

THE CONGRESS OF LOCAL AND REGIONAL AUTHORITIES

Opinion 23 (2004)¹ on the draft recommendation of the Committee of Ministers on processes of reform of boundaries and/or the structure of local and regional authorities

The Congress,

Having been asked by the Steering Committee on Local and Regional Democracy (CDLR) for an opinion,

1. After examining the texts forwarded to it by the CDLR relating to the draft recommendation of the Committee of Ministers on processes of reform of boundaries and/or the structure of local and regional authorities;²

2. Considering the relevant articles of the European Charter of Local Self-Government (hereafter referred to as the Charter), in particular:

a. Article 4, paragraph 6, stipulating that “Local authorities shall be consulted, in so far as possible, in due time and in an appropriate way in the planning and decision-making processes for all matters which concern them directly”;

b. Article 5, providing that “Changes in local authority boundaries shall not be made without prior consultation of the local communities concerned, possibly by means of a referendum where this is permitted by statute”;

3. Recalling that it is important to take account of the fact that the above-mentioned articles may, in accordance with Article 13 of the Charter, also apply to regional authorities;

4. Believing that, in this matter, it is also important to bear in mind the explanatory report of the Charter, which:

a. with regard to Article 4.6 stipulates, *inter alia*, that “(...) the manner and timing of consultation should be such that the local authorities have a real possibility to exercise influence, whilst conceding that exceptional circumstances may override the consultation requirement particularly in cases of urgency. Such consultation should take place directly with the authority or authorities concerned or indirectly through the medium of their associations where several authorities are concerned”;

b. with regard to Article 5, states that “Proposals for changes to its boundaries, of which amalgamations with other authorities are extreme cases, are obviously of fundamental importance to a local authority and the citizens whom it serves. Whilst in most countries it is regarded as unrealistic to expect the local community to have power to veto such changes, prior consultation of

it, either directly or indirectly, is essential. Referendums will possibly provide an appropriate procedure for such consultations but there is no statutory provision for them in a number of countries. Where statutory provisions do not make recourse to a referendum mandatory, other forms of consultation may be exercised”;

5. In view of the above, believes that it is desirable that the draft recommendation make explicit reference to the aforementioned articles of the Charter;

6. With regard to the individual paragraphs of the draft recommendation, wishes to make the following proposals:

a. Paragraph 1: insert the words “legal and practical” before the word “preconditions” and at the end of the sentence insert the words “including a detailed study of the effects of the reforms with regard to the effectiveness and efficiency of service delivery and the quality of local and/or regional democracy in the community concerned”;

b. Paragraph 2: delete the words “well-designed” and insert the words “agreed on with the associations representing the local and regional authorities concerned and” before “based on”; after the words “institutional dialogue”, insert the words “between these authorities”;

c. Paragraph 3: replace the first part of the paragraph “elaborate a step-by-step plan and clearly assign responsibilities including leadership for the implementation of the reform” with the words “draw up a step-by-step plan in consultation with the local and/or regional authorities concerned and stipulate the responsibilities, including leadership, of each body concerned in the implementation of the reform,”;

d. Paragraph 4: at the end of the paragraph insert the words “and keep the relevant local and/or regional authorities informed”;

7. With regard to the part of the text concerning the good practice collected in sections A, B, C and D, believes that it is important, generally speaking, to take account of the above-mentioned proposals *mutatis mutandis*;

8. In particular, with regard to the individual sections in this part, considers it advisable to highlight the fact that:

a. the local and regional authorities concerned by a specific reform should be involved in every stage of that reform (preparation, decision taking – at least for the regions with a legislative power, and those local and regional authorities which enjoy a special status – implementation and evaluation);

b. the aim of the reforms must be to improve the living conditions of the local and/or regional communities concerned. Accordingly, so as not to weaken local and/or regional democracy by inappropriate centralisation processes, all proposals for reform must clearly outline the social and economic advantages for the communities concerned;

c. institutional dialogue procedures should always be of an official nature and permit all the local and/or regional

communities concerned to take part. In this respect, it should be pointed out that the local and regional authorities concerned should be able either directly to conduct or to be involved in all procedures for consulting the communities they represent;

9. From a purely formal standpoint, believes that it is advisable to standardise the language used, in so far as possible, with reference being made, where appropriate, to the terminology used in the Charter: it is, for example, suggested that the term “municipalities” be replaced by the term “local authorities”, and the words “decentralised authorities” by the words “local and/or regional authorities”; for the same reason, it would be preferable, with regard to the bodies concerned, to make specific reference to the local and/or regional communities and/or authorities and avoid vague terms such as “stakeholders”, “others concerned”, etc.;

10. Proposes that the results of the evaluation of reforms conducted in Council of Europe member states should be forwarded to the Congress of Local and Regional Authorities of the Council of Europe for information;

11. Decides to transmit this opinion directly to the CDLR and to the Institutional Committee of the Chamber of Local Authorities so that it can be taken into consideration during the drafting of the 6th general report on political monitoring of the implementation of the European Charter of Local Self-Government, on the subject of the consultation of local authorities.

