

The Congress of Local and Regional Authorities



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Local and regional democracy in Portugal

Monitoring Committee

Rapporteurs¹: Jos WIENEN, The Netherlands (L, EPP/CD); Devrim ÇUKUR, Turkey (R, SOC)

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Summary

This is the second report concerning the monitoring of local and regional democracy in Portugal in light of the Charter since 2003. The report notes that, since then, Portugal has been engaged in a difficult reform process to increase its capacity to access international capital markets and has been seriously affected by the economic crisis. In this context, the report underlines the importance of improving consultation with the local authorities and their representative associations and of developing the relations between the different tiers of government.

The report stresses the necessity that local authorities be given autonomy with respect to local taxes including the local and regional tax-collecting system. The Government is invited to improve consultation procedures, setting up consultation guidelines in agreement with local and regional authorities and encouraged to give the municipal and regional associations the right to appeal to the Constitutional Court. The Congress recommends that the institutional links between directly elected representatives at State, regional and local authority level be strengthened and calls for transparency in administrative procedures. Finally, it invites the Government to sign and ratify, in the near future, 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).

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



DRAFT RECOMMENDATION²

(See Recommendation 323 (2012) adopted on 22 March 2012)

1. The Congress of Local and Regional Authorities of the Council of Europe (“the Congress”) refers to:

a. Article 2, paragraph 1.b of Statutory Resolution (2011) 2 relating to the Congress, which provides 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 (2011) 2 relating to the Congress, stipulating that “The 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) REV on the “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 (ETS No. 122)”;

d. the explanatory memorandum on local and regional democracy in Portugal drawn up by the Rapporteurs, Jos Wiene (Netherlands, L, EPP/CD) and Devrim Çukur (Turkey, R, SOC) following an official visit to Portugal from 7 to 9 November 2011.

2. The Congress notes that:

a. Portugal signed the European Charter of Local Self-Government (“the Charter”) on 15 October 1985 and ratified it on 18 December 1990 without reservations, with entry into force on 1 April 1991;

b. Portugal has not signed the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (ETS No. 207);

c. the Monitoring Committee decided on 23 March 2011 to carry out a second monitoring of the state of local and regional self-government in Portugal. It instructed Mr Wiene and Mr Çukur to prepare and submit to the Congress, as Rapporteurs, a report on local and regional democracy in Portugal;

d. The Congress delegation carried out a monitoring visit to Portugal from 7 to 9 November 2011 visiting Lisbon, Coimbra and Vila Nova de Poiares.

² Preliminary draft recommendation approved by the Monitoring Committee on 24 February 2012.

Members of the Committee:

L. O. Molin (President), *M. Abuladze*, *U. Aldegren*, K. Andersen, L. Avetyan (alternate: *E. Yeritsyan*), A. Babayev (alternate: *I. Khalilov*), *T. Badan*, M. Barcina Angulo, *V. Belikov*, G. Bende (alternate: *E. Penzes*), G. Bergemann, *M. Bespalova*, *J. Broccoli*, *Z. Broz*, *A. Buchmann*, *X. Cadoret*, *E. Calota*, S. Carugo, *S. Chernov*, *D. Chichinadze*, B. Collin-Langen, *M. Cools*, *J. Costa*, *D. Çukur*, L. Dellai, M. De Lamotte, *N. Dogan*, *G. Doğanoglu*, M. Gaju, V. Gebel, *G. Geguzinskas*, S. Glavak, *S. Guckian*, *M. Guegan*, M. Gulevskiy, H. Halldorsson, *M. Heatley*, J. Hepburn, B. Hirs, *J. Hlinka*, *C. Hughes*, A. Ibrahimov (alternate: *R. Aliyev*), *G. Illes*, J. Jalinska (alternate: *M. Juzupa*), *S. James*, *A. Jaunsleinis*, *M. Jegeni Yıldız*, *M. Juhkami*, *J-P. Klein* (alternate: *E. Eicher*), A. Kriza, I. Kulichenko (alternate: *N. Rybak*), *F. Lec*, *J-P. Liouville*, *I. Loizidou*, M. Magomedov, P. Mangin (alternate: *J-M. Belliard*), *T. Margaryan*, G. Marsan, H. Marva, *V. Mc Hugh*, M. Merrild, *I. Micallef*, T. Mikus, K. Miskiniene, *M. Monesi*, *G. Mosler-Törnström*, A. Muzio, *M. Njilas*, *Z. Ozegovic* (alternate: *V. Vasic*), R. Paita (alternate: *A. Miele*), *U. Paslavska*, *H. Pihlajasaari*, *G. Pinto*, *G. Policinski*, *A. Pruszkowski*, C. Radulescu (alternate: *L. Sfirloaga*), *R. Rautava* (alternate: *S. Ruponen*), *H. Richtermocova*, A. Rokofillou, *N. Romanova*, *D. Ruseva*, *J. Sauwens*, P. Schowtka, W. Schuster, *D. Shakespeare*, M. Simonovic (alternate: *S. Lazic*), G. Spartanski, *M. Tamiolos*, A. Torres Pereira, V. Udovychenko (alternate: *O. Radziievskiy*), *A. Ugues*, G. Ugulava (alternate: *P. Zambakidze*), A. Uss, P. Uszok, V. Varnavskiy (alternate: *A. Borisov*), O. Van Veldhuizen, *L. Vennesland*, *L. Verbeek*, *H. Weninger*, K. Whitmore (alternate: *P. Grove*), *J. Wiene*, *D. Wrobel*, *U. Wüthrich-Pelloli*, *D. Zmegac*.

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

Secretariat of the Committee : S. Poirel and S. Cankoçak.

3. The Congress wishes to thank the Permanent Representation of Portugal to the Council of Europe and the Portuguese authorities at central, regional and local levels, the National Association of Portuguese Municipalities (ANMP) and the National Association of Parishes (ANAFRE), experts as well as other interlocutors for their valuable cooperation at different stages of the monitoring procedure and the information conveyed to the delegation.

4. The Congress also takes note that:

a. Portugal is engaged in substantial economic, political and administrative reforms with long-term effects on local and regional government on the basis, amongst others, of the Memorandum of Understanding, which led to the Government "Green Paper" concerning the reform of the management, territory and politics of local government;

b. that the Portuguese Constitution gives considerable importance to local and regional self-government, although the institutional interaction between these two tiers and the State requires improvement;

c. that there are no political initiatives at present to reintroduce the debate on the question of administrative regions in mainland Portugal;

d. that the Government attaches special significance to a territorial reform as well as to an in-depth reform of the Local Finance Act of 2007, which will certainly have particular implications for the core responsibilities of local self-government entities.

5. The Congress expresses some concern that:

a. local authorities and their representative associations are not systematically consulted on the basis of a clear, generally binding and functioning procedure;

b. the associations representing local authority interests do not have the right to appeal directly to the Constitutional Court against a decision or a regulation which would contradict one of their rights;

c. Portuguese municipalities have been affected in unequal ways by the economic and financial effects of the crisis, some of them facing very serious budgetary problems and the recent state restrictions concerning indebtedness have shortcomings with regard to a fair distribution of charges;

d. regional and local authorities lack sufficient autonomy with respect to local taxes including the local and regional tax collecting system;

e. The cooperation between the state administration at local and regional level and local and regional self-government entities lacks a clear and coherent basis;

6. In the light of the above, the Congress recommends that the Committee of Ministers invite the Portuguese authorities to:

a. improve the consultation process by institutionalising systematic prior and timely consultation with the associations of regional and self-government bodies on issues that are of direct concern to local and regional authorities, in particular on the ongoing reforms related to local and regional authorities, with the aim of agreeing upon common consultation guidelines;

b. grant the associations representing local authority interests the right to appeal directly to the Constitutional Court;

c. consider setting up, on a temporary and flexible basis, special aid programs or procedures to strengthen the economic competitiveness of those municipalities that have been more seriously affected by the economic and financial crisis;

d. give local authorities more autonomy with respect to local taxes including the local tax-collecting system;

e. consider the setting up a national stability board, including local representatives, in order to streamline budget objectives and procedures, with a view to assure as far as possible, the compliance with national, European and international commitments, and a better coherence in the cooperation between the different tiers of government ;

f. guarantee an effective participation of the municipalities in the legislative process to reform the Local Finance Act of 2007, particularly if budgeting procedures with respect to accounting, monitoring and reporting functions or other items to improve the efficiency of local budgeting procedures are involved ;

g. consider signing and ratifying, in the near future, 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) and to ratify the Additional Protocol to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (ETS No. 159) signed on 9 May 1997.

EXPLANATORY MEMORANDUM

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1. Introduction: Objective of the visit, terms of reference, scope

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 (hereafter "the Congress") regularly prepares reports on the state of local and regional democracy in the member states and candidate countries.

2. According to the general principles set out in the Congress Resolution 307 (2010) REV, the monitoring missions of the Congress have the overall objective to ensure that the commitments entered into by all member states having ratified the European Charter of Local Self-Government ((hereafter "the Charter", ETS No. 122) are fully honoured. The missions also take into consideration to what extent member States respond to the Council of Europe Reference Framework for Regional

Democracy, adopted by the Council of Europe Conference of Ministers responsible for Local and Regional Government in Utrecht, November 2009.³

3. Portugal joined the Council of Europe on 22 September 1976, signed the Charter on 15 October 1985 and ratified it without reservation on 18 December 1990, with entry into force on 1 April 1991.

4. Portugal has not 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).

5. The Monitoring Committee appointed, on 23 March 2011, Jos Wielen (Netherlands, L, EPP/CD) and Devrim Çukur (Turkey, R, SOC), co-rapporteurs, for, respectively, local and regional democracy in Portugal. They were instructed to submit to the Congress a report and a recommendation on local and regional democracy in the country. On this visit, the two co-rapporteurs were assisted by Bernd Semmelroggen, consultant, member of the Group of Independent Experts on the European Charter of Local Self-Government and members of the Congress secretariat.

6. The Congress delegation visited Portugal from 7 to 9 November 2011 and met various interlocutors in Lisbon, Coimbra and Vila Nova de Poaires.

7. The delegation met the Secretary of State for Local Administration and Administrative Reform, the Deputy Secretary of State for Economy and Regional Development, the Secretary of State for Public Administration, the mayors of Lisbon, Coimbra and Vila Nova de Poaires, the President of the Lisbon Metropolitan Area, the chairs of the parliamentary committees on Environment, Regional Planning and Local Government, and on Budget, Finance and Public Administration, the Deputy Ombudsman, the presidents of the Constitutional Court and the Court of Audit, other representatives of different tiers of government, members of the National Association of Portuguese Municipalities (ANMP) and the National Association of Parishes (ANAFRE), as well as with experts from the Research Centre for Regional and Local Development (CEDREL) and the University of Coimbra (see the appended detailed programme).

8. The co-rapporteurs wish to thank the Permanent Representation of Portugal to the Council of Europe and all those whom it met on the visit for their readiness to assist the delegation and for the information they so willingly supplied. It also thanks the Portuguese National Delegation to the Congress and its secretariat for the information provided and for their contribution to the smooth running of the visit.

2. Political context and main political and economic developments since Recommendation 127 (2003)

2.1. International context

9. Portugal has since 2008 been seriously hit by the effects of the global financial and economic crisis. Unfortunately these effects coincided with the general economic downturn prevalent since the beginning of the last decade. All tiers of government feel the impact of the crisis and have to face the consequences in terms of budget restrictions and new challenges to improve competitiveness.

10. The EU Commission described the economic development in Portugal since the middle of the 1990s to the beginning of the current decade as follows:⁴ “The strong demand stemming from the sharp fall in interest rates was fuelled further by budgetary policy in the nineties and early this decade. Demand was not followed by a parallel increase in potential supply, mainly due to insufficient reforms preventing productivity growth from supporting catching-up dynamics. Imports rose substantially, leading to high external deficits and debt. Over time higher external indebtedness led to lower domestically available income.”

³[https://wcd.coe.int/ViewDoc.jsp?Ref=MCL\(2009\)12&Language=lanEnglish&Ver=original&Site=COE&BackColorInternet=DBDC F2&BackColorIntranet=FDC864&BackColorLogged=FDC864](https://wcd.coe.int/ViewDoc.jsp?Ref=MCL(2009)12&Language=lanEnglish&Ver=original&Site=COE&BackColorInternet=DBDC F2&BackColorIntranet=FDC864&BackColorLogged=FDC864)

⁴ EcFin Country focus, Portugal's boom and bust: lessons for Euro newcomers. Volume 3 , issue 16, 22 December 2006

11. New Eurostat figures give a forecast about the GDP Growth rate in Portugal as follows: 2011 - 1,9%, 2012 -3,0%, 2013 +1,1%. This would correspond to a stronger cutback of the overall economic growth rate especially in 2012:

12. After a short period of uncertainty⁵ in the handling of the state debt crisis before the informal European Council meeting on 11 March 2011, Portugal was obliged to ask for financial assistance on 7 April 2011 from the IMF/ECB and EU troika. The result of the negotiation was set out in an Economic Adjustment Programme.⁶ Portugal will have up to €78 billion help from the troika members for domestic financial needs and for support of its banking system. The most important political commitment is the reduction of the budget deficit in terms of GDP (fiscal target) in accordance with the following table. For 2011, the target is a fiscal deficit of a maximum of 5.9% in terms of GDP.

13. In 2013, Portugal should once again meet the 3% deficit target of the Maastricht treaty. Both Portugal and the troika partners are convinced that the country will then have unlimited access to capital markets and will be able to refund state bonds under normal conditions and have a functioning banking sector.⁷

14. This programme and the attached Memorandum of Understanding contain diverse commitments which relate to the responsibility of local and regional authorities or which have a direct or indirect impact on local and regional self-government affairs. The key commitments concerning regional and local self-government are the following:

- Reduction of the state grants to municipalities by €175 million in 2012 and 2013;
- Annual reduction of the number of municipality staff by 2% in 2012 and 2013;
- Restructuring of the administrative map of the country with a view to reducing the number of units (parishes);
- Decrease of the overall local debt limit in Section 37 of Act No. 2/2007 from 125% to 62.5%. The details of these reform steps are set out below.

15. Furthermore, the programme includes reductions in tax deductions for the regional level (corporate tax and personal income tax). Fiscal structural measures may have consequences for the budgetary process, strengthening risk management, reporting and monitoring. New rules are to be implemented with respect to state (or municipal) owned enterprises. Management positions and administrative units are to be reduced by at least 15% by the end of 2012. A significant reduction of the number of local entities is planned and the taxable value of all property is expected to become close to the market value. These aspects will be addressed in more detail in the following chapters.

16. The programme was formally agreed upon by the European Council on 30 May 2011 and the IMF Board on 20 May. It covers the period 2011-2014. One third of the total amount of aid provided (up to EUR 26 billion) will be financed by the European Union under the European Financial Stabilisation Mechanism (EFSM), another third by the European Financial Stability Facility (EFSF), and the final third by the IMF under an Extended Fund Facility".⁸ The Portuguese Parliament has approved the programme. According to the National Association of Portuguese Municipalities (ANMP), the programme was not subject to prior consultation between central government and the regional and local authorities but the ANMP was given the opportunity to analyse it and receive comments from the competent state authorities.⁹

⁵ See Dow Jones: from 22 February 2011, Portugal might soon need financial assistance,

<http://www.dowjones.de/site/2011/02/portugal-könnte-bald-finanzhilfen-benötigen-kreise.html>

⁶ http://ec.europa.eu/economy_finance/publications/occasional_paper/2011/pdf/ocp79_en.pdf

The programme documents are published in Annex 4 (Letter of Intent, p.38, Portugal – Memorandum of economic and financial policies, p.41, Memorandum of Understanding on specific economic policy conditionality, p.58, Portugal - Technical Memorandum Of Understanding (TMU), p.94) and 5 (Indicative timeline of financial sector and structural measures in the Memorandum of Understanding on specific economic conditionality)

⁷ See overview of the Portuguese banking system in: OECD Banking Statistics: Methodological Country Notes 2010 © OCDE 2011, Portugal page 139 et seq.

