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REPORT

EUROPEAN CHARTER OF REGIONAL SELF-GOVERNMENT

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EXPLANATORY MEMORANDUM

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In June 1993, the Standing Conference of Local and Regional Authorities of Europe organised a Conference in Geneva on "Regionalisation in Europe: Evaluation and Perspectives", at the invitation of the Republic and Canton of Geneva.

Following this Conference and its final declaration, the Congress of Local and Regional Authorities of Europe, at its first session in June 1994, adopted Resolution No. 8 in which it invited the Chamber of Regions "to draw up a 'European Charter of Regional Autonomy' along the lines of the European Charter of Local Self-Government, in co-operation with the Parliamentary Assembly."

In 1994 the Bureau of the Congress set up a working group on the "European Charter of Regional Self Government". Several meetings were held in this context, some of which were attended by eminent lawyers and other regionalisation experts whom the working group wished to consult. Furthermore, at the invitation of the Government of Lower Saxony (Germany), a first draft of the text of the Charter was presented to the public on the occasion of a Hearing held in Hannover on 22 March 1996.

The group was chaired by Mr Haegi, President of the Chamber of Regions, and the Vice-Chair was Mr Leon Kieres who is also Vice-President of the Chamber of Regions. Peter Rabe, member of the Diet of Lower Saxony (Germany) was appointed Rapporteur. Two experts have made a considerable contribution to the success of the work: Professors Nicolas Levrat, lecturer at the University of Geneva, and Philippe de Bruycker, Director at the Public Law Centre at the Free University of Brussels. Dr Günter Hedtkamp (Munich), Director of the Osteuropa Institut, provided a valuable input to the section relating to the funding of regions. For the Hannover Hearing and the next stage in the work, the Bureau decided to ask the Chamber of Local Authorities to gives its opinion on the draft text. This task was entrusted to Mr Diego Scacchi, Mayor of Locarno (Switzerland). Right from the beginning, and in accordance with the mandate given by Resolution No. 8 (1994), representatives of the Parliamentary Assembly have been invited to participate in our work. We have thus benefitted from the co-operation of Mr Francesco Parisi, Chairman of the Assembly's Committee on the Environment, Regional Planning and Local Authorities, of Mr Pere Grau, and of Mr Joao Bosco Mota Amaral, the latter having first the statute as member of the Congress, and later as member of the Assembly.

First of all, the experts' report was submitted for examination by a group of consultants who met in Strasbourg on 3 April 1995. The report, amended to incorporate the consultants' additions and observations, was submitted to the working group of the Congress of Local and Regional Authorities of Europe in Paris on 20 June 1995. The members of the working group and several observers examined the first draft report, which did not propose a text for a European Charter, but sought to expound a number of politically sensitive and methodologically important questions in the fields which, in the experts' opinion, should be covered by the draft Charter.

The members of the working group approved the report submitted by the experts, including the proposed structure of the draft Charter. They commissioned the same experts to produce what was called a "*preliminary draft European Charter of Regional Self-Government*".

The group subsequently met three times (in Paris in November 1995, in Geneva in December 1995 and finally in Paris in January 1996) to approve the present preliminary draft European Charter of Regional Self-Government. The draft was then examined at a public hearing held in Hannover on 22 March 1996, following which the experts made a few final amendments to the draft.

The preliminary draft European Charter of Regional Self-Government to which this explanatory report refers is based on:

- the first expert report;
- the minutes of the working group's meetings;
- the documents and observations submitted to the authors by working group members;
- the European Charter of Local Self-Government;
- the CLRAE Statutory Resolution and Charter;
- the European Parliament Community Charter for Regionalization;
- Council of Europe member States' legislation on regional matters;
- numerous Council of Europe reports published in the "Local and Regional Authorities in Europe" series;
- the documents presented at the Conference on Regionalisation in Europe: Evaluation and Perspectives (Geneva, 1993);
- the relevant legal literature.

The group approached its task by attempting to draw up a text which could become a Council of Europe convention, along the lines of the European Charter of Local Self-Government, which celebrated its 10th anniversary last year and which to date is in force in 21 Council of Europe member states. The group also drew on several texts from NGOs and the European Parliament, as well as on the work carried out by the CDLR, in particular Recommendation R (95) 19 of the Committee of Ministers to member states on the implementation of the principle of subsidiarity, adopted by the Committee of Ministers on 12 October 1995. It also took into account the parts of the Maastricht Treaty relating to subsidiarity. Certain provisions contained in the Statutory Resolution and Charter of the Congress of Local and Regional Authorities of Europe were taken into account.

The text as it stands does not actually provide a global definition of a region. It merely defines the foundation of regional self-government, regional self-government itself, regional attributions and powers, although the latter are not enumerated. It will be the responsibility of states to specify the regions to which the Charter will apply (Article 29 of the text).

The authors' aim was to present a text which would be widely acceptable among the Council of Europe member states, whatever their regional configuration, covering both federal regimes and the county system of the Nordic countries and the UK and Ireland. For this reason, it was decided to adopt a "Lego-style" approach, meaning that signatory states would not be obliged to accept the whole text but would be able to choose not to accept certain articles, listed in Article 25 of the Charter. A special provision has been included for states which would like to embark upon a process of regionalisation and the authors hope that this provision will be of particular relevance to certain countries in central and eastern Europe. Such states would have the opportunity of undertaking to bring their legislation in conformity with the principles of the Charter within a period of ten years. A control mechanism has also been proposed which would entail the drafting of regular reports (every five years). These reports would initially be examined by the Congress, which would then transmit them, together with its observations, to the Committee of Ministers.

