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COUNCIL OF EUROPE COMMITTEE OF MINISTERS

1. EUROPEAN CHARTER OF LOCAL SELF- GOVERNMENT

Strasbourg, 15.X.1985

Preamble

The member States of the Council of Europe, signatory hereto,
Considering that the aim of the Council of Europe is to achieve a greater unity
between its members for the purpose of safeguarding and realising the ideals and
principles which are their common heritage;
Considering that one of the methods by which this aim is to be achieved is through
agreements in the administrative field;
Considering that the local authorities are one of the main foundations of any
democratic regime;
Considering that the right of citizens to participate in the conduct of public affairs is
one of the democratic principles that are shared by all member States of the Council of
Europe;
Considering that it is at local level that this right can be most directly exercised;
Convinced that the existence of local authorities with real responsibilities can provide
an administration which is both effective and close to the citizen;
Aware that the safeguarding and reinforcement of local self-government in the
different European countries is an important contribution to the construction of a
Europe based on the principles of democracy and the decentralisation of power;
Asserting that this entails the existence of local authorities endowed with
democratically constituted decision-making bodies and possessing a wide degree of
autonomy with regard to their responsibilities, the ways and means by which those
responsibilities are exercised and the resources required for their fulfilment,
Have agreed as follows:

Article 1

The Parties undertake to consider themselves bound by the following articles in the
manner and to the extent prescribed in Article 12 of this Charter.

Part I

Article 2 – Constitutional and legal foundation for local self-government

The principle of local self-government shall be recognised in domestic legislation, and
where practicable in the constitution.

Article 3 – Concept of local self-government

1. Local self-government denotes the right and the ability of local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population.
2. This right shall be exercised by councils or assemblies composed of members freely elected by secret ballot on the basis of direct, equal, universal suffrage, and which may possess executive organs responsible to them. This provision shall in no way affect recourse to assemblies of citizens, referendums or any other form of direct citizen participation where it is permitted by statute.

Article 4 – Scope of local self-government

1. The basic powers and responsibilities of local authorities shall be prescribed by the constitution or by statute. However, this provision shall not prevent the attribution to local authorities of powers and responsibilities for specific purposes in accordance with the law.
2. Local authorities shall, within the limits of the law, have full discretion to exercise their initiative with regard to any matter which is not excluded from their competence nor assigned to any other authority.
3. Public responsibilities shall generally be exercised, in preference, by those authorities which are closest to the citizen. Allocation of responsibility to another authority should weigh up the extent and nature of the task and requirements of efficiency and economy.
4. Powers given to local authorities shall normally be full and exclusive. They may not be undermined or limited by another, central or regional, authority except as provided for by the law.
5. Where powers are delegated to them by a central or regional authority, local authorities shall, insofar as possible, be allowed discretion in adapting their exercise to local conditions.
6. Local authorities shall be consulted, insofar as possible, in due time and in an appropriate way in the planning and decision-making processes for all matters which concern them directly.

Article 5 – Protection of local authority boundaries

Changes in local authority boundaries shall not be made without prior consultation of the local communities concerned, possibly by means of a referendum where this is permitted by statute.

Article 6 – Appropriate administrative structures and resources for the tasks of local authorities

1. Without prejudice to more general statutory provisions, local authorities shall be able to determine their own internal administrative structures in order to adapt them to local needs and ensure effective management.
2. The conditions of service of local government employees shall be such as to permit the recruitment of high-quality staff on the basis of merit and competence; to this end adequate training opportunities, remuneration and career prospects shall be provided.

Article 7 – Conditions under which responsibilities at local level are exercised

1. The conditions of office of local elected representatives shall provide for free exercise of their functions.
2. They shall allow for appropriate financial compensation for expenses incurred in the exercise of the office in question as well as, where appropriate, compensation for loss of earnings or remuneration for work done and corresponding social welfare protection.
3. Any functions and activities which are deemed incompatible with the holding of local elective office shall be determined by statute or fundamental legal principles.

Article 8 – Administrative supervision of local authorities' activities

1. Any administrative supervision of local authorities may only be exercised according to such procedures and in such cases as are provided for by the constitution or by statute.
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.
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.

Article 9 – Financial resources of local authorities

1. Local authorities shall be entitled, within national economic policy, to adequate financial resources of their own, of which they may dispose freely within the framework of their powers.
2. Local authorities' financial resources shall be commensurate with the responsibilities provided for by the constitution and the law.
3. Part at least of the financial resources of local authorities shall derive from local taxes and charges of which, within the limits of statute, they have the power to determine the rate.
4. The financial systems on which resources available to local authorities are based shall be of a sufficiently diversified and buoyant nature to enable them to keep pace as far as practically possible with the real evolution of the cost of carrying out their tasks.
5. The protection of financially weaker local authorities calls for the institution of financial equalisation procedures or equivalent measures which are designed to correct the effects of the unequal distribution of potential sources of finance and of the financial burden they must support. Such procedures or measures shall not diminish the discretion local authorities may exercise within their own sphere of responsibility.
6. Local authorities shall be consulted, in an appropriate manner, on the way in which redistributed resources are to be allocated to them.
7. As far as possible, grants to local authorities shall not be earmarked for the financing of specific projects. The provision of grants shall not remove the basic freedom of local authorities to exercise policy discretion within their own jurisdiction.
8. For the purpose of borrowing for capital investment, local authorities shall have access to the national capital market within the limits of the law.

Article 10 – Local authorities' right to associate

1. Local authorities shall be entitled, in exercising their powers, to co-operate and, within the framework of the law, to form consortia with other local authorities in order to carry out tasks of common interest.
2. The entitlement of local authorities to belong to an association for the protection and promotion of their common interests and to belong to an international association of local authorities shall be recognised in each State.
3. Local authorities shall be entitled, under such conditions as may be provided for by the law, to co-operate with their counterparts in other States.

Article 11 – Legal protection of local self-government

Local authorities shall have the right of recourse to a judicial remedy in order to secure free exercise of their powers and respect for such principles of local self-government as are enshrined in the constitution or domestic legislation.

Part II – Miscellaneous provisions

Article 12 – Undertakings

1. Each Party undertakes to consider itself bound by at least twenty paragraphs of Part I of the Charter, at least ten of which shall be selected from among the following paragraphs:
 - Article 2,
 - Article 3, paragraphs 1 and 2,
 - Article 4, paragraphs 1, 2 and 4,
 - Article 5,
 - Article 7, paragraph 1,
 - Article 8, paragraph 2,
 - Article 9, paragraphs 1, 2 and 3,
 - Article 10, paragraph 1,
 - Article 11.
2. Each Contracting State, when depositing its instrument of ratification, acceptance or approval, shall notify to the Secretary General of the Council of Europe of the paragraphs selected in accordance with the provisions of paragraph 1 of this article.
3. Any Party may, at any later time, notify the Secretary General that it considers itself bound by any paragraphs of this Charter which it has not already accepted under the terms of paragraph 1 of this article. Such undertakings subsequently given shall be deemed to be an integral part of the ratification, acceptance or approval of the Party so notifying, and shall have the same effect as from the first day of the month following the expiration of a period of three months after the date of the receipt of the notification by the Secretary General.

Article 13 – Authorities to which the Charter applies

The principles of local self-government contained in the present Charter apply to all the categories of local authorities existing within the territory of the Party. However, each Party may, when depositing its instrument of ratification, acceptance or approval,

specify the categories of local or regional authorities to which it intends to confine the scope of the Charter or which it intends to exclude from its scope. It may also include further categories of local or regional authorities within the scope of the Charter by subsequent notification to the Secretary General of the Council of Europe.

Article 14 – Provision of information

Each Party shall forward to the Secretary General of the Council of Europe all relevant information concerning legislative provisions and other measures taken by it for the purposes of complying with the terms of this Charter.

Part III

Article 15 – Signature, ratification and entry into force

1. This Charter shall be open for signature by the member States of the Council of Europe. It is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.
2. This Charter shall enter into force on the first day of the month following the expiration of a period of three months after the date on which four member States of the Council of Europe have expressed their consent to be bound by the Charter in accordance with the provisions of the preceding paragraph.
3. In respect of any member State which subsequently expresses its consent to be bound by it, the Charter shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of the instrument of ratification, acceptance or approval.

Article 16 – Territorial clause

1. Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories to which this Charter shall apply.
2. Any State may at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Charter to any other territory specified in the declaration. In respect of such territory the Charter shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of such declaration by the Secretary General.
3. Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General. The withdrawal shall become effective on the first day of the month following the expiration of a period of six months after the date of receipt of such notification by the Secretary General.

Article 17 – Denunciation

1. Any Party may denounce this Charter at any time after the expiration of a period of five years from the date on which the Charter entered into force for it. Six months' notice shall be given to the Secretary General of the Council of Europe. Such

denunciation shall not affect the validity of the Charter in respect of the other Parties provided that at all times there are not less than four such Parties.

2. Any Party may, in accordance with the provisions set out in the preceding paragraph, denounce any paragraph of Part I of the Charter accepted by it provided that the Party remains bound by the number and type of paragraphs stipulated in Article 12, paragraph 1. Any Party which, upon denouncing a paragraph, no longer meets the requirements of Article 12, paragraph 1, shall be considered as also having denounced the Charter itself.

Article 18 – Notifications

The Secretary General of the Council of Europe shall notify the member States of the Council of Europe of:

- a. any signature;
- b. the deposit of any instrument of ratification, acceptance or approval;
- c. any date of entry into force of this Charter in accordance with Article 15;
- d. any notification received in application of the provisions of Article 12, paragraphs 2 and 3;
- e. any notification received in application of the provisions of Article 13;
- f. any other act, notification or communication relating to this Charter.

In witness whereof the undersigned, being duly authorised thereto, have signed this Charter.

Done at Strasbourg, this 15th day of October 1985, in English and French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe.,

European Charter of Local Self-Government [\(ETS no. 122\)](#) - *Explanatory Report*

I. The European Charter of Local Self-Government was drawn up within the Council of Europe by a committee of governmental experts under the authority of the Steering Committee for Regional and Municipal Matters on the basis of a draft proposed by the Standing Conference of Local and Regional Authorities of Europe. It was opened to signature as a convention by the member states of the Council of Europe on 15 October 1985.

II. The text of the explanatory report prepared on the basis of the committee's discussions and submitted to the Committee of Ministers of the Council of Europe does not constitute an instrument providing an authoritative interpretation of the text of the Charter, although it may facilitate the understanding of its provisions.

A. Origins of the Charter

The European Charter of Local Self-Government is the culmination of a series of initiatives and many years of deliberation within the Council of Europe.

The protection and strengthening of local autonomy in Europe by means of a document expounding the principles subscribed to by all the democratic states of Europe is a longstanding ambition in local government circles. Moreover, it was recognised at an early stage that such a text should aim at securing the adherence of those whose actions are primarily at issue in any defence of local autonomy, namely governments.

The Council of Europe, as the custodian of human rights and the upholder of the principles of democratic government, was the obvious framework within which to draft and adopt such an instrument; all the more so because, as long ago as 1957, it showed its appreciation of the importance of local authorities by establishing for them a representative body at European level known as the Standing Conference of Local and Regional Authorities of Europe (CLRAE) (**Note** : As from 14 January 1994 the Standing Conference was transformed into the Congress of Local and Regional Authorities of Europe (CLRAE), as a recognition of its political significance.).

It was indeed the CLRAE which, in its Resolution 64 (1968), proposed a Declaration of Principles on Local Autonomy and called upon the Committee of Ministers of the Council of Europe to adopt it. This initiative was supported by the Consultative Assembly, which in its Recommendation 615 (1970) presented to the Committee of Ministers a text closely based on that of the CLRAE and drafted jointly by the two bodies. The proposed declaration was, however, of a rather too general and sweeping character for any firm action to be taken on it.

The new initiative of the CLRAE in 1981 was therefore based on a more flexible approach. But the view was also taken that a mere non-binding declaration of principles could not do justice to the importance of local autonomy or to the nature of the threats to which it is exposed. Rather, government must be asked to enter into binding commitments. The necessary flexibility to take account of the differences between national constitutional arrangements and administrative traditions was to be built in, not by excessively diluting the

requirements of the new instruments but by allowing governments a degree of choice with regard to the provisions by which they would consider themselves bound.

The logical outcome of this approach was the submission to the Committee of Ministers, in CLRAE Resolution 126 (1981), of a draft European Charter of Local Self-Government with the request that it be adopted with the status of a European convention.

The Committee of Ministers decided to transmit the CLRAE's proposals to the Steering Committee for Regional and Municipal Matters (CDRM) with a view to their being discussed at the 5th Conference of European Ministers responsible for Local Government (Lugano, 5-7 October 1982). In their conclusions, the Ministers present at Lugano

"...consider that this draft Charter constitutes an important step towards a definition of the principles of local autonomy, while noting the reservations of some ministers about the need for a Charter in the form a binding convention and about some aspects of the content of the Charter;

ask the Committee of Ministers of the Council of Europe to instruct the Steering Committee for Regional and Municipal Matters (CDRM), in contact with the Conference of Local and Regional Authorities of Europe, to make the necessary changes to the draft European Charter of Local Self-Government in accordance with the comments concerning the form and the substance made during the conference, so that it may be submitted to them for approval at their next conference..."