⁸ European Commission, The Economic Adjustment Programme for Portugal, Occasional papers 79, June 2011, page 4

⁹ The ANMP had prepared a hand-out to the Congress rapporteurs with detailed explanations of the core elements concerning the present reform process with respect to local and regional democracy and noted with regard to this point: "The ANMP has studied the Memorandum of Understanding signed by the IMF, the European Commission and the European Central Bank, and has kept abreast of its implementation, particularly in terms of the impact on local authorities. It has also held meetings with the aforementioned bodies."

17. The Portuguese Government has recently updated the programme¹⁰ and committed itself to the following reform steps with respect to local and regional governments:

“Regional and Local Governments

13. The inter-governmental fiscal framework needs to be thoroughly revised to enhance fiscal responsibility and transparency across the general government. We will need more time to submit the regional and local public finance laws to Parliament than originally envisaged (end-December 2011). Therefore, we will re-phase our commitment and, by end-December, prepare a document setting out the key elements of the reform. Based on this document and with IMF/EC technical assistance, we will submit to Parliament a draft regional public finance law by end-March 2012 (structural benchmark) and a draft local public finance law by end-June.

14. We will seek a financial arrangement with the Autonomous Region of Madeira. The region poses a significant drag on the Portuguese public finances. The arrangement will include quantitative criteria on fiscal performance and structural reforms – the latter in line with the recommendations of the September technical assistance mission. As a pre-condition for signing the arrangement, the Madeira government will present a Statement of Affairs, which will be reviewed by the authorities and sent to the Court of Auditors (MoU paragraph 3.17). The 2012 Madeira budget should be fully consistent with the State budget. Under the programme, we will ensure that all arrears are audited before any settlement strategy is implemented. Until the arrangement is in place, we will enhance our monitoring of Madeira’s budget execution.

15. An assessment of local and regional SOEs is being prepared. Based on this analysis and in line with the Strategic Plan for the central government SOEs, we will prepare restructuring plans for the local SOE sector by end-January 2012. Regarding regional SOEs, restructuring in Madeira will start under the above-mentioned programme, while work has already started in the Azores.

Public Administration Reform

16. Plans to streamline the public administration (including SOEs and foundations) are on track. At the central level, we will fully implement the measures set out in the July PREMAC (Central Administration Restructuring and Modernisation Plan), targeting a reduction of 40 percent in administrative structures and of 27 percent in management positions (which is above the 15 percent reduction agreed in the May 2011 MEFP). At the local level, we approved the “Green Paper for Local Administration Reform” in October and will submit the related draft laws to Parliament by end-June 2012.”

18. In the context of these negotiations between Portugal and the troika members, the Congress monitoring mission to Portugal took place under exceptional circumstances.

19. The Congress rapporteurs stress the difficulties Portugal faces in restoring fiscal and budgetary discipline, economic recovery and competitiveness and reducing unemployment. In this context, the rapporteurs would like to pay tribute to all those with whom they spoke during the mission, for their open attitude concerning the problems of local and regional self-government and their commitment to providing useful information to the delegation.

20. The implications of the commitments made in the Memorandum of Understanding with relevance to local and regional self-government give rise to three general remarks:

- Portugal’s obligations to reduce its overall state public deficit according to a very ambitious deficit reduction path oblige central government to make important spending and revenue cuts and territorial and administrative reforms of relevance to both the regional and local level.

¹⁰ Letter of intent from 9.December 2011, see details on the IMF website: <http://www.imf.org/external/np/loi/2011/prt/120911.pdf>

- The opinions of representatives of the political parties and state officials give the impression that the reform imposed by the troika calls for wide-ranging reform at regional and local level (a necessity recognised for a long time but so far not tackled).
- There is obviously no intense reflection as to whether the troika requirements with respect to the regional and local level are in line with the fundamental provisions of the Constitution, which guarantees regional and local autonomy, or with the provisions of the Charter. The reform requirements based on the Memorandum of Understanding for the regional and local levels are defined as “inevitable”.

21. The rapporteurs are therefore aware that there are two possible approaches to an analysis of the present situation of regional or local self-government in Portugal with respect to compliance with the Charter:

- To accept that there is severe pressure on the state authorities to overcome a serious state debt crisis and its effects on regional and local autonomy, particularly the budgets, i.e. to accept that the Charter is, at least temporarily, politically suspended, or
- To call nevertheless for compliance with the constitutional provisions regarding regional and local self-government and with the Charter, even in these difficult times.

22. Only the second alternative is appropriate to address the present situation particularly with respect to regional and local self-government. The state debt crisis itself has not changed the constitutional framework, or the fundamental architecture characterising the different levels of government. Nor has it altered the binding legal nature of the Charter. The Charter has been ratified by Portugal without reservations and must therefore be complied with as a whole in domestic law and policy. It is therefore necessary to maintain consistency between the Charter provisions and those parts of the Economic Adjustment Programme which are relevant for local and regional self-government. If not, the effects of the adjustment measures risk having an adverse effect on relations between local and regional authorities and central government in Portugal in the post-crisis period.

23. Because the programme concerns both fiscal and economic issues and far reaching-structural reforms at state level, it is necessary to initiate an intensive constitutional, political and economic debate on its objectives and effects not only upon the particular local or regional content of the Economic Adjustment Programme, but also with respect to the scope of local or regional self-government, as guaranteed by the Charter. The crisis might therefore be a catalyst to improve the dialogue between national, regional and local entities to overcome together the severe consequences of the crisis. In this context, it may be useful to have recourse to the “Guidelines for policy responses by central government to the impact of the economic crisis on local government“, adopted by the Ministers responsible for Local and Regional Government of the CoE member states in Utrecht 2009 as a benchmark.

24. Regional and local entities also need to make serious commitments in this consolidation process. A structured dialogue between national, regional and local levels can help all entities to find suitable solutions for different aspects of the crisis. Experience in other Council of Europe member states shows that the crisis can be overcome only through improved and intensified co-operation between the various tiers of government, even if the current reforms, particularly those regarding the distribution of powers, allocation of funds or structures of administration are essential for resolving the crisis.

2.2. Internal political context: elections (presidential, parliamentary, provincial and local)

25. In connection with the negotiations on the international assistance package, the government in office under Prime Minister José Sócrates (*Partido Socialista*) lost a vote in Parliament concerning the budgetary adjustment package.¹¹ He then submitted his resignation on 23 March 2011. The anticipated general elections took place on 5 June 2011. According to the official results, the votes in

¹¹ See the general commentary on the situation in: Económico, 17 March 2011 00:04 | Bruno Proença, http://economico.sapo.pt/noticias/o-povo-tem-de-ser-ouvido_113609.html
Translation: The people must be heard. There has been a succession of major political events just recently. Yesterday's statements by José Sócrates at least gave the date and location of the final battle, putting an end to the oppressive climate that has paralysed national life.

the Assembly of the Republic (in total 230 seats) were distributed among the political parties as follows:

<u>Partido Social Democrata (PPD/PSD)</u>	38.65% = 108 seats
<u>Partido Socialista (PS)</u>	28.06% = 74 seats
<u>Centro Democrático e Social – Partido Popular (CDS-PP)</u>	11.70% = 24 seats
<i>Coligação Democrática Unitária:</i>	
<i>Partido Comunista Português e Partido Ecologista “Os Verdes” (PCP-PEV)</i> ¹²	7.91% = 16 seats
Bloco de Esquerda (B.E.)	5.17% = 8 seats

Source: <http://www.legislativas2011.mj.pt/index.html>

26. The new prime minister for the next four-year term (2011-2015) is Pedro Passos Coelho. His coalition PPD/PSD and CDS-PP has 132 out of the 230 seats in the Assembly of the Republic. The government programme for the next electoral period was presented on 30 June 2011.¹³

27. The next elections at local and regional level will take place in 2013.

2.3. Perception of local self-government topics within the party system

28. A core element of the political debate with regard to regional and local self-government is dedicated to the “Economic Adjustment Programme” for Portugal, which the former government has accepted with the agreement of parliament.

29. At the meeting with the Congress rapporteurs, the positions of representatives of the political parties in Parliament in the field of regional and local self-government included the following:

30. The PSD generally regards the pressure exercised by international organisations as an opportunity to achieve major reforms at all levels, including organising local power more effectively and merging smaller units in the interests of the subsidiarity principle. Restrictive government measures theoretically might be a threat to the autonomy of local authorities, but this would be a consequence of the troika programme. Concerning local finances, the municipalities receive less funding than the law provides for. The PSD raised the question of whether particular types of local expenditure, for instance with respect to environmental affairs, should be given preferential treatment and exempted from debt restrictions.

31. The PS focused on the question of local autonomy and the need to define the functions of central government on the one hand and of the local authorities on the other. The “municipal elections” issue needed special attention, as too did the question of the overall improvement of transparency in local authorities’ acts. The PS supports a reform of the parishes, in particular in Lisbon (reduction of parishes from 53 to 24 units). It also advocates a multi-annual approach to the organisation of local finances.

32. The CDS/PP in general supported the four focal points of the Green Paper.¹⁴ They were especially concerned about reform of the local business sector, the protection of inland parishes to ensure and improve territorial cohesion and reform of the local executives (removal of opposition representatives on those bodies). The CDS/PP was sceptical about regional self-government, as reforms needed a two-thirds majority in parliament. Local finances depended largely on state transfers (which corresponded to 70% of the total, while local own taxes remained at only 11%). The state collected all taxes through its own administrative system. Local authorities had the feeling that they had not been well served. On the revenue side, assessments of local property values were to be increased from 0.5 to 0.8%. There were growing difficulties for home owners to adequately provide for the upkeep of their buildings. The number of abandoned or dilapidated houses was increasing.

¹² The PCP and PEV have jointly participated in the 2011’s elections, within the coalition ‘Coligação Democrática Unitária (PCP-PEV)’, receiving 7,91% of the votes.

¹³ Discurso de apresentação do Programa do Governo, 2011-06-30

<http://www.portugal.gov.pt/pt/GC19/PrimeiroMinistro/Intervencoes/Pages/Intervencoes.aspx>

¹⁴ See below under heading 3.1 Constitutional developments

Furthermore, as a result of the crisis, expenditure on health and education in the state budget has risen.

33. The PCP (Portuguese Communist Party) did not sign the Memorandum of Understanding. In their opinion, the overall state debt had to be renegotiated with international creditors. The main problem with respect to local self-government is that central government does not respect the latter's administrative and financial autonomy, and also the lack of balance in the distribution of financial resources between the national and local administration, in violation of the Constitution of the Portugal. There should be no change in the system of elected members in local executive bodies, out of respect for the work of 60 000 elected councillors, who accomplished their duties without being paid. The party was calling for regional structures in mainland Portugal.

2.4. Previous report and recommendations

34. Portugal has on several occasions been the subject of Congress monitoring missions. We refer to Congress Recommendation 127 (2003) on local and regional democracy in Portugal, and to a report on local government finances written for the Chamber of Local Authorities in 2010.¹⁵ Congress Recommendation 219 (2007) on the "Status of capital cities" may also be of particular interest.

3. Honouring of obligations and commitments

3.1. Constitutional developments

35. The most recent change in the Constitution regarding local or regional self-government was in 2005.¹⁶ With respect to the commitments of the Economic Adjustment Programme, Portugal intends to radically modify the scope and framework of local and regional government but there have been no hints from the state representatives as to whether these modifications require constitutional changes. According to the Secretary of State for Local Administration and Administrative Reform (SEALRA), the government indicated in October 2011 what the reform would cover in its "Green Paper on the Reform of Local Government".¹⁷ The four main focal points of the reform concern:

- the local business sector,
- territorial organisation,
- municipal and intermunicipal management, funding,
- and various aspects concerning local democracy.

36. The various strands of the Green Paper implement the commitments of the Adjustment programme and serve as a general guide for the different legal acts provided for in the four main focal points cited above. The commitments in the Adjustment programme (see paragraph 6) will have an impact on the number and size of local authorities,¹⁸ the expenditure and revenue side of local and regional finances as a result of reduced state grants or limited taxation flexibility, and will further limit local and regional debt schemes.¹⁹ They require major changes in the budget procedure and in the accountability and reporting process, have consequences on the human resources²⁰ of local and regional authorities (e.g. the structure and the number and remuneration schemes for local and regional staff) and also require far-reaching reforms with respect to municipality- or regionally-owned

¹⁵ Institutional Committee CPL(18)4 from 24 February 2010

¹⁶ The "VII REVISÃO CONSTITUCIONAL [2005] (Lei Constitucional no 1/2005 de 12 de Agosto)" introduced a new Article 295 into the Constitution, which refers to referendums in the context of the EU.

¹⁷ See the Green paper (Portuguese version „DOCUMENTO VERDE DA REFORMA DA ADMINISTRAÇÃO LOCAL“): http://www.portugal.gov.pt/pt/GC19/Documentos/MAAP/Doc_Verde_Ref_Adm_Local.pdf

¹⁸ The aim of restructuring local units should be to reduce the number of units to 1000-1500 (currently 4,259).

¹⁹ The government is verifying a new instrument to modify the general debt limit introduced with the 2007 reform. The Minister of Finance is in favour of a decrease of the debt limit from 125% to 62.5%. In cash terms, this would mean a reduction in PIE grants to the local and regional level of €140 million. One of the main measures is a reduction in the salaries and wages of public employees (cancellation of Christmas and Easter allowances = 14%). The ANMP agreed to the use of this reduction as a means of limiting debt ceilings.

²⁰ See details in paragraph 114

enterprises.²¹ Furthermore, measures relating to the state or state-owned enterprises will indirectly affect local and regional entities by increasing costs and allowances, reducing state aid to citizens and oblige local and regional authorities to subsidise state transfers. This will obviously have implications for the exercise of local and regional authorities' powers.

37. The Green Paper defines the targets, procedures and methodology of the focal points of the reform, but has no legally binding effect in itself. During the meetings with the rapporteurs, the Secretary of State and other state representatives underlined the political nature of the paper and the fact that it remains open to discussion and further streamlining within the parliamentary political and legislative processes. It should be possible for the associations of local and regional authorities to intervene with respect to different aspects of the paper.

38. In accordance with the methodology adopted regarding municipality-owned enterprises (MOEs), the government has developed legal mechanisms intended to suspend the creation of new entities until the functioning of the current MOEs has been assessed and the new legal framework has entered into force.^{22 23} A similar approach is being adopted with regard to the other focal points of the reform. The government has committed itself to respect, for example in the field of parish affairs, their identity, names, history and culture when drawing up legal provisions concerning the new map of territories.²⁴

39. Although implementation of the targets set out in the Green Paper requires legally binding instruments, the government is concentrating its efforts on a "rationalisation" of the existing legal framework and there is obviously no intention to alter the Constitution. According to the Secretary of State for Local Administration, the government is willing to respect local (and regional) autonomy, but will implement the reforms in a way which upholds the balance between state and local/regional interests in the reform architecture. As regards the role of the Charter within the legislative drafting process, it is not used by the Secretary of State as a major benchmark for the reforms under way.

3.2. Local self-government: European Charter of Local Self-Government

3.2.1. Institutional arrangements and devolution of competences

40. The main foundation of the constitutional safeguard for local autonomy is Article 235 of the Constitution. Article 235.1 guarantees the existence of local authorities as part of the democratic organisational structure of the country. This is a guarantee within the meaning of Article 3.1 of the Charter. However, this is only an institutional guarantee, and does not guarantee the existence of every actual local unit. This might be an important differentiation within the context of the intended reform of the map of territories in Portugal.

