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Local and regional democracy in France

Monitoring Committee
Rapporteurs:[1] Jakob (Jos) WIENEN, Netherlands (L, EPP/CCE)
Gudrun MOSLER-TÖRNSTRÖM, Austria (R, SOC)

Summary

This is the first report on the state of local and regional democracy in France since that country's ratification of the Charter in 2007. The rapporteurs note first of all that there has been progress on the whole in the decentralisation process in France. The report also underlines France's efforts in the field of co-operation between local and regional authorities, especially as regards transfrontier co-operation. It is also observed that these authorities enjoy greater financial autonomy as a result of the increasing proportion of own resources in their budgets. Where the territorial reform is concerned, however, the rapporteurs express concern about the lack of any real consultation of local authorities before the adoption of the legislation which came into force on 1 January 2016, and about the financial imbalance between local and regional authorities due to an inappropriate equalisation system and recentralisation of local taxation decisions to national level.

It is therefore recommended that the French authorities review the process for consulting local authorities' direct representatives on all decisions concerning them (Article 4), in particular those concerning their boundaries (Article 5). It is further recommended that France review its equalisation system to render it more equitable, transfer responsibility for deciding local tax rates back to the local level and clarify the sources of local authorities' financial resources. Lastly, the report calls on the French authorities to clarify the division of responsibilities between the different tiers of local government to avoid all overlaps and continue to increase the proportion of own resources in local authorities' budgets.

1 L: Chamber of Local Authorities / R: Chamber of Regions
EPP/CCE: European People's Party Group in the Congress
SOC: Socialist Group
ILDG: Independent Liberal and Democratic Group
ECR: European Conservatives and Reformists Group
NR: Members not belonging to a political group of the Congress

RECOMMENDATION 384 (2016)[2]

1. The Congress of Local and Regional Authorities of the Council of Europe refers to:

a. Article 2, paragraph 1.b, of Statutory Resolution CM/Res(2011)2 relating to the Congress, which states that one of the aims of the Congress shall be to "submit proposals to the Committee of Ministers in order to promote local and regional democracy";

b. Article 2, paragraph 3, of Statutory Resolution CM/Res(2011)2 relating to the Congress, according to which "[t]he Congress shall prepare on a regular basis country-by-country reports on the situation of local and regional democracy in all member states and in states which have applied to join the Council of Europe, and shall ensure, in particular, that the principles of the European Charter of Local Self-Government are implemented";

c. Resolution 307 (2010) REV2 on procedures for monitoring the obligations and commitments entered into by the Council of Europe member states in respect of their ratification of the European Charter of Local Self-Government;

d. the appended explanatory memorandum on local and regional democracy in France.

2. The Congress notes that:

a. France acceded to the Council of Europe on 5 May 1949. It signed the European Charter of Local Self-Government (ETS No. 122, hereafter "the Charter") on 15 October 1985 and ratified it on 17 January 2007.

b. France signed the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207) on 16 November 2009, but has not yet ratified it. It is also a party to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (ETS No. 106), which it ratified on 14 February 1984. On 29 January 2013, it ratified Protocol No. 3 to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities concerning Euroregional Co-operation Groupings (ECGs) (CETS No. 206). However, it has not signed the Convention on the Participation of Foreigners in Public Life at Local Level (ETS No. 144).

c. the Monitoring Committee decided to review the situation with regard to local and regional self-government in France in the light of the Charter. It tasked Mr Jacob (Jos) WIENEN (Netherlands, L, EPP/CCE) and Ms Gudrun MOSLER-TÖRNSTRÖM (Austria, R, SOC), the respective rapporteurs on France, with drawing up a report on local and regional democracy in France and submitting it to the Congress.[3]

d. the monitoring visit took place from 26 to 29 May 2015 in Paris, Reims, Ay-Champagne and Châlons-en-Champagne. During the visit, the Congress delegation met with representatives of various political institutions such as the Senate, the Ministry of Decentralisation, State Reform and Public Service, the Ministry of Finance and Public Accounts and the Ministry of Overseas; it also met with representatives of judicial institutions (the Court of Auditors), the Ombudsman's Office and local and regional authorities. The detailed programme of the visit is appended hereto.

e. the delegation wishes to thank the Permanent Representation of France to the Council of Europe and the persons met during the visit for their readiness to assist and the information they supplied. The delegation also thanks the French delegation to the Congress and the national associations of local and regional authorities, which contributed to the organisation and smooth running of the visit.

2 Debated and adopted by the Congress on 22 March 2016, 1st sitting (see document CG30(2016)06-final, explanatory memorandum), co-rapporteurs: Jakob (Jos) WIENEN, Netherlands (L, EPP/CCE) and Gudrun MOSLER-TÖRNSTRÖM, Austria (R, SOC).

3 They were assisted by Mr Nikolaos-Komninos CHLEPAS, member of the Group of Independent Experts on the European Charter of Local Self-Government, and the Congress Secretariat.

3. The Congress notes with satisfaction:

a. the constitutional revision of 2003, which enshrines the principle of a decentralised French Republic and which is the outcome of a long process of decentralisation initiated by the laws of 1982;

b. the development of co-operation between local and regional authorities via, for example, inter-municipal common interest associations and European Cross-Border Co-operation Groupings, a practice which warrants dissemination in other Council of Europe member States;

c. the efforts made by France with regard to the financing of local authorities, inter alia by institutionalising minimum levels for local authorities' own resources, which have fostered greater financial autonomy;

d. the initiatives launched in the larger cities, notably Paris, to foster direct citizen participation, including participatory budgeting;

e. Law No. 2015-366 of 31 March 2015, designed to facilitate the exercise of local electoral mandates through the provision of appropriate financial compensation, which is in line with the requirements of Article 7, paragraph 2 of the Charter.

4. The Congress expresses its concern regarding:

a. the procedures employed for passing Law No. 2015-29 of 16 January 2015 on regional boundaries, regional and departmental elections and changes to the election timetable, in that there was no effective prior consultation of the regions within the meaning of Article 4, paragraph 6 of the Charter, read together with Article 5;

b. the inadequate consultation of local and regional authority representatives on decisions concerning them directly and the insufficient involvement of representatives of the associations of local authorities, particularly in financial matters (Article 4, paragraph 6 and Article 9, paragraph 6);

c. the overlapping of responsibilities due largely to the complex structure of subnational levels of government, which accounts for the fact that many small municipalities, particularly in rural areas, are unable to carry out certain tasks and are forced to delegate responsibility to the inter-municipal level;

d. the abolition of the general clause of competence, which was approved by the Senate on 15 August 2015 and which restricts the local authorities' prerogatives;

e. the transfer back to the national level of responsibilities initially devolved to the local authorities in the field of tax policy, which is leading to a gradual recentralisation and a significant shortfall in local authority resources in relation to their responsibilities;

f. the current financial equalisation system, which does not meet the objectives expected of an equalisation mechanism, namely redistribution of resources among authorities to compensate for the financial disparities between them.

5. In the light of the foregoing, the Congress asks the Committee of Ministers to call on the French authorities to:

a. draw up legislation setting out the procedures for consulting local and regional authority representatives to ensure that they are effectively consulted, that is in due time and in an appropriate manner, on all questions directly concerning those authorities, including financial questions, and *a fortiori* on changes to their boundaries (Article 4, paragraph 6, Article 5 and Article 9, paragraph 6);

b. revise the breakdown of responsibilities between the four subnational levels of government so as to avoid all overlapping of responsibilities by strengthening the arrangements already provided for in the Law of 7 August 2015 on the new territorial organisation of the Republic (Article 4, paragraph 4);

c. revise the legislation currently in force on the conditions governing local taxation and, in particular, the setting of tax rates by local authorities in order to give these authorities greater freedom of action with regard to their own resources and thus avoid any trend towards recentralisation in this field (Article 9, paragraph 3);

d. consider reintroducing the general clause of competence in order to respect the local authorities' right to full discretion in the exercise of their initiatives for any matter not excluded from their field of competence by law (Article 4, paragraph 2);

e. revise the financial equalisation system so that it actually serves its purpose of reducing financial disparities between local authorities and meets the requirements of transparency, by promoting a system of equalisation between levels of government (Article 9, paragraph 5);

f. consider ratifying Articles 3, paragraph 2, and 7, paragraph 2, of the Charter insofar as the relevant legislative provisions in force in France render the *de lege* situation consistent with the requirements of these articles.

6. The Congress calls on the Committee of Ministers to take account of this recommendation on local and regional democracy in France and the accompanying explanatory memorandum in its activities relating to this member state.

EXPLANATORY MEMORANDUM

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EXPLANATORY MEMORANDUM

1. Introduction: aim and scope of visit, terms of reference

1. In accordance with Article 2 of Statutory Resolution CM/Res(2011)2 of the Committee of Ministers, the Congress of Local and Regional Authorities of the Council of Europe (hereinafter "the Congress") regularly prepares reports on the state of local and regional democracy in the member states and candidate countries.

2. France acceded to the Council of Europe on 5 May 1949. A founder member of the Organisation, it signed the European Charter of Local Self-Government (ETS No. 122, hereinafter "the Charter") on 15 October 1985 but did not ratify it until 17 January 2007. It should be mentioned that for a long period (until 1991) the Council of the State (*Conseil d'Etat*[4]*)* considered that the Charter introduced concepts that were incompatible with French legal tradition. Finally, the Charter entered into force in respect of France on 1 May 2007.

3. Pursuant to Article 12, paragraph 2 of the Charter, France declared itself not to be bound by Article 7, paragraph 2 on financial compensation for expenses incurred in the exercise of the functions of local elected representatives. Furthermore, France declared that the provisions of Article 3, paragraph 2 (whereby the rights of self-government must be exercised by democratically constituted authorities), "must be interpreted as giving to the States the possibility to make the executive organ answerable to the deliberative organ of a territorial authority". Finally, the French Republic declared that, in accordance with Article 13, the authorities to which the Charter applies are the territorial authorities which are named in Articles 72, 73, 74 and in Chapter XIII of the Constitution or which are created on those bases. The French Republic therefore considers that the public establishments of intermunicipal (*intercommunal*) co-operation, which are not territorial authorities, are excluded from the scope of application of the Charter.

4. France is party to:

- the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (ETS No. 106), signed on 10 November 1982, ratified on 14 February 1984 and which entered into force in respect of it on 15 May 1984;

- the Additional Protocol to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (ETS No. 159) signed on 9 November 1995, ratified on 4 October 1999 and which entered into force in respect of it on 5 January 2000;

- Protocol No. 3 to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities concerning Euroregional Co-operation Groupings (ECGs) (CETS No. 206) signed on 16 November 2009, ratified on 29 January 2013 and entered into force on 1 May 2013.

France has signed but not yet ratified:

- the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207), signed on 16 November 2009, but not yet ratified.

France has not signed:

- the Convention on the Participation of Foreigners in Public Life at Local Level (ETS No. 144) although this issue had been raised by Resolution 94 (2000).

5. The present report relates to a Congress delegation's visit to France from 26 to 29 May 2015 to monitor the situation of local and regional democracy in France in the light of the Charter. The Monitoring Committee appointed Mr Jacob (Jos) WIENEN (Netherlands, L, EPP/CCE) and Mrs Gudrun MOSLER-TÖRNSTRÖM (Austria (R, SOC) as co-rapporteurs for local and regional democracy. The co-rapporteurs were assisted by Mr Nikolaos-Komninos CHLEPAS, member of the

[4] Supreme Administrative Court. The *Conseil d'État* advises the Government on the preparation of bills, ordinances and certain decrees. It is the highest administrative jurisdiction – it is the final arbiter of cases relating to executive power, local authorities, independent public authorities, public administration agencies or any other agency invested with public authority.

Group of Independent Experts on the European Charter of Local Self-Government, and by the secretariat of the Congress.

6. The Congress delegation met representatives of the French State institutions of the Senate; the Ministry of Decentralisation, State Reform and Public Services, the Ministry of Finance and Public Accounts and the Ministry of Overseas France; judicial institutions (the Court of Auditors); as well as the Ombudsman (at national level) and representatives from local and regional authorities in Paris; Reims; Ay-Champagne, Champagne-Ardenne and Chalôns-en-Champagne, as well as the French associations of local and regional authorities. The detailed programme of the visit is appended to the present report.

7. The co-rapporteurs wish to thank the Permanent Representation of France to the Council of Europe as well as all the partners they met during this visit for their availability and the information they kindly provided to the delegation. They also thank the French delegation to the Congress and the associations of local and regional authorities, for contributing to the organisation and smooth running of the visit.

2. Historical, political and constitutional context

2.1. Historical background

8. Territorial fragmentation characterised feudal monarchy in France, where each province had its own status, while territorial power was divided among the landlords, the agents of the King and the Catholic Church. Some cities with special status were ruled by oligarchic governments. French monarchs were eager to enforce central control over the territory of their Kingdom. Louis XIV (1648-1715), who considered he embodied the state, together with his Chief Minister Colbert, were the most exponent historical figures who tried to impose political uniformity over the nobles of the provinces and promote state interventionism into the economic sphere.

9. The French revolution did away with the monarchy and introduced the idea of the people as an incorporation of the sovereign nation and its polity – the republican state. In accordance with the guiding principle of equality, the one and indivisible Republic established a unitary status for all citizens and all provinces. Right after the fall of the Ancien Regime, federal privileges were abolished[5] and the National Assembly adopted the Act of 14 December 1789 that created a new unitary territorial organisation of municipalities *(communes)* and departments *(départements)*. The municipalities were based on the historical parishes *(paroisses)* (there were more than 40 000) and each one of them could become a municipality with elected organs and public law status. According to the Constitution of 3 September 1791, French citizens formed the municipalities on the basis of local relations within their cities and certain rural districts.[6] The departments were artificial creations for the organisation of general state administration that would locally perform state tasks. Napoleon Bonaparte's government consolidated the institution of the state prefect *(préfet)*[7] and established a new order through the law of 17 February 1800 concerning the "division of the territory of the Republic and the administration". This law has been characterised as the "administrative constitution of France" since its main principles and norms remained in force until the end of the 20th century.

10. The Napoleonic model signified organisational uniformity and central control over territorial administration and local government. France was divided into departments, cantons and municipalities (*départements*, *cantons*, *communes)* and all units in each layer had the same legal responsibilities. The prefect represented central government in each department and even the mayor was principally an official of central government. An Act of 1833 determined that municipal and departmental councils should be elected. Decentralisation progressed by strengthening elected councils and creating a political awareness of municipal and departmental communities. Departments were legally transformed by laws in the 1830s also introducing the elected Council of the Department (*Conseil*

[5] In the night of the 4th of August 1789, all privileges of feudal France were abolished, namely the ones of *« provinces, principautés, pays, cantons, villes et communautés d'habitants »,* which would be subject to the common law for all French citizens: *« demeureront confondus dans le droit commun de tous les Français (Décret du 4 août 1789, article 10*).

[6] *« Les citoyens français, considérés sous le rapport des relations locales […], forment des communes » .* French citizens, considered with respect to local relations which derive from their association in cities and in certain arrondissements of rural territory, constitute the communes.

[7] In the period of the Convention there was the institution of « commissaire du Directoire » (created by the Constitution of 22 August 1795). The institution of the prefect was introduced by the Law of 28 Pluviôse year VIII (17 February 1800), *« Le préfet sera chargé seul de l'Administration ».*

Général).[8] These laws introduced the dual nature of second tier territorial entities: on the one hand, departments were characterised as districts for State administrations; and, on the other hand, as local self-government units, in both cases under the authority of the prefect (*préfet)*. Fully democratic elections were introduced in 1848 by the Second Republic (1848–52). During the Second Empire (1852-1870) the state reclaimed the right to nominate mayors, but local democracy was slowly consolidated during the Third Republic, with the 1871 (departmental) and 1884 (municipal) Acts, which recognised 'local liberties' for the first time, guaranteed democratic elections, and consolidated local influence in political decision making. More specifically, the Municipal Act *(loi municipale*) of 5 April 1884 signified the foundation of the principle of free municipal administration (*libre administration communale*) and the underlying competence clause in favor of the municipal council.[9] It was the same law that defined the police powers of the mayor that were more precisely elaborated by the jurisdiction of the *Conseil d'État* according to the Public Law Doctrine by the beginning of the 20th century.[10] The French mayor of the Third Republic was at the same time the representative of the State and the elected politician who was closest to the citizens.

11. Gradually Paris became the unchallenged decision centre, but provincial interests were taken care of through various channels including networks of deputies who often also held local office, according to the well-known practice of multiple mandates (*cumul des mandats)*. At the same time, the evolution of public administration led to parallel and overlapping state networks (prefectures and field services of the core ministries) that increased territorial complexity. The state was unable to exercise complete territorial control without the support of local allies, namely the political 'barons' known as "*les grands notables"* who formed their own top-down and bottom-up networks.

12. Decentralisation expanded by the addition of new institutions. Single purpose inter-municipal co-operation entities were allowed in 1890; in 1959 a new model of «multi-purpose municipal unions» was introduced. Successive statutes (1967, 1992, and 1999) established inter-municipal communities with their own fiscal power and strong competences.

13. As for regions, they were first created as state districts in the 1950s for a better co-ordination of national policies.[11] In 1969, a project for autonomous regions was rejected by referendum and caused the dismissal of then President General de Gaulle.[12] Established in 1972,[13] these legal entities with just small financial competences, the regions became territorial communities in two steps: first in 1982 (grant of general competence and establishment of a political executive) and second in 1986 (inception of elected councils). Communities and regions were meant to compensate the small size of communes and departments. These new tiers with a more pertinent size brought economy of scale in the considered competences, but also new costs and budget expansion.

2.2. Decentralisation reforms and debates

14. In the post-war era, decentralisation reforms have been carried out in most European countries, strengthening the role of local government in the welfare system and focusing on territorial re-structuring to enhance efficiency of local government, through economies of scale and economies of scope. In France, the ideology of decentralisation did not have a clear political label, since both the right and the left have successively been proponents and opponents of decentralisation efforts at different times. After the breakdown of De Gaulle's regionalisation reform plans in 1969, the law of 31 December 1970 extended municipal decision-making, reduced control by the *préfets* (especially on budgets), and modernised management rules. In the following year, the Act of 16 July 1971 introduced a national strategy aimed at drastically reducing the number of municipalities. In spite of supplementary grants for amalgamation, the number of local entities reduced only from 38 600 to 36 600 (and several merged municipalities divorced afterwards!). This failure had a long lasting impact

[8] Loi du 22 juin 1833 et loi du 10 mai 1838.
[9] *«le Conseil municipal règle par ses délibérations les affaires de la commune».*
[10] See for example the famous case law CE, 18 avril 1902, *Commune de Néris-les-Bains*.
[11] Décret n°55-873 du 30 juin 1955 relatif à l'établissement de programmes d'action régionale; décret n°64-251 du 14 mars 1964 relatif à l'organisation des services de l'État dans les circonscriptions d'action régionale.
[12] *Référendum du 27 avril 1969 sur le projet de loi relatif à la création de régions et à la rénovation du Sénat*. General de Gaulle's announcement of the referendum highlightsthe connection between the establishment of the regions and the transformation of the Senate: « *L'avènement de la région, cadre nouveau de l'initiative, du conseil et de l'action pour ce qui touche localement la vie pratique de la nation, voilà donc la grande réforme que nous devons apporter à la France. [...] Pour que cette rénovation se réalise suivant les mêmes principes au plan de la nation en même temps qu'au plan de la région, nous devons transformer le Sénat, afin qu'il associe dans la préparation des lois les mêmes sortes d'élus et les mêmes sortes de délégués avec leurs compétences et leurs responsabilités* ».
[13] Loi n°72-619 du 5 juillet 1972 portant création et organisation des régions.

highlighting the difficulty of amalgamation in France when opposed by the majority of politicians and citizens.

15. A substantive «big bang» territorial reform was finally adopted in 1982 after a socialist President of the Republic and a socialist majority at the National Assembly were elected for the first time since the foundation of the Fifth Republic in 1958. Despite strong opposition of the Senate, the Act of 2 March1982 «on the rights and liberties of the municipalities, departments and regions» enforced dramatic changes.[14] The decentralisation process was highly complex: 22 elected regional councils, replaced previously co-opted institutions, and greatly enhanced the decision-making powers of the 96 departmental councils and of the larger municipalities. The most symbolic and decisive innovation was to transfer the executive powers in the department and the region from the prefect to the president of the said department or region, who would be elected by the council. This required a separation of the services of the prefect's office *(prefecture)* between those staying under the authority of the prefect and assuming state powers and those newly placed under the authority of the president of the department or region. Henceforth, two separate administrations worked side by side in the territorial division called «department» or «region». The departments and the regions acquired the status of a territorial authority and were released from the traditional tutelage of the state prefect who remained responsible solely for legality checks and budgetary *a posteriori* control.[15] The reforms extended local influence into policy sectors such as social affairs, economic development, and education. The three layers of French subnational government – the region, the department, and the municipality – were all strengthened, with increases in budgets, staff, and powers. A corresponding financial compensation took the form of a transfer of state taxes to local governments and of a budget grant – the general decentralisation grant (DGD). From 1986 to 2002, several additional acts were adopted including on territorial civil service, inter-municipal co-operation and transfers or creation of responsibilities such as regional rail transport or elderly assistance.

16. From 2003 onwards, the second stage of decentralisation (*Acte II de la decentralisation)* was implemented. The first phase included the revision of the Constitution (17 March 2003) which embedded the regions in the constitution and referred to the decentralised organisation of the republic. It also gave constitutional recognition to the four local governments, including the regions; recognised authorities with a 'special statute', including the different inter-communal bodies (*Etablissement public de coopération intercommunale* (EPCI)), and also referred to the eventual merging of existing sub-national authorities into larger units – potentially a radical break with the past. The Act on the decentralised organisation of the Republic places the different tiers of territorial self-government *(collectivités territoriales*) in the country's institutional organisation provides them with guarantees for the fulfilment of their tasks and allows them to hold local referendums for the approval of their decisions by the citizens. Later on, three organic laws were enacted in order to effect these constitutional dispositions: The Act on the financial autonomy of sub-national government tiers (29 July 2004), the Act on experimentation by local governments,[16] and the Act on local referendums (2 March 2003).[17] The second legislation phase began with the 13 August 2004 Act on local public freedoms and responsibilities.[18] The law referred to new significant transfers of responsibilities from the state to local governments and their co-operation structures, as well as with the transfer of State agents. These transfers of responsibilities ("functional reforms") took effect on 1 January 2005 and were gradually implemented up to 2008-9. The transfer of resources was also spread over several years and was supposed to keep pace with the transfer of responsibilities. Financial compensation acquired the form of fiscal sharing between the state and the territorial authorities. In this way, a corresponding fraction of the special tax on insurance contracts and of the domestic tax on petroleum products was attributed to sub-national territorial governments.

17. Therefore decentralisation reforms in France were guided by two contradictory principles. First, that decision-making power should be attributed to specific tiers of subnational authority. Second, that all authorities should enjoy the freedom of initiative to make policies in areas they deemed to be important for their constituents. The first of these principles enshrined the so-called '*blocs de compétences*', particular responsibilities carried out by the different levels. As a general rule, matters of immediate proximity (low-level social assistance, administrative port of first call, planning

[14] *Loi n°82-213 du 2 mars 1982 relative aux droits et libertés des communes, des départements et des régions*.
[15] The regional accounting authorities ("*chambres régionales des comptes*") were created in 1982 by *"loi n°82-213 du 2 mars 1982 relative aux droits et libertés des communes, des départements et des régions".*
[16] *Experimentation* empowers local and regional authorities through transferring powers in specific domains, admitting exceptions to general provisions, or vesting a local or regional authority with the authority of the state.
[17] The local council can decide to refer any issue to a local referendum. The decision by the majority in the referendum must be implemented if at least half the registered voters have participated.
[18] *Loi n° 2004-809 du 13 août 2004 relative aux libertés et responsabilités locales*.

permission, waste) are the preserve of the municipalities and the various inter-municipal bodies. Matters of intermediate proximity are the policy province of the departments which have large budgets and deliver major services (social assistance, some secondary education, social services, roads, minimum income). Matters deemed to be strategic are, in theory, the preserve of the regions: economic development, vocational training, infrastructure, some secondary education, some transport (and regional rail services since 2002), with additional responsibilities in culture and the environment. The second principle, however, the 'free administration" of territorial authorities cuts across the apparent clarity of the first. In practice, the various subnational authorities have overlapping territorial jurisdictions and loosely defined spheres of competence. Even when responsibilities are clear, they are not always respected. Communes, departments, and regions compete openly with each other and adopt policies designed to appeal to their electorates. Moreover, there is no formal hierarchy among them. In theory, no single authority can impose its will on any other, or prevent a rival authority from adopting policies in competition with its own. This means that, unlike federal systems, the French regions do not exercise leadership over other local authorities; if anything, the French regions are dependent upon the co-operation of lower-level authorities - the departments in particular - for the successful implementation of their own policies.

