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Overview of administrative supervision of local authorities' activities in selected countries

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Introduction

The present report was prepared in response to the request formulated on 16 December 2019 by Minister of Community and Territorial Development of Ukraine Alyona BABAK and refers to the Council of Europe standards on administrative supervision of local authorities' activities and existing legal frameworks and practices related to it in the selected counties: Denmark, Finland, Germany, Ireland, Norway, Sweden, the Netherlands and the United Kingdom.

Key remarks

The framework for legality supervision is an important element of the local government system in all European states. It is even more important in a state going through a process of accelerated decentralisation through the transfer of new competences and resources to local elected representatives and administrations, a process accompanied by efforts to help them develop their capacities.

During the last 50-60 years most European countries underwent municipal-level territorial reforms aimed at reducing the number of local governments¹ and creating larger and stronger municipalities. Although the rationale for these reforms varies widely², most of them contributed to a significant increase of the degree of local governments' autonomy throughout Europe³.

Such a development was quite revolutionary taking into consideration that in a number of countries the state's almost omnipotent "*contrôle de tutelle*" (guardianship) over local authorities had long been dominating the philosophy of administrative supervision of local government activities⁴. Requirements of prior authorisation to act or of confirmation for local acts to take effect, power to annul a local authority's decisions regardless of the type of competence used to be the national government *business as usual*.

On the other hand, through the decentralisation reforms many central governments transferred more competences to local authorities (namely in the domain of social services) supposing that: *a)* the same tasks will have to be accomplished by local authorities, but with less money; *b)* in fulfilling these tasks, local authorities must follow the directives approved by the central government (in

¹ In the early 1990s, the 39 European countries had altogether about 120.000 municipalities; in 2014 the number of municipalities amounted to about 106.500. In some countries, however, the consolidation of municipalities is an ongoing process. The Nordic countries, where municipalities enjoy a very high degree of autonomy, between 1990 and 2014 further reduced the number of their municipalities (e.g. from 275 to 98 in Denmark, from 452 to 342 in Finland). Also Germany continued to reduce the number of its municipalities by about 5000 (mainly in the new Länder) (Ladner 2015). For more details please refer to Appendix I.

² The first wave of territorial reforms took place in 1960-70s in the Northern part of Western Europe (Belgium, Denmark, Finland, Norway, Sweden, the Netherlands, the Federal Republic of Germany, the United Kingdom, etc.) and was rooted in the very popular belief at that time in *economies of scale* in relation to both industry and public administration. Further changes were initiated in Central and Eastern Europe following the demise of undemocratic regimes aimed at *bringing back a high degree of municipal autonomy*. In the aftermath of the financial and economic crisis that has shaken primarily but not exclusively Western European States, another wave of restructuring has been set in motion aimed at *reducing costs, improving service delivery* (Swianiewicz 2017).

³ Ladner, A., Keuffer, N. and Baldersheim, H. (2015). Local Autonomy Index for European countries (1990-2014). Release 1.0. Brussels: European Commission
https://ec.europa.eu/regional_policy/en/information/publications/studies/2015/self-rule-index-for-local-authorities-release-1-0

⁴ Explanatory Report to the European Charter of Local Self-Government (1985) <https://rm.coe.int/16800ca437>

terms of efficiency, etc.)⁵. These are new challenges for local autonomy, which reduce their activities discretion and might transform local authorities into simple “executors” of national legislation.

After all decentralisation reforms conducted in the 60s and 70s, it became clear that supervision is one of the most important elements of a solid local self-government system. At the same time, no country in Europe trusted that a system where the only supervision of legality of local authorities’ acts was done by the citizens themselves simply because of the asymmetry of information between citizens and their authorities. This problem is compounded by local authorities’ relative inexperience to manage new tasks in case of recent decentralisation and, in the last decades, by the slow but sure disappearance of small local independent newspapers in favour of corporate media, and then of online sources of information (social media in particular). On the other side, excessive supervision risks killing local self-government and destroying the very benefits decentralisation is supposed to bring.

Therefore, a need for a new model of state supervision of local authorities’ activities as an element of check-and-balances system became obvious.

Council of Europe standards

European Charter of Local Self-Government

In 1985 the **European Charter of Local Self-Government** (henceforth “the Charter”) defines the principle of local autonomy as one of the pillars of democracy, stressing the need for local authorities to enjoy wide ranging autonomy and to *limit* administrative supervision of their activities. For obvious reasons, the extent to which municipalities are subject to state supervision affects the autonomy of local government.

Article 8 of the Charter sets the framework for supervision of local authorities’ activities by other levels of government, which *normally* should be concerned with the **legality** of local decisions (their compliance with legal regulations) and not expediency (merit or public interest), which represents restrictions on local autonomy. *Expediency* might be a merit of oversight of delegated powers, however, local authorities shall, insofar as possible, be allowed discretion in adapting their exercise to local conditions (Article 4 of the Charter).

Provision of the Carter and Explanatory report (1985)

Article 8 – Administrative supervision of local authorities' activities

*Explanatory report to the Charter⁶: This article deals with supervision of local authorities' activities by other levels of government. It is not concerned with enabling individuals to bring court actions against local authorities nor is it concerned with the appointment and activities of an ombudsman or other official body having an investigatory role. The provisions are above all relevant to the philosophy of supervision normally associated with the *contrôle de tutelle* which have long been the tradition in a number of countries. They thus concern such practices as requirements of prior authorisation to act or of confirmation for acts to take effect, power to annul a local authority's decisions, accounting controls, etc.*

1 Any administrative supervision of local authorities may only be exercised according to such

⁵ Swianiewicz, P., Gendźwiłł, A. and Zardi, A. (2017). Territorial reforms in Europe: Does size matter? Territorial Amalgamation Toolkit. Centre of Expertise for Local Government Reform, Council of Europe <https://rm.coe.int/territorial-reforms-in-europe-does-size-matter-territorial-amalgamatio/168076cf16>

⁶ Explanatory Report to the European Charter of Local Self-Government (1985) <https://rm.coe.int/16800ca437>

procedures and in such cases as are provided for by the constitution or by statute.

Explanatory report: Paragraph 1 provides that there should be an adequate legislative basis for supervision and thus rules out ad hoc supervisory procedures.

- 2 **Any administrative supervision of the activities of the local authorities shall normally aim only at ensuring compliance with the law and with constitutional principles. Administrative supervision may however be exercised with regard to expediency by higher-level authorities in respect of tasks the execution of which is delegated to local authorities.**

Explanatory report: Administrative supervision should normally be confined to the question of the legality of local authority action and not its expediency. One particular but not the sole exception is made in the case of delegated tasks, where the authority delegating its powers may wish to exercise some supervision over the way in which the task is carried out. This should not, however, result in preventing the local authority from exercising a certain discretion as provided for in Article 4, paragraph 5.

- 3 **Administrative supervision of local authorities shall be exercised in such a way as to ensure that the intervention of the controlling authority is kept in proportion to the importance of the interests which it is intended to protect.**

Explanatory report: The text draws its inspiration from the principle of "proportionality", whereby the controlling authority, in exercising its prerogatives, is obliged to use the method which affects local autonomy the least whilst at the same time achieving the desired result. Since access to judicial remedies against the improper exercise of supervision and control is covered by Article 11, precise provisions on the conditions and manner of intervention in specific situations have not been felt to be essential.

According to the Explanatory report to the Charter, its key principles are the following:

- there should be a sound **legislative basis** for supervision provided by the Constitution and/or by the law;
- administrative supervision should normally be confined to the question of the **legality** of local authority action and not its expediency. Delegated tasks might be an exception, however, the local authority should exercise a certain discretion as provided by Article 4 of the Charter;
- the principle of "**proportionality**" means that the controlling authority is obliged to use the method which affects local autonomy the least whilst at the same time achieving the desired results;
- access to **judicial remedies** against the improper exercise of supervision and control should be provided as set out in Article 11 of the Charter.

