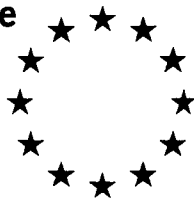


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Council of Europe
Conseil de l'Europe



CONGRESS020973

For debate in the Standing Committee
Pour débat à la Commission Permanente
* See Rule 12 (4) - Voir article 12 (4) du Règlement *

Congress of Local and Regional Authorities of Europe

Congrès des Pouvoirs Locaux et Régionaux de l'Europe

Strasbourg, 12 November 1997
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CG (4) 19
Part II

FOURTH SESSION

DRAFT OPINION

ON

DRAFT PROTOCOL N° 2 TO THE EUROPEAN OUTLINE CONVENTION ON TRANSFRONTIER CO-OPERATION BETWEEN TERRITORIAL COMMUNITIES OR AUTHORITIES CONCERNING INTERTERRITORIAL CO-OPERATION

Rapporteur: Mr Llibert CUATRECASAS (Spain)

EXPLANATORY MEMORANDUM

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- * Objections to the Standing Committee procedure must reach the Head of the Congress Secretariat a clear week before the meeting of the Standing Committee; if 5 members object, the report will be submitted to the Plenary Session.

Les éventuelles objections à l'examen en Commission Permanente doivent parvenir au Chef du Secrétariat du Congrès une semaine avant la réunion de la Commission Permanente; si 5 membres du Congrès présentent des objections, le rapport sera soumis à la session plénière.

In Resolution 248 (1993), adopted on 17 March, the Standing Conference of Local and Regional Authorities of Europe recommended that the Committee of Ministers adopt a preliminary draft on interterritorial co-operation between territorial communities or authorities in order to create an instrument similar to the Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities in this particular sphere of interterritorial co-operation.

After lengthy discussions by the Committee of Ministers and the competent Steering Committee, namely the CDLR, the latter agreed on a draft Additional Protocol No. 2 to the outline convention, rather than proposing a separate legal instrument. Before adopting a final version of this Protocol for the attention of the Committee of Ministers, the CDLR decided to consult the CLRAE with regard to the draft. At its meeting on 8 September, the Bureau of the Congress decided to request this opinion from the Working Group on the European Charter of Local Self-Government.

At its meeting held in Paris on 20 October this working group examined the draft text prepared by the CDLR. It appointed its Chairperson, Llibert Cuatrecasas (Spain), as Rapporteur and set out the main points of the opinion which the Rapporteur was to propose for adoption by the Standing Committee on 27 November. Given the urgency of the matter, it was then agreed that, after being adopted by the Standing Committee, this opinion of the Congress could be examined by the CDLR at its meeting to be held in Strasbourg from 26 to 28 November.

Although the working group would clearly have preferred the CDLR to propose a text for a new convention on interterritorial co-operation, which might possibly have encompassed the more specific aspects of transfrontier co-operation which are now mentioned in the outline convention, it nevertheless considers that the CDLR's desire to propose binding rules on interterritorial co-operation essentially met the request made by the former CLRAE in Resolution 248.

More particularly, as far as Article 6 of the draft Additional Protocol is concerned, the working group notes that, in the light of the explanatory report, this Protocol allows Contracting Parties to make a different choice, if need be, than that already made with regard to Articles 4 and 5 of Additional Protocol No. 1 concerning the application of one or both of the articles in question. Although it is clear that practical co-operation between two contiguous regions might not necessarily follow the same rules as between two geographically separated regions, it would have been useful to specify more clearly in the explanatory report why states might be led to choose two different solutions for transfrontier co-operation and for interterritorial co-operation.

The working group also regretted that the CDLR did not think it was possible for Protocol No. 2 to include the provisions of Article 9 of the Appendix to Resolution 248, which called for an appendix concerning arbitration to resolve possible differences of opinion. The working group thought that this could be a useful adjunct to Additional Protocol No. 2.

In the opinion of the CLRAE working group, therefore, the current draft Additional Protocol No. 2 certainly indicates that states are beginning to recognise the importance today of interterritorial co-operation between local authorities or regions which are not necessarily geographical neighbours. This recognition, already advocated by the Summit of Heads of State and Government of the Council of Europe held in Vienna in October 1993, is a significant political development. Although it is regrettable that this opportunity has not been seized to draft a major new convention which, as well as interterritorial co-operation, could have encompassed the more specific aspects of transfrontier co-operation and hence up-dated the Madrid Outline Convention, this official recognition by the states, once Protocol No. 2 has been adopted by the Committee of Ministers and ratified by the member states, is a significant

development which will strengthen the powers of local and regional democracy, demonstrated by the Outline Convention on Transfrontier Co-operation, the European Charter of Local Self-Government and the draft European Charter of Regional Self-Government which the Congress has just submitted in Recommendation 34 (1997).

For all these reasons, the Rapporteur and the working group propose that the Standing Committee adopt the generally favourable opinion which is reproduced in document CG (4) 19 Opinion.