
Recommendation CM/Rec(2022)2 of the Committee of Ministers to member States on democratic accountability of elected representatives and elected bodies at local and regional level

*(Adopted by the Committee of Ministers on 9 February 2022
at the 1424th meeting of the Ministers' Deputies)*

The Committee of Ministers, under Article 15.b of the Statute of the Council of Europe,

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

Considering that there is an increasing desire by citizens to have a say in the management and scrutiny of public affairs at the territorial levels which are closest to them, and that active participation by citizens in the management of local and regional public affairs by, *inter alia*, taking on elective functions, is a prerequisite for effective democracy;

Considering the many benefits brought about by a developed system and culture of accountability of elected representatives and elected bodies at local and regional level, especially regarding the promotion of good governance, democracy, high standards of public ethics, trust in public institutions, and a healthy economic and social environment;

Considering that, in general, transparency regarding the actions of elected representatives and bodies and the various bodies under their purview, and the quality of information and easy access to information held by public authorities are particularly important features of an accountability framework;

Considering that clarity of legislation concerning local and regional self-government, in particular in the determination of responsibilities, including the consequences of inadequate management, is an essential condition for good governance in accordance with the rule of law and fundamental rights, and for the legal security of those held to account;

Considering also that, among recent trends, the use of various forms of violence against elected representatives has become a growing source of concern in many member States, and that this can deter candidacies and thus affect the necessary renewal of political leadership, as well as have a negative impact on the capacity for initiative and the effectiveness of public action;

Considering that the experience of many member States demonstrates that it is necessary to organise systems of accountability in such a way as to guarantee, by virtue of the European Charter of Local Self-Government (ETS No. 122), both the effectiveness of local authorities and the maintenance of "a wide degree of autonomy with regard to their responsibilities, the ways and means by which those responsibilities are exercised and the resources required for their fulfilment";

Having regard to:

- the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5);
- the European Charter of Local Self-Government (ETS No. 122) and its Additional Protocol on the right to participate in the affairs of local authorities (CETS No. 207);
- the other legal instruments of the Council of Europe which contain relevant provisions on the subject of public accountability, such as the Convention on Access to Official Documents (CETS No. 205), Recommendation Rec(99)8 of the Committee of Ministers to member States on the financial liability of local elected representatives for acts or omissions in the course of their duties, Recommendation CM/Rec(2014)7 on the protection of whistleblowers, Recommendation CM/Rec(2018)4 on the participation of citizens in public life at local level and Recommendation CM/Rec(2019)3 on supervision of local authorities' activities;
- the Valencia Declaration and the Strategy on Innovation and Good Governance at Local Level, including the 12 Principles of Good Democratic Governance, adopted at the 15th session of the Council of Europe Conference of European Ministers responsible for Local and Regional Government (15-16 October 2007, document CM(2008)14), specifically Principle 12 (accountability);
- the work of the Congress of Local and Regional Authorities of the Council of Europe, in particular Recommendation 423 (2018) "Conflicts of interest at local and regional level", Recommendation 424 (2018) "Transparency and open government", Recommendation 395 (2017) "Recurrent problems identified in the assessments following Congress election monitoring and observation missions (reference period 2010-2016)", its report entitled "A contemporary commentary by the Congress on the explanatory report to the European Charter of Local Self-Government" (December 2020) and Recommendation 459 (2021) "Holding referendums at local level";
- the work of the European Commission for Democracy through Law (Venice Commission), including its report on the recall of mayors and local elected representatives (document CDL-AD(2019)011rev, June 2019);
- recurrent issues identified in the monitoring work of the Group of States against Corruption (GRECO);
- the United Nations Sustainable Development Goals (SDGs), in particular Goal No. 16, "Peace, justice and strong institutions",

Recommends that the governments of member States, having regard to the definitions, principles and guidance set out in the appendix, undertake the tasks set out in the paragraphs 1 to 5 below or entrust these tasks to the competent public authorities, taking into account their respective constitutional or legislative provisions:

1. establish and maintain an accountability framework for elected representatives and elected bodies at local and regional level, comprising appropriate legislation, institutions, procedures, practices, and norms of conduct which together create the conditions and culture whereby:
 - a. decision makers take responsibility for their decisions;
 - b. those decisions are reported on, explained, examined and, where appropriate, questioned or sanctioned; and
 - c. there are effective and proportionate remedies for inappropriate decisions or omissions and any resulting actions or inactions;
2. ensure that provisions within this framework operate in a complementary manner with the judicial, political and administrative systems of the member State, including those systems put in place for elected representatives and elected bodies at the national level;
3. involve local and regional elected representatives in the considerations about reforms to be undertaken in the accountability framework and the procedures for their implementation;