It is worth noting that not every country who ratified the Charter, declared their readiness to comply with the abovementioned framework of the legality supervision. The Netherlands for instance indicated that it did not consider itself bound by Article 8, paragraph 2 of the Charter, considering the extent of the supervisory power given to the Crown in the national legal system.

Recommendations of the Council of Europe Committee of Ministers

Application of the principles of supervision of local authorities' activities, enshrined in Article 8 of the Charter, is further guided by **the Recommendations of the Council of Europe Committee of Ministers, adopted in 1998 and 2019**. Monitoring of the Charter implementation is carried out by the Congress of Local and Regional Authorities of the Council of Europe (henceforth "the Congress") on a country-by-country basis.

The 2019 Recommendation made a clear distinction between three different types of supervision: a) administrative (covered by Article 8 of the Charter); b) financial (targeted at sound financial performance); and c) democratic supervision by citizens.

Both Recommendations focused on the need for improvement of consistency between the systems of supervision and the principle of **subsidiarity**. Also, they encouraged local authorities to create **internal control procedures** to reduce the risks of errors and litigation (please refer to Appendix II).

The 1998 Recommendation urged to apply administrative sanctions concerning local authorities' representatives (suspension or dismissal of local elected representatives and dissolution of local bodies) only **exceptionally**, to accompany their use with the appropriate guarantees, in order to ensure their compatibility with the free exercise of local electoral mandates.

The 2019 Recommendation further elaborated on the application of the proportionality principle to ensure that the only consequences of supervision are the maintenance or the restoration of legality or sound finances. Relevant tools depend on the nature of the local government competency under consideration. In the event that illegalities are identified in relation to **own** competencies, redress should normally be sought by inviting the local authority to review its decision or by referral of the matter to the competent court. In the case of **delegated** competencies, procedures for redress by the delegating or supervisory authority may include issuing an advisory statement; requesting the modification, reversal, suspension or annulment of the decision or activity; or substitution or coercive measures as allowed by law. Meanwhile, annulment of activities should be kept to a minimum.

The 1998 Recommendation also recommends that own competencies should be favoured over delegated ones and, unless otherwise provided for by law, local authorities are deemed to exercise own competences. It also recommends that there should normally be a single first instance supervisory authority.

Overview of existing legal frameworks and practices in selected countries

Academic research of administrative supervision in 39 European countries was done as a part of Local autonomy comparative study⁷. Although Nordic countries (Denmark, Finland, Iceland, Norway and Sweden) rank among the countries with the highest degree of autonomy and constitute a particular type of mature local government system, their supervision models are different.

It is worth noting that powers of legality supervision authorities, which are in practice exercised in most countries under this research, are limited to non-radical interventions (request remedy and, if

⁷ Ladner, A., Keuffer, N. and Baldersheim, H. (2015). Local Autonomy Index for European countries (1990-2014). Release 1.0. Brussels: European Commission
https://ec.europa.eu/regional_policy/en/information/publications/studies/2015/self-rule-index-for-local-authorities-release-1-0

necessary, in some countries suspend and appeal to court or annul), although a number of countries⁸ do provide legal framework for administrative sanctions (suspension or dismissal of local elected representatives, dissolution of local bodies, appointment of a commissioner). Such powers are however exercised with caution: as an example, during recent decades in the UK there were only few cases (all in Wales) of dismissal of local council and appointment of a Commissioner to act as a local authority.

Table 1. Administrative supervision authorities and their powers in selected countries

	Agency in Charge of Supervision				Powers of Supervision Agency				
	<i>One main agency subordinated to</i>		<i>Several agencies subordinated to</i>		<i>Send to Court</i>	<i>Suspend</i>	<i>Annul</i>	<i>Impose sanctions</i>	<i>Advisory</i>
	Central	Regional	Central	Regional					
Denmark	X				X	X	X	X	X
Finland				X				X	
Germany				X		X	X	X	X
Ireland	X		X			X	X	X	X
Netherlands			X			X	X	X	X
Norway		X						X	X
Sweden			X	X	X	X	X	X	X
UK				X	X	X	X	X	

Source: Council of Europe Secretariat, on the basis of reports on structure and operation of local and regional democracy (1999 - 2013), supplemented with the author marks where missing

Selection of the countries for this overview was made jointly by the Council of Europe and the Ministry of Community and Territorial Development of Ukraine.

All the selected countries represent the High Income Group (OECD). However, there are significant differences in terms of average population of municipalities and their fiscal role (Fig. 1 and Fig. 2).

⁸ Per instance, Ireland, Germany, the Netherlands, UK.

Fig. 1. Number of municipalities and their average population in selected countries⁹

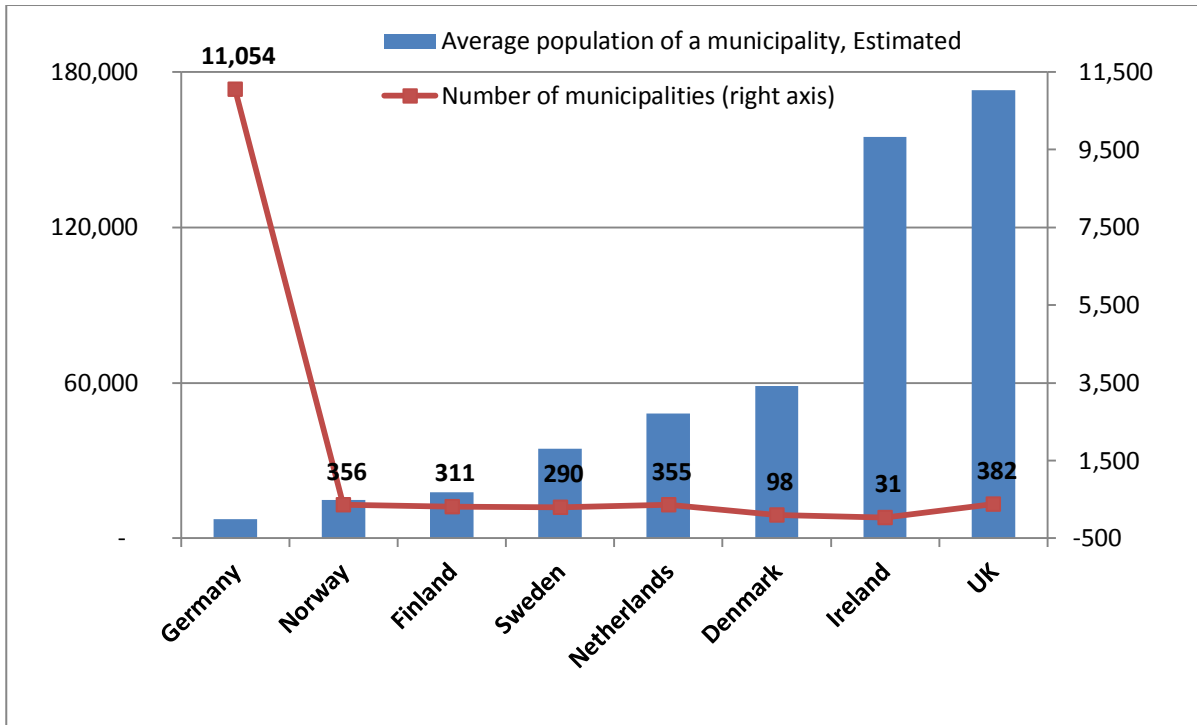
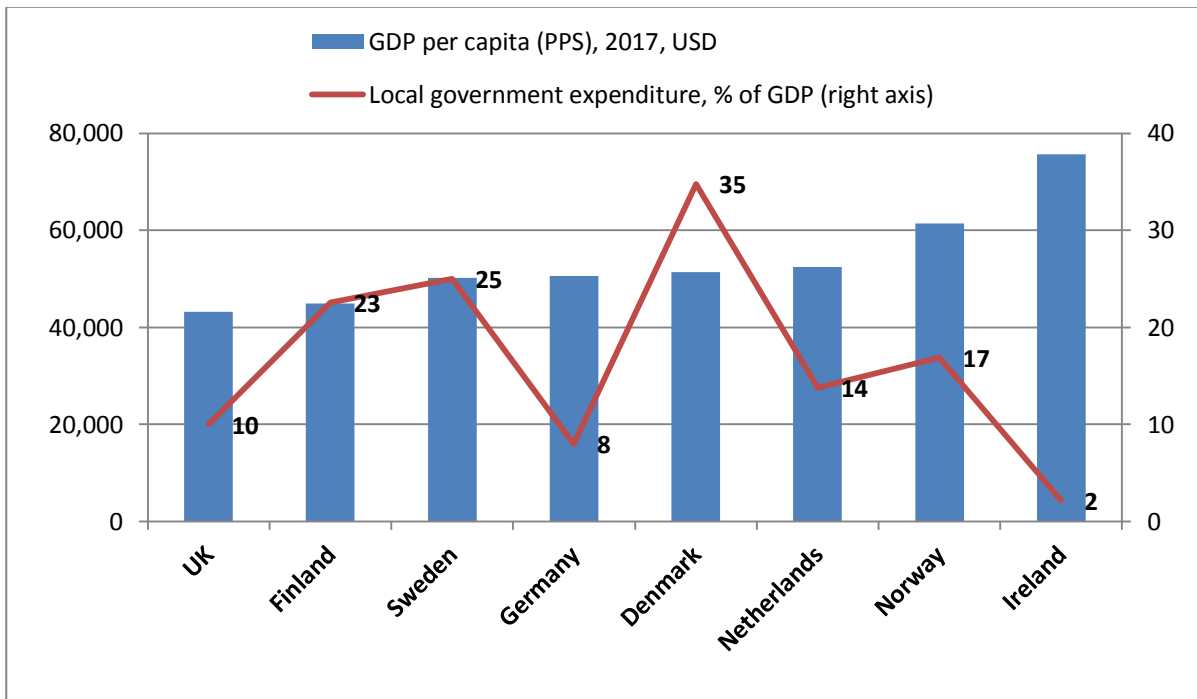


