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

**PRELIMINARY DRAFT RECOMMENDATION  
FOR THE COMMITTEE OF MINISTERS ON DEMOCRATIC  
ACCOUNTABILITY OF ELECTED OFFICIALS AND BODIES AT LOCAL  
AND REGIONAL LEVEL**

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

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## Introduction

The GT-RE discussed the draft at its 3<sup>rd</sup> meeting (8-9 March). Below is a summary of the main directions given by the working group.

## Action required

CDDG members are invited to share any comments they may have on the draft, which appears in appendix.

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## In general

- A more systematic approach is desirable in distinguishing between accountability mechanisms, their forms, implications and modalities of implementation and the consequences that can be drawn in a logic of proportionality, and the various actors involved.
- A principle of symmetry between the mode of designation and the accountability link (who reports to whom) should be kept in mind.
- It was also necessary to insist on the effectiveness of the rules and general norms of good conduct and mutual trust as well as on the 12 Principles and their contribution.

## As for the operative part of the Recommendation

- The justifications/considerations should also refer to the desire for greater citizen participation, to some additional texts, to the need to strengthen democracy, and be ranked in order of importance.
- A definition of accountability should be included here (rather than in the appended guidelines).
- The link between the general accountability of elected officials and bodies, and the accountability of other entities under their influence or authority should be clarified (for whose activities elected officials and bodies may be held accountable even if they are not directly responsible for the services which are provided).
- Participants considered that the protection of elected officials is an increasingly important issue.

As for the attached guidelines

- The first chapter on basic principles should become a general call to establish (or revise) the framework for accountability policies and practices, and to specify the various forms (formal, political), the actors concerned and the general implications.
- Some of the basic elements of the chapters that follow on the various forms of accountability and responsibility (including ethics) would logically need to be incorporated into this first part.
- Chapters II, III and IV on political, legal/judicial and managerial mechanisms should follow a systematic approach distinguishing the various elements of accountability (who is accountable, how, to whom, in relation to which responsibilities and with what possible consequences).
- Regarding political mechanisms, a distinction should be made between the various forms of implementation (censure motion, no-confidence motion).
- Concerning legal/judicial mechanisms, this is the chapter under which the achievements of Recommendation CM/Rec(99)8 should be included.
- The management mechanisms should place more emphasis on the relationship with accountability and on entities outside the public sphere that carry out missions of general interest, as well as on the importance of auditing.

Since the members of the working group were also given an opportunity to submit written contributions after the meeting, the member of the United Kingdom prepared a contribution reflecting most of the above comments and proposing to divide the guidelines appended to the draft Recommendation into two sets of principles :

- A first Annex with the components of an Accountability Framework:
  - who is held to account;
  - what they are accountable for (which will differ in each member state, and could also extend to the actions of companies/quangos appointed to carry out specific responsibilities);
  - who they are accountable to. As a basic principle, elected representatives provide an account to those who have granted them a position of authority or power (but will also, in parallel, provide an account to other actors. The interactions between different layers of accountability should be clearly set out and subject to review);
  - how they can be held to account by these people/bodies and how judgements can be made about whether someone has departed from those standards and rules etc.;

- the results which may follow from this, including a judgement as to whether departing from expectations is acceptable or if there must be consequences in line with the laws and constitutional arrangements for different situations in member states (e.g. political consequences such as recall, or legal/judicial consequences linked to their work).
- A second annex, addressing operational regimes which are complementary to an Accountability Framework and should have the following characteristics:
  - terms of responsibility, contracts, agreements, compliance etc.;
  - the part played by citizen participation;
  - the part played by civil society;
  - transparency, openness, access to information, periods for retention;
  - other independent systems which will also be calling on the official/body to provide an account for aspects of their activities;
  - training and awareness raising;
  - delegation and outsourcing responsibility for public services;
  - measures/ policies to protect elected officials in the light of recent trends;
  - independent systems complementing the accountability framework, upholding good standards and enforcing the rule of law: formal processes which are part of the political system - petition, interpellation, motion of no confidence (or censure) or suspension, popular dismissal through a referendum; legal system; administrative systems; professional standards.

