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

### **COMPENDIUM OF RESPONSES TO THE QUESTIONNAIRE ON THE DEMOCRATIC ACCOUNTABILITY OF LOCAL AND REGIONAL ELECTED OFFICIALS AND BODIES**

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

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## TABLE OF CONTENTS

### Introduction

<b>Austria.....</b>	<b>4</b>
<b>Azerbaijan.....</b>	<b>8</b>
<b>Belgium (Brussels + Flanders).....</b>	<b>11</b>
<b>Bulgaria.....</b>	<b>33</b>
<b>Croatia.....</b>	<b>39</b>
<b>Cyprus.....</b>	<b>55</b>
<b>Czech Republic.....</b>	<b>59</b>
<b>Denmark.....</b>	<b>63</b>
<b>Estonia.....</b>	<b>69</b>
<b>Finland.....</b>	<b>74</b>
<b>Georgia.....</b>	<b>79</b>
<b>Greece.....</b>	<b>87</b>
<b>Hungary.....</b>	<b>97</b>
<b>Iceland.....</b>	<b>105</b>
<b>Republic of Moldova.....</b>	<b>110</b>
<b>Poland.....</b>	<b>118</b>
<b>Serbia .....</b>	<b>127</b>
<b>Slovak Republic .....</b>	<b>128</b>
<b>Slovenia.....</b>	<b>134</b>
<b>Spain.....</b>	<b>139</b>
<b>Sweden.....</b>	<b>151</b>
<b>Switzerland .....</b>	<b>158</b>
<b>United Kingdom.....</b>	<b>163</b>

## 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.

The present document is a compilation of the responses received (as at 23 September).

Given the variety of concepts and situations in national legislation, the questionnaire provided for the following working definitions in order to allow a common understanding of issues under consideration:

**"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.

## AUSTRIA

## 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.

**Yes**

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?

**The procedure varies among the regions, in Austria a federal country. There are 9 different procedures ("Bundesländerkompetenz"). Generalized there are two different kinds of procedures (that only vary in details): In some regions majors are not directly elected by citizens, but by the municipal council – in that case the municipal council can take a "vote of no-confidence" anytime (the same applies for members of the city governments – "Stadtrat" bzw. "Gemeindevorstand"). In regions where the mayor is voted directly by the citizens, the "vote of no-confidence" must be confirmed by a referendum among the eligible voters.**

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

**To our knowledge, there are no statistics available.**

## 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.

**Yes**

5. What circumstances may give rise to financial liability of local and regional elected officials and/or bodies in your country?

**Locally elected officials can be financially liable in case their actions violate due diligence. Both in administrative cases, as well as when their actions are subject to private law.**

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)?

**The liability of municipal decision makers is object to the law of damages and is adjudicated by a civil court. Recent rulings have been subject to major discussions, criticism and uncertainty among regional politicians. E.g. a mayor was ruled liable for the damage caused by a fish biting a citizen (because the pond was owned by the municipality).**

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

**The inhibitions to assert claims for damages are decreasing among the population, which is why lawsuits against regional politicians have increased in recent years. The result is a lack of proper candidates willing to run for office.**

## 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.

**Yes**

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

**It is not limited. In addition there are criminal offenses specifically for political or administrative decision makers (as "abuse of authority" – "Amtsmissbrauch")**

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.

**The public prosecution can exclusively initiate a criminal procedure.**

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)?

**Certain criminal offenses directly lead to a loss of office. This is stated directly in the Austrian criminal code (§ 27 StGB): All offences threatened by imprisonment of more than one year, all offenses that exceed an unconditional imprisonment by 6 months, a conviction for abuse of authority.**

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.

**Elected officials can be voted out of office by the required majority in the municipal council. The regulations vary among different regions (Bundesländer). Please see the answer to question 2.**

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.)?

**Each elected person can be voted out by the board which elected him/her. E.g. a mayor is politically accountable to the municipal council.**

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)?

**The procedures vary in the different regions ("Bundesländer"). In general, it is required to bring in a bill that is handled like any other bill.**

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

**To our knowledge, there are no official statistics nationwide on that. However, a vote of no confidence on the municipal level happens rarely.**

### 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.

**Yes**

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

**Standards and principles are stated in the constitutions of the regions ("Bundesländer") as well as in city-statutes and other administrative legal acts. A breach can lead to fines as well as to civil or criminal actions.**

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

**That depends on the legal act stating the duty as well as on the duty itself. E.g. financial fines for some breaches of procedure; the failure to comply with due diligence regulations can lead to claims of damages.**

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

**To our knowledge there are no statistics available.**

### 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.

**Yes**

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

**Mayors are accountable to the city council as well as to the municipal supervisory authority on the regional level ("Gemeindeaufsichtsbehörden der Bundesländer")**

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

**Every annual budget as well as every annual statement of account must be approved by the municipal council – mayors and members of the city government are politically accountable to the municipal council. In addition statements of accounts are audited by the supervisory authority of the region.**

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

**On the regional level there are no statistics available.**

### 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?

**Recent court rulings led to discussions and uncertainty among local politicians. Criminal and civil liability is seen to be excessive by many politicians. Many argue that they could be liable for decisions without even noticing the consequences at the time. The consequence is a lack of candidates for local political offices. E.g. in municipal elections it has recently become common that only one candidate runs for mayor (in smaller municipalities). A more precise wording of the relevant provisions stated in the criminal code, as well as a more effective regime of insurance for mayors and members of the city governments are two important demands by local politicians.**

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

## AZERBAIJAN

### 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.

Yes

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?

*At the initiative of 25 percent of the voters living in the same municipality, the municipal meeting can be called and the issue of dismissal of the chairman because he could not fulfill his duties (can be dismissed).*

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

*There is no information on the use of these mechanisms in practice*

### 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.

Yes

5. What circumstances may give rise to financial liability of local and regional elected officials and/or bodies in your country?

*Municipal officials bear full financial responsibility for damages caused to individuals and legal entities as a result of municipal decisions and actions of municipal employees.*

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)?

*This liability of a judicial (i.e. a decision taken by a judge) nature, but the execution mechanism is not yet available because this add-on is newly adopted.*

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

*There is no information on the use of these mechanisms in practice*

### 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.



Yes

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

*Criminal liability of local and/or regional elected officials arises for specific crimes and is called official crimes. Abuse of official authority, failure to perform their official duties, negligent approach to their duties entails liability if it causes significant damage to the public interests*

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.

*The process can start on the basis of a complaint or an illegal local municipal act and there is no special procedural form. If the administrative body starts the process, it must send the documents to the prosecutor's office. The final decision is made by the court.*

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)?

*The sanctions applied to elected officials are purely criminal and do not have political effects*

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

*This year, based on a complaint, the administrative control body sent documents from 8 municipalities to the anti-corruption Department. A 4 criminal case was opened in the Prosecutor's office on the fact of abuse of official powers, and the investigation materials were sent to the court. In court, fine sanctions were applied for loss caused to local self-government bodies*

## **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.

No

## **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.

No

## **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.

No

## 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?

*Democratic accountability is closely linked to ensuring transparency and is one of the mechanisms of public control over local authorities. It also helps to identify shortcomings at the local level and contributes to the implementation of reforms in this area.*

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

*The accountability of local government officials should only serve to improve the financial stability of local government, the completeness of the collection of local budget funds, and the correct use of financial resources to address local issues.*

*It is very important to ensure democratic and financial accountability in local governments, which can help to increase confidence in local democracy and reduce the negative aspects of its activities.*

## BELGIUM (Brussels)

[NB: original language : French]

**Preliminary remarks:** In the Brussels-Capital Region (hereinafter "the Region"), a distinction is made between elected representatives and elected bodies within the meaning of the working definition given:

- within **territorial authorities** (Regions and municipalities) :
  - at the regional level: the members of the Brussels Parliament (hereinafter "the Parliament") and the Brussels Government (hereinafter "the Government"). The members of the French Community Commission (hereinafter "COCOF", composed of the French-speaking elected members of Parliament) and the Flemish Community Commission (hereinafter "VGC", composed of the Dutch-speaking elected members of Parliament), which are institutions with competences in the fields of education and culture. The members of the Joint Community Commission (hereinafter "Cocom"), an entity which regulates and manages matters of health and assistance to persons in the Brussels-Capital Region. Each of these Commissions consists of a legislative body (an Assembly, composed of the members of parliament of the corresponding language group for the COCOF and the VGC, and the Joint Assembly composed of all Brussels elected representatives for the Cocom) and an executive body (a College, composed of the regional ministers of the corresponding language group for the COCOF and the VGC, and a Joint College for the Cocom).
  - at local level: local councillors, the mayor, aldermen (they form the College of mayors and aldermen, appointed by the Local Council)
- within entities constituted directly or indirectly by local and regional authorities, which have been assigned a public service mission exercised under the control of local and regional authorities:
  - at the regional level: members of general assemblies, colleges of commissioners and boards of directors of intermunicipal associations (associations of municipalities which may include other public authorities and private partners); members of the management and administrative bodies of regional public interest organisations (hereinafter "OIP"); heads of zones and members of police colleges and boards within Local Police Zones which cover the territory of several municipalities
  - at the local level : the members of the administrative and management bodies of the Public Centres for Social Welfare (hereinafter "PCSWs"); the members of the administrative and management bodies of Chapter XII associations (formed by one or more PCSWs, together with other public authorities and/or with legal entities other than those with a profit motive, with a view to carrying out one of the tasks entrusted to the PCSWs); the members of the boards of directors and management committees of the autonomous municipal self-governments (hereinafter "RCAs", legal persons under public law created by the municipality and entrusted with the management of one or more activities of an industrial or commercial nature in the municipal interest); the members of the general assemblies and boards of directors of municipal NPOs (non-profit associations entrusted with tasks in the municipal interest).

## DEMOCRATIC ACCOUNTABILITY

### **1. Does your country practice a system of democratic accountability at local and/or regional level? If not, go directly to question 4.**

Yes, in the Brussels-Capital Region, citizens can directly express their opinions and ask questions to certain elected representatives or bodies, as well as obtain information on their activities.

At the regional level, petitions can be submitted to the Parliament (if necessary, they will be sent back to the Government for explanations when they concern it).

At the local level, requests to the College of Burgomasters and Aldermen and popular consultations on citizens' initiatives can be made to the Local Council.

Apart from the obligation to respond to petitions and interpellations, these mechanisms for implementing democratic accountability have no binding effect on subsequent actions to be taken by elected persons and bodies.

### **2. How the system works: conditions of implementation, who can act / who formally implements the process, procedure and special requirements e.g. quorum rules, excluded periods (before / after an election), decision-making body, consequences?**

Right to petition Parliament: petitions must be sent in writing, in paper or electronic form, to the President of Parliament. All petitions must be signed by the petitioner and must legibly indicate his or her surname and first names, as well as his or her place of residence and date of birth. The right to petition is open to persons domiciled in the Brussels-Capital Region who are at least 16 years of age. A letter or written communication does not qualify as a petition if the author does not make a concrete request. Only petitions whose subject matter is in conformity with human rights and fundamental freedoms and which deal with a subject that falls, in whole or in part, within the competence of the Region, or which concerns its interests are admissible.

The President of Parliament decides on the admissibility of petitions, after consulting the Enlarged Bureau (the Parliament's internal consultation body).

The petition is then referred to the competent committee according to the subject matter, which may decide: that the request made cannot be answered in a parliamentary debate or that it has already been answered; to refer the petition back to the Government for explanation; and/or to deal with the petition. In this case, the committee may take any measures useful for this examination, including organising hearings. The Enlarged Bureau may decide to hold a debate in plenary session. The petitioner shall be notified by the President of Parliament of the inadmissibility of the petition or of the action taken on it by the committee responsible. Parliament regularly publishes the action taken on each petition.

The author of a petition has the right to a reply within 6 months of the submission of a petition. In addition, if a petition reaches the number of 1,000 signatures of persons domiciled on the territory of the Region and aged 16 years, it gives its author the right to be heard by the competent committee.

Right of interpellation for the Council of Burgomasters and Aldermen: 20 people, residing in the municipality, aged at least 16, may submit a request for interpellation to the Municipal Council for the attention of the Council. The interpellation must relate to a subject of municipal interest, not be of exclusively particular interest and be written

in French or Dutch.

An interpellation relating to a matter that falls within the scope of in camera sessions (by copy in disciplinary matters), that is already on the council's agenda, that has already been the subject of an interpellation in the last 3 months or that does not respect human rights or is of a racist or xenophobic nature is inadmissible. For the rest, the procedure for the admissibility of interpellations is governed by the specific provisions of the 19 internal regulations of the 19 Brussels local councils.

In general, a citizen who wishes to exercise this right of interpellation must make a prior request in writing to the Local Council. Admissibility will be examined by the President of the Local Council and the College of Burgomasters and Aldermen.

If the interpellation is admissible, it is placed on the agenda of the public session of the Local Council and the applicant is invited to this session to present his or her interpellation. In the event of a decision of inadmissibility, the applicant will be informed.

In practice, the interpellation takes place at the beginning of a public session of the Local Council. The interpellant's speaking time is limited to a few minutes. The oral statement is formulated by the person who was indicated as spokesperson in the request and cannot deviate from the content of the written development that accompanied it.

After the response from the College of Burgomasters and Aldermen has been received, the respondent may have a few minutes to reply.

The questions and answers are posted on the Commune's website.

Popular consultation of citizen's initiative: the local council can decide to organise a popular consultation on the initiative of the inhabitants of the municipality.

The initiative from the inhabitants of the municipality must be supported by at least 20% of the inhabitants in municipalities with less than 15,000 inhabitants; 3,000 inhabitants in municipalities with at least 15,000 inhabitants and less than 30,000 inhabitants; 10% of the inhabitants in municipalities with at least 30,000 inhabitants. The request for a popular consultation must be sent by registered letter to the College of Burgomasters and Aldermen, to which are attached a reasoned note and documents of such a nature as to inform the Local Council. The request is only admissible if it is submitted using a form issued by the municipality and if it includes certain specific information, particularly concerning the identity of the signatories. The College of Burgomasters and Aldermen controls the sufficient number of valid signatures: when this number is reached, the Local Council must organise the popular consultation.

Questions of persons and questions relating to accounts, budgets, municipal taxes and fees, access to the territory, residence and establishment and the removal of foreigners may not be the subject of consultation.

A popular consultation may not be organised during the 16 months preceding the local elections, or during the 40 days preceding the election of the members of the House of Representatives, the Parliaments of Regions and Communities and the European Parliament.

Inhabitants of the municipality may only be consulted once every six months and no more than six times per legislature. During the period extending from one renewal of the Communal Councils to the next, only one consultation on the same subject may be organised.

At least one month before the day of the consultation, the municipal administration provides the inhabitants with a brochure presenting the subject of the popular consultation in an objective manner. The questions must be formulated in such a way that they can be answered with a yes or no answer. Participation in the popular consultation is not compulsory. Each participant is entitled to one vote. The ballot is secret.

The College of Burgomasters and Aldermen displays the results of the popular consultation at the town hall.

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

During each public session of the 19 Municipal Councils of the Brussels-Capital Region, questions are almost systematically formulated.

The use of the right of popular consultation is marginal, as is the right to petition Parliament, which in its current version has only existed since 3 July 2020.

**PECUNIARY RESPONSIBILITY ASPECTS**

**4. Does your country practice a system of pecuniary responsibility at local and/or regional level? If not, go directly to question 8.**

Yes, the ordinary civil liability regime established by the Belgian Civil Code applies to members of the Government and regional parliamentarians, subject to certain reservations, local representatives, public officials and directors of legal entities governed by public law. Special regimes apply, which may give rise to the pecuniary liability of certain public officials, directors of public law legal entities and these same legal entities (provisions of the Code of Companies and Associations and of the Articles of Association of public law legal entities, provisions of the Code of Economic Law, provisions of environmental law, etc.).

**5. What circumstances may give rise to liability?  
What is the financial situation of elected representatives and bodies at local and/or regional level in your country?**

Members of Parliament and members of the Government shall enjoy immunity for votes and opinions expressed in the exercise of their functions. Subject to these immunity provisions, members of the Government and parliamentarians remain subject to the principle of full personal liability for damage caused to third parties in the exercise of their functions.

The slightest fault of the municipal representatives is their personal liability. In general, when an agent causes damage to others by acting in the exercise of his duties, or simply when he can be held to be acting within the limits of his duties by any reasonable and prudent person, he engages the responsibility of the public authority. In other words, in so far as a fault is established on the part of a municipal representative, the liability of the municipality co-exists. In the event of coexistence of the civil liability of the public authority and the natural person holding a parcel of public authority, both are jointly and severally liable to compensate the damage inflicted on the third party.

The municipality is obliged to take out insurance to cover civil liability, including legal aid, which is the personal responsibility of the mayor and the alderman or aldermen in the normal exercise of their duties.

As regards public officials, their personal liability may be called into question when they cause damage to others through their fault with intent to harm, their gross negligence

or their habitual slight negligence. However, the limitation of the personal liability of public officials does not entail any limitation of the victims' right to reparation of the damage: all acts of all staff members are covered by the liability of the public authority, as long as they are related to the functions exercised, even if these acts are intentional in nature. A double condition is generally required: on the one hand, the wrongful act must have been committed during the period of the duties, i.e. either at the place and during the normal working hours, or outside these limits but during the performance of the agreed services; on the other hand, the act must present a relation even indirect or occasional with the duties of the employee. The public authority, as a legal person, is solely liable for the damage caused by the slight accidental fault of a public official to a third party.

The public official is therefore solely liable when the alleged misconduct is unrelated to the performance of his duties.

The directors of OIPs, intermunicipal associations, municipal ASBLs, RCAs and Chapter XII associations, as well as all other persons who hold or have held the power to effectively manage the public law legal entity, have a differentiated civil liability regime. Firstly, liability for mismanagement (the poor execution by a director of his mandate) is contractual: this means that only the public law legal person can bring this liability action. Secondly, third parties can only bring an action against the liability of members of the administrative or management body (or one of its members) in the event of extra-contractual fault, based on a violation of the Code of Companies and Associations or the articles of association of the legal person concerned (e.g. failure to submit accounts within the required time limits, conflicts of interest, abusive advantages granted to directors, etc.). In addition, any fault of the director which would simultaneously constitute a breach of the general duty of care and diligence may give rise to a liability action on the basis of the Civil Code.

Where the board of directors forms a college, the directors shall be jointly and severally liable for the decisions and failures of that college. Even where the administrative body does not form a college, its members shall be jointly and severally liable both to the legal person and to third parties for any damage resulting from infringements of the provisions of the Code of Companies and Associations or the articles of association of that legal person.

The members of the administrative body shall be relieved of liability when they form a college and for violation of the code and/or the articles of association, for faults in which they have not taken part, if they have reported the alleged fault to all the other members of the administrative body. If the report is made to a collegial administrative body, the report and the discussions to which it gives rise shall be recorded in minutes.

**6. Is this responsibility of a judicial (i.e. decided by the judge) or administrative (decided by an administrative body) nature? How does the system work: conditions of implementation, who can act / formally implements the process, procedure, consequences?**

Civil rights compensation is the competence of the judicial judge.

In the civil sense, fault is understood to mean the mildest form of guilt that can be taken into consideration. Carelessness, forgetfulness or negligence are sufficient to commit a fault. The civil action is brought by the party who suffers damage resulting from a fault.

The ordinary law of Belgian civil procedure is applicable.

The Council of State also has the competence to grant reparatory compensation to applicants who have suffered damages due to the illegality of an administrative act under appeal.

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

We do not have statistical data on the use of these mechanisms. taken in isolation.

**QUESTIONS RELATING TO CRIMINAL LIABILITY**

**8. Does your country practice a system of criminal liability of elected representatives at local and/or regional level for acts related to their official functions? If not, go directly to question 13.**

Yes, at the regional level it concerns the members of the Brussels Government and of the Cocom College and members of parliament.

The local elected representative is criminally liable when he or she is the perpetrator of an offence or when he or she participates in it. Local representatives have no criminal immunity. Belgian common criminal law applies.

Any legal person governed by public law shall be criminally liable for offences which are intrinsically linked to the achievement of its object or the defence of its interests, or for those which the concrete facts show to have been committed on its behalf.

However, the Region, the Cocom, the COCOF, the VGC, the municipalities and the PCSWs can only have a conviction, to the exclusion of any other penalty, pronounced against them for the offences they commit. The conviction may lead to compensation of victims through the mechanism of imputability of offences to natural persons. IPOs, inter-municipal organisations, communal non-profit organisations and CAR and Chapter XII associations are subject to ordinary criminal law.

All public officials, the administrators of IPOs, intermunicipal associations, communal ASBLs, CAR and Chapter XII associations, are subject to a system of criminal liability for offences committed in the exercise of their duties, in addition to the ordinary criminal law system.

**9. Is this responsibility of elected representatives at local and/or regional level limited to specific offences, or is it of a general nature? Please give details.**

The criminal liability of the elected representatives and bodies referred to in the preceding points, in the exercise of their functions, is constituted :

- on the one hand, categories of offences specific to the exercise of a public function, listed in Title IV of the Belgian Criminal Code (e.g. corruption, abuse of authority, illegally anticipated or prolonged exercise of public authority, misappropriation and taking of interest, interference of the local executive in the exercise of local legislative power, etc.), as well as specific offences related to the exercise of a leading function within a legal person governed by public law (e.g. abuse of social property);
- on the other hand, of the ordinary criminal law regime, which applies to offences committed outside the performance of their duties by the above-mentioned natural persons.

For legal persons governed by public law, it should be noted that the criminal risk does not stop at the borders of the Criminal Code. Indeed, many specific legislations contain penal provisions whose violation is likely to trigger public action against them (legislation concerning the respect of private life, environmental legislation, legislation on public procurement, etc.). Finally, all criminal offences constituted by common or



particular criminal law are taken into consideration for the criminal liability of legal persons, provided that these offences are intrinsically linked to the realisation of the object or the defence of the interests of legal persons, or that the concrete facts demonstrate that they have been committed on their behalf.

**10. Please briefly describe the mechanism (conditions of implementation, who can act / formally implements the process, procedure, decision-making body) and in particular indicate whether this criminal responsibility of elected representatives is subject to specific procedural forms.**

Concerning the members of the Government :

The Brussels Court of Appeal has exclusive jurisdiction to try a member of the Government for offences committed in the exercise of his or her duties. Proceedings against a member of the Government may be instituted only by the public prosecutor at the competent court of appeal. They are exercised under his direction and authority. The competent Public Prosecutor and an advisor appointed by the First President of the Court of Appeal may carry out and cause to be carried out any act of information or investigation falling within their respective attributions throughout the territory of the Kingdom.

Except in the case of a crime or flagrant offence, coercive measures for which a judge's warrant is required, including warrants to bring, searches, seizures, call tracing and telephone tapping, as well as body searches, may only be ordered in respect of a minister by a panel of three councillors at the Court of Appeal appointed by the President of that Court. For the rest, the rules of the common law of criminal investigation apply.

The summons of a member of the Government to appear before the Court of Appeal by the public prosecutor is subject to the authorisation of the parliament and occurs when there are sufficient charges against the accused.

The public prosecutor shall forward to Parliament a statement of the evidence and an indication of its possible qualification, where appropriate the indictment. Parliament may refuse its authorisation if both the prosecution and the facts are clearly based essentially on political motives, or if the elements provided are irregular, arbitrary or insignificant. Parliament's authorisation is also required if the remand in custody or arrest of the accused minister is necessary. For the rest, the ordinary law of criminal procedure applies to proceedings before the Court of Appeal.

Concerning parliamentarians :

The criminal liability of parliamentarians for offences committed in the exercise of their functions is conditional upon the lifting of a specific immunity provided for in the Constitution. In practice, throughout his or her term of office, a member of parliament may not, in matters of repression, be arrested, referred or summoned directly to a court or tribunal, except with the authorisation of parliament. This regime is called "parliamentary inviolability". The regime of inviolability implies that the exercise of certain acts of criminal procedure requires prior authorisation by Parliament.

Only the public prosecutor's office can set public action in motion. The potential victim does not have the possibility to do so by filing a civil claim with the examining magistrate, or by directly summoning the member of parliament to appear. The binding investigative acts referred to in the previous point, such as telephone tapping, DNA tests, etc., must be authorised by the First President of the Court of Appeal of Brussels, with the President of the Parliament being informed. In addition, the presence of the latter is required in the event of a search or seizure.

The Constitution also provides that a parliamentarian may only be arrested or placed in preventive detention with the authorisation of Parliament. The same applies if the public prosecutor decides to refer or summon the parliamentarian directly to a court or tribunal. It is therefore Parliament that decides whether or not to lift parliamentary immunity.

However, these rules are not applicable in cases of *flagrante delicto* or *flagrante delicto* crime. In this case, no prior authorisation from the meeting concerned is required. Furthermore, any member of parliament may request, at any stage of the investigation, the suspension of proceedings or his or her release. Parliament must decide in favour of suspension by a two-thirds majority of the votes cast. It may also, on its own initiative and by a simple majority, request the suspension of prosecution and detention at any time during the proceedings and until the closure of the debates.

A request to lift inviolability may be transmitted by the public prosecutor at the Brussels Court of Appeal to the Parliament. This request is accompanied by a file containing the facts with which the Member of Parliament is charged, any complaints, testimonies, confessions and supporting documents. The decision to lift inviolability constitutes an authorisation for prosecution or arrest. A prosecution committee shall rule on the lifting of inviolability and subsequently, if necessary, the plenary assembly. The Committee of Proceedings may hear third parties and the Member of Parliament against whom the proceedings are brought.

The meeting may limit the scope of the authorisation to proceed. It may, for example, grant it for certain facts and refuse it for others. The assembly may also grant authorisation for referral to a court or direct summons, but refuse it for arrest.

For the rest, the ordinary law of criminal procedure applies to the procedure before the court.

#### Concerning local elected representatives :

Like members of the Government and regional parliamentarians, for a local representative to be held criminally liable, he or she must have committed an offence. In order to determine whether this is the case, it will have to be determined whether the elements constituting the offence are met. For local elected representatives, there is no specific immunity regime, the common criminal law applies. When the offence is committed, the criminal responsibility of the natural person can be engaged and sanctions can be applied. As far as the local representative is concerned, he may be held criminally liable in many cases: either as a result of an intentional offence or as a result of an unintentional offence. For an intentional offence to be punishable, it is necessary that the person committed it with knowledge and will. Some offences only require proof that the perpetrator acted knowingly (e.g. the offence of bribery, trespassing or arbitrary arrest). Some offences require proof of an intention to cause harm or to obtain an illicit benefit (e.g. forgery, embezzlement). Other offences require only simple fault (e.g. a burgomaster prosecuted for assault and battery following the burning of a building on his territory).

The criminal liability of local elected representatives and the criminal liability of the directors of OIP, intermunicipal associations, RCA, communal ASBLs and Chapter XII associations are not subject to specific procedural forms: general criminal law and the general law of Belgian criminal procedure apply.

#### Concerning the criminal liability of legal persons governed by public law :

The general criminal law and the common law of Belgian criminal procedure apply, with

the proviso that the only penalty that can be pronounced against the Region, the Cocom, the municipality and the PCSW is a declaration of guilt.

The criminal liability of legal persons does not exclude the criminal liability of natural persons who have committed or participated in the same acts. This means that the Region, the Cocom, the municipality, the CPAS, the Chapter XII association, the CAR, the municipal and inter-municipal ASBLs and the OIP can henceforth be held criminally liable, as can elected natural persons, public officials or directors/executives, who have committed or participated in the same acts.

**11. Are the sanctions applicable to elected representatives appropriate to their status? Are they purely penal or do they also have political effects (e.g. loss of civil and political rights / ineligibility)?**

As regards the criminal responsibility of members of the Government, parliamentarians, local representatives and public officials according to the sentence handed down (they may be subject to the same type of criminal sanctions as any citizen, i.e. imprisonment or fine), the competent court may attach penalties of dismissal and/or prohibition of the right to hold public office, employment or public office and/or to exercise certain civil and political rights. This prohibition, which is for life, is automatically accompanied by the pronouncement of a sentence of imprisonment for a term of 20 years or more.

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

We do not have statistical data on the use of these mechanisms.  
taken in isolation.

## ISSUES OF POLITICAL ACCOUNTABILITY

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

Yes, at the regional level, there is a mechanism for a motion of confidence at the initiative of the Government and a mechanism for a constructive motion of mistrust at the initiative of Parliament. At the local level, at any time, the Communal Council may adopt a motion of no-confidence in the President of the Council or his or her deputy.

With regard to IPOs, Chapter XII associations, municipal ASBLs, RCAs and intermunicipal associations, a mechanism for the "ad nutum" dismissal, without just cause, of directors is provided for in the Code of Companies and Associations. Such dismissal is decided by the deliberative body of the company or association by a simple majority of votes.

**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.)?**

At the regional level, under the confidence-building mechanism, if confidence is refused by an absolute majority in Parliament, the entire Government shall resign as of right.

If a motion of constructive mistrust is passed, the resignation of the Executive or simply of the members affected by the motion is automatic.

At the local level, the motion of no-confidence only concerns the President of the Local Council, or his deputy.

**15. How the system works: conditions of implementation, who can act / who initiates the procedure formally, procedure, possible temporal exclusions (period during which it cannot be implemented), decision-making body, consequences)?**

At regional level :

The Government may decide at any time to put the **question of confidence** in the form of a motion. The Parliament, for its part, may at any time adopt a motion of no confidence in the Government or in one or more of its members. The motion of distrust is admissible only if the Parliament presents a successor to the Government or to the member(s) concerned by the motion.

A vote on a motion of confidence or mistrust may not be taken until 48 hours have elapsed since the motion was tabled.

The motion of confidence is only adopted if a majority of the members of Parliament supports it. If the vote of confidence is refused, the Government shall resign as of right. In that case, it shall be replaced without delay. In the meantime, the resigning Government shall dispatch the current business.

A **motion of constructive distrust** must be adopted by a majority of the members of Parliament if it is directed against the President of the Government, and by a majority of the members of Parliament and a majority of the members of each language group if it is directed against the Government as a whole. When a motion of no-confidence is directed against a member of the Government with the exception of the presiding minister, it must be adopted by a majority of the members of the language group to which that member of the Government belongs.

The adoption of the motion of no-confidence shall entail the resignation of the Government or of the contested member(s) and the installation of the new executive or new member(s).

At the local level :

At any time, the Local Council may adopt a motion of no confidence in the President of the Council or his or her deputy. This motion is only admissible if it presents a successor to the one or those it refers to. It is deposited in the hands of the municipal secretary (head of the municipal administrative services), who sends it without delay to each member of the Council and of the College of Burgomasters and Aldermen. The Council shall place the debate and the vote on the motion of no-confidence on the agenda of the next Local Council following its submission, provided that at least 7 clear days have elapsed following the submission of the motion of no-confidence. During this meeting, before the vote on the motion, the President of the Council or the substitute concerned by the motion shall, if present, have the opportunity to make his or her observations in person.

The adoption of the motion by a majority of the members of the Council shall entail the resignation of the Chairman of the Council or his deputy concerned and the election of his successor with immediate effect.

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

We do not have statistical data on the use of these mechanisms, which remains marginal at both local and regional level in the Brussels-Capital Region.

## QUESTIONS RELATING TO ADMINISTRATIVE LIABILITY

**17. Beyond the democratic and political accountability mechanisms mentioned above, does your country have a mechanism for the administrative accountability of elected persons and bodies at local/regional level? If not, go directly to question 21.**

Yes, there is a mechanism of administrative supervision exercised by the Regional Government and the Cocom College in matters within their respective competences.

In addition, there is a jurisdictional channel: the Council of State is competent to annul administrative acts that are contrary to the rules of law in force or, in case of emergency, to suspend their execution.

**18. On what grounds can this responsibility be initiated and/or applied?**

The control of the Council of State is limited to the legality of administrative acts. If the Council of State finds, after taking up an appeal, that an act of an administrative authority is illegal, it may annul or suspend it.

The control of the supervisory authority encompasses both the legality of legal acts and contracts performed by subordinate administrative bodies (control of compliance with laws, regulations and general principles of law) and their conformity with the general interest.

Ordinary supervision is the mode of control of local management in general, in which the municipality and/or other local authorities act as decentralised authorities and enjoy the autonomy granted to them by the Constitution.

There are specific supervisory mechanisms in certain matters falling within the competence of the federal State, the Communities or the Regions and in which local authorities have ancillary competence. In the legislation relating to these matters, it is therefore the Federal State, the Communities or the Regions that determine which acts of local authorities are subject to supervision, the deadlines and the supervisory body, as well as the essential elements of the procedure (examples: specific supervision by the Federal State over Police Zones, supervision by the Regional Minister for Mobility over additional road traffic regulations).

In this questionnaire, we focus on ordinary supervision, which is a good illustration of the administrative responsibility system in the Brussels-Capital Region.

**19. How the system works: conditions of implementation, who can act / who initiates the procedure formally, procedure, decision-making body, consequences)?**

Government supervision of the communes :

Certain documents have to be transmitted in their entirety by the municipalities to the authority of guardianship. The guardianship authority has a specified period of time in which to exercise its control.

The other acts are listed in the form of brief statements (a concise but clear description of the subject of the decision) on a list sent by the municipalities to the supervisory authority, which may request them in their entirety within a specified period of time in order to exercise its control.

The documents must be accompanied by all the documents necessary for checking that

they comply with the law and the general interest. The Government may ask the municipalities to send it any information, any data or any information useful for the exercise of administrative supervision.

In the ordinary guardianship regime, a distinction is made between :

The **general supervision of annulment**: the Government can suspend or annul an act of a commune by means of an order. Any communal act may be subject to a trusteeship measure but the Government is not obliged to exercise it. The exercise of the power of suspension is discretionary on the part of the supervisory authority and is not a necessary prerequisite for the exercise of its power of annulment. The suspension is intended to enable the municipal authority to withdraw the suspended act or to justify it. If the commune wishes to adapt its decision in accordance with the suspension order, it must first withdraw the suspended decision and then take a new act.

**Approval supervision**: this covers certain specific acts, for example certain acts in financial matters (budget and municipal accounts, accounts and statements of income and expenditure of the municipal corporations, the final account of the municipal receiver or the treasurer of the municipal corporations - the municipal receiver, appointed by the Municipal Council, is responsible, alone and under his own responsibility, for carrying out municipal income and paying out expenditure. In the PCSWs, the financial director plays a similar role) and in matters of local personnel. These acts must obligatorily be approved by the Region before they can take effect.

**Substitute guardianship**: in very limited cases of failure of a municipality, the Region can take its place. This type of guardianship is implemented by the Government when the subordinate authority does not fulfil its legal obligations. This includes supervision measures such as the reform of the budgets and budgetary modifications of the communes and the local authorities, the budgetary accounts of the communes and the statements of income and expenditure of the local authorities, the profit and loss accounts and the balance sheets of the communes and the local authorities, as well as the end-of-management accounts of the local receivers.

After two consecutive warnings and sent by registered letter with acknowledgement of receipt or delivered by hand in return for a receipt, the Government may instruct one or more commissioners to visit the site in order to gather the information requested or to fulfil an obligation imposed on the municipal authority.

Any Government supervision order must be notified in writing to the communal authority.

within the time limit and must be the subject of a formal statement of reasons.

#### Government supervision of intermunicipal associations:

The guardianship regime for municipalities is taken as a reference.

The memorandum and articles of association, the statutes, their annexes and amendments which entail additional obligations for the associated municipalities or a reduction in their rights, are subject to an approval supervision modelled on the approval supervision of the acts of the municipalities.

All the other acts of the intermunicipal associations are subject to a general trusteeship of annulment.

modelled on the model of the general supervision of the acts of the communes.

The Government may ask the intermunicipal associations to transmit any useful information, data or intelligence to it and even collect them on the spot.

The Government may, by order, appoint a special commissioner when the intermunicipal association fails to provide the information and elements requested, or to implement the measures prescribed by laws, ordinances, orders, regulations or statutes or by a court decision. The special commissioner is empowered to gather the elements or observations requested or to take all necessary measures in the place of the intermunicipal body, within the limits of the mandate given to him by the order appointing him.

#### Government supervision of autonomous communal self-governments:

The regime is similar to the previous regimes discussed.

The accounts, i.e. the statement of income and expenditure of the autonomous local authority, accompanied by the auditor's report and the acts of creation of companies, associations and institutions or the participation in companies, associations and institutions and the contributions of the autonomous local authority in these companies, associations or institutions, are subject to an approval supervision modelled on the approval supervision of the acts of the municipalities.

All the other acts of the autonomous municipal authorities are subject to supervision. general cancellation policy.

The transmission of information and the appointment of a special commissioner, as mentioned in the previous point, are also provided for in the system of government supervision of the autonomous municipal corporations.

#### Governmental supervision of communal NPOs :

The scheme is similar to the previous guardianship schemes discussed. There is no mechanism for approval guardianship. All the acts of municipal ASBLs are subject to the general trusteeship of annulment modelled on the model of the general trusteeship of municipal acts. The transmission of information and the appointment of a special commissioner as mentioned in the previous point are also provided for in the system of government supervision of the autonomous municipal corporations.

#### Supervision of the PCSWs :

It is exercised by the Cocom Council, the Municipal Council and the Council of Burgomasters and Aldermen of the municipality of the PCSW concerned.

The mechanism of general trusteeship of annulment on the acts of the municipalities is taken as a reference. This mechanism concerns most of the acts of the PCSWs. The College of Burgomasters and Aldermen can give optional opinions to the College meeting within the framework of the general supervision process.

The acts by which the PCSW adopts the budgets or the annual accounts, as well as the acts by which it carries out budgetary modifications, are also subject to a double supervision: approval supervision exercised by the Municipal Council to which the PCSW reports, and variable-geometry supervision of the college that meets according to the supervision decision taken by the municipality. If the municipality approves these acts, the Council meeting exercises a general supervision of suspension and/or cancellation of these acts. If the municipality does not approve or reform (the reform concerns only the budgets) these acts, in this case, the Council exercises special supervision for approval.