Fig. 2. Local government expenditures vs GDP per capita (current PPP) in selected countries¹⁰



⁹ OECD Country profiles: regional facts and figures <http://www.oecd.org/regional/regional-policy/country-profiles.htm>

¹⁰ OECD Country profiles: regional facts and figures <http://www.oecd.org/regional/regional-policy/country-profiles.htm>

Denmark

The Kingdom of Denmark's nature of local democracy has been recognized by the Congress (2013) as generally positive and in some ways exemplary¹¹. Therefore, detailed description of the Danish experience is presented below.

Denmark has undergone two waves of radical territorial reform. In 1970 the number of Danish counties was reduced from 86 to 14 and the number of municipalities from 1300 to 275. In 2007 the counties were transformed into a new level of responsibility - **five regions**, each of which is led by a regional council elected by direct suffrage. Secondly, 271 municipalities were merged into **98 municipalities** with directly elected councils. Consequently, average population of the Danish municipalities (58 154) is much higher than the EU average (5 630).

Meanwhile, in January 2019, the government announced the health care reform, which aims to abolish the 5 current regions with elected councils. According to the reform plan, hospital services will be organised by five new organisations, which are governed by nominated boards, with no directly elected body and no self-government feature. The rest of the current social and health services will be transferred to 21 new health associations, which are organised and governed by municipalities.

Total local government expenditures in Denmark equal 35% of GDP or 65% of total public expenditure (2016), which is the highest level in the EU. This is partly due to the fact that local governments have significant competences in the field of social protection, including the payment of various social benefits.

Article 82 of the Danish **Constitution** (since 1849) sets out the right of municipalities to manage their own affairs independently but under State supervision.

Formally, supervision in Denmark aims at controlling only legality of municipal decisions and service provision, but in practice supervision has become more detailed and extensive over the last decade; thus the concept of legality has been stretched¹².

Supervision of Danish municipalities is carried out by the **five devolved State regional administrations** under the direction of the **Minister of Social Affairs and the Interior**. These administrations verify the legality, though not the expediency, of local government activities, with the exception of labour law and specific fields in which other public authorities are vested with oversight powers, including health and education. Supervision includes the activities carried out by the local council or on behalf of the local council (e.g. the committees, the mayor and the administration, when they act on behalf of the local council).

The cases dealt with by the supervisory authority are usually the subject of a consultative declaration in which the authority provides a legal opinion on the case in question. The supervisory authority informs the local council of its responsibilities under current legislation. It can also impose sanctions for decisions taken by a local council or against specific councillors having colluded in an illegal

¹¹ CLRA Monitoring and Election Observation Reports [https://www.coe.int/en/web/congress/congress-reports#%2254213415%22:\[16\]](https://www.coe.int/en/web/congress/congress-reports#%2254213415%22:[16])

¹² Ladner, A., Keuffer, N. and Baldersheim, H. (2015). Local Autonomy Index for European countries (1990-2014). Release 1.0. Brussels: European Commission
https://ec.europa.eu/regional_policy/en/information/publications/studies/2015/self-rule-index-for-local-authorities-release-1-0

municipal act. The sanctions available are **annulment, suspension, fines and actions for damages**. However, the sanctions are very seldom used.

The **Ministry of Social Affairs and the Interior** can only consider cases of fundamental importance and cases where sanctions have been imposed. The Ministry is empowered to annul or modify State administration's sanctions. This role played by the Ministry in "judging" legality has attracted controversy and criticism. It has been suggested that it might be replaced with a kind of administrative court.

In accordance with legislation, **special supervisory or appeal boards** have been set up in a wide variety of fields in order to verify local authority decisions and the execution of their tasks and to consider complaints in this regard.

In addition to the supervision of legality, all local and regional authorities must have their accounts verified by the **Local Authority Auditing Service**, an inter-municipal body operating under the association of local authorities, or by a **private company**.

Municipality borrowing requires **prior approbation** by the state. The only exception is the utility area (refuse disposal, sewers and supply of water, heating and electricity) – where expenditures are not allowed to be financed by taxes but must be financed solely by user fees – in which municipalities and municipal companies within certain limits are granted borrowing autonomy.

Finland

Finland is the only parliamentary Republic among the Scandinavian countries. It gained independence only in 1917, following a very long period of foreign rule that included seven centuries as part of Sweden and one century as part of the Russian Empire. Historical context inevitably influenced relations between local and central authorities.

The principle of local government is explicitly recognized in the Constitution: "Finland is divided into municipalities, whose administration shall be based on the self-government of their residents".

Finland has undergone several municipal reforms, in particular in 2005-2007 which promoted inter-municipal cooperation and municipal mergers (the number of municipalities decreased to 311 in 2018). The most senior position in a municipality is either that of chief executive or mayor. Whereas the chief executive is a local government officer and not a member of the local council, the mayor is chosen from among local councillors. Most Finnish municipalities have **a chief executive model**, which implies internal oversight procedure. The Law provides that if the local executive deems that a local council has exceeded its authority or that a decision is otherwise unlawful, he/she shall not put the decision into effect. The matter shall then be brought for reconsideration by the local council without delay.

