

# THE CONGRESS OF LOCAL AND REGIONAL AUTHORITIES

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## Recommendation 172 (2005)<sup>1</sup> on local democracy in Luxembourg

The Congress, bearing in mind the proposal of the Chamber of Local Authorities,

1. Recalls:

*a.* Article 2, paragraph 1.*b* of Statutory Resolution (2000) 1 relating to the Congress of Local and Regional Authorities of Europe which stipulates 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 (2000) 1 relating to the Congress, which stipulates 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.* its Resolutions 31 (1996), 58 (1997) and 106 (2000) which lay down guiding principles for the drafting of these reports;

2. Takes note of the report on the situation of local democracy in Luxembourg prepared by Mr Christopher Newbury (EPP/CD, L, United Kingdom), rapporteur, following an official visit to Luxembourg (27-29 October 2004), with the assistance of Professor Jean-Marie Woehrling, member of the Group of Independent Experts on the European Charter of Local Self-Government, whom it takes this opportunity to thank;

3. Thanks all the representatives of governments and parliaments, local elected representatives and the Association of Local Authorities of Luxembourg (Syvicol), and the experts who accepted to meet the Congress delegation (rapporteur, expert, secretariat) during its visits and contributed to the preparation of the report;

4. Wishes to draw the comments and recommendations presented hereinafter to the attention of the Luxembourg authorities, the Committee of Ministers and the Parliamentary Assembly of the Council of Europe;

5. Concerning the implementation of the European Charter of Local Self-Government (hereinafter “the Charter”) and the general situation of local democracy in Luxembourg,

the Congress:

*a.* recalls that Luxembourg ratified the Charter on 18 March 1987, giving it supra-legislative force and thereby permitting the courts to invoke it directly;

*b.* notes that revised communal legislation introduced on 13 December 1988, following the ratification of the Charter, clearly expresses the concern to strengthen communal self-government in the spirit of the Charter;

*c.* welcomes the positive role played by Syvicol in this process;

*d.* notes, however, that the conditions of implementation of the Charter may prompt certain questions and call for certain improvements;

6. Concerning the competencies attributed to local authorities, the Congress:

*a.* recalls that:

*i.* the proportion of public affairs assigned to the local authorities in Luxembourg is significant and comparable to that attributed to local authorities in other European countries;

*ii.* however, as in other states, the trend towards standardised service provision and living conditions is reducing the communes’ control in certain areas;

*iii.* counterweights and compensatory measures are therefore required to offset this trend;

*b.* recommends, accordingly, that this loss of influence of the communes in certain areas be taken into consideration and measures taken to strengthen local-authority powers in other areas, such as public order, education and spatial and urban planning;

7. Concerning the supervision of municipal decisions, the Congress:

*a.* recalls that:

*i.* although the law of 1988 did away with many cases of *a priori* government supervision, various supervisory instruments survive, and the government also has the power to take alternative action by appointing a special commissioner;

*ii.* the central authorities have the power to dissolve the municipal council and suspend or dismiss mayors or individual aldermen; although this is not specified in the law, such suspensions and dismissals may only be effected on particularly serious grounds, and in such cases the rights of the defence and of appeal are guaranteed;

*iii.* Article 8, paragraph 2, of the Charter stipulates that any administrative supervision of the activities of the local authorities shall normally aim only at ensuring compliance with the law, which raises the question of whether the supervisory system in Luxembourg respects this limitation;

*iv.* under the system of administrative supervision of municipalities in Luxembourg, action incompatible

with the general interest is considered grounds for the supervisory authority to declare an act void, and that the concept of the general interest appears to be vague and subject to interpretation;

v. many acts remain subject to central government approval and, in the field of the development of spatial planning instruments, for example, the increase in the number of approval procedures confirms the strengthening of state supervision in this particular field;

vi. the increase in the number of acts subject to central government approval is scarcely compatible with Article 8, paragraph 3, which calls for supervision to be in proportion to the importance of the interests which it is intended to protect; and that submitting relatively modest acts to prior approval seems to indicate disproportion between the strictness of the supervision and the public interests likely to be affected;

vii. there is no denying that, in practice, the Luxembourg authorities exercise their powers of supervision with moderation, and local-authority representatives have little or no cause to complain of abuse of these powers;

*b.* recommends accordingly that the Luxembourg authorities revise their legislation on supervision of local authorities with a view to confining such control to *a posteriori* verification of strict legality;

8. Concerning the democratic appointment of the municipal executive, the Congress:

*a.* recalls that:

i. under Article 3, paragraph 2 of the European Charter of Local Self-Government, the right of local authorities to manage their affairs is exercised by councils or assemblies composed of members freely elected by secret ballot on the basis of direct, equal, universal suffrage, and which may possess executive organs responsible to them;

ii. appointment of the municipal executive by a state authority has been considered incompatible with the spirit of the Charter, even if the Charter does not explicitly preclude this possibility;

iii. in Luxembourg, mayors and aldermen in towns and cities are appointed by the Grand Duke, while those in smaller municipalities (communes) are appointed by the Minister of the Interior. Both must, however, be selected from among the municipal councillors and, in practice, the majority faction on the newly elected municipal council puts forward a proposal to the state administration;

iv. very few Luxembourg local officials ever criticise the current arrangements for appointing the municipal executive. Furthermore, the law on communes provides for a vote of no confidence if the budget is rejected, so the municipal executive is in fact responsible to the elected council;

v. beyond the formal aspect of the procedure, which should – at the very least – require the nominations put forward to the Grand Duke to be formally debated by the municipal

council, and beyond the argument that the mayor and aldermen are also the government's representatives in the communes, this appointment procedure no longer tallies with the present-day conception of local self-government;

