

The Congress of Local and Regional Authorities



Chamber of Local Authorities

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Reservations and declarations to the European Charter of Local Self-Government

Governance Committee
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Summary

The European Charter of Local Self-Government remains the most important European legal instrument for guaranteeing and developing local and regional democracy.

The Congress is committed to increasing the impact of the Charter. It therefore undertakes to periodically review the reservations and declarations to this treaty and to encourage member States to do the same, with a view to extending, where possible, its formal application in member States.

The Congress will address this issue in all its country monitoring missions and invites associations of local and regional authorities to participate in this review process.

The Committee of Ministers is invited to consider preparing reports on non-accepted provisions of the Charter.

¹ L: Chamber of Local Authorities/ R: Chamber of Regions
ILDG: Independent and Liberal Democrat Group of the Congress
EPP/CD: Group of the European People's Party – Christian Democrats of the Congress
SOC: Socialist Group of the Congress
NR: Member not belonging to a political group of the Congress



DRAFT RESOLUTION²

[\[see Resolution 330 \(2011\) adopted on 20 October 2011\]](#)

1. The Congress is convinced of the need to broaden the application of the European Charter of Local Self-Government (hereinafter referred to as "the Charter") in member States with a view to strengthening the systems of local self-government in the interests of the citizen.
2. A number of member States, when they ratified the Charter, limited the scope of its application in the form of reservations or declarations. "A 'reservation' means a unilateral statement, however phrased or named, made by a State, when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State" (Vienna Convention on the Law of Treaties).
3. The Congress believes that reservations and declarations should be regularly reviewed to determine whether they are still relevant or necessary. Recent country monitoring activities of the Congress have revealed that developments that have taken place in some countries since ratification have rendered the reservations that they made when ratifying the Charter redundant.
4. The Congress notes that the Charter has been accepted in its entirety by 24 Member States, whereas 21 countries have limited their commitment in the form of reservations.
5. The 2011 convention review exercise, carried out by the Secretary General of the Council of Europe with a view to strengthening the Organisation's treaties, has also addressed this issue and encourages the Council of Europe's monitoring mechanisms to review the question of reservations.
6. The Congress therefore undertakes:
 - a. to conduct a periodic review, by country and by article, of reservations and declarations to the Charter, in cooperation with member States and their local authority associations, with the aim of encouraging member States to extend the number of articles by which they consider themselves bound and to lift those reservations which are no longer necessary;
 - b. to systematically address this question during its country visits to monitor the application of the Charter and to pursue its political dialogue with member States to encourage them to follow the European trend towards subsidiarity with a view to implementing the Charter in its entirety.
7. The Congress invites the national associations of local and regional authorities of those member States which have formulated reservations and declarations to the Charter to participate in the review process and to notify it of cases where the application of the Charter might be extended.

² Preliminary draft resolution and preliminary draft recommendation approved by the Governance Committee on 26 September 2011.

Members of the Committee :

B.-M. Lövgren (1st Vice-Chair), *V. Rogov* (3rd Vice-Chair), *D. Barisic*, *N. Berlu* (*alternate: C. Tascon-Mennetrier*), *B. Biscoe*, *W. Borsus*, *M. Chernishev* (*alternate: V. Novikov*), *M. Cohen*, *B. Degani*, *A. Ü. Erzen*, *H. Feral*, *P. Filippou*, *G. Gerega*, *M. Hegarty*, *I. Henttonen*, *L. Iliescu*, *P. Karleskind*, *I. Khalilov*, *O. Kidik* (*alternate: S. Tunalij*), *E. Lindal*, *O. Luk'ianchenko*, *C. Mayar*, *M. Mahmutovic*, *C. Mauch*, *J. McCabe*, *A. Mediratta*, *J. Mend*, *A. Mimenov*, *E. Mohr*, *G. Neff*, *A. Nemcikova*, *E. Yeritzyan* (*alternate*), *R. Nwelati*, *F. Pellegrini*, *J. Pulido Valente*, *G. Roger*, *S. Röhl*, *B. Rope*, *R. Roper*, *Mancera*, *M. Sabban*, *C.-L. Schroeter*, *A. Sokolov* (*alternate*), *N. Stepanovs*, *D. Suica*, *S. Tobreluts*, *P. Van der Velden*, *E. Verrengia*.

N.B.: The names of members who took part in the vote are in italics.

Secretariat of the Committee : *T. Lisney* and *N. Howson*.

DRAFT RECOMMENDATION³

[\[see Recommendation 314 \(2011\) adopted on 20 October 2011\]](#)

1. The Congress, convinced that the European Charter of Local Self-Government (hereinafter referred to as "the Charter") is a unique international legal instrument for strengthening democracy at the local level, committed to supporting member States in making more effective use of the Charter and determined to increase its own efforts to strengthen its implementation, has undertaken its first review of the reservations and declarations made by States Parties to the Charter.

2. The Congress believes that many member States have considerably evolved their system of local government since ratifying the Charter and that, as a result, the reservations that they formulated at the time of ratification may no longer be necessary.

3. The Congress notes and welcomes the trend, in recent Council of Europe treaties, to exclude the possibility of making reservations when ratifying the treaty.

4. The Congress also welcomes and supports the 2011 convention review exercise carried out by the Secretary General of the Council of Europe with a view to strengthening the Organisation's treaties and identifying those which are the most important in terms of the Organisation's work.