The Finnish Local Government act (1995) has been completely reformed in 2015, focusing on internal supervision as response to increased complexity of the municipality and its entity including municipal companies and other bodies. The external supervision of the municipalities has remained on the same State Regional level, but this level has been very much reformed during last decades and is currently under reformation, too.

According to the Local autonomy index (2015), in general, the supervision institution in Finland is **fairly weak**¹³. State authorities do not exercise a systematic control over all municipal decisions. Supervision of the legality of municipal activities is mainly exercised by the **administrative courts** in individual cases. In most cases Administrative Courts may uphold the decision or repeal it, but not directly amend it.

Additionally to court appeal there is a possibility of administrative complaint of a citizen, which might be investigated by several different authorities: **Regional State Administrative Agency**, the **Chancellor of Justice**, the **Parliamentary Ombudsman** of Finland and the **National Supervisory Authority for Welfare and Health Valvira**.

Supervision is slightly different in respect of social services, which represent a significant part of local authorities' action. According to the Social Welfare Act, the Regional Government Office directs and supervises social welfare in its area of competence and monitors the adequacy of the services in its territory.

Valvira (national agency operating under the Ministry of Social Affairs and Health, charged with the supervision of the social and health care, alcohol and environmental health sectors) directs the activities of regional government agencies in order to harmonize their policies, procedures and decision-making practices in the direction and supervision of social welfare.

The provisions on social welfare control entitle **Valvira or the Regional Government Office to undertake, on its own initiative, overall supervision of the service system of the entire municipality, without the need for a complaint or other indication of maladministration**.

Administrative supervision of social welfare is primarily **an administrative legality control aimed at monitoring the fulfilment of the municipal obligations** to provide social welfare and the functioning of the service structure. In addition, supervision of municipal operating units is implemented as part of municipal control and supervision of the municipal service system.

Legality control can also lead to sanctions, the use of ultimately binding rules or a ban on the use of the operational unit. In an individual case, in the application of interpretative and transparent provisions, the legality review determines that the minimum requirements of the legislation are met.

Alongside the legality review, the supervisory authorities can in practice assess the appropriateness of the action taken through the guidance and negotiation procedure. In practice, due to the general nature of the provisions, it is not possible to separate categorically between the supervision of the legality of municipal social and health care provision and the assessment of its appropriateness in practice.

If, in the course of the supervision and supervision of social welfare, it is found that a municipality or association of municipalities has acted in error or failed to fulfil its obligations in organising or performing activities under this Act, Valvira and the Regional Government Office may give notice to the municipality or may draw the attention of the supervisor to the proper organisation of the business and to good administrative practice. A remark is the most serious administrative criticism that can be made and used in a social welfare system by a supervised person for obviously unlawful

¹³ Ladner, A., Keuffer, N. and Baldersheim, H. (2015). Local Autonomy Index for European countries (1990-2014). Release 1.0. Brussels: European Commission
https://ec.europa.eu/regional_policy/en/information/publications/studies/2015/self-rule-index-for-local-authorities-release-1-0

or inappropriate conduct or, for example, in situations where the supervised subject has previously been referred for similar conduct. It does however not have legal repercussions.

In 2007, there was an introduction of an economic supervision tool, so called an evaluation procedure, for those municipalities in economic difficulties. These municipalities are defined by economic indicators in law: level of debt, indebtedness ratio, annual margin and accumulated deficit. Checking is done by **Ministry of Finance** every year, on the base of yearly Financial Statements of all municipalities.

Finland provides constitutional status for **two languages**, and 15 per cent of Finnish municipalities are recognized as bilingual¹⁴ or Swedish speaking. Supervision of language legislation application is provided by the **Ministry of Justice** (issues binding recommendations and prepares every 4 years monitoring report for the Parliament) and by the **Swedish Assembly of Finland**, which is a statutory organisation (est. 1919), whose tasks are laid down by the individual law and covers consideration of linguistic right violation complaints from public.

Germany

The Federal Republic of Germany is made up of 16 federal states, each having its own constitution, parliaments and administrative structures. The relations between the federal and the state governments are governed by the Basic Law. The federal states have the power to legislate unless the Basic Law assigns this power to the federal government. Local authorities' supervision arrangements **vary from state to state**, as forms, procedures and instruments of administrative supervision are regulated by the Land legislation.

The three-tier system of subnational government includes a regional level (16 Länder), an intermediate level (401 Kreise - counties) and a local level - municipalities (11,054 Gemeinden). There are 294 "rural districts" (Landkreise). Cities with more than 100,000 inhabitants (and smaller towns in some states) do not usually belong to a district, but take on district responsibilities themselves, similar to the concept of independent cities. These are known as "urban districts" (German: Kreisfreie Städte or Stadtkreise) – cities which constitute a district in their own right – and there are 107 of them.

The number of municipalities has decreased regularly in recent decades, as a result of municipal amalgamation policies. Mergers were carried out by several Länder in the 1970s (Baden-Württemberg, Hessen, North Rhine-Westphalia), after 1990 in the former East Germany (e.g. in Brandenburg in 2003) and, more recently, in the Land of Saxony-Anhalt (from 1 015 municipalities in 2008 to 222 in 2012).

Municipalities in all Länder, except for that of Hessen, are governed according to the "*council system*", with a local council elected by direct suffrage. The mayor (Bürgermeister), also elected by direct suffrage, chairs the local council and heads the municipal administration. In the Land of Hessen, municipalities are governed according to the "*magistrate system*".

As a rule, the **district administrative office** (Landratsamt), a state agency, is the supervisory body for the municipalities that belong to districts. Supervision of non-district municipalities and rural districts conforms to the structure of the state in question. If the state in question has state intermediate level agencies, such as **district boards** (Regierungspräsidien), then these agencies are the municipal

¹⁴ A municipality is bilingual when at least 8 per cent or 3,000 residents speak a minority language as their mother tongue

supervisory bodies for the non-district cities and for the rural districts. If the state has no such intermediate level agencies, the supervisory body is the relevant **Minister of the Interior, who is the supreme supervisory body in all states**.

Notably, the respective governments of the **three city-states** (Berlin, Bremen and Hamburg) are not supervised by a superior level of government in the way the other municipalities are controlled. Legal control over their actions is exercised by the **constitutional courts** of these Länder.

Supervisory control over local authorities within scope of their **own** competencies targets only legality issue. In the area of **delegated** competencies local authorities are subject to “technical supervision” which includes both compliance with the law and expediency. Technical supervision over the counties and large cities is always carried out by the responsible ministry; technical supervision over municipalities belonging to a county is carried out by the county and the responsible ministry.

With both legal and technical supervision, the supervisory agency has the same means of surveillance, including:

- The right to be **informed**: The legal supervisory agency can require information concerning individual affairs;
- The right of **objection**: Certain measures can be prevented from taking effect or from remaining in effect;
- The right to **require the issuance of directives**: The municipality can be required to take certain measures in order to fulfil its legal duties;
- The right to **substitute for the municipality**: The legal supervisory agency may substitute for the municipality in carrying out certain tasks;
- **Appointing a commissioner**: The legal supervisory agency can appoint a commissioner to carry out all or part of a municipality’s duties.

In general, the Congress rapporteurs (2012) recognized that all conditions of Article 8 of the Charter prevail in Germany.

Ireland

Ireland has traditionally been a highly centralised state with local self-government formerly recognised in the constitution for the first time only in 1999. Although in 2014 a major reform changed the allocation of responsibilities across levels of government, the **reform even led to a decrease of local autonomy**, providing the worst rank of Ireland in the Local Autonomy Index scoreboard among 39 countries¹⁵.