The Committee of Ministers so instructed the CDRM, which thereupon carried out a thorough revision of the draft Charter. In application of the conclusions of the Lugano Conference, representatives of the CLRAE participated in the discussions.

The text of the draft Charter as revised by the CDRM was finally submitted to the 6th Conference of European Ministers responsible for Local Government, which met in Rome from 6 to 8 November 1984. After examining this text, the ministers expressed their unanimous agreement on the principles contained in it. With regard to the legal form which the Charter should take, a majority of ministers expressed themselves in favour of a convention.

In the light of the opinions of the Consultative Assembly and the Rome Ministerial Conference, the Committee of Ministers therefore adopted the European Charter of Local Self-Government in the form of a convention in June 1985. In recognition of the fact that the initiative for the Charter had originally come from the Standing Conference of Local and Regional Authorities of Europe, it was decided that the convention should be opened for signature on 15 October 1985 on the occasion of the CLRAE's 20th Plenary Session.

B. General remarks

The purpose of the European Charter of Local Self-Government is to make good the lack of common European standards for measuring and safeguarding the rights of local authorities, which are closest to the citizen and give him the opportunity of participating effectively in the making of decisions affecting his everyday environment.

The Charter commits the parties to applying basic rules guaranteeing the political, administrative and financial independence of local authorities. It is thus a demonstration, at European level, of the political will to give substance at all levels of territorial administration to the principles of local self-government since its foundation by the Council of Europe, which considers its function to be the keeping of Europe's democratic conscience and the defence of human rights in the widest sense. Indeed, it embodies the conviction that the degree of self-government enjoyed by local authorities may be regarded as a touchstone of genuine democracy.

The Charter is in three parts. The first part contains the substantive provisions setting out the principles of local self-government. It specifies the need for a constitutional and legal foundation for local self-government, defines the concept and establishes principles governing the nature and scope of local authorities' powers. Further articles are concerned with protecting the boundaries of local authorities, ensuring that they have autonomy as regards their administrative structures and access to competent staff and defining conditions for the holding of local elective office. Two major articles aim at limiting administrative supervision of the activities of local authorities and ensuring that they have adequate financial resources at their disposal on terms which do not impair their basic autonomy. The remaining provisions in this part cover the right of local authorities to co-operate and form associations and the protection of local self-government by the right of recourse to a judicial remedy.

Part II contains miscellaneous provisions relating to the scope of the undertakings entered into by the parties. In accordance with the intention of securing a realistic balance between the safeguarding of essential principles and the flexibility necessary to take account of the legal and institutional peculiarities of the various member states, it permits the parties specifically to exclude certain provisions of the Charter from those by which they consider themselves bound. It thus represents a compromise between, on the one hand, acknowledgement of the fact that local self-government affects the structure and organisation of the state itself, which is a basic concern of government and, on the other hand, the objective of protecting a minimum of basic principles which any democratic system of local government should respect. Moreover, the commitments of the parties can subsequently be added to, whenever the relevant obstacles have been removed.

Potentially, the principles of local self-government laid down in the Charter apply to all the levels or categories of local authorities in each member state, and indeed also, *mutatis mutandis*, to territorial authorities at regional level. However, to allow for special cases, the parties are permitted to exclude certain categories of authorities from the scope of the Charter.

The Charter does not provide for an institutionalised system of control of its application, beyond a requirement for parties to supply all relevant information concerning legislative or other measures taken for the purpose of complying with the Charter. Consideration was indeed given to setting up an international system of supervision analogous to that of the European Social Charter. However, it was felt possible to dispense with complex supervisory machinery, given that the presence within the Council of Europe of the CLRAE with direct access to the Committee of Ministers would ensure adequate political control of compliance by the parties with the requirements of the Charter.

The last part of the text contains final provisions consistent with those customarily used in conventions drawn up under the auspices of the Council of Europe.

The European Charter of Local Self-Government is the first multilateral legal instrument to define and safeguard the principles of local autonomy, one of the pillars of democracy which it is the Council of Europe's function to defend and develop. It may be hoped that it will thus make a substantial contribution to the protection and enhancement of common European values.

C. Commentary on the Charter's provisions

Preamble

The preamble provides an opportunity for a statement of the basic premises underlying the Charter. These are, essentially:

- the vital contribution of local self-government to democracy, effective administration and the decentralisation of power;
- the important role of local authorities in the construction of Europe;
- the need for local authorities to be democratically constituted and enjoy wide-ranging autonomy.

Article 1

Article 1 expresses the general undertaking of the parties to observe the principles of local self-government laid down in Part I of the Charter (Articles 2-11), to the extent prescribed by Article 12.

Article 2

This article provides that the principle of local self-government should be enshrined in written law.

In view of the importance of the principle, it is further desirable that this should be achieved by including it in the fundamental text governing the organisation of the state, that is to say, the Constitution. However, it was recognised that, in those countries in which the procedure for amending the Constitution required assent by a special majority of the legislature or the assent of the whole population expressed in a referendum, it might not be possible to give a commitment to enshrine the principle of local self-government in the Constitution. It was also recognised that countries not having a written constitution but a constitution to be found in various documents and sources might encounter specific difficulties or even be unable to make that commitment.

Account must also be taken of the fact that, in federal countries, local government may be regulated by the federated states rather than by the central federal government. For the federal states, this Charter in no way affects the division of powers and responsibilities between the federal state and the federated states.

Article 3

This article lays down the essential characteristics of local self-government as they are to be understood for the purposes of the Charter.

Paragraph 1

The notion of "ability" expresses the idea that the legal right to regulate and manage certain public affairs must be accompanied by the means of doing so effectively. The inclusion of the phrase "within the limits of the law" recognises the fact that this right and ability may be defined more closely by legislation.

"Under their own responsibility" stresses that local authorities should not be limited to merely acting as agents of higher authorities.

It is not possible to define precisely what affairs local authorities should be entitled to regulate and manage. Expressions such as "local affairs" and "own affairs" were rejected as too vague and difficult to interpret. The traditions of member states as to the affairs which are regarded as belonging to the preserve of local authorities differ greatly. In reality most affairs have both local and national implications and responsibility for them may vary between countries and over time, and may even be shared between different levels of government. To limit local authorities to matters which do not have wider implications would risk relegating them to a marginal role. On the other hand, it is accepted that countries will wish to reserve certain functions, such as national defence, for central government. The intention of the Charter is that local authorities should have a broad range of responsibilities which are capable of being carried out at local level. The definition of these responsibilities is the subject of Article 4.

Paragraph 2

The rights of self-government must be exercised by democratically constituted authorities. This principle is in accordance with the importance attached by the Council of Europe to democratic forms of government.

This right normally entails a representative assembly with or without executive bodies subordinate thereto, but allowance is also made for the possibility of direct democracy where this is provided for by statute.

Article 4

As was explained in the comments on Article 3, it is not possible, nor would it be appropriate to attempt, to enumerate exhaustively the powers and responsibilities which should appertain to local government throughout Europe. However, this article lays down the general principles on which the responsibilities of local authorities and the nature of their powers should be based.

Paragraph 1

Since the nature of local authorities' responsibilities is fundamental to the reality of local self-government, it is in the interests of both clarity and legal certainty that basic responsibilities should not be assigned to them on an *ad hoc* basis but should be sufficiently rooted in legislation. Normally, responsibilities should be conferred by the Constitution or an Act of Parliament. However, notwithstanding the use of the word "statute" in this paragraph, it is

acknowledged that in certain countries some delegation by parliament of power to assign specific responsibilities, particularly in respect of details or of matters requiring implementation as a result of European Community directives, may be desirable for the sake of efficiency, provided parliament retains adequate powers of supervision over the use of delegated powers. Furthermore, an exception applies in the case of member states of the European Community insofar as Community Regulations (which under Article 189 of the Treaty of Rome are directly applicable) may stipulate application of a specific measure at a given level of administration.

Paragraph 2

In addition to the responsibilities assigned by legislation to specific levels of authority, other needs or possibilities for action by public bodies may present themselves. Where these fields of action have local implications and are not excluded from the general competence obtaining in most member states, it is important to the conception of local authorities as political entities acting in their own right to promote the general welfare of their inhabitants that they have the right to exercise their initiative in these matters. The general rules under which they may act in such cases may, however, be laid down by law. In certain member states, however, local authorities must be able to adduce statutory authority for their actions. A wide discretion beyond specific responsibilities can be given to local authorities under such a system, whose existence is to that extent comprehended by Article 4, paragraph 2.

Paragraph 3

This paragraph articulates the general principle that the exercise of public responsibilities should be decentralised. This principle has been stated on a number of occasions within the context of the Council of Europe and in particular in the Conclusions of the Lisbon Conference of European Ministers responsible for Local Government in 1977. This implies that, unless the size or nature of a task is such that it requires to be treated within a larger territorial area or there are overriding considerations of efficiency or economy, it should generally be entrusted to the most local level of government.

This clause does not imply, however, a requirement systematically to decentralise functions to such local authorities which, because of their nature and size, can only accomplish limited tasks.

Paragraph 4

This paragraph is concerned with the problem of overlapping responsibilities. In the interest of clarity and for the sake of avoiding any tendency towards a progressive dilution of responsibility, powers should normally be full and exclusive. However, complementary action by different levels of authority is required in certain fields and it is important that in these cases the intervention by central or regional authorities takes place in accordance with clear legislative provisions.

Paragraph 5

The administrative structures of local authorities and their familiarity with local conditions may make them appropriate bodies to implement certain functions, the ultimate responsibility for which falls on supra-local authorities. It is important, however, in order that recourse to

such delegation does not excessively impinge on the sphere of independent authority of the local level, that the latter should, when possible, be allowed to take account of local circumstances in exercising delegated powers. It is recognised, however, that in respect of certain functions, for example the issue of identity papers, the need for uniform regulations may leave no scope for local discretion.

Paragraph 6

Whilst paragraphs 1 to 5 deal with matters which come within the scope of local authorities, paragraph 6 is concerned both with matters coming within the scope of such authorities and with matters which are outside their scope but by which they are particularly affected. The text provides that the manner and timing of consultation should be such that the local authorities have a real possibility to exercise influence, whilst conceding that exceptional circumstances may override the consultation requirement particularly in cases of urgency. Such consultation should take place directly with the authority or authorities concerned or indirectly through the medium of their associations where several authorities are concerned.

Article 5

Proposals for changes to its boundaries, of which amalgamations with other authorities are extreme cases, are obviously of fundamental importance to a local authority and the citizens whom it serves. Whilst in most countries it is regarded as unrealistic to expect the local community to have power to veto such changes, prior consultation of it, either directly or indirectly, is essential. Referendums will possibly provide an appropriate procedure for such consultations but there is no statutory provision for them in a number of countries. Where statutory provisions do not make recourse to a referendum mandatory, other forms of consultation may be exercised.

Article 6

Paragraph 1

The text of this paragraph deals not with the general constitution of the local authority and its council but rather with the way in which its administrative services are organised. Whilst central or regional laws may lay down certain general principles for this organisation, local authorities must be able to order their own administrative structures to take account of local circumstances and administrative efficiency. Limited specific requirements in central or regional laws concerning, for example, the establishment of certain committees or the creation of certain administrative posts are acceptable but these should not be so widespread as to impose a rigid organisational structure.

Paragraph 2

In addition to the appropriate management structures, it is essential to the efficiency and effectiveness of a local authority that it is able to recruit and maintain a staff whose quality corresponds to the authority's responsibilities. This clearly depends in large degree on the local authority's ability to offer sufficiently favourable conditions of service.

Article 7

This article aims at ensuring both that elected representatives may not be prevented by the action of a third party from carrying out their functions and that some categories of persons may not be prevented by purely material considerations from standing for office. The material considerations include appropriate financial compensation for expenses flowing from the exercise of functions and, as appropriate, compensation for loss of earnings and, particularly in the case of councillors elected to full-time executive responsibilities, remuneration and corresponding social welfare protection. In the spirit of this article, it would also be reasonable to expect provision to be made for the reintegration of those taking on a full-time post into normal working life at the end of their term of office.

Paragraph 3

This paragraph provides that disqualification from the holding of local elective office should only be based on objective legal criteria and not on *ad hoc* decisions. Normally this means that cases of incompatibility will be laid down by statute. However, cases have been noted of firmly entrenched, non-written legal principles, which seem to provide adequate guarantees.

Article 8

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.

Paragraph 1

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

Paragraph 2

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.

Paragraph 3

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.

Article 9

The legal authority to perform certain functions is meaningless if local authorities are deprived of the financial resources to carry them out.

Paragraph 1

This paragraph seeks to ensure that local authorities shall not be deprived of their freedom to determine expenditure priorities.

Paragraph 2

The principle in question is that there should be an adequate relationship between the financial resources available to a local authority and the tasks it performs. This relationship is particularly strong for functions which have been specifically assigned to it.

