisation of all the mechanisms by which elected officials can be held accountable. Conceived as a tool to disseminate and verify good governance by local elected officials in all its dimensions, this term makes it possible to bring together mechanisms of various natures and functions, all of which serve to verify the compliance of the elected official with certain standards - those stemming from state law as well as those stemming from the principles of good democratic governance. Accountability can thus range from the simple recurrent audit or the simple petition to the judicial implementation of the criminal or civil responsibility of the elected official or to his political responsibility.
60. According to the Recommendation, the "principle of accountability" should lead to the establishment of a framework "*for elected representatives and elected bodies at local and regional level, that framework comprising as appropriate legislation, institutions, procedures, practices and norms of conduct, which together create the conditions and culture whereby:*
(a) decision-makers take responsibility for their decisions;
(b) those decisions are reported on, explained, examined and where appropriate sanctioned; and
(c) there are effective and proportionate remedies against inappropriate decisions or omissions and any resulting actions or inactions."
61. By stating the above, the Recommendation clearly does not intend to limit its scope to political and legal accountability mechanisms alone, but intends to encourage all the mechanisms by which the accountability of elected representatives can be guaranteed, whether they are initiated by the elected representatives themselves through voluntary accountability or whether they are invoked by other bodies or by the electorate, whether their aim is simply to give a public account of the decisions taken or whether their purpose is to make the elected representatives responsible bear the consequences of their actions.

2. Identifying the audience for accountability mechanisms

62. The replies to the questionnaire often showed hesitation as to the addressee of the forms of accountability: the elected official, in a personal capacity, the body (which may be individual), or the community itself? The respondent States mentioned various accountability procedures which are sometimes imposed on the individual elected official, sometimes on the deliberative or executive bodies, and sometimes on the community itself.
63. These hesitations raise the delicate issue of the attribution of accountability. In this regard, the draft Recommendation faced the important issue of identifying the subjected entity of accountability in the various circumstances which may arise in practice, given also the various traditions and legal/political systems. Focusing on the individual elected official, while useful, is unlikely to be exclusive insofar as local government is often based on collective decisions. In the same vein, mechanisms of administrative responsibility often imply the implementation of the responsibility of the community itself, taken from the angle of its legal personality and declared responsible for an act having caused damage.
64. In its work, the CDDG thus took into account the accountability of individual elected representatives and that of elected representatives in a more collective capacity.
65. However, as mentioned earlier, it is important not to lose sight of the fact that democratic accountability can also involve the accountability of the community itself, when the decision taken does not appear to be detachable from the proper administration of its interests and has nevertheless caused damage that must be repaired. In this case, reparation cannot reasonably be the responsibility of elected officials, either individually or collectively: it is based on the accountability of the social body that is the community to those who have suffered the damage, in a way that also reflects a concern for the need for accountability. This is what the draft Recommendation observes in point 3.23 of its appendix, by stating that elected representatives "should not be held personally liable when acting within the scope of their duties and in good faith".
66. In the course of the CDDG's work, the question was raised as to whether local and regional level public officials who do not hold elected office but who have similar responsibilities to those of elected officials or bodies should not also be taken into account, in order to preserve the "effet utile" of the accountability principles.

67. The CDDG agreed that an effective accountability policy should, of course, also apply to such public officials. These include heads and members of cabinets, directors and heads of departments appointed to positions of trust by elected representatives, and others who may have advisory or managerial/supervisory functions and who, in practice, may sometimes be delegated significant responsibilities in day-to-day work. Their explicit inclusion in an accountability policy would also contribute to the development of a working culture of accountability on the part of the administrations and entities concerned.
68. The principle is already laid down in existing texts adopted under the aegis of the Council of Europe. In this respect, mention may be made of the Council of Europe Committee of Ministers' [Guidelines on Public Ethics](#) (adopted by the Committee of Ministers on 11 March 2020). Thus, these guidelines state as a basic principle of public ethics, alongside legality, integrity, objectivity, transparency, honesty, respect and leadership, "Accountability: public officials, in the exercise of their mandate or functions, take responsibility for their actions and are obliged to submit to the necessary reviews". In addition to elected officials, the Guidelines specifically refer to persons acting on behalf of a public organisation without having been elected, appointed to a public office or mandate, or employed by a public organisation, i.e. any national, regional or local institution or administration; a company or similar entity managed or financed by such an institution or administration, or by the state; or a private sector entity, including a not-for-profit entity, providing public services.
69. [Recommendation No. R\(2000\)10 of the Committee of Ministers to member states on codes of conduct for public officials](#) (May 2000): the appended Model Code of Conduct for Public Officials, which covers all public officials other than elected officials, sets out the principle of accountability (to officials' superiors) in Article 10.
70. As mentioned earlier, the 12th of the 12 Principles of Good Democratic Governance is about accountability and covers all decision-makers, whether groups or individuals.
71. The CDDG therefore considered it preferable to keep strictly to the terms of reference given to it by the Committee of Ministers as regards the scope of the Recommendation and the persons concerned, namely holders of elective office and elective bodies. It should also be recalled that various aspects of accountability are specific to elected representatives and elected bodies, in particular the implications of the relationship between voters and elected representatives and the sometimes collegial nature of the responsibilities on which accountability is based in the case of elected assemblies.

