

**Indenrigs- og Sundhedsministeriet**

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Kontor: 1.k.kt.  
J.nr.: 2004-2060-3  
Sagsbeh.: jro

**Notat om forholdet mellem regeringens aftale med Dansk Folkeparti om en strukturreform og Europarådets konvention om lokalt selvstyre**

**1. Baggrund**

I forbindelse med den offentlige debat om regeringens aftale med Dansk Folkeparti om en strukturreform har der i forskellige sammenhænge været rejst spørgsmål om – og til dels kritik af – reformen i relation til Europarådets konvention af 15. oktober 1985 om lokalt selvstyre.

Det er ministeriets opfattelse, at aftalen om en strukturreform og udmøntningen heraf ikke vil være i strid med Europarådets konvention om lokalt selvstyre.

**2. Konventionens formål**

Af konventionens præambel fremgår bl.a., at de lokale myndigheder er en af de vigtigste grundpiller i ethvert demokratisk styre, og at det er på lokalt plan, at borgernes ret til at deltage i varetagelsen af offentlige anliggender kan udøves på den mest direkte måde. Desuden fremgår det, at tilstedeværelsen af lokale myndigheder med reelt ansvar kan skabe en forvaltning, som er både effektiv og tæt på borgerne. Endvidere fremgår det, at beskyttelsen og styrkelsen af lokalt selvstyre i de forskellige europæiske lande er et vigtigt bidrag til opbygningen af et Europa grundlagt på principperne om demokrati og decentralisering af beføjelser, og at dette forudsætter eksistensen af lokale myndigheder, der har demokratisk valgte besluttende organer og en udstrakt grad af selvbestemmelse med hensyn til deres opgaver, de måder, på hvilke opgaverne varetages, og de midler, der er nødvendige for deres udførelse.

Endvidere fremgår det af Europarådets uddybende rapport om konventionen, at formålet med konventionen ved vedtagelsen var at rette op på mangelen på europæiske standarder for vurdering og sikring af rettighederne for de lokale myndigheder, der er tættest på borgerne, og at give borgerne mulighed for at deltage effektivt i de beslutninger, som påvirker deres hverdag.

Det overordnede formål med konventionen er således efter ministeriets opfattelse at sikre og styrke et selvstændigt, effektivt og borgernært lokalt forvaltningsniveau i medlemslandene.

Med aftalen om en strukturreform og udmøntningen heraf dannes en ny offentlig sektor, hvor kommuner, regioner og stat har hver sin opgavemæssige identitet. Staten fastlægger de overordnede rammer. Fem nye regioner får ansvaret for sundhedsvæsenet, bliver dynamo for den regionale udvikling og får ansvaret for at løse visse driftsopgaver. Kommunerne varetager de direkte borgerrettede opgaver og bliver dermed for borgere og virksomheder hovedindgangen til den offentlige sektor.

Kommunerne får i medfør af aftalen om en strukturreform og udmøntningen heraf ansvaret for at løse langt de fleste velfærdsopgaver. Der overføres således en række opgaver fra amtskommunerne til kommunerne, som i forbindelse med reformen bliver større og dermed opnår større faglig bæredygtighed og bliver i stand til at løse flere typer af opgaver. Med dannelsen af nye stærke kommuner skabes der endvidere grobund for at give disse en større rolle i forhold til den lokale egns udvikling.

På denne baggrund er det ministeriets opfattelse, at aftalen om en strukturreform fuldt ud lever op til konventionens overordnede formål.

### **3. Særlige overvejelser**

#### **3.1. Fremtidige regioners status i forhold til konventionen**

3.1.1. Konventionens artikel 13 har følgende ordlyd: *"De principper for lokalt selvstyre, der er indeholdt i denne konvention, finder anvendelse på alle typer af lokale myndigheder inden for den pågældende parts territorium. Hver part kan dog ved deponeringen af ratifikations-, accept- eller godkendelsesinstrumentet angive, hvilke typer af lokale eller regionale myndigheder den ønsker omfattet af eller undtaget fra denne konventions anvendelsesområde. Den kan også inddrage yderligere typer af lokale eller regionale myndigheder under konventionen ved efterfølgende meddelelse til Europarådets Generalsekretær."*

Det følger således af konventionens artikel 13, at de enkelte medlemslande er tildelt en ret til – i lyset af deres respektive strukturer – selv at angive, hvilke lokale og regionale myndigheder medlemslandene ønsker omfattet af eller undtaget fra konventionens anvendelsesområde.

I forbindelse med ratifikationen af konventionen i 1988 afgav Danmark en erklæring om, at konventionen omfatter kommuner og amtskommuner i Danmark (bortset fra Hovedstadsrådet). Konventionen gælder altså for Danmarks vedkommende for myndigheder med en bred vifte af opgaver, som der skal prioriteres imellem, som er valgt ved direkte valg, og som har direkte skatteudskrivningsret. Det var disse myndigheder, Danmark i forbindelse med ratifikationen af konventionen valgte at lade være omfattet af konventionens regler.

Det bemærkes i den forbindelse, at kommuner og amtskommuner i Danmark i mange henseender har været ligestillet, herunder for så vidt angår styrelsesretlige forhold, jf. § 1, stk. 2, i lov om kommunernes styrelse, jf. lovbekendtgørelse nr. 968 af 2. december 2003. Det har således været

naturligt også i relation til konventionen at sidestille kommuner og amtskommuner.

Erklæringen afspejler den forvaltningsstruktur, Danmark havde på tidspunktet for afgivelsen, og indebærer efter ministeriets opfattelse ikke, at Danmark er forpligtet til at opretholde den pågældende struktur og herunder opretholde amtskommunerne.

De regioner, der som følge af den indgåede aftale om en strukturreform skal oprettes, er ikke amtskommuner og kan ikke sidestilles med disse.

Ikke blot vil de fem nye regioner være væsentligt større end de nuværende amtskommuner. Regionernes rolle vil også være forskellig fra amtskommunernes og kommunernes. Regionerne er særlige myndigheder etableret på regionalt niveau med henblik på at varetage en begrænset vifte af opgaver, som det vurderes kræver et bredt befolkningsmæssigt underlag. Regionerne skal således varetage opgaver på sundhedsområdet og et antal mindre områder, der er nærmere opregnet i aftalen om en strukturreform. For at finansiere netop disse opgaver er der etableret et finansieringssystem, der adskiller sig fra det, der gælder for kommunerne og de nuværende amtskommuner.

Regionerne vil på denne baggrund ikke være omfattet af den danske erklæring om, hvilke myndigheder konventionen gælder for.

3.1.2. Det følger endvidere af konventionens artikel 13, at konventionens principper for lokalt selvstyre finder anvendelse på alle typer af lokale myndigheder i medlemslandene.

Af Europarådets uddybende rapport om konventionen fremgår bl.a. følgende om bestemmelsen:

*"In principle, the requirements set forth in Part I of the Charter relate to all categories or levels of local authority in each member state. They potentially apply (ministeriets fremhævnings) also to regional authorities where these exist. However, the special legal form or constitutional status of certain regions (in particular the member states of federations) may preclude their being made subject to the same requirements as local authorities. Furthermore, in one or two member states there exists a category of local authorities which, because of their small size, have only minor or consultative functions. To take account of such exceptional cases, Article 13 permits the Parties to exclude certain categories of authorities from the scope of the Charter."*

Det fremgår således af bestemmelsens ordlyd, at konventionen omfatter alle kategorier af lokale myndigheder i medlemslandene. Efter Indenrigs- og Sundhedsministeriets opfattelse omfatter udtrykket "lokale myndigheder" ikke regionale myndigheder. Det i bestemmelsen anførte om, at medlemslandene kan angive, hvilke typer af lokale og regionale myndigheder der skal være omfattet af konventionen, viser efter ministeriets opfattelse, at der er tale om to forskellige typer af myndigheder.

Af konventionens præambel fremgår det bl.a., at medlemslandene har undertegnet konventionen i den overbevisning, at tilstedeværelsen af lokale myndigheder med reelt ansvar kan skabe en forvaltning, som er både effektiv og tæt på borgeren. Også denne passus viser efter ministeriets opfattelse, at konventionen er tænkt anvendt på lokale myndigheder, som er tæt på borgerne. Der henvises i det hele til notatets afsnit 2 om konventionens formål, som aftalen om en strukturreform fuldt ud lever op til.

Det forhold, at det af Europarådets uddybende rapport fremgår, at konventionen om muligt vil kunne anvendes på regionale myndigheder, hvor disse eksisterer, skal efter ministeriets opfattelse forstås som en henvisning til, at medlemsstaterne efter artikel 13 kan angive, hvilke regionale myndigheder medlemslandene ønsker omfattet af eller undtaget fra konventionens anvendelsesområde.

Det er på denne baggrund ministeriets opfattelse, at konventionen gælder for alle former for lokale myndigheder, men alene for regionale myndigheder, hvis de enkelte medlemslande har truffet beslutning herom.

Det er i den forbindelse ministeriets holdning, at de kommende regioner ikke er omfattet af konventionen, og at det vil være i overensstemmelse med konventionen, at Danmark i forbindelse med en kommende strukturreform undlader at beslutte, at regioner skal være omfattet af konventionens bestemmelser.