5. The Congress therefore asks the Committee of Ministers to invite member States which have made reservations:

a. under Article 12 of the Charter⁴ to review these declarations with a view to extending the number of articles by which they consider themselves bound;

b. under Article 13 of the Charter⁵ to review these reservations to see if the Charter's application could be extended;

c. under Article 16 of the Charter⁶ and other declarations which restrict the territories where the Charter applies, to examine these restrictions to see whether they are still required.

6. The Congress asks the Committee of Ministers to:

a. consider preparing regular reports on non-accepted provisions of the Charter;

b. continue its efforts to limit the use of reserves and declarations in its treaties to a strict minimum.

³ See footnote 2.

⁴ Andorra, Armenia, Austria, Azerbaijan, Belgium, Bulgaria, Cyprus, Czech Republic, France, Georgia, Greece, Latvia, Liechtenstein, Montenegro, Netherlands, Romania, Serbia, Spain, Switzerland and Turkey.

⁵ Belgium, Denmark, France, Germany, Ireland, Netherlands, Romania, Spain, Sweden, Switzerland and the United Kingdom.

⁶ Denmark, Georgia and the Netherlands.

EXPLANATORY MEMORANDUM⁷

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I. The reservation concept

1. The European Charter of Local Self-Government (hereinafter referred to as "the Charter") does not have "reservations" in the strict sense of the word. Article 12 of the Charter allows each Party to choose the provisions by which it undertakes to "consider itself bound", with a minimum 20 paragraphs out of the 30 included in Articles 2 to 11 of the Charter.

2. To that extent we can speak of "reservations" vis-à-vis the paragraphs of the Charter which a country has not included in its instrument of ratification.

3. In addition to these "reservations" relating to the provisions of the Charter, we will consider two further categories of "reservations":

- possible restrictions concerning the categories of local authorities to which the country wishes the provisions of the Charter to apply (Article 13);
- possible restrictions concerning the territories to which the Charter is to apply (Article 16).

4. This report will deal mainly with reservations in the first category (vis-à-vis the provisions of the Charter), although it will also mention the two other categories.

II. Current situation as regards reservations to the Charter

5. Of the 47 Council of Europe member States, 45 have signed and ratified the Charter (the latest being Andorra, where the Charter came into force on 1 July 2011).

6. Of these 45 States, 24 have ratified the Charter in its entirety, i.e. without reservation, while 21 others have limited its scope by means of reservations.

7. The total number of reservations formulated is 83 (86 if we include interpretative declarations on various provisions of the Charter). In other words, in 83 cases a specific paragraph of the Charter does not apply in a country having signed and ratified the Charter.

8. This figure is extremely low compared with the total number of reservations which could theoretically have been entered: since the 45 States could have entered a maximum ten reservations each (the difference between the 30 paragraphs in Articles 2 to 11 and the 20 compulsory

⁷ The Congress would like to thank Professor Francesco Merloni, Chair of the Group of Independent Experts, for his work on this explanatory memorandum.

paragraphs), the total number of reservations entered could have been 450. The 82 reservations actually entered only come to 18.2% of the potential total of 450.

9. The number of reservations looks even smaller if we compare it to the total number of paragraphs in Articles 2 to 11 (30), multiplied by the number of States Parties (45): the 83 reservations represent 6.1% of this new total of 1350.

10. We can accordingly point to a very high rate of acceptance of the provisions of the Charter: 93.9% of the Charter's paragraphs have been accepted.

11. It should be stressed that the total of 83 reservations corresponds to the current situation in the wake of a series of subsequent declarations of acceptance of provisions of the Charter (or, alternatively, of withdrawal of reservations entered). Only three States have made such declarations: Croatia, which withdrew 10 reservations; Malta (4 reservations); and Slovakia (10 reservations). The original total number of reservations expressed in the instruments of ratification was 106.

III. Reservations by member State

12. The first approach involves examining the reservations entered by each State. This enables us to study each country's attitude to the Charter and pinpoint any specific trends emerging.

13. Appendix 1 shows the situation of reservations by country, indicating the provisions in question. The data used for this table come from the 1998 report on "The incorporation of the European Charter of Local Self-Government into the legal systems of ratifying countries and legal protection of local self-government"⁸ and the 2011 report on "Reception of the European Charter of Local Self-Government into the legal systems of ratifying countries"⁹ and the list of declarations made with respect to Treaty No. 122 (on the Council of Europe website).

14. The 1998 report noted that out of the total 21 States considered, eleven had accepted the Charter in its entirety and ten had entered reservations.

15. Of the 24 countries which signed and ratified the Charter in the subsequent thirteen years (1998-2011), thirteen accepted it in its entirety, while eleven States entered reservations.

16. However, the ratio of States which have made reservations to those which have not has remained unchanged, with the former slightly predominating.

17. As already mentioned in the 2011 report on the reception of the Charter, "where the relationship between countries which have made reservations and those which have not is concerned, a more positive view should not necessarily be taken of those which have expressed none, and nor should these countries be considered to show greater acceptance of the Charter. The absence of reservations may reflect an underestimation of the Charter and the international obligations that it brings: a country may formally state that it agrees with the principles of the Charter while failing to make a full assessment of the legal consequences of ratification. Alternatively, the absence of reservations may be based on a feeling that the country's domestic legislation is fully in line with the Charter, notwithstanding actual possible conflicts with the text of the Charter. In contrast, the expression of reservations by some of the countries which have done so may, rather than indicating a problem of acceptance of the principles of the Charter, indicate a highly positive attitude. The Charter is 'taken seriously', and the ratifying state, particularly in the event of full reception (i.e. the Charter becomes a source of domestic law that is directly applicable) has identified provisions of the Charter in respect of which it will not agree to amend its own legislation, and for which there is a risk of conflict between domestic law and the Charter.