The preliminary draft European Charter of Regional Self-Government incorporates all the matters of substance which the working group had earlier decided should be contained in the definition of regional self-government. The articles are, as far as possible, applicable to all European States (with the exception of those of a size which makes the existence of regions somewhat unrealistic). As discussions among the members of the working group have shown, however, a multi-tiered structure for the project (or "*Lego-type system*") may prove useful. Where a uniform solution does not seem applicable to all European States, Article 25 provides for the possibility of accepting only some of the obligations set out in the Charter.

Where the structure of the draft is concerned, ie, the ordering of the articles are arranged, the authors have endeavoured to adopt a logical pattern making clear the different components of regional self-government and the relations between them.

The preliminary draft text has been finalised at the working group's meeting on 30 April next. This finalised text will now be submitted to the Congress at its session in July. First, the Chamber of Local Authorities is invited to give its opinion, following which a draft Recommendation and a draft Resolution would be approved by the Chamber of Regions before being adopted by the Congress itself.

As a result, it is still an interim report insofar as the authors wish to continue their consultations over the next year. It is thus foreseen to consult, in particular, the Parliamentary Assembly of the Council of Europe which has already been involved in the group's work, and other international organisations, such as the European Union through the Committee of the Regions. A general consultation of the regions of Europe should take place, at the same time, through the channel of the Assembly of European Regions and the Council of European Municipalities and Regions.

It is our hope that such a text, once adopted, would be an integral part of the basic texts of the Council of Europe in the favour of guaranteeing the principle of "democratic security" developed at the Council of Europe's Vienna Summit in 1993. Ten years after its entry into force, the European Charter of Local Self-Government, to which this text is considered as being a necessary and useful complement or "pendant", has been ratified by 21 States and signed by 5 more. It is therefore an essentiel component of what has been recently suggested to become, at the horizon of the Council of Europe's 50th anniversary in 1999, the "Magna Charta" of democratic security, based on the three major principles of the Council of Europe, i.e. pluralistic democracy, human rights and the preeminence of law.

A draft explanatory report to the Charter of Regional Self-Government is appended to this explanatory memorandum. It illustrates the text of the draft Charter. In the tradition of the Council of Europe, such an explanatory report is adopted by the Committee of Ministers at the same time as a convention. The text that has already been discussed in the Working Group is therefore intended to facilitate the Committee of Ministers' work, when it would, hopefully, proceed to the adoption of the Charter.

Following these final consultations, the Congress could adopt, at its fourth Session in 1997, a finalised text which would then be submitted to the Committee of Ministers, in the hope that the text, which will have been the subject of extensive consultations, will result in a new Council of Europe convention.

APPENDIX

Explanatory Report

of the draft
European Charter of Regional Self-Government

BACKGROUND

The first session of the Congress of Local and Regional Authorities of Europe adopted Resolution No. 8, which "*invites the Chamber of Regions and the Chamber of Local Authorities: to draw up a 'European Charter of Regional Autonomy' along the lines of the 'European Charter of Local Self-Government', in co-operation with the Parliamentary Assembly, as stipulated in paragraph 23 of the Geneva Declaration*".

On the basis of this resolution, a working group chaired by Mr Claude Haegi with Mr Peter Rabe as Rapporteur was set up within the Congress. With the help of experts, the working group produced the present draft Charter. The text aims to lay down the guiding principles for regional self-government which take account of the wide range of political and legal systems in Europe's States. However, the size of some States, in terms of territory and population, makes them unsuited to regional organisation; this text therefore does not take into consideration the specific characteristics of these micro-States.

The principles laid down in this Charter form the foundations of regional self-government in Europe. They do not rule out the possibility for the institutions or legislators of European States of adopting provisions recognising the existence of greater regional autonomy.

PART I

FOUNDATION AND DEFINITION OF REGIONAL SELF-GOVERNMENT

Article 1

Article 1 is based on Article 1 of the *European Charter of Local Self-Government.* The wording adopted thus implies a particular structure for the Charter. The "substantive" part of the text (PartI) comprises an article laying down the principle of the foundation of regional self-government (Article 2), Articles 3 to 20, which define the scope of regional self-government, and Articles 21-24, which indicate the protection to be accorded to regional self-government. Finally, Articles 25 and 27 of the Charter provide for three separate formulae which States may use to undertake to comply with the provisions of the Charter.

Article 2 - Foundation of regional self-government

This article covers the foundation of regional self-government and the provisions giving substance to this. It is proposed that the principle of regional self-government should be laid down in the Constitution: it was decided to add the phrase "as far as possible" in order to take account of cases such as that of the States which have no written Constitution. It is envisaged that the provisions giving substance to regional self-government should necessarily be legislative in nature, so as to preclude the possibility of central government prescribing standards in the matter by means of regulations.

It was also thought desirable to stipulate that the procedure for drawing up these standards should provide the regions with special protection by various means, such as a need for there to be a specific majority in the relevant assembly for their adoption or amendment, or an obligation for the regions to be consulted prior to their adoption.