Det bemærkes i den forbindelse, at der i Europarådets regi i flere år har været arbejdet på udarbejdelsen af en rekommandation eller konvention om regionalt selvstyre – som en pendant til konventionen om det lokale selvstyre. I de udkast til rekommandation og konvention, der foreligger på nuværende tidspunkt, er regionale myndigheder defineret som territoriale myndigheder mellem den centrale regering og de lokale myndigheder ("*regional authorities are territorial authorities between central government and local authorities*").

Efter ministeriets opfattelse viser dette arbejde en anerkendelse af behovet for et dokument, der omhandler selvstyre på regionalt niveau.

3.1.3. Det kan endvidere anføres, at selvom konventionen om lokalt selvstyre må betragtes som omfattende de fremtidige regioner, vil konventionens bestemmelser være opfyldt.

Det har været gjort gældende, at regionerne ikke opfylder bestemmelsen i konventionens artikel 9, stk. 3.

Konventionens artikel 9, stk. 3, har følgende ordlyd: "*I det mindste en del af lokale myndigheders økonomiske midler skal hidrøre fra lokale skatter og afgifter, hvis størrelse de har beføjelse til at fastsætte inden for lovens rammer.*"

Af Europarådets uddybende rapport fremgår følgende om bestemmelsen:

*"The exercise of a political choice in weighing the benefit of services provided against the cost to the local taxpayer or the user is a fundamental duty of local elected representatives. It is accepted that central or regional statutes may set overall limits to local authorities' powers of taxation; however, they must not prevent the effective functioning of the process of local accountability."*

I rapporten er det således anført, at det er en fundamental opgave for lokalpolitikere at foretage en afvejning mellem på den ene side udbyttet af evt. ydelser og på den anden side udgifterne hertil for de lokale skatteydere eller brugere. Det er endvidere anført, at det er accepteret, at central eller regional lovgivning kan sætte grænser for lokale myndigheders adgang til skatteopkrævning. Disse grænser må imidlertid ikke forhindre en effektiv udøvelse af lokal ansvarlighed.

Den finansiering af regionerne, der er fastlagt i aftalen om en strukturreform, indebærer, at regionerne modtager dels bloktilskud fra staten, dels et statsligt, aktivitetsbestemt tilskud og dels opkræver bidrag fra kommunerne i de enkelte regioner.

På denne baggrund er det ministeriets opfattelse, at bestemmelsen i konventionens artikel 9, stk. 3, er opfyldt for så vidt angår de nye regioner.

### 3.2. Ændringer i kommunernes geografiske områder, herunder krav om folkeafstemninger

Det har været anført, at bestemmelsen i konventionens artikel 5 medfører, at der skal afholdes folkeafstemning i alle kommuner, der bliver berørt af grænseændringer i forbindelse med kommunesammenlægninger.

Konventionens artikel 5 har følgende ordlyd: *"Ændringer i lokale myndigheders geografiske områder må ikke foretages, uden at de lokale samfund, som ændringerne vedrører, forinden har været rådspurgt, eventuelt ved folkeafstemning, såfremt der er adgang hertil ifølge lov"*.

I Europarådets uddybende rapport er der om bestemmelsen anført følgende:

*"Proposals for changes to its boundaries, of which amalgamations with other authorities are extreme cases, are obviously of fundamental importance to a local authority and the citizens whom it serves. Whilst in most countries it is regarded as unrealistic to expect the local community to have power to veto such changes, prior consultation of it, either directly or indirectly, is essential. Referendums will possibly provide an appropriate procedure for such consultations but there is no statutory provision for them in a number of countries. Where statutory provisions do not make recourse to a referendum mandatory, other forms of consultation may be exercised."*

Det er således bl.a. anført, at såfremt der ikke i lovgivningen i de enkelte lande er krav om afholdelse af folkeafstemning, kan inddragelsen af de

lokale samfund ske på anden vis. I rapporten er det endvidere forudsat, at inddragelsen kan ske såvel direkte som indirekte (via kommunale sammenslutninger). Der er derfor ikke i konventionen krav om, at der forud for grænseændringer foranstaltes folkeafstemninger, eller at borgerne på anden måde inddrages direkte i forhold til beslutningsprocessen.

Det bemærkes, at Europarådets Styrekomité for Lokalt og Regionalt Demokrati (CDLR) har udarbejdet et udkast til en rekommandation om fremgangsmåder i forbindelse med grænseændringer og/eller ændringer af den lokale og regionale myndighedsstruktur. I det udkast til rekommandation, som CDLR i maj 2004 besluttede at videresende til Europarådets Ministerkomité, er det anført, at en beslutning om at foretage de nævnte ændringer skal tages på det højeste institutionelle niveau efter inddragelse af de involverede institutioner, og at beslutningen kan blive påvirket af eller afsluttet med en folkeafstemning, såfremt dette er tilladt i lovgivningen. Der er således heller ikke med den nævnte rekommandation lagt op til et krav om, at der skal afholdes folkeafstemning forud for en grænseændring. Udkastet forventes behandlet af Ministerkomitéen i september 2004.

Det bemærkes i den forbindelse, at landets kommuner har været og bliver inddraget i strukturprocessen – direkte såvel som indirekte ved høring af KL.

Indenrigs- og sundhedsministeren har således i et brev til samtlige landets kommunalbestyrelser anmodet om tilbagemeldinger om, hvordan den – for varetagelsen af de opgaver, kommunerne bliver tillagt – nødvendige bæredygtighed ønskes opnået. Herunder har ministeren anmodet kommunalbestyrelsen i kommuner med mindre end ca. 20.000 indbyggere om tilbagemelding om, hvilken kommunesammenlægning de ønsker at indgå i, eller hvilken aftale om forpligtende kommunalt samarbejde, de har indgået.

Lovforslaget, der bemyndiger indenrigs- og sundhedsministeren til at foretage en revision af den kommunale inddeling, herunder ved kommunesammenlægninger, vil endvidere blive sendt i høring hos KL.

Endelig fremgår det af aftalen om en strukturreform, at kommunesammenlægninger som udgangspunkt vil blive gennemført i overensstemmelse med ønskerne hos kommunalbestyrelserne i de berørte kommuner. Ingen kommuner vil blive sammenlagt imod ønskerne hos kommunalbestyrelserne i de berørte kommuner, uden at det har været drøftet med de involverede kommunalbestyrelser.

Den konkrete udmøntning af strukturreformen vil således ikke være i strid med konventionens artikel 5.

### 3.3. Ændringer i opgavefordelingen mellem myndighedsniveauer

#### *3.3.1. Henlæggelse af opgaver til staten*

Det har været fremhævet, at det vil være i strid med konventionens artikel 4, stk. 3, i forbindelse med strukturreformen at henlægge visse opgaver, som hidtil har været varetaget i kommunerne og amtskommunerne, til staten.

Konventionens artikel 4, stk. 3, har følgende ordlyd: "Offentlige opgaver skal i almindelighed varetages fortrinsvis af de myndigheder, som er nærmest borgeren. Henlæggelse af opgaver til en anden myndighed må være begrundet i opgavens omfang og art og i krav til effektivitet og økonomi."

Af Europarådets uddybende rapport om konventionen fremgår følgende:

*"This paragraph articulates the general principle that the exercise of public responsibilities should be decentralised. This principle has been stated on a number of occasions within the context of the Council of Europe and in particular in the Conclusions of the Lisbon Conference of European Ministers responsible for Local Government in 1977. This implies that, unless the size or nature of a task is such that it requires to be treated within a larger territorial area or there are overriding considerations of efficiency or economy, it should generally be entrusted to the most local level of government.*

*This clause does not imply, however, a requirement systematically to decentralise functions to such local authorities which, because of their nature and size, can only accomplish limited tasks."*

Bestemmelsen forudsætter således bl.a., at opgaver generelt set bør varetages af det mest lokale myndighedsniveau. Imidlertid kan en opgaves omfang eller art gøre det nødvendigt at placere opgaven hos en myndighed, der dækker et større geografisk område, ligesom væsentlige hensyn til effektivitet eller økonomi kan legitimere en sådan placering.

Endvidere kræves det ikke i medfør af bestemmelsen, at der sker en systematisk decentralisering af opgaver til lokale myndigheder, som på grund af deres art eller omfang kun kan varetage begrænsede opgaver.

Den anførte bestemmelse i konventionen er således ikke til hinder for, at varetagelsen af visse opgaver, der hidtil har været varetaget af kommunerne og amtskommunerne, i forbindelse med en ny struktur placeres i staten.

### 3.3.2. Konsultation af kommuner

Det har været anført, at bestemmelsen i konventionens artikel 4, stk. 6, er til hinder for, at der gennemføres ændringer i den kommunale opgavevaretagelse uden forudgående direkte konsultation af hver enkelt kommune.

Konventionens artikel 4, stk. 6, har følgende ordlyd: "Lokale myndigheder skal så vidt muligt rådspørges i rette tid og på hensigtsmæssig måde i planlægnings- og beslutningsprocessen vedrørende alle anliggender, der angår dem direkte."

Af Europarådets uddybende rapport om konventionen fremgår følgende om bestemmelsen:

*"Whilst paragraphs 1 to 5 deal with matters which come within the scope of local authorities, paragraph 6 is concerned both with matters coming within the scope of such authorities and with matters which are outside their scope but by which they are particularly affected. The text provides that the manner and timing of consultation should be such that the local authorities have a real possibility to exercise influence, whilst conceding that exceptional circumstances may override the consultation requirement particularly in cases of urgency. Such consultation should take place directly with the authority or authorities concerned or indirectly through the medium of their associations where several authorities are concerned."*

Det er altså udtrykkeligt anført i rapporten, at inddragelse af de lokale myndigheder skal ske enten ved direkte konsultation af den eller de berørte myndigheder eller ved konsultation af disses sammenslutninger.