41. Article 235.2 of the Constitution defines the function of local authorities, stating that they shall "seek to pursue the interests of the local people." This wording is not directly equivalent to that of Article 3.1 of the Charter, which calls for "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." The different wording excludes, at constitutional level, the powers of self-government bodies "to regulate and manage a substantial share of public affairs under their own responsibility". However, if the provisions of Portuguese legislation concerning the powers and responsibilities of these bodies are taken into consideration (Act No. 159/99) the scope of

²¹ There is broad political agreement in the government, that MOEs depend economically and financially on municipal resources. Following a meeting with the Court of Auditors, the government's approach will be refined. There will be no general prohibition of the creation of MOEs, but some additional regulations are necessary to avoid the negative impact of MOEs on their municipalities. The rationalisation effect also has to be strengthened. The basis thereof will be a government white paper on local authority enterprises, which should be presented in November 2011. A consultation process is under way.

²² Presentation to the Assembly of a draft bill for a new legislative framework for the SEL, focusing on strengthening the legislation currently in force, namely:

- Act No. 53-F/2006, SEL Legal Regime;
- Act No. 02/2007, Local Finance Act.

²³ The Law No 55/2011, of 15th November has altered the State-owned enterprises' legal regime ; namely, it suspended the creation of new MOE (article 4).

²⁴ Green Paper, page 25, Initiative in the Assembly with a view to making legal acts concerning the new map of territories more practical, namely:

- Act No 8/93, Legal Scheme of the creation of parishes (current edition).

responsibilities attributed to the different types of local authorities in Portugal (parishes (*freguesias*) and municipalities on the one hand, autonomous regions on the other) corresponds broadly speaking to the definition in Article 3.1 of the Charter. The scope of these responsibilities is listed in detail in the 2006 CDLR Country report on Portugal.²⁵

42. The protection of local authorities is strengthened through Article 288 n) of the Constitution,²⁶ restricting the scope of review of the autonomy of local authorities and the political and administrative autonomy of the archipelagos.

43. The Green Paper sets out²⁷ a number of key guidelines for not only the further development of powers and responsibilities of local and regional authorities and different types of intermunicipal co-operation but also the functioning of the entire state architecture:

Concerning the allocation of powers and responsibilities to the different levels of local authorities and their respective funding mechanisms, the reform of local government shall comply with the following assumptions:

- a) implementation of the principles of devolution and subsidiarity;*
- b) focusing on improvement of national cohesion and the promotion of interregional solidarity;*
- c) giving priority to the efficiency of public management;*
- d) striking an appropriate balance between the devolution of powers and the necessary funding mechanisms;*
- e) improving the transparency of the local government management system through the development of active citizenship;*
- f) creating a local government management league table, through the DGAL²⁸, recording best practices at local level;*
- g) strengthening citizenship through civil society monitoring of the action and the exercise of local government, encouraging the creation of resources and mechanisms for greater and easier access to public information;*

On the basis of the above principles, the Government wishes to achieve the following results:

- a) a redefinition of powers, promoting the enhancement of the performance of intermunicipal communities and metropolitan areas;*
- b) differentiation and co-ordination of powers and responsibilities between parishes, municipalities, intermunicipal communities and other associated structures;*
- c) reinforcing the legitimacy and democratic supervision of intermunicipal communities and metropolitan areas;*
- d) regulating intermunicipal associations with a view to accreditation, avoiding duplication and generating savings in the use of resources;*
- e) reviewing the funding of local authorities in order to pursue the following objectives:*
 - i. financial sustainability;*
 - ii. New paradigm of own resources.*

44. Bearing in mind that a constitutional reform would increase the legal hurdles for implementing the ambitious reform programme in time and that state officials have not announced any initiatives to reform the Constitution, it is nevertheless necessary to compare the different reform measures of the Green Paper with the above-mentioned constitutional provisions as well as with the stipulations of the Charter. All draft laws which have consequences on local and regional self-government have to comply with Article 288 n) of the Constitution. This provision is applicable to “constitutional revision laws” and even more so to ordinary laws.

45. The state representatives gave no information as to whether verification of the constitutional conformity of the different reform measures had been carried out and with what results. Furthermore

²⁵ CDLR, Structure and operation of local and regional democracy Portugal, page 31 et seq.

²⁶ Article 288 (Matters in which revision shall be restricted)

Constitutional revision laws shall respect:

n) The autonomy of local authorities;

o) The political and administrative autonomy of the Azores and Madeira archipelagos.

²⁷ Green Paper page 26/27

²⁸ DGAL - Direcção Geral das Autarquias Locais

there were no hints as to the legal value of the Economic Adjustment Programme and its various elements with regard to the Portuguese Constitution or the Charter. Obviously the programme has not the legal statute of an international treaty and has not been transposed into the Portuguese legal system according to Article 8.2 of the Constitution. So the Programme does not have equivalent legal value with the Constitution itself or with the Charter. Although the state representatives' starting point is the premise that the Programme is politically binding and justifies broad interference in the existing scope of local and regional self-government, the legal situation requires greater differentiation between the components of the reform which concern directly and constitutionally the protected cornerstones of local and regional self-government and other components of a more technical or administrative nature.

3.2.2. Territorial issues

46. One of the most important reform objectives is linked to the territorial organisation of the country at local level. The Secretary of State addressed this topic in the following words: "The aim of restructuring local units should be to reduce the number of units to 1000-1500."²⁹ In the meantime, the government has presented the draft Law 44/XII, which has modified the geographical and demographical criteria to reform the parish level (there is now a stronger differentiation in the reform goals between urban and rural areas), and which will, as a result, bring down the number of parishes to within the reform margins of 2000 and 2500 units. Another important element concerns the functions of intermunicipal communities (CIM) and metropolitan areas.³⁰ On the other hand, there are no plans to make changes in the structures of administrative regions in mainland Portugal whereas it is intended to make limited reforms of the legal provisions governing the two archipelagos. The government has no intention of creating new regional structures. Existing structures shall be strengthened in line with the results of two pilot projects to strengthen "regional" entities".

47. All these reforms have to comply with the constitutional provisions which define the scope of local and regional self-government. The Portuguese Constitution differentiates considerably between the types of local and regional self-government. It provides on the one hand for the establishment of two "Autonomous regions", the Azores and Madeira (see Articles 225 and seq). On the other, there are provisions for three levels of "local authorities" (Articles 235 and seq.): parishes (*freguesias*), municipalities and administrative regions on the mainland. Furthermore, the Constitution allows for "other forms of local government organisation" in large urban areas and on the islands (Article 236.3).

48. As a result of the negative outcome of a referendum held in 1998 on the basis of Article 256 of the Constitution, no "administrative regions" have so far been set up. This means that whereas three tiers of local and regional self-government have been established in the Azores and in Madeira, only two tiers are in operation on the mainland. The Congress adopted a recommendation on this topic in 2003.³¹ Local and regional representatives pointed out during the meeting with the rapporteurs that the 1998 referendum resulted in a "no" vote because the regional map presented at the referendum was unsuitable for resolving the Portuguese problems at regional level. It might therefore be necessary to hold another referendum on territorial organisation in mainland Portugal, given that Article 256 of the Constitution does not prevent a second initiative.

49. The most important local unit in terms of unity, powers, finances and organisational capacity is the municipality (*município*). Portugal has 308 municipalities. The average number of inhabitants is about 35,000. It would appear that the reform does not intend to increase the efficiency of local administration by means of merging municipalities. This is understandable because the Portuguese municipalities are already fairly large in terms of population in comparison with international standards.

²⁹ From the current number of 4,260 entities – see paragraph 43

³⁰ Green Paper page 29

³¹ Paragraph 82 of Congress Recommendation 127 (2003):

82. When a referendum on the establishment of eight regions in the Portuguese mainland was held on 8 November 1998, 64% of the 49% of the electorate that took part voted against the proposal. A more detailed account of the events is provided in a document produced by Mr Montalvo for the Standing Committee of the Chamber of Regions of the CLRAE on the results of the Portuguese referendum of 8 November 1998 (CPR/CP (5)15), to which reference should be made.

50. In terms of population and number, the following charts indicate how Portuguese municipalities and parishes compare with other countries:³²

Figure 3.3. **Average size of municipalities in OECD countries, 2006**

Unit: number of people per municipality

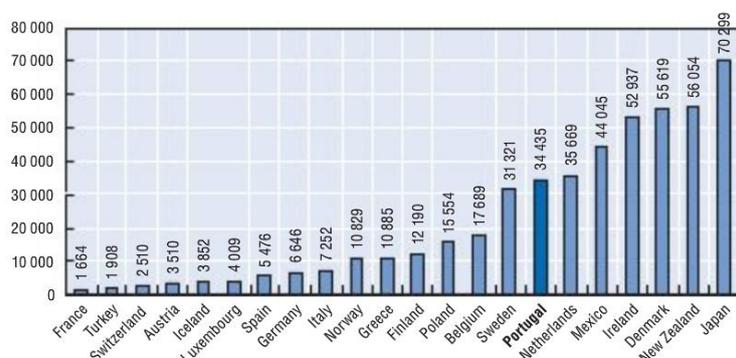
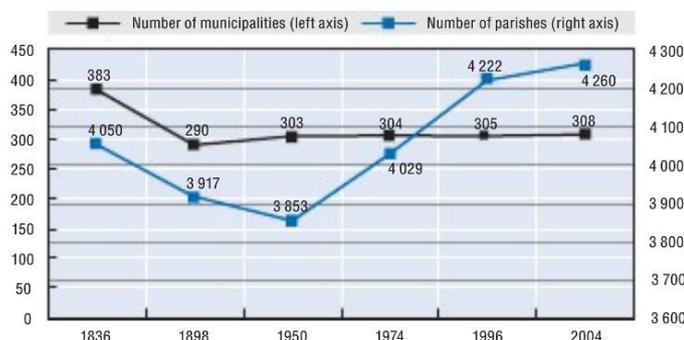


Figure 3.4. **Number of municipalities and parishes in Portugal**



Source: Council of Europe.

51. In comparison, the number of parishes is fairly large – there are more than 4,251 with a slight upward trend since 1950. Parish boundaries are congruent with a municipality; there are no parishes associated with two or more municipalities.

52. According to the analysis of the President of the Association of Parishes, the Portuguese parish structures present both a quantitative problem and a number of structural imbalances and specific conditions:

- The size of parishes in terms of voters is fairly uneven: There is a spread between 39 voters to 57,000 voters.
- Financial revenue is very limited, approximately 1% of the overall local revenue.
- The funding of parishes varies per year between €15 230 and €403 000.
- Although parishes are legally independent, they depend financially on the municipality of which they are geographically a part.
- A transfer of powers and personnel between parishes and municipalities is generally possible.
- Parishes have weak administrative powers, because only 1.4% of the members of parish bodies are paid. All the others serve on an honorary basis. The range of payment varies between €610 and €953 per month (The minimum monthly salary in Portugal is €485).

53. In the opinion of the rapporteurs, reforming the parish level seems advisable but a pure merging of parish units may not have the anticipated effects, due to the weak powers and responsibilities of parishes in comparison with municipalities and the very small budgetary impact of the parish administration. Secondly, the reform does not completely cover the traditional functions of parishes. In times of crisis parishes have a special mission because they address “poorer people” and their basic needs, especially in terms of social services of general interest. These aspects reflect the notion of proximity, of transparency and of democratic accountability. All these elements are important basic

³² OECD Territorial Reviews Portugal © 2008 OECD

values characterising local self-government. The Congress referred to the functions of parishes in its Recommendation 2003.³³ These considerations would appear to remain relevant today. It might therefore be useful to rethink the starting point of the reform and to include qualitative reform elements to strengthen the capacity of parishes to provide real added-value to citizens.

3.2.3. Relations between central and local authorities

54. State and local government administration in Portugal is relatively separate. According to Article 267.1 of the Constitution, *“the Public Administration shall be structured in such a way as to avoid bureaucratisation, bring departments and services closer to local people and ensure that interested parties take part in its effective management, particularly via public associations, residents’ organisations and other forms of democratic representation.”* Bearing in mind that the Economic Adjustment Programme for Portugal contains very major commitments with respect to the reform of the national public administration, there are at least three issues regarding inter-institutional relations between central and local government bodies:

- Rationalising the state administration will redesign the state’s administration at regional and local level and create a demand to reorganise the interface and interconnections between these levels. This might also have effects on the organisation of regional and local entities.
- The definition of parameters to increase the efficiency and effectiveness of state administration bodies might be adapted to similar reform measures at regional and local level as well. This might infringe upon the reform autonomy of the self-government bodies.
- Last but not least, the existing “normal” supervising powers of state administration bodies vis-à-vis self-government bodies might be enlarged or more detailed in times of exceptional necessity to streamline the overall national, regional and local activities.

55. An example of the interaction of these problems may be found in the field of economic development at regional level. The state has one major tool: The CCRD (*Comissões de Coordenação e Desenvolvimento Regional*, 5 units + islands). This level corresponds to the NUTS 2 level terminology of the EU and has been, up to now, a decentralised state administration unit. The government intends to strengthen the NUTS 2 level through intermunicipal groupings and metropolitan areas. Details are set out in the Green Paper. A pilot study, which should have started on 1 December 2011, is expected to yield results on how to distribute powers and responsibilities between the different levels of government. Up to now it is not clear if and to what extent this state function will be altered by the inclusion of local (intermunicipal) aspects and if this regional development body will become a new type of authority lying between state and local interests.

56. ANMP representatives raised special supervision issues regarding the discharge of the mayor’s duties.³⁴ There have been recent measures by the supervisory body, with mayors being fined between €1,000 and €1,500 for failure to comply with the financial regulations. The ANMP is critical of this situation, claiming that the state cannot fine local authority officeholders for negative results in the management of debt for which it is responsible (e.g. through cutting debt lines). Furthermore, they raise the question of adopting a different approach between the legal liability of local councillors and members of the government. The question of how to differentiate between the consequences of political accountability at ministerial level and liability at local or regional level is a complex issue of relevance for all CoE member states. Some elements thereof will be dealt with under Section 3.3 Articles 7 and 8 (see below).

57. In general legal terms, administrative supervision is restricted to control of the legality of the activities of local authorities (Article 242 of the Constitution) and therefore normally aims only at ensuring compliance with the law. The Government, via the Ministry of Finance, is the body that performs general administrative supervision over local authorities, through inspections, inquiries and

³³ Paragraph 21 of the explanatory report to Congress Recommendation 127 (2003)

21. The constitutional provisions regarding parishes reflect a long-standing tradition of organising common affairs at very local level. As the name indicates, the institution originates from the church “parishes”. It has now lost all legal relationship with this part of the past. The rapporteurs have the strong impression that the institution of parishes enjoys considerable credibility and affection among the population. As currently regulated, parishes represent one of the more original contributions of Portugal to the European heritage of local self-government.

³⁴ See ANMP communication: “Responsabilidade financeira dos Autarcas, Assembleia da República rejeitou proposta que a ANMP sugeriu e o governo aceitou”, Comunicação ANMP, 09 December 2010

investigations, involving the collection and analysis of information and explanations that are required to ensure that laws and regulations are enforced by local government organs and departments, metropolitan areas and intermunicipal communities. Special supervision of local authorities is carried out by the Court of Auditors in accordance with Article 214 of the Constitution. The Court of Auditors has powers not only to scrutinise the different accounts but also to carry out prior checks on the legality of expenditure involving medium- to long-term financial commitment and verify whether the expenditure is covered by the budget. Details of administrative supervision are laid down in the relevant law (Act No. 27/96 of 1 August); there are also special supervision instruments concerning municipal master plans, to make sure that municipal plans comply with certain laws and regulations as well as complying and fitting in with other, supra-municipal, plans.

3.2.4. Financial resources

Legal principles

58. The basic rules of the funding system of local authorities are set out in Article 238 of the Portuguese Constitution.³⁵ This article contains at least five guarantees:

- The autonomy of local authorities with respect to their own assets and finances;
- The principle of fair distribution of public resources between the state and the local authorities;
- The need for equalisation in the event of inequalities between local authorities of the same category;
- The allocation of the financial yield of local assets and charges for local services; and
- Taxation power in accordance with the law.

