

The Status of Metropolises in France

Guillaume Protière^{*}

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Since the 1960s, a policy has been undertaken to promote balanced metropolises in order to foster the emergence of regional metropolises. The Law of 2010 created metropolises to enable the most important urban areas to enter into worldwide city competition. They have been given a number of competences transferred to them from the local authorities (communes, departments and regions) on the territory of which the metropolis is located. This questions the organization of the whole French local system. However, both the status of metropolises and their legal regime (competences and financial regime) do not guarantee the reform success.

Key words: local self-government – France, worldwide city competition, urban areas, metropolitanisation policy, metropolises

^{*} Guillaume Protière, PhD, Associate Professor of Public Law at the University of Lyon 2, France (izvanredni profesor javnog prava na Sveučilištu Lyon 2, Francuska, e-mail: g_protiere@hotmail.com)

»France does not have enough big cities and is sorry for it.«

(Pierre Mauroy)

1. Introduction

Both the context of globalisation and the recent efforts to make local administration more efficient have shown how costly the weakness of French cities has been. Even if this statement must be made more precise, to take into account the entire urban architecture (Perben, 2008: 30), it should be noted that, Paris being the sole exception, no other French city is ranked among the thirteen major European metropolises (Perben, 2008: 30). There are two main reasons that could perhaps warrant this situation. Firstly, the French historical centralisation has hampered the development of provincial urban poles and has strengthened the Centre, resulting in the concentration of political, social and economic functions close to the seats of power. Secondly, the combination of a very strong fragmentation of French cities and of the principle of statutory uniformity of communes has additionally hindered the emergence of big cities. With the very rare exceptions of Paris, Lyon and Marseille,¹ large cities (such as Lille, Toulouse, Bordeaux or Nice) are governed by the very same status as the other communes (Prétot, 1991: 108). »By preventing the city from becoming something else than a town or a sum of communes, the legal organisation interferes with its development. Not only has it imprisoned the city into backward administrative divisions, it is also still delaying the institutionalisation of the functional territories that urban practices generate« (Caillosse, 1995: 89).

This phenomenon has prompted public authorities into (re)acting. As far back as in the 1960s,² a policy was undertaken to promote balanced metropolises in order to foster the emergence of regional metropolises. In the wake of this policy, Paris was given a special status³ and the first »urban communities«⁴ (*communautés urbaines*) were implemented to solve »the urgent issue of the status of the large clustering of 'multi-towns' in the

¹ L. n° 82-1169 of 31 December 1982, JORF, December 29, 1982, p. 3914.

² Article 89 of the Constitution of 27 October 1946 allowed the possibility of working rules specific to »big cities«. Nevertheless, it was disregarded.

³ L. n° 64-707 of 10 July 1964, JORF, 12 July 1964, p. 6204.

⁴ L. n° 66-1069 of 31 December 1966, JORF, 4 January 1967, p. 99.

French province« (Colard, 1967: 449). More recently, the legislator has developed other statuses for towns (Jegouzo, 1992: 101), beginning with the creation of the »communities of city« (*communautés de ville*),⁵ which turned out to be a complete disaster, and continuing with the »communities of agglomeration« (*communautés d'agglomération*).⁶ Despite the failure of the communities of city, those devices have enabled the creation of a strong network of medium-sized cities and of regional metropolises. Yet, those medium-sized cities and regional agglomerations remain too weak to allow the French cities to weigh down on the European and worldwide competition in which large metropolises are engaged today. In response to these new problems, the law reforming the local authorities⁷ is set to create a new institutional framework suited to the most important urban areas: the *metropolises*.

This new public body organizing the cooperation of local authorities⁸ is the result of several years' discussion. The Balladur Committee for the reform of local authorities has advocated the creation of eleven metropolises (Balladur, 2009: 78–82), constituting a completely new category of local government with rather wide competences, transferred from the communes and other local authorities (mainly departments). For its part, the Interministerial Delegation for land settlement and regional competitiveness⁹ has recommended the creation of twelve metropolises or »metropolitan areas«. The Act that came into force on 16 December 2010 endorsed those propositions by »recognising the institutional specificity of our large agglomerations«¹⁰ that are given an *ad hoc* status: »the metropolis is a public body combining together several towns that are associated within a space of solidarity to draft and build together an economic, ecological, educational, cultural and social land settlement and development projects so as to improve competitiveness and cohesion« (Art. L. 5217–1 of the General Code on Local Authorities,¹¹ GCLA).