Article 3 - Principle

This provision gives a general definition of regional self-government rather than a region, taking account of the necessary dove-tailing between each State's domestic law and the provisions of the Charter. It locates regions in relation to central government and local authorities. Only the most significant aspects of regional self-government have been included in the definition. As regards the remainder, each of the ensuing provisions in the Charter helps provide a fuller definition of regional self-government than is given in this article.

The article encompasses two types of regions (decentralised and federate) both of which are covered by the Charter. Consequently, the text is a flexible one with a wide scope. The authors of the text have attempted to circumvent factors which could prove an obstacle to a genuinely European Charter, such as the conferring upon regions of a legislative power.

It did not seem possible to provide a more detailed definition of "matters of general interest" (such as town planning, the environment, transport, the economy, public works, etc) which are the responsibility of the regions, subject to the provisions of the Charter relating to regional powers. The phrase "within the limits of the law", which appears in Article 3 of the European Charter of Local Self-Government, has been omitted, because a number of regions have genuine legislative power enabling them to enact regulations with equal authority to those of the State (meaning the central authority). Similarly, the expression "regulate", which also appears in Article 3 of the European Charter of Local Self-Government, has likewise been omitted, to prevent it from possibly being interpreted as referring to the idea of a regulatory power.

None of the provisions of this Charter may be interpreted as restricting regional self-government in any country. The Charter has been designed for the purpose of guaranteeing the minimum provisions that are essential for regional self-government.

REGIONAL COMPETENCES

Two distinctions have to be made here, firstly between different types of competences, and secondly between different areas of responsibility. The former is based on the sources and scope of attributions and the conditions in which they are exercised, while the second relates to different spheres of responsibility, which we have divided into four thematic groups.

This classification makes a more accurate analysis possible, enabling a distinction to be made between attributions of different types in the same sphere and attributions of the same type in different spheres (eg, in the regional and European spheres, "own attributions" and "delegated attributions" are conceivable. Also conceivable are regions' own attributions both in the sphere of inter-regional relations and in the matter of participation in State power). This general classification makes it possible to lay down fundamental principles which can be respected by states with different legal traditions.

1. Types of competences

Article 4 - Own competences

The expression "*own competences*" is based on a definition in the transitional provisions of the *Charter of the Congress of Local and Regional Authorities of Europe*, which states that possession of their "*own competences*" is a precondition for the existence of "*regional authorities*". From the outset the members of the working group clearly stated their desire for the definition given in the *Charter of the Congress of Local and Regional Authorities of Europe* to be used in the draft Charter.

Paragraph 1: this article stresses that regions' own attributions are held only under the Constitution, the law or their own statute, and in no circumstances received from another tier of administration identified as such (eg, the national government). Own attributions cannot therefore be administrative in origin, but must be of a legislative or equivalent (possibly customary) type.

Acknowledgement of powers by the Constitution or by the law implies that they existed before the text in which they are mentioned. This wording thus enables account to be taken of the cases of States where regions' powers are not defined by, but predate domestic law.

Paragraph 2: this paragraph echoes *mutatis mutandis*, Article 4 paragraph 4 of the *European Charter of Local Self-Government*. The wording used in the paragraph to which this report relates prevents a region's own powers from being undermined by an executive or by an administrative authority, since the only authorities which can influence the Constitution or the law are the national legislature and the authors of the Constitution. This is a relatively high level of protection for regional self-government.

Paragraph 3: regions' decision-making powers in their own spheres of authority may include the power to legislate, in those countries which allow regions to do this. With reference to the other States, this wording makes it possible not to insist on regional assemblies having formal legislative powers, whilst clearly stipulating that regions should possess genuine "*decision-making power*", which goes much further than mere executive powers. What is more, the second sentence implies that regions' own powers must exist in politically significant spheres, so that the elected representatives of the regions are able to develop a *"real policy specific to each region"*.

Article 5 - Power of execution

In some States, particularly federal ones, decentralisation is very limited, or even non-existent. These make regional authorities responsible for the decentralised exercising of national powers, giving them responsibility only for the exercising of powers which are not their own.

Paragraph 1: this paragraph lays down the principle of decentralised exercising of State powers through executive powers devolved to the regions, rather than through the development of decentralised state administration. The working group members felt that this position was more in line with the principle of regional self-government. The expression "Within the limits of the law" implies that solely the legislature may confer executive powers upon regions.

Paragraph 2: although it is not a matter of the exercising of regions' own powers, but one of the exercising of State powers, regional executive power is as a general rule one of the regions' own attributions. Consequently the regulations applicable to this executive power, particularly where central government supervision is concerned, are similar to those governing own attributions.

Paragraph 3: this paragraph, in contrast, reiterates the requirement set out in Article 5 paragraph 1 in respect of the taking into account of the necessary resources for regions to exercise State powers in respect of which they hold executive power. It should be noted that the notion of "necessary resources" extends beyond financial aspects, encompassing human and administrative resources.

Article 6 - Delegated powers

Research conducted at the Council of Europe into the "*Definition and limits of the principle of subsidiarity*", has found a tendency in Europe towards delegated administration, developing in tandem with the "process of autonomisation of the state level". It therefore seems that a provision governing this particular type of attribution of power, which may have to be exercised in more limited conditions than "own attributions", has a place in the draft Charter.