Paragraph 3

The exercise of a political choice in weighing the benefit of services provided against the cost to the local taxpayer or the user is a fundamental duty of local elected representatives. It is accepted that central or regional statutes may set overall limits to local authorities' powers of taxation; however, they must not prevent the effective functioning of the process of local accountability.

Paragraph 4

Certain taxes or sources of local authority finance are, by their nature or for practical reasons, relatively unresponsive to the effects of inflation and other economic factors. Excessive reliance on such taxes or sources can bring local authorities into difficulties since the costs of providing services are directly influenced by the evolution of economic factors. It is recognised, however, that even in the case of relatively dynamic sources of revenue there can be no automatic link between cost and resource movements.

Paragraph 6

Where redistributed resources are allocated according to specific criteria set out in legislation, the provisions of this paragraph will be met if the local authorities are consulted during the preparation of the relevant legislation.

Paragraph 7

Block grants or even sector-specific grants are preferable, from the point of view of local authority freedom of action, to grants earmarked for specific projects. It would be unrealistic to expect all specific project grants to be replaced by general grants, particularly for major capital investments, but excessive recourse to such grants will severely restrict a local authority's freedom to exercise its discretion with regard to expenditure priorities. However, the part of total resources represented by grants varies considerably between countries, and a higher ratio of project-specific grants to more general grants may be considered reasonable where grants as a whole represent a relatively insignificant proportion of total revenue.

The second sentence of Article 9, paragraph 7, seeks to ensure that a grant for a specific purpose does not undermine a local authority's freedom to exercise discretion within its own sphere of competence.

Paragraph 8

It is important for local authorities that they have access to loan finance for capital investment. The possible sources of such finance will, however, inevitably depend on the structure of each country's capital markets; procedures and conditions for access to these sources may be laid down by legislation.

Article 10

Paragraph 1

This paragraph covers co-operation between local authorities on a functional basis with a view in particular to seeking greater efficiency through joint projects or carrying out tasks which are beyond the capacity of a single authority. Such co-operation may take the form of the creation of consortia or federations of authorities, although a legal framework for the creation of such bodies may be laid down by legislation.

Paragraph 2

Paragraph 2 is concerned with associations whose objectives are much more general than the functional considerations of paragraph 1 and which normally seek to represent all local authorities of a particular kind or kinds on a regional or national basis. The right to belong to associations of this type does not however imply central government recognition of any individual association as a valid interlocutor.

In a Council of Europe instrument of this type, it is normal that the right to belong to associations at the national level be accompanied by a parallel right to belong to international associations, a number of which are active in the promotion of European unity along lines which accord with the aims laid down in the statute of the Council of Europe.

However, Article 10.2 leaves to individual member states the choice of means, legislative or otherwise, whereby the principle is given effect.

Paragraph 3

Direct co-operation with individual local authorities of other countries should also be permitted, although the manner of such co-operation must respect such legal rules as may

exist in each country and take place within the framework of the powers of the authorities in question.

The provisions of the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (21 May 1980, ETS No. 106) are particularly relevant in this respect, although some forms of co-operation need not be restricted to frontier areas.

Article 11

By recourse to a judicial remedy is meant access by a local authority to:

- a. a properly constituted court of law, or
- b. an equivalent, independent, statutory body having the power to rule and advise on the ruling respectively, as to whether any action, omission, decision or other administrative act is in accordance with the law.

An instance has been noted in one country where, although administrative decisions are not subject to an ordinary appeal to a court, it is possible to have recourse to an extraordinary remedy called an application for reopening of proceedings. This judicial remedy, which is available if the decision is based on a manifestly incorrect application of the law, is in accordance with the requirements of this article.

Article 12

The formulation of the principles of local self-government laid down in Part I of the Charter had to try to reconcile the wide diversity of legal systems and local government structures existing in the member states of the Council of Europe. Nevertheless, it is recognised that individual governments may still face constitutional or practical impediments to subscribing to particular provisions of the Charter.

This article accordingly adopts the "compulsory nucleus" system first established by the European Social Charter, by providing that the Parties to the European Charter of Local Self-Government are required to subscribe to at least twenty of the thirty paragraphs of Part I of the Charter, including at least ten from a nucleus of fourteen basic principles. However, as the ultimate aim remains compliance with all the provisions of the Charter, the Parties are specifically enabled to add to their undertakings as and when this becomes possible.

Article 13

In principle, the requirements set forth in Part I of the Charter relate to all categories or levels of local authority in each member state. They potentially apply also to regional authorities where these exist. However, the special legal form or constitutional status of certain regions (in particular the member states of federations) may preclude their being made subject to the same requirements as local authorities. Furthermore, in one or two member states there exists a category of local authorities which, because of their small size, have only minor or consultative functions. To take account of such exceptional cases, Article 13 permits the Parties to exclude certain categories of authorities from the scope of the Charter.

Article 14

This article is intended to facilitate the monitoring of the application of the Charter in the individual Parties by creating an obligation for the latter to supply relevant information to the Secretary General of the Council of Europe. Especially in the absence of a specific body responsible for supervising the implementation of the Charter, it is particularly important that information should be available to the Secretary General concerning any changes of legislation or other measures which have a significant impact on local autonomy as defined in the Charter.

Articles 15 to 18

The final clauses contained in Articles 15 to 18 are based on the model final clauses for conventions and agreements concluded within the Council of Europe.

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

**2. *RECOMMENDATION No R (92) 5 OF THE
COMMITTEE OF MINISTERS TO MEMBER STATES
ON BORROWING BY LOCAL AND REGIONAL
AUTHORITIES***

**(Adopted by the Committee of Ministers on 27 March 1992
at the 472nd meeting of the Ministers' Deputies)**

1. The Committee of Ministers, having regard to Article 15 of the Statute of the Council of Europe,
2. Considering that the aim of the Council of Europe is to achieve a greater unity between its members for the purpose of safeguarding and realising the values and principles which are their common heritage and to foster their economic and social progress, and that one way of achieving this aim is to take joint action in the legal and administrative field;
3. Considering that the local and regional authorities are one of the main foundations of any democratic regime;
4. Recalling that Article 9 of the European Charter of Local Self-Government opened for signature in 1985 provides that for the purpose of borrowing for capital investment, local authorities shall have access to the national capital market within the limits of the law;
5. Considering that the completion of the European Single Market envisaged for 1993 provides inter alia for free movement of capital within the EEC member states, and that local and regional authorities shall have access to the integrated European capital markets within the limits of the law;
6. Considering that local and regional authorities should be able to draw on the experience of their counterparts in other European countries in order to adopt least costly and less risky solutions for the servicing of their debt;
7. Considering that as part of sound financial management, the sole purpose of such loans as local and regional authorities may contract should be to finance investments, to re-schedule current debt and to finance temporary cash shortages arising from the uneven flow of income and expenditure, but not to finance budget deficits, and that current expenditure should be covered by current revenue;
8. Considering that for reasons of sound financial practice or because of the need to co-ordinate national monetary policy or maintain price stability, some forms of control on the short-term and long-term debt position of local and regional authorities may be justified;
9. Considering that fluctuations in exchange rates form an ever-present risk factor in foreign currency borrowing;

10. Considering that a loan pool with each local or regional authority (ie. a system whereby a specific loan is not required for every individual capital expenditure) both allows greater flexibility in the timing, the amount and the duration of loans and makes it possible to contract large long-term loans when the interest rate is relatively low,

RECOMMENDS TO MEMBER STATES

a. to invite local and regional authorities to

i. resort to borrowing only for the purpose of funding expenditure on capital investment, re-scheduling of current debt or financing short-term cash shortages;

ii. ensure that the repayment of loans, including the payment of interest, can be covered from current revenues, and consequently see to it that the depreciation period is not longer than the life-span of the asset(s) financed by the loan in question;

iii. envisage the creation of a loan pool for the combined financing of the expenditure mentioned in item i) above so as to achieve optimal flexibility and efficiency;

b. to bear in mind the risk attending any loan contracted in foreign currency, and therefore to allow local and regional authorities free access to the capital markets only if the exchange rate risks are taken into account, which may entail certain types of control by higher authorities;

c. to accept that restrictions on borrowing abroad may be necessary for limited periods in circumstances where exchange rate parity has to be safeguarded (eg. within the European Monetary System);

d. to comply conscientiously with the announced deadline for state allocations to local and regional authorities in order to preserve their solvency and avert unwarranted cash shortages, and to envisage accepting the principle that interest should be paid by the state whenever the announced deadline is exceeded;

e. in those cases in which investments need to be subsidised and the costs borne by a higher authority, to opt for the award of direct subsidies rather than promote types of borrowing at artificially limited interest rates, so that local and regional authorities know the exact real cost of investments approved by them;

f. to consider how far it is expedient, in particular in cases prompted by the need to pursue a national monetary policy, to place limits on the amount of short-term debt (ie. borrowing for less than one year) contracted by local and regional authorities and, if such limits are imposed, to define them in a clear, objective and understandable way;

g. to consider that the total amount of long-term and short-term loans that can be contracted by local and regional government should be limited only as part of a general programme to reduce the overall level of public debt or as part of a general programme to reduce public expenditure as a whole;

h. to establish clearly the conditions of any State assistance in the event of local and regional authorities becoming insolvent;

- i. to enable local and regional authorities, if they so wish, to avail themselves of a service at national level, staffed by specialists able to provide all requisite information on the possibilities for financing capital expenditure and the conditions thereof, and on the scope for improving the management and reducing the cost of the debts incurred;
- j. to envisage periodical publication of the local and regional authorities' debt situation and the interest payments made.

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

**3. *RECOMMENDATION No. R (96) 3 OF THE
COMMITTEE OF MINISTERS TO MEMBER STATES
ON LOCAL AUTHORITIES' BUDGETARY DEFICITS
AND EXCESSIVE INDEBTEDNESS***

**(Adopted by the Committee of Ministers on 15 February 1996,
at the 558th meeting of the Ministers' Deputies)**

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

Considering that the aim of the Council of Europe is to achieve a greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage and to foster their economic and social progress, and that one way of achieving this aim is to take joint action in the legal and administrative fields;

Recalling that Article 9 of the European Charter of Local Self-Government states that "Local authorities shall be entitled, within national economic policy, to adequate financial resources of their own, of which they may dispose freely within the framework of their powers";

Recalling that in its Recommendation No. R (92) 5 on borrowing by local and regional authorities, the Committee of Ministers recommended that the governments of member states consider on the one hand how far it is expedient, in particular in cases prompted by the need to pursue a national monetary policy, to place limits on the amount of short-term debt (namely borrowing for less than one year) and consider, on the other hand, that the total amount of long-term and short-term loans that can be contracted by local and regional government should be limited only as part of a general programme to reduce public expenditure as a whole;

Considering that for those member states which have established a global public expenditure threshold, this limit will necessarily have an effect on the maximum level of local authorities' indebtedness;

Considering that public sector borrowing increases the tax burden in the long term unless inflation is high, and that excessive indebtedness can eventually lead to an unacceptable decrease in the proportion of the budget which goes into running public services;

Considering that, in a number of European countries, overall financial pressure has reached a level regarded as a ceiling;

Considering that all capital expenditure leads to further debt management costs and debt repayment costs;

Considering that local authorities considered to be at risk are sometimes forced by banks to agree to borrowing conditions which impair freedom of local authority management and can lead to excessive financial burdens;

Considering that local authorities should refrain from financing their capital expenditure through any financial instruments of a more or less speculative nature because of the potential risks which are involved and which conflict with the public interest;

Considering the growing part played by local authorities in the national economy, their increasing involvement in supporting local economic development, particularly during an adverse period in the economic cycle, which inevitably entails considerable financial risks, the sometimes excessive competition between local authorities seeking to increase their economic appeal and improve their reputation without always sufficient regard for the future return on this spending, and the scale of local authority commitments under separate subsidiary budgets or to mixed enterprises in which the local authorities have an interest;

Considering that specific controls by supervisory authorities can be less stringent if general principles governing debt are clearly established;

Considering that, in order to comply with the principle of subsidiarity and avoid excessive indebtedness which could jeopardise the financial autonomy of local authorities and the desirable prospect of sustained development, it is appropriate to establish a number of precautionary rules,

Recommends that the governments of member states establish, in co-operation with local authorities and based on the guidelines set out in the appendix, the framework considered appropriate in order to avoid excessive indebtedness.

Appendix to Recommendation No. R (96) 3

Guidelines on measures to be taken in order to avoid excessive debt jeopardising the financial situation of local authorities

1. In order to help local authorities better control their level of indebtedness, member states should establish a framework offering the necessary terms of reference to prevent the critical thresholds of indebtedness from being exceeded.
2. They could also establish indicators and provide regular national data enabling local and regional authorities to easier assess normal levels of indebtedness, without impairing their operational efficiency or autonomy.

Indicators could include, for example, figures for:

- i. the ratio of debt burden to working capital;
- ii. the ratio of debt to own resources;

iii. the total amount of security which local authorities are able to provide;

iv. the maximum security which a local authority can offer to a single borrower and/or for a single operation.