18. If we relate the 83 reservations to the twenty countries which entered them, we obtain an average rate of 4 reservations per country out of the 30 relevant paragraphs. If we relate these 83 reservations to the 45 States which have signed and ratified the Charter, we obtain an average rate of only 1.8 reservations per country, so that approximately two provisions on average (out of 30) are the subject of reservations.

⁸ Congress Recommendation (1998)39 and explanatory memorandum CPL (4) 7 Part II

⁹ CG/GOV(20)2rev.

19. The countries which have entered the largest numbers of reservations are Turkey (9 reservations), Liechtenstein (8), and Georgia, the Czech Republic, Serbia and Switzerland (6 each). These countries alone account for half of all the reservations entered (41 out of 82).

20. In the case of some countries, we should specify the reasons behind the reservations in order to draw a distinction between permanent and temporary reservations. Monitoring missions are very useful here, in order both to understand the current situation and to advise the countries in question to rethink reservations they have entered (the general situation has often radically changed in the country since the entering of the reservations).

21. Other countries which have only made one reservation should be considered as “non-reservation-entering” countries rather than “reservation-entering” ones. These countries are Bulgaria, Cyprus, Spain, Malta, Latvia and Romania.¹⁰ This choice would be justified in the light of the relative importance of the reservation entered: in three cases (Bulgaria, Cyprus and Romania) the reservation concerns Article 7 para. 2 of the Charter (see para. 30) and may be deemed fairly important; in one case (Spain) it is not so much a reservation as a declaration on the local authorities to which Article 2 para. 3 is to apply; in Malta the last remaining reservation concerns Article 9 para. 3 (right of local authorities to levy taxes) and in the last case (Latvia) the reservation is also fairly important, relating to Article 9 para. 8 (concerning access to national capital markets).

IV. Reservations by Charter provision

22. A second useful approach involves examining the reservations from the angle of the Charter provisions to which they refer. This might facilitate a more qualitative appraisal of the reservation phenomenon, in conjunction with the content of the relevant paragraphs.

23. Appendix 2 shows the situation of reservations by Charter provision. It pinpoints the Charter provisions to which the largest numbers of reservations have been entered.

24. The situations diverge enormously depending on the provision: for instance, 14 reservations have been entered to Article 7 para. 2; 7 reservations concern Article 6 para. 2; whereas a fair number of provisions have been the subject of no reservations at all (Article 2; Article 3 para. 1; Article 4 para. 1; Article 7 para. 1; Article 8 para. 1; Article 9 para. 1; and Article 10 para. 1).

25. We will examine in more detail the provisions which have the greatest number of reservations:

- Article 7 para. 2 (14 reservations): this Charter provision lays down that the conditions of office of local elected representatives shall “allow for appropriate financial compensation for expenses incurred in the exercise of the office in question as well as, where appropriate, compensation for loss of earnings or remuneration for work done and corresponding social welfare protection”. It is understandable that this provision might have been regarded as involving overly stringent financial obligations. Although it is not one of the directly applicable provisions, the countries concerned have opted for wider latitude in terms of regulating economic rights for local elected representatives. It would appear to operate in a typically transitional situation: the reservation loses its *raison d’être* once a system for compensating the expenses of local elected representatives has been adopted.
- Article 6 para. 2 (7 reservations): “The conditions of service of local government employees shall be such as to permit the recruitment of high-quality staff on the basis of merit and competence; to this end adequate training opportunities, remuneration and career prospects shall be provided”. Here again, the main motivation for the reservation would seem to lie in the desire to avoid excessive financial commitments. As in the previous case, reservations to the provision are entered despite the fact that it is a mere provision of principle which is not directly applicable. The States are concerned that they will have to introduce minimum wages for local authority staff. Here again, this is a typically transitional situation where the reservation loses its *raison d’être* once the staff remuneration system has been adopted.

¹⁰ If we were to add these six countries to the 24 which are strictly “non-reservation-entering”, the total number of states making no reservations would be 30 out of 45 (ie. 2/3).

