

THE CONGRESS OF LOCAL AND REGIONAL AUTHORITIES

Recommendation 366 (2014)¹ Local and regional democracy in Belgium

1. The Congress of Local and Regional Authorities of the Council of Europe refers to:

a. Article 2, paragraph 1.*b.*, of Statutory Resolution CM/Res(2011)2 relating to the Congress of Local and Regional Authorities of the Council of Europe and the revised Charter appended thereto, which provides that one of the aims of the Congress is “to submit proposals to the Committee of Ministers in order to promote local and regional democracy”;

b. Article 2, paragraph 3, of Statutory Resolution CM/Res(2011)2, which provides that the “Congress shall prepare on a regular basis country-by-country reports on the situation of local and regional democracy in all member states and in states which have applied to join the Council of Europe, and shall ensure, in particular, that the principles of the European Charter of Local Self-Government are implemented”;

c. Congress Resolution 299 (2010), which provides that the Congress will use the Council of Europe Reference Framework for Regional Democracy in its monitoring activities, as well as the reply given by the Committee of Ministers to Congress Recommendation 282 (2010) [CM/Cong(2011)Rec282final] encouraging the governments of member States to take account of the aforementioned Reference Framework in their policies and reforms;

d. the attached explanatory memorandum on local and regional democracy in Belgium.

2. The Congress notes that:

a. Belgium signed the European Charter of Local Self-Government (“the Charter”) on 15 November 1985 and ratified it on 25 August 2004. The Charter entered into force in Belgium on 1 December 2004. The provisions not ratified relate to Articles 3.2, 8.2 and 9.2, 9.6 and 9.7. In accordance with Article 13 of the Charter, the Kingdom of Belgium stated that it intended to confine the scope of the Charter to the provinces and municipalities (*communes*). Pursuant to the same article, the provisions of the Charter do not apply to the social services centres (*Centres publics d’aide sociale*, CPAS) in the territory of the Brussels-Capital Region;

b. Belgium also signed the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207) on 16 November 2009 but has not yet ratified it. In addition, Belgium has signed the European Outline Convention

on Transfrontier Co-operation between Territorial Communities or Authorities (ETS No. 106). It has not yet ratified the Framework Convention for the Protection of National Minorities (ETS No. 157) or the European Charter for Regional or Minority Languages (ETS No. 148);

c. the Congress’s Monitoring Committee appointed Henrik Hammar (Sweden, L, EPP/CCE) and Urs Wütrich-Pelloli (Switzerland, R, SOC) as rapporteurs and tasked them with drawing up and submitting to the Congress a report on local and regional democracy in Belgium;

d. the Congress delegation made two visits on 8 and 9 October 2013 (Brussels and Tervuren) and a further visit was made to Brussels from 4 to 6 February 2014.

3. The Congress would like to thank the Permanent Representation of Belgium to the Council of Europe, the Belgian authorities at all territorial levels and everyone to whom they spoke for making themselves available, for their interest in the work of the Congress and for their co-operation throughout the visit.

4. The Congress notes the following with satisfaction:

a. local and regional democracy in Belgium generally complies with the commitments made under the Charter, and the legal foundation of local self-government is fully complied with in all regions of Belgium, in particular Articles 2, 5, 7, 10 and 11 of the Charter;

b. the entry into force of the sixth State Reform;

c. the introduction in 2006 of a procedure for the automatic *de jure* appointment of burgomasters elected in Wallonia;

d. the passage of a special act in July 2012, endorsed by two judgments of the Constitutional Court on 3 April 2014, under which burgomasters whose appointment is refused may appeal to the Council of State, which can issue a final appointment decision;

e. the appointment in December 2013 by the Flemish Minister of the Interior of a burgomaster for the municipality of Wezembeek-Oppem and the appointment in June 2014 by the general assembly of the Council of State of a burgomaster for the municipality of Kraainem, neither of which had had appointed burgomasters since 2006;

f. the desire expressed by the authorities of the Flemish region, the Walloon region, the German-speaking Community and the Brussels-Capital Region to reconsider the provisions of the Charter that have not yet been ratified with a view to possible ratification.

5. The Congress nevertheless expresses concern about the following:

a. the overlapping of some responsibilities between municipal and provincial levels;

b. the financial difficulties which the local authorities in the three regions encounter, in particular because of the burden of staff pension costs paid by the local authorities;

c. the inadequacy of Belgian municipalities' and provinces' resources in relation to their responsibilities.

6. In the light of the above, the Congress asks the Committee of Ministers to invite the Belgian authorities to:

a. continue the implementation of all aspects of the sixth State Reform in line with the timetable indicated;

b. clarify Belgian local authorities' powers so as to strengthen their ability to manage their affairs in the light of Article 3.1 of the Charter and strengthen, *de facto* and *de jure*, local and provincial democracy in Belgium (Article 4.2);

c. consider the introduction of a system, in Flanders and in the Brussels-Capital Region, for the election of burgomasters by the municipal councils or by the citizens, which implies the automatic nomination of burgomasters;

d. improve and systematise the procedure for consulting local authorities about matters that directly concern them, in particular in the Walloon Region and the Brussels-Capital Region (Article 4.6);

e. review the financial burden of the staff pensions paid by local authorities, which account for a significant proportion of local government expenditure in Belgium (unlike the pensions paid at regional level, which are funded at federal

level) and recommend that the federal level take structural measures to balance the relevant expenditure (Articles 6.2 and 9.1);

f. urge the community and regional authorities to pay particular attention to the financial situation of municipalities and provinces, making sure that they have diverse and adequate financial resources deriving from local taxes and charges, for which they have the power to determine the rate within the meaning of Articles 9.3 and 9.4 of the Charter in all the entities in Belgium;

g. reconsider ratifying the provisions of the Charter that have not yet been accepted;

h. consider ratifying the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207) and the Additional Protocol to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (ETS No. 159).

1. Debated and adopted by the Congress on 15 October 2014, 2nd Sitting (see Document CG(27)7FINAL explanatory memorandum) rapporteurs: Henrik Hammar, Sweden (L, EPP/CCE) and Urs Wüthrich-Pelloli, Switzerland (R, SOC).