3. For the member states which have established objectives for global public indebtedness (for example member states of the European Union wishing to participate in the monetary union have agreed to maintain their public debt within 60% of the G.D.P.), the competent authorities should indicate what the effects are on the maximum level of local authority indebtedness.

4. Repayment of the sums borrowed should not normally be index-linked, except in the specific situations of economies in transition where such index-linking is the only possible way of obtaining long-term loans for financing capital expenditure.

5. The competent authorities should clearly state the consequences in the event of local authority insolvency.

6. If it proved necessary, as part of a national monetary policy, to place limits on the amount of short-term debt (less than one year) contracted by local authorities, the ceilings might be set either in relation to local authorities total debt or in relation to their total operating budgets; the state should take all necessary measures to ensure that this indebtedness is not caused by failure to meet deadlines for the transfer of funds to local authorities, particularly in cases where the local authorities have to deposit their cash surpluses with a central body.

7. Local authority access to "financial derivatives", which do not represent a spot transaction but correspond to a forward sale or purchase deal with a price fixed at the outset, should be subject to strict regulations because of the considerable financial risks that these transactions may entail for the taxpayer, and also because it is not the role of local authorities to engage in financial speculation.

8. Any financial undertaking or guarantee of any sort given to mixed enterprises, bodies or associations in which local authorities have an interest, and which could result in financial costs outside the budget, should be described in a separate report appended to their budget documents; a statement of the outstanding debt on loans contracted by local authorities and a repayment schedule should also be attached.

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

**4. RECOMMENDATION REC(2000)14 OF THE
COMMITTEE OF MINISTERS TO MEMBER STATES
ON LOCAL TAXATION, FINANCIAL
EQUALISATION AND GRANTS TO LOCAL
AUTHORITIES**

(Adopted by the Committee of Ministers on 6 September 2000 at the 719th meeting of the Ministers' Deputies)

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

Considering that the aim of the Council of Europe is to achieve a 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, and that this aim can be pursued, *inter alia*, by the adoption of common action in economic, social, legal and administrative matters;

Considering that local self-government involves a certain degree of financial autonomy;

Considering the provisions of Article 9 of the European Charter of Local Self-Government which it adopted as an international treaty on 15 October 1985 and which has so far been ratified by a large majority of member states of the Council of Europe;

Taking account of Recommendation 79 (2000) of the Congress of Local and Regional Authorities of Europe (CLRAE), adopted in the context of its monitoring of the implementation of the European Charter of Local Self-Government, which refers to local authorities' financial resources in relation to their responsibilities;

Taking account of CLRAE Opinion 14 (2000);

Considering that local taxation, financial equalisation mechanisms and state grants should be adapted to the needs of local communities in order to optimise the effectiveness of the activity of their authorities whilst observing rules and codes of conduct applicable at national level;

Considering that the solutions given to financial problems of local authorities should be adapted to each state's specificity as resulting, *inter alia*, from its structure, territorial organisation, distribution of powers between different levels of government and traditions;

Considering that the changes that have taken place since its adoption justify that Recommendation No. R (91) 4 of the Committee of Ministers to member states on the equalisation of resources between local authorities be replaced by this recommendation,

Recommends the governments of member states:

to ensure a fair distribution of public financial resources between the different tiers of government, taking account of the responsibilities assigned to each of these tiers and their evolution;

to guarantee local authorities a system of financing their expenditure which is based on the following principles:

– local authorities' resources and their allocation must be consistent with the need to carry out their responsibilities effectively;

– a substantial proportion of transfers, as well as, in general, own resources, must not be earmarked;

– local authorities are entitled, within the national economic policy, to raise adequate resources of their own; the possibility of sound competition in tax levels should be maintained, whilst avoiding harmful tax competition;

– the amount of state grants must be fair and foreseeable;

– the system of financing as a whole must be consistent with the constraints of the national economic policy;

3. to review – if necessary – the legal and administrative framework for local taxation, financial equalisation and grants to local authorities having regard, *inter alia*, to the guidelines appended to this recommendation and to other ways of achieving a distribution of grants which is fair and encourages the improvement of services and their efficient provision;

4. to involve local elected representatives in the debate on reforms to be undertaken in this area and on the mechanisms for implementing such reforms.

Appendix to Recommendation Rec(2000)14

Guidelines on local taxation, financial equalisation and grants to local authorities

1. Guidelines concerning local taxation

a. Tax-revenue level

Financial autonomy of local authorities implies a level of own resources which is commensurate with their competences, as they are defined by constitution or law. In general, the most important own resource should be tax revenue in relation to which a certain degree of fiscal decentralisation is required.

In order to estimate this degree, the following parameters may be used:

- the ratio between the local authorities' tax revenue level and the total tax revenue for the country;
- the ratio between the local tax revenue and the total local revenue;
- the weight of tax revenue compared to the weight of grants (both general and specific) from the state and other public authorities.

When the degree of fiscal decentralisation appears to be low on the basis of the previous parameters, the states should examine, with the local authorities, measures which will make it possible to increase the proportion of local authorities' own and shared tax revenues, without increasing the global fiscal pressure.

b. The structure of local taxation

The structure of local taxation should meet the following conditions:

- a fair distribution of the tax burden according to the taxpayers' ability to pay;
- an appropriate yield and low administration and compliance costs;
- visibility of the tax burden for contributing individuals and enterprises (this being a precondition for an effective distribution of resources according to citizens' preferences);
- the right for local authorities to vary – where appropriate, within a pre-established bracket – the rates of the taxes they levy;
- the difference in tax rate between the various local authorities should not be too great unless it is justified by such factors as a different level of services;
- low negative economic distortions (minimum impact on the growth and the economic structure of the municipality), demographic distortions (the fiscal structure should not stimulate the migration of persons) and social distortions (it should not weaken further social groups in difficulty);
- a degree of buoyancy allowing for the adjustment of tax revenue according to the evolution of costs.

It is possible to satisfy these requirements both with a system based on own taxes and with a system based on a combination of own taxes and shared taxes, where the share allocated to local authorities is defined by law.

2. Guidelines on financial equalisation

A substantial degree of financial equalisation is a necessary condition of fiscal decentralisation and a strong local government. At the same time, it may contribute effectively to the achievement of the objectives of economic stability and to the success of policies for a balanced sustainable territorial development.

a. Methods of estimating spending needs with a view to equalisation

When estimating spending needs, criteria should be favoured which:

- are objective and over which individual local authorities have no direct control;
- are not liable to affect the local authorities' freedom of choice, within the bounds of available resources;
- do not penalise local authorities which attempt to streamline the management of their services with a view to improving efficiency and do not create unintended incentives to particular courses of action which are in conflict with the objectives of local accountability and efficiency in the provision of services;
- take into account as far as possible the demographic, geographic, social and economic characteristics that lead to disparities in their costs.

The formulae used when estimating spending needs should meet the following conditions:

- the weighting given to the individual indicators should be set on the basis of objective evidence about spending variations generated by the variations of these indicators;
- inasmuch as the assessment of needs nevertheless involves value judgements as to the weight to be given to different indicators of need, it is necessary to identify and assess the results of such judgements in consultation with representatives of the local authorities concerned or their associations;
- formulae (models) for the estimation of needs should be as simple as possible, so as to promote understanding and accountability, but complete and precise enough so as to be reliable;
- formulae for the estimation of needs should remain as stable as possible so that local authorities are able to make long-term forecasts and so that changes in assessed needs reflect real changes in the situation of local authorities;

b. Financial equalisation mechanisms

Governments should periodically verify the functioning of their equalisation systems and examine, with local authorities, the improvements which could be made with a view to remedying the adverse effects of the unequal distribution of resources and expenditure requirements and granting local authorities genuine freedom of choice in the areas within their responsibilities.

These systems should be designed so that they can at least partially equalise the fiscal strength of local authorities in order to enable them, if they wish, to provide a broadly similar range and level of services while levying similar rates of local taxation.

However, it is necessary to ensure that such equalisation of financial capacity does not undermine local autonomy by inducing local authorities in practice to provide the same level of services or apply the same rates of tax.

Financial equalisation must not discourage local authorities from developing the tax base and pursuing the efficient collection of taxes.

Financial equalisation of spending needs should take into account as much of local government activity as possible.

Appropriate information should be given to local authorities on the functioning of the equalisation system, as local authorities cannot accept a system they do not know or understand.

It is also appropriate to favour voluntary redistribution mechanisms for certain local taxes; these mechanisms may be introduced, in particular, in urban areas between the central city and surrounding municipalities.

In general, equalisation by means of grants is less likely to create ill-feeling between local communities; however, where local fiscal capacity varies so greatly that the decided level of equalisation of resources cannot be achieved solely by means of government grants, it may be useful to consider having recourse to resource-sharing arrangements (based on law and consistent with the principle of solidarity among authorities of the same level) by which part of the tax revenues of the wealthy authorities is transferred to the less wealthy.

Where there is more than one local tax, financial equalisation should be made for each tax, unless a single tax is dominant and local authorities have little say in the balance between their various taxes.

3. Guidelines on financial grants to local authorities

a. General grants

Government (and regional authorities) financial support to local budgets should take, in most cases, the form of general (not earmarked) grants.

The total amount of general grants should be determined on the basis of criteria which take into account such factors as economic growth and the increase in costs, especially when the level of local authorities' own resources and their room for manoeuvre on these resources do not allow for their adjustment to the growth of expenditure as a result of economic factors.

It would also be appropriate if government guaranteed local authorities a certain stability in the evolution of this total amount, possibly by law or within the framework of agreements aiming at ensuring economic stability with the co-operation of all tiers of government.

The criteria for distributing general grants must, as a rule, be clearly defined according to the legal framework on a non-discretionary basis. This should allow local authorities to calculate in advance the amount of general grants they will receive and to adopt their budgets accordingly.

b. Specific grants

Specific (earmarked) grants limit local authorities' policy discretion and are less effective than general grants as instruments of equalisation. Consequently, the use of specific grants should be limited, in general, to what is necessary to achieve the following objectives:

- (co-)financing capital expenditure, within the framework of policies for a balanced sustainable territorial development;
- ensuring that certain local public services are provided at a standard level on the whole national territory;
- compensating the spillover effects which may affect the supply of certain public services;
- funding certain public services which local authorities provide on the state's behalf or compensating for expenses covered by local and regional authorities when implementing competencies which are delegated by other authorities.

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

**5. RECOMMENDATION REC(2004)1
OF THE COMMITTEE OF MINISTERS TO MEMBER
STATES
ON FINANCIAL AND BUDGETARY MANAGEMENT
AT LOCAL AND REGIONAL LEVELS**

*(Adopted by the Committee of Ministers on 8 January 2004
at the 867th meeting of the Ministers' Deputies)*

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

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

Considering that this aim may be pursued *inter alia* through the adoption of common action in economic, social, legal and administrative matters;

Having regard to the provisions of the European Charter of Local Self-Government, which it adopted in the form of an international treaty on 15 October 1985 and which to date has been ratified by a large majority of Council of Europe member states;

Having regard to the following reports of the Steering Committee on Local and Regional Democracy (CDLR):

- Effects on the financial autonomy of local and regional authorities resulting from the limits set at European level on national public debt (2000);
- Methods for estimating local authorities' spending needs and methods for estimating revenue (2001);
- Risks arising from local authorities' financial obligations (2002);
- Recovery of local and regional authorities in financial difficulty (2002);
- Budgetary procedures and budget management at local authority level (2002);

Taking into account CLRAE Opinion 20 (2003) on the Committee of Ministers' preliminary draft recommendation to member states on financial and budgetary management at local and regional level;

Aware that local and, where it exists, regional self-government implies a degree of autonomy in financial and budgetary management, without which local and regional authorities cannot be accountable for, and control and manage the share of public affairs falling within their remit;

Believing it important that public spending is managed openly and in accordance with the law and that financial and budgetary management procedures play a vital role in this respect;

Considering that financial and budgetary management procedures must be tailored to the needs of local and regional communities for greater effectiveness,

Recommends that the governments of member states:

1. take inspiration for their policy on financial and budgetary management at local and regional levels from the following principles of:

- a.* securing consistency with the macro-economic targets of the national economic policy;
- b.* establishing and ensuring financial stability of local and regional authorities;
- c.* looking for cost-effectiveness of services provided to the community;
- d.* ensuring openness and accountability of decisions;

2. ensure that these principles are respected through the appropriate means, including the use of domestic law by changing, where necessary, the regulatory framework of financial and budgetary management at local and regional levels, and by drawing on the guidelines appended to the present recommendation;

3. involve local and regional authorities or their representatives in debate and in any reforms that might prove necessary in the area of financial and budgetary management at local and regional levels, and in the area of financial relations between levels of government, particularly as a follow-up to the present recommendation;

4. translate the present recommendation into their official language(s) and circulate it to their local and regional authorities and associations thereof, inviting them to take note of the guidelines intended for them set out in Part II of the appendix.

Appendix to Recommendation Rec(2004)1

Part I

Guidelines for central authorities

These guidelines are addressed to central authorities insofar as they are responsible for defining the legal framework and supervising the activity of local or regional authorities.