*b.* recommends, for all these reasons, introducing a procedure for direct appointment by the municipal council;

9. Concerning the status of local elected representatives and communal staff in Luxembourg, the Congress:

*a.* recalls that:

i. the status of local elected representatives in Luxembourg complies with the requirements of the Charter, although communal representatives are demanding improvements to the training facilities for local councillors and to their social and fiscal rights;

ii. in Luxembourg, as in many other European countries, the question of the possible full-time employment of communal executive bodies has been raised. This seems to be the path to follow, particularly for municipalities of a certain size and for associations of municipalities;

iii. also, while communal officials express overall satisfaction with the communal civil-service system in Luxembourg, there would seem to be room for improving their expertise, which appears to be of a lower level than that of the state authorities. *Inter alia*, this would mean facilitating the recruitment of administrative staff with a university education or qualifications equivalent to those of government officials;

*b.* recommends accordingly:

i. that the Luxembourg Government give concrete expression to its intention to examine the feasibility of full-time employment of communal executives, at least in the larger municipalities;

ii. that it consider improving the organisation of inter-communal co-operation with a view, *inter alia*, to harnessing the same level of professional skills at this level as in central government;

10. Concerning local finances, the Congress:

*a.* recalls that:

i. the communes account for 32% of overall public expenditure in Luxembourg, which puts Luxembourg in fifth place in Europe in this respect (although it must be remembered that, unlike many other countries, public expenditure in Luxembourg is concentrated on the one existing level of local authority: the communes);

ii. the sharing of public resources between the municipalities and the state seems to be deteriorating and, what is more, local public spending seems quite low in comparison with other European countries;

iii. there are three categories of local taxation: communal trade tax, land tax and miscellaneous taxes;

iv. the communal trade tax (ICC) represents a large share of municipal income. It is based on local business profits

and is subject to a method of financial equalisation deemed opaque. It is also sensitive to the prevailing economic situation, making it difficult to plan ahead;

v. the land tax has been constantly decreasing in importance, although it could be an interesting means of diversifying tax revenues;

vi. the Communal Financial Grant Fund is a state subsidy representing about 20% of overall communal income, which the communes would like to negotiate and see evolve in line with the tasks delegated to them by the state;

*b.* recommends that:

i. in order to avoid the communal trade tax accounting for too large a share of overall communal revenues in Luxembourg, the communes' sources of revenue be further diversified;

ii. generally speaking, the financial situation of local authorities in Luxembourg be improved in a number of ways in order to strengthen local authorities' control of their own resources and promote a method of managing the local finance system and its evolution involving greater consultation and co-operation between the state and the communes;

11. Concerning the strengthening of the communal structure, the Congress:

*a.* recalls that:

i. Luxembourg has 118 municipalities, only seven of which have 10 000 inhabitants or more, and the crucial question for the future of local authorities in Luxembourg lies in the organisation of inter-municipal co-operation;

ii. the small size of most of the municipalities is tailored to a style of management that is close to the citizen, but restricts their ability to take charge of complex tasks and employ specialised staff, leaving them dependent on central state expertise;

iii. in spite of the laudable efforts of the Luxembourg Government to merge municipalities, no significant reduction of the number of municipalities was achieved;

iv. it would seem that municipal structures in Luxembourg will never be significantly changed by means of mergers;

v. over the past two decades inter-communal associations have increased in number (from 30 to 70), but most of them are single-purpose structures and they have no resources of their own, nor any directly elected bodies;

vi. furthermore, this system precludes them taking over tasks currently carried out by the state;

vii. spatial planning documents, on the other hand, refer to six "planning regions", which tends to indicate that in addition to the municipal level there is a need for an intermediate level for planning purposes;

*b.* recommends:

i. developing inter-communal co-operation that is not limited to the pooling of services, as at present, but corresponds to a specific level of communal action;

ii. grouping municipalities into units of approximately 20, which would in fact correspond to the level of the six planning regions, not limiting the entities thus formed to a mere decentralised state-planning role, but giving them genuine powers of public expression and empowerment, through a structure guaranteeing the possibility of democratic expression at the regional level;

12. Concerning the consultation of local authorities, the Congress:

*a.* recalls that:

i. in pursuance of Articles 4.1, 5, 9.6 and 10 of the Charter, local authorities shall be consulted in respect of all matters of direct concern to them;

ii. this consultation shall be conducted appropriately, particularly during the planning and decision-making processes;

*b.* consequently recommends that a legal basis be created for compulsory consultation of municipalities through their most representative association on any subject of direct interest to them;

13. Concerning the general situation of local democracy in Luxembourg, the Congress:

*a.* recalls that:

i. Luxembourg's institutions generally comply with the requirements of the Charter;

ii. a number of technical and social developments have had the effect of intensifying centralisation de facto, making it necessary to energise management of the communes;

*b.* recommends that:

i. a series of measures be taken to provide municipalities with a more suitable framework for reinforcing their management capabilities and extending their general jurisdiction;

ii. to achieve this, priority be given to re-thinking the organisation of the inter-communal level, with the emphasis on a new form of intensified inter-communal co-operation at a level which might correspond to that of the six spatial planning regions;

iii. this new system embrace a sufficiently dynamic combination of responsibilities to ensure the availability of highly qualified staff, and the reform of local finances take account of the creation of this inter-communal structure, channelling resources directly to this level.

1. Debated and approved by the Chamber of Local Authorities on 1 June 2005 and adopted by the Standing Committee of the Congress on 2 June 2005 (see Document CPL (12) 6, draft recommendation presented by C. Newbury (UK, L, EPP/CD), rapporteur).