18. Other reforms were initiated to address the new challenges of the last decade which have included questions of transparency, layering, and democracy, the adjustment to new forms of central steering, European regulations and constraints as well as the question of local finances and public expenditure.

19. The Richard report (2006) strengthened the view that local government finance must be controlled, that recruitment should be halted, and that certain key functions ought to be transferred to executive agencies. The Lambert report (2007) called for a clarification of competencies between levels of local authority, a suppression of the 'general administration' clause, the identification of lead authorities in all areas of public policy, new financial instruments to control local expenditure, and a closer involvement of local and regional authorities with EU policies. The Attali report (2008) recommended suppressing the *départements* altogether as being inimical to France's competitiveness.

20. The most complete set of recommendations were those in the Balladur Committee's report on local government reform, published in March 2009, which was meant to announce a third stage of French decentralisation.[19] Most of its 20 proposals were adopted unanimously by the Committee. The main recommendations might be summarised in terms of five headings:
a) incentives for structural reforms,
b) elections and electoral rules,
c) a modification of legal principles,
d) a reform of local government finance,
e) the creation of new forms of metropolitan governance.
First, the report recommended a reduction in the number of regions from 22 to 15 for a more efficient organisation and also encouraged the merging of *départements* into larger entities. It proposed that inter-communal bodies should cover the whole French territory by 2014 and proposed the abolition of older forms of inter-communal cooperation, namely the single (SIVU) and multiple (SIVOM) purpose inter-communal syndicates.

21. Concerning electoral rules, the report proposed to suppress the canton as an administrative unit, and to hold elections for the departmental and regional councils on the basis of party lists from 2014 onwards. While the head of the list would sit on both the regional and the departmental council, lower placed members would be elected only for the *département* (creating an implicit hierarchy between the two levels of local authority). The report argued strongly in favour of the direct election of the inter-communal bodies (EPCI). Resistance was strong with charges of gerrymandering and manoeuvring for partisan advantage.

22. In terms of legal principles, the Balladur report proposed:
a) to limit the principle of the 'free administration of local authorities' (whereby local authorities may intervene in areas of their own choice) solely to *municipalities* and the EPCI.
b) A new law would set out the areas in which the regions and departments would have either the lead, or exclusive responsibilities.
c) The division of responsibilities between the local authorities and the state would also be clarified with the state field services being drastically reduced.

[19] *Balladur: Comité pour la Réforme des collectivités territoriales: 2009*

d) A ceiling for local government expenditure would be introduced in the annual budgetary exercise in line with the policy objective of 2007 for a more productive state.
e) New forms of public administration to represent metropolitan France would be created with 11 new metropolitan councils in cities with over 400,000 inhabitants. These 'special statute' authorities would deliver most services on a city-wide scale, notably the social and welfare services that were delivered by the *départements*. Finally, the Balladur Committee recommend the creation of a *Grand Paris* that would replace the four existing *départements* of Paris and its immediate suburbs.

23. The key proposals of the Balladur Committee were instantly challenged by interested stakeholders. The ambition to create 15 regions of a 'European dimension' raised the objections of those—in Picardy and Poitou-Charentes notably—likely to be abolished under the new proposals. Faced with likely territorial opposition, the Committee agreed that local referenda would be necessary before any local government boundaries could be changed. The proposals to abolish the canton as an administrative unit provoked opposition from members of the Commission itself, while the proposed Grand Paris was put aside by the President of the Republic. Finally, the Balladur Commission restrained from several, previously concrete proposals: It was not explicitly proposed to abolish the departments; the bicentennial structure would remain, while attempts forcibly to fuse regions were abandoned. At the very end, even the proposed abolition of the cantons was defined to become operational in 2014 when another President of the Republic would be in office.

24. The resistance to reform of the territorial structure and administration and the inability to rationalise those parts which are overtaken by new forms, is explained in detail here as it characterises the sclerosis of every administration to deal with what is called in France "*le millefeuille territoriale*" – the multi-layered confection that is French local and regional governance. The irony is that all stakeholders recognise that it is inefficient, costly and must be reformed, but agreement cannot be reached as to where and how the limits should be placed.

25. Prior to the current (Hollande) Administration in 2012, President Sarkozy initiated a further attempt at rationalisation which resulted in the Law on the reform of territorial authorities[20] of 16 December 2010. The aim, as in previous reforms, was to simplify territorial structures (communes, inter-communal structures, departments, regions), reduce the number of territorial levels and clarify competences and finance. Competivity would be increased by allowing departments or regions to merge and other mergers would result in the creation, by voluntary accord, of a metropolis (*métropole*) when more than 500 000 inhabitants are concerned (except Ile de France); a metropolitan centre (*pôle metropolitain*) – through inter-communal cooperation – where more than 300 000 inhabitants are concerned and in the creation of the new commune *(communes nouvelles)* whereby mergers amongst several communes would be facilitated. Departments and Regions were not abolished but specialised competences were envisaged to replace the general competence clause to be abolished after 1 January 2015.

26. Many parts of the reform were not implemented following gains by the Socialist Party in the 2012 elections of both the presidency and the parliament and the announcement by President Hollande, just 5 months after his investiture, of his own major reform of local authorities.[21] This latest initiative started as a threefold reform in a single piece of legislation, subsequently divided into three separate parts in a conciliatory gesture to initial resistance. The three parts, which are explained in fuller detail under section 3.3 describing current territorial structures and powers, are:

a. A law modernising territorial public action law and affirming the importance of the metropolis,[22] promulgated on 27 January 2014, popularly known as the Maptam law;

b. The law on new regional boundaries, regional and departmental elections and modifying the electoral calendar,[23] which was passed on 16 January 2015 and will take effect from 1 January 2016 and

c. A law on a new territorial organisation for the Republic,[24] popularly called *loi NOTRe*. This passed into law on 7 August 2015, after the rapporteurs visit.

[20] *Loi 2010-1563 "Loi de réforme des collectivités territoriales".*
[21] Speech of President Hollande 5 October 2012 (http://discours.vie-publique.fr/notices/127001806.html)
[22] *Loi 2014-58 sur le modernisation de l'action publique territoriale et d'affirmation des métropoles.*
[23] *Loi 2015-29 relative à la délimitation des régions, aux élections régionales et départementales et modifiant le calendrier électoral.*
[24] *Loi 2015-991 portant nouvelle organisation territoriale de la République.*

2.3. Internal political situation and elections

Internal political situation

27. The territory of the French Republic is composed of:
- Metropolitan France: comprising the French mainland, Corsica and minor coastal islands
- Overseas departments and regions: Guadeloupe, Martinique, Réunion, Mayotte and French Guiana (Each has the status of a department and also a region of France)
- Overseas collectivities: French Polynesia, Saint Barthélemy, Saint Martin and Saint Pierre and Miquelon and Wallis and Futuna
- The special collectivity of New Caledonia
- The territories of Clipperton Island and the French Southern and Antarctic Lands

28. Overseas Departments and Territories include island territories in the Atlantic, Pacific and Indian oceans, French Guiana on the South American continent, and several periantarctic islands as well as a claim in Antarctica.

29. The population of metropolitan France is 63.6 million people – overseas departments and territories account for approximately 2.7 million, forming 4.1% of the total population of the French Republic. With 674,843 sq. km, France is the largest country in Western Europe.

30. The French Republic has a hybrid structure of executive authority and parliamentary democracy, a system that is characterised as semi-presidentialism. The President of France is elected by universal suffrage and serves a five-year term. The incumbent President of France is François Hollande (since 15 May 2012). He is the 24th President.

31. The French Parliament is a bicameral legislature composed of a National Assembly *(Assemblée Nationale)* and a Senate *(Sénat).* The National Assembly comprises 577 MPs elected to five-year terms. Following the last elections on 10 and 17 June 2012 (and on other dates for small numbers of voters outside metropolitan France), the Socialist, Republican and Citizens Group has 287 members while the Republicans (LR)[25] form the second largest group with 199 members.

32. The latest elections to the second chamber, the Senate, took place in 2014. The 348 Senators are elected indirectly for a six-year mandate by an electoral college composed of MPs for the department, departmental councillors and the relevant regional councillors. Every 3 years 50% of the chamber renewed. After the last elections the largest group is The Republicans (LR) with 144 members. The Socialist Group has 109 members.

33. The 1958 Constitution affirmed the basis of a normal parliamentary system, creating a government responsible to parliament (Article 20), headed by a prime minister (Article 21). The prime minister is appointed by the President of the Republic and since 31 March 2014 the incumbent is Prime Minister Manuel Valls.

34. At the time of the rapporteurs'visit, the last regional council elections had been held on 14 and 21 March 2010 for a six-year mandate in 25 regional councils and the Corsican Assembly. Overall the United Left held 1 006 seats while the right majority list gained 511 seats with the National Front on 118 and the Socialists with 58. The subsequent regional elections were held on 6 and 13 December 2015 and led to the victory of the extreme-right party *Front National* during the first round,[26] but the party did not win a single region at the second round, during which five of the French metropolitan regions were won by the Socialist Party, seven by the right-wing party *Les Républicains* and Corsica by the independence movement.[27] These were the first elections on the basis of the new territorial map that comes into force from 1 January 2016 reducing the number of metropolitan regions (including Corsica) to 13 (see below para. 58 et seq).

[25] Formerly, the Union for a Popular Movement (UMP). The name changed on 28 May 2015 to "*Les Républicains*"
[26] The *Front National* obtained the highest score in six regions, for example in Alsace-Champagne-Ardenne-Lorraine with 36.6% of the votes, in Nord-Pas-de-Calais-Picardie with 40.64% and in Provence-Alpes-Côte d'Azur with 41.67%.
[27] The Socialist Party won in the following regions : Aquitaine-Poitou-Charentes-Limousin, Midi-Pyrénées-Languedoc-Roussillon, Centre, Bourgogne-Franche-Comté and Brittany ; *Les Républicains* in the following ones: Alsace-Champagne-Ardenne-Lorraine, Nord-Pas-de-Calais-Picardie, Provence-Alpes-Côte d'Azur, Île-de-France, Pays de la Loire, Rhône-Alpes-Auvergne and Normandy. Please note that the mentioned results do not include those of the French overseas territories (DOM-TOM).

35. On 22 and 29 March 2015, departmental council elections were held to elect the members for a six-year term in 98 out of 101 French departments.[28] The Socialists and other left won only 34 councils (in contrast to 61 held previously). The UMP, led by ex-President Nicolas Sarkozy, boosted the number of councils it controls from 40 to 67. Finally, Le Pen's far-right National Front (FN) failed to obtain control of any council but won at least 60 seats.

36. The most recent municipal elections, for a six-year mandate, were held on 23 and 30 March 2014. In the whole of France, the UMP and allies received more votes than the Socialists and their allies, while the FN was third. The first task of each newly constituted municipal council was to elect a mayor for that municipality *(commune).* The socialists lost some important cities, such as Reims (population 180 752) and Tours (134 633), but they won Paris on the second round, Hidalgo obtaining 54.5% of the votes, becoming Paris's first female mayor.

Local elections

Basic organisation

37. The electoral system in use for local elections depends upon the type of election: The regional councils have a list form of proportional representation, while the departments and larger municipalities are elected by the two- ballot majority-based system. The electoral system also depends on the size of local authorities: the Law No. 2013-403 dated May 17, 2013 lowered the threshold to 1,000 inhabitants (instead of 3,500) in order to apply different voting systems and thereby enable communication advisors to be elected through a voting mechanism that is in accordance with parity. Currently most councillors for the inter-communal bodies (EPCI)[29] are directly elected, although formerly this was not the case (see below).

38. The directly-elected city council *(conseil municipal*) is the deliberative body. Its members are elected every 6 years by direct universal suffrage. The mayor *(maire)* is a city councillor and is elected by the city council. In practice, the majority list has a leader and usually the electorate knows in advance that this leader will be elected as mayor if the list wins. S/he is assisted by deputy mayors *(adjoints),* who are also selected by the council.

39. French mayors have traditionally been the focal actors of local political communities and this has not changed since the decentralisation reforms. The social position of the *notables* who are local political patrons and the stability of political personnel are key features of the mayoral position in the French system. Power within municipalities is usually concentrated in a closed circle of few key actors, first and foremost the mayor and his main executive officers, the deputy mayors (*adjoints*).The political power of the municipal council does not include much more than voting the budget and passing a motion of no confidence in the mayor (an eventuality reduced by the majoritarian system). Participatory practices did not have a strong tradition and decentralisation reforms did not pay much attention to this issue, since they intended to give more power to the politicians and many of them were important for party mechanisms. In the meantime, however, some participatory institutions have been introduced (about participatory budgeting in Paris, see *infra*) and the local council can decide to refer any issue to a local referendum. The decision by the majority in the referendum must be implemented if at least half the registered voters have participated. The 27 February 2002 Act on community democracy allows the creation of local public service consultative commissions (*commissions consultative de services publics locaux)* in municipalities with more than 10 000 inhabitants and district councils *(conseils de quartier)* in municipalities with more than 80 000 inhabitants. In small communes, where persons count rather than parties, the practice of *panachage* (free vote for candidates, whatever list or pre-defined list order they belong to) can make a difference: Voters have the possibility to change the order of names on a list, or to add the names of candidates who are not present on this list, even if they are included in other lists.

40. In Departments, the departmental council (previously called *Conseil General)* is the deliberative body. Departmental councillors are elected by direct universal suffrage based on a two-round majority rule system in each constituency (*canton*) and half of the councillors are replaced every three years. The departmental council constitutes sector- specific committees from among its members. The president of the departmental council is the executive who constitutes the executive body from among its members and s/he represents the standing committee *(commission permanente)* together with the elected vice-presidents and, in a more limited form, the bureau.

[28] Paris, Guiana and Martinique did not vote at this time
[29] *Etablissement public de coopération intercommunale.*

41. Finally, the regional council is the deliberative body of the region (*conséil régional*), whose members are elected (since 2004) for a six-year term based on a two-round majority rule system. The regional council is assisted by special committees and by the economic and social council *(conseil économique et social régional – CESR),* which is an advisory bodywhere corporate, union and voluntary sector organisations participate. The president of the regional council is a councillor elected by the council's members. S/he is the executive body of the regions and is assisted by vice-presidents, representing the standing committee (*commission permanente)* and the bureau (see below).

42. Following implementation of Law 2013-403 of 17 May 2013, the term "departmental elections" replaced the traditional term "cantonal elections", and the term "departmental council" replaced the "general council". Just like the previous cantonal elections, the departmental elections used a two-round system similar to that employed in the country's legislative elections. One important innovation was the so-called binomial voting adopted in this election. According to this new system two councilors (a man and a woman) were elected from single-member constituencies (the new cantons adopted in 2014). A binomial (male and female pair of candidates) gaining the votes of at least 25% of the canton's registered voters and more than 50% of the total number of votes actually cast in the first round of voting would thereby be elected. If no candidate satisfied these conditions, then a second round of voting would be held one week later. Entitled to present themselves in the second round were the two binomials who received the highest number of votes in the first round, plus any other candidate or candidates who received the votes of at least 12.5% of those registered to vote in the canton. In the second round, the binomial receiving the highest number of votes would be elected. It should be noted, however, that neither the city of Paris and the Lyon *métropole*, nor Martinique and French Guyana took part in this election due to their particular status.

Multiple mandates

43. A traditional characteristic of the French political system is the accumulation of mandates *(cumul des mandats)*. Often mayors may hold at the same time elected posts at the *Conseil General*, the National Parliament and sometimes even executive posts in the National Government. During the monitoring visit, several interlocutors underlined the advantage of this system in maintaining close links between the members of Parliament and the territories of the Republic. Undoubtedly under this system the politicians themselves will also receive the benefit of additional allowances and other advantages. This may even explain the continued complexity of French territorial and, political organisation where new roles have been added, but strong resistance has meant that those roles they should have replaced or merged, have also remained. The great number of political posts at different levels are retained at a high cost in relation to efficiency, transparency and accountability and constitute a major barrier to reform.

44. This *cumul des mandats* system has been called into question several times. In spite of strong resistance from the elected officials, it seems that now there is a visible movement towards the end of the so-called "French exception" of the plurality of mandates at various levels between the national mandate and local executive mandate.[30] Each one defends the territorial level of which he/she is the elected official. Therefore, it is well-known that in the assemblies, there are "departmentalists" and "regionalists", who endeavor to amend territorial reform projects of the government, with growing risks of unhelpful compromises.

45. A first, rather cautious reform was introduced in 2000,[31] following passionate debates, it limited the possibility of office plurality to two mandates. The recent law of 2014[32] marks a paradigm shift since it prohibits cumulating local executive functions with a national parliamentary mandate (deputy or senator) or a mandate at the European Parliament, starting from 2017. Officially, the explanatory memorandum of the law stresses the need to restrain the number of mandates since nowadays executive duties in territorial authorities imply a heavy workload for elected officials.[33]

[30] In 2013, 58% of the French deputies and 59% of the senators also held a local executive function at a territorial authority or a public corporation of inter-municipal co-operation with own taxation powers (Press release of the Council of Ministers of April 3rd, 2013).
[31] Loi du 5 avril 2000 relative aux incompatibilités entre mandats électoraux ; loi du 5 avril 2000 relative à la limitation du cumul des mandats électoraux et des fonctions électives et à leurs conditions d'exercice.
[32] Loi organique n° 2014-125 du 14 février 2014 interdisant le cumul de fonctions exécutives locales avec le mandat de député ou de sénateur ; loi n° 2014-126 du 14 février 2014 interdisant le cumul de fonctions exécutives locales avec le mandat de représentant au Parlement européen.
[33] Communiqué de presse du Conseil des ministres du 3 avril 2013.

2.4. Previous reports and recommendations

46. Following the preparation of several reports concerning a number of European countries, the Congress decided, in September 1999, to begin preparing the report for France. Fact-finding visits (December 1999 – March 2000) on local and regional democracy in France focused on the following aspects:

- increased participation by representatives of territorial authorities in public decisions concerning administrative planning and the administrative re-organisation;
- clarification of the powers of territorial authorities, in response to their interlocking nature and the growing use of contractual arrangements;
- consolidation of territorial authorities' financial resources from taxation, through reform of the corresponding legislative framework;
- the question of simultaneous office holding and the adoption of a series of coherent legislative measures to improve the status of territorial elected representative;
- The political accountability of territorial executives to elected assemblies;
- the future role of regional democracy;
- ratification by the appropriate bodies of the European Charter of Local Self-Government and acceptance of the Charter on the Participation of Foreigners in Public Life at Local Level.

3. Honouring of obligations and commitments

3.1. Level at which the Charter is incorporated

47. The European Charter of Local Self-Government (The Charter) contains principles that bind the Parliament and the central cabinet, since Article 55 of the French Constitution specifies that treaties duly ratified shall, upon publication, prevail over Acts of Parliament. France participated actively in the preparation of the Charter and was one of the few states to sign it immediately on 15 October 1985. However, ratification, authorised by a law of 10 July 2006, became effective only on 1 May 2007. Decentralisation in France was much ahead of the requirements of the Charter – following the reforms of 1982 – making the immediate legal impact of the Charter marginal. The principle of subsidiarity, which was new in France, had been included in Article 72 of the Constitution in 2003.

48. A draft law providing for ratification of the Additional Protocol to the Charter, on the right to participate in the affairs of local authorities,[34] is currently going through Parliament, having been introduced into the Senate on 4 March 2015.

3.2. Constitutional and legislative developments

49. The current Constitution dates from 3 June 1958 with various later modifications, and completed by organic statutes that must be respected by ordinary laws.[35] As mentioned *supra* the 1958 Constitution affirmed the basis of a normal parliamentary system. It defines *inter alia*:

- the President of the Republic (Chapter II)
- the Government (Chapter III) headed by the Prime Minister (Article 21)
- the Parliament (Chapter IV)
- the relationship between the Parliament and the Government is set out in Chapter V under which the National Assembly may revoke the Government, including its Prime Minister.

50. Article 34 of Chapter V states that statute shall define the system of electing members of local assemblies, as well as members of deliberative assemblies of the territorial authorities.[36] Article 34 has also played a central role in constitutional case law, as it states that law shall found the «basic principles of free administration (*libre administration*) of territorial authorities, their powers and revenue». The

[34] CETS No 207.
[35] English version of the Constitution: http://www.legislationline.org/documents/action/popup/id/8808/preview
[36] This paragraph was modified by article 11 of loi constitutionnelle n° 2008-724 du 23 juillet 2008.

Constitutional Court has interpreted this key provision as meaning that all important rules on local authorities must be passed by parliament, in which «the Senate shall ensure the representation of the territorial communities of the Republic.» (Article 24) as the senators are elected by local governments. Moreover, «bills primarily dealing with the organisation of territorial communities shall be tabled first in the Senate» (Article 39). As a majority of members of parliament are or have been elected to local government, this provides a strong guarantee for local interests. The local and regional authorities associations often draft amendments that are presented by members of parliament – with a high probability of adoption.

51. Treaties and international agreements are regulated in Chapter VI.

52. The character of the Republic is defined in Article 1 as "….indivisible, secular, democratic and social Republic" and states «It shall be organised on a decentralised basis».[37] The incorporation of this principle into the first article of the Constitution, as revised in 2003, signalled the rise and the growing importance of decentralisation for the French Republic.

53. Territorial communities are detailed in Chapter XII, Articles 72 to 75-1. Article 72 of the Constitution contains an indicative, non-exclusive list of autonomous local and regional authorities (municipalities, departments and, since 2003, regions) and allows the creation of new categories by statute. These authorities have elected councils and are granted the right of free administration (*libre administration*) within the limits of the law (see further *infra*). The article also includes an "experimental clause" whereby territorial authorities or associations may, under certain conditions, exercise their powers on an experimental basis, in derogation of statute or regulation (see further *infra*). In addition it states that no territorial community has authority over another one (regions over departments, for example). The State representative has the right (and, according to the Constitutional and Administrative Courts, even the obligation) to control the legality of the decisions taken by local and regional authorities.

> Article 72:[38]
>
> "The territorial communities of the Republic shall be the *Communes*, the *Départements*, the Regions, the Special-Status communities and the Overseas Territorial communities to which Article 74 applies. Any other territorial communities created, if need be, to replace one or more communities provided for by this paragraph shall be created by statute.
>
> Territorial communities may take decisions in all matters arising under powers that can best be exercised at their level.
>
> In the conditions provided for by statute, these communities shall be freely administered through elected councils and shall have power to make regulations for matters coming within their jurisdiction.
>
> In the manner provided for by an Institutional Act, except where the essential conditions for the exercise of public freedoms or of a right guaranteed by the Constitution are affected, territorial communities or associations thereof may, where provision is made by statute or regulation, as the case may be, derogate on an experimental basis for limited purposes and duration from provisions laid down by statute or regulation governing the exercise of their powers.
>
> No territorial community may exercise authority over another. However, where the exercising of a power requires the combined action of several territorial communities, one of those communities or one of their associations may be authorised by statute to organise such combined action.
>
> In the territorial communities of the Republic, the State representative, representing each of the Members of the Government, shall be responsible for national interests, administrative supervision and compliance with the law".

54. Article 72-1[39] also provides the right of petition before the local council and for referendums; although in reality these procedures are not often used. Concerning territorial reforms, this article explicitly refers to the possibility (not the obligation) of consultation of voters on changes to the boundaries of territorial communities in the conditions determined by statute.

[37] Loi constitutionnelle n°2003-276 du 28 mars 2003 relative à l'organisation décentralisée de la République.
[38] This article is the result of article 5 of loi constitutionnelle n° 2003-276 du 28 mars 2003.
[39] This article was introduced by article 6 of loi constitutionnelle n° 2003-276 du 28 mars 2003.

> Article 72-1:
>
> The conditions in which voters in each territorial community may use their right of petition to ask for a matter within the powers of the community to be entered on the agenda of its Deliberative Assembly shall be determined by statute.
>
> In the conditions determined by an Institutional Act, draft decisions or acts within the powers of a territorial community may, on the initiative of the latter, be submitted for a decision by voters of said community by means of a referendum.
>
> When the creation of a special-status territorial community or modification of its organisation are contemplated, a decision may be taken by statute to consult the voters registered in the relevant communities. Voters may also be consulted on changes to the boundaries of territorial communities in the conditions determined by statute.