Before the 2014 reform launch the Congress (2013) expressed concern that the **administrative supervision of local authorities’ activities by the central level remains disproportionate** and called Irish government to ensure that the **level of supervision would not increase even more** through the

¹⁵ Ladner, A., Keuffer, N. and Baldersheim, H. (2015). Local Autonomy Index for European countries (1990-2014). Release 1.0. Brussels: European Commission
https://ec.europa.eu/regional_policy/en/information/publications/studies/2015/self-rule-index-for-local-authorities-release-1-0

establishment of a new additional **National Oversight Office** to monitor the *efficiency* of local authorities including, inter alia, their compliance with national objectives and policies.

The 2014 reform drastically modified the territorial organisation: 114 local councils were merged into 31, a system of sub-county governance of 95 Municipal Districts was introduced; 8 regional indirectly elected councils were replaced with 3 regional assemblies (also indirectly elected). Consequently, Irish **municipalities are very large** (average population being almost 155 000), while exercising a **relatively limited range of responsibilities** (they mainly concern economic affairs, environmental issues, housing, cultural and recreation facilities). In the course of the 2014 reform some functions have been **recentralised** (e.g. water services have been transferred from local authorities to the State company “Irish Water”). Therefore, Ireland has **one of the lowest ratios of local expenditure to GDP** (2,2%) and public spending (8%) among OECD unitary countries. Local governments depend largely on central government grants.

The **National Oversight and Audit Commission** (NOAC) is a specially designed body (established in 2014) to provide independent oversight local government sector in Ireland (local authorities and associated bodies). Despite the Congress (2013) concerns, NOAC’s functions are wide ranging, covering all local authority activities and involving the **scrutiny of performance generally and financial** performance specifically. NOAC also has a role in overseeing implementation of national local government policy and monitoring and evaluating implementation of corporate plans, adherence to service level agreements and public service reform by local government bodies.

Other stakeholders, who also have a supervisory role of local authorities, are the **Local Government Audit Service, the Environment Protection Agency and the Office of the Planning Regulator**.

The Department of Housing, Planning and Local Government (which provides secretariat to support the NOAC work) has specific powers such as to **remove members of local authorities** from office on a number of specific grounds and to **appoint a Commissioner to act as a local authority** (although this power has been used very rarely, the latest instance being around 25 years ago). Also, the central government can **revoke any local by-law**, if considered “objectionable” although this power has apparently never been used. Radical interventions are not necessary, as the most important instruments are subtle forms of control such as notes, comments and explanations on legislation, technical inspection, enquiries by the Department and budgetary restrictions and “caps”, the Congress rapporteurs stressed (2013).

Netherlands

In the political tradition of the Kingdom of the Netherlands supervision of municipal activities by the province and the central bodies is seen as a part of the system of self-government, a feature that checks local autonomy in order to ensure the unity of the country. However, the supervision model is profound and quite restrictive¹⁶, targeting expediency and compliance with the *public interest*. Thus, the Government of the Netherlands, when ratifying the Charter, indicated that it **did not consider itself bound by Article 8, paragraph 2**¹⁷, which limits supervision to the issue of *legality* of municipal activities within own competencies.

¹⁶ In the Local autonomy index scoreboard the Netherlands sub-index “Administrative Supervision” is the lowest (0 out of 3) (Ladner 2015).

¹⁷ Article 8, paragraph 2: “Any administrative supervision of the activities of the local authorities shall normally aim only at ensuring compliance with the law and with constitutional principles. Administrative supervision may however be exercised

Moreover, the principle of local self-government is explicitly recognised neither in the Constitution nor in the legislation (Municipalities Act). The opening article of the relevant Chapter of the Constitution provides that “**provinces and municipalities¹⁸ may be dissolved by an Act of Parliament**”.

Another specificity of the Dutch local government system is that the mayor is not elected directly, either by the local residents or by the council. **Mayors are appointed by royal decree** based on the recommendations of the local councils. Therefore, foremost official representative of the municipality – the chair of both the council and of the executive body - might be considered as an element of supervision.

The Revitalisation of General Supervision Act (2012) updates procedures of supervision over municipalities by different supervisory authority in each policy area. **Provincial authorities** are responsible for supervision of local authorities, with regard to spatial planning, construction, the natural environment, housing, monuments and the structural safety of buildings and other works. The **central government** is responsible for supervision of tasks of local authorities if provincial authorities have no expertise in the matter, for example social affairs, welfare and education and has the competence of annulling decisions of municipal or provincial administrative bodies.

State authorities are **to approve, suspend or to annul** municipal decisions as following:

- a. Prior approval: This approval must be given by royal decree. To obtain such approval, the local decision is to be sent to the **Minister of the Interior**. The minister takes the final decision, on the basis of the report of the Council of State.
- b. Suspension and reversal of local decisions: An order or a non-written decision adopted by the municipal administration may be reversed by **Royal Decree**, on the grounds of *legality* or for the protection of the *public interest*. In this case, **state control is triggered by a demand of the mayor**. If the mayor is of the opinion that a decision should be considered for reversal, within two days of it coming to his or her attention, he or she is to inform the **Minister of the Interior** through the **Provincial Executive**. Simultaneously, the mayor is to inform the body which took the decision (the council or the executive board), and, if necessary, the body that has been charged with its implementation. The said minister is to make a recommendation for the suspension of the contested local decision. The Royal Decree to suspend, withdraw or extend the suspension of a decision or to reverse it, is to be published in the Bulletin of Acts, Orders and Decrees. When a royal decree has been granted, the municipal authority is to make a new decision on the matter that formed the subject of the reversed decision.

In reality, and according to the information facilitated to the Congress delegation (2014), the actual application of such controls is very rare and the relative autonomy of local authorities in the Netherlands is due not so much to legislative and institutional arrangements but to a long-standing democratic practice.

with regard to expediency by higher-level authorities in respect of tasks the execution of which is delegated to local authorities”. The Government of the Netherlands declared that this particular guideline could only be followed by the Netherlands where it does not bring into question the extent of the supervisory power given to the Crown in its legal system.

¹⁸ As of Jan. 2019, there are two tiers of local self-government: 12 provinces and 355 municipalities (decreased from 672 in 1990).

Norway

The Constitution of the Kingdom of Norway (1814) makes reference neither to local self-government, nor to local democracy. The legal framework is set by the Local Government Act (1992) and other laws, which states that the role of local democratic bodies is more administrative than legislative.

Although Norway's GDP used to be much higher than of other Scandinavian countries (partly due to oil revenues), its local government expenditure (17% of GDP or 33% of public expenditure in 2016) was significantly lower. Meanwhile, Norway is the least densely populated country in Europe after Iceland (17 persons per sq km).

Since 1 January 2020, a radical territorial reform¹⁹ in Norway has come into effect, reducing overnight the number of **municipalities** from 428 to **356** and transforming 19 **counties into 11 regions** as functional units. The reform had been prepared during 6 years, however its outcomes are still to be assessed.

All the main functions performed by local authorities, including in the field of social welfare, health and education, are closely scrutinised by central government. Administrative supervision of local authorities' activities is exercised **by the governor**, who acts as the representative of central government in the counties and is also the **coordinator of the activities of other central government bodies** at the county level. Besides supervising compliance with the law, governors can also exercise a form of supervision with regard to *expediency* and issue **recommendations** or even **instructions** to local authorities and raise **objections**, e.g. in matters relating to town planning.

The governor may carry out reviews on his or her own initiative, or if asked to do so by at least three members of the municipal council or by members of the public who consider that their individual rights in relation to health, social welfare, education or construction and planning have been infringed upon. These local decisions can thus be reversed in favour of the individuals concerned.