Paragraph 1: this paragraph looks at the conditions relating to the delegation of powers. The *European Charter of Local Self-Government* deals with this matter far more succinctly, concerning itself only with the conditions in which delegated powers are exercised, and not with those in which powers are delegated.

A requirement for a clear definition in the instrument of delegation of power seems to satisfy both the interests of the authority delegating and those of the authority to which the exercise of the power is delegated. When a dispute arises in connection with the exercise of such a power, the delegating instrument of delegation will be the main reference point for determining the rights and obligations of each of the parties.

"*Resources ... for exercise*" of course means not only the material and financial resources that may be needed to exercise a new power, but also the administrative resources; in other words, administrative costs, staff costs, structural expenses and any other foreseeable costs must also be taken into account. The words "provided for" however, do not imply that a transfer of powers must inevitably be accompanied by a transfer of resources. There may in fact be cases in which the rationalisation of functions or possible combinations with other similar functions already exercised by the region may enable regional institutions to exercise the additional power without any need to provide additional resources. Even in such cases, however, the instrument of delegation should make it clear that this aspect of the delegation of power has been examined. It will be noted that the question of the funding of delegated powers was considered of such importance as to necessitate a specific provision (see Article 19 paragraph 6).

Paragraph 2: the authority delegating a power may specify the conditions of its exercise, but may equally make no provision in this respect. The next sentence in this paragraph, in any case, restricts the specification of such conditions.

Discretion to adapt is actually important in terms of compliance with the principle of subsidiarity. While there are benefits if State action throughout its territory has some degree of uniformity, the philosophy underlying regionalism is that the State's power must be able to be adapted in the light of each region's preferences and conditions. The delegation of powers thus implies that the State allows some diversity in the way in which some of these powers are exercised. *The European Charter of Local Self-Government* has a provision of similar scope in Article 4 paragraph 5.

2. Spheres of power

Having defined different types of power, we must examine the spheres in which the regions possess powers. The working group decided to make a distinction between four separate spheres of power: "*regional affairs*", "*inter-regional relations*", "*participation in State affairs*" and finally "*participation in European and international affairs*".

These four spheres do not overlap. The Charter does not, however, give a precise definition of regional powers; its sole purpose is to determine the basic principles according to which each State's domestic law should define the powers falling within each of the spheres.

Article 7 - Regional affairs

"*Regional affairs*" is not a concept which draws on recognised terminology. The concept of "*local affairs*" does exist under French law, and the expression seems transferable *mutatis mutandis* to the regions.

Paragraph 1: this first paragraph defines the principle of regional affairs. The Committee of Ministers Recommendation [No. R (95) 19] on the implementation of the principle of subsidiarity recommends that member States "*specify in the relevant legislation a core set of powers pertaining to each level of local and regional authorities in addition to any assumption of general competence*". It is thus clear that own powers cannot be defined by an international treaty, but remain within the purview of each country's domestic legislation. In the light of this recommendation, the authors do not list powers in the article defining regional affairs, but refer to national law.

On the other hand, this article does define the principle of regions' general power, largely reiterating the wording of Article 4 paragraph 2 of the *European Charter of Local Self-Government*, which provides that "*Local authorities shall, within the limits of the law, have full discretion to exercise their initiative with regard to any matter which is not excluded from their competence nor assigned to any other authority*".

Paragraph 2: the legitimacy of the exercise of a power by a region on the basis of its general powers could be contested if one of the conditions was not met. In practice, it is the authority which exercises the power which will have to evaluate the criteria listed in this paragraph.

"*The interests of the citizens*" has to be understood in the broad sense, extending both to the direct interest of a citizen in a particular task being performed and to an economic interest in the region's public expenditure remaining under control.

Where the "*principle of subsidiarity*" is concerned, it seems appropriate to ask the regions, which so frequently rely on this principle, also to use it when delimiting their own powers. The criteria set out in Recommendation No. R (95) 19 on the implementation of the principle of subsidiarity will also be able to play a useful role in defining the limits of this principle.

The wording which refers to "*solidarity*" should make it possible, in particular, for richer regions within a state where regional disparities are considerable to be prevented from claiming sole use of certain resources required by the whole national population. That said, the requirements of national and European solidarity, however real they may be, must nonetheless remain within reasonable limits and cannot lead to a levelling out of standards of living.

Article 8 - Relations with local authorities

During their discussions, members of the working group frequently emphasised the need to indicate that a greater development of regional self-government did not involve any risk or additional restriction for local self-government. In some states, particularly federal ones, the power to implement the principles of local self-government is held exclusively at regional level. The inclusion in this article of a reference to the *European Charter of Local Self-Government* is an indication that the regions undertake, in general terms during the exercise of their self-government, to safeguard and protect local self-government as defined in the *European Charter of Local Self-Government.*

Paragraph 2: this paragraph contains another reference to the principle of subsidiarity, in the specific sphere of relations between regions and local authorities.

Paragraph 3: this paragraph has been inserted in Article 8 to make it clear that regions may, in line with the principle of subsidiarity, delegate some of their powers to local authorities.

Paragraph 4: this paragraph refers to the regions which have a part to play in the process of equalisation among local authorities, either as holders of the power to lay down rules relating to municipal taxation or as participants in one way or another in the process of financial transfers between state and local authorities. In all circumstances, the regions must *"ensure a certain level of equalisation"*, which nevertheless leaves plenty of room for interpretation of the scope of this obligation.

