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*"Good local and regional governance in
turbulent times: the challenge of change"*

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**Council of Europe Reference Framework
for Regional Democracy**

COUNCIL OF EUROPE REFERENCE FRAMEWORK FOR REGIONAL DEMOCRACY

Introduction

Strengthening local and regional democracy and securing respect for human rights are among the Council of Europe's main aims because a properly functioning democracy provides one of the foundations for peace and stability in Europe.

Through their diversity, local and regional authorities also reflect the fact that the key principles of democracy and public participation in the management of living environments are flourishing.

The work of the European Committee on Local and Regional Democracy (CDLR) and the Congress of Local and Regional Authorities of the Council of Europe demonstrates the importance of providing member states (regardless of their internal structure) with a "reference framework for regional democracy" to help them with their institutional development.

In June 1993, the Conference on "Regionalisation in Europe: Evolution and Perspectives", held in Geneva by the Standing Conference of Local and Regional Authorities of Europe at the invitation of the Swiss Confederation and the Canton of Geneva, was the first manifestation of the Council of Europe's interest in regions and regionalisation.

In Recommendation 1349(1997), the Parliamentary Assembly of the Council of Europe expressed its full support for the Congress's draft European Charter of Regional Self-Government of 1997. It recommended that the Committee of Ministers grasp the political opportunity provided by the draft Charter, involving the Parliamentary Assembly and the Congress of Local and Regional Authorities of Europe in the work, which would be entrusted to an intergovernmental committee of experts so as to finalise the text prior to its adoption and opening for signature.

At the 13th session of the Conference of European Ministers responsible for Local and Regional Government, held in Finland in 2002, the Ministers asked the Committee of Ministers to give terms of reference to the CDLR to prepare draft legal instruments of various types taking account of the guidelines devised during the Conference (subsequently referred to as the "Helsinki Principles"), modelled on the European Charter of Local Self-Government (ECLSG).

The Committee of Ministers Recommendation Rec(2004)12 to member states on the processes of reform of boundaries and/or structure of local and regional authorities sets out numerous pointers for setting up or changing such entities, particularly the need for consultation between authorities. Any reform process must be based on effective, transparent, responsible and representative institutional dialogue. Public access to information should be ensured and the results of the dialogue should be made public as soon as possible. If institutional dialogue is to be representative, local and regional authorities at all levels that have a legitimate interest in the issues being addressed must be invited to take part, regardless of their political make-up. Lastly, it is essential that all the relevant information is made available to all the participants in good time, by means of clearly established procedures, that the result, if not binding, is at least given due consideration in the final decision-making process and, of course, that institutional dialogue is of genuine import and is not deprived of its substance by parallel processes.

At the 14th session of the Conference of European Ministers responsible for Local and Regional Government, in Budapest, the Ministers instructed the CDLR to produce a detailed report on developments, innovations and issues to be discussed at the 15th conference in Valencia, while at the Valencia Conference it decided to "keep the issue of regional self-government and the further work carried out in this field under review at [its] next session [in Utrecht, in 2009], in order to give this important aspect of democratic societies the attention it deserves".

At the same time, the Congress, continuing the work on which it had embarked when it drafted a European Charter of Regional Self-Government (1997), came up, in 2008, with a proposal for a draft European Charter of Regional Democracy, which is appended to its Recommendation 240 (2008).

In 2008, acting on the instructions given to it in Valencia in 2007, the CDLR proposed to the Committee of Ministers of the Council of Europe that it would work with the Congress to draw up a "Reference framework for regional democracy".

This document is a compilation and a synthesis of decisions by the Ministers and the Congress, serving as a reference point for any government wishing to begin a process of regionalisation or reform of its local and regional structures, without placing its sources in any order of priority.

Drafted in the CDLR, with the help of representatives of governments, the Congress and INGOs, the "reference framework" is also a means of transcending the scope of Article 13 of the European Charter of Local Self-Government in order to help governments strike the best possible balance in the apportionment of powers and responsibilities among different tiers of government.

The "reference framework" must also stress the principle of subsidiarity ⁽¹⁾, the principle of social and territorial cohesion ⁽²⁾ and the need for solidarity among the components of a sovereign state (or "federal" loyalty) ⁽³⁾.

