

THE CONGRESS OF LOCAL AND REGIONAL AUTHORITIES

Recommendation 218 (2007)¹ Opening of the European Charter of Local Self-Government to the accession of the European Community and of non-member states of the Council of Europe

The Congress, acting upon the proposal of the Chamber of Local Authorities,

1. Having regard to:

a. the European Charter of Local Self-Government (ETS No. 122);

b. its Resolution 195 (2005) on the 20th Anniversary of the European Charter of Local Self-Government;

c. its Resolution 222 (2006) on the United Nations Human Settlements Programme (UN-HABITAT) draft guidelines on decentralisation and the strengthening of local authorities;

d. Resolution 1290 (2002) of the Parliamentary Assembly of the Council of Europe on future co-operation between European institutions;

e. Recommendation 1770 (2006) of the Parliamentary Assembly of the Council of Europe on the promotion of local self-government along Council of Europe borders;

f. the draft protocol amending the European Charter of Local Self-Government with a view to opening it to the accession of the European Community and of non-member states of the Council of Europe, its explanatory report (Appendix I and Appendix II) and the explanatory memorandum (CPL(14)3REP) presented by Christopher Newbury (United Kingdom, EPP/CD) and prepared with the collaboration of the Group of Independent Experts;

2. Recalling that the charter remains the only legally binding international treaty that defines the essential characteristics of local self-government and provides the local authorities of the member states with guarantees in the exercise of their rights and competences in a state where power is shared between the different spheres of government;

3. Considering that the provisions of the charter contain fundamental principles for all the member states of the Council of Europe, but that the relevance of these principles is by no means limited to the confines of the European continent;

4. Considering that the existence of local authorities with real responsibilities and independence makes the administration of public affairs more effective and brings it

closer to the citizen, in keeping with the subsidiarity principle;

5. Considering also that the adoption by the United Nations of the Guidelines on Decentralisation and the Strengthening of Local Authorities on 23 April 2007 illustrates the emergence of a worldwide consensus around the principles of local democracy and represents a significant development in favour of peace, democratisation and social and economic progress;

6. Aware of the fact that when it was drafted in the early 1980s the charter was set up as a “closed” instrument, open for signature only by Council of Europe member states;

7. Welcoming Recommendation 1770 (2006) of the Parliamentary Assembly of the Council of Europe which recommends that the Committee of Ministers provide for the charter to be opened for signature by non-member states;

8. Resolved to promoting the values of local self-government and local democracy outside the Council of Europe;

9. Recalling that the aim of both the Council of Europe and the European Union is to achieve greater unity among their members and among the peoples of Europe, “in which decisions are taken as openly as possible and as closely as possible to the citizen” (see Article 1 of Title I of the 1992 Treaty on European Union);

10. Convinced that respect for the principles of local democracy is one of the foundations of the European architecture and that local authorities have contributed to it as actors in this process as well as subjects of Community and European law;

11. Aware also of the increasing impact of European Community law in the member states in fields that fall within the remit of the local authorities, such as the environment, resource management and education;

12. Considering that in exercising its own or shared competences the European Union/European Community, like its member states, makes a point of respecting the principles of local self-government and subsidiarity, and of promoting good governance at European, national and local levels, with the aim of the coherence and simplification of the regulatory environment;

13. Considering accordingly that the question of the implementation of the principle of subsidiarity cannot be circumvented in the European Union’s work on the future of the constitutional process;

14. Recalling in this respect that the Constitutional Treaty of the European Union provides for the explicit recognition of regional and local self-government, as well as the right of the Committee of the Regions to refer subsidiarity issues to the European Court of Justice;

15. Noting in this regard that the charter has been ratified by almost all the member states of the Council of Europe and by all the member states of the European Union;

16. Considering accordingly that for the coherence and consolidation of the rule of law in Europe, the European Union/European Community should be able to accede to the charter;

17. Aware that as long as the European Union does not have a legal personality, any eventual accession to the charter must be effected by the European Community;

18. Given that in order to permit the European Community to accede to the European Charter of Local Self-Government, the charter must be amended;

19. Taking note of the fact that the present draft protocol is of a technical nature and aimed at making it possible for the European Community and non-member states of the Council of Europe, as appropriate, to accede to the charter, without prejudging the decisions to be taken later, on a case-by-case basis, regarding the merits of these accessions and the possible arrangements for participation of the European Community and non-member states in the Council of Europe's co-operation structures;

20. Considering also that in order to enter into force a draft protocol amending the charter must be adopted by the Committee of Ministers and signed and ratified by all the parties to the charter,

21. Recommends that the Committee of Ministers:

a. examine the appended draft protocol amending the charter with a view to opening it to the accession of the European Community and of non-member states of the Council of Europe;

b. adopt the draft protocol amending the charter and take note of the draft explanatory report;

c. open it for signature by the member states of the Council of Europe, if possible at the Conference of European Ministers responsible for Local and Regional Government in Valencia (Spain) on 15 October 2007;

d. invite the member states of the Council of Europe to ratify it at the earliest opportunity;

22. Invites the Parliamentary Assembly of the Council of Europe to take note of this text, which is of a technical nature and in the spirit of co-operation both between the Council of Europe and the European Union, and between the Council of Europe and non-member states.

