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Local democracy in Luxembourg

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EXPLANATORY MEMORANDUM

I. General context

Like all small States, Luxembourg has the contradictory characteristics of being both highly decentralised and highly centralised:

- it is highly decentralised in that the whole of Luxembourg is the same size as many European municipalities and exercises both national and local powers on this modest scale;
- it is highly centralised because, firstly, the City of Luxembourg houses a high proportion of the population and general activities, and secondly, the national and local levels are very close together, making it difficult for the local level to work in isolation from the central level, given the intricate links between places and persons in the country.

Local democracy in Luxembourg is marked by this geographical situation, which also explains why there is only one local authority level, *viz.* the 118 communes (municipalities).

The total population and geographical area of Luxembourg (430 000 inhabitants within a total area of 2586 km²) means that the average commune comprises 3 600 inhabitants and covers 22 km². However, most communes are smaller than this, as the eight biggest communes comprise 190 000 inhabitants, the combined population of the other 110 being less than 240 000, giving an average communal population (apart from those eight) of 2 200. Consequently, alongside the limited size of the country and the closeness of the centre to the periphery, the relatively weak communal infrastructure is the second main characteristic of Luxembourg communes.

This does not mean that the Luxembourg authorities are not interested in local self-government issues. On the contrary, the reason why the communes are so small is that the authorities do not choose to engage in authoritarian mergers.

The country has long recognised the principle of local self-government, which is broadly based on the French legal tradition. The Grand Duchy of Luxembourg was even the first European country to ratify the European Charter of Local Self-Government under legislation unanimously adopted by the Chamber of Deputies on 18 March 1987.

II. Historical background

Communes in Luxembourg are principally based on the legislative legacy of the French Revolution. Indeed, the French Decree of 17 December 1789 relating to the constitution of communes is still partly in force in Luxembourg. Most of the current communal boundaries in the country date from this time (apart from a number of mergers of communes, most of which occurred during the 1970s). Administrative regulations of 1822 and 1825 (under the Dutch regime) set up eight districts, five of which were subsequently abolished under the 1831 Treaty. A Grand-Ducal Decree of 1841 established twelve cantons. The communal system was developed under a Law of 24 February 1843, which long survived as the Communal Charter and was modernised under a Law of 13 December 1988, although the latter made no really radical changes.

III. Implementation of the Charter in Luxembourg

On ratification of the Charter by virtue of a Law of 18 March 1987, it became part of the Luxembourg legal system.

In pursuance of the principles applicable to international conventions ratified by Luxembourg, the Charter now has supra-legislative force and can be directly invoked by the national courts. The Administrative Court has agreed to consider applications based on infringements of the Charter in several of its decisions^{*)}.

Following ratification, the legislation on communes was revised, and the Law of 13 December 1988 makes clear the determination to strengthen communal self-government, in the spirit of the Charter.

Consideration of this legislation and practice shows that the Luxembourg authorities are generally concerned to ensure compliance with the Charter. In some areas, however, the conditions under which the Charter is implemented might prompt a number of observations, criticisms and recommendations.

IV. The concept of communal self-government in Luxembourg law

a) The legal basis of local self-government

Article 2 of the Charter stipulates that the principle of local self-government should be recognised in the constitution, or at least in legislation. Luxembourg law complies with these provisions.

Article 107 of the Luxembourg Constitution (in its 1979 version) provides that “Communes form autonomous authorities, on a territorial basis, possessing legal personality and administering their patrimony and own interests”.

The same Article provides for a communal council directly elected by the inhabitants and a corporate body made up of the mayor and aldermen chosen among the communal councillors, and stipulates that the communal attributions and supervision of the communal administration must be governed by law.

In accordance with these provisions, the communal attributions, the organisation of the communes and the supervision to which they are subject must be determined by law.

The same provisions permit the communes to impose communal taxes, with the Grand Duke’s approval. The communes also have statutory powers to safeguard public order, safety and health. Lastly, Article 28 (1) of the Communal Law lays down a rule vesting the communes with general jurisdiction for all matter of communal interest.