It also takes account of the emergence – to differing degrees according to the country concerned – of the concept of "regional interests", covering such regional activity sectors as culture and training, social protection and health care, balanced, sustainable development, nature conservation and the protection of biodiversity and economic policies.

The combination of all these principles and "rules for living" within a State set-up constitutes the essence of the principles of democracy.

As to the deliberative bodies of regional entities, and hence to democratic representation, direct election by secret ballot is to be preferred, though other means of designating members should not be ruled out (indirect election of the members of bodies representing the regional entity, for instance).

⁽¹⁾ The **principle of subsidiarity** is designed to make sure that decisions are taken as close as possible to citizens by ensuring that action to be taken at a higher level is justified in the light of the possibilities available at national, regional or local level. The principle was devised in order to bring the places where decisions are taken closer to citizens and prevent seats of power from being unduly remote. The principle of subsidiarity has no effect on the actual existence of powers, but makes it possible to determine whether or not an existing power may be exercised, and comes into play only where there are rival powers.

⁽²⁾ The **principle of territorial cohesion** may be defined as the principle of equity among citizens, regardless of where they live: the objective of territorial cohesion is to provide citizens with equitable conditions of access to public services and ensure optimum conditions in terms of competitiveness, balanced, sustainable development and the improvement of the quality of life throughout the country, with due regard in particular for the diversity of geographical and demographic situations.

⁽³⁾ The (federal or regional) entities may exercise their powers independently and should not in theory be answerable to the higher or federal authority or to other component entities for the way in which they exercise their powers. The autonomy of the component entities is, however, liable to endanger the structure of the State. All the entities must therefore observe "**federal**" **loyalty** and, when exercising their powers and responsibilities, refrain from taking steps that can jeopardise the overall structural balance and harm the interests of other component entities.

REFERENCE FRAMEWORK FOR REGIONAL DEMOCRACY

This section brings together the relevant parts of the reference texts under headings which reflect the main issues of regional democracy.

Generally speaking, the texts brought together are wholly complementary. However, on certain issues, divergencies exist between them. Where this is the case, it reflects the differing views of those having adopted the respective reference texts.

1. REGIONAL ARCHITECTURE

a. Regional structure

Helsinki principles A1.1 and A1.3

Regional authorities are territorial authorities between the central government and local authorities. This does not necessarily imply a hierarchical relationship between regional and local authorities.

Where regional authorities exist, the principle of regional self-government shall be recognized in domestic legislation and/or by the constitution, as appropriate.

b. Competences

Helsinki principles A1.2, B1.1, B1.2, B1.3 and B1.4

Regional self-government denotes the legal competence and the ability of regional authorities, within the limits of the constitution and the law, to regulate and manage a share of public affairs under their own responsibility, in the interests of the regional population and in accordance with the principle of subsidiarity.

Regional competences shall be defined by the constitution, the statutes of the region or by national law. Regional authorities shall, within the limits of the law and/or the constitution, 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. Regulation or limitations of regional competences shall be based on the constitution and/or law.

Regional authorities shall have decision-making and administrative powers in the areas covered by their own competences. These powers shall permit the adoption and implementation of policies specific to the region. Decision-making powers may include legislative powers.

For specific purposes and within the limits of the law, competences may be conferred upon regional authorities by other public authorities.

When powers are delegated to regional authorities, they shall be allowed discretion to adapt the exercise thereof to regional conditions, within the framework set out by the constitution and/or the law.

Congress Recommendation 240 (2008) – Articles 29.1, 29.2, 29.3, 29.4, 29.5 and 29.6

Regional authorities shall be responsible for promoting regional culture and defending and enhancing the region's cultural heritage, including regional languages.

Regional economic development shall constitute an important aspect of regional responsibilities, to be carried out in partnership with economic operators in the region.

Regional authorities shall help to adapt education and training facilities to employment development requirements in the region.

Social welfare and public health shall be among the areas of activity of regional authorities, which shall also be responsible for promoting social cohesion in the region.

Balanced development of the territory shall constitute a major objective of any action by regional authorities affecting the territorial organisation of the region.

Regional authorities shall be responsible for protecting and enhancing natural resources and biodiversity and shall ensure the sustainable development of the region, with due regard for local, national, European and international policies in this respect.

c. Relations with other tiers of government

Helsinki principles B2.1 and B2.2

The relationship between regional authorities and other sub-national territorial authorities shall be governed by the principles of regional self-government set out in this document and local self-government set out in the European Charter of Local Self-Government and the principle of subsidiarity.