APPENDIX

Draft recommendation of the Committee of Ministers on processes of reform of boundaries and/or the structure of local and regional authorities

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Considering, ...

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Recommends that the governments of member states, where they engage in reforms of boundaries and/or the structure of local and/or regional authorities:

1. undertake thorough preparation, in order to identify and take account of the applicable preconditions;
2. ensure the existence of well-designed decision-making procedures based on good institutional dialogue;
3. elaborate a step-by-step plan and clearly assign responsibilities including leadership for the implementation of the reform, as well as arrange for the consistent monitoring of it;
4. undertake broad and unbiased evaluation of the results;

in accordance with the good practice drawn together under A, B, C and D below and ensuring that the objectives, methods and results of a process of reform are fully

compatible with the provisions of the European Charter of Local Self-Government.

Furthermore, where appropriate, states must further ensure that the objectives, methods and results of a process of reform comply with their obligations under Article 7.1.b of the European Charter for Regional or Minority Languages and Article 16 of the Framework Convention for the Protection of National Minorities.

These recommendations may also be applied where reform is undertaken by a higher tier of sub-national government in respect of a lower tier or where, within a pre-established framework, territorial authorities engage in reforming themselves, for example by amalgamating two existing territorial entities of the same level into one or by changing the territorial boundaries between them.

A. Preparation

a. Analysis

1. A thorough preparation entails being aware of the following:

- the way in which the problems are defined is conceptually linked to the solutions that may be found;
- there are five basic parameters which apply to any system of sub-national territorial administration units; the size,³ the competences, the degree of autonomy, the financial arrangements and the mode of operation;⁴
- these parameters are interlinked and thus changes to one of them will affect one or more of the others;
- among stakeholders and others concerned with a reform there needs to be at least that degree of consensus that permits the setting of clear goals for the reform.

2. As a starting point for considering reforms, there needs to be an objective either in terms of size or in terms of competences. Not having such an objective is likely to lead to an inability to formulate a clear strategy for action.

3. Any plan for reform should be guided by a comprehensive view on or theory of the different levels of government within the state⁵ and their interaction (blueprint), both as it is and as it will be upon completion of the reform.

4. The wider socio-economic context in which the reform is to take place needs to be clearly analysed, particularly having regard to the economic conditions and to how population is distributed across the entire territory.

5. Failure to deliver the kind and level of services citizens require as well as poor quality of democratic life may undermine the legitimacy of local and regional authorities. For this reason, an analysis of the existing preconditions for reform should examine:

- questions of efficiency and capacity to act;
- questions of democratic legitimacy including electoral effects;

– questions of capacity to generate consensus and of maintaining or generating a sense of community.

Care should be taken to avoid gerrymandering or even the perception of gerrymandering.

6. As regards size,⁶ the following points are to be borne in mind:

a. Size has an important and complex impact on the capacity of local and regional authorities to function and perform their tasks as well as on the effectiveness of local and regional democracy.

b. Efforts are rightly focused on achieving the optimal size, however there is no standard optimal size applicable to all situations. The optimal size is dependent on factors such as the distribution of competences between levels of government, the degree of financial autonomy and the existence of financial equalisation systems.

c. Deviations from the optimal size can to some extent be compensated through different measures (see paragraphs 6.*k* and 6.*l*: internal decentralisation and deconcentration in bigger units, and external association and co-operation between smaller units).

d. The impact of size may differ or even be opposite if measured in terms of effectiveness and efficiency of service delivery or in terms of changes to the quality of local democracy. Furthermore, the impact of size on effectiveness and efficiency may differ between individual competences or policy areas.

e. There is no unequivocal relation between size and effectiveness in the delivery of services: large municipalities may benefit from economies of scale. However, beyond a certain point they may also create heavy bureaucracies, which may affect effectiveness and efficiency of their action.

f. There is no unequivocal relation between size and the quality of local and regional democracy. In general, individual participation (essentially through elections) may be better in smaller municipalities, while associative participation is usually lower. Within large metropolitan areas, internal decentralisation and deconcentration may help to improve participation (for example elected bodies at municipal district level).

g. There is one clear relation between size and financial/budgetary autonomy in that very small municipalities often have very little financial freedom (if at all) because of their low income and high overheads.

h. Levels of satisfaction both in respect of service delivery and the credibility and sensitivity of local/regional government are important indicators for the optimal size.

i. E-government has a potential to affect the relationships between on the one hand the size of local and regional authorities and on the other hand both service delivery and the quality of local and regional democracy. The capital and human resource requirements needed to set up e-government will tend to require common action on

a larger scale. At the same time e-government will make it possible to increase the possibilities for citizen participation.