59. Article 254 of the Constitution adds to these guarantees the right of municipalities to have a share of the national revenue from direct taxes and the right to have tax revenues of their own. The power to create new taxes is vested in the Assembly of the Republic (Article 165.1.); local authorities have, generally speaking, no legislative power to create new taxes. Consequently, under the Local Finance Act, all local authority organs are prohibited from levying taxes not laid down by law. With respect to developments in other CoE countries to enlarge the tax basis of local authorities, there might be reason to consider introducing greater flexibility, respecting the wording of Article 9.4 of the Charter: *“that the systems shall be of a sufficiently diversified and buoyant nature”*. Additional local taxes should nevertheless comply with the conditions that the local tax basis has a local content and does not adversely affect the functioning of the Portuguese interior market.

60. In addition to the constitutional provisions, the following acts contain special arrangements for municipal and parish finances: Acts 42/98 of 6 August, 87-B/98 of 31 December, 3-B/2000 of 4 April, 15/2001 of 5 June and 94/2001 of 20 August, and Institutional Act 2/2002 of 28 August and especially Act 2/2007 (rules governing municipal and parish finances).

61. These constitutional and legal provisions are implemented as follows: The yield of the following taxes is attributed to local authorities; they are levied by the relevant central government departments. All specifically local taxes are compulsory, except for the *derrama*:

- municipal real estate tax;
- tax on the transfer, for payment, of real estate rights;
- municipal vehicle tax;
- the *derrama* (additional municipal tax) on corporate incomes.

62. Municipalities and parishes have other sources of income in the form of charges for use of their services and revenue from municipal assets. The assets are guaranteed by the Constitution (Article 238.1). This “non-fiscal own income” represents approximately 12% of municipal revenues. This type

³⁵ Article 238

(Local assets and finances)

1. Local authorities shall possess their own assets and finances.

2. The law shall lay down the rules governing local finances and shall seek to ensure that public resources are justly shared between the state and the local authorities, and the necessary correction in inequalities between local authorities of the same category.

3. Each local authority's income shall obligatorily include that derived from the management of its assets and that charged for the use of its services.

4. Local authorities may possess the power of taxation in such cases and under such terms as may be laid down by law.

of revenue therefore has only a small impact – in the light of the cumulated effects of decreasing revenues from own resources, the PIE yield (*Participação nos impostos do Estado (PIE)* - participation in State taxes) and state grants – on the budgetary situation of sub-national units.

Macroeconomic and fiscal policy situation in 2010/2011

63. The financial situation of local authorities in Portugal has been significantly influenced by the effects of the economic crisis since 2008, the outcome of the national EU Stability and Growth programme and the EU/IMF/ECB Economic Adjustment Programme for Portugal since summer 2011. Portuguese state representatives have repeatedly raised the question of regional and local responsibility within the reform context and argued that these entities have to deliver an appropriate contribution.

64. In the interim report of the troika entitled “Second review under the extended arrangement”³⁶ the critical points with respect to regional and local government became more concrete, as shown by the following:

“19. Revising the local and regional fiscal frameworks is critical to restoring fiscal discipline, limiting risks, and increasing transparency.

- *The current design is leading to various problems at the regional and local government levels, including overoptimistic revenue forecasts, pro-cyclical spending, accumulation of arrears, and an unsustainable increase in indebtedness. In order to address these weaknesses, the programme envisaged the revision of the local and regional finance laws by end-December. However, the authorities need more time and technical assistance to finalise this work. Submitting a new regional finance draft law to Parliament has been set as a structural benchmark for end-March while the submission of the new local finance draft law was postponed to end-June 2012.*
- *Measures to deal with Madeira’s acute financial distress (total debt of €6.3 billion and estimated financing needs of €3.5 billion over the next four years) have been included in the programme. Weak PFM systems and procedures are an important concern, as illustrated by the misreporting of €1.2 billion of liabilities under Portugal’s Excessive Deficit Procedure. The authorities are seeking to negotiate an arrangement with the Madeira government, including financial support linked to conditionality on fiscal performance and structural reform.”*

65. Within this political framework, representatives of the Ministry of Finance and Public Administration pointed out that the central commitments of the “troika programme” are of paramount importance for the whole country:

- Portugal has to make savings of €67 billion for three years. This leads to severe budget limitations. The country has undertaken, within the second review of the programme, to limit its deficit in 2011 to 5.9% of GDP.
- Local authorities are fully integrated into the restructuring programme. The central, regional and local levels have to adapt public expenditure to the revenue available.
- This readjustment is not possible without serious improvement to the organisation of the administration and service delivery. Public service costs must be reduced by 15%, maintaining at the same time a high quality of services.
- The most important troika objectives concerning local governments are to be found in paragraphs 1.7 v, 1.9 i, 1.14, 1.19 v, 1.20 iii, 1.29 iii, vi, 3.12., 3.13 i, 3.14, 3.39 to 3.49. of the Memorandum. Due to the fact that Portugal has no sectoral budgets, staff-related costs have to be reduced. This presupposes the permanent monitoring and review of the number and structure of local government staff as well.

66. The reduction of transfers to regional and local governments in terms of GDP is calculated with a consolidation effect of 0.2%.³⁷ But other measures will have effects upon regional and local authorities too, so that the overall consolidation effects for these entities will be much greater than just 0.2%:

³⁶ IMF, Portugal: Second Review Under the Extended Arrangement, December 7, 2011, page 14
<http://www.imf.org/external/pubs/ft/scr/2011/cr11363.pdf>

67. The state representatives are fully aware that local authorities have faced a noticeable reduction of own resources. The state can theoretically intervene with special aid programmes (grants) to balance municipal indebtedness. Moreover, the government has expressed special concern about the sustainability of local government fiscal autonomy and has strengthened controls over municipalities' budget behaviour, taking into consideration that the reduction of municipal indebtedness proceeds slower than expected. The overall objective of the Portuguese government is to reduce public debt at all levels of government.

68. ANMP representatives noted that the troika programme had not been submitted in advance to the association for consultation. They had had an opportunity to analyse it *a posteriori* and to discuss with state bodies its possible effects on local self-government. Their assessment of the effects of the programme can be summarised as follows: local authorities would have to pay for problems at national level; the government's approach to reduce the level of local government debt would be inadequate and did not respect the particular circumstances of financing the needs of regional and local authorities; and finally, the programme constituted interference with local autonomy in several respects.

69. Regional and local budgets are under strong state pressure to reduce deficits, although they are responsible for only a small share of the total state debt. In 2010 the local public sector in Portugal is responsible for about only 4% of the total state debt.

70. The troika statements concerning local government structures and finances have called for a decrease in state grants to local authorities. These are stagnating or – more often – they are reduced. The losses to local government amount to approximately 5%. The total fiscal revenue of local authorities from 2006 up to the present have decreased in all by some 25%. Trends in state and local resources are as follows, according to ANMP estimates given to the rapporteurs:

	2005	2011	Σ 2005-2011
State revenues	88,097	177,736	+101.8%
PIE (transfers to municipalities) (in €billion)	2,298	2,398	+ 4.3%

71. ANMP has expressed special concern over the development of debt rules. Section 37 of the 2007 Local Finance Act (LFL)³⁷ establishes a debt ceiling individually applicable to each municipality. This ceiling is based on the concept of net municipal indebtedness which may not exceed, at the year's end, 125% of the previous year's total revenue. In order to promote effective compliance with the rule, municipalities that exceed this ceiling face penalties. These include a reduction in transfers from the state budget to the municipality in question, which is equal to the value of the verified debt excess. Municipalities are thus obliged to reduce their debt for each year thereafter by at least 10% if the 125% limit is exceeded.

72. The Regional Finance Act (LFR) states that indebtedness ceilings for regions will be stipulated annually by the State Budget Act. In accordance with these limits, the autonomous regions must prevent debt service (interest and debt repayment) from exceeding 25% of the current revenue recorded in the previous year (excluding transfers and co-payment from the state). Any infringement of

³⁷ Source: EU Commission DG ECFIN Occasional Papers 83, September 2011 - The Economic Adjustment Programme for Portugal – First review summer 2011

³⁸ Section 37 Municipal net indebtedness limit (version 2007)

1 — the total amount of net indebtedness of each municipality on 31 December of each year shall not exceed 125% of the amount of revenue from local taxes, the municipality's shareholdings in the Financial Balance Fund, the fixed element of contribution to income tax, and the results of the contribution of the local business sector entities, for the previous year.

2 — When the total net debt of the municipality does not comply with the provisions of the preceding paragraph, at least 10% of the amount of indebtedness in excess should be reduced, each year thereafter, until the limit of net indebtedness of the municipality is reached less than the amount the previous year, until the limit on the municipality's net indebtedness is reached.

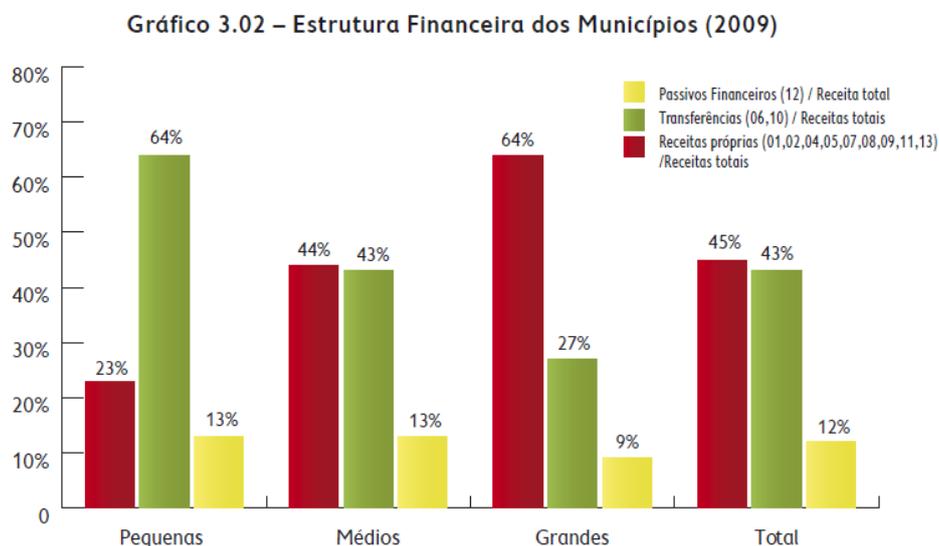
these limits will result in a penalty comprising a reduction in transfers from the state equal in value to the verified debt excess. The new law further establishes the general principle that debts incurred by the regions cannot be guaranteed by the state.

73. The ANMP referred to other concerns:

- The state changes the debt rules every year. For a given municipality, in 2012 there is only €700,000 budget flexibility left (it was originally €11 million and then €3 million). The reduction in transfers comes in addition to the general cuts and makes it extremely difficult to balance the budgets.
- Government measures are giving rise to considerable reductions in municipal finances. In the case of EU Funding, a special order of the Ministry of Finance is necessary when the local expenditure to co-finance EU intervention exceeds the general debt limit (as per the 2007 Act).
- The regions of the Azores and Madeira were not consulted in the troika negotiation process.

74. There are a number of fundamental features inherent in the situation of local and regional finances in Portugal in times of crisis. Portugal has an important public budget balance deficits and a high gross public debt ratios. Obviously, this situation has influenced the macroeconomic policy at national level, particularly in limiting expenditure at local level, although the sub-national self-government bodies in Portugal have only a small impact on public expenditure as a whole (about 13% of the overall public expenditure and revenue; on average 11%). Local authorities sometimes have difficulties to exhaust their own resources completely; local revenues are generally small and not very diversified. The intermunicipal fiscal equalisation schemes are relatively weak. Local authorities depend largely on state transfers in the form of PIE or other grants.³⁹

75. The following chart, submitted by ANMP,⁴⁰ gives a more detailed overview of the levels of different types of revenue according to the size of the municipality (small, medium, large). Small and medium-sized municipalities depend to a larger extent than larger units on state transfers. This might be an indicator of the need to improve special fiscal equalisation schemes on a horizontal (intermunicipal) or vertical (from the state to municipalities) level:



76. As state grants play a key role in financing local and regional authorities (financial transfers from the state to the local and regional authorities total up to about 60% of their revenue), it is important to know that Portuguese law contains specific elements relating to grants. The Local Finance Act 2/2007

³⁹ Details concerning the structure of revenues and expenditure of municipalities 1997 – 2002 may be found in the following publication: *Estrutura e funcionamento da democracia local e regional* - Ministério das cidades, administração local, habitação e desenvolvimento regional - Secretaria de Estado da Administração Local, Direcção-Geral das Autarquias Locais, 2004, page 102.

⁴⁰ ANMP, *Anuário financeiro dos municípios Portugueses 2009*, page 53

prohibits the payment of specific grants from the state to the local authorities except in particular cases laid down by law.

77. A comparison of the proportion of sub-national revenue and expenditure with other countries shows the limited impact of Portuguese local finances on the state fiscal system (approx. 10%), whereas the European standard is 33%. Portugal should, in the long term, increase the local share of revenue and expenditure in the total state revenue and expenditure. This will not only stabilise local finances in general but will enhance the local authorities' capacity to co-finance EU- and State-funded or local investments and thereby improve local autonomy and will strengthen the local and regional economic sector as a whole. As local investments normally account for around 60% of the investments of the total public sector, strengthening local investments would help stabilise economic development in key sectors such as construction, transport infrastructures and infrastructures of services of general interest.

78. The recent state restrictions on indebtedness have shown shortcomings with regard to the fair distribution of charges. Although there is a legal basis for debt limits set out in Section 37 of the Local Finance Act 2/2007 and subsequent modifications, Article 238.2 of the Constitution stipulates that public resources should be fairly shared out.⁴¹ The cumulative effect of PIE reduction, the reduction in other state grants and a new debt limit is threatening the principle of the symmetrical burden-sharing of financial charges among the various tiers of government. A particularly significant reduction in regional and local revenue may certainly be justified, if the national budgets had suffered more severely than those of local governments. However, revenue trends relating to the different tiers of government between 2005 and 2011, presented by the ANMP, show a significant increase in central government revenue, but only a slight increase in regional and local funding (see paragraph 55 above). The restrictions seem to be unbalanced: might therefore not be in conformity with Section 2 of the Local Finance Act 2/2007 and thus, not comply with Article 9-2 of the Charter.

79. Additional tax revenue through an intensified tax collection procedure is an important element of balancing the state budget. In 2011, Portugal has exceeded its target of €1.1 billion in additional tax revenue by about 10%. Another possibility would be the implementation of additional taxes on, for example, wealth or extraordinary high incomes.

80. The tax revenue structure of regional and local authorities is characterised by a strong decline in the yield of taxes linked to real estate and the construction sector. Due to the recession in this economic sector, the consequences concerning the tax revenues of municipalities are considerable. Article 9 of the Charter mentions resources of "a sufficiently diversified and buoyant nature". If local authorities depend largely on the outcome of only a small number of taxes, this objective cannot be met. Probably the whole model of local financing should be analysed as to whether and to what extent local revenues depend on particular economic activities and how to reduce these dependencies.

81. It is obviously necessary to distinguish between the fiscal need of local authorities in different parts of the country, including the situation of coastal or inland units, urban or rural zones. This presupposes further revision of the fiscal equalisation scheme, which involves the regional distribution of gross national product (GNP) according to the type of local or regional authority in 2004.

82. The Government seems not to be able to provide enough public money for local and regional authorities, especially in times of crisis. Private savings cannot cover this gap, because they too have been in decline since 2009. There is a need for a stronger consultation and co-ordination between central government and the self-government bodies, to secure local and regional co-decision-making in fiscal affairs and for agreements to increase profits from the limited financial resources of the country.