^{*)} Some of these decisions have used restrictive interpretations of the Charter. In Decision 1598 C of 6 November 1997, for instance, the Administrative Court held that the Charter was inapplicable to an association of communes because the latter had no directly elected council.

b) Scope of local self-government

Article 3 of the Charter defines local self-government as the right and ability of local authorities to regulate and manage a substantial share of public affairs.

We should therefore assess the proportion of public affairs entrusted to the local authorities in each State in order to gauge the extent to which it is implementing the principle of local self-government.

The Charter grants each Contracting State some degree of discretion in determining the share of local affairs to be assigned to its local authorities. Nevertheless, accession to the Charter requires each State to keep under constant review the question how to preserve, adapt or strengthen local responsibilities, having regard to the national context.

Luxembourg assigns a substantial share of its affairs to the local authorities, including:

- general jurisdiction over all matters of communal interest;
- urban planning and civil engineering;
- creation of industrial estates;
- general municipal policing, covering public hygiene, health, peace and quiet;
- drinking water supplies and waste water disposal;
- disposal of household, bulky, organic and inert waste;
- traffic control;
- communal road maintenance;
- provision of primary school premises, contribution to remuneration of primary teachers, supervision of compulsory school attendance, appointment of teachers, helping organise school life;
- civil registration;
- public assistance and aid for the destitute provided by social welfare departments;
- communal hospitals;
- burials and upkeep of graveyards;
- local sports amenities;
- tourism infrastructure;
- organisation of cultural activities.

These responsibilities are comparable to those attributed to municipalities in other European States.

c) Present and future trends

As in other States, the trend towards standardised service provision and living conditions is reducing the communes' control in the following areas:

- spatial planning, town planning and social housing;
- economic activities;
- provision for social problems and welfare assistance;
- education;
- public health.

Many of these phenomena, which involve standardised, and therefore centralised decision-making, derive from technological progress, the increasing mobility of population groups, the

growing complexity of the problems to be dealt with and the general demand for egalitarian treatment. In such a context, transfers of policy-making, rubber-stamping, and indeed decision-making powers above the municipal level are often legitimate, and in any case inevitable.

Nevertheless, counterweights and compensatory measures are required to offset this trend. Some matters must be transferred to a higher level, but others can be better dealt with at the local level, which is conducive to a more differentiated type of management. Dynamic application of the principle of local self-government necessitates an unflinching effort to pinpoint and develop such transfers of new powers to the communal level in order to offset the transfer of other responsibilities to the central government level.

The overall impression is that Luxembourg has not exhausted all its potential for decentralising and facilitating new initiatives at the local level.

Little action has been taken recently to reinforce local responsibilities, although other measures have been adopted to intensify decentralisation (*e.g.* spatial planning, police force administration, etc).

d) The issue of increased communal powers

The Luxembourg authorities are aware of the issues mentioned above, and a debate has been going on for several years on the potential for redistribution of responsibilities between the communal and central levels. The new Government expressed its determination to pursue this goal in its policy declaration for 2004.

This is obviously a matter intimately bound up with the reorganisation of the inter-communal level and the establishment of an efficient administrative level on the inter-communal front (see section XI below).

The questions to be answered include:

- public order: under current trends, the role played by local authorities in policing and the maintenance of law and order has been in constant decline. Current social developments would militate for restoring these authorities' involvement in this field;
- education: the communes should be given enhanced powers to decide on a number of educational options, even if the main policy thrusts must be established at national level. Such local educational options could be linked up with pre-school and extracurricular activities, which should also be run by the local level;
- on the urban and spatial planning front, it would be quite conceivable to establish full-scale local responsibility for drawing up local development plans, provided they complied with "regional" strategies. The latter would have to be adopted under a joint procedure involving local and national authorities.

V. Supervision of communal decisions

a) Overview of Luxembourg legislation

This area was reorganised under the Law of 1988 abolishing many cases where "upstream supervision" had been allowed. A number of supervisory instruments have nonetheless survived.

The Grand Duke is empowered to declare void any decisions taken by communal authorities which are contrary to the law or the general interest. The decree setting these measures aside must be reasoned, and may be challenged in the administrative courts.

The Minister of the Interior may stay execution of a decision taken by a communal authority if he or she considers it unlawful or contrary to the general interest. Such stay of execution is lifted where the decision is not declared void within forty days. The grounds for the stay of execution must be communicated within five days.

