



**COUNCIL OF EUROPEAN MUNICIPALITIES AND REGIONS
CONSEIL DES COMMUNES ET REGIONS D'EUROPE**

CEMR

**Position
on the preliminary draft
recommendation of the Committee of
Ministers to member states on the
funding by higher level authorities of
new competences for local authorities
CDLR(2011)prov. 1**

Brussels, February 2011

Preliminary draft recommendation of the Committee of Ministers to member states on the funding by higher level authorities of new competences for local authorities¹

Introduction

CEMR welcomes the effort by the European committee on local and regional democracy (CDLR) and its committee of experts on local and regional finance and public services (LR-FS) to bring forward a recommendation of the Committee of ministers to member states on the funding by higher level authorities of new competences for local authorities.

CEMR especially acknowledges the fact that the European Charter of Local Self-Government (ECLSG), as called for in the preamble, is a live document which lays down basic values, ideals and principles of local and regional democracy, and CEMR fully supports the call for greater accountability, better legislation and improved implementation at the local level.

However, public governance in the Council of Europe member states underwent profound developments in the last 25 years after the ECLSG was open for signatures. These include the overall trend of decentralisation, application of the principle of subsidiarity and the emerging European model of multi-level governance in partnership of all spheres of public administration.

As this document aims to be a recommendation to member states and not a legally binding instrument, CEMR calls for an ambitious political document which would reflect these developments and would not be diluted with concessions and compromises. It should fully underline the best and most democratic practice based on the principles of good governance in all spheres of public administration.

Specific remarks

Article A.1.iv. Local savings created by high-level decisions should not be transferred to the higher-level authority, if the funding was not clearly provided by the higher-level authority, but might have been from other sources of income. This needs to be differentiated and specified.

Article A.1.vi. An increase of administrative burden, even if it does not result in a change of administrative procedures, should be considered as applicable administrative cost, due to increased demand on resources of the local authority.

Article 2. The rules should include clear provisions for a justifiable re-opening of the discussion on compensation in each case that the costs differ from the original cost estimates – the emphasis should be on the need triggered by changed condition, rather than merely by number of cases.

Article 3.iii.² In addition to the proposed provisions, hidden costs should be compensated, associated with the transferred buildings, land and other assets, such as

¹ CDLR(2011)prov. 1

² Proposed by CEMR.

lack of previous maintenance, non-compliance with standards and norms which needs to be corrected, or other specific unforeseen costs associated therewith.

Article 4.iv.³ Compensation (at least on a temporary basis) should be given in cases, where a seemingly general regulation results in a disproportionate and/or unjust negative impact on a small number of local authorities, due to their specific conditions.

Article 5. The text in italics (*"Preferably this commitment is provided for by law."*) should remain in the article. Legal basis for the framework compensations allows for the involvement of a democratically-elected legislative assembly (Parliament) in the process, rather than just the executive branch of power (Government). It would also honour the provisions of Art. 2 (legal foundation) and Art. 9.2 (legal basis of responsibilities) of the ECLSG. Moreover, a legal framework would also be in line with Art. 11 of the ECLSG on legal protection of local self-government.

Article 9. The insertion of the word *"preferably"* into article 9.i–ii is in direct contradiction with the preamble of the draft recommendation, which recalls the purpose of safeguarding and realising the ideals and principles which are common heritage of Council of Europe member states, and thereafter directly references Art. 4.6 of the CLSG: *"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"*. Especially in the emerging modern European system of multilevel governance, consultations are a basic tool of co-operation between different spheres of public administration, and relativising their purpose defies the values and principles mentioned above.

Article 10. The Council of Europe promotes Good Democratic Governance at Local Level with a set of 12 principles⁴, and no doubt these principles are valid for all spheres of government. A review, as proposed by Recommendation B, would be in line with good governance principles of efficiency and effectiveness (3), openness and transparency (4), competence and capacity (7), innovation and openness to change (8) as well as that of sound financial management (10).



³ Proposed by CEMR

⁴ Strategy on Innovation and Good Democratic Governance at Local Level, Council of Europe