

Draft European Charter of Regional Self-Government (5 June 1997)

Caption: With the backing of the Committee of the Regions of the European Union, the Council of Europe's Congress of Local and Regional Authorities of Europe (CLRAE) draws up a draft 'European Charter of Regional Self-Government' along the lines of the 'European Charter of Local Self-Government'. Given that these two Charters are complementary in the application of the principle of subsidiarity for the benefit of regional and local authorities, the CLRAE directs its efforts towards this Charter eventually securing the status of European treaty as does the European Charter of Local Self-Government. However, points of contention between the member States of the Council of Europe stand in the way of its being signed.

Source: Recommendation 34 (1997) on the Draft European Charter of Regional Self-Government. Congress of Local and Regional Authorities of Europe. Fourth Session (Strasbourg, 3-5 June 1997). [ON-LINE]. [Strasbourg]: Council of Europe, [24.06.2002]. Disponible sur [http://www.coe.fr/cplre/textad/rec/1997/rec34\(97\)e.htm](http://www.coe.fr/cplre/textad/rec/1997/rec34(97)e.htm).

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URL: http://www.cvce.eu/obj/draft_european_charter_of_regional_self_government_5_june_1997-en-78ae4dcf-6346-4aa8-8474-7535e4091bf7.html

Publication date: 26/09/2012

Recommendation 34 (1997) of the Congress of Local and Regional Authorities of Europe on the Draft European Charter of Regional Self-Government

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I. The Congress,

bearing in mind the proposal of the Chamber of Regions, and after taking note of an Opinion of the Chamber of Local Authorities;

1. Having examined the report presented by Mr Peter Rabe (Lower Saxony, Germany) at the present session;
2. Having regard to Resolutions 67 (1970) on "the problems of regionalisation in Europe" and 117 (1980) on "regional institutions in Europe" of the Standing Conference of Local and Regional Authorities of Europe;
3. Having regard to Resolution 8 (1994) and Recommendation 6 (1994) of the Congress of Local and Regional Authorities of Europe and to the request in Resolution 8 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;
4. Having regard to the Declarations adopted at various conferences and conventions organised by the Standing Conference of Local and Regional Authorities of Europe, particularly the Galway Declaration (1975), the Bordeaux Declaration (1978) and the Geneva Declaration (1993);
5. Having regard to the Resolution on "Community Regional Policy and the Role of the Regions", adopted on 18 November 1988 by the European Parliament;
6. Having regard to the Parliamentary Assembly's commitment towards regionalisation and, in particular, to its Recommendations 1021 (1985) and 1256 (1995) on regions within the Council of Europe;
7. Bearing in mind the European Charter of Local Self-Government (Council of Europe Convention No. 122) of 15 October 1985, and welcoming the fact that it has so far been signed by 32 member states and ratified by 24 of these;
8. Being mindful of the importance of the principle of subsidiarity, which was defined for the first time in an international text in Article 4, paragraph 3, of the European Charter of Local Self-Government and was included as a basic principle in the Maastricht Treaty;
9. Having regard to Recommendation No. R (95) 19 of the Committee of Ministers to member states on the implementation of the principle of subsidiarity, which was adopted on 12 October 1995;
10. Having regard to Statutory Resolution (94) 3 relating to the setting-up of the Congress of Local and Regional Authorities of Europe and to the Congress's Charter, particularly transitory provision No. 1, which presupposes that those countries without regions will make progress in the area of regionalisation;
11. Having regard to its Resolution 37 (1996), whereby it provisionally approved a preliminary draft of the European Charter of Regional Self-Government;
12. Having regard to its Recommendation 22 (1996), whereby it sought opinions on the aforesaid draft;
13. Thanking the Parliamentary Assembly for its contribution to the preparatory work on the Charter and for its favourable interim opinion in Resolution 1118 (1997);
14. Taking account of the position taken up by the European Union's Committee of the Regions [doc. CPR/GT/RSG (3) 5] and the opinions expressed by the Assembly of European Regions [doc. CPR/GT/RSG (3) 3] and the Council of European Municipalities and Regions [doc. CPR/GT/RSG (3) 8];

