

CENTRE OF EXPERTISE FOR MULTILEVEL GOVERNANCE

OPINION

ON THE ESTABLISHMENT OF A UNIFIED STATE REGISTER OF ACTS OF LOCAL SELF-GOVERNMENT

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This Opinion was prepared by the [Centre of Expertise for Multilevel Governance](#) at the [Congress of Local and Regional Authorities of the Council of Europe](#).

It is available in English and in Ukrainian. Should there be any inconsistency or discrepancy between the English and Ukrainian versions of the document, the English version shall prevail.

I. Introduction

1. On 4 July 2025, Mr Oleksii Riabykin, Deputy Minister for Development of Communities and Territories of Ukraine, and Mr Vitaliy Bezghin, Member of the Parliament of Ukraine, Chair of the Sub-committee on Administrative and Territorial Set Up and Local Self-Government of the Parliamentary Committee on State Building, Local Governance, Regional and Urban Development, addressed Ms Claudia Luciani, Director of the Congress of Local and Regional Authorities of the Council of Europe (the Congress) concerning a specific provision of the Draft Law “On Amendments to Certain Legislative Acts of Ukraine on Ensuring Legality in Activities of Local Self-Government Bodies and Officials” (No. 13150 of 3 April 2025). The provision in question concerns the establishment of a Unified State Register of Acts of Local Self-Government (the Register).
2. The letters asked for an assessment by the Council of Europe regarding the compliance of the implementation of the Register with the provisions of the European Charter of Local Self-Government (the Charter), and established practices of democratic governance.
3. In response to these requests, the Centre of Expertise for Multilevel Governance at the Congress prepared the current opinion on behalf of the Council of Europe.
4. It must be noted that this document does not analyse the Draft Law No. 13150 per se, and that it mentions the issue of administrative supervision over local authorities’ acts – a topic on which the Council of Europe has substantial standards and has already prepared a series of opinions – only insofar as it has an actual or potential relation to the Register. The goal of this opinion is therefore only to reply to the question asked within the very short timeframe between the reception of the requests and the second reading of the Draft Law, which, at the time of writing, is scheduled tentatively for consideration during the plenary week of the Verkhovna Rada of Ukraine on 15-17 July 2025.

II. Transparency and accountability

5. Citizens’ expectations and hence legal provisions and practice in respect of transparency of and accountability for administrative activity have greatly progressed over the past decades. This has been obviously helped by information technologies, which have made publication of information fast and at a very low marginal cost.
6. Typically, transparency concerns two sets of relations. The first refers to the relation between public authorities and their constituencies, citizens, NGOs, and journalists. From declassification to making information public by default (meaning that interested citizens consult it, albeit often with a significant investment of time and energy), to publicising decisions and other information of general interest on paper or online, information availability has greatly progressed. Most local authorities in Europe currently publish all their administrative acts (in the sense of decisions with legal consequences) on their websites.

7. The second set concerns the relation between local authorities and their supervisory authorities. It is not usually expected for the latter to continuously browse through the websites of supervised local authorities, often very different in structure, technical specifications or rhythm of updating, to find out about their decisions. It is therefore often an obligation for local authorities to communicate (transmit) any decision taken to the supervisory authority within a legally set time limit.

8. The two types of transparency obligations (or initiatives), publication and transmission, are not mutually exclusive nor even redundant. The general public may prefer traditional and more user-friendly local authorities' websites as the best source of information about the life of the polis while supervisors (including supervisory authorities and various kinds of auditors) would prefer, in the absence of a system of compulsory transmission, a quick access to information via more structured online registers or official journals. If such register is open to the public, it could also be useful for civil society organisations and media watchdogs.

9. It is the understanding of the Council of Europe that the Register proposed by the Draft Law No. 13150 is of the latter kind, aimed mainly at making the exercise of legality supervision easier, and that it would be open to the public and, therefore, it could also serve as a source of information for civil society organisations and media watchdogs.

III. Relations with the European Charter of Local Self-Government

10. Because of its relationship with the supervisory mechanism, the conformity of the proposed Register with European standards in general and the Charter in particular should first and foremost be analysed in light of Article 8 of the Charter (Administrative supervision of local authorities' activities).