Article 9 - Inter-regional relations

This term draws on the one suggested by the CLRAE rapporteur for the preliminary draft Convention included in *Resolution 248* (1993) of the CLRAE under the title of Preliminary draft Convention on inter-territorial co-operation between territorial communities or authorities. Insofar as this Charter refers only to regions, the term inter-regional seems appropriate, however.

This article on principles has three aims. The first paragraph acknowledges that regions have genuine power to engage in inter-regional relations. The second defines what is meant by inter-regional relations. The third regulates the relationship between the provisions of the Charter and those of the other relevant international instruments.

Paragraph 1: this is the most important provision in this part. It does not assign any new, explicit power to the regions to engage in inter-regional relations, but recognises that regions' capacity to engage in inter-regional relations in their own spheres of authority is consubstantial with their existence.

Paragraph 2 imposes two - reasonable - restrictions on the right defined in the previous sentence. These restrictions give the state, in its relations at national level with the regions comprising it, the capacity to intervene when a region might undermine the state's position in international law. Consequently, this provision does not preclude a form of *a priori* supervision exercised by state bodies over inter-regional relations, but such supervision is not a discretionary form of supervision and should be limited to monitoring the compliance of an inter-regional relationship with the international undertakings of the state.

Paragraph 3: this paragraph makes a distinction between two types of activities. Activities in the first category have no legal effect of their own, so they should not be subject to any specific limitation. Those in the second come within the purview of the law. In principle, this does not create any problems, as was clearly stated by the European specialists meeting in Jaca at the invitation of the King of Spain. They noted that: "*From a legal point of view, nothing prevents states, in order to settle problems of common interest, from accepting the principle that their respective regional and local authorities are normally empowered to maintain relations, conclude contracts and undertake certain joint actions with the corresponding authorities on the other side of the border, insofar as the matters dealt with fall within the powers defined for each of them by their domestic public law.*" (point II.2.1 of the *Jaca Declaration*).

Activities which come within the purview of the law may take place only with other regions or local authorities, which implies, *a contrario*, that partnerships with foreign States are excluded.

Paragraph 4 makes clear the situation of certain federal states in which the domestic legal system reserves a capacity for concluding international treaties in certain clearly defined spheres for regional bodies. This is the logical consequence of the definition given in the previous sub-paragraph, *in fine*, which states that agreements concluded by regions within the framework of inter-regional relations "*are not governed by ... international public law*".

Paragraph 5: with regard to the rules that will govern inter-regional relations, this paragraph refers to "*international agreements on the subject*". This general phrase is necessary, rather than a tedious enumeration, because of the variety of international treaties dealing principally or incidentally with such questions. In the first place, of course, there are the legal instruments concluded within the framework of the Council of Europe, particularly the *European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities*, which has acquired an additional Protocol extending and giving greater detail of the arrangements for application of the Convention.

There are many other kinds of more general treaties which only touch incidentally on the rules governing inter-regional and transfrontier co-operation. Examples include various neighbourhood treaties, treaties of friendship and co-operation and treaties relating to the rights of national minorities. Insofar as the provisions of these treaties are applicable to inter-regional relations, they are also covered by this reference.

Article 10 - Transfrontier relations and bodies

Article 10 paragraph 1 echoes *mutatis mutandis* Article 9 paragraph 1; please see the comments on that paragraph.

Article 10 paragraph 2 breaks new ground. It ties in with the intention expressed in the *White Paper of the Assembly of the Regions of Europe* (1993) to consider "*the overall vision - social, economic, cultural, etc. - of a genuine transfrontier region, that is a region which has a real existence of its own, although it is crossed by national boundaries*" (pp. 72-73). As its title shows, this proposal concerns only transfrontier relations, ie those set in a clear neighbourhood relationship.

This second paragraph provides for the setting up of joint bodies for such transfrontier regions. This solution is also envisaged in Articles 3 and 5 of the *Draft Additional Protocol to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities.* Indeed, the second sentence of the paragraph refers directly to this text.

Article 11 - Representation abroad

It is increasingly common for regions to set up offices to represent them abroad, especially vis-à-vis the European Community bodies in Brussels (on this point, see J R GUEVARA's report to the CLRAE on *the external relations of territorial communities*, particularly page 10). In this connection, Article 11 of the *Preliminary Draft Convention on Inter-territorial Co-operation between Territorial Communities or Authorities* also contains a provision on this point. Article 9 of the Charter reiterates this provision with a few modifications necessitated by the drafting method used for the Charter, and omits the requirement that such liaison offices must exist only for the promotion or defence of *fundamental* interests.

Article 12 - Participation in State affairs

The working group was in favour of including an article of this kind in the Charter. This is a question on which it is particularly difficult to envisage a uniform solution for all European States. This being so, the increasing dovetailing of powers, in modern States is a reason to consider the establishment of co-operative machinery between the different tiers of power which would be appropriate to each state's legal traditions.

The first paragraph sets out the principle in relatively flexible terms, since it seems difficult to adopt precise rules on this point applicable by all European States. The right envisaged in this paragraph is limited to cases where "*rules adopted at State level make alter the scope of regional self-government*", so it is not an unconditional right.

Paragraph 2: this paragraph proposes only alternative ways of implementing the principle set out in the first paragraph, taking into consideration the variety of institutions and legal traditions which exist in Council of Europe member states.

