CONGRESS OF LOCAL AND REGIONAL AUTHORITIES OF EUROPE

Opinion 20 (2003)[1] on the Committee of Ministers' preliminary[2] draft recommendation on financial and budgetary management at local and regional level Preliminary observation

The Committee of Ministers' preliminary draft recommendation to governments on financial and budgetary management at local and regional level sets out what should be the main underlying principles of local financial and budgetary autonomy in the member states. The recommendation consists of four general provisions and two appendices containing guidelines, the first case for central authorities and the second for local and regional authorities.

The general principles laid down in the recommendation proper stem from a concern to balance financial autonomy – essential to local and regional authorities' self-government – with rules of sound financial and budgetary management, which, in the first place, entail open, efficient management and, in the second place, necessitate independent control performed in accordance with the law. These general policy objectives cannot but be commended.

The comments below address the provisions of the recommendation itself, followed by those of the two appendices.

I. Recommendation

Paragraph 1 of the recommendation emphasises local and regional authorities' need for financial stability, since, to implement local policies, they must be able to rely on stable resources commensurate with the expenses incurred. Paragraph 1 also recognises the importance of ensuring the cost-effectiveness of local public services.

The other two objectives mentioned in the same paragraph are also vital, although of a different nature: matching the price of local public services to their quality and openness in decision making.

Paragraph 2, concerning the means to be implemented, refers to the appended guidelines, which are commented on below.

Another very important matter is local and regional elected representatives' involvement in any debate or reform concerning local financial and budgetary management, as recommended in paragraph 3. It is by drawing on the experience of local officials that changes in financial and budgetary conditions at local and regional level are most likely to meet with their acceptance and can best be adapted to the population's expectations and real needs.

Paragraph 4, relating to circulation of the recommendation in the member states' languages does not call for any comment.

II. Appendix

Part I – Guidelines for central authorities

The general principles set out in paragraphs 1 to 4 are consistent with local financial and budgetary law as applied in a number of European countries with positive results.

It should perhaps be specified in paragraph 3 that financial transfers must cover the cost of the tasks and responsibilities delegated, as assessed at the time of such transfers. This would make it possible to take account of the progressive nature of the related costs.

Paragraph 5, concerned with adaptation of rules to specific situations, addresses the concept of "experimentation". Generally applicable, strictly defined legal rules should allow some adaptation, given the variety of situations encountered at local level.

Paragraph 6 allows local authorities greater flexibility and precision in implementing annual budgets. Similarly, it provides an additional reason for preparing reliable multi-annual budgets for the implementation of major projects.

Limitations on financial autonomy

Paragraphs 7 to 15 prompt the following general observation: under the decentralisation principle responsibility should be vested in local elected representatives, subject to subsequent control exercised by central government representatives, but giving rise to legal penalties only where necessary. This is the best means of guaranteeing sound management.

The possibility of the state's imposing other restrictions on local financial autonomy, raised in paragraph 7, may leave the door open to measures prejudicial to local self-government. This possibility afforded the state should therefore come within the powers of the national parliament; in other words, it should be a matter decided not by the executive but by democratically elected representatives. Financial supervision must never be incompatible with local financial autonomy and, more broadly, decentralisation.

In paragraph 9 the objective of the limitations should be to ensure "sound, prudent" management in accordance with the taxpayer's interests, not obedience to rules, which is a self-evident requirement and offers local and regional authorities no special guarantee. From this angle, it would be preferable to talk of respecting the law, or administrative law.

Paragraph 11 probably requires clarification. The implication is that limitations are necessary for effective management. Does this mean limitations of a general nature decided at national level in the interests of overall financial balance or limitations linked to inadequacies in local management? In the latter case, they should have a pre-defined legal basis and the principle of a fair hearing should be respected.

Financial estimation methods

The recommendations made in paragraphs 16, 17 and 18 are highly appropriate.

It can be noted that estimates of this kind should be prepared whenever a wide-ranging reform having a potential impact on local authorities' resources and expenses is in the pipeline.

Assessment of financial risks

Paragraphs 19, 21, 22 and 23 require no particular comment.

With regard to speculative investments (paragraph 20), is it necessary to go as far as to proscribe all forms of investment involving a capital risk?

Local elected representatives and employees

Paragraphs 24, 25 and 26 reflect a concern to ensure the transparency of financial and budgetary information provided by local and regional authorities.

Regarding the need for independence of officials responsible for collecting revenue and paying expenses, a number of European countries have adopted the solution of separating the task of committing expenditure (performed by the elected local or regional authority) from public accounting, which is the duty of state civil servants subject to special judicial supervision, who respect local independence in financial decision-making provided decisions are consistent with the legal rules in force. This situation should be taken into account.

Control

Paragraphs 27 to 32 lay down essential principles guaranteeing the exercise of control in a sound, efficient and independent manner.