15. Taking account of the proposals and comments from many associations of local and regional authorities in the member states;
16. Taking account of the proposals received at the hearings held by its working group in Hanover (22 March 1996), Barcelona (18 October 1996), Florence (27 and 28 February 1997) and Wrocław (10 March 1997) as well as the many suggestions received from members of the Congress;
17. Thanking the many experts who contributed to the preparatory work on the Charter, in particular Mr Philippe de Bruycker and Mr Nicolas Levrat;

II. Invites:

1. The Parliamentary Assembly of the Council of Europe to support the draft European Charter of Regional Self-Government, as appended hereto;
2. The Committee of Ministers of the Council of Europe to examine the draft European Charter of Regional Self-Government, with a view to its adoption as a Council of Europe convention;
3. The 2nd Summit of Heads of State and Government of the Council of Europe (Strasbourg, October 1997) to express a political opinion in favour of this step towards fuller recognition of the importance of regionalism for the process of European construction, in accordance with the lead given by the Vienna Summit;
4. The Governments of member States which have not yet done so to ratify the European Charter of Local Self-Government, at the latest at the same time as their ratification of the European Charter of Regional Self-Government.

Appendix

Draft European Charter of Regional Self-Government

Preamble

The member States of the Council of Europe, signatory hereto,

1. Considering that the aim of the Council of Europe is to achieve a greater unity between its members for the purpose of safeguarding and realising the ideals and principles of respect for human rights and democracy, which are their common heritage and constitute conditions for democratic security and factors for peace;
2. Considering that the right of citizens to participate in the conduct of public affairs is one of the democratic principles that are shared by all member States of the Council of Europe and that regions further the exercise of that right;
3. Convinced that the existence of regions governed by representatives elected by universal suffrage and endowed with real responsibilities can provide an administration which is both effective and close to the citizen;
4. Convinced that the principle of subsidiarity is a major contribution to the development of democracy in Europe on the basis of the equal legitimacy of the different levels of authority: local, regional, national and European;

5. Considering that this Charter and the European Charter of Local Self-Government are complementary in the application of the principle of subsidiarity for the benefit of regional and local authorities;
6. Aware that the region is an appropriate level of authority for effective implementation of subsidiarity, which is considered one of the basic principles to be observed with regard both to European integration and to the internal organisation of States involved in this movement;
7. Asserting that regionalisation must not be achieved at the expense of the autonomy of local authorities but must be accompanied by measures designed to protect such authorities and fully respecting what has been achieved through the European Charter of Local Self-Government;
8. Affirming that recognition of regional self-government entails loyalty towards the State to which the regions belong, with due regard to its sovereignty and territorial integrity;
9. Affirming that recognition of regional self-government should be accompanied by measures to implement solidarity between regions so as to foster balanced development;
10. Considering that the region, as an essential component of the State, bears witness to Europe's diversity, contributes to the enrichment of its culture with due regard to its traditions and in keeping with its history, and furthers its economic prosperity with a view to sustainable development;
11. Aware that interregional and transfrontier co-operation makes a valuable and indispensable contribution to European construction;
12. Affirming that the creation of appropriate European institutions should take account of the existence of regions within European States as regards the framing and execution of policies implemented at European level and should encourage regions to participate in such institutions, in particular in the Chamber of Regions of the Congress of Local and Regional Authorities of Europe and the European Union's Committee of the Regions;
13. Asserting that these principles presuppose the existence of a level of regional authority endowed with democratically constituted decision-making bodies and possessing a wide degree of autonomy with regard to their responsibilities, the ways and means by which those responsibilities are exercised and the resources required for the fulfilment of their tasks;
14. Considering that, over and above the profound differences existing between the legal and institutional traditions of the different European countries, it is both desirable and appropriate to extend the process of regionalisation within European States on the basis of the principles set out below;
15. Considering that one of the means by which these aims are to be achieved is through agreements in the field of their respective territorial structures,
Have agreed as follows:

Article 1

The Contracting Parties undertake to consider themselves bound by the following articles in the manner and to the extent prescribed in one of the procedures contained in Article 20 or Article 23 of this Charter.