The Congress, in its country monitoring report (2015) expressed **deep concerns** regarding compliance with the Charter, especially on supervision issues, mentioning the following:

- The governor and other supervising bodies may de facto exercise their supervision in a manner that exceeds the spirit of the law and which lacks a clear specification of competences in statutory law;
- The control exercised by the government through a too dense and specific sectoral legislation may lead to a considerable degree of supervision;
- Moreover, there is **no judicial remedy for municipalities** to challenge the respective decisions of the central government.

Additionally, in support of the above-mentioned findings, the Local Autonomy Index study (2015) reveals that state supervision in Norway has become extremely detailed and extensive over the last decade.

In this context, the Norwegian government has declared that one of the aims of the current reform is to improve coordination and streamline the state supervision of municipalities. Progress report is still to come.

¹⁹ Previous reform was done in the 1960s, when the number of municipalities decreased from over 700 to about 450

Sweden

The Kingdom of Sweden is now considered to be among the most decentralised countries in the world²⁰. In 1960s and 1970s the municipalities and counties were granted strong financial autonomy. Municipal mergers started on a voluntary basis but were made compulsory. In 1974 the number was cut from 464 to 278. Today, the municipal average size is around 34 000 inhabitants (to be compared to 9 700 inhabitants in the OECD on average) and the median size is 15 500 inhabitants.

Sweden is a rare case among European countries in that most of the local revenues (on average 70%) are derived from local taxes. It is also a rare case in that local authorities have not been affected by the economic and financial crisis almost at all. The financial equalisation system is enshrined in the law and works well.

In 2011, the constitutional reform introduced a new Chapter 14 under the title “Local Authorities”, which establishes that municipalities and county councils are vested with a decision-making power which is exercised by elected assemblies and lays down the principle of *proportionality* in relation to any restrictions imposed on local self-government.

The **County Administrative Boards** (CABs, led by **County Governors** appointed by the central government) and **central government agencies** are commissioned to supervise municipalities and county councils for compliance with the laws and regulations. The CABs are also responsible for coordinating central government activities in the counties.

The areas where oversight is exercised extensively are environmental protection, social services and education. Different monitoring instruments are used such as evaluations, inspections, benchmarking systems and follow-ups.

The principle of autonomy, as the second pillar to guarantee local self-government, is sometimes considered challenged by a significantly increased amount of **detailed state regulations for local level** activities, for example in such areas as working conditions, health care, education and public procurement, which carry the risk of infringement on local affairs.

Local authority representatives complained to the Congress rapporteurs (2014) that often decisions are taken at the national level which have financial implications that **limit financial autonomy** at local level. Secondary school education was mentioned as an example. To start with the reform, funds were provided by the state level; however, the fact that the newly reformed secondary education system had to run alongside the old school system simultaneously was not taken into account.

In addition, according to SALAR (Swedish Association of Local and Regional Authorities), central government agencies such as the **National Board of Health and Welfare and the Swedish Work Environment Authority**, within the framework of their supervision, provide regulations which can be contradictory and in certain cases also reach beyond their competence.

Under the Local Government Act (Chapter 9) an audit scheme was established at the municipal as well as at county council level. The auditors are appointed by the council and are independent in reviewing the activities of the board, committees and the administration. The elected auditors are assisted by experts and carry out their function according to generally accepted auditing standards called “good auditing”.

²⁰ OECD Country profiles: regional facts and figures <http://www.sng-wofi.org/country-profiles/Fiche%20SWEDEN.pdf>

United Kingdom

The United Kingdom is made up of four countries (England, Scotland, Wales and Northern Ireland) which retain territorial and cultural distinctions of their own, and it has thus **very complicated local government arrangements**. In Scotland, Wales and Northern Ireland there are two levels of sub-national government (one of local governments and the region of Scotland, Wales and Northern Ireland themselves). In England²¹ there are areas with one and other parts with two level (district and county) system, and there is no systematic rule which could help to predict which of the two systems may be found in a given place²².

Overall, the United Kingdom has large municipalities on average, around 170 000 inhabitants, which is the OECD's highest. However, the UK system allocates **very limited task and political discretion to the municipalities**, having delegated more competencies to the states (as a result of devolution, launched in 1999²³). Today the **English system could be described as one of or even the most centralised** in the Western world, and at the same time local government in **Northern Ireland as one of the weakest**, given that its functions are not very important (sometimes described as 'bins, bogs and burials'²⁴).

The UK has no written constitution, and therefore no constitutional provision for local governments, which rely instead on Acts and Bills passed by the Houses of Parliament. Under the United Kingdom legal system, case law and common law are important sources of law for local authorities. Local authorities are primarily corporate bodies whose scope for action is determined by statute. The legislation determining the scope for action may, however, be the responsibility of various **Secretaries of State** with responsibilities relevant to the field of activity concerned (for example, the Secretary of State for Education, or the Secretary of State for Work and Pensions).

Central government exercises *a posteriori* control through two main modalities: the **courts** and **specific powers**. Any government department may challenge a local authority through the courts if it considers that the authority has acted unlawfully. Legislation may reserve specific powers to the relevant **Secretary of State** to intervene in the activities of local authorities after the event.

There is no single body with responsibility for exercising general administrative supervision of the actions of local authorities. In the UK local state representatives have not existed for centuries and were established only briefly (between 1994 and 2011). Meanwhile, the UK provides a unique model of temporary commissioners of central government to exercise emergency powers in case of natural or industrial disasters or threats to public order and State security²⁵.

²¹ England has 35 local governments at the intermediary level (upper tier), comprising 26 county councils, the Greater London Authority (GLA) and 8 combined authorities. At the local level, England has 317 lower tier authorities.

²² Swianiewicz, P., Gendźwił, A. and Zardi, A. (2017). Territorial reforms in Europe: Does size matter? Territorial Amalgamation Toolkit. Centre of Expertise for Local Government Reform, Council of Europe <https://rm.coe.int/territorial-reforms-in-europe-does-size-matter-territorial-amalgamation/168076cf16>

²³ Administrative devolution took place in 1999, when Wales, Scotland and Northern Ireland had their own elected assembly and government. The powers and responsibilities of the three devolved bodies vary in nature and scope, as each devolution Act was arranged independently.

²⁴ Ladner, A., Keuffer, N. and Baldersheim, H. (2015). Local Autonomy Index for European countries (1990-2014). Release 1.0. Brussels: European Commission

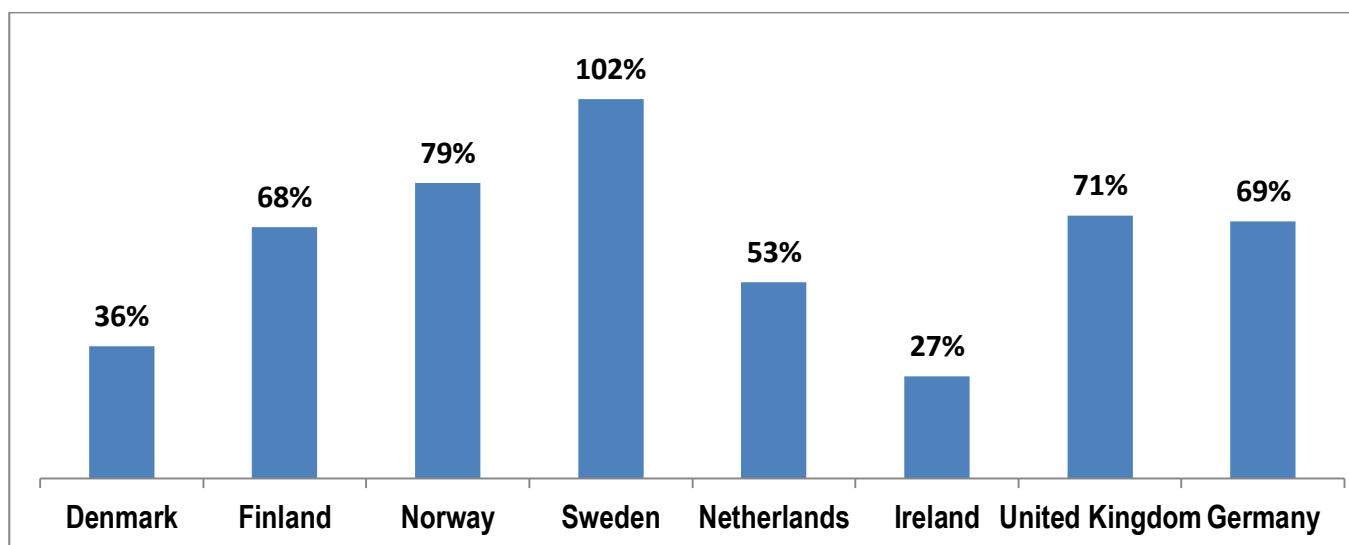
https://ec.europa.eu/regional_policy/en/information/publications/studies/2015/self-rule-index-for-local-authorities-release-1-0