55. Financial autonomy for local and regional authorities and the principle of fiscal equalisation and compensation if new tasks are delegated by the State are provided for in Article 72-2.[40] Tax revenue and other own revenue of territorial communities should represent a "decisive share" of revenue for each category of territorial communities.

> Article 72-2:
>
> "Territorial communities shall enjoy revenue of which they may dispose freely in the conditions determined by statute.
>
> They may receive all or part of the proceeds of taxes of all kinds. They may be authorised by statute to determine the basis of assessment and the rates thereof, within the limits set by such statutes.
>
> Tax revenue and other own revenue of territorial communities shall, for each category of territorial community, represent a decisive share of their revenue. The conditions for the implementation of this rule shall be determined by an Institutional Act.
>
> Whenever powers are transferred between central government and the territorial communities, revenue equivalent to that given over to the exercise of those powers shall also be transferred. Whenever the effect of newly created or extended powers is to increase the expenditure to be borne by territorial communities, revenue as determined by statute shall be allocated to said communities.
>
> Equalisation mechanisms intended to promote equality between territorial communities shall be provided for by statute."

56. Thus, concerning the legal framework of local and regional self-government, the prime legal basis remains the 1958 Constitution, while some of its provisions are completed by organic statutes that must be respected by ordinary statutes. Uniformity of statutes and the principle of equal rules for all entities in a given category (municipalities, departments, regions) indicates no hierarchy amongst them and no difference in their type of powers. Today the main provisions on local self-government are consolidated in *the Code général des collectivités territoriales* (CGCT), one of more than 50 Codes in which laws and decrees are organised. Such Codes are useful where rules change constantly. The CGCT is divided in 6 parts: General provisions, common to all local authorities; rules for municipalities, departments and regions, Local co-operation (inter-municipal co-operation, but also between regions or departments) and Overseas communities with special statute. More provisions are included in sectorial codes such as the Tax Code and the Codes for: Financial Jurisdiction, Education, Transport, Urban planning, Housing, Public properties, etc.

3.2.1. The principle of free administration (*libre administration*)

57. According to French legal doctrine, the principle of free administration (*libre administration*), as mentioned in Articles 34 and 72, is the key constitutional concept of local autonomy. This concept has

[40] This article was introduced by article 7 of loi constitutionnelle n° 2003-276 du 28 mars 2003.

allowed the Constitutional Court to produce a creative case law. Its positions are rather balanced, but it is not considered to be very audacious in favour of decentralisation. Its voluminous case law has developed since procedures adopted in 2009 allow a litigant in any ordinary suit to claim that a law violates the constitution and should therefore be examined for conformity by the Constitutional Court (the constitutionality question. This has been used by many local governments, often with success, to contest laws that had been in force for a long time.

3.2.2. Legislative developments

58. Legislative initiatives taken since 2013 in relation to decentralisation have already been alluded to above and will be discussed in more detail below in connection with the relevant territorial structures and powers.

a. A law modernising territorial public action law and affirming the importance of the metropolis,[41] promulgated on 27 January 2014, popularly known as the Maptam law;

b. The law on new regional boundaries, regional and departmental elections and modifying the electoral calendar,[42] which was passed on 16 January 2015 and will take effect from 1 January 2016;

c. A law on a new territorial organisation for the Republic,[43] popularly called *loi NOTRe*. This passed into law on 7 August 2015, after the rapporteurs visit.

59. Apart from this major reform other recent or proposed legislation includes:

- The law of 16 March 2015 on improvement of the laws relating to the new community (*nouvelle commune*),[44]
- The law of 31 March 2015 to facilitate local elected representatives in the exercise of their mandate;
- The organic law of 5 August 2015 relating to consultation on the accession of New Caledonia to full sovereignty.

60. Reform of the Global Operating Grant *(Dotation Globale de Fonctionnement* – DGF) for the communal sector[45] (*bloc communal*) is in progress. Interlocutors raised the issue of further cuts in state subsidies with the rapporteurs. However, the provisions contained in the 2016 draft Finance Law were not known at the time of the visit as it was presented to the Council of Ministers only on 30 September 2015. The bill principally reforms the DGF for the communal sector. It is proposed to create 3 subsidy rates:

- A basic subsidy for all communes (€75.72 per inhabitant);
- A rural subsidy for all communes with a population density less than 75% of national density (€20 per inhabitant);
- A centrality subsidy for those communes exercising a centrality function (€15-45 per inhabitant).

61. Equalisation grants are also to be reformed. The national equalisation grant is to be cut and the resources distributed as follows:

- an urban solidarity grant (659 communes will qualify for 2016 against 742 in 2015);
- a rural solidarity grant (23 000 communes will qualify for 2016 against 34 000 in 2015).

62. In addition the equalisation fund for intercommunal and communal resources (FPIC) will increase from €780 million to €1 billion.

3.3. Local and regional authorities: territorial structures and powers

3.3.1. Territorial structures

63. At the time of the rapporteurs visit, prior to the implementation of the new regional map of 13 metropolitan regions, self-government administration was carried out in 27 regions

[41] *Loi 2014-58 sur le modernisation de l'action publique territoriale et d'affirmation des métropoles.*
[42] *Loi 2015-29 relative à la délimitation des régions, aux élections régionales et départementales et modifiant le calendrier électoral.*
[43] *Loi 2015-991 portant nouvelle organisation territoriale de la République.*
[44] *Loi du 16 mars 2015 relative à l'amélioration du regime de la commune nouvelle, pour des communes fortes et vivantes.*
[45] This encompasses *communes* and intercommunal bodies.

(22 in metropolitan France) and 101 departments (96 in metropolitan France). Of the Inter-municipal cooperation entities, there were 2 133 EPCI[46] communities (of various kinds) and 12 700 technical unions (*Syndicats)* of different kinds*)* and finally 36 744 municipalities (*communes*) – of which 36 529 in metropolitan France.

64. Alongside this local structure and using the face to face *(face à face)* principle, the state territorial administration was arranged in 27 regional administrations, 101 departmental prefectures and 342 sub-prefectural districts (*arrondissements*). The law of 1992 on the territorial administration of the Republic in its first article underlines that: "the territorial administration of the Republic is assured by territorial authorities and by the deconcentrated services of the state" A following decree (Deconcentration Charter)[47] explicitly sets out the principle of subsidiarity that should clarify the allocation of responsibilities between the different tiers of state administration. The Constitutional Council stated that reorganisation of state territorial administration belongs to the exclusive competence of the government.[48] The territorial organisation of government into deconcentrated and decentralised bodies dates back to the 19th century.

65. Deconcentrated state services are locally headed by a prefect, who is appointed by a decree of the President of the Republic. He represents the authority of the state and the ministers. These services have been the effective instruments of centralisation as local affairs were directly managed by state institutions. Their drastic transformation is the interface of the decentralisation revolution which started in 1982. As a result of the recent legislation on regional boundary change (to take effect from 1 January 2016[49]) state services are currently undergoing a rationalisation process with a concentration at the regional level.

66. The decentralised bodies on the other hand are legal entities with elected assemblies and executives bodies. They have their own competences, properties, budget, resources and employees. Their existence and autonomy are guaranteed by the constitution and protected by the courts. Municipalities, departments and regions have equal constitutional status of local self-government. Municipalities and inter-municipal entities, now called "the communal sector" *(bloc communal),* represent more than 55% of the total expenses of local government, while departments account for 32% and regions 13%.

67. Local and regional authorities are considered to be administrative authorities, whose unilateral decisions can be contested in the administrative courts. Many deliberations of the assemblies are considered as regulatory acts: the creation of a public service; the vote on the budget, fees or tax rates, lists of job positions, the regime of bonus for employees, etc. Decisions taken by the executive bodies, that is, the mayor or president, are rather individual ones: concerning employees, citizens, private corporations, etc. The contracts are, as a rule, subject to Administrative Law, and local authorities have to follow the Code of Public Procurement, which is the same for the State. If any local or regional authority needs land or real estate for a project of public interest, it may launch a procedure of expropriation. Municipalities can also decide to pre-empt a property that is involved in a selling process. However, local authorities have no direct possibility to create or decide on administrative penalties or sanctions.

68. Although the Constitution states that territorial authorities «shall have power to make regulations for matters coming within their jurisdiction» (Article 72), in reality they have few normative powers - namely the capacity to issue general compulsory rules that have to be respected by a large group of persons. Concerning their own competences, they may issue complementary provisions to national rules: on the regime of the grants they allocate; on the aids to private firms, on social assistance (in the case of departments), etc. In only two domains strong normative power is delegated to local communities: town planning is a competence of municipalities, often transferred to inter-administrative communities (see below para. 84 et seq.). Moreover, the administrative police fall within the power of the mayor who may issue regulations on safety: traffic; dangerous places (lakes and rivers); sanitary measures; protection against fire, natural emergencies and environmental management (water protection, noise reduction) etc.

3.3.2. The general clause of competence *(La clause générale de compétence)*

69. The general clause of competence signifies that subnational government may take on tasks which do not form part of the obligatory responsibilities of another level. For example, municipalities

[46] *Etablissement public de coopération intercommunale*.
[47] Décret n°92-604 du 1 juillet 1992 portant charte de la déconcentration.
[48] Being also "d'ordre réglementaire": CC, décision n°97-180 L du 21 janvier 1997, *Nature juridique de l'article 2 de la loi d'orientation n° 92-125 du 6 février 1992 relative à l'administration territoriale de la République*.
[49] Loi 2015-29 relative à la délimitation des régions, aux elections régionales et départementales et modifiant le calendrier électorale.

are responsible for elementary education, departments for middle schools and regions for high schools. Therefore, a department cannot set up and run a high school. But apart from these cases a relatively broad spectrum of tasks may be developed under this clause.

70. General competence was first bestowed on communes by municipal law of 1884 and extended in 1982 to the other subnational levels. The Balladur Committee of 2009 criticised the clause for generating duplication and costly competition between local governments and concluded that it was impossible to simplify the distribution of competences without reducing the number of tiers. It intended to restrict the clause to municipalities and to provide a specialisation clause for the departments and regions by allowing intervention only within specific laws. However it did not manage to overcome opposition. The opposition heard today, believes that restrictions on general competence contradict the principle of 'free administration' at the sub-national territorial level, guaranteed by the French Constitution. In 2010 general competence was nevertheless removed for departments and regions, to take effect from 1 January 2015 although with the change of Administration the relevant provisions were never implemented.[50] General competence for departments and regions was restored once more under the Maptam Law of 2014[51] but has been dealt a fatal blow by the law NOTRe promulgated on 7 August 2015[52] thereby returning general competence to the sole prerogative of the municipality.

71. Thus municipalities still benefit from the general clause of competence. As the Council of State has said,[53] "Article L. 2121 – 29 of the general code of the territorial authorities, entitles the town council to rule on all the questions of municipal public interest, provided they are not reserved by the law for the State or other public persons and that there is no encroachment on the attributions conferred to the mayor". Consequently, municipal councils may intervene in a wide and diverse range of matters, as long as these are considered to be of local interest by the courts. Under this clause, local governments have created services and infrastructures in domains such as sport, culture, environment, economic development, co-operation with foreign local authorities, transport (airport or port), etc. The municipal council is in charge of land-use planning and urban planning, which is often delegated to inter-governmental structures for co-operation.

72. Special attention should be given to the "Experimental clause" (see above para. 53 et seq.) that empowers local and regional authorities through the possibility of transferring powers in specific domains, allowing exceptions to general provisions, or vesting a local or regional authority with the authority of the state. The proposals for experimentation were modified in the passage of the bill on new territorial organisation through parliament, particularly after the serious doubts expressed by the Council of State. Even a restrictive reading sees experimentation as a move away from the uniform application of rules associated with the republican territorial model.

3.3.3. The regions

73. The first substate level, the region is the youngest territorial body in France. It was primarily established in 1959, as a district for state administration in charge of economic development and co-ordination of the national policies. The regional institution was established while retaining the longer established and, in many ways, more powerful *départements*. New competences were added several times but without overall strategic vision. Their financial size is about 13% of the total local government budgets, which is less than 40% of the departments'. Yet certain regions (Corsica, all those overseas) have special competences and a great autonomy. The regions are still generally considered to be the poor cousins of French subnational authorities. They have been fully operational, democratically elected authorities only since 1986. They have no legislative power, nor even many regulatory competences. Regions have traditionally had a leading role in economic development, especially for delivering direct aids and subsidies to private companies. This leadership, though, is hardly accepted by other local governments. Regions' competences can better be seen in their expenditures. Regions support universities and research centres. Regional train lines have also been transferred to regions. They pay the equipment and support part of the deficit, but trains are run by the national SNCF Company, on the basis of contracts. Thanks to the general competence clause, there has been multi-directional support for culture (museums, operas, libraries) and art, sport, environment (regional parks and preservation areas, energy saving, water protection). Some regions own an airport, canals and river ports, etc. They are very active in trans-border and international co-operation.

[50] *Loi n° 2010-1563 du 16 décembre 2010 sur la réforme des collectivités territoriales*.
[51] *Loi 2014-58 du 27 janvier 2014 de modernisation de l'action publique territoriale et d'affirmation des métropoles*.
[52] *Loi portant nouvelle organisation territoriale de la République :Loi n° 2015-991 du 7 août 2015.*
[53] Conseil d' Etat, décision du 29 juin 2001, commune de Mons-en-Baroeul.

74. French regions have from the outset been the victim of political problems. The proportional electoral system in operation until 2004 prevented the emergence of clear majorities in many regions, which paralysed effective political action.[54] The regions have neither the organisational heritage, nor the political or bureaucratic resources available to the departmental councils. But the regional councils do have precise legal responsibilities in economic development, secondary education, training, transport, and several other fields and have used their powers ambitiously. The Vaillant law of 2002, though falling well below regionalist expectations, transferred new responsibilities to the regions (in regional transport and adult training) and granted a right to regional 'experimentation' in certain areas (for instance culture). The real challenge for the French regions is that they are institutions without a clear link to territory. Regional boundaries do not usually respect the informal boundaries of France's historic regions. The region of the Centre thus enjoys the same prerogatives as Brittany. French regionalisation was intended to produce more effective decision-making, not to give rise to what "Jacobin"[55] opponents call 'communautarian' or regionalist identities.

75. EU rules for the attribution of regional development and structural funds insist upon the involvement of local and regional authorities and voluntary associations. The Commission has come up against the French government over the interpretation of these rules. The regional prefectures have associated the regions with the definition and the implementation of structural and cohesion funds. Since the passage of the 2004 decentralisation law, French regions have been allowed to bid to exercise complete control over the management of structural funds on an experimental basis (the first contender being Alsace). The direction of change is clear, even though French administrative and political elites continue to resist as in many other areas of decentralisation. But, in comparative terms, the formal institutional influence exercised by the local and regional authorities on European Union issues is relatively minor.

76. The regional council is elected for 6 years. The next election in December 2015 takes account of the law on new territorial boundaries promulgated on 27 January 2014. The electoral system has been modified several times. The council, which has at least 4 meetings a year, elects a permanent committee to which it can delegate most of its competences, except in matters of budget and taxation. The president, elected by the council at its first meeting after elections, is, in fact, the leader of the winning list. The president and the vice presidents have classical executive tasks, and they can delegate certain competences to high ranking officers.

77. After the elections of December 2015, the regional assembly will include at least 2 elected members from each department. The opposition will have more rights and will, among other provisions, acquire the post of the chairman at the Finance Committee.

78. Regions will obtain new competences transferred from the departments. These will be (in 2017) for non-urban transport, school transport, departmental roads, public colleges and (in 2016) departmental harbours. The corresponding departmental services will be subordinated to regional authorities (Regional Council), while the financial resources allocated to these policy fields will also be transferred to the regions. The mode of transferring these services and financial resources will be concretised through conventions between the respective departmental and regional councils. An estimation of additional costs for the new tasks will be based on running expenses for these services over the previous 3 years (2014-2015-2016) and on investments' spending over the previous 10 years.

3.3.4. The departments[56]

79. The 101 French departments (including the 5 overseas departments of Guadeloupe, Guiana, Martinique, Mayotte and la Réunion) are an intermediate level of territorial division with a long tradition, important competences and large budgets.

[54] Up to 1998, elections for the French regional councils took place on the basis of departmental party lists. The proportional representation system used a 5% threshold and the 'highest average' methods of allocating votes to seats—marginally favoured the larger parties, but ensured a very broad representation of political forces, making it difficult for single parties, or even mainstream coalitions to obtain a majority. In 1998, only four (of twenty-two) regional councils had a working majority. The electoral system was reformed for the 2004 regional elections in an attempt to reduce chronic instability and create majorities. Two rounds of voting have been introduced. Lists obtaining over 50% of valid votes cast on the first round obtain a majority bonus of 25% of the seats—rather like in the municipal election. In the event of there being no first-round majority, a second round is held at which the leading list obtains a majority bonus of 25% of the overall seats. In 2004, this electoral reform carried out by the right produced a left-wing majority coalition in 20 out of 22 regional councils.

[55] In France generally a proponent of strong, centralised government powers.

[56] The nature and responsibilities of departments are evolving with recent and upcoming legislative changes which may alter the information contained here.

80. As concerns the departments they act in a variety of fields. The most important is social assistance, including the protection of children, assistance for the handicapped and elderly people, and social integration. Departments are also in charge of non-teaching personnel and middle schools (*collège*s); roads, including most national roads; school buses; local development; bus transportation in rural areas; water protection; public archives, etc. Departments support inter-municipal associations in varied domains. They offer grants to municipalities and the said associations for investment. Finally, they run several programs in domains such as culture, museums, libraries, historical buildings, etc.

81. There is an ongoing reform debate which has included the option of amalgamating departments with regions and of distributing of certain competences to the inter-municipal communities, but resistance is very strong. Currently the departmental council (*Conseil Départementale*[57]) can decide on all departmental matters, particularly on the creation of public services, on provisions for social assistance, on budget and taxes, on roads and secondary schools construction and maintenance, support for associations or municipalities, etc. These responsibilities are being altered by the new law on territorial organisation of the Republic (loi NOTRe), Chapter III, which aims to limit the powers to social and territorial solidarity. The council has at least 4 meetings a year; it elects a permanent committee to which it can delegate its competences (except budget and taxation) and which has frequent meetings.

82. The councillors are elected by binomials for six years in a constituency called a canton. The election follows a two-round voting system: a single winner is designated by each voter who casts a single vote. The abstention is often high, especially in urban areas. The councillors are not professionals; however, they receive a variable compensation for their activities. The executive president, assisted by four to fifteen vice-presidents, is elected among the councillors every three years. Being «the only one in charge of the administration»; s/he prepares and executes the council deliberations, signs the contracts, appoints employees, decides on expenditures. S/he can delegate powers to the vice-presidents and in limited part to the staff.

83. Departments are in a difficult financial position with costs for social welfare, roads and education all rising. Their resources are either hit by the crisis (tax on real estate transactions) or no longer flexible (taxes are shared with the state, without being able to set the rate). However, grants from national budget have stabilised. The consequence is that although departments reduce investment as well as discretionary expenses (culture, support of municipalities, etc.), their debt is rising. From 1 January 2016 onwards, departments will have the option to join a different region if the department itself adopts such a decision and both regional councils agree through 3/5 majority vote of their councils.

3.3.5. Inter-municipal co-operation (IMC) bodies: the French alternative to amalgamation

84. The most characteristic feature of the French system is the fragmentation of the municipal level, with a large proportion of very small municipalities (*communes*) yet they have nearly the same status. Inter-municipal co-operation (IMC) aims at remedying this fragmentation) through amalgamation to reduce their number and create more powerful bodies.

- 14 351 municipalities have less than 300 inhabitants and total less than 2.3 million inhabitants;
- 20 233 municipalities have less than 500 inhabitants;
- 27 200 municipalities, have less than 1 000 inhabitants;
- only 886 such bodies total more than 10 000 inhabitants;
- 39 municipalities have more than 100 000 inhabitants.

85. There are more small communes in France than in any other European country—over 36 500 with around 550 000 local councillors. Almost 500,000 of these councillors represent 34 000 communes with fewer than 1 500 inhabitants. Although the size and character of communes vary enormously, each one has the same legal rights and obligations. One could distinguish between two main categories of communes: First, the small and medium-sized communes (up to 20 000 inhabitants), which generally exist in a dependent relationship with, and look for protection from higher-placed local, regional, and state authorities (especially the departments). Second, the larger urban communes, which adopt characteristics of city governments.

86. On 1 January 2015, there were 2 133 public entities of inter-municipal co-operation (EPCIEP, *Etablissements publics de cooperation intercommunale)* with own fiscal powers, while there were 2 145 such entities in 2014. Main changes had rather to do with new legal categories or forms: ten major cities (*métropoles)* (see below para. 92 et seq.*)*, were created (in addition to the one of Nice) by transforming six urban communities (*communautes urbaines)* and four conglomerates

[57] Before 2013 they were called General Councils and their members were called General Councillors (*Conseillers Géneraux*).

(*communautés d'agglomeration)*. Moreover, the urban community of Lyon was transformed into the *Métropole de Lyon* and fulfills both the tasks of a *métropole* and of a departmental council (*Conseil Départemental ou Général).*

87. A decrease in numbers has also been recorded for simpler forms of IMC, the syndicates *(syndicats):* They were no more than a total of 12 700 entities on 1 January 2015 comprising a reduction of 700 entities. There was also a new legal category: The Centre of territorial and rural equilibrium (*le pôle d'équilibre territorial et rural*). On 1 January 2015 there were 55 such entities, most of them from mixed syndicates (*syndicats mixtes)* that had been closed.

88. In some cases, state authorities intervene in the creation of such entities (see above Constitutional Council decision in the *"Communes de Thonon des Bains"* case on the need for prior consultation with the affected authorities for compulsory measures of state authorities. On the other hand, in April 2013 - and particularly in decision n° 2013-315 *QPC Commune de Couvrot* – the Constitutional Council accepted the power of the state prefect to integrate (according to a temporary procedure valid from 1January 2012 to 1June.2013) a municipality into an EPCI with own fiscality in spite of the desire of the affected municipality to belong to another constituency. According to the Constitutional Council, the mechanisms that had been introduced in order to promote fusion of EPCIs according to the departmental scheme of IMC as provided by article L. 5210-1-1 of CGCT, did not violate Article 72 of the Constitution. The lawmaker is entitled, within the scope of public interest for the rationalisation of the inter-municipal structure, to introduce limitations to the principle of free administration, provided that there is previous consultation of the departmental commission for IMC as well as of the elected representatives of the affected municipalities.

3.3.5.1. The first step of IMC: technical unions

89. The Act of 22 March 1890 set up a model of municipal union called a "*syndicat"*. It has legal personality and can assume a public function in place of municipalities. It is created by unanimity. Multi-purpose municipal unions, allowed in 1959, were a decisive progress. They are created by a special majority: 1/2 of the municipalities and 2/3 of population, or the reverse. Thousands of unions were created in 1960-1970, when France had a booming economy, fast growing metropolitan areas and a national policy for the modernisation of public services. These «pipe unions» (water supply, garbage collection, electricity or gasworks, urban transport) look much like public companies though municipal law basically applies. Many do not have their own staff, the tasks being fulfilled on the basis of a contract by the employees of one municipality, or the services being delegated to a private contractor.

90. The procedure for creating such inter-municipal bodies begins with the publication by the prefect of a list of municipalities to be consulted on a project to create a certain type of union. In fact, the prefect holds informal preliminary discussions to build consensus or to react to the proposal of a group of municipalities. If unanimity (generally) or a qualified majority of municipal councils approves the project, then the prefect issues a decree that formally creates the union, and defines its by-laws. The union is a legal entity. Its assembly is composed of delegates elected by each municipal assembly (normally two). The *syndicat des communes* elects a president and vice-presidents, who have executive power. The resources of the budget are the fees paid by the users of the services, contributions paid by the municipalities in pursuance of criteria that are in the by-laws (number of inhabitants, of pupils in schools, length of the roads, fiscal capacity of each participating municipality, etc.).

91. The union receives general grants from the state budget and can get specific ones for investment. It can contract loans with banks. The employees are civil servants or contractual employees, if the union has commercial activity. Unless the law says differently, the general provisions applying to municipalities apply to unions. Thanks to these unions, all basic public services are available everywhere. By creating solidarity and confidence between local politicians and bureaucrats, they allowed a step forward for more integrated structures.