- Article 8 para. 2 (6 reservations): “Any administrative supervision of the activities of the local authorities shall normally aim only at ensuring compliance with the law and with constitutional principles. Administrative supervision may however be exercised with regard to expediency by higher-level authorities in respect of tasks the execution of which is delegated to local authorities”. This reservation is less easily comprehensible in the case of this provision. Even if it is deemed directly applicable, the provision does leave a great deal of discretion for States Parties to retain a system of delegated powers, supervision of which may concern the appropriateness of a given local authority’s administrative decisions. As the monitoring missions have shown, the problem concerns not the supervision of appropriateness (which is normal for powers which the authority retains, delegating and financing their implementation), but the extent of the delegated powers as compared with their own competences, i.e. compliance with the principle set out in Article 4 para. 4 (“Powers given to local authorities shall normally be full and exclusive”). Incidentally, only one reservation has been entered to this principle (by Switzerland).
- Article 9 para. 6 (5 reservations): “Local authorities shall be consulted, in an appropriate manner, on the way in which redistributed resources are to be allocated to them”. This provision of principle does not lay down any specific mode of consultation on financial matters. It is an application of the general principle set out in Article 4 para. 6, which is particularly important because of the vital importance of financial resources for the protection of local self-government: the provision leaves States a maximum leeway for deciding on the “appropriate manner” in which consultation should be organised.
- Article 10 para. 3 (5 reservations): “Local authorities shall be entitled, under such conditions as may be provided for by the law, to co-operate with their counterparts in other States”. Here again, this directly applicable provision does not impose any specific form of transfrontier co-operation but leaves it to the national legislations to define such co-operation. Nevertheless, several countries experiencing major border problems with their neighbours (Armenia, Azerbaijan, Georgia, Liechtenstein and Turkey) deemed it necessary to enter a reservation to this paragraph.
- Article 10 para. 2 (4 reservations): “The entitlement of local authorities to belong to an association for the protection and promotion of their common interests and to belong to an international association of local authorities shall be recognised in each State”. In this case, the provision, which is also directly applicable, is explicit: each country must recognise the right of local and regional authorities to join both national and international associations. This is a vital dimension of the protection of local self-government, which is adhered to by the vast majority of States. Nevertheless, once again a number of countries with problems of co-operation with their neighbours (Georgia, Greece, Liechtenstein and Turkey) deemed it necessary to enter the reservation.

26. The matter of differentiating the various provisions of the Charter on the basis of their legal nature (or content) is still fairly controversial.

27. During the writing of the report on the ‘Reception of the Charter’ important differences in interpretation of the nature of the provisions of the Charter were noted.

28. In the section of the questionnaire on this point, most of the experts replied that their countries made no distinction (Armenia, Bulgaria, Estonia, Germany, Greece, Hungary, Latvia, Lithuania, Luxembourg, “the former Yugoslav Republic of Macedonia”, Russia, Serbia, Slovenia and Ukraine). Some experts pointed out that the lack of differentiation stemmed from the fact that all the provisions of the Charter were considered as “programme provisions” (Spain, Poland and the Czech Republic) or, on the contrary, that they were all considered directly applicable (Croatia). For a smaller number of countries (Belgium, France and Switzerland), there was a real difference because of the immediate entry into force of the provisions considered directly applicable.

29. The Congress, in its Recommendation 39 (1998), identified specific provisions of the Charter as having the force of *directly applicable* standards (Article 3 para. 2, Article 4 paras. 5 and 6, Article 5, Article 7 paras. 1 and 3, Article 8, Article 10 and Article 11). Other provisions have been identified as

enforceable as a result of the interpretation of the Charter during monitoring missions (primarily in the recommendations adopted).

30. Appendix 2 simply applies the official distinction made in Recommendation 39 (1998): 13 of the 30 provisions are to be considered directly applicable.

31. The reservations break down fairly evenly between the two categories of provisions: 31 reservations concern the 13 directly applicable provisions and 52 relate to the 17 paragraphs which are provisions of principle.

32. Therefore, the nature of the provisions is apparently not the main explanation for the reservations entered: some provisions of principle are the subject of many reservations (e.g. Article 6 para. 2 and Article 7 para. 2), whereas some directly applicable provisions are widely accepted.

33. Article 12 allows the State to enter reservations but at the same time attempts to limit this right by requiring that at least ten of the twenty paragraphs, by which each State undertakes to consider itself bound, are chosen from a list of fourteen articles or paragraphs. Article 12 thus sets these fourteen provisions apart as being more important than the others, or as constituting the “core” of the Charter.

34. If we consider the number of reservations entered to the 14 core provisions, we note that the adoption of this list of preferences has been quite useful, but that it has not been quite as successful as had been hoped.

35. Out of the fourteen provisions: six have attracted no reservations (Article 6, Article 3 para. 1, Article 4 para. 1, Article 7 para. 1, Article 9 para. 1 and Article 10 para. 1). On the other hand, a large number of reservations (6) have been entered to one of the provisions on the list (Article 8 para. 2). Between one and three reservations have been entered to the other seven provisions.

V. Declarations on the categories of authorities to which the Charter applies

36. These declarations concern the scope of Article 13 of the Charter. The basic principle set out in the first sentence of the article is that all categories of territorial authorities should be included in the system of protection of the Charter. This enables, for instance, the scope of the Charter to be extended to regional institutions.

37. However, regional institutions can have a wide variety of legal statuses (e.g. some regions lack a legal self-governing status and democratically elected bodies), and the same article therefore allows States to exclude some categories from the scope of the Charter. We shall see below that States use this restrictive option not only to exclude the regional level from the scope of the Charter but also to pinpoint the categories which they consider as proper local authorities.

38. The principle of direct election of political bodies is a further major motivation for entering reservations on the application of the Charter to specific categories of local authorities. There are exceptions to this principle in several countries, e.g. for modes of inter-municipal co-operation, which mostly have indirectly elected political bodies.

39. A total of eleven countries have opted for a declaration under Article 13 (Belgium, Denmark, France, Germany, Ireland, Netherlands, Romania, Spain, Sweden, Switzerland and the United Kingdom).