3. General overview of forms of accountability

72. The analysis of the responses to the questionnaire has made it possible to identify forms of accountability that are generally recognised by States and which therefore appear to be the subject of a relative consensus in their structure (**3.1**). Other forms of accountability are more subject to variation, with States making more contrasting use of them (**3.2**).

3.1 Generally recognised forms of accountability

73. Some forms of accountability appear to be fairly standard across Europe. Unsurprisingly, these are the criminal and pecuniary responsibilities of elected representatives, which testify to the fact that the accountability of elected representatives in the event of a criminal offence or civil damage is generally well established in Europe.

3.1.1 Criminal liability

74. Despite disparities in the procedural framework and the conditions of this responsibility, it appears that the immunity of elected officials has generally disappeared and that their criminal responsibility, often reinforced by offences specific to public action (corruption, abuse of power, embezzlement, etc.), is nowadays a generally accepted legal fact: all the States that replied to the questionnaire indicated that they practise this form of responsibility of elected officials. It is a basic level of accountability for elected officials, ensuring that elected officials do not benefit from undue protection and that they comply with the law in their actions. Such a state of affairs constitutes a predictable democratic standard reinforced by the existence of specific offences against elected officials.
75. On this subject, the **draft Recommendation** states that:

"3.22 Legal, civil, criminal or disciplinary consequences should be regulated by law, in a clear, predictable and consistent manner, with appropriate safeguards in place to prevent their misuse."

"3.23 In principle, ERs should not be held personally liable when acting within the scope of their duties and in good faith. Specific criminal provisions may provide for situations where such ERs' action entails liability in case of serious negligence. (...) "

"3.25 In the case of unlawful decisions taken by a collegiate body deliberating in public, it is advisable to exclude the personal liability of those having formally justified their opposition to these decisions, provided it is possible to know how each member of the collegiate body voted."

"3.27 Criminal acts committed by local and regional ERs in the course of their duties, should attract proportionate and dissuasive sanctions. An additional measure of ineligibility following a conviction must be limited in time (not perpetual). Immunity from criminal prosecution, including where it is enjoyed by the elected representative by virtue of an additional mandate held at another tier of government should not prevent prosecution in the case of serious criminal conduct involving the interests of the local or regional authority."

THE QUESTION OF THE POLITICAL CONSEQUENCES OF CRIMINAL CONVICTION
SOME EXAMPLES OF NOTABLE STATE PRACTICE

Among the responding States, some indicated that political consequences are associated with criminal consequences for the commission of an offence by elected officials. A number of states have given themselves the possibility of combining criminal sentences with ineligibility. Others, however, go further by generating a more pronounced automaticity mechanism.

Among them, **Croatia** states that the term of office of a member of a representative body is automatically terminated if he or she is sentenced by a final judgment to a prison term of more than six months. The term of office of a mayor, county executive or their deputies is automatically terminated in the event of a final sentence of more than one month in prison. In the **Slovak Republic**, the term of office of an elected official convicted of an intentional offence expires automatically. In **Austria**, certain criminal offences automatically lead to termination of office: all offences punishable by more than one year's imprisonment, those for which the sentence is more than 6 months' unsuspended imprisonment and in the event of a conviction for "abuse of power", an offence specific to public decision-makers.

In the **Czech Republic**, the criminal conviction of an elected representative also has political consequences: the deliberative assembly is obliged to declare the end of the mandate of an elected representative sentenced to a prison term at its next session. Failing that, a higher authority can pronounce it. **Serbia** has a similar system, providing for the revocation of an elected representative's mandate by the assembly in the event of his or her being sentenced to a prison term of more than six months.

In **Greece**, an administrative measure of disqualification from elective office may be pronounced against an elected representative convicted of a criminal offence or a specific offence. This is pronounced after a specific administrative procedure.

In **Finland**, an elected official under investigation for a serious offence must resign, even temporarily, from the position he or she holds.