⁵ L. of orientation n° 92–125 of 6 February 1992, JORF, n° 33, 8 February 1992, p. 2064.

⁶ L. n° 99–586 of 12 July 1999, JORF, 13 July 1999, p. 10361.

⁷ L. n° 2010–1563 of 16 December 2010, JORF, n° 292, 17 December 2010, p. 22146.

⁸ Établissement public de coopération intercommunale (EPCI).

⁹ Délégation interministérielle à l'aménagement et à la compétitivité des territoires (DIACT).

¹⁰ Presentation of the purposes of the Bill reforming the local authorities, <http://www.senat.fr/leg/pjl09-060.pdf>

¹¹ Code general des collectivités territoriales (CGCT).

The metropolis, as an urban territorial public body, has been given numerous competences transferred to it from the local authorities (communes, department and region) existing on the territory where the metropolis is located. As a result, its interest goes beyond the sole finalization of the communal cooperation map and questions the organization of the whole French local system. Indeed, the metropolis introduces a series of settlements that should result in the rewriting – at least partial – of the range of competences of the whole territorial framework. However, the actual thrust that has been produced by those urban poles remains quite uncertain. Indeed, its ability to reshape the French local system is conditioned by the general principles the government adopted in order to design and implement the reform. Even though those general principles are thought to guarantee the general coherence of the local government reform, they seem to hang over the metropolises in a way that appears to be incompatible with the purpose of their creation. Both the status of metropolises and their legal regime (competences and financial regime) reveal these uncertainties.

A public body designed for urban areas, the metropolis has made but limited changes in the French local system.

2. The Metropolis, a Public Body Designed for Urban Areas

Designed as a means for French cities to gain European and international weight, the metropolis confirms the specific nature of urban areas, renewing the apprehension of the city in the French law. Yet, it is worth noting that, once again, the metropolis has been severed from the status of local authorities, the government having explicitly refused to give it.

2.1. Functional Recognition of the Specificity of Urban Spaces

The metropolis was created to make up for two flaws in the French territorial organization. »On the one hand, the French territorial organization has not sufficiently taken into account the growing success of the ‘urban fact’ and on the other hand, there has continuously been an increased competition between large European or international metropolises«. ¹²

¹² Impact assessment attached to the Bill reforming the local authorities, p. 36.

Beyond the short-term motives, the institutional recognition of the »urban fact« by the French legislator results from systematic considerations and from a constant: in France, the city is still a »minor space« neutralized by law (Caillousse, 1995: 89). Because metropolises are intended to change this situation, they aim at taking the legal policy of city organization a step further in order to not only take into account but also to allow the development of the »urban fact«. To achieve this, it has appeared necessary to discard the already existing statuses (communes, communities of agglomeration and urban communities) ill-fitting to the new forms of urban organization.

This is why the metropolis has originally been conceived as a step beyond previous urban forms,¹³ from which it differs due to its specific functions. The different works of Dominique Perben, of the Balladur Committee, and of the Interministerial delegation for land settlement and regional competitiveness have offered a series of criteria allowing to enhance the peculiarity (and consequently the interest) of the metropolis: more than a minimal-sized urban area, the metropolis exercises a variety of functions (Perben, 2008: 21; Balladur, 2009: 78; D.I.A.C.T., 2009: 30). According to Perben, »four notions are used to [identify a metropolis]: 1- the density, the diversity and the diversification of the populations and of the activities ...; 2- the networks ...; 3- the power and the attractiveness ...; 4- the irreversibility: contrary to the city, the metropolis, thanks to its diversity and its power, is able to meet the different requirements that its development and constraints impose on it« (Perben, 2008: 21–22). The Interministerial Delegation for land settlement and regional competitiveness, for its part, conveys a similar idea: »to be constituted, the metropolis will need to meet [beside the demographic criterion] a set of requirements and facilities in order to be internationally competent in part of or in all of the following fields of activities: economy, ecology, sciences, technology, tourism, culture, and leisure. As a brand new institutional and project-conveying territory, the metropolitan community would define and implement a territorial strategy« (D.I.A.C.T., 2009: 30–31). The metropolis is thus more than an agglomeration; it is a specific form of urban area whose identification goes beyond the sole demographic criteria.