40. The declarations made on ratifying the Charter have a dual content. They specify: a) the categories of local authorities to be excluded from the scope of the Charter in its entirety; and b) the categories of local authorities to be excluded from the scope of specific provisions of the Charter.

41. Given the wide variety of purposes the declarations may have, we shall avoid establishing any other categories here. We shall confine ourselves to a brief country-by-country assessment.

42. The German declaration should be considered in the light of the enormous diversity of modes of inter-municipality co-operation depending on the individual *Länder*. The criterion adopted is as follows: since the basic level – *Gemeinden* – exists in all *Länder*, application of the Charter to these authorities is undisputed. For the higher level, which comprises a large number of inter-municipal co-

operation communities, the criterion consists in restricting the scope of the Charter to modes of co-operation of a general nature: most definitely the *Kreise* (nationwide) and also the *Verbandsgemeinden* (in the *Land* of Rhineland Palatinate). Consequently, the criterion consists in excluding specific or sectoral modes of co-operation. This criterion is, however, contested, because it does not cater for the general modes of co-operation which are not specified in the declaration (the various forms of *Gesamtgemeinden* provided for in *Länder* legislations).

43. Belgium has confined the scope of the Charter to its provinces and municipalities, and has explicitly excluded the *Centres publics d'aide social* in the territory of the Brussels-Capital Region. However, a more important implicit exclusion concerns the higher-level institutions, namely the Regions and the Language Communities.

44. Denmark confines the scope of the Charter to its municipalities, excluding the five "regions" that were created when the 13 provinces (*ämter*) were abolished.

45. The French declaration expressly includes "territorial communities as set out in Articles 72, 73, 74 and Title XIII of the Constitution or which have been set up on the basis of the latter". Article 72 of the French Constitution recognises as territorial communities "the communes, the departments, the regions, the special-status areas, and the overseas territories to which article 74 applies". The declaration, which was made on the occasion of the recent ratification of the Charter (2007), is geared not to excluding the regions but to confining the scope of the Charter to the actual territorial communities. "Public inter-municipal co-operation institutions, which are not territorial communities, are excluded from its scope".

46. In its declaration made under Article 13 of the Charter, Ireland "intends to confine the scope of the Charter to the following categories of authorities: county councils, city councils and town councils". The declaration would therefore seem to be mainly intended to exclude from the scope of the Charter the "regional authorities", which have no democratically elected bodies and are subject to extensive control by the Central State.

47. The Kingdom of the Netherlands declares, in accordance with Article 13, that it "intends to confine the scope of the Charter to provinces and municipalities". Since this country lacks a regional level, this is a purely recognitive declaration.

48. The United Kingdom made its declaration in two parts:

1. "In accordance with Article declaration 13, the United Kingdom intends to confine the scope of the Charter to the following categories of authority: England: county councils, district councils, London borough councils, the Council of the Isles of Scilly; Wales: all councils constituted under Section 2 of the Local Government (Wales) Act 1994; Scotland: all councils constituted under Section 2 of the Local Government (Scotland) Act 1994".

2. "It is the understanding of the United Kingdom that the term "local authority" in the Charter does not include local or regional bodies such as police authorities which, by reason of the specialist functions for which they are responsible, are composed of both elected and appointed members".

49. The first declaration is chiefly recognitive. The second follows the criterion of excluding all local authorities which are not general in nature.

50. Sweden intends to confine the scope of the Charter to local and regional authorities: municipalities (*Kommuner*) and county councils (*Landstingskommuner*).

51. In Switzerland, the Charter applies to the political communes (*Einwohnergemeinde/comuni politici*). The declaration therefore implicitly excludes the cantons, which are not only a higher administrative level but the actual constituent parts of the Swiss Confederation.

52. Spain does not consider itself bound by Article 3 para. 2 of the Charter, to the extent that the system of direct suffrage foreseen therein should be implemented in all local authorities falling within the scope of the Charter. The declaration reflects the Spanish desire not to extend the direct suffrage principle to the supra-municipal levels based on the *Diputaciones* (Provinces) and the islands.

53. The German declaration reads as follows: “1. in *Land* Rhineland-Palatinate, Article 9, paragraph 3, does not apply to *Verbandsgemeinden* and *Kreise*; 2. in the other *Länder*, Article 9, paragraph 3, does not apply to *Kreise*”. This declaration is designed to restrict the scope of the principle of financial autonomy (based on local taxes). It takes account of the fact that most modes of inter-municipal co-operation are financed indirectly (transfers from the municipalities concerned) rather than autonomously.

54. Romania declares that in accordance with its legislation, it understands the notion of regional authority, referred to in Article 4, paragraphs 4 and 5, of the Charter, as the department authority of the local public administration. This “department” authority comprises the 41 *județe* (counties). The declaration would appear to have a completely different aim. It is confined to identifying the “regional” institutions for the purposes of the application of Article 4, i.e. the regional authorities capable of limiting the exercise of the specific powers of local authorities or delegating powers to them. The declaration does not make clear whether the protection afforded by the Charter can also be extended to this department level, which apparently lacks some of the attributes of a genuine territorial authority.

VI. Declarations relating to territories to which the Charter applies

55. There are only three declarations of this kind. All three concern very specific situations, whether from a geographical viewpoint (Denmark) or a historical angle.