76. In any case, this solution presupposes the intervention of a judge responsible for establishing the burden of responsibility of the elected official in a neutral and impartial manner:

“3.23 (...) The question of the individual liability of an ER, or of an EB with legal personality, should be appraised by a court of law which shall determine any possible sanctions applicable. It might be advisable to set up specialised sections within the civil or administrative courts to deal with issues of financial liability, or independent specialist bodies to provide opinions on such matters, before judgements are made by the courts.”

3.1.2 Financial liability

77. The respondent States also clearly agree to establish a form of financial liability whereby elected officials or the community must pay compensation for the damage they have caused. This liability requirement is a traditional achievement of constitutional states, which recognize the possibility of obtaining compensation for damage caused by the action of the government.
78. The main factor of variation in this liability lies in the identification of the person to whom the damage is attributed. States are very generally concerned to recognise, in this sense, that the individual liability of the elected official must be limited to certain situations, for example: serious misconduct, serious breach of duty, intent, personal fault, flagrant violation of the law, criminal offence... Thus, the pecuniary liability of elected representatives cannot be general and absolute, as was stressed in Recommendation CM/Rec(99)8 of the Committee of Ministers on the pecuniary liability of locally elected representatives for acts or omissions in the performance of their duties of 17 March 1999, of which the **draft Recommendation** takes up some of the *acquis* by stipulating that:

“3.24 Local and regional authorities should be allowed to take out insurance covering their financial liabilities, and pecuniary liability insurance on behalf of their ERs to protect them from lawsuits engaged as a result of damage or loss suffered by citizens in the course of the normal activities of ERs and EBs carried out in the public interest and provided that the damage or loss does not result from gross negligence or tortious intent. Local and regional authorities or their elected representatives should also be allowed to set up mutual insurance bodies to cover the risks mentioned above.”

79. It is therefore a question of finding the criterion or criteria for distinguishing the personal fault of the elected official, which would be attributable to him, from the fault of the service or wider decision, which should be attributed to the normal running of the community or the decision-making body and can therefore only be borne by it. Practices on this subject vary from one country to another.

THE IDENTIFICATION OF THE PERSONAL PECUNIARY LIABILITY OF THE ELECTED OFFICIAL

SOME EXAMPLES OF NOTABLE STATE PRACTICES

Among the respondent States, a few examples of variations in the identification of personal fault attributable to the elected official can be highlighted.

In **Denmark**, the intentional or negligent character of an act of the elected representative makes it possible to direct the attribution of responsibility to the latter.

In **Poland**, this liability is enforced in the case of a gross violation of the law or a serious violation caused by deliberate acts or omission.

In **Spain**, once the community has been convicted of a financial offence, it may automatically require an elected official to pay all or part of the sentence in the event of fraud or serious fault or negligence.

80. Another, more modest, factor of variation seems to lie in the way the judge intervenes in the procedure. In most of these cases, the judge intervenes to engage the responsibility of the elected official. In others (Spain in particular), the judge intervenes as a supervisory authority over decisions taken by the administration. On this subject, the draft Recommendation states that:

"3.26 The application of any kind of automatic pecuniary sanction mechanism to ERs should only be possible following an adversarial hearing, either judicial or opening a right to judicial proceedings, and the finding of serious negligence or deliberate tortious intent."

81. The control of the judge and the guarantee of the adversarial process in this matter are obviously essential requirements aimed at guaranteeing that the mechanisms of responsibility of the elected representative will not be diverted or misused.

3.2 Forms of accountability more subject to variation

82. Among the forms of accountability frequently encountered, but more subject to variation across systems, are of course the various forms of political accountability.

3.2.1 Political responsibility

83. Among these forms, political responsibility is applied differently in different countries. Traditions obviously vary: six respondent countries do not know it (**Azerbaijan, Cyprus, Greece, Iceland, Czech Republic, Slovenia**), not to mention those that are not among the respondents but do not practice it either. Nearly fifteen respondent countries (**Austria, Belgium, Croatia, Denmark, Finland, Georgia, Hungary, Republic of Moldova, Poland, Serbia, Slovak Republic, Spain, Sweden, Switzerland**) have at least one political accountability mechanism, forming a fairly clear majority. The nature of the procedures implemented, their modalities and their effect obviously vary from country to country.
84. The most widespread mechanism is the motion of censure (or no-confidence motion), which aims at the implementation of the dismissal of an elected official by the assembly for political reasons and, sometimes, at his immediate replacement by another candidate elected for this purpose (constructive no-confidence motion). It should be noted, however, that within this category, the mechanisms used and their purpose vary greatly.
85. In some states (e.g. **Belgium**), the tool is designed to put an end to a situation of ungovernability and is therefore reserved for a very limited number of factual situations. In others (e.g. **Hungary**), it is designed in connection with a form of legal responsibility to seek to sanction an illegality, from which it is also desired, at the initiative of the assembly, to draw political consequences, which presupposes the intervention of a judge in the procedure. In most other States, however, the purpose of the motion of censure is much broader: it is conceived as a more general political adjustment mechanism aimed at an early return to the ballot box for political reasons.
86. The conditions of initiative, majority and deadlines applicable to these procedures vary significantly between states, which naturally rules out any prospect of more precise recommendations. States adapt the procedural framework of the motion of censure to their institutional structure and the purposes of these mechanisms. This implies that it is hardly possible to establish "good practices" in this area, as they are naturally highly dependent on systemic considerations that cannot be the subject of any qualitative assessment.
87. Associated with these mechanisms of political accountability are also more flexible mechanisms of political accountability of the executive to the assembly. In this regard, the **United Kingdom** reports that it has, alongside the (executive) cabinet, an oversight and scrutiny committee composed to reflect the political sensitivities of the deliberative assembly and charged with reviewing decisions taken by the latter. Such an arrangement provides an original example of legislative control over the executive and a permanent procedural framework to ensure political accountability.