4. evaluate periodically the measures adopted and undertake, if necessary, legislative reforms to improve the effectiveness of the accountability mechanisms as set out in the framework, as well as the consistency of their implementation. In doing so, member States should take into account the recommendations resulting from the monitoring and observation activities carried out by the Congress of Local and Regional Authorities of the Council of Europe on the implementation of the European Charter of Local Self-Government;
5. translate this recommendation into the official language(s) of the country and actively disseminate and promote it to local and regional authorities, their associations, and other interested parties.
6. when taking implementing measures, consider jointly this recommendation and Recommendation Rec(99)8 of the Committee of Ministers to member States on the financial liability of local elected representatives for acts or omissions in the course of their duties.

Appendix

Definitions, principles, and guidelines in relation to the accountability of elected representatives and elected bodies at local and regional level

1. Definitions

1.1 For the purposes of this recommendation:

- a. “elected representatives at local and regional level” (referred to as “representatives”) refers to those elected directly or indirectly by the people of a geographic unit to represent them. This includes those selected by other elected representatives to hold an office within a local or regional authority and/or its executive organ (including a councillor, mayor, leader, provost, etc.);
- b. “elected bodies at local and regional level” (referred to as “bodies”) refers to bodies composed exclusively or mainly of elected representatives, including an authority’s assembly and/or its executive organ and any sub-committee of that assembly/executive organ (including councils, municipalities and municipal districts, territorial units, counties, regions, provinces, etc.);
- c. “accountable” means being willing and able to take responsibility for one’s decisions, to report on and explain those decisions and to be prepared to be examined on those decisions, as well as to accept any consequence or proportionate sanction against inappropriate decisions or omissions;
- d. “accountability”, is the condition of being accountable;
- e. an “accountability framework” comprises, where appropriate, legislation, institutions, procedures, practices and norms of conduct, in order that citizens can have confidence in the accountability of their representatives and bodies at local and regional level;
- f. “responsibilities” means those functions, powers, matters, actions, and tasks for which the representatives and bodies must be accountable.

2. Principles of accountability

- 2.1 Accountability involves a set of various relationships between parties and a transfer of powers, functions and responsibilities from one party to another.
- 2.2 As a basic principle, representatives and bodies are accountable to those who have granted them a position of authority or power through direct election. Likewise, those who have been granted a position of power or authority to perform executive or supervisory functions, through designation or appointment within an elected body, are accountable to those who have granted them that position.
- 2.3 Therefore, representatives and bodies are required to account for their actions to citizens and voters in relation to the domain of responsibilities embodied in their office. They will also be required to be accountable to others involved in any formal system of audit or scrutiny. In addition, there may be officers or bodies who are responsible for the conduct of a representative or body as well as a range of stakeholder groups who will be affected in one way or another by the actions of representatives and bodies.
- 2.4 Accountability is personal and cannot be delegated. Where responsibilities have been delegated to another person or body, the representatives and bodies remain accountable for those matters.
- 2.5 Some aspects of these accountability relationships will be institutionalised or embodied within organisational or political mechanisms: political accountability for the general conduct of policies (before the voters or another body); legal/judicial liability for acts entailing a civil claim or criminal law response (before the courts); and managerial accountability for the general administrative and financial management of resources and procedures (through management control, judicial control, external audit, etc.).