3.3.5.2. The second step of IMC: communities

92. A 1966 Act created four compulsory urban communities in specially designated metropolitan areas (Bordeaux, Lille, Lyon and Strasbourg). The aim was to allow better regional development policies, considering that a region needs a dynamic capital. Others were subsequently created on a voluntary basis (the current total is 16). They have a wide range of competences and full fiscal power. The Act on Territorial Administration of 6 February1992, proposed new forms of communities, more centralised in competences and taxation. Implementation was slow, the main reason being the complexity of the rules.

After a new round of negotiations, Parliament adopted the law of 12 July1999 «On simplification of inter-municipal cooperation», which reduced the number of community types to three. Its strategic aim was to cover the whole territory with communities, but the Government was convinced that this would take time. It succeeded in an unpredictable way and by 2005 this aim was nearly achieved.

93. In 2011 there were 2 599 inter-municipal communities (in 2015 they were 2 133). They included 35 041 municipalities, 95.5% of their total number, and 91.2% of the national population. Out of these, 1 320 communities have established the exclusive business tax. There are 3 types of inter-municipal communities:

a. For rural municipalities and small cities (the law sets no size limit): 2 387 *communautés de communes,* with a population of nearly 28 million.

b. For larger cities (total over 50 000 inhabitants and a city of at least 15 000): 196 *communautés d'agglomération* (conglomerations) with a population of 23.7 million.

c. Metropolitan cities (over 500 000 inhabitants)*:* 16 *communautés urbaines,* with an overall population of 7.7 million inhabitants.

94. The creation of an inter-municipal community (*communauté*) is similar to that of the unions. Communities are legal entities, with compulsory minimal competences in economic development and urban planning. All other municipal competences are open for transfer, except state delegated competences, which belong to the mayor. It is possible to add new competences at any time and many communities are in a continuous process to extend their functions.

95. Community councillors are elected by municipal councils: each one elects a number of delegates in approximate proportion to the population. The smallest ones have at least one delegate, generally their mayor. These assemblies can be really numerous. The president and deputy presidents of the community are elected by the community council. They have the same executive powers as the mayor, in the matters for which the IMC is competent. The community has its own administration and staff but can, by contract, share it with a municipality. The law of 16 December 2010 has established provisions to facilitate such joint practices.

96. The budget of the community follows the same rules as the municipal budget. The resources are: the local business tax, the tax on property for waste collection, the tax on salaries for public transports. The «c*ommunautés de communes*» have taxes additional to municipal taxes, but they can opt for exclusivity of the business tax. Community councils can create an equalisation fund that redistributes part of its tax income to the participating municipalities, on criteria defined by the council. Moreover, communities receive general grants from the state and they can establish fees for commercial services and freely contract loans.

3.3.5.3. New steps to rationalise and democratise inter-municipal co-operation (IMC)

97. The Committee for the reform of local government in its Report (3 March 2009) proposed major modifications of the IMC. Some of them are enshrined in the law of 16 December 2010 on territorial reform. The new provisions should have facilitated the amalgamation of the municipalities belonging to the same community, but this has not had much success. A plan of systematic revision of the IMC entities was implemented in each department aimed at reducing their number and defining more rational boundaries and clear competences. Likewise, the law allows the creation of a new category of IMC called a *métropole.* Its main specificity is that its competences are transferred from the department and the region in certain domains. Financing was an issue as the department and the region had to pay compensation to the *métropole*. With a change of government in 2012 many of the provisions in the 2010 Act were not implemented and the new law of 27 January 2014 on modernising territorial action and affirming the role of the Metropolis has developed the previous law. Under this law the major cities (*métropoles*) of Paris (*Grand Paris*), Lyon and Marseille are endowed with special status. Developments are currently under way and the Mayor of Paris has announced ongoing public consultations throughout 2015 to feed into the future metropolitan area which will take effect from 1 January 2016. On the other hand, the new law NOTRe sets out a new inter-municipal map for rural and semi-rural areas with effect from 2018. The new minimum population for inter-municipal communes will be set at 15 000 inhabitants instead of the current minimum of 5 000. Although the 5 000 threshold is retained in derogations for mountainous and other low population density areas. Those IMCs recently constituted with 12 000 inhabitants will also be maintained.

98. There was also an important development concerning the democratisation of IMC entities, since direct election has been introduced: A demographic threshold operates so that in all communes above 1 000 inhabitants, the *conseillers communautaires* (members of assemblies of inter-municipal bodies) are elected directly through a ballot that is used in each municipality both for the municipal and the inter-municipal assembly. Below the threshold of 1 000 inhabitants it is generally the mayor represents the municipality (small communes generally have only one representative on intermunicipal bodies because of their weak demographic weight within the intermunicipal bodies - but there are exceptions). Although the system of one unitary ballot offered to people for electing both for the municipal and the inter-municipal assembly gave rise to criticisms, there is no doubt that the introduction of direct election for inter-municipal assemblies is an important step towards the democratisation of these entities.

99. It should be noted that there are also 70 "isolated" municipalities (*communes isolées),* which are not part of inter-municipal structures*,* excluding the special-status municipality of Lyon. Of these 70 municipalities, 42 will be integrated into the *metropole du Grand Paris*, 15 are located in the department of Mayotte, 4 are single municipalities of islands (Ile de Brehat, Ile de Sein, Ouessant, Ile d'Yeu), one was created after the transformation of an *EPCI* into a new major municipality and finally 8 municipalities became "isolated" because of the decision of the *Conseil constitutionnel* of 25 April 2014 in *"Commune de Thonon-les-Bains et autre*". In this decision, the Constitutional Council decided on a priority question on constitutionality, submitted by the highest administrative court, the *Conseil d'Etat* in February 2014, that Article L. 5210-1-2 of the General Code on territorial authorities (CGCT) which obliges the state prefect to compulsorily incorporate isolated municipalities into an inter-municipal structure *(EPCI à fiscalité propre*) violated the principle of free administration (Article 72 of the Constitution) as the affected municipalities were not previously consulted.[58]

3.3.6. The municipalities (communes)

100. Municipalities are extremely diverse. They have a common status, but with increasing technical differences (elections, budget structure, modalities of grants, human resources management, salaries and staff positions etc.).

101. Municipalities still benefit from the «general clause of competence» (see above para. 69 et seq.).

102. Therefore, municipalities are responsible for the construction and maintenance of kindergartens and primary schools. They decide on the construction and functioning of sport facilities and cultural services (music school, museum, and theatre) as well as of roads, parking areas, public gardens, public utilities such as water distribution, waste collection and disposal, heating plants, bus or tram transport, though these services are often managed by co-operation bodies or delegated to private companies. Fire protection, with volunteer firemen, remains a traditional function in small municipalities, but this service, becoming more professional, is mainly organised on an inter-municipal and departmental level. Municipal police employees have limited powers. They may impose fines in fields such as traffic violations, supervision of rural areas and environment regulations. Municipal social services have competence concerning the elderly, nurseries, and the poor. Social housing can be another municipal responsibility. All these services can be transferred to co-operation bodies such as unions or communities.

103. Paris is a unique case in point as it is, at the same time, both a municipality and a department. Its council and mayor have competences in both legal capacities with responsibilities for security and the police coming directly under the authority of a prefect of police, dependent on the Ministry of the Interior. Like Lyon and Marseille, Paris is divided in *communes d'arrondissement* (a kind of district or section) each with its own council and mayor, staff and budget for current administrative, social, cultural and educational matters.

104. The deliberative organ of municipalities is the municipal council. Its members, the councillors, number 9 (for entities under 100 inhabitants) to 69 (over 300 000 inhabitants) and are elected for six years (most recently in March 2014) by the registered voters. In municipalities with less than 1,000 inhabitants (see above, para.37), candidates can run as part of a list and voting for candidates on different lists or

[58] In 2013, the Constitutional Court had decided that legal provisions about withdrawal, fusion or border modification of an EPCI in article L. 5210-1-2 of CGCT, of the ACT of 16th December 2010 "de réforme des collectivités territoriales" would not violate the principle of free administration in Art. 72 of the Constitution: Décisions CC 26 avril 2013 Commune de Puyravault, n° 2013-303 QPC – CC 26 avril 2013 Commune de Maing, n° 2013-304 QPC – CC 26 avril 2013 Commune de Couvrot, n° 2013-315 QPC. See comments by Lutton (P.) "*Liberté communale et coopération intercommunale, trois décisions du Conseil constitutionnel du 26 avril 2013*", Constitutions 2013 pp. 397. Montecler (M.-C.), AJDA May 2013; Fialaire (J.) "L'intercommunalité face au principe de libre administration", AJDA 2013 pp. 1386 ; Le Chatelier (G.) "Le Conseil constitutionnel valide les pouvoirs exorbitants du préfet en matière d'intercommunalité", AJCT 2013 pp. 344.

deleting names is allowed, and votes are counted for each candidate. During the first round, candidates who gain more than 50% of votes, representing more than 25% of the people registered on the electoral list, are elected. At the second round, a relative majority is sufficient to be elected. In municipalities having more than 1,000 inhabitants (see above, para.37), full lists are compulsory and voters cannot change them. During the first round, the list that gains more than 50% of votes controls the majority of the municipal council. The remaining seats are proportionally shared among all the lists with more than 5% of votes, including the winning one. If no list gets an absolute majority, there is a second round among the lists which obtained more than 10% of votes. During the second round, the list with the majority of votes wins the majority of seats, the remaining seats being shared as above.

105. This is a good compromise as there is always a solid majority in the council so that the mayor can count on strong support and authority. Minorities are also represented. A central government decree may disband the Council in the event it is unable to fulfil its duties, and new elections must be held in short delay. Municipal councillors are considered as volunteers and are not salaried. However, they may be financially compensated for extra expenditures linked to their duty. Towns may establish a general allowance up to about €1 000 per month. Councillors dispose of rights including to: training, protection against attacks, absence in job, etc. There has been a long-lasting debate on professional status for local politicians and on 31 March 2015 a law was promulgated to facilitate local elected representatives in the exercise of their mandate providing for better working conditions and indemnities.[59]

106. The municipal council meets at least four times a year and at any time the mayor so requests. Meetings are public, unless the council decides otherwise. The mayor is responsible for setting the agenda. The municipal council is responsible for the adoption of the budget, the rate of taxes and fees, the guidelines of the different policies, the town planning rules, for deciding the job positions for employees, the creation, organisation and management process of services and equipment, authorising the mayor for signing contracts, including loans, etc.

107. The executive municipal body is formed by the mayor and several deputy mayors. The election of the mayor occurs in the week following the election of the council. Deputy mayors cannot exceed 30% of the number of councillors. They are, of course, political friends or allies of the mayor, their powers are those delegated by the mayor, and s/he can take them away at any moment. The mayor and deputy mayors may only be dismissed by the council but under specific conditions they may be dismissed by the central government. The mayor is responsible for the preparation and implementation of the decisions of the council, which can delegate part of its powers. Furthermore, s/he represents the state and therefore carries out some state delegated responsibilities. Mayors also have their own competences, which are not shared with the council: such as regulatory power in matters of security, traffic, health, environment; delivery of construction permits, etc. Mayors organise the services of the City Hall and are the chief of all employees who are appointed by them -generally upon competitive exam to a vacant position. The mayor and deputies are not considered as professionals, but earn a gratuity that is proportional to the population of the municipalities. In larger municipalities, the position of mayor is, in fact, a full-time job and the holder often has another political mandate in inter-municipal cooperation bodies, another local government or even in Parliament (see above para. 43 et seq.).

108. The Mayor, in his dual function as a state authority, is also endowed with delegated competences for keeping the civil register of births, deaths and marriages, voter registers, organizing elections, etc.

[59] Loi No 2015-366.

3.3.7. Finances

> Article 72-2 of the Constitution:
>
> "Territorial communities shall enjoy revenue of which they may dispose freely in the conditions determined by statute.
>
> They may receive all or part of the proceeds of taxes of all kinds. They may be authorised by statute to determine the basis of assessment and the rates thereof, within the limits set by such statutes.
>
> Tax revenue and other own revenue of territorial communities shall, for each category of territorial community, represent a decisive share of their revenue. The conditions for the implementation of this rule shall be determined by an Institutional Act.
>
> Whenever powers are transferred between central government and the territorial communities, revenue equivalent to that given over to the exercise of those powers shall also be transferred. Whenever the effect of newly created or extended powers is to increase the expenditure to be borne by territorial communities, revenue as determined by statute shall be allocated to said communities.
>
> Equalisation mechanisms intended to promote equality between territorial communities shall be provided for by statute".

109. The 2003 constitutional reform and the May 2004 law embedded the principle of financial autonomy for territorial authorities. The Constitution now explicitly affirms that the principle of 'free administration' incorporates the ability of local and regional authorities to be responsible for raising the 'preponderant part' of their 'local resources' in local taxation (Article 9 3 of the European Charter of Local Self-Government only speaks about "a part at least" of resources that should derive from local taxes and charges). There were rises up to 30% in the regional element of local taxation during the first two years of implementation of the new financial provisions (2004 and 2005). Moreover regional councils were levying the maximum fuel duty they were legally entitled to (1.75 centimes per litre). The de Villepin government commissioned the Richard report on finances of territorial authorities which criticised the increases in local taxes since the 2004 law and recommended that, in the interests of controlling overall public expenditure, tax increases by local authorities should be closely monitored. The subsequent Sarkozy/Fillon Administration introduced new strategies to reduce public expenditure. whereby local and regional authorities faced much tighter controls on staff recruitments than in the pre-2007 period. Nowadays, austerity policy is also accepted and the territorial authorities are among the addressees for savings.

110. In 2003, the principle of compensation was included in the Constitution: whenever powers are decentralised from the central government to the territorial communities, revenue equivalent to the resources necessary to discharge those powers shall be transferred (Article. 72-2) and compensation must be full and immediate. The Local Finance Committee *(Le Comité des Finances)*, a body composed of parliamentarians, elected representatives of the regions, departments and communes, as well as their associations, together with state representatives, is in charge of evaluating the due amount to be transferred. The Constitution states also that whenever the effect of newly created or extended powers is to increase the expenditure to be borne by territorial communities, revenue as determined by statute shall be allocated to the said communities. The Constitutional Court has decided that if the sum of taxes allocated for compensation regresses beneath the compensatory amount, a statute must create additional revenue. Once competences are transferred, there is pressure on local governments to spend more money. Thus, there were constant complaints that the compensation was not fair and frequent compromises triggered additional State support. On several issues, departments referred to the administrative and Constitutional Courts, with various results.

Financial resources

111. Local government resources are numerous, complex, partly different for each tier and in constant evolution. Local taxes are not collected by the municipalities in France, which regret that they do not have their own tax collection mechanisms. Local taxes are collected by the *Directions Départementales des Finances Publiques, DDIFP*, which depend on the Ministry of Economy and

Finance. The system for financing sub-national government in France is mixed. On the one hand, it includes state grants from the national level and, on the other, fiscal resources from a number of fees and taxes. Local and regional authorities raise direct and indirect taxes. They can establish fees and freely borrow money (following competitive procedures) but only in order to finance new investment. Monetary loans in order to cover current expenditure are not permitted and budgets must be balanced (the so-called "golden rule"). Many sub-national governments try to reach a surplus in their operating budget in order to use these resources for investment and avoid borrowing.

112. The existing direct local taxes, created at the end of the 18th century, seem archaic characters but also have some advantages. Two property taxes, on buildings and on land, are paid by the owners, mainly to the municipalities, communities and departments. The taxable assets are assessed by the government, taking into consideration physical criteria, but appraisals have not been fully re-evaluated since 1970. Moreover, municipalities and communities of municipalities *(communautés des communes)* can establish a tax on salaries to finance public transportation.

113. It should be noted that own revenue of the subnational governments in France traditionally derived from four direct local taxes often called *"les quatres vieilles"* (the four oldies). These taxes are levied by the three tiers of sub-national government, as well as by some inter-municipal associations. These four taxes, summing up to nearly 75% of own revenue in 2005, included:

a. The professional tax (*taxe professionnelle* - TP) that was mainly based on the value of equipment and reached nearly 50% of the total revenue from these four taxes, but it was abolished in 2010.

b. The property tax on buildings (*taxe foncière sur les propiétés bâties* - TFPB) paid by property owners (not only individuals but also companies).

c. The residence tax (*taxe d'habitation* -TH) that is paid by the residents.

d. The property tax on land (*taxe foncière sur les propiétés non bâties* - TFPnB). The right to levy these taxes was given to territorial governments by the special Act of 10h January 1980[60] that came into effect in 1981. Ceiling (or maximum) rates are provided, while there are sliding rules for increases in the rates for the different taxes. Tax management, including calculation, collection and recovery falls within the responsibility of state services.

114. In 2009, a reform of the local finance system began which had considerable impact on the first component of the "four oldies" as it removed one of the taxes placed on enterprises, the professional tax (TP). The professional tax had been the target of several criticisms. Instead of being based on the added value of enterprises, it taxed equipment and was thus seen as a penalty on investing by enterprises and a burden on the industrial sector. Therefore, those who had to pay this tax tended to be made exempt from its provisions by national legislation, and these exemptions were compensated for by providing grants to sub-national government.

115. The professional tax has been replaced by a new one called Territorial Economic Contribution (CET: *contribution économique territoriale*). The CET includes two taxes:
- the property contribution of enterprises ("*la cotisation foncière des enterprises*": CFE) and
- the contribution on added value of enterprises ("*la cotisation sur la valeur ajoutée des enterprises*": CVAE)

116. The CFE concerns natural and legal persons and it is calculated on the rental value of the property subject to property tax: the terrain, buildings and facilities. The goods concerned are those which belong to the person, those rented or leased and even those used for free. The base, called the rental value *(valeur locative)* determines the property tax. The tax rate is fixed by the municipality. CFE was revised upwards following a revision of the cadastre.

117. The CVAE, applies only to entrepreneurs with a turnover higher than €152 500. It is calculated on the value added by the company, meaning the difference between actual revenue and part of the operating expenses. In reality, and despite the complexity of calculations, the CVAE mostly affects companies exceeding €500 000 with a minimum contribution of € 250. A company turning over more than one million euros would seldom exceed €1000.

[60] Loi n° 80-10 du 10 janvier 1980 portant aménagement de la fiscalité directe locale.

118. The main reason for the abolition of the old professional tax was the need to reduce this taxation weight on manufacturing activities. The reform also modified the distribution of local taxes between the different tiers of local and regional government. In fact, the new asset is a mix of value added and property, with additional criteria for certain activities and provisional compensation by the national budget. Regions and departments no longer have the capacity to modify its rate and obtain a certain fraction of the total collection. The main capacity of decision is in the hands of the «inter-municipal communities". This new system of TPE (which is the sum of CFE and CVAE, but in most cases it is only CFE) proved to be more unstable than the former one in the context of economic downturn. Furthermore, national government responded to concerns expressed by some enterprises (particularly those in the service sector) through compensatory measures – especially for small businesses and for those with a large number of employees. The law guaranteed that local governments would be fully compensated for possible losses in revenue caused by the abolition of the TP. Indeed, between the TP in 2009 and the CET in 2010, there was a loss of almost €11 billion.

119. Concerning departments, the major issue of this reform lies within the larger financial framework. Neither the national government, nor the departments can determine the rate of the new taxes, something they were able to do with the TP. In other words, this new fiscal resource is less flexible than the former one. Furthermore, the promise by national government to provide compensation covered only the first year of the operation of this system and the experience of departments in receiving the promised compensation has not been positive according to the Congress delegation's interlocutors. Moreover, the transfer of new responsibilities (for example, for elderly people, the unemployed and people living below the poverty level) brought new and heavy burdens since financial compensation from the national government has not taken into account the amount of compulsory expenditure linked to the new responsibilities. There are even allegations that the heavily indebted state is looking to exploit the more solvent sub-national government in order to improve its financial position.

120. Revenue of sub-national governments in France also includes a series other direct or indirect taxes:

121. The transfer tax on property transactions (*droits de mutation à titre onéreux* -DMTO), imposed by departments and municipalities. This tax is particularly sensitive to economic evolution and the real estate market. The crisis has led to a decrease of 8.3 % for departments and 6.9 % for *communes*.

122. The household disposal tax (*taxe d'enlèvement des ordures ménagères* TEOM). This tax is levied by municipalities and inter-municipal structures with own fiscal powers (*groupements à fiscalité propre*). TEOM reached €6.3 billion in 2013, which made up an increase of 2.7 % after the previous increase of 3.7 % in 2012. Intermunicipal groupings receive more than 80% of this tax.

123. Special tax on security contracts (*taxe spéciale sur les contrats d'assurance* TSCA). This TSCA tax that has been transferred to the departments in 2005 includes two fractions, one which is linked to transfer of competence and the other one to the financing of fire and emergency service (SDIS *Service Départemental d'Incendie et de Secours*). In 2011 TSCA has been totally transferred to departments, within the framework of the reform of local finance (*réforme de la fiscalité locale*).[61] Following this reform, there was a duplication of the amount received by the departments, which reached €6.7 billion in 2013 (an increase of 0.8 % compared to 2012). Departments do not have any fiscal power over this tax, whose rate is fixed by the Parliament.

124. Interior tax on the consumption of energy products (*taxe intérieure de consommation sur les produits énergétiques* TICPE). The TICPE is received by regions and departments within the framework of transferred competences. In 2013 TICPE reached €6.5 billion for departments (- 1.1 %) and €4.2 billion for regions (+ 0.9 %).

125. Taxes on registration of motor vehicles (*taxes sur les cartes grises*). These are the only ones levied exclusively by the regions who received €2 billion from these taxes in 2013.

[61] Loi n° 2009_1673 du 30 décembre 2009 de finances pour 2010, loi n° 2010-1657 du 29 décembre 2010 de finances pour 2011, loi n° 2010-1658 du 29 décembre 2010 de finances rectificative pour 2010.

126. Railway network tax (*Imposition forfaitaire sur les entreprises de réseaux* – IFER), which amounted to more than €1.4 billion in 2013.[62]

127. Tax on commercial surface (*taxe sur les surfaces commerciales* -TASCOM). It concerns shops with shopping surface bigger than de 400 m², with a minimum turnover of €460 000. The TASCOM amounted for €708 million in 2013.

128. In 2013 total operational revenue (*recettes de fonctionnement*, not including investment) of territorial authorities in France reached €191.8 billion. Municipalities had the lion's share (€79.1 billion), without the inter-municipal groupings with own fiscal powers (*Groupements des Communes a fiscalite propre*) which reached €34.5 billion. Thus, the municipal sector totalled €113.6 billion which accounts for nearly 60% of total sub-national revenue. The departments received €64.7 billion, while regions only received €22.9 billion.

129. In addition, French territorial authorities are supported by state subsidies. The amount of financial assistance offered by the state as operating revenue reached €52 billion in 2013. The global operating grant (*dotation globale de fonctionnement* - DGF) constitutes the main component, or €41.3 billion, while the amount of equalisation grants and compensations, which also include the compensation for the reform of the professional tax (*dotation de compensation pour la réforme de la taxe professionelle* - DCRTP, amounted to €6.9 billion and the level of other endowments was €3.7 billion.

130. The distribution of DGF among the various levels of government remained stable since 2005: the municipal sector (municipalities and inter-municipal entities) receives an average of 57% of the total DGF amount, departments 30% and regions 13%. Equalisation grants reached € 7.5 billion in 2013, which was an increase of 4.3%. The amount of municipal equalisation grants reached in 2013 respectively €1.491 billion for urban solidarity grant ("*dotation de solidarite urbaine*" – DSU), €969 million was the rural solidarity grant ("*dotation de solidarité rurale*" – DSR) and €774 million under the national equalisation grant ("*dotation nationale de péréquation*" – DNP). Inter-municipal grant (*dotation d'intercommunalité*) amounted to €2.702 billion. Departments receive €1.413 billion under the equalisation distributed between urban equalisation grant ("*dotation de péréquation urbaine*" – DPU) with €623 million and minimum operation grant ("*dotation de fonctionnement minimale*" DFM) with €790 million. Finally, among 11 regions €193 million of regional equalisation were distributed in 2013

131. State transfers as a proportion of local government revenues decreased in the period following the 1982 reforms. With diminishing real central government income for local authorities, ambitious economic development or cultural projects in the 1980s and early 1990s had to be financed through borrowing, raising local taxes, or investment from the private sector. The financial situation of local and regional authorities has improved markedly since the mid-1990s, as large capital investment projects have been implemented (especially in education). In 2007, local and regional authorities carried out over 70% of all public investment, a proportion that would further increase as the transfers of competencies decided in the 2003–4 decentralisation reforms would be fully implemented. However, these expectations were frustrated mainly because of the global economic crisis in 2008. The rapporteurs heard from the Ministry of Finance that the revenue from DGF which decreased since 2014, will keep on shrinking until 2017. Furthermore, a policy strategy of the Ministry is to simplify the structure of local government revenue, which now includes more than 100 "small" taxes (bringing not more than €300 000 per year), having the effect of creating a "fiscal illusion" (the citizen is now aware of taxes and of services being financed through these taxes). Nevertheless the main policy decision authority lies in the hands of central government since territorial authorities, according to French Constitution, enjoy financial autonomy but no autonomous fiscal power.