Part I

A. Foundation of regional self-government

Article 2

Foundation of regional self-government

1. The principle of regional self-government shall be recognised as far as possible in the constitution.
2. The scope of regional self-government shall be determined only by the constitution, the statutes of the region, national law or international law.
3. The statutory provisions determining the scope of regional self-government shall, as far as possible, afford the regions specific protection by virtue of the procedures or conditions for their adoption.

B. Definition of regional self-government

1. Principle

Article 3

Principle

1. Regional self-government denotes the right and the ability of the largest territorial authorities within each State, having elected bodies, being administratively placed between central government and local authorities and enjoying prerogatives either of self-organisation or of a type normally associated with the central authority, to manage, on their own responsibility and in the interests of their populations, a substantial share of public affairs, in accordance with the principle of subsidiarity.
2. In conformity with the provisions of the present Charter, the scope of regional self-government shall be determined by the domestic law of each State on the conditions set forth in Article 2, paragraph 2.

2. Types of competence

Article 4

Own competences

1. The competences of the regions shall be acknowledged or determined by the constitution, the statutes of the region, national law or international law.
2. The regions' own competences may not be affected or limited except by the constitution, by national law or by international law.
3. The regions shall have decision-making and administrative powers in the areas covered by their own competences. These powers shall permit the adoption and implementation of policies specific to each region.

4. Within the limits of the law, it is desirable that the implementation at regional level of tasks which fall within the competence of national government should be assigned to regional bodies. The regions shall be provided with the necessary resources to this end.

Article 5

Delegated competences

1. Competences may, within the limits of the law, be delegated to the regions by other levels of government.
2. Delegation of competences shall, in so far as is reasonable, be clearly defined. The resources, in particular material and financial, for the effective exercise of these additional powers shall be properly provided for in the instrument of delegation.
3. The bodies responsible for exercising such competences shall, as far as is possible within the limits of the law, be allowed discretion in adapting their exercise to the conditions specific to the region and to their organisational structures, in the interests of efficiency and in accordance with the wishes of the region's inhabitants. Provision for the financial aspects in the instrument of delegation shall not excessively restrict this discretion.

3. Spheres of competence

Article 6

Regional affairs

1. In addition to the competences which, in conformity with the principle set forth in Article 3, are acknowledged or attributed to the regions by the constitution, the statutes of the region, national law or international law, regional affairs shall equally cover any matter of regional interest that is not excluded from their competence or assigned specifically to another authority.
2. When exercising their competences the regions shall, with due respect for the law, be guided by the interests of the citizens as well as the principle of subsidiarity and take into account the reasonable requirements of national and European solidarity.

Article 7

Relations with local authorities

1. The regions which possess competences concerning authorities to which the European Charter of Local Self-Government is intended to be applicable shall respect the spirit and the letter of that Convention in their relations with such authorities.
2. Regions shall apply the principle of subsidiarity in their relations with local authorities.
3. Within the limits of the law, regions may delegate some of their competences to local authorities in accordance with the principles set forth in Article 5.
4. In so far as it falls within their competence, regions shall wherever necessary endeavour to ensure financial equalisation between the local authorities located within their boundaries.

Article 8

Interregional and transfrontier relations

1. In the spheres falling within their competence, regions shall be entitled to undertake activities of

interregional or transfrontier co-operation, in accordance with any procedures laid down by domestic law. These activities shall be carried out with due regard to domestic law and to the international obligations of the State.