Regional authorities and other sub-national territorial authorities may, within the limits of the law, define their mutual relationship and they may co-operate with each other.

Congress Recommendation 240 (2008) – Article 8.3

Regional authorities shall co-operate with local authorities in the pursuit of objectives of general interest and to meet citizens' needs.

European Charter of Local Self-Government – Article 4.6

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.

d. Links with central authorities

- **Involvement in decision-making**

Helsinki principles B3.1, B3.2 and B3.3

Regional authorities shall have the right as described in paragraphs 3.2 and 3.3 below to be involved in state decision-making affecting their competences and essential interests or the scope of regional self-government.

This involvement shall be ensured through representation in decision making bodies and/or through consultation and discussion between the state and regional authorities concerned. Where appropriate, participation may also be ensured through consultation and discussion between state authorities and representative bodies of regional authorities.

In so far as the constitution and/or the law enable it, regional authorities and/or their representative bodies shall be represented or consulted, through appropriate bodies and/or procedures, with regard to international negotiations of the state and the implementation of treaties in which their competences or the scope of regional self-government are at stake.

- **Supervision and substitution**

Helsinki principles B4.1 and B4.2

Any supervision of regional authorities by central state authorities shall normally only aim at ensuring their compliance with the law. However, the supervision of delegated powers may also include an appraisal of expediency.

Administrative supervision of regional authorities may be exercised only according to such procedures and in such cases as are provided for by constitutional or legislative provisions. Such supervision shall be exercised *ex post facto* and any measures taken must be proportionate to the importance of the interests which it is intended to protect.

Congress Recommendation 240 (2008) – Articles 44.1 and 44.2

National or federal authorities' power of temporary substitution to act in lieu of regional authority organs may be exercised only in exceptional cases and under the procedures provided for by the constitution or by law. This power shall be confined to specific cases where regional authorities have seriously failed to exercise the competences vested in them and shall be utilised in accordance with the principle of proportionality in the light of the interests it is designed to protect.

The decision-making power resulting from a substitution measure shall be entrusted to staff acting solely in the interests of the regional authority concerned, except in the case of delegated responsibilities.

- **Loyalty, territorial integrity and cohesion**

Congress Recommendation 240 (2008) – Articles 9.1, 9.2, 9.3 and 10

The relationship between regional authorities and central government shall be based on the principle of mutual loyalty and equal dignity and shall entail respect for the unity, sovereignty and territorial integrity of the state.

Regional self-government necessarily entails compliance with the rule of law and the respect of the territorial organisation of every state whether in relations between central government and regional authorities, relations between regional authorities and other territorial authorities or relations between regional authorities and citizens.

Regional authorities shall take all appropriate measures to ensure fulfilment of the obligations arising from the Constitution or the law.

The exercise of regional self-government shall contribute to the central government's economic and social cohesion objectives and to central government activities aimed at achieving comparable living conditions and balanced development throughout the national territory, in a spirit of solidarity between regional authorities.

- e. **Protection of regional self-government**

Helsinki principles B5.1, B5.2 and B5.3

Regional authorities may be provided for by the constitution or established by law. The existence of regions, once established, is guaranteed by the constitution and/or by law and may be revoked only by the same due process of amendment of the Constitution and/or law that established them.

Regional authorities shall have the right of recourse to a judicial remedy in order to secure the free exercise of their powers and respect for the principles of regional self-government enshrined in domestic law.

Regional boundaries shall not be altered without prior consultation of the region(s) concerned. Prior consultation may include a referendum.

2. REGIONAL BODIES AND INTERNAL ORGANISATION (REGIONAL DEMOCRACY)

- **Self-organisation**

Helsinki principles B8

Where a constitution and/or the law provide the right for regions to decide their internal organisation, including their statutes and their institutions, it will define this right as widely as possible.

- **Regional bodies**

Helsinki principles B9.1

Regional authorities shall have a representative assembly. Executive functions, where they are not exercised directly by the representative body, shall be entrusted to a person or a body answerable to it in accordance with the conditions and procedures laid down by the law. Where the executive body is directly elected by the population, it needs not necessarily be answerable to the representative assembly but should give it account of its acts.

