

THE CONGRESS OF LOCAL AND REGIONAL AUTHORITIES

Recommendation 380 (2015)¹ Local democracy in Luxembourg

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 shall be “to submit proposals to the Committee of Ministers in order to promote local and regional democracy”;

b. Article 2, paragraph 3, of the above-mentioned Statutory Resolution CM/Res(2011)2, stipulating 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 Resolution 307 (2010) REV2 on procedures for monitoring the obligations and commitments entered into by the Council of Europe member States in respect of their ratification of the European Charter of Local Self-Government (ETS No. 122);

d. the attached explanatory memorandum on local democracy in Luxembourg.

2. The Congress notes that:

a. Luxembourg signed the European Charter of Local Self-Government (ETS No. 122, hereafter “the Charter”), including all provisions, on 15 October 1985 and ratified it on 15 May 1987. The Charter entered into force with respect to Luxembourg on 1 September 1988;

b. Luxembourg has not 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);

c. the Committee on the Honouring of Obligations and Commitments by member States of the European Charter of Local Self-Government (to be known as the “Monitoring Committee”) decided to monitor the state of local democracy in Luxembourg and its compliance with the European Charter of Local Self-Government. It instructed Dorin Chirtoacă, Republic of Moldova (L, EPP/CCE), and Marianne Hollinger, Switzerland (L, ILDG), to prepare and submit to the Congress, as rapporteurs, the report on local democracy in Luxembourg;²

d. the Congress delegation conducted the monitoring visit to Luxembourg, Schengen and Schuttrange from 3 to 5 March 2015. During the visit, the Congress delegation met representatives of SYVICOL (Syndicat des Villes et Communes Luxembourgeoises) and experts, mayors, government officials, representatives of the Chamber of Deputies, the Council of State, the Constitutional Court and the ombudsman.

3. The Congress wishes to thank the Permanent Representation of Luxembourg to the Council of Europe and all those whom it met on these visits for their readiness to assist the delegation and for the information which they kindly supplied.

4. The Congress notes with satisfaction:

a. the commitment shown by the government for several years to continuing and stepping up the efforts to simplify administration and procedure for the benefit of the communes and citizens, in particular in the field of legislation, involving the grouping of all legislative amendments with an impact at local level into a single “Omnibus” bill, and in the field of public procurement;

b. the relaxation of administrative supervision on the basis of Circular No. 2867 of 7 July 2010, which lists a whole series of communal acts which are no longer subject to the Minister of the Interior’s approval;

c. the abolition of the districts, something the communes have long been calling for. The law of 2 September 2015 abolishing the districts was approved by the Chamber of Deputies on 7 July 2015 and is due to enter into force on 3 October 2015;

d. the references to the European Charter of Local Self-Government in the opinions of the Council of State;

e. the good practice in terms of changes to local authority boundaries, which are carried out voluntarily and following consultation, by referendum, of the electorate in the communes concerned. Luxembourg’s example is clearly a good practice which it would be worth bringing to the attention of other member States which are considering potential mergers.

5. The Congress notes with concern the following:

a. the problems with regard to the distribution of powers between the State and the communes;

b. the partial compliance with the principle that local authorities must be consulted on all matters concerning them directly;

c. the regulatory power over the internal organisation of communes’ services in Luxembourg, namely the fact that staff recruitment is subject to the prior approval of the Minister of the Interior;

d. the administrative supervision of acts and persons at local authority level, which is sometimes excessive;

e. the difficulties local authorities have with a system of local financing which does not always take account of changes in their core tasks and income disparities between communes;

f. the fact that the unit values for the land tax have not been reviewed since 1941, resulting in lost earnings for local authorities.

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

a. clearly delimit the powers of the State and the communes (Article 4, paragraphs 1 and 2 of the Charter);

b. improve the dialogue between central government and the communes and SYVICOL on all matters concerning the communes by putting regular dialogue co-ordinated by central government on a more formal footing, so as to ensure that it becomes a permanent practice (Article 4, paragraph 6 of the Charter);

c. review staff recruitment policy for communes so that they can determine for themselves the kind of internal administrative structures they wish to have, independently and without having to seek ministerial approval (Article 6 of the Charter);

d. relax the administrative supervision of the communes' activities with a view to confining such control to verification of strict legality, and review the supervision of individuals, i.e. the hiring of local government officers, the dismissal of mayors or aldermen and the dissolution of the communal council (Article 8, paragraph 3 of the Charter);

e. provide communes with sufficient own resources to enable them to exercise their powers, taking account of changes in

their core tasks and income disparities between communes (Article 9, paragraphs 1 and 2 of the Charter);

f. review the unit values for the land tax to take account of actual property prices so as to restore communal revenues (Article 9, paragraph 3 of the Charter);

g. provide the communes with predictable, stable and sufficiently diversified income to enable them to perform their tasks regardless of the economic climate (Article 9, paragraph 4 of the Charter);

h. review the criteria and formula for financial equalisation, taking account of the size of the communes (Article 9, paragraph 5 of the Charter);

i. consider in the near future signing and ratifying the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority.

7. The Congress invites the Committee of Ministers of the Council of Europe to take into consideration the present recommendation on local democracy in Luxembourg, as well as the explanatory memorandum, in its activities related to this member State.

1. Discussed and approved by the Chamber of Local Authorities on 21 October 2015 and adopted by the Congress on 22 October 2015, 3rd Sitting (see Document [CPL/2015\(29\)5FINAL](#), explanatory memorandum), rapporteurs: Dorin Chirtoacă, Republic of Moldova (L, EPP/CCE) Marianne Hollinger, Switzerland (L, ILDG).

2. In their work, the rapporteurs were assisted by Professor Konstantinos Tsimaras, consultant and member of the Group of Independent Experts on the European Charter of Local Self-Government, and the Congress secretariat.