²⁵ Report on European practice and Legal framework on Prefect institution, Local government in emergency situation (CELGR/LEX/2015/2, Prof Marcou) http://www.slg-coe.org.ua/wp-content/uploads/2015/10/CoE-REPORT_On-European-practice-and-legal-framework-on-prefect-institution_local-government-in-emergency-situations_CELGR-LEX-2_2015.pdf

Administrative supervision is also exercised by devolved state level. In England Ministers responsible for various sectors, such as school education, social services and transport, maintain some powers to influence and steer relevant activities of local authorities. They monitor both **legal compliance and efficiency**, using performance indicators for reporting to central government as set in the Single Data list (2011). In **Wales** the **executive functions of a council have been taken over by 5 commissioners** appointed by the Welsh Government due to political in-fighting and a history of poor performance (Isle of Anglesey Council, in 2011). Between 2011 and 2013 the Welsh Government has introduced 'special measures' and commissioners in 6 other Welsh local authorities to address what it perceives as serious shortcomings in education.

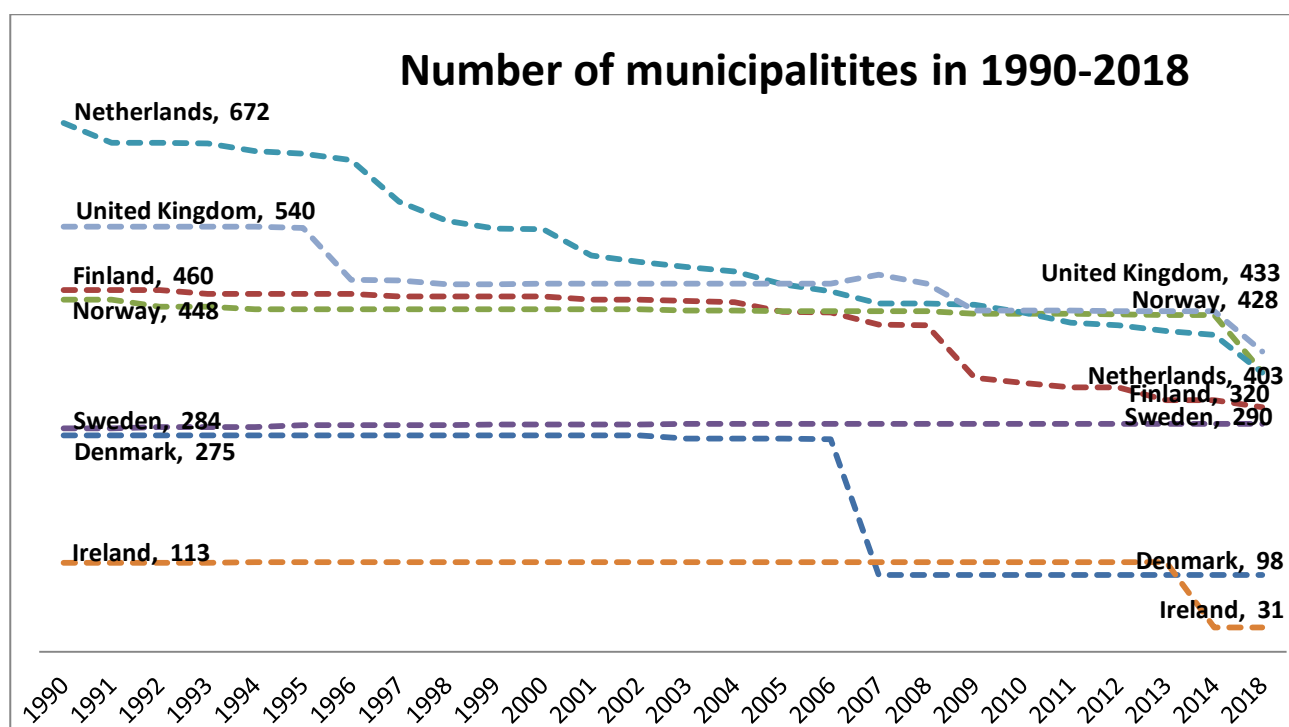
The Congress (2014) expresses concern that **oversight through extensive reporting duties and active involvement in local affairs by various ministries of the central government** poses considerable limits on local authorities' discretion to manage local affairs.

Fig. Number of Municipalities in 2018 (for Norway – as of 1/01/2020), per cent of 1990

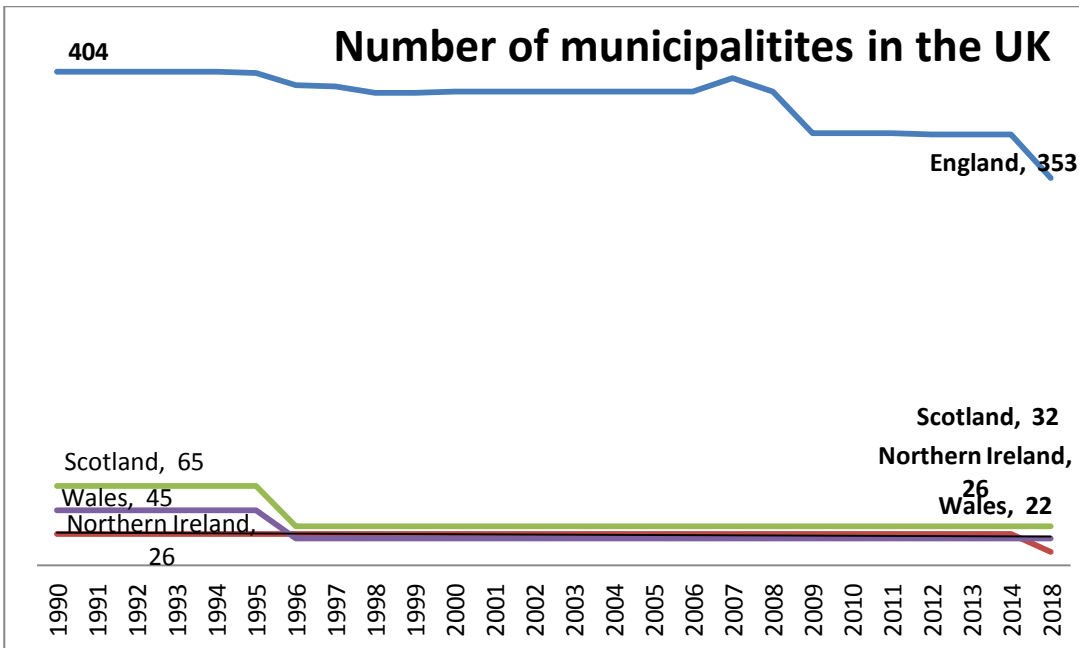


Source: OECD Country profiles 2019 <http://www.oecd.org/regional/regional-policy/country-profiles.htm>; Local Autonomy Index 2015:

