

# The Congress of Local and Regional Authorities



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## Draft European Charter of Regional Democracy

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Explanatory Memorandum  
Institutional Committee

### Summary:

The report presents the results of the work of the Congress's Reflection Group on Regionalisation in Europe. It is accompanied with a draft recommendation and, in appendix, with the draft European Charter of Regional Democracy prepared by the same group appended to it.

The report presents the political considerations that had led the Congress to start a relaunch of the debate on a European legal instrument for regionalisation. It draws in particular on recent regional developments in Europe and underlines the added value of greater regionalisation. It outlines the reservations of some member states that had caused the failure of the draft European Charter on Regional Self-Government proposed by the Congress in 1997 and describes the adapted, innovative approach necessary for a new legal instrument on regional democracy, such as the inclusion of the principle of loyalty and respect of territorial integrity of the state, the principles of good governance, participation of citizens and the reaffirmation of respect for local self-government. The draft Charter appended to the recommendation is a more elaborated proposal than the previous version, as it was improved in the course of the discussions engaged in 2007, and in the beginning of 2008, by amendments that have been made namely concerning the question of direct election of regional assemblies.

It is intended to submit this draft with the draft Recommendation to the Committee of Ministers to the Congress Plenary Session in 2008 for adoption. In the meantime, further consultations could take place, in particular with representatives of the Parliamentary Assembly, Committee of the Regions, and intergovernmental organisations of regions such as AER, CEMR, CALRE, BSSSC and others, which contributed to the text of the Charter.

R : Chamber of Regions / L : Chamber of Local Authorities  
ILDG : Independent and Liberal Democrat Group of the Congress  
EPP/CD : Group European People's Party – Christian Democrats of the Congress  
SOC : Socialist Group of the Congress  
NR : Member not belonging to a Political Group of the Congress



## **Introduction**

1. In 1997, the Congress adopted a "draft European Charter of Regional Self-Government". This did not receive support from a large enough majority of member states at the Ministerial Conferences in Helsinki in 2002 and Budapest in 2005.
2. The Congress has nevertheless decided to start a new debate on the prospects for regionalisation in Europe, and remains convinced of the need to provide member states with a legal instrument on regional democracy which complements the European Charter of Local Self-Government.
3. The Congress is indeed convinced that, in application of the principle of subsidiarity, it is important to develop a regional tier in European countries between the local level (towns and municipalities) and the central authorities, in order to improve the governance of European states and to enable European citizens to be closer to decision-taking centres.
4. The work done since 2005 within the Congress itself and the CDLR (Steering Committee on Local and Regional Democracy) has focused on two questions:
  - What new, innovative and important developments have occurred in member states at regional level?
  - How can new life be breathed into the debate on the codification of regional democracy on the basis of recent developments?
5. At the Plenary Session of the Congress in 2006, I presented an information report on "Prospects for Regionalisation in Europe" [CPR (13) 4]. A more substantial report on "The current state of regionalisation and the prospects of development of regional self-government in the member states of the Council of Europe", written by Mr Semmelroggen, expert, is appended to this explanatory memorandum. For its part, the CDLR has prepared a draft report on "Developments in regional self-government across member states", which was presented to the Ministerial Conference in Valencia in October 2007.
6. The Congress held a debate in the Chamber of Regions at its 14th Plenary Session (26 May - 1 June 2007), during which the present report was discussed. A draft resolution was put to the vote in the Chamber, instructing the Congress delegation to put to the Ministerial Conference in Valencia the components of a new draft European Charter of Regional Democracy.
7. At the Ministerial conference in Valencia, although not officially on the agenda, the subject was widely and favourably discussed, both by representatives of the Congress and the Parliamentary Assembly and, more unexpectedly, by various ministers speaking at the conference.

Support for the idea seems to be growing in line with the influence and spreading of regionalism in Europe.

8. This explanatory memorandum presents the results of the work of the Congress' Reflection Group on this subject. The Group deserves thanks for the quality of its work.