56. Denmark limits the scope of the Charter by excluding the territories of Greenland and the Faeroe Islands. This declaration was withdrawn – or rather amended – in 2007, to the extent that the territorial exclusion was replaced with an exclusion relating to categories (the municipalities, as we have seen above).

57. Azerbaijan declares “that it is unable to guarantee the application of the provisions of the Charter in the territories occupied by Armenia until these territories are liberated from that occupation”.

58. Georgia declares that “Till the restoration of full jurisdiction of Georgia on the territories of Abkhazia and Tskhinvali Region, Georgia declines its responsibility for performing obligations under the paragraphs of the European Charter of Local Self-Government listed [in its declaration regarding Article 12] in such territories”.

VII. Additional Protocol on the right to participate in the affairs of a local authority

59. The Protocol on the right to participate in the affairs of a local authority was opened for signature on 16 November 2009. So far eleven States have signed the Protocol and three have ratified it (the condition for entry into force being eight ratifications).

60. This is an important protocol because it does not allow for reservations to the content of its provisions. It does, on the other hand, provide for the possibility of declarations limiting its scope, in respect of both specific local authorities (Article 3) and specific territories (Article 4).

61. The fact that no reservations can be entered to the content of the provisions of the Protocol is a major innovation in line with a recent trend (since the 2000 European Landscape Convention) to require all the provisions of Council of Europe conventions to be signed and ratified.

VIII. Situation of the reservations vis-à-vis the content of the Charter

62. We might draw a preliminary conclusion from the data examined: the Charter has been broadly accepted in its entirety. Usually, States use reservations to gain time to adapt their domestic law to the provisions of the Charter. Reservations seldom reflect a genuine rejection of the substantive principles of the Charter. More often than not, provisions to which reservations have been entered are deemed too demanding, particularly in financial terms.

63. The reservations system laid down in Article 12 obviously gives rise to a variety of criticisms as it can be seen as contradictory.

64. The first contradiction concerns the list of 14 core provisions of the Charter. If Article 12 identifies a list of provisions constituting the “core” of the Charter, how can we justify allowing reservations to at

least four of the provisions on this list? For instance, the possibility of entering a reservation to Article 7 para. 1 (on the free exercise of functions by local elected representatives) could mean that the country entering such a reservation – fortunately this has never happened – can adopt legislation limiting freedom of exercise of such functions, which would infringe one of the fundamental principles of the Charter.

65.The second contradiction mentioned concerns the number – which is deemed too high – of reservations which can be entered (ten out of thirty, i.e. 33.3%). The felicitous fact that the rate of reservations actually entered is lower does nothing to mitigate this contradiction.

66.The third relates to the excessive leeway left to the states in selecting the provisions which can be the subject of a reservation. The only real limitation is provided by the 14 core provisions, which, as we have seen, has its own contradictions. As it stands, this system of reservations theoretically permits each State Party to reject certain vital provisions characteristic of the Charter.

67.While the reservations system has facilitated broad accession to the Charter, the trend recently has been to prioritise conventions excluding the entering of reservations. We have already mentioned the example of the European Landscape Convention, but we could also quote the case of the Civil Law Convention on Corruption (Article 17 of which explicitly excludes any possibility of reservations).

68.The now typical example is the European Convention on Human Rights (with its numerous additional protocols). Increasingly, if a convention recognises fundamental rights, its provisions are directly applicable, taking precedence over any provisions to the contrary in domestic law. If the rights are directly applicable, any possibility of a reservation would be a blatant contradiction.

IX. Reservations from the perspective of a review of the Charter

69.The Congress has long been facing the question of reinforcing the Charter, i.e. ensuring improved application of its principles by the States which have signed and ratified it. Since it has quite rightly been decided not to amend the current text of the Charter, thoughts have been turning to possible complementary instruments to the main text. The recent 2011 explanatory memorandum¹¹ on the reception of the Charter proposes several possible solutions.

70.One option would be to retain the current text of the Charter and attempt, under the monitoring process, to convince the States, from the political angle, to intensify the direct application of the provisions of the Charter. This option would be particularly suited to the provisions which are already clearly directly applicable, i.e. those which the Congress has already pinpointed as such in its Recommendation No. 39 (1998) (see section 4.2 above) and those which might be so recognised in future. This option does, however, meet its limits in the provisions of principle which leave States a great deal of discretion on the requisite measures for implementing them in practice. When the Charter was opened for signature, it was supposed to be a convention setting out general principles capable of gradually inducing the countries having signed and ratified it to reinforce local democracy, which also confirms, as we have seen, the recognition of the power to make reservations.

71.The second option would be to revise the content of the Charter and, without amending the current provisions, add new ones in order to integrate and develop the consolidated content of the Charter: such a revision would involve one or more additional protocol(s).

72.The aim of such a revision would be to identify a larger number of directly applicable provisions. This would differentiate them more clearly from the provisions of principle (which leave States greater discretion). From this angle, the 2011 explanatory memorandum on the reception of the Charter defines the objective of directly applicable provisions, i.e. the recognition of the rights of local authorities. *“We should recognise rights for local authorities rather than imposing specific organisational solutions, for instance for the configuration of local authorities' internal organisational structure and of the instruments governing relations between higher authorities and local authorities (monitoring, participation, allocation of resources). This would enable a clearer definition to be given of a ‘true’ right to be exercised vis-à-vis a higher authority: right to a service (allocation of necessary resources, distribution of adequate information), right to the absence of invasive behaviour (monitoring of expediency, power to dismiss, to dissolve, to act on the subordinate body’s*

¹¹ CG/GOV(20)2rev.