2. Regions forming part of a transfrontier area may, with due regard to the law of all national legal systems concerned as well as to international law, provide themselves with joint deliberative and/or executive bodies. The acts of these bodies shall be subject to the procedures of the competent courts to the same extent as if they had been performed by a regional body, in accordance with the principles set forth in the existing treaties on the subject.

3. The interregional or transfrontier relations of regions shall be governed by the relevant international agreements, in so far as these are applicable.

Article 9

Participation in State affairs

1. In so far as rules adopted at central government level may alter the scope of regional self-government or affect the interests of regions, regions shall be able to participate in the decision-making process.

2. Participation by regions in central government affairs may:

- either be ensured through appropriate representation of the regions within legislative or administrative bodies;
- or be based on procedures of discussion or consultation between State bodies and each region concerned;
- or derive from consultation between central government bodies and a structure representing the regions.

These forms of participation shall not be mutually exclusive.

Article 10

Participation in European and international affairs

1. Regions shall have the right to participate or be represented, through bodies designed for this specific purpose, in the activities of the European institutions.

2. Regions shall at least have the right to be consulted by their national government whenever their State is negotiating the conclusion of an international treaty or the adoption of some other instrument within the framework of a European organisation which may directly affect their powers or their fundamental interests. The same shall apply whenever the implementation of rules adopted at European level may be their responsibility.

3. National governments may involve regions in the negotiating process, notably by including regional representatives in the national delegations.

4. In order to promote or defend their interests, regions shall have the right to set up, either individually or collectively with other regions or local authorities, liaison offices vis-à-vis other regions or local authorities or vis-à-vis international organisations - in particular European organisations - which are active in their spheres of competence.

4. Institutional organisation of regions

Article 11

The principle of regional self-organisation

To the fullest possible extent, regions shall have the right to adopt and, at the very least, supplement their statutes with due regard to the Constitution and the laws passed in accordance with Article 2, paragraph 3.

Article 12**Regional bodies**

1. Without prejudice to the different forms of citizen participation in decision-making, regions shall be endowed with a representative assembly and an executive body.
2. The assembly shall be freely and directly elected by secret ballot on the basis of universal suffrage.
3. Except in the case of direct election by the population, the executive body shall be answerable to the assembly in accordance with the conditions and procedures laid down by the domestic law of each State party to the present Charter.
4. The conditions of office of elected regional representatives shall provide for the free exercise of their functions, in particular through adequate allowances.
5. Members of the representative assembly or the executive body may not be subjected to measures of the central authority which encroach upon the free performance of their duties, except in connection with judicial proceedings.

Article 13**Regional administration**

1. Regions shall have their own assets and their own system of administration, as well as such bodies of their own as they may set up and their own staff.
2. Regions may freely determine the internal structures of their administrative system and their bodies.
3. Regions may determine the conditions of service of their staff within the limits of such general principles as may be laid down by the central or federal authority in the matter.

5. Regional finance**Article 14****Principles**

1. The funding system for the regions shall provide them with a foreseeable amount of revenue commensurate with their competences and allowing them to conduct their own policies.
2. The regions' sources of funding shall be sufficiently diversified and buoyant to enable them to keep pace, as far as possible, with the real evolution of the cost of exercising their competences and with general economic development.
3. As regards the exercise of their own competences, the regions' financial resources shall consist mainly of own resources, which they may use freely.
4. The principle of solidarity necessitates the introduction, within each State, of a financial equalisation mechanism taking account of both the potential resources and the tasks of regions, with the aim of harmonising the living standard of inhabitants of the different regions.
5. Transfers and grants shall as a rule be made on a non-earmarked basis. Financial transfers to regions and, where applicable, sharing of taxes as provided for in Article 15, paragraph 3 shall be governed by predetermined rules based on a few objective criteria corresponding to the regions' actual needs.