A prior approval rule is applicable to a fair number of areas, including:

- assessment of communal taxes;
- decisions on communal staff (appointment, dismissal, remuneration, etc);
- purchases, sales, exchanges and transactions of a value exceeding € 7 500;
- communal regulations;
- budgets and settlements of accounts;
- general and specific development projects.

The State authorities are also empowered to take alternative action by appointing a special commissioner.

Lastly, the State authorities are empowered to dissolve the municipal council and to suspend or dismiss the mayor or individual aldermen. Such dissolution can only be effected on the grounds of serious circumstances, although this fact is not specified by law. Suspension and dismissal are only admissible on grounds of misconduct, negligence or criminal negligence. The rights of defence and appeal are safeguarded in all such cases.

b) Compatibility with the principles of the Charter

The provisions of Luxembourg law set out above raise a number of questions with regard to Article 8 of the Charter.

The Luxembourg system for supervising the communes does admittedly comply with the first paragraph of this Article inasmuch as it requires supervision to have a legislative basis. The system for supervising Luxembourg communes is based on statute.

However, paragraph 2 provides that supervision must be confined to considering the lawfulness of the activities of local authorities. We might wonder whether the Luxembourg supervisory system observes such a limitation:

- the system in force is such that activities can be declared void by the supervisory authority not only for unlawfulness but also for incompatibility with the general interest, even though the general interest is a very vague concept which leaves a good deal of scope for discretionary assessment;
- many activities remain subject to State authority approval. Such approval may be subordinate to considerations of expediency rather than lawfulness alone. For instance, the number of approval procedures for spatial planning instruments has apparently increased in recent years, thus reinforcing State supervision.

The mere existence of judicial appeals against decisions by State authorities to declare measures void or withhold approval from them is insufficient to offset the wide-ranging nature of such supervision, given that the abuse of such power could be sanctioned under the

existing case-law. The mere fact of having to lodge an appeal against *ultra vires* supervision is a sufficient deterrent to small communes which cannot afford adequate legal advice.

In fact, the large number of activities subject to approval might even be considered incompatible with Article 8 (3), which prescribes proportionality between the extent of the supervision exercised by the controlling authority and the importance of the interests which it is intended to protect. Making prior approval compulsory for such mundane activities as drawing up the order of precedence in the municipal council, delegating responsibilities, appointing a temporary communal employee or authorising communal employees to work part-time would seem to point to some disproportion between such a strict supervisory method and the public interests likely to be injured.

Lastly, supervision of individuals (municipal councils, mayors and aldermen) is also unsatisfactory to the extent that the actual law fails to specify the legitimate grounds for these measures in sufficiently exhaustive and restrictive terms.

Above and beyond the strict compatibility with the Charter of Luxembourg legislation on supervision of local authorities, we might postulate that this legislation has not kept pace with the general trend towards relaxing controls. As the Luxembourg authorities themselves acknowledge, these provisions no longer tally with the present-day conception of municipal self-government, which is tending to reduce prior control (approval) to a small number of particularly important activities and making “downstream” control subject to a judicial or quasi-judicial procedure.

No one is claiming that in practice the Luxembourg supervisory authorities fail to show restraint in exercising their power to control local decisions, and no local authority representatives have ever complained of *ultra vires* action on their part, which is all the more reason for tailoring the law to the facts.

The Luxembourg authorities would therefore be well advised to modernise the communal law provisions on supervision of local authorities with a view to confining such control to downstream verification of strict legality.

VI. Democratic appointment of the communal executive

By virtue of Article 3 (1) of the European Charter of Local Self-Government, the right of local authorities to manage their affairs is exercised by councils or assemblies composed of members freely elected on the basis of direct universal suffrage, which may possess executive organs responsible to them.

This rule is generally interpreted as meaning that the local executive must be appointed on the basis of at least indirect universal suffrage.

Appointment of the communal executive body by a State authority has been considered incompatible with the spirit of the Charter, even if the latter does not formally preclude this approach (merely requiring the executive body to be responsible to the elected council). This point has already been considered in the past in connection with the executive bodies of local authorities in the Netherlands.