The budget may be adopted by the Local Council in place of the Social Action Council in the event of the latter's default. In this case, the Council meeting shall supervise the

approval of the budget. In this context, it may approve, reject or reform the budget. The Council also has the power to approve the deed of the PCSW's Chief Financial Officer's end-of-management account.

There are also guardianship mechanisms for certain acts of the PCSWs relating to Chapter XII associations, as well as guardianship mechanisms for certain acts of Chapter XII associations. The mechanisms are in essence similar to the mechanisms of general trusteeship of annulment and special trusteeship of approval already mentioned.

The PCSW must be notified in writing of any order of supervision of the College within the time limits set by the PCSW.  
and must be the subject of a formal motivation.

#### Judicial:

To challenge the legality of an administrative act before the Council of State, the applicant must have the required capacity, quality and interest. He/she must observe the requirements of a procedure described by the Coordinated Acts on the Council of State. There are also requirements for the opposing party (i.e. the administration which issued the contested act).

If the appeal against an administrative act is declared admissible and the challenge to its legality is found to be founded, the appeal leads to the annulment of the act undertaken, so that this act is deemed never to have existed. In case of urgency, if requested by the petitioner, the suspension of the contested act may be decided by the Council of State. If the request for suspension is granted by the Council, it leads to the provisional suspension of the effects of the act due to the urgency, until the annulment action is decided.

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

Concerning guardianship in its entirety, in 2014, 25,954 guardianship files will be encoded by Brussels Local Authorities, the administration in charge of the execution of guardianship. In total, 124 approvals, 58 suspensions, 22 cancellations and 18 non-approvals were pronounced. In 2018, 22,735 files are encoded by Brussels Local Authorities. In addition, the administration regularly addresses remarks to the local authorities without taking any guardianship measures.

Regarding the judicial path, from 31 August 2017 to 31 August 2018, the Council of State reports 4,571 cases pending before the Administrative Jurisdiction Division, including 3,001 new cases. A total of 3,239 judgments were handed down by the Administrative Jurisdiction Division in the same year.

## **FINANCIAL LIABILITY ISSUES**

### **21. Does your country have a mechanism for financial accountability of persons and elected bodies at local/regional level? If not, go directly to question 25.**

Yes, financial control, control of the legality of public expenditure and revenue and the proper use of public funds is exercised by the Court of Auditors (hereinafter "the Court"). It can also examine the accounts of the municipalities. It informs the Parliament of the results of its controls in the form of reports. It may examine and settle the accounts of the general administration and of all public accountants (i.e. agents of the executive



power responsible for the collection and/or payment of public funds) in the context of judicial proceedings.

Public officials (members of parliament, members of a government and their chiefs of staff, mayors and aldermen, certain administrators of inter-municipal associations, etc.) and senior civil servants of public administrations and bodies are required to communicate annually to the Court, by electronic means, the list of their mandates, functions and professions, as well as the remuneration related to these functions (annual gross amount or range of magnitude).

Furthermore, in certain cases, public officials and senior civil servants are required to file a declaration of assets with the Court in a sealed envelope, which the Court keeps as such. The lists of mandates, functions and professions, as well as the list of persons who have not submitted a list of mandates or a declaration of assets, are published annually on the Court's website and in the *Moniteur belge*.

At the local level, regarding the financial responsibility of municipalities, intermunicipal organisations, CAR, municipal NPOs and PCSWs, there are supervisory mechanisms described in point 19 of this questionnaire.

It should be noted that the control of the financial situation and the annual accounts of CAR is entrusted to an auditor appointed by the Municipal Council, who provides it with a technical report on the basis of which the Council will discharge the CAR directors or not.

On the other hand, each municipal NPO concludes an agreement with the municipality. This agreement designates a body responsible for drawing up an evaluation report specifying the means of control available to the commune over the financial situation of the ASBL and the concrete procedures enabling it to exercise effective control over the use of the subsidies granted by the commune.

As regards the communes, the College of Burgomasters and Aldermen checks the cash of the municipal collector at least once every quarter, and draws up a report of the check, which mentions its observations and those made by the collector. This report is sent to the town council. An identical mechanism exists regarding the PCSWs and the cash of their financial directors.

## **22. On what grounds can this responsibility be initiated and/or applied?**

The financial responsibility of the Brussels-Capital Region, the Cocom and the public interest bodies that depend on it may be incurred in the event of non-compliance of accounting operations with public accounting regulations, and when the accounts drawn up by the public accountants show a deficit. The latter case gives rise to an administrative ruling of deficit which may lead to the Court exercising its jurisdictional mission.

At the local level, regarding the financial responsibility of municipalities, intermunicipal organisations, CAR, municipal NPOs and PCSWs, there are supervisory mechanisms described in point 19 of this questionnaire.

The financial responsibility of the municipal collector or the financial director of the PCSW can be committed in the event of a deficit in public cash.

**24. How the system works: conditions of implementation, who can act / who initiates the procedure formally, procedure, decision-making body, consequences)?**

As an impartial and independent institution, the Court exercises its own-initiative control.

The Brussels-Capital Region, the Cocom and the public interest bodies that depend on it report annually to the Court on the use of the public funds entrusted to them, as well as in the event of a deficit or the termination of a public accountant's mandate. The Court verifies the accuracy, reliability and completeness of the financial statements, ensuring that accounting operations comply with public accounting regulations. The Court gives its ruling on the conformity of the accounts. In the event that the ruling reveals a deficit in the management of an accounting officer, the competent minister must refer the matter to the Court of Auditors. He can only refrain from citing him if he considers that the accountant can claim force majeure or if the deficit does not exceed an amount fixed by royal decree.

At the end of an adversarial and public procedure, the Court gives a discharge to the accounting officer if it concludes that there is no deficit. Otherwise, the Court condemns the accounting officer to pay off his deficit if it judges that he has committed a serious fault or negligence, or a slight fault of a repetitive nature, which facilitated or allowed the deficit to occur. It may, however, in the light of all the circumstances of the case and in particular the importance of the accounting officer's failure to fulfil his obligations, order him to repay only part of the deficit.

The Court verifies the conformity of public expenditure and revenue with the budgetary law (sufficient appropriations in the budget, correctness of allocations, etc.) and it ensures the correct application of the rules of law to which the operation under audit is subject (in particular the rules applicable to public procurement, the granting and use of subsidies, the recruitment of staff, etc.).

Controls are carried out in collaboration with the administrations concerned, which are informed in advance of the controls decided upon. The control teams work on the basis of supporting documents sent to the Court or on the basis of information they collect on the spot from the audited bodies.

The Court communicates to Parliament the results of its control missions. The Court gives the administrations and ministers concerned by the audits the opportunity to express their views on the results of the audits. The contradictory procedure, prior to informing parliaments, is formalised and gives rise to an exchange of written documents. The conclusions of this procedure are included in the report adopted by the Court and transmitted to parliaments.

The Court also informs the relevant parliamentary assemblies (Parliament or Colleges of Community Committees) of any commitment, authorisation or payment of expenditure made over and above or outside the appropriations provided for in the budgets. The Court's documents sent to the various assemblies are debated in the Finance Committee of Parliament, in the presence of a representative of the Court.

At the local level, regarding the financial responsibility of municipalities, intermunicipal organisations, CAR, municipal NPOs and PCSWs, there are supervisory mechanisms described in point 19 of this questionnaire.

In addition, at the commune level, the municipal collector immediately reports any deficit resulting from theft or loss to the Council of Burgomasters and Aldermen. The cash is immediately checked to determine the amount of the deficit, the circumstances

of its occurrence and the conservation measures taken by the receiver. The minutes are forwarded to the Local Council, which decides whether the receiver should be held responsible for the theft or loss, setting the amount of the deficit that it will be up to him to settle. When the verification of the cash shows a deficit, particularly following the rejection of certain expenditure from accounts that have been definitively closed, the Council of Burgomasters and Aldermen invites the receiver, by registered letter sent to the post office, to pay an equivalent sum into the communal cash register. The collector may appeal to the judicial panel.

The jurisdictional college, a regional court, shall rule on the liability of the receiver and shall determine the amount of the deficit to be borne by him/her. The receiver shall be exempt from any liability when the deficit results from the rejection of expenditure from accounts that have been finally closed, provided that he has paid them in accordance with the law.

If the deficit is attributed to the definitive rejection of certain expenses, the receiver may call upon the members of the College of Burgomasters and Aldermen who have irregularly incurred or mandated these expenses to intervene, so that the decision is declared common and opposable to them. In this case, the jurisdictional Council also rules on the liability of the interveners.

Where the recipient does not appeal to the Judicial Council and fails to comply with the request for payment addressed to him/her after the expiry of the time limit set for this purpose, enforcement by way of constraint shall be carried out in the same way.

In the month following the end of each quarter of the calendar year, the College of Burgomasters and Aldermen draws up a report containing the budgetary and accounting data of the municipality, which is transmitted to the Government.

An identical system applies for the financial director of the PCSW. The report containing the budgetary and accounting data of the PCSW is drawn up by the Social Action Council and forwarded to the Cocom Board at its meeting.

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

Concerning the use of guardianship, see the statistics referred to in point 20 of this report. In 2019 in Belgium, the Court of Audit certified or declared audited 318 accounts of public bodies and separately managed services. In the same year, it closed 2,833 accounts of public accountants; the findings, conclusions and recommendations resulting from its thematic audits concern both financial aspects and the legality or proper use of public funds, and were the subject of 70 reports.

## **OTHER ISSUES AND ASPECTS**

**26. Is the responsibility of elected public representatives at local/regional level a subject of debate in your country, or even of proposals and/or reform projects?**

Yes. Examples of the most recent reforms include :

- enlargement and facilitation of the right to petition the Brussels Parliament in July 2020;

- the entry into force of an ordinance governing various specific modes of management of municipal activity and multi-municipal cooperatives, providing in particular for a harmonised administrative supervision system for the acts of the RCA, municipal and inter-municipal non-profit associations, in September 2018;

-the entry into force of the reform of Article 5 of the Criminal Code, introducing a relative abolition of the immunity of public law legal persons with regard to their criminal liability, in July 2018.

**27. Please provide any other useful information on the topics covered in this questionnaire.**

## BELGIUM (Flanders)

### 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. **No.**
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. **Yes**
5. What circumstances may give rise to financial liability of local and regional elected officials and/or bodies in your country? **This is described in general as being liable for the damage they caused through their faults whilst exercising their mandate**
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? **Judicial nature**. How does the process work (conditions of implementation, who can act / who initiates it formally, procedure, consequences)? **Everybody can initiate such a process. No special process. The "ordinary" process for recovery of damage due to faults apply.**

**Article 17 of the Flemish Act on Local Governance makes it mandatory for each municipality to take out an insurance policy to cover civil liability, legal assistance included, which is personally charged to the municipal councilors in the normal exercise of their mandate.**

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. **Yes. The elected official is criminally liable for his deeds.**
9. Is the criminal liability of local and/or regional elected officials limited to specific offences, or is it general? Please give details. **General, for instance conflicts of interest.**
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. **Everybody can initiate it, no special procedure, decision-making body are the courts, the judiciary.**

**Except in the case of repetition, the local government is civil liable for the payment of fines to which the elected official is found guilty due to a crime committed in the normal exercise of his mandate, with the exception of a personal breach of the highway code.**

**The recourse action of the municipality with regard to sentenced municipal councilors is limited to the cases of deception or serious guilt.**

The criminal immunity of local government has been abolished, which means that a municipality can be criminally prosecuted and condemned. This doesn't change the possibility to invoke the criminal liability of the elected official, but this is less expedient in lots of cases. The burden of proof of a personal breach of an elected official is quite heavy, because the faults committed by a local government are not automatically attributed to its' elected officials. There is lots of jurisprudence in which the criminal court argues that the condition of the road network is dangerous, but still acquits the mayor because one can't expect that he or she personally knows this situation or condition.

Regional elected officials, which are the members of the Flemish Parliament, have parliamentary immunity for criminal cases only, not for civil or disciplinary cases. Their parliamentary immunity can only be lifted if the Flemish Parliament agrees with this. A house search can only proceed in the presence of the Chairperson of the Flemish Parliament or a Member of Parliament who has been designated by the chairperson.

11. Are the penalties applicable to elected officials tailored to their status? **No.** Are they purely criminal or do they also have political effects (e.g. loss of political-civic rights / ineligibility)? **A penalty from a criminal conviction can be the loss of political rights, which means 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.

**Article 46 of the Act of the Flemish Parliament on Local Governance contains a clause for the reestablishment of the governability of the municipality when the local council assesses the structural ungovernability of the municipality.**

**This is the case when there is an instability in the executive of mayor and aldermen and when the executive can no longer count on the support of a majority of the councillors.**

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.)?

**The executive of mayor and aldermen.**

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)?

**The municipal council assesses with an absolute majority the structural ungovernability of the council and notifies this to the Flemish Government.**

**Based on this notification, the Flemish Government gives the governor of the province a mediation assignment. The governor informs the Flemish Government of the result of his or her mediation.**

**If the Flemish Government finds that the governor's mediation failed, it will notify this to the local council.**

**In that case, the local council can then start the procedure for appointing a new executive of mayor and aldermen.**

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

The Flemish Governance Agreement for the legislature 2019-2024 provides for the introduction in the Act of the Flemish Parliament on Local Governance of a constructive motion of no-confidence, in order to avoid the ungovernability of a municipality. This instrument can only be used with the support of two thirds of the local councillors of each party group and can't be introduced within the first 12 months after the installation of the local council, nor within the last 12 months before local elections.

## 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. **Yes.**

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

The Flemish Minister for Home Affairs and the governors of the five provinces are responsible for the general administrative supervision of local and provincial administrations. They may annul decisions of these boards if they breach the law or the public interest.

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

Local and provincial boards are obliged to publish a large number of their decisions on their website and/or other web application. In this way, anyone can consult them and possibly file a complaint.

Complaints can be lodged against the decisions of the bodies and staff who can make a decision of these local and provincial administrations (a municipality, an autonomous municipal corporation, a public center for social welfare, a province, an autonomous provincial corporation, an intermunicipal partnership).

The complaint must be made and submitted in a timely manner. The monitoring period is in most cases 30 days (in exceptional cases 50 days). Otherwise, the complaint is inadmissible..

Anyone can complain: no interest must be demonstrated.

If the complaint has been filed in a timely manner and the supervisory authority is competent, the governor of the province or the minister will ask for the decision and position of the local government.

The examination of the file starts as soon as the local authority delivers the decision.

The complainant will receive a definitive response to his or her complaint within three months.

The Flemish Agency for Home Affairs is responsible for the preparation of the file and the support of the supervisory authorities.

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

**Quantitative information:**

- **Advices:** the number of advices that the Agency for Home Affairs – competent for local government – gave in 2019 (to local authorities, citizens, local councilors, legal persons):  
 Total number= 5953;  
 Whereof:
  - 1941 about local finances (annual account, local taxes, etc.);
  - 1991 about the organization and functioning of local authorities (local council, the executive of mayor and aldermen, committees, the Public Center for Social Welfare and its organs, citizen participation, church administration, cemeteries, public procurement, real estate of local authorities);
  - 2021 about local staff, autonomous municipal corporations and intermunicipal cooperation.
- **Complaints:** the different complaints about local decisions the Agency for Home Affairs received in 2019 from a citizen/ local councilor/ legal person, led to 69 annulments of the local decision and to 10 suspensions.

### **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. **No.**
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.



## Bulgaria

### 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.

*There is no such system*

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.

*As stipulated in the Damages caused by the State and Municipalities Liability Act, the municipalities are responsible for damages caused to citizens and legal entities in relation to illegal acts, actions or omissions of their bodies and officials during or on the occasion of performing administrative activity, as well as for the damages caused by the action of regulations repealed as illegal or declared null and void. The payer of the compensation is the municipality as a legal entity, and the local elected officials are accountable to the municipality by way of recourse liability. Both types of legal liability are realized in court.*

*For the protection of public interest in Bulgaria, a number of public audit and control bodies have been established and operate, such as the National Audit Office, Public Finance Inspection Agency, Ministry of Finance, Commission for Consumers' Protection, Commission for Protection of Competition, National Revenue Agency, National Social Security Institute, Counter-Corruption and Unlawfully Acquired Assets Forfeiture Commission and others.*

5. What circumstances may give rise to financial liability of local and regional elected officials and/or bodies in your country?

*Illegality of the acts and actions of the respective local elected officials/ body; violation of the rights of the citizens/ legal entities; damages.*

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)?

*The liability of local elected officials/ bodies is judicial with regards to the right of compensation for damages caused to a natural/ legal person. The court shall issue a decision determining the amount of the respective monetary compensation.*

*At the same time, local elected officials and/ or bodies bear administrative responsibility before a number of public audit and control bodies mentioned above (National Audit Office, Public Finance Inspection Agency, Ministry of Finance, Commission for Consumers' Protection, Commission for Protection of Competition, National Revenue Agency, National Social Security Institute, Commission for Combating Corruption and Confiscation of Illegally Acquired Property and others)*

### **National Audit Office Act**

*The National Audit Office (NAO) exercises control over the implementation of the municipal budget. In the presence of data on damages and violations in the implementation of budgets and EU funds accounts or in the management of property that do not constitute a crime, the NAO sends the audit report to the relevant competent authority to seek property or administrative-penal liability - incl. from local elected officials.*

### **Public Financial Inspection Act**

*The financial liability of local elected officials is usually administrative, provided for in a normative act regulating the budgetary, financial-economic or reporting activity and is expressed in the imposition of a monetary penalty - a fine. The administrative violations of the requirements of the respective normative acts are established by financial inspectors of PFIA, and the penal decrees are issued by the director of PFIA.*

### **Public Finance Act**

*The mayor of a municipality, who did not propose to the municipal council to open a procedure for financial recovery of the municipality according to the conditions provided in the act, shall be punished by imposing a monetary penalty - a fine. The act for establishing the violation shall be drawn up by an official authorized by the Minister of Finance, and the penal decree shall be issued by the Minister of Finance or by an official authorized by him.*

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

*Ministry of Regional Development and Public Works (MRDPW) and National Association of Municipalities in the Republic of Bulgaria (NAMRB) do not maintain such information. There is no normative act to regulate the collection and maintenance of such information. The paid compensations, fines and penalties by the municipalities are reported separately, in accordance with the approved unified budget classification. In regard to the imposed sanctions in personal capacity of local self-government bodies – they have to be paid personally by the given official.*

## **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.

*Local elected officials are criminally liable as officials within the meaning of the Penal Code for certain types of crimes, and for some of the subheadings of a specific crime - in the general order as criminally liable persons.*

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

*See point 8*

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.

*No specific procedural forms of criminal liability of local elected officials are established.*

*Local elected officials are criminally liable as officials within the meaning of the Penal Code for certain types of crimes, some of the subheadings of a specific crime - in the general order as criminally liable persons. Their criminal liability is carried out in accordance with the procedure, conditions and terms provided for in the Criminal Procedure Code in two phases - pre-trial proceedings and court proceedings.*

*The pre-trial proceedings start in the occurrence of a legal reason and sufficient data for a committed crime. For some of the crimes pre-trial proceedings against the mayor of a municipality/ city district, chair of a municipal council and municipal councilor are conducted by an investigator, and in other cases - by an investigating police officer. The prosecutor is also conducting pre-trial proceedings.*

*Upon completion of the pre-trial proceedings, the prosecutor files an indictment with the court.*

*Certain category of crimes, committed by mayors of municipalities/ city districts or by chairs of municipal councils are considered by the specialized criminal court, and in other cases - by ordinary courts.*

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)?

*The applicable penalties are not determined by [note Secretariat: "specific to" instead ?] the status of local elected officials.*

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

*MRDPW and NAMRB do not maintain such information. There is no regulation to collection and maintain such information.*

## **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.

*Elements of a system for political accountability of elected officials and bodies at the local level can be found in the Counter-Corruption and Unlawfully Acquired Assets Forfeiture Act, the Local Self-Government and Local Administration Act and others.*

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.)?

*It applies to all elected representatives at local level - mayor, chair of municipal council, municipal councillors.*

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)?

### **Counter-Corruption and Unlawfully Acquired Assets Forfeiture Act**

*Counter-Corruption and Unlawfully Acquired Assets Forfeiture Commission establishes a conflict of interest.*

### **Local Self-Government and Local Administration Act**

*The legal capacities of the chair of the municipal council shall be terminated ahead of term for:*

- resignation;
- permanent inability or systematic non-fulfilment of his obligations as a chairman, for a period longer than three months, by a decision of the municipal council, taken by the order of para 1;
- entry into force of an act, establishing conflict of interests under the Counter-Corruption and Unlawfully Acquired Assets Forfeiture Act

***The powers of the municipal councillor shall be terminated ahead of time:***

1. at judicial disability;
2. when, after being elected, he/she has been convicted with a sentence to imprisonment for deliberate indictable crime of general character or to deprivation of the right to hold public office;
3. at the submission of a resignation through the chairperson of the municipal council to the municipal election commission;
4. at his election as a member of the National Assembly, Minister, regional governor or mayor, at his appointment as deputy Minister, deputy regional governor, deputy mayor, or at appointment of payroll position in the corresponding municipal administration;
5. in cases when without having informed in writing the chair of the municipal council about his/her non-participation in the session of the council for acceptable reasons – office engagements, absence from the country, illness or whatsoever, does not attend three subsequent or five in total sessions of the municipal council over the year;
6. in case of permanent physical incapability to perform his/her obligations due to illness lasting for more than 6 months.
7. at implementing of administrative – territorial changes, leading to change of the permanent address out of the territory of municipality;
8. at implementing of administrative – territorial changes, leading to closing of the municipality;
9. in case of non-fulfilment of the obligation to eliminate the existing conflict of interests
10. in case of entry into force of an act, establishing conflict of interests under the Counter-Corruption and Unlawfully Acquired Assets Forfeiture Act
11. in case of establishing non-electability;

*If the municipal council does not hold a meeting within three months, its powers shall be terminated by a decision of the municipal election commission and new elections for municipal council shall be held within three months. When a municipal councillor does not participate in three consecutive or in a total of five meetings of the municipal council during the year for non-objective (listed in LLSGA) reasons.*

*Termination of the powers ahead of time of the mayor occurs with a decision of the municipal election commission in case of violation of the prohibitions according to the LGMSA, in case of unjustified absence from work for more than one month; upon entry into force of an act establishing a conflict of interest under the Counter-Corruption and Unlawfully Acquired Assets Forfeiture Act; when ineligibility is established.*

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

*MRDPW and NAMRB do not maintain information on the reasons for early termination of powers. More detailed information should be available at the Central Electoral Commission- <https://www.cik.bg/en/>.*

## **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.

*Local elected officials bear administrative accountability under the legal acts and regulations.*

*In general, municipal obligations and responsibilities are currently defined in 8 codes, 131 laws and more than 500 regulations. A total of 800 are all obligations imposed on municipalities by virtue of legal acts. Of these, 559 - to the mayors, 141 - to the municipal councils, and also to the chief architects, the municipal administration, the mayors of mayoralties and other officials*

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

*Establishment of an administrative violation.*

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

*The procedure is two-phased and starts with the establishment of adm. violation, set as an administrative-penal composition of subjective and objective features in the respective law/ regulation, and subsequent issuance of a penal decree. The acts for establishing the violations and the penal decrees are drawn up by competent state bodies.*

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

*MRDPW and NAMRB do not maintain such information.*

## **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.

*The system of financial accountability of local elected officials represents in its nature the compliance with fiscal indicators and rules, as well as transparency and mandatory disclosure of data.*

*Financial accountability is laid down in a number of legislative acts:*

**Accountancy Act:** *municipalities apply the general rules on:*

- 1. the requirements to bookkeeping and accounting systems of enterprises, accounting documents and accounting information, the inventory of assets and liabilities and the storage of accounting information;*
- 2. the applicable basis of accounting in financial reporting;*
- 3. the content and the preparation of financial statements, management reports and reports on payments to governments of enterprises and groups of enterprises;*
- 4. the obligations for independent financial audit and disclosure of financial statements, management reports and reports on payments to governments of enterprises and groups of enterprises;*
- 5. the duties and responsibilities of the manager of the enterprise.*

**Public Finance Act:** *in addition to the abovementioned general rules, the municipalities carry out their accounting in accordance with the requirements of the Public Finance Act, and on the basis of the standards, the chart of accounts and the instructions of the Minister of Finance.*

*The Public Finance Act also contains provisions for the accountability of local authorities to the local community in relation to the budget (in the stage of preparation and implementation).*

**Municipal Debt Act:** Provisions are in place for the reporting of local authorities to the local community regarding proposals for taking on long-term and short-term debt, as well as the conditions to be met.

**Other Acts:**

**Internal Audit in the Public Sector Act**

**Financial Management and Control in the Public Sector Act**

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

*Violation of applicable laws and regulations.*

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

*See answers on Financial Liability and Administrative Accountability*

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

*MRDPW and NAMRB do not maintain such information.*

**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?

*Municipalities raise the issue of revising the indicators under the Public Finance Act for municipalities with an objective structural deficit in the context of the crisis caused by the coronavirus pandemic.*

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



# CROATIA

## 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.

Local and regional self-government units in Croatia, their remit and organisation, functioning of their bodies, supervision over their legal acts and work, and other issues of importance for their work are regulated by the **Local and Regional Self-Government Act** (Official Gazette 33/01, 60/01, 129/05, 109/07, 125/08, 36/09, 150/11, 144/12, 19/13 – consolidated text, 137/15 – correction, 123/17 and 98/19) – hereinafter referred to as: LRSGA.

According to the above Act, mayors of municipalities and cities, county executives and their respective deputies elected together with them may be removed from office through a referendum.

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?

A referendum on removal from office may be initiated by:

- 20% of the total electorate of the unit in which the removal of the mayor or county executive and their respective deputy elected together with them is sought,
- 2/3 of the members of the representative body.

If the referendum on removal is initiated by 20% of the total electorate of the unit in which dismissal of the executive body is sought, the representative body shall call a referendum on removal of the mayor or county executive and their respective deputy elected with them in accordance with Article 24, paragraph (5) of this Act, in the part concerning verification that the motion was filed by the required number of voters of the respective unit.

If members of the representative body initiate the referendum on removal, the decision on calling the referendum must be adopted by a two-thirds majority of all members of the representative body.

A referendum on removal may not be called only for a deputy mayor or deputy county executive.

Furthermore, a referendum on the removal of a mayor or county executive and their respective deputy cannot be called earlier than six months after elections or after a previous referendum on removal, or in the year in which regular elections for mayors and county executives are to take place.

A decision on the removal of a mayor or county executive together with their respective deputy is adopted if the majority of votes cast in the referendum were in favour of removal, provided that this majority amounts to at least 1/3 of the total number of voters registered in the voters list of the relevant unit.

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

The possibility of removal of the elected local executive was introduced in the Croatian system of local self-government in 2009, simultaneously with the introduction of direct elections of mayors and county executives. The possibility of removal from office was

prescribed ever since the beginning of direct elections, but the requirements for removal underwent several amendments.

During the first term of directly elected holders of executive power, 2009-2013, only two referendums on removal took place, both initiated by the representative body. There have been no referendums on removal of local executives ever since.

## 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.

Systematic regulations governing local and regional self-government, notably the Local and Regional Self-Government Act and the Local Elections Act, do not prescribe or envisage the financial liability of elected local executives within the meaning of this questionnaire.

The issue of compensation of damages caused to a natural or legal person by paying a pecuniary compensation is regulated by general provisions of the law of obligations.

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.

Elected local officials are subject to the provisions of the **Criminal Code** (OG 125/11, 144/12, 56/15, 61/15, 101/17, 118/18 and 126/19), like any other citizen. A special chapter (XXVIII) of the Criminal Code stipulates criminal offences against official duty, including offences committed in the exercise of public office: abuse of position and authority, unlawful favouritism, bribe taking, bribe giving, trading in influence, giving bribes for trading in influence.

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

Local elections in Croatia are governed by the Local Elections Act (OG 144/12, 121/16, 98/219 and 42/20). Local elections within the meaning of the Act are elections of the members of the representative bodies of local and regional self-government units and the election of mayors of municipalities and cities, county executives, and their respective deputies.

Under Article 3 of the Local Elections Act, to be eligible to stand for election for a member of the representative body of a unit, a voter must permanently reside on the territory of the relevant unit on the day of entry into force of the Decision on holding elections, whereas to be eligible to stand for election for a mayor or county executive, or their



deputy, a voter must permanently reside on the territory of the relevant unit for no less than six months on the day of entry into force of the Decision on holding elections.

In the context of criminal liability, the Local Elections Act prohibits voters sentenced by a valid final court judgement to imprisonment (including a suspended sentence) of six or more months for criminal offences specified by the Criminal Act from standing for election.

Thus, voters and political parties may not propose as candidates for mayors, county executives and their respective deputies persons who have been sentenced by a valid final court judgement to imprisonment (including a suspended sentence) of six or more months for the following criminal offences specified by the Criminal Act:

1. murder (Art. 90), aggravated murder (Art. 91), kidnapping (Art. 125, para (3)), high treason (Art. 135), acceding to occupation and capitulation (Art. 136), murder of top state officials (Art. 138), kidnapping of top state officials (Art. 139), violence against top state officials (Art. 140), disclosure of state secrets (Art. 144), preventing the fight against enemies (Art. 147), service in the enemy's armed forces (Art. 148), aiding the enemy (Art. 149), undermining the military and defence powers of the state (Art. 150), espionage (Art. 146), damaging the reputation of the Republic of Croatia (Art. 151), preparing the commission of criminal offences against the Republic of Croatia (Art. 153), genocide (Art. 156), waging aggressive war (Art. 157), crime against humanity (Art. 157.a), crime against civilian population (Art. 158), war crime against the sick and wounded (Art. 159), war crime against the prisoners of war (Art. 160), unlawful killing and wounding of enemy combatants (Art. 161), unlawful seizure of belongings from the killed and wounded on the battlefield (Art. 162), prohibited means of combat (Art. 163, para (2)), harsh treatment of the sick and wounded and prisoners of war (Art. 165), destruction of cultural property and facilities containing cultural property (Art. 167), international terrorism (Art. 169), public incitement to terrorism (Art. 169.a), recruitment and training for terrorism (Art. 169.b), torture and other cruel, inhuman or degrading treatment (Art. 176), human trafficking and slavery (Art. 175), rape (Art. 188), sexual abuse of a person with disabilities (Art. 189, para (2), (3) and (4)), abuse of authority to obtain sexual intercourse (Art. 191, para (2)), sexual intercourse with a child (Art. 192), lewd acts (Art. 193, para (2)), satisfying lust in the presence of a child or minor (Art. 194), pandering (Art. 195, para (1), (4), (5) and (6)), exploitation of children or minors for pornography (Art. 196) and child pornography on a computer system or the Internet (Art. 197.a, para (1)) from the Criminal Code (OG 110/97, 27/98, 50/00, 129/00, 51/01, 111/03, 190/03, 105/04, 84/05, 71/06, 110/07, 152/08 and 57/11.,

2. genocide (Art. 88), crime of aggression (Art. 89), crime against humanity (Art. 90), war crime (Art. 91), terrorism (Art. 97), financing of terrorism (Art. 98), public incitement to terrorism (Art. 99), recruitment for terrorism (Art. 100), training for terrorism (Art. 101), terrorist association (Art. 102), preparing criminal offences against the values protected under international law (Art. 103), torture and other cruel, inhuman or degrading treatment or punishment (Art. 104), slavery (Art. 105), human trafficking (Art. 106), trafficking in human body parts and human embryos (Art. 107), murder (Art. 110), aggravated murder (Art. 111), kidnapping (Art. 137, para (3)), rape (Art. 153), serious criminal offences against sexual freedom (Art. 154), sexual abuse of a child under the age of fifteen (Art. 158), sexual abuse of a child over the age of fifteen (Art. 159), satisfying lust in the presence of a child under the age of fifteen (Art. 160), child pandering (Art. 162), exploitation of children for pornography (Art. 163), exploitation of children for pornographic performances (Art. 164), serious criminal offence of child sexual abuse and exploitation (Art. 166), coercion against a judicial official (Art. 312), coercion against a public official (Art. 314), high treason (Art. 340), acceding to occupation and capitulation (Art. 341), preventing the fight against enemies (Art. 342), service in the enemy's armed

forces (Art. 343), aiding the enemy (Art. 344), undermining the military and defence powers of the state (Art. 345), coercion against the most senior state officials of the Republic of Croatia (Art. 346), disclosure of secret information (Art. 347), espionage (Art. 348), damaging the reputation of the Republic of Croatia (Art. 349), and preparing the commission of criminal offences against the Republic of Croatia (Art. 350) from the Criminal Code,

3. violation of the right to seek judicial relief or to file a petition (Art. 112), abuse of position and authority (Art. 337), abuse of office in central government (Art. 338), illegal mediation (Art. 343), illegal mediation (Art. 343), bribe taking (Art. 347) and bribe giving (Art. 348) from the Criminal Code (OG 110/97., 27/98., 50/00., 129/00., 51/01., 111/03., 190/03, 105/04., 84/05., 71/06., 110/07., 152/08 and 57/11), which are committed with the intent and for the purpose of making a financial or other gain for oneself or another person,

4. abuse of position and authority (Art. 291), unlawful favouritism (Art. 292), bribe taking (Art. 293), bribe giving (Art. 294), trading in influence (Art. 295) and giving a bribe for trading in influence (Art. 296) from the Criminal Code, which are committed with the intent and for the purpose of making a financial or other gain for oneself or another person.

5. crimes which have no statute of limitations according to the Constitution of the Republic of Croatia, in accordance with the Act on the Exemption from Statutes of Limitations for Crimes of War Profiteering and Crimes Committed in the Process of Ownership Transformation and Privatisation (OG 57/11).

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.

As regards the criminal liability of elected local officials, legislation in Croatia does not envisage special procedural rules applicable to local officials only, but rather they are subject to provisions applying equally to all citizens of Croatia (regardless of their function).

Provisions of the LRS GA do not envisage immunity for the mayors of municipalities and cities or for county executives. The Act only stipulates, with regard to the members of representative bodies, that a member of a representative body may not be prosecuted or held responsible in any other manner for the way they vote, their statements or opinions and views expressed in the sittings of the representative body.

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)?

The Local Elections Act stipulates reasons for termination of the term of office of mayors and county executives as well as members of the representative bodies of units. One of the reasons for termination of the term of office by force of law concerns the issue of criminal liability.

Under Art. 80 of the Act, the term of a member of a representative body is terminated by force of law if they are convicted by a valid final court judgement to a prison sentence of over 6 months, on the day the judgement becomes valid and final, whereas, under Art. 93 of the same Act, the term of a mayor or county executive and their respective deputies is terminated by force of law if they are convicted by a valid final court judgement to a prison sentence of over one month, on the day the judgement becomes valid and final.

Under the LRSGA, any changes during the term of office of a mayor, county executive and their respective deputies must be notified by the head of the administrative body responsible for civil service employment relations in the respective local or regional self-government unit, without delay, to the state administration body competent for local and regional self-government i.e. the Ministry of Justice and Public Administration.

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

Tijekom mandata 2013.-2017. zbog izrečene pravomoćne presude mandat je prestao jednom općinskom načelniku.

### 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.

ZLP(R)S-om je predviđena politička odgovornost u smislu ovog upitnika.

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.)?

Political accountability applies to both the executive body (mayor and county executive), and the representative body (municipal and city councils, and county assembly).

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)?

As regards the executive body, the LRSGA stipulates the possibility of **dismissal of mayor or county executive**.

The Act stipulates the obligation of the mayor of a municipality or a city and of the county executive to propose the adoption of the budget within the period stipulated by a special law (Budget Act), and the consequence of their failure to propose a budget, namely the dismissal of the executive body, which represents a form of political accountability within the meaning of this questionnaire.

Article 69 of the LRSGA stipulates that the mayor or county executive, as the only authorised proposer, is obliged to establish a budget proposal and to submit it to the representative body for adoption within the period prescribed by a special law.

The Act goes on to regulate the situation of failure by the authorised proposer to propose a budget. The Act distinguishes a situation where a mayor or county executive proposes a budget but then withdraws it, thus making it impossible for the representative body to adopt it.

Specifically, under Article 69.a of the LRSGA, if a mayor or county executive fails to propose a budget to the representative body or withdraws a budget proposal before it can be voted upon in its entirety, and then fails to submit a new budget proposal within a period which allows it to be adopted, the Government of Croatia shall, at the proposal of the central state administration body competent for local and regional self-government, dismiss the mayor or county executive and the deputy elected with them.

As regards the representative body, the LRSGA envisages the possibility of **dissolution of the representative body**.

Article 84 of the LRSGA stipulates that the Government of Croatia shall, on proposal of the central state body competent for local and regional self-government, dissolve the representative body in the following cases:

- 1) if the representative body has issued a decision or other act which jeopardises sovereignty and territorial integrity of the Republic of Croatia,
- 2) if the representative body of a newly established local or regional self-government unit fails to adopt a statute within 60 days from the day of its constitution,
- 3) if the representative body often adopts general acts contrary to the Constitution, law or other regulation, or due to frequent heavy breaches of laws and other regulations,
- 4) if the representative body for any reason remains permanently without the number of members necessary for functioning and decision making,
- 5) if the representative body is incapable of adopting decisions from its scope for longer than 3 months,
- 6) if the representative body fails to call a referendum requested by voters in accordance with the law,
- 7) if the representative body fails to adopt the budget duly proposed by the mayor or county executive during the current year for the following year, and fails to adopt a decision on temporary financing, as well as in the case when it fails to adopt the budget by the date of expiry of temporary financing.

In accordance with the above, the central state administration body competent for local and regional self-government (i.e. the Ministry of Justice and Public Administration) establishes the existence of one of the above circumstances, and when it finds that the legally stipulated requirements have been met, proposes to the Government of Croatia to dissolve the relevant representative body.

In addition to the above, the LRSGA also stipulates the possibility of **simultaneous dissolution of the representative body and dismissal of the mayor or county executive and their respective deputies elected with them.**

By way of introduction and for the purpose of a better understanding of the valid legislative solutions, it should be mentioned that the budgetary adoption procedure is one of the particularly sensitive moments in the relationship between the representative and the executive body.