6. Regions shall, within the limits of the law, have access to the capital market in order to cover their capital expenditure by borrowing, provided they can demonstrate their ability to service the debt throughout the repayment period from their own income.

7. A statutory obligation to comply with certain budgetary rules or a standardised accounting system shall not constitute an encroachment on the regions' financial autonomy.

Article 15

Own resources

1. Own resources shall consist mainly of taxes, duties or charges which regions have the right to raise within the limits defined by the constitution or the law. Regions shall be able to determine the rates of regional taxes and duties.

2. Where they cannot raise their own regional taxes, regions shall be entitled, within the limits prescribed by the constitution or the law, to set additional percentages on taxes levied by other public authorities.

3. The regions' share in general taxes set by the constitution or the law shall also be regarded as own resources. Appropriate procedures shall be set up for consulting all regions on rules and arrangements for sharing and allocating such resources.

4. Regional tax management may, for the sake of rationalisation, efficiency and co-ordination, be made the responsibility of an administration belonging to several authorities or to an authority other than the region, without this affecting the ownership and use of the revenue.

C. Protection of regional self-government

Article 16

Protection of regional boundaries

1. Without prejudice to such procedures of direct democracy as may be provided for in domestic law, a regional boundary may not be altered until the region concerned has given its agreement.

2. In the event of a general redrawing of regional boundaries, consultation of all the regions concerned, in accordance with any procedures prescribed by domestic law, may be substituted for the express agreement of each region.

Article 17 - Right of regions to institute legal proceedings

Regions shall be empowered to bring an action in the competent courts in order to secure the free exercise of their powers and respect for the principles of regional self-government enshrined in the present Charter or in domestic law.

Article 18

Conflicts of competences

1. When a conflict of competences exists, it shall be settled by a judicial body.

2. Conflicts of competences shall be settled according to the constitutional and statutory principles of each State. Failing a clear solution in the positive law applicable, the principle of subsidiarity shall be taken into consideration in the decision.

Article 19 - Supervision of regional instruments

1. Supervision of instruments adopted by regions may be exercised only in such cases and according to such procedures as are provided for by the constitution or the law.
2. Any supervision of regional instruments shall be aimed only at ensuring compliance with the law. Such supervision shall be exercised only ex post facto, subject to the existence of a procedure for the approval of the region's statute.
3. Supervision may, however, include an appraisal of expediency with regard to the power of implementation referred to in Article 4, paragraph 4, and the exercise of competences delegated to the regions.

Part II

Article 20

Undertakings and reservations

1. The Contracting States agree to be bound by all the provisions of this Charter and undertake not to hinder through any measure the effective exercise of the monitoring arrangements referred to in Article 22 of the Charter.
2. In order to take account of the diversity and developing nature of regional situations in European States, States shall be authorised to enter reservations in respect of the following articles:
 - Article 4, paragraph 4,
 - Article 8, paragraph 2,
 - Article 10, paragraph 3,
 - Article 13, paragraph 3.

In States where the regional assembly is traditionally composed of elected representatives of the local authorities forming the region, a State shall be authorised to enter a reservation in respect of the direct character of the election as provided for in paragraph 2 of Article 12.

3. No reservation other than those provided for in the preceding paragraph shall be permissible.
4. Reservations shall be notified to the Secretary General of the Council of Europe at the time of signature, ratification or accession.
5. Any State which has entered reservations may withdraw them at any time by notification to the Secretary General of the Council of Europe.

Article 21

Interpretation of the Charter

None of the provisions of this Charter shall be interpreted as encroaching on or restricting a form of self-

government more widely conferred on territorial authorities by international law or by the domestic law of each State Party.