In Luxembourg, communal executive bodies are made up of the mayor and aldermen (of whom there are between two and six, depending on commune size). Mayors are appointed by the Grand Duke; aldermen in towns and cities are also appointed by the Grand Duke, while

those in other communes are appointed by the Minister of the Interior. The mayor and the aldermen must, however, be selected from among the municipal councillors (who must be of Luxembourg nationality).

In practice, the majority faction on the newly elected municipal council puts forward a proposal to the State administration, which almost invariably accepts it.

Consequently, very few Luxembourg communal officials ever criticise the current system for appointing the communal executive body. Furthermore, Article 37 of the Communal Law provides for a vote of no confidence which can be implemented where the municipal council has rejected the draft budget tabled by the corporate body made up of the mayor and aldermen. If the vote of no confidence is passed, the mayor and aldermen must stand down. This means that the communal executive body is indeed responsible to the elected council.

The current mode of appointment is, moreover, deemed justified by the fact that the mayor and aldermen are the representatives not only of the local self-governing bodies themselves but also of the Government acting at the communal level.

Although, in the light of all these facts, there may be some compliance with the Charter, it must nevertheless be noted that the mode of appointment of the communal executive body is not transparent. It would be desirable, at the very least, for the nominations put forward to the Grand Duke by members of the municipal council to be formally debated by the municipal council, rather than simply being consigned to an unofficial written opinion by the majority of the municipal council.

Beyond this formal aspect, the appointment of a local authority executive by the State supervisory body is not compatible with the current conception of local self-government. The fact that the executive also carries out certain secondary tasks on the State's behalf, can no longer justify this situation, which creates confusion between the different responsibilities.

For all these reasons the Congress of the Council of Europe might recommend introducing a procedure for direct appointment by the Municipal Council.

VII. Consultation of local authorities

Article 4 (1) of the Charter provides that "Local authorities shall be consulted, insofar as possible, in due time and in an appropriate way in the planning and decision-making processes for all matters which concern them directly".

Article 5 stipulates that they must be consulted prior to any changes to the relevant local authority boundaries.

Article 9 (6) recommends consulting local authorities in an appropriate manner on the way in which resources redistributed under financial equalisation procedures should be allocated to them.

Luxembourg has no legal rules requiring local authorities to be consulted in any general manner. However, the usual practice is for the communes to be consulted during the preparation of measures relevant to them.

The Spatial Planning Law of 29 May 1999 provides for consulting the communes during the procedure for drawing up the Overall Spatial Planning Strategy, the regional and sectoral

master plans and general land-use plans. The Law of 10 June 1999 on listed buildings also provides for consulting the communes on relevant projects to protect threatened buildings.

While Luxembourg law does not formally provide for prior consultation of the communes where communal boundaries are to be altered or local authorities merged, such consultation is in fact carried out.

In 1986 the Association of Luxembourg Towns and Communes (SYVICOL) was set up to cover all the communes. The Association represents Luxembourg local authorities in dealings with the central authorities.

Furthermore, the Luxembourg Parliament comprises a large number of communal councillors. The size of the country facilitates regular contact between the communes and the central authorities.

Nevertheless, communal officials are sometimes frustrated by the outcome of consultations. The SYVICOL would like the communal authorities to be more formally involved in the national legislative and statutory procedures and a new legal basis to be defined making consultation of the communes on subjects of direct concern to them more clearly compulsory. For instance, it has voiced regret at not having been properly approached in connection with the recent bill on communal and urban development.

Apart from the formality of compulsory consultation, the main priority should be to improve the efficiency of consultation procedures. This requires the communes to have possession of all the documentary and human resources which they need in order to produce an informed opinion, and all parties involved must be able to overcome the temptation to settle for the type of "loose consensus" which emerges when the local and national decision-makers work too closely together. Again, the consultation must be organised in such a way as to ensure that the opinions given are actually taken into account and provide real input into the final decision.

VIII. Status of local elected representatives

Article 7 of the Charter provides that the conditions of office of local elected representatives should provide for free exercise of their functions.

The status of local elected representatives in Luxembourg complies with the requirements of the Charter.