According to the regulations which were in force until 2013, failure to adopt a budget (as well as a temporary financing decision) resulted in the sanctioning of the only body authorised to adopt such financial acts, namely the representative body. Since this possibility tended to be misused in such a way that the failure to adopt the budget was provoked on purpose to cause the dissolution of the representative body, the 2012 Act on Amendments to the Local and Regional Self-Government Act introduced simultaneous sanctioning of the only authorised proposer, namely the executive body. Thus, in a unit in which neither the budget nor a decision on temporary financing was adopted, early elections would be held for both the representative and the executive body, after dissolving/dismissing both bodies simultaneously. The intention behind prescribing simultaneous termination of office for both bodies was to increase their responsibility. However, the institute designed to reduce the occurrences of dissolution of representative bodies by distributing responsibility evenly between both bodies also proved to have some weaknesses. There was an increase in the number of dissolutions, and since the executive body was dismissed as well, early elections had to be held for both bodies, which required a new legislative intervention.

The current Act therefore stipulates the obligation of the executive body to propose the budget as well as the obligation of the representative body to adopt the budget, and

elaborates in detail on the consequences of the failure to adopt the budget, regardless of the reasons.

As already mentioned, if a mayor or county executive fails to propose a budget to the representative body or withdraws the proposal before it is voted upon in its entirety, and then fails to submit a new budget proposal within a period which allows it to be adopted, s/he will be dismissed together with the deputy elected with him/her.

On the other hand, if the mayor or county executive duly submits a budget proposal to the representative body, which then fails to adopt it or to adopt a decision on temporary financing, the representative body will be dissolved (one of the seven reasons for the dissolution of the representative body as listed above).

In other words, the body whose actions or failure to act cause the non-adoption of the budget will be held to account – either the representative body will be dissolved or the executive body will be dismissed.

However, if they fail to adopt the budget for the second consecutive time, both bodies will be held to account, with two possible situations, both involving the same consequence:

The first situation is when the representative body has led to its dissolution by failing to act, and then, after dissolution and early elections, the newly elected representative body (again) fails to adopt the budget within 90 days of its constitution, the representative body will be dissolved simultaneously with the dismissal of the mayor i.e. county executive. The second situation occurs in case of early elections after the dismissal of the mayor or county executive due to his/her failure to propose the budget. The newly elected mayor or county executive is then obliged to propose the budget within 45 days of taking up office, and the representative body is obliged to adopt the budget within the following 45 days, so if the budget is (again) not adopted (regardless of the reasons), the representative body will also be dissolved simultaneously with the dismissal of the mayor i.e. county executive.

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

In the 2009-2013 term, 18 representative bodies were dissolved for failure to adopt the budget. It was the main reason for the dissolution of representative bodies in that period. In that period, the possibility of dismissal of a mayor and county executive was not envisaged by the law.

In the 2013-2017 term, there were 52 cases of simultaneous dissolution of the representative body and dismissal of the mayor.

In the current term, 2017-2021, representative bodies of 7 local self-government units have been dissolved due to failure to adopt the budget. The executive body proposed the budget, but the representative body did not adopt it and was therefore dissolved.

## 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.

In the context of administrative accountability as defined in this questionnaire, the prevention of conflict between private and public interests in the exercise of public offices is regulated by the **Act on the Prevention of Conflict of Interest** (OG 26/11, 12/12, 126/12, 57/15 and 98/19) - hereinafter referred to as: APCoI.

The purpose of the Act is to prevent conflicts of interests in the exercise of public offices, prevent the influence of private interests on decision making in the discharge of public duties, to strengthen integrity, objectivity, impartiality and transparency in the exercise of public offices, and to strengthen citizens' trust in public authorities.

Mayors of municipalities and cities, county executives and their respective deputies are considered officials within the meaning of the Act, and as such must abide by it.

Members of the representative bodies of local and regional self-government units are not considered officials within the meaning of the Act, so the Act is not applicable to them. Under the LRSGA, they exercise their office as members on a voluntary basis, and do not receive a salary for it.

Under Article 2 of the APCoI, officials, which inter alia includes mayors and county executives as well as their respective deputies, are not allowed to put their private interest above the public interest in the exercise of public office. The Act provides that a conflict of interests arises when the private interests of an official are contrary to the public interest, in particular where:

- a private interest of an official affects or may affect his/her impartiality in exercising a public office or
- it is reasonable to conclude that a private interest of an official affects his/her impartiality in exercising a public office, or
- a private interest of an official may affect his/her impartiality in exercising a public office.

For purposes of enforcement of the APCoI, the Commission for the Resolution of Conflicts of Interest was established.

The Commission is a permanent, independent and autonomous state body which performs functions from the remit specified by the above Act, and which comprises the chairman and four members, who are selected by the Croatian Parliament for a period of 5 years.

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

Under Article 5 of the APCoI, in case of doubt as to whether certain conduct complies with the principles of public office, officials are obliged to request the opinion of the CoI Commission. The Commission must respond with a reasoned opinion no later than 15 days from receipt of the request. When assessing the potential existence of a conflict of interest, special account is taken of the nature of the office held by the relevant official.

After election or appointment to a public office, the official is obliged to arrange his/her private affairs so as to prevent foreseeable conflicts of interest, and should such a conflict arise, the official is obliged to resolve it so as to protect the public interest. If case of doubt about a potential conflict of interest, the official is obliged to do whatever it takes to divide their private interest from the public interest.

The Act goes on to stipulate prohibitions in Article 7. In particular, officials are prohibited from:

- a. receiving or soliciting benefits or a promise of benefits for exercising public office,
- b. obtaining or receiving an entitlement if it violates the principle of equality before the law,
- c. misusing special entitlements of officials which stem from or are necessary for exercising public office,
- d. receiving additional compensation for the discharge of duties of their public office,



- e. soliciting, accepting or receiving something of value or a service for voting on any issue, or to influence a decision made by a body or a person for personal gain or the gain of a connected person,
- f. promising employment or any other right in exchange for a gift or the promise of a gift,
- g. exerting influence over who gets jobs or contracts through public procurement,
- h. using privileged information about the activities of state bodies for the purpose of personal gain or that of a connected person,
- i. using their position as officials in any other way by influencing the decisions of legislative, executive or judicial authorities in order to achieve personal gain or the gain of a connected person, a privilege or a right, to conclude a legal affair, or to receive benefits of personal interest or of interest to another connected person in any other way.

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

Under Article 39 of the APCoI, the Commission may initiate proceedings from its remit on the basis of its own decision, on the basis of a credible, justified and non-anonymous report, or in cases where it has knowledge of a possible conflict of interest of an official. The Commission issues a written decision on initiating or not initiating proceedings, and is obliged to notify the person who submitted the relevant report thereof. The Commission must inform the official concerned about the initiation of proceedings, and request their statement with regard to allegations contained in the report, and the official must submit it to the Commission within 15 days from the date of receiving a written request.

Furthermore, the CoI Commission is obliged to initiate proceedings from its remit at the personal request of an official. Proceedings before the Commission, with the exception of the voting procedure, are open to the public. The Commission must make the final results of the conducted proceedings available to the public. The Commission is required to provide a statement of reasons for their decisions, which are published on the Commission's website.

The CoI Commission may impose the following sanctions for the violation of the provisions of the APCoI:

1. a caution,
2. a punitive deduction of a part of the official's monthly net salary,
3. public announcement of the Commission's decision.

A caution may be imposed when the official's conduct and responsibility as well as the consequences thereof evidently constitute a minor violation of the provisions of the APCoI.

The Commission may impose the sanction of a punitive deduction of a part of monthly net salary ranging from HRK 2,000 to HRK 40,000, depending on the gravity and consequences of the violation of the Act. The sanction of deduction of a part of the official's monthly net salary may not last longer than twelve months, while the total amount of the deduction may not exceed a half of the official's monthly net salary.

The Commission may also impose the sanction of publication of its decision, taking into account the gravity and consequences of the violation, except when the Act stipulates that the sanction is mandatory. The decision must be published in the daily press.

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

According to the 2018 Report on the Work of the Commission for the Resolution of Conflicts of Interest, the Commission held 41 sittings that year, and issued a total of 126 decisions not to initiate proceedings, 78 decisions to initiate proceedings, and 75 final decisions establishing or not establishing violations of the APCoI. In the decisions establishing a violation of the provisions of the CPCoI, the sanction of caution was imposed in 10 cases, and a total of HRK 121,000 was deducted from officials' monthly net salaries by way of sanction. In addition, 140 cases involving requests for the Commission's opinion were resolved, and 14 responses were issued.

As regards the Commission's work in 2019, it held 41 public sittings, where it issued a total of 156 opinions, 8 responses, 114 decisions to institute proceedings, 106 decisions not to institute proceedings, and 116 final decisions establishing or not establishing violations of the Act. Out of 116 decisions, the sanction of deduction of a part of monthly net salary was imposed in 67 of them, with a total amount of HRK 330,000 deducted, while the sanction of caution was imposed in 10 decisions.

Please note that the above data concern all the officials covered by the APCoI, rather than local officials only, as the Report on the Work of the CoI Commission contains consolidated data, without making a distinction between state and local officials.

## 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.

The issue of financial accountability within the meaning of this questionnaire is regulated by the **Budget Act** (OG 87/08, 109/07, 136/12 and 15/15), the **Fiscal Responsibility Act** (OG 111/18) and the **Act on Internal Controls System in the Public Sector** (OG 78/15 and 102/19).

The Budget Act regulates planning, drafting, adoption and execution of the budget, asset and debt management, public debt management, borrowing and issuance of guarantees by the state and by local and regional governments, budgetary relationships in the public sector, accounting, budget oversight and other matters related to public finance management.

The Fiscal Responsibility Act sets forth the rules aimed at limiting government spending, general budget deficit and public debt, strengthening responsibility for a legal, earmarked and purposeful spending of budget resources and reinforcing the system of controls and supervision for the purpose of ensuring fiscal responsibility.

The Act on Internal Controls System in the Public Sector governs the system of internal controls in the public sector of the Republic of Croatia, responsibilities, relationships and competences in the development of the internal controls system, including internal audit. It also regulates the issue of responsibility of the head of an institution for the development of an efficient and effective system of internal controls within that institution.

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

Under Article 13 of the Budget Act, the executive body of a self-government unit is accountable to its representative body for budget planning and execution, and reports to it as specified in the Act. The mayor or county executive as the accountable person in a local or regional self-government unit is responsible for the lawful and proper planning and execution of the budget or the financial plan.



Under Article 95 of the Act, the executive head of a local or regional self-government unit is accountable for:

- a. the planning and execution of their portion of the budget,
- b. the collection of revenues and receipts under their jurisdiction and their payment into the budget
- c. the assumption of liabilities, verification of liabilities, the issue of payment orders against the budgetary funds of the bodies which they administer, ascertaining the right to collection and the issue of collection orders to the benefit of budgetary funds,
- d. the legality, purposiveness, efficiency and cost-effective administration of budgetary funds.

Moreover, under Article 101 of the Budget Act, the responsible person in a local or regional self-government unit is accountable for the organization and the lawful and proper conduct of budgetary accounting.

The head of the accounting department of a local or regional self-government unit and budget user or the person entrusted with accounting tasks is responsible for the development of financial statements. The responsible person in a local or regional self-government unit or the person authorized by them signs financial statements and is accountable for their submission.

As regards the Fiscal Responsibility Act, Article 34 of the Act stipulates that the executive head (which includes, inter alia, mayors and county executives) is responsible for:

- lawful, earmarked and purposeful spending of resources; and
- efficient and effective functioning of the financial controls system within the framework of funds established by the budget or the financial plan.

The executive head is obliged to produce a Fiscal Responsibility Statement each year of their term of office as head of the institution for the previous budget year. In that Statement, the executive head confirms:

- lawful, earmarked and purposeful spending of resources; and
- efficient and effective functioning of the financial controls system within the framework of funds established by the budget or the financial plan.

According to the Act, the Statement must be accompanied by the Fiscal Responsibility Questionnaire, a weaknesses and irregularities removal plan, a report on the removed weaknesses and irregularities detected in the previous year and the opinion of internal auditors on the financial controls system for the areas audited in the previous year.

Furthermore, under Article 7 of the Act on the Internal Controls System, the head of an institution (including mayors and county executives, inter alia) is responsible for the development of an efficient and effective internal controls system within the institution and must ensure the following:

- a) development and implementation of strategic and other plans as well as programmes for the achievement of the business goals of the institution
- b) alignment of strategic and other plans and programmes with the budget of the institution
- c) internal organisation with clearly defined competences and responsibilities for efficient and effective achievement of business goals and the use of funds allocated for the achievement thereof
- d) establishment of reporting lines in accordance with the conferred competences and responsibilities, for the purpose of monitoring outputs and outcomes achieved using the allocated funds

- e) risk management and adoption of a risk management strategy
- f) establishment of controls to ensure proper, ethical, economical, efficient and effective management of revenue, expenditure, assets and liabilities
- g) establishment of efficient and effective information and communication systems
- h) monitoring and assessment of efficiency and effectiveness of the internal controls system
- i) definition of the mode of cooperation with institutions under their remit, including the reporting system.

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

Under Article 40 of the Budget Act, mayors and county executives submit their local or regional government budgets, budget execution decisions and budget amendments to the Ministry of Finance within 15 days of their entry into force.

Under Article 115 of the Budget Act, the Ministry of Finance conducts budgetary oversight. Budgetary oversight is the inspection of the legality, purposiveness and timeliness of the use of budgetary funds, timely and comprehensive collection of revenues and receipts under the purview of budget users and the bodies of local and regional governments, and the inspection of adherence to and enforcement of laws and other regulations pertaining to budgetary funds and funds from other sources, regardless of whether they concern revenues/receipts, expenditures/outlays, refunds, assets or liabilities. Budgetary oversight encompasses oversight of accounting, financial and other operating documents and an inspection of operating premises, buildings, physical articles, goods and other items in compliance with the purpose of inspection.

The budgetary oversight inspector who ascertained during the oversight procedure that a violation was perpetrated is authorised under Article 117 of the Budget Act, on behalf of the Ministry of Finance, to file an information to initiate misdemeanour proceedings against the perpetrator of the violation and submit it to the regional office of the National Tax Administration.

The Budget Act contains a number of provisions listing misdemeanours and specifying pecuniary fines for them. Due to the large scope of those misdemeanours, we would here like to point out only several of them.

The Act thus stipulates, inter alia, that a violation by the accountable person of the budget user shall carry a fine of HRK 50,000 to 100,000: if budgetary funds are not used to finance expenditure, functions and programmes of state bodies and local and regional governmental bodies and other budget users and extra-budgetary users to the level established by the budget; if own revenues are not paid into the budget, if in the case of disbursements for which the purposes were established in advance in special regulations there is no monitoring of the legal and earmarked use of disbursed funds; if the budget user, after subsequently ascertaining that a disbursement from the budget was executed illegally and/or without justification, fails to seek recovery of the budgetary funds to the budget; if the expenditure or outlay from the budget is not based on credible accounting documents; if prior to disbursement they fail to verify and does not sign the legal foundation and level of liability which ensues from the accounting document; if the bodies of local and regional self-government units fail to abide by all the rules for the collection of revenues under their remit, and if they fail to execute expenditure and outlays in compliance with stipulated purposes, etc.

As regards liabilities arising from the Fiscal Responsibility Act, mayors and county executives submit the Statement and other acts for the purpose of verification of their content to the Ministry of Finance by 31 March of the current year.

Under that Act, a misdemeanour fine ranging from HRK 5,000 to HRK 25,000 is imposed on the executive head in the following cases:

1. if they fail to prepare the Fiscal Responsibility Statement in line with Article 34, paragraphs (2) and (3), and in line with the decree referred to in Article 36, paragraph (3) of this Act
2. if they fail to submit the above Statement by the deadline stipulated in Article 35 of this Act
3. if the Ministry of Finance, competent ministries and local and regional self-government units, when reviewing the contents of the Fiscal Responsibility Statement referred to in Article 35, paragraphs (1)-(13) of this Act, notice irregularities under Article 36, paragraph (1) of this Act, or notice that the documentation on the basis of which the Statement is provided is not authentic.

The budgetary oversight inspector who ascertained during the oversight procedure that a violation was perpetrated files an information to initiate misdemeanour proceedings against the perpetrator of the violation and submits it to the competent regional office of the National Tax Administration.

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

The Ministry of Finance conducts budgetary oversight of budget users and extra-budgetary users of the state budget, budgets of local and regional self-government units and their budget users and extra-budgetary users, as well as oversight pursuant to the Fiscal Responsibility Act.

Pursuant to the Fiscal Responsibility Act, the Ministry of Finance conducts formal and substantive controls of the submitted Fiscal Responsibility Statements and accompanying appendices. All mayors and county executives (576 of them in total) must submit the signed Statement with completed accompanying appendices (fiscal responsibility questionnaire, weaknesses and irregularities removal plan, etc.) every year within the stipulated deadline.

In case of failure to submit the Statement or if during the substantive control it is established that the documentation on the basis of which the Statement is provided is not authentic, the budgetary oversight procedure is initiated.

Under the Act on Financial Operations and Accountancy of Non-Profit Organisations, the Ministry of Finance conducts oversight of associations, unions of associations, foundations, professional chambers, trade unions and other non-profit organisations, and establishes whether the non-profit organisations have submitted reports on the expenditure of earmarked funds allocated from the state budget or the budgets of local and regional self-government units.

The significance of financial oversight over the non-profit sector is seen in the data available to the Ministry of Finance, according to which, in 2019, non-profit organisations were allocated HRK 3,762,022,372 from the state budget and local budgets, out of which HRK 1,176,379,982 constitutes revenues under special regulations, and HRK 2,585,642,390 constitutes revenues from donations from budgets, whereby donations from local budgets amounted to HRK 1,310,236,384. Mayors and county executives are responsible for a misdemeanour if they fail to monitor whether non-profit organisations

use the allocated funds as earmarked, if they fail to request reports on the expenditures of allocated funds, supported by authentic documentation proving the expenditures.

The oversight of deadlines for meeting financial obligations by companies and bodies under public law is conducted in accordance with the Act on Financial Operations and Pre-Bankruptcy Settlement, and this type of oversight is also applicable to local and regional self-government units.

There are misdemeanour provisions envisaged for failure to act in accordance with the above-mentioned laws, and if actions constituting misdemeanours are established during the oversight procedure, an information is filed against the responsible persons to the competent body.

If during the oversight procedure actions are established where there is a suspicion of a crime, the case is submitted to the competent state attorney's office with accompanying evidence.

In the period from 2017 to 31 May 2020, a total of 818 oversights were conducted, out of which 217 budgetary oversights, 349 financial oversights of non-profit organisations, and 252 oversights of deadlines for meeting financial obligations.

The oversights established 358 actions constituting misdemeanours, and informations were filed before competent bodies, 75 cases were submitted to competent state attorney's offices, the amount of HRK 607,000,000 was paid into the state budget pursuant to decisions on recovery/payment, and, pursuant to the Misdemeanour Act, the payment of outstanding overdue obligations amounting to the total of HRK 941,915,296 was ordered.

In line with the request of the European Commission, the Ministry of Finance receives reports on the irregularities reported and perceived through verifications of fiscal responsibility statements and fiscal responsibility questionnaires, as well as irregularities established in other ways, and compiles a consolidated report on the number and type of reported irregularities.

According to the latest processed data, 477 irregularities were reported in 2018, out of which:

- 3 irregularities for which misdemeanour provisions are not envisaged in the law,
- 472 irregularities which constitute misdemeanours,
- 2 irregularities which lead to a suspicion of a crime.

To make reporting of irregularities widely available, there is an open e-mail address for reporting irregularities - [nepravilnosti@mfin.hr](mailto:nepravilnosti@mfin.hr) - where reports of irregularities are continuously received and then processed by the Ministry of Finance if they are related to irregularities in managing budget funds from the state budget of the Republic of Croatia, funds from the budgets of local and regional self-government units, regardless of whether they concern revenues/receipts, expenditures/outlays, refunds, assets or liabilities.

This activity was established in the Action Plan for the Period 2019-20 Accompanying the Anti-Corruption Strategy, and its implementation is regularly monitored and reported on a quarterly basis to the Ministry of Justice, which reports on the implementation of the Action Plan to the Government of Croatia and the National Council Monitoring the Implementation of the Anti-Corruption Strategy.

## **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?

At this point, legislative activities in Croatia are related to the announced reduction of the number of local officials.

The Government of Croatia Programme for the Term 2020-2024 envisages under priority area 4) Reinforced statehood the objective of Efficient, transparent and resilient state, which should be achieved, inter alia, by reducing the number of local officials.

According to the valid provisions of the LRSGA, the mayors of local self-government units with the population of up to 10,000 have one deputy, elected in direct elections in accordance with a special law.

Mayors of local self-government units with over 10,000 inhabitants and of cities which of cities which are county seats, and county executives have two deputies, elected in direct elections in accordance with the special law.

Under the above provisions, there are currently 745 persons holding the offices of deputy mayor or deputy county executive, and 74 of them are deputies from the ranks of national minority members or members of the Croatian people in units in which national minority members constitute the majority of the overall population. This means that a total of 671 deputies were elected together with the mayors of municipalities and cities and county executives, out of whom 434 deputy municipal mayors, 197 deputy mayors of cities and 40 deputy county executives.

They can all exercise their offices professionally, in which case they are entitled to a salary and other rights from employment, and the term of office is included in their pensionable service. Moreover, upon termination of the office they exercised professionally, they are entitled to remuneration amounting to their salary for 6 months upon termination of office, which is also included in their pensionable service (or for a shorter period if they held the office for less than 6 months).

Furthermore, as regards the number of members of the representative bodies of local and regional self-government units, it is always an odd number which is determined according to the population size, so that the representative body of

- a unit with up to 500 inhabitants has 7 members,
- a unit with the population of 500 – 1,000 has 9 members,
- a unit with the population of 1,000 – 2,500 has 11 members,
- a unit with the population of 2,500 – 5,000 has 13 members,
- a unit with the population of 5,000 – 10,000 has 15 members,
- a unit with the population of 10,000 – 20,000 has 17 members,
- a unit with the population of 20,000 – 35,000 has 21 members,
- a unit with the population of 35,000 – 60,000:
- if it is a county, has 31 members,
- if it is a city, has 25 members,
- a unit with the population of 60,000 – 100,000:
- if it is a county, has 35 members,
- if it is a city, has 31 members,
- a unit with the population of 100,000 – 200,000:
- if it is a county, has 41 members,
- if it is a city, has 35 members,

- a unit with the population of 200,000 – 300,000 has 45 members,
- a unit with the population of over 300,000 has 51 members.

Under the current Act, a total of 8,254 members of representative bodies are elected in local elections, and members from the ranks of national minorities are added to that number if their adequate representation is not achieved among the elected members.

As a result of the legislative activities underway, the number of deputy mayors and deputy county executives will be reduced by 634. Consequently, after the next regular local elections (which are due on 16 May 2021 under the law), only larger cities with over 35,000 inhabitants and counties will elect deputy mayors and deputy executives, 37 of them in total, whereas all other local self-government units will no longer have deputy mayors and deputy county executives.

As regards members of representative bodies, their number should be reduced by ca. 20%.

The goal of this reform is to optimise the system of local and regional self-government by reducing the number of local officials, which will result in considerable savings in the budgets of local and regional self-government units, and ultimately to more rational performance of functions in those units.

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

## CYPRUS

### 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.

**No**

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.

**Financial liability can be decided through a Ministerial decision or Judicial procedure**

5. What circumstances may give rise to financial liability of local and regional elected officials and/or bodies in your country?

**According to article 106 of the Local Communities Law, "Any person who has a complaint from:**

- (a) refusal of the Council to issue or renew a license or**
- (b) the withdrawal, suspension or revocation of a license by the Council or**
- (c) any term imposed by the Council on any license or its renewal or**
- (d) any imposition or imputation by the Council of any sum**

**may, within fourteen days from the date the decision of the Council on any issue referred to in this article was notified, file an appeal to the Minister (of Interior).**

**Any individual person or legal entity who may be negatively affected by a decision of the local council may appeal to the Court against the legality of the decision. The Court could decide that the Council should reimburse the affected person or entity.**

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)?

**See answer to question 5 above**

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

**There no statistical data available**



## 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.

**According to article 16 of the Local Communities Law, "A person cannot serve as Community President or Member of the Community Council who ...(e) after his election was convicted of a disgracing offence or an offence involving moral depravity or has been deprived of his right to be elected after a decision by a competent Court as a result of committing any electoral offence. The same applies for Mayors, vice mayors or members of the Municipal Council according to article 16 of the Municipalities Law.**

**According to article 105 of the Criminal Code Law, any public officer (the term "public officer includes elected officials") who, in the abuse of his power, acts or orders the action of any arbitrary act that harms the rights of another person, is guilty of a misdemeanor.**

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

**Please see answer to question 8 above.**

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.

**The process initiates from a complaint made to the Attorney General of the Republic who, if deems necessary, refers the issue to the Police for investigation. In case that following the investigation the issue is considered as a criminal offence, a judicial procedure is initiated.**

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)?

**There are no tailored penalties. Elected officials' offences are treated as criminal and also have an impact on their status (see answer to question 8 above).**

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

**There are no available statistics on this**

## 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.

**No**

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.

**According to Article 42 of the Communities Law, the President of the Community Council has the obligation to send the minutes of the Council Meetings to the District Officer, within fifteen days from the date of the meeting. The District Officer has the power to exercise a legality check on the decisions taken by the Council. In case the District Officer finds that a decision was not taken according the procedures laid down by the legislation, he shall call upon the President of the Council to withdraw the decision and take corrective measures. The District Officer may also request the opinion of the Attorney General on the legality of some decisions in order to examine whether there is civil or criminal liability of the Council.**

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

**Please see above**

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

**Please see above**

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

**There are no available statistics on this**

### 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.

**According to the Financial Responsibility and the Financial Framework Law of 2014, both Municipalities and Communities have a responsibility to submit every year their budget and their financial accounts to the Office of the Auditor General of the Republic. The Auditor General may also initiate ad hoc audit missions to local authorities and issue a specific report**

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

**Please see above**

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

**Please see above**

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

**There are no available statistics on this**

#### **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?

**For the past few years, there has been a big effort on behalf of the government and social partners in Cyprus for the Reform of Local Administration in Cyprus. The issue of accountability of local elected officials is one of the important issues that are dealt with and reinforced through the three draft bills covering this Reform that are currently discussed before the Parliament.**

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

## CZECH REPUBLIC

### 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.

*No, there is no such a system of democratic accountability in the Czech Republic. Nevertheless, there are cases where citizens (e.g. due to dissatisfaction) initiate the dismissal of the mayor or a member of municipal council. However, these cases do not meet the legal conditions of a "petition" (= only for state authorities) or a "local / regional referendum" (= illegal topic) and are therefore not binding. The mayor can be recalled only by the municipal council, the president of the regional council only by the regional council.*

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.

*There is no system of financial liability in the Czech Republic that would apply merely to the local or regional level. However, local and regional elected representatives are subject to the general regulation of compensation for damage pursuant to the Civil Code or the Act on Liability for Damage Caused in the Exercise of Public Power by a Decision or Improper Official Procedure.*

*The latter law makes it possible to claim recourse against officials and territorial units in the field of delegated powers, if they caused damage.*

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.

*There is no system of criminal liability in the Czech Republic that would apply specifically to the local or regional level. However, local and regional elected representatives are*

subject to the general regulation of criminal liability under the Criminal Code, and possibly misdemeanor liability under the Offenses Act.

With regard to the Criminal Code, local and regional elected representatives (among other groups of persons) fall under the institute of "official persons", which provides them with increased protection under certain conditions (e. g. crime of violence against an official person, threats to an official person – this is an aggravating circumstance on the part of the offender), but on the other hand also increased liability (e. g. conspiracies in public procurement, breach of letter secrecy - this is an aggravating circumstance on the part of the official person).

There is also a specific range of "crimes of official persons", which is regulated in a separate section of the Criminal Code (e.g. abuse of powers, obstruction of acts, acceptance of bribes, bribery).

For some crimes, negligence rather than intentional culpability suffices, making local and regional elected representatives more vulnerable in some respects.

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

Please see above reply to question No. 8.

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.

There is not a specific procedural arrangement for local or regional elected representatives; general conditions for criminal procedure are applied.

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)?

Apart from criminal liability, there is also an impact to the status (function of local or regional elected representatives). The legal arrangement for such situations is provided in electoral laws (Act on Elections to Municipal Councils, Act on Elections to Regional Councils). If a local or regional councillor (including mayor or president of regional council) is lawfully condemned to imprisonment, the local (regional) council is obliged to declare end of his/her mandate at its nearest session. In case the council fails to do so, a higher level authority (a Regional Office for municipalities or the Minister of Interior for regions) issues such a declaration instead, within the framework of legal supervision over territorial self-government authorities. Nevertheless, the local and regional councillors can continue keeping their mandate if they are condemned for "lighter" crimes (e. g. suspended sentence, financial penalty) or penalised for an offence.

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

There are no statistics available that would specifically distinguish the offenses of local and regional elected representatives.

## 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.

There is no such a specific system. In the legal system and in practice, however, certain elements can be found, e.g. (municipal, regional) council, as the most important deliberative body, can reserve certain powers of the (municipal, regional) board (executive body) or the mayor/president of the regional council.

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.

The system of administrative accountability is very fragmented in the Czech Republic. There exist a number of legal provisions covering administrative accountability of local and regional elected representatives. For example, the Administrative Procedure Code in Title II defines the "basic principles of the activity of administrative bodies", which include in particular the manner of acting and conduct in relation to public administration addressees. In addition, there are various codes of ethics (one general for the whole public administration as well as a number of specific ones for particular authorities). Some aspects of administrative accountability can be found also in Act on Municipalities, Act on Regions, Act on Officials of Territorial Self-Governing Units, Act on the Conflict of Interests, Civil Code or Act on Liability for Damage Caused in the Exercise of Public Power by a Decision or Improper Official Procedure.

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.

The basic principles of management of territorial self-governing units can be found in the Act on Municipalities and in the Act on Regions. The provisions of some other laws (the Accounting Act, the Act on Liability for Damage Caused in the Exercise of Public Power by a Decision or Improper Official Procedure, the Act on Financial Control, etc.) also cover the given area. There is also a system of internal and external audits that local and regional authorities have to respect. It can be said that the system of financial responsibility is relatively fragmented and partly overlaps with administrative and economic responsibilities - see also the answers to questions 4 and 17.

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?

The system of responsibility of local and regional elected representatives is at the forefront of media and political attention at certain times, for example in the event of significant excesses of elected representatives or, on the contrary, in cases where the court imposes an extremely severe punishment on minor or negligent crime. The last time such a national debate took place was around 2010.

In 2017, an amendment to the Conflict of Interest Act was adopted. According to this law, politicians and public officials (including local and regional elected representatives) are obliged to submit a notification of a conflict of interest (especially their property) to a special register, newly created for this purpose.

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

## Denmark

### 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.

*Answer: No*

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<sup>1</sup>

4. Does your country have a system of financial liability at local and/or regional level? If not, go directly to question 8.

*Answer: The Constitutional Act sets out the right of local governments to manage their own affairs independently within the law and under State supervision. Thereby the constitution ensures that local governments are autonomous from state intervention.*

*The specific rules on internal structure and supervision of local governments are laid down in the Local Government Act from 1968, which has been amended several times.*

*Ankestyrelsen (The National Board of Appeal) supervises the local and regional governments with the Ministry for Social Affairs and the Interior as the executive supervisory authority. Please refer to the answers to question 17-20.*

*Local council members are financially liable for their decisions. Please refer to the answers to the answers to questions 5-7.*

5. What circumstances may give rise to financial liability of local and regional elected officials and/or bodies in your country?

*Answer: Under certain conditions, the supervisory authority, Ankestyrelsen, may bring legal (court) action for damages against a local council member who is responsible for the local government having suffered an economic loss, cf. section 50.c in the Local Government Act.*

*It must be decided in accordance with general rules of damages under Danish law whether there is a basis for liability, i.e. whether there is unjustifiable conduct (decision or omission) which can be attributed to the member in question as intentional or negligent, and whether a loss has arisen for the local government as a foreseeable consequence. Simple negligent conduct is covered by the provision.*

*The supervisory authority, Ankestyrelsen, can only bring action for damages if in the specific case this reaction is considered necessary rather than less intrusive*

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<sup>1</sup> Only local governments are described under questions 4-7. Generally the same applies to regional governments.

*reactions on the part of the supervisory authority, and if the local council member's liability is not of a trivial nature.*

*Ankestyrelsen may waive legal action pursuant to section 50.c, of the Local Government Act if the member or members in question pay a specified amount (a fine) to the local government before a set deadline, cf section 50.d. The fine replaces legal action, and the conditions for bringing an action for damages must therefore be met, i.e. the local government must have suffered a loss, and the member must be liable for this in accordance with the general rules of damages under Danish law.*

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)?

*Answer: Liability for damages against local council members regarding the losses of the local government can only be claimed by the (administrative) supervisory authority, Ankestyrelsen, according to the provisions listed above, or by the local council.*

*A member of the local council can only be sentenced to pay compensation by the courts.*

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

*Answer: Legal action for damages against local council members is very rarely taken.*

## **QUESTIONS RELATING TO CRIMINAL LIABILITY<sup>2</sup>**

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.

*Answer: Members of local councils are subject to the general rules of criminal law in Denmark.*

*Furthermore, section 61 in the Local Government Act stipulates that a member of the local council who is guilty of gross breach of the duties entailed in the office shall be fined. However, according to section 61 breach of duty due to simple negligence shall not be punished.*

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

*Answer: As the mentioned penalty provision (section 61) is included in the Local Government Act and not in the Criminal Code, it is hereby stated that the provision only covers the exercise of municipal functions.*

*The provision covers not only the duties incumbent on the council members as members of the local council and its committees, but also the duties imposed on the individual member by the local council as a member of commissions, boards and the like.*

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<sup>2</sup> Only local governments are described under questions 8-11. Generally the same applies to regional governments.



*As mentioned above members of local councils are subject to the general rules of criminal law in Denmark even when they act as council members.*

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.

*Answer: Everyone, including the supervisory authority, Ankestyrelsen, is entitled to report violation of section 61.*

*The Prosecution Service can bring criminal charges against members of the local councils according to section 61 and to the general rules of criminal law. The Prosecution Service is responsible for providing the necessary information for an assessment of the basis for bringing an action.*

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)?

*Answer: Penalty (a fine) according to section 61 of the Local Government Act does not have political effects in terms of loss of rights or ineligibility.*

*However, a member of a local council forfeits his or her eligibility, if he or she has received an unsuspended or suspended prison or other custodial sentence by final judgment, or if his or her driving licence has been suspended by final judgment.*

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

*Answer: No information is available, but section 61 of the Local Government Act is very rarely used.*

## **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.

*Answer: Yes.*

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.)?

*Answer: It is limited to mayors (chairpersons of the local councils) and chairpersons of the regional councils.*

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)?

*Answer: According to section 6(6) of the Local Government Act the council's election of the mayor, which takes place at the beginning of the council's 4-year term of office, shall remain effective for the entire 4-year term. According to section 7(3), the council shall elect a new mayor only when the elected mayor resigns from office, resigns from the local council, or dies.*

*Sections 66 - 66.c of the Local Government Act stipulate the very limited exceptions to this. The procedure, decision-making bodies and consequences of decisions are mentioned in the description of each section below. The decisions mentioned can be made throughout the term of office.*

*According to Section 66 if a mayor with intent or gross negligence fails to perform a duty incumbent upon him or her, the local council may appoint one of its members to perform the duty, which such failure concerns.*

*According to Section 66.a, a mayor who with intent or gross negligence fails to perform a duty incumbent on him or her, may be removed from office if such failure is particularly gross. The local council must submit a reasoned recommendation for the removal to the Election Board appointed under the Parliamentary Elections Act. The Election Board makes the final decision, which removes the mayor from office for the rest of the term.*

*According to Section 66.b, the local council may request the Election Board to suspend a mayor who is charged with a criminal offence punishable by imprisonment for a period of four years or more. If the passing of a sentence for the offence will cause the mayor to forfeit his or her eligibility<sup>3</sup>, and suspension cannot be deemed inadvisable, the Board must make a decision to suspend the mayor. The suspension will run until the mayor forfeits his eligibility and thus resigns from the local council, or until it is final that the mayor does not forfeit his eligibility and can return to office.*

*According to Section 66.c, the council may – with a majority of nine-tenth of all its members (or all members except the mayor) – remove the mayor from office. This can only take place where a mayor proves not to deserve the respect and trust that the position demands, and where the local council decides that for this reason, the local council does not trust the mayor. The local council must submit the decision to two stages of consideration at intervals of not less than six days and not more than twelve days, and the above-mentioned majority must agree on the grounds for the decision. The removed mayor may bring the legality of the decision taken by the local council before the Election Board no later than 2 weeks after the local council's decision. If the Election Board decides that the decision to remove the mayor was not legal, the removed mayor must return to his or her post for the rest of the term. If the mayor does not bring decision of the council before the Election Board, or if the Election Board decides that the decision to remove the mayor was legal, the mayor is removed from office for the rest of the term.*

*Equivalent rules apply to the chairpersons of the regional councils.*

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

*Answer: The existing rules have been in force since 2014. The Election Board has not made any decisions according to these rules, and the Ministry of Social Affairs and the Interior is not aware of examples of their use.*

## **QUESTIONS RELATING TO ADMINISTRATIVE ACCOUNTABILITY<sup>4</sup>**

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.

*Answer: The supervisory authority, Ankestyrelsen, supervises the local governments with the Ministry for Social Affairs and the Interior as the executive*

<sup>3</sup> Please, refer to the answer to question no. 11.

<sup>4</sup> Only local governments are described under questions 17-20. Generally the same applies to regional governments..