In certain federal states, these competences belong to the federated entities. In such cases, these guidelines are addressed to them. Central authorities are invited to bring these guidelines to their attention.

General principles

1. The local or regional authority should be entitled, within the framework of national economic policy, to foreseeable resources commensurate with its competences and responsibilities that would allow it to implement these competences effectively and of which it may dispose freely.
2. The overall system of local and regional finance should aim at striking a suitable balance between financial transfers, including grants and shares of nationally determined taxes on the one hand, and locally determined taxes and charges on the other. Such balance should provide discretion to adjust revenue and expenditure levels to local priorities, and also ensure that local services nevertheless reach minimum standards, whatever the local or regional fiscal capacities may be.
3. Higher-level authorities whose decisions impose additional costs on local and regional authorities should ensure that these costs are covered by new financial resources such as additional fiscal resources, evolving financial transfers or other financial means.
4. Legislation should establish rules for drawing up, approving and implementing local and regional budgets and for the supervision of their implementation, as well as for their healthy, balanced management in the long term.
5. It should not be possible to delegate the adoption of the budget and the approval of the accounts to a committee or a body other than the elected deliberative body of the local or regional authority.
6. Within the limits of the legislation, the local or regional authority should be able to independently adopt its budget and to adapt the operational rules applicable to its budget and to apply them to its specific situation.
7. The local or regional authority should be able to allocate credit balances carried over from a budget year to non-recurrent expenditure (for example, self-financing from investments, the reduction of public borrowing, setting up provisions or reserves, etc.) and carry over debit balances in order to rectify the situation by allocating funds from subsequent budgets to write them off.

Limitations on the financial autonomy of local and regional authorities

8. The state or legally established supervisory authority may take measures to restrict the financial autonomy of a local or regional authority or to limit or reduce the amount of funding transferred to it. Such measures should be taken within the framework defined by statute and should not be excessive or threaten the principle of local autonomy.
9. Such restrictive measures may be general (applied to all authorities) or specific (applied to a limited number of authorities, having regard to their particular situation). Their aim should be to:
 - ensure a healthy macro-economic policy at state level, on the one hand, and
 - ensure sound and safe management, while observing the rules laid down by statute and administrative law, and overcome financial difficulties or deal with exceptional

situations encountered within those local and regional authorities subject to the restrictions, on the other hand.

10. The limitations which may be imposed by the state on the financial autonomy of local and regional authorities should be established by law. Limitations should be based on objective, transparent and verifiable criteria, applied fairly and in such a way as to avoid accounting devices that obscure the truth.

11. The local or regional authority should be consulted, following appropriate procedures, prior to any measure to restrict its financial and budgetary autonomy, and it should be notified of the application and consequences of any such measure. Institutional mechanisms of regular dialogue, consultation and co-operation between the different levels of government could be created.

12. Regular checks should be made by the central authority to gauge whether the limitations are necessary and effective.

13. Specific measures restricting the financial and budgetary freedom of certain local or regional authorities should be short-term and lifted once they have achieved their aim.

14. The limitations imposed on each authority should be clear, objective and quantifiable.

15. The limitations should be proportionate to the desired aim and be free of any punitive nature.

16. Measures having a substantial impact on the financial autonomy of a local or regional authority, such as the general and rigid capping of spending and taxation rates, should be avoided if other, softer, measures such as incentives and flexible limitations (which vary in time and take account of the situation and of the average spending and taxation rates for a certain type of community) could be used.

Methods of financial estimation

17. Evaluations of the evolution, at the national level, of local and regional authority spending needs and provisional receipts, of financial transfers and of criteria for sharing these transfers should be prepared and published. These are to be considered as provisional evaluations; they should be subject to adjustment at regular intervals. They should be based on calculation formulae that are transparent, stable, fair and objective.

18. The purpose of these evaluations should be to provide information on changes in the macro-economic situation and the foreseeable amount of transfer funding that could be granted by the central authority to local and regional authorities, and they should allow, where applicable, for transfers to be shared fairly between authorities.

19. Where appropriate, the state should promote the setting up of standards for essential local and regional services and should develop outline procedures for financial estimations relating to spending needs at local and regional levels.

Assessment and management of financial risk

20. The assessment of financial risk should comprise prior monitoring and warning mechanisms (such as tables presenting the evolution of revenue and expenditure, of indebtedness and interest rates, of the main tax bases, etc.) as well as intervention and supervisory procedures. An approach of overall regulation should be preferred to that of control of individual activities.

21. Speculative investment by local and regional authorities should be prohibited. If the local or regional authority wishes to invest on the equity market, such investment should be managed professionally.

22. Any financing techniques which have the object or the effect of concealing the level of debt of the local or regional authority should be prohibited. All financing techniques should be subject to conditions that ensure or restore the transparency of the financial situation or limit the risks involved.

23. Legislation should exclude or limit the possibility of using buildings and assets indispensable to the fulfillment of the local or regional authority's mandatory or related tasks as collateral for guaranteeing borrowing.

24. In general, local and regional authorities should have the right to incur debts only for the funding of investment expenditure and not for current expenditure. The level of debt could be established in relation to the volume of the authority's own resources, their extent, stability and foreseeable development.

Local elected representatives and employees

25. The quality and accuracy of the financial and budgetary information issued by the local or regional authority should be guaranteed by the mayor, the chief executive or any other elected representative or executive body designated by law, who assumes responsibility.

26. Officials responsible for collecting local or regional tax revenue and/or committing local or regional expenditure and enjoying a degree of independence in the exercise of their duties should be personally accountable for their acts of management, in accordance with the law.

27. The central authority should ensure that local or regional officers and elected representatives receive appropriate professional training. If such training is not provided by the local or regional authority itself or its association, the central authority could, for example, set up standards in this respect, organise such training and help the local or regional authority and its association to organise training for their elected representatives and officers.

Control

28. The external supervisory procedure should be laid down by law and should be balanced and fair. The procedure should be limited to an examination of the legality of

decisions. In the case of a disagreement, the procedure should provide the supervising authority with the possibility of recourse to the competent jurisdiction.

29. In general, control after the event should be preferred to prior approval or authorisation.

30. Failing this, where prior approval is required, particularly for the exercise of delegated powers, a reasonable time limit should be set by law for the supervisory authority to give its approval, which shall be deemed granted if no reply is forthcoming within the time limit set.

31. There should be a legal deadline for the adoption of local and regional budgets and mechanisms to ensure the continuity of public services if the budget is not adopted in due time, or if the local or regional authority fails to fulfill its obligations (such as omission from the budget of expenses that are legally or contractually binding, inaccuracy of budgetary entries, gross violation of budgetary procedures, etc). Such mechanisms may provide for the intervention of the central authority, of the controlling body or of an independent administrative body in order to redress the situation, while at the same time guaranteeing that the intervention is proportional to the cause, is neither political nor excessive, does not endanger local or regional self-government and is not prolonged beyond what is needed to redress the situation or to tackle the deficiencies observed.

32. There should be statistical and comparative analysis of budget implementation, spending and the rate of spending in order to detect any anomalies and trigger the relevant warning procedures, rather than a series of successive authorisations that provide no dynamic overview.

33. The central authority should ensure that arrangements are made for drawing up comparisons of budgets and performance for local or regional authorities of comparable size and socio-economic characteristics that are widely accessible (through publications or Internet site postings) and accompanied by explanatory texts (such as the meaning of indicators used, etc.).

Recovery of local and regional authorities in financial difficulty

34. As a general principle, the central authority should not guarantee the borrowings of a local or regional authority.

35. Current expenditure of the local and regional authority should be financed out of current revenue and non-earmarked reserves, except in exceptional cases of cash advances and short-term loans.

36. The state or supervisory authority should establish procedures for monitoring the financial situation of local and regional authorities by gathering financial information and making it public. This information should enable citizens, the local and regional authority and the government to be aware of the financial situation of a given authority, to compare it with that of other authorities with similar characteristics and to take appropriate measures, where necessary and according to law, to avoid any financial difficulties arising.

37. Procedures should exist enabling the local or regional authority to handle a localised and short-term financial crisis without requesting assistance from the next highest level of authority or the state. Such procedures could be established, for example, under a bankruptcy and insolvency code for local and regional authorities.

38. The state or supervisory authority should establish and observe clear rules for intervention to assist a local or regional authority in financial difficulty.

39. These rules of intervention should pursue the aim of financial recovery of the local or regional authority concerned while making elected representatives and officers responsible for their acts. There should be provisions aimed at discouraging and avoiding perverse effects such as local or regional authorities becoming accustomed to assistance or becoming careless in their financial management or competing for state aid.

40. In cases where the financial difficulty arises from a structural income deficit, the central authority should not only provide financial assistance but should also intervene to eliminate the causes of that structural deficit.

41. The central authority should make provision for special financial resources in order to help local and regional authorities that are in an emergency situation, or victims of natural disasters or affected by sharp economic decline.

42. Financial assistance should be granted following dialogue with the given local or regional authority and on the basis of an economic recovery plan that includes financial contributions and undertakings from the authority itself.

43. Financial assistance should be adjusted according to the local or regional authority's wealth and medium-term economic and fiscal potential.

Part II

Guidelines for local and regional authorities

Local and regional authorities are invited to take into account the following measures when designing their policies in the field of financial and budgetary management, insofar as they fall within their competence.

General principles

44. It would be desirable for newly elected local or regional executives to present a programme at the beginning of their term in office setting out aims, priorities and measures with an indication of the time-table of implementation and of the relevant budget resources.

45. The local or regional authority should draw up pluri-annual budget plans (covering the two to four years following the current year) setting out the overall budget objectives, an indication of the cost of pursuing the policies and undertakings subscribed to, and future budgetary consequences of decisions taken or to be taken.

46. Budget projections and proposals should be prepared with the involvement of in-house experts (for example, receiver, treasurer, internal auditor) and outside opinions (such as economists, independent auditors, etc.), particularly in the event of public debate (hearings before the relevant committees, the local or regional council, etc.).

47. Whenever a decision is taken by the executive or the local or regional council, the budgetary expenditure for the current year and the following financial years should be clearly explained.

48. As a general rule, the proceedings of committees dealing with budget matters should be open to the public and their documents should be published and accessible to the public.

49. The elected representatives and officers of local and regional authorities should be offered and benefit from appropriate training in budgeting, both basic and advanced, that enables them to understand the documents submitted to them and to take appropriate, informed decisions. Incentives for training such as a closer link with promotion criteria should be implemented for officers.

50. Any activity of a local or regional authority that may result in public debts or entail significant financial risk should be primarily agreed upon and authorised by the elected deliberative body concerned.

Information and openness

51. Budget and accounting documents should be easily readable, providing both a clear and comprehensible overview of the budget (including main balances, issues and priorities, key data, etc.) and sufficient detail to analyse the content of the budget and make relevant comparisons (with other financial years, other authorities, etc.).

52. Published documents, for example via the Internet, should be accompanied by a suitable explanation making them more easily comprehensible to a lay public.

53. Expenditure and receipts should be presented by type and by function in budget documents, identifying as far as possible the different sectors of local and regional government involved so that the sharing of resources between fields of activity may be gauged.

54. Information on the performance of the local or regional service management (financial indicators, output and impact indicators, comparisons with the performances of other local or regional authorities and the interpretation of such information) should, where appropriate, be appended to budgetary documents.

55. The local or regional authority should stimulate participation by citizens and social partners in public affairs by regularly consulting them and should ensure that objective information is provided on the financial aspects of the issues under consultation.

56. The local or regional authority should make it possible for citizens to be informed of draft budgets as soon as these are forwarded to local or regional councillors for final approval. When a budget has been adopted, its outlines and consequences for the

community should be made public; for example by explaining changes in taxation or priority allocation of the authority's funding, and mentioning services ready to provide the public with further details.

Preparation of the budget

57. Preparation of the budget should be the responsibility of a specialised unit of the local or regional authority with a good knowledge of the authority's operational departmental costs and budget consumption so that it can propose different options to the executive and prepare internal arbitration before arbitration at a later stage.

58. Budget proposals should be discussed by the authorities and persons responsible for the domain concerned and then by those responsible for finance, who should consider overall balances, overall income, borrowings and any problems raised.

59. Choices between different investment projects should be made more objective, for example by using a "scoring" system based on several criteria. When the size of the proposed investment justifies it, a participatory process involving the local community should be envisaged; if this occurs, procedures should be set up in order to guarantee that the exercise is properly run.

60. The budgetary consequences of a local or regional authority's links with the commercial sector (for example, income and expenditure linked to shareholding, execution of guarantees given, etc.) should be carefully assessed in accordance with the rules and procedures for assessment used in the private sector.

Assessment and management of financial risk

61. The presentation of the budget and accounts must give as complete and objective a picture as possible of the local or regional authority's financial situation. The local or regional authority should work towards drawing up consolidated accounts, integrating the results and showing the risks and obligations of the different satellite agencies.