The Law has thus chosen two criteria to identify the metropolis: the population and the metropolitan project. However, the demographic criterion

¹³ See the intervention of the Secretary of the Rural Space during the second meeting of the National Assembly on 28 May 2010.

is the main one: urban areas located outside Île-de-France and consisting of more than 500,000 inhabitants in the same spot¹⁴ will be able to constitute themselves as a metropolis. This threshold is the result of a heated debate where hesitation prevailed over the minimum level of population to be chosen to differentiate it from the one necessary to constitute an urban community. The discussion about the threshold of minimum population to create a metropolis was characterized by the opposition between those who advocated a high number (600,000 or even a million inhabitants) and those who considered that too high a threshold would not allow the constitution of a sufficient number of metropolises and favoured a lower threshold (450,000 – 500,000 inhabitants). Because the Government wanted a threshold allowing for the creation of a dozen metropolises, the latter won. This resulted in lining up the level of population of metropolises on that of urban communities. For fear the 1992 precedent¹⁵ would repeat itself, the population required for the creation of an urban community has been lowered to 450,000 inhabitants; yet the difference between the two is not significant enough to enable the metropolis to be clearly different from the urban community. The second criterion chosen by the legislator confirms this impression. The metropolises constitute »a space of solidarity [conceived] to draft and build together an economic, ecological, educational, cultural and social land settlement and development project so as to improve competitiveness and cohesion« (art. L. 5217–1 GCLA), while the urban community is defined as »a space of solidarity, [conceived] to draft and build ... a common project of urban development and land settlement« (art. L. 5215–1 GCLA). Regarding those two definitions, the peculiarity of the metropolis does not appear really significant. From an optimistic point of view, it can be said that the number of details used to define the metropolitan project emphasizes the scarcity of details regarding the urban communities, but the difference is solely formal and nothing in the definition really distinguishes metropolises from urban communities.

The legislator is thus undertaking to implement a policy of metropolisation without bothering to specify the peculiarities of the urban land-

¹⁴ However, an exception is admitted in favor of some »communities of agglomeration« that were created before 1st January 2000 on the basis of a derogatory provision of the 12 July 1999 Act.

¹⁵ The similarity of thresholds necessary for the creation of a community of city or an urban community has turned out to be unfavorable to the newest public body (i.e. the community of city).

scape he is trying to foster, and which justify a great deal of competences granted to these structures. The legislator's lack of imagination should regrettably be noted since other countries have shown that the definition of metropolitan areas based on socio-economic criterion¹⁶ is possible. Actually, the true peculiarity of metropolises should be visible through the competences the legislator intends to transfer to them, since they are to monopolize »the structuring competences on their territory«. ¹⁷ However, this is fuelling the discrepancies between the city and its legal representation, since the same social reality can equally be managed through two legal concepts without any clear and indisputable criterion of distinction. One of the explanations for this is that the legislator may want to give leeway to the executive to implement the law. However, this freedom is shocking for two reasons. First, from a methodological point of view, it reveals the legislator's inability to actually define the specificity of the metropolis. Secondly, from a normative point of view, the legislator is in charge of implementing the autonomy of local authorities, which will definitely be challenged by the creation of different metropolises (even if the Constitution Council has not adopted this point of view). ¹⁸ The purpose of the Law is thus less to design a better definition of the city than to advocate a new land settlement paradigm that does not clash with the already existing inter-communal policy. In that sense, refusing to grant the metropolis the status of a local authority is a logical choice.

2.2. The Refusal to Grant the Status of a Local Authority to the Metropolis

Since the reform »aims at redrawing the administrative divisions of the entire territory of the State« (Marcou, 2010: 357), the creation of new structures requires their status to be defined. Much to our disappointment, the legislator has decided not to grant the metropolis the status of a new local authority. Since they are part of the process of rationaliza-

¹⁶ In Slovenia, the status of urban municipality is thus given to municipalities whose population is over 20,000 inhabitants and that gather more than 15,000 jobs in the third and fourth sectors, if they are the center of a geographic, economic and cultural area organized around them.

¹⁷ Impact assessment, op. cit., p. 36.