*supervisory authority. The supervision of local government is performed solely on a legal basis, cf. below. If unlawful activities occur, the supervisory authority can take action to ensure that they are remedied.*

*Supervision includes the activities carried out by the local council or on behalf of the local council. Therefore, the supervision also includes the committees under the council, the mayor and the administration, when they act on behalf of the local council. Bodies that act independently of the local council even though they are organized at the local level, for example school boards and housing or rent boards, are not included.*

*The supervisory authorities' general supervision does not cover specific issues or cases when a special complaint or supervisory authority is competent.*

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

***Answer:** The supervisory authority, Ankestyrelsen, performs legal supervision. This means that it can decide whether the local government has acted in accordance with current legislation specifically applicable to public authorities. The legislation covered includes both written legislation and general principles of public law. It is a prerequisite that the rules apply specifically to public authorities and not to private entities as well.*

*The supervisory authority cannot decide on questions regarding the level of service delivery as long as the level of service delivery meets the requirements of the law.*

*The supervisory authority may consider legislation within the sphere of all ministries.*

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

***Answer:** Anyone who suspects that a local government has not complied with legislation can direct inquiries concerning the matter to the supervisory authority.*

*The supervisory authority decides if there is reason to raise a supervisory case. A grievance from a citizen or others is not necessarily a sufficient reason for the supervisory authority to raise a case, nor is such grievance a condition for the supervisory authority to do so.*

*The supervisory bodies have wide-ranging powers to check and enforce the legality of local government actions. The most commonly used reaction is an indicative opinion. An indicative opinion states the supervisory authority's legal opinion as to whether a municipal council has violated the legislation.*

*Normally, municipalities follow the opinion of the supervisory authority. Thus, it is very rare for the supervisory authority to apply sanctions such as for instance the annulment of a decision made by a local council.*

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

***Answer:** Unfortunately, no general statistics are available in English.*

## **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.

*Answer: We have a rule called: 'kassekreditreglen', which roughly translates to 'the overdraft rule'.*

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

*Answer: Local and regional governments can use an overdraft facility to handle daily variations in payment flows. The prerequisite is that total liquidity over one year is positive. The average of the daily balances on the overdraft account for the past 12 months must not exceed the average of total balances on the accounts for the liquid assets of the local government during the same period. If the local or regional government's liquidity is declining, it may indicate that it is draining its financial reserves, i.e. its financial latitude.*

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

*Answer: If a local government is getting into conflict with the overdraft rule, binding agreements are made with the Ministry of Social Affairs and the Interior on how to re-establish the balance between expenditure and revenue.*

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

*Answer: A local government in Denmark (Vesthimmerlands Kommune) had negative liquidity in 2008, and an agreement was made with the former ministry of Welfare (now the Ministry of Social Affairs and the Interior) to re-establish the balance between expenditure and revenue. The agreement lasted 3 years until 2011, where the local government's balances and liquidity were deemed fine again.*

## 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?

*Answer: The accountability of elected local or regional officials and bodies, for example local or regional councils, mayors and sometimes also committee chairpersons, is debated mainly in connection with criticism of the way that a specific case or a sequence of events has been handled by the local or regional government.*

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

# ESTONIA

## 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.

No, Estonia does not have a system of democratic accountability.

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.

Financial liability of central and local authorities is regulated in [State Liability Act](#). According to this a person whose rights are violated by the unlawful activities of a public authority in a public law relationship may claim compensation for damage caused to him/her. But only in case if damage could not be prevented and cannot be eliminated by the protection or restoration of rights.

Regulations of financial liability apply to both elected and appointed officials.

5. What circumstances may give rise to financial liability of local and regional elected officials and/or bodies in your country?

Compensation may be claimed if an administrative act is not issued in due time or a measure is not taken in due time and the rights of a person are violated thereby (§ 7). A public authority who compensates for damage may file a claim of recourse against a person whose unlawful activities resulted in the occurrence of damage. Compensation is reduced if full claim would be unfair taking into account the orders and instructions issued by the public authority (the person is liable only if damage was caused wrongfully) (§ 19).

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)?

The liability is more administrative in nature, though, an application to receive compensation for damage may be submitted to the administrative authority which caused the damage or an action may be filed with an administrative court (§ 17). Compensation may be claimed by a person whose rights are violated due to the unlawful activities of local authorities (§7). Upon the causing of death or a bodily injury or damage to health, a third person is entitled to claim compensation (§ 10).

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

There is no statistics available, but the judgements of Supreme Court of Estonia are mostly involved with claims against state authorities. Though this does not reveal the popularity of submitting the claims against local authorities, it indicates that very few of these reach the highest level of court system.

## 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.

There is no specific regulation as criminal liability of elected officials, but criminal liability of elected officials/ public authorities is mostly related to corruption.

According to the [Anti-Corruption Act](#) an official is prohibited from: 1) demanding, intermediating and receiving income derived from corrupt practices; 2) corrupt use of official position; 3) corrupt use of public resources; 4) corrupt use of influence; and 5) corrupt use of inside information.

Forementioned activities and the violation of procedural restrictions are punishable by a fine of up to 300 fine units if proceeded as misdemeanours by a police authority). Corruption offences according to the [Penal Code](#) which will face criminal charges are following: appropriation/ possession of property (§ 201); abuse of trust (§ 217<sup>2</sup>); bribery (§§ 294,296, 298); trading in influence (§ 298<sup>1</sup>); professional forgery (§ 299); violation of public procurement requirements (§ 300) and violation of operating restriction (§ 300<sup>1</sup>).

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

These are general regulations applying to all public authorities on central and local level, both elected and appointed officials.

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.

According to the law every official is obliged to notify about the incidents of corruption, which he/ she becomes aware of. Proceedings of corruption misdemeanours are generally conducted by a police authority.

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)?

Regulations of criminal liability apply to both elected and appointed officials. There are no specific provisions for elected officials, in case of a conviction by a court for an intentional criminal offence has entered into force, both elected and appointed officials are released from the service.



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.

The main mechanism of political accountability is the procedure for expression of no confidence in municipal council (§ 46).

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.)?

This responsibility is limited to most important elected and appointed posts in local council/ assembly and government/ executive board.

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)?

At least one fourth of the members of a municipal council may initiate an expression of no confidence in the following elected officials/ positions:

- the chairman of the municipal council;
- deputy chairman of the municipal council;
- chairman of a municipal council committee;
- deputy chairman of a municipal council committee;
- a member of the revision committee,
- the municipal government (executive board);
- the rural municipality or city mayor;
- a member of the municipal government (executive board).

An expression of no confidence is initiated at a municipal council session. The representative of the initiators presents the expression and deliver to the chair of the council. The issue of expression of no confidence will included in the agenda of the next municipal council session.

Expression of no confidence releases the elected official from his or her duties. In the event of expression of no confidence in mayor, the municipal council shall elect a new mayor at the same municipal council session, or appoint one of the members of the municipal government/ executive board to act as substitute for the mayor, until the election of a new mayor. If an expression of no confidence finds no support in a council session, an expression of no confidence in the same person cannot be initiated for the same reason within three months.

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

This is the most used mechanism of accountability used in local level, especially in the cases of power. Although, its main function is rather for the opposition to express their views about the ongoing policy/ management and relatively less results in the actual release from office.

## 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.

Although administrative accountability is regulated in the [Civil Service Act](#) which mainly applies to officials not elected officials, it together with constitution sets the general principles that all activities of public authorities must be constitutional and based on the law. Standards are practically not used in local administration, there aren't any mandatory standards (in addition to legislation) related to local services or local officials (except for internal auditor, which only very few municipalities have).

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.

Although it cannot be considered as a system of financial accountability, there are regulations related to accounting and financial management in [Local Government Financial Management Act](#), which provides the principles of preparation, adoption, implementation and reporting of local government budgets.

According to the [Local Government Act](#) (§48) local councils/ assemblies have to establish revision committee, which has a role in monitoring financial accountability. Revision committee has the right to:

- verify and assess the lawfulness, purposefulness and productivity of the activities of a municipal government/ executive board, the municipal administration and its agencies, foundations and non-profit organisations,
- verify and assess and the purposefulness of the use of municipal funds;
- verify and assess the compliance with the rural municipality or city budget.

Productivity should be assessed by the revision committee pursuant to the following criteria:

- 1) economy, i.e., minimising the costs incurred in achieving the objectives;
- 2) efficiency, i.e., the relationship between the results and the expenses made to achieve them;
- 3) effectiveness, i.e., the actual impact of an activity compared to the intended impact.



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

The revision committee performs the functions within its competence pursuant to the procedure provided in the municipal statute and based on its work schedule or as required by the municipal council, i.e., it can look into issues that have been planned ahead for a year or decided by the council on the ongoing basis (e.g., problematic issues regarding municipal funds which have occurred).

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

Revision committee reviews the issue at hand and composes a report. The decision of the revision committee and audit report will be sent to the municipal government/ executive for position taking (before passing to the council). The executive has to present a position concerning the audit report to the revision committee within ten days. After which the revision committee submits the documents to the council for a making a decision about addressing the findings of the report.

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?

Currently there is an ongoing process of amending the [Local Government Act](#), which has initiated some related debates, but the focus is rather on direct/ deliberative democracy (some of its mechanisms relate to the issues of accountability e.g., recall of mayors, though these are just possible suggestions, we are probably not going to change our system so profoundly (direct elections, recalls etc., though we are discussing about enhancing local referendums, petitions etc.)) Second aspect related to accountability is strengthening the system of internal control and internal audit.

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

## FINLAND

### 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.

*Yes, defined mostly by Local Government Act and local rules accepted by Local Council.*

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?

*Please see reply to question 10. Local rules define details for terms of office to some members: for example is a Chair for some body part-time or full-time.*

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.

*No. Our Local Government Act contains a special section to municipalities that are in financial difficulties and a special evaluation procedure can be started. Even in these quite extreme processes guilty persons are not sought, but the ways to find a new balance for economy.*

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.

*Yes.*

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

*If some member of an executive board is under serious crime investigation, he/she must resign from the position he/she holds. This can be also temporary. However, if he/she does not agree with resigning, there is possibility to resign the whole body and all its members. After that Local Council defines and accepts the new members to Board.*

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.

Local Government Act :

Section 34 – Removal of elected officials before the end of their term

(1) The local council may remove the elected officials it has elected to a decision-making body of the municipality or of a joint municipal authority or to a joint municipal decision-making body before the end of their term if all or some of them do not enjoy the confidence of the council. A removal decision shall apply to all the elected officials of the decision-making body.

(2) The local council may remove the chairperson and deputy chairperson of the council and of decision-making bodies it has appointed before the end of their term if all or some of them do not enjoy the confidence of the council. A removal decision shall apply to the chairperson and deputy chairpersons together.

(3) The local council may remove the mayor and deputy mayor before the end of their term if they do not enjoy the confidence of the council.

(4) The matter shall be initiated at the proposal of the local executive or if at least a quarter of local councillors submit an initiative to this effect.

Section 35 – Council ad hoc committees

(1) When a matter concerning the removal of elected officials as referred to in section 34 or the dismissal of the chief executive or his or her transfer to other duties as referred to in section 43 has been initiated, the local council may establish an ad hoc committee to perform the preparatory work on the matter. The members of an ad hoc committee must be local councillors or deputy councillors.

(2) An ad hoc committee may also be established for the purpose of issuing an opinion or for the auditing of administration.

(3) In matters that are subject to preparation by a council ad hoc committee, the ad hoc committee shall obtain an opinion from the local executive.

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)?

*Political effects are decided by local parties: they can decide whether they keep a person on their party and whether he/she can be candidate for next elections. If listed, it is up to citizens to decide by voting.*

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

*There are some cases each year.*

## 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.

*Yes.*

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.)?

*Please see reply to question 10: very much same applies here. It is a question of enjoying the confidence of Local Council, whether there is a trust to person or not.*

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)?

See above, 11.

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.

Yes.

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

*Replies to 18 and 19 are defined by the Local Government Act.*

#### **Chapter 12 a (1484/2016) - Investigation procedure concerning a municipality in exceptional administrative difficulties**

##### **Section 109 a (1484/2016) - Investigation procedure concerning a municipality in exceptional administrative difficulties**

(1) If the administration and activities of a municipality are in exceptionally large difficulties which the municipality cannot cope with with its own efforts, the Ministry of Finance may, after hearing the views of the municipality, appoint an investigator or investigation group to investigate the municipality's governance.

(2) A precondition for appointing an investigator or investigation group is that:

1) criminal investigation has been initiated in respect of a serious offence in office or of several offences in office suspected to have been committed by a municipal authority or by several members of a municipal decision-making body and the municipality has not taken adequate measures to render the municipality's governance to comply with the law;

2) there is another justifiable reason to suspect that municipal authorities or members of a decision-making body have materially or repeatedly acted unlawfully or neglected their statutory obligations and the municipality has not taken adequate measures to render the municipality's governance to comply with the law.

The investigator or investigation group shall present a proposal for actions necessary to render the municipality's governance to comply with this Act and other laws. After receiving the proposal for actions from the investigator or investigation group, the local council shall handle them without undue delay and report the decision thereon to the Ministry of Finance.

(3) If the investigator or investigation group has proposed that an elected official or elected officials be suspended from their positions of trust under the grounds laid down in section 85(4) for the duration of the investigation or court proceedings concerning a suspected offence in office committed in a position of trust and the local council has not acted in this manner, the Ministry of Finance may, after hearing the local council and the elected official in question decide on the matter if the suspension from office is necessary in order to render municipal decision-making to comply with the law and to safeguard the credibility and reliability of the municipal decision-making taking into consideration the seriousness and possible repeated nature of the suspected offence as well as other factors. The decision of the Ministry of Finance may be enforced immediately.

##### **Section 109 b (1484/2016) - Investigator and members of the investigation group**

(1) An investigator and an investigation group referred to above in section 109 a shall have the legal expertise required by the task. The investigator and a member of the investigation group shall, in their tasks, be independent of the municipality and the Ministry of Finance.

(2) In attending to their duties in accordance with this Act, an investigator and a member of the investigation group shall be governed by the provisions on criminal liability in office as well as the provisions of the Tort Liability Act (412/1974) on liability in damages of public corporations and public officials.

(3) Notwithstanding the provisions on secrecy, an investigator and a member of an investigation group shall have the right to obtain from the authorities the information on the administration and finances of municipalities and of corporations belonging to a local authority corporation necessary for attending to their task.

**Section 109 c (1484/2016) - Right of the Ministry of Finance to obtain information on the initiation of criminal investigation**

When preparing the appointment of an investigator or an investigation group referred to in section 109 a and a suspension from a position of trust, the Ministry of Finance shall have the right to receive the notice of the initiation of criminal investigation referred to in chapter 3(6) of the Criminal Investigation Act of an offence in office suspected to have been committed by an elected official.

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

*See above.*

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

*There has been one case, where Ministry has intervened single municipality. The process has proved to be very complicated, with further process in Court. These cases are exceptional, but very generally, one could say municipal organization has developed into very complex direction last years and those structures might be more vulnerable to very difficult cases.*

## 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.

*No. Only if some person in office has with his/her act in office caused harm to another person, and if decided by Court, there might be also financial consequences if he/she has committed a crime. There can be fine/prison sentence and in addition to that, a compensation to a victim of damage caused.*

**Section 85 (1484/2016)**  
Wrongful acts in a position of trust

(1) Elected officials shall be subject to liability for acts in office and governed by the provisions of the Criminal Code (39/1889) concerning offences in office.

(2) If there is probable cause to suspect that an elected official has, in a position of trust, committed an offence in office or otherwise acted contrary to his or her obligations, the local executive shall demand an explanation from the party in question and, if necessary, notify the local council of the matter. If an offence in office has manifestly been committed, the offence shall be reported without delay.

(3) The local council may suspend an elected official for the duration of the investigation or court proceedings unless the person has, himself or herself, notified of withdrawal from the position of trust. Before the local council meets, the council's chairperson may make an interim decision concerning suspension. A suspension decision may be put into effect immediately.

(4) The local council shall suspend an elected official from his or her position of trust for the duration of the investigation or court proceedings concerning a suspected offence in office if this is necessary to safeguard the credibility and reliability of municipal decision making taking into consideration the seriousness and possible repeated nature of the suspected

offence as well as other factors. A suspension decision may be put into effect immediately.

(5) When preparing a decision in accordance with subsection 3 or 4, the municipal authority shall have the right to receive the notice of the initiation of the criminal investigation referred to in chapter 3(6) of the Criminal Investigation Act (805/2011) relating to an offence in office suspected to have been committed by an elected official.

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

*It is usually by single person or group of persons, who have faced this injustice. This can be directed to various organisations, to municipality as a complaint, to Parliament Ombudsman, to State Regional Office, State Ombudsman or directly to court.*

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

*Each organisation handles these in their ways. In some less grave cases, it is usual that a note or warning can be given. In crime cases, these can be lead to fine/prison and to dismissal of office.*

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?

*The system is currently working quite well, no major changes in legislation during the last few years. However, there is a administration reform plan going on and that means, if realized, that some municipal duties and their control will be transferred from local level to completely new regional level. This transfer of duties include health and social services and fire and rescue services. The latter services are not very problematic by any form of accountability, but social and health services are more common for complaints. Generally, the procedures of accountability will remain the same also after reform.*

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

*Please contact me for any question.*

# GEORGIA

## 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.

In pursuance with the Article 51 of Local Self-Government Code of Georgia, the procedure for casting a vote of no confidence against a Mayor may be initiated based on a written initiative of more than half of the members on the current list of the Municipal Council ("Sakrebulo"), or of at least 20% of the total number of constituents registered in the territory of the municipality. Passing of a vote of no confidence against a Mayor results in the termination of his/her powers. With regard to the representative body (Municipal Council - Sakrebulo) in accordance with the Article 40 of the Organic Law of Georgia Local Self-Government Code, a member of a municipality Sakrebulo shall enjoy a free mandate and he/she may not be recalled.

Also, the Article 85 of Local Self-Government Code of Georgia stipulates citizen participation at the local level. In particular, the Article 85 defines guarantees and forms of participation of citizens in the course of exercising local self-government. According to the paragraph 4 of the Article 85, the respective forms of citizen participation shall be as follows:

- a) *a general Assembly of a settlement;*
- b) *a petition;*
- c) *the council of civil advisors;*
- d) *participation in the sessions of the municipal council/Sakrebulo and the sessions of its commission;*
- e) *hearing reports on the work performed by the Mayor of the municipality and by a member of the municipal council/Sakrebulo.*

### 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?

The procedure for casting a vote of no confidence against a Mayor is defined in compliance with the Article 51 of the Local Self-Government Code;

The procedure for casting a vote of no confidence against a Gamgebeli/Mayor may be initiated based on a written initiative of more than half of the members on the current list of the municipal Sakrebulo, or of at least 20% of the total number of constituents registered in the territory of the municipality proposing a vote of no confidence against the Mayor.

If the initiative proposing a vote of no confidence against a Mayor comes from the constituents, an action group shall be formed consisting of at least 10 members. The list of the action group shall include the names, surnames, places of residence and places of registration of each member. The initiative proposing a vote of no confidence against a Mayor shall be specifically formulated by the action group. The relevant initiative application shall be filed with the municipality Sakrebulo.

According to the paragraph 12 of the Article 51 of Organic Law of Georgia Local Self-Government Code, the procedure of a vote of no confidence against a Mayor may not be initiated and the vote of no confidence may not be taken within 6 months after the election of the Mayor, as well as during the last one year of the term of office of the Mayor.



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

In practice, the mechanism of the procedure for casting a vote of no confidence against a Mayor has not been employed yet.

**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.**

Issues relating to financial liability are given in the Constitution of Georgia. In particular, according to the Paragraph 4 of the Article 18, - everyone shall be entitled to full compensation, through a court, for damage unlawfully inflicted by the bodies of the State, the autonomous republics and local self-governments, or their employees, from state funds, the funds of the autonomous republics or the funds of local self-governments, respectively.

**5. What circumstances may give rise to financial liability of local and regional elected officials and/or bodies in your country?**

According to the Article 47 of the General Administrative Code of Georgia, a person has the right to apply to a court to cancel or reverse a decision of a public institution or a public servant. He/she may also claim property and non-property damages incurred:

- a) because of refusing to issue public information, due to full or partial closing of a session of a collegial public institution, as well as by keeping public information confidential;*
- b) as a result of creating and processing inaccurate public information;*
- c) by infringing other requirements of this chapter by a public institution or a public servant. The burden of proof shall rest with a defending public institution or public servant.*

In addition, Articles 60 and 61 of the General Administrative Code provide for cases for compensation of damage, which may be caused in cases of annulment or invalidation of an administrative-legal act issued by a public institution.

**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)?**

Financial liability and damages are mainly settled in court. The interested party has the right to file a lawsuit. According to the Article 22 (paragraph 3) of the Administrative Procedure Code of Georgia, unless otherwise provided for by law, a claim shall be filed with a court within one month after making available an individual administrative act or a decision regarding an administrative claim, as well as after the expiry of the time determined for rendering a decision regarding the administrative claim, while in the case of normative acts, a claim shall be filed within three months after the direct prejudice.

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

There is a broad practice on the issue in question yet the precise information needs to be obtained from the courts of Georgia.



## 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.**

The law does not impose any exceptions on the persons elected or appointed by the local self-government and they are subject to the general rule of criminal liability. Also, Article 40 of the Criminal Code of Georgia provides for a form of penalty such as deprivation of the right to hold office, but this only applies to appointment to state or municipal services and not to elected positions.

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.**

Political accountability, within the limits established by law, is imposed only on political officials.

**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.)?**

According to the Article 3 of the Law of Georgia on Public Service, political officials are - a state trustee - a Governor and his/her deputy, an official of a municipal Sakrebulo (municipal assembly), a municipal Gamgebeli (head of local administration)/mayor, a deputy Gamgebeli/mayor.

The State Representative (appointed by the Government of Georgia at the regional level as a representative of the Government) is politically accountable to the Government of Georgia. The State Representative acts in accordance with the instructions of the Government and the powers over them are delegated, expanded or reduced by the decision of the Government, as well as the appointment and dismissal of the State Representative.

The Deputy State Representative is politically accountable to the State Representative, who makes the decision on the definition of his authority, as well as on his appointment and dismissal.

The mayor, the chairperson of the Sakrebulo, the Deputy Chairperson of the Sakrebulo and the chairpersons of the Sakrebulo commissions are politically accountable to the representative body of the municipality - the Sakrebulo. Due to the fact that the functions of these officials are described in detail in the Local Self-Government Code and the Sakrebulo regulations, they are not subject to any significant changes. Political accountability is manifested in the submission of the periodic report of these officials to

the Sakrebulo, as well as the right of the Sakrebulo to use the mechanism of the procedure for casting a vote of no confidence against the mayor of the municipality, as well as to dismiss Sakrebulo officials (Sakrebulo chairperson, Sakrebulo deputy chairperson and Sakrebulo commission chairmen).

Deputy mayors are politically accountable to the mayor, who, within the scope of competence established by law, determines their powers and makes decisions on their appointment and dismissal. Deputy mayors are appointed by law for the term of office of the mayor, and termination of the mayor is the basis for their dismissal.

**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)?**

In pursuance with the Article 51 of the Local Self-Government Code, the procedure for casting a vote of no confidence against a Mayor may be initiated based on a written initiative of more than half of the members on the current list of the municipality Sakrebulo.

No confidence is declared for the Mayor if the initiative of more than half of the listed members of the Sakrebulo is supported by at least two thirds of the listed members of the Sakrebulo. A vote of no confidence results in the termination of Mayor's authority.

The law stipulates that initiating a vote of no confidence against the Mayor is not allowed for 6 months after the election of the mayor, as well as during the last 1 year of the mayor's term of office. It is also stipulated that if the City Council fails to declare a vote of no confidence against the Mayor, it is inadmissible to raise the issue of no confidence again within the next 6 months.

As for the Sakrebulo officials (Chairman of the Sakrebulo, Deputy Chairman of the Sakrebulo and chairmen of the Sakrebulo commissions), the Sakrebulo has the right to remove these officials from their positions at any time.

According to Article 34 of the Local Self-Government Code, a municipality Sakrebulo may remove from office the chairperson of the municipality Sakrebulo. The question of removing from office the chairperson of a municipality Sakrebulo may be raised in writing before the municipality Sakrebulo by at least one third of the total number of Sakrebulo members. A decision to remove from office the chairperson of a municipality Sakrebulo shall be considered adopted if it is supported by more than half of the members on the current list of the municipality Sakrebulo. The only constraint established by the law is that if a municipality's Sakrebulo does not take a decision to remove the chairperson of the municipality Sakrebulo from the position, it shall be prohibited to repeatedly initiate a procedure for the removal of the chairperson of Sakrebulo within the next 3 months.

Article 36 (Paragraph 4 ) of the Local Self-Government Code establishes the procedure for dismissal of the Deputy Chairman of the Sakrebulo. According to the law a municipality Sakrebulo may remove from office a deputy chairperson of the municipality Sakrebulo. The question of removing from office a deputy chairperson of a municipality Sakrebulo may be raised in writing before the municipality Sakrebulo by the chairperson of the municipality Sakrebulo and by at least one fifth of the members on the current list of the municipal Sakrebulo. A decision to remove a deputy chairperson of a municipality Sakrebulo shall be considered adopted if it is sustained by more than half of the members on the current list of the municipality Sakrebulo.

Paragraph 3 of Article 37 of the Code establishes the procedure for dismissal of Sakrebulo commission chairmen. According to the law, A municipal Sakrebulo may remove from office the chairperson of the municipality Sakrebulo. The question of removal from office of the chairperson of a Sakrebulo commission may be raised in writing before the municipality Sakrebulo by at least one fifth of the members on the current list of the municipality Sakrebulo, by more than half of the members of the commission concerned

and by the chairperson of the municipal Sakrebulo. A decision to remove the chairperson of a municipality Sakrebulo commission shall be considered adopted if it is sustained by more than half of the members on the current list of the municipality Sakrebulo.

As for the elected members of the representative body of the municipality - Sakrebulo, according to Article 88 of the Local Self-Government Code, - at least once in a year, yet not later than 1 November of each year, the Gamgebeli/Mayor of a municipality and a member of a municipality Sakrebulo shall, under the respective resolution of the municipality Sakrebulo, hold public meetings with the constituents of the municipality and deliver a report to them on the work performed and answer questions put by the municipality constituents during the discussion of the report. In accordance to the Article 40 of the Organic Law of Georgia Local Self-Government Code, a member of a municipal Sakrebulo shall enjoy a free mandate and he/she may not be recalled. A member of a municipal Sakrebulo shall enjoy a free mandate and he/she may not be recalled and while performing his/her duties, shall not be restricted by the regulations and instructions of his/her constituents and of the political party that nominated him/her. Yet, in accordance with the Paragraph 5 of the same article, a free mandate shall not discharge a member of a municipality Sakrebulo from the duty to work with the constituents, and from the associated responsibility as prescribed by the legislation of Georgia and the rules of procedure of the municipal Sakrebulo.

**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.**

State representatives are administratively accountable to the Government of Georgia, which monitors and evaluates the activities of state representatives on the basis of both compliance with the law and the expediency of their activities.

According to Article 130 of the Code of Local Self-Government, only legal supervision is exercised over one's own powers established by law on the grounds of compliance of normative acts adopted by the Sakrebulo with the law. As for the powers delegated by the state to the municipalities, in this case, the delegating state body also supervises the activities of self-governing bodies and officials (sectoral supervision) on the basis of expediency.

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

Supervision of the municipality's own powers can be exercised only in accordance with the law, while the powers delegated to the municipality are supervised on the basis of the decisions made and the compliance with the law, as well as the proper implementation and expediency of the activity.

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

According to Article 132 of the Local Self-Government Code, legal supervision shall be exercised with respect to a normative administrative-legal act adopted by a municipal Sakrebulo. When exercising legal supervision, the state supervisory body, if it considers that the normative act adopted by the municipality contradicts the legislation of Georgia, shall, within 15 days after the publication of this act, apply to the representative body of

the municipality with a legal conclusion. In case of a negative legal conclusion, within 15 working days after receiving the conclusion, the municipal council shall send to the legal supervisory body a normative administrative-legal act on the amendment or repeal of this normative administrative-legal act or a motivated written refusal. In case of non-consideration of the legal conclusion or motivated written refusal, the legal oversight body is entitled to apply to the court no later than 15 working days after the expiration of the relevant period or after receiving a motivated written response to request the annulment of the normative administrative-legal act.

According to Article 132, Paragraph 8 of the Local Self-Government Code, if a normative administrative-legal act of a municipal Sakrebulo contravenes the provisions of the Constitution of Georgia, or causes substantial and irreversible damage to citizen Constitutional rights and freedoms, the legal supervision body may, without adhering to the time limits prescribed by Paragraph 5 of this Article, immediately apply to a court for annulment of the normative administrative-legal act.

In case of powers delegated by the state to the municipalities, the delegating state body supervises both compliance with the law and expediency. According to Article 133, Paragraph 2 of the Local Self-Government Code, when performing state supervision over the exercise of delegated powers, the sectoral supervision authority may:

- a. request documents or information;
  - a1) issue recommendatory instructions;
- b. suspend or annul an individual administrative-legal act of a municipal body/official;
- c. c) substitute the local self-government.

According to Article 135 of the Local Self-Government Code, the sectoral supervision authority shall be entitled to examine the legality and appropriateness of an individual administrative-legal act adopted/issued by a municipal body/official within the delegated powers and provide binding instructions to the municipality. In order to ensure a proper exercise of delegated powers, an individual administrative-legal act of a municipal body/official may be annulled on the grounds of inappropriateness if it does not comply with the instructions of the state supervision authority. A decision on the annulment of an act on the grounds of inappropriateness shall be substantiated.

In pursuance with the Article 136 of the Local Self-Government Code, if the relevant municipal body improperly performs or fails to perform the powers delegated to the municipality under this Law, the relevant state supervision authority may request that municipal body to perform this obligation, give it mandatory instructions and allow a reasonable period of at least 15 working days for remedying the situation. If, in order to remedy the situation, the sectoral supervision body, after the expiration of the period determines that the municipality continues taking improper measures, or does not take them at all, or the situation cannot be remedied, the sectoral supervision authority shall be entitled to propose to the Government of Georgia to substitute the local self-government.

A decision on the substitution of the local self-government in the relevant municipality shall be made, by an ordinance, by the Government of Georgia. The ordinance of the Government of Georgia shall determine a provisional procedure for the exercise of relevant delegated powers during the substitution of the local selfgovernment, including the duration of the substitution, the administrative body/official responsible for the exercise of the relevant delegated powers, as well as any other measures required for the exercise of the delegated powers. The costs associated with the substitution of the local self-government shall be borne by the relevant municipality. The costs shall be reimbursed by deducting them from the amount of the targeted transfer.

According to Article 136, Paragraph 7 of the Local Self-Government Code, Local self-government substitution may be used only once, or as a provisional measure, for not longer than a year. It shall be prohibited to substitute local self-government during the

first and last 6 months of office of a municipal Sakrebulo. According to Article 136, Paragraph 8 of the Local Self-Government Code, - a municipality may appeal to a court the lawfulness of the relevant decision on the substitution of the local self-government.

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

There are no cases of application of such mechanism so far.

## **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.**

According to the Local Self-Government Code, among the municipality's own powers are drafting, discussion and approval the municipal budget. As envisaged by the Code, the mayor of the municipality is obliged to prepare and submit a report on the implementation of the local budget to the Sakrebulo for consideration.

The rules of accounting and reporting of the municipal budget are defined by the *Budget Code of Georgia (Article 84)*. Also, according to the Article 14 of the *Budget Code of Georgia*, in line with the respective international standards, Minister of Finance of Georgia issues the applicable regulations to ensure the adherence of budgetary organizations of Central, Autonomous Republics and Local Authorities of Georgia with standard accounting procedures and reporting requirements. 2. Central, Autonomous Republican and Local Authorities of Georgia are responsible for the accounting and control over the revenues, expenditures and change in balance, along with the compliance with the applicable regulations issued by the Minister of Finance of Georgia.

The issue of financial reporting of the municipality, as well as other public institutions, is also defined by the Law of Georgia on Public Internal Financial Control. In pursuance with the Article 5 of the law in question, Municipal bodies, as public institutions, are obliged - in accordance with the "Instruction on the Procedure and Procedures for Establishing a Financial Management and Control System" approved by the Government of Georgia - to develop their own system of financial management and control, which aims to:

1. *conformity of transactions performed by an institution with the legislation of Georgia, regulations, internal policy and international agreements and treaties to which Georgia is a party;*
2. *complete, comprehensive and reliable financial and operational reporting*
3. *cost-effective, effective and efficient use of funds and resources;*
4. *protection of assets, information and other resources from loss, or from improper use or mismanagement and damage.*

Paragraph 2 of Article 17 of the Law of Georgia on State Audit stipulates that the expenditure and execution of the municipal budget is periodically inspected by the state audit, and the inspection report is submitted to the relevant municipality. According to Article 31, Paragraph 5 of the same law, the State Audit Office is obliged to submit a report to the Parliament of Georgia on the expenditures and execution of municipal budgets every 2 years.

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

The forms and rules of financial reporting are established by law and it is carried out at intervals established by law. However, in addition to this periodicity established by law, according to Article 140 (2) of the Local Self-Government Code, Sakrebulo shall carry out

an independent audit at the request of at least one third of the members on the current list.

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

According to Article 85 of the Budget Code of Georgia, the mayor is obliged to submit a quarterly review of budget execution to the Sakrebulo within 1 month after the end of each quarter. And the budget execution report will be submitted to the Sakrebulo by the mayor no later than 2 months after the end of the budget year.

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

According to Self-Government Code of Georgia, Mayor is authorized to draft and present for approval to the Sakrebulo a municipal budget and amendments to the budget; ensure, within his/her powers, the execution of the approved budget. Also, submit for approval to the Sakrebulo a report on the execution of the budget for the reporting year. Whilst Sakrebulo is entitled to discussion and approval of a draft budget of a municipality in accordance with this Law and other legislative acts of Georgia, making amendments to the approved budget, monitoring and evaluation of budget execution;

In addition, regarding this issue, there is a well-established external mechanism in the country. Namely, the State Audit Office has an authority to examine the spending and execution of the budgets of the State, autonomous republics and local self-government units as well (Paragraph 2 of Article 17 of the Law of Georgia on State Audit). Such detailed information may be collected through the reports of the State Audit Office.

## 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?**

Further reform and development of the issue of reporting on elected officials of the municipality is given in the ***Decentralization Strategy for 2020-2025*** approved by the Government of Georgia in 2019, which addresses this issue as a separate task (*the introduction of a high standard of transparency and accountability*). In particular, the strategy provides that "the international standards and principles of local self-government transparency and accountability, as well as relevant international best practices, will be taken into account in the development and implementation of decentralization reform. In the course of planning measures for transparency in the decision-making process at the local level, the baseline data will be properly taken into account and the current situation, including the legal framework, will be explored and opportunities for further improvements in terms of transparency and accountability will be identified. Feedback and response forms and ways will be clearly defined according to the needs of the citizens.

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

## GREECE

### 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.

**NO. The Greek legal order does not provide for mechanisms and procedures responding to the definition of the democratic accountability as given in the present questionnaire.**

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).

**Within the framework of democratic accountability, the following provisions of the Greek legislation on the accountability of elected representatives which is checked on a annual basis, might be included.**

- **The review/stocktaking of a municipal authority activities, which, in accordance with article 217 of L. 3463/2006 takes place in an open meeting by the end of June, concerns the economic situation, the management and the implementation of the programme related to municipal activities. During the meeting, in addition to the members of the municipal council, any entity/body, municipal resident, inhabitant or taxpayer from the municipality may take the floor, present their observations and submit their comments relating to the review.**
- **The review/stocktaking of a regional authority and the executive committee<sup>5</sup> activities, in accordance with article 185 of L. 3852/2010 takes place by January 31, of the following year. Members of the regional consultation committee, mayors of the municipalities lying within the boundaries of the region and representatives of political parties are called to take part in the meeting. If the special meeting does not take place, it can be convened by 1/3 of the regional councils, in accordance with the provisions of article 167 of L. 3852/2010**

### 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.

**Article 232 of L. 3852/2010 provides for the civil liability of elected representatives (Heads of the Region, Deputy- Heads of the Region, Regional councilors, Mayors , Deputy-mayors, Municipal councilors and Presidents of communities, Members of collective organs governing local authorities' legal**

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<sup>5</sup>The executive committee of the region is a regional organ consisting of the Head of the Region as president, and the Deputy- Heads of the Region (article 173 of L. 3852/2010. Its responsibilities are provided for in article 174)

**entities and local authorities' associations, either they are elected or appointed). In accordance with the applicable legislation, they have to compensate the region, the municipality, the legal entity or the association in respect of a positive damage <sup>6</sup> they created, having acted fraudulently or with gross negligence.**

**It is noted that the above representatives do not have any compensation liability to third parties (natural persons or private businesses)**

5. What circumstances may give rise to financial liability of local and regional elected officials and/or bodies in your country?

**The exercise of their duties (responsibilities) as elected representatives or members of local authorities' collective organs. The exercise of duty refers both to an action and to an omission of it.**

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)?

**The liability is of an administrative nature. It results from the attribution of the damage following a reasoned act which is issued by a three member committee. At present, the three member committee is convened in the seat of the local Decentralized Administration, by decision of the Coordinator of the Decentralized Administration. It is composed of:**

**a. The Commissioner of the Court of Auditors, or where a Commissioner is not employed, a high official of the Court of Auditors, designated together with his alternate by the President of the Court of Auditors**

**b. The Coordinator of the Decentralized Administration, together with his alternate**

**c. Concerning municipalities or their public entities or institutions, one representative of the Local Regional Union of Municipalities, with his alternate, who are designated by the Management Board of the Union. In the case of Regions, or their public entities or institutions, one representative of the Union of Regions together with his alternate, who are designated by the Management Board of the Union of Regions.**

**After the launch of the Independent Supervisory Service and the appointment of the Supervisor, the committee will be convened in the seat of each Independent Supervisory Service of Local Authorities<sup>7</sup>, by joint decision of the Ministers of Interior and of Finance. The committee will be composed of:**

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<sup>6</sup> In accordance with the Greek legal order and case-law, a positive damage is considered any reduction in the existing property of the person who suffered a damage; in this case, the region, the municipality, the legal entity or the association.