3.2.2 Managerial accountability

88. Among the forms of accountability that are more subject to variation is also managerial accountability, both in its administrative and financial dimensions. Due to the wording of the questions in the questionnaire and the confusion that may have arisen among respondents between administrative responsibility (in the legal sense of the term) and administrative accountability, the data on this subject lacks precision.
89. Nevertheless, States have generally reported on mechanisms for administrative control of the action of local authorities. On the subject, it should nevertheless be noted that the purpose of administrative accountability mechanisms should be to allow transparency and control of the management carried out by elected officials with a view to good administrative management. This form of accountability can obviously take different forms: control by an institution made up of elected representatives (on the model previously mentioned in the United Kingdom), annual management controls, control of legality by other local or state institutions, control by the judge, etc. However, it is important to ensure that these forms of accountability have no other purpose than to guarantee good governance at local level, and that they do not have the purpose or effect of allowing the establishment of mechanisms aimed at reducing local autonomy. In this respect, it should be recalled that the mechanisms established should comply with the requirements of Article 8 of the European Charter of Local Self-Government, which states that:

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.

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.

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."

90. These mechanisms should furthermore respect the framework provided by Recommendation CM/Rec(2019)3 on the supervision of local authorities activities., which states inter alia that:

"2. Administrative supervision may be undertaken by a supervisory authority appointed by a State authority. It may concern clearly defined activities carried out by local authorities, in order to verify their legality. The supervisory authority may also consider or take action in relation to a legally required activity which was not undertaken or, in the case of delegated competencies, an otherwise required activity 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 administrative supervision, where the supervisory authority has an obligation to systematically verify legality, should be limited to activities of a 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 competencies;
- 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
- make information on the legal and regulatory 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.

91. It should further be noted that administrative control mechanisms operated by the state or other public institutions cannot alone exhaust the possibilities of managerial accountability in administrative matters, which can be achieved through increased mobilisation of citizens or through periodic reporting obligations to the legislative assembly and/or citizens. To this end, the draft Recommendation sets out a number of requirements for the scrutiny of decisions. This mechanism, which is the basis of any accountability mechanism, aims to guarantee transparency in decision-making through the implementation of a number of requirements:

- Record keeping to enable the establishment of the conditions under which decisions were made and to ensure transparency of the decision-making process - a *condition of accountability*.

- The implementation of scrutiny procedures that ensure access to relevant information, establish the conditions under which elected officials are accountable and determine the safeguards of the process - *a tool for accountability*.
- The identification of ways in which citizens have the opportunity to draw out the consequences of the polling process, using graduated techniques ranging from simple expression to the implementation of more advanced solutions such as the organisation of a referendum - *a consequence of accountability*.

92. The Annex to the **draft Recommendation** reflects these concerns in the following terms:

"3.8 The legal framework should provide for a comprehensive system of record-keeping, retention, classification and archiving, including retention periods, concerning official and other documents pertaining to the activity and responsibilities of ERs and EBs, including the activity of bodies under their responsibility. Retention periods should be commensurate with the deadlines and statute of limitations provided for litigation procedures. Policies should also be in place to deal with specific requests for information held by the local and regional authorities. Inspiration may be drawn from the Council of Europe Convention on Access to Official Documents (CETS No. 205) and the Additional Protocol to the Charter, on the right to participate in the affairs of local authorities (CETS No. 207)."