## **APPENDIX**

### **Preliminary draft of the Recommendation discussed by the GT-RE at its 3<sup>rd</sup> meeting (8-9 March 2021)**

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, where local authorities have, in the words of Article 3, paragraph 1, of the European Charter of Local Self-Government (ETS No. 122, hereinafter "the charter"), "the right and the effective capacity ... to regulate and administer, within the framework of the law, on their own responsibility and for the benefit of their populations, a substantial part of public affairs", these authorities become accountable to citizens and state authorities as provided by law;

Considering that, according to Article 4, paragraph 3, of the Charter, "the exercise of public responsibilities should, as a general rule, be entrusted preferably to the authorities closest to the citizens";

Considering that the accountability of elected representatives and elected bodies [at local and regional level] for their action and management contributes:

- to preserve good governance of public affairs,
- to maintain and develop the confidence of citizens in their elected representatives by ensuring that the exercise of public authority is in line with the interests of the community,
- to effective democratic control,
- to reduce the risks of a drift in the financial situation of local authorities, which is a major concern in most countries;

Considering that the transparency, in general, of the actions of elected representatives and elected bodies, and the quality of information, including access to information held by local and regional authorities, are important corollaries of their accountability;

Considering that clarity of legislation concerning local self-government, in particular in the definition of collective and individual competences and responsibilities, including the consequences to be drawn from inadequate management, is an essential condition for good governance in accordance with the rule of law and fundamental rights;

Considering also that the legal security of elected officials is a source of concern in many countries, and that uncertainties about the extent of their individual responsibility may deter candidacies and thus affect the necessary renewal of political leaders, but also have a negative impact on the capacity for initiative and the effectiveness of public action;

Considering that the experience of many member states shows that it is necessary to organise systems of responsibility [accountability] in such a way as to guarantee, by virtue of the Charter, both their effectiveness and the maintenance of "a large measure of autonomy as regards the powers [of local authorities], the manner in which they are exercised and the means necessary for the accomplishment of their mission";

Considering that, according to Article 7, paragraph 1, of the charter, "the status of locally elected representatives should ensure the free exercise of their mandate", sanctions against local government representatives (suspension, removal or dismissal of elected representatives and dissolution of local bodies, fines) should be exceptional and applied only when the functioning of the institution is hindered;

Considering that, according to Article 11 of the charter, "local authorities must have a right of judicial recourse in order to ensure the free exercise of their competences ", which implies the possibility of recourse and guarantees against the abusive calling into question of the responsibility of local elected officials by those who appreciate the quality of their work;

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 Council of Europe Convention on Access to Official Documents (CETS No. 205);
- Recommendation CM/Rec(2018)4 of the Committee of Ministers to member states on the participation of citizens in public life at local level and the Guidelines on civil participation in political decision-making;
- Recommendation CM/Rec(2019)3 of the Committee of Ministers to member states on the control of the acts of local authorities;
- 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 Ministers responsible for Local and Regional Government (15-16 October 2007);

- Recommendation 395 (2017) of the Congress of Local and Regional Authorities of the Council of Europe on recurrent problems identified in the assessments following Congress election monitoring and observation missions;

- earlier work of the Steering Committee on Local and Regional Democracy (CDLR), in particular its study on the accountability of locally elected representatives for acts or omissions in the exercise of their functions (1998);

- the work of the Venice Commission, in particular its Report on the popular dismissal of mayors and local elected representatives (June 2019);

- the recurrent issues identified in the evaluations of the Group of States against Corruption (GRECO), particularly in the second, fourth and fifth rounds of evaluations;

Recommends that the Governments of Member States, on the basis of the rules set out in the Annex, 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 [note by the Secretariat: formula taken from Recommendation CM/Rec(2019)3 on the control of acts of local authorities in order to take into account the division of competences between the national and local/regional levels],