*behalf on the basis of merit), right to **positive behaviour** (openness to participation, recognition of the right of debate)".*

73. If we revise the Charter by adopting one or more additional protocols recognising new rights for local authorities (or citizens), to what extent should declarations be allowed? Should we take account of the fact that the new provisions would be even more binding than those of the 1985 Charter?

74. The clearest option, and the one most consistent with the current trend in Council of Europe conventions, would be to exclude any possibility of entering reservations to the provisions of the additional protocols, on the understanding that it would still be possible to make declarations concerning the categories of local authorities and territories to which the protocol is to apply.

75. A second option would be to single out in the protocol certain provisions which cannot be the subject of a reservation and only to allow temporary reservations to the other provisions (the reservations being geared to giving the State signing and ratifying the protocol enough time to bring its legislation into line with the provisions of the protocol).

76. A third, less desirable option would be to grant greater facilities for entering reservations but to continue to limit their duration. The reservations should be temporary in all cases.

X. Conclusion

77. If, in view of the low rate of reservations, the Charter remains unaltered, things could remain as they stand.

78. To advocate amending Article 12 so as to abolish the option of entering reservations could be seen as an unnecessary investment of legal energy.

79. It would be better to recommend:

a. inviting Member States which have made declarations under Article 12 to see whether they are able to increase the number of articles by which they consider themselves bound;

b. inviting Member States which have made reservations under Articles 13 and 16 to review these restrictions with a view to lifting them;

c. preparing regular reports on non-accepted provisions of the Charter.

80. If the Council of Europe adopts additional protocols with a view to revising the Charter, in order to reinforce its direct applicability and the recognition of the "genuine rights" of local authorities (*vis-à-vis* higher-level authorities) and citizens (*vis-à-vis* the local authorities), these protocols should follow the recent trend in European conventions of excluding all reservations, even if the new dispositions are more binding (leaving only a facility for temporary reservations).

APPENDIX 1: RESERVATIONS BY MEMBER STATE

States	Signature	Ratification	Entry into force	Reservations to art. 12	No. of Reserv.	Provisions subject to a reservation	Reservations to arts. 13 and 16
Albania	27/5/1998	4/4/2000	1/8/2000	NO			
Germany	15/10/1985	17/5/1988	1/9/1988	NO			Gemeinden and Kreise 9.3 not Kreise
Andorra	27/10/2010	23/3/2011	1/7/2011	YES	3	9.2 9.5 9.8	
Armenia	11/5/2001	25/1/2002	1/5/2002	YES	5	5 6.1 6.2 7.2 10.3	
Austria	15/10/1985	23/9/1987	1/9/1988	YES	5	4.2 4.3 7.2 8.2 11	
Azerbaijan	21/12/2001	15/4/2002	1/8/2002	YES	4	7.2 9.5 9.6 10.3	
Belgium	15/10/1985	25/8/2004	1/12/2004	YES	4	3.2 8.2 9.6 9.7	Provinces and municipalities
Bosnia-Herzegovina	12/7/2002	12/7/2002	1/11/2002	NO			
Bulgaria	3/10/1994	10/5/1995	1/9/1995	YES	1	7.2	
Cyprus	8/10/1986	16/5/1988	1/9/1988	YES	1	7.2	
Croatia	11/10/1997	11/10/1997	1/2/1998	NO 2 stages 1998 and 2008			
Denmark	15/10/1985	3/2/1988	1/9/1988	NO			Municipalities Greenland and Faeroes
Spain	15/10/1985	8/11/1988	1/3/1989	YES	1	3.2	
Estonia	4/11/1993	16/12/1994	1/4/1995	NO			
Finland	14/6/1990	3/6/1991	1/10/1991	NO			
France	15/10/1985	17/1/2007	1/5/2007	YES	2	3.2 7.2	Inter-municipal co-operation
Georgia	29/5/2002	8/12/2004	1/4/2005	YES	6	4.6 5 6.2 9.6 10.2 10.3	
Greece	15/10/1985	6/9/1989	1/1/1990	YES	4	5 7.2 8.2 10.2	
Hungary	6/4/1992	21/3/1994	1/7/1994	NO			
Ireland	7/10/1997	14/5/2002	1/9/2002	NO			County councils, town councils
Iceland	20/11/1985	25/3/1991	1/7/1991	NO			
Italy	15/10/1985	11/5/1990	1/9/1990	NO			
Latvia	5/12/1996	5/12/1996	1/4/1997	YES	1	9.8	
"the former Yugoslav Republic of Macedonia"	14/6/1996	6/6/1997	1/10/1997	NO			
Liechtenstein	15/10/1985	11/5/1988	1/9/1988	YES	8	3.2 6.2 7.2 9.3 9.4 9.8 10.2 10.3	
Lithuania	27/11/1996	22/6/1999	1/10/1999	NO			
Luxembourg	15/10/1985	15/5/1987	1/9/1988	NO			
Malta	13/7/1993	6/9/1993	1/1/1994	NO 2 stages 1994 and 2010	1	9.3	
Moldova	2/5/1996	2/10/1997	1/2/1998	NO			
Monaco							