62. Where the consolidation of the accounts is not possible, the local or regional authority should present an overview of its participation or involvement in any external organisation and possible risks to which the organisation may be exposed in which the local or regional authority is a financial stakeholder.

63. The presentation of the budget should be accompanied by an analysis of the financial risks to which the local or regional authority is exposed: the quantifiable risks should give rise to setting up reserves, while the degree of exposure to non-quantifiable risks should be estimated.

64. In those countries where the local or regional authorities are at liberty to deposit their funds at the banks that they deem appropriate, a system of insurance or re-insurance is needed to protect the local or regional authorities against the loss of some of their assets in the event of bankruptcy of their bank.

65. Guarantee or guarantee deposit obligations should be published, with a distinction being made between the obligations during the financial year, the loans outstanding

and the costs arising from these guarantees; the use of risk-assessment ratios to limit these risks is to be recommended.

66. Establishing or managing commercial enterprises and participation in such enterprises should be limited, in principle, to public service activities or to activities in which there is no competitive market or activities that are aimed at economic promotion (such as housing developments, creation of business parks and start-up activities, promotion of employment, etc.).

67. If the local or regional authority has the right to invest on the financial market, it should, in principle, limit such investment to the bond market. Any other financial product should be the subject of specific ratios for assessing their volatility and risk and in every case be subject to professional management.

68. Follow-up systems and ratios should be set up, the most important of which must be made public so as to enable the financial situations to be compared and the divergences to be analysed and to prevent risks.

69. Local and regional authorities should acquire, individually or collectively, the expertise necessary to manage risks arising from their financial obligations; that expertise may imply training financial executives of local administrative bodies or involving the state services or independent public consultancy bodies, the associations of local authorities and the private sector on a commercial basis. Consultancy and supervisory functions should not be exercised by the same body.

70. Horizontal and vertical co-operation between authorities should be encouraged to facilitate the completion of major projects, in such a way as to share the expenses and the risks.

71. Estimates of investment-project costs should not overlook recurrent subsequent costs (such as staffing, operation, maintenance, etc.), which should logically be incorporated into pluri-annual budget programming.

72. In public-private partnerships, the risks should be shared out realistically and the local or regional authority should avoid, by its intervention, taking on the role of guarantor of risky private investment. In particular, an explicit public guarantee is preferable when the nature of the structure or service is such that the authority may find it difficult, to put its future in the hands of the user.

Approval of the budget

73. A budget strategy debate should be organised at the beginning of the budgetary procedure, permitting initial discussion of the overall objectives to be adopted for the year and possibly the years to come.

74. The local or regional authority should set sufficient time limits in which councillors may read and analyse the budget documents issued.

75. If the elected representatives consider the information received to be inadequate or unclear, they - individually or collectively (for example in the competent committees)

- should be able to request further information, question the relevant officers and, where necessary, hear the experts of their choice.

Implementation of the budget

76. Where appropriate, a debate on the implementation of the budget should be held mid-year, in order to put budget changes into perspective and to review the changes in the economic, budgetary and social context, and after the end of the financial year.

77. The council should receive regular updates (for example, every three or four months) on the monitoring of the budget. If budget adjustments prove necessary, it would be advisable to group them in one or two “sets” per annum, accompanied by an overview or even a debate on the state of budget spending.

78. Budget adjustments should be limited in number and in scope in order to avoid diverting the aims of initial budgetary objective. Adjustments should be organised in such a way as to give a clear view of the changes suggested and on their importance, and they should be given the same level of transparency, publicity and conditions of democratic control as the initial budgets.

Budget accounts

79. The accounts (for financial year n) should be submitted to the council within a reasonable time, and certainly before the holding of the debate on budget implementation for the following year (n + 1) and before the budget for the year after that (n + 2) is drawn up.

80. Approval of the accounts should be properly debated, in committee and then in the council, in the light of an outside opinion (for example an external audit).

81. The executive of the local or regional authority should ensure that the reports of committees and the council concerning the budget are published (allowing public access or on-line consultation).

Control

82. The local or regional authority should establish and put into general practice a framework for internal auditing (for example a code of ethics, independence measures, a right of initiative, conditions of intervention, notification of the council, follow-up, publishing of reports, etc.) and organise support for such internal auditing (recommended methodology, outside technical back-up).

83. Without prejudice to any existing legal obligations, the local or regional authority should make systematic use of annual external auditing (in whatever form) to certify accounts and check their compliance with the law (including measures combating fraud and corruption).

84. The local or regional authority should assess the efficiency of its management at regular intervals, for example by making use of external audit.

Financial difficulty

85. The local or regional authority should not request financial aid from the state or supervisory authority if it is able to redress its financial situation through other means.

86. As soon as it finds itself in financial difficulty, the local or regional authority should devise and set up a financial recovery plan, if necessary with assistance from the state or supervisory authority, independent administrative authorities or private auditing firms.

87. The recovery plans should be debated and adopted by the council or assembly in public sittings. The plan should set out the necessary data and the undertakings on which the following budgets are to be based. The plan may be contractual, depending on legislation, vis-à-vis the body providing financial support to the local or regional authority concerned.

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

**6. RECOMMENDATION REC(2005)1
OF THE COMMITTEE OF MINISTERS TO MEMBER
STATES
ON THE FINANCIAL RESOURCES OF LOCAL AND
REGIONAL AUTHORITIES**

*(Adopted by the Committee of Ministers on 19 January 2005
at the 912th meeting of the Ministers' Deputies)*

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

Considering that the aim of the Council of Europe is to achieve a 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, and that this aim may be pursued, *inter alia*, by common action in economic, social, legal and administrative matters;

Considering that local self-government implies a degree of financial autonomy;

Considering the provisions of Article 9 of the European Charter of Local Self-Government, which it adopted as an international treaty on 15 October 1985 and which has now been ratified by a large majority of member states of the Council of Europe;

Having regard to the Resolution on local government finance adopted at the Conference of European Ministers responsible for Local Government in Lisbon in 1996;

Having regard to Recommendation Rec(2004)1 of the Committee of Ministers on financial and budgetary management at local and regional levels;

Having regard to the following reports of the Steering Committee on Local and Regional Democracy (CDLR):

- Local finance in Europe (1997);
- Limitations of local taxation, financial equalisation and methods for calculating general grants (1998);
- Effects on the financial autonomy of local and regional authorities resulting from the limits on national public debt set at European level (2000);
- Methods for estimating local authorities' spending needs and methods for estimating revenue (2001);
- Risks arising from local authorities' financial obligations (2002);
- Recovery of local and regional authorities in financial difficulty (2002);
- Budgetary procedures and budget management at local authority level (2002);

Having regard to Recommendation 79 (2000) of the Congress of Local and Regional Authorities of the Council of Europe, adopted in connection with the monitoring of the implementation of the European Charter of Local Self-Government and concerning the financial resources of local authorities in relation to their responsibilities;

Considering that local taxation, state grants and financial equalisation mechanisms should be adapted to the needs of local communities so that their authorities can operate as effectively as possible, with due regard for the rules and codes of conduct applicable at national level;

Considering that the solutions to local authorities' financial problems should be adapted to the specific features of each state, as resulting, *inter alia*, from its structure, territorial organisation, distribution of powers between the different tiers of government and traditions;

Considering that this Recommendation, which was specifically developed for local authorities, may also apply, *mutatis mutandis*, to self-governing regional authorities and recalling in this respect the Helsinki Final Declaration on regional self-government adopted by the Conference of European Ministers responsible for Local and Regional Government in 2002;

Considering that the changes that have taken place since its adoption justify replacing Recommendation Rec(2000)14 of the Committee of Ministers to member states on local taxation, financial equalisation and grants to local authorities by this Recommendation,

Recommends that the governments of member states:

1. ensure a fair distribution of public financial resources between the different tiers of government, taking account of the responsibilities assigned to each of these tiers and changes in those responsibilities, as well as economic circumstances;

2. guarantee local authorities a system of financing their expenditure that is based on the following principles:

- local authorities' resources and their allocation must be consistent with the requirement that they discharge their responsibilities effectively;
- local authorities are entitled, within the framework of national economic policy, to raise adequate resources of their own;
- a substantial proportion of transfers, and, generally, of their own resources, must not be earmarked for specific purposes;
- the amount of state grants must be fair, transparent and foreseeable; fairness demands that allocation rules be universal, non-discriminatory, stable, and neither arbitrary nor negotiable on an ad hoc basis;
- the financial equalisation system should allow local authorities to provide their citizens, if they so wish, with broadly comparable levels of services in return for comparable levels of taxation and charges; this system should take account both of disparities in the financial capacity of local authorities and disparities in their spending needs;
- where the demands of national economic policy so require, measures should be taken to ensure that the system of financing local authorities is consistent, overall, with those demands; such measures should:

- a. not be disproportionate to the demands in question;

- b. should be negotiated with these authorities or their representatives; and
- c. should be introduced by law;

- specific limitations which apply to a limited number of local authorities should be lifted as soon as the situation permits.

3. review – if necessary – the legal and administrative framework for local taxation and grants to local authorities so as to encourage the improvement of services and their efficient provision, and the legal and administrative framework for financial equalisation, so as to ensure fairness and solidarity between authorities, with due regard in particular for the guidelines appended to this Recommendation;

4. involve local councillors in the debate on reforms needed in this area, particularly those undertaken pursuant to this Recommendation, and on arrangements for implementing such reforms;

5. translate this Recommendation into their official language(s) and circulate it to local authorities and associations of such authorities, inviting them to take note of the guidelines addressed to them, as set out in Part II of the Appendix.

Appendix to Recommendation Rec(2005)1

Part I – Guidelines for central authorities

These guidelines are addressed to central authorities, in so far as they are responsible for defining the legal framework and supervising the activities of local authorities. In certain federal states, these responsibilities rest with the federated entities. In such cases, these guidelines are addressed to them. Central authorities are invited to bring the guidelines to their attention.

1. Definitions

Within the meaning of this Recommendation:

a. From the point of view of the authority's capacity to alter their level, resources may be classified as either own or transferred resources.

An authority's "own resources" are resources of which it can vary the level, possibly within a predetermined range. These resources may, for example, be fiscal or non-fiscal, exclusive or shared, etc.

An authority's "transferred resources" are resources whose level the authority may not vary. They may be, for example, fiscal or non-fiscal, exclusive or additional, proportional or non-proportional (grants), etc.

b. From the point of view of the authority's capacity to use their proceeds freely, resources may be classified as either earmarked or non-earmarked.

A local authority's "earmarked resources" are resources which must be used for a purpose (goods, property, a service, a programme) decided on by an authority other than the authority in question.

"Non-earmarked resources" are resources which may be used freely, with due regard for the legislation concerning the use of public funds, by the local authority.

c. From the point of view of the relation between the sum that constitutes revenue of the local authority and the total sum levied locally, resources may be proportional or non-proportional.

An authority's "proportional resources" are resources that depend directly on the amount raised locally. They may be, for example, fiscal or non-fiscal, exclusive or non-exclusive (shared), etc. Own resources are normally proportional.

"Grants" are non proportional financial transfers.

d. From the point of view of the number of authorities which share their proceeds, resources may be exclusive or shared.

An authority's "exclusive resources" are the resources whose proceeds, as a whole, constitute the revenue of the authority in question. They may, for example, be financial or non-financial, own resources or financial transfers, etc.

An authority's "shared resources" are resources that are raised by the authority in addition to resources raised by another authority on the same basis.

e. Other definitions

"Additional resources" are shared own resources.

"Surcharges" are fiscal additional resources.

"General grants" are non-earmarked, non-proportional financial transfers.

"Specific grants" are earmarked non-proportional financial transfers.

The "financial capacity" is the maximum revenue an authority can raise in standard conditions which are set at the national level. As a rule, financial capacity largely depends on the tax (fiscal) capacity. There are, however, authorities that can raise very substantial non-fiscal resources (revenue from property, in particular land and buildings, economic activities or financial investments); their financial capacity takes account of this.

An authority's "tax (fiscal) capacity" is its ability to raise taxes in standard conditions which are set at the national level. Tax capacity is therefore proportional to the tax base, and differences in tax base lead to differences in tax capacity.

An authority's "spending need" is the amount theoretically necessary for the authority to produce or provide goods or services or a predetermined set of goods and services at standard level. The differences between authorities' spending needs stem either from differences in the unit costs of the goods and services produced or provided by the authorities in order to meet

the quantity and quality minima imposed on them, or from the number of services needed (economies of scale) to attain these minima, or from differences in the number of residents entitled to the services.

“Delegated tasks” are competencies for which the ultimate responsibility falls on a higher level authority but the implementation of which has been transferred to a local authority.

“Exceptional revenue” is revenue which does not occur on a regular basis.

“Fiscal pressure” is the ratio between the total compulsory contributions and the added value (for companies) or income (for families) on the considered territory.

2. General principles

1. States are invited to take note of and put into practice the fundamental principles to be observed in respect of local and (*mutatis mutandis*) regional authorities' financial resources, as set out in Article 9 of the European Charter of Local Self-Government.