Dette betyder, at det ikke er i strid med konventionens artikel 4, stk. 6, at kommuner og amtskommuner inddrages i de kommende strukturændringer gennem høring m.v. af de kommunale parter.

#### 3.4. Forlængelse af funktionsperioden for kommunalbestyrelserne i de kommuner, der skal indgå i en sammenlægning

Det har været rejst som et problem i forhold til konventionens artikel 3, stk. 2, at det fremgår af aftalen om en strukturreform, at funktionsperioden for kommunalbestyrelserne i de kommuner, der skal indgå i en sammenlægning, forlænges med et år.

Der er argumenteret for, at medlemmerne af de kommunalbestyrelser, hvis funktionsperiode bliver forlænget, i den forlængede periode (2006) ikke vil være valgt og derfor vil fungere uden folkeligt mandat.

Konventionens artikel 3, stk. 2, har følgende ordlyd: *"Denne ret skal udøves af råd eller forsamlinger, sammensat af medlemmer, som vælges frit ved hemmelig afstemning på grundlag af direkte, lige og almindelig stemmeafgivning og som kan have udøvende organer, der er ansvarlige over for dem. Denne bestemmelse skal ikke på nogen måde begrænse mulighederne for borgermøder, folkeafstemninger eller anden form for direkte borgerdeltagelse, hvor der er adgang hertil ifølge lov."*

I den uddybende rapport er om bestemmelsen anført følgende:

*"The rights of self-government must be exercised by democratically constituted authorities. This principle is in accordance with the importance attached by the Council of Europe to democratic forms of government."*

*This right normally entails a representative assembly with or without executive bodies subordinate thereto, but allowance is also made for the possibility of direct democracy where this is provided for by statute."*



Bestemmelsen indeholder ikke en maksimumgrænse for valgperiodens længde, men forudsætter alene, at de lokale råd sammensættes af medlemmer, som vælges frit ved hemmelig afstemning på grundlag af direkte, lige og almindelig stemmeafgivning.

Det er således ikke i strid med bestemmelsen, at funktionsperioden for kommunalbestyrelserne i de kommuner, der indgår i en sammenlægning, forlænges med et år.

### 3.5. Statslig styring af lokale og regionale forhold

Det har været gjort gældende, at strukturreformen indebærer elementer af statslig styring og indflydelse, der inddrænker kommunernes råderum, og at dette skulle være i strid med konventionens artikel 4, stk. 4.

Konventionens artikel 4, stk. 4, har følgende ordlyd: "*Beføjelser henlagt til lokale myndigheder skal normalt være fulde og udelte. De må ikke forringes eller begrænses af en anden, central eller regional, myndighed, medmindre dette er hjemlet i lovgivningen.*"

Af Europarådets uddybende rapport fremgår om bestemmelsen følgende:

*"This paragraph is concerned with the problem of overlapping responsibilities. In the interest of clarity and for the sake of avoiding any tendency towards a progressive dilution of responsibility, powers should normally be full and exclusive. However, complementary action by different levels of authority is required in certain fields and it is important that in these cases the intervention by central or regional authorities takes place in accordance with clear legislative provisions."*

Det fremgår således, at lokale og regionale myndigheders beføjelser som udgangspunkt skal være fulde og udelte. Dette skyldes særligt hensynet til klarhed i ansvarsfordelingen. Imidlertid anerkendes det, at der på visse områder kan være behov for, at myndighedsniveauer supplerer hinanden. I sådanne tilfælde er det vigtigt, at de centrale eller regionale myndigheders indgriben i forhold til et lavere myndighedsniveau sker i overensstemmelse med klare bestemmelser i lovgivningen.

Bestemmelsen forhindrer således ikke, at regionerne eller staten i visse tilfælde i lovgivningen tillægges funktioner, der har betydning for kommunernes udførelse af deres opgaver.

### 4. Konklusion:

Som beskrevet i dette notat er det ministeriets opfattelse, at aftalen om en strukturreform og udmøntningen heraf ikke vil være i strid med Europarådets konvention om lokalt selvstyre.

**THE CONGRESS  
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**12<sup>th</sup> PLENARY SESSION**

Strasbourg, 3 May 2005

CG (12) 8  
Part II

**TWELFTH SESSION**

(Strasbourg, 31 May – 2 June 2005)

**Local and regional democracy in Denmark**

**Rapporteurs:**

**Kathryn SMITH, United Kingdom  
Chamber of local authorities  
Political Group : SOC**

**Karsten BEHR, Germany  
Chamber of Regions  
Political Group: EPP/CD**

**Roberto RUOCCO, Italy  
Chamber of Regions  
Political Group: NR**

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**EXPLANATORY MEMORANDUM**

## Introduction

1. According to the Article 2.3 of Statutory Resolution (2000) 1 of the Committee of Ministers of Council of Europe, the Congress of Local and Regional Authorities (CLRAE) shall carry out monitoring reports on the situation of local and/or regional democracy in the member states and in states which have applied for membership, on a regular basis. So far, several country reports have been prepared, but none for Denmark. Therefore the CLRAE decided to do so in 2004.

2. To prepare and submit the Danish report to the Congress, Ms. Kathryn Smith (United Kingdom, SOC, L) and Mr. Roberto Ruocco (Italy, NI, R) were appointed as rapporteurs. Mr Karsten Behr (Germany, R, EPP), replaced Mr Ruocco on the second visit to Denmark. In carrying out their task, they were assisted by Mr. Zoltán Szente (a member of the Group of Independent Experts attached to the Institutional Committee of the Congress), Mr. Ivan Volodin and Ms Pilar Morales (Secretariat of Congress). The delegation paid two visits to Denmark, the first was from 2 to 3 September, 2004, and the second visit took place from 29 to 31 March, 2005.

3. During the visits, the Congress delegation met a number of people (for the detailed list see the appendices) discussing not only the present situation of local and regional democracy but the designed reforms of the whole administrative structure of Denmark as well.

4. Our report was prepared on the basis of the information received during the two study visits and put at the disposal of the Congress delegation by the competent authorities of the central government, the members of the relevant parliamentary committee, the national associations of the local and regional self-governments, the representatives of the City Council of Copenhagen, and Frederiksberg, and the representatives of the Municipal Council of Horsholm, Fredensborg-Humlebæk, Birkerød and Værløse, and, finally, the representatives of the Borgerkomite (Citizens Committee) in Fredensborg-Humlebæk.

5. Denmark signed the European Charter of Local Self-Governments among the first signatory member states in 1985 and ratified it in 1988 (thereafter: Charter) declaring that:

- Denmark considers itself bound by the European Charter of Local Self-Governments in its entirety;
- the provisions of the Charter would apply to the Danish municipalities (*kommuner*) as well as to the Danish counties (*amtskommuner*) with the exception of the Metropolitan Council (*Hovedstadsradet*), which was abolished in 1989;
- the Charter would not apply to Greenland and the Faroe Islands.

6. Nevertheless, the Charter has not direct legal effects in Denmark. The Danish legal system is a dualistic one, which means that international treaties and conventions, like the Charter, may have legal force only if a separate act of Parliament transposes it into the domestic law. The ratification of an international convention, like the Charter, in itself is not equivalent to its legal incorporation into the Danish legal system. However, when ratifying the Charter in 1988 the view of the Danish government was that there was no need for any changes or adoption of new legislation in order to fulfil the Charter, since the existing laws of Denmark had been already in full conformity with the principles and requirements of the Charter. Therefore, although the

Danish government has the opinion that the Charter can be directly invoked before and applied by the Danish courts and other authorities, it does not make sense.

7. As to the subject of the present report, Denmark is in a unique situation since a comprehensive reform of the administrative structure of the country is in process. Thus, our report is intended not only to describe the present situation of local and regional democracy in Denmark, but also to set out the most important proposals and directions of the public sector reform examining their compatibility with the fundamental principles and norms of the Charter.

8. Below, the first section of the report deals with the present situation of local and regional democracy in Denmark, describing the constitutional and legislative bases of the local government system, the administrative structure of the country, the division of tasks and powers, the status and organisation, the finance, and the supervision of local authorities, and, finally, the present system of consultation between central and local governments.

9. The second part summarizes the most important changes of the planned administrative reform including the major criticisms our delegation met during the visits.

10. Our conclusions can be found in the last section of the report. This part comprises the results of our assessments on the compliance of the Danish local government system with the principles and requirements of the European Charter of Local Self-Governments and our proposals to be translated into a Congress resolution and a Recommendation to the Committee of Ministers.

## **I. PRESENT SITUATION OF LOCAL AND REGIONAL DEMOCRACY IN DENMARK**

### **1. Constitutional and legislative bases**

11. The principle of local self-government is entrenched in the Danish Constitution of 1953. Section 82 says:

“The right of the municipalities to manage their own affairs independently under the supervision of the State shall be laid down by statute.”