1. review existing rules and policies to ensure that locally and regionally elected representatives and bodies:
  - a) be required as broadly as possible to account for their actions and for the manner in which they carry out their mandates, responsibilities and management, including with respect to the status of entities and bodies distinct from local or regional government [alternative: in respect of which they exercise management or control] [Secretariat note: this is in response to the desire of delegations to take into account the status of quangos, semi-public companies and other entities not directly under the administrative services];
  - b) and that appropriate political, legal [judicial] or other [administrative] consequences, as the case may be, can be drawn from possible significant deficiencies;
2. to ensure that the legal, institutional and regulatory framework relating to the responsibility [accountability] of elected representatives and bodies at the local and regional level is:
  - a) proportionate, in law and in practice, to the importance of the interests it seeks to safeguard by ensuring a fair balance between the needs of good governance and a high level of accountability of those who are called to account, on the one hand, and the capacity of elected representatives and elected bodies to act without undue interference from those who evaluate their actions [citizens and oversight bodies], on the other;

- b) in conformity with the standards of the Council of Europe, in particular the Charter and the 12 Principles of Good Democratic Governance; [note by the Secretariat: formula taken from Recommendation CM/Rec(2019)3 on the control of acts of local authorities];
- 3. to draw inspiration from these rules, as far as relevant, in the definition of similar frameworks for elected officials and elected bodies at the national level [note by the Secretariat: some delegations had expressed the wish to make such a reference to the central State level];
- 4. to periodically evaluate the measures adopted and undertake, if necessary, legislative reforms to improve the effectiveness of [responsibility] [accountability] mechanisms and the consistency of their implementation. In doing so, they 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. note by the Secretariat: formula taken from Recommendation CM/Rec(2019)3 on the supervision of acts of local authorities];
- 5. to translate this recommendation into the official language(s) of the country and actively disseminate it to local authorities, their associations and other interested parties.



## ***Annex to Recommendation CM/Rec(20XX)XX***

### **Guidelines for Improving the Accountability Mechanisms of Elected Representatives and Elected Bodies at the Local and Regional Levels**

[For the purposes of this Recommendation...(introductory part with working definitions used to date). Note by the Secretariat: In order not to make the text cumbersome, it may be preferable to refer to the various working definitions in the Explanatory Report or to include only the basic definition of accountability.

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

NB: Another definition is already given in Recommendation CM/Rec(2019)3 and the 12 Principles of Democratic Governance: "accountability... ensures that all decision makers, collective and individual, take responsibility for their decisions, which are reported on, explained and can be sanctioned, and that effective remedies are in place against maladministration."

#### **I. General principles and basic corollaries**

Member States should undertake the following actions:

##### **A. Transparency, access to official documents and public participation**

[Note by the Secretariat: The importance of referring to transparency, participation and access to public documents was stressed in previous discussions. Previous CDDG texts already set out certain principles. Existing wordings, for example, in Recommendation CM/Rec(2018)4 on citizen participation in public life at the local level, can provide a basis with some adaptations.]

1. Ensure compliance with the principles applicable to the communication of information, set out in the Council of Europe Convention on Access to Official Documents (CETS No. 205), in the various matters that concern the local authority, in order to give their citizens the opportunity to participate in decisions that affect their community or that affect them personally and to allow for transparency in decision-making at the level of local authorities, thus reinforcing the accountability of decision-makers.
2. To seek new ways to (...) promote a culture of accountability and democratic participation shared by communities and local authorities and to enable the exchange of good practice in this area between the various local and regional authorities.

3. Attach major importance to the continuous communication of objective and quality information between local and regional public authorities and the public, enabling citizens to judge the actions of elected representatives and bodies and to make the widest possible use of the potential of new information technologies. In any event, the deliberations of local and regional assemblies should be public and accompanied, to the greatest extent possible, by the availability of the agenda and important documents discussed at the meetings. The hypotheses of recourse to meetings behind closed doors should be clearly and restrictively listed.