93. The Annex of the **draft Recommendation** calls for mechanisms for collecting, organising, analysing and processing information relevant to the accountability process:

"3.9 The scrutiny process should be governed by adequate rules and regulations which set out the categories, content, and periodicity of accounts to be provided by ERs and EBs, to ensure that up-to-date and meaningful information, including accounts of activity, is made available continuously.

3.10 The scrutinising body should be given the necessary means and authority to perform their task, including sufficient time for consideration and seeking the necessary clarification, the possibility of recourse to persons with the necessary degree of expertise to assist them, and access to relevant information and accounts to make an informed assessment. This may also include the power to solicit an independent external audit concerning specific matters that the accounts presented (are meant to) cover.

3.11 Political affiliation should not interfere with the scrutiny process which precedes a deliberation or vote on the final conclusions. The same information, within the same deadlines, should be made available to all members of the scrutinising body, irrespective of political considerations. Rules should also guarantee a fair access of members of political groups to specific scrutiny functions (e.g. as a rapporteur or member of a specific review group). The mandatory periodic public audit of local and regional authorities should be organised in such a manner as to ensure the political neutrality.

3.12 An [elected representative] or an [elected body] whose action or management is under scrutiny should have the opportunity to be heard and to provide explanations for its actions and decisions.”

94. In terms of financial accountability, the respondent States - the vast majority of which report having such mechanisms in place - have mentioned a variety of control mechanisms using fairly heterogeneous procedural frameworks with varying purposes and means.
95. In some cases, which are quite rare, the purpose of the control mentioned is only to seek to uncover malpractice: its function is therefore substantially penal.
96. In other cases, which are much more numerous, the control has an administrative nature and is based on the periodic carrying out of audits and budgetary controls, by central authorities, by specially instituted authorities or by a specialised court (**Belgium, Greece...**). These examinations can sometimes lead to sanctions against elected officials who have not respected the budgetary rules in force. In some countries, the executive is required to report to the legislative assembly, whether this is done by the executive or through the mediation of auditors, either annually (as is most often the case) or more frequently (as is the case in **Georgia**, where a quarterly obligation to present the implementation of the budget has been introduced). In some situations (e.g. **Sweden**), annual audits must lead to a vote by the assembly to discharge the executive, a mechanism that significantly increases the financial responsibility of elected officials.
97. Again, it should be noted that the mechanisms established should be in line with the guidelines of Recommendation CM/Rec(2019)3 of the Committee of Ministers on supervision of local authorities' activities, which states that:

« 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 in order to foster good accounting practices and effective management, to prevent financial imbalances or to monitor the financial rehabilitation of local authorities which encounter financial difficulties.

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

7. Observations following financial supervision can 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. "

98. Moreover, it should be noted that financial control mechanisms operated by the State or by other institutions cannot by themselves exhaust the possibilities of managerial accountability in financial matters, which implies in particular a requirement for transparency and access to financial documents. In this context, the guidelines of the Convention on Access to Official Documents should be given particular attention, as should the elements mentioned above concerning administrative accountability.

3.2.3 Popular accountability as a significant area of divergence between states

99. Of all the accountability mechanisms questioned, popular accountability is the one that is the subject of the greatest divergence between States. This can be explained, of course, by a variation in the relationship of states to the political consequences to be attached to the general prohibition of the imperative mandate and their appetite for participatory democracy mechanisms. As the Venice Commission noted in its 2009 report on the imperative mandate and similar practices, *"the basic constitutional principle which prohibits imperative mandate or any other form of politically depriving representatives of their mandates must prevail as a cornerstone of European democratic constitutionalism."*
100. The fact remains that, in the face of the development of citizens' distrust of their elected representatives and the development of frameworks for citizens' participation in political life, we are witnessing the development, in Europe, of procedures aimed at ensuring a form of direct accountability of elected representatives to citizens. This obviously goes beyond the simple framework of participation or consultation, since it implies the possibility of challenging elected representatives directly, or even allowing them to be overthrown.
101. The responses from states show that nine states (**Austria, Azerbaijan, Belgium, Croatia, Georgia, Republic of Moldova, Poland, Slovak Republic, Switzerland**) have popular accountability procedures. Conversely, a majority of respondent states indicate that they do not have such procedures.

102. Among the states practising democratic accountability, the procedural forms vary quite clearly, so that a distinction should be made between states that implement simple interpellation or petition procedures (**Belgium, Georgia, Switzerland**) and those that have chosen to implement procedures involving citizens and that can lead to the removal of elected officials (**certain Austrian Länder, Azerbaijan, Croatia, Georgia, Republic of Moldova, Poland, Slovak Republic, and certain Swiss cantons**).