- 2.6 To incentivise accountable conduct, it is essential to ensure openness and transparency of the actions of representatives and bodies, and those of the administrations and entities under their responsibility, allowing actions to be placed in the public spotlight and be subject to ongoing scrutiny. The openness and transparency should therefore be actively promoted by all means.
- 2.7 Effective accountability will also rely on a range of elements outside formal institutions and systems, such as an active civil society, informed and politically educated citizens and a free and independent press and media that report on the operation of the political system.
- 3. Guidelines on an effective accountability framework for elected representatives and elected bodies at the local and regional level**
- 3.1 The principle of accountability can be made a practical reality by putting in place an accountability framework comprising regulations, rules, norms, institutions, and practices, which should be promoted through training and awareness-raising initiatives. An effective accountability framework will identify the following elements of the accountability relationships.
- i. Who is accountable and what they are accountable for*
- 3.2 For all representatives and bodies, the accountability framework should clearly identify and document the matters for which they are accountable and the extent to which they are legally and financially responsible.
- 3.3 Representatives and bodies entrusted with collegial, deliberative and scrutiny functions (typically local/regional assemblies) should be accountable for the manner in which they perform these tasks. Representatives and bodies entrusted with executive and managerial tasks (typically local/regional government functions, including mayors) should account for the manner in which public services are delivered, including the implementation of policies and objectives agreed upon with the deliberative body.
- 3.4 Wherever possible, the number of laws, regulations, and other rules that representatives and bodies are required to apply, particularly ministerial decrees and circulars, should be reduced; the legislation in force in the main spheres of activity of representatives and bodies should be presented as consolidated legislation.
- ii. How they will be held to account and to whom they should be held accountable*
- 3.5 Major importance should be attached to enabling citizens and civil society to express opinions, provide feedback on policies, formulate suggestions and voice criticism or concerns. This may include referendums, popular initiatives and various forms of participation and consultation. For the design of such measures, inspiration may be drawn from the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207). Particular attention and consideration should be given to those who may experience barriers to participation to enable them to have an equal say in matters affecting them.
- 3.6 The deliberations of local and regional assemblies should be public; the agenda and important documents discussed at the meetings should be made available in a timely manner. The law should provide for limited circumstances in which meetings can be held in private and representatives and bodies must still be prepared to report on decisions taken in such meetings.
- 3.7 All information provided for the purpose of scrutiny should be made available in a format that is accessible and relevant to those for whom it is intended. Information that is made public should be objective and of high quality, for the purpose of enabling citizens to form their opinions on the actions of representatives and bodies. When making use of the potential of new information technology, careful consideration should be given to ensure accessibility for groups who experience barriers to accessing information online.

- 3.8 The legal framework should provide for a comprehensive system of record-keeping, retention, classification, and archiving, including retention periods, concerning official and other documents pertaining to the activity and responsibilities of representatives and bodies, including the activity of bodies under their responsibility. Retention periods should be commensurate with the deadlines and statute of limitations provided for litigation procedures. Policies should also be in place to deal with specific requests for information held by the local and regional authorities. Inspiration may be drawn from the Council of Europe Convention on Access to Official Documents (CETS No. 205) and the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of local authorities (CETS No. 207).
- 3.9 The scrutiny process should be governed by adequate rules and regulations which set out the categories, content, and frequency of accounts to be provided by representatives and bodies, to ensure that up-to-date and meaningful information, including accounts of activity, remains constantly available.
- 3.10 The scrutinising body should be given the means and authority to perform its tasks, including sufficient time for consideration and seeking the desirable clarification, the opportunity to have recourse to people with the necessary degree of expertise to assist them, and access to relevant information and accounts to make an informed assessment. This may also include the power to solicit an independent external audit concerning specific matters that the accounts presented (are meant to) cover.
- 3.11 Political affiliation should not interfere with the process of scrutiny which precedes a deliberation or vote on the final conclusions. The same information, within the same deadlines, should be made available to all members of the scrutinising body, irrespective of political considerations. Rules should also guarantee fair access of members of political groups to specific scrutiny functions (as a rapporteur or member of a specific review group, for example). The mandatory periodic public audit of local and regional authorities should be organised in such a manner as to ensure political neutrality.
- 3.12 A representative or body whose action or management is under scrutiny should have the opportunity to be heard and to provide explanations for its actions and decisions.
- 3.13 Where representatives and bodies are held accountable for their action by other tiers of government or bodies appointed by them in any of the following cases, this should be clearly determined by the law: ensuring compliance with the law and constitutional principles; expediency in respect of tasks which have been delegated to them; a legally required activity which was not undertaken; financial supervision aimed at fostering good accounting practices and effective management, preventing financial imbalances or monitoring the financial rehabilitation of local authorities encountering financial difficulties.
- 3.14 Where appropriate, mechanisms for a political response to representatives and bodies may include: petitions calling for action on a specific issue; interpellation requiring a response; procedural questions requiring an answer; a motion of confidence/no-confidence on whether a person is fit for the position of responsibility; a motion of censure or suspension; popular dismissal through a referendum.
- 3.15 Channels should be in place for employees and stakeholders to disclose suspicions of malfeasance, together with protective measures, drawing inspiration from Recommendation CM/Rec(2014)7 on the protection of whistleblowers.
- 3.16 All forms of violence against representatives and candidates should be clearly condemned and, where possible, should result in dissuasive sanctions. Where representatives and bodies (including their relatives) may be at risk of physical violence, hate speech, including sexist hate, online intimidation and abuse, degradation of property, etc., victims should be able to benefit from rapid and effective protection, for instance by means of restraining orders. The responsible use of social networks by representatives, bodies and the public as regards local/regional politics and public affairs should be encouraged.