12. It means that in general, local public affairs are to be carried out – within the limits of the law – by the local authorities. The specific rules concerning the internal structure, the finance, and the supervision of local governments are laid down by the Local Government Act of 1968, which has been amended several times. The most recent consolidated act is no 968 of 2 December 2003.

13. There is a separate law on the election of the municipal and county governments. The Local Government Election Act of 2001 regulates the franchise and eligibility, voting system and election applied at local and regional level.

14. The distribution of public responsibilities between the State, regions<sup>1</sup> and local authorities is laid down by several laws of Parliament.

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<sup>1</sup> It is to be noted, that there is a meaningful difference in the Danish administrative terminology between the 'counties' and 'regions'. In Denmark, both the municipal and county governments are to be seen as local authorities. The importance of the distinction between the counties and regions is growing in this period, because one of the

15. As it was indicated above, the present system of local and regional governments is being reformed. In order to implement these considerable changes, 49 bills on the planned reform of the administrative structure were submitted to the Danish Parliament in February 2005, which are expected to be adopted in June 2005.

## **2. Administrative structure of Denmark**

16. In Denmark, a two-level local government system exists. The present administrative structure as well as the distribution of tasks and powers of local and regional self-governments was established by the local government reform of 1970. Before this substantial change of administrative division, which affected also the state administrative counties, the judicial system and the police, there were as many as 1,386 local authorities (86 boroughs and about 1300 parishes) and 25 counties. But since the reform, at the basic level, there have been 275 municipalities, whereas regionally 14 county self-governments have been working. From the first of January 2003 the county of the island Bornholm and the 5 municipalities on the island were merged into one municipality. Since then the number of municipalities in Denmark has been 271 and the number of counties 13. The municipalities of Copenhagen, Frederiksberg and Bornholm (the latter since 2003) have a special status, being municipalities undertaking county tasks as well.

17. The number of inhabitants of the municipalities varies from approximately 2.200 (Municipality of Laesoe) to approximately 501.000 (Municipality of Copenhagen), while the number of inhabitants of the counties varies from about 224.000 (County of Ribe) to approximately 649.000 (County of Aarhus).

18. Both municipalities and counties have "general competence" to act within their administrative boundaries.

## **3. Division of tasks and powers**

19. As in many other European countries, the public sector tasks are divided in Denmark between the state administration and the municipal and county governments. By and large, the classical state administrative functions, like police, defence, the administration of justice, foreign service, certain education services, special training and research, functions related to the asylum procedure, etc. are handled directly by the central government and its regional units. The Danish Constitution refers to municipalities as they are in charge of the management of their own affairs, and the range of responsibilities of local authorities is specified by law.

20. Municipal governments are the basic level local authorities which are the closest to the citizens.

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major changes in the planned reform is to abolish the existing counties and establishing larger regions with different scope of authority.

Nevertheless, in this report, we study the regional democracy of Denmark following the Guidelines of the Institutional Committee of the Council of Europe on the preparation of reports on the situation of Local and Regional Democracy in Council of Europe member States (CG/INST (7) 31 rev 1, Strasbourg, 1 June 2001), and use the concept of 'regions' as it is defined in the draft Charter on Regional Self-Governments.

21. According to the present distribution of tasks and functions, the municipal governments are – among other tasks – responsible for:

- Primary education;
- Child care and care for elderly people;
- Basic health services;
- Employment (particularly organising projects for non-insured unemployed persons);
- Public utilities (water supply, electricity);
- Housing, urban development and planning;
- Environmental protection;
- Some tasks concerning roads and public transport;
- Leisure, sport and cultural facilities;

22. Municipalities have primary responsibility for social welfare and health services, but they also have a key role in tax assessment. The individual functions are specified in a number of laws of the particular sectors providing usually wide ranging discretionary power for local authorities in performing them, although the degree of local freedom is certainly different in the various sectors. The local authorities carry out some state administrative functions related to some tax assessment tasks delegated by the central government directly.

23. The major scope of responsibility of the county councils is as follows:

- Provision of hospitals
- Public health insurance
- Post 16 secondary education
- Social welfare of the disabled
- Regional planning
- Nature conservation and environmental protection
- Highways
- Regional railways
- Public bus services

24. In the division of work between the regional and local governments, counties fulfil those tasks which require a larger number of inhabitants to ensure quality and sustainability in their performance than those tasks which are placed at municipal level. In some cases, county councils co-operate with the central government and municipal councils concerned, for example in regional planning.

25. As it can be seen, the main logic of this division of tasks and duties between the two tiers of local government is that the municipalities are in charge primarily of the social services, primary education, and communal services, while the tasks of the county governments focus on health, secondary education and other services affecting larger territory and population.

#### **4. Status and organisation of local and regional self-governments**

26. The internal organisation of municipal and county self-governments is laid down by the Local Government Act of 1968 as it applies to all the counties as well as municipalities. The main decision-making body of local authorities is the local council (or county council in the regions, respectively). The members of the council are elected every four years directly by the

local (county) citizens. The suffrage and the local government election system are laid down by the Local Government Election Act. According to the Act, every citizen over 18 who is a permanent resident of the municipality (and in a region), is entitled to vote for the municipal (and the county) council concerned. The representatives of the local and county councils are elected for a four-year period based on a proportional system.

27. The number of local representatives in the local councils ranges from 9 to 31. However, in the City of Copenhagen, the council consists of maximum 55 members. The number must be uneven and is decided by the local councils themselves. Generally the number of their members reflects the number of inhabitants of the municipality.

28. Each local council elects its mayor from among its own members. This means that committees are responsible for the preparation and implementation of the council decisions and for the administration of local authority functions. In addition they can make decisions on behalf of the council. The mayor is the chairman of the representative body, as well as the chief executive of the local government. The council passes the annual budget, imposes local taxes, issues by-laws, etc.

29. The executive functions are carried out by committees having primary responsibility for the administration of municipal tasks. While all local authorities have to set up a financial committee, they may establish other standing committees too. The finance committee has extensive powers including the preparation of the draft budget and the administration of the local and county councils' economy and staff. It also functions as planning committee and, as such, co-ordinates both economic and physical planning of the authority.

30. Although this government by committees method of local executive is the usual one, the largest municipalities are allowed instead to establish a system where the administration is managed by a corporate body (magistracy) and run a magistracy, elected by the local council and consisting of the mayor, and so-called "aldermen" representing the political parties. The magistracy performs the same functions as the committees in other local authorities.

31. The organisation of the county councils is quite similar to that of the local councils. The number of members of these councils can according to the law range also from 7 to 31, although each region may decide on the number of its own members. The number must be uneven and is decided by the county councils themselves. The county council is chaired by the mayor, who is elected by the council from amongst its own members. Like the municipalities, the regions can also be characterised by the government-by-committee formula.

## 5. Finance

32. In Denmark, the local governments' share of expenditure in GDP is about 31 per cent, one of the highest all over Europe. If we take their share of total public expenditure, it is clear that the local governments are key actors in public service delivery since they spend as much as 56 per cent of the all government expenditure.

33. Local governments have revenues from their own resources, central support and other sources.

34. The financial resources of local authorities are:

- ♦ local and shared taxes;
- ♦ charges and fees;
- ♦ credits and loans;
- ♦ state reimbursements;
- ♦ general and specific grants.

35. The local government tax revenues amount to about 56 per cent of the total income of municipalities and counties. Local authorities decide each year the percentage of these taxes in their budget.

36. Significant local revenues derive from charges and fees for local services. These rates are paid by the users of services delivered by local government institutions and service providers such as public utilities, transport, day-care facilities, and so on. Local authorities may have revenues from investment incomes, eg. from sales of local government property.

37. Local authorities may get revenues also in an indirect way; that is by receiving money from so-called shared taxes. For instance, they receive a certain share of the company tax which is imposed by the central government, collected by state authorities.

38. For capital spending, local authorities may take out loans and credits, although the amount of loans is restricted by the central government .

39. Municipalities and counties also receive state contributions as reimbursements of certain types of expenditure (eg. in the social area).

40. The high proportion of local tax revenues in the local government income structure provides great autonomy for local authorities. On the other hand, in itself, it preserves the regional differences and the inequalities between the richer and the poorer municipalities, since the tax base is largely different in the various municipalities and regions. According to an assessment of these differences, the tax base per inhabitants of the wealthiest municipality is more than two and a half times higher than that of the poorest. Moreover, the costs of maintaining the same level of services are not the same in all municipalities. Local governments which are in a less beneficial situation have to spend more to provide the same public services than the others. Therefore, a financial equalisation scheme is used for ensuring that the same level of public services is achieved with a more uniform tax rate despite variations in the level of income and in the demographic profile of the municipality. It is said that the equalisation system is to ensure a more uniform relationship between taxes and services. By this mechanism, the central government allocates block grants not earmarked for any specific expenditure.



41. The share of the local government resources shows the following figures:

Share in local government revenues as % of the total (2002)	
<i>Local and shared taxes</i>	56
<i>Charges and fees</i>	26
<i>Reimbursements</i>	8
<i>Loans</i>	1
<i>General grants</i>	10

Share in county government revenues as % of the total (budget 2005)	
<i>Taxes on income</i>	79
<i>Land taxes</i>	10
<i>General grants</i>	9
<i>Other</i>	2

## 6. Supervision of local authorities

42. As we have seen, Section 82 of the Constitution empowers the State to exert supervision over the local authorities. The supervision of local and county governments is exercised by five county governors. These supervisory authorities exercise legal control over local governments, but they cannot investigate the reasonableness or efficiency of the activity of the municipal and county governments.