2. The main objectives in developing intergovernmental financial relations should be to the following:

- to secure revenue for each tier of government according to the assignment of their responsibilities and standard financial needs (vertical fiscal balance);
- to achieve an equitable distribution among local authorities (horizontal fiscal balance);
- to enhance the efficiency of the public sector.

3. Local authorities should, within the framework of the national economic policy, be entitled to their own resources, which should be adequate, and of which they may freely dispose, in the exercise of their powers and responsibilities, within the limits of the law (financial autonomy).

4. Taxes (right to levy, proceeds and capacity to set the rate, if necessary inside a pre-established bracket) should be assigned to local authorities unless these taxes would exhibit significant horizontal spillovers, entail an inequitable pattern of revenue among local authorities, or discrimination or distortions among authorities, which warrants these taxes being administered at higher levels of government (subsidiarity principle). Where taxes are assigned to local authorities, they should also be given some power to intervene in their administration in order to improve their efficiency and to appropriate their proceeds (fiscal autonomy). Fiscal autonomy includes some tax policy discretion on behalf of local authorities, especially in the setting of tax rates.

5. To the greatest extent possible, each local authority should finance, from its own resources, the expenditure it decides on (fiscal equivalence at the local authority level).

6. Fiscal equivalence at individual level requires local authorities to charge, within a common regulatory framework, for local public services, and to tax citizens and local businesses in accordance with their use of local infrastructure (tax-benefit principle).

7. Local authorities should balance the financing of public services through taxation and charges, according to the public-private benefit they provide. When an authority deems it

necessary to help a category of citizens to have access to a public service, it should not subsidise the service, but grant financial help to the users in question, in a targeted and, as far as possible, personalised way.

8. For regulatory purposes of local interest, local authorities should be able to levy fees, fines and emoluments and to grant permits and user rights to local businesses.

9. Where taxes are shared with local tiers of government, the local share should be commensurate with the local tax effort in order to encourage local officials to strengthen and develop the local tax base (derivation or origin principle).

10. Where there are large inter-jurisdictional disparities between local financial capacity and spending needs, central authorities should ensure the compensation of the financially weaker local authorities. These transfers should be unconditional and secure financing of a reasonable standard level of public service provision for all local authorities.

11. For local services of national interest (vertical spillovers) or for which some degree of national harmonisation is desirable, central authorities should guide local authorities through standard setting, and support these programmes through specific grants or service-related elements calculated for the general grants.

12. Where local authorities act as agents of a higher administrative level, the principal government must share the costs of these programmes (connectivity principle). Full funding is appropriate where the mandating government can control the administration of the programme; where this is not true, local authorities could be required to share some costs in order to contain their volume and to support the targeting and the effective administration of the programme.

3. Local taxation guidelines

a. Fiscal decentralisation

13. Financial autonomy of local authorities implies that local authorities have sufficient own resources to fund a significant proportion of the costs incurred in the discharge of their responsibilities, as defined in the Constitution or by law. This proportion should be sufficiently large to allow for and encourage substantial room for manoeuvre and accountability on the part of local authorities when they determine the expenditure to be incurred in the discharge of these responsibilities.

14. Shared resources of local authorities should primarily consist of non-earmarked additional resources and/or non-earmarked shared proportional resources decided by a permanent law.

15. A degree of tax decentralisation is therefore required. The following parameters may be used to determine this degree:

- the ratio of local authorities' tax revenues to total state tax revenues;
- the ratio of local tax revenues to total local resources;
- the ratio of tax revenues to the grants from the state and other public authorities;
- the ratio of local authorities' own tax revenues to the country's gross domestic product;

- the ratio of the maximum resources to the minimum resources that the authorities can raise by varying local taxation rates within the statutorily permitted range.

16. When the degree of fiscal decentralisation is considered low on the basis of the above parameters, the central authorities should consider, in conjunction with the local authorities, means of increasing the proportion of local authorities' own tax revenues and tax revenues transferred under a permanent law, without necessarily increasing overall tax pressure.

17. Local authorities should be able to establish the level of their (exclusive or additional) taxation, if appropriate within predetermined limits, so that they can vary the quantity and quality of their services according to local needs and preferences and so that elected representatives are more accountable.

18. When they can decide on the level of their revenues derived from taxes established at national level, local authorities should, in general, be able to vary the rate rather than the tax base. The rates fixed should reflect a local political choice, whereas the tax base should be assessed objectively and uniformly based on the law.

19. Local authorities' freedom in tax matters should be restricted only for reasons relating to fairness or national economic policy constraints.

20. Limitations on the financial autonomy of local authorities should not be disproportionate to the objectives pursued, and should be discussed with local authorities or associations of such authorities, provided for by law and lifted as soon as possible.

21. In general, when higher authorities take decisions that reduce the local authorities' tax base, compensation should be provided.

22. In order to send out a clear message to the public and ensure that local authorities are accountable, local taxation rates should vary essentially in accordance with their respective communities' choices as regards level of services. For this reason, differences in financial capacity, and in particular in the local tax base and spending needs, should be subject to an equalisation system.

23. Minimum conditions regarding the openness of decisions concerning local taxation should be laid down by law, both for central authorities (publication of information on which decisions are based, national debates, consultation of local authorities or their associations) and for local authorities (public meetings, public votes or votes by roll call, publication of key documents before meetings at which decisions are taken, etc.).

b. Structure of local taxation

24. The tax revenues of a local authority should come from resident individuals or property or businesses on the territory of the local authority in question.¹

25. The structure of local taxation should be such as to ensure a fair, open breakdown of the burden of local taxation according to the taxpayers' ability to pay.

26. The structure of local taxation should be such as to ensure that the overall tax burden and its relation to the level of services provided for the individuals and businesses that bear it is

clearly visible (as this is a prerequisite for the efficient allocation of resources according to local preferences).

27. Local authorities should be able to vary the rates of taxes that account for a substantial proportion of their revenues, so as to prevent slightly different levels of services from being matched by large differences in local taxation rates.

28. Local taxes should have a sufficiently high yield and low administrative and inspection costs.

29. Local taxation should be reasonably stable so as to make for continuity and foreseeability in public services, and have a certain degree of flexibility, so that tax revenue can be adjusted to changing budget costs.

30. Local taxes should be neutral and create little negative economic distortion (minimum impact on growth and the economic structure of the municipality), demographic distortion (so as not to prompt people to migrate) and social distortion (so as not to cause further problems for social groups in difficulty).

31. The central authorities should be able to help local authorities draw up local tax regulations. The establishment of a single database (or a single access point) for all local taxation can make for greater openness.

32. Care should be taken to avoid: unduly large or unduly rapid changes in the tax base or taxation rate introduced by the higher authority; the risk of incentives that are contrary to local interests; measures that undermine the incentive to collect the tax intended for local authorities and carry out the inspections necessary to this end; unduly long delays in paying the sums collected; and a lack of information about the amount collected.

c. Tax collection and litigation

33. Consideration should be given to the possibility of the central authority's registering and collecting the taxes. The main advantage of such a system is that the regulations are drawn up by the central authority, registration costs are reduced and collection and litigation costs are lower, because there are economies of scale, and are borne by the higher authority.

34. If the taxes are collected by the local authorities, the central authority should provide them with logistic support (training, access to information, integrated, interoperable software, etc.) and set up special databases at national level.

35. When the tax is collected by a higher authority before being transferred to the local authorities, it is important that the sums concerned should be transferred within a reasonable time set by the law. A system permitting regular payments is of key importance to the municipality's cash management. The local authorities should be provided with transparent information about the calendar of transfers and the amounts paid.

36. It is desirable to have a single litigation procedure for local taxes, established at national level (or regional level in federal states). Failing that, it is recommended that the various procedures have as much in common as possible.

4. Financial equalisation guidelines

a. Equalisation systems

37. The purpose of financial equalisation should be to allow local authorities to provide their citizens, if they so wish, with services of generally similar levels for similar taxation levels.

38. When designing their equalisation systems, central authorities should take account of the fact that the differences in the tax burden that authorities have to impose on their residents to achieve the same level of services are generally the result of differences in their financial capacity, their spending needs or their managerial efficiency.

39. The equalisation system should compensate, at least in part, for differences in authorities' financial capacity (so as to provide more resources to financial weaker authorities) and spending needs (so as to provide more resources for authorities that either have additional responsibilities or, by virtue of their geographical location, demographic situation or other factors, are obliged to spend more in order to discharge their responsibilities). It should not compensate for differences in managerial efficiency or differences in cost stemming from the adaptation of service levels to local preferences.

40. A substantial degree of financial equalisation is a prerequisite for the success of fiscal decentralisation and sound local self-government. At the same time, financial equalisation is a prerequisite for the success of policies geared to economic stability and balanced, sustainable regional development. The decision concerning the desirable degree of equalisation is an eminently political one. There is no optimum level of equalisation at European level. It is important, however, that, once the decision has been taken, an efficient equalisation system is set up to implement it.

41. Local authorities should be provided with appropriate information about the way in which equalisation systems work, for they cannot accept a system with which they are unfamiliar or which they do not understand.

42. Equalisation may be achieved by means of grants from a higher authority (vertical equalisation) or the redistribution of local tax revenues, particularly if they are collected by central government departments (horizontal equalisation) or a combination of both. Vertical equalisation generally lessens the risk of resentment among local authorities. Horizontal equalisation (provided for by law, in accordance with the principle of solidarity between authorities of the same level) has the advantage of strengthening inter-municipal solidarity and giving local authorities greater independence from the central authority; it should be envisaged, in particular, in cases where local taxation capacity varies too much for it to be possible to achieve the desired level of equalisation solely by means of financial transfers from the state. The extent to which local authorities with above average per capita revenues are expected to contribute to horizontal redistribution should not be so great, however, as to discourage them from the exploitation and development of their revenue base. The volume of resources contributed by the national budget to vertical equalisation should reflect the priority of the services for which local authorities are responsible within the overall framework of public expenditure; their stability should be guaranteed by a permanent law and some form of indexation to the growth of aggregate national budget revenues is highly desirable.

43. The desired degree of equalisation of disparities in spending needs and in financial capacity should be clearly and foreseeably specified.

44. Equalisation systems should specify openly and foreseeably which local parties are eligible for financial transfers to equalise financial capacity and spending needs. Eligibility criteria should be laid down by law.

45. Although equalisation systems normally operate at national level, it may be worth encouraging systems for pooling certain local taxes or redistributing certain local taxes among local authorities that make up an urban area and, in particular, between municipalities that constitute the industrial and commercial heart of the urban area and those which are residential areas. A local equalisation system of this kind makes it possible to compensate, at least in part, for externalities and may be set up by means of an agreement among the municipalities concerned. In some cases, if it is impossible to reach such an agreement, it may be necessary to legislate.

46. In all cases, the mechanisms adopted to equalise among jurisdictions should be based on standardised (not actual) levels of revenues and expenditures. The standardisation of costs and revenues acts as a safeguard against implicit financial bail-outs that would otherwise eliminate the local authorities' (and their officials') accountability and result in wasted public resources. It also avoids moral hazard by local authorities because it precludes the manipulation of distribution criteria by recipient governments.

47. Central authorities should regularly check how their equalisation systems are working and consider, with local authorities, improvements that can be made in order to ensure that the adverse effects of an unequal distribution of resources and spending needs are effectively remedied.

b. Equalisation of spending needs

48. The equalisation of (standardised) specific spending needs should be effected through grants based on appropriate and objective criteria. Even when these grants are programme-specific, they should allow some limited discretion as to their use within programmes, and should avoid onerous monitoring and reporting.

49. Spending needs should be estimated primarily on the basis of criteria which:

- are objective and which local authorities do not directly control;
- are unlikely to affect local authorities' freedom of choice, within the limits of the budgets available;
- do not penalise local authorities that endeavour to streamline the management of their services to make them more efficient, either by lowering unit costs or by trying, by means of co-operation arrangements or mergers, to increase the number of users and units produced in order to obtain economies of scale, and which do not involuntarily provide incentives to indulge in behaviour that is contrary to the objectives of local accountability and efficiency in the provision of public services;
- take account, as far as possible, of demographic, geographical, social and economic features leading to disparities in costs.

50. The calculation formulae used to estimate spending needs should fulfil the following conditions:

- the weight afforded to the various individual indicators should be determined on the basis of objective information about the impact of variations in those indicators on the actual cost of local services;
- insofar as the assessment of needs nevertheless entails value judgments as to the weight to be afforded to the various indicators, it is necessary to identify and assess the results of these judgments in conjunction with representatives of the local authorities concerned or their associations;
- formulae for evaluating needs (models) should be as simple as possible, so that they are easy to understand and make for openness and accountability, but comprehensive and detailed enough to be reliable;
- formulae for evaluating needs should remain as stable as possible, to allow local authorities to make long-term forecasts and so that changes in estimated needs reflect genuine changes in the situation of local authorities over which they have no control.

51. The equalisation of spending needs should take account of as many local authority activities as possible, and in particular those that are very important or compulsory. A different formula should be drawn up for each spending need in respect of which equalisation is to apply.

c. Equalisation of financial capacity

52. The equalisation of (standardised) financial capacity should aim at reinforcing a deficient revenue base of a local government measured against a national yardstick (benchmark); such transfers should be unconditional general grants at the discretion of local authorities.