iii. Consequences

- 3.17 The process of reporting and holding to account, through scrutiny and other mechanisms, will highlight both good and weak performance. It will incentivise accountable behaviour and build an accountable culture focused on learning and developing better public services for the future.
- 3.18 The use of procedures aimed at the early termination of a mandate should be exceptional, and strictly and precisely regulated in law. The legislation should define the procedural guarantees of transparency, legitimacy and legality of the recall process, clearly identify those involved in the process, and set the thresholds for launching the procedure and for validating the recall. Clear and reasonable time limits for launching the procedure should be set after a previous election or before a future election, as well as jurisdictional control of the steps and conditions of the process.
- 3.19 In particular:
- a. popular recall should only complement the other mechanisms available in a representative democracy; it should be subject to legal limitations, for example in respect of the timing, the number of signatures that are required, the quorum for decisions on recall and the required majority for decisions on recall. These limitations are important in order to avoid transforming a representative mandate into an imperative mandate;
 - b. popular recall should be possible only for those elected to local and regional government functions by direct universal suffrage and prohibited for individual members of elected councils;
 - c. in principle, local and regional assemblies should have no authority to dismiss mayors and other heads of local government who are elected directly unless the dismissal is the unavoidable consequence of a collective resignation of the assembly or results in the dissolution of the assembly itself.
- 3.20 Administrative measures entailing a suspension, removal or dismissal of local government or the dissolution of local councils at the initiative of a higher territorial level or the State authorities should be exceptional and clearly provided for by law in a very limited number of circumstances. These circumstances, which should be defined by criteria set in law, should include when the functioning of the institution is seriously hindered and/or when its course of action does not pursue the public interest of the local/regional constituents.
- 3.21 The early termination of a mandate should allow, if necessary, for new elections to be held without delay and avoid the need to appoint a manager where the rules or the situation do not allow an elected substitute or deputy to carry out required functions.
- 3.22 Legal, civil, criminal, or disciplinary consequences of actions or inactions should be regulated by law, in a clear, predictable and consistent manner, with appropriate safeguards in place to prevent their misuse.
- 3.23 In principle, representatives should not be held personally liable when acting within the scope of their duties and in good faith. Specific criminal provisions may provide for situations in which action by representatives entails liability in cases of serious negligence. The question of the individual liability of representatives or of bodies with legal personality, should be appraised by a court of law which shall determine any possible sanctions applicable. It might be advisable to set up specialised sections within the civil or administrative courts to deal with issues of financial liability, or independent specialist bodies to provide opinions on such matters before judgments are made by the courts.
- 3.24 Local and regional authorities should be allowed to take out insurance covering their financial liabilities, and pecuniary liability insurance on behalf of their representatives, to protect them from lawsuits engaged as a result of damage or loss suffered by citizens in the course of the normal activities of representatives and bodies carried out in the public interest and provided that the damage or loss does not result from gross negligence or tortious intent. Local and regional authorities, or their elected representatives, should also be allowed to set up mutual insurance bodies to cover the risks mentioned above.

- 3.25 In the case of unlawful decisions taken by a collegiate body deliberating in public, it is advisable to exclude the personal liability of those having formally justified their opposition to these decisions, provided it is possible to know how each member of the collegiate body voted.
- 3.26 The application of any kind of automatic pecuniary sanction mechanism should only be possible following an adversarial hearing, either judicial or opening a right to judicial proceedings, and the finding of serious negligence or deliberate tortious intent.
- 3.27 Criminal acts committed by representatives in the course of their duties should attract proportionate and dissuasive sanctions. An additional measure of ineligibility following a conviction must be limited in time (not perpetual). Immunity from criminal prosecution, including where it is enjoyed by representatives by virtue of an additional mandate held at another tier of government, should not prevent prosecution in the case of serious criminal conduct involving the interests of the local or regional authority.