It would be advisable to supplement paragraph 28 as follows:

a. with regard to local and regional authorities' own powers and responsibilities, by making reference to the need to confine control to a review of lawfulness;

b. by providing that, in the event of disagreement, the supervisory authority would refer the matter to the judicial authorities.

In paragraph 32 the term "arrangements" should probably be explained. Publication of information allowing budgetary and performance comparisons, in particular over the Internet, should provide local authorities with essential tools for the good management of local budgets.

Recovery of local and regional authorities in financial difficulty

No comments are called for in respect of paragraphs 34, 37, 38, 41 and 42.

The recommendation made in paragraph 33 is consistent with the current tendency within the European Union, where central government guarantees are on the way out, with the aim of eliminating moral hazard.

Paragraph 35, concerned with gathering financial information and making it public, should be linked with paragraph 32, which has to do with the availability of increasingly plentiful, widely accessible, regularly updated information.

Paragraph 36, concerned with the handling of short-term, localised financial crises, cites the example of bankruptcy and insolvency procedures for local and regional authorities. Subject to a review of the consequences of any such system, where available, bankruptcy (if based on the corporate bankruptcy system) has the disadvantage of resulting in the disappearance of the local or regional authority experiencing financial problems. It would seem preferable to introduce procedures allowing gradual recovery, based on proposals issued by the regional offices of the Auditor General's Department or equivalent.

In the event of a structural income deficit, paragraph 39 recommends eliminating the causes of that deficit. The solution may consist in adapting expenditure to the local or regional authority's real income level.

Part II – Guidelines for local and regional authorities

Preliminary observation:

This part, which, in the main, reflects current practice in a number of European countries, requires little comment.

General principles

General comment:

These are sound management principles. However, it is not always easy for small local or regional authorities to apply them.

No special comment need be made on paragraphs 43, 45, 46, 47 and 48.

Regarding multi-annual budgetary planning, the recommendations made in paragraph 44 are consistent with the trend followed by public authorities in the European Union since the signature of the Maastricht Treaty.

Information and openness

Paragraphs 49, 50, 53 and 54 do not call for any particular comment.

Regarding the recommendations in paragraph 51, on presentation of expenditure and receipts in budget documents, and paragraph 52, relating to information on local and regional services' management performance, information may be presented by category or by function, as preferred by the local authority concerned.

Budget preparation

Paragraphs 55 to 58 do not call for any particular comment.

Risk assessment and management

Paragraphs 59, 60, 62, 63, 64, 65, 66, 68 and 69 do not call for any particular comment.

Paragraph 59, which aims to ensure that the presentation of budgets and accounts gives as complete a picture as possible, in particular through the preparation of consolidated accounts, reflects the current trend in Europe. Local government accounting is being modernised, so as to ensure that financial information gives a true, complete view of a local authority's circumstances.

Paragraph 61 relating to an insurance/re-insurance system against loss of local authority assets deposited with a bank, in the event of the latter's bankruptcy, is irrelevant in some countries, where funds must obligatorily be deposited with the state.

Paragraph 66: forming a partnership among a number of local and/or regional public entities for the implementation of a major project is a very frequent practice, enabling local authorities to benefit from the "cross-financing" system. This is a pragmatic solution, allowing the pooling of financial resources among a number of local or regional authorities or bodies for a very large-scale project, but it none the less entails some risk: that of poor definition of responsibilities. Hence, the emergence of the concept of a "lead" local authority. None the less, the system works best when the right level of responsibility is defined for each task, in other words, that enables its proper financing, even if that means establishing an intermunicipal body (an intermunicipal co-operative, for instance).

Approval of the budget

No particular comments on paragraphs 70 to 72.

Budget implementation

Paragraphs 73 to 75: no particular comments.

Budget accounts

Paragraphs 76 to 78: no particular comments.

Control

Paragraphs 79 and 80: no particular comments.

Financial difficulty

Paragraphs 81 to 83: no particular comments.

General conclusion

Part II, containing guidelines for local and regional authorities, sets out principles of sound management, openness and accountability, which are already widely applied in many European countries where local management processes have been steadily improving for some time now.

Experience of decentralisation shows that greater local autonomy goes hand-in-hand with more efficient management of local public services, entailing reduced financial risks. Self-government should none the less in principle be combined with an effective system of subsequent control, which should be exercised by a judicial authority to ensure respect for local freedoms and for the principle of a fair hearing.

Part I could therefore go further by proposing the abolishing of the concept of the state's role of "financial guardian" and replacing it with autonomous local management, which would continue to be subject to parliamentary scrutiny, with due representation of local authorities on the parliamentary body responsible.

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1. Debated and adopted by the Standing Committee of the Congress on 22 May 2003 (see Document CG (10) 13, draft opinion presented by Mr E. Calota and Mr J.-C. Frecon, rapporteurs).
2. Document prepared by the Steering Committee on Local and Regional Democracy, CDLR (2003) 12, of 14 April 2003.