**IMPLEMENTING POPULAR ACCOUNTABILITY MECHANISMS THAT DO NOT RESULT
IN THE REMOVAL OF ELECTED OFFICIALS
SOME NOTABLE EXAMPLES OF STATE PRACTICE**

Some states practice forms of democratic accountability that do not result in the removal of elected officials.

In **Belgium**, petition (at regional level) and interpellation (at local level) mechanisms allow citizens to provoke a response from elected officials. At the regional level (Brussels region), these petitions, formulated by any person residing in the territory and aged 16 years or over, must formulate a concrete request which will be answered within six months. If a petition is signed by more than 1,000 people, it gives the author the right to be heard by the committee responsible for responding to it. At the local level, the interpellation of the College of Burgomasters and Aldermen must be initiated by 20 persons domiciled in the municipality and aged 16 or over and concern a subject of municipal interest. The interpellation allows the interpellation to be put on the agenda of the public meeting of the deliberative assembly, the applicant being invited to present his interpellation. An answer will be given to the interpellation during the meeting, to which the petitioner may reply. The country also has a popular consultation procedure for citizens' initiatives, which is more of a participatory technique than a form of accountability.

In **Switzerland**, everyone has the constitutional right (Article 33 of the Constitution) to petition the authorities, including local and regional authorities. The authorities must take cognizance of these petitions, which may concern any matter of public interest and even demand the resignation or dismissal of an elected body. Although the authority to which the petition is submitted is not obliged to respond, in practice it appears that petitions are most often answered.

**THE IMPLEMENTATION OF POPULAR ACCOUNTABILITY MECHANISMS LEADING
TO THE REMOVAL OF ELECTED OFFICIALS
SOME EXAMPLES OF NOTABLE STATE PRACTICES ³**

Some States practice forms of democratic accountability that result in the removal of elected officials individually or collectively.

In **Austria**, some Länder practise popular dismissal because of the principle that any person elected can be dismissed by the person who elected him. Since some of the Länder elect their mayors by direct universal suffrage, this means that a motion of no confidence by the assembly will be subject to a referendum.

In **Azerbaijan**, 25% of the voters living in a municipality have the capacity to call a meeting at which the dismissal of the president of the municipality can be raised.

In **Croatia**, since 2009 and the implementation of the election of mayors and county executives by direct universal suffrage, mayors of municipalities and cities, county executives and their respective deputies can be subject to a recall referendum initiated by 20% of the electorate or 2/3 of the deliberative assembly. Such a referendum can only be called at the earliest six months after the designation of the elected officials concerned or within one year before the holding of regular elections. To date, only two referendums (initiated at the request of the deliberative assembly) have been held.

In **Georgia**, a system halfway between political accountability and popular recall has been instituted. The law allows a municipal council (Sakrebulo) to table a motion of no confidence in a mayor if more than half of its members or at least 20 per cent of the total number of registered voters in the municipality are in favour. However, no no-confidence motion may be passed during the first six months after the election of a mayor, during the last year of the mayor's term of office, or within six months of the first no-confidence motion. If a Sakrebulo does not vote for a motion of no confidence in the mayor concerned, it must wait six months before tabling one.

In the **Republic of Moldova**, a local referendum can lead to the dismissal of the mayor. Such a procedure can be initiated by a secret vote of 2/3 of the deliberative assembly or by 10% of the electorate.

In **Poland**, a recall referendum on the mayor can be held at municipal level in the event of the executive not being discharged, by resolution of the deliberative assembly. The referendum is held within 14 days. Such a referendum cannot be held within 9 months after the election of the mayor, nor within 9 months before the regular elections are held. Under the same conditions, a recall referendum may also be held for another reason if it is initiated by at least one quarter of the statutory composition of the deliberative assembly by means of a written and justified request, which

³ These observations from the questionnaires can be usefully supplemented by the Venice Commission's report *on the popular dismissal of mayors and local elected representatives*, adopted in June 2019, pp. 9-13.

must first be approved by the council's review/audit commission. The council is then invited to give its opinion by means of a resolution which can lead, by a 3/5 majority, to the organisation of a referendum. Finally, a referendum on the dismissal of a council or the executive office in a self-government may be held on the initiative of a constituent body of a unit of local self-government or at the request of at least 10% of the inhabitants of a municipality or poviat, or 5% of the inhabitants of a voivodeship.

In the **Slovak Republic**, a referendum for the dismissal of the mayor must be held if at least 30% of the voters request it by petition. It may also be held if the municipal council calls for it in the event of the mayor's incapacity or absence for six months. The referendum is held within 90 days and, to be valid, must be attended by at least half of the voters. It is adopted by an absolute majority.