83. Moreover, there is a need to improve the State administration's flexibility and willingness to offset local and regional difficulties in financing public needs. National governments have generally several instruments to influence local revenues or expenditure. The most relevant instruments used by EU

⁴¹ 2. The law shall lay down the rules governing local finances and shall seek to ensure that public resources are justly shared between the state and the local authorities, and the necessary correction in inequalities between local authorities of the same category.

member states since 2008 to address the crisis and its consequences on the national and local economy are:

- Increasing non-earmarked national transfers
- Increasing earmarked national transfers/grants
- Speeding up payments to local authorities
- Speeding up financing of infrastructures
- Simplifying procedures before starting infrastructure projects
- Facilitating borrowing/loans
- Temporarily increasing the local share in taxes
- Temporarily alleviating budget restrictions
- Implementing structural reforms particularly in budget organisation.⁴²

84. With respect to the latter, the Portuguese government is engaged in a far-reaching reform of public budgeting methods. Concerning public contracts, ANMP has mentioned that there are delays in payments from central government to local authorities and that, sometimes, different conditions are negotiated when implementing public contracts according to the purchase power of municipalities. This normally discriminates against smaller units.

3.2.5. *Autonomy and freedom of association*

85. Article 253 of the Constitution⁴³ establishes the municipalities' right to form associations. Municipalities may form national associations to represent them, provided these have at least 100 members. A similar stipulation concerning parishes is set out in Article 247 of the Constitution. Details are to be found in Act 54/98 of 18 August. The most important right for the associations is the right to participate in the consultation process (Section 4.1.a⁴⁴ of this Act concerns all legal initiatives with respect to local and regional autonomy). With regard to the growing importance of governmental strategic papers such as Green Papers or other Green or White Papers of the EU Commission, the right of the associations to be consulted should be extended to include these documents.

86. Concerning regions, Article 178.7 of the Constitution gives the right to representatives of the legislative assembly of the autonomous region in question to participate in committee meetings at which regional legislative proposals are discussed, as laid down by the Rules of Procedure. This competence is not limited to special subjects; the redistribution or allocation of finances may come under this right to participate. Some details are obviously laid down in the Rules of Procedure of the Parliament. These Rules may also regulate the participation of representatives of other types of local authorities.

87. Under Section 4 of Act 54/98, the ANMP, an association under private law, is entitled to exercise the consultation rights set out in the Act. Since 1995, the National Association of Parishes (ANAFRE) has had the status of a government speaking partner in respect of legislative initiatives affecting Portuguese parishes. There is no association at regional level and the autonomous islands have special consultation rights.

⁴² Further details can be found in the OECD report: Teresa Curristine, Chung-Keun Park and Richard Emery, Budgeting in Portugal, OECD Journal on Budgeting, Volume 2008/3, © OECD 2008

⁴³ Article 253 (Associations and federations)

In order to administer common interests, municipalities may form associations and federations, on which the law may confer specific powers and responsibilities.

⁴⁴ Section 4. 1 Partner Status

1-National associations automatically acquire the status of partner of the State and shall be granted, without prejudice to other legal provisions, the following rights, in accordance with the regulatory framework:

a) prior consultation, by the sovereign organs, in all legislative initiatives relating to matters within their field of competence;

b) participation in the Economic and Social Council;

c) Participation in the management and direction of the Centre for studies and training for municipal and other bodies specifically devoted to matters relating to local authorities.

2-The stipulations in para. 1 are conferred by law to municipalities and parishes, regardless of their membership.

3-Sub-paragraph a) of paragraph 1 covers the right of associations to publish, in accordance with the law, in the Journal of the Republic a summary of the positions adopted by itself formally expressed in the consultation on the respective legislative acts with municipal impact.

88. Other forms of co-operation between local authorities in Portugal and local authorities in other countries are possible:

- Co-operation under the Outline Convention on Transfrontier Co-operation between Portuguese local authorities along the border with the neighbouring Spanish local authorities;
- twinning schemes between local authorities in Portugal and foreign local authorities;
- formation or membership of associations of local authorities, as a private initiative.

89. Co-operation between Portuguese municipalities and those in other countries under the Intermunicipal Co-operation Programme set up by EU Council of Ministers Resolution No. 174/2000 of 30 December and co-operation with other European local authorities on various bodies, such as the EU Committee of the Regions and the Congress of Local and Regional Authorities of the Council of Europe, are forms of specific co-operation that are developing within the Portuguese institutional framework.

90. Despite these very detailed regulations about the consultation process, ANMP representatives have raised doubts about the effectiveness of the consultation process. The main complaints refer to the procedure itself (divergent consultation procedures between different authorities,⁴⁵ sometimes extremely short time-limits for comments, often oral instead of written participation) and the failure to take into account their comments on legal drafts. With respect to the Economic Adjustment Programme, the ANMP was not heard in advance by the government and there has been no opportunity for a detailed discussion of special local and regional government interests. This seems to tie in with the results of an OECD study about Regulatory Management in Selected EU Member States: Executive Summaries,⁴⁶ which analysed the general consultation processes.

91. The rapporteurs share the opinion that progress in the consultation process could be useful to address particular aspects of common concern between central, regional and local authorities. The starting point should be a shared conviction of the need for a “consultation culture”. To overcome the diversity of procedures, it might be worthwhile concluding a written general consultation agreement between the government and the associations, with basic regulations concerning the scope of consultation, the information the government has to deliver, the deadlines and the forms of participation as well as the handling of statements by the contracting parties. This might include the obligation for the state bodies involved to justify their positions, where they differ from the associations' views or if specific proposals from the associations are ignored in the drafting of legal or other acts.

3.2.6. *Status of the capital city*

92. The Charter does not contain any specific provisions regarding capital cities; it is nevertheless obvious that the fundamental principles of local democracy should prevail in them too. Article 236.3 of the Portuguese Constitution allows for “other forms of local government organisation”. Thus, it is possible to create a special local authority unit in Lisbon. Act No. 44/91 of 2 August, creating the metropolitan areas of Lisbon and Porto, contains a special provision for these areas. Section 4 (powers and responsibilities) and Section 5 (finances) are of special relevance. More details may be found in the CDLR country report on Portugal. It is worthwhile noting in this context, Congress Recommendations 133 (2003) “Management of capital cities” and 219 (2007) “Status of capital cities”, containing some basic elements for the status, powers and functioning of capital cities in CoE member states.

⁴⁵ According to specialised legislation, the scope of local authority participation in the State law-making process differs from topic to topic. For example, the legislation governing planning procedures in Portugal grants local authorities their own powers in this field and likewise guarantees their participation in the planning process at a higher level, including the national level.

⁴⁶ OECD from 11-12 May 2009, GOV/PGC/REG(2009)4/ANN, Portugal see pages 35 et seq.

“145. The new legal framework for consultation together with the planned Code of Good Practice is a positive step towards promoting more effective, open and user-friendly consultation across all ministries, not just with the best performers. The quality and scope of consultation practices appear to vary across ministries, and open consultation is not yet fully embedded. The government is now preparing a new legal framework and a Code of Good Practice, which should help to promote good practices. There is a particular need to promote more user friendly deadlines, and provide more systematic feedback on the results of consultation, so as not to discourage those who are putting big efforts in the provision of comments. Public consultation usually takes place within short deadlines and at a late stage in the development of regulations, which does not allow stakeholders sufficient time to contribute and reflect on how they could be affected. Nor does it encourage public ownership of the policy under development. Feedback on the use made of comments also appears to be poor.”

93. According to the Mayor of Lisbon, a special status for the city would probably be an advantage in financial terms. At present, the town depends largely on its own resources. Like other local authorities, Lisbon has been affected by the crisis in fiscal terms. The State transfers, normally 10% of the city's revenue, saw a 5% reduction in 2011 and will be further reduced in 2012 by 65%. Overall resources were down in 2011 by 20%. Taxes from businesses fell by 35% (equivalent to €70 million). The city has suffered severe losses (-50%) in the yield from the transaction tax on properties. Capital city status would give it greater freedom, for example in the taxation of vehicles. Currently, Lisbon can tax the 174,000 cars of city residents. 400,000 cars come in from suburban areas every day. Imposing taxes on them would be advantageous under special conditions.⁴⁷ Concerning levies on State properties, as the State is exempt from local levies, the city is not allowed to collect contributions in this sector. In general the city of Lisbon supports the Congress's recommendation on capital cities adopted in 2007.

94. Concerning the metropolitan area aspect, Lisbon and the surrounding area have formed a metropolitan area since 1989. In terms of concentration of the population, Portugal has an aggregate urban population far below the OECD average in urban areas,⁴⁸ so it might not be possible to concentrate regional development policy upon these regions alone.

95. The main function of the metropolitan area is to co-ordinate the action of member municipalities, to articulate common positions and to support co-operation between them, as far as necessary. The metropolitan areas do not have relevant powers and responsibilities of their own. The budget of about €1.3 million is small, coming from State grants, the municipalities and EU funding. The office of the metropolitan area has 12 employees. The 18 mayors of the municipalities who are members of the metropolitan area together form the metropolitan council; there is no executive committee. The members of the metropolitan assembly are appointed in an indirect way: They are representatives of the assemblies of the municipalities.

96. The Mayor of Lisbon and the representatives of the metropolitan area are dissatisfied with the functioning of the metropolitan area. There is little co-operation. In the assessment of the Mayor, the area is more an association of municipalities. The government intends to improve the situation and has defined targets in Chapter 3.5 of the Green Paper. According to the Mayor, several measures could be conceived:

- Transfer of state powers to the metropolitan area;
- Organising the area in a "region-type" structure;
- Transferring municipal services to the metropolitan area with a view to creating win-win situations. Obviously, however, there are significant obstacles to the transfer of powers and resources, if the shift of powers in order to strengthen the metropolitan level and resources ends up weakening the municipal level.
- There is a need for mandatory legal enforcement to improve the metropolitan area; voluntary solutions have been considered since 1989 but not implemented
- Powers and responsibilities of municipalities must also be increased;
- If changes are planned, they should be implemented so as to enable them to be in place by the local elections in 2013.

⁴⁷ See OECD Paper, GOV/TDPC/RD(2010)1 from 3.6.2010, Trends in Urbanisation and Urban Policies in OECD Countries: What Lessons for China? Page 205

"Fees and charges are ideal for funding local services where specific beneficiaries can be identified and non-payers excluded."

⁴⁸ OECD, GOV/TDPC/TI(2011)3/REV1 from 1 December.2011

Working Party on Territorial Indicators

Redefining Urban: A new way to measure metropolitan areas in OECD countries, 22nd Session of the Working Party on Territorial Indicators

3.3. *Analysis of the situation of local democracy on an article-by-article basis*

3.3.1. *Articles 2 and 3: Principle and concept 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.

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

97. The Constitution of the Portuguese Republic (7th revision, 2005) stipulates in Article 6 the principle of a unitarian State, while guaranteeing respect of the autonomous island system, the principles of subsidiarity, the autonomy of local authorities and the democratic decentralisation of public administration. The details are set out in Title VIII of the Constitution (local government). Article 2 of the Charter is therefore formally complied with. The exclusive or partially exclusive responsibility for legislating in local and regional affairs is vested in the Assembly of the Republic (Articles 164 and 165 of the Constitution).

98. An important constitutional safeguard is vested in the Constitutional Court (Article 221 of the Constitution). The Constitutional Court has the power to “consider unconstitutionality and illegality, in accordance with Articles 277 et sequitur”. The Court is restricted to controlling the conformity of legal acts with the Constitution. It has no consultative function. The legal benchmarks for examining this question are only the Constitution itself and the European Convention on Human Rights. The European Charter of Local Self-Government is not a legal benchmark, for it is situated within the hierarchy of legal norms below the Constitution, but above ordinary legislation. The institutions that can appeal to the Court are the President, the Assembly, the Ombudsman and the Attorney General, but not assemblies of local authorities.

99. Despite this important function of the Court, representatives of the associations have raised certain points, which according to them obstruct the overarching constitutional safeguard function of the Court with respect to regional and local issues. Members with a local or regional professional background are underrepresented in the Court. The Constitutional Court is a judicial body, whose composition is decided according to political criteria. The Court consists of 13 judges, ten of whom are appointed by the Assembly of the Republic and three are co-opted by those ten. The term of office is nine years and not renewable. But despite the criticisms of the associations, the nomination procedure does not exclude the appointment of members with closer links to local or regional self-government. Furthermore, the judges are obliged to respect all the provisions of the Constitution, including those relevant to local and regional self-government.

100. Secondly, there is no procedure for local authorities whereby the Constitutional Court controls in an abstract way the legality and constitutionality of laws. There must always be prior concrete litigation before an ordinary court, before a constitutional procedure can be instituted. Portuguese constitutional law does not contain a system of prior review of the constitutionality of a legal act.

101. The examination of the constitutionality of the Local Finances Act 2/2007 has shown another restricting element: The Court has exercised a control of constitutionality of this Act only with respect to those particular provisions submitted by the President of the Republic. The modification of the Act was not brought before the Court in 2008. But, as a matter of course, the President of the Republic has to prove the unconstitutionality of the provisions he submits to the Court. He also has to verify the conformity of the laws with the Constitution before promulgating them. Accordingly, constitutional control is divided between the two institutions.

102. Article 239.3, sentence 3 of the Constitution stipulates that the law shall regulate “the proceedings and operation of the assembly and the collegiate executive body”. The details are laid down in ordinary laws.

103. Article 8 (2) of the Constitution contains provisions on the entry into force of international agreements. As stated in the Congress monitoring report on Portugal in 2003 (para. 18),⁴⁹ “the Charter is effectively an international convention within the meaning of this provision. It is therefore clear that the Charter in its entirety (as far as the material content of each provision justifies it) may be referred to in Portuguese courts and taken into account when resolving legal disputes between local and regional authorities and central government, and between local authorities and the autonomous regions in which they are to be found.” Portugal signed the Charter on 15 October 1985. It was ratified on 18 December 1990 and entered into force on 1 April 1991. No particular declarations were made nor reservations taken by Portugal upon ratification.

104. The main elements of local and regional autonomy were included in the Portuguese Constitution of 1976. The Charter, ratified by Portugal in 1990, thus had no direct influence upon the wording of those provisions.

3.3.2. *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. |

105. Current legislation in Portugal establishes a major distinction between local self-government and local government by the state. In the present system and in traditional administrative practice in Portugal, the state does not delegate its responsibilities to local authorities.

106. Powers and responsibilities are transferred to established local authorities under legal instruments that specify the type and manner of the transfer, as follows:

- transfer of powers relating to exclusively municipal matters which are of a general character and universally applicable;
- transfer of powers relating to matters connected with regional action programmes, these powers being exercised by municipalities according to the priorities laid down by the regional development co-ordination boards, which are decentralised central government administrative units;
- transfer of powers relating to matters relating to national action programmes, these powers being exercised by municipalities in accordance with the priorities laid down by the Assembly of the Republic at the Government's instigation.

107. Article 237.1 of the Constitution provides that the responsibilities and organisation of local authorities shall be laid down in a law. The regulatory power of local authorities is governed by Article 241 of the Constitution. Local authorities are allowed to issue their own regulations within the limits of the Constitution and of laws and regulations established by either a higher level of local government or a supervisory authority.

⁴⁹ Recommendation 127 (2003) on local and regional democracy in Portugal, paragraph 18 of the explanatory memorandum.

108. The distribution of powers is defined in Chapter II, Section 13 et seq of Act No. 159/99 of 14 September. The question of a new allocation of powers between the different tiers of government is not a prominent issue in the Green Paper. Representatives of the associations have not called for extending the transfer of state powers to local authorities. Concerning the distribution of powers between municipalities and parishes, there is a strong concentration of powers in the hands of municipalities. Due to the administrative decentralisation, the municipalities today have the following general attributions:

1. Rural and urban equipment;
2. Energy;
3. Transport and communications;
4. Education;
5. Heritage, culture, science;
6. Leisure activities and sport;
7. Health; social action and housing;
8. Civil Protection;
9. Environment, public hygiene and basic sanitation;
10. Upholding consumer rights;
11. Promotion of economic development;
12. Regional and town planning;
13. External (Foreign) co-operation and
14. Urban policing.