However, communal representatives are demanding improvements to the training facilities for local councillors and to their social and fiscal rights.

Above and beyond this issue of local councillor status looms the question of the possible full-time employment of communal executive bodies. This organisational method is gaining ground in many European countries. The Luxembourg Government should be encouraged to give concrete expression to its intention to start considering this matter. It might be useful to assign management functions to an elected representative capable of exercising his or her functions on a full-time basis, in communes which are big enough and in associations of communes that exercise genuine responsibilities.

IX. Communal staff

The local public sector employs some 12 000 staff, including 3 000 civil servants (the State employs some 20 000 staff, including 14 000 civil servants, not including national public corporations). Communal officials express overall satisfaction with the Luxembourg communal civil service system.

However, it should be noted that apart from three or four of the largest municipalities in Luxembourg, the Luxembourg communes are in a weaker position than the State authorities where staff competence is concerned. The Luxembourg communes have very few administrative staff members with university training or qualifications equivalent to those of central government staff. This is obviously due to the small size of the communes, but in practice it leads to a situation of technical dependence on State services.

One way to bring the professional skills at this level into line with those available at State level would be to improve the organisation of inter-communal co-operation.

X. The financial situation of Luxembourg local authorities

a) Reminder of the provisions of the Charter

Article 9 of the Charter provides that local authorities must have “adequate financial resources of their own, of which they may dispose freely” (para. 1). The adequacy of these resources is gauged in relation to the responsibilities entrusted to the authorities: they must be commensurate with these responsibilities (para. 2). An appropriate part of these local financial resources must derive from local taxes and charges of which the authorities must have the power to determine the rate (para. 3). The Charter also requires such resources to be sufficiently diversified and buoyant (para. 4).

Moreover, the Charter requires the authorities to implement financial equalisation between the poorer and the richer authorities, but specifies that such equalisation should not diminish the discretion local authorities may exercise within their own sphere of responsibility (para. 5). Local authorities should also be consulted on the way in which redistributed resources are to be allocated to them (para. 6).

Lastly, as far as possible, grants to local authorities should not be earmarked for the financing of specific projects (para. 7), and local authorities should have free access to borrowing (para. 8).

b) Communal finances in Luxembourg

The above-mentioned principles of the Charter are implemented in the Luxembourg communes as follows:

The communes account for 32% of overall public expenditure in Luxembourg, which puts Luxembourg in 5th place in Europe in this respect (although it must be remembered that many other countries have to apportion their local expenditure among several different levels, whereas in Luxembourg the communes are the only local level).

Luxembourg’s communal representatives are critical of several aspects of this situation.

1. Reduction of the communal share in public resources

Luxembourg communes complain of losing out in terms of sharing public resources with the State.

The statistics would seem to corroborate this concern. Ordinary receipts by the communes as compared with State revenue decreased from 25.61% in 1982 to 21.45% in 2000. Moreover, local public expenditure is somewhat below the European average (43% in Luxembourg as against 63% for the whole of Europe). In terms of GDP, such local expenditure accounts for 5.7% as compared with an average European proportion of 11% for 2000 (the corresponding figure in 1990 had been 9%^(*)).

However, these figures should be treated with caution because of Luxembourg's small size and the consequences this has in terms of apportionment of tasks and resources.

2. Local taxation issues

More specific criticisms have been levelled at the local taxation system.

Communal taxes account for some one third of overall communal income. The taxes are:

- communal trade tax (ICC), which accounts for 91% of communal tax revenue;
- land tax, which accounts for some 5% of tax revenue;
- miscellaneous taxes (property transfer duty, dog tax, gaming taxes, etc), corresponding to 4% of overall communal tax revenue.

Communal trade tax (ICC) represents over 30% of all income available to communes. This tax is based on local business profits, and although it is dynamic and buoyant (bringing in some € 400 million), Luxembourg communal representatives level a number of criticisms at this levy:

- first of all, the communes have little effective room for manoeuvre on this tax: although they can establish its coefficient, the latter must remain within a limited range, *viz.* between 200% and 300% of the tax base. Furthermore, the tax is subject to financial equalisation among the communes at a rate varying between 42% and 67% of its total, depending on the economic strength of the various communes. The method of calculating this equalisation is deemed opaque. The high equalisation rate greatly reduces actual communal independence in managing this resource;
- it is contended that this tax creates too close a link between communal receipts and the prevailing economic situation. In recent years this tax has been hit by major fluctuations linked to an unfavourable economic context. In the event of an economic recession, communes are liable to be affected directly and severely.