4. The following information should be easily accessible: general information (structure, competence, etc.) on administrations and elected decision-making bodies; identification of the staff and/or elected officials responsible for the various policy areas; objective and quality information on the public policies pursued, and the result of the evaluation of these policies; draft annual budgets and annual accounts; the result of financial and organizational audits.

5. Where elected representatives at local and regional level are required to submit periodic declarations of private interests and assets, and on the contacts they may have with representatives of interest groups, these declarations should be published and easily accessible, so as to provide information on possible influences of third parties or private interests on the decisions and actions of elected representatives.

6. The above information should ideally remain available over a period of time so as to allow comparisons to be made from year to year.

7. Encourage local officials to value citizen participation and to give careful consideration to their requests and criticisms in order to provide appropriate responses within a reasonable period of time.

8. Recognise and strengthen the role of citizens' associations and groups as essential partners in developing and maintaining a culture of accountability and participation.

## **B. Training and Awareness Raising**

1. Given the temporary nature of the mandate of local and regional elected officials and the diversity of socio-professional backgrounds from which they come, the establishment of a culture of accountability calls for initial and ongoing training and awareness-raising measures regarding their general responsibilities, rights and obligations that accountability entails. Elected officials and elected bodies should therefore benefit from such measures and be able to obtain advice when they feel the need to do so from clearly identified services.

2. The public and the elected bodies themselves, in assessing the information reported, should be informed of what they are entitled to expect and of the means available to them to obtain the necessary information and to express their approval or disapproval of the action taken.

## **C. Quality of rules**

1. Ensure that the rights and obligations of an elected official or elected body and the specific accountability requirements set out in laws, regulations, procedures or other instruments, including the consequences to be drawn from the implementation of accountability or responsibility of the persons or bodies concerned, are subject to a clear, consistent, predictable and stable legal framework. Adequate safeguards should be provided against the misuse of these rules for purposes other than those for which they were enacted.
2. Explanatory documents and guidelines illustrated with concrete cases and regularly updated can provide useful additional information.
3. In general, an elected official or elected body whose actions or management are in question should be given the opportunity to be heard and to provide explanations.

## **II. Political accountability**

[note by the Secretariat: the following elements are largely based on inputs from the Venice Commission].

1. The responsibility [accountability] of elected representatives and elected bodies at the local and regional levels may give rise to a political response other than sanctioning by election. This response may take the form of petition, interpellation, motion of no confidence (or censure) or suspension by a body that is itself political - usually the body that appointed the elected representative to office, or popular dismissal through a referendum.
2. The use of procedures aimed at the early termination of a mandate should be strictly and precisely regulated because they can be diverted from their purpose and they contradict the principle of freedom of representative mandate attributed for a determined period of time – which is the foundation of democracies :
  - this recourse must remain exceptional;
  - it must be provided for in national or regional law and precisely regulated;
  - when the reasons justifying the cancellation of a warrant call for a legal assessment, it should be up to the courts to decide by expedited judicial procedure, within the time limits set by law;
  - this should allow, if necessary, for new elections to be held, and to avoid the need to appoint a manager] [this should make it possible to hold new elections, if necessary, and to avoid appointing a manager].

3. With regard to popular recall in particular, it should only complement the other mechanisms available to a representative democracy:

- It should be possible only for mayors elected by direct universal suffrage, and prohibited for members of local councils;
- the legislation should define procedural guarantees of transparency, legitimacy and legality of the recall process, clearly identify its actors, set the thresholds for launching the procedure (number of signatures of voters or local council members) and for validating the recall;
- clear and reasonable time limits are to be expected after a previous election or before a future election;
- as well as a jurisdictional control of the steps and conditions of the process.