Local government expenses and budget

132. The expenses of local governments represented nearly 22% (in 1990 it was 18%) of all public governmental expenses (including the central administration and the social security) and 70% of public investment (without research and development) expenses in 2013 (in 1990 it was 60% of public investment)(OECD 2014). Their budgets have increased at high speed since the 1980s, more than the

[62] The IFER tax, in 2013, was the subject of infringement proceedings of the European Commission against France over its railway network tax (IFER). The Commission had declared that this tax undermines competition on the railways and infringes current European legislation. French and foreign companies are subject to the tax when they use the French railway network. There were allegations expressed in the European Parliament that this practice would discriminate foreign companies and puts a brake on cross-border railway traffic (http://www.michael-cramer.eu/en/transport-policy/single-view/article/ae-transport-french/)

state budget and GDP, due to the transfer of competences but also to the dynamism of the local leaders and the flexibility of the resources.

133. Intervention expenditure constitutes the most important part of operating expenses for subnational governments with €65.4 billion- mostly in grants and payments of social benefits to households. More than half of the sum of these expenses is paid by the departments (€38.3 billion in 2013), mostly for social assistance. Regions pay much less (€11.6 billion), mostly for education, vocational learning and training, but also for regional passenger transportation by rail.

134. Expenditure on social assistance by the departments, for the three major social services RSA, APA, PCH1),[63] reached nearly €16 billion in 2013. Spending for RSA amounted to €8.9 billion in 2013 (+ 8.6% increase) and it has kept growing in particular since 2008. This remarkable increase in RSA is not only due to the crisis, but is also partly explained by successive extensions of this RSA tool: first, concerning young people under 25 years in September 2010, then with the DOM (*Départements d'Outre Mer*, except Mayotte) in January 2011 and, finally with the increase of the flat-rate amount, within the framework of the plan to fight poverty which envisages a rise in RSA of 10% in 5 years. There were 2.3 million households who benefitted from the RSA in December 2013, that is to say an increase of 7.2% compared to December 2012. Spending for APA reached €5.5 billion in 2013 and has constantly been growing. On 1January 2014 elderly people of 75 years of age or older had reached 9.1% of the population, while they were 8.0% at the beginning of 2005.

135. The second largest category of expenses for territorial governments in France is staff costs. Spending for staff is most important in municipalities and inter-municipal entities (*Groupements des Communes*). In regions and departments, staff costs increased considerably in the period 2006-2010, when state employees were transferred, along with corresponding responsibilities, previously exercised by state authorities.

136. The general framework of the budget is the same for all local and regional entities. It is divided into two parts: current operations and investment. Both must be balanced, but a surplus of resources in current operations means savings for paying investment costs. Current expenses are salaries, social aids, general administrative costs, grants to private associations (sport, social, culture), interest of loans, redemption (not of buildings). Investment expenses are mainly debt refund, buying land, real estate and any equipment.

Table 1: Budget Volume of territorial authorities in 2013 (billion euros)

	Operating Expenditure *(Dépenses de fonctionnement)*		Investment Expenditure		Total Expenditure	
	Amount	Annual Evolution	Amount	Annual Evolution	Amount	Annual Evolution
Communal Block	87,3	+3,2	45,2	+7,1	132,5	+4,5
Departments	57,6	+2,5	14,7	-3,9	72,4	+1,1,
Regions	17,6	+2,4	11,1	+2,9	28,7	+2,6
Total	162,6	+2,9	71,1	+4,0	233,6	+3,2

Source: DGFiP

137. Local governments have always had right to own property including major ones: land, buildings, roads, equipment and machines. The General Code of Properties of Public Legal Persons, which applies to the state, local and regional bodies and other public entities, distinguishes public and private property regimes. The first one enjoys a special protection and cannot be sold but it can be declassified. These are properties for common use (roads, seaside) or specifically designed for public service (schools, water tower, city-hall, etc.) These assets can be given for a temporary period to other persons for economic use, on payment of fees. Public properties are evaluated in the general accounts but the depreciation amount of buildings and other real estate is not included in the budgets. Local and regional private properties are governed by civil law, though there are some specific provisions. They concern land, forest, lakes, houses and other buildings not affected to a public service.

[63] *RSA: revenu de solidarité active (income of active solidarity); APA: allocation personnalisée d'autonomie (personalised allocation of autonomy – for elderly people); PCH: prestation de compensation du handicap* (benefit of compensation for handicap).

Financial autonomy

138. A traditional element of decentralisation consists of having a proper budget, resources and properties and a certain freedom to decide on them. The Constitutional Court has considered it to be part of free administration. At the end of the 1990s, when several laws abolished local taxes and compensated them by grants from the national budget, local government's thesis was that this lowered their power, but the Court decided that local revenues were not reduced in a way that damaged free administration. This became an issue for the 2002 elections. The new government, led by Jean-Pierre Raffarin, a former regional president, decided to launch Act II of Decentralisation. A modification of the Constitution in 2003 added Article 72.2, enshrining many principles that were customary until then so that territorial authorities could enjoy revenue and dispose of it freely in the conditions determined by law. When authorised by statute they could also determine the basis of assessment, and the rates, within the limits set by law. There is a principle of compensation for new competences and another for equalisation.

139. The principle of financial autonomy was meant to avoid cutting local government taxes and to replace them with state grants. Therefore, taxes and «other own revenues» shall be a «decisive part» of all resources in each category of local government. More precision shall be given by an «organic statute». The law passed in 2004 gives a definition of the own revenues that excludes grants and loans, but includes revenue from taxes on which local governments have no capacity of decision. A general definition of the «decisive part» has been rejected by the Constitutional Court, therefore there is only the mention that the ratio of own revenues should not be smaller than the one valid for 2003. In fact, the figures have risen in a paradoxical way. Many new revenues allocated to departments and regions consist of a share of national taxes, considered by law as «own revenues», but local and regional authorities claim they restrict their fiscal power.

3.3.8. Human resources

140. In the early 1970s a national agency was created, ruled by delegates from local government, with the mission to establish a professional training program and organise or supervise the recruitment procedures for entering into local government careers. This agency is now the *Centre national de la Fonction publique Territoriale* (CNFPT). This legal entity, financed by taxes paid on local government salaries, has the mission to organise the professional training of local employees. It has different schools and regional branches around France.

141. After the decentralisation laws of 1982, the central government decided to modify the general status of the civil service. Therefore, a 1983 Act created three categories and defined their overall status: state civil service, local civil service and the one for public hospitals. The law of 26 January1984, dedicated to local civil service, organised a career-oriented system. Regulations are enacted by the central government after consultation with an advisory committee with representatives of local government executives and trade unions.

142. The assertion of additional competence[64] strengthened the power of local government authorities and their administrations. National legislation introduced more effective instruments of management and created the CNFPT (see above).[65] Manpower of the territorial civil service (civil service in territorial authorities) increased considerably by 50% within 20 years[66] and in 2012 there were nearly 1.9 million public employees working in 250 different kinds of positions in municipalities, departments, regions, inter-municipalities and other local bodies, which made up 34% of the total workforce in French civil service. About 1.4 million are permanent civil servants (*fonctionnaires*), recruited through competitive exams at the beginning of their career. Local governments can also recruit non-permanent employees, under restricted conditions. In commercial services, employees can be under civil labour contract. Not only has the number of local government employees grown in the last decades, so has the level of expertise. Today local employees have the same university background, professional expertise and salary as state employees.

143. Today, entry to the local civil service, through competitive exam does not grant the right to a position. Successful candidates are placed on a reserve list for three years and have to apply for a concrete position in local government. This allows a good balance between freedom of decision by each employer

[64] Mainly In the following fields: town planning, housing, vocational training, regional planning, social action, social housing, health, transport, education and culture.
[65] The CNFPT - *Centre national de la fonction publique territorial -Act n°87-529 du 13 juillet 1987* .This modified the status of the territorial civil service.
[66] J.-P. Bouquet, *État des lieux des effectifs de la fonction publique territoriale, Conseil supérieur de la fonction publique territoriale, 27 février 2013.*

and a guarantee of minimal qualifications of the personnel recruited. The salary scale is the same as in the state civil service, but there are often additional advantages. Employees are in a statutory position with many possibilities to progress during their professional life.

144. The rise of the territorial civil service results from its statutory framework as well as the mobility of its staff, in particular those in charge such as at head offices of the services, technical directorate, directorates of the financial services etc, with multiple career paths and routes facilitated by the management centres.[67] The *Institut nationale des études territoriales* (INET)[68] provides a pool of increasingly qualified territorial public servants. Thus the regions, the departments and the major cities offer their high ranked officers the kind of responsibilities and remunerations which are equivalent to the high civil service of the state. And today it is not an exception that careers of territorial civil servants include secondments between the national and local civil services.

145. This rise has also meant a corresponding increase in the fiscal burden of territorial government authorities and now accounts for approximately 20% of total public expenditure. It is true that local government debt accounts for only 10% of the national debt, since territorial authorities are obliged to balance their budget. But ongoing increases in the wage bill and in local public services[69] seem to be the main reason for the rise of local fees and taxes. The result is an increase of inequalities between the territories, In small communes, the mayors, who often do not have more than a one full-time clerk, emphasise that they do not have the means of managing their territory without the assistance of the communities, the departments and the state.

3.4. Control and supervision of local authorities

146. Traditionally, the French prefect has enjoyed prestige and considerable authority within a centralised system. But with decentralisation reforms the prefect has lost the double role (*dédoublement fonctionnel*) on behalf of the state and the corresponding territorial authority. Until 1982, France enjoyed a kind of co-administration of local affairs. The prefect was the executive of the department and the region. State administration had a strong grip on municipal policies by earmarked grants for investment and by consultation or support on financial or technical questions. Since 1982, parallel to greater autonomy, a systematic and clever control system has been established, with the same rules and procedures for all local and regional entities. The essential role of the prefect now is to be the guardian of the law, for the unity of the Republic and for equality of all before the law. His task to enforce national interests, administrative control and respect for the law, (see *supra* Article 72 of the Constitution).[70]

147. First, the Prefect has a constitutional duty to control the legality of the decisions of local and regional councils and the executives. The law contains a list of acts that must be sent to the prefect for information. This, and effective publicity, are conditions for their entery into force. The prefect can claim for a modification of a local or regional decision (an amendment to be performed by the affected body) if he considers that the decision is illegal. Alternatively, the prefect may go immediately to the administrative court for annulment.

148. Second, there is also a financial control. For this purpose, a financial controlling board was established in each region (*Chambre régionale des comptes*), under the supervision of the national Accounts Court (*Cour des Comptes).* Its members have the status of judges, though most of their activity is not litigation but control and audit. They have three kinds of powers. First, they judge the accounts of local and regional accountants, who are state employees. Appeal is possible to the *Cour des comptes* and then to *Conseil d'Etat*. Second, they give an advice when the prefect or other authorised officials claim that the budget has not been adopted in time, is not balanced or does not contain credit for compulsory expenses. In these cases, the prefect can decide on the budget if the local council does not

[67] "*Centres de gestion*", also created by Act n°87-529 du 13 juillet 1987. This modified the status of territorial civil service.
[68] The INET - *Institut nationale des études territoriales* is a deconcentrated entity of CNFPT. Since 1998 it succeeded the *Institut d'études supérieures de la fonction publique territoriale* (IESFPT) created in 1990.
[69] *Cour des Comptes/ Chambres Regionales & Territoriales des Comptes, Les Finances Publiques Locales*, Octobre 2014, DILA, Paris 2014, pp. 43, 47f.
[70] The court made clear, that the institution of state supervision is no at the disposition of the lawmaker who is obliged to ensure the efficiency of this institution: Décision n°137 DC du 25 février 1982 relative aux lois de décentralisation : *« Considérant qu'il résulte des dispositions précitées de l'article 72 de la Constitution que, si la loi peut fixer les conditions de la libre administration des collectivités territoriales, c'est sous la réserve qu'elle respecte les prérogatives de l'État énoncées à l'alinéa 3 de cet article [« Dans les départements et les territoires, le délégué du Gouvernement à la charge des intérêts nationaux, du contrôle administratif et du respect des lois»….. que ces prérogatives ne peuvent être ni restreintes ni privées d'effet, même temporairement ; que l'intervention du législateur est donc subordonnée à la condition que le contrôle administratif prévu par l'article 72 (...) permette d'assurer le respect des lois et, plus généralement, la sauvegarde des intérêts nationaux auxquels, de surcroît, se rattache l'application des engagements internationaux contractés à cette fin ».*

comply with legal requirements. On the other hand, if the budget implementation ends in deficit (exceeding a certain ratio) the responsible local or regional authority will be put under a special supervision of the court and the prefect. Finally, the regional boards control periodically all local and regional authorities (except for the very small municipalities when it is carried out by a regional branch of the Ministry of Finance) and even private entities which received public money. Their reports are public and must be discussed at the next local assembly meeting. The role of these regional boards has been criticised by politicians and local and regional staff, but it is well accepted and probably the reason for the generally healthy financial situation of local and regional authorities. They have also lobbyed for better management techniques and internal control procedures, now familiar to local managers.

3.5. Innovative participatory institutions

149. The well-established image of French municipal power remaining in the preserve of a small elite around the mayor undoubtedly underestimates the complexity and variety of French localities; such affirmations require more fine-grained empirical investigation. There is little evidence to back up the diagnosis of a new deliberative democracy, notwithstanding a number of well-documented innovations in cities such as Grenoble, Lille, or Paris.

150. There are several forms of local political participation and democratic deliberation. Experiments in democratic deliberation are not new. Innovative municipalities such as Grenoble emphasized the importance of participatory democracy as early as the 1960s and sought to bring local associations into municipal decision-making. In recent years, the theme of local democracy as deliberative democracy has gained in influence. Arguments based on deliberation refer to the local public sphere and the process of deliberation as intrinsically adding value. Politicians such as the Socialist Ségolène Royal have called for citizens' juries to consolidate the practice of deliberative democracy. More direct forms of local democracy are the local referendums given a legal basis in the law of 13 August 2004 and practised with increased regularity since then (though from a weak initial base; local referendums used to be viewed as a challenge to the position of the mayor). The role of cities such as Lille in creating neighbourhood councils (*conseils des quartiers*) reveals genuine concern about direct democracy. Some municipalities have interpreted 'direct democracy' in terms of electronic democracy, with internet consultations of citizens becoming widespread.

151. Interlocuteurs from the Administraton for Paris informed the rapporteurs about several new institutions and procedures of citizen's participation implemented in the French capital since the election of the new mayor in 2014. Consultation with citizens is often implemented for infrastructure projects, public spaces etc., sometimes there are physical meetings in the Town Hall or in District Town Halls. There were also the so called digital campaigns "Madame la Maire I have some ideas". There are people's assemblies (*assemblées populaires locales*) in the area (*quartier)* and a council for the area. (*conseils de quartier).* The Bureau of the *Quartier* sends proposals to the mayor of the respective district *(arrondissement*). There are 123 *quartiers* in the Paris city area. Every *arrondissement* decides how the elections are organized for Quarters (for example with colleges of residents (*collège des habitants)*, or with suffrage, the 20th *arrondissement* opted for randomly-selected voters, with non-EU nationals also being selected).

152. Since 2014, a participatory budget has been implemented in Paris. According to the schedule, 5% of the investment budget will be decided by the Parisians, meaning €500 million over 6 years).The participatory budget began in Paris with €20 million and will gradually grow up to €100 million. There are participatory budget proposals also for *arrondissements*. At the start in 2014, the City of Paris proposed 15 projects. From 2015 on, the Parisians alone will propose and decide. By the end of May 2015, 5 150 projects had already been proposed by 3 000 individuals or groups or units/entities with the aim that in September 2015 residents would decide on 80-90 projects for Paris as a whole, and on 100 projects for each *arrondissement*.

Status of the capital city

153. Since the early days of the First Republic, the National Convention was wary of big cities' municipalities, due to their revolutionary moods, such as in Paris, or counter-revolutionary tendencies observed in Lyon and other cities in the provinces. The National Convention decided accordingly to split larger cities (*communes*) into smaller communes, while Paris was split into *arrondissements*, and the central municipality abolished. In 1834 the *commune* of Paris was reunified and a municipal council created. Instead of a mayor, Paris was however ruled by a prefect (*préfet)* as well as a *préfet de police* respectively, leading to a situation that would only change in 1977, when Jacques Chirac was elected by universal suffrage as the first mayor after nearly 183 years.

154. With a change in the political landscape following the 1981 general elections, the Socialist government embarked on a range of legislative reforms with the clear aim of decentralisation, redefining the powers of *communes*, *départements* and *régions*. In that context, a reform of the status of Paris, as capital city as well as the metropolises Lyon and Marseille, which as a matter of fact do not dispose of particular provisions in the Constitution of 1958, was under debate. Law n°82-1169 of 31 December 1982, also commonly referred to by the acronym *PML*, governs the specific administrative organisation of Paris, Marseille and Lyon and in that sense the specific status of the *arrondissement*. Unlike municipalities (*communes*), *arrondissements* are no legal entities by itself, have no legal capacity and are without an independent budget.

155. The law of 1982 further created district councils (*conseil d'arrondissement)* which in the case of Paris and Lyon are essentially made up by councillors elected by the populace of the city and the district respectively, whereas in Marseille they are elected by sectors of districts. The election of the district councils is operated in the same way as is the case for municipal councils in Paris: Elections take place at the same day and by means of the same lists, with both mandates lasting for six years. Two thirds of the councillors in the arrondissement council are elected inside the arrondissement; the remaining one third is made up of members of the municipal council elected at the commune level above the *arrondissements*. The district mayor (*maire d'arrondissement)* is elected by the municipal councillors of the district eight days after the election of the city mayor and must be a member of the municipal council of the *commune*.

156. In accordance with Law No. 82-1169 and to a further degree the developments introduced by Law No. 2002-276, the powers of the district councils are strictly limited by law and comprises a consultative role on projects of the municipal council whose completion will take place on at least a part of the concerned district; local zoning (*Plan Local d'Urbanisme*) as well as the allocation of subsidies to local non-profit organisations. The district council obtains a certain decision making power in regard to local facilities. In this regard it dispose of a managing function relating to any affair that is of interest to the district, which is however limited by the final approval and attribution of resources by the municipal council. Each district is granted financial resources by the city and in that sense disposes of staff to manage local community facilities. The district mayor as well as his deputies is furthermore in charge of registering death, births and marriages. Ultimately, the city mayor and municipal council can delegate certain powers to the district mayors and council.

157. Today, Paris is a specific case in point as it is, at the same time, both a municipality and a department. Its council and mayor have competences in both legal capacities, with responsibilities for security and the police however coming directly under the authority of a prefect of police, dependent on the Ministry of the Interior. Compared with "ordinary municipalities" the mayor of Paris faces thus slightly more restrictions in what regards the implementation of matters such as urban planning, security or civil defence.

158. With that in mind, the rapporteurs could grasp how the legal framework in place continues to contribute to a sensitive relation between state and capital city in France. The historically strong administrative control underpinned by a legal framework of rather unique continuity stands in contrast to a city that is marked by the demographic and socio-economic challenges of a world metropolis that are, as a matter of fact second-to-none in its own country. As for any other large metropolises in world, the last decade strengthened the political ambitions of several couleurs to create an institutional framework that takes account of the fact that Paris extends in political, social and economic terms far beyond the borders of the city itself, being embedded in a Greater Parisian Region that accommodates nearly 12 million people, amounting to 19 per cent of the French population and generating 32 per cent of the country's GDP.

159. In that light, a public establishment for inter-communal cooperation (*Établissement public de coopération intercommunale – EPCI*) named "Metropolis of Greater Paris" (*Métropole du Grand Paris-MGP*) was officially created by Law No. 2014-58 of 27 January 2014 and modified by Law n° 2015-991 of 7 August 2015. An initiative that goes back to 2007, the MGP constitutes an inter-communal cooperation that is aimed at bringing solutions in terms of transport, urban planning and governance to the Greater Parisian Region. In this context, the national authorities outline the MGP as a mechanism to define and implement comprehensive action that reduces regional inequalities, enhances the quality of life of residents and in this sense serves as an urban, economic and social sustainability model to improve the competitiveness of Paris for the benefit of the entire country.

160. As of 1st of January 2016, Paris and the municipalities in the Departments of Seine-Saint-Denis, Hauts-de-Seine and Val-de-Marne will form a Metropolis of Greater Paris. The 126 constituents, extending over an area of 760km² will incorporate Paris, the 123 densely-populated municipalities in the inner suburbs and two towns in the outer suburbs, Argenteuil (Val d'Oise) and Paray-Vieille-Poste (Essonne). For operational purposes, the MGP will be divided into twelve territories (Paris being one territory) with inter-communalities from 300,000 to 500,000 of this amalgamation of 6.9 million inhabitants. As an inter-communal cooperation it will be administered by a Metropolitan Council of 210 members, not directly elected, but chosen by the councils of the member Communes. The four key competences of this EPCI include, urban planning and housing policy (beginning in 2016), economic, social and cultural development and protection of the environment (beginning in January 2017). It will not have its own authority to raise money, but will depend upon the national government for funding. The implementation of this mega-project was accompanied by vicious criticism from national, as well as local representatives, claiming among others that the new inter-communal cooperation structures would hamper the existing positive dynamics between municipalities in the region, as the MGP will erase the currently 17 co-operation mechanisms by 1 of January 2016.

161. Under the backdrop of the coming into force of this project, the delegation also took note of the recent discussions initiated by the Mayor of Paris, who opened the debate on a corresponding reform of the capital's status, by calling for an adaption of the institutional framework to the new needs of the population, simplifying the decision making process and therewith furthering the efficiency of public services in the city. In this context, the Mayor of Paris advocates for the merger of the city and the department and aims at redesigning the *arrondissements* in order to take account of the different demographic realities in the city's 20 districts. Furthermore the reform suggestions of the mayor include the abolition of the derogatory provisions hampering the competences of the capital city, so as to give the mayor of Paris an equal position in the exercise of its power in comparison to other mayors in France.

162. The rapporteurs consider the overall concept of the MGP as a well-intended mechanism for cooperation, focusing on key areas of concern for the involved municipalities that is *per se* in the spirit of the Charter. The unique characteristics of the Paris area in socio-political and economic terms suggest a comprehensive inter-communal structure that goes beyond the usual mechanisms of cooperation, even if this implies the (temporary) removal of bilateral cooperation structures currently in place.

163. On the basis of the information communicated to the delegation, the rapporteurs assessed the MGP as a positive example of a consortium of local authorities aimed at carrying out tasks of common interest as specified by article 10 of the Charter, which was initiated and largely facilitated by efforts form the state level. At the same time the rapporteurs would like to draw the national authorities' attention to the concerns raised by the mayor of Paris. With a view to enhancing the quality and most of all efficiency of services provided to citizens, the rapporteurs share the recent opinion of the Regional Audit Chamber, which concluded that a merger of the city and the *départements* is only a "logical step to take" and should thus be studied closely. Any move towards enhancing the quality for services for citizens is only in accordance with the Charter, particularly in light of Article 4 par. 3, evoking that "public responsibilities shall generally be exercised, in preference, by those authorities which are closest to the citizen" and that the "allocation of a responsibility to another authority should weigh up the extent and nature of the task and requirements of efficiency and economy". In the same vein, the rapporteurs are of the opinion that a discussion on granting the mayor of Paris the equal powers of other local authorities in exercising its competence should be furthered. Accordingly they believe that the current process of administrative reform would be a suitable occasion to debate also the adaption of the legal status of Paris as a capital city to the realities of the 21st century.

4. Article-by-article analysis of the situation of local democracy in the light of the European Charter of Local Self-Government

4.1. Article 2 – Principle of local self-government

Article 2 – Constitutional and legal foundation for local self-government

The principle of local self-government shall be recognised in domestic legislation, and where practicable in the constitution.