¹⁸ Constitutional Council, decision n° 2010–618 D.C. of 9 December 2010, reasons aduced 48–51.

tion of inter-communal cooperation's map (Verpeaux, 2009: 410–411), metropolises are public bodies. However, both the report of the Balladur Committee (Balladur, 2009: 78) and the one penned by the Mission of information presided by deputy Jean-Luc Warsmann (Quentin & Urvoas, 2008: 111) suggested to set them up as local authorities. The Law adopted on 16 December 2010 did not include these propositions. As explained by the rapporteur of the Legislative Commission at the National Assembly, Dominique Perben, this choice was supported by two series of motives – legal and political (Perben, 2010: 38). From a legal standpoint, even if the creation of a new category of local authority was possible based on Article 72 of the Constitution, it would be at odds with the interdiction for a local authority to be under the supervision of another one (Marcou, 2010a: 59; Douence, 2011: 263). From a political standpoint, the upper-tier local authorities, more particularly departments, feared the competition of too powerful metropolises.¹⁹ However, it has turned out that »after a careful reading of the Law, this fear is not grounded since there are numerous prerogatives that the departments and regions continue to enjoy« (Perben, 2010: 38). The Government conveys the impression that it aims at settling the territory (*i.e.* at giving itself new means of action to foster its development) without formally challenging the structure of decentralization. From that perspective, the fact that the metropolis has been given the status of a public body is leeway that saves up appearances. Several provisions of the text convey the idea that, in spite of all the prudence expressed by the Government, the previous argument is the most fundamental to understand the reform and its thrust. Firstly, the Government has refused the authoritative creation of metropolises by the law advocated by the Balladur Committee after the model of the first urban communities (Balladur, 2009: 79). Secondly, the metropolitan area is established on the basis of common articles set forth to create the other public bodies of inter-communal cooperation (art. L. 5217–2 GCLA), with one exception: the prefect cannot initiate the creation of a metropolis, the initiative belonging to the local councils located on the territory.²⁰ Notwithstanding this, the prefect is the one that, after talks with the local councils concerned, sets the size of the metropolis. The prefect is thus a

¹⁹ For example: »The metropolis is an attack against communes and departments«, Pierre Gosnat (Communist Party), Second session of 28 May 2010, National Assembly.

²⁰ A provision validated by the Constitutional council, decision n° 2010–618 D.C. of 9 December 2010, reasons adduced 43–47.

key in the world of local authorities and accounts for the large power of the State over entities created by decree (art. L. 5217–2 GCLA).²¹

Actually, the philosophy and implementation of the policy of metropolises are not far away from those of the urban communities in 1966, only the method (the first four urban communities were created by the law), the aim (challenging globalization instead of fighting the French desertification) and the scale (promoting continental and worldwide metropolises instead of solely regional ones) has changed. The *modus operandi* is overall quite identical. Such a similarity can seem surprising since the French Republic is now decentralized (see the first article of the French Constitution introduced in 2003). This change of context probably accounts for the care taken by the Government to place the reform in the path of the previous framework. Despite this, the State is still recycling ideas related to centralization to implement the reform of local authorities, revealing at the same time a widening gap between the policy of land settlement and that of decentralization. Elected local officials, eager to preserve the continuity of the former, could very well be reluctant to endorse the latter, jeopardizing the success of the policy of metropolises.

Along with the specific status of metropolises, two sets of provisions question whether the refusal to grant metropolises the status of local authority units is coherent. Indeed, the Law indicates that, just like all public bodies of inter-communal cooperation with a specific tax status, the metropolitan deliberative organ will be elected through direct voting (the communal and inter-communal elections being paired, art. L. 5211–6 GCLA). The direct voting should bring about a double evolution bringing closer the way metropolises and local authorities function (Wolff, 2011: 1120). For one, the voting method should foster the autonomy of metropolitan organs in comparison with the communes. If, at first glance, the pairing of elections seems justified as a way to preserve the communes, it should not be long before a complete turnaround in the situation. As a matter of fact, based on the voting method exemplified in Paris, Lyon and Marseille, one can see how the political and democratic importance depends on the competences these cities exercise and on the means they have. The metropolis, by receiving the main communal competences, should soon become the true decision-making centre, dealing with political and democratic issues. A new organic logic, in favour of the metropolis, which

²¹ For example, the Metropolis of Nice Côte d'Azur was created by a Decree of 17 October 2011, JORF 18 October 2011, p. 17 548.

will modify the local political space, should be introduced progressively. Secondly, a limited introduction of the notion of metropolitan interest²² (Art. L. 5217–4 GCLA) should not substantially modify this equilibrium, contrary to what its advocates²³ were anticipating. Its very indeterminacy allows for actual political leeway (Caillosse, 2009: 140) that should help to qualify the principles of specialty and exclusivity of the metropolis (Montain-Domenach, 2009: 95). If it were not understood as a variation of the general clause of competence, its ambiguities (Monjal, 2003: 1705; Caillosse, 2009: 134) could very well favour the alignment of metropolises and local authorities even more.