### **III. Legal [judicial] liability**

Member States should undertake the following actions:

1. ensure that local and regional elected representatives are subject to clear rules on their personal liability, both civil and pecuniary, and criminal, ensuring a fair balance between the needs of accountability in their actions and management, on the one hand, and those of preserving the attractiveness of elected political office on the other hand.

2. In particular, elected officials should not be held personally liable when acting within the scope of their duties and in good faith.

3. local and regional authorities should have the possibility of taking out insurance or setting up an indemnity scheme to cover possible costs related to proceedings against elected representatives.

4. Local and regional elected representatives, bound by their office to demonstrate exemplary behaviour and integrity, should be subject to effective, proportionate and dissuasive sanctions when they act with criminal intent outside their remit (principle of the act detachable from office). An additional measure of ineligibility following a conviction must be limited in time (not perpetual).

5. The offences to which they are subject may be common offences, or specific offences designed to capture the specificities of malfeasance in the exercise of public functions and facilitate criminal prosecution, for example, manipulation of public contracts, misappropriation of public property and resources (e.g. for electoral purposes), conflicts of interest, trading in influence.

6. Care should be taken to ensure that the provisions, which generally apply to public officials, are as broadly applicable as possible also to local and regional elected officials even when they do not exercise administrative functions as such.

7. It should also be ensured that immunities from criminal prosecution, including those enjoyed by the elected representative by virtue of other elected offices, particularly national ones, do not prevent prosecution in the case of wrongdoing involving the interests of the local or regional authority.

8. Allegations of a civil or criminal nature must be examined by a court and the elected representative concerned must be able to appeal against a decision.

#### **IV. Managerial accountability**

Member States should undertake the following actions:

1. Promote and encourage, through legislation or regulations, circulars and incentive policies, good governance of public entities and administrations along the lines of what is being done regarding the governance of organisations: generating core values for the organisation, planning and strategy, internal control mechanisms, stakeholder engagement (users, clients...), leadership, quality of data and decisions, risk management, social responsibility, organisational sustainability and long-term perspectives, accountability. [Note by the Secretariat: reference is made here to ISO 37000 in particular].

2. within this framework, pay particular attention to the imperative of accountability, given the importance of this subject-matter for public and political institutions and the functioning of democracy at the local and regional level. This presupposes that elected officials and elected governing bodies always assume ultimate responsibility for the functioning of institutions under their responsibility, observance of the rules imposed on these, and their actions and inactions.

3. This accountability and responsibility must be enforced even if responsibilities are delegated to others within the institution or other bodies under its (co-) leadership.

4. It should therefore be ensured that delegations of responsibilities are clearly defined, with clear objectives and expectations throughout the chain of command, and that the persons or bodies benefiting from such delegations report periodically on their performance through evaluation / appraisal processes.

5. Define the organisational scope of accountability: in particular, account should be taken of structures created or managed in whole or in part by local and regional authorities (quangos, semi-public companies, para-public associations, etc.), and appropriate criteria should be used to define which of these structures are to be taken into account in the scope of responsibilities of elected officials or elected bodies and thus in the democratic debate on their action.

6. The law should clearly define:

- the obligations relating to the financial planning and budgeting of local and regional authorities, including the use of internal and external audit;
- the rights and responsibilities of local and regional assemblies to take cognizance of a given situation and to ensure that elected representatives vested with managerial functions respect the orientations decided upon and the financial, budgetary and organisational/administrative imperatives agreed politically or imposed legally;
- the hypotheses in which a higher authority, at state or regional level as the case may be, may intervene to ensure that a local assembly which does not itself carry out its tasks, complies with certain fundamental requirements or even appoint a commissioner to temporarily carry out certain tasks.

7. Local assemblies responsible for assessing situations and the information submitted by elected representatives or bodies reporting to them should have the possibility of recourse to persons with the necessary degree of expertise to assist them.

8. The law should also clearly determine the cases in which elected officials may be held personally liable for failure to comply with certain organisational, administrative, and budgetary/financial obligations. The decision and any resulting sanction should be made by an independent court of law.