

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

RECOMMENDATION No. R (95) 19

OF THE COMMITTEE OF MINISTERS TO MEMBER STATES ON THE IMPLEMENTATION OF THE PRINCIPLE OF SUBSIDIARITY

*(Adopted by the Committee of Ministers on 12 October 1995
at the 545th meeting of the Ministers' Deputies)*

The Committee of Ministers, having regard to 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;

Having regard to the principles underlying the European Charter of Local Self-Government, in particular Article 4, paragraph 3, which provides that "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";

Considering that these provisions constitute a first effort to define the criteria to be followed in the implementation of the principle of subsidiarity in a text of international law;

Considering that observance of the principle of subsidiarity in member states' legal systems in its dual dimension, as a criterion for allocating powers between different levels of government and guiding them in the exercise of these powers, can only contribute to a better application of the principles contained in the European Charter of Local Self-Government;

Considering that although explicit mention is rarely made of this principle in existing national legal systems, the philosophy of subsidiarity, which favours the exercise of power at the level closest to the citizen, has already inspired numerous provisions, particularly in the member states of the Council of Europe with federal structures;

Considering that observance of the principle of subsidiarity in member states' legal systems must be accompanied by a fresh look at the situation as regards the number of levels of government and the way they work together (organisation of relations, distribution of powers, responsibilities and resources);

Stressing that the principle of subsidiarity should be implemented in conjunction with other organising and operating principles of the state, such as the principles of coherence and unity of application of public policies for the benefit of all citizens, of co-ordination and of territorial solidarity;

Considering that the effective performance of the increasingly numerous and complex tasks assigned to local and regional authorities demands the provision of adequate human and financial resources which, in some cases, are available only in organisations (territorial authorities or intermunicipal co-operation structures) of a large scale;

Believing therefore that not all local authorities of the same level are necessarily able to exercise the same powers, if only because of inequalities in terms of size or resources, and that a pragmatic and flexible approach should be adopted to overcome this obstacle;

Considering the need not only to give effect to the principle, but also to promote its application;

Reaffirming:

– the essentially political nature of local self-government, which must allow the citizen to participate more closely in the management of public affairs, and should therefore be entrusted to elected authorities;

– that local self-government requires the clearest possible division of powers as regards both the formulation and the implementation of policies, and presupposes that the authorities entrusted with these powers have the human, legal and financial resources to exercise them;

– that the protection of the financially weaker local authorities calls for the introduction of financial equalisation measures which, depending on the circumstances and the degree of financial autonomy of the local and regional authorities, may involve vertical equalisation (from central government) and/or horizontal equalisation (among local authorities),

Recommends that the governments of the member states:

a. with regard to the division of powers:

– specify in the relevant legislation a core set of powers pertaining to each level of local and regional authorities in addition to any assumption of general competence;

– implement principles of organisation of powers designed to match powers with the characteristics (resources, size, geographical location, etc.) of the local and regional authorities;

– adopt experimental legislative and administrative measures to this effect (for example possibility for local authorities to give up certain powers and transfer them to a higher level, or, conversely, possibility for certain local authorities – in particular those of medium and large cities – to amass powers belonging to different levels of local and regional authorities; creation of single or multi-purpose intermunicipal co-operation bodies; differentiation of the mandatory tasks of local authorities according to their size or other characteristics);

– introduce, where these do not already exist, permanent mechanisms involving the local and regional authorities in any new redistribution of powers, for example by formalising contacts between central government and the associations of local and regional authorities, and, in the federal states, between the governments of the federate entities and the said associations;

b. with regard to the exercise of powers, in cases, which should be reduced to the strict minimum, where powers are shared between different levels of government, develop, if necessary, a system of programme contracts for the implementation of the associated tasks, setting out the specific role and responsibilities of each level and including clauses safeguarding local self-government and monitoring compliance with this principle;

c. with regard to the promotion of the implementation of the principle of subsidiarity, set up procedures or mechanisms, of a legal or political nature, where these do not already exist, to promote the implementation of the principle of subsidiarity and to deal with any possible associated disputes;

d. apply all these provisions not only to relations between central government and local authorities, but also to relations between regional authorities – in federal states, the governments of the federate entities – and local authorities and, more generally, between all levels of local and regional authorities.