43. The supervisory bodies have wide ranging powers to check and enforce the legality of local government actions. Among others, they are entitled:

- to annul the illegal decisions of the local authorities;
- to suspend the actions being under consideration;
- to set default fines imposed to force a local council to comply with a binding decision made by an instance of appeal or a sector authority;
- to impose a penalty on the responsible members of the local council which has omitted to implement an act which is in its duty to perform according to law.

44. The Minister of the Interior and Health monitors the five county governors. The local and county authorities may challenge the action of the supervisory body appealing to the Minister of the Interior and Health. Although during our visits we were not given any information about the right of local and county governments to turn to ordinary court against the supervisory actions made either by the county governors, or the Minister, according to the Ministry of the Interior and Health, the local governments have the right to bring any administrative act before a court of law.

45. It is worth noting that special supervisory or appeal boards have been set up in many subject areas to supervise or deal with complaints concerning local authority decisions and performance of their tasks.

## **7. Consultation with local governments**

46. In Denmark, local authorities may freely establish or join associations for representing and promoting their interests. At the moment, there are two national associations of local governments. Local Government Denmark represents the interests of municipal governments, while Danish Regions represents the county governments. Whilst the Municipality of Bornholm holds a membership of both associations, the city councils of Copenhagen and Frederiksberg – on account for their special status – do not belong to any of the associations, but are consulted by the central government in all matters relevant to the local government.

47. Although there is not a uniform and institutionalized procedure for the consultation between the central government and local authorities, the national associations – on an equal basis – are consulted in all matters relevant to the local government interests. Since the local governments have a high share in the total public expenditure, it is of great importance to coordinate between the national economic policy and the financial needs of local authorities. For this purpose, the representatives of the Government (the Minister of the Interior and the Health and the Minister of Finance) and the two national associations conclude an agreement every year on the amount of the central block grant and the level of local taxation. Although the agreement does not have a direct legal force on the individual local authorities, they usually take it into consideration by adjusting their economy to it.

## **II. PLANNED REFORMS**

48. For the past two years, comprehensive preparatory work has been done in order to make proposals on the structural reform of the Danish public administration. In October 2002 the Government appointed a Commission on Administrative Reform with the task of investigating the existing administrative system assessing its strengths and weaknesses and drawing up proposals for the redistribution of the public sector tasks and the new structure of regional and local government.

49. The basic purpose of the reform was to develop the performance of the public sector in such a way that it can meet the requirements of the future, and to improve democracy so that the citizens and the users of public services can be involved more actively in the decisions of public policy. The comprehensive and thorough nature of the reform makes it possible to achieve other objectives and goals too. These official aims are

- to establish a simpler and more efficient public sector;
- to deliver better public services with unchanged tax levels;
- to improve health care service;
- to determine clear responsibility and to eliminate the so-called "grey areas" where the responsibility for service delivery is not clear.

50. As a part of its work, the Commission made an analysis of the current administrative division and distribution of tasks and functions between the central, regional (county) and municipal governments. In doing so, it identified a number of problems and disadvantages in the present functional and structural arrangements. The weaknesses discovered by this body have been attributed partly to the too small size of counties and municipalities, and partly to the ineffective distribution of tasks between the three levels of government. These problems bring

about a lot of negative effects, for example reducing the level of quality of public services, increasing their costs in such important areas like health care, employment, groups with special needs, special education and taxation.

51. The Commission submitted its recommendations to the Government in January 2004 proposing six different models of administrative structure and division of tasks.

52. According to the main conclusion of the Commission a large number of basic level local authorities are too small in proportion to the tasks and duties they have to carry out. These administrative units do not have enough financial and professional capacity to maintain and improve the quality of public services, and they are not able to provide broad options for citizens who are consumers of those services. Furthermore, sustaining the required level of public services needs more expenditure in a number of areas, since the size of local governments is not optimal for co-ordination and service delivery.

53. It is to be noted that the Danish local government system has been for a long time an integrated one having large municipalities from a European comparative view. Nevertheless, the Commission report claims that large municipalities are not less democratic than small or medium-sized local governments.

54. The Government published its own proposals for a new administrative structure and division of tasks between the tiers of government in April, 2004 launching political negotiations with the political parties to get support for it. The result of this process was an Agreement on a Structural Reform between the Government and the Danish People's Party.

55. The Agreement sets out the major changes to be carried out and gives a schedule of how to implement them.

56. According to the Agreement, the administrative structure of Denmark will be changed as follows:

- the existing 13 county governments will be dissolved and replaced by five elected regional governments;
- the aim of restructuring the municipal governments is to establish larger municipalities having at least 20,000 inhabitants (nevertheless, in the Agreement cited above, it is stated that a population of minimum 30,000 inhabitants will be a good aim for establishment of new sustainable local governments);
- those municipalities whose population is less than 20,000:
  - should merge with one or more local governments into municipalities with minimum 20,000 inhabitants;
  - or, if they do not want to be amalgamated with other municipalities, must enter into binding partnerships (consortia) with one or more municipalities.

57. All these changes are adjusted to a renewed allocation of functions between the State, the regional and the municipal level. The larger municipalities and the binding partnerships will expectedly be more powerful entities to perform their tasks enhancing the quality and efficiency of local services.

58. In the new structure, municipalities will be responsible for carrying out most of the welfare services. Their greater capacity makes it possible to confer more responsibilities on them.

Thus, in addition to the tasks and functions carried out by the municipalities at the moment, the new local governments will be capable of undertaking more responsibilities ranging from prevention, care and rehabilitation that do not take place during hospitalisation and social institutions for people in special need to physical planning.

59. It is a general expectation that those relatively small (with less than 20,000 inhabitants) municipalities which are not interested in being merged into a greater local government, cannot provide the same public services of the same quality as the bigger ones. Therefore, they must join a binding partnership with other local authorities which are adjacent to each other in the way that this co-operation should embrace at least 30,000 people to ensure the required sustainability of compulsory public services.

60. The main reason for dismissing the existing county governments and for establishing five new regions is to assign the primary responsibility for health care to a powerful and efficient level of regional government. The newly created regional councils are conceived to be able to run hospitals and the entire national health insurance service. Besides that, they should undertake other functions as well – that the individual municipality is unable to undertake appropriately – like the running of a number of institutions (mainly for groups with special needs). Furthermore, the regions will be responsible for preparation of regional development plans including a general vision for the development of the region within the areas of nature and environment, trade and industry, tourism, employment, education, and culture as well as development in rural districts, and for the establishment of transport companies.

61. The changing administrative structure and division of tasks and functions need a new financial system of local and regional councils. The financial sources of the municipal governments seem to be extended to some items which are currently county revenues, like the county income tax or land tax. The financial equalisation scheme and the method of the state reimbursements will also be changed, though their precise mechanisms have not been determined so far.

62. As for the financial means of the new regions, a difference will be made between the finance of health care services and of other tasks. The large part (approx. 75 per cent) of the health services will derive from block grant allocated by the central government. Another part of revenues will come also from the state in form of specific, activity-related form calculated annually, though its amount will be limited. Finally, the health care expenditure will be covered by the contributions of the municipal governments in the framework of a co-finance of certain services by the regions and municipalities.

63. Maybe the least elaborated part of the reform is the way and method of the enhancement of participatory democracy. The Agreement itself is not very clear in this aspect as it emphasizes the need for further investigation, and contains only very general terms encouraging the strengthening of local democracy through increased citizen participation or greater authority of consumer organisations and boards.

64. The Agreement sets out a schedule on the process for the establishment of the new division of local and regional governments. The new administrative structure will presumably come into effect in January 2007. Since the election period of members of the existing municipal and county governments will expire on 31 December 2005, there will be a gap between the end of the mandate of the old councils and the establishment of the new municipalities involved in the merger, and of the regions. The proposed solution to bridge this gap is that although the

election for the new merged municipalities and for the newly established regions will be held in November 2005, the tenure for the present local and regional councils will be prolonged by statute by one year till the end of 2006. During the overlapping period of the operation of the old and the new councils, the task of the newly elected bodies in 2006 will be to work as integration (in the merged municipalities) or preparation committees (in the new regions) to manage the transition.

65. Noteworthy, during the preparation, the local authorities have been given the opportunity to express their opinion, and they may present their choice whether they want to be merged or prefer joining a binding association. Nonetheless, the opinion of local authorities will not be compulsory, and the final decision on the new administrative division will be made, on the proposal of the Government, by the law of Parliament.

66. During our visit, we met a lot of criticism of the planned reforms. Some of these critics refer to the principles and norms of the European Charter of Local Self-Government asserting that these requirements are not likely to be met after the implementation of the reforms. However, it should also be noted that, over time, a large consensus on the reform seems to have been achieved among local authorities.

67. Some people who were interviewed supposed that the regional changes – ie the replacement of the existing 13 counties by the 5 new regions – would result in a “massive transfer” of responsibilities from the mezo-level of local government to the central government, since the regional councils were intended only to be in charge of health care and certain regional development functions, whilst other tasks would be centralised. Thus, the responsibilities for the secondary education, the environment and the highways will be transferred to central authority. According to this view, this centralisation is not in accordance with the principle of subsidiarity as it is entrenched in the Article 4, Section (3) of the Charter.