Montenegro	24/6/2005	12/9/2008	1/1/2009	YES	5	4.5 6.2 7.2 8.2 8.3	
Norway	26/5/1989	26/5/1989	1/9/1989	NO			
Netherlands	7/1/1988	20/3/1991	1/7/1991	YES	4 (5)	(6.2) 7.2 8.2 9.5 11	Provinces and municipalities In the Kingdom in Europe
Poland	19/2/1993	22/11/1993	1/3/1994	NO			
Portugal	15/10/1985	18/12/1990	1/4/1991	NO			
Czech Republic	28/5/1998	7/5/1999	1/9/1999	YES	6	4.5 6.2 7.2 9.3 9.5 9.6	
Romania	4/10/1994	28/1/1998	1/5/1998	YES	1 (3)	7.2 (Interpretation 4.4 et 4.5)	
United Kingdom	3/6/1997	24/4/1998	1/8/1998	NO			<u>England</u> County councils district councils London borough councils The Council of the Isles of Scilly <u>Wales</u> All Councils set up under Section 2 of the Local Government (Wales) Act 1994. <u>Scotland</u> All Councils set up under Section 2 of the Local Government (Scotland) Act 1994.
Russia	28/2/1996	5/5/1998	1/9/1998	NO			
San Marino							
Serbia	24/6/2005	6/9/2007	1/1/2008	YES	6	4.3 4.5 6.1 6.2 7.2 8.3	
Slovakia	23/2/1999	1/2/2000	1/6/2000	NO 3 stages 2000 2002 2007			
Slovenia	11/10/1994	15/11/1996	1/3/1997	NO			
Sweden	4/10/1988	29/8/1989	1/12/1989	NO			Municipalities County councils
Switzerland	21/1/2004	17/2/2005	1/6/2005	YES	6	4.4 6.2 7.2 8.2 9.5 9.7	Political municipalities
Turkey	21/11/1988	9/12/1992	1/4/1993	YES	9	4.6 6.1 7.3 9.4 9.6 9.7 10.2 10.3 11	
Ukraine	6/11/1996	11/9/1997	1/1/1998	NO			
				NO 24/YES 20	83 (85)		

APPENDIX 2: RESERVATIONS BY PROVISION OF THE CHARTER

	Provision	Content	Nature	List of 14	Number of reservations	States
1	2	Constitutional foundation	Principle	X	-	
2	3.1	Concept of local self-government	Principle	X	-	
3	3.2	Election	Directly applicable (*)	X	4	Belgium Spain France Liechtenstein
4	4.1	General powers	Principle	X	-	
5	4.2	Self-attribution of powers	Principle	X	1	Austria
6	4.3	Principle of subsidiarity	Principle		2	Austria Serbia
7	4.4	Full and exclusive powers	Directly applicable (*)	X	1 (2)	Switzerland Romania (for the interpretation of regional authority)
8	4.5	Freedom of adaptation for delegated powers	Principle		3 (4)	Montenegro Czech Republic Serbia Romania (for the interpretation of regional authority)
9	4.6	Right of consultation	Directly applicable (*)		2	Georgia Turkey
10	5	Protection of territorial boundaries	Directly applicable (*)	X	3	Armenia Georgia Greece
11	6.1	Autonomy of internal organisation	Principle		3	Armenia Serbia Turkey
12	6.2	High-quality staff	Principle		7 (8)	Armenia Georgia Liechtenstein Montenegro Czech Republic Serbia Switzerland Netherlands (interpretation)
13	7.1	Free exercise of functions of local elected representatives	Directly applicable (*)	X	-	
14	7.2	Compensation for expenses incurred by local functions	Principle		14	Armenia Austria Azerbaijan Bulgaria Cyprus France Greece Liechtenstein Montenegro Netherlands Czech Republic Romania Serbia Switzerland
15	7.3	Incompatibilities	Directly applicable (*)		1	Turkey

16	8.1	Supervision provided for by law	Directly applicable (*)		-	
17	8.2	Supervision of legality	Directly applicable (*)	X	6	Austria Belgium Greece Montenegro Netherlands Switzerland
18	8.3	Proportionality supervision in	Directly applicable (*)		2	Montenegro Serbia
19	9.1	Free disposal of own resources	Principle	X	-	
20	9.2	Resources commensurate with responsibilities	Principle	X	1	Andorra
21	9.3	Local taxes	Principle	X	3	Liechtenstein Czech Republic Malta
22	9.4	Flexibility	Principle		2	Liechtenstein Turkey
23	9.5	Financial equalisation	Principle		5	Andorra Azerbaijan Netherlands Czech Republic Switzerland
24	9.6	Right of consultation in financial matters	Principle		5	Azerbaijan Belgium Georgia Czech Republic Turkey
25	9.7	Non-earmarked grants	Principle		3	Belgium Switzerland Turkey
26	9.8	Access to capital markets	Principle		3	Andorra Latvia Liechtenstein
27	10.1	Consortia of local authorities	Directly applicable (*)	X	-	
28	10.2	Belonging to national and international associations	Directly applicable (*)		4	Georgia Greece Liechtenstein Turkey
29	10.3	Co-operation with local authorities in other States	Directly applicable (*)		5	Armenia Azerbaijan Georgia Liechtenstein Turkey
30	11	Legal protection	Directly applicable (*)	X	3	Austria Netherlands Turkey
					83 (85)	

(*) As identified by Recommendation No. 39 (1998).