The first case encompasses a relatively wide range of situations, but they are fairly common ones.

Individual consultation of each region is probably the most flexible solution. No requirement for a formal procedure for such consultation has been included, allowing the States wishing to do so considerable scope for fulfilling the right granted to the regions by the first paragraph of this article in a manner which is not very coercive. Indeed, there are some states in which relatively informal consultation procedures between national and regional governments are regularly used, with convincing results.

The last method of participation covers two different cases. The first involves representation of the regions by an association which defends their interests in negotiations with the national government. The second involves the setting-up of "conferences", usually through an agreement between the central and regional governments, for regular discussion of questions of interest to both the State and the regions. In both systems, consultation with all the regions is able to take place simultaneously.

Article 13 - Participation in European and international affairs

The increasingly extensive overlapping of tiers of power and authority and the far from minor transfers of powers traditionally effected by the regions to community authorities mean that the regions now consider that they have a right to be involved in European affairs.

There are two distinct scenarios. The first is direct regional participation in the European institutions, "*through bodies intended for this specific purpose*"; while the second is the right to be consulted (or involved) during the negotiation of treaties which may have a direct effect on their powers. Each is dealt with in a separate paragraph.

This article does not cover direct, non-institutionalised approaches which the regions may wish to make, particularly to European authorities. For methodological reasons, it seems that this question is better dealt with in the context of inter-regional relations, where it is the subject of a separate article.

Paragraph 1, sub-paragraph 1: This article acknowledges regions' right to participate in bodies intended for this purpose within the European organisations. In the present situation of the European institutions, this means the CLRAE's Chamber of Regions and the European Union's Committee of Regions. The general wording of the first sentence of the paragraph, however, leaves open the possibility that this article could concern any other bodies which might be created.

Paragraph 1, sub-paragraph 2, reiterates the basic principles for the organisation of procedures for appointing regions' representatives to the European bodies. The requirement for a procedure which guarantees that the members of the European bodies within which regions are represented are genuinely representative can only increase the importance and influence these bodies have within the European institutions. In practice, however, it is the detailed rules drawn up for each of the institutions concerned which apply.

Paragraph 2: insofar as a State alters the distribution of powers as provided for in domestic law by concluding an international treaty, it seems improper that it should rely on its exclusive powers in the sphere of international relations to this end. In the specific context of international negotiations, this would effectively make it possible to bypass all the safeguards that exist in domestic law to protect regional self-government. By virtue of the matters dealt with and of the particular structure of Community law, this risk is extremely acute in European negotiations.

This being so, practical remedies to this difficulty must be considered so as not to render States unable to take action on the international stage. Two solutions are envisaged: on the one hand, regions have a right to be consulted when their powers or fundamental interests may be directly affected or when the implementation of the rules may be their responsibility sub-paragraph 1). On the other hand, in addition to this acknowledged right of the regions, it is stated that "*depending on circumstances, national governments may involve the regions in the negotiating process*", thus enabling them to play a direct part in such negotiations, a worthwhile solution if the interests of one specific region are affected by an international treaty (sub-paragraph 2).

INSTITUTIONAL ORGANISATION OF REGIONS

Article 14 - The principle of regional self-organisation

This provision takes account of one of the basic principles of federalism, namely the right of federal entities to self-organisation, by granting this right to the regions, subject to the greater or lesser restrictions in the domestic law of each signatory state. A minimum is nevertheless laid down in the shape of the regions' mandatory right to supplement the statutory provisions concerning them, but without breaking the rules imposed by central government.

Article 15 - Regional bodies

These provisions, which require few specific comments, draw directly upon the equivalent provisions of the European Charter of Local Self Government. Nevertheless, it is important to stress the right to enter a reservation concerning the uniquely direct nature of regional assembly elections, which article 25 paragraph 2 offers certain states in order to take account of their special circumstances.

In respect of direct personal discipline, the spirit of the *European Charter of Regional Self-Government* has been made clearer. It is in fact specified that these rather special forms of discipline (suspension, dismissal, etc), which may be described as "surveillance procedures" since they are directly aimed at persons, rather than at acts of the regions - as, for example, in the case of the supervision of regional legislation or regulations (see below) - may not have the effect, under judicial control, of prejudicing the free performance of the mandate or functions of members of regional bodies.

Article 16 - Regional administration

This provision regulates the administrative resources regions must be provided with in order to exercise their powers. The term "assets" used in paragraph 1 covers all forms of property owned by regions, including land and buildings. Provision is also made for the regions to have their own administration and staff, as well as the right to set up public-law corporations to which they may give certain assignments, and to associate with private-law corporations.

Where the conditions of service of regional staff are concerned, it is proposed that a position be adopted half-way between the two extreme points of view that regions should either have full power or no power at all in this matter. It is thus acknowledged that the regions have such a power within the limits of any general principles considered necessary and therefore laid down, under judicial supervision, by the central authority.

REGIONAL FUNDING

This question is of paramount importance for the scope of the draft Charter. In practice, as implied in the choice of structure for the Charter, funding arrangements are part and parcel of the definition of regional self-government, at least in the practical meaning of the term. It is thus appropriate to include four articles on this subject.