j. The impact of a possible change to the size of a local or regional authority must be considered both in terms of effectiveness and efficiency of service delivery and in terms of quality of local and regional democracy and must be the subject of thorough analysis before any decisions are taken. Such an analysis should consider the consequences on effectiveness and efficiency in all individual policy areas or competences as well as the effects on democracy in the local community.

k. Where a local or regional authority is found to be too small in certain respects, external association and co-operation may be considered as solutions. Such co-operation may be horizontal, vertical as well as across frontiers (where relevant national legislation permits this).

l. Where a local or regional authority is found to be too big in certain respects, internal decentralisation and deconcentration may be considered as solutions.

m. In cases where merger of small local or regional authorities is found to be appropriate, consideration should be given, in the light of history and tradition, to casting the institutional arrangements of the new entity in such a way that the sense of identification of the population with the previously existing entities may, as far as possible, be preserved.

7. The issues of ownership of public capital, transfer of personnel and institutions as well as the sharing of the burden of debt and the possible shift in fiscal burden should not be overlooked in the preparatory stage.

8. Advantage should be taken of new technologies to improve the effectiveness and efficiency of service delivery and to enhance the quality of local and regional democracy.

9. Advantage should be taken from the experiences of others, not only within one country but also across and outside Europe. In particular full use should be made of information available on the Local Democracy Internet site and the LOREG database.

However, concrete solutions are rarely transplantable without adaptation, so that comparative efforts may most usefully be focused on the identification of the type of (broad) objectives that were involved in other reforms, the procedures that were in place and the issues that had to be dealt with in the course of their execution.

10. A decision to proceed with a proposal for territorial and/or administrative reforms should only be arrived at once the preparatory analysis has been completed and can be taken fully into account.

b. Participation

11. Comprehensive systemic reforms are strongly dependent on the ability to create consensus. This may be less difficult in the case of smaller-scale reforms.

12. Among stakeholders and others concerned with a reform there needs to be at least that degree of consensus that permits the setting of clear goals for the reform.

13. Preparatory studies of a general type involving stakeholders and others concerned can be a useful means of developing this consensus.

14. Reform based on the willing participation by the level of territorial administration to be reformed, is to be preferred to the exercise of its legal power by the higher authority against the will of the level involved. A bottom-up initiative⁷ may, in order to lead to a successful reform, need to be complemented by decision of the higher level, even against the will of some of the authorities involved in the reform. A top-down initiative⁸ should, in order to lead to a successful reform, seek to obtain the willing participation by the level of territorial administration that is to be reformed.

15. Stakeholders and others concerned should be involved, already at the preparatory stage.

16. Mergers and other changes involving modifications of boundaries should only be performed in conformity with the principles underlying the European Charter of Local Self-Government (such as the consultation of the local communities concerned, possibly by means of referendum). This does not preclude the central authorities from creating positive incentives for local or regional authorities to co-operate, merge, decentralise or engage in deconcentration.

17. A process of reform should in its preparation, decision making, implementation and evaluation be based on institutional dialogue that meets the parameters of effectiveness, transparency, accountability, representativeness and efficiency.

18. In order for the institutional dialogue to be effective it is to be ensured that:

- it takes place in a timely manner;
- it takes place on the basis of clearly established procedures;
- all relevant information is available to all participants, in particular relevant dates, agendas and events are to be made available in advance;
- the outcome, if not binding, is given at least due consideration in the final decision-making process;
- the institutional dialogue is meaningful and not rendered ineffective through parallel processes;
- whilst respecting the rules of public access to information, the basis on which information about the process is to be made available to the public is to be agreed by all participants in order to ensure the necessary trust between participants.

19. In order for the institutional dialogue to be transparent, it is to be ensured that rules of access to public information

are respected and that the results of the dialogue are made public as soon as possible.

20. It is to be ensured that those participating in the institutional dialogue are accountable to democratically elected bodies (assemblies).

21. In order for the institutional dialogue to be representative it is to be ensured that all (levels of) territorial authorities with a legitimate interest in the matters at hand are involved, regardless of the party political make-up of these territorial authorities. Participation in the dialogue should generally not be limited exclusively to those who belong to the political majority. In as far as participants represent territorial authorities, they must be representative of these territorial authorities.

22. In order for the institutional dialogue to be efficient it is to be ensured that:

- the best possible use is made of existing resources and procedures;
- care is taken to avoid unnecessary duplication;
- the dialogues between different levels (state-region; state-local level; regional-local level) are well co-ordinated.

c. Design

23. The time schedule for implementing a reform should be given careful consideration. On the one hand there has to be left enough time for the necessary discussions and practical arrangements at central as well as on local level, on the other hand a time perspective that is too long, could result in the loss of momentum.