### **I. Developments on the regional front in Europe**

9. A study of developments in terms of regional democracy in certain member states since the year 2000 reveals the following facts: in almost all Council of Europe member states, far-reaching reforms have affected regional authorities, are under way or are in preparation for the years ahead. These reforms concern federal states, states with a high level of devolution and strong regional self-government, states which have devolved central powers and states which are in the process of regionalising their central government.
10. These regionalisation processes, described in detail in the appendix to this report, tend to be successful, although the effects of reform are seldom evaluated systematically. There have been some failures, however, or unfortunate effects. It is important to point out in this respect that a plan to set up elected regional assemblies in England was rejected in a referendum in autumn 2004. In Italy, a reform plan involving a redistribution of powers between central government and the regions was also rejected in a referendum of June 2006. Fresh

proposals have nevertheless been announced by the new Italian government with a view to giving the regions their own powers in the fiscal sphere (fiscal federalism).

11. Generally speaking, member states regard their internal territorial organisation, and therefore decisions on the advisability of sharing power between several tiers of government, as matters within their own national remit. Some developments can nevertheless be observed, especially in European Union law, affecting the scope and substance of regional development in the countries of Europe. The pressure brought to bear by the European Union, particularly on its new members, through its regional policy and structural funds (or other financial instruments with a regional slant) has had appreciable effects on regional structures.

12. Legal protection for regional authorities at European level is fairly limited. While some provisions do exist on regional self-government, member states tend to have little inclination to accept international rules or recommendations in this field.

13. The conclusions below may be drawn from the work in progress at the Council of Europe:

a) Change is under way at regional level in Europe: virtually all member states have reformed, are reforming or plan to reform their regional tier.

b) Just like the national tier, the regional tier is very much subject to economic, social and structural pressure and change:

- effects of globalisation;
- effects of European integration.

c) The regional tier seems to be the ideal level to carry out many particularly important public tasks:

- proximity of the regional tier to the civil and private sectors;
- appropriate scale for planning, co-ordination and supervisory functions in particular;
- level of government capable of guaranteeing the consistency of political activity.

d) Current reforms or plans particularly cover the following:

- division of territory;
- distribution of powers;
- financial appropriations to regions (according to the powers transferred);
- co-operation between regions;
- regional representation at national and European/international levels.

e) The current reforms reflect changes at national level: they are co-ordinated in terms of neither substance nor time, nor are they co-ordinated at European level. The fundamental trend towards increased regional democratic governance is ever more widespread.

14. A significant development of co-operation between regions and across borders is also observed, thanks to the legal instruments of the Council of Europe and European Union, as well as financial incentives offered by Community policies in this sphere. Such co-operation is already highly developed in western Europe, but has also expanded to the greater part of central and eastern Europe. It undeniably offers the regions of different states, and with different levels of self-government, an opportunity to gauge the disparities with their partner regions in terms of powers and financial autonomy, disparities which act as so many checks on their co-operation, which can relate only to the powers common to the two or more regions concerned. A need for harmonisation of regional reforms in the various countries of Europe automatically arises.

15. Nor can it any longer be denied that the successive enlargements of the European Union, first from 15 to 25, and then to 27 member states, have encouraged regions to play an increasingly active role, particularly in the new member states, where the centralising traditions of Communist regimes stood in the way of regional devolution, and where the regional tier often represented the level at which the state kept the local tier under control.

## **II. The added value of greater regionalisation**

16. Among the features of greater regionalisation are:

- regions are playing an increasingly active role in the building of Europe;
- regionalism is the only way of putting into practice the principles of subsidiarity and proximity;
- contemporary democracy requires the democratic force and the governance at a level close to the citizen provided by an intermediate tier between central and local government;
- increasing amounts of co-operation between regions and across borders (cf the new instruments under discussion at the Council of Europe and in the European Union) demonstrate regional vitality;
- regions provide a counterweight to globalisation and an antidote to separatism;
- regionalism is not a Trojan horse to destabilise states, but a factor in strengthening their institutional structure, and especially their democratic legitimacy;
- regionalisation enables both centrifugal processes and the splitting of territories into many small entities to be avoided;
- when minorities can benefit from regional structures and find their place within them, conflicts may be avoided.

17. The following comments may also be made:

- the idea of "shared sovereignty" must be promoted;
- it is one of regions' duties to preserve national unity, territorial integrity and the coherence of internal policies;
- the six Helsinki models are no longer capable of taking regional dynamics into account.