68. Moreover, it is to be noted that according to the Danish Government, the new regions will not fall within the scope of the European Charter on local self-government, therefore its requirements cannot be accounted for.

69. Another recurring criticism is that the new regions will not have the right to levy (regional taxes) necessary for ensuring their financial autonomy. The opposing views assume that the compulsory health contribution of the municipal governments, as is designed in the Agreement, will be paid from local tax revenues, thus, although in an indirect way, the new regions will have tax revenues.

70. The method of consultation with the local governments on the administrative reform has also been objected to asserting that in certain cases, the Minister of the Interior and Health failed to take into account the wishes of local authorities concerned.

71. An independent evaluation institute will be set up as from 1 January 2006. The objective of this institute is to systematically follow up on decentralised, public task performance. The evaluation institute will be established by statute under the Ministry of the Interior and Health.

### III. Conclusions

72. In this section, we summarize the consequences of our findings with special regard to the compatibility of the Danish system of local and regional government with the European Charter of Local Self-Government, respecting also the view of Danish central authorities that it might not cover the new regions, unless the Danish government decides otherwise. Our assessment is also partly based on the draft Charter of Regional Self-government which is likely to cover the new regions in the future.

73. Actually, the present situation is quite a curious one, because, as we referred to it above, the Charter cannot be invoked directly before a Danish court or other law enforcing authority, since it has not been incorporated into the Danish domestic law. Nevertheless, its principles and requirements are met in other way, because the existing Danish laws are in harmony with them.

74. Denmark has a long democratic tradition including far-reaching local autonomy and decentralisation. The Constitution recognises the role of local authorities in regulating and managing local public affairs freely and independently in accordance with the requirements of the Charter of Local Self-Government. Although the Constitution refers only to the municipal self-governments, the Local Government Act contains rules also for county governments. The effect of the Charter as Denmark has signed and ratified it extends to the counties as well.

75. The Charter of Local Self-Government defines local self-government as "the right and the ability of local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population". Considering the present distribution of local government tasks and functions, it seems to be a well-established view that the subsidiarity principle of the Charter is followed by balancing it with the requirement of efficiency and economy. As we have seen above, a wide ranging scope of public responsibilities (social, welfare and communal services) is exercised at municipal level, that is close to the citizens, while the boundaries and capacities of the basic level local governments have been, and – see below – will be adjusted to the tenets of economic efficiency and effectiveness, and equal level of public services. The determination of functions of the county self-governments is guided by the regional interest, but they are also regarded as having general competence.

76. At the same time, while municipalities and counties comply with all the elements of the broad definition of local self-government laid down by the Charter, the status of the new regions as it is designed in the administrative reform raises some doubts. As we have seen above, the new regions really seem to be much less multifunctional regional governments than the existing counties are. Nevertheless, neither the Charter, nor the draft Charter on Regional Self-Government specifies which or what kind of functions should be assigned to the regional level of local governments. The crucial point in this aspect is the assessment of the role of the would-be regions. Whereas the present counties have unambiguously general competence at the regional level, the primary function of the new regional councils will be health care. The rest of their future responsibilities will only be secondary or supplementary tasks and duties. Most of them are not full and exclusive functions as is requested by the Article 4, Section (4) of the Charter.

77. For the protection of the boundaries of local governments, the Charter says that "[c]hanges in local authority boundaries shall not be made without prior consultation of the local communities concerned, possibly by means of a referendum where this is permitted by statute".

Although the consultation procedure was criticized by a few local councils and citizens groups, primarily because the Minister of the Interior and Health did not follow the wishes of the municipalities concerned when drawing up the new map of municipal governments, according to our assessment, although there is not an authoritative interpretation of the precise meaning of consultation, it does not include the central government accepting the opinions and wishes of those who are consulted.

78. Another debating point relates to the finance of the new regional councils, since the regions will not have the right to levy taxes. It seems to be in contrast with the Article 9, Section (3) of the Charter which requires that the financial resources of local authorities must derive partly from local taxes prescribing that they must have the power at least to determine the rate of the tax within the limits of statute. The new regions will not have such revenues, which appears to eliminate one of the basic elements of the local self-government.

79. Noteworthy, as we were informed, the new regions' right to establish consortia with other regions or the municipal governments will be strongly restricted which seems to be in contrast with the Article 10, Section (1) of the Charter according to which "[l]ocal authorities shall be entitled, in exercising their powers, to co-operate and, within the framework of the law, to form consortia with other local authorities in order to carry out tasks of common interest."

80. As it was set out above, under the transition period of introducing the new administrative structure, the tenure of the members of the existing municipal and county councils will be prolonged by an extra year. Although it is apparently a technical solution to ensure the smooth transition, during our visits, it was argued by a few, that it is not a democratic measure and is incompatible with the Charter. The relevant provision of the Charter says that the right to local self-government must "be exercised by councils or assemblies composed of members freely elected by secret ballot on the basis of direct, equal, universal suffrage", whereas the explanatory report adds to it that "the rights of self-government must be exercised by democratically constituted authorities". In Denmark, the local and county councillors were elected for a fixed period (4 years), therefore after the expiry of their mandate, the standards of the Charter will not prevail. Nevertheless, the representatives of the new municipal and regional councils will be elected in due time, even if they begin their work only from 1 January, 2007. According to our assessment, the prolongation of the tenure of the present councillors, as an exceptional case, might be accepted regarding the extraordinary situation, its restricted time and the election of the new councils in due time.

81. Certainly, all the possible objections might be avoided if Denmark does not submit the new regional councils to the effect of the Charter, as it seems to. No doubt, the Article 13 of the Charter recognizes that any member state has the right to exclude certain categories of authorities from the scope of the Charter. Nevertheless, the Congress should encourage Denmark not to do so at a time when the Council of Europe specialised bodies are making efforts to gather and extend the "acquis" of the local governance in Europe, and to respect the principles and norms of the Charter as fundamentals of local and regional democracy. From this point of view, it would be the most desirable, if the new regional governments complied with all the standards of the Charter. However, it is also possible for a member state to make exemptions from a few provisions of the Charter, if it cannot or does not want to comply with them. In the latter case, the Danish government could consider to do so concerning the Article 4, Section (4), Article 9, Section (3), and Article 10, Section (1), in order to ensure that also the new regions be covered by the Charter.

## APPENDICES

### Appendix I

#### Programme of the first visit of the Congress monitoring mission to Denmark at 2- 3 September 2004

##### Thursday, 2 September

**9:00 Meeting with Mr. Lars Løkke RASMUSSEN, Minister for Interior and Health**

Participants: Mr. Lars Løkke RASMUSSEN, Minister for Interior and Health  
Mr. Thorkil JUUL, Deputy Permanent Undersecretary of the  
Ministry  
Mr. Hans B. THOMSEN, Deputy Permanent Undersecretary  
Mr. Jann LARSEN, Legal Counsellor, Ministry of Interior and  
Health  
Mrs. Julie ROTHE, Head of Section, Ministry of Interior and Health

**10.30 Meeting with the Chairman Mr. Poul NØDGAARD and members of the  
Parliamentary Committee on Local/Regional Government**

Participants: Mr. Poul NØDGAARD, DF, Chairman of Parliamentary Committee  
Mrs. Marianne PEDERSEN, V, Vice Chairman of the Committee  
Mr. Ole STAVAD, S, Member of Parliamentary Committee  
Mrs. Margrethe VESTAGER, RV, Member of Parliamentary  
Committee  
Mrs. Line BARFOD, EL, Member of Parliamentary Committee  
Mr. Jørgen NIELSEN, Secretary of the Parliamentary Committee

**11:45 Meeting with Mr. Ejgil W. RASMUSSEN, President of Local Government Denmark**

Participants: Mr. Ejgil W. RASMUSSEN, President of Local Government  
Denmark / Mayor of Gedved Municipality,  
Mr. Laust Grove VEJLSTRUP, Vice Chairman of LGDK's International  
Board / Councillor of Sydthy Municipality  
Mr. Erling FRIIS POULSEN, Director, LGDK  
Mrs. Vibeke VINTEN, Head of Division, LGDK  
Mr. Uwe LORENZEN, Head of Division, LGDK  
Mr. Hans Otto JØRGENSEN, Head of Division, LGDK  
Mrs. Helle SEHESTED, Head of Section, LGDK

**13:00 Lunch at Local Government Denmark**

Participants: Mr. Ejgil W. RASMUSSEN, President of Local Government  
Denmark,  
Mr. Laust Grove VEJLSTRUP, Vice Chairman of LGDK's International  
Board  
Mr. Erling FRIIS POULSEN, Director, LGDK



Mrs. Vibeke VINTEN, Head of Division, LGDK  
Mr. Uwe LORENZEN, Head of Division, LGDK  
Mr. Hans Otto JØRGENSEN, Head of Division, LGDK  
Mrs. Helle SEHESTED, Head of Section, LGDK

**14:30 Meeting with Mrs. Bente FROST, Vice Chairman of the City Council of Copenhagen**

Participants: Mrs. Bente FROST, Vice Chairman of the City Council  
Mrs. Kajsa OEST, International Adviser, Municipality of Copenhagen

**15:45 Meeting with Mr. Kristian EBBENSGAARD, President of Danish Regions and Mrs. Vibeke Storm RASMUSSEN, Member of the Board of Danish Regions**