This chapter draws on the six articles of Chapter IV ("*Finance*") of the *Community Charter for Regionalization.* Account was also taken of the considerable body of work done in this field within the CDLR as well as of a report by a group of experts on local finance, which, for the benefit of the new democracies of central and eastern Europe, sets out clear principles with regard to local finance, some of which can be transferred *mutatis mutandis* to regional funding. This part has been drafted under the responsibility of Mr Günter Hedtkamp, Director of the Munich Osteuropa Institut.

Article 17 - Principles

The corollary to budgetary autonomy from central government is that the regions should have financial resources to use as they see fit and that these resources should be sufficient not only to carry out the tasks assigned to them by the Constitution or by legislation, but also to allow them to take specific initiatives in performing those tasks. The regions must also be able to provide services for the population going beyond those for which an obligation exists. This is a consequence of the principles of regional self-government and subsidiarity.

When the regions have own resources and when they may determine the rate of taxes and contributions, it is the tax payer who, in the final analysis, as a voter, determines the need for and quality of regional services.

Given that the various taxes and contributions differ considerably as regards their ability to adapt to economic cycles and economic growth and that the regions do not have powers to implement a countering policy, they need own resources that are not too sensitive to economic trends. On the other hand, the revenue from these resources must keep pace with economic growth to enable the regions to maintain the level of services over time.

It is also preferable for all the beneficiaries of regional services to contribute to their funding. This promotes democracy at regional level and prevents one part of the population exploiting another. The level of public services always depends on the wealth of a region, expressed in terms of the tax potential. To lessen the differences in regional wealth and to guarantee the whole country a level of services regarded as essential, financial equalisation becomes necessary.

Article 18 - Own resources

Since political autonomy depends largely on own resources, regional self-government implies the right to levy taxes and determine the rate of such taxes. Levying regional taxes and contributions therefore follows from the principles set out in Article 17.

In the absence of the possibility to levy their own regional taxes, regions should be entitled to fix additional percentages of one or more taxes levied by another public authority; in most cases a procedure of this kind will apply to State taxes. This is to be regarded as a "second best" solution since the region would have to accept the consequences of any changes made to the definition of the tax base by the authority levying that tax. An even less efficient, "third best", solution is a fixed-rate share in tax revenue. This can be regarded as the region's own resources, in the strict sense of the term, only if the rate of the share is determined by law or by the Constitution, so as to guard against arbitrary decisions by the central authority.

Article 19 - Transfers and financial equalisation

All financial equalisation must seek to strike a balance between, on the one hand, the national objective to guarantee a certain uniformity in the standard of living of the whole country and, on the other hand, the need to afford regional authorities the opportunity to create their own environment and encourage the regions to preserve and make very careful use of the tax potential of their territory. Equalisation therefore has its limits.

At first glance, horizontal equalisation among the regions by direct financial transfers between contributing regions and beneficiaries would certainly appear to be the ideal solution. However, political resistance, particularly from those making the contributions, places limitations on such a procedure. Consequently, equalisation must consist partly of State transfers allocated in a way that allows for differences in wealth and needs. Since it is extremely difficult to implement a system based on differences in needs, because regions could manipulate transfers for political ends, equalisation must be based first on a very limited number of criteria that are as objective as possible, such as population and population structure, and secondly on differences in the tax base.

Given that the granting of transfers can interfere with regional autonomy, it is essential that the majority of grants should not be subject to any conditions other than the limited number of criteria defined by law. Lastly, for the purposes of political equilibrium, the regions must be able to express their interests when legislation on equalisation and the rules for apportioning revenue are drawn up.

Article 20 - Borrowing

For their funding, particularly of regional investments, the regions must have access to the capital market. As in other areas, it has to be made sure that any supervision is confined to monitoring of lawfulness and that national rules defining borrowing limits are not discretionary and aim to guarantee that the region will be able to service its debt.

PROTECTION OF REGIONAL SELF-GOVERNMENT

Article 21 - Protection of regional boundaries

This provision reinforces the stipulations of the European Charter of Local Self-Government in this sphere. The latter requires only prior consultation of the communities concerned, while this text stipulates that prior agreement must be given by the regions concerned. This stipulation seemed necessary, since regions are larger than local authorities.

Nevertheless, it seemed expedient to make the first paragraph more flexible in the event of a State entirely revising the territorial boundaries of its regions, in order to prevent such a process being effectively blocked by the opposition of a single region.

Article 22 - Right of the regions to institute legal proceedings

This provision stipulates that regions shall be entitled to bring an action before the competent courts in their State in order to settle conflicts to which their existence may give rise, particularly where the protection of their self-government is concerned. What is clearly meant by this is the possibility for regions to contest the implementation of procedures for monitoring their action and of the surveillance procedures applicable to members of their institutions.

It will be recalled that a specific provision of the Charter stipulates that conflicts of powers shall be settled by judicial process.

This provision also presupposes that the provisions of the Charter itself may be relied upon in the competent courts of the States which have ratified it.

Article 23 - Conflicts of powers

It is important not to confuse conflicts of rules and conflicts of powers. The former (cases in which each tier of government has, in one of its spheres of authority, adopted one or more rules, the terms or effects of which prove contradictory) are covered in the next article. This article refers to a situation where the powers assigned to different tiers of government (local, regional and national) overlap in one way or another, and where each of these authorities claims to exercise the power exclusively. This article may apply both where there is a conflict of powers between the regional level and the State and when a conflict of powers exists between regional and local level.