<sup>7</sup> The Independent Supervisory Services of Local Authorities, which will be headed by the Local Authorities' Supervisor will exercise state supervision over the Local Authorities. They are decentralized services of the Ministry of Interior and they will be seated on the seat of each Decentralized Administration of the country (7 Decentralized Administrations). Until they have been set up, supervision over local authorities and the



- **The Commissioner of the Court of Auditors, or where a Commissioner is not employed, a high official of the Court of Auditors, designated by the President of the Court of Auditors**
- **The Head of the Directorate- General of Financial Audits**
- **For municipalities or their entities, one representative of the local Regional Union of Municipalities, designated by its Management Board. For the regions or their entities, one representative designated by the Union of Regions.**

**All the above stated representatives are designated together with their alternates.**

**At present, the procedure to examine the liability is initiated by the committee after a request lodged by the municipality or the region or the public entity or institution or at the request of the Coordinator of the local Decentralized Administration who acts on an ex-officio basis, or following a request lodged by any municipal resident. The committee has to make a decision within a reasonable timeframe, after having conducted an investigation and having called the persons claimed to be liable for the damage caused, so that they provide explanations.**

**After the launch of the Independent Supervisory Service of Local Authorities, the initiative to initiate the procedure belongs to the Local Authorities' Supervisor (instead of the Coordinator) and the Authority of Transparency<sup>8</sup> (the Authority of Transparency exercises the responsibilities of the Inspector General of Public Administration) or following a request lodged by a municipal resident.**

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.

**The elected representatives fall under the provisions of the Criminal Code in relation to offences related to the service provision, such as breach of duty within the service.**

**In addition, the administrative measures of suspension/ lay off and disqualification may be imposed, following decisions issued by Criminal Courts. (see 11 below)**

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disciplinary control on the elected representatives will be exercised by the Decentralized Administration and its Coordinator. ( Articles 108-115 of L. 4555/2018)

<sup>8</sup> The post of the Inspector General of Public Administration was abolished by law 4622/2019. The services offered and the responsibilities were transferred to the Authority of Transparency and to the Manager of the Authority, respectively.

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

**The criminal liability, in addition to their liability as individuals, concerns the criminal offences provided in the criminal code and falling under the general category of offences related to services (such as breach of duty, corruption).**

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.

**The criminal liability of elected officials does not fall under special forms and frames of procedure. However, for elected representatives the proceedings for offences alleged to have been committed by them fall under the particular jurisdiction of the Criminal Courts.**

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)?

**Penalties have also political consequences:**

**A. Imposing the administrative measure of disqualification from the elected office (article 236 of L3852/2010).**

**An elected representative who is convicted by a final judgment for a criminal offence or for having committed specific offences <sup>9</sup>, is automatically disqualified from his office.**

**For imposing the disqualification a fact-finding act has to be issued by the Coordinator of the Decentralized Administration- and after the launch of the Independent Supervisory Service, by the Supervisor of Local Authorities,- within fifteen (15) days after the notification of the judicial decision, which is communicated to the above parties by the competent Prosecution Service.**

**B. Imposing the administrative measure of suspension (article 236A of L. 3852/2010)**

- **If the elected representative is condemned by a decision taken at first instance for criminal offences**
- **If restrictions or a provisional detention have been imposed after an irrevocable referral of the case for committing a criminal offence**
- **If a final sentence is passed against an elected representative for committing certain offences <sup>10</sup>.**

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<sup>9</sup> Counterfeiting, forgery, false attestation, bribery, blackmail, theft, misappropriation, abuse of office, fraud, oppression, incest, pimping, trafficking in women, trafficking of foreigners, infringement of law on combating drugs, smuggling, as well as for breach of duty, when an economic damage is caused to Local Authorities and their legal entities.

<sup>10</sup> Counterfeiting, forgery, false attestation, bribery, blackmail, theft, misappropriation, abuse of office, fraud, oppression, incest, pimping, trafficking in women, trafficking of foreigners, infringement of law on combating

**In addition, if an elected representative is disqualified from office, either because of a final conviction for a criminal offence or for committing specific offences, or after having committed a disciplinary misconduct referred to in article 233 of L.3852/2010 (see question 15 below), he may not be eligible for standing as candidate in the elections which follow his disqualification (eligibility impediment).**

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

**Based on the records kept in the Ministry of Interior for the year 2018, measures of administrative nature were imposed in the case of 18 elected representatives coming from the first tier of local government; and in 2019, in the case of 15 elected representatives from the first tier of local government.**

### **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.

**A system of political accountability of elected representatives is applied in our country, which concerns the execution of their duties. The disciplinary liability is controlled by a disciplinary board and by the Coordinator of the Decentralized Administration- and after the launch of the Independent Supervisory Services of Local Authorities by a disciplinary board and the Local Authorities' Supervisor.**

**A special case of political accountability is the case which leads to a dismissal of elected representatives from office for serious reasons of public interest. For the dismissal, a relevant decision has to be issued by the Minister of Interior, following a reasoned report of the local Coordinator- and after the launch of the Independent Supervisory Services of Local Authorities of the Local Authorities' Supervisor- having obtained the agreement of the disciplinary board.**

**A dissolution of a municipal or regional council may take place on the same grounds and following the same procedure. This dissolution brings about the dissolution of community councils, the termination of office of the presidents of communities and new elections.**

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.)?

**The disciplinary liability applies to all elected representatives, namely the Heads of the Region, Deputy - Heads of the Regions, regional councilors, Mayors, Deputy -mayors, Municipal councilors, Presidents of the communities and councilors of the communities.**

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)?

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drugs, smuggling, as well as for breach of duty, when an economic damage is caused to Local Authorities and their legal entities.

The disciplinary penalties of a maximum six- month suspension and of disqualification are imposed to elected representatives, if an elected representative (in accordance with article 233 of L.3852/2010) :

- has committed a serious breach of duty or due to abuse of power acting fraudulently or with gross negligence.
- has committed an abuse of a duty assigned to him in accordance with special legislative arrangements.

**Procedure (article 234 of L. 3852/2010):**

The above mentioned disciplinary penalties are imposed by the Coordinator of the Decentralized Administration ( and after the launch of the Independent Supervisory Services of Local Authorities , by the Local Authorities' Supervisor) following his reasoned decision, having obtained the agreement of the disciplinary board.

An elected representative is referred to the disciplinary board after he was called to account or after the expiry of the deadline for account, which is set in writing by the Coordinator and it cannot be less than ten(10) days.

For any suspension, the duration of the suspension as well as for a disqualification, an agreement of the disciplinary board has to be obtained.

The disciplinary board is established for a period of two years. It meets in public and in addition to the elected representative (who may appear either in person or through a representing lawyer) it may also examine witnesses.

The assent of the disciplinary board is given, following secret deliberation within two months after the reception of the referral document from the Coordinator.

At present, the disciplinary board is composed of the president of the Court of Appeal of the seat of the Decentralized Administration or his /her legal alternate, as President, b) two Judges of Appeals with their alternates, c) the Head of the Directorate of the local Decentralized Administration with his/her alternate and d) one elected representative of the local Regional Union of Municipalities, when the accountability concerns a representative of Municipalities, or one elected representative of the Union of Regions, when the accountability concerns a representatives of the region, as members.

The disciplinary action /penalty imposed (disqualification or suspension for a maximum period of six months) must be commensurate with the seriousness of the misconduct of the elected representative.

After the launch of the Independent Supervisory Service, the disciplinary Board will be composed of:

a) one President of the Judges of Appeals of the Administrative Court of Appeal, where the seat of the Independent Supervisory Service of the Local Authority belongs, or his /her legal alternate, as President

b) two judges, from the rank of the Judges of Appeals who serve at the Higher Administrative Court of Appeal, together with their alternates.

**c) two judges from the rank of the Judges of Appeals who serve at the Court of Appeals where the Independent Supervisory Service of the Local Authority belongs, together with their alternates.**

**d) one Head of Directorate from the Ministry of Interior, together with his /her alternate and**

**e) three elected representatives of the local Regional Union of Municipalities, when the accountability concerns a representative of Municipalities, or three elected representatives of the Union of Regions, when the accountability concerns a representatives of the region, as members.**

**After the launch of the Independent Supervisory Service, the disciplinary board may:**

- **give its assent to the proposal of the Supervisor**
- **not give its assent, if it considers that there is not any disciplinary responsibility/ accountability**
- **propose that the Supervisor should impose a milder or stricter penalty . The proposal is mandatory ( it has a binding character) for the Supervisor .**

**In general, the criminal liability is independent of the disciplinary responsibility. However, initiating and completing a criminal procedure may initiate the procedure of disciplinary control.**

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

**Based on the records kept in the Ministry of Interior for the year 2018, disciplinary penalties were imposed in the case of 56 elected representatives coming from the first tier of local government; and in 2019 , in the case of 45 elected representatives from the first tier of local government.**

## **QUESTIONS RELATING TO ADMINISTRATIVE ACCOUNTABILITY**

**NO. There are not any ad hoc provisions on administrative accountability. The elected organs, when performing their duties, have to respect and be consistent with the Constitution and the laws governing the local government and relating to the exercise of their duties.**

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.

**A series of financial controls are exercised over the acts of Local Authorities and of their public entities by the relevant monitoring bodies of the Ministry of Finance and the Court of Auditors.**

**According to the Constitution and the law on the Court of Auditors (L. 4700/2020), local expenditures are subject to the audits carried out by the Court of Auditors (either ax ante or ex post auditing )in compliance with the provisions of the legislation in force. In particular, the Court of Auditors is undertaking mandatorily an ex post audit over the accounts of the Municipalities, the Regions and their public entities, as well as of the public utilities, water and sanitation utilities and the municipal limited liability companies which are provided for in article 266 of the Code of Municipalities and Communities.**

**In parallel, the Inspectorate for Finance within the Ministry of Finance may undertake financial audits and management audits over the management of the Municipalities and of their public entities, following a request from the Ministry of Interior or the Decentralized Administration Coordinator (article 168.L. 3463/06).**

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

**The above stated auditing mechanisms exercise audits on a regular or exceptional basis, by carrying out either generally applied audits or random checks. The results from the audits on the financial management lead to accountability and attributing responsibility for damages/ deficits.**

**An ex ante control is exercised over the local expenditures by the Court of Auditors, either as a matter of routine or, following an appeal, by the Decentralized Administration Coordinator.**

**The financial audits of the Ministry of Finance are carried out by order of the Head of the General Directorate of Financial Controls .They are distinguished in scheduled and exceptional audits . The scheduled audits are carried out based on an annual plan; the exceptional audits are carried out following complaints, publications, information and reasonable grounds on bribes, fraud, irregularities or managing irregularities or following a request from the European Commission or an order issued by the relevant Prosecutor.**

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

**The Mayor/the Head of the Region become the Authorizing Officers .In the capacity of the Authorizing Officers, they are responsible for every damage caused to the local entity, because of the issuance of decisions on undertakings in excess of the appropriations entered in the budget of the entity or the rate of allocated appropriations or the procedures laid down in article 60 of law 4270/2014, as well as because of the issuance of decisions in violation of the procedures referred to in the presidential decree No 80/2016 and the provisions of article 66 of L.4270/2014.**

**The Authorizing Officers, the Head of the Financial Services of the entity as well as any other relevant body are held jointly and severally liable to the local entity and the damages /losses caused are mandatorily attributed to them.( par. 2 article 11 of the p.d. 80/2016) (Ministry of Finance 2/100018/0026/30.12.2016).**

**In cases where the legality of an expenditure is called into question by a competent staff member ( eg Treasurer), the Mayor may reject the reasons for questioning and the expenditure be paid by order of the Mayor (par. 3 article 175 of L. 3463/2006). In these cases, the relevant (payment) order is sent for being checked by order of priority before the local competent Commissioner of the Court of Auditors. If the Commissioner of the Court of Auditors finds that the expenditure is not legal, prepares a relevant Audit Report with a proposal for attributing responsibility to the Mayor , which is transferred to the Second Step of the Court of Auditors. The Second Step attributes responsibility to the Mayor who gave the order , with the corresponding amount which was paid.**

**In case where the person who is attributed the responsibility is a person acting in the capacity of an accounting officer, the dispute is presented to the competent Section not following a request of the General Commissioner of State of the Court of Auditors but by lodging an appeal against the enforceable demand for payment which is provided for by the public accounting legislation and is issued against the accounting officer. (Hellenic Const. 4 Decision No 2384/2016).**

**In addition, the Commissioner who is responsible for the ex ante control of expenditures, may as of 1/1/2011 monitor in the course of the year the regular recovery of revenues of Local Authorities and of their legal entities. In case of inaction related to recovery , the Commissioner calls the administrative bodies and the financial services to take all necessary steps within a reasonable deadline. If the administrative bodies or the Heads of the financial services fail fraudulently or with gross negligence to recover the revenues, the Commissioner sends by a reasoned proposal the persons hold responsible who are elected representatives before a three member committee (provided for in par 2 of article 232 of L. 3852/2010), so that they can be attributed the damages they caused to the Municipality.**

**Furthermore, the financial statements of Local Authorities ( accounts and balance sheet with the certification and the audit report prepared by the chartered accountant- accountant) together with all the supporting documents are submitted for auditing before the Court of Auditors within a month after the act /decision is issued by the municipal council. The submission is announced to the Decentralized Administration Coordinator. In case of non submission of the accounts and /or the balance sheet to the Court of Auditors, the sanctions provided for in article 345 of L. 4700/2020 of the Single Text of Procedure for the Court of Auditors are imposed against the persons hold responsible. At the same time, an exceptional general audit is carried out to the management of the Municipality , following a decision of the president of the Court of Auditors which is issued automatically or following a request of the Decentralized Administration Coordinator (par 5 article 163 of L. 3463/06).**

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

**As it results from what has been stated above, the mechanisms for carrying out financial audits, accountability and attributing responsibilities belong to the Ministry of Finance and to the Court of Auditors. Therefore, the Directorate of Local Government Finance does not keep any records which can provide qualitative/ quantitative information in relation to the operation of these mechanisms .**

#### **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?

**Yes. It has been a constant topic of discussion, of proposals and consultation among the parties involved: the elected representatives, KEDE (Central Union of Municipalities of Greece), ENPE (Union of Regions of Greece), members of the scientific community, civil society ,etc. In the case of malfunctions observed in the system of accountability, on the initiative of the Minister of Interior, the applicable legislation is amended.**

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



# HUNGARY

## DEMOCRATIC ACCOUNTABILITY

The set of legal instruments of the Hungarian legal system does not include the dismissal of local government representatives. The rights and duties of local government representatives are regulated by Act CLXXXIX of 2011 on the Local Governments of Hungary (hereinafter referred to as Local Governments Act) as follows:

The local government representative shall represent the interests of his/her constituents with responsibility taken for the entirety of the municipality (capital city district, county). The rights and duties of the local government representatives are identical.

*The local government representative:*

- a) may initiate the adoption of decrees or decision at the meeting of the representative body, in the manner specified in the by-laws;*
- b) may request information from the mayor (deputy mayor), the notary and the chairman of the committee at the meeting of the representative body, to which request for information substantive reply shall be given at the meeting or in writing within thirty days at the latest;*
- c) upon his/her request, his/her comment submitted in writing as well shall be attached to the minutes, or upon his/her request, his/her opinion shall be recorded in the minutes;*
- d) may participate in the public and closed meetings of any of the committees of the representative body in consultative capacity. He/she may make a proposal to the chairman of the committee for the discussion of any matter within the scope of duties of the committee, which matter shall be submitted to the next meeting of the committee and the local government representative shall be invited to the discussion. He/she may initiate that the representative body reviewed the decision of the committee, the mayor, the partial local government body or the notary made in the local government-related matter, which had been vested by the representative body;*
- e) subject to mandate, he/she may represent the representative body;*
- f) may request information necessary for his/her representative work from the mayor. In matters of public interest he/she may initiate measures to be taken by the mayor, to which substantive reply shall be given within thirty days;*
- g) during the time period necessary for participating in the committee's work, he/she shall be excused from work at his/her workplace. Any of his/her income lost for this reason shall be reimbursed by the representative body, based on which the local government representative shall be entitled to social security care as well. The representative body may also establish a lump-sum payment.*
- h) may use the Hungarian sign language or the special communication system chosen by him/her at the meetings of the representative body and the committees of the representative body. All costs of the use of the Hungarian sign language or special communication system shall be provided by the local government;*
- i) shall attend the committee and body meetings, shall participate in the work and decision-making procedure of the representative body;*
- j) after taking the oath, he/she shall participate in the training organised by the government office within three months;*
- k) shall maintain contact with the constituents, to whom he/she shall give a report on his/her representative activity at least once a year. Local Governments Act Subsections (1)-(2) Section 32*

## FINANCIAL RESPONSIBILITY

There is no direct financial responsibility.

According to the local government regulations, the representative body shall be responsible for the security of the financial management of the local government, while the mayor shall be responsible for the compliance of the financial management. Local Governments Act Subsection (1) Section 115

The civil law regulations recognise the legal instrument of liability for damages caused in course of exercising administrative powers. This regulation does not belong to the scope of duties of the Ministry of Interior.

*(Civil Code Section 6:548) Subsection (1) Liability may be established for damage caused in the course of exercising administrative powers if the damage has been caused by exercising public authority or by failing to exercise it, and the damage could not be averted by an ordinary legal remedy or an administrative court action.*

*Subsection (2) The legal person exercising public authority shall be liable for the damage caused in the course of exercising administrative powers. If the person exercising public powers is not a legal person, the administrative organ with legal personality under the auspices of which the proceeding administrative organ operates shall be liable for the damage.*

## CRIMINAL LIABILITY

It does not fall within the scope of local government regulation, it is not the competence of the Ministry of Interior.

Regulations in relation to criminal liability, such as corruption or criminal offences committed in official capacity are included in the Act C of 2012 on the Criminal Code. The Act is accessible through the following link in English: [https://njt.hu/translated/doc/J2012T0100P\\_20200716\\_FIN.PDF](https://njt.hu/translated/doc/J2012T0100P_20200716_FIN.PDF)

## POLITICAL ACCOUNTABILITY - ADMINISTRATIVE ACCOUNTABILITY

The conflict of interest and the legal instrument of unworthiness may concern two issues.

The mandate of the local government representative and the office of the mayor shall cease if any conflict of interest is established, and also if unworthiness is established. The regulations applicable to these two legal instruments are attached hereto as appendix.

The following provision may also belong to this issue:

The office of the mayor shall cease: if his/her legal liability due to his/her series of unlawful activities or omissions is established in definitive court judgement, as of the day the judgement becomes definitive;

Based on its decision made with qualified majority the representative body may file an administrative lawsuit against the mayor in order to have his/her legal liability established for his/her series of unlawful activities or omissions, in order to cause the office of the mayor to cease. The statement of claim shall be submitted to the court, and simultaneously – according to the rules of immediate legal protection – the suspension of the mayor from his office may be requested. The judgement of the court may be appealed. No retrial is allowed in the case. The mayor shall not participate in the adoption of the decision related to the initiation of the lawsuit, however, the mayor shall be considered as present for the purposes of establishing quorum. (Local Governments Act Sections 69-70)

## FINANCIAL ACCOUNTABILITY

According to the local government regulations, the representative body shall be responsible for the security of the financial management of the local government, while the mayor shall be responsible for the compliance of the financial management. Local Governments Act Subsection (1) Section 115

The State Audit Office of Hungary – which is the supreme financial and economic controlling body of the National Assembly – carries out the controlling of the responsible management of public funds and the national and local government assets. Act LXCI of 2011 Subsection (3) Section 1

The capital or county government offices which carry out the supervision of the legality of local governments may initiate before the State Audit Office of Hungary that an audit concerning the financial management of the local government was conducted. Local Governments Act Point j) Subsection (1) Section 132

This area may belong to the “internal control system of local governments” topic (not a Ministry of Interior competence)

The notary shall operate an internal control system – specified by law – which ensures the compliant, economical, efficient and effective use of the funds available to the local government. Within the internal control system, the notary shall ensure the operation of internal audit, taking into consideration the methodology guidelines and published by the minister responsible for the public finances, as well as the international internal control standards. In the framework of the internal audit of the local government, the audit of the supervised budgetary authorities shall be ensured as well. The detailed rules applicable to the internal audit of the local government and its budgetary authorities are specified by law. (Local Governments Act Section 119)

In the local government and its institutions, the financial committee (the establishment of which is mandatory in settlements with more than two thousand residents):

- a) develops an opinion the drafts of the annual budget proposal and the semi-annual and annual accounts;
- b) monitors the development of the budgetary revenues - in particular the own revenues - and the development of the changes in assets (asset growth or decrease), as well as evaluates the underlying reasons;
- c) examined the reasons and economic justification for the obligation generating debts, may audit the compliance with the cash management policy, and the enforcement of the documentation policy and adherence to the documentation policy;
- d) fulfils the tasks specified in the decrees of the representative body.

The financial committee shall notify the representative body of the audit findings of the financial committee without delay. If the representative body does not agree with the audit findings or fails to take the necessary measures, then the financial committee shall send the audit minutes – together with its observations – to the State Audit Office of Hungary (Local Governments Act Subsections (1)-(2) Section 120).

## Appendix (Hungary)

***Conflict of interest and unworthiness regulations in Act CLXXXIX of 2011 on the Local Governments of Hungary (Local Governments Act)***

***Conflict of interest***

Section 36

Subsection (1) The local government representative and the non-representative member of the committees of the representative body shall not pursue activities which may make the public trust necessary to fulfil his/her duties waver, as well as

a) he/she shall not be National Assembly representatives, and shall not have any office for which his/her mandate was granted by the National Assembly, the President of the Republic, the Government, any member of the Government or any body subordinate to the National Assembly or the Government (or the head of such body), except

aa) if in the framework of such mandate he/she pursues scientific, educational, artistic, reviser, editorial activity or any intellectual activity subject to legal protection, as well as if he/she has a legal relationship for foster parent employment;

ab) if he/she is the director-general or chief financial officer of any healthcare institutions, if he/she is a physician, healthcare worker, the head or an employee of any public education institution, the head or an employee of any vocational training institution, the head or an employee of any body which exercises control powers as the operator of the vocational training institutions, the head or an employee of any institution of higher education, the head or an employee of any social care institution, the head or an employee of any child welfare and child protection institution;

ac) if he/she is a member of the supervisory board or the management of any economic operator founded by the state or operating with state ownership share;

b) if he/she is the head or public officer of any central budgetary agency;

c) if he/she is a government official at any public administration agency within the territory of jurisdiction the local government concerned is operated;

d) if he/she is a professional or contracted staff member of the Hungarian Defence Forces, the Military State Security Service, or the professional staff member of any law enforcement body, the Parliamentary Guard or the National Tax and Customs Administration;

e) if he/she is a notary (head notary), deputy notary, as well as the public officer or employee of the mayor's office or joint local government office of the same local government;

f) if he/she is a representative for the local government of any other settlement;

g) if he/she is a mayor or deputy mayor for any other municipal local government;

h) if he/she is a member, personal contributor or person with representation powers of any business association founded by or operating with the ownership share of the local government, as well as if he/she is a member, personal contributor or person with representation powers of the supreme body of any business association founded by any business association operating with the ownership share of the local government, except if the supreme body of the business association is the representative body;

i) he/she is a media content provider private person, legal person, member, personal contributor or person with representation powers of the supreme body or management of any business association.

(2) The settlement local government representative shall not be the president, deputy president of any county assembly, mayor or deputy mayor.

### ***Conflict of interest procedure***

#### **Section 37**

Subsection (1) The local government representative shall terminate the ground for conflict of interest within thirty days of his/her election or the occurrence of the ground for conflict of interest. If it is not possible to terminate the legal relationship giving rise to the ground for conflict of interest within thirty days and in accordance with the provisions of the law, then the delivery of declaration of resignation made by the local government representative about the termination of the legal relationship and confirmed in writing by the party entitled to give confirmation to the committee specified in the by-laws shall be considered as the termination of the conflict of interest.

Subsection (2) If the local government representative failed to fulfil his/her obligation specified in Subsection (1), then upon the initiative of any local government representative or committee – and based on the proposal of the committee responsible for the duties related to conflicts of interest – the representative body shall – through its resolution - establish the occurrence of the circumstances giving rise to the conflict of interest and shall declare the conflict of interest at its next session, or within thirty days of the initiation of the establishment of the conflict of interest at the latest. The resolution of the representative body shall be delivered to the local government representative and the government office.

Subsection (3) The establishment of the conflict of interest of the local government representative may be initiated by anybody before the mayor, which initiative shall be forwarded to the committee responsible for the duties related to conflicts of interest for investigation without delay. In case of repeated initiation – provided that it does not contain any new facts or circumstances – the case shall be closed by the committee responsible for the duties related to conflicts of interest without separate investigation, and in this case the resolution specified in Subsection (2) will not be adopted.

Subsection (4) The local government representative may contest the resolution of the representative body establishing his/her conflict of interest or the termination of his/her office before the court proceeding in administrative cases and within

five days of the communication of the resolution. The statement of claim shall be submitted to the court.

Subsection (5) If the representative body does not make a decision on the conflict of interest or if its decision is unlawful, then the government office may request that the conflict of interest of the local government representative was declared by the court proceeding in administrative cases within five days from the receipt of the notification of the local government or within five days of the unsuccessful expiry of the time limit available for the notification.

Subsection (6) The court shall make a decision with a council of judges and within fifteen days of the receipt of the statement of claim; the decision of the court may be appealed within eight days of the communication of the resolution. The court shall make a decision on the appeal within fifteen days of the receipt of the appeal by the court. The decision of the court shall not be contested in retrial.

Subsection (7) The office of the local government representative shall cease on the day following the day on which the resolution establishing the conflict of interest was adopted, provided that the resolution was not contested in court. If the conflict of interest was established by the court, then the office of the local government representative shall cease on the day following the day on which the court decision became definitive.

### ***Unworthiness***

#### **Section 38**

Subsection (1) The mandate of the local government representative shall be terminated by the representative body – through its resolution – due to unworthiness if

- a)
- b) the local government representative was sentenced definitively to imprisonment due to wilful criminal offence;
- c)
- d) the local government representative owes any public debt to the state or the local government – after having exhausted the possible legal remedy possibilities – and the local government representative fails to settle such public debt within sixty days of the notification related thereto, or in case of payment in instalments or deferred payment, the local government representative fails to settle his/her public debt in accordance with the provisions of resolution permitting such payment in instalments or deferred payment;
- e) in accordance with the provisions of the act on business associations, the local government representative's liability for claims not settled in course of any compulsory liquidation was established definitively by the court, and if the local government representative failed to fulfil its compensation obligation specified by the court decision;
- f) the local government representative hinders or is accountable for omitting the enforcement of the definitive court decision concluding the court procedure initiated against the local government representative;

g) the local government representative fails to notify the representative body of the ground for conflict of interest regulated in Section 36.

Subsection (2) The local government representative shall notify the representative body and the government office of the matters specified in Points a) to g) of Subsection (1) within three days of the receipt of the definitive judgement or the occurrence of the circumstances specified in Points d) and e) of Subsection (1).

Subsection (3) Considering the provisions of the act on criminal procedure, the proceeding court shall notify the representative body and the government office of adoption of the definitive judgement establishing the guilt of the local government representative without delay.

Subsection (4) The local government representative shall apply for entry into the database of public debt-free taxpayers specified in the act on the rules of procedure of taxation (hereinafter referred to as database) within thirty days of his/her election as local government representative. The local government representative shall verify his/her entry into the database to the representative body until the last day of the month in which the local government representative's application for entry into the database was submitted. If after the entry into the database the state tax authority establishes that the local government representative does not comply with the requirements of entry into the database, then the state tax authority shall remove the local government representative from the database, of which removal it shall notify the representative body and the government office in writing.

Subsection (5) Otherwise the provisions of Subsections (2) to (7) Section 37 shall be applicable mutatis mutandis to the unworthiness procedure.

### ***Conflict of interest rules applicable to mayors***

Conflict of interest

#### **Section 72**

Subsection (1) Section 36 shall be applicable to the conflict of interest of the mayor of settlements with the population of less than 3000 residents and the conflict of interest of the mayor with societal mandate of settlements with the population of more than 3000 residents.

(2) The mayor of settlements with the population of more than 3000 residents shall not pursue any other legal relationship for work apart from the following:

- a) scientific, educational, artistic, reviser, editorial activity or any intellectual activity subject to legal protection,
- b) legal relationship for foster parent employment, and
- c) legal relationship for healthcare activity, not including the activity pursued in primary healthcare, as well as the mayor of settlements with the population of more than 3000 residents shall not pursue any other income-earning occupation and shall not be the personally contributing member of any business association.

### Subsection (3)

Subsection (4) The conflict of interest, unworthiness and assets declaration rules applicable to local government representatives shall be applicable to the mayor *mutatis mutandis*, with that the mayor shall not be the mayor, deputy mayor or local government representative of any other local government, shall not be the president, deputy president of any county assembly, except if the capital city district mayor is a member of the capital city assembly. The capital city district mayor shall not be the senior mayor or deputy senior mayor of the capital city.

### Section 73

The other provisions related to the fulfilment of the mayoral office are specified by the act on public service officers.



## ICELAND

### 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

**There is not a provision in Icelandic law that covers democratic accountability as it is defined in this document.**

### 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.

**The main rule in Icelandic tort law, is that anyone who causes unjustified financial damages to an individual or a legal person, is obligated to pay financial compensations. This liability is based on intent or negligence, and a causal link between the intended or negligence act and the damage. If these conditions are not met, there is no financial liability.**

**Therefore according to tort law, if a financial damages is caused by an elected official in connection with his duties, the municipality can be financial liable. If the damages is not in connection with his duties or the act of the elected official is grossly negligent or criminal, then the elected official can be personally financially reliable.**

**Other than above rule, there is not a system of financial liability at local level in Iceland legal system and there is not a provision that states that an elected official can be personally financially liable for a damage without a cause.**

5. What circumstances may give rise to financial liability of local and regional elected officials and/or bodies in your country?

**The financial liability is of a judicial nature. The procedure begins with a lawsuit, filed by the individual or legal person, and is treated like any other civil court case. The opposing party can either be the local government itself or a specific department within it.**

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)?

**See answer 5.**

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

**No information available**

### 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.

**There is no legal provision regarding criminal liability of local elected officials in the Local Authorities Act, no. 138/2011. It can, however, be**

**concluded by the general penal code that they can be held liable for criminal offences, while carrying out their duties as elected officials.**

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

**The criminal liability is general. Penalty clauses can be found in The General Penal Code, no. 19/1940:**

***Article 140: "A public official who refuses or intentionally neglects to do something he or she is lawfully instructed to do shall be fined or [imprisoned for up to 1 year]."***

***Article 141: "A public official who is convicted of gross or repeated negligence or carelessness in his or her work shall be fined for [or imprisoned for up to 1 year]."***

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.

**There is no specific procedural form for assessing criminal liability of elected officials. It is up to the district prosecutor and/or local law enforcement to assess if a criminal conduct has occurred.**

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)?

**There are no penalties applicable to elected official tailored to his status, but a criminal offence could affect his mandate.**

**Mandate rules have just recently been changed in Iceland. Before 2018 there was a provision in the Icelandic Local Authorities Election act, no. 5/1998, which stated that elected officials were required to have a "hreina æru", to be electable. "Hrein æra" is an old Icelandic term which loosely translated means "to have an honor untainted". There were also specific provisions in Icelandic laws which stated how an individual would lose his honor, and the only way to have a "honor resurrected" was by a presidential decision. This system has now been reformed.**

**According to current law, an elected official at a local level can only lose his mandate if he is sentenced to jail without a parole. Since the administrator of the municipality or other senior officials (mayor or managing director), are not personally elected, theoretically it would not affect their eligibility if they would be sentenced to jail, although it would be very unlikely that the council of the municipality would not terminate their working contract in that scenario.**

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

**No information**

## **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.

**There is not a system of political accountability. The term political responsibility in Icelandic Local Authority law has mainly meant that an elected official is responsible towards his electorate at election time.**

#### **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.

**The system of administrative accountability is twofold, specific monitoring system and general monitoring system.**

**The tasks of local government are versatile, but their main tasks are the operation of compulsory schools and kindergarten, social services including services for the disabled, youth and sport issues, environment and planning and various projects related to infrastructure. Many authorities, which are answerable to the state, have been directly appointed to undertake monitoring in such special areas so each issue can be monitored by a different authority. This kind of monitoring is referred to as special monitoring system.**

**When the special monitoring system has completed its handling of a case, or it is clear that the facts of the case do not fall under the monitoring role of a specific authority, the general monitoring system takes over. The general monitoring role is hand of the Ministry of Transport and Local Government.**

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

**The general monitoring of municipalities administrations is initiated by the ministry. Any individuals or legal person can send the ministry a complaint regardless of their connection to a case. If no other government bodies are assigned by law to monitor the facts of the case, the ministry has to investigate the complaint and reach a decision to either formally debate the case or dismiss it.**

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

**According to article 112 which was added to the Local Authorities Act in the year 2011, the ministry may independently decide whether there is a reason to formally debate the legality of municipalities management, that falls under the scope of the ministry monitoring.**

**If the ministry deems that there is a reason to formally address a case on its own initiative it may issue a guidance on the interpretation of the laws or issue an opinion on the legitimacy of action. If it is the ministry decisions that the municipality has not acted in accordance to law, the ministry can:**

- 1. Issue instructions to the municipality to make a decision in a case,**
- 2. invalidate municipalities decisions, but cannot make a new decision on behalf of municipality in a case,**
- 3. if a contract does not respect or fulfil provisions in the Local Authorities Act regarding municipal finances, the ministry may instruct parties to remedy the contract defects within a specified deadline and even invalidate such contract,**

**4. in case of municipality neglect, the ministry may, following a caution, halt payment from the Local Authorities Equalisation Fund or employ per diem fines until the neglect has been rectified.**

**5. otherwise bring matter into line with law,**

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

**In the year 2017 the ministry had 8 cases that ministry addressed in accordance to article 112 of the Local Authorities act. The year 2018 there were 16 cases and in the year 2019 there were 28 cases. Since 2011, the ministry has not deemed it necessary to take those actions mentioned in points 1-5 in question 19.**

### **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.

**Yes, according to chapter VIII. of the Icelandic local authorities act, the minister appoints an three member municipal finances monitoring committee. The committee has general supervision of ensuring that the finances and financial management of municipalities is in accordance with laws and regulations. The committee also has certain remedies to ensure that the financial management is according to law.**

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

**The role of the committee is to intervene if it concludes that a financial management of a municipality is not according to law. All municipalities shall provide the committee and its employees access to their operating units, their accounts, attachments and other financial data as well as explanations of such items.**

**It is in the discretion of the committee to decide what accountability mechanism is applied in each case, but it depends on seriousness of the situation.**

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

**The first procedures regarding financial accountability are in the hand of the municipal finance monitoring committee. According to article 82 of the Icelandic Local Authorities act, the monitoring committee may:**

- 1. Regularly publicly general background information on municipal finances,**
- 2. send queries to municipal authorities requesting explanations or data within a specified deadline,**
- 3. send written suggestions or recommendations to municipal authorities relating to the financial status of the municipality or individual financial decisions,**
- 4. have finances and operations of the municipality examined and then submit proposals to the council regarding improvements, within an appropriate period of time,**
- 5. publish notifications or resolutions on the status or individual financial decisions of the municipality,**
- 6. refer the issue to the minister of transport and local government.**

**If the committee refers a financial issue of a municipal to the minister according point six, the minister remedies are as follows:**

**1. Make an agreement with the municipality council which states that the municipality shall meet certain financial objectives. The minister can also provide the municipality with grant or an loan from the Local Governments Equalization fund and allow the municipality to impose surcharge on the municipal taxes or property taxes.**

**2. If the agreement has not returned results or if an agreement is not believed to improve the finances of a municipality, the minister can present the municipality with instructions on operations and administrations, including investment restriction, restrictions in borrowing and other obligations, utilisations of income bases and anything else considered material to the finances of the municipality in question.**

**3. In the event that a municipal council has repeatedly and significantly neglected its duties the minister can, on having received the proposals of the monitoring committee, suspend the council's fiscal powers over the municipality and appoint a financial management board.**

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

**The ministry has three times, since 2011 made an agreement with a municipality council to meet certain financial objectives. In recent times, the ministry has twice presented a municipality with instructions regarding their financial matters and once suspended council's fiscal powers and appointed a financial management board.**

## **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?

**The accountability of elected officials has been up for debate, most recently in connection with the public discussion regarding implementation of a new constitution in Iceland. Even though accountability of elected officials have been debated, there have never been any proposals or reform projects that involves this issue.**

# REPUBLIC OF MOLDOVA

## 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.**

*In accordance with the provisions of art.109 of the Constitution of the Republic of Moldova „(1) The public administration in the administrative-territorial units is based on the principles of local autonomy, decentralization of public services, eligibility of local public administration authorities and consultation of citizens in local issues of special interest .(2) Autonomy concerns both the organization and functioning of the local public administration, as well as the management of the communities they represent.*

*Moreover, in accordance with Art. 23 of Law no. 436-XVI from December 28, 2006 on local public administration, the legislature established the general legal framework on the liability of local elected officials, individual or collective, for actions or negligence in the service.*

*The legal framework is based on the following principles: the councilors are collectively responsible for the activity of the Local Council and for its decisions which they voted on; each counselor bears legal responsibility according to the legislation in force for its own activity carried out in the exercise mandate.The mandate of the local elected official is a representative one, and any mandatory mandate is void.*

*In accordance with the provisions of art. 5 paragraph 2 of Law no. 786/2000, the mandate of the counselor ends prematurely in case of:*

*a) absence without justified reasons from 3 consecutive meetings of the council or of the commission of which it is part;*

*b) violation of the Constitution, of other laws or interests of the local community, as well as participation in the actions of some unconstitutional bodies, fact confirmed by the final decision of the court;*

*c) incompatibility of the position;*

*d) entry into force of the sentence of his conviction;*

*e) legal dissolution of the council;*

*f) resignation (with the submission of the resignation request);*

*g) death.*

*At the same time, in accordance with art. 5 paragraph 4 of the same law, the mayor's mandate ends prematurely in case of:*

*a) incompatibility of the position;*

*b) impossibility to exercise the function for a period longer than 4 consecutive months, including due to illness;*

*c) entry into force of the sentence of his conviction;*

*d) revocation by local referendum, under the conditions of the Electoral Code by local referendum, under the conditions of the Electoral Code;*

*e) resignation;*

f) death.