In the Government's view, the communes enjoy considerable financial independence in terms of communal land tax, but the communes themselves consider, not without reason, that this tax is difficult to incorporate into any systematic, forward-looking style of communal management.

^(*) Sources: Dexia, Local Finance in the Fifteen Countries of the EU, 2002, Dexia editions.

Given that the equalisation principle is unobjectionable, if this redistribution procedure is to come up to communal expectations it should be based on criteria other than mere returns on the ICC, so that those communes which go for courageous fiscal options can actually reap the benefits. The Communal Financial Grant Fund (see below) might be in a better position to cater for solidarity among richer and less well-off communes.

The claim that the ICC is “volatile” is more difficult to assess: broadly speaking, in view of the relatively stable, rigid nature of communal expenditure, it would be desirable to grant the communes a type of funding which is also stable. However, the fact of basing taxes on stable elements (such as capital) may have unfavourable economic consequences. As a comparison, we might note that the type of taxation based on business profits also exists in other countries (Germany, Portugal, Austria, Spain, etc), although in these States it represents a lower proportion of overall communal receipts than in Luxembourg.

Accordingly, the aspect that is no doubt open to criticism is the weight, within overall communal receipts in Luxembourg, of a tax which is sensitive to changing economic circumstances. The authorities must continue to intensify their efforts to diversify these resources.

Land tax

Although land tax could contribute to such diversification, it has been constantly decreasing in importance over the years. Receipts from this source stand at about € 20 million. The communes are reluctant to increase the weight of this tax, which is based on both developed and undeveloped land, because the reference values for immovable property have not been revised for many years. Such re-evaluation would be a matter for the State tax department.

In many European States, tax on real estate accounts for a significant proportion of communal revenue. This resource could be used more effectively for the benefit of Luxembourg communes. Since the latter are already responsible for levying this tax, they might also be mandated to revise and update the bases of assessment, obviously in accordance with the rules, procedures and remedies defined by the State. This would improve the return on such taxation.

3. State grants

Another major resource comprises State grants and subsidies, which many take several different forms:

Communal Financial Grant Fund: Luxembourg communes receive a kind of overall grant from the State which is not earmarked for any specific purpose. This grant is apportioned in accordance with commune area and population, and accounts for 18% of income tax, 10% of VAT, and 20% of motor vehicle tax, topped up by a State subsidy which is established on an annual basis. This non-earmarked grant totals some € 350 million, representing 20% of overall communal income.

The communes would like to see the above-mentioned percentages, which correspond to their contributions to State taxes, evolve in line with the tasks delegated to them by the State and be renegotiated annually.

Broadly speaking, both these demands are legitimate. The following two principles might be generally considered as components of a suitable procedure for implementing the local self-government principle:

- appropriate financial compensation for any transfer of responsibility or burden;
- regular consultation between the State and the local authorities on the latter's share in public resources.

The Congress of the Council of Europe could therefore insist on the proper implementation of these principles.

However, these principles would not appear to be seriously flouted in Luxembourg. For instance, a Higher Council on Communal Finances was recently set up representing the communal sector on an equal footing with the central State departments.

Lastly, we should not overlook the communes' "earmarked" income.

Such income accounts for some one third of overall communal resources. This figure might seem fairly high, in the light of current conceptions of communal public finances. In fact, this amount embraces a State contribution to remuneration for teaching staff (in primary schools), which is immaterial to any appraisal of the reality of the communes' financial independence and service products. In the final analysis, the proportion of genuine "earmarked" State subsidies is much lower, *viz.* 8% of communal income: 5% for subsidies to specific local investments (swimming pools, etc), and 3% for service grants (assistance with music infrastructures, etc). These statistics are quite acceptable, although they could perhaps be reduced even further.