11. As already mentioned in the introduction, the Council of Europe has expressed its position about such supervision on several occasions.¹ Its Committee of Ministers adopted in 2019 a very important standard in this respect,² which builds upon the provisions of the Charter and is abundantly referred to in the Contemporary Commentary by the Congress on the explanatory report to the European Charter of Local Self-Government" (the Contemporary Commentary). Suffice it to mention paragraph 130 of the latter:

"130. In its seminal 2019 Recommendation to member States on supervision of local authorities' activities, the Committee of Ministers of the Council of Europe underlined some key principles and guidelines in the area of supervision. Firstly, the Committee of Ministers declared that the 12 Principles of Good Democratic Governance are applicable to supervision. These principles include openness and transparency, the rule of law and competence and capacity. The Committee of Ministers also set out three different types of supervision: administrative, financial and democratic, only the first of which falls within

¹ For example, see "Overview of administrative supervision of local authorities' activities in selected countries", CEGG/PAD(2020)2, 31 January 2020, <https://rm.coe.int/ceggpad20202/1680aef5bf>.

² Recommendation CM/Rec(2019)3 of the Committee of Ministers to Council of Europe member States on supervision of local authorities' activities, 4 April 2019, <https://search.coe.int/cm?i=090000168093d066>.

the ambit of Article 8 of the Charter. The existence of administrative supervision is justified by the need to comply “with the principles of the rule of law and with the defined roles of various public authorities, as well as the protection of citizens’ rights and the effective management of public property”. Lastly, administrative supervision should be governed by a set of principles and guidelines, which include:

- i. the activities subject to supervision should be clearly specified by law;*
- ii. compulsory automatic administrative supervision should be limited to activities of a certain significance;*
- iii. administrative supervision should normally take place after the exercise of the competences (a posteriori);*
- iv. a priori administrative supervision should be kept to a minimum and normally be reserved for delegated competences;*
- v. the law should define the time limit or period granted for the supervisory authority to perform the supervision; in the case of a priori supervision, absence of a decision by the supervisory authority within a specified time should mean that the planned activity may take effect.”*

12. When analysing the compatibility with the Charter of the initiative to introduce an online Register, specific attention should be given to paragraph 3 of Article 8:

“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”.

13. This is the principle of proportionality and is quite frequent and well-known in European legal systems. Although relatively difficult to quantify, it is a principle which is enforceable in courts. According to the Contemporary Commentary:

“138. Apparently, this principle is applicable to any form of inter-governmental supervision, whether a priori or a posteriori checks on legality or expediency. It is a generally worded principle that can only be tested in the precise context of an actual dispute, but it could be explained in simple terms by pointing out that in ensuring compliance with the law, the regional/State body should not “use a sledgehammer to crack a nut”.

139. Consequently, under the principle of proportionality, the regional or State body should intervene only to the extent necessary, taking into account the relevance of the public interest at stake, or the seriousness of the legal violation allegedly committed by the local authority. It should first consider the possibility of “de minimis” action (warnings, requests, negotiations) before using more intrusive powers, such as annulling or suspending a decision, plan or project adopted at local level. On the other hand, a system under which local authorities must obtain prior approval from regional or State bodies for minor or even trivial decisions would not comply with the principle of proportionality.”

14. The analysis of the Contemporary Commentary raises a first important caveat: if any authority, organisation or body has the power or the ability to block or delay the publication of decisions and such publication is a condition for their entering into force, this would be equivalent to a non-legal a priori (ex ante) form of supervision and would be a violation of both

paragraphs 1 (legality of supervision) and 3 (proportionality) of Article 8 of the Charter. The publication of decisions taken by local authorities should be automatic and direct, with no intermediary or hurdle.

15. The second caveat concerns the facility of publication in the Register. Ukraine is one of the most digitalised countries in Europe and its recent successful amalgamation reform made local authorities stronger and more capable than their counterparts in some other European countries. However, if the difficulty of publication was such that local authorities could barely afford to invest the necessary resources to implement such legal obligation, this would represent not only a violation of Article 8 of the Charter, but also, to a large extent, of Article 4 (Scope of local self-government).