Congress Recommendation 240 (2008) – Article 14.1

The right of regional self-government shall be exercised by assemblies elected through direct, free and secret suffrage. This provision shall in no way affect recourse to citizens' assemblies, referendums or any other form of direct citizen participation, where it is permitted by law.

Helsinki principles B9.2

Regional assemblies shall be directly elected through free and secret ballot based on universal suffrage, or indirectly elected by and composed of popularly elected representatives of constituent local self-government authorities.

- **Conditions of office**

Helsinki principles B9.3 and B9.4

The conditions of office of elected regional representatives shall provide for the free exercise of their functions. They shall allow for appropriate financial allowance and/or for appropriate financial compensation for expenses incurred in the exercise of the office in question as well as, where appropriate, full or partial compensation for loss of earnings or remuneration for work done and corresponding social welfare protection. Members of the assembly shall have the right to express themselves freely during the meeting of this assembly. Any functions and activities which are deemed incompatible with the representative's office shall be determined by law.

Where sanctions against regional elected representatives are possible, they must be provided for by the law, be proportionate to the importance of the interest they are intended to protect and be subject to judicial review. Suspension and dismissal may only be foreseen in exceptional cases.

- **Regional administration**

Helsinki principles B10.1, B10.2 and B10.3

Regional authorities shall have their own assets, their own administration and their own staff.

Regional authorities shall freely determine the internal structures of their administrative system and their bodies, within the framework defined by law.

The conditions of service of regional authorities' staff shall comply with general principles of public service and 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.

- **Good governance**

Congress Recommendation 240 (2008) – Articles 4, 6.1 and 6.2

Regional authorities shall encourage the exercise of citizens' right to participate in the management of public affairs and shall aim to bring the administration closer to the public.

The exercise of regional self-government shall comply with the principles of informed decision-making and evaluation of decisions made, as well as pursue aims of flexibility, openness, transparency, participation and public accountability.

The performance of public tasks at regional level shall comply with the principles of good administration and good quality of public services.

3. FINANCING

- **Resources**

Helsinki principles B11.1, B11.2, B11.3 and B11.4

Regional authorities shall have at their disposal foreseeable resources commensurate with their competences and responsibilities allowing them to implement these competences effectively.

Regional authorities shall be able to dispose freely of their resources, for the implementation of their competences.

In the implementation of their own competences, regional authorities shall be able to rely in particular on resources of their own at which they shall be able to dispose freely. These resources may include regional taxes, other revenues decided by regional authorities, fixed shares of state taxes, non-earmarked funding from the state and constituent territorial authorities, in accordance with the law.

The financial systems on which resources available to regional 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.

- **Financial equalisation and transfers**

Helsinki principles B12.1, B12.2 and B12.3

The protection of financially weaker regional authorities shall be ensured through 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 should not have the effect of restricting the financial resources of regional authorities to the extent of hindering their freedom of administration.

Financial transfers to regional authorities shall be governed by predetermined rules based on objective criteria related to regional competences. As far as possible, grants to regional authorities shall not be earmarked for the financing of specific projects.

Financial transfers to regional authorities shall not limit the basic freedom of regional authorities to exercise policy discretion in the implementation of their competences.

Congress Recommendation 240 (2008) – Articles 16.4 and 16.5

Financial transfers to regional authorities shall be governed by rules established by law and based on objective criteria relating to regional competences.

Any transfer of competence to regional authorities shall be accompanied by a transfer of corresponding financial resources.

- **Borrowing**

Helsinki principles B12.4

For the purpose of borrowing for capital investment, regional authorities shall have access to the capital market within the limits of the law.

4. NATIONAL AND INTERNATIONAL RELATIONS

Helsinki principles B6, B7.1 and B7.2

Regional authorities shall be entitled to form associations and to undertake activities of interregional co-operation in matters within their competences and within the framework of the law. Regional authorities may also be members of international organisations of regional authorities.

In so far as national and/or European law allows, regional authorities shall have the right to be involved in or to be represented through bodies established for this purpose in the activities of the European institutions.

Regional authorities may co-operate with territorial authorities of other countries within the framework of their competences and in accordance with the law, the international obligations and the foreign policy of the state.