109. In terms of administrative responsibilities, granting local and regional authorities the right to collect their own taxes could be one key way of increasing the fiscal autonomy of these entities. If, in order to ensure the efficiency and effectiveness of the overall tax collecting system, no reform is intended in order to give more responsibilities to local or regional authorities, then at least the co-operation procedures between the different entities in tax collecting measures should be improved.

110. With respect to Article 3.1 of the Charter, local authorities do have of a substantial share of public affairs.

3.3.3. *Article 5: Protection of 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.

111. Article 164 of the Constitution grants legislative power for the “creation, abolition and modification of local authorities and the rules governing them” to the Assembly of the Republic. Under the constitutional provisions currently in force, the power to lay down rules on the establishment, abolition or territorial modification of local authorities lies solely with Parliament, which under Acts 11/82 of 2 June and 8/93 of 5 March also has to legislate on decisions setting up or abolishing local authorities or modifying their boundaries. When examining relevant legislative initiatives, Parliament must take account of reports or assessments by local government organs.

112. This topic seems to be of special relevance due to the fact that Portugal has decided, in accordance with its commitments under the Economic Adjustment Programme, to launch a vast initiative to rationalise the local authority map in the context of the reform agreed with the EU and the IMF, with effect from 2012, particularly at parish level. According to the Secretary of State for Local Administration, the reconstruction of local units in Portugal should lead to the reduction of the number of units to between 1,000 and 1,500.

113. With respect to Article 249 of the Constitution, prior consultation of the local authorities concerned (or their national associations) in the event of boundary reforms is guaranteed. However, Article 249 of the Constitution guarantees the consultation only of the “local authorities in question”. If the reform has an effect on the overall architecture of local government in Portugal, it might be necessary to consult the local authorities through their associations in general.

3.3.4. Article 6: Administrative structures

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.

114. Article 237.1 of the Constitution gives local authorities the right of self-government within the limits of the law. This includes autonomy in deciding on their internal administrative structures. In accordance with their powers of self-government, local authorities decide on their internal organisation. The executive body submits a proposal on its own organisational structure to the deliberative body for the latter's approval (Acts 169/99 of 18 September and 5A/2002 of 11 January).

115. Services must be organised in such a way as to enable the local authority to perform its functions, and the structure of services and the way they operate must be adapted to the authority's permanent objectives. The organisation of municipal services is governed by Legislative Decree 116/84 of 6 April, amended by Act 44/85 of 13 September and Legislative Decree 198/91 of 29 May. Portuguese regional and local authorities have started to rationalise their administration with a view to using e-government facilities and to make administrative procedures more transparent and less complicated.⁵⁰

116. One important component of the Economic Adjustment Programme is the limitation of staff at central and local level. At local level, the city of Lisbon has to spend 52% of its budget on staff salaries. Whereas in most countries the size of the public sector has been reduced from 1996 onwards, Portugal has had a slight increase, which corresponds to an increase of the public wage bill as well. But the distribution of employees between central government, the regions and the local level is rather uneven - 78% of staff are to be found in central government. This distribution requires a differentiated approach between the tiers of government if rationalisation targets are to be set.

117. The primary staff reduction target differentiated originally between central and local level, obliging local authorities to reduce their personnel in 2011 and 2012 at a rate of 2%, whereas central government staff had to be reduced by 1%. This differential approach was justified by the effects of the reform on the state administration; the State had begun to fulfil its reduction targets. ANMP representatives pointed out that there had been a transfer in powers from central government to local authorities along with a transfer of staff. The "gains" at State level in the form of staff reduction were artificial, because the staff concerned were now employed at local level. The government has since eliminated the differentiation in staff reduction target between State and local administrations. Now both levels have to reduce their staffing complement in 2011 and 2012 at an annual rate of 2%.

118. Nevertheless this target is rather abstract and does not respect legal provisions and particular local features. It might not respect Article 6.1 of the Charter,⁵¹ as it would impair the power of local and regional self government entities to determine their internal administrative structures, including the number, the qualifications and the remuneration schemes of local and regional staff members.

119. If the overall aim of the government is to reduce public deficits at local level as well, local autonomy would be better served if the practical methods for making savings in administrative matters were left to the local authorities themselves. Local authorities may take into consideration the aspect of unemployment too, particularly in regions with a low employment level outside the public administration. This would probably increase pressure on the associations to negotiate special

⁵⁰ See OECD from 18. March 2008, Working Party on Regulatory Management and Reform - Administrative Simplification and E-Government in Portugal GOV/PGC/REG(2008)4

⁵¹ 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.

reduction targets between the different types of local bodies. But if the local self-government bodies were not able to respond collectively to the State staff reduction targets, they would have to give back this task to State authorities.

120. With respect to the staff of local authorities, Article 243 of the Constitution contains general provisions. Article 243.2 refers to the rules to be applied for State staff and agents; Article 269 of the Constitution is also relevant for local authorities. In addition, Article 267 may be applicable to local authorities too, insofar as it contains indications as to the structure of the public state administration. Due to the sectoral rationalising effects of the State administration reform and transfers of responsibilities, for example in the field of education, local authorities recently acquired additional tasks to restructure services. In the Lisbon city administration, 900 employees out of 9,700 were given new (assistant) functions within the school system. The city is “in-sourcing” services and concluding fewer contracts.

121. With respect to the number of parishes, the reduction target is ambitious. But bearing in mind the powers and the financial resources of parishes, the reform of parish structures seems to be of minor relevance. Parishes give citizens a voice in the democratic decision-making process, especially in rural areas. This includes the maintaining of parish representatives on the municipal council despite the fact that these bodies are rather large.

122. The reform should not interfere with local autonomy by defining the number of managerial staff but instead should leave it to the local authorities to decide how best to organise local administration. Local authorities need qualified staff and market-adjusted remuneration schemes.

123. Concerning the restructuring of the membership of executive councils, the refocusing of the representation of political representatives according to a parliamentary model might not be appropriate for local governance. The rapporteurs learnt during their visit to Coimbra that the executive council consists of 11 members (6 from the winning party, 5 from the opposition). If the opposition members were excluded from the executive body, the institutional relationship between the local executive and local assembly would change, most probably resulting in more frequent conflict.

124. The 2003 Congress report (paragraph 46 et seq. “Local and Regional Democracy in Portugal - CG(10)5REV Part II”), discussed the problems linked to the existence of two “representative” and “collective” bodies - the deliberative bodies (“assemblies”) and the executive bodies (“authorities”) – at local level. These topics did give rise to any particular concern, with the exception of the membership question of the executive body.

3.3.5. *Articles 7 and 8: Exercising responsibilities and government supervision*

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.

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.

125. A law which was adopted at the end of the 90's, and which will enter into force in October 2013 (for the next local elections) will limit the term of office of mayors to a maximum of three terms. All terms of office above this limit will automatically end with the next local elections in 2013. According to

Article 118 of the Constitution, the law may specify limits on successive renewals of mandates of holders of executive political office. ANMP representatives ask whether a national law may restrict the term of office of local office-holders. In their view, such a question should be left to the local decision-makers and the citizens. Article 7 of the Charter requires “free exercise of their functions”. Given the fact that local self-government legislation often sets age limits for local office-holders, a general clause, limiting the duration of the office holder without reference to an age limit, may not be in conformity with Article 7 of the Charter. But with respect to the above-mentioned Article 118 of the Constitution, the existing rules should be analysed more specifically, if there are similar regulations concerning other types of executive office holders.

126. Administrative supervision is restricted to control of the legality of the activities of local authorities (Article 242 of the Constitution) and should normally aim only at ensuring compliance with the law. Details of the administrative supervision are laid down in the relevant law (Act 27/96 of 1 August).⁵² The government, via both the Ministry of Finance and the Ministry of Local administration, is the body that performs general administrative supervision over local authorities. Supervision is thus performed through inspections, inquiries and investigations, involving the collection and analysis of information and explanations that are necessary to make sure that laws and regulations are enforced by local government organs and departments, metropolitan areas and intermunicipal communities.

127. Special supervision of local authorities is carried out by the Court of Auditors in accordance with Article 214 of the Constitution. The Court of Auditors has powers not only to scrutinise the different accounts but also to carry out prior checks on the legality of expenditure involving medium- to long-term financial commitment and to verify that the expenditure is covered by the budget. The court is furthermore tasked with monitoring public contracts with a contract value of over €350,000.⁵³ The scrutiny of the court is strictly limited to the legality of contracts. It covers the legal foundation of contracts, compliance with budget law and whether the financial implications of a contract would oblige the public authority to override debt limits.

128. Ratification by the Council of Ministers of municipal master plans (which are a responsibility of municipal executive bodies and are also approved by the deliberative assemblies), is done in some cases where there is a risk of non compliance of municipal laws with certain laws and regulations. The purpose of such ratification is to make sure that municipal plans fit in with other supra-municipal plans.

129. The question of personal liability of officeholders was raised by several people with whom the rapporteurs spoke during the visit. The starting point of the problem could be Article 22 of the Constitution.⁵⁴ In accordance with this provision, it seems quite clear that both officeholders and local authorities may be held civilly liable – the wording is “jointly”. Nevertheless, only civil not criminal liability is mentioned. On the other hand, reference should be made to Section 15 of Act 2/2004 (*Lei n. 2/2004 de 15 de Janeiro - Aprova o estatuto do pessoal dirigente dos serviços e organismos da administração central, regional e local do Estado*)⁵⁵ and Section 14 of the *Decreto-Lei n. 93/2004 de 20 de Abril*.⁵⁶ Under the latter, officeholders may incur “civil, criminal, disciplinary and financial liability”.

⁵² See details concerning the supervision of municipal enterprises in the circular letter of the “Gabinete do secretario do estado da administração local e reforma administrativa”, <http://www.seal.gov.pt/seaal/pt/com/20100525.htm>

⁵³ See Section 5 “Essential substantive powers” of Act 98/97 of 26 August,

c) prior monitoring of the legality and budgetary appropriateness of acts and contracts of any nature which give rise to expenditure or represent any kind of direct or indirect liabilities or responsibilities for the entities referred to in paragraph. 1 of Section 2. and those of the entities of any nature created by the State or by any other public entities to perform administrative functions originally the responsibility of the public administration, with costs borne by budgetary transfer from the entity that created them, whenever, as a result, acts and contracts would not be subject to the prior review of the Court of Auditors.

⁵⁴ Article 22 (*Liability of public bodies*) - *Jointly with their officeholders, staff and agents, the state and all other public bodies shall be civilly liable for such actions or omissions in the performance of their functions as result in a breach of rights, freedoms or guarantees or in any loss to others.*

⁵⁵ Section 15 – *Responsibility* - *In the exercise of their functions, the Office-holders have civil, criminal, disciplinary and financial liability in accordance with the law.*

⁵⁶ Section 14 - *Violation of rules* – *In addition to civil, financial and disciplinary liability, as appropriate, the staff member who has received undue remuneration and other advantages inherent in his or her position shall be obliged to return the amounts received; the person who submits information in his or her favour or fails to provide information regarding the appointment or continuation in post of the staff member in question, in violation of this Act, shall be held jointly liable for such return.*

130. With regard to these provisions and similar rulings in other CoE member states, the liability of mayors cannot be compared with the political accountability of members of the government towards the Assembly. In accordance with the position of the Court of Auditors, there must be responsibility with respect to the acts of the head of the executive; a system without liability is not in line with the legal stipulations of the Constitution. Office-holders such as mayors may organise the entities they are responsible for in a way so as to limit the risks of illegal conduct by their staff members. But ultimately the law requires the civil (or criminal or disciplinary) responsibility of the head of the executive.

131. Another question relates to the decisions taken by the state supervision bodies against mayors who have exceeded budgetary provisions. If the claim of the ANMP is correct, i.e. that the State cannot fine local authority executives for negative results in debt management under its responsibility, then the supervision measures are in line with the Charter. Obviously local office-holders are obliged to implement legal and administrative provisions with respect to the execution of budgets. But if, due to the implementation of the Economic Adjustment Programme, there is a multiplication of new budget provisions which generate greater administrative difficulties in respect of their implementation, the supervision authority might be obliged to first give useful hints as to the correct implementation of budget norms before they use supervisory instruments.

3.3.6. Article 9: Financial resources

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.
- 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.

132. The most important issue concerning local finances for the association representatives is whether it is admissible to limit the size of local indebtedness through national law and if so, under what conditions. As a member of the EU, Portugal has to comply with the TFEU and Protocol no. 12 on the excessive deficit procedure.⁵⁷ The national government is therefore responsible not only for its own deficit but also for the deficits of regional or local governments.

133. The Court of Auditors stated the following in connection with the effects of the Local Finances Act 2/2007: The general question of admissibility and the size of limits of local indebtedness is not a question for the court in general. But the court is aware that the setting of debt limits to regional and local authorities within the Local Finances Act 2/2007 is linked to the political problem of the risk of regional and local debt accruing through non-transparent debt schemes within the local units themselves and within MOEs. Setting limits is a way of regaining transparency and limiting financial risks with respect to the country's European obligations. Debt limits for local authorities, set by national

⁵⁷ Official Journal of the European Union C 83/279, 30.3.2010

legislation, are a common instrument and may be found in different legal systems in EU member states.

134. Nevertheless, several particular aspects are a feature of the Portuguese situation. First of all, the debt limits have been significantly increased since 2007. Second, due to the fact that local authorities' own resources are largely dependent on the PIE and that the PIE is calculated on the basis of the yield of three taxes, a reduction in the income from these taxes is equivalent to a loss of revenue for local authorities. Thirdly, state grants to local authorities, which are of particular importance for these entities, have been radically cut back since 2009. In addition, the accumulated local debt is responsible for only about 0.25% of the yearly state debt in terms of GDP. The delegation has been told that the Secretary of State for Public Administration is willing to discuss these issues with the associations in the law-making process concerning local and regional finance laws.

135. Lastly, the general debt limit does not make any allowance for the different budgetary situations of local authorities. ANMP representatives and mayors have pointed out that the financial situation of Portuguese local authorities varies significantly. Some of them have fewer financial problems in balancing their budgets. Others are extremely vulnerable to volatile funding or shrinking revenues, due to different expenditure structures or time constraints for adapting the budget. More than 200 out of 308 municipalities have severe problems in balancing their budget. Furthermore, local authorities have to deal with increasing interest rates for local investments. For example, one municipality had to invest in a school centre with EU funding. The interest rates of the syndicated loans taken from banks are currently 6-7%, whereas formerly the municipality had to pay an interest rate of only 2-3%. On the expenditure side, local authorities have increased charges in contracting with state service providers. Costs are rising (e.g. water supply, sewage), but the authority is not able to pass on these increases to the citizens since about 50% of the people are unable to afford them. As a result, the municipality is subsidising a part of the cost increase with negative effects for the budget.

136. With respect to the cumulating effects of this revenue depreciation, the debt limit blocks the only instrument local authorities have to balance their accounts. A strict debt limit might not be sufficient to restrict local revenue schemes if there is not only a general will to offer special aid programmes but also a concrete compensation scheme for special financing needs of local authorities within the 2011 and 2012 State budget. The government has committed itself to set out definitions and procedures to make the revenue reduction mechanism more transparent,⁵⁸ but the details are yet not known.

137. The dispute concerning debt limits seems to be rooted not merely in different legal assessments of the constitutionality, proportionality or expediency of such a guiding instrument. The Ministry of Finance's position is based on the premise that there is a need now to improve control over municipalities in general, and particularly their budgets. On the other hand, central government and local authorities face new financial challenges, and not only with respect to the commitments of the Economic Adjustment Programme. At EU Level, the commitments of the "Six pack" regulation relate to the European Semester, the stability and growth programmes and the new stipulations regarding budgetary supervision at central and local level. The Euro-plus pact will link more closely decisions having a financial impact on state and local level. Closer macro-economic co-ordination will be introduced at European level, which will obviously result in more detailed guidelines concerning budgetary and economic core decisions at local and regional level as well. The draft of a "new international agreement on a reinforced economic union", to which the heads of governments of the Eurozone committed themselves on 9 December, will strengthen the budgetary discipline rules for all tiers of government. Finally there are difficult aspects of fiscal equalisation between urban and rural areas as well as between coastal and inland municipalities to consider. The government indicated that it is aware of the complexity and the inter-connectivity of these topics with respect to their special relevance for the local and regional level.