164. The principle of local government is explicitly recognised in the French Constitution, in Article 1 paragraph 1 which (since the amendment of 2003) states that the organisation of the French Republic is decentralised. This introduces the principle of decentralisation which is, according to French legal doctrine, the principle of territorial self-government, traditionally focusing on the administrative mission of local self-government.

165. In addition to this explicit incorporation of the decentralisation principle in the first article of the French constitution in the beginning of the 21st century, there is also the constitutional notion of "free administration". The so-called principle of free administration for territorial collectivities ("principe de la libre administration des collectivités territoriales") was announced by the Constitution of 27 October 1946 (Article 87) and then also adopted in Article 72 of the Constitution of 4 October 1958. This principle first developed its full legal effect during the seventies, due to the case law of the Conseil Constitutionnel (Constitutional Council) and, later on, of the Conseil d'Etat (Council of the State).[71]

166. According to Article 34 of the French Constitution, the law lays down the fundamental principles of free administration of "territorial collectivities" ("collectivites territoriales"). The term comes from the older, wider notion of "territorial community" ("communaute territorial"), often used already by the beginning of the 20th century in legal handbooks of Leon Duguit and other writers, in order to describe a political community defined through the common affiliation of its members to a certain territory. Today, Article 72 of the French Constitution enumerates the territorial collectivities of the Republic ("communes", "departments", "regions", "collectivités de statut particulier", "collectivités d' outre-mer"), but it also gives the possibility to the legislator to create other sorts of territorial collectivities, if need be, to replace one or more of the aforementioned types.

167. According to Article 72 paragrah 2 of the Constitution, these territorial collectivities are "freely administered" ("s'administrent librement"), by elected councils who have regulatory power for the exercise of their competences.

168. The French Constitution recognises and guarantees the principle of local self-government, first as a defining principle for the character of the Republic (Article 1, since 2003), then through Articles 34 and especially 72 and the following, where the principle of "free administration" for "territorial collectivities" is enshrined, the existence of different sorts of territorial collectivities is guaranteed (Article 72 paragraph 1) and the main institutional features of local government are configured. The Constitution includes a special chapter (Titre XII Des Collectivités Territoriales) for local government, however, only the first three articles (Articles 72, 72-1, 72-2) refer to local government in general, while most articles are dedicated to the special status of overseas territories (Articles 72-3, 72-4, 73, 74, 74-1). There is extensive and systematic legislation (see below) recognising and regulating different aspects of local government.

169. Therefore, it follows that the requirements of Article 2 are met in France.

4.2. Article 3 – Concept of local self-government

Article 3 – Concept of local self-government

1 Local self-government denotes 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.

2 This right shall be exercised by councils or assemblies composed of members freely elected by secret ballot on the basis of direct, equal, universal suffrage, and which may possess executive organs responsible to them. This provision shall in no way

[71] CC, n° 79-104 DC du 23 mai 1979, territoire de Nouvelle-Calédonie, CE sect. 18 janvier 2001, commune de Venelles c/ M. Morbelli, req. n° 229247, rec. RFDA 2001 CE.

affect recourse to assemblies of citizens, referendums or any other form of direct citizen participation where it is permitted by statute.

170. The question about the exact meaning of the right and the ability to "regulate and manage a substantial share of public affairs under their own responsibility"arises in all countries party to the Charter. In France, the case law of the Conseil Constitutionnel, even since the eighties, indicates that a substantial share of public competence should be assigned to the territorial collectivities – with the effect that their elected assemblies should be able to exercise their rights of free administration on behalf of their communities (attributions effectives).[72]

171. The percentage of local spending in total public spending (see above para. 109 et seq.) may be taken as an indicator of the share of public affairs that local government manages under its' own responsibility and this share appears to reach a satisfactory level in France. There seems however to be an issue for smaller municipalities which are members of inter-municipal entities with own fiscal powers. In fact, these smaller municipalities manage a very small part of public responsibilities under their own responsibility, while the most important and demanding tasks are carried out by EPCI's or other structures of inter-municipal co-operation. The fact that mayors of smaller municipalities represent their authorities on boards and assemblies of such inter-municipal entities does not change the fact that these municipalities do not "regulate and manage a substantial share" of public affairs "under their own responsibility". France has declared that the Charter does not apply to such inter-municipal entities and the French Constitution does not include EPCI's in the list of territorial collectivities (Article 72 paragraph 1). This worsens the situation for small municipalities whose competence is protected both by the Charter and the French Constitution but they delegate their tasks to entities which are excluded both from the normative field of Charter and from constitutional safeguards for local government. Therefore, the situation of small municipalities that perform only few secondary residual tasks and delegate their most important tasks to inter-municipal entities, amounts to a violation of the Charter. It should be clear that Article 3 paragraph 1, when using the term "ability" refers to each municipality and not simply to the overall situation or only to the majority of municipalities.

172. France declared itself not to be bound by Article 3 paragraph 2 of the Charter Nowdays, however, there seems to be no need for France to sustain this declaration as all tiers of local government have elected assemblies, while even the main inter-municipal entities (which are not subject to the Charter) have obtained directly elected assemblies. Therefore the rapporteurs believe that France could withdraw this declaration.

4.3. Article 4 – Scope of local self-government

Article 4 – Scope of local self-government

1 The basic powers and responsibilities of local authorities shall be prescribed by the constitution or by statute. However, this provision shall not prevent the attribution to local authorities of powers and responsibilities for specific purposes in accordance with the law.

2 Local authorities shall, within the limits of the law, have full discretion to exercise their initiative with regard to any matter which is not excluded from their competence nor assigned to any other authority.

3 Public responsibilities shall generally be exercised, in preference, by those authorities which are closest to the citizen. Allocation of responsibility to another authority should weigh up the extent and nature of the task and requirements of efficiency and economy.

4 Powers given to local authorities shall normally be full and exclusive. They may not be undermined or limited by another, central or regional, authority except as provided for by the law.

5 Where powers are delegated to them by a central or regional authority, local authorities shall, insofar as possible, be allowed discretion in adapting their exercise to local conditions.

6 Local authorities shall be consulted, insofar as possible, in due time and in an appropriate way in the planning and decision-making processes for all matters which concern them directly.

173. In France there has been an ongoing procedure of decentralisation since the early eighties. Many additional new tasks have been transferred from the state to local and regional government. Although basic powers and responsibilities of territorial collectivities are not mentioned in the French Constitution, there are extensive provisions in several decentralisation laws as well as in other laws,

[72] CC, no 85-196 DC du 8. Auguste 1985 and CC 87 -241 DC du 19. Janvier 1988.

such as the protection of the environment, education, social cohesion etc. Furthermore, French municipalities and departments traditionally fulfil several tasks on behalf of the state.

174. The so-called "general clause of competence" (clause générale de compétence) (see above, Chapter 3) that was temporarily abolished in France – and certain interpretations connecting this clause to the constitutional principle of free administration[73] – appear harmonised with Article 4, paragraph 2 of the Charter, whereby local authorities should have full discretion to exercise their initiative for matters not excluded from their competence nor assigned to any other authority. The abolition of the general clause, had it taken place, could have constituted a violation of Article 4 paragraph 2 of the Charter, no matter whether it affected the municipal, the departmental or the regional level. The new law NOTRe ("Nouvelle Organisation Territoriale de la République" – see above) aims at rationalising and specifying the distribution of responsibilities among the sub-national tiers. There was much debate as to whether the final version of this law would clarify whether the general clause principle would be abolished, or whether it would be better defined in order to avoid competence overlap but at the same time leave enough room for local discretion to take initiative for matters not excluded from local authorities' own competence according to Article 4 paragraph 2 of the Charter. In fact, after an appeal filed on the 22 July by at least 60 senators and 60 deputies, the Constitutional Council, in its decision of the 6 August 2015[74] criticised the method of election of the metropolitan councillors in the Greater Paris metropolitan area (Métropole du Grand Paris). The final version of the law NOTRe[75] finally abolished the general clause of competence for regions and departments, while reinforcing the role of regions in economic development.

175. Article 4, paragraph 3 of the Charter introduces the subsidiarity principle whereby public responsibilities should be exercised "in preference" closest to the citizen. The same paragraph introduces the criteria whereby of the extent and nature of tasks, as well as the requirements of efficiency and economy should be taken into account in the allocation of responsibilities. The French Constitution states that territorial authorities should decide on all competence that can "better be dealt with at their level".[76] The decentralisation principle (Article 1 of the French Constitution) also supports the transfer of all tasks that can be performed at a sub-national level to a decentralised entity. The French Constitution does not explicitly introduce the principle of subsidiarity (as Article 4 paragraph 3 of the Charter does), since neither the decentralisation principle nor the rule of Article 72 paragraph 2, concerning the distribution of competence, incorporate subsidiarity. In practical terms this would mean that, including within sub-national governments, lower tiers would own a kind of prerogative of competence, since they would be "closer to the citizen" than the upper tier.

176. However, it seems clear to the rapporteurs that the up-scaling of competence and re-centralisation of responsibilities would not only face the restraints set by the aforementioned criteria of Article 4.3 of the Charter, but further obstacles created by the principle of decentralisation in the French Constitution. On the other hand, it should be clear that up-scaling of competence or even re-centralisation may be compatible with these principles and conditions when the nature and the extent of a task (e.g. concerning environmental protection) has drastically changed.

177. A point that was raised by most of the interlocutors that the rapporteurs met during their visit in France (including by the representatives of the Cour des Comptes) was the question of overlapping responsibilities and blurred competences. In some cases the application of the general competence clause across all tiers of local government has been blamed for this, and sometimes (as was the case in the Balladur report) the very design of the territorial organisation in France, including at least 4 sub-national tiers (including inter-municipal entities) and a plethora of specialised procedures could explain the hydra of overlapping responsibilities in France – which is an issue also in connection with paragraph 4 of Article 4 of the Charter. The new law NoTRE aims to clarify the distribution of responsibilities.

178. he provision of the Charter in Article 4 paragraph 6 about timely and appropriate consultation of local authorities when planning and decision-making processes directly concerning them has also

[73] It should be noted, however, that the Constitutional Council of France rejected the idea of general clause of competence for departments in its decision n° 2010-618 DC 9. Décembre 2010. *"il n'existe pas de principe fondamental reconnu par les lois de la République garantissant une compétence générale du département pour traiter de toute affaire ayant un lien avec son territoire. La loi n'est pas davantage contraire sur ce point à la libre administration des collectivités territoriales."*.

[74] Décision n° 2015-717 DC du 6 août 2015.

[75] Loi du 7 août 2015 portant nouvelle organisation territoriale de la République JORF n°0182 du 8 août 2015 page 13705, texte n° 1.

[76] Article 72 paragraph 2: *"prendre les décisions pour l'ensemble des compétences qui peuvent le mieux être mises en œuvre à leur échelon"*.

been in the background of several discussions between the rapporteurs and representatives of associations or of single local and regional authorities. While most interlocutors agreed that the presence of many local politicians in the senate and consultation procedures with representatives of local/ government associations do have an important impact, there were complaints that single authorities are not heard (although some territorial collectivities are particularly affected), or even that local politicians change their views and attitude when they act as Senate members or at times when they are out of office. The latter should be no surprise, since senators have to adapt to their institutional role, namely to be part of parliamentary procedures and defend general interests of territorial collectivities and the local level, and not to promote particular interest of single authorities (see also para. 170 above).

179. In the literature about the French local government system,[77] it is often stated that in reality, the French model is essentially based on co-operative decentralisation. On the political side, there is the strong representation of local and regional leaders in Parliament, especially in the Senate. Local politicians are also the law-makers. They have always had a strong grip on national policies because of a typical character of the French political system: multiple mandates, meaning that the same person can be elected for different positions and not have to give any up: mayor, department counsellor, senator or deputy and minister. National representatives identify themselves with their territorial constituencies. Most presidents of the departments are senators, which makes them a powerful party lobby in Parliament. Furthermore, the Senate has a special role of representation of territorial communities. Not to mention the influence of national associations of mayors (created in 1907), of departments, of regions, of great cities, of touristic or forest-municipalities, etc. Ministries ask always their advice when preparing new projects. They make also direct proposals and work with parliamentary committees. Pressures from the central government, though, often succeed in having the Parliament adopt laws that are not welcome by local government practitioners - the 2009 business tax reform was an example, but this is commonplace in politics. A further example concerned the recent law on the regional merger which cause vehement reactions by many regions and was rejected by the Senate but finally passed through narrow majority vote of the National Assembly (see above, para. 170 et seq.).

180. There is a clear need to organise and institutionalise consultation channels and procedures. This is already the case concerning finance and sometimes other important aspects of local government performance. There are many institutions of co-operation between the State and the local governments. For instance, the very important National Committee of Local Finances, composed of representatives of ministries and local and regional authorities and chaired by a local politician. This committee has certain powers in the distribution of grants and must give advice on all regulatory decisions of the central government that have a specific impact on local finances. A further committee evaluates the compensation disbursed when new competences are transferred from the State to local and regional authorities. Another committee discusses the rules to be established for local government civil service, and so on. The logistic of local finances, treasury and tax administration are in the hands of State administrations, but they are in constant working relations with the territorial collectivities. As a final finding, it can be stated, however, that the organisation of institutionalised consultation concerning other matters could be improved in a way that would also offer to single authorities easier access and more chances to be heard. The provisions of the Constitution concerning consultation with representatives of the territorial collectivities for overseas areas (e.g. in Article 72-4 of the Constitution) can be seen as good practices and good examples.

181. In conclusion France fulfils the requirements of Article 4 of the Charter.

4.4. Article 5 – Protection of local authority boundaries

Article 5 – Protection of local authority boundaries

Changes 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.

182. The Charter contains several articles on consultation between central and sub-national governments. As already mentioned (see paragraph 166), Article 4.6 introduces the right of local authorities to be consulted in general terms, as a basic principle of local self-government. Two more articles, Article 5 on local authority boundaries and Article 9.6. about financial matters, refer to special fields of consultation.

[77] Cole: 11.

183. The Congress has also adopted recommendations on consultation of local authorities. Recommendation 171 (2005),[78] the Congress emphasises that the right of local authorities to be consulted is a fundamental principle of European legal and democratic practice, the aim of which is to contribute to good governance. In the interests of promoting good governance, consultation of local authorities should be a required part of policy-making, enabling the wishes of local authorities to be known in good time and properly taken into account in the decisions of central authorities. Mechanisms for consultation should be well-established in the democratic and political relationship between the state and the territorial authorities. Consultation processes appear in general to be moving towards a system of negotiation between the government and territorial authorities. Although the concept of "appropriate consultation" (Article 4, paragraph 6 of the Charter) has not yet given rise to specific case-law, there is already "extensive case-law" in several countries on the legal effects of failure to consult territorial authorities[79]. Regarding territorial organisation, the Congress has emphasised that the general rule should be the prior consultation of the territorial authorities concerned.

184. In Resolution 347 (2012),[80] the Congress initiated the elaboration of a strategy for 2013 to further strengthen the consultation processes between the different levels of government in order to improve the quality of legislation and, thereby, the local and regional policies -as well as the effectiveness of such consultation processes in the member States.[81]

185. In Recommendation 328 (2012)[82] the Congress stated that the right of territorial authorities to be consulted, as laid down in Articles 4.6, 5 and 9.6. of the Charter, constitutes one of the core principles of local democracy. Local authorities should therefore be consulted and should have an active role in adopting decisions on all matters that concern them and in a manner and timeframe such that local authorities have a real opportunity to formulate and articulate their own views and proposals, in order to exercise influence on the decision-making processes affecting them.

186. Consultation procedures should be clearly defined and transparent and should constitute a required part of policy making and the legislative process, to enable local authorities to express their interests and opinions in time for these to be taken into account in the formulation of policy and legislation. Central and regional authorities should provide clear and detailed information, in writing, about proposed policies well before the consultations are due to take place, in order for those consulted to be well informed about the motives and objectives of each planned decision or policy. Strategically important decisions should be based on careful analysis of the implications for self-governance as well as of the economic consequences for the local and regional level. Local and regional government expertise should be involved in the process of drafting policies and legislation at an early stage, for example through participation in working groups to prepare new legislation. Local and regional authorities should have a clearly defined right to petition if they believe that necessary consultations have not been properly conducted, and a right to redress if it is established that procedures were not properly followed.[83]

187. Although the text of the Charter does not define the concept of consultation, having regard to the Charter's basic function to establish and promote the rights of territorial authorities, consultation between the central and the territorial governments can be defined as a process by which the parties seek information, advice or the opinion of each other about particular topics, and discuss them. From the point of view of territorial governments, the main functions of consultation are:[84]

- to obtain relevant information on the decision-making process of central authorities affecting their interests;

- to provide the opportunity for local authorities to express their views and opinions on the relevant statutory laws and regulations in all stages of the decision-making process;

[78] Debated and approved by the Chamber of Local Authorities on 1 June 2005 and adopted by the Standing Committee of the Congress on 2 June 2005 (see Document CPL (12) 5, draft recommendation presented by E. Calota (Romania, L, SOC), rapporteur).
[79] Ibid.
[80] Debated and adopted on 18 October 2012 by the Congress.
[81] Ibid.
[82] Debated and adopted on 18 October 2012 by the Congress.
[83] Ibid.
[84] Ibid.

- to make proposals, and submit claims or complaints to central government, with the latter's obligation to respond to them.

188. As already mentioned (paragraph 171), Article 5 of the Charter refers to a particular field of consultation (changes to territorial government borders), while Article 4.6. introduces the general right of consultation, also referring to some guiding principles. By definition, the general provisions of Article 4.6. also apply to the specific field of changing borders. The requirement of Article 4.6. for an "appropriate way" of consultation is to be seen as a "rationality" principle of consultation, which obviously requires that consultation should take place in a way that provides real opportunity for territorial authorities to formulate and articulate their own views and proposals. Certainly, there is no guarantee that the central authorities, entitled to legislate or make policy decisions by law, will accept the opinions of sub-national territorial authorities, but it is an inherent requirement that they have to take them into account, before taking any final decision.

189. The purpose of the Charter's "due time" criterion is to ensure that the manner and timing of consultation is such that territorial authorities have a real possibility to exercise influence on the decision-making process affecting them. As the explanatory memorandum of the Charter states, the right of local governments to consultation under certain conditions may be overridden, in particular in cases of urgency, but this is allowed only exceptionally. The Charter does not specify the length of "due time" in a normative and general way, because it depends on many circumstances in the member states. But the more specific the matter concerned, the easier this is to determine, having regard also to the traditions and demands of the territorial authorities.[85] The "due time" criterion could be equated with a "reasonable time" requirement.

190. More specifically, Article 5 of the Charter contains a procedural safeguard of territorial self-government rights; it requires a consultation with the concerned territorial government(s) on any plan to change its boundaries before any action has been taken. This principle underlines the basic requirement that the affected authorities must be notified about any proposal to change their boundaries. This relates to both cases when an individual authority's boundaries change, and when the whole territorial government system is transformed. The decision maker, before any final action, is obliged to ask the view of the territorial communities concerned. In other words, any change of territorial government boundary may take place only after seeking the opinion of the affected authorities, municipalities and/or regions. In this way the spirit of the Charter is respected, requiring a partnership between central government and territorial authorities based on mutual trust and co-operation.

191. When the change of the boundaries or the administrative status of a territorial authority takes place against the will of the overwhelming majority of the local population, not only the affected sub-national authorities but also the affected citizens may easily lose their trust in democratic institutions and processes. Therefore, national governments should publicise and explain a coherent concept as justification for the changing of boundaries, based on plausible reasons of public interest. Finally, results of consultation are not binding for the decision makers, but it is important to achieve transparency and procedural (so-called "throughput") legitimacy of decisions on territorial choices, especially when an important part of the local/regional citizenry does not approve of changing the borders.

192. In view of the importance attached to appropriate and efficient consultation, which builds trust and legitimacy, and takes place in due time (which means, prior to territorial reform), the practice whereby central government consults only with the national associations of local/regional authorities when the whole local government system is restructured, or when a number of local/regional authorities are merged into greater units, does not meet the requirements of the Charter. The provisions of the Charter require consultation with all local/regional communities concerned, especially when the number of the affected authorities is rather small and consultation with each one of them is easily practicable (as it is in the case of the French regions).

193. The issue of prior consultation when changes in local authority boundaries are made is fundamental and existential for territorial authorities in all countries. In France, the question of regional boundary changes has been particularly controversial since the draft law on "the delimitation of the regions, regional and departmental elections and modifying the electoral calendar" (hereafter called the Law on the Regions) was introduced into the Senate on 18 June 2014. That the government chose an "accelerated procedure" (also controversial) to steer the law through the upper and lower house is

[85] Ibid.

a further indication of the extent of discussion that the subject - in particular the regional boundaries – was expected to, and did, generate. The law aimed principally at reducing the number of metropolitan regions from 22 down to (initially) 14,[86] merging some and leaving others intact. After much debate and amendment, the Senate finally adopted the draft law in first reading but voted to delete the amendment aimed at reducing the number of regions. The national assembly reinstated a new map of 13 regions[87] – which the Senate extended to 15 at its second reading – adopting it by a narrow majority of a single party. The 13 regions were again reinstated by the National Assembly at second reading. With no common accord between the two houses, a joint committee was convened but no agreement was found and on 17 December 2015 the National Assembly adopted its definitive text with 13 regions. Finally on 19 December a group of 60 parliamentarians and 60 senators challenged the law as unconstitutional, taking a case to the *Conseil Constitutionnel* (Constitutional Council)[88] (further details of this court case appear below). Following the Council's decision of 15 January 2015,[89] rejecting the challenge of unconstitutionality, the law was finally promulgated on 16 January 2015 with the date of 1 January 2016 set for the new boundaries to enter into force.

194. The strength of feeling shown in the National Assembly and the Senate on the issue of regional boundary changes was also reflected in concerns at the level of citizens and their associations and guided the rapporteurs' questions during the monitoring visit. The issue has remained one of heated discussion in the country at large owing to the regional elections scheduled for December 2015, and the entry into force of the new, amalgamated regions from 1 January 2016. In some of the meetings that the rapporteurs had with French regional and local politicians, there were strong criticisms about the lack of previous consultation, while during the visit in the Region of Champagne-Ardenne, it was clear that the planned amalgamation with Alsace caused furious reactions among the regional and the local politicians in Champagne. However, the Law on the Regions, passed by Parliament on 16 January 2015, is going ahead; neither will referenda on this issue be organised, as some complainants have proposed.

195. The *Conseil Constitutionnel* in its decision of 15 January 2015, marked the first of two significant rulings handed down in France in 2015 concerning the legal aspects of amalgamation and prior consultation according to Article 5 of the Charter. The second case was brought before the *Conseil d'Etat* (The Council of State) also contesting the above law on the Regions, but this time with a request to annul Decree No. 2015-939 published on 30 July 2015 relating to the election of regional councillors under the new regional map.[90] The two cases are described in further detail below.

196. As to the decision of the *Conseil Constitutionnel*, the 120 litigant deputies and senators claimed that the law on amalgamating and delimiting the regions (the Law on the Regions) violated Article 5 of the European Charter of Local Self-Government and that the absence of prior consultation with the affected territorial collectivities also violated the principle of superiority of international treaties over parliamentary laws that is enshrined in Article 55 of the French Constitution. According to this reasoning, if an international treaty is violated, then the Constitution itself is violated. However, rejecting this argument, the *Conseil Constitutionel* confirmed its traditional interpretation, according to which it is not its role to review the compliance of a law with the provisions of an international treaty or agreement. Since its Decision n° 74-54 DC of 15 January 1975, the Court has constantly stated « *si les dispositions de l'article 55 de la Constitution confèrent aux traités, dans les conditions qu'elles définissent, une autorité supérieure à celle des lois, elles ne prescrivent ni n'impliquent que le respect de ce principe doive être assuré dans le cadre du contrôle de la conformité à la Constitution ».* « If (should) the provisions of Article 55 of the Constitution confer on treaties, under the conditions so defined, a superior authority to those of laws, they neither prescribe nor imply respect for this principle when ruling on conformity with the Constitution".