*Thus, the legislation expressly provides for the possibility of revoking the mayor by local referendum.*

**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?**

*This aspect is largely regulated by the provisions of Chapter 14 of the Electoral Code of the Republic of Moldova.*

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

*According to art. 185 of the Electoral Code, the local referendum represents the consultation of the citizens in issues of special interest for the village (commune), sector, city (municipality), district, administrative-territorial unit with special status. The revocation of the mayor of the village (commune), sector, city (municipality) is also carried out by local referendum.*

*The local referendum can be initiated:*

*a) of 1/2 of the number of elected councilors, and in case of revocation of the mayor by secret ballot - of 2/3 of the number of elected councilors;*

*b) by the mayor of the village (commune), sector, city (municipality), except when a referendum is initiated for the revocation of the mayor;*

*c) by the representative authority of the administrative-territorial unit with special status;*

*d) of 10 percent of the number of citizens with the right to vote residing on the territory of the respective administrative-territorial unit.*

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

*At the moment there are no statistics in this regard*

## **ISSUES RELATING TO FINANCIAL LIABILITY**

**5. Does your country have a system of financial liability at local and/or regional level? If not, go directly to question 8.**

*N/A*

**6. What circumstances may give rise to financial liability of local and regional elected officials and/or bodies in your country?**

*N/A*

**7. 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)?**

*N/A*

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



N/A

## 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.**

*The analysis of normative acts in the field of civil service, especially criminal liability, allows us to conclude that the institution of criminal liability of the civil servant is subject to a continuous evolution, from the perspective reconfiguration of social reality, under the rule of legislative changes.*

*Article 23.of the law no. 436/2006 regarding the local public administration provides general aspects regarding the Liability of the councilors in the local council:*

*(1) The councilors are jointly and severally liable for the activity of the local council and for its decisions which they voted for.*

*(2) Each councilor bears legal responsibility, according to the legislation in force, for his own activity carried out in the exercise of the mandate.*

*Subsidiary, art. 83 of the aforementioned law states that, the mayors and vice-mayors, the presidents and vice-presidents of the districts, the councilors, the secretaries and the staff of the mayoralties and the apparatuses of the district presidents have legal responsibility in accordance with the legislation in force for the illegal acts committed in the exercise of the function.*

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

*In this context, the Criminal Code no. 985/2002 regulates in the Special Part the criminal liability of local elected officials and civil servants.*

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

*Art. 33 of Law no. 436/2006 regarding the local public administration provides the following Suspension of the mayor*

*(1) In case he has been referred to justice for committing a crime, the mayor may be suspended from office until the final settlement of the case. The organization of new elections for mayor is not allowed for the entire duration of the suspension.*

*(2) The suspension may be ordered only by the court, in accordance with the law.*

*(3) If he has been acquitted or his criminal file has been closed, except for the cases of amnesty, the suspended mayor has the right to repair, in accordance with the law, the damage caused. The mayor is reinstated for the period until the expiration of his term.*

*(4) The provisions of this article shall apply, in the respective manner, to the deputy mayors.*



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

*The elected officials bear the contraventional and criminal/penal liability, as the case may be, according to the legislation in force.*

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

*There are no statistics in this regard.*

## **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.**

*These aspects are regulated a priori by the provisions of art. 23 of Law no. 199/2010 on the status of persons of public dignity*

*Article 23. Liability of the dignitary*

*(1) The dignitary shall exercise his mandate in good faith. In case of violation of this provision, the dignitary bears personal responsibility.*

*(2) The violations committed in the exercise of the mandate attract the disciplinary, civil, contraventional or criminal liability under the conditions of the law.*

*(3) The non-execution or improper execution by the person with a position of public dignity of his obligations, prerogatives and competences, regardless of the presence of guilt, may entail the revocation or dismissal from office. The grounds and reasons for revocation or dismissal for reasons attributable to the dignitary shall be indicated in the corresponding administrative act.*

*(4) The dignitary has the right to challenge in the court the administrative act of dismissal only in case the law states this right.*

**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.)?**

*This responsibility applies to all elected representatives and is not limited to the Assembly or the local and / or regional executive.*

**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)?**

*For example, the status of the district president:*

*The district council elects the president of the district, at the proposal of at least one third of the elected councilors, with the vote of the majority of the elected councilors.*

*Therefore, the district council may dismiss the president of the district before term, with the vote of two thirds of the number of elected councilors, at the proposal of at least one third of the elected councilors.*

*The vice-president of the rayon may be dismissed prematurely, with the vote of the majority of the elected councilors, at the proposal of the rayon president or of a third of the elected councilors.*

*If the term of office of the rayon council ends prematurely, the president and vice-president of the rayon exercise their attributions and solve the current problems of the rayon until the election by the newly constituted rayon council of another president of the rayon.*

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

*There are no statistics in this regard.*

## **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.**

*In the conditions of the permanent insufficiency of means for ensuring the continuous development and sustainable development of society, including the country's economy and, implicitly, the business environment, a particularly important role is assigned to the economical and efficient use of available resources. Insufficient financial means dictate an increased requirement for the priority setting process, strategic planning and efficient use of allocated resources. Therefore, the Government of the Republic Moldova plays a key role in improving the quality of state administration.*

*According to the Moldova-EU Association Agreement, the Republic of Moldova has undertaken to implement the system of internal public financial control (CFPI) at national level in accordance with internationally recognized methodologies and standards, as well as EU best practices, which meant a comprehensive reform in the field of internal control and audit in the public sector.*

*The CFPI concept was developed by the European Commission to provide a structured and operational model to assist national authorities in reshaping their internal control environment and, in particular, to update control systems in the public sector in line with international standards and EU best practices.*

*The activity of the Government is the transparency and efficiency of the use of public finances. Currently, in the Republic of Moldova increases the role and functions of managers of public entities, which are called to organize and ensure the system of internal managerial control necessary to ensure that the objectives set under the conditions for optimizing there sources.*

*Thus, the concept of internal state financial control, which is the basis for creation and application of the administrative responsibility for the functioning of the financial management and control system, as well as internal audit, approved by Decision no. 124 of 02.02.2018, brought in accordance with commitments made by the Republic of Moldova, including through the Association Agreement. Concept is based on the contemporary international adoption of the approach to the role and place of internal state financial*

*control in ensuring the efficient use of the means of expenditure creating a favorable business environment, training internal auditors, establishing tasks and organization of the internal control system, coordination of the activity with the auditor external, the elaboration and implementation of the national standards of internal public audit, as well as of their application methodology.*

*Law no. 229 of 13.09.2010 on public internal financial control establishes general rules and principles for the organization of internal public financial control, the purpose of which is the consolidation of the managerial responsibility for the optimal management of the resources according to the objectives of the public entity, based on the principles of good governance, by implementing the internal managerial control system and the internal audit activity in the sector public. The provisions of the law apply to central and local GPAs, public institutions as well autonomous authorities / institutions that manage means of the national public budget. Internal public financial control, established by the nominated law, is based on the responsibility of the leaders of public institutions to create an appropriate model and efficient management, control and internal audit, independence of internal audit activity from the public institutions, as well as on the activity of the central unit regarding the harmonization from within the Ministry of Finance.*

*The nominated law also includes the responsibility of operational managers for setting objectives, actions and performance indicators as well as for identification, registration, assessment, control and reporting of risks that may affect the achievement of established objectives. At the same time, the responsibility of the staff is established public entity for control activities aimed at reducing risks and insurance meeting the set objectives.*

*According to the legal provisions, the manager of the public entity organizes the system of internal managerial control to ensure the achievement of the objectives of the public entity by:*

- a) economy, efficiency and effectiveness of operations;*
- b) compliance with the normative framework and internal regulations;*
- c) security and optimization of assets and liabilities;*
- d) security and integrity of information.*

*The manager of the public entity implements the internal managerial control system according to the National Standards of internal control in the public sector, taking into account complexity and field of activity of the public entity, designating the subdivision organizational responsible for coordinating the activities of organizing and maintaining internal managerial control within the entity.*

*At the same time, the internal managerial control system cannot be fruitful, if they are not set distinct, concrete and real performance objectives, related to the fields, purpose and functions performed by the public entity. Thus, the internal control system managerial begins with determining the clear strategic and operational objectives to be achieved.*

*By setting strategic and operational objectives, in our view managers must establish measurable indicators, identify risks that could influence the achievement of measurable objectives and indicators, and create a system of internal control in order to treat and monitor the risks identified for insurance the efficiency of the activity of both the public entity and the business environment with which it interacts. The development of the CIM system also requires the establishment of control objectives.*

*The control objectives represent control actions and measures, aimed at prevention the main risks that could hinder the public entity from carrying out its tasks its operational and strategic*

*Moreover, article 35. of the administrative code establishes the following, The public authorities and the persons representing them are responsible, as the case may be, for criminal, contraventional, civil or disciplinary matters for the non-execution or improper execution of the administrative activity, in accordance with the law.*

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

*It is applied annually, according to the prescribed procedure.*

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

*In accordance with the normative framework, the public entity performs the self-assessment in order to determine the functionality of the CIM system, assess its compliance with the regulatory framework in the field, prepare the Annual Report on internal management control (hereinafter - Report), and issue the Declaration of managerial responsibility.*

*The manager of the public entity designates the person or organizational subdivision responsible for coordinating the activities of organization, maintenance and development of the CIM system within the public entity (hereinafter - coordinator).*

*The coordinator is responsible for organizing and conducting the process of self-assessment and reporting of the CIM system within the public entity.*

*The coordinator provides support for the organization of the self-assessment process within the subordinated public entities.*

*The internal audit subdivision within the public entity may be involved in advising on issues related to the CIM evaluation process.*

*The public entity that is not subordinated to other entities shall record the results of the self-assessment of the CIM system in the Annual Report on internal managerial control, according to the model set out.*

*The hierarchically superior public entity subordinated to other public entities records the results of the self-assessment of the CIM system in the Consolidated Annual Report on internal managerial control.*

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

*There are no statistics in this regard.*

**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 questionNo. 25.

N/A

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

N/A

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

N/A

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

N/A

#### **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?

N/A

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

N/A

## POLAND

### DEMOCRATIC ACCOUNTABILITY

Poland has a system of democratic accountability at local level (in local government in communes, poviats and in voivodships). There are some mechanisms that can be used and applied by electorate and its representatives (councillors) to recall executive bodies (commune heads, mayors, presidents, poviat and voivodeship boards).

Procedures of discharge: In the local government at the levels of a commune, poviat and in the voivodship self-government the executive bodies are granted a discharge each year.

#### **In a commune**

Before adoption a resolution to grant a discharge to an executive body - a commune council becomes acquainted with the opinion of the audit committee of a commune council as well as the territorially competent regional accounting office. The commune council adopts the resolution on the discharge with an absolute majority of votes of the statutory composition of the commune council. In case of a failure to discharge the commune council may pass a resolution to hold a referendum regarding the revocation of a commune head for this reason at the session convened not earlier than 14 days from the day of the adoption of the resolution on not granting discharge to the commune head. Before the adoption of the resolution in case of holding the referendum the commune council makes familiar with the opinion of the regional accounting office in the matter of the commune council's resolution on not granting a discharge to the commune head and gives a commune head a hearing of his/her explanations in the matter on holding the referendum.

The referendum is not held in case when the resolution on not granting a discharge was taken before 9 months from the day of the commune head's election and not later than 9 months before the end of his/her term of office. A resolution on the referendum is adopted by the commune council with an absolute majority of votes of the statutory composition of the commune council, in a roll-call voting.

The procedures connected with granting a discharge in a commune are defined in the following articles: article 18 paragraph 2 point 4, article 18a paragraph 3 and article 28a of the Act of 8 March 1990 on municipal local government (i.e. Journal of Laws 2019, item. 506, as amended), articles 266 to 271 of the Act of 27 August 2009 on public finance (i.e. Journal of Laws of 2019, item 869, as amended) and article 11 paragraph 1 point 6, article 13 point 5 and point 8, article 18a paragraph 3, article 19, article 20 and article 21 paragraph 2 and paragraph 3 of the Act of 7 October 1992 on regional accounting offices (i.e. Journal of Laws of 2019, item 2137).

#### **In a poviat**

A resolution of the poviat council regarding a failure to grant a discharge to the poviat board is the equivalent to submitting an application to dismiss the board, provided that after the end of the financial year, the poviat board was dismissed for another reason. The poviat council adopts the resolution on the discharge similarly to the municipal local government with an absolute majority of votes of the statutory composition of the poviat council. The rejection of the resolution in a voting on granting a discharge is tantamount to an adoption of the resolution on the failure to discharge to the board. The poviat council shall hear the matter of dismissal of the management board for a reason of a failure to discharge at a convened session not earlier than 14 days after the resolution not to grant the discharge to the management board had been taken after making familiar with the opinions of the audit committee of a poviat council and the territorially competent regional accounting office as well as with the resolution of the regional accounting office in the matter of the resolution of the poviat council on the failure to grant the discharge to the

poviat management board. The poviat council may dismiss the management board by a majority of at least 3/5 votes of the statutory composition of the council, in a secret ballot.

The procedures connected with granting a discharge in a poviat are defined in the following articles: article 12 point 6), 13 paragraph 2, 16 paragraph 3, article 30 of the Act of 5 June 1998 on poviat self-government (Journal of Laws of 1998 No. 91, item 578), articles 266 to 271 of the Act of 27 August 2009 on public finance (i.e. Journal of Laws of 2019, item 869, as amended) as well as article 11 paragraph 1 point 6, article 13 point 5 and point 8, article 18 a paragraph 3, article 19, article 20 and article 21 paragraph 2 and paragraph 3 of the Act of 7 October 1992 on regional accounting offices (i.e. Journal of Laws of 2019, item 2137).

### **In a voivodship**

A resolution of the voivodship parliament regarding a failure to grant it to the voivodship parliament board is the equivalent to submitting an application to dismiss the board, unless after the end of the financial year, the voivodship management board was dismissed for another reason. The voivodship parliament adopts the resolution on the discharge similarly to the poviat self-government with an absolute majority of votes of the statutory composition of the voivodship parliament council. The rejection of the resolution in a voting on granting a discharge is tantamount to adoption of the resolution on the failure to discharge. The voivodship council shall hear the matter of dismissal of the management board for a reason of a failure to discharge at a session convened not earlier than 14 days from adoption of a resolution. After making familiar with the opinions of the audit committee of a voivodship parliament and the territorially competent regional accounting office as well as with the resolution of the regional accounting office in the matter of the resolution of the voivodship parliament on the failure to grant the discharge to the management board, the voivodship parliament may dismiss the management board by a majority of at least 3/5 votes of the statutory composition of the council, in a secret ballot.

The procedures connected with granting a discharge in a voivodeship are defined in the following articles: article 12 point 6), article 18 point 10, article 19 paragraph 3, article 30 paragraph 3, article 34 of the Act of 5 June 1998 on voivodeship parliament (Journal of Laws of 1998 Number 91 item 576), articles 266 to 271 of the Act of 27 August 2009 on public finance (i.e. Journal of Laws of 2019, item 869, as amended) as well as article 11 paragraph 1 point 6 article 13 point 5 and point 8, article 18a paragraph 3, article 19 article 20 and article 21 paragraph 2 and paragraph 3 of the Act of 7 October 1992 on regional accounting offices (i.e. Journal of Laws of 2019, item 2137).

## **1. A vote of confidence**

**In a commune** Every year the commune head presents the commune council a report on the state of a commune. After the end of the debate over the report of the state of the commune the council of the commune takes a vote to grant the commune head a vote of confidence. A resolution on granting a vote of confidence to the commune head is adopted by the commune council with an absolute majority of votes of the statutory composition of the commune council. A failure to adopt a resolution on granting the vote of confidence to the commune head is tantamount to an adoption of the resolution on non - granting the vote of confidence to the commune head. In case of the failure to adopt a resolution on granting the vote of confidence in two subsequent years the commune council may adopt a resolution on holding a referendum in the matter of the commune head's dismissal. In case of the failure to grant the vote of confidence twice the commune council may pass a resolution to hold a referendum regarding the revocation of a commune head for this reason on the session convened not earlier than 14 days from the day of the adoption of the resolution on the failure to grant the vote of confidence. The resolution in the matter of holding the referendum the commune council adopts with an absolute majority of votes of the statutory composition of the commune council. The procedures connected with

granting of a vote of confidence in a commune are defined in the following articles: article 18 paragraph 1 point. 4a, 28 aa paragraphs 9 and 10 of the Act of 8 March 1990 on municipal local government (i.e. Journal of Laws 2019, item.506, as amended).

### **In a poviát**

The poviát management board annually submits the poviát council a report on the state of the poviát. After the debate on the report on the state of the poviát, the poviát council conducts a vote on granting a vote of confidence to the board. A resolution on granting a vote of confidence to the poviát management board is taken by the poviát council by an absolute majority of votes of the statutory composition of the poviát council. A failure to resolution on granting a vote of confidence to the poviát management board is equivalent to adopting a resolution not to grant a vote of confidence to the poviát board. The poviát council's failure to grant a vote of confidence to the poviát board is tantamount to submitting an application for dismissal of the board. The poviát council considers the matter of dismissal of the management board for the reason of the failure to grant a vote of confidence at a session convened not earlier than 14 days after taking a resolution on not granting a vote of confidence to the management board. A poviát council may dismiss the management by a majority of at least 3/5 of the statutory composition of the board. The procedures connected with granting of a vote of confidence in a poviát are defined in the following articles: article 12 point 6a), article 30a paragraphs 9 and 10 of the Act of 5 June 1998 on poviát self-government (Journal of Laws of 1998 No. 91, item 578).

### **In a voivodship**

The voivodship parliament board annually submits the voivodship parliament a report on the state of the voivodship. After the debate on the report on the state of the voivodship, the voivodship parliament conducts a vote on granting a vote of confidence to the board. A resolution on granting a vote of confidence the voivodship parliament takes by an absolute majority of votes of the statutory composition of the voivodship parliament. A failure to resolution on granting a vote of confidence to the board is equivalent to adopting a resolution not to grant a vote of confidence to the board. The voivodship parliament's failure to grant a vote of confidence to the voivodship parliament board is tantamount to submitting an application for dismissal of the board. The voivodship parliament considers the matter of dismissal of the board for the reason of the failure to grant a vote of confidence at a session convened not earlier than 14 days after taking a resolution on not granting a vote of confidence to the management board. The voivodship parliament may dismiss management board by a majority of at least 3/5 of the statutory composition of the voivodship parliament. The procedures connected with granting of a vote of confidence in a voivodship are defined in the following articles: article 12 point 6a), article 18 point 10a, article 34a paragraphs 9 and 10 of the Act of 5 June 1998 on voivodeship parliament (Journal of Laws of 1998 Number 91 item 576).

## **2. Dismissal of executive bodies in other cases**

### **In a commune**

The commune council after 9 months from the day of the election of the commune head but not later than 9 months before the end of the term may adopt a resolution on holding a referendum in the matter of the commune head's dismissal for a different reason than a failure to grant a vote of discharge or a failure to grant a vote of confidence to the commune head only at the request of at least 1/4 of the statutory composition of the council. This application requires a written form and a justification of the reason of the recall and it shall be endorsed by the revision/ audit commission of the council. The commune council may adopt a resolution on holding a referendum regarding the revocation of the commune head on the session convened not earlier than 14 days from the day of submitting the application described above. The commune council adopts the resolution on the



referendum by a majority of at least 3/5 of the statutory composition of the council roll-call voting. The procedures connected with the implementation of this mechanism in a commune are defined in article 28 b of the Act of 8 March 1990 on municipal local government (i.e. Journal of Laws 2019, item.506, as amended).

### **In a poviát**

The poviát council may dismiss a staroste for a reason other than a failure to discharge or a vote of confidence to the board only on the request of at least 1/4 of the statutory composition of the council. This application requires a written form and a justification of the reason of the recall and it shall be endorsed by the revision / audit commission. The staroste is dismissed by a majority of at least 3/5 votes of the statutory composition of the council, by secret ballot. The voting on the recall the poviát council carries out after hearing the opinion of the audit commission at the next session after the one at which the request for the recall was made, but not earlier than after 1 month from the date of the submission of the application. If the application to dismiss the staroste has not obtained the required majority of votes, another request for the recall may be submitted not earlier than 6 months after the previous vote. Additionally, the dismissal of the staroste or her/his resignation is, respectively, tantamount to the dismissal of the entire poviát board or resignation of the entire poviát board. The poviát council may upon a justified request from the staroste dismiss individual members of the board by a simple majority of votes in the presence of at least half statutory composition of the council, by secret ballot. The procedures connected with the implementation of this mechanism are defined in article 31 of the Act of 5 June 1998 on poviát self-government (Journal of Laws of 1998 No. 91, item 578).

### **In a voivodship**

The voivodship parliament may dismiss a Voivodship Marshal for a reason other than a failure to discharge or a vote of confidence only on the request of at least 1/4 of the statutory composition of the parliament. This application requires a written form and a justification of the reason of the recall and it shall be endorsed by the revision / audit commission. The Voivodship Marshal is dismissed by a majority of at least 3/5 votes of the statutory composition of the parliament, by secret ballot. The voting on the recall of the voivodship parliament is carried out after hearing the opinion of the audit commission at the next session after the one at which the request for the recall was made, but not earlier than after 1 month from the date of the submission of the application. If the application to dismiss the Voivodship Marshal has not obtained the required majority of votes, another request for the recall may be submitted not earlier than 6 months after the previous vote. Additionally, the dismissal of the Voivodship Marshal or her/his resignation is, respectively, tantamount to the dismissal of the entire voivodship parliament board or resignation of the entire voivodship parliament board. The voivodship parliament may dismiss upon a justified request from the staroste Voivodship Marshal dismiss individual members of the board by a simple majority of votes in the presence of at least half statutory composition of the voivodship parliament, by secret ballot. The procedures connected with the implementation of this mechanism are defined in article 37 of the Act of 5 June 1998 on voivodeship parliament (Journal of Laws of 1998 Number 91 item 576).

### **3. A referendum on the recall of the council (of the voivodship parliament) or the executive board (a commune head, a mayor, a president) in a self-government**

In a local referendum inhabitants of a local government unit as the members of a self-governing community express by vote their will in many issues, including the matters of the dismissal of the constitutive body of this unit (the council, the voivodship parliament); dismissal of a commune head (a mayor, a president of a city). A referendum is held at the initiative of a constitutive body of a given unit of local self-government or at a request of least of 10% of the inhabitants of a commune or a poviát entitled to vote or 5% of

the inhabitants of voivodship entitled to vote. In the matters on the recall of a constitutive body of a local government unit before the expiration of the term it is settled only by way of a referendum, referred to above, held at the request of the inhabitants. An application of inhabitants of a commune may apply to the recall of a commune council and a commune head (a mayor, a president of a city) or the recall of one of these bodies. A referendum on the recall of a commune head (a mayor, a president of a city) may also be held at the initiative of the commune council (as mentioned above in points 1-4). Inhabitants' application on the recall of a commune council (a mayor, a president of a city) or on the recall of one of these bodies may be submitted after 10 months from the day of the election of the body and not later than 8 months before the end of its term. An initiator of a referendum on a recall of a body of a local government delivers in writing within 60 days to an electoral commissioner the request of inhabitants with information about fulfillment of statutory obligations. A referendum on the recall of local government unit elected in direct election is valid in case when not less than 3/5 of the number of people taking part in the election of the body being recalled took part in. The result of the referendum is decisive if more than a half of the valid votes were cast for one of the two solutions in the matter which was under the referendum. Detailed rules of holding the referendum are defined in the provisions of an act on 15 September 2000 on a local referendum (Journal of Laws of 2000 No. 88, item 985). The National Institute of Local Government does not have any statistical data concerning the subject matter being discussed.

### **Issues related to financial liability and administrative accountability**

Officials bear financial liability for their wrong administrative decisions. These principles are defined in particular in an act of 20 January 2011 on material liability of public officers for serious violation of the law (Journal of Laws of 2011 No. 34, item 173). It has entered into force since 17 of May 2011 and it applies to the actions and forerances after this date. This act in question applies to the public officers including the persons acting as a public administration body, acting upon authorisation of such a body, acting as a member of a collective body of public administration acting by authority of this body, acting as a member of a collective body of public administration, performing in an office of a public administration body the work within an employment relationship, an official relationship or a civil law agreement, taking part in a conduction of a case being decided through a decision or a decision by such a body. The persons performing only technical actions, e.g. rewriting a project of a decision, submitting it to be signed are not under responsibility of the officials.

According to the rules determined in the act on the liability of officials a public official bear material liability in case of the occurrence of the following premises :

- by virtue of a valid decision of a court or a settlement a compensation has been paid off for a damage inflicted at performing a public power with a gross breach of a law
- a gross breach of a law has been caused by wilful acts or by a failure of a public officer
- a gross breach of a law has been stated in accordance with article 6 of act on an accountability of officials.

The first of the prerequisites means that the act on the liability of officials may be used only in a situation when the compensation for a damage inflicted by a public official has been paid off. An entity paying off the compensation had to be the State Treasury, a local government unit or other entity which in accordance with article 417 of an act of 23 April 1964 – the Civil Code bears material liability for the damages inflicted while performing a public authority.

The following [mode of proceedings](#) is applied : within 14 days from the day of the payment of a compensation the manager of a entity responsible which paid off a

compensation or a manager of an organisational unit of a responsible entity which paid off a compensation submits to the regional prosecutor competent for a seat of a responsible entity a request for explanatory proceedings. The regional prosecutor carries out the explanatory proceedings aiming at premises justifying bringing a legal action on a compensation against a public officer concerning the damage inflicted when holding public power with a gross breach of a law. In case of the existence of the basis for bringing a legal action against a public officer, a prosecutor before its bringing calls in writing a public officer to a voluntary fulfillment of the performance in a fixed period, however not shorter than 7 days from the day of receiving of a motion and after ineffective lapse of the time limit brings a legal action. The legal proceedings in case concerning the compensation referred to in article 7 paragraph 3 last according to the provisions of an act of 17 November 1964 – the Code of Civil Procedure. The compensation cannot exceed twelve times a remuneration of a public officer. The National Institute of Local Government does not possess statistical data concerning a discussed subject area.

## Criminal liability

Poland possesses the system of the liability of the officials at a local level for their actions. In chapter I of an act of 6 June 1997 – the Penal Code (k.k) the rules of the liability of the officials including local government officials have been defined. Pursuant to article 1 § 1 k.k. The only one who commits a criminal offense shall be subject to criminal liability by statute in force at the time of its commission. A part of the crimes penalized in the Penal Code may commit only a person belonging to a precisely specified group. The provisions of XXIX chapter of k.k are such an example. "Offenses against the activities of state institutions and local government". It includes a catalogue in which a legislator included only the crimes for which a subject of protection is a right activity of state and self – government institutions connected with performing of entrusted tasks and admitted competences. The above tasks are performed solely by public officials. They also bear a particular responsibility for their actions. The crimes described in chapter XXIX of k.k. generally belong into two groups: clerical crimes (which can be committed only by a person performing public functions) and the crimes directed against institutions or their officers. The definition of a public officer has been included in article 115 § 13 of k.k. It includes among other things a councilor, as well as a person being an employee of government, other state body or a local government.

### **The crimes that can be committed by public officials.**

Acceptance of a material benefit (bribery) This crime is included in article 228 k.k., which states that: whoever, in connection with the performance of a public function accepts a material or personal benefit or a promise thereof shall be subject to the penalty of deprivation of liberty for a term of between 6 months and 8 years. In a case of less significance, the offender is liable to a fine, the restriction of liberty or imprisonment for up to two years. Whoever, in connection with the performance of a public function, accepts the property or personal benefit or its promise for a conduct constituting a breach of the law, be subject to imprisonment from one to 10 years. To the subject of the punishment described above the person who in connection with the performance of a public function makes dependent from a material or a personal benefit or demands such a promise. Additionally, anyone who, in connection with the performance of a public function accepts a material benefit of considerable value or a promise thereof, shall be subject to the penalty of deprivation of liberty / imprisonment for a term of between 2 and 12 years. The above penalties also apply to anyone who, in connection with his or her public function in a foreign state or an international organisation, accepts a material benefit, or a promise thereof, or who demands such a benefit, or makes the performance of official duties dependent upon receiving a material benefit.

### Exceeding the powers (abuse of power)

This crime is included in article 231 k.k. stating that a public officer who, exceeding the powers or not completing the duties, acts to the detriment of a public or private interest, is liable to imprisonment for up to 3 years. Nevertheless, if the offender / perpetrator exceeds the powers in order to obtain a material or personal benefit, he or she is liable to imprisonment for between one and 10 years. If the offender / perpetrator of this act acts unintentionally and causes a significant damage, he or she is liable to a fine, a restriction of liberty, or imprisonment for up to two years.

#### Unlawful duress to obtain a statement

This crime has been included in article 246 k.k., stating that a public officer, or anyone acting under his or her orders who, in order to obtain specific testimony, explanations, information or a statement, uses force, unlawful duress, or exerts physical or mental cruelty in whatever form on another person, is liable to imprisonment for between one and 10 years.

#### Attestation of an untruth

This crime has been included in article 271 k.k., stating that a public official, or another person authorised to issue a document, who certifies an untruth therein, in circumstances of legal significance, is liable to imprisonment for between three months and five years. On the other hand, if the act is of less significance, the offender / perpetrator is liable to a fine or the restriction of liberty. If the offender / perpetrator commits the act of attesting to an untruth in order to gain material or personal benefit, he is liable to imprisonment for between six months and eight years.

#### Other penal provisions

The acts (except for the Penal Code) include in certain cases the provisions and legal sanctions concerning the actions of the officials. An act of 20 January 2011 on material liability of public officers for serious violation of the law (Journal of Laws of 2011 No. 34, item 173) may be an example. In article 10 it has been defined that a person being a manager of a responsible entity or an organisational unit of such an entity does not fulfil an obligation to inform a prosecutor about a compensation payment, is liable to a fine, a penalty of restricted liberty or imprisonment for up to three years. Nevertheless, if the offender / perpetrator acts unintentionally, he/ she is liable to a fine, or a penalty of restricted liberty. There are more similar penal provisions in other acts and cataloguing them would require a separate analysis.

#### Legal proceedings

The offence mentioned above belong to a category of offences prosecuted ex officio. In Poland everyone learning about committing a crime prosecuted ex officio, has a social duty to inform about it a prosecutor or the police. This obligation in this respect concerns in particular all the public officers. In case of making a crime more probable a prosecutor initiates legal proceedings bringing an indictment to the court. The task of the court is establishing the facts of the case. It is done during a trial when a prosecutor and on the other hand an accused (who may have a counsel) present arguments for and against an indictment. In the text of a judgement the accused may be acquitted of the crime, the legal proceedings may be discontinued or the accused may be sentenced. These are two - instance proceedings. The National Institute of Local Government does not have statistical data concerning a discussed subject area at its disposal.

## Political accountability

The rules on a political accountability in Poland are not regulated by local government acts. In case of a loss of a political recommendation (e.g. of a political party) a recall of an official elected earlier in a direct or indirect election is conducted on the basis of the provisions defined in the acts on municipal self-government, on poviats self-government and on the self-government of the voivodship. The provisions concerning the executive bodies in the communes, in the poviats and in the voivodships were characterized in detail in the part I . 1.2.3. 4 of this study. With regard to the dismissals of the chairpersons of the council boards and the voivodship parliaments the following procedures are being followed:

In a commune a dismissal of the chairperson and vice-chairmen takes place at the request of at least 1/4 of the statutory membership of the council in the manner specified with an absolute majority of votes, in the presence of at least half of the statutory composition of the council, in a secret ballot. The same principle applies to a poviat self-government and a self-government of the voivodship. A detailed mode is determined in article 19 of the Act of 8 March 1990 on municipal local government (i.e. Journal of Laws 2019, item.506, as amended), in article 14 of the Act of 5 June 1998 on poviat self-government (Journal of Laws of 1998 No. 91, item 578) as well as in article 20 of the Act of 5 June 1998 on voivodeship parliament (Journal of Laws of 1998 Number 91 item 576).

It should be emphasised that the loss of a political recommendation not always results in a dismissal a person from his/her function. Councillors and residents may in practice take up other decisions than the political recommendations indicated by authorities of parties. A mandate in a Polish self – government is a free mandate.

## Financial Liability

The provisions of officials' liability for a violation of the principle of the discipline of the public finance specifies the Act of 17 December 2004 on a liability for a violation of public finance discipline (Journal of Laws of 2005 Number 14 item 114). The same legal act indicates the competent bodies in these matters as well as the rules of conduct in the matters of the violation of the discipline of the public finance. In this matter the following persons bear responsibility:

- 1) the persons being the members of a body implementing a budget or a financial plan of a public finance unit or a managing body of an entity not belonging to the sector of public finances to which public funds have been transferred to be used or to be managed or which manages a property of these units or entities.
- 2) the managers of public finance sector units
- 3) the employees of public finance sector units or other persons whom by a separate act or on its basis performing duties in such an unit has been entrusted and non-performance or improper performance of these duties is an act violating the public finance discipline.
- 4) the persons performing on behalf of an entity not included into the sector of public finances, to which public funds have been transferred to be used or to be managed, activities connected with the use of these funds or with a disposal of these funds. The catalogue of the violation of public finance discipline is very extensive and it has been precisely defined in the Act of 17 December 2004 on a liability for a violation of public finance discipline. The liability for violation of public finance discipline bears a person who has violated the discipline of public finance determined by an act at the time of performing this act. Also a person who is guilty of this violation also bears such a responsibility. The liability for violation of public finance discipline bears also a person who ordered to perform an action violating public finance discipline. The liability for violation of public finance discipline is independent from the responsibility defined by other legal regulations (democratic, political or administrative accountability).

The penalties for a violation of public finance discipline are:

- 1) a warning
- 2) a reprimand
- 3) a fine (of 0,25 to threefold monthly payment of a person reliable for violation of public finance discipline)
- 4) a ban on performing functions connected with a disposal of public funds (determined for the period from one year to 5 years).

A punishability of the violation of public finance discipline ceases if since the time of committing an offence 3 years have passed. If, however, in this period proceedings on violation of public finance discipline started, a punishability stops upon 2 years from the end of this period. The erasure of a punishment for the violation of public finance discipline is by force of law if since the day of carrying out the penalty 2 years have passed. In case of a renouncement of inflicting a punishment the erasure of a punishment by law is after a year from the day on which the decision of a court becomes valid. At the time of the erasure of a punishment it is considered void. The bodies adjudicating in cases on violation of public finance discipline of the first instance are the commissions adjudicating in cases on violation of public finance discipline. The proceedings before the commissions are two - instance proceedings. The National Institute of Local Government does not have statistical data concerning a discussed subject area at its disposal.

### **Is accountability of local officials and bodies a topic of debate in Poland?**

In recent years, in the provisions on a local government, a poviast self-government and on voivodship parliament significant changes have been introduced increasing a social control over a self - government. Pursuant to the Act of 11 January 2018 on changes of certain laws to increase citizen involvement in the process of choosing functioning and controlling of public bodies (Journal of Laws item. 130 as amended) a number of new solutions (including a vote of confidence defined in the part 1.2 of this study have been introduced. In the same act it was introduced:

1. Additional powers for the chairperson of a council and of a chairman of the voivodship parliament
2. An institution of the commission of the complaints, proposals and petitions in all the councils and in the voivodship parliaments.
3. A duty of broadcasting the debates of the Sejm and voivodship parliaments
4. Additional rights for the clubs of councillors acting in councils and voivodship parliaments
5. A report on the state of a local government unit
6. Questions and interpellations of the councilors have been have been organized.
7. A five - year term of office in a local self government has been introduced.
8. A requirement of holding an electoral voting in councils and in the voivodship parliaments
9. An individual control of the councilors have been introduced.

An additional and a very substantial change there was a limitation to two terms the possibility of performing a function of a commune head, a mayor or a president.

All these changes were introduced in the term of a self - government 2018 - 2023. Undoubtedly they have increased the participation of residents in the process of election, functioning and controlling of certain public bodies. Due to the fact that this above - mentioned change has been introduced relatively recently, at present any works in the scope of an extensive amending of regulations are not conducted.

# SERBIA

## DEMOCRATIC ACCOUNTABILITY

There is no mechanism for citizens to recall elected officials.

## ISSUES RELATING TO FINANCIAL LIABILITY

There is no individual financial liability for damages of the elected official or elected body. Financial liability exists only for entire local self-government units.

## ANSWERS RELATING TO CRIMINAL LIABILITY

There is a possibility of criminal liability of elected officials for all criminal acts of both natural persons and those arising under the business of legal entities. Anyone can file a report, a prosecutorial investigation.

Article 46 Law on Local Elections "if one has been sentenced by a final court decision to an unconditional imprisonment of at least six months" alludes that the Assembly will dismiss the mandate of a representative sentenced to prison for more than 6 months. There are no data on these situations.

## ANSWERS RELATING TO POLITICAL ACCOUNTABILITY

Dismissal of executive bodies (president, deputy, council) has to be conducted by the Assembly that elects them.

Dismissal can be initiated by 1/3 of the councillors, the president - for a member of the council or his deputy, and each councillor as well, if he gets the majority of the Assembly for his proposal.

Dissolution of the Assembly by the Government – the Assembly of a local self-government unit may be dissolved if:

- 1) The Assembly does not sit for more than three months;
- 2) Does not elect the president of the municipality and the municipal council within one month from the day of constituting the Assembly of the local self-government unit or from the day of their dismissal/resignation;
- 3) Does not adopt the statute or budget within the deadline determined by the law, in terms of Article 85 of the LLSG.

## ANSWERS RELATING TO ADMINISTRATIVE ACCOUNTABILITY

Administrative accountability reflects in:

- Observance of prescribed deadlines in administrative procedures and decision-making in accordance with the law.
- Annulment or repeal of individual administrative acts by a second-instance body or court, as well as the decision making process of the Constitutional Court on the conformity of general acts with the Constitution and the law.
- The misdemeanor liability of elected officials for not acting in accordance with the law providing such liability.