Finally, the two chosen criteria are definitely bringing together the metropolis and the local authorities. One could regret the legislator's refusal to deal with those issues as soon as the device was introduced, instead of postponing the question of the nature of the most integrated public bodies of inter-communal cooperation and artificially maintaining the *status quo*. The representation of territories, particularly the urban ones, would benefit from this effort of clarification. Otherwise, it leaves an impression of hypocrisy that is at odds with the legitimacy and credibility of the reform and of the organs that initiated it. The ambiguities that have been spotted in the definition of the status of metropolis reflect on its legal regime, including both its competences and its finances.

3. The Metropolis, a Limited Change of the French Local System

Conceived as a structuring pillar (D.I.A.C.T., 2009: 33–37), the metropolis should be exercising the main competences on its territory in order to implement the conditions of its development. By organizing an unprecedented degree of interaction of an inter-communal public body, the

²² As the other territorial public bodies with fiscal competences (for example, Art. L. 5216–5 GCLA for the community of agglomeration or Art. L. 5215–20 GCLA for the urban community), the metropolis has to define its metropolitan interest, i.e. to define the repartition of some competences between itself and its members. For the metropolis, only the competence of »building, developing, maintaining and functioning of cultural, socio-cultural, socio-educational and sports facilities« is dependent on the determination of metropolitan interest. All the other competences are thus automatically exercised.

²³ See the debate regarding Article 5 of the Bill adopted by the Senate on 4 February 2010, Meeting on 2 February 2011.

metropolis raises a completely new question of its articulation with the higher-ranking local authorities (departments and regions). There is the risk of competing with the local authorities. However, this impression is tempered by the observation of a limited financial resources and tax weakness of the metropolis.

3.1. A Centre of Competences Competing with Local Authorities

»The metropolis will enable the concentration of structuring competences, whether local, departmental, or regional, at the same local level, in order to avoid fragmentation of the interests on the metropolitan territory«. ²⁴ The originality of the metropolitan institution stems from its benefiting from the competences of the communes participating in the metropolis, as well as from those of the local authorities above. Thus, going further than before, ²⁵ it gives additional weight to inter-communal cooperation. However, this does not mean that the metropolis is drifting away from the bases and the philosophy of inter-communal cooperation, quite the contrary. By trying to »implement the most essential and most sensitive urban functions at the most relevant inter-communal scale possible to realize genuine synergies« (Muller-Quoy, 2000: 201), it is not clashing with its precursors. The metropolitan public body simply gets larger manoeuvring space to carry out its functions. This can be seen at two levels, that of the communes participating in the metropolis, and at the level of upper local authorities.

Compared to the communes participating in the metropolis, the status of the metropolis appears to be hybrid, difficult to calibrate, because the desire to promote tightly integrated bodies is blocked by the necessity to preserve the communes. It should be noted that, on certain aspects at least, the adopted Law is not going as far as the bill presented by the Government (itself less daring than the contributions of the Parliament and doctrine). A core of competences, built by analogy with the attributions exercised by urban communities, has nevertheless been granted to

²⁴ Impact assessment, op. cit., p. 36.

²⁵ Even though since the 5 March 2007 Act on the Prevention of Petty Crime (JORF 7 March 2007, p. 4297), urban communities can »agree by convention with the department ... to exercise on its behalf all or part of its competences« in the field of social services (Art. L. 5215–20, III GCLA).

metropolises. Article L. 5217–4, I (GCLA) is reproducing, *mutatis mutandis*, the six major sets of competences of urban communities mentioned in Article L. 5215–20 (GCLA): economic, social and cultural development; management of the metropolitan area; local housing policy; urban social development policy; management of services of general interest; and environment protection policy and everyday life policy. Moreover, just like the other presidents of public bodies of inter-communal cooperation with specific tax status, the president of the metropolis is given more powers in terms of administrative police at the expense of the mayors (Art. L. 5211–9–2 GCLA). However, his/her competences are thus not different from those of the other inter-communal heads of the executive. As a consequence, the metropolis is not significantly original with regard to the communal competences it has been granted.