Appendix I

Draft protocol amending the European Charter of Local Self-Government

Preamble

The member states of the Council of Europe, signatory to this Protocol amending the European Charter of Local Self-Government,

Having regard to Resolution 195 (2005) of the Congress of Local and Regional Authorities of the Council of Europe on the 20th Anniversary of the European Charter of Local Self-Government;

Considering the importance of local self-government and local democracy for the European Union/European Community and its member states, and for states other than the member states of the Council of Europe;

Resolved to promote the values of local self-government and local democracy outside the Council of Europe;

Have agreed as follows:

Article 1

Paragraphs 2 and 3 of Article 12 of the Charter shall be amended as follows:

“2. Each Contracting State or the European Community, when depositing its instrument of ratification, acceptance, approval or accession, shall notify the Secretary General of the Council of Europe of the paragraphs selected in accordance with the provisions of paragraph 1 of this article.

3. Any Party may, at any later time, notify the Secretary General that it considers itself bound by any paragraphs of this Charter which it has not already accepted under the terms of paragraph 1 of this article. Such undertakings subsequently shall be deemed to be an integral part of the ratification, acceptance, approval or accession of the Party so notifying, and shall have the same effect as from the first day of the month following the expiration of a period of three months after the date of the receipt of the notification by the Secretary General.”

Article 2

Three new paragraphs (4, 5 and 6) shall be added at the end of Article 15 of the Charter, worded as follows:

“4. The European Community may accede to the Charter.

5. The Committee of Ministers of the Council of Europe may, after consulting the Parties to the Charter and after consulting the Congress of Local and Regional Authorities of the Council of Europe, invite a Council of Europe non-member state to accede to the Charter. The decision shall be taken by the majority provided for in Article 20.d of the Statute of the Council of Europe and by a unanimous vote of the representatives of the Parties to the Charter entitled to sit on the Committee of Ministers.

6. In respect of the European Community and of any state acceding to the Charter under paragraphs 4 and 5 above, the Charter shall enter into force on the first day of the month following the expiration of a period of three months after the date of deposit of the instrument of accession with the Secretary General of the Council of Europe.”

Article 3

Paragraphs 1 and 2 of Article 16 of the Charter shall be amended as follows:

“1. Any state or the European Community may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories to which this Charter shall apply.

2. Any state or the European Community may at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Charter to any other territory specified in the declaration. In respect of such territory the Charter shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of such declaration by the Secretary General.”

Article 4

At the end of Article 17, paragraph 1, of the Charter, before the full stop, the following words shall be added: “which are member states of the Council of Europe”.

Article 5

Article 18 of the Charter shall be amended as follows:

1. The introductory part of Article 18 shall be amended as follows: “The Secretary General of the Council of Europe shall notify the member states of the Council of Europe, the European Community and any other state having acceded or having been invited to accede to the Charter, of:”

2. Article 18, paragraph *b*, shall be amended as follows: “the deposit of any instrument of ratification, acceptance, approval or accession;”.

Final provisions

Article 6

This Protocol shall be open for signature by the member states of the Council of Europe which have signed the Charter. It is subject to ratification, acceptance or approval. No member state of the Council of Europe may ratify, accept or approve this Protocol without having simultaneously or previously ratified the Charter. The instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

Article 7

This Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date on which all the States Parties to the Charter have expressed their consent to be bound by the Charter, in accordance with the provisions of Article 6 thereof.

Article 8

The Secretary General of the Council of Europe shall notify all the member states of the Council of Europe of:

- a. any signature;
- b. the deposit of any instrument of ratification, acceptance or approval;
- c. the date of entry into force of this Protocol in accordance with Article 7 thereof;
- d. any other act, notification or communication relating to this Protocol.

In witness whereof the undersigned, being duly authorised thereto, have signed this Protocol.

Done at, this, in English and French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member state of the Council of Europe.

Appendix II

Draft Explanatory Report

1. The Protocol amending the European Charter of Local Self-Government was drawn up within the Council of Europe by the Congress of Local and Regional Authorities, then adopted by the Committee of Ministers. It was opened for signature by the member States of the Council of Europe on

2. The text of the explanatory report, prepared by the Congress and noted by the Committee of Ministers on, does not constitute an instrument providing an authoritative interpretation of the text of the Protocol, although it may facilitate the understanding of its provisions.

Introduction

3. The Congress of Local and Regional Authorities of the Council of Europe, in its Resolution 195 (2005) on the “20th anniversary of the European Charter of Local Self-Government”, “*considers that the question of ratification of the Charter by the European Union, by virtue of the latter’s legal personality under Article I-7 of the Treaty establishing a Constitution for Europe, merits attention*” (paragraph 8).

4. This resolution also contains, in paragraph 9.c, a proposal by the Congress “*that the possibility be considered of opening the Charter to States that are located in the immediate vicinity of Council of Europe member States but are not Council of Europe members themselves and have democratically formed local authorities*”.