## **III. The key elements of the draft Charter produced by the Congress in 1997 (Recommendation 34 of 5 June 1997)**

18. For its work on regional self-government, the Congress took as its starting point an existing Council of Europe legal instrument, the European Charter of Local Self-Government, of 1985, and more particularly the definition of local self-government given by that Charter (in Article 3).

19. This work was based on the following considerations:

a) The Congress was in favour of legal consistency with the European Charter of Local Self-Government. The guarantee of regional self-government at European level could not be less than that for which provision was made in relation to local authorities.

b) The Congress was committed to regional self-government which respected member states' national unity, territorial integrity and regional diversity.

c) The Congress called for basic standards to be adopted which, at the very least, covered the guarantee of self-government, powers, organisation, finance, regions' participation in national and European affairs and interregional co-operation.

d) The Congress wished to strengthen the legal status of regions in a way that complemented the path followed by the European Union. The EU wished to strengthen regions' rights through a new protocol on subsidiarity. The Congress could support this approach through a regional Charter, something not possible in the European Union.

e) The Congress obtained unanimous support from the Parliamentary Assembly (Recommendation 1349 (1997)) and from the Committee of the Regions (13 December 2000) for its draft Charter, support that was recently reiterated.

20. In order to understand the new move by the Congress, it is important to remember certain characteristics of the Congress' draft (of 1997):

- a) a very large measure of consistency with the European Charter of Local Self-Government, of 1985;
- b) the draft was valid for virtually all member states, with a fairly small degree of differentiation;
- c) the draft did not make a strong distinction between advanced regionalisation (regions holding legislative powers) and other forms of regionalisation;
- d) the draft placed more emphasis on regional units' rights, but less on their duties and responsibilities (in the national and European context);
- e) although it contained a clause allowing for further change, encouraging regional development, the draft did not include a sophisticated programme for countries in the process of regionalisation.

#### **IV. The work of the Ministerial Conferences in Helsinki (2002) and Budapest (2005)**

21. As we know, the Congress' draft European Charter of Regional Self-Government was not agreed by the specialised Ministers, so not by the Committee of Ministers either. At the 2002 Helsinki Conference of European Ministers responsible for Local and Regional Government, the Ministers agreed on the feasibility of a legal instrument on the basic components of regional self-government. But member states did not agree on whether this instrument should take the form of a convention (binding) or a recommendation (non-binding). In spite of these differences of opinion, the Conference did, on the basis of the work of the CDLR, adopt some core concepts of regional self-government and overviews of six models which encapsulated Europe's regional diversity (the six Helsinki models).

22. Another approach with a view to the adoption of a legal instrument failed at the Budapest Ministerial Conference in 2005. The CDLR had nevertheless drawn up a draft recommendation and a draft convention on regional self-government, largely based on the Helsinki principles, but in greater detail. It had not been possible, however, for the CDLR to find a compromise acceptable to all the countries in respect of the issue of regional tax-raising power. Thus the Budapest Conference was unable to approve continuation of the draft convention or recommendation, the Ministers also being divided on these two kinds of legal instrument. The Ministers therefore instructed the CDLR to "produce a substantial report on [...] developments, innovations and issues" relating to regional self-government in Europe. The Budapest Conference in fact marked a halt in the CDLR's preparatory work on a legal instrument proper.

23. The Committee of Ministers of the Council of Europe then instructed the CDLR to draw up a substantive report on the new facts observed in member states in relation to regional self-government, identifying in particular the innovations and any issues common to a number of states, in order to communicate this document to the 15th session of the Conference, to be held in Valencia in October 2007.

#### **V. Member states' reservations**

24. To the extent that it has not to date been possible to adopt within the Council of Europe an instrument which guarantees regional self-government, the prospects of success for a new political initiative very much depend on good knowledge of member states' reservations and misgivings.

25. Since some member states have a sceptical, or even hostile, attitude to the adoption of such an instrument, it will be useful for the Congress to identify the reservations expressed so as better to direct its future activity.