Participants: Mr. Kristian EBBENSGAARD, President of Danish Regions /  
Roskilde Regional Assembly  
Mrs. Vibeke Storm RASMUSSEN, Member of the Board of Danish  
Regions / President of Copenhagen Regional Assembly  
Mr. Ove NISSEN, Director, Danish Regions  
Mrs. Inge HYLDEBRANDT, Assistant Director, Danish Regions  
Mrs. Katrine HAUCHROG, Head of Section, Danish Regions

**16:45 Meeting with the Danish delegation to the Congress**

Participants: Mr. Kristian EBBENSGAARD, President of Danish Regions /  
Roskilde Regional Assembly,  
Mr. Bent HANSEN, President of Viborg Regional Assembly,  
Mr. Orla HAV, President of North Jutland Regional Assembly,  
Mr. Knud ANDERSEN, Member of the Assembly of the Region of  
Bornholm,  
Mr. Laust Grove VEJLSTRUP, Vice Chairman of LGDK's International  
Board  
Mr. Ove NISSEN, Director, Danish Regions  
Mrs. Inge HYLDEBRANDT, Assistant Director, Danish Regions  
Mrs. Katrine HAUCHROG, Head of Section, Danish Regions  
Mr. Erling FRIIS POULSEN, Director, LGDK  
Mr. Uwe LORENZEN, Head of Division, LGDK  
Mrs. Helle SEHESTED, Head of Section, LGDK

**19:00 Dinner hosted by the Danish delegation to the Congress**

Participants: Mr. Kristian EBBENSGAARD, President of Danish Regions /  
Roskilde Regional Assembly,  
Mr. Bent HANSEN, President of Viborg Regional Assembly  
Mr. Knud ANDERSEN, Member of the Assembly of the Region of  
Bornholm,  
Mr. Laust Grove VEJLSTRUP, Vice Chairman of LGDK's International  
Board  
Mrs. Bente FROST, Vice Chairman of the City Council of Copenhagen  
Mr. Ove NISSEN, Director, Danish Regions  
Mrs. Inge HYLDEBRANDT, Assistant Director, Danish Regions

Mrs. Katrine HAUCHROG, Head of Section, Danish Regions  
Mr. Erling FRIIS POULSEN, Director, LGDK  
Mr. Uwe LORENZEN, Head of Division, LGDK  
Mrs. Helle SEHESTED, Head of Section, LGDK  
Mrs. Kajsa OEST, International Advisor, Copenhagen Municipality  
Mr. Jann LARSEN, Legal Counsellor, Ministry of Interior and Health

**Friday, 3 September**

**11:00 Meeting with Mr. Uffe THORND AHL, Mayor of Hørsholm**

Participants: Mr. Uffe THORND AHL, Mayor of Horsholm  
Mr. Poul Erik SØRENSEN, Mayor of Suså Municipality  
Mr. Axel BREDS DORFF, Vice Mayor of Birkerød Municipality  
(by any change)  
Mr. Søren HEMMINGSEN, Secretary for Association of Municipalities  
in Frederiksborg County  
Mr. Jens Jakob JAKOBSEN, Director for Social and Health Affairs,  
Horsholm Municipality

**13:00 Lunch at Horsholm**

Participants: Mr. Uffe THORND AHL, Mayor of Horsholm  
(Other participants to be confirmed)

## Appendix II

### Programme of the second visit of the Congress monitoring mission to Denmark 29 - 31 March 2005

#### Programme

#### **Monday, 28 March**

Afternoon Arrivals and checking in at **Hotel KONG FREDERIK**, Vester Voldgade 25,  
1552 Copenhagen. Phone: +45 33125902

#### **Tuesday, 29 March**

10.00 - 13.00 **Meeting with Mr. Kristian EBBENSGAARD, President of Danish Regions**

*Participants:*

Mr Kristian EBBENSGAARD, President of Danish Regions  
Mr Knud ANDERSEN, Regional councilor in Bornholm Regional Municipality,  
and member of the Board of Danish Regions  
Mr Ove NISSEN, Director, Danish Regions  
Ms Inge HYLDEBRANDT, Assistant Director, Danish Regions  
Ms Katrine HAUCHROG, Head of Section, Danish Regions

*Venue:* Danish Regions, Dampfærgevej 22, 2100 Copenhagen

*Contact:* Assistance Director Mrs Inge Hyldebrandt, phone: +45 35 29 81 69,  
mail: [ih@arf.dk](mailto:ih@arf.dk)

13.00 - 14.00 **Lunch at Danish Regions**

14:00 - 16.30 **Meeting with Mr Johannes FLENSTED-JENSEN, President of Aarhus Region**

*Participants:*

Mr Johannes FLENSTED-JENSEN, President of Aarhus Region, member of the  
board of Danish Regions  
Ms Gunhild HUSUM, Councillor of Aarhus Regions  
Mr Bo JOHANSEN, Director, Aarhus Region  
Mr Ove NISSEN, Director, Danish Regions  
Ms Inge HYLDEBRANDT, Assistant Director, Danish Regions  
Ms Katrine HAUCHROG, Head of Section, Danish Regions

*Venue:* Danish Regions, Dampfærgevej 22, 2100 Copenhagen, phone: 35298100

*Contact:* Assistance Director Mrs Inge Hyldebrandt, phone: +45 35 29 81 69,  
mail: [ih@arf.dk](mailto:ih@arf.dk)

19:00 **Dinner hosted by Danish Regions at Restaurant Søren K., Søren Kierkegaards Plads 1, 1221 København K, phone +45 33 47 49 49**

**Wednesday, 30 March**

8:30 - 10.00 **Meeting with Mr Mads LEBECH, Mayor of The City of Frederiksberg, Chairman of Greater Copenhagen Authority and Head of the Danish CLRAE-delegation**

*Participants:*

Mr Mads LEBECH, Mayor  
Mr Kurt E. CHRISTOFFERSEN, Executive Director  
Ms Sonja NIELSEN, Head of section  
Mr Hans Otto JØRGENSEN, LGDK and member of the Council of Europe Group of Independent Experts

*Venue:* Frederiksberg Kommune, Smallegade 1, 2000 Fredriksberg. Room: Borgmesterkontoret, 1. floor, room 19.

*Contact:* Executive Director Mr Kurt E. Christoffersen

mail: [kommunaldirektoeren@frederiksberg.dk](mailto:kommunaldirektoeren@frederiksberg.dk)

10.30 - 11.30 **Meeting with Mr Laust Grove VEJLSTRUP, Vice-Chairman of LGDK's International Board and member of the Board of LGDK and Mr Niels LARSEN, Mayor of Nørre Alslev and Member of the Danish Delegation to CLRAE**

*Participants:*

Mr Laust Grove VEJLSTRUP, Vice Chairman of LGDK's International Board  
**Mr Niels LARSEN, Mayor of Nørre Alslev and Member of the Danish Delegation to CLRAE**

Mr Hans Otto JØRGENSEN, Head of Division, LGDK  
Ms Vibeke VINTEN, Head of Division, LGDK  
Mr Uwe LORENZEN, Head of Division, LGDK  
Ms Helle SEHESTED, Head of Section, LGDK

*Venue:* Local Government Denmark (LGDK), Weidekampsgade 10, 2300 Copenhagen S. Room 5-02.

*Contact:* Head of Division Mr Uwe Lorenzen, phone: +45 33 70 35 50/  
+ 45 29 74 13 01 (mobil), mail: [uwe@kl.dk](mailto:uwe@kl.dk)

11.30 - 12.00 **Meeting with Mr. Hans Otto JØRGENSEN, Ms. Vibeke VINTEN, Danish experts, members of the Council of Europe Group of Independent Experts; and Mr. Ove Nissen, Director, Danish Regions**

*Participants:*

Mr Hans Otto JØRGENSEN

Ms Vibeke VINTEN  
Mr Ove NISSEN

*Venue:* Local Government Denmark (LGDK), Weidekampsgade 10, 2300  
Copenhagen S. Room 5-02.

*Contact:* Head of Division Mr Uwe Lorenzen, phone: +45 33 70 35 50/  
+ 45 29 74 13 01 (mobil), mail: [uwe@kl.dk](mailto:uwe@kl.dk)

**12:00 - 13.00 Lunch at LGDK**

Walk to Christiansborg Castle.

**14.00 - 15.00 Meeting with Chairperson of the Parliamentary Committee on  
Local/Regional Government**

*Participants:*

Mr Poul NØDGAARD, Chairman of the Committee  
Ms Maiken Borch CLAUSEN, Secretary of the Committee

*Venue:* Christiansborg Castle, Rigsdagsgården

*Contact:* Secretary of the Committee Mrs Maiken Bork Clausen,  
phone: +45 33 37 55 19, mail: [uamabc@ft.dk](mailto:uamabc@ft.dk)

**15.15 - 16.00 Meeting with Mr Lars Løkke RASMUSSEN, Minister of the Interior and  
Health**

*Participants:*

Mr Lars Løkke RASMUSSEN, Minister  
Mr Thorkil JUUL, Deputy Undersecretary  
Mr Christian SCHØNAU, Head of Division  
Ms Julie ROTHE, Head of Section  
Mr Jann LARSEN, Legal Counsellor

*Venue:* Ministry of Interior and Health, Slotsholmsgade 10, 1216 Copenhagen K,

*Contact:* Legal Counsellor Mr Jann Larsen, phone: +45 33 92 60 52, mail:  
[jl@im.dk](mailto:jl@im.dk)

**Thursday, 31 March**

**10.00 - 11.00: Meeting with Mr John HEMMING, Mayor of Fredensborg-Humblebaek  
and members of the Municipal Council**

*Participants:*

Mr John HEMMING, Mayor  
Mr Thomas Lykke PEDERSEN, 1. Deputy Mayor  
Mrs Tinne Borch JACOBSEN, 2. Deputy Mayor  
Mr Flemming KISUM, Head of Secretariat

*Venue:* Rådhuset, Tinghusvej 6, 3480 Fredensborg.