The true thrust of the »metropolis« device actually comes from its harvest of certain powers of higher-ranking local authorities (departments, regions) and of the Government. The transfers of competences from those authorities can be done in two different fashions: they can be carried out forthwith (they then come with »the concomitant transfer of the services, staff and goods necessary to exercise these competences«) (Douence, 2011: 263) or conventionally.

In the first case, metropolises are entrusted, in lieu of the department, with the competences of school transportation, of the maintenance of public roads belonging to department's domain, and with the competences »related to areas of activities and to the promotion of the territory and its economic activities abroad« (Art. L. 5217–4, II (GCLA). They are also entrusted with the regional competences »related to the promotion of the territory and of its economic activities abroad« (same Article, III). Nevertheless, the Law is a step back in comparison with what the Balladur Committee or the Warsmann Mission advocated. The former suggested that metropolises »exercise, through stipulations of the law that would institute them, the entirety of the departmental competences (social and community health care, secondary schools, environment ...)« (Balladur, 2009: 79), while the latter reached a similar conclusion by putting forward the merger of the general council and the urban public body (Quentin & Urvoas, 2008: 111). The Government could not choose such a solution given that it would obviously be in discrepancy with the existing territorial frameworks. Yet, delegating all the departmental competences to the metropolis on its territory would unavoidably require »a division of the existing departments into two entities, with the metropolitan authority with a specific status on the one hand, and the rest of the department left on

its own on the other» (Balladur, 2009: 79). By refusing to transform the metropolises into local authorities and simultaneously to modify the existing ones, the reform is bound to limit the departmental transfers. Regarding this issue, one should bear in mind that the competences transferred *ipso jure* have to do with how the metropolis organizes its own territory whereas the urban competences (in the sense of *urbanity*) remain in departmental hands. Thus, the metropolis, conceived as a functional space, is struggling to become the actual legal embodiment of the city.

Transfers of competences can also be made through the means of a convention that would be negotiated between the metropolis and the local authority in order to determine the conditions necessary for those transfers to be carried out. In this case, the metropolis would be able to request the department to agree with a convention stating the metropolis would exercise the department's competences concerning social security (the transfer can be either full or partial), construction, development, maintenance and management of secondary schools, economic development (full or partial transfer), tourism, culture and sports. If they are all carried out, those transfers are very likely to deprive the department of an actual meaning on the metropolitan territory (Perrin, 2010: 72), while the departmental council will still be predominantly made up of members coming from the metropolis. In that sense, the decoupling between the departmental council members and the exercised competences leads to a situation where the metropolitan elected members not only still deliberate on departmental public utilities even though they are not related to their constituencies, but also still »vote for a budget a great part of which is used for the metropolitan budget, pursuant to the terms of the convention negotiated between the two public authorities ... All the conditions are [thus] met for the department to become the colony of the metropolis!« (Douence, 2011: 261). The metropolis can also ask the region to entrust it with the construction, development, maintenance and functioning of high schools and all or part of the regional competences concerning economic development. Finally, the metropolis can ask the Government to transfer to it the ownership, maintenance and management of big facilities.²⁶ The competences that can potentially be transferred to metropolises are thus multiple and quite varied. However, since the metropolis cannot impose its will, the possibility of negotiation could turn out to be disadvantageous to it, since the local authorities, and especially the regional ones,

²⁶ »Those transfers are done for free and shall not be done in exchange for any indemnity, right, tax, salary or fee«.

»are either [able] to decline the metropolitan plea for competence, or ... to negotiate a convention for a very limited transfer« (Deschamps, 2011: 1135). The power of metropolises is far from being certain.

The parliamentary debates about competence transfers add to this impression of uncertainty regarding the roles and functions given to metropolises. The criticisms are pointed at two competences that shed light on how difficult it is to overcome the *status quo*. Thus, the transfer of the department's social competence raised questions on whether it was relevant. The criticisms that invoke the discrepancy between the general direction given regarding the competences of metropolises and the field of social action (Krattinger & Gourault, 2009: 32) have led to set aside the automatic aspect of the transfer to metropolises, since social competence is only optional for the metropolis. Beyond the arguments on the appropriateness of such a transfer, it is unquestionably hampered by the Government's refusal to challenge the existing territorial framework – the metropolis is indeed substantially challenging the mere existence of the department. Similar doubts are cast regarding the transfer of economic competences to metropolises. These are leading to the principled limited transfer, since only some of the economic competences are granted automatically, while metropolises have to negotiate further transfers with the department and the region. This is actually very unlikely to happen. Indeed, the division of economic competences raises the question of the role given to the metropolis within the regional territory. Is it necessary to make the metropolis a distinctive and particular centre of development by granting it all the economic competences – and thus risk excluding it from the rest of the regional territory? Or should it be integrated into the regional politics that would guarantee the development and planning of the territory on a larger scale? The division chosen by the Law clearly favours the second option, given that the metropolises are intended as the driving force of a bigger territory rather than for their own sake. This seems to find a confirmation in their »[automatic] association to the drafting, revision and modification of planning schemes and documents in the field of development, transportation and environment ... when those schemes and documents have a consequence or impact on the territory of the metropolis« (Art. L. 5217–4, IV GCLA).