26. Member states' positions may be categorised as follows:

- some are in favour of the adoption of a European legal instrument, preferably in the form of a European convention;
- others are in favour of the adoption of a European legal instrument in the form of a recommendation;
- others are in favour of national legal protection for regional self-government;
- there are countries which would consider a solemn declaration to be enough;
- others take a more "neutral" line or are undecided.

27. The main doubts at first sight seem to fall into the following categories:

- a) General opposition to the legal pressure brought to bear at European level with a view to defining the substance and scope of regional self-government; a legal instrument concerning regional self-government would introduce Council of Europe supervision of its member states;
- b) Reservations vis-à-vis the codification of regional self-government, as a result of dissatisfaction with regionalisation experiments or the inability of regional authorities to exercise their powers effectively and, in economic terms, efficiently;
- c) The risks that too radical a development of regional self-government would entail for national and territorial integrity, and even the dangers deriving from separatist tendencies. The maintenance of national unity and equality is thus a prime concern. National constitutional constraints limiting the scope of the concept of regional self-government are regarded as desirable. In this respect, several examples may be said to demonstrate that well-designed regionalisation is in practice more of a bulwark against separatism.
- d) A wish among central authorities to maintain the major lines of economic and political development in the national interest, especially in countries which are in transition. With this in mind, regionalisation is "put off until later", being regarded as a "luxury" which requires a mature and advanced economic and political situation and civil society.
- e) A fear in central government of losing financial resources or sharing them with regional bodies and, where European funds are concerned, of no longer having power to influence the content of programmes.
- f) A feeling that a binding legal instrument might set reference targets that exceed national ambitions: some countries fear that such an instrument would open the way for a regional development process beyond their control, to which they are not, for the time being, willing to commit themselves, or at least not so rapidly.
- g) A fear among national elites and the staff of decentralised national bodies of a loss of influence if the structures of regional self-government are strengthened. There is a fear that wages may fall, because pay is lower at regional level. Another fear is that regional disparities may be aggravated.
- h) Uncertainty about, in particular, the financial and administrative consequences of regional reform, bearing in mind the need for a complete reorganisation of relations between central government, regions and local authorities. Such a process is a costly and time-consuming one, draining much of the energy of the political class.

28. The doubts about a draft Charter of regional self-government expressed by governments are sometimes reflected in large segments of the public and in the media. Be that as it may be, several of these reservations lack any real foundation, and an equally large proportion of the public and the political parties are in favour of regionalisation.

## **VI. A new approach by the Congress with a view to a Charter of regional democracy**

29. Following the 1997 failure and an analysis of several member states' reservations and certain recent developments, the Congress sought other appropriate legal and political approaches to achieving an acceptable outcome.

30. In view of the variety of reservations mentioned above, it is important to remember that the Helsinki Declaration on Regional Self-Government (28 June 2002) recognised the need for a legal instrument, stating in paragraph 11 that:

"the Council of Europe should recognise and promote common principles on regional self-government in a European legal instrument which takes into account member states' experience".

31. It is also appropriate to point to certain European Union texts (considered in detail in the appendix). The draft Treaty establishing a Constitution for Europe, in particular, provides in Article I-5 that the EU shall respect the fundamental structures of member states "inclusive of regional and local self-government", necessarily implying the acceptance in European law of the principle of regional self-government. And the third paragraph of the Preamble to Part II, i.e. the "Charter of Fundamental Rights of the Union", provides that "The Union contributes to the preservation and to the development of these common values while respecting the diversity of the cultures and traditions of the peoples of Europe as well as the national identities of the Member States and the organisation of their public authorities at national, regional and local levels".

## **VII. Alternative instruments considered by the experts**

32. Before deciding on its new course of action, the Congress gave thought to several possibilities, which it ultimately rejected.

- *New recommendation/resolution*

33. This proposal involved the presentation to the Valencia Conference of a brief statement containing all the proposals relating to the development of regional self-government and setting out practical criteria.

It was also proposed to draw up a "European code of subsidiarity and local and regional self-government".