53. The estimate of the financial capacity of local authorities should preferably include all sources of revenue. The aim should be to gauge overall financial capacity.

54. Care should be taken to ensure that the equalisation of financial capacity does not undermine local self-government by, in practice, inducing authorities to provide the same level of services or apply the same taxation rates.

55. Equalisation of financial capacity should not deter local authorities from improving the tax base and ensuring efficient tax collection. The measurement of financial capacity for equalisation purposes should be based on the assumption that all local authorities levy taxes at the same rates and are equally efficient in assessing and collecting taxes, so that authorities are not penalised for the efforts they make or rewarded for laxity. This assumption should be used solely to calculate equalisation funds and should not undermine the authorities' right to vary the actual rates of the taxes levied. Local authority decisions should not directly affect the amount of equalisation funds received or paid.

56. In contrast to the equalisation of spending needs, where there is more than one local tax, equalisation should not take place for each tax: a representative fiscal system should be devised that reflects the total local tax-raising potential. A resource equalisation fund should be set up and the money allocated according to discrepancies between the various authorities' tax capacity and the average tax capacity.

57. Actual fiscal pressure should not be used as indicator of the financial capacity.

5. Grants to local authorities

58. Grants are provided by the central authorities for various reasons and may take various forms. In general, they should be provided for by law or decided on in the light of clear criteria laid down by law. The government's discretion in calculating and effecting transfers should be reduced in order to avoid objectivity and credibility problems.

a. General grants

59. The higher authorities' contribution to local budgets should mainly take the form of general grants.

60. The sum total of such grants should:

- cover the standardised cost of discharging delegated tasks and the structural shortfall in local authorities' resources in relation to their statutory responsibilities;
- take account of such factors as demographic changes and economic circumstances such as economic growth and rising costs, particularly when the level of local authorities' own resources and their ability to influence these resources do not make it possible to adjust them to meet expenditure increases caused by economic factors;
- take account of variations in costs generated by decisions taken at national level, in particular variations in such general factors as salaries and social security costs, minimum standards for local services and environmental protection standards applicable to local authorities.

61. States should assure local authorities of a degree of stability in this sum total, possibly by law or by virtue of arrangements designed to ensure economic stability, with the cooperation of all tiers of government. The sum total of transfers should not be subject to frequent, arbitrary fluctuations when the state's annual budgets are drawn up.

62. Criteria for the allocation of general grants should be clearly defined by law, or at least in accordance with the legal framework, on a non-discretionary basis. This should enable local authorities to calculate in advance the amount of the grants they will receive and adopt their budgets accordingly.

63. Any major redistribution of resources between local authorities resulting from a substantial change in the criteria for calculating grants, sharing out taxes or equalisation formulae should take place gradually, over a sufficient number of years to allow local authorities to adapt their budgets to the new funding levels without any excessive transfer of services.

64. Local authorities should not be in a position to influence the amount of the general grants they receive, unless this is one of the explicit objectives of a particular grant.

b. Specific grants

65. Specific grants restrict local authorities' freedom of choice as regards policy, are less effective than general grants in making good shortfalls in resources in relation to

responsibilities and are not very useful as equalisation tools. Recourse to specific grants should therefore generally be restricted to what is necessary to achieve the following objectives:

- (co-)financing capital expenditure as part of balanced, sustainable regional development policies;
- ensuring that certain local public services, for which minimum standards are laid down at national level, are provided at a standardised level throughout the country;
- offsetting any centrality costs affecting the provision of certain local public services, insofar as they are not compensated for by horizontal transfer mechanisms, following voluntary agreements or statutory obligations;

- financing certain public services that local authorities provide on behalf of the state or offsetting costs which local authorities incur when discharging responsibilities delegated by other authorities; while specific grants may be used for these purposes, particularly because they can serve as an incentive, general grants are often more effective; the central authorities should consider which solution is to be preferred, with due regard for local autonomy, in the particular situation in question.

66. Specific grants should generally be awarded on the basis of objective, transparent criteria related to spending needs. All the authorities eligible for such grants should be informed about the availability of funds and the relevant criteria and should be able to submit applications for such grants, which should be compared by means of transparent procedures.

67. Where specific grants are conditional upon financial contributions on the part of the authorities receiving them, the level of such contributions should be flexible so as to take account of the authorities' financial capacity. The central authorities should examine the possibilities of modulating the specific grants according to that capacity so that the financial effort, and not the financial input, of the authorities is comparable and the most disadvantaged authorities are not denied such grants.

6. Other financial resources

a. Fees and charges

68. Recourse to fees and charges can make a considerable contribution to local authority revenues. Their impact on the demand and on the access to services should, however, be examined.

69. Local authorities should be entitled to decide what to charge for the services they provide according to the situation and local preferences.

70. In the case of essential services, the central authorities may lay down minimum (quantitative and qualitative) standards and conditions of access for disadvantaged sections of the population (exemptions and subsidies).

71. If necessary, the central authorities may, in order to ensure equal access throughout the country, lay down maximum charges for essential services and minimum charges for convenience services.

b. Sundry resources

72. With regard to the sundry resources of local authorities (revenues from economic activities, property, investments, donations and legacies), and also to loans, states are invited to take note of the guidelines addressed to them in Recommendation Rec(2004)1 on financial and budgetary management at local and regional levels.

7. Borrowing

73. Local authorities should be able to borrow in order to finance their capital expenditure projects. Such projects are intended to benefit future generations, and recourse to borrowing may therefore make it possible to spread the burden fairly among generations. As future generations do not have a say in the choice of projects to be financed, however, financing through borrowing is mainly suitable for services for which the loan will be repaid by means of charges to users.

74. Except in the case of cash advances and in exceptional circumstances, local authorities should not be allowed to take out loans to finance current expenditure. Current expenditure benefits the current generations and financing it through loans would mean that the costs would be borne by future generations. In addition, financing current expenditure through borrowing would make elected representatives less accountable for the financial implications of their decisions.

75. Local authority access to borrowing may be restricted on account of national economic policy constraints, in order to limit the risk of non-repayment and to avoid decisions that would transfer an excessive financial burden to future generations. Any such restrictions should be fair, commensurate with the constraints in question, discussed in advance with the local authorities or their representatives and lifted as soon as the macro-economic situation permits.

76. In order to make decision-makers more accountable, local authorities should be held fully answerable for their decisions to resort to borrowing. The central authority should not offer guarantees for loans raised by local authorities, save in exceptional circumstances.

Part II – Guidelines for local authorities

1. General principles

1. Major decisions such as the establishment of taxation rates, charges payable by users for services provided and recourse to loans should be taken by the elected deliberative body (council or assembly) at a plenary meeting, and not delegated to the executive or a committee or other body subordinate to the elected deliberative body.

2. Financial and budgetary discussions should take place and the relevant decisions should be taken at meetings of the elected deliberative body that are open to the public.

3. The consequences of local authority decisions concerning sources of revenue should be made public. Budgetary documents should include overviews that are easy to understand on this topic.

4. In areas in which local authorities enjoy discretionary powers, major financial decisions should be grouped together and taken at specific intervals. In general, decisions concerning revenues and those concerning expenditure should be taken together when the budget is adopted and revised.
5. Associations of local authorities can play an important role in finding solutions that strike a balance between the various tiers of authority when national economic policy is framed; the same is true with regard to helping local authorities to draw up local tax regulations, for example.
6. Local authorities should use information technologies to improve managerial efficiency (collection and processing of information, preparation of decisions, follow-up to decisions). Priority should be given to “real-time”, open, evolutive systems that are, where possible, interoperable with the authority's other systems and with systems established centrally or as a result of horizontal co-operation. Opportunities for payment by electronic means at a distance should be increased.
7. Local authorities should make sure to provide their staff with the various forms of training they are likely to need (legal, financial, fiscal, organisational, etc.) and regularly update key technical skills.
8. Local authorities should set up systems to enhance the professionalism and ethics of staff dealing with financial and, in particular, fiscal matters. They are invited to take note of the best practices pinpointed by the CDLR in the Public Ethics at Local Level Handbook, adopted at the Conference on Ethical Standards in the Public Sector, Noordwijkerhout (31 March-1 April 2004).

2. Local taxation

9. The basic principles for determining local taxation should be fairness (taxation should be commensurate with each taxpayer's ability to pay) and efficiency (a high yield and a low collection cost).
10. When they establish the level of local taxes, local authorities should do so as openly as possible, so that their decisions are clear to the public. Measures ensuring the transparency of fiscal decisions should include publishing (in paper and electronic version), posting up and possibly disseminating all draft fiscal decisions, the documents needed to understand them and the decisions actually taken.
11. Local authorities should vary the level of taxation only in order to adapt the level of services to local needs and preferences.
12. Local authorities should avoid introducing too many taxes, as this inevitably increases administration and is liable to increase the cost of collection, grounds for litigation, etc.
13. Although the incentive purpose of local taxation should not be overlooked, it should not render impossible activities that are otherwise lawful. Any incentive should respect the principle of the equality of citizens before the law. In such cases, the determination of the tax base, taxation rate and exemptions should be consistent with the objective pursued.

14. Untimely changes in the local tax framework that could cause excessive disruption to economic operators or households should be avoided.

15. The local authority should provide the public with information and explanations concerning any taxes in addition to tax levied by a higher authority. If they are exclusive taxes, it is up to the municipality to draw up its fiscal regulations and bring them to the attention of the public.

16. Local authorities should provide the public with comprehensive, readable information about the use made of tax revenues by the authority.

17. The means used to inform the public about local taxation should take account of specific local features: electronic publication, posters, direct mailing, telephone service, etc. Certain methods of prior consultation may also be useful, as may public meetings after the council has adopted regulations.

18. In the case of exclusive local taxes, the authorities should pay particular attention:

- to ensuring that tax bands are both simple and fair;
- to the quality of the drafting of tax regulations, particularly in small municipalities;
- to tax avoidance and evasion mechanisms that may be prompted by local regulations.

19. Information on the tax base should be regularly updated and founded on factors that do not lend themselves to contestation. Cooperation between local authority departments should be arranged in order to obtain the necessary information (police, registry of births, marriages and deaths, etc). Cooperation with the higher authorities may enable local authorities to obtain the information needed to establish the tax base.

20. The bulk of local taxation should rest on a relatively stable tax base.

21. Registration and collection of local taxes right at the start of the financial year enable the municipality to have financial resources at its disposal earlier in the year and therefore to improve its cash flow. Steps should be taken to avoid delays that could lead to subsequent adjustments obliging taxpayers to pay, in the course of the same year, tax due in respect of several years. A system for following up unpaid taxes should be set up, both to protect the interests of the community and to take account of social situations.

22. Local taxes should require the least possible effort and the fewest possible formalities on the part of taxpayers, so that they do not inadvertently evade tax. Local taxation should not be based on taxpayers' prior tax returns.

23. Payment demands should allow taxpayers to check the accuracy of the information on which the amount of tax payable is based: tax base, rate, any exemptions, etc. The procedure to be followed for lodging a complaint should also be clearly mentioned, as should the procedure for requesting easy payment terms in the case of a sizeable tax.

24. Given the delays involved in court proceedings and the uncertainty surrounding such proceedings, it is desirable that litigation be reduced to a minimum. It is therefore recommended that every effort be made to limit it: laws and regulations should be clear, with few exemptions and special cases; it should be easy to obtain information; social situations in

which easy payment terms are desirable should be identified, etc. Tax documents should mention the deadline for lodging a complaint, the method of doing so and the time-limit within which a decision should be taken and the possibility of appeal. Budgetary reserves should, where appropriate, be set aside to take account of trends in litigation.

25. Local authorities should carry out audits at regular intervals for each tax directly levied by the authority. Such audits should:

- compare collection costs (and changes in such costs) with the proceeds from the tax;
- indicate whether, for example, all taxpayers have been identified and whether they all pay the tax;
- assess the incentive and discouraging role of any taxes that have such an objective.

3. Fees and charges

26. As a rule, charges should not exceed the cost of services and the local authority should not seek to make a paper profit from the provision of public services.

27. The charges applied should not reduce demand excessively, particularly in the case of important public services.

28. The choice between financing through charges (in which case users pay) and financing through taxes (in which case taxpayers pay) should be explicit and taken by the authorities with due regard for the specific features and preferences of each authority. It should be taken, for each service, in the light of considerations of fairness and equality.

29. Local authorities should make sure that access to essential services is preserved for the most disadvantaged sections of the population.

4. Other resources

30. Local authorities are invited to take account of the guidelines concerning other resources (borrowing, income from economic activities, property, investments, donations and legacies) addressed to them in Recommendation Rec(2004)1 of the Committee of Ministers on financial and budgetary management at local and regional levels.

31. Exceptional revenue should only be used to finance capital expenditure and the reimbursement of debt.

Note ¹. The CDLR studies show that local and regional authorities have greater financial autonomy in countries where they receive a share of revenues from income tax and all revenues raised in tax on land and buildings.