For example - Non-compliance with the Law on Access to Information of Public Importance, which can be initiated by anyone in the Office of Commissioner for Information of Public Importance and Personal Data Protection. After the fact-checking procedure and the Commissioner's order for data submission, Commissioner may impose a fine for non-compliance with his order/decision.



# SLOVAK REPUBLIC

## 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.

**- Yes it does. The law regulating the functioning of municipalities enshrines the institute of local referendum. This is a referendum, which the municipal council is obliged to call in cases provided for by law. The municipal council declares a local referendum in the case of dismissal of the mayor.**

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?

**- In the Municipal Establishment Act, the institute of a local referendum on the dismissal of the mayor is constructed in two ways: mandatory referendum, which the municipal council must declare in certain situations, or as a possible referendum which the municipal council may declare.**

**Mandatory: The municipal council must declare a local referendum on the dismissal of the mayor if at least 30% of eligible voters request it by petition.**

**Optional: The municipal council may declare a local referendum on the dismissal of the mayor if the absence or incapacity of the mayor lasts for more than six months.**

**The law provides that in the event of a mandatory local referendum, the municipal council shall declare a local referendum so that it takes place within 90 days of delivery of the petition to the municipality.**

**In the event of an optional local referendum, the municipal council shall declare a local referendum that it will take place within 90 days from the approval of the resolution about declaring a local referendum.**

**Rules common for both types of local referendum:**

**After the announcement of the local referendum, the municipal council shall immediately establish a commission for the local referendum for voting and counting of votes and shall set a deadline for its first meeting.**

**No later than 15 days before the local referendum, the municipality shall publish a notice announcing the local referendum on the municipal's official notice board and on the municipality's website. The announcement of the local referendum contains**

**a) Date of approval of the resolution of the municipal council declaring a local referendum or the date of delivery of the petition,**

**b) Question or questions that are submitted to the inhabitants of the municipality for decision,**

**c) Place, date and time of the local referendum,**

**d) Method of adjusting the ballot paper.**



***The results of a local referendum are valid if at least half of the eligible voters took part in it and if the decision was taken by an absolute majority of the valid votes of the participants in the local referendum.***

***If the results of the local referendum are valid, the mayor will lose his mandate and his duties are performed by deputy mayor.***

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

***The institute of local referendum is not widely used in the Slovak Republic. The reason may also be that even if a referendum is held, the results are often invalid due to insufficient participation of eligible voters. The local referendum will be affected by the prepared legislative changes.***

### **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.

***Yes, we do, for both local and regional level of local self – government.***

5. What circumstances may give rise to financial liability of local and regional elected officials and/or bodies in your country?

***The self-government bodies on local and regional level shall be liable for the damage which was caused by an unlawful decision or maladministration.***

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)?

***- The right to compensation for damage caused by an illegal decision and maladministration must be discussed in advance on the basis of a written request of the injured party with the competent authority. Competent authority on a local level is a mayor.***

***- If the competent authority does not satisfy the claim for damages or satisfies only part of it within six months from the date of receipt of the request or if the competent authority notifies the injured party that it will not satisfy its claim for damages, the injured party may demand satisfaction of the claim or its unsatisfied part at a court.***

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

***- The success of claims for damages is very low, but the Ministry of Finance of the Slovak Republic shall keep a central register of applications and paid damages. Another problem is that victims often claim damages that are inadequate for the damage caused.***

### **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.

***-Yes it does. In the conditions of the Slovak Republic, there are 2 elected bodies at the local level: Mayor and Municipal Council. The deputies of the municipal***

**council and the mayor are public officials, but they do not have criminal immunity.**

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

**- The criminal liability of the mayor or members of municipal council is general because they do not enjoy criminal immunity, but the Criminal Code contains a special section that defines specific criminal offenses of public officials.**

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.

**- Anyone who is informed about the unlawful conduct of the mayor/chairman of self – governing region or a member of the municipal/regional council should contact the criminal authorities – police or prosecutor’s office**

**- Criminal proceedings in the Slovak Republic are complex and consist of two parts. The first part is the so-called pre-trial proceedings, where criminal authorities find out if the act has happened at all and collect as much evidence as possible. If the prosecutor concludes that the act has occurred and at the same time has sufficient evidence, he may file a charge, after that begins the second part, in which the court decides on the outcome of the criminal proceedings. Otherwise, the proceedings may end in pre-trial proceedings by a decision issued by the prosecutor or a police officer.**

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)?

**- The mandates of the mayor/chairman of self – governing region or a member of the municipal/regional council expires by a valid conviction for an intentional criminal offense.**

**- A valid conviction for an intentional criminal offense, is an obstacle to being elected to territorial self-government.**

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

**- The criminal offenses of these bodies in connection with the performance of public duties most often occur in the disposal of municipal property or result from their position as public officials. Corruption offenses are also common.**

## **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.

**The possibility of political accountability in Slovak Republic is established in the Constitutional Act on the Protection of the Public Interest in the Performance of the Functions and Public Officials. The possibility of political accountability applies in case of breaking this Constitutional Act or in case of providing false information in the notice on conflicts of interest or property relations.**

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.)?

***This responsibility applies to mayors, members of the city councils (not members of councils in villages), chairman of self – governing region and members of the council of self – governing region.***

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)?

***The body empowered to start the procedure is council or special committee. The acting body shall initiate the procedure on its own initiative or on the basis of substantiated initiative, from which it is clear who is making it, of which public official it is concerned and of what it objects to. The acting body has to come to decision until 180 days from the start of the procedure. The decision shall be taken by at least a three – fifths majority of the members of the committee present or by absolute majority of the members of the council (if council is acting body). The possible punishment is imposing a fine or dismissal.***

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

***These mechanisms in practice are regularly used, mostly with the result of imposing fine. The accurate data are not available.***

#### **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.

***Yes it does. The mayor and members of the municipal council are taking the oath, which binds them to properly fulfill their duties, protect the interests of the municipality and the Slovak Republic, and apply the Constitution of the Slovak Republic, constitutional laws, laws and other generally binding legal regulations.***

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

***- It is necessary for the local bodies to observe the law, because that is the only way, how to secure the needs of the inhabitants of the municipality and to secure the development of the municipality generally.***

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

***- Supervision over the observance of laws by public administration bodies, including municipalities and self – governing regions, belongs to the public prosecutor's office. The prosecutor supervises the observance of laws and other generally binding legal regulations by public administration bodies. In the event that the prosecutor's office finds that the municipality has violated the law, the prosecutor may begin to investigate the actions of the municipality.***

***- It is also worth mentioning the relationship between the state and the municipality. Certain tasks of state administration may be transferred to the municipality, if their fulfillment in this way is more rational and more efficient. With the transfer of tasks to the municipality, the state will donate the municipality the necessary financial and other material resources. The performance of state administration transferred to the municipality shall be administered and controlled by the government. If a municipality does not***

**perform these transferred tasks for at least six months and has not taken any measures to secure its performance during this time, the nearest state administration body that performs state administration in the relevant section shall challenge the municipality to remedy and set a deadline for it.**

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

**- In practice, there are many cases where citizens turn to the prosecutor's office with their problems because they feel that the actions of the municipality have violated their rights, but there are not available specific statistics on this matter.**

## **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.

**- The municipality finances its needs primarily from its own revenues, subsidies from the state budget and other sources. The municipality may use repayable sources of financing and extra-budgetary monetary funds to fulfill its tasks. A state subsidy may be provided to a municipality whose own income is not sufficient for the fulfillment of the tasks of self-government. A municipality may also finance its tasks from funds associated with other municipalities, self-governing regions and other legal entities or natural persons. The municipality may establish extra-budgetary monetary funds for the performance of its tasks.**

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

**One of the ways how to secure the needs of the inhabitants of the municipality and to secure the development of the municipality generally is that the municipality has to manage the municipal budget wisely. Special laws impose many obligations that municipal authorities must comply with when they want to manage the municipal property.**

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

**- The law regulating the functioning of municipal self-government regulates the institute of the chief controller of a municipality. The chief comptroller carries out the control activity, control activity means control of legality, efficiency, economy and effectiveness in the management and disposal of property and property rights of the municipality, as well as property used by the municipality under special regulations, control of income, expenditure and financial operations of the municipality, control handling of complaints and petitions, control of compliance with generally binding legal regulations, including municipal regulations, control of compliance with resolutions of the municipal council, control of compliance with internal regulations of the municipality and control of compliance with other tasks established by special regulations.**

**Natural and legal persons may also apply to the Supreme Audit Office with a notification or initiative if they register illegal handling of the municipality's property or illegal management of the municipality. The Supreme Audit Office, as far as municipalities are concerned, controls the management of property, property rights, funds, liabilities and receivables of municipalities. It also controls the method of enforcing taxes, levies, fees and fines, which are the incomes of the state budget of the republic or the budgets of municipalities. The**

***Office shall notify the inspection of the found deficiencies to the municipal authority, which acts on behalf of the municipality.***

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

***There are not overall statistics available on this matter.***

#### **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?

***Yes, discussions about public administration reform are currently held and we have on this matter two project with Centre of Expertize of Council of Europe.***

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

# SLOVENIA

## 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.

**Slovenia doesn't have a system of democratic accountability yet.**

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.

**Slovenia doesn't have a special system of financial liability for local elected officials, but they are liable in system of public procurement the liability can and also be exercised through general civil liability.**

5. What circumstances may give rise to financial liability of local and regional elected officials and/or bodies in your country?

**In accordance with fifth paragraph of Article 111 of Public Procurement Act (Official Gazette of the Republic of Slovenia, No. 91/15 and 14/18) the elected official is as the responsible person in a self-governing local community can be fined if he chooses the method of determining the value of the public procurement in such a way as to avoid the application of this Act due to the lower estimated value (Article 24); awards a public contract without carrying out an appropriate procedure, except in cases where the law allows it (Articles 39 to 47); does not send the notices referred to in Article 52 of this Act for publication, even though it is obliged to do so by this Act; awards a public contract or concludes a contract on the performance of a public contract with a tenderer for whom there are grounds for exclusion referred to in the first, second and fourth paragraphs of Article 75 of this Act; does not take into account the standstill period, although it is obliged to do so by this Act (Article 92); during the implementation of the public procurement, amends the contract on the implementation of the public procurement in contravention of this Act (Article 95); does not observe the deadlines for the publication and submission of tenders or applications defined in this Act (Articles 40 to 45, Article 49, Articles 57 to 60, Article 74); define the provisions of the public procurement contract in such a way that they deviate in essential elements from the provisions of the documentation related to the award of the public contract (Article 67); fails to publish the documentation related to the award of the public contract on or through the public procurement portal (first paragraph of Article 67); withdraws from the performance of a public procurement in contravention of the eighth paragraph of Article 90 of this Act; fails to report statistical data or reports incorrect statistical data on awarded public contracts (Article 106); does not**



**hand over documents or evidence to the National Audit Commission in accordance with its invitation (third paragraph of Article 109).**

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)?

**The liability in system of public procurement is an administrative one. The process is regulated in Legal Protection in Public Procurement Procedures Act (Official Gazette of the Republic of Slovenia, No. 43/11 , 60/11 - ZTP-D, 63/13 , 90/14 - ZDU-1I, 60/17 and 72/19).**

**The general civil liability is asserted in civil procedure before a court in accordance with Civil Procedure Act (Official Gazette of the Republic of Slovenia, No. 73/07 - official consolidated text, 45/08 - ZArbit, 45/08 , 111/08 - US decision, 57/09 - US decision, 12/10 - decision US, 50/10 - US, 107/10 - US, 75/12 - US, 40/13 - US, 92/13 - US, 10/14 - US , 48/15 - US decision, 6/17 - US decision, 10/17 , 16/19 - ZNP-1 and 70/19 - US decision).**

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.

**Slovenian Criminal code (Official Gazette of RS, Nos. 50/12 - official consolidated text, 6/16 - corr. , 54/15 , 38/16 , 27/17 , 23/20 and 91/20 ) in Chapter 26 sets out 12 crimes against official duty, public powers and public resources, which are**

- Abuse of official position or official rights (Article 257)
- Damage to public funds (Article 257a)
- Breach of work at work (Article 258)
- Forgery or destruction of an official document, book, file or archival material (Article 259)
- Issuance of classified information (Article 260)
- Taking a bribe (Article 261)
- Giving a bribe (Article 262)
- Accepting the benefits of illegal mediation (Article 263)
- Giving gifts for illegal intermediation (Article 264)
- Violation of human dignity through abuse of official position or official rights (Article 266)
- Extortion of the statement (Article 267)
- Unlawful appropriation of property during investigation or execution (Article 268)

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

**That offences are not set out just for the elected officials but for all officials, civil servant or other authorized persons in general.**

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.

**There is no special process for the elected officials. The entire procedure is determined as for all other crimes by Criminal Procedure Act (Official Gazette of the Republic of Slovenia, No. 32/12 - official consolidated text, 47/13 , 87/14 , 8/16 - US decision, 64/16 - US decision, 65/16 - US decision , 66/17 - ORZKP153,154, 22/19 , 55/20 - US decision and 89/20 - US decision).**

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)?

**In accordance with the third indent of the first paragraph of Article 37a of Local Self-Government Act (Official Gazette of the Republic of Slovenia, No. 94/07 - official consolidated text, 76/08 , 79/09 , 51/10 , 40/12 - ZUJF, 14/15 - ZUUJFO, 11/18 - ZSPDLS-1 , 30/18 , 61/20 - ZIUZEOP-A and 80/20 - ZIUOOPE), the term of office of an official shall be terminated if he is sentenced by a final judgment to an unconditional sentence of imprisonment of more than six months.**

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

**There is no available data on terminations of terms of office.**

#### **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.

**In accordance with the Article 90b of Local Self-Government Act a municipal council may be subject to early dissolution if:**

- **it does not implement a decision of the Constitutional Court requiring it to act in compliance with the Constitution or an Act;**
- **during the year for which a budget has not been adopted, the municipal council fails to adopt a budget submitted and drafted in compliance with an Act also for the following year, and the budget could enter into force at the beginning of the year; or**
- **after convening the municipal council at least three times in a single calendar year, it fails to hold a quorate session.**

**The mayor may be subject to early dismissal from office if:**

- **he or she does not implement a decision of the Constitutional Court or a final decision of the court competent for administrative disputes requiring it to act in compliance with the Constitution or an Act.**

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.)?

**See answer to previous question.**

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)?

**In accordance with the Article 90c of Local Self-Government Act the National Assembly decides on the dissolution of the municipal council or the dismissal of the mayor on the proposal of the government.**



**Before issuing a decision on the dissolution of the municipal council or the dismissal of the mayor, the National Assembly must warn the municipal council or the mayor of his illegal conduct and propose to him how to eliminate this illegality within a reasonable time. If the municipal council or the mayor acts in accordance with the warning, the National Assembly shall stop the procedure of dissolution or dismissal by a resolution.**

**The National Assembly dissolves the municipal council or dismisses the mayor if it finds that the reasons have not been eliminated, that all milder legal measures have been applied and early dissolution of the municipal council or dismissal of the mayor is an appropriate and necessary measure to ensure local self-government in the municipality.**

**The municipal council or the mayor may, within thirty days of receipt, submit a request for review of the constitutionality of the resolution of the National Assembly referred to in the preceding paragraph. If the request is not submitted within the deadline or if it is not granted, the municipal council is dissolved or the mayor is dismissed on the day of the publication of the decision of the National Assembly or the Constitutional Court.**

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

**The above provisions have not yet been used entirely. Until now there were two cases that municipalities failed to adopt the budget in two consecutive years, but as the National Assembly started the process and notified the municipal council what will happen if they don't adopt it they managed to do so in the time limit given to them. So in fact we don't have the actual experience of the early dissolution of municipal council neither of an early dismissal of the mayor yet.**

#### **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.

**In accordance with the Article 37 of Integrity and Prevention of Corruption Act (Official Gazette of the Republic of Slovenia, No. 69/11 - official consolidated text) local elected officials have the duty to avoid conflicts of interest.**

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

**An official must pay attention to any actual or potential conflict of interest and must do everything possible to avoid it and an official may not use his function or service in order to pursue any illicit private interest for himself or for anyone else.**

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

**Conflict of interest determination procedure is stipulated in Article 39 of Integrity and Prevention of Corruption Act.**

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

**Quantitative information about the number and sorts of conflicts of interest in year 2018 are to be found on pages 35-37.**

[https://www.kpk-rs.si/en/wp-content/uploads/sites/3/2020/06/Porocilo2019\\_za-prevod-lektoriran-prevod.pdf](https://www.kpk-rs.si/en/wp-content/uploads/sites/3/2020/06/Porocilo2019_za-prevod-lektoriran-prevod.pdf)

### 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?

**In 2017 there was a strong political will to introduce the recall for all directly elected representatives on all levels, not just the mayors but also for the MEPs and the president of the republic. It was proposed in a package of legislative changes called "Mr. Muscolo". The only problem was that after the legislative procedure all the other bills were voted against except the amendment of Local Self-Government Act that made local representatives so much discontent that they engaged the upper house which afterwards vetoed the bill which didn't pass the second round in Parliament.**

**The proposed solutions for regulation of the recall were that the voters could recall the mayor. The voting on recall could be done once per term, but not prior than one year after the start of mandate and at latest one year before the end of mandate. Any voter could submit the initiative for recall but would need to get the support of at least 2% of voters that voted in first round of last general elections for mayor, but not less than 15 or not more than 2500 voters. Voter support should be between 30% and 10% of voters depending of the size of the municipality. The recall of the mayor would succeed if the majority of voters would vote for it under the condition that the turnout would be higher than 90%.**

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

# SPAIN

## 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.

NO

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.

Yes <sup>11</sup>

5. What circumstances may give rise to financial liability of local and regional elected officials and/or bodies in your country?

### Law 40/2015, of October 1, on the Legal Regime of the Public Sector.

Article 36. Requirement of the patrimonial responsibility of the authorities and personnel at the service of the Public Administrations.

1. In order to enforce the patrimonial responsibility referred to in this Law, individuals will directly demand compensation from the corresponding Public Administration for damages caused by the authorities and personnel at their service.

2. The corresponding Administration, when it has compensated the damaged citizen, will demand ex officio through the administrative channels of its authorities and other personnel at its service the responsibility that they have incurred by fraud, or gross fault or negligence, after instruction of the corresponding procedure. For the requirement of said responsibility and, where appropriate, for its quantification, the following criteria will be weighed, among others: the harmful result produced, the degree of guilt, the professional responsibility of the personnel at the service of the Public Administrations and their relationship with producing the harmful result.

3. Likewise, the Administration will instruct the same procedure to the authorities and other personnel at its service for damages caused to their property or rights when there has been intent, or gross fault or negligence.

4. The procedure for the requirement of responsibility referred to in sections 2 and 3, will be conducted in accordance with the provisions of the Law of Common Administrative Procedure of Public Administrations and will begin by agreement of the competent body that will be notified to the interested parties and that will consist, at least, of the following procedures:

<sup>11</sup> Law 40/2015, of October 1, on the Legal Regime of the Public Sector.

<https://www.boe.es/buscar/act.php?id=BOE-A-2015-10566>

- a) Allegations for a period of fifteen days.
  - b) Practice of the admitted tests and any others that the competent body deems appropriate for a period of fifteen days.
  - c) Hearing for a period of ten days.
  - d) Formulation of the resolution proposal within a period of five days from the completion of the hearing process.
  - e) Resolution by the competent body within five days.
5. The resolution declaring responsibility will put an end to the administrative process.
6. The provisions of the preceding paragraphs shall be understood without prejudice to passing, if applicable, the amount of fault to the competent Courts.

#### Article 37. Criminal responsibility.

- 1. The criminal responsibility of the personnel at the service of the Public Administrations, as well as the civil responsibility derived from the crime, will be required in accordance with the provisions of the corresponding legislation.
- 2. The requirement of criminal responsibility of the personnel at the service of the Public Administrations will not suspend the procedures for the recognition of patrimonial responsibility that are instructed, unless the determination of the facts in the criminal jurisdictional order is necessary for the determination of patrimonial responsibility.

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)?

*It is of an administrative nature. The decision may be challenged in Court. See point 5 for conditions and procedure.*

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.

*Yes.*

*Art 24.1 Criminal Code<sup>12</sup>: For criminal purposes, the authority who alone or as a member of any corporation, court or collegiate body has command or exercises its own jurisdiction shall be considered an authority. In any case, the members of the Congress of Deputies, the Senate, the Legislative Assemblies of the Autonomous Communities and the European Parliament will be considered as authority. [...]*

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

*Elected officials are subject to the general criminal law (Criminal code).*

<sup>12</sup> Ley Orgánica 10/1995, de 23 de noviembre, del Código Penal: <https://www.boe.es/buscar/act.php?id=BOE-A-1995-25444>

*However, certain offenses can only be committed when exercising public functions: Crimes against the public administration. Arts 404-445 of the criminal code.*

*Title XIX of the criminal code mentions crimes such as prevarication, abandoning of posting, not prosecuting crimes, disobedience and denial of assistance, infidelity in the custody of documents and the violation of secrets, bribery, influence peddling, embezzlement, fraud and illegal levies etc. (TÍTULO XIX código penal, **Delitos contra la Administración pública**)*

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.

*It is the same procedure as for the general population, there are not specific procedural forms for crimes committed by elected officials from regional or local bodies.*

*Real Decreto de 14 de septiembre de 1882 por el que se aprueba la Ley de Enjuiciamiento Criminal. <https://www.boe.es/buscar/act.php?id=BOE-A-1882-6036>.*

*WHO INITIATES:*

*Art. 101 The criminal action is public. All Spanish citizens may exercise it in accordance with the provisions of the Law.*

*Article 105. 1. The officials of the Public Prosecutor's Office will have the obligation to exercise, in accordance with the provisions of the Law, all criminal actions that they consider appropriate, whether or not there is a private prosecutor in the cases, except those that the Penal Code reserves exclusively to the complaint private.*

*2. In crimes that can be prosecuted at the request of the aggrieved person, the Public Prosecutor may also file a complaint if he / she is a minor, a person with a disability in need of special protection or a helpless person.*

*The absence of a complaint will not prevent the practice of prevention procedures.*

*DECISION: judges and courts*

*SPECIFICITIES:*

*There is a specificity regulated in the Royal Decree of September 14, 1882, which approves the Criminal Procedure Law, regarding some public officials, including some from the Autonomous Communities.*

*Art 412. 2. They are exempt from attending the appeal of the Judge, but not from declaring, being able to report in writing on the facts of which they have knowledge by reason of their position:*

*[....]*

*The Presidents of the Autonomous Communities.*

*3. If it is convenient to receive a statement from any of the persons referred to in section 2 above, on matters of which they have not had knowledge due to their position, it will be taken at their home or official office.*

*4. Those who have held the positions referred to in section 2 of this article will also be exempt from attending the call of the Judge, but not from declaring, being able*

*to report in writing on the facts of which they have had knowledge by reason of their position.*

*5. They will also be exempt from attending the call of the Judge, but not from declaring, being able to do so in their official office or at the headquarters of the body of which they are members:*

*6.º The Presidents of the Legislative Assemblies of the Autonomous Communities.*

*9º. The members of the Governing Councils of the Autonomous Communities.*

*6. In the case of positions whose competence is territorially limited, only the exemption will be only applicable with respect to the statements that must be received in their territory, with the exception of the Presidents of the Autonomous Communities and their Legislative Assemblies.*

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)?

*The penalties are the same as for the general population. They are regulated in art 33 onwards of the criminal code.*

*However, some of the penalties can affect the status of an elected official: suspension or disqualification from employment or public office, either special (for a specific position) or absolute (for any position). The penalty will be applied based on the crime committed, in the same way for elected officials as for the general population.*

*As a consequence, the Central Election Commission ([www.juntaelectoralcentral.es](http://www.juntaelectoralcentral.es)) has repeatedly agreed on the following issues:*

*1.- In the event that a Mayor is sentenced by a final judgment to the penalty of disqualification from holding any public office, the election of a new Mayor shall be held by the procedure provided for in article 196 in relation to article 198, both of the Organic Law 5/1985, of 19 June, on the general electoral system.*

*2 - Being final the sentence of special disqualification for employment or public office, it is appropriate to declare the cessation of the affected and the appropriate vacancy for the purpose of issuing credentials to the candidate concerned.*

*3.- The disqualified councillor does not recover his or her position during the mandate for which they have been elected.*

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

*The Transparency Portal of the General Council of the Judiciary includes information on judicial processes for corruption organised by territory, judicial body, and type of procedure. The information has been obtained through statistical bulletins approved by the National Judicial Statistics Commission.*

*<http://www.poderjudicial.es/cgpj/es/Temas/Transparencia/Repositorio-de-datos-sobre-procesos-por-corrupcion/>*

## 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.

YES

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.)?

*The executive responds before de local assembly/ regional parliament (moción de censura/motion of censure and mocion de confianza/motion of confidence) as well as elected members of the regional parliament or local bodies respond before the citizens when elections take place.*

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)?

*The motion of censure has a different regulation in each of the 17 Autonomous Communities.*

*The regulation for the motion of censure and the question of confidence may be found in each of the Estatutes o Autonomy of the Autonomous Communities and their subsequent legislation.*

*For the Municipalities, the motion of censure is provided for in art 197 of the Organic Law of the General Electoral Regime (LOREG) <sup>13</sup>. The art 197 bis regulated the question of confidence.*

### Article 197 Motion of censure of the Mayor

1. The Mayor may be removed by a motion of censure, whose presentation, processing and voting will be governed by the following rules:

a) The motion of censure must be proposed, at least, by the absolute majority of the legal number of members of the Corporation and must include a candidate for Mayor, being able to be any Councilor whose express acceptance is recorded in the proposal writing of the motion.

In the event that any of the proponents of the motion of censure forms or has been part of the municipal political group to which the Mayor whose censorship is proposed belongs, the majority required in the previous paragraph will be increased by the same number of councilors as are in such circumstances.

This same assumption will be applied when any of the councilors proposing the motion has ceased to belong, for any reason, to the municipal political group to which they joined at the beginning of their mandate.

b) The writing in which the motion of censure is proposed must include the signatures duly authenticated by a Notary Public or by the General Secretary of the Corporation and must be presented before him by any of the signers. The Secretary General shall verify that the motion of censure meets the requirements set forth in this article and shall extend the corresponding accrediting diligence in the same act.

c) The document thus filled out will be presented in the General Register of the Corporation by any of the signers of the motion, with the Plenary meeting automatically called for twelve hours on the tenth business day following its registration. The Secretary of the Corporation must send indicative notification of such circumstance to all the members of the same within a maximum period of one day, counting from the

<sup>13</sup> In English : [http://www.juntaelectoralcentral.es/cs/jec/electoralLaw#Representation of the People](http://www.juntaelectoralcentral.es/cs/jec/electoralLaw#Representation%20of%20the%20People)  
Institutional Act (LOREG)



presentation of the document in the Registry, for the purposes of attending the session, specifying the date and time of the same.

d) The Plenary Session will be chaired by a Board of age, made up of the oldest and youngest councilors present, excluding the Mayor and the candidate for Mayor's Office, acting as Secretary of the Corporation, who will accredit such circumstance .

e) The Board will limit itself to reading the motion of censure, verifying in order to continue with its processing that at that same moment the requirements demanded in the three paragraphs of section a) are maintained, giving the floor, where appropriate, during a short time, if present, for the mayoral candidate, the mayor and the spokespersons of the municipal groups, and to put the motion of censure to the vote.

2. No councilor may sign more than one motion of no confidence during his term of office. For these purposes, motions that have not been processed will not be taken into consideration because they do not meet the requirements set forth in letter b) of section 1 of this article.

3. The sudden resignation of the Mayor will not suspend the processing and voting of the motion of censure.

4. In the municipalities in which the open council regime is applied, the motion of censure will be regulated by the norms contained in the two previous numbers, with the following specialties:

a) The references made to the councilors for the purposes of signing, presenting and voting on the motion of censure, as well as the constitution of the Age Table, shall be understood to be made to the voters included in the municipality's electoral roll, in force in the date of presentation of the motion of censure.

b) Any voter residing in the municipality with passive voting rights may be a candidate.

c) References made to the Plenary will be understood to have been made to the Neighborhood Assembly.

d) Notification by the Secretary to the councilors of the day and time of the plenary session will be replaced by an announcement to the neighbors of such circumstance, made in the manner locally used for the summons of the Neighborhood Assembly. e) The old Board will grant the floor only to the candidate for Mayor and the Mayor

5. The Mayor, in the exercise of his powers, is obliged to prevent any act that disturbs, obstructs or impedes the right of the members of the Corporation to attend the plenary session in which the motion of censure is voted and to exercise their right to vote in it. In particular, the causes of abstention and objection provided for in the legislation on administrative procedure do not apply to the motion of censure.

6. Changes of Mayor as a consequence of a motion of censure in the municipalities in which the open council system is applied will not affect the composition of the Provincial Councils

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#### Article 197 bis

1. The Mayor may raise a question of confidence to the Plenary, linked to the approval or modification of any of the following matters:

a) Annual budgets.

b) The organic regulation.

c) Tax ordinances.

d) The approval that puts an end to the processing of the municipal general planning instruments.

2. The presentation of the question of confidence linked to the agreement on any of the matters indicated in the previous number will expressly appear in the corresponding point of the Plenary's agenda, requiring the "quorum" of voting required for the adoption of said resolutions. Law 7/1985, of April 2, regulating the Bases of the Local Regime, for each of them. The vote will be carried out, in any case, by means of the nominal system of public appeal.



3. For the presentation of the question of confidence, it will be a prerequisite that the corresponding agreement has been debated in the Plenary and that it has not obtained the majority necessary for its approval.

[.....]

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.

*Ley 19/2013, de 9 de diciembre, de transparencia, acceso a la información pública y buen gobierno. / Law 19/2013, of December 9, on transparency, access to public information and good governance<sup>14</sup> has to be mentioned.*

*Title II (on good governance) of this norm grants the status of Law to the ethical and action principles that must govern the work of the members of the Government and senior and similar officials of the State Administration, the Autonomous Communities and the Local Entities. It also clarifies and reinforces the system of sanctions applicable to them, in line with the responsibility to which they are subject.*

*This system seeks to ensure that citizens are provided with public servants who act in accordance with the principles of efficiency, austerity, impartiality and, above all, responsibility. In order to meet this objective, the Law establishes a system of sanctions structured in three areas: violations in the area of conflict of interest, in the area of economic-budgetary management and in the area of discipline. In addition, it incorporates infractions derived from non-compliance with Organic Law 2/2012, of 27 April, on Budgetary Stability and Financial Sustainability. In the economic-budgetary area, it is important to note that sanctions will be imposed on those who commit expenses, liquidate obligations and order payments without sufficient credit to make them or in violation of the provisions of budgetary regulations, or who do not justify the investment of the funds referred to in the equivalent budgetary regulations. This introduces a fundamental control mechanism that will prevent irresponsible behavior that is unacceptable in a state governed by the rule of law.*

*The commission of the planned infringements will give rise to the imposition of penalties such as dismissal from public posts held by the offender, failure to receive compensation pensions, the obligation to repay sums wrongly received and the obligation to compensate the public purse. It should be noted that these sanctions are inspired by those already provided for in Law 5/2006, of 10 April, on conflicts of interest of members of the Government and senior officials of the General State Administration.*

*It also provides that the perpetrators of very serious offences may not be appointed to certain public posts for a period of between 5 and 10 years.<sup>15</sup>*

<sup>14</sup> <https://www.boe.es/eli/es/l/2013/12/09/19/con>

<sup>15</sup> <https://www.consejodetransparencia.es/ct/Home/en/transparencia/transparencia-en-espanya.html>

*The transparency law, as well as the respective regional law, where applicable, is directly applicable to local entities. Without prejudice to this, local entities may approve their own regulations on transparency and right of access, the content of which must be based on the minimum regulation contained in the state regulation, and must also assume any additional obligations that may have been incorporated in the regional regulation.*

*Several Autonomous Communities and municipalities have their own regulations on transparency, good governance and open government: [https://transparencia.gob.es/transparencia/transparencia\\_Home/index/MasInformacion/Administraciones-publicas.html](https://transparencia.gob.es/transparencia/transparencia_Home/index/MasInformacion/Administraciones-publicas.html)*

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

*See infractions: articles 25 to 29 (available in English at: [https://transparencia.gob.es/transparencia/en/transparencia\\_Home/index/MasInformacion/Ley-de-Transparencia.html](https://transparencia.gob.es/transparencia/en/transparencia_Home/index/MasInformacion/Ley-de-Transparencia.html) )*

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

*Several Autonomous Communities and municipalities have their own regulations on transparency, good governance and open government, and, therefore, procedures may differ [https://transparencia.gob.es/transparencia/transparencia\\_Home/index/MasInformacion/Administraciones-publicas.html](https://transparencia.gob.es/transparencia/transparencia_Home/index/MasInformacion/Administraciones-publicas.html)*

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.

*Yes. The accounting responsibility is independent from the criminal or disciplinary responsibility that may correspond for the same events and will be looked into in a separate file.*

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

*At state level, accounting responsibility can be articulated through an administrative procedure regulated in the General Budgetary Law 47/, of November 26, and in Royal Decree 700/1988, of July 1, on Administrative Records of Accounting responsibility derived from infractions foreseen in Title VII of the aforementioned Law. Autonomous Communities may regulate similar administrative procedures. This procedure does not apply to embezzlement nor unjustified debit balance of an account or absence of cash or justification in the accounts that must be rendered by the people who are in charge of managing flows or public effects ("alcance contable").*

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[https://www.consejodetransparencia.es/ct\\_Home/en/Actividad/Resoluciones/resoluciones\\_CCAA\\_ELL.html](https://www.consejodetransparencia.es/ct_Home/en/Actividad/Resoluciones/resoluciones_CCAA_ELL.html)

*The Court of Audit ( article 136 of the Spanish Constitution) is regulated by:*

- *the Organic Law 2/1982, of May 12, on the Court of Audit,*
- *and Law 7/1988, of April 5, on the Operation of the Court of Audit.*

*The Court of Audit is unique in its kind and extends its jurisdiction to the entire national territory, in addition to the accounts auditing bodies that their Autonomous Communities Statutes have created. It reports to the Congress.*

*Functions :*

- *The external, permanent and consultative control of the economic-financial activity of the public sector.*
- *The prosecution of the accounting responsibility incurred by those who are in charge of managing flows or public effects.*

*Therefore, the Court of Audit has a supervisory function and another jurisdiction*

*In the exercise of the accounting jurisdictional function, the Court of Audit is unique, but not supreme (rulings of the Constitutional Court 187/1988, of 17 October, and 18/1991, of 31 January, among others), hence the regional external control bodies, in this area, can only act by express delegation of the former and exclusively in the preparatory phase of the jurisdictional procedures whose purpose is accounting responsibility.*

*Conditions :*

- *Accounting infractions, specially the unjustified debit balance of an account or absence of cash or justification in the accounts that must be rendered by the people who are in charge of managing flows or public effects ("alcance contable"), and embezzlement;*
- *Infraction derives from the specific responsibility incumbent on those who manage flows or public securities or shares.*
- *need for an infringement of budgetary or accounting laws.*

*There is an obligation for those responsible accountants to compensate the damages caused in the public flows.*

#### **ABOUT THE LOCAL ENTITIES.**

*Local entities and all the agencies and companies dependent on them are subject to external audit or control of their accounts and their financial management by the Court of Accounts and other bodies ( competent authorities of the autonomous communities.)*

*The external control bodies of the Spanish local corporations are the following:*

- *The Court of Audit.*
- *The autonomous communities auditing bodies.*
- *The special commissions of accounts of the local entities. Political control.*

*According to the art 116 of the Law of Bases of the Local Regime, the special commission of accounts is an external body made up of representatives of the different political groups that are part the local corporation (the elected body of the local entity), whose function is the examination, study and report of all the accounts, budgetary and extra-budgetary, that must be approved by the plenary session of the corporation.*

*"The annual accounts will be submitted before June 1 to the report of the special accounts committee of the local entity and will be the subject of "public information" (made public), before being submitted to the approval of the plenary session, so that the public may make claims, objections or observations.*

*The existence of irregularities in the financial management and in the approved accounts may be reported to the Court of Accounts. "*

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

*While the unjustified debit balance and embezzlements are within the scope reimbursement procedures, the other infractions are tried in audit trials (Court of Audit).*

*These other infractions may be instructed through an administrative procedure (art. 41 Law Organic of the Court of Accounts, and art 180.1 and 2 of the General Budgetary Law).*

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

*At present, the vast majority of the judgments of the Court of Justice in the Court of Audit relate to assumptions of scope, since an expansive interpretation of the concept of scope (« alcance contable ») has been made over the years.*

## **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?

**a) Spanish Court of audit (Tribunal de Cuentas) and regional external audit institutions.** <https://www.tcu.es/tribunal-de-cuentas/en/>

*The Court of audit, external audit body recognized by the Spanish Constitution as the supreme audit body of the accounts and the financial management of the public sector, without prejudice to its judicial function focused on the prosecution of accounting liability incurred by those who are responsible for the management of public funds, exercises the function of supervision, determining whether the economic and financial activity of the local entities meets the principles of legality, efficiency and economy; as well as the jurisdictional function, which entails the judgment of the possible accounting responsibility in which those responsible for the management of public funds may incur.*

*The Court of audit issues recommendations to local entities as well as audit reports on the implementation of those recommendations.*

*The Spanish Court of audit (Tribunal de Cuentas) with the participation of the regional public-sector audit bodies of Valencia , Canary Islands, Madrid, Balearic Islands, Castile – León, Principality of Asturias , Aragón and Galicia, has launched, and manages, the Accountability website (<https://www.rendiciondecuentas.es/en/>) to facilitate accountability of local bodies and to allow citizens to have access to information and data on Local Authorities and their accounts:*

<https://www.rendiciondecuentas.es/en/consultadeentidadesycuentas/index.html>

*Thanks to this Accountability website local public sector entities can more efficiently comply with their accountability duties and other mandatory information.*

And furthermore, an "Accountability Observatory: evolution of indicators of accountability" can be found, in English, at:

<https://www.rendiciondecuentas.es/en/observatorioderendicion/>

**b) Independent Authority for Fiscal Responsibility (AIREF).** <https://www.airef.es/en/>

Organic Law 6/2013, of 14 November, creating the Independent Authority for Fiscal Responsibility, has also set up the Technical Committee on National Accounts made up of the National Statistics Institute, the Bank of Spain and the General State Intervention to carry out actions to verify and contrast the information provided from the Autonomous Communities and local corporations, an aspect recommended by the European bodies responsible for national accounting. Likewise, the aforementioned group will provide its reports to the Independent Authority for Fiscal Responsibility.