Article 22

Monitoring of the application of the Charter

1. Each State shall, during the year in which the Charter enters into force as far as it is concerned, and every five years thereafter, draw up a report on the application of the Charter.
2. States which have entered reservations in accordance with paragraph 2 of Article 20 shall examine in their report the relevance of maintaining such reservations.
3. The report shall be submitted for examination by the CLRAE, which shall transmit it with its observations to the Committee of Ministers and the Parliamentary Assembly of the Council of Europe. The Committee of Ministers shall consider every national report in accordance with such procedures as it shall lay down, and shall notify its conclusions to the State concerned and to the President of the CLRAE.
4. The Committee of Ministers shall, if appropriate and after consultation with the CLRAE and the Parliamentary Assembly, take measures designed to permit examination of reports submitted by non-member States of the Council of Europe.

Article 23

Undertakings by States involved in a process of regionalisation

1. States in which a process of regionalisation is currently under way may ratify this Charter while undertaking to implement its provisions by setting up and developing regional structures. They shall undertake, within a period of not more than ten years from the entry into force of the Charter as far as they are concerned, to set up the legal framework and the administrative and financial mechanisms which will enable them to comply, in respect of their regions, with the rights set forth in this Charter, on the conditions stipulated in paragraph 1 or 2 of Article 20.
2. Each State in respect of which the Charter is in force on the conditions stipulated in the preceding paragraph shall, during the year in which the Charter enters into force as far as it is concerned, and every three years thereafter, draw up a report on developments in the regionalisation process; these reports shall be subject to the procedure provided for in paragraphs 3 and 4 of Article 22. Following the fourth report at the latest, the Party concerned shall inform the Secretary General of the Council of Europe of its undertaking to comply with the Charter on the conditions specified in paragraph 1 or 2 of Article 20.

Part III

Article 24

Signature, ratification, entry into force

1. This Charter shall be open for signature by the member States of the Council of Europe. It shall be subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

2. This Charter shall enter into force on the first day of the month following the expiry of a period of three months after the date on which five member States of the Council of Europe have expressed their consent to be bound by the Charter in accordance with the provisions of the preceding paragraph.

3. In respect of any member State which subsequently expresses its consent to be bound by it, the Charter shall enter into force on the first day of the month following the expiry of a period of three months after the date of the deposit of the instrument of ratification, acceptance or approval.

Article 25

Regions to which the Charter shall apply

The principles of regional self-government contained in this Charter shall apply to all the regions existing within the territory of a Contracting Party. However, each Contracting Party may, when depositing its instrument of ratification, acceptance or approval, specify the categories of regions to which it intends to confine the scope of the Charter or which it intends to exclude from its scope.

Article 26

Accession by non-member States of the Council of Europe

After the entry into force of this Charter and after consultation with the CLRAE, the Committee of Ministers may, by a decision taken by a unanimous vote, invite any non-member State to accede to the Charter. This invitation must receive the express agreement of each of the States which have ratified the Convention.

Article 27

Denunciation

Any Contracting Party may denounce this Charter at any time after the expiry of five years from the date on which the Charter entered into force for it. Six months' notice shall be given to the Secretary General of the Council of Europe. Such notification shall not affect the validity of the Charter in respect of the other Contracting Parties, provided that at all times there are not fewer than five such Parties.

Article 28

Notifications

The Secretary General of the Council of Europe shall notify the member States of the Council of Europe of:

- a. any signature;
- b. the deposit of any instrument of ratification, acceptance or approval;
- c. any date of entry into force of this Charter in accordance with Article 24;
- d. any notification received in application of Article 20, paragraphs 4 and 5, concerning reservations;
- e. any notification concerning the exclusion of certain categories of regions from the scope of the present Charter, in conformity with Article 25;
- f. any notification by a State having ratified the Charter under the terms of Article 23, at the latest following the expiry of the period specified in Article 23, paragraph 2;
- g. all Committee of Ministers, Congress of Local and Regional Authorities of Europe and Parliamentary Assembly reports adopted under the arrangements for monitoring the application of this Charter;
- h. any other act, notification or communication relating to this Charter.

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

Done at _____, this _____ day of _____ 19__, 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.