In the reform spirit, the metropolis constitutes a centre, both rival and complementary to local authorities, which has to be promoted without disrupting the existing equilibrium. Dressing the metropolis without undressing the local authorities, is what is at stake. Nevertheless, this attempt to preserve the original territorial equilibrium is leading to a quasi-

inert device whose concrete difference from the urban community is not substantial enough to be appealing (Marcou, 2010a: 64).

3.2. The Preservation of the Tax and Financial Existence of the Communes, Weakness of the Metropolises' Finances

Along with its competences, the finances of the metropolis are confirming how difficult it is to implement a new territorial institution without modifying the existing structures. The different steps leading from the governmental Bill to the final text provide a particularly useful insight on the doubts and difficulties in promoting an innovative project on the basis of established constitutional law.

The original version of the Bill arranged a genuine »metropolitan tax federalism« that would have been very favourable to the metropolis. It was anticipated that the metropolis would indeed be automatically given the result of direct local taxes,²⁷ the result of taxes corresponding to the competences having been transferred and the governmental grants redirected to the metropolis instead of the member-communes. The communes, for their part, would only benefit from a grant paid by the metropolis.²⁸ If this financial and tax economy was warranted by »the transfer of competences from the communes to the metropolis«,²⁹ the financial and tax integration resulting from it would deprive the communes of any financial autonomy under the terms of Article 72–2 of the Constitution. This meant running a risk of unconstitutionality. Moreover, the experience of the community of cities had already shown that a financial and tax regime too favourable to any public body discouraged from resorting to this device. By promoting a financial structure that corresponded more strongly to a federative local authority than to a public body, the Bill appeared legally and politically too radical.

The Senate, willing to re-establish an equilibrium far more respectful of the communal autonomy (Courtois, 2009: 77), thus went back to the

²⁷ According to Article L. 5217–12 (GCLA) as drafted in the Bill reforming local authorities, n° 60, p. 38.

²⁸ Art. L. 5217–21, paragraphs 2 and 3 (GCLA) as drafted in the Bill reforming local authorities, n° 60, p. 42.

²⁹ Art. L. 5217–21, paragraph 1(GCLA), *op. cit.*

governmental Bill, as soon as its first reading of the text had finished, by aligning the financial regime of the metropolises with that of urban communities³⁰ and by re-establishing the previous rights of the communes (concerning their financial grants). The National Assembly undertook to present a median legal regime, built on the primacy of the metropolis in terms of grants³¹ and on the transfer of the sole *ad valorem* tax on undeveloped sites (*taxes foncières sur les propriétés non bâties*),³² but this did not win the senators over. This is why the finally adopted tax and financial regime of metropolises is almost identical to that of urban communities. The abandonment of metropolitan tax federalism suggested by the Government threatens to deprive the metropolis of any genuine financial distinctive identity in comparison to other public bodies with a specific tax status. Moreover, keeping in mind how important financial incentives are for the success of inter-communal cooperation, the legislative device does not appear to be encouraging enough to prod the communal representatives into creating metropolises. If the governmental Bill *was* going too far (given the legal background), the parliamentary lack of boldness, as far as senators are concerned, did the exact same thing in the opposite direction.

The legislator's refusal to grant the status of a local authority to the metropolis is causing a backlash: tax federalism between a public body and local authorities is inconceivable according to the current Constitution. However, establishing the metropolis as a local authority, by substantially reorganizing its area, was a way to ensure significant tax resources and to clarify the administrative map. On the contrary, and as several members of Parliament have noted, the modification is not really making things simpler. Moreover, there is an actual risk that the creation of metropolis' structuring institutions that would appeal to the communal representatives will fail. Additionally, without a genuine financial and tax capacity, the metropolis will not come into the world and will not be able to become the driving force of the economic development of its territory, thus thwarting the reform (Marcou, 2010: 368; Douence, 2011: 265).