138. With a view to guaranteeing coherent policy co-ordination between the different tiers of government with respect to the aforementioned topics and to maintaining the fiscal autonomy of local authorities within the meaning of Article 9 of the Charter, the rapporteurs suggest that a national

⁵⁸ Diário de Notícias, Saturday, 5.November 2011, p. 11 - Autarquias não se livram de reduzir a dívida Orçamento. Governo estuda mecanismo para forçar corte de, pelo menos, 150 milhões
"We will maintain the government objectives for reducing local authority indebtedness for the coming years", the State Secretary of the Local Administration Paulo Julius warned yesterday. "We will put forward a definition and a procedure to find a way to gradually reduce the debt ceiling" he said.

stability board be set up. Its members could be representatives of the associations of regional and local authorities along with an equivalent number of representatives from the relevant ministries. The board should be chaired by the Ministry of Finance; the vice-chairmanship should rotate between regional and local representatives. The recommendations and decisions of the board, though not legally binding, would have an effect through peer pressure and should be published.

139. Although Article 9 of the Charter contains no special provision concerning the municipal business sector (MBS), this topic was of special interest during the monitoring visit. First of all, municipal assets are protected by Article 9.1 of the Charter, where national law authorises the setting up of an MBS and economic integration within the local authority. Article 238 of the Constitution allows local authorities to own assets, so existing assets are constitutionally protected within the limits of the law. Second, the Green Paper announced a far-reaching reform of the MBS as one of the main focal points. There is broad political agreement in the government that the MBS depends economically and financially on municipal resources. Following a meeting with the Court of Auditors the government's approach has been refined: There will not be a total prohibition for setting up an MBS, but some further regulations to avoid the negative impact of MBSs on their municipalities are necessary. The rationalisation effect must also be strengthened. A government white paper on MOEs (municipality owned enterprises), will now serve as the basis of this reform.

140. According to the Green Paper (page 15 seq.), the reform of local government within the domain of MOEs pursues the following objectives:

- to adapt the number of MBS entities to the local situation in their municipality (significant reduction of the number of entities);
- to limit the functions of MOEs to strategic purposes (to define the sectors where MOEs should operate in lieu of and/or in addition to the municipalities);
- to match the aim and activities of MOEs to the powers and responsibilities of municipalities;
- to limit the significance of the (fiscal) contributions of the municipalities towards the own resources of the MBS (establishing a maximum ceiling for subsidies from the municipality).

141. A reform⁵⁹ of the MBS should take these factors into consideration, because the simple abolition of MOEs on a cost-effectiveness basis may fail to take into account the advantages that can be derived from setting up such enterprises, if differences in the management culture between the classical local administration and administration through MOEs persist. Cost-effectiveness is clearly not the sole benchmark for all MOEs. For example public transport enterprises are generally not able to cover the cost of the service throughout Europe – a massive tax or cross subsidy system is necessary to stabilise the revenue of the systems concerned.

3.3.7. *Article 10: 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. |

142. The provisions of Article 10 of the Charter are fully complied with. ANMP representatives underlined the need to increase the association's influence on national policy with regard to local government affairs. The political context and the consultation procedures have been analysed above. Based on the various opinions of central government and local representatives heard during the visit, the rapporteurs have the impression that local self-government has a strong constitutional backing, but that in reality, local affairs are often overridden by national interests and thinking. In the wording of

⁵⁹ Regarding the overall reform targets see: OECD paper, DAF/CA/SOPP/RD(2010)7 of 11 October 2010, Working Party on State Ownership and Privatisation Practices, SOE Governance Reform: Recent Developments in Portugal

Article 4.2 of the Treaty of the European Union,⁶⁰ the extent of local identity within the fundamental political and constitutional structures of the country is not totally clear. It might therefore be necessary to improve the institutional influence of the local self-government sector on the national level through new co-ordination and co-operation structures, ensuring appropriate participation by the self-government level in national and European affairs. The participation of local authorities in the Economic and Social Council has not so far been sufficient, bearing in mind that this body focuses, in particular, on social consultation, including regional development and spatial planning, and does not have responsibilities with respect to local self-government as a whole.

3.3.8. Article 11: Legal protection of local authorities

Article 11 – Legal protection of local self-government

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.

143. Article 242 of the Constitution defines the scope of the supervision of local authorities and the procedures to be complied with. The focus of the supervision is compliance of the acts of local authority bodies with the law. Details are governed by Act 27/96 of 1 August. This act (*Diario da Republica I Serie-A No 177 1-8-1996 p. 2235*) relating to the legal regime of administrative supervision, contains the details of the legal remedies available under Portuguese law to local and regional authorities to protect themselves against supervision measures. Details of the legal protection system of local government affairs and the political weaknesses of the control system are set out above.

144. Bearing in mind that there is no general procedure for local authorities, and that the Constitutional Court controls in an abstract way the legality and constitutionality of national laws with special relevance for regional and local self-government, the rapporteurs would suggest that the jurisdiction of the Constitutional Court be extended to include a special procedure, giving the right for local and regional authorities to apply to the Court, if they consider that the “principles of local self-government, enshrined in the constitution or domestic legislation” within the meaning of Article 11 of the Charter have been violated. To avoid any misuse of the control of constitutionality, there could be prior examination by the Court of the admissibility of such supervision-related complaints.

3.3.9. Article 12: Declarations – reservations formulated by States, if any

Article 12 – Undertakings

- 1 Each Party undertakes to consider itself bound by at least twenty paragraphs of Part I of the Charter, at least ten of which shall be selected from among the following paragraphs:
 - Article 2,
 - Article 3, paragraphs 1 and 2,
 - Article 4, paragraphs 1, 2 and 4,
 - Article 5,
 - Article 7, paragraph 1,
 - Article 8, paragraph 2,
 - Article 9, paragraphs 1, 2 and 3,
 - Article 10, paragraph 1,
 - Article 11.
- 2 Each Contracting State, when depositing its instrument of ratification, acceptance or approval, shall notify to the Secretary General of the Council of Europe of the paragraphs selected in accordance with the provisions of paragraph 1 of this article.
- 3 Any Party may, at any later time, notify the Secretary General that it considers itself bound by any paragraphs of this Charter which it has not already accepted under the terms of paragraph 1 of this article. Such undertakings subsequently given shall be deemed to be an integral part of the ratification, acceptance or approval of the Party so notifying, and shall have the same effect as from the first day of the month following the expiration of a period of three months after the date of the receipt of the notification by the Secretary General.

⁶⁰ TEU: Article 4.2. The Union shall respect the equality of Member States before the Treaties as well as their national identities, inherent in their fundamental structures, political and constitutional, inclusive of regional and local self-government. It shall respect their essential State functions, including ensuring the territorial integrity of the State, maintaining law and order and safeguarding national security. In particular, national security remains the sole responsibility of each Member State.

145. Portugal has not formulated any declarations or reservations, or has it so far 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).

3.4. Regional democracy: The Reference Framework for Regional Democracy

146. There are four main aspects to the current situation in Portugal regarding regional democracy:

- The constitutional provisions to guarantee regional self-government;
- The absence of regional self-government structures in the mainland of Portugal;
- The economic challenges of a real regionalisation process; and
- The integration of reform measures to improve regional self-government reform within the recent Green Paper on local government reform in Portugal.

147. The constitutional situation differs in respect of regional self-government on the archipelagos Azores and Madeira and regional self-government on the mainland. Article 6.2 of the Constitution guarantees regional autonomy to the Azores and Madeira. Articles 225 to 234 of the Constitution stipulate the details about the archipelagos' structures, powers and responsibilities, the self-government bodies, funding and relationship with the state institutions. Improvement of the situation at regional level required changes to the constitutional framework. . The delegation was told that this was not opportune to revise the Constitution in order to, for example, expand the taxation autonomy of regions. The regions will be making proposals in this connection in 2012.

148. With regard to mainland regions, Article 236 of the Constitution authorises the creation of local authorities in the form of "administrative regions". These entities have nevertheless never seen the light of day due to the negative outcome of a referendum held in 1998 (see below). In accordance with Article 236.3 of the Constitution it is possible to create "other forms of local government organisation". This has been implemented through the creation of metropolitan areas.

149. Congress Recommendation 127 (2003) on local and regional democracy in Portugal and its explanatory memorandum outlined the political and legal implications associated with the implementation of regional self-government in mainland Portugal, particularly in the light of the follow-up to the result of the 1998 referendum concerning the creation of eight regions in mainland Portugal. The political conclusions are to be found under paragraph 8 of the Recommendation, summed up in sub-paragraph d:

d. acknowledges that since 1998 there has been little or no political move in favour of raising the question a second time (perhaps it could be raised after some remodelling of the regional pattern proposed in 1998);

150. The rapporteurs have raised the question of whether there should be a new referendum with a new geographical map of the territory, if the pilot studies announced by the Green Paper concerning this issue put forward arguments for reform of the regional administrative structures in mainland Portugal (see details under paragraph 40).

151. According to a recent OECD document on regional development in Portugal,⁶¹ there are major economic challenges to the regionalisation process.⁶² Regional development in terms of NUTS 3 level entities differs very much, with five NUTS 3 units above and the rest of the country below the national average. In addition, the urban/rural divide calls for special concern in terms of additional fiscal

⁶¹ OECD, GOV/TDPC/TI/RD(2009)2, 30 November 2009

Working Party on Territorial Indicators "ISDR - A Composite Indicator for monitoring Regional Development in Portugal"

⁶² See in general "Regional development policies in OECD countries", 28 September 2010, Portugal page 239 et seq.

"In Portugal the urban/rural divide commonly found in OECD member countries has translated in a gap between dynamic and densely populated urban areas (mainly along the coast) and declining low-density rural areas (concentrated in the interior of the country) . Regional disparities are less visible in terms of GDP per capita than in terms of unemployment rates, educational attainment, and R&D investment. Accordingly, strong variations of competitiveness across regions are increasingly regarded as a challenge. It is acknowledged that public policies need to focus not only on improving national competitiveness with Lisbon as a motor of development but also on increasing regional competitiveness more generally."

equalisation. The OECD has furthermore drawn up helpful criteria to determine the functional linkages between urban and rural areas.⁶³

152. Regionalisation with economically more balanced effects might be a central political challenge for the territorial organisation of the country. It seems to be an important issue in the Green Paper with the aim of securing greater territorial cohesion through administrative reforms on the mainland. Nevertheless the strengthening of territorial cohesion might not only be a question of administrative reforms or a reform of the geographical map of the country but rather a question of designing special development programmes for smaller local authorities and inland regions as well. Improvement of the NUTS 3 level within the next EU financial framework 2014-2020 should be targeted by the relevant central government authority in close liaison with the associations.

153. The government objectives concerning regional development policies are focused on the operational programme regarding competitiveness (COMPETE).⁶⁴ This programme is included in the national strategic reference framework (QREN), approved on 5 October 2007, and seeks to bring about a sustained improvement in the competitiveness of the Portuguese economy in the context of the global market, taking action on strategic matters, such as innovation, scientific and technological development, internationalisation, entrepreneurship and the modernisation of the public administration. With regard to the territorial scope, these support programmes will apply to the regions of mainland Portugal as part of the convergence objective (Northern, Central and Alentejo).

154. The Green Paper on the reform of local self-government in Portugal makes no reference to the autonomous regions (Azores and Madeira) or the administrative regions on the mainland. Instead, with its focus on the issues of intermunicipal co-operation and metropolitan areas, the government seems willing to redesign the territorial map of the country without recourse to the regional level of government. Bearing in mind that the CoE has so far no binding legal instrument concerning the regional level of government, and that in accordance with Article 13 of the Charter “the principles of local self-government contained in the present Charter apply to all the categories of local authorities existing within the territory of the Party” and the fact that there are no administrative regions within the meaning of Article 236 of the Constitution, the question of regional autonomy in mainland Portugal has in the meantime been overtaken by recent developments to redesign the territory with other elements “of local government organisation”. Regional self-government in terms of the Utrecht declaration and the Framework of Reference for Regional Self-Government is at present not a fundamental component of the local and regional architecture in the country.

3.4.1. Regional Architecture: Competences, relations with other authorities or associations, territorial integrity and protection of regional self-government

155. From the people with whom they spoke, the rapporteurs have been given the impression that the essential preconditions for an in-depth debate on the regional architecture in mainland Portugal are at present non-existent. The Government has no intention of creating new regional structures; existing structures should be strengthened. Two pilot projects to strengthen “regional” entities are under way.

156. Nevertheless it might be useful to produce, as part of the Green Paper discussion and consultation process, an impact assessment to see whether there are any advantages to creating an “administrative region-type” structure in Portugal, bearing in mind that the Green Paper will strengthen intermunicipal and metropolitan area structures. When the time comes to decide on these alternatives, the implementation of administrative regions in the future will become more difficult or well-nigh impossible, if new structures are operating on a larger intermunicipal level. In all probability, there would have to be sufficient political and administrative momentum and energy, a revision of powers and responsibilities in the legal framework and a reallocation of finances and administrative powers.

⁶³ OECD, GOV/TDPC/TI/RUR/URB(2011)2 from 28.11.2011 - Working Party on Territorial Policy in Rural Areas and Working Party on Territorial Policy in Urban Areas - Assessing and monitoring rural-urban linkages in functional regions: A methodological framework

And
 OECD, GOV/TDPC/TI/RUR/URB(2011)1 from 29.November 2011 - Working Party on Territorial Policy in Rural Areas and Working Party on Territorial Policy in Urban Areas - Partnerships and Rural-Urban Relationships: An OECD Perspective

⁶⁴ See additional answers of the MEE and SEADR for the meeting with the Congress Monitoring Mission on 8 November 2011 - Lista indicativa de questões para a reunião da delegação do CARLE com os Senhores Ministro da Economia e do Emprego e Secretário de Estado Adjunto da Economia e Desenvolvimento Regional

Experience shows that states are generally able to organise only one territorial and structural reform programme in a given time period. The concentration of the reform on intermunicipal or metropolitan structures would therefore seem to indicate that this is central government's long-term focus of attention.

157. This assessment should also take into consideration the interaction between the reform of NUTS 2 level and the "administrative region process". The Ministry of Economy intends to begin a reform of the economic development at regional level with the CCRD (*Comissões de Coordenação e Desenvolvimento Regional*) as the main instruments. Intermunicipal groupings and metropolitan areas shall play an advanced function within this process. Considering that there are 5 CCRD units on the mainland plus 1 unit on each archipelago, upgrading the CCRD to an intermediate regional administrative body within the meaning of Article 235 of the Constitution could be considered.

3.5. Analysis of the situation of regional democracy on an article-by-article basis

158. There are no particular findings in comparison with the situation of local self-government, except for the following.

3.5.1. Right of association

159. With regard to the involvement of associations in the consultation process relating to European Union affairs, in 2009 the OECD addressed the following recommendation to Portugal:

160. Recommendation: Portugal should elaborate a stronger policy and guidance for its approach to the negotiation and transposition of EU regulations, after consulting with stakeholders within and outside the administration. This is now being taken forward. Since the OECD review in spring 2008, the government of Portugal has adopted a resolution to create a stronger institutional framework for monitoring the transposition of EU directives, which constitutes a positive step in that direction".⁶⁵

161. Detailed information about the aspects to be taken into consideration concerning the consultation of local authorities in EU affairs is to be found in the annex to the OECD paper.

3.5.2. Financial resources of regional authorities

162. The Portuguese government and the regional government of Madeira⁶⁶ have been at variance over the handling of regional expenditure, which has increased the overall state deficit and thus undermined Portugal's global commitment to limit the annual deficit to 4.9% in GDP terms. The unexpected overall deficit of the autonomous region of Madeira was calculated as -€1.3 billion and had to be included in the state deficit statistics.