16. The third element to be considered in relation to the Charter is that easy access to information should have no influence on the implementation of the principle of proportionality. If frequency and depth of supervision of various types of decisions is to be adapted to their respective importance and potential impact – an obligation under Article 8.3 of the Charter – this needs to result from a clear political decision and be based in law, and not be dependent on how easy it is for the supervisory authority to find the decisions. Moreover, such publication should normally eliminate the need for any separate transmission (communication) of local authorities' decisions to the supervisory authority.

17. Finally – and this does not concern the Charter proper – on the current path of Ukraine towards EU accession, attention should be paid to the conformity of any database with the EU's General Data Protection Regulation (GDPR).³ Normative acts usually do not pose problems in this respect, but they are typically of a lesser concern from the point of view of ethical and lawful behaviour than decisions concerning individual persons and entities (such as contracts or building permits). The latter type of decisions will however include personal data which, along with Ukraine's EU accession, will fall under the GDPR provisions. Moreover, some of the personal information may be too sensitive to be made public; therefore, further filtering may be necessary before making such decisions public – and this is not a task which should fall on local authorities themselves. It should be resolved by legal specifications (possibly in a decree of implementation) and technical means of the database itself.

18. Administrative supervision is necessary to ensure the legality of public decisions but, if improperly balanced against the legitimate interest of local authorities and persons, it could become a threat to local self-government and citizens' right to private life. Moreover, the supervisory power could be abused. The question "who supervises the supervisors?" is often raised; less often asked but equally important is the question "who trains the supervisors?". The Council of Europe recommends Ukrainian authorities to pay due attention to these questions and offers its support in relation to further debates on these topics.

³ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC, <https://eur-lex.europa.eu/eli/reg/2016/679/oj/eng>.

IV. Experience of other countries

19. The experience of European countries is very varied. While all have taken steps towards increasing transparency of public life and decisions, only a select few have nationwide registers where decisions of all local authorities are to be mandatorily published.

20. Monitoring reports of the Congress only mention the existence of centralised and digitalised registries where local authorities are under the obligation to publish their decisions in Estonia and the Netherlands.⁴ There is of course no nationwide register in federal countries, where competences to regulate, organise and supervise local authorities are granted to federated entities, although some of the latter did introduce regional registers.

21. France has established an obligation for local authorities to publish their decisions both in paper and digital format, but maintaining up-to-date websites has proven to be very difficult for the smallest of France's almost 36,000 local authorities. In respect of the supervisory function, France has a mechanism of transmission of local decisions to prefects; such decisions are collected in a database which is similar to a register, but its access is reserved to central authorities.

22. In Poland, the entry into force of normative acts of local authorities is conditioned by their publication in regional official journals, which are public and accessible online.

V. Conclusions and recommendations

23. There is no uniform practice in Europe in respect to the obligation to introduce local authorities' decisions into national (or, in federal or quasi-federal states, regions) online databases. However, with the current trend of increased transparency and accountability, it is likely that such practice will grow in frequency in the future. The creation of the Register proposed in the Draft Law No. 13150 is a step in that direction.

24. In order to ensure the compatibility of the Register with the Charter, the Council of Europe advises Ukrainian authorities to:

- Make publication in this Register automatic and give no authority, organisation or body the power or the ability to delay or block it; otherwise, it would risk that the implementation of the Register could turn into the creation of a general power of a priori (*ex ante*) form of supervision and consequently would represent a violation of the Charter;
- Make such publication a very simple and easy process, which should not mobilise important local human, technical or financial resources of local authorities;
- Ensure that the proportionality principle enshrined in Article 8.3 of the Charter is secured and that width, depth, frequency or any other element of the extent of supervision is not dependent on the easiness of accessing information about decisions made at local level.

⁴ Based on the latest Congress monitoring reports from all Council of Europe member states as available on the Congress website.

25. Moreover, the Council of Europe recommends that:

- The creation of the Register should eliminate any obligation of local authorities to transmit (communicate) their decisions to the supervisory authority;
- The content of the Register should be aligned with the provisions of the GDPR and not disclose publicly sensitive personal information;
- Supervisors should be the subject of proper training, capacity building, and oversight to guarantee that their activity is legal, allows for the necessary functional autonomy of local authorities, and is kept in proportion with the importance of the interests which it is intended to protect.