Paragraph 1: the wording adopted prevents powers from being monitored *a priori*. A court may intervene only if a conflict of powers really exists, and not if an instrument or rule emanating from one level of authority might create a potential conflict of powers.

The stipulation that there should be a judicial body to guarantee regional self-government was regarded as fundamental by the working group. The Charter goes further in this respect than Recommendation [No. R (95) 19] of the Committee of Ministers to member States on the implementation of the principle of subsidiarity. Bearing in mind the varied nature of European states' institutional structures, this article does not specify the type of court which must settle conflicts of power of this kind. It seemed sufficient for the existence of a court to be guaranteed.

Paragraph 2: the first sentence sets out the principle that it is the Constitution or statutes of a country which make it possible to resolve conflicts of this kind.

If, however, the law is silent or ambiguous, the judicial body will be unable to hand down a judgment without examining the principle or subsidiarity. This signifies an important new development in the taking into account of the principle of subsidiarity, namely that the principle should no longer be applied solely by legislative or executive bodies in the process of division of powers, but must also be applied by the courts. Without adding to the substance or the legal force of this principle, such a provision nevertheless gives it a new operational scope.

Article 24 - Supervision of regional legislation or regulations

It is important to note at the outset that this provision governing the supervision which may be exercised over legislation or regulations adopted by the regions (irrespective of whether they emanate from the assembly or the executive body) does not cover conflicts of powers, ie cases in which the legal debate hinges on whether or not a region has remained within the limits of its powers. This point is actually the subject of a specific provision, which establishes judicial machinery for this purpose.

The identity and nature of the supervisory body are not defined. On this point, the Charter refers to the domestic law of each signatory State, which may lay down that this task is to be performed by either an administrative or a judicial body, or may set up an intermediate system involving at different stages of the procedure administrative and some judicial bodies.

The question of the scope of supervision has, on the other hand, been settled by limiting this procedure to questions of lawfulness (in the broadest sense of the term, particularly including constitutionality), except where regions exercise powers delegated by the central authority.

PART II

Article 25 - Undertakings and reservations

In accordance with the wishes expressed by the members of the working group for a "Lego-type system", this article enables a distinction to be made between two levels of undertaking in respect of the implementation of the principle of regional self-government by Council of Europe member States.

Paragraph 1: the principle is that States accept the Charter in its entirety. This requirement corresponds to the wish of the working group for the text to make it possible to take into account the variety of actual situations in the regional self-government sphere in Council of Europe member States, but without weakening the scope of the principles on which regional self-government is based.

Paragraph 2: in respect of a number of provisions implying an advanced stage of regional self-government, States where the system has not achieved this level of development are allowed to express reservations, whose continued relevance must nevertheless be reviewed periodically in accordance with Article 26.2.

Paragraph 5: if a State which has made reservations in accordance with paragraph 2 of this article notifies the Secretary General of its withdrawal of one or more of these reservations, such notification takes effect in accordance with the provisions of Article 28 paragraph 3.

Article 26 - Control of the application of the Charter

This provision fills a gap in the European Charter of Local Self-Government by providing for a control mechanism to make sure that the Charter is effectively applied.

Control is the task of the Committee of Ministers, but provision is made for the Congress of Local and Regional Authorities of Europe to intervene during the procedure by giving its opinion. The mechanism decided upon is based on the compulsory drawing up of reports at regular intervals on the application of the Charter in the countries which have ratified it.

Article 27 - Undertaking of States in a process of regionalisation

This provision offers an innovative procedure based on the experience acquired in the application of the *European Charter of Local Self-Government* in processes of institutional transition, as witnessed in the central and east European states since 1989.

For those States where genuine regional self-government does not yet exist, but which manifest a wish to embark upon a process leading to the existence of regions which have effective self-government within the meaning of the Charter, provision is made for a special form of agreement to be bound by the treaty. This formula implies slightly different obligations in respect of the control machinery, and, after a 10-year period, an undertaking to comply with the treaty under the

conditions stipulated in paragraph 1 or 2 of Article 25. States which have agreed through a treaty obligation to comply with the principles of the Charter during their process of regionalisation should "in return" be able to enjoy special co-operation with the States which are Parties to the Charter, enabling them to benefit from technical expertise based on practical experience of regional self-government.

PART III

Article 28 - Signature, ratification, entry into force

This provision is common to all treaties drawn up at the Council of Europe and requires no particular comments.

Article 29 - Regions to which the Charter shall apply

This provision is aimed at enabling states parties to specify the territorial scope of this Charter, explicitly including or excluding certain categories of regions.

Article 30 - Accession by European non-member states of the Council of Europe

Some Conventions drawn up at the Council of Europe are open to participation by non-member States, whereas others are not. The working group, making frequent reference to the important role played by the *European Charter of Local Self-Government* in the process of transition experienced by the States of central and eastern Europe after 1989, often before they had even joined the Council of Europe, wished the Charter to be open to participation by European States which are not members of the Council of Europe.

Article 31 - Denunciation

This provision is traditionally included in international treaties. Where it is absent, it is the rules of the Vienna Convention on the Law of Treaties (1969) which applies. The time limits for which paragraph 1 provides are identical to those in the *European Charter of Local Self-Government.*

Article 32 - Notifications

Another standard provision. The only innovation is that sub-paragraph g, which provides that all the reports drawn up under the mechanism for monitoring application of the Charter are to be notified to all Council of Europe member States.