Any proposed reform should usually be expected to take several years.

24. Any plan for reform should be designed in clearly distinguished steps.

25. Any reform requires assigning clear responsibilities for it, including for identifiable leadership in order to ensure both continuity and consistency. Consideration should be given to the possibility of anchoring the process of reform in a body or administrative arrangement between the institutions involved.

26. It is important to learn from previous experience both at home and abroad. However, concrete solutions are rarely transplantable without adaptation, so that comparative efforts may most usefully be focused on the identification of the type of (broad) objectives that were involved in other reforms, the procedures that were in place and the issues that had to be dealt with in the course of their execution.

27. The reform strategy should include an adjustment procedure to address specific concerns of specific territorial authorities which arise during the reform process. The necessary consensus about the goals of the reform should ensure that this procedure is not used to try to alter the strategic objectives of the reform.

28. Where population and economic conditions are not uniformly distributed across the territory, the possibility should be considered to apply differentiated solutions in that:

- the same levels of territorial administration need not exist everywhere in the state;
- competences of territorial authorities of the same level may differ;
- institutional relations of territorial authorities of the same level may differ.

29. Designing a process on a bottom-up experimental approach may generate useful results both as regards fine-tuning the objectives and the process of reform, as well as for creating a momentum in support of the reforms.

B. Decision making

1. The decision to go ahead with a proposed reform should be taken at the highest institutional level, following consultations with the institutions involved (see recommendations on institutional dialogue) and may be influenced or concluded by a referendum where such a consultation is permitted by statute.
2. The plan for reform and for its implementation should be decided upon at the highest institutional level, following consultations with the institutions involved (see recommendations on institutional dialogue).
3. Support for reforms may be obtained both by engaging in consultations with those concerned and by empowerment of the territorial authorities within a centrally established framework.

C. Implementation

1. Leadership as mentioned above⁹ is also essential for successful implementation.
2. As the emphasis in the process shifts from the central authority to the decentralised authorities in the implementation phase, it is particularly important to clearly assign the responsibility of leadership at de-central level during that phase.
3. Central political¹⁰ commitment to the reforms remains necessary in order to be able to resolve any serious problems arising in the implementation phase.
4. A common framework of reference needs to be in place for the implementation phase, for example, by including planning procedures involving all actors concerned.
5. A bottom-up experimental approach may generate useful results (both as regards fine-tuning the objectives and the process of reform, as well as for creating a momentum in support of the reforms) also in the implementation phase.
6. The central authority will usually need to set up supporting programmes providing IT and other necessary infrastructure. Such programmes may be designed in the planning process referred to above.
7. There must be in place a robust framework to preserve normal budgetary discipline during the transitional phase, to safeguard the assets and to ensure any transfer of staff of territorial authorities being reformed is efficiently handled.

8. Monitoring the implementation of reforms is essential in order to identify bottlenecks at a timely moment and to allow for the comparison of experiences by the different territorial authorities involved.

9. Such monitoring should be carried out at all levels of public administration involved in the reform, both by those involved and by independent monitors and have a broad focus not limited to the reform of administrative structures as such.

D. Evaluation

1. Upon completion of the reform, independent evaluation studies with a broad focus and not limited to the reform of administrative structures as such, should be carried out in order to verify whether and to what degree the objectives of reform have been achieved.

2. Evaluation should also be carried out by those directly involved in the process of reform.

3. The results of evaluation should be made public.

4. Measures should be taken to ensure that reforms may be adjusted or even reversed where they are shown to have significantly fallen short of their objectives. These measures should include, where it does not already exist, the creation of a legal framework to regulate the rights and obligations affected by the adjustment or reversal of the reform.

5. Measures should be taken to ensure that the results of evaluation are taken into account in the shaping of general policies on reform and in any subsequent process of reform.

6. Evaluation results should also be made available to other member states of the Council of Europe.

1. Debated and adopted by the Standing Committee of the Congress on 24 March 2003, (see Document CG (10) 29, draft opinion presented by Carlo Andreotti, Italy, R, NR, rapporteur).

2. See appendix.

3. Size is usually expressed in terms of number of inhabitants, the density of inhabitation, geographical area and the resources at its disposal.

4. The mode of operation concerns whether the authority in question will only be responsible for the final delivery of services or also for producing them.

5. Or, as the case may be, within the sub-national territorial entity leading the reform.

6. Size is usually expressed in terms of number of inhabitants, the density of inhabitation, geographical area and resources at its disposal.

7. A bottom-up approach to reform is the approach where action for reform by the higher level of territorial authority is dependent on the initiative of the level of territorial authority to be reformed (bottom-up initiative).

8. A top-down approach to reform is the approach where the initiative for reform is taken by a higher level of territorial authority (top-down initiative).

9. In A25.

10. Or, as the case may be, a sub-national territorial authority leading the reform.