- *Reworking of the European Charter of Local Self-Government (proposed in June 2005 by Mrs Halvarsson)*

34. The aim of this proposal was, in the context of a reworking of the European Charter of Local Self-Government, to add a second part devoted to regional self-government, and thus including both components of sub-national self-government in a single instrument. It became apparent that combining the Charter with a text on regional self-government would give rise to considerable political and legal complexity. This solution might well have led to total failure of the project, with possible repercussions for the part on local democracy. Such a path would be unacceptable to countries with federal or quasi-federal structures, for which the regional tier could not be dependent on the local tier, the hierarchy of powers being exactly the opposite in this kind of state. Consequently, the very form of the legal instrument must take account of this great diversity.

- *Additional Protocol to the European Charter of Local Self-Government*

35. This proposal involved the addition to the European Charter of Local Self-Government of an Additional Protocol on regional democracy. It became apparent that, even with two legally distinct instruments, the same uncertainties remained: any disagreement about the regional legal instrument might be transferred to the European Charter of Local Self-Government and jeopardise the very existence of this instrument. Furthermore, it would not be politically acceptable to propose an Additional Protocol, especially for regions which have powers relating to local affairs and do not want their interests to be subject to an Additional Protocol to the European Charter of Local Self-Government.

- *Conclusion of a convention on the basis of international law extending beyond the Council of Europe (following the example of the Alpine Convention of 7 November 1991, involving eight countries and the European Community)*

36. Had this option been chosen, a Convention on Regional Self-Government would have brought together only a handful of states parties, so its scope would have been limited. Furthermore, a legal instrument on regional self-government would have to deal with all the aspects which guarantee vigorous regional self-government. Were we to settle for limited framework regulation, the substance of regional self-government would be unclear.

37. Although some of these projects were of interest, we opted for a new Charter of Regional Democracy.

## **VIII. Draft European Charter of Regional Democracy (cf Appendix to the draft Recommendation)**

### **VIII.1 Philosophy of the new Charter**

38. The reworking of the 1997 Charter is a necessity dictated by rapid changes in not only our societies, but also their political structures and methods of governance, and the demands made by citizens.

39. The new draft must reaffirm respect for local self-government, while ensuring the consistency and regional cohesion of local policies.

40. The new instrument must prohibit regional centralism. Local self-government must be protected.

41. The future convention must be flexible enough to cater for the fact that the regional tier tends to experience more changes in terms of dynamics, powers and responsibilities than the local tier, which is structurally more homogeneous, in spite of its diversity.

42. The new instrument must emphasize regions' responsibilities and duties as much as their rights.

### **VIII.2 Innovative aspects of the new draft Charter**

43. Bearing in mind the obstacles encountered and reservations expressed as the Congress worked towards a convention on regional self-government, it seems sensible for the Congress to adopt a new philosophy, which now underlies the new draft. The new draft European Charter of Regional Democracy thus contains numerous innovative elements likely to give the Ministers reason to support its ratification.

44. The main innovative elements of the draft are:

a) A new title emphasizing "regional democracy", rather than using the term "self-government", also matches the new content of the Charter.

b) A new structure, divided into four parts:

- a common core containing the fundamental principles of regionalisation;
- a kind of common basis for all the states that accede;
- Part II offering three alternative options for each subject dealt with, according to each country's own level of self-government, making accession possible as appropriate to different types of regionalisation;
- Part III specifying the arrangements for implementing regionalisation on the basis of a more flexible method of accession allowing a large number of reservations;
- and Part IV which contains the final provisions.

c) The innovative principles included in Part I likely to be of interest to governments and local authorities are:

- the principle of good governance,
- participation by citizens,
- the principle of good administration,
- reaffirmation of respect for local self-government, as defined in the European Charter of Local Self-Government,
- the principle of co-operation between regional and local authorities, as well as between regional authorities themselves,
- the principle of loyalty and respect for the territorial integrity of the state,
- the principle of cohesion and solidarity,
- the inclusion in Parts II and III only of regional tax-raising powers (own resources such as regional taxes, the rates of which may be decided by the regions), leaving countries free to sign up to such a commitment or not;
- the principle of direct elections



d) The inclusion in Part III of the right of the higher state authorities to act in lieu of regional authorities in specific cases in which these fail to carry out their statutory duties.

45. The presentation of the draft Charter take also into consideration the sensitive nature of this draft for some countries.