Comments on the provisions of the Protocol

Preamble

5. The preamble asserts the special importance to the Council of Europe and the member States of the values represented by local self-government and local democracy.

6. The importance of these values leads the States Parties to the Charter to offer the European Community and Council of Europe non-member States the opportunity to become Parties to the Charter, by acceding to it.

7. The European Charter of Local Self-Government is thus transformed from a closed treaty (to which only the Council of Europe member States may become Parties) into a semi-open treaty (open to other States, accepted by the Parties, and to the European Community).

Article 1

8. The amendments to Article 12, paragraphs 2 and 3 of the Charter are purely technical, and aim to extend the category of “Party” to include not only States but also the European Community, and to add “accession” to the means whereby a Party may express its consent to be bound by the Charter, alongside ratification, acceptance and approval.

Article 2

9. Under the new paragraph 4 of Article 15 of the Charter, the European Community may accede to the Charter.

10. The European Community has the option of becoming a Party to the Charter as of right, by virtue of the provisions of the Charter as amended by this Protocol.

11. Several treaties adopted within the Council of Europe are open to the European Community.

These include, by way of example: the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine (1997), the Criminal Law Convention on Corruption (1999), the Civil Law Convention on Corruption (1999), the Convention on the Prevention of Terrorism (2005), the Convention on Action against Trafficking in Human Beings (2005), and the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (2005).

12. Pursuant to the new paragraph 5 of Article 15 of the Charter, non-member States of the Council of Europe may be invited to accede to the Charter.

13. This paragraph was drafted in the light of the precedents established by several other conventions drawn up within the Council of Europe. Indeed, most treaties adopted within the Council of Europe are open to non-member States. These include, by way of example: the European Cultural Convention (1954), the European Convention on Extradition (1957), the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (1980), Convention on the Transfer of Sentenced Persons (1983), the Anti-Doping Convention (1989), the Convention on the Participation of Foreigners in Public Life at Local Level (1992), the European Charter for Regional or Minority Languages (1992), the Framework Convention for the Protection of National Minorities (1995), Convention on the Recognition of Qualifications concerning Higher Education in the European Region (1997), the Criminal Law Convention on Corruption, 1999), and the Convention on Cybercrime (2001).

14. The procedure for accession to the Charter by Council of Europe non-member States follows conventional treaty practice at the Council of Europe.

15. The Committee of Ministers decides, on request of the interested non-member State to invite it to accede to the Charter, after consulting all the Parties to the treaty, including

Council of Europe member states and the European Community.

16. The official decision to invite a non-member State to accede requires a two-thirds majority of the votes and the majority of the representatives holding a seat on the Committee, in accordance with Article 20.d of the Statute of the Council of Europe, as well as the unanimity of the representatives of the Parties entitled to sit on the Committee of Ministers.

17. According to new paragraph 5 of Article 15 the Committee of Ministers will consult the Congress of Local and Regional Authorities of the Council of Europe before inviting a Council of Europe non-member State to accede to the Charter.

18. Indeed, pursuant to the terms of Article 2, paragraph 2 of Statutory Resolution (2000) 1 relating to the Congress of Local and Regional Authorities of Europe (adopted by the Committee of Ministers on 15 March 2000, at the 702nd meeting of the Ministers’ Deputies), “*The Committee of Ministers and the Parliamentary Assembly shall consult the CLRAE on issues which are likely to affect the responsibilities and essential interests of the local and/or regional authorities which the CLRAE represents*”.

19. The new paragraph 6 of Article 15 of the Charter specifies the date of entry into force of the Charter in respect of the European Community and of States acceding to the Charter.

Article 3

20. The amendments to Article 16, paragraphs 1 and 2 of the Charter are purely technical, and have the aim of extending the category of “Party” to include not only States but also the European Community.

Article 4

21. The amendments to Article 17, paragraph 1 of the Charter concern the validity of the Charter following its denunciation by the Parties. For the Charter to remain in force, the figure of four Parties has been retained, but with the additional stipulation that they should be Council of Europe member States, to maintain the link between the Charter and the Council of Europe.

Article 5

22. The amendment to the introductory part of Article 18 and to paragraph b of that article of the Charter are purely technical, and aim to extend the category of “Party” to include not only States but also the European Community, and to add “accession” to the means of expression of consent by a Party, alongside ratification, acceptance and approval.

Final provisions

Article 6

Article 7

Article 8

23. The provisions of Articles 6 to 8 of the Protocol are founded on the wording of the model final clauses adopted by the Committee of Ministers of the Council of Europe in February 1980.

24. Since this is an amending Protocol to the Charter extending the range of the subjects of international law between

which treaty relations may be established, ratification by all the States Parties to the Charter is necessary for this Protocol to enter into force.

1. Debated and approved by the Chamber of Local Authorities on 30 May 2007 and adopted by the Congress on 1 June 2007, 3rd Sitting (see Document CPL(14)3REC, draft recommendation presented by C. Newbury (United Kingdom, L, EPP/CD), rapporteur).