*Contact:* Executive Director Mr Flemming Kisum, phone: +45 48 40 20 08,  
[fki@fhkom.dk](mailto:fki@fhkom.dk)

11.00 – 12.00 Meeting with Mrs Grethe TROENSEGAARD, Secretary of Fredensborg-Humblebaek Citizens' Committee (Borgerkomiteen) and other members of the committee

*Participants:*

Mr Carsten NIELSEN  
Mr Henrik JÜRS  
Ms Grethe TROENSEGAARD  
Mr Poul JUUL  
Mr Christian ELSRUD  
Mr Peter TRAVIS

*Venue:* Radhuset, Tinghusvej 6, 3480 Fredensborg, meeting room no. 2

*Contact:* Mrs Grethe Troensegaard, phone: +45 49 19 42 78  
mail: [Grethe.Troensegaard@mail.tele.dk](mailto:Grethe.Troensegaard@mail.tele.dk)

13.30 – 14.30 **Meeting with Mr Ove ALMINDE, Mayor of Birkerod Municipality, Mr Alex BREDSORFF, 1. Vice Mayor; Mr Jesper BACH, Mayor of Varlose**

*Participants:*

Mr Ove ALMINDE, Mayor of Birkenod Municipality  
Mr Axel BREDSORFF, Vice Mayor of Birkenod Municipality  
Mr Jesper BACH, Mayor of Varlose  
Mr Michael Schroder, CEO

*Venue:*

Radhuset, Stationsvej 36, 3460 Birkerod, room: borgmesterkontoret, phone: +45 45 99 06 00; mail: [raadhus@birkerodkom.dk](mailto:raadhus@birkerodkom.dk)

**Departure from Copenhagen**

### Appendix III

#### Written sources of information

Agreement on a Structural Reform, 2004. The Danish Ministry of the Interior and Health.

Municipalities and Counties in Denmark. Tasks and Finance. Indenrigs- og undhedstministeriet, August, 2002.

The Commission on Administrative Structure. Summary. Recommendation no. 1434. The Commission on Administrative Structure. January, 2004.

Regional Government in Denmark. Amtsrådsforeningen, 2001.

Local Government Act, No. 615 of July 18th 1995.

Local Government Elections Act, No. 263 of April 18th 2001.

Letter of 23 March, 2005 of the Ministry of the Interior and Health.

Memorandum on the enhancement of participatory democracy as part of the structural reform.

Memorandum about the government's agreement with the Danish People's Party on a structural reform in relation to the Council of Europe's Charter of Local Self-Government.

Supervision of municipalities and counties in Denmark.

Translation of correspondents between Danish Regions and the Minister of the Interior and Health concerning the European Convention of Local Self-Government and the Draft Convention of Regional Self-Government

Battrup, Gerd: *The Constitutional Act of Denmark, the Local Government Reform and the Regions*. Manuscript.

**Indenrigs- og Sundhedsministeriet**

Dato: 17. maj 2005  
Kontor: 1.k.kt.  
J.nr.: 2004-2000-8  
Sagsbeh.: jro  
Fil-navn: Lovforslag.indd./Udvalgsbehandling/  
Regionslov K-spørgsmål 41

**Besvarelse af spørgsmål nr. 41 (L 65), som Kommunaludvalget har stillet til indenrigs- og sundhedsministeren den 26. april 2005**

**Spørgsmål 41:**

"Under henvisning til oplysninger i pressen om, at der nu foreligger et udkast til rapport fra Europarådets Kommunalkongres delegation, der senest har besøgt Danmark i april i år, bedes ministeren oversende en kopi til udvalget med ministerens kommentar og om muligt, hvis rapporten kun foreligger på engelsk et kort resume af konklusionerne på dansk."

**Svar:**

1. Det seneste rapportudkast er godkendt af Kommunalkongressens Institutionelle Komité den 15. april 2005 og skal drøftes på Kommunalkongressens Plenarforsamling den 1. juni 2005.

Rapportudkastet, der er tilgængeligt på Europarådets hjemmeside ([www.coe.int](http://www.coe.int)), vedlægges.

Rapportudkastet indeholder en beskrivelse af de nuværende forhold vedrørende fordelingen af opgaver i den offentlige sektor i Danmark og om styrelse, finansiering m.v. af kommuner og amtskommuner, jf. rapportudkastets pkt. 11 - 47. Sammenholdt med Europarådets konvention om lokalt selvstyre vurderes forholdene generelt som tilfredsstillende, idet det bl.a. fremhæves, at der i Danmark er stærk tradition for demokrati, decentralisering og udstrakt grad af lokalt selvstyre, jf. rapportudkastets pkt. 74 - 76.

Endvidere indeholder udkastet en beskrivelse af kommunalreformen og aspekter af reformen i relation til den nævnte konvention, jf. rapportudkastets pkt. 48 - 71. Det fremhæves i den forbindelse, at kommunalbestyrelserne har været inddraget i processen omkring den nye kommunale inddeling og haft lejlighed til at fremkomme med ønsker om et fremtidigt kommunalt tilhørsforhold, og at konventionen om lokalt selvstyre ikke giver regeringen pligt til at imødekomme kommunalbestyrelsernes ønsker, jf. rapportudkastets pkt. 77.

I udkastet fremhæves de kommende regioners status i relation til konventionen om lokalt selvstyre som kontroversiel, idet regionerne får begrænsede opgaver og ikke får ret til skatteudskrivning. Desuden bemærkes det i udkastet, at regionernes adgang til at indgå samarbejde med andre regioner



eller med kommunerne er begrænsede, jf. i det hele rapportudkastets pkt. 76, 78 og 79. Det konkluderes i den forbindelse, at problemer i forhold til Europarådets konvention om lokalt selvstyre kan undgås, hvis det besluttes, at regionerne ikke skal være omfattet af konventionen, der efter sin ordlyd omhandler "lokale myndigheder", jf. rapportudkastets pkt. 81.

Monitorerne opfordrer til, at regionerne bliver omfattet af Europarådets konvention om lokalt selvstyre – helst alle konventionens bestemmelser, men om nødvendigt med undtagelse af visse bestemmelser. Der henvises i den forbindelse til Europarådets bestræbelser på i Europa generelt at udvide anvendelsesområdet for reglerne om lokalt selvstyre, jf. rapportudkastets pkt. 81.

2. Som tilkendegivet i ministeriets notat om forholdet mellem regeringens aftale med Dansk Folkeparti om en strukturreform og Europarådets konvention om lokalt selvstyre, som Indenrigs- og Sundhedsministeriet den 5. oktober 2004 har sendt til Kommunaludvalget (alm. del – bilag 6), og som ministeriet kan henholde sig til, er det Indenrigs- og Sundhedsministeriets opfattelse, at aftalen om en strukturreform og udmøntningen heraf ikke vil være i strid med Europarådets konvention om lokalt selvstyre.

I rapportudkastet anerkender monitorerne, at problemer i forhold til Europarådets konvention om lokalt selvstyre kan undgås, hvis det besluttes, at regionerne ikke skal være omfattet af konventionen, der efter sin ordlyd omhandler "lokale myndigheder". I rapportudkastet anerkendes således regeringens synspunkt om, at konventionen ikke omfatter de kommende regioner, med mindre regeringen træffer beslutning herom.

Det bemærkes, at monitorernes opfordring til, at regionerne bliver omfattet af Europarådets konvention om lokalt selvstyre, efter Indenrigs- og Sundhedsministeriets opfattelse er politisk og ikke juridisk. Regeringen vil efter lovforslagernes vedtagelse tage stilling til, om regeringen skal træffe beslutning om, at regionerne bliver omfattet af konventionen.

Det bemærkes endvidere, at ministeriet til Kommunalkongressen har fremsendt bemærkninger til rapportudkastet, og at ministeriets bemærkninger kun til dels er indarbejdet.

Ministeriet har således en række faktuelle bemærkninger, der kun til dels er indarbejdet, til rapportudkastets beskrivelse af bl.a. det kommunale styrelsessystem og adgangen til ved de danske domstole at påberåbe sig internationale konventioner. Ministeriet har desuden haft bemærkninger, der kun til dels er indarbejdet, til rapportudkastets gengivelse af regeringens holdning til spørgsmålet om, hvorvidt konventionen om lokalt selvstyre skal omfatte de kommende regioner. Ministeriet har endvidere argumenteret for, at de kommende regioner efter ministeriets opfattelse - såfremt regeringen beslutter, at regionerne bliver omfattet af konventionen - i givet fald vil være i overensstemmelse med konventionen om lokalt selvstyre.

Ministeriet har desuden gjort Kongressen opmærksom på den proces vedrørende styrkelse af nærdemokrati, som regeringen har igangsat.