163. To balance this additional deficit the government negotiated a voluntary agreement with the major banks to transfer part of the assets and liabilities of these banks' pension funds to the social security system with an overall volume of about €6 billion, so as to ensure achieving the 2011 fiscal deficit target of 5.9% in GDP terms.

164. The troika members have reacted in the following way:

"...implementation of the 2012 budget will need to be accompanied by flanking measures to address still rising spending arrears and to reduce other fiscal risks, particularly at the level of local and regional governments and the state-owned enterprises. In this context, the envisaged adjustment programme for the troubled autonomous region of Madeira will provide an opportunity to signal that errant fiscal behaviour at the regional and local levels will no longer be tolerated."⁶⁷

⁶⁵ OECD, Working Party on Regulatory Management and Reform - Regulatory Management in Selected EU Member States: Background Report for Portugal 11-12 May 2009, GOV/PGC/REG(2009)4/ANN3

⁶⁶ See Expresso from 5 September 2011: "Jardim admits disaster situation. Debt is "a drop in the ocean of Portuguese debacle," says regional Government leader <http://aeiou.expresso.pt/video-sic-jardim-admite-situacao-grave-na-madeira=f671928>

⁶⁷ ECB, press release from 16.November 2011 and EU Commission, The Economic Adjustment Programme for Portugal, Second Review- Autumn 2011, page 4:

165. In consequence, pressure on the budgeting and accounting structures of regions will probably be intensified and the confidence of central government in the accuracy of regional financial statistics is limited.

4. Conclusions and further steps in the monitoring procedure

166. The rapporteurs took note of the general position of representatives from central, regional and local level that the main challenge for the reform of self-government in Portugal is to be found in the strong centralised tradition of the country and that there is reluctance to test new approaches to distributing powers and responsibilities between central and regional or local administrations. We encourage the Portuguese authorities and their representatives at all levels of government to grant to regional and local self-government bodies, as in the wording of Article 3 of the Charter, the "regulation and management of a substantial share of public affairs under their own responsibility and in the interests of the local population". This would also require concomittant resources as stated in Article 9, para. 1 of the Charter.

167. Portugal is engaged in a difficult reform process to restore by 2013 the country's capacity to have open access to international capital markets. Central government and regional and local self-government bodies have the common obligation to take the necessary measures to fulfil the different commitments of the government regarding the Economic Adjustment Programme.

168. This programme has various elements with direct or indirect effect on (in particular) the scope of regional and local self-government, structures, territorial organisation and finances. The implementation of these elements is politically bundled in a government "Green Paper on reform of local government. A reform of the management, a reform of the territory and a reform of politics" (*Documento verde da reforma da administração local*). Considering the importance of these documents, prior consultation with the associations of regional and self-government bodies is indispensable. Unfortunately there has been no such consultation in the case of the adjustment programme but only *ex post* information.

169. The consultation process shows shortcomings and should be improved. The rapporteurs encourage the authorities to compile an inventory of existing written or oral procedures between the associations and the various central government bodies so as to reach agreement on common consultation guidelines and to conclude a general written consultation agreement.

170. With respect to the important role which the Portuguese Constitution assigns to regional and local self-government, institutional co-operation between the latter and central government should be improved. The representation of regional and local entities needs to be institutionalised. The rapporteurs refer to consultative bodies at EU and CoE level and would suggest the setting up of a special consultative body on regional and local affairs, comprising central government and local and regional authority representatives, whose remit would include giving recommendations on issues which are relevant for the structure and functioning of regional and local self-government in Portugal.

171. Verification of the conformity of national legislation with the principles laid down in Article 6 of the Constitution should be improved. Associations should have the right to appeal to the Constitutional Court if they have reasonable doubt about the constitutionality of a legal provision.

"A revision of the fiscal frameworks for the regional and local governments is under preparation, although somewhat behind schedule. Measures limiting the indebtedness of local governments have been included in the budget plan for 2012. But a more profound revision, possibly benefiting from technical assistance, of legislation governing the finances of local and regional governments is necessary with a view to enhancing accountability. Recent developments in the Autonomous Region of Madeira have dramatically demonstrated the fiscal risks related to a lack of transparency and budgetary control. With debt sustainability of the region seriously in doubt, the central government is preparing an arrangement that will include quantitative criteria on fiscal performance and structural reforms. Until this arrangement is in place, the government will ensure enhanced monitoring of Madeira's budget execution."

172. The reform of the territorial map is a key element of the reform programme with regard to the local level. A certain reduction of parishes appears to be a reasonable move, but the rapporteurs would suggest that further thought should be given to the substance of the reform, in particular concerning the criteria on which this reduction would be based and in light of the traditional functions of parishes. The parishes reflect the notion of proximity, of transparency and democratic accountability. These basic values should be taken into account in the framework of the reform undertaken by Portuguese authorities. The Congress has already referred to these functions of parishes in its Recommendation of 2003.⁶⁸ These reflections would appear to remain relevant today.

173. Due to the fact that Portuguese municipalities have been affected in a very unequal way by the economic and financial effects of the crisis, the rapporteurs would like to suggest a more flexible adaptation programme at least for municipalities with budgetary difficulties; this might include the temporary setting up of special aid programmes or procedures such as those listed in paragraph 79 above, as well as programmes to strengthen economic competitiveness in a long-term perspective.

174. Concerning regional and local finance, the recent state restrictions concerning indebtedness have shown shortcomings in terms of the fair distribution of charges. Although there is a legal basis in Section 37 of the Local Finance Act 2/2007 and subsequent modifications, the cumulative effect of PIE reduction, the decrease of State grants is threatening the principle of the symmetrical sharing of financial charges between the tiers of government. A particularly significant cut in regional and local revenues may be justified if the national budgets have suffered more severely than those of local governments. Revenue trends in the different tiers of government between 2005 and 2011, presented by the ANMP, show a considerable rise in state revenues, but only a slight increase in regional and local funding. These restrictions may lead to a breach of the principle of conformity in Section 2 of Act No. 2/2007 and Article 9.2 of the Charter.

175. Regional and local authorities should be given more autonomy in respect of local taxes including the local and regional tax collecting system, but avoiding local tax policies that lead to wasteful tax competition and market distortions. This would make it possible to improve the local tax system and give local authorities the opportunity to introduce new taxes with a local impact. Excessive taxes could probably be avoided by properly functioning tax competition between municipalities.

176. Regional and local self-government bodies rely on the State's revenue administration. Any problems in the fiscal accounting system which may be due to inefficient information technology are the responsibility of the central government authorities. The rapporteurs recommend that the reforms in preparation to merge the tax, customs and information technology services are discussed with the competent regional and local authorities in order to increase the transparency of these administrative procedures.

177. In order to prevent asymmetrical adverse developments in public finances and to improve the ability of central, regional and local authorities to implement the new EU regulatory framework for avoiding excessive deficits, to streamline budget procedures and make monitoring and reporting processes more informative, the rapporteurs suggest that a national stability board, including regional and local representatives, be set up.

178. There are no political initiatives to tackle the general issue of administrative regions in mainland Portugal. Regarding the government's initiatives set out in the Green Paper to rationalise intermunicipal and metropolitan structures as a part of the improvement of the territorial competitiveness of Portugal, the rapporteurs call for an assessment of the conformity of these initiatives with the provisions of Article 255 et seq of the Constitution. The question of new regional administrative structures in mainland Portugal could be put back on the political agenda following analysis of the results of the pilot studies.

⁶⁸ Paragraph 21 of the explanatory memorandum to Congress Recommendation 127 (2003)

21. The constitutional provisions regarding parishes reflect a long-standing tradition of organising common affairs at very local level. As the name indicates, the institution originates from the church "parishes". It has now lost all legal relationship with this part of the past. The rapporteurs have the strong impression that the institution of parishes enjoys considerable credibility and affection among the population. As currently regulated, parishes represent one of the more original contributions of Portugal to the European heritage of local self-government.

179. Various statements by central government representatives prompted the rapporteurs to clarify the function of the Charter. This international treaty was ratified by Portugal in 1990 and came into force, in accordance with Article 8 of the Constitution, on 1 April 1991. The Charter is therefore not only a political benchmark to verify the expediency of provisions in ordinary law concerning regional and local affairs but also a legally binding instrument in domestic legislation.

180. Finally the rapporteurs invite the Government to consider signing and ratifying 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) and ratifying the Additional Protocol to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (ETS 159) signed on 9 May 1997.

Appendix 1 – Programme of the Congress Monitoring visit to Portugal (7-9 Nov. 2011)

**PROGRAMME OF THE CONGRESS MONITORING VISIT TO PORTUGAL
Lisbon, Coimbra and Vila Nova de Poiares
7 - 9 November 2011**

Mr Devrim ÇUKUR	Rapporteur on regional democracy Member of the Monitoring Committee of the Congress Chamber of Regions, SOC ⁶⁹ Member of the Provincial Council of Izmir (Turkey)
Mr Jos WIENEN	Rapporteur on local democracy Member of the Monitoring Committee of the Congress Chamber of Local Authorities, EPP/CD ⁷⁰ Mayor of Katwijk (The Netherlands)
Mr Bernd SEMMELROGGEN	Consultant (Germany) Member of the Group of Independent Experts on the European Charter of Local Self-Government
<u>Congress Secretariat</u>	
Ms Stéphanie POIREL	Secretary of the Monitoring Committee of the Congress

Monday, 7 November 2011

Joint Meeting with:

- the Portuguese delegation to the Congress:
 - Mr Alberto JOAO JARDIM**, Head of Delegation, Governor of the Autonomous Region of Madeira
 - Mr Artur TORRES PEREIRA**, President of the Municipal Assembly of Sousel
 - Ms Julia COSTA**, Mayor of Caminha
 - Mr Guilherme PINTO**, Mayor of Matosinhos
 - Mr Jorge PULIDO VALENTE**, Mayor of Beja
- the National Association of Portuguese Municipalities (ANMP):
 - Mr Fernando CRUZ**, Deputy Secretary-General
- the National Association of Parishes (ANAFRE):
 - Mr Armando VIEIRA**, President
 - Mr Cândido MOREIRA**, Vice-President
 - Mr Paulo QUARESMA**, Vice-President

Mr Jorge SILVEIRA, Deputy Ombudsman

Mr Guilherme D'OLIVEIRA MARTINS, President of the Court of Auditors

Mr Rui Manuel GENS DE MOURA RAMOS, President of the Constitutional Court

⁶⁹ SOC: Socialist Group

⁷⁰ EPP/CD: European People's Party – Christian Democrats of the Congress

Tuesday, 8 November 2011

Joint meeting with:

Mr Paulo SIMOES JULIO, Secretary of State for Local Administration and Administrative Reform

Ms Eugénia ALMEIDA SANTOS, General Director for Local Administration

Mr António Luís DOS SANTOS DA COSTA, Mayor of Lisbon

Mr Antonio ALMEIDA HENRIQUES, Deputy Secretary of State for Economy and Regional Development

Meeting with experts on local and regional democracy in Portugal:

Prof. António REBORDÃO MONTALVO

Head of the Research Centre for Regional and Local Development (CEDREL)

Ms Susana Margarida FAUSTINO JORGE

Researcher, Assistant professor at the University of Coimbra

Meeting with the representatives of the Ministry of Finance and Public Administration:

Mr Hélder ROSALINO, Secretary of State for Public Administration

Mrs Madalena TRAVISCO, Advisor to the Private Office of the Secretary of State

Meeting with representatives of the Lisbon Metropolitan Area:

Mr Carlos Humberto PALÁCIOS PINHEIRO DE CARVALHO, President of the Junta

Mrs Sofia LONA CID, General Secretary

Joint meeting with the representatives of the Parliamentary Committees:

Mr Ramos PRETO, Chair of the Parliamentary Standing Committee for Environment, Regional Planning and Local Government

Mr Eduardo CABRITA, Chair of the Parliamentary Standing Committee for Budget, Finance and Public Administration

Wednesday, 9 November 2011

Mr João Paulo BARBOSA DE MELO, Mayor of Coimbra

Mr Jaime Carlos Marta SOARES, Mayor of Vila Nova de Poiares

Appendix 2 - Overview of the state of implementation of human rights at local and regional levels

HUMAN RIGHTS AT LOCAL AND REGIONAL LEVEL

Institutional provisions

1. The legal basis for the Portuguese ombudsman (*provedor*) has, since 1975, been Article 23 of the Constitution and the Statute of the Ombudsman of 9 April 1991 (Act No. 9/91 of 9 April: <http://www.provedor-jus.pt/legislacao/estatutos.htm>). The *provedor* is able to ask the Constitutional Court (Article 20 paragraphs 3 and 4 of the statute) to declare the unconstitutionality or illegality of any legal provision, resulting from a legislative omission. This happens two or three times a year. Regional laws are also within the *provedor's* scope of activities. Furthermore, he or she may issue recommendations to municipalities to change local regulations.
2. Regional and local authorities are the subject of complaints from citizens as well, as shown in the following chart VII⁷¹ of the ombudsman's report. Including the two autonomous regions, 14.7% of the complaints concern the activities of the local and regional administration.
3. Nevertheless, these complaints do not relate to the human rights violations in general.
4. Some municipalities have departments to deal with "petitions". But in general these units lack independence and impartiality being part of the municipal executive. For example, Porto has assigned a post for persons with disabilities, but within a special legal basis. Local authorities' activities are important for strengthening the economic, social and cultural rights of citizens. Particular attention must be paid to ensure that citizens' demands are incorporated in "environmental impact studies". Municipalities sometimes call on the services of the Ombudsman, if they face obstacles at local level in dealing with a particular case.
5. The subjects of complaints before the Ombudsman relate to the following main areas:
 - About 16% relate to social content;
 - About 11% concern civil service aspects;
 - About 11% are complaints of delays in the court system.
6. The activity of the Ombudsman in 2009 with respect to the autonomous region of Madeira has been included in this report as an example. The situation in other regional and local units would appear to be similar.
7. According to footnote 2 to this chart, the "rights, freedoms and guarantees" focused on the following questions: "In 2009, questions related to foregoing the duty to provide a response by public organisations, and also issues related to teaching and education and health".

Participation: citizen involvement in decision-making and elections

8. Art. 48 of the Constitution guarantees citizen participation in public life. This also applies to the local level. The competent ministry⁷² has compiled the following list of the different forms of direct citizen participation:

1. Local and regional Referendums;
2. Other forms of direct participation:
 - a) Public meetings

⁷¹ Ombudsman Report 2009, page 33

⁷² Estrutura e funcionamento da democracia local e regional - Ministério das cidades, administração local, habitação e desenvolvimento regional - Secretaria de Estado da Administração Local - Direção-Geral das Autarquias Locais - 2004, page 52 et seq..

- b) Convening of special meetings
- c) Preparation of minutes
- d) Publication of proceedings
- e) Residents' organisations
- f) Submissions from groups of voters
- g) Plenary of voters
- h) Right of petition
- i) Access to the Ombudsman
- j) Courts
- l) Popular Action
- m) Public discussion in the context of the approval of territorial management instruments.

Non-discrimination

9. The Ombudsman has set up a special project to protect the rights of particular population groups (children, senior citizens and people with disabilities). The reasons for focusing on these groupings were summed up by the Ombudsman as follows:

The Ombudsman considered that these three categories of potential complainants – children, senior citizens and citizens with disabilities – should continue to benefit from special attention within the scope of the Ombudsman's activity, specifically in view of the specially vulnerable character of such citizens; the need for specialised and multi-disciplinary knowledge for firm defence and promotion of their rights; and the objective to achieve close ties of co-operation with other governmental and non-governmental bodies that intervene in such issues.

10. The main functions and targets, along with practical cases, are detailed in the Ombudsman's 2009 report.⁷³

⁷³ Portuguese Ombudsman, Report to the Assembly of the Republic 2009, page 25 et seq.