197. The litigants in this case had claimed that the lack of prior consultation of regions and departments would violate the principle of free administration of the territorial collectivities which is a fundamental principle recognised by the Constitution and the laws of the Republic. In Article 72 the

[86] 13 on mainland France + Corsica.
[87] 12 + Corsica.
[88] It is a court vested with various powers, including in particular the review of the constitutionality of legislation. The Constitutional Council is not a supreme court that is hierarchically superior to the Conseil d'État or the Cour de Cassation.
[89] *Décision n° 2014-709 DC du 15 janvier 2015 -Loi relative à la délimitation des régions, aux élections régionales et départementales et modifiant le calendrier électoral.*
[90] *"Decret no 2015-939 du 30 juillet 2015 portant convocation des colleges electoraux pour proceder a l'election des conseillers regionaux, des conseillers a l' Assemblee de Corse, des conseillers a l'Assemblee de Guyane et des conseillers a l'Assemblee de Martinique*".

Constitution stipulates that the territorial collectivities are freely administered by elected councils under the conditions provided by law.[91]

198. Nevertheless, the *Conseil Constitutionnel* rejected the complaint alleging disregard of the principle of free administration of territorial collectivities stating that the Constitution would not prescribe the consultation of territorial collectivities on changes to their territorialboundaries. At most,it ruled, Article 72-1 provides that changes to the boundaries of territorial collectivities may give rise to the consultation of voters under the conditions provided for by the law.[92]

199. The litigants had also invoked laws preceding the Constitution of 1946. These laws prescribe the obligation to take into consideration the opinion of territorial collectivities before adopting an administrative decision concerning their boundaries. These arguments were also rejected by the Council which stated: In the case under consideration, the changes to regional boundaries were made by a legislative act of parliament and not by a normative act of the administration. Furthermore, the Council reasoned that Article 72-1 referred to consultation of local voters and this exluded *a contrario*, the existence of a principle of consultation in favour of the collectivities themselves. Therefore, the *Conseil Constitutionnel* refused to recognise the existence of a fundamental principle that would impose prior consultation of territorial collectivities.

200. The question of the requirement for prior consultation of individual regions was the subject of another application based once again on a violation of Article 5, giving rise to a decision by the *Conseil d'Etat* (the Council of State) in 2015.[93] This case was brought by three associations and five individuals who filed for a judicial remedy requesting to annul the presidential Decree No. 2015-939 of 30 July 2015 concerning the convocation of the electoral colleges for the election of regional councillors, councillors of the Corsican Assembly, councillors of the Assembly of Guyana and councillors of the Assembly of Martinique (hereafter called the decree on the election of regional councillors). In this the litigants relied on the jurisdiction of the court to rule on the compatibility of a law with international treaties, even where the law is posterior to the treaty.[94] Indeed, there are already a number of cases where French administrative courts have taken into account the principles and norms of the Charter in their judgements on provisions of French law.[95]

201. The facts were that the French Government had convened the voters by a decree of 30 July 2015, to vote in December 2015 for the first regional elections to be based on the new map of the regions. Three associations and five individuals filed for a judicial remedy, requesting the *Conseil d'Etat (*Council of State) to annul the decree No. 2015-939 of 30 July 2015 concerning convocation of the electoral colleges to proceed with the election of regional councillors. Furthermore they requested the Council to order the Prime Minister to convene the electoral college to elect regional councillors within the areas defined in accordance with Article L. 4111-1 of the general code of local authorities in its version prior to its amendment by Article 1 of Law on the Regions of 16 January 2015. On this occasion, the applicants contested the law of 16 January 2015 concerning the merging and delimitation of the French regions, which was the legal basis for the aforementioned decree. The litigants argued that the law disregarded the European Charter of Local Self-Government, which requires signatory states to implement rules safeguarding the political, administrative and financial autonomy of local authorities.

202. In its decision of 27 October 2015[96] the *Conseil d'Etat* rejected all the requests before it. The Council held that Article 4 of the European Charter of Local Self-Government (which provides in its paragraph 3 on the scope of local self-government, that "public responsibilities shall generally be exercised, in preference, by those authorities which are closest to the citizen") only governs relations between states signatory to the Charter and therefore may not be relied upon by individuals before a judge. However the judges' reasoning contains many subtleties as they accepted only to examine the

[91] *les collectivités territoriales « s'administrent librement par des conseils élus, dans les conditions prévues par la loi».*
[92] *La modification des limites des collectivités territoriales peut également donner lieu à la consultation des électeurs dans les conditions prévues par la loi.*
[93] The highest administrative court in France.
[94] This is already accepted by the case law of the Conseil d' Etat: CE, ass, 20 Octobre 1989, *Nicolo,* no 108243, Lebon 190.
[95] The Council of State (arret *26 juillet 2011 Dpt. De Seine-St-Denis, no 340041)* underlined the power of the administrative judge, while reviewing disputed administrative acts, to examine the compatibility of the law with the European Charter of Local Self-Government. There were two cases concerning the financing of local governments, where the rather general formulations of the Charter (art. 9) offered the possibility for interpretations relating to very concrete questions: *CE 19 nov 2008 CU de Strascbourg, no 312095; 26 juillet 2011 Dpt de Seine-St-Denis, no 340041.* In another case, relating to problems of urbanism, environment and development (TGV train line), no less than 5 different articles of the Charter were invoked, in a rather general maner: *CE 28 mars 2011 Collectif contre les nuisances du TGV de Chasseneuil-du-Poitou et de Migne-Auxances, no 330256.*
[96] CE, 27. Octobre 2015, M. H. et autres, Nos 393026,393488,393622,393659,393724

provisions of the law in the light of France's international commitments but would not examine the procedure for the adoption of the law in the light of its international commitments.

203. Therefore, as regards the alleged violation of Article 5 of the Charter, the judges found that the applicants could not rely on compliance with an international treaty to challenge the procedure for the adoption of the law of 16 January 2015. They further reasoned that the *Conseil d'Etat* was therefore only able to rule on the content of the law with regard to France's international commitments, and not the procedure for adoption of that law.

204. Finally, the *Conseil d'Etat* also rejected the argument that the merging of regions had disregarded the provisions of Article L. 4122-1 of the general code of local authorities which provides that regional boundaries should be changed only after consultation with, and favourable vote by, the regional and departmental councils affected. The judges held that the Parliament, being the legislator, was able to remove this requirement for prior consultation on a case-by-case basis before the adoption of the law of 16 January 2015 on territorial reform.

205. The Congress delegation cannot but regret that the European Charter of Local Self-Government, ratified by France, were not taken into consideration by the *Conseil d'Etat*.

206. Considering now the requirements of Article 5, the fact that a special parliamentary law had been adopted and that the law about the mergers of regions was the subject of debate and voting in the Senate, does not appear to satisfy the principles laid down in the Charter. The Senate is an integral part of the legislative power. The Constitution (Article 24) provides a particular mode of election for the members of the Senate, who are elected by representatives of the territorial collectivities although they are not entitled to represent single territorial collectivities (e.g. regions) – they have no legal mandate for representing the interests of single territorial authorities. Senators represent general interests of the territorial collectivities as such and they fulfil this task within the framework of their parliamentary work (to examine and vote on laws, control the government and evaluate public policies, Article 24 of the Constitution). The opinions of the senators cannot be regarded as "consultation" as required by the Charter. Moreover, the participation of senators in parliamentary work cannot be characterised as efficient prior consultation "in due time and in an appropriate way" for the authorities directly concerned as stipulated in Article 4.6 (general rule) in combination with Article 5 (particular rule) that safeguard the right of territorial authorities to be consulted.

207. Furthermore, the right of "prior consultation" is enshrined in the Charter for "the local communities concerned" and that means for each one of them, especially if the number of the "communities concerned" is small (as it is the case of the French Regions) so that such a consultation is easily practicable. Therefore, the delegation concludes that, according to Article 5 of the Charter, the official representatives of each region have to be consulted prior to changes in regional boundaries and mergers. The genuine representative of the regional community is no other than the regional assembly, the representative and deliberative institution where an open local debate about the reasons, the aims, the means and the possible consequences of such mergers can take place. The provision of the Charter for prior consultation of "communities concerned" (and not of communities in general or even of their representatives at national level etc.) is a substantial procedural guarantee safeguarding the spatial component of local autonomy and the distinct identity of each territorial community. These guarantees cannot be by-passed through distant consultation on a general basis at the national level.

208. The rapporteurs conclude, therefore, that the procedures for adopting the law of 16 January 2015 "on the delimitation of the regions, regional and departmental elections and modifying the electoral calendar" did not meet the aforementioned requirements of the Charter and that there is therefore an infringement of Article 5.

4.5. Article 6 – Appropriate administrative structures and resources for the tasks of local authorities

Article 6 – Appropriate administrative structures and resources for the tasks of local authorities	
1	Without prejudice to more general statutory provisions, local authorities shall be able to determine their own internal administrative structures in order to adapt them to local needs and ensure effective management.
2	The conditions of service of local government employees shall be such as to permit the recruitment of high-quality staff on the basis of merit and competence; to this end adequate training opportunities, remuneration and career prospects shall be provided.

209. French legislation (also CGCT – Code General des collectivites territoriales)[97] offers many different possibilities to sub-national territorial authorities for the organisation of their services. It is worth mentioning however, that financial administration of territorial authorities in France does not fall under the decision-making power of territorial collectivities but is run by state employees and the respective administrative units. During the monitoring visit, the interlocutors from French territorial authorities met by the rapporteurs did not consider this to be a problem and they highlighted to the rapporteurs the advantages of impartiallity and the excellent know-how that these financial services offer, claiming that de facto there are always points of interdependence. Therefore, co-operation with these state financial services operating on behalf of the territorial collectivities appears to work well.

210. Conditions of service in French local government have improved greatly and high-quality staff are now engaged in several territorial collectivities, while training and life-long learning are ensured through a series of efficient institutions (see supra human resources). Increased mobility of personnel offers better carreer perspectives and makes territorial collectivities more attractive than theywere.

211. Therefore, there seem to be no major challenges concerning the implementation of Article 6 of the Charter in France. Smaller municipalities are the exception, where mayors are obliged to solve a wide range of problems through their own means and resources, due to the lack of staff, as emphasised by the Representative of Rural Mayors to the rapporteurs. There is also lack of specialised staff in rural areas and municipalities and even in some departments, where stronger incentives and motives would attract better qualified staff.

4.6. Article 7 – Conditions under which responsibilities at local level are exercised

Article 7 – Conditions under which responsibilities at local level are exercised	
1	The conditions of office of local elected representatives shall provide for free exercise of their functions.
2	They shall allow for appropriate financial compensation for expenses incurred in the exercise of the office in question as well as, where appropriate, compensation for loss of earnings or remuneration for work done and corresponding social welfare protection.
3	Any functions and activities which are deemed incompatible with the holding of local elective office shall be determined by statute or fundamental legal principles.

212. In March 2015, a new law was adopted to facilitate local elected representatives in exercising their mandate,[98] in accordance with Article 7 of the Charter. The rapporteurs received positive comments on this law, during their meetings with representatives of local and regional governmental associations and/or associations of different groups of elected persons. It was clear that the new law provides improvements for elected representatives, so that conditions of office are able to provide for the free exercise of functions according to Article 7 paragraph 1 of the Charter.

213. More precisely, this law stresses the need to offer better conditions to elected representatives for reasons of public interest, to be better able to meet the challenges of their mission. In Article 2, the law incorporated the "Charter of locally elected representatives"),[99] introducing fundamental principles for the exercise of a local mandate (impartiality, diligence, integrity, dignity), and highlighting obligations concerning, for example, the conflict of interest (which is particular importance in local government and especially in small municipalities). The new lawexpanded the rights for special leave during the election campaign also for candidates in small municipalities under 1000 inhabitants (Article 6), it also provided the possibility to suspend labour contracts in municipalities with less than 10 000 inhabitants (previously the threshold was 20 000) for mayors, deputy-mayors, vice-presidents of EPCI's and even members of an arrondissement council in the communes of Paris, Lyon and Marseille (Article 8), while it introduced provisions about the professional re-integration after two succesive mandates. Article 1 stipulated compensation rights for mayors of arrondissements in Paris, Lyon and Marseille who are not councillors of the cities. Furthermore, Article 3 also introduced compensation for members of inter-municipal councils (in communautés des communes). These new regulations corresponded to the provisions of Article 7 paragraph 2 of the Charter (see below). At the same time, the law introduced penalties for absence (Article 4) and further concretised the obligations of elected persons.

[97] See the consolidated version Version consolidée du code au 9 mai 2015. Edition : 2015-05-17
[98] Loi no 2015-366 du 31 mars 2015 visant à faciliter l'exercice, par les élus locaux, de leur mandat.
[99] *"Charte de l'élu local'.*

214. However, during the monitoring visit in France, there were still strong complaints from rural mayors highlighting their paradoxical situation, since they are obliged to spend much more time ontheir duties compared to mayors of largermunicipalities who have specialised staff, but rural mayors recieve much lower remuneration. Through the new law, the status for locally electedrepresentatives in municipalities with more than 2 500 inhabitants hasimproved, but in municipalities with less than 2 500 inhabitiants, they do not recieve an appropriate remuneration (the remuneration of the elected municipals depends on the population range the municipality belongs to, according to article L2123-23 of the *Code Général des Collectivités Territoriales, "CGCT"*. It is of €646,25 gross for mayors of municipalities with less than 500 inhabitants – €250,25 for a deputy mayor – and of €1178,45 for mayors of municipalities of 500 to 1,000 inhabitants – €313,62 for a deputy mayor) and they use their own means and ressources in order to be able to exercise their functions.

215. It is also worth mentioning that the recent law of 2014 (see above) prohibits cumulating local executive functions with a national parliamentary mandate (as deputy or senator) or a mandate at the European Parliament, starting from 2017. It seems that the French tradition of "cumul des mandats" willbe phased out gradually. These new incompatibilities are provided by law, in accordance with Article 7 paragraph 3 of the Charter.

216. France has declared not to be bound by Article 7 paragraph 2 this may now be outdated, since the new law of 2015 incorporating the "Charte de l'elu local" meets the requirements set by Article 7 paragraph 2. In addition, a withdrawal of this declaration would force the legislator to pay more attention to elected representatives in small municipalities, who still criticise the conditions they face when exercising their functions. Therefore, the rapporteurs believe that France should be able to withdraw this declaration.

4.7. Article 8 – Administrative supervision of local authorities' activities

Article 8 – Administrative supervision of local authorities' activities

1 Any administrative supervision of local authorities may only be exercised according to such procedures and in such cases as are provided for by the constitution or by statute.

2 Any administrative supervision of the activities of the local authorities shall normally aim only at ensuring compliance with the law and with constitutional principles. Administrative supervision may however be exercised with regard to expediency by higher-level authorities in respect of tasks the execution of which is delegated to local authorities.

3 Administrative supervision of local authorities shall be exercised in such a way as to ensure that the intervention of the controlling authority is kept in proportion to the importance of the interests which it is intended to protect.

217. According to the last paragraph of Article 72 of the French Constitution: "In the territorial collectivities of the Republic, the State representative, representing each of the Members of the Government, shall be responsible for national interests, administrative supervision and compliance with the law". In addition to the Constitution, rules on supervision are included in common legislation, in accordance with Article 8.1 of the Charter.[100]

218. As already stated, France had a "traditional" tutelle system, including expediency control that was abolished during the major decentralisation reforms of the eighties.[101] Nowadays, supervision concerns only compliance with the law (Article 8, paragraph 2).

219. The currently system appears satisfactory and during the monitoring visit no complaints were made to the rapporteurs, especially in relation to any disproportional exercise of supervison (Article 8.3). Therefore, relevant provisions of the present French legislation and practice of state supervision comply with the Charter.

4.8. Article 9 – Financial resources of local authorities

Article 9 – Financial resources of local authorities

1 Local authorities shall be entitled, within national economic policy, to adequate financial resources of their own, of which they may dispose freely within the framework of their powers.

[100] See Faure, B. 2014: 629-668

[101] See for example the law that profoundly changed the system in the beginning of these decentralisation reforms: *"loi no 82-213 du 2 mars 1982 relative aux droits et libertés des communes, des départements et régions".*

2	Local authorities' financial resources shall be commensurate with the responsibilities provided for by the constitution and the law.
3	Part at least of the financial resources of local authorities shall derive from local taxes and charges of which, within the limits of statute, they have the power to determine the rate.
4	The financial systems on which resources available to local authorities are based shall be of a sufficiently diversified and buoyant nature to enable them to keep pace as far as practically possible with the real evolution of the cost of carrying out their tasks.
5	The protection of financially weaker local authorities calls for the institution of financial equalisation procedures or equivalent measures which are designed to correct the effects of the unequal distribution of potential sources of finance and of the financial burden they must support. Such procedures or measures shall not diminish the discretion local authorities may exercise within their own sphere of responsibility.
6	Local authorities shall be consulted, in an appropriate manner, on the way in which redistributed resources are to be allocated to them.
7	As far as possible, grants to local authorities shall not be earmarked for the financing of specific projects. The provision of grants shall not remove the basic freedom of local authorities to exercise policy discretion within their own jurisdiction.
8	For the purpose of borrowing for capital investment, local authorities shall have access to the national capital market within the limits of the law.

220. In France, the constitutional reform of the 28 March 2003 integrated important rules and principles in Chapter XII of the Constitution that considerably strengthened the position of territorial communities in the French Republic.

221. The new constitutional norms have consolidated the status of local finance. There are also statements about the leading idea of a “pouvoir financier” local,[102] which is the essence of the new Article 72-2 of the Constitution. This guiding principle allows territorial authorities to have enough financial resources so as to be sufficiently autonomous concerning their origin and their use.

222. As to the use of financial resources, even before the amendment of 2003, the Constitutional Council examined the question of the harmonisation of obligatory expenses provided by the law, with the constitutional principle of free administration. Such laws should have a general interest purpose which takes into account the own competence of collectivities.[103]

223. The so-called principle of “own local fiscality”[104] within the meaning of Article 72-2 paragraph 2 of the Constitution means the concrete capacity of the municipalities to receive taxes of which they can determine the base and the rate within the framework designed by the law. The imposition taxes remains an exclusive power of the state in France: According to Article 34 of the French constitution, the law determines the base, the rate and the collection modalities for taxes of all kinds” of taxation.[105].

224. The French Constitution (Article 72-2) also enshrines the principle of a “determinant” level of “own resources”.[106] The incorporation of this principle in the French Constitution after the amendment of 2003, was a response to previous negative developments concerning the ratio of own resources within total revenue of local government. In fact, since 1990, the ratio of own resources had constantly been suppressed while at the same time the portion of state grants grew constantly. While territorial collectivities could determine, within limits determined by law, the base and the ratio of their own taxes and could configure and mobilise these taxes according to their own priorities, they had little influence on state taxes and state grants. Between 1997 and 2002, the percentage of own resources in total revenue dropped from 58.2% to 54.7% for the municipal sector (municipalities and inter-municipal sector) from 58.3% to 52.2% for departments and from 57.8% to 36.5% for regions. The Constitutional Council had stated that the decrease of own resource should not reach the point where the principle of their free administration would be violated,[107] however it did not go further and formulate operational criteria for assessment. Therefore, local politicians took advantage of the constitutional revision of 2003 and promoted the incorporation of the aforementioned principle of the “determinant” level of “own resources” in order to restrain tendencies of replacing own resources through state grants.

[102] Faure, 2014: 586 f.
[103] CC Décision n° 00-436 DC du 7. décembre 2000.
[104] principe d’une fiscalité locale propre.
[105] Détermine l’assiette, le taux et les modalités de recouvrement des impositions des toutes natures.
[106] Principe d’un niveau déterminant de ressources propres.
[107] CC, Decision no 98-405 DC du 29. Décembre 1998, *Loi des finances pour 2009.*

225. The organic law of the 29 July 2004 defined that the part of own resources within total revenue of territorial collectivities (sub-national governments) cannot be inferior to the corresponding level / percentage that was registered for 2003.[108] The "ratio of financial autonomy" therefore has a reference of 60.8% for the municipal sector (municipalities and inter-municipal entities-EPCI), 58.6% for departments and 41.7% for regions. This rule meant no more than safeguarding the status-quo, nevertheless it caused serious difficulties to the legislator whenever new additional competences of territorial collectivities should be financed, just as it had during the functional reforms (transfer of competence to sub-national governments) in the period 2003-2004.

226. The national government is obliged by law to submit a special report each year to the Parliament about the evolution of this "ratio of fiscal autonomy". If this minimum ratio of 2003is not maintained, the legislator should adopt appropriate measures, in the second year after this statement, at the latest (CGST, Article LO 1114-4). In reality, however, if the legislator restrains from taking measures necessary to restore the autonomy ration, there is no sanction, since possible violations of the Constitution by omission (failure to act), are not able to be checked under the French legal system.[109] In practice however, the "ratio of fiscal autonomy" has been respected and even improved in recent years, as shown in the following tables:

Table 2: Ratio of fiscal autonomy of municipalities (communes) and EPCI (ratio 60.8% in 2003)

	2007	**2008**	**2009**	**2010**	**2011**	**2012**
Own Resources (billion Eur.)	66,75	67,62	70,61	74,00	76,41	78,63
Other Resources (billion Eur.)	40,97	40,54	42,64	40,37	41,41	41,40
Total Resources (billion Eur.)	107,71	108,16	113,25	114,37	117,82	120,03
Ratio	62%	62,5%	62,3%	64,7%	64,9%	65,5%

Table 3: Ratio of fiscal autonomy of departments (ratio 58.6% in 2003)

	2007	**2008**	**2009**	**2010**	**2011**	**2012**
Own Resources (billion Eur.)	38,05	39,73	40,57	43,67	44,82	45,34
Other Resources (billion Eur.)	19,56	20,06	21,41	20,44	21,68	21,61
Total Resources (billion Eur.)	57,61	59,79	61,98	64,11	66,50	66,95
Ratio	66%	64,4%	65,5%	68,1%	67,4%	67,7%

Table 4: Ratio of fiscal autonomy of regions (ratio 41.7% in 2003)

	2007	**2008**	**2009**	**2010**	**2011**	**2012**
Own Resources (billion Eur.)	11,99	13,32	13,63	13,95	13,75	14,02
Other Resources (billion Eur.)	10,53	10,59	11,60	11,12	11,55	11,87
Total Resources (billion Eur.)	22,52	23,91	25,23	25,07	25,30	25,90
Ratio	53,2%	55,7%	54,0%	55,6%	54,3%	54,2%

Source: OFL 2014, 29ff.

227. According to the figures presented in the tables above, there is a constant improvement of the autonomy ratio for all 3 tiers of territorial collectivities in France. Municipalities and EPCI's began with a ratio of 60.8% in 2003 that reached 65.5% in 2012. Departments improved even more, rising from 58.6% in 2003 up to 67.7% in 2012. Even the regions experienced remarkable progress, starting with a very low 41.7% ratio that reached 54.2% in 2012.

228. This picture, however, is not entirely accurate, owing to extensive interpretation of the notion of "own resources" in previous years. This was the case with the transfer to the departments of a part of the interior tax on petroleum products,[110] as a type of compensation for the additional fiscal burden caused to departments through the social assistance competence. In reality, it was a form of endowment since the amount is attributed by the state to each department according to fixed local needs, which means that the department may not define the rate or the tax base. But the law considers taxes as "local" and part of "own resources" where the rate or/and the local part of the tax

[108] Loi organique no 04-758 du 29. Juillet 2004: "*Ne peut etre inferieure au niveau constate au titre de l' annee 2003".*
[109] CC no 05-530, DC du 29. Décembre 2005, *Loi de finance pour 2006.*
[110] taxe intérieure sur les produits pétroliers" – TIPP.

base is especially determined for each territorial collectivity because it can be “localised”, although the fiscal performance of this tax cannot be influenced in any way by the local authority itself.[111]

229. The Constitutional Council has accepted this extensive interpretation of the notion of “own resources” for several years. More recently, in a case also concerning the contribution to added value of businesses[112] which it considered as part of own resources, although the territorial collectivities cannot determine the rate, because the part of the tax base received by the respective collectivity is locally determined, it is defined by the territory where the business can be “localised” (considerations sub-paragraphs 60-65). The Constitutional Council further decided (in the same decision that also concerned the reform/abolition of the professional tax and replacement with new taxes) (see Chapter 3), that there is no fiscal autonomy for territorial collectivities in the French Constitution (sub-paragraph 64). The judges stated that this reform did not violate the principle of "financial autonomy" of communities, according to the rule introduced in the constitutional amendment of 2003 because it did not violate the autonomy ratio of that year (see supra). The Constitutional Council has noted that the substitution of resources guaranteed by the state in the year 2010, in the form of additional allocations or new taxes remain "above the 2003 reference year". In this decision, however, the Council did not rule on the question of a possible violation of the Constitution (Article. 72-2) when territorial communities are increasingly becoming financially dependent on the state.