In **Switzerland**, six cantons provide for the possibility for citizens to recall any cantonal authority by referendum. Two cantons provide for the same procedure for local authorities. The vote is not aimed at an elected official, but at a body as a whole. The procedure is initiated by the collection of a certain number of signatures from voters (which varies according to the canton) within a given period. The country reports a rather low, and above all unsuccessful, mobilisation of these mechanisms.

103. As can be seen, the forms of popular accountability as practiced in the respondent States vary significantly. It should be noted that no State reports an overly frequent use or misuse of the procedures leading to the dismissal of elected officials, which are all based on a precise procedural framework providing for conditions of initiative and deadlines that tend to restrict their use to cases that could justify it. The initiative is sometimes taken by the deliberative assembly, sometimes by a percentage of citizens. Sometimes it must be justified - which obviously tends to reinforce the transparency of such a procedure. Sometimes it is subject to time limits.
104. In any case, it is remarkable that most of the countries that have decided to introduce popular accountability mechanisms leading to the removal of elected officials have made it a corollary of the appointment of those affected by these procedures by direct universal suffrage (**Austria, Croatia, Georgia, Poland, Slovak Republic**). It is thus clear that the growth of the election of mayors by direct universal suffrage in Europe has been accompanied by the development of popular recall procedures.
105. With regard to the consequences and modalities of democratic accountability, which is seen as a consequence of scrutiny processes, the draft Recommendation opens the way to a varied range of solutions that take into account the practices of States. It provides that:

"3.14 Where appropriate, mechanisms for a political response to ERs and EBs may include: petitions calling for action on a specific issue, interpellation requiring a response, procedural questions requiring an answer, motion of confidence/no-confidence on whether a person is fit for the position of responsibility, motion of censure or suspension, popular dismissal through a referendum."

106. The text also reminds that such solutions must be accompanied by safeguards to prevent their misuse and to ensure a good balance between the representative and direct logics of democracy. Principles 3.17 et seq. of the Annex thus contain limitations in relation to the early termination of mandates and aim to guarantee the exceptional nature of their implementation:

- where recourse to these procedures involves the assessment of a legal situation, provision should be made for the intervention of a judge;
- the use of these procedures should be a complement to other mechanisms for citizen intervention, so as to avoid their over-frequent use and to reserve their use for cases justifying the dismissal of elected officials;
- recourse to these procedures should not be possible in certain cases or only in very specific circumstances, in particular with regard to the termination of the mandate of an elected official entrusted with executive functions designated by universal suffrage, with regard to measures taken by another territorial level, or with regard to measures against an individual member of an elected assembly;
- the use of these procedures should be reserved for executive bodies designated by direct universal suffrage. This should exclude their use for executive bodies appointed by indirect universal suffrage and for deliberative bodies.
- the law or the Constitution should define precisely the procedural rules governing the dismissal of members of parliament and provide a framework for it within a reasonable time frame in relation to the elections.
- judicial review of the steps and conditions of the process should be guaranteed, so as to establish a "scrutiny of the scrutiny".

107. Inspired by the work of the Venice Commission and the practices of the states mentioned above, these rules are intended to strike a balance between the representative dimension of local democracy and the arrangements for direct intervention by voters. They thus reflect the requirement of proportionality referred to in the text of the Recommendation.

ANNEX

Questionnaire sent to CDDG members on the accountability of elected officials and bodies at local and regional level

A compendium of responses is available as a specific working document, on the CDDG webpages ([link to the document](#))

Introduction

In its terms of reference for 2020-2021, the European Committee on Democracy and Governance (CDDG) is tasked with drafting '*a recommendation for the Committee of Ministers on democratic accountability of elected officials and bodies at local and regional level with a view to complementing Recommendation CM/Rec(2019)3 on the supervision of local authorities' activities and updating previous work in this area*'.

To this end, the CDDG has set up a specific working group on accountability (GT-RE). At its first meeting, GT-RE proposed, amongst other things, that a questionnaire be prepared on how different forms of accountability of local and regional elected officials and bodies are dealt with in Council of Europe member States.

Working definitions

Given the variety of concepts and situations in national legislation, in order to allow a common understanding of this questionnaire the following working definitions are given:

"Accountability" refers to the responsibility of a person or body to account for his/her/its activities to another person/body who has the powers to respond and take action in relation to the account that is given and particularly in relation to the person or body who gives the account.

"Elected officials and bodies at local and regional level" refers to persons or bodies directly elected to perform local / regional functions of public governance as well as persons appointed (often by them) to perform similarly high functions which may imply a delegation of powers, whether in the same public governing institutions (examples: president, executive secretary, chief of staff) or in structures to which functions of public governance have been devolved, irrespective of their legal status (example: public-private partnership, inter-communal non-profit association, so-called quangos etc.).