³⁰ Art. L. 5217–13 (GCLA) as drafted in the Bill adopted by the Senate on 4 February 2010.

³¹ Only the local grant was paid directly to the communes.

³² Art. L. 5217–12 (GCLA) as drafted in the text of the Commission of Laws, *op. cit.*, p. 23. It was also receiving the amount of taxes corresponding to the transferred competences.

4. Conclusion – An Uncertain Move Subjected to the Test of Time

Two series of uncertainties are hanging over the reform. First, choosing to make the metropolis a public body raises questions: the status of a territorial public body is highly political, and distorts what the metropolis really is. Bearing in mind the criticisms regarding the category of territorial public bodies, it can be noted that »neither the qualification of public body matches the features of the association at hand ... nor to the aimed target set by the legislator« (Laubadère, 1974: 435). Moreover, »the reasons put forward to warrant the qualification of public body [given to metropolises] are groundless: [metropolises] are federative local authorities; they exemplify an administrative federalism« (Laubadère, 1974: 441), as can be seen in the financial regime that is part of the initial Bill. Finally, »the resort to the qualification of a public body has drawbacks as far as local rights and democracy are concerned« (Laubadère, 1974: 445), given that local democracy has to be organized within the previous framework even though the level of exercise of the power changes (Rémond, 2009: 16). In the end, the policy behind metropolises raises a very redundant question: should the communes have been saved in the urban areas? However, it goes without saying that by maintaining the communes within the area of metropolitan agglomerations, the Law is still lagging behind the social reality. It is a pity that a reform purportedly aiming at making things more simple would not take this into account since »we [undoubtedly] have no more than a legal representation that is a far cry from the institutional realities« (Caillousse, 2009: 169). Unless the legislator has strategically »bet on the decline of the commune or the department at the benefit of the inter-communal public body« (Degoffe, 2005: 136), those observations bring about a second uncertainty regarding the motive for the creation of metropolises. The commentators are thus very careful with regard to the effects of metropolises and are all underscoring the discrepancy between the political ambitions and the legal instrument that has been chosen.

However, it may be too soon to be too harsh on the reform. After all, metropolises »are undoubtedly innovative but not revolutionary. The legislator could have imagined something more creative. He has shown prudence and moderation both urgent and necessary in this reform. The experience and functioning of the institution will perhaps reveal that the main faults of the system stem from the fact that the [metropolis] is a copycat of the current French inter-communal regime. Nevertheless, the institution that has just been born should not be condemned. 'History will step in as an

accelerator as always, just like it does in more important fields' (Marcel Waline)» (Colard, 1967: 461). These words, written in 1967 about urban communities remain relevant to the reform implemented by the Law of December 2010 and remind the legislator and the observers that only the judgment of time matters. »The legislator has done his duty, time will do its own«, Gambetta used to say (Colard, 1967: 461). These words deserve to be pondered over once again.

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THE STATUS OF METROPOLISES IN FRANCE

Summary

Since the 1960s, a policy has been undertaken to promote balanced metropolises in order to foster the emergence of regional metropolises. The Law of 2010 created metropolises to enable the most important urban areas to enter into worldwide city competition. They have been given a number of competences transferred to them from the local authorities (communes, departments and regions) on the territory of which the metropolis is located. This questions the organization of the whole French local system. However, both the status of metropolises and their legal regime (competences and financial regime) do not guarantee the reform success.

Key words: *local self-government – France, worldwide city competition, urban areas, metropolitanisation policy, metropolises*

STATUS METROPOLA U FRANCUSKOJ

Sažetak

Od 1960-ih u Francuskoj se provodi politika promocije uravnotežene strukture metropola da bi se ojačale regionalne metropole. Zakon iz 2010. je stvorio metropole kako bi se najvažnijim urbanim područjima omogućilo da se natječu s velikim svjetskim gradovima. Dodijeljene su im velike ovlasti, prijenosom od strane općina, departmana i regija na čijem su području smještene. To stavlja pod znak pitanja čitav sustav lokalne samouprave u Francuskoj. Ipak, ni status metropola ni pravni režim kojem su podvrgnute (njihove ovlasti i financije), ne garantiraju uspjeh metropolitanijske reforme.

Ključne riječi: lokalna samouprava – Francuska, natjecanje velikih svjetskih gradova, urbana područja, politika metropolitanijske reforme