All in all, while the financial situation of Luxembourg local authorities is generally compatible with the European Charter of Local Self-Government, it could nonetheless be improved in a number of ways in order to strengthen local authorities' control of their own resources and to promote a method of managing the local finance system and its evolution involving greater consultation and co-operation between the State and the communes.

XI. Reinforcing (inter-)communal infrastructures

One of the major questions for the future of local authorities in Luxembourg is the organisation of inter-communal co-operation.

The main feature of the structure of Luxembourg communes is the small average size of the local authority areas. Of a total 118 communes, only seven have 10 000 inhabitants or more.

The smallness of most of the communes restricts their ability to take charge of complex tasks, employ diversified specialised staff and develop dynamic communal policies. The current size of Luxembourg communes is tailored to a type of management close to the citizen, but it often simultaneously leaves them dependent on central State expertise.

If the local self-government principle is to remain dynamic, communal structures must be tailored to the changing expectations of the general public and modern management methods.

Realising the weakness of the Luxembourg communal architecture, the Luxembourg Government has in the past attempted to promote a communal merger process. In 1976 a bill was tabled setting out a plan for voluntary mergers which would have reduced the number of

communes from 126 to 39. However, the Law of 31 October 1977 and the subsequent measures failed to produce any significant reduction in the number of communes.

We must assume that communal structures in Luxembourg will never be significantly changed by means of voluntary mergers.

This means that another method must be used, namely that of intensifying inter-communal co-operation. The law provides for the setting up of inter-communal associations, although such bodies are designed as mere services shared by several communes rather than as a specific level for communal action.

The Law of 14 February 1900 on inter-communal associations was amended under a Law of 23 February 2001. Over the past two decades inter-communal associations have increased in number (from thirty to seventy), but most of them are single-purpose structures. Such associations have no resources of their own or directly elected bodies.

It would be useful to tidy up this throng of inter-communal structures by combining their activities. Such large numbers of associations do not make for transparency or efficiency. In particular, the current system precludes taking over tasks currently carried out by the State, or providing any new dimension for local self-government.

Luxembourg might conceivably evolve towards a two-tier communal system, with a grass-roots level (the current communes) and a new level for service planning and management, calling on advanced technical competences. This upper communal level could consist of a combination of twenty or so current communes, thus corresponding to the six “regions” referred to in spatial planning documents.

The Congress should reject the idea that the Luxembourg territory is too small to envisage creating new “urban community”-type communal structures^(*). The creation of the six planning regions has already demonstrated the need for an intermediate level in addition to the communes, exercising a planning and development function. It is vital for the future of local democracy in Luxembourg that the “regional planning” level, which will be taking on increasing importance in the future with the implementation of the “IVL” strategy (*Integratives Verkehrs- und Landesentwicklungskonzept* – integrated transport and spatial planning strategy), should not be a mere decentralised planning level but one catering for genuine public expression and empowerment complying with the principles of local self-government. A “community of communes” level corresponding to the level at which the regional master plans are implemented would be an appropriate framework for negotiating such master plans and concluding regional development contracts with an eye to their implementation.

The argument that setting up “communities of communes” would not enable all the existing associations of communes to be replaced is not conclusive. There can be little doubt that after such bodies have been set up there will still be a need for a number of major single-purpose associations. However, most of the current associations of communes could merge with the new “communities of communes”.

^(*) This option was proposed, for instance, by the Higher Council for Spatial Planning on 22 December 1993.