"Democratic accountability" is a form of responsibility applicable to an elected official and/or elected body, by which the electorate / citizens themselves can take measures against the official or body (example: initiating an action through a popular vote to recall/terminate his/her/its mandate, petition to recall a senior appointee).

"Political accountability" refers to an elected and/or appointed official or body being politically accountable to another official or body which can take measures against the official or body (example: withdrawing certain responsibilities or reconsidering a devolution, terminating his/her/its mandate).

"Financial liability" is the obligation of an elected official and/or body to repair the unjustified damage caused to an individual or a legal person by paying a financial compensation or a non-criminal fine.

"Criminal liability" is the responsibility in law for any illegal action, which is punishable through criminal sanctions.

"Administrative accountability" refers to the responsibility of an elected and/or appointed official or body to perform his/her/its duties in compliance with certain standards, the law and constitutional principles, including with regard to expediency, and/or to deliver agreed outcomes.

"Financial accountability" refers to the responsibility of an elected and/or appointed official or body in relation to good accounting practices and/or effective financial management, to prevent financial imbalances or to address financial difficulties in particular.

Questions

DEMOCRATIC ACCOUNTABILITY

1. Does your country have a system of democratic accountability at local and/or regional level? If not, go directly to question 4.
2. How does the process work: conditions of implementation, who can act/who initiates it formally, procedure and special requirements e.g. quorum rules, time-limits (before / after elections), decision-making body, consequences?
3. Please, provide information on the use of these mechanisms in practice (qualitative/quantitative information, available statistics).

ISSUES RELATING TO FINANCIAL LIABILITY

4. Does your country have a system of financial liability at local and/or regional level? If not, go directly to question 8.
5. What circumstances may give rise to financial liability of local and regional elected officials and/or bodies in your country?
6. Is this liability of a judicial (i.e. a decision taken by a judge) or administrative (i.e. taken by an administrative body) nature? How does the process work (conditions of implementation, who can act / who initiates it formally, procedure, consequences)?
7. Please, provide information on the use of these mechanisms in practice (qualitative/quantitative information, available statistics).

QUESTIONS RELATING TO CRIMINAL LIABILITY

8. Does your country have a system of criminal liability of elected officials at local and/or regional level for actions taken in relation to public duties? If not, go directly to question 13.

9. Is the criminal liability of local and/or regional elected officials limited to specific offences, or is it general? Please give details.

10. Please describe briefly the process (conditions of implementation, who can act / who initiates it formally, procedure, decision-making body) and in particular whether the criminal liability of elected officials is subject to specific procedural forms.

11. Are the penalties applicable to elected officials tailored to their status? Are they purely criminal or do they also have political effects (e.g. loss of political-civic rights / ineligibility)?

12. Please, provide information on the use of these mechanisms in practice (qualitative/quantitative information, available statistics).

QUESTIONS RELATING TO POLITICAL ACCOUNTABILITY

13. Does your country apply a system of political accountability of elected officials and/or elected bodies at local and/or regional level? If not, go directly to question 17.

14. Does this responsibility apply to all elected representatives, or is it limited to the Assembly or the local and/or regional executive (mayor, president, etc.)?

15. How does the procedure take place: conditions of implementation, who can act/initiate it formally, procedure, possible time limits (time span during which it may not be used), decision-making body, consequences)?

16. Please, provide information on the use of these mechanisms in practice (qualitative/quantitative information, available statistics).

QUESTIONS RELATING TO ADMINISTRATIVE ACCOUNTABILITY

17. Besides the process of democratic and of political accountability mentioned above, does your country have a system of administrative accountability of elected officials and bodies at local and/or regional level? If not, go directly to question No. 21.

18. For what reasons can such accountability mechanism be initiated and/or applied?

19. How does the procedure take place (conditions of implementation, who can act/who initiates it formally, procedure, decision-making body, consequences)?

20. Please, provide information on the use of these mechanisms in practice (qualitative/quantitative information, available statistics).

QUESTIONS RELATING TO FINANCIAL ACCOUNTABILITY

21. Does your country have a system of financial accountability of elected officials and elected bodies at local and/or regional level? If not, go directly to question No. 25.

22. For what reasons can such accountability mechanism be initiated and/or applied?

23. How does the procedure take place (conditions of implementation, who can act/initiates it formally, procedure, decision-making body, consequences)?

24. Please, provide information on the use of these mechanisms in practice (qualitative/quantitative information, available statistics).

OTHER QUESTIONS AND ASPECTS

25. Is the accountability of local / regional elected officials and/or bodies a subject of debate in your country, or even of proposals and/or reform projects?

26. Please, add any useful information in relation to matters addressed in this questionnaire.