230. The French Constitution also addresses the question of financial equalisation (Article 72-2). In France equalisation[113] is defined as a redistribution mechanism for the purpose of reducing inequalities in financial resources between rich and poor territorial collectivities. Legally, this is seen as a conciliation between the principle of liberty and the principle of solidarity and it is not considered to be a subjective right of each collectivity[114] that could give rise to lawsuits and constitutional complaints. In fact the French equalisation system has, in the first place, a horizontal component through the respective funds (fonds) that exist for the municipal sector (“fonds national des recettes fiscales intercommunales et communales”, since 2010), and the departments (“fonds national de perequation des droits de mutation à titre onéreux”, since 2011). It is also worth mentioning the special fund for the Ile-de-France region, where extreme inequalities prevail, created in 1991 (“Fonds de solidarite entre les communes de la region Ile-de-France” – FSRIF). Secondly, there is also a vertical component of the equalisation system, through the distribution of state grants, especially through the most important one, the DGF (“Dotation globale de fonctionnement”). There are also the “Fonds national de perequation des recettes de cotisation sur la valeur ajoutee des enterprises” (CVAE), the “Dotation de solidarite urbaine” (DSU, for “urban solidarity”) and the “Fonds nationaux de garantie individuelle des resources” (FNGIR) that, since 2011, aims to compensate for losses of fiscal resources. Finally, equalisation measures are often provided on an ad hoc basis when competence is transferred (“dispositifs punctuels”), under the respective provision of the French Constitution (Article 72-2). The fact that vertical mechanisms are the most important for equalisation in France, means that equalisation is particularly sensitive to switches and variations of the state budget, while it currently reflects the decrease of state grants.

231. An institution that is particularly important is the Committee of Local Finance (“*Comité des finances locales”- CFL)* which was established by law in 1979[115] with the mission to defend the financial interest of local collectivities and to harmonise their position with that of the state. The composition of the CFL is defined by Article L. 1211-2 CGCT (“*code général des collectivités territoriales*”) and it comprises 32 incumbent elected members (representatives of parliamentary assemblies and elected representatives of regions, departments and municipalities or EPCI’s)[116] and 11 incumbent representatives of the state whose list is defined by decree. Among the different tiers of territorial collectivities, it appears that the municipal sector has the strongest influence in the CFL, as different interlocutors from local government associations, the Cour des Comptes and the Ministry of Finance stated to the rapporteurs during the monitoring visit.

232. CFL meetings take place four to five times per year. According to Article L. 1211-3 (CGCT), the Committee controls the distribution of the DGF (the main state grant). The government may also request consultation on every legal measure of financial character affecting the local authorities. This consultation is obligatory when it comes to the issue of decrees. The Committee also has the mission

[111] Faure, 2014: 590 f.
[112] Contribution sur la valeur ajoutée des entreprises.
[113] Péréquation.
[114] CC no 201-29, DC du 22. Sept. 2010.
[115] Loi du 3 janvier 1979.
[116] The law provides for the following members: “*2 députés, 2 sénateurs, 2 présidents de conseils régionaux, 4 présidents de conseils généraux, 7 présidents d’établissements publics de coopération intercommunale et 15 maires”.*

to provide to the government and the parliament with every necessary analysis for the elaboration of projects concerning local finances. The CFL made an important contribution to the elaboration of equalisation mechanisms. The Decree no 2008-994 of 22 September 2008 established a special consultative committee within the CFL for the evaluation of norms ("*commission consultative d'évaluation des norms*") with 22 members having the - very important – duty to assess the financial impact of new norms or techniques, whether of national or local/regional origin. The very existence of the CFL means that, in principle, the standards set by Article 9 paragraph 6 of the Charter, are met in the case of France.

233. In view of the aforementioned characteristics of the financial status of local and regional authorities in France, the rapporteurs consider, concerning Article 9 paragraph 1 of the Charter, that French "territorial collectivities" do indeed have the ability to set spending priorities, although a large part of their spending is pre-defined through tasks and responsibilities to be fulfilled according to the law, particularly in the field of social policies (and more especially the departments).

234. Further the Charter provides for "adequate own resources (Article 9 paragraph 1) and that a *"part at least of the financial resources"* should "*derive from local taxes and charges"* (Article 9 paragraph 3). According to the Charter, local authorities should also (but "within the limits of statute") have the power to "determine the rate" (Article 9 paragraph 3) of these local taxes and charges. It is clear, that the "financial autonomy ratio" (with the year 2003 as a fixed minimum) of the French law (see above) is certainly a positive framework in order to ensure that this part of "own resources" remains important and prioritisation of revenue through local political decisions on local taxation remains, therefore, possible. Extensive interpretation of the notion of "own resources" (see above) gives reason for scepticism, since the tax rate is sometimes defined by national decision but the corresponding revenue is considered to be "own revenue" because this rate is defined separately for each collectivity (is "localised"). In such cases, it should be made clear that this "extensive interpretation" is not compatible with the provisions of Article 9 paragraphs 1 and 3 and the logic of the Charter about own financial resources and local power to determine the rate of local taxes in order to achieve accountability for weighting the benefit of services against the cost to the taxpayer. During the meetings held by the rapporteurs in France it was unfortunately, clear to the delegation that the prevailing tendency is to recentralise decision-making on tax rates and bases.

235. French territorial collectivities have received a number of new additional responsibilities. During the meetings of the rapporteurs with representatives of local government associations and single local governments, many interlocutors complained that their financial resources are not commensurate with new additional responsibilities delegated to local government (especially to departments). An important shortcoming is that the cost of the respective services is estimated at the moment of competence transfer and the dynamic character of cost development in time is not sufficiently taken into consideration, although the French Constitution also incorporates the principle of commensurate resources. This problem that is emerging in many countries experiencing decentralisation reforms and functional re-scaling but where the provisions of Article 9 paragraph 2 of the Charter are not accordingly respected. A possible solution for France may be to further enhance the role of the Committee for Local Finance (CLF), where know-how about cost burdens of different tasks exists and can further be developed, possibly through the *commission consultative d'évaluation des norms* (see above).

236. The Congress information report in 2000 raised the issue of consolidation of territorial authorities' financial resources from taxation. Up to now, little progress has been made and financial resources derive from a wide variety of different taxes and contributions. One could claim that this variety meets the provision of the Charter (Article 9 paragraph 4) for "sufficiently diversified" resources that can "*keep pace as far as practically possible with the real cost of carrying out their tasks".* In fact, however, the large number of different taxes (especially the many dozens of "small" taxes) is creating a "fiscal illusion" for citizens (where it is not clear who is paying for what service) and frustrates accountability, while it drastically increases managing costs. The Ministry of Finance is willing to simplify and consolidate this fragmented structure of financial resources, as was said during the visit of the rapporteurs.

237. Allocation of redistributed resources to local authorities should be made after consultation with them according to Article 9 paragraph 6 of the Charter). In France, the institution of the CLF (Committee of Local Finance) seems to fulfill this requirement of the Charter. It should be noted, however, that the financial equalisation schemes adopted in France (see *supra*) could be further elaborated and sophisticated. Up to now, these equalisation schemes are mainly vertical or

competence-oriented, thus depending on the overall financial situation of the state and fiscal priorities of central government. Horizontal equalisation acts within each tier of territorial governance (municipal sector, departments, regions) and does not cross-cut different tiers, which would however be strongly recommended, since there are major inequalities between municipalities within the same department and/or region. Representatives of the Cour des Comptes, made clear that such an equalisation cross-cutting different tiers would be welcome as well as mobilisation of the global DGF for equalisation. It should be noted that the Ministry of Finance is also preparing the reform of DGF).

4.9. Article 10 – Local authorities' right to associate

Article 10 – Local authorities' right to associate	
1	Local 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.
2	The entitlement of local authorities to belong to an association for the protection and promotion of their common interests and to belong to an international association of local authorities shall be recognised in each State.
3	Local authorities shall be entitled, under such conditions as may be provided for by the law, to co-operate with their counterparts in other States.

238. France is probably the European nation with the richest history of inter-municipal cooperation that already began in the 19th century. Today, French municipalities have a very wide spectrum of possibilities to develop co-operation, not only through the formation of inter-municipal entities, but also through different sorts of public contracts. Nearly all French municipalities are involved in some kind of inter-municipal cooperation, while cross-border cooperation (Article 10 paragraph 3 of the Charter) has also been practiced for decades. French territorial collectivities may also participate in a European Grouping of Territorial Collaboration (EGTC) in order to promote transnational and/or interregional co-operation in order to strengthen economic and social cohesion.

239. A major reform concerning inter-municipal cooperation was initiated through the law of 16 December 2010, when a procedure of territorial re-structuring of inter-municipal co-operation through the EPCI was promoted, setting the minimum size for the formation of such EPCI's with own fiscal powers at the number of 20 000 inhabitants, which is considered to be more adequate for public services.[117]

240. As already mentioned, France declared, in accordance with Article 13 ('authorities to which the Charter applies"), that the local and regional authorities to which the Charter applies are the territorial authorities which are named in Articles 72, 73, 74 and in Title XIII of the Constitution or which are created on their basis. The French Republic would therefore consider that the public establishments of intercommunal (intermunicipal) co-operation, which are not territorial collectivities, are *excluded from the scope of application of the Charter.* However, in the opinion of the rapporteurs, this does not mean that the territorial collectivities themselves are not subject to the provisions of Article 10, which does not protect the establishments of intermunicipal co-operation as such, but the right of local authorities to associate and co-operate with each other.

241. Concerning transfrontier co-operation (see also Art. 10 paragraph 3 of the Charter) it should be reiterated that France signed the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (ETS no. 106) on 10 November 1982 and ratified it on 14 February 1984. The Outline Convention entered into force on 15 May 1984. France signed on 9 November 1995 and ratified on 4 October 1999 the Additional Protocol to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (ETS no. 159), which entered into force on 5 January 2000. France has not signed Protocol No. 3 to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities concerning Euroregional Co-operation Groupings (ECGs) (CETS No. 206).

242. Article 10 paragraph 2 of the Charter guarantees the right of local authorities to belong to an association. In France there are several associations promoting the interests of local authorities. Concerning the first tier, however, is the Association of Mayors of France (AMF)[118] and the Association of Rural Mayors (AMRF),[119] furthermore there are several associations of municipalities sharing

[117] Faure, 2014: 345.
[118] *Association des Maires de France.*
[119] *Association des Maires Ruraux de France.*

common characteristics, such as the Association of forestry municipalities,[120] the Association of Municipalities in mining areas,[121] etc. For the second tier there is the Assembly of French Departments (ADF)[122] and the Association of French Regions (ARF).[123] It is clear that French territorial governments and their elected representatives are strongly engaged in a variety of different associations, but the question arising is whether such fragmentation is good for the promotion of common interests of the territorial collectivities. One could consider whether it would make sense to have special legal provisions, introducing, "umbrella" associations that would better be in the position to represent all local governments and better promote their interests.

4.10. Article 11 – Legal protection of local self-government

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Local authorities shall have the right of recourse to a judicial remedy in order to secure free exercise of their powers and respect for such principles of local self-government as are enshrined in the constitution or domestic legislation.

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244. Free administration ("*libre administration"*), as mentioned in Articles 34 and 72, is the key constitutional concept of local autonomy. This concept has allowed the Constitutional Court to produce a creative case law. Its positions are rather balanced, and very cautiously in favour of decentralisation. Its voluminous case law has developed since new (2009) procedures allow a litigant in any ordinary suit to claim that a law violates the constitution and should therefore be examined for conformity by the Constitutional Council (the *"constitutionality question"*). This has been used by many local governments, often with success, to contest laws that had been in force for a long time.

245. Legal protection of local autonomy in France is guaranteed by the Constitution, by the European Charter of Local Self-Government, and by the Constitutional Council. More concretely, the administrative courts decide hundreds of cases each year opposing the State and local and regional authorities, or between those bodies. For example, decisions on the grants allocated to a given local community may be discussed in the courts, as well as new regulations that create expenses for local government units, or any administrative regulation issued by a state authority.

246. France has a specialised administrative jurisdiction that traditionally had the monopoly to regulate government bodies and agencies in their relations with citizens and in their relations together. Local and regional authorities may also challenge any decision taken by state authorities or other local bodies, either on individual adjudications or regulations, including decrees of the president, the prime minister or the prefect (préfet). Combined with access to the Constitutional Council, these should be deemed as sufficient judicial protection. The Conseil d'Etat (the Council of State) generally has a balanced case law. On the basis of an ambiguous provision in the Municipal Act of 1884, it recognised that municipalities had a general clause of competence to act autonomously in all matters of local interest, as long as there is no legal prohibition or explicit power given to another authority. But the courts also take care to preserve the core power of central government, within the logic of a unitarian state and legal system.

5. Conclusions

247. France has been the archetype of a unitary centralised state in the European continent for two centuries. Important progress has been made towards decentralisation since 1980 such as the full municipalisation of departments; creation of the new regional tier, decentralisation of competences , and resources etc. Some important landmarks include the constitutional amendment in 2003, the ratification of the European Charter of Local Government and a series of laws concerning local finance, inter-municipal co-operation, new forms of citizens' participation, voting systems and gender parity, local government employees, the status of elected persons and the clarification of competence. However, further issues may be raised.

[120] *Communes Forestières Fédération Nationale.*
[121] *Association des Communes Minières de France.*
[122] *Assemblée des départements de France.*
[123] *Association des Régions de France.*

248. In France there are visible (Senate, Committee for Local Finance, various other Committees) and inivisible forms for the participation of territorial authorities' representatives in decision making that direclty affects their authorities. However, there is still a lack in institutionalised forms and procedures that would include not simply those with local/regional mandates but official representatives of local government associations, giving voice to local and regional governments as collectively organised institutions. The rapporteurs would suggest, therefore, to systematically include in French legislation this kind of collective organisation of local/regional governments (according to Article 10 paragraph 2 of the Charter) and their participation in decision making without, at the same time , reaching a point where their freedom of association would be violated.

249. The law on the merging of the regions, which was the subject of debates and voting in the Senate, does not meet the requirements of Article 5 of the Charter (see above). In the delegation's view, senatorial activities cannot be equated with a form of "consultation" as required by the Charter.

250. France sustained declarations not to be bound by Article 7 paragraph 2 (appropriate financial compensation of elected officers), nor by Article 3 paragraph 2 of the Charter (where directly elected councils or assemblies must exercise the right of local government). In the view of the rapporteurs, both declarations are now outdated since French legislation meets the requirements of these provisions of the Charter. Therefore, the rapporteurs would suggest to withdraw these declarations.

251. In the new draft "NoTRE" law there is another attempt to clarify distribution of competence between different tiers of territorial administration and that would be a positive development since overlapping of responsibilities has been a major problem in France (also pointed out by the Resolution 94/2000) which frustrates transparency, accountability and efficiency. However, this must not necessarily be achieved through the complete abolition of the so-called general clause of competence and local governments should , according to article 4 par. 2 of the Charter, be granted the discretion to exercise their initiative in matters which are not excluded from the competence assigned to another authority.

252. The overlapping or duplication of competences is, according the the Balladur report, also a result of extremely complex territorial structures in France, including at least four different tiers of sub-national territorial governments. At the municipal level, France has developed the richest tradition of inter-municipal cooperation and the results of such co-operations seem to be rather satisfactory, in terms of efficiency. There were various reforms of this inter-municipal "landscape" and direct election of members of inter-municipal assemblies has been introduced for several categories, thus offering a strong argument against criticisms about the "democratic deficit" and the "lack of accountability and transparency" in such inter-municipal entities. Apart from persistent complexity, however, there is the fact that a large number of legally and politically fully autonomous small municipalities with their own directly elected politicians are not in the position to fullfill even some elementary municipal tasks and are therefore obliged to delegate them to the inter-municipal level. In this way, local poltical mandate is disconnected from the administration of the major part of public local affairs.

253. Consolidation and simplification of the very wide spread and numerous sources of local government revenue is an explicit policy target of French fiscal policy and it would be a positive development, promoting efficiency, economy, transparency and accountability (the issue was also raised in Resolution 94/2000). However, the new system should also quarantee a minimum level of diversity for local government revenue according to Article 9 paragraph 4 of the Charter in order to avoid the risks and the inflexibility of fiscal "monocultures".

254. There is a new risk emerging for the financial autonomy of sub-national territorial governments in France, through the tendency to reduce or even practically eliminate the discretion of territorial collectivities on tax rates and bases. The abolition of local/regional discretion on tax rates would violate Article 9 paragraph 3 of the Charter and remove local political accountability for local taxation which is a key element for the functioning of local democracy. In addition to that, it should be pointed out that the definition of tax rates per territorial authority by state decision which "localises" rates definitely does not meet the requirements of the Charter for local discretion, within the limits of law, on tax rates. The rapporteurs would, therefore, recommend to restrain from further centralisation of decisions on tax rates and restore local discretion in cases where it already has been abolished.

255. The rapporteurs welcome the institutionalisation of minimum rates for "own revenues" in France, although this rate is remarkably lower in the case of the Regions. All in all, the rate of "own revenues" in France in obviously higher thant the average of Council of Europe members or of OECD members.

However, extensive interpretation of the notion of “own revenue” could blur the distinction between own and “shared” revenue or even between own revenue and some typesof grants. Therefore, it would be suggested not to include revenue whose rate cannot be at least partly defined by local/regional governments, in the category “own” revenue.

256. Decentralisation of competence and allocation of responsibilities often cause additonal costs for local/regional authorities and complaints were heard from various sides about the rising financial burden carried by local/regional authorities. The involvment of the Committe for Local Finance in the allocation of state grants has been perceived as a good practice from the rapporteurs, although there were also complaints, especially from representatives of municipalities in disadvantaged areas (such as mountainous areas of continental France etc.) about criteria and decisions on the concrete distribution of the DGF and other grants. There is certainly enough roomfor further elaboration and sophistication of the allocation criteria currently implemented. The rapporteurs would suggest to take full advantage of the knowledge and know-how accumulated in the institution of the Committee for Local Finance and create a special task group that would elaborate sophisticated and operational criteria for precise calculation of additional costs caused throught the transfer of additional tasks to territorial collectivities.

257. Another point would be the existing equalisation system, which results in various shortcomings, as it also has been stated to the rapporteurs, during their meetings with the representatives of the *Cour des Comptes*, as well as with territorial government associations and single local/regional governments. The rapporteurs would therefore suggest the elaboration of a new equalisation system that would be cross-cutting over different tiers of territorial collectivities, as well as the mobilisation of the global DGF for equalisation purposes.

258. To round off their conclusions, the rapporteurs would like to highlight the good practices which are evolving in some major French cities and especially in Paris, concerning the vitalisation of various participatory institutions and instruments and of the implementation of participatory budgeting in such a vast city. These are innovations and socio-political experiments which are of great importance and should closely be followed also by other European agglomerations facing the challenges set by multi-cultural and post-modern societies in modern large cities.

Appendix – Programme of the Congress delegation visit to France

CONGRESS MONITORING VISIT TO FRANCE
Paris, Reims, Aÿ-Champagne, Chalôns-en-Champagne)
(26 - 29 May 2015)

PROGRAMME

Congress delegation:

Rapporteurs:

Mr Jakob (Jos) WIENEN	Rapporteur on local democracy Chamber of local authorities, EPP/CCE[124] Vice-President of the Monitoring Committee of the Congress Mayor of Katwijk (Netherlands)
Ms Gudrun MOSLER-TÖRNSTRÖM	Rapporteur on regional democracy President of the Chamber of Regions, SOC[125] Vice–President of the State Parliament of Salzburg (Austria)

Congress Secretariat:

Ms Stéphanie POIREL	Secretary to the Monitoring Committee
Ms Jane DUTTON-EARLY	Co-Secretary to the Monitoring Committee

Consultant:

Mr Nikolaos-Komninos CHLEPAS	Member of the Group of Independent Experts on the European Charter of Local Self-Government Professor of Local Government and Regional Administration at the National and Kapodistrian University of Athens (Greece)

Interpreters:

Mr Philip MINNS

Ms Claudine PIERSON

[124] EPP/CCE: European People's Party Group in the Congress
[125] SOC: Socialist Group of the Congress

Tuesday, 26 May 2015
Paris

French Delegation to the Congress:

- **Chamber of Local Authorities:**

  Mr Jean-Claude FRÉCON, Council Member of Pouilly-lès-Feurs, Senator (Loire), President of the Congress (SOC)
  Mr Francis LEC, First Vice President of the General Council of Somme (SOC)
  Ms Monique RYO, Deputy Mayor of Saint-Quentin (EPP/CCE)
  Mr Jean-Louis TESTUD, Deputy Mayor of Suresnes (EPP/CCE)

- **Chamber of Regions:**

  Mr Jean-Marie BELLIARD, Regional Councillor of Alsace (EPP/CCE)
  Ms Andrée BUCHMANN, Regional Councillor of Alsace (SOC)
  Mr Jean-Pierre LIOUVILLE, Vice-President of the General Council of Lorraine (SOC)
  Mr François MAITIA, Vice-President of the General Council of Aquitaine (SOC)

Joint meeting with the associations of local and regional authorities:

- ***Assembly of the Mayors of France (AMF):***

  Mr Jacques BLANC, Mayor of La Canourgue,
  President of the association of mayors of Lozère
  Ms Julia BARBIER

- ***Association of French Regions (ARF):***

  Ms Karine GLOANEC-MAURIN, Vice-President
  (European Vice-President of the Centre Region & Vice-President of the European Committee for ARF)

- ***Association of French Municipal and Regional Councils of Europe (AFCCRE):***

  Mr Christophe CHAILLOU, Delegation Secretary

- ***Association of Rural Mayors of France (AMRF):***

  Mr Vanik BERBERIAN, President

Senate Delegation on Local and Regional Authorities and Decentralisation:

Mr Jean-Marie BOCKEL, President of the delegation

Ministry for Decentralisation, State Reform and Public Services:

Mr Issam TALEB, Deputy Chief of staff in charge of international relations

Ombudsman:

Mr Bernard DREYFUS, General delegate for mediation with public services
Ms Charlotte CLAVREUL Advisor, European international affairs
Mr Benoît NORMAND, Director of territorial network for the Ombudsman
Mr Fabien DECHAVANNE, Director of the department for the protection of access to goods and services

Wednesday, 27 May 2015
Paris

Ministry of Finance and Public Accounts:

Mr Julien ROBINEAU, Advisor on Local Finances
Ms Nathalie BIQUARD, Directorate General for Public Finance, Department of local authorities
Mr Richard BORDIGNON, Directorate General for Budget

Independent Expert:

Prof. Michel VERPEAUX, Member of the Group of Independent Experts on the European Charter of Local Self-Government, Professor of Law

Court of Audit:

Mr Gérard TERRIEN, President of the Regional Chamber
Mr Olivier ORTIZ, Advisor

Thursday, 28 May 2015
Paris

Ministry of Overseas France:

Ms George PAU-LANGEVIN, Minister for Overseas France
Mr Matthieu DENIS-VIENOT, Advisor for Political and Parliamentary Affairs, Private Office of the Overseas Minister

Ville de Paris:

Mr Hermano SANCHES RUIVO, Councillor Delegate in charge of Europe, Councillor of Paris *to Mr Patrick Klugman, Deputy Mayor responsible for international relations and francophonie*
Mr Didier BERTRAND, Director for the Greater Paris Metropole project
Mr Julien ANTELIN, Director of Private office of Ms Pauline VERON

Independent Expert:

Prof. Alain DELCAMP, Congress adviser on constitutional matters

Friday, 29 May 2015
Reims, Aÿ-Champagne, Chalôns-en-Champagne

City of Reims:

Mr Mario ROSSI, Deputy Mayor for neighbourhood policy, Community Councillor
Mr Jean-Marc ROZE, Deputy Mayor for finance

Municipality of Aÿ-Champagne:

Mr Pierre CHEVAL, 1st Deputy Mayor, responsible for general administration and heritage
Ms Anne COLBACH, Deputy Mayor for sustainable development
Mr René GOUTORBE, Deputy Mayor for major works, communal buildings and vineyards
Mr Michel GRELET, Municipal Councillor
Ms Bettina ROCHE, Secretary General

Regional Council of Champagne-Ardenne:

Mr Jean-Paul BACHY, President

Municipality of Chalôns-en-Champagne:

Mr Benoist APPARU, Mayor of Chalôns-en-Champagne and former Minister for Housing
Mr Gérard LEBAS, 1st Deputy Mayor, responsible for human resources, European and international affairs
Mr Philippe CHANAL, General Director for services