XII. Conclusion

1. Luxembourg institutions generally comply with the requirements of the European Charter of Local Self-Government. However, a number of improvements would be useful in order to implement the principles of the Charter more fully.
2. In order to preserve the full vigour of local self-government, which is the second driving force behind public action alongside the State authorities and a necessary partner in dialogue with the latter, Luxembourg must continue the work of reorganising its communes. Action is needed to offset the effects of a number of technical and social developments which are intensifying centralisation *de facto*. This means energising communal management.
3. Such new dynamics would involve increasing the local authorities' scope for action, reinforcing their management capabilities and extending their general jurisdiction. Such measures necessitate a more suitable framework, given the very small size of most of the Luxembourg communes.
4. With this in mind, the Luxembourg authorities could be encouraged to revise the status of communal executive bodies and relax upstream supervisory measures. They should associate the communes more closely with State decision-making processes by improving consultation procedures and, in some cases, replacing straight consultation with such co-operative techniques as development contracts, especially in the various spatial planning fields. Reforming local resources would, broadly speaking, provide the communal level with greater scope for independent action and general empowerment. Furthermore, it is important to facilitate wide-ranging transfers of powers competences to the communes in order to offset the centralising tendencies inherent in changing lifestyles and management methods.
5. One fundamental issue to be addressed here will be that of organising the inter-communal level. Since most Luxembourg communes are small and the inter-communal association system is fairly weak, it would be wise to move towards a new form of intensified inter-communal co-operation at the level corresponding to that of the six spatial planning regions.
6. The creation of a strong inter-communal co-operation level would probably be the optimal means of energising local self-government in Luxembourg. There are a variety of options for implementing this strategy that would be compatible with the European Charter of Local Self-Government. Such an inter-communal level might be based on the German "*Kreis*" structure or the French "communities of communes". It should embrace a sufficiently dynamic combination of responsibilities to ensure the availability of highly qualified staff. Lastly, the reform of local finances should take account of the creation of this inter-communal structure, channelling resources directly to this level.

**Programme
of the visit by the rapporteurs of the Congress of the Council of Europe
on local democracy in Luxembourg
(28 and 29 October 2004)**

Wednesday, 27 October 2004

Preparatory meeting at a dinner with the participation of **Mr Jean-Mathias GOERENS**, member of the Group of Independent Experts on the European Charter of Local Self-Government and **Mr Alphonse CRUCHTEN**, Honorary Secretary of SYVICOL

Thursday, 28 October 2004

Steinsel Town Hall

Meeting with the Union of Luxembourg Towns and Municipalities (SYVICOL)

Mr Jean-Pierre KLEIN, Mayor of Steinsel, President of SYVICOL, Member of Parliament, Chair of the national delegation to the Congress

Ms Francine ERNSTER and **Mr Pierre WIES**, Vice-Presidents of SYVICOL, substitute members of the Congress

Mr Lucien MAJERUS, SYVICOL Treasurer, member of the Congress

Mr Paul-Henri MEYERS, Member of SYVICOL, Chair of the Committee of Institutions and Constitutional Revision of the Chamber of Deputies

Ms Irma KRIPPES and **Mr Emile EICHER**, Members of SYVICOL and members of the Congress

Ms Mireille COLBACH-CRUCHTEN, Director of SYVICOL

Mr Laurent DEVILLE, SYVICOL inspector

Mr Alphonse CRUCHTEN, Honorary Secretary of SYVICOL

Ministry of the Interior

Meeting with the Senior Officials of the Ministry of the Interior

Ms Christiane LOUTSCH-JEMMING, and **Mr Marc LEONHARD**, principal advisors to the government

Mr Charles LAMPERS, Commissioner of the District of Luxembourg

Mr Serge SANDT, Commissioner of the District of Grevenmacher

Dinner offered by the Minister of the Interior, **Mr Jean-Marie HALSDORF**, and in his presence, at the "Digne de Gourmets" restaurant, Bascharage

Friday, 29 October 2004

Short meeting with **Mr Marc FISCHBACH**, Ombudsman

Short meeting with **Mr Paul HELMINGER**, Mayor of the City of Luxembourg

Meeting with the General Federation of Local Authority Staff (*Fédération Générale de la Fonction Communale (FGFC)*)

Mr Camille SCHILTZ, Vice-Chair; **Mr Ernest REUTER**, Secretary General

Short meeting with **Mr Marcel GLESENER**, Chair of the Luxembourg delegation to the Parliamentary Assembly

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Congress delegation:

Mr Christopher NEWBURY
Member of the Congress
Member of West Wiltshire District Council of Europe
UNITED KINGDOM

Mr Jean-Marie WOEHLING
Expert, member of the Group of Independent Experts on the European Charter of Local Self-Government
Secretary General of the Central Commission for the Navigation of the Rhine
FRANCE

Ms Antonella CAGNOLATI
Deputy Chief Executive of the Congress
Ms Marianne DE-SUSBIELLE
Interpreter