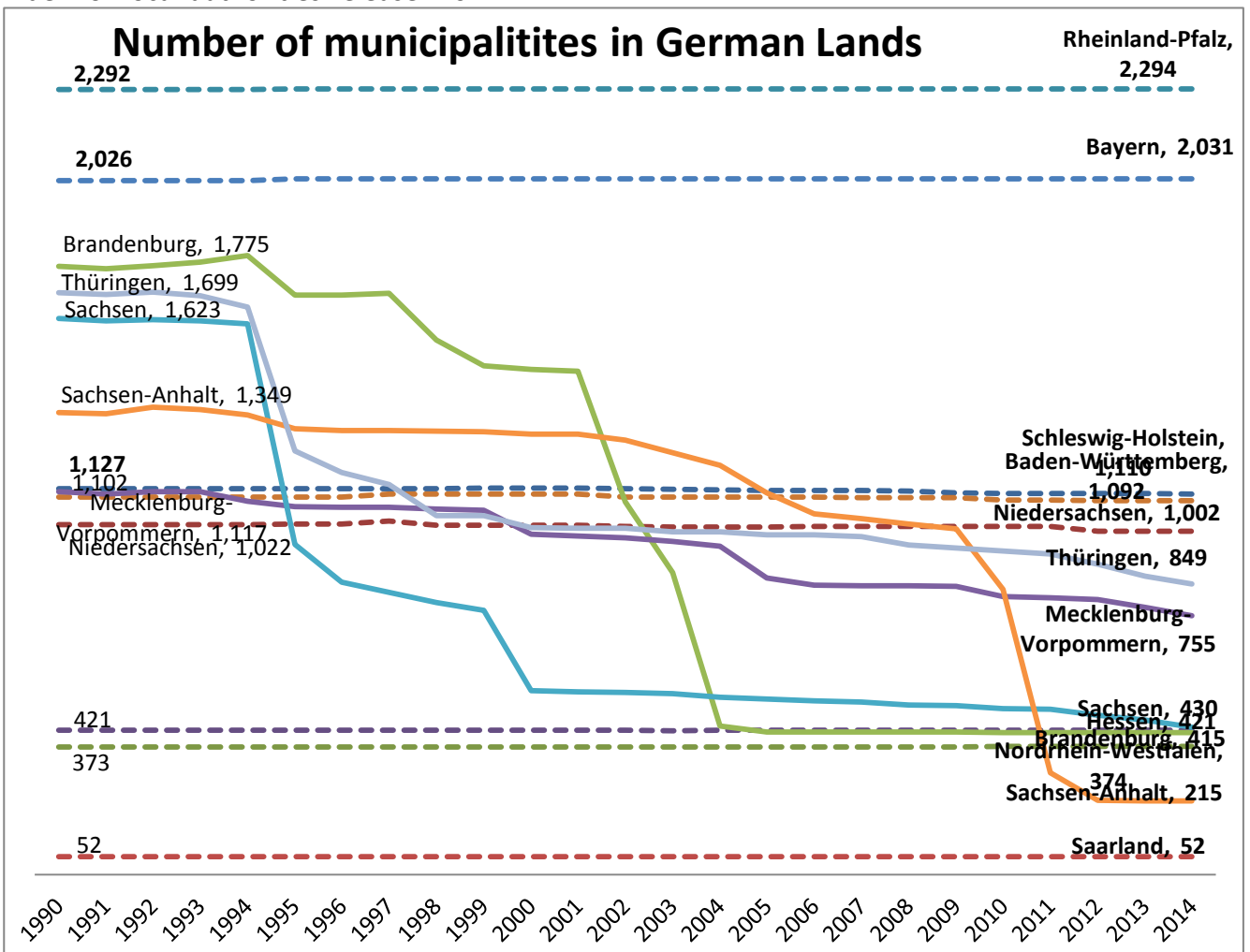
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Source: OECD Country profiles 2019 <http://www.oecd.org/regional/regional-policy/country-profiles.htm>, LAI 2015 https://ec.europa.eu/regional_policy/en/information/publications/studies/2015/self-rule-index-for-local-authorities-release-1-0



Source: OECD Country profiles 2019 <http://www.oecd.org/regional/regional-policy/country-profiles.htm>;
 LAI 2015 https://ec.europa.eu/regional_policy/en/information/publications/studies/2015/self-rule-index-for-local-authorities-release-1-0



Source: https://ec.europa.eu/regional_policy/en/information/publications/studies/2015/self-rule-index-for-local-authorities-release-1-0

Recommendation CM(1998)12	Recommendation CM/Rec(2019)3
<p>Recommends to the governments of member states that they:</p> <p>1. adopt the appropriate measures:</p> <ul style="list-style-type: none"> - to extend the application of the principles enshrined in Article 8 of the Charter to all forms of supervision of local authorities' action; - to recognise the essential role of political supervision by citizens and to foster the implementation of this supervision, through, inter alia, the use of the instruments of direct democracy considered appropriate; - to strengthen the transparency of local authorities' action and to ensure, in general, the public nature of decisions which engender financial costs to be borne by the community, as well as the real possibility for citizens and legal persons concerned to have access to these decisions in conformity with the procedures established according to the law; - in accordance with Article 7, paragraph 1, of the Charter, to allow administrative sanctions concerning local authorities' representatives (suspension or dismissal of local elected representatives and dissolution of local bodies) only exceptionally, to accompany their use with the appropriate guarantees, in order to ensure their compatibility with the free exercise of local electoral mandates, and to give preference to procedures where the supervisory authority, or a named ad hoc authority, intervenes in the place of the authority at fault, thus reducing cases where administrative sanctions could be adopted against the latter; - to provide procedures that local bodies can themselves initiate for solving their internal conflicts, and envisage the intervention of the supervisory administrative authorities only when these procedures achieve no result 	<p>Recommends that the governments of member States undertake the tasks set out in paragraphs 1 and 2 below, or entrust these tasks to the competent public authorities taking into account their respective constitutional or legislative arrangements,</p> <p>1. Adopt, having regard to the guidelines set out in the appendix hereto, appropriate measures to:</p> <ul style="list-style-type: none"> - apply the principles enshrined in Article 8 of the Charter in relation to administrative supervision to all forms of supervision of local authorities' activities; - put in place an appropriate legal, institutional and regulatory framework for supervision of local authorities' activities which is: <ul style="list-style-type: none"> ○ proportionate, in law and in practice, to the interests which it is intended to protect; and ○ in line with Council of Europe standards, in particular the Charter and the 12 Principles of Good Democratic Governance; - foster the role of democratic supervision by citizens including by promoting a vibrant local democracy; - ensure that the consequences of supervision are the maintenance or, as necessary, the restoration of legality or sound finances; - ensure the free exercise of local electoral mandates; - encourage local authorities to create internal control procedures and services to reduce the risks of errors and litigation, and facilitate the relations with external control authorities; - create appropriate conditions so that those responsible for supervision may advise local authorities, if so requested by them, on legal, financial and administrative matters.

<p>2. Undertake, if necessary, the appropriate legislative reforms in order to improve consistency between the systems of supervision and the principle of subsidiarity, and the effectiveness of these systems, taking into account the guidelines appearing in the appendix to this recommendation</p>	<p>2. Periodically review the measures adopted and undertake legislative reforms as needed to improve the effectiveness of the systems of supervision and their consistency with the principle of subsidiarity. In so doing, they should have regard to issues raised as a result of monitoring and election observations missions by the Congress of Local and Regional Authorities of the Council of Europe in relation to the implementation of the European Charter of Local Self-Government.</p>
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