The Independent Authority for Fiscal Responsibility (AIREF) report on local administration (2019) is available at:

<https://www.airef.es/wp-content/uploads/2019/12/LINEAS-CCAA-CCLL/2019-12-05-Informe-Corporaciones-Locales.pdf>

AIREF has also developed a Data Lab. Observatory of Economic and Financial Information of Local Corporations (<https://www.airef.es/es/datalab/ccll-lab/>)

This platform gathers economic and financial data relevant to the analysis of the sustainability situation of all local corporations it enables the evolution of the main ratios and magnitudes that define the medium-term sustainability of local authorities to be visualized by means of graphs, serving to detect risks of compliance with tax rules and, where appropriate, to make comparisons between local authorities.

Local entities can easily visualize their main magnitudes and verify the information shown about them, as well as consult the same data from any other entities.

AIREF may also carry out studies requested by the Autonomous Communities and Local Corporations, which must be limited to its area of competence and without affecting the competences of other Administrations.

**c) State Ombudsman/Defensor del Pueblo and similar bodies in the Autonomous Communities.** <https://www.defensordelpueblo.es/en/>

The functions of the Defensor del Pueblo/Ombudsman include examining the functioning of provincial councils, minor local authorities, municipal plenaries and the rights of councillors.

The institution supervises the proper provision of municipal services: water supply, sewerage, lighting, cemeteries, sports and recreation facilities, and management of the census of inhabitants.

As a result of his actions, the Ombudsman can formulate four types of resolutions to the administrations:

1. Recommendation: it is proposed that the interpretation of a rule or even the creation of a new one be modified and has a general scope

2. *Suggestion: it is proposed to modify a specific action, which concerns only a particular citizen or a particular community*
3. *Reminder of legal duties: a reminder of the obligation to comply with a legal requirement*
4. *Warning: in which it communicates the existence of a factual situation or practice that requires improvement*

Several Autonomous Communities has also created institutions similar to the Defensor del Pueblo: <https://www.defensordelpueblo.es/enlaces-a-instituciones/>

#### **d) Council for Transparency and Good Governance**

*The Council for Transparency and Good Governance is the independent body responsible for promoting the transparency of public activity, ensuring compliance with publicity obligations, safeguarding the exercise of the right of access to public information and ensuring compliance with good governance provisions. This institution is regulated in Law 19/2013, of 9 December, on Transparency, Access to Public Information and Good Governance, and in its Statute, approved via Royal Decree 919/2014 of 31 October.*

*All Council resolutions on the State Administration, the Autonomous Communities and the Local Entities with which the Council for Transparency and Good Governance has signed an agreement for the resolution of their claims, are published monthly in its website.*

[https://www.consejodetransparencia.es/ct\\_Home/en/Actividad/Resoluciones/resoluciones\\_CCAA\\_EELL.html](https://www.consejodetransparencia.es/ct_Home/en/Actividad/Resoluciones/resoluciones_CCAA_EELL.html)

[https://www.consejodetransparencia.es/ct\\_Home/en/transparencia/transparencia-en-espanya.html](https://www.consejodetransparencia.es/ct_Home/en/transparencia/transparencia-en-espanya.html)

*Cooperation agreements and MoUs have been signed between the Council for Transparency and Good Governance, the Federation of Municipalities and Provinces (to foster transparency in Local Administration), Autonomous Communities and foundations as Fundación Democracia y Gobierno Local.*

*In May 2015, the Spanish Federation of Municipalities and Provinces (FEMP) created the Network of Local Entities for Transparency and Citizen Participation, aware that in these new times, the reality that the Spanish local world is experiencing on a daily basis is to offer the society that supports it public policies that are very much in line with the openness of their governments, decisively promoting such recurrent (and decidedly crucial) issues as transparency, participation, accountability, reuse of public data and good governance, among many others.*

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



## SWEDEN

### 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.

**No, not apart from the local and regional governmental elections every four years.**

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.

**Yes, see below.**

5. What circumstances may give rise to financial liability of local and regional elected officials and/or bodies in your country?

**Rules on financial liability can be found in the Swedish Tort Liability Act. Under Chapter 3, Section 2 of said act, the State, a municipality or a county council must provide compensation for personal injury, material damage or purely financial damage caused by incorrect or negligent exercise of a public authority in activities for whose completion the State or the municipality is responsible. The State, municipality or county council must also compensate damage caused by the violation of another person's integrity as described in Chapter 2, Section 3 through the incorrect or negligent exercise of public authority. Pursuant to Chapter 2, Section 3 of the Tort Liability Act, compensation for such non-material damage can only be paid when the injured party has been subjected to a serious violation through offences against their person, freedom, peace or honour. There is also a liability to compensate for purely financial damage caused by an authority providing incorrect advice or information (Chapter 3, Section 3).**

**In so far as the elected official can be regarded as an employee of the State, municipality or county council, the State, municipality or county council may also be liable to pay damages for property or personal injury outside the area of exercise of authority that has arisen as a result of error or negligence in the service on the part of the official (Chapter 3, Section 1). An employee is only liable to the extent that there are special reasons with regard to the nature of the act, the employee's position, the injured party's interest and other circumstances.**

**The Local Government Act furthermore stipulates that if discharge from liability is refused, the local or regional assembly may decide to bring an action for damages.**

**Actions that are not based on criminal offences must be brought within one year of the decision to refuse discharge from liability.**

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)?

***A claim for damages from the State can be tried by the Chancellor of Justice (in some cases instead by the responsible authority) and by a general court. As an individual, you can choose between turning to the Chancellor of Justice or bringing an action in court. The claims settlement with the Chancellor of Justice takes place on a voluntary basis and if an individual is not satisfied with the decision, the possibility of bringing an action in court remains. A claim for damages from a municipality can be tried by a general court.***

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

**N/A**

### **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.

***In Chapter 20, Section 1, of The Swedish Criminal Code it is stated that a person who, intentionally or through negligence when exercising public authority disregards their duties by action or omission is guilty of official misconduct and is sentenced to a fine or imprisonment for at most two years. Responsibility is not assigned if, in view of the perpetrator's powers, or some other connection between the duties and the exercise of public authority, or other circumstances, the act is considered minor.***

***If an offence referred to in the first paragraph was committed intentionally and is considered gross, the person is guilty of gross official misconduct and is sentenced to imprisonment for at least six months and at most six years. When assessing whether the offence is gross, particular consideration is given to whether the perpetrator seriously abused their position, or whether the act resulted in serious detriment or considerable undue advantage for an individual or the public.***

***A person who is a member of a central or local government decision-making assembly is not subject to responsibility under the first or second paragraph for any measure that they take in this capacity.***

***Nor are the provisions of the first and second paragraphs applied if the act is punishable under another provision.***

***The above provision does not apply only to elected officials but to all people exercising public authority. The limitation of criminal liability in the third paragraph only applies in respect of official misconduct, not other offences.***

***Besides the provision on official misconduct there are other provisions that may be relevant in the matter, for example those in Chapter 10 of The Swedish Criminal Code regarding embezzlement, other breaches of trust and bribery.***



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

***It is general. However as mentioned above in Chapter 20, Section 1, third paragraph, of The Swedish Criminal Code it is stated that a person who is a member of a central or local government decision-making assembly is not subject to responsibility under the first or second paragraph (i.e. for the specific offence official misconduct) for any measure that they take in this capacity.***

***Also, as stated above the offence must take place when exercising public authority.***

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.

***Any person can make a notification to the police authority. A prosecutor will lead a preliminary investigation to investigate whether there are grounds for bringing prosecution in the matter. If a prosecutor decides to bring prosecution to the court, the court will have a main hearing and hereafter deliver a judgment. The procedure is the same whether it is an elected official or not.***

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)?

***The penalties applicable to elected officials are not tailored with regards to their status. However, as stated above, when assessing whether the offence is gross, particular consideration is given to whether the perpetrator seriously abused their position. Also, in Chapter 29, Section 1, second paragraph, of The Swedish Criminal Code it is stated that the court should, when assessing penalty value, consider the damage, violation or danger involved in the act, what the accused realised or ought to have realised in this respect, and their intentions or motives.***

***According to Chapter 29, Section 2, second paragraph, point 4, the court should also, when assessing penalty value in addition to what applies for each specific type of offence, as aggravating circumstances consider whether the accused exploited their position or otherwise abused some special trust.***

***The penalties for official misconduct are purely criminal. An offence can however result in political effects as well.***

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

***In 2019, 15 people was convicted of official misconduct. The statistics does not show how many of these cases concerns elected officials.***

## **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.

***The local or regional assembly may revoke the office of a representative it has elected, if the elected representative has been refused discharge from liability or has been convicted of a crime punishable by imprisonment for two years or more and the judgement has entered into force.***

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.)?

***The possibility for the assembly to revoke an office applies to all representatives elected by the assembly, i.e. those sitting on committees or assembly drafting committees.***

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)?

***Matters may be raised in the assembly by***

- 1. a committee,***
- 2. a member, through a motion,***
- 3. an auditor, if the matter applies to management connected with the audit assignment or if the matter concerns the audit,***
- 4. an assembly drafting committee, if the assembly has so decided, or***
- 5. the board in a legal entity, if the assembly has so decided for special cases.***

***Matters may also be raised in the assembly through citizens' and popular initiatives, if the assembly allows it.***

***At a meeting before the end of June in the year after the year to which the audit relates, the assembly decides whether to grant or refuse discharge from liability. Reasons for the decision must be given unless this is obviously unnecessary.***

***If the auditors have expressed modified opinions on a committee or an assembly drafting committee, or on individual elected representatives in such bodies, the assembly decides whether to second these opinions. The assembly may express modified opinions even if the auditors have not done so. Reasons must be given for decisions on modified opinions.***

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

***In 2018, 265 out of 290 municipalities had an audit report without remarks or statements concerning that discharge from liability should be refused. In the same year, all representatives in 275 out of 290 municipalities were granted discharge from liability.***

***As for the county councils, 17 out of 21 county councils had an audit report without remarks or statements concerning that discharge from liability should be refused in 2018. All representatives in 18 out of 21 county councils were granted discharge from liability.***

***There is no information regarding the extent to which the office of a representative has been revoked.***

## 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.

***Local governments performance regarding education, health care and other tasks is monitored by different central government supervision agencies (the county boards [länsstyrelser], the parliamentary ombudsman and other government agencies). The purpose is to ensure that municipalities and county councils comply with the law and deliver what is required according to the law. That can imply following certain standards and constitutional principles. The regulation differs from area to area. Therefore, all details cannot be described within the scope of this questionnaire.***

***In some areas there are specific administrative measures that can be taken against elected bodies. For instance, people in need of care have the legal right to receive the help and support they need from the municipality. The Social Welfare Board, or equivalent in a municipality, is obliged to report to the national supervision agency if an aid granted has not been carried out within three months. If the agency considers that the operation has not been carried out within a reasonable time, the agency may apply to the Administrative Court for a special fee to be handed out.***

***LGA stipulates that each member of a municipality or county council is entitled to have the legality of the municipality's or county council's decisions reviewed by appealing to the administrative court. The following decisions may be appealed:***

- 1. decisions by an assembly, or the decision-making assembly in a local government federation,***
- 2. decisions by a committee or joint body, if the decision is not purely preparatory or purely executive in nature,***
- 3. decisions by the federation board, another committee or a joint body in a local government federation, if the decision is other than purely preparatory or purely executive in nature, and***
- 4. auditors' decisions as referred to in Chapter 12, Section 11.***

***These provisions do not apply if there are special provisions concerning appeal by law or other statutory instrument.***

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

***See above.***

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

***See above.***

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

***N/A***

## 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.

***The Local Government Act (LGA) stipulates that each local government shall adopt its own rules on borrowing, risk assessments etcetera. Local governments are free to borrow on the financial markets without restrictions from the central government. There are also regulations in the LGA regarding sound housekeeping and a balanced budget. The follow-up on the requirements are carried out by auditors elected by locally/regionally elected assemblies.***

***The auditors oversee whether the activities by the municipalities and county councils are conducted in an appropriate and, from a financial point of view, satisfactory manner. They also oversee if the internal control within the committees is sufficient.***

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

***The auditing takes place annually. Every year, the auditors must submit to the assembly a report on their audit, containing details of the outcome of their audit based on their inspection of activities during the previous fiscal year.***

***The audit report on local government federation to which the municipality or county council belongs must also be attached to the auditors' report. In addition, the audit report on a limited company, partnership, economic association or foundation to which the municipality or county council has transferred management of a local government concern must be attached to the audit report.***

***The auditors may express modified opinions on committees and assembly drafting committees, and individual elected representatives in such bodies. The reason for the opinion must be specified in the audit report. The audit report must also contain a special statement concerning whether discharge from liability is confirmed or not. Afterwards, the assemblies decide on whether discharge from liability is granted.***

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

***The auditing procedure is stipulated in the LGA. See details in the answers above.***

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

***N/A***

## 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?

***In May 2020, the Government decided to appoint an inquiry which, among other things, shall investigate whether the criminal liability for official misconduct should be extended. The inquiry's results are to be reported to the Government no later than the 12th of November 2021.***

***An often-debated question regards the locally and regionally elected auditors, and the fact that they are politically appointed and auditing the same body that appoints them. It is argued that the auditing instead should be the responsibility of the state.***

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

## SWITZERLAND

### 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.

*Yes, every person has the constitutional right to petition the authorities, including regional and local authorities (art. 33 par. 1 Swiss Constitution). As the right to petition covers a very wide range of concerns, a petition can demand the resignation or recall of an elected official or body.*

*Six cantons foresee the right to recall an authority (any authority, government and parliament, or only the government) by a popular vote. However, it is not possible to vote on the recall of a single member (only of the authority as a whole). In two cantons local governments can be recalled, including in one of the two the president and vice-president of the government.*

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?

*Any person – including people not entitled to vote – can petition the authorities alone or collectively. The formalities and the procedure are relatively simple, there is e.g. no time-limit or minimum of signatures and online petitions fulfil the requirements. The authorities are obliged to take note of a petition.*

*For popular votes, the conditions and procedure are matters of cantonal law and therefore vary. In general, signatures of eligible voters must be collected. Some cantons require the threshold of signatures to be met within a specific period. It is not legally necessary to provide a political or legal reason. If enough voters sign, then there will be a popular vote on whether or not there shall be new elections.*

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

*Petitions are an attractive instrument for participation and are often used. Although addressed authorities are not obliged to respond to petitions, in practice they usually do.*

*Popular votes on recalling authorities are often unsuccessful. In two cantons there has only been one unsuccessful vote, while in two other cantons multiple times the minimum of signatures required for a vote was not reached. Finally, in two cantons, the voters never made use of the right to recall an authority.*

### 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.

*All cantons have laws on financial liability for damage incidents occurring during the exercise of official activities. In 24 cantons, there is exclusive state liability (casual liability). In the Canton of Lucerne, the canton is liable for damage caused by an official, as long as it does not prove that the official is not at fault (mixture between casual liability and fault-based liability). In the Canton of Geneva, there is exclusive state liability for damage caused intentionally, through negligence or*

*imprudence (fault-based liability). However, in 22 cantons the canton take a recourse against the official in cases of grave negligence or intentional misconduct.*

*For private persons who fulfil a public function, 14 cantons foresee that the canton remains liable. In 5 cantons, private persons are financially liable for damage caused by them while subsidiary liability remains with the commissioning authority. 7 cantons do not clearly regulate this question.*

*For other incidents – damages without functional link to his/her official activities – financial liability according to federal civil law is applicable.*

5. What circumstances may give rise to financial liability of local and regional elected officials and/or bodies in your country?

*Elected officials are not directly liable towards the third party. In cases where the state takes recourse against the official, it generally is a fault-based liability. The official must have acted with grave negligence or intentionally caused the damage. The damage must result from an essential breach of an official duty.*

*Some cantons have special rules concerning state liability for acts of the judiciary, for provided information and for therapeutic care in public hospitals.*

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)?

*In most cantons, civil tribunals are the competent instance. Some allocated financial liability claims to the administrative tribunals. In 13 cantons the concerned third party must submit a request for financial compensation at the competent administrative body (in two more cantons this is voluntary). In a second step – when the administrative body does not reply or reply negatively – the third party can then submit a complaint at the competent civil/administrative court.*

*The recourse taken by the state against the official is initiated by various administrative or judiciary authorities depending on the official's role. For recourses against members of the regional government, it is often the regional parliament initiating the recourse (e.g. SO, ZH, SZ, ZG). It is then treated in a judicial procedure. However, in some cantons the administrative authority decides on recourses (see FR).*

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

*There are no statistics available in this respect.*

## **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.

*Yes, in principle there is a duty for criminal prosecution (article 7 par. 1 Swiss Criminal Procedural Code). However, cantons may regulate immunities for statements made by the legislative and judicial branch, and by the government in the cantonal parliament (art. 7 par. 2 Swiss Criminal Procedural Code). Such immunities cannot be extended to communal authorities. Cantons may make*



*criminal prosecution for felonies and misdemeanors – not for contraventions – dependent on an authorization from a non-judicial body for officials from enforcement and judicial authorities both at cantonal and communal level.*

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

*Criminal liability is general. Some offences are specifically for officials such as the abuse of public office (art. 312 Swiss Criminal Code). Criminal prosecution for felonies and misdemeanors may depend on an authorization (see answer 8). For immunities in the cantonal parliament, see answer 8.*

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.

*See answers 8 and 9.*

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)?

*In the Canton of Ticino, for instance, a person with a custodial sentence for a felony or misdemeanors, which is incompatible with the envisaged function, is ineligible.*

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

*In 2019, for example, 16 officials were sentenced for abuse of public office and 25 officials were sentenced for breach of official secrecy. For more statistics on offences against official or professional duty, see <https://www.bfs.admin.ch/bfs/de/home/statistiken/kriminalitaet-strafrecht/strafjustiz/jugend-erwachsenenurteile.assetdetail.13407147.html>.*

## **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.

*Yes, see answer 15.*

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.)?

*The responsibility is limited to the cantonal government. At a local level, it varies a lot (see answer 15).*

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)?

*In almost all cantons, the parliament has the oversight over the government and the latter must annually report to the parliament. Monitoring instruments include the right of inspection or of inquiry.*



*At a local level, the cantonal government typically has the supervision over the municipalities with monitoring instruments, which vary per canton. They range from inquiries in some cantons the cantonal government can withdraw the right to self-administration at the communal level, remove elected officials from office, dissolve the local parliament and recall the communal executive authority.*

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

*There are no statistics available in this regard.*

## **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.

*All activities of the state are based on and limited by law (art. 5 par. 1 Swiss Constitution).*

*Many cantons have disciplinary laws in force. Nevertheless, some cantons have repealed their disciplinary law or parts of it.*

*In the majority of cantons, the concept of New Public Management has been introduced with reporting and controlling mechanisms.*

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

*Disciplinary measures can be imposed for breaches of official duties. Their purpose is to ensure the orderly execution of tasks. In cases of heavy breaches of official duties, some cantons and communes include the option of a disciplinary dismissal of the official.*

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

*For members of government, typically the parliament is in charge. In some cantons, depending on the measure, e.g. warnings or suspensions, different bodies are in charge. Before imposing a possible measure, in some cantons, there must be an inquiry led by a commission.*

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

*There are no statistics available in this regard.*

## **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.

*No, either financial liability or administrative accountability is applicable.*

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?

*The accountability of local/regional elected officials and/or bodies is not actively debated in Switzerland. However, in relation to specific cases, there have been debates.*

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

*Most of the questions address matters that are subject to cantonal law and therefore 26 different laws apply.*

# UNITED KINGDOM

(provisional / provisoire)

## 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.

### Recall

**Councils operate independently of central government and are accountable to their electorates for the provision of services. Measures are put in place to ensure that local government performs to a high standard, and that it is held to account.**

**There is currently no recall procedure for local councilors in the UK. However, we have added a few examples of democratic accountability in the UK below.**

### Recall elections for MPs

- **There is currently no recall procedure for local councillors in the UK.**
- **However, a recall procedure for MPs was introduced in the UK in 2015 and serves as a useful example.**
- **A recall petition can be opened under the following circumstances:**
  - **If they are convicted in the UK of an offence and sentenced or ordered to be imprisoned or detained and all appeals have been exhausted;**
  - **If they are suspended from the House following report and recommended sanction from the Committee on Standards for a specified period (at least 10 sitting days, or at least 14 days if sitting days are not specified).;**
  - **If they are convicted of an offence under section 10 of the Parliamentary Standards Act 2009 (making false or misleading Parliamentary allowances claims).**
- **For a recall petition to be successful 10% of eligible registered voters need to sign the petition. If the required number is not reached the petition fails and the MP remains in post.**
- **If the threshold is met, the parliamentary seat becomes vacant and a by-election is called.**
- **As of January 2019, there are no plans to extend recall to other elected officials.**

### Kingston Council system of recall

- **Kingston Council have introduced their own system to give electors the right to 'recall' councilors if they are not properly representing local residents. The scheme has no statutory basis.**
- **If any of the following criteria are met, council staff (monitoring officer and an independent person) will determine whether a recall petition should be initiated:**
  - **A Councillor's attendance at meetings of the Council over one year falls below 20%**
  - **A Councillor has attended less than two Full Council or Neighbourhood Committee meetings within a municipal year;**

- **A Councillor has been convicted of a crime for which a prison sentence (whether suspended or not) has been imposed and the appeal period has expired without the sentence being overturned;**
- **A Councillor has moved their main place of residence outside of the Borough.**
- **If 33% of the total electors registered in the ward sign the petition, the Councillor will be asked to consider resigning from the Council.**
- **Where a Councillor resigns in accordance with this scheme, the Council's Returning Officer shall call a By-Election to fill the resultant vacancy in accordance with the usual statutory timescales, unless the vacancy occurs within six months of the next scheduled four yearly Council Elections.**
- **The Councillor concerned may stand in that By-Election if they so choose.**

### **Referendums to change the Governance arrangements of a local authority**

**Local councils in England must hold a referendum on whether they should change to a different form of governance if at least 5 per cent of the electorate in that area petition the council to do so.**

**All local councils are required to publish each year the number of electors which corresponds to that 5%, based on the electoral registers for the area as at 15 February each year.**

**If 5% of the electorate sign a petition requesting a referendum on changing the governance model a referendum must held (subject to the petition meeting eligibility requirements set out in the Local Authorities (Referendums)(Petitions)(England) Regulations 2011) within a specified time frame. If a majority of those voting support a change in governance then the changes set out in the referendum must be implemented.**

**A council can decide to hold such a referendum to change its governance arrangements, without a petition, unless the current governance arrangements are the result of a petition and referendum, in which case a further change can only be made as the result of another petition.**

**Such petitions seek referendums on whether councils should be run in a different way, meaning that they can be considered as a type of democratic accountability. Local campaigners would agree with this, as they generally consider such referendums to be a judgement on the performance of local politicians.**

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?

**There is no formal recall process for councillors in the UK. However, the Kingston Council example above does provide details of the process which can lead to a councillor being asked to consider resigning.**

**In regard to referendums on governance arrangements, the information requested has been provided above.**

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

**Referendums on governance arrangements are not very frequent. There have been a total of 17 petitions that have resulted in a referendum since 2001, following the introduction of the legislation in the Local Government Act 2000.**

## 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.

**Yes**

5. What circumstances may give rise to financial liability of local and regional elected officials and/or bodies in your country?

**Under section 265 of the Public Health Act 1875 councillors and local authority officers, when acting in the course of their duties and in good faith, have statutory immunity and are not personally liable for actions they take. The Act provides for indemnity in relation personal liabilities and also costs. In these circumstances, therefore, there is no system of financial liability.**

**The Local Authorities (Indemnities for Member and Officers) Order 2004 gives a specific power for authorities to grant indemnities and/or take out insurance to cover the potential liability of councillors and officers in a wider range of circumstances than under the 1875 Act. Each local authority has discretion to decide whether to use the powers, and to decide the extent of such indemnities.**

**The 2004 order allows local authorities to indemnify (insure) members and officers where they have acted outside of the powers of the authority but reasonably believed that the action was within the powers at the time they were taken, or where they are acting on outside bodies for the Council. If a council does indemnify its members in this way, there is again no system of financial liability in these circumstances.**

**However, local authorities can not provide an indemnity in relation to any action by a member or officer which:**

- **constitutes a criminal offence;**
- **is a result of fraud or recklessness; or**
- **constitutes a defamatory claim.**

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).

**We do not hold this information.**

## 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.

**Yes**

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

Elected councilors are criminally liable for their actions, in the same way that members of the public are.

#### **Additional offences – disclosing interests**

In addition to this, elected councillors can be prosecuted if they do not follow certain procedures related to their roles. For example, it is a criminal offence for a councillor to fail to disclose a business or financial interest without a reasonable excuse. It is also a criminal offence to knowingly or recklessly provide false or misleading information, or to participate in the business of their local authority where that business involves a disclosable interest.

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.

#### **Code of Conduct - Standards Committees**

A large number of local authorities have established standards committees to adjudicate on the Code of Practice that their councillors are bound by.

For example, Leeds City Council's Standards Committee promotes and maintains high standards of behaviour among Councillors by:

- Advising the Council on the Members' Code of Conduct, reviewing and revising where appropriate.
- Arranging for training for Leeds City Councillors, Co-opted Members and Parish and Town Councillors in Leeds. It also keeps the training received by these Members under review, and has supported the development of new methods to make the training more accessible, such as e-learning and pocket guides.
- Determining whether applications for dispensation from Leeds City Councillors and Parish and Town Councillors where prejudicial interests would prevent a Council Committee or Council from considering a matter.
- Receiving any allegations of misconduct made against a councillor and adjudicating on whether further action is needed.

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)?

A person is disqualified from standing as a candidate or being a member of a local authority if they are imprisoned for three months or more on conviction of any criminal offence. They are also disqualified if they are found guilty of corrupt or illegal practice in an election. If found guilty of failing to disclose a pecuniary interest, councillors can be fined up to £5,000 and disqualified from holding office for up to five years.

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

**We do not hold this information.**

## 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.

**Yes – some examples have been outlined below:**

### Overview and Scrutiny Committees

**Councils that operate under executive arrangements, meaning that they have a Cabinet, are required by law to have an Overview and Scrutiny Committee. The committee must be composed to reflect the political proportions of the Council as a whole. Barnsley Metropolitan Borough Council describe their committee as follows:**

***"The Overview and Scrutiny Committee (OSC) is responsible for reviewing the decisions made by the Council's Cabinet and Executive Officers. It acts as a watchdog that reviews and monitors the work and performance of the Council as well as other local organisations such as healthcare providers. This supports the effective delivery of local services and safeguarding of adults and children in the Borough."***

**Committee meetings usually involve one or more substantive written reports being tabled on issues selected by the committee and its chair on the basis of the work programme. The purpose of scrutiny is to provide recommendations for improvement, so it is important to have a clearly defined outcome at the end of the meeting.**

### Code of Conduct - Standards Committees

**All local authorities are required to have a Code of Conduct for their elected members, which must be consistent with the Nolan Principles of Selflessness, Integrity, Objectivity, Accountability, Openness, Honesty and Leadership. A large number of local authorities have established standards committees to adjudicate on the Code of Practice that their councillors are bound by. Further information can be found in question 10 above.**

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.)?

**As mentioned above, Overview and Scrutiny Committees review decisions made by a council's Cabinet specifically. However, all councillors can be subject to the adjudication of Standards Committees.**

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)?

**The accountability measures detailed above are ongoing – the committee meetings take place at regular intervals.**

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

**The accountability measures detailed above are ongoing – the committee meetings take place at regular intervals.**

## 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.

**Yes – some examples have been outlined below.**

### Overview and Scrutiny Committees

- **Councils that operate under executive arrangements are required by law to have an overview and scrutiny committee. This must be composed to reflect the political proportions of the council as a whole**
- **Scrutiny committee meetings are formal and public. They provide a forum whereby councillors can:**
  - **discuss written information they have received, from the council and external bodies**
  - **hear evidence from witnesses, which could include other councillors, council officers, experts, representatives from other organisations and members of the public**
  - **question witnesses to gain a better understanding of the issues**
  - **draw conclusions from their discussions and the evidence examined, in the form of an outcome.**
- **Committee meetings usually involve one or more substantive written reports being tabled on issues selected by the committee and its chair on the basis of the work programme. The purpose of scrutiny is to provide recommendations for improvement, so it is important to have a clearly defined outcome at the end of the meeting.**

### Accountability for metro mayors

- **The Cities and Local Government Devolution Act 2016 requires all combined authorities to set up at least one overview and scrutiny committee. Each local authority within the combined authority will appoint one member to hold the authorities and mayors to account.**
- **Overview and scrutiny committees have statutory powers to scrutinise decisions the executive is planning to take, those it plans to implement, and those that have already been taken/implemented, and can require the mayor, any other member or officer of the combined authority to attend the Committee.**
- **While metro mayors are not able to take as many decisions affecting the whole area alone, they will have a significant democratic mandate and larger public profile compared to many of their cabinet colleagues.**
- **In the current devolution deals, the metro mayor chairs the combined authority cabinet, which is made up of the leaders from each local authority.**
- **Most of the deals require the metro mayor to consult the combined authority cabinet on their strategies. These can be rejected if two thirds of the cabinet members do not agree with them. The cabinet also reviews the metro mayors' spending plans and can amend these with a two-thirds majority.**

### Annual Governance Statement/accounts

- **Local authorities are responsible for ensuring that their business is conducted in accordance with the law and proper standards. They need to ensure that public money is safeguarded, properly accounted for and used economically, efficiently and effectively.**



- **The Accounts and Audit Regulations (2015), as amended by the Accounts and Audit (Coronavirus) (Amendment) Regulations 2020, require councils to conduct a review, at least once a year, on the effectiveness of their systems of internal control and include an Annual Governance Statement reporting on the review with the Statement of Accounts.**
- **In addition to local authorities acknowledging their responsibility for ensuring governance is effective, the statement should:**
  - **focus on outcomes and value for money**
  - **evaluate against the local code and principles**
  - **be in an open and readable style**
  - **include an opinion on whether arrangements are fit for purpose**
  - **include identification of significant governance issues and an action plan to address them**
  - **explain action taken in the year to address the significant governance issues identified in the previous year's statement**
  - **be signed by the chief executive and leading member of the council. The police and crime commissioner (PCC) and chief constable should sign theirs.**
- **The Annual Governance Statement is a way in which local authorities account to their stakeholders. This includes local citizens, businesses, central government and external auditors.**
- **Annual Governance Statements are usually reviewed by a local authority's Audit Committee, which is made up of councillors and (sometimes) independent non-councillors. Once the AGS has been approved, the committee can review progress in implementing the actions, so helping to ensure that the AGS is meaningful and is an effective tool for improvement in governance.**
- **By law, councils must also arrange for an external audit of their accounts to take place. The external auditor's responsibilities are set out in the Local Audit and Accountability Act 2014. Broadly speaking, these responsibilities are:**
  - **to provide an opinion on whether the council's Annual Financial Statements provide a true and fair view of the council's finances**
  - **to provide an opinion on whether the council has made proper arrangements for securing economy, efficiency and effectiveness in its use of resources**
  - **to give electors the opportunity to raise questions about the council's accounts and consider and decide upon objections received in relation to the accounts**
  - **to apply to the court for a declaration that an item in the accounts is contrary to the law.**

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

**The accountability measures detailed above are ongoing – the committee meetings take place at regular intervals. The external auditor has several mechanisms at their disposal if they have concerns about an authority's accounts, its governance or other significant matter in relation to the arrangements it has in place to ensure efficiency, effectiveness and economy. They may qualify the accounts in some way or, in the most serious cases, issue a report in the public interest (PIR). Schedule 7 of the Local Audit and Accountability Act 2014 sets out the requirements around the issuing of a PIR by the external auditor of a local authority.**

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

**The accountability measures detailed above are ongoing –committee meetings take place at regular intervals.**

**Schedule 7 of the 2014 Act requires the external auditor to consider whether to issue a PIR on any significant matter coming to his or her notice during the course of an audit, and to bring it to the attention of the audited body and the public. They are also required to send a copy of any such PIR to the Secretary of State. It is for the local authority concerned to respond publicly to the issues raised and the recommendations made in the PIR within 1 month of it being issued.**

**Every Council is also required by law to appoint a Monitoring Officer. Part of the Monitoring Officer's role is to report if they consider that any proposal, decision or omission made by the Council is (or is likely to be) illegal or amounts to maladministration. If the Monitoring Officer makes such a report to the Council, it will be sent to every councillor and the proposal, decision, or omission referred to in the report is suspended. The Council must then consider the report and decide, within 21 days on the steps it is taking in response to the report.**

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

**The accountability measures detailed above are ongoing – the committee meetings take place at regular intervals. Since the 2014 Act came into effect, only 4 Public Interest Reports have been issued; to North Dorset District Council in 2015, to York City Council and Derby City Council in 2016 and, so far, in 2020 to Nottingham City Council.**

## **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.

**Yes.**

**Legislation is clear that every councillor is responsible for the financial control and decision making at their council. The Local Government Act 1972 (Sec 151) states that "every local authority shall make arrangements for the proper administration of their financial affairs..." and the Local Government Act 2000 requires Full Council to approve the council's budget and council tax demand. However, it is recognised that councillors may well not be financial experts and so legislation also requires that every council has a named 'Responsible Financial Officer'. Part 1 of the Local Government Finance Act 1992 requires local authorities to deliver a balanced budget.**

**Whilst section 151 of the Local Government Act 1972 makes clear that the council is responsible for the overall financial administration of the council, a key way in discharging this function is the requirement that councils "secure that one of their officers has responsibility for the administration of those affairs". Section 113 of the Local Government Finance Act goes further and requires that this officer is a qualified member of one of the accountancy institutes (such as, but not exclusively, The Chartered Institute of Public Finance and Accountancy, CIPFA). Therefore, every council designates a specific officer as their responsible**

financial officer, also known as the council's 'Section 151 officer'. This person is usually the head of the council's finance function and is central in providing:

- effective financial advice to councillors and officers
- organising and maintaining a sound system of financial governance and control
- ensuring that the council follows all of its legal duties in financial matters.

### **Budgeting**

There is a significant amount of legislation around local authority financial planning and budgeting:

- The Local Government Act 2000 states that it is the responsibility of the full council, on the recommendation of the executive (or the elected mayor) to approve the budget and related council tax demand.
- The Local Government Act 2003, section 25 requires the council's Section 151 officer to report to the council on the robustness of the estimates made and the adequacy of the proposed financial reserves assumed in the budget calculations.
- The Local Government Finance Act 1988, section 114 requires the Section 151 officer to report to all of the authority's councillors if there is or is likely to be unlawful expenditure or an unbalanced budget. The council must meet within 21 days to consider the report and during that period the authority is prohibited from entering into new arrangements that will cause money to be spent.

### **Audit**

The Accounts and Audit Regulations 2016 require councils to carry out both internal and external audits.

Internal audit provides assurance to councillors and officers that the council's various internal control processes and procedures operate in an effective and efficient manner.

The external auditor's responsibilities are set out in the Local Audit and Accountability Act 2014. Broadly speaking, these responsibilities are:

- to provide an opinion on whether the council's Annual Financial Statements provide a true and fair view of the council's finances
- to provide an opinion on whether the council has made proper arrangements for securing economy, efficiency and effectiveness in its use of resources
- to give electors the opportunity to raise questions about the council's accounts and consider and decide upon objections received in relation to the accounts
- to apply to the court for a declaration that an item in the accounts is contrary to the law.

### **Best Value duty**

Under the Local Government Act 1999, a council must "make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness". They

must consult local people on how they should fulfil this duty, known as the 'best value' duty.

Section 15 of the Local Government Act 1999 provides powers for the Secretary of State for Housing, Communities and Local Government to intervene where he is satisfied that an authority is failing to comply with the best value duty.

In particular, the legislation provides powers for the Secretary of State (or his or her nominee) to take over all or some of the functions of the authority. In recent interventions, the practice has been to use the latter powers to nominate Commissioners to take over some or all of the functions of an authority.

Further information on this can be found in guidance [at this link](#), published earlier this year by the Government.

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

**This information has been provided above in the various examples.**

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

**This information has been provided above in the various examples.**

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

### **Best Value duty**

Since 2010, the Secretary of State has intervened formally in 4 local authorities (Doncaster, Tower Hamlets, Rotherham and Northamptonshire). From this list of interventions, it will be clear that, in previous interventions by MHCLG, the Secretary of State has only used the powers in the legislation in very exceptional circumstances and very much as a last resort. We at the Ministry of Housing, Communities and Local Government (MHCLG) envisage this continuing to be the case.

### **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?

**The UK Government is fully committed to levelling up all parts of the UK, ensuring that towns, cities and rural areas receive the investment they need to improve their local economies. To this end, the upcoming Devolution and Local Recovery White Paper will set out plans for more directly elected mayors with the powers and funding to drive growth in their areas. The White Paper will also set out plans to strengthen the accountability of mayors. These are matters of significant interest and debate in the UK.**

**The Committee on Standards in Public Life (CSPL) is responsible for monitoring and reporting on the arrangements in place to support high standards in public life and advises the Prime Minister on ethical standards. In January 2019, the CSPL published a report on Local Government Ethical Standards. The report included various recommendations which in the CSPL's view would improve ethical standards in local government, holding locally elected officials to account effectively and enhancing the fairness and transparency of processes to address**

**problems when they arise